

2001

Absolute and Free Pardon: The Effect of the Amnesty Provision in the Lome Peace Agreement on the Jurisdiction of the Special Court for Sierra Leone

Daniel J. Macaluso

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/bjil>

Recommended Citation

Daniel J. Macaluso, *Absolute and Free Pardon: The Effect of the Amnesty Provision in the Lome Peace Agreement on the Jurisdiction of the Special Court for Sierra Leone*, 27 Brook. J. Int'l L. (2001).

Available at: <https://brooklynworks.brooklaw.edu/bjil/vol27/iss1/10>

ABSOLUTE AND FREE PARDON: THE EFFECT OF THE AMNESTY PROVISION IN THE LOME PEACE AGREEMENT ON THE JURISDICTION OF THE SPECIAL COURT FOR SIERRA LEONE

*"The names of the rebel offensives speak for themselves: Operation Burn House, was a series of arson attacks. Operation Pay Yourself, a programme of looting, and - most sinister of all - Operation No Living Thing."*¹

I. INTRODUCTION

In 1991, the West African country of Sierra Leone erupted in a civil conflict that has endured to the present. Hundreds of thousands have suffered at the hands of the rebels, whose composition includes younger boys and men who were abducted, drugged, and forced to carry out the gruesome campaigns of the rebel leaders. The rebel movement allegedly began in order to fight against government corruption, but after a president was democratically elected under United Nations ("UN") monitoring, the rebels persisted, refusing to relinquish control of the rich

1. Caroline Hawley, *A Country Torn By Conflict*, BBC NEWS ONLINE (Jan. 12, 1999), at http://news.bbc.co.uk/hi/english/special_report/1999/01/99/sierra_leone/newsid_251000/251377.stm.

diamond areas of the country. Since 1996, the government and the rebels have tried four times to negotiate peace agreements in order to end the conflict.

Both sides signed the third, and most comprehensive, peace agreement, on July 7, 1999, in the Togolese capital of Lomé. This agreement, known as the Lomé Peace Agreement, contained a controversial "blanket" amnesty, which granted absolute and free pardon to anyone involved in the conflict for any act committed. At the time of the signing, the Special Representative to the United Nations attached to his signature a disclaimer that provided that the amnesty would not apply to violations of international crimes. As the terms of the Lomé Peace Agreement were repeatedly violated by the rebels, the government, in June 2000, asked the UN Security Council to create a court to try the worst of the offenders. Subsequently, the UN Secretary-General negotiated with the government, pursuant to a treaty-like document, the creation of a criminal court ("Special Court" or "Court") that would be Sierra Leone specific, i.e. it incorporates provisions of Sierra Leonean domestic criminal law into its subject-matter jurisdiction. The statute of the Court purports to set the temporal jurisdiction of the Court at November 30, 1996, for violations of both international and domestic crimes, in flagrant disregard of the amnesty provision in the Lomé Peace Agreement, which would preclude prosecutions up to the moment of the signing.

The contention that amnesty provisions cannot, without violating international law, bar prosecutions for international crimes is far from settled, and although the UN might be able to successfully argue this point in the context of the Special Court for Sierra Leone, the same precept does not apply to prosecutions of domestic crimes. On the contrary, the pardon in the Lomé Peace Agreement is in full force and must be honored by the government if it intends to achieve everlasting peace in its ravaged country.

This Note attempts to examine the application of the amnesty provision contained in the Lomé Peace Agreement on the ability of the Special Court to try those "most responsible" for violations of Sierra Leonean criminal law. The Note is divided into six parts. Parts II and

III describe the history of the conflict and the creation of the Special Court. Part IV analyzes the amnesty provision of the Lomé Peace Agreement. Part V discusses the use of Sierra Leonean law in the Special Court, and briefly describes the substance of each law and purpose for its inclusion into the subject-matter jurisdiction of the Court. Part VI establishes how the amnesty provision in the peace agreement will limit the temporal jurisdiction of the Court with respect to violations of domestic law, and signals the flaw in the reasoning of the Secretary-General in his report to the Security Council.¹ Part VII will suggest some tactics that the government could employ to circumscribe the effect of the amnesty, and maintain its legitimacy in the peace process.

II. BACKGROUND

The conflict in Sierra Leone is long and complicated, and dates back to March 1991, when Revolutionary United Front ("RUF") combatants launched a war to overthrow the government. Captain Valentine Strasser, the new government leader, promised there would be multi-party elections, the first since 1967. Unfortunately, this promise was not fulfilled, and Strasser was deposed in a palace coup by a military junta that finally organized multi-party elections. The people of Sierra Leone democratically elected Ahmed Tejan Kabbah of the Sierra Leone People's Party, in February 1996, under UN supervision. The RUF had previously refused to recognize the election results, but on November 30, 1996, Foday Sankoh, leader of the rebel movement, signed the Abidjan Accord,² which purported to end the conflict. This victory was short lived, for on May 25, 1997, another military coup, led by General Johnny Paul Koroma and comprised of both the national army and the RUF, deposed President Kabbah and

2. See generally *Sierra Leone Timeline*, BBC NEWS ONLINE (Aug. 31, 2000), at http://news.bbc.co.uk/hi/english/world/africa/newsid_741000/741070.stm; *Sierra Leone - UNAMSIL Background*, at <http://www.un.org/Depts/dpko/unamsil/UnamsilB.htm> (last visited Oct. 1, 2001); *Crisis in Sierra Leone*, BBC NEWS ONLINE (July 28, 2000), at http://news.bbc.co.uk/hi/english/in_depth/africa/2000/sierra_leone/default.stm.

sent him fleeing into neighboring Guinea.³ President Kabbah returned to Freetown, the capital of Sierra Leone, on March 10, 1998, after the intervention of the Nigerian peacekeeping forces, or Economic Community Military Observer Group ("ECOMOG").⁴ The fighting continued, and by December 1998, the rebels had gained control of more than half of Sierra Leone, and by January 1999, had overrun most of Freetown.⁵ Later that month, ECOMOG chased the rebels out of Freetown and reinstalled the Kabbah government.⁶

In May 1999, after one of the RUF's worst scourges on the countryside, both sides declared a cease-fire. The two sides, possibly motivated by the terror of their own actions, took up negotiations once again.⁷ These negotiations led to the creation of the Lomé Peace Agreement,⁸ which Foday Sankoh and President Kabbah signed on July 7, 1999.⁹ The United Nations Security Council subsequently created the United Nations Mission in Sierra Leone ("UNAMSIL") to implement and oversee the peacekeeping provisions of this accord.¹⁰

Despite the signing of the Lomé Peace Agreement and the UN's subsequent deployment of peacekeeping forces in Sierra Leone, the atrocities continued.¹¹ Though the accord contained provisions requiring the disarmament of both the rebels and the forces loyal to President Kabbah,¹² the rebels refused to comply, and attacks on the

3. See sources cited *supra* note 2.

4. See sources cited *supra* note 2.

5. See sources cited *supra* note 2.

6. See sources cited *supra* note 2.

7. *Sierra Leone Peace Deal Signed*, BBC NEWS ONLINE (July 7, 1999), at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_388000/388153.stm.

8. *Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, U.N. SCOR, Annex, at 15, U.N. Doc. S/1999/777 (1999), available at <http://www.sierra-leone.org/lomeaccord.html> [hereinafter *Lomé Peace Agreement*].

9. See *Sierra Leone Peace Deal Signed*, *supra* note 7.

10. S.C. Res. 1270, U.N. SCOR, 54th Sess., 4054th mtg., U.N. Doc. S/RES/1270 (1999), available at <http://www.un.org/Docs/scres/1999/99sc1270.htm> (last visited Oct. 1, 2001).

11. For more discussion of how the Lomé Peace Agreement went wrong, see *infra* Part VII.

12. *Lomé Peace Agreement*, *supra* note 8, at Annex 1 (entitled

UN forces became increasingly frequent.¹³ In addition, widespread human rights abuses around the country continued to occur.¹⁴ The tension between the UN peacekeepers and the rebels grew until May 18, 2000, when Foday Sankoh, the most notorious of the rebel leaders,¹⁵ was captured. He has since been detained in an undisclosed location.¹⁶

Sankoh's capture sparked the first discussions of a possible international criminal tribunal to try the rebel leader. In June 2000, the Sierra Leonean government asked the UN to help it set up a court to try war criminals. In late July, the government approved a draft resolution that would formally request the Secretary-General to set up a criminal tribunal.¹⁷ The Security Council unanimously adopted this resolution on August 14, 2000.¹⁸ The resolution called for the Secretary-General to negotiate an agreement with the government of Sierra Leone for the creation of a Special Court.¹⁹

On October 4, 2000, the Secretary-General submitted his report to the Security Council,²⁰ which included an examination of the of the Special Court's practical con-

"Agreement on Ceasefire in Sierra Leone").

13. Justin Pearce, *Rebel's Broken Promises*, BBC NEWS ONLINE (May 18, 2000), at http://newsvote.bbc.co.uk/hi/english/world/africa/newsid_735000/735062.stm.

14. *Recent Violations of the Lomé Peace Agreement*, HUMAN RIGHTS WATCH (Jan. 2000), at <http://www.hrw.org/campaigns/sleone/violations.htm>.

15. David Bamford, *Foday Sankoh: Rebel Leader*, BBC NEWS ONLINE (May 12, 2000), at http://newsvote.bbc.co.uk/hi/english/world/africa/newsid_737000/737268.stm.

16. *The Strange Tale of Sankoh's Capture*, BBC NEWS ONLINE (May 18, 2000), at http://newsvote.bbc.co.uk/hi/english/world/africa/newsid_752000/752036.stm.

17. *Government Welcomes UN Draft Resolution*, INTEGRATED REGIONAL INFORMATION NETWORK (July 28, 2000), at <http://allafrica.com/stories/printable/200007280328.html>.

18. S.C. Res. 1315, U.N. SCOR, 55th Sess., 4186th mtg., U.N. Doc. S/RES/1315 (2000), available at <http://www.un.org/Docs/scres/2000/res1315e.pdf> [hereinafter Resolution 1315].

19. *Id.* ¶ 1 ("Requests the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court.") (emphasis added).

20. *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, U.N. SCOR, 55th Sess., 915th mtg., U.N. Doc., S/2000/915, (2000), available at <http://www.un.org/Docs/sc/reports/2000/915e.pdf> [hereinafter Report].

cerns, such as the subject matter, personal, and temporal jurisdiction of the Court. The report also discussed the composition and budget of the Court. Attached to this report was an annex containing the agreement between the United Nations and the government of Sierra Leone, and an enclosure, which contained the draft Statute of the Special Court for Sierra Leone.²¹ The nature of the proposed court, outlined below, shows how truly "special" it is.

III. THE SPECIAL COURT

One reason the Court is so unique is that the United Nations and the Sierra Leonean government established it pursuant to a *contractual agreement*,²² unlike the Yugoslavian ("ICTY") and Rwandan ("ICTR") international criminal tribunals, which the Security Council created pursuant to a resolution in the exercise of its UN Charter Chapter VII powers.²³ This is an important fact to keep in mind when reviewing the nuances of the Sierra Leone's Special Court. For instance, whereas the ICTY and the ICTR are limited by the Security Council's Chapter VII powers, and how these powers have been con-

21. *Id.*

22. *Id.* art. II, ¶ 9.

23. See *United Nations Security Council Resolution 827 on Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, S.C. Res. 27, U.N. SCOR, 48th Sess., 3217th mtg., at 29, U.N. Doc. S/RES/827 (1992), reprinted in 32 I.L.M. 1203, available at <http://www.un.org/icty/basic/statut/statute.htm> [hereinafter *ICTY*] ("Acting under Chapter VII of the Charter of the United Nations"). See also *United Nations Security Council Resolution 955 Establishing the International Tribunal for Rwanda*, S.C. Res. 955, U.N. SCOR, 49th Sess., 3452d mtg., at 15, U.N. Doc S/RES/955 (1994) ("Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations") [hereinafter *ICTR*]. The power of the Security Council to establish international tribunals is derived from the UN Charter Articles 39 ("The Security Council shall . . . decide what measures shall be taken . . . to maintain or restore international peace and security") and 41 ("The Security Council may decide what measures not involving the use of armed forces are to be employed to give effect to its decisions."). U.N. CHARTER arts. 39, 41, available at <http://www.un.org/aboutun/charter/index.html> (last visited Oct. 1, 2001).

strued on the international plane,²⁴ the Special Court is not so limited.²⁵ Because the Court has been created with the full participation of the Sierra Leonean government, both it and the United Nations allowed themselves to be creative, "contracting" in whatever special provisions they felt appropriate.²⁶ Accordingly, the Special Court is specific to Sierra Leone,²⁷ a result of compromise between the two negotiating parties. For instance, the Secretary-General will appoint two of the judges to each of the two trial chambers, and the government of Sierra Leone will appoint the remaining judge.²⁸ The Court, not having the backing of the Security Council's Article VII powers, lacks the authority to request the surrender of an accused from other states.²⁹ However, the Secretary-General mentioned in his report that the Court could later be "endowed" by the Security Council with this power.³⁰

The parties to the agreement have used their unrestricted power to specifically tailor the subject-matter jurisdiction of the Court. Accordingly, the draft Statute of the Special Court has added novel international crimes to the standard "crimes against humanity"³¹ and "serious

24. For instance, the UN Security Council may only exercise its Chapter VII powers "once a problem escalates to the point of being a threat to international peace," whereas the Special Court, formed pursuant to a contract, does not have this restriction. See Frederick J. Petersen, *The Facade of Humanitarian Intervention For Human Rights in a Community of Sovereign Nations*, 15 ARIZ. J. INT'L & COMP. L. 871, 877 (1998).

25. See Report, *supra* note 20, art. I, ¶¶ 5-6.

26. *Id.*

27. See Report, *supra* note 20, art. II, ¶ 11.

28. *Id.* at Annex, art. 1, ¶ 2(a). This could pose an interesting problem as to the impartiality of the judges. Human Rights Watch, for example, has expressed concern that "a possible dominant role in the court by Sierra Leone authorities could lead to political manipulation of the process, leading to biased prosecutions and inadequate protections for persons standing trial before the tribunal." Press Release, Human Rights Watch, U.N. Action on Sierra Leone Court Welcomed, But "Mixed" Tribunal Has Shortcomings (Aug. 14, 2000), available at <http://www.hrw.org/hrw/press/2000/08/sl0814.htm>.

29. See Report, *supra* note 20, art. II, ¶ 10.

30. *Id.* Although the ICTY and ICTR were endowed with this power, it was a major shortcoming in the case of the former-Yugoslavia, and worked to some extent in the case of Rwanda. See Gregory P. Noone & Douglas W. Moore, *An Introduction to the International Criminal Court*, NAVAL L. REV. 113, 117 (1999).

31. Crimes against humanity are "acts . . . committed as part of widespread or systematic attack directed against any civilian population,

violations of article 3 common to the four Geneva Conventions.”³² These additional crimes constitute “other serious violations of international humanitarian law.”³³ For instance, attacks against UN personnel serving in either a humanitarian or peacekeeping capacity can be prosecuted.³⁴ This “new” crime has already been incorporated into the Statute of the International Criminal Court (“ICC”).³⁵ The justification given for its inclusion was that a crime against UN personnel is an attack against a civilian, a crime already prohibited under customary international law.³⁶ The second novel international crime is understood in the context of the horror of the Sierra Leonean civil war, where children were abducted, injected with drugs, and forced to carry out the rebels’ gruesome campaign.³⁷ Accordingly, Article 4(c) of the draft Statute of the Special Court will allow the prosecution of any individual who abducts children under the age of fifteen and forces them to participate in hostilities.³⁸ Article 4(c) is slightly different from the ICC criminalization of conscription or enlistment of children.³⁹

with knowledge of the attack,” and include murder, extermination, enslavement, deportation or forcible transfer of population, torture and rape. Rome Statute of the International Criminal Court, July 17, 1998, art. 7, U.N. Doc. A/CONF.183/9 (1998), reprinted in 37 I.L.M. 999, available at <http://untreaty.un.org/English/notpubl/rome-en-c.htm> [hereinafter ICC Statute] (last visited Oct. 1, 2001).

32. Serious violations of common article three are “acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause.” *Id.* art. 8, § 2(c).

33. “Other serious violations of international humanitarian law” is also codified in the ICC Statute. *Id.* art. 8(e). See also Report, *supra* note 20, art. III, § A.1, ¶ 15 & Enclosure, art. 4.

34. See Report, *supra* note 20, art. III, § A.1, ¶ 15(a) - (b) & Enclosure, art. 4(b).

35. See ICC Statute, *supra* note 31, art. 8, ¶ 2, § (b)(iii).

36. See Report, *supra* note 20, art. III, § A.1., ¶ 16.

37. *Brutal Child Army Grows Up*, BBC NEWS ONLINE (June 1, 2000), at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_743000/743684.stm (describing the “thousands of surgical syringes found amid the squalor at the abandoned home of Sierra Leonean rebel leader Foday Sankoh.”).

38. See Report, *supra* note 20, at Enclosure, art. 4, ¶ (c).

39. See ICC Statute, *supra* note 31, art. 8, ¶ 2, § (e)(vii). The ICC Statute criminalizes “[c]onscripting or enlisting children under the age of

One of the most fascinating aspects of the Special Court is that it has incorporated several provisions of Sierra Leone's domestic criminal law. For example, the draft Statute of the Special Court allows for the prosecution of any person who abuses a girl under the age of fourteen, or who abducts any girl for "immoral purposes," pursuant to Sierra Leone's 1926 Prevention of Cruelty to Children Act.⁴⁰ Additionally, the Court has incorporated certain provisions of the 1861 Malicious Damage Act, which criminalizes the intentional destruction of property, particularly arson.⁴¹ At the forefront of the development of the Special Court is how effectively it will be able to avail itself of these laws, if it intends to honor the amnesty provision of the Lomé Peace Agreement of July 7, 1999, which granted absolute and free pardon to all participants in the conflict.⁴²

The personal jurisdiction of the Court conforms to Sierra Leone's specific circumstances as well. Since the inception of the Special Court, there has been considerable debate over who should be prosecuted. The people of Sierra Leone, who have suffered for a decade at the hands of the rebels, wish to see everyone punished for the crimes committed, including the considerably large child army that has committed some of the worst atrocities.⁴³ Their position is in direct conflict with the wishes of the various humanitarian organizations stationed in Sierra Leone, who wish to see the children rehabilitated.⁴⁴ The Security

fifteen years into armed forces or groups or using them to participate actively in the hostilities." Since this crime "connotes an administrative act of putting one's name on a list and formal entry into the armed forces," and differs from the more informal method of abduction that the RUF employed, the Secretary-General deemed it necessary to create a Sierra Leone specific crime. *Id.* at art. III, § A.1, ¶ 18.

40. See *Report*, *supra* note 20, at Enclosure, art. 5, ¶ (a)(i)-(iii). For a discussion of the Sierra Leonean crimes, see *id.* art. III § A.2.

41. *Id.* at Enclosure, art. 5, ¶ (b)(i)-(iii).

42. See *infra* Part VI; See *Lomé Peace Agreement*, *supra* note 8, art. IX.

43. See generally *Brutal Child Army Grows Up*, *supra* note 37.

44. See *Report*, *supra* note 20, art. III, § C.2, ¶¶ 32-38, for a discussion of the dilemma. Amnesty International discusses the matter extensively in its report, *Sierra Leone: Recommendations on the draft Statute of the Special Court*, AMNESTY INTERNATIONAL (NOV. 14, 2000), at <http://web.amnesty.org/ai.nsf/Index/AFR510832000?OpenDocument&of=COUNTRIES\SIERRA+LEONE> [hereinafter AI Report].

Council, when addressing the issue, recommended rather vaguely that only those who bear "the greatest responsibility" for the crimes committed should be prosecuted.⁴⁵ Arguably, this would not preclude the inclusion of children onto the list of indictees. The Secretary-General concluded in his report to the Security Council that children under the age of eighteen could be prosecuted, but balanced this by including provisions in the agreement that would guarantee their proper treatment.⁴⁶

IV. THE AMNESTY PROVISION OF THE LOMÉ PEACE ACCORD

As discussed in Part II,⁴⁷ the RUF and the government of Sierra Leone signed the Lomé Peace Agreement on July 7, 1999, following six weeks of discussion.⁴⁸ The Agreement granted wide concessions to the RUF. It transformed the RUF into a political party;⁴⁹ gave Foday Sankoh, the rebel leader, expansive privileges,⁵⁰ including control of the nation's diamond mines; created a Commission for the Consolidation of Peace;⁵¹ and importantly,

45. See Resolution 1315, *supra* note 18, ¶ 3. This is similar to the personal jurisdiction of the ICTY, *supra* note 23, art. 1, and the ICTR, *supra* note 23, art. 1 (stating that "persons responsible for serious violations of international humanitarian law" will be prosecuted). It remains to be seen whether or not only prosecuting those *most* responsible, in the Special Court for Sierra Leone, will limit the number of prosecutions.

46. See *Report*, *supra* note 20, art. III, § C.2, ¶¶ 32-38, for a discussion of the various concerns, and its Enclosure, art. 7 ("Jurisdiction over persons of 15 years of age."); art. 13, ¶ 2 ("Qualification and appointment of judges . . . due account shall be taken of the experience of the judges . . . including . . . juvenile justice."); art. 15, ¶ 5 ("[T]he prosecutor shall ensure that the child-rehabilitation programme is not placed at risk."); art. 19, ¶ 1 (providing that juvenile offenders will not be imprisoned).

47. See *supra* Part II.

48. See *Sierra Leone Peace Deal Signed*, *supra* note 7.

49. *Lomé Peace Agreement*, *supra* note 8, art. III. This article, entitled "Transformation of the RUF/SL into a political party," gives the RUF unlimited access to the media, resources to function as a political party, and creates a trust to fund the party.

50. *Id.* art. V ("The Chairmanship of the Board of the Commission for the Management of Strategic Resources . . . shall be offered to the leader of the RUF/SL, Corporal Foday Sankoh.").

51. *Id.* art. VI ("A Commission for the Consolidation of Peace . . . shall be established within two weeks of the signing of the present Agreement to implement a post-conflict programme that ensures reconciliation and

contained a controversial "blanket" amnesty⁵² that granted absolute and free pardon to Foday Sankoh and all other participants in the civil war, whether members of the rebel groups or of the national army.⁵³ Obviously, this last provision in the Agreement was very controversial at the time of the signing; it was emphatically denounced by human rights campaigners.⁵⁴ At the time of the signing of the Lomé Peace Agreement, the UN Special Representative of the Secretary-General for Sierra Leone was instructed to append to his signature a disclaimer.⁵⁵ This disclaimer stated that the amnesty provision in the

the welfare of all parties to the conflict, especially the victims of war.").

52. See Kristin Henrard, *The Viability of National Amnesties in View of the Increasing Recognition of Individual Criminal Responsibility at International Law*, 8 MSU-DCL J. INT'L L. 595, 639 (1999) (arguing that "blanket amnesties can . . . often lead to bitterness and deep resentment, thus blocking reconciliation and healing.").

53. See *Lomé Peace Agreement*, *supra* note 8, art. IX. Article IX states:

PARDON AND AMNESTY

1. In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon.

2. After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the signing of the present Agreement.

3. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organizations, since March 1991, up to the time of the signing of the present agreement.

Id.

54. See *Sierra Leone Backs Tribunal Plans*, BBC NEWS ONLINE (July 28, 2000), at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_855000/855478.stm. See generally Karen Gallagher, *No Justice, No Peace: The Legalities and Realities of Amnesty in Sierra Leone*, 23 T. JEFFERSON L. REV. 149 (2000).

55. U.N. Ambassador Francis G. Okelo, Special Representative of the Secretary-General, witnessed the signing of the Lomé Peace Agreement. See *Lomé Peace Agreement*, *supra* note 8, art. XXXVII.

Agreement would not apply to international crimes of genocide,⁵⁶ crimes against humanity, war crimes, and other serious violations of international humanitarian law.⁵⁷ The Security Council noted this disclaimer in its request to the Secretary-General to negotiate the creation of the Court,⁵⁸ as did the Secretary-General in his report to the Security-Council.⁵⁹

The Secretary-General's reservation has become very important in light of the creation of the Special Court because it effectively allows the UN to ignore the amnesty provisions of the Lomé Peace Agreement.⁶⁰ In fact, the UN has dual means of protection from attacks challenging the Special Court's ability to try war criminals for events that occurred before the Agreement's signing. Firstly, the reservation, by its very existence, permits the UN to set the temporal jurisdiction for the prosecution of international crimes at any appropriate date, since the Court is no longer restricted by the granting of pardon. Secondly, the Secretary-General stated in his report that the United Nations had invariably held the position that amnesties did not protect perpetrators from international crimes, such as genocide and crimes against humanity.⁶¹ Therefore, the Secretary-General, having decided the matter, continued his discussion of the Special Court, and decided to set the temporal jurisdiction of the Court to commence on November 30, 1996.⁶²

56. Which, in the end, has been excluded from the Special Court's subject matter jurisdiction. *Report, supra* note 20, art. III, § A.1, ¶ 13 ("Because of the lack of any evidence that the massive, large-scale killing in Sierra Leone was at any time perpetrated against an identified national, ethnic, racial or religious group with an intent to annihilate the group as such, the Security Council did not include the crime of genocide in its recommendation, nor was it considered appropriate by the Secretary-General to include it in the list of international crimes falling within the jurisdiction of the court.").

57. *Sierra Leone: Government Welcomes War Crimes Court*, INTEGRATED REGIONAL INFORMATION NETWORK (Aug. 16, 2000), at <http://www.reliefweb.int/IRIN/wa/countrystories/sierraleone/20000816.phtml>.

58. Resolution 1315, *supra* note 18, pmbl., ¶ 5.

59. *See Report, supra* note 20, art. III, § B.1, ¶ 23.

60. Perhaps the UN was already envisioning an international tribunal?

61. *See Report, supra* note 20, art. III, § B.1, ¶ 22.

62. *Id.* at art. III, § B.2, ¶ 27. This is the date of the conclusion of

Although the Secretary-General was able to brush aside the important question of the effect of the amnesty provision on the temporal jurisdiction of the Special Court, his explanation is hardly satisfactory.⁶³ Amnesties are an important tool of negotiations during a post-conflict society, for they allow a society to move on from the past.⁶⁴ Certainly, prior to World War I, it was fairly common to insert into a post-war treaty an amnesty provision that would pardon the worst of the offenders.⁶⁵ And although after World War II the focus on international human rights has gained worldwide prominence, the importance of amnesty in helping to resolve conflict should not be discounted.⁶⁶ Indeed, Protocol II Additional to the Geneva Conventions contains a provision that advocates granting the "broadest possible" amnesty to those who participated in the conflict.⁶⁷ Therefore, the Secretary-

the failed Abidjan Accord. *See infra* note 139. It was chosen as an appropriate date for the beginning of the temporal jurisdiction of the Special Court because it would "ensure that the most serious crimes committed by all parties and armed groups would be encompassed within its jurisdiction." *Report, supra* note 20, art. III, § B.2, ¶ 27. The decision to set the temporal jurisdiction of the court at 1996 has been greatly criticized. Human Rights Watch, for example, is of the opinion that this decision will allow "some of the worst perpetrators of atrocities in Sierra Leone, such as former rebel leader Foday Sankoh, . . . [to] walk free." Press Release, Human Rights Watch, Sierra Leone: Justice and the Special Court (Nov. 1, 2000), *available at* <http://www.hrw.org/press/2000/11/sl-pr-1101.htm>.

63. In fact, the opposite contention has been argued. *See* Johan D. van der Vyver, *Personal and Territorial Jurisdiction of the International Criminal Court*, 14 EMORY INT'L L. REV. 1, 78 (2000) (stating that "Michael Scharf noted a few years ago that 'the practice of states does not yet support the present existence of an obligation under customary international law to refrain from conferring amnesty for . . . crimes [against humanity].' He went on to point out '[t]hat the United Nations, itself, has felt free of legal constraints in endorsing recent amnesty for peace deals underscores this conclusion.'").

64. W. Michael Reisman, *Legal Responses to Genocide and Other Massive Violations of Human Rights*, 59 L. & CONTEMP. PROBS. 75, 79 (1996).

65. Remigiusz Bierzanek, *War Crimes: History and Definition*, in INTERNATIONAL CRIMINAL LAW 29, 31 (M. Cherif Bassiouni ed., 1986).

66. *See* Roman Boed, *The Effect of a Domestic Amnesty on the Ability of Foreign States to Prosecute Alleged Perpetrators of Serious Human Rights Violations*, 33 CORNELL INT'L L.J. 297 (2000) ("In the last two decades, amnesty measures have existed in eleven Latin American countries, including Argentina, Brazil, Chile, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Peru, Suriname, and Uruguay.").

67. Protocol Additional (No. II) to the Geneva Conventions of Au-

General's disclaimer appended to the signing of the Lomé Peace Agreement might successfully allow the UN to circumvent the amnesty obligations. However, it is unclear whether the Secretary-General's allegation that amnesties do not pardon international crimes, standing alone, would allow the UN to ignore the amnesty granted in the Lomé Peace Agreement. This uncertainty is further addressed in the draft Statute of the Special Court, at Article 10, which declares that any amnesty granted in the Lomé Peace Agreement shall not apply to international crimes enumerated in Articles 2 through 4 of the draft Statute of the Special Court.⁶⁸

If international war crimes, such as common article three violations, crimes against humanity, and other serious crimes, such as attacking UN personnel and abducting children, are all punishable in the Special Court, then the question remains whether the amnesty provision, so hailed at the time of the signing of the Lomé Peace Agreement, will have any effect at all. The simple answer to this is yes, the amnesty granted to all combatants will potentially limit the prosecution of violations of Sierra Leonean crimes enumerated in Article 5 of the draft Statute of the Special Court.⁶⁹

V. THE USE OF DOMESTIC CRIMINAL LAW IN THE SPECIAL COURT

As discussed in Part III,⁷⁰ the Special Court will try those most responsible for the atrocities under a combination of international and domestic law. The crimes listed in Articles 2 through 4 in the draft Statute encompass the international crimes, and are fairly standard.⁷¹ Articles 2

gust 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, art. 6, ¶ 5, 16 I.L.M. 1442 (entered into force Dec. 7, 1978). *But see* Johan D. van der Vyver, *supra* note 63, at 82 ("Protocol II . . . applies only if political change has been preceded by armed conflict and is not of an international character; it must not be taken to authorize blanket amnesty.").

68. *See Report, supra* note 20, at Enclosure, art. 10.

69. *Id.* at Enclosure, art. 5. This conflict is discussed more fully *supra* Part VI.

70. *See supra* Part III.

71. *See Report, supra* note 20, at Enclosure, arts. 2-4.

and 3 list “crimes against humanity” and “violations of article 3 common to the Geneva Conventions and of the Additional Protocol II,” respectively.⁷² Article 4 of the draft Statute lists “other serious violations of international humanitarian law,” including attacks the civilian population, peacekeeping personnel, and the abduction of children for war purposes.⁷³ As previously mentioned, the additional crimes have also been included in the Rome Statute creating the ICC.⁷⁴ Finally, in Article 5 of the Statute, the UN and the government of Sierra Leone enumerated several Sierra Leonean criminal violations that will also comprise the subject-matter jurisdiction of the Court. Section (a)(i)-(iii) of Article 5 criminalizes abusing a girl under thirteen years of age, abusing a girl between thirteen and fourteen years of age, and abducting a girl for immoral purposes.⁷⁵ Additionally, Section (b)(i)-(iii) of Article 5 criminalizes setting fire to dwelling-houses with a person inside and setting fire to public buildings or other buildings.⁷⁶ The decision to include domestic criminal law into the subject matter jurisdiction of the Special Court is novel, and it raises some important questions that this Part will address. First, why did the Special Court decide to try criminals under Sierra Leonean domestic law, and, generally, what is the place of the Sierra Leonean law in the Court? Finally, what will the impact of the amnesty provisions be on the temporal jurisdiction of the Court to hear charges brought under Sierra Leonean law?

The use of a state’s own criminal laws in an international criminal tribunal has not been attempted before the creation Special Court.⁷⁷ Given that the very name of

72. *Id.* at Enclosure, art. 2, §§ (a)-(i), art. 3, §§ (a)-(h).

73. *Id.* at Enclosure, art. 4, §§ (a)-(c).

74. *See supra*. Part III.

75. *See Report, supra* note 20, at Enclosure, art. 5, § (a)(i)-(iii).

76. *Id.* at Enclosure, art. 5, § (b)(i)-(iii).

77. The other two international criminal tribunals (not including the military tribunals in Nuremberg and Tokyo after WWII) since the ICTY and the ICTR may only prosecute international crimes. *See ICTR, supra* note 23, art. 1 (“The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of *international humanitarian law*.”)(emphasis added); *ICTY, supra* note 23, art. 1 (“The International Tribunal shall have the power to prosecute persons responsible for serious violations of *international humanitarian law*.”) (emphasis added).

the Court would suggest that there would be some departures from established international criminal law, and keeping in mind that the Court is created by a agreement between the government of Sierra Leone and the United Nations and not pursuant to a Security Council resolution wielding its Chapter VII powers, the ability of the Special Court to include in its jurisdiction domestic crimes is entirely permissible. The natural question flowing this statement is why the government of Sierra Leone wanted to include these particular laws.

The criminal law of Sierra Leone is inherited directly from its former colonial ruler, Great Britain.⁷⁸ Therefore, the starting point for Sierra Leonean criminal law is 1787, the year that English philanthropists set up the present-day capital, Freetown, as a settlement for freed slaves.⁷⁹ Most of the criminal law of Sierra Leone exists in statutory form, very little being derived from the common law.⁸⁰ Since the criminal law of Sierra Leone is not documented in a single volume,⁸¹ it is all the more interesting that the government wanted to incorporate certain crimes into the jurisdiction of the Special Court.

Perhaps the purpose of using Sierra Leonean criminal law is that it would lend some legitimacy to a system that has been described as "inaccessible, complex, uncertain and lacking systematic arrangement."⁸² Especially in light of the nine year civil war, the need to solidify and redefine the national criminal law system is of utmost importance. Therefore, a possible "political" reason for including the Sierra Leonean crimes-against-girls and arson statutes is that it would help to revitalize some of the "lost" code, even as the hostilities continue. However, although the need to legitimize Sierra Leonean

These crimes include genocide, crimes against humanity, war crimes, and common article three violations.

78. BANKOLE THOMPSON, *THE CRIMINAL LAW OF SIERRA LEONE* 13 (1999).

79. *Id.*

80. *Id.* at 1. Some common law crimes in Sierra Leone are rape and murder. *Id.*

81. *Id.* at xviii (describing the criminal law of Sierra Leone as being "scattered in a wilderness of legislation substantially imported from England.").

82. *Id.*

criminal law might be an important justification for its inclusion into the punishable crimes of the Special Court, it is obviously not the only motivation.

A second, more important reason for this decision appears when one takes a close look at the nature of the Sierra Leonean conflict. The Secretary-General stated at the beginning of his report that the Special Court would be specific to Sierra Leone.⁸³ Therefore, it is important to keep in mind that every aspect of the Court serves as a reflection of the horrors committed in Sierra Leone.

The atrocities committed in Sierra Leone from the commencement of the conflict in 1991 are well documented by Human Rights Watch and many other international non-governmental organizations.⁸⁴ In addition, the British Broadcasting Corporation ("BBC") has been another important source for monitoring the situation in Sierra Leone.⁸⁵ Since the beginning of the conflict, children have been both the victims and the perpetrators of the worst atrocities.⁸⁶ Young girls under the age of fifteen have also been the targets of all of the various combatants.⁸⁷ The Special Court has tried to address these horrendous acts. First, as previously discussed, the punishable crimes of the Court will include the abduction and forced recruitment of children,⁸⁸ in order to punish those who participated in the making of the child army, com-

83. *Report, supra* note 20, art. II, ¶ 11.

84. Human Rights Watch periodically publishes its listing of the grievances occurring in Sierra Leone. *See, e.g., Recent Violations of the Lomé Peace Agreement*, HUMAN RIGHTS WATCH (January 2000), at <http://www.hrw.org/campaigns/sleone/violations.htm>.

85. For a full report of the situation in Sierra Leone as well as useful links to other sights, see *Crisis in Sierra Leone*, BBC NEWS ONLINE (July 28, 2000), at http://news.bbc.co.uk/hi/english/in_depth/africa/2000/sierra_leone/default.stm. Indeed, BBC's coverage of the crisis in Sierra Leone has been so comprehensive that for many Sierra Leoneans, BBC's *Focus on Africa* is their primary source of news.

86. *See Sierra Leone: Getting Away with Murder, Mutilation, Rape*, HUMAN RIGHTS WATCH REPORT, July 1999, at pt. VII [hereinafter HRW REPORT], available at http://www.hrw.org/reports/1999/sierra/SIERLE99-05.htm#P1308_217192.

87. *See generally Sierra Leone: Rape and Other Forms of Sexual Violence Against Girls and Women*, AMNESTY INTERNATIONAL (JUNE 29, 2000), at <http://web.amnesty.org/ai.nsf/Index/AFR510352000?OpenDocument&of=COUNTRIES\SIERRA+LEONE>.

88. *Report, supra* note 20, at Enclosure, art. 4, § (c).

prised mostly of young boys. Not stopping here, the subject-matter jurisdiction of the Court will also include Sierra Leonean laws that criminalize the abuse of young girls.

A. Offenses Relating to the Abuse of Girls

The plight of women, and in particular, young girls, is a serious concern of the Special Court that must be addressed. The rape of women and girls has been the common practice of the rebels.⁸⁹ Hundreds of girls and women were rounded up as they were fleeing their villages, and held captive in the rebel camps.⁹⁰ Once there, they would be locked in a room, and allowed to leave only to fetch water, cook or perform other household chores.⁹¹ These girls would also be subjected to rape on a daily basis, by one or more combatants, or would sometimes become the "rebel wife" of a particular combatant. Evidently, these atrocities could be prosecuted under the international "crimes against humanity"⁹² and "common article 3 violations."⁹³ However, the government of Sierra Leone, as well as the Secretary-General, did not wish to see any of the perpetrators of these acts go unpunished.⁹⁴ They might have been wary of the shortcomings and widespread criticisms of the prosecution for crimes against humanity in the ICTY in dealing with crimes against women.⁹⁵ Therefore,

89. *Grim Facts of Sierra Leone's War*, BBC NEWS ONLINE (Feb. 13, 1999), at http://news.bbc.co.uk/hi/english/world/africa/newsid_278000/278774.stm.

90. See HRW REPORT, *supra* note 86.

91. *Id.*

92. These include rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence. See Report, *supra* note 20, at Enclosure, art. 2, § (g).

93. These include torture, mutilation and outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any other form of indecent assault.

94. The Secretary-General admitted in his report to the Security Counsel that this area of international law could possibly be "unregulated or inadequately regulated." Report, *supra* note 20, art. III, § A.2, ¶ 19.

95. Amy E. Ray, *For the Shame of It: Gender-Based Terrorism in the Former Yugoslavia and the Failure of International Humans Rights Law to Comprehend the Injuries*, 46 AM. U. L. REV. 793, 823-24 (1997) ("The exclusion of sex from subsection (h) [which criminalizes persecution on political,

the creators of the Special Court addressed this problem by adding several domestic crimes dealing specifically with the treatment of young girls.⁹⁶ Specifically, the Statute of the Special Court incorporates provisions of the 1926 Prevention of Cruelty to Children Act.⁹⁷

B. Offenses Relating to the Wanton Destruction of Property

In addition to adding crimes against girls to the subject matter jurisdiction of the Special Court, the government of Sierra Leone and the Secretary-General deemed it necessary to prosecute those who were involved in the burning of people and buildings.⁹⁸ This decision reflects the specificity of the Court in relation to Sierra Leone's crisis, but it also reflects an inability on the part of international criminal law to adequately prosecute arsonists. The burning and destruction of houses and other buildings has been a regular tactic of the rebels.⁹⁹ Since the beginning of the conflict, as many as 200,000 people have been made homeless as the result of extensive destruction of property.¹⁰⁰ In addition, many civilians have

racial or religious grounds] means that if the physical injuries inflicted on the women of the former Yugoslavia are considered crimes against humanity, the additional injury of being targeted because they are women will not be considered a crime against humanity. Presumably, then, persecution on the basis of gender is not a crime against humanity.”).

96. *Report, supra* note 20, at Enclosure, art. 5, § (a)(i)-(iii).

97. Prevention of Cruelty Act, Cap. 31 of the Laws of Sierra Leone, 1960 edition, vol. 1, § 6. “Besides rape, Cap. 31 of the Laws of Sierra Leone criminalizes various other acts involving sexual intercourse or indecent assault with children. . . . [For example,] . . . abducting an unmarried girl under the age of sixteen . . . [is a] misdemeanor punishable with a maximum of two years imprisonment.” THOMPSON, *supra* note 78, at 71. The decision of the Special Court to particularly criminalize acts committed against girls under a certain age has been criticized by Amnesty International, which believes that “all sexual assaults - whether committed against women or girls of any age, or whether committed against men or boys - should be treated as grave crimes.” See AI Report, *supra* note 44, at 12.

98. See *Report, supra* note 20, art. III, § A.2, ¶ 19, Enclosure, art. 5, § (b)(i)-(iii).

99. See Hawley, *supra* note 1. Foday Sankoh ordered “Operation Burn Houses . . . that saw the most terrible arson Sierra Leone has seen since its corporate existence.” *Id.* For a biting critique of Foday Sankoh, see Koko Akosah-Sarpong, *Profile of RUF Leader Foday Sankoh*, CONCORD TIMES (May 29, 2000), available at <http://allafrica.com/stories/200005290204.html>.

100. See AMNESTY INT’L, ANNUAL REPORT 2000: SIERRA LEONE (2000),

died by with either being locked inside a burning building, or thrown alive into a fire.¹⁰¹ Since the conflict in Sierra Leone has been termed a non-international armed conflict,¹⁰² it follows that the crimes characterizing international armed conflicts are not prosecutable in the Special Court, such as "attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives"¹⁰³ An inclusion of this crime would have encompassed the widespread arson that occurred in Sierra Leone. The draft Statute of the Special Court does include the common article three violation, "pillage," but this covers the expropriation of property.¹⁰⁴ Given the pervasiveness of the use of arson during rebel attacks, and because arson is considered a grave crime in Sierra Leone,¹⁰⁵ the subject matter of the Special Court has been drafted to include arson attacks, punishable under Sierra Leonean criminal law. Whether as a result of the Special Court's limitation to prosecute only non-international war crimes, or stemming from Sierra Leone's own concern over the issue, the draft Statute of the Special Court has incorporated Sierra Leone's 1861 Malicious Damage Act, which criminalizes destruction of property, and in particular, arson.¹⁰⁶

VI. THE EFFECT OF THE LOMÉ PEACE ACCORD ON THE PROSECUTION OF DOMESTIC CRIMES

As previously discussed, the Secretary-General absolved the Special Court from the amnesty provision of the Lomé Peace Agreement by pointing to the notion that

available at <http://www.web.amnesty.org/web/ar2000web.nsf/countries/6ff8783fea50d6fc802568f200552966?OpenDocument> (last visited Oct. 1, 2001).

101. *Id.*

102. AI Report, *supra* note 44, at 9.

103. See ICC Statute, *supra* note 31, art. 8, § 2(b)(v).

104. "The forcible seizure of another's property, especially in war."

BLACK'S LAW DICTIONARY 1168 (7th ed. 1999).

105. THOMPSON, *supra* note 78, at 149.

106. For a general discussion of this law, see *id.*, at 149-50. This text describes the history of the law, sets out the prison sentences for the various crimes, and explains the necessary elements of the crime of arson.

international crimes cannot be pardoned.¹⁰⁷ The Secretary-General, in paragraph 24 of his Report to the Security-Counsel, states that the Statute of the Special Court would include its own amnesty clause which provides that "an amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the *crimes referred to in Articles 2 to 4* of the present Statute shall not be a bar to prosecution."¹⁰⁸ This clause is repeated in Article 10 of the draft Statute.¹⁰⁹ The exclusion of international crimes from the amnesty bar is thus firmly planted.

There is an inherent flaw in the reasoning of the Secretary-General. He first states that the amnesty provision in the Accord would not prevent the prosecution of individuals who committed the crimes enumerated in Articles 2 through 4 of the draft Statute.¹¹⁰ Therefore, it follows that this protection afforded to the Special Court is *only applicable* to crimes against humanity, violations of common article three, and other serious violations of international humanitarian law. The amnesty clause in the draft Statute reiterates this idea.¹¹¹ However, Article 1 of the draft Statute also declares that the temporal jurisdiction of the Special Court shall commence at November 30, 1996, for both international *and domestic* crimes.¹¹² This means that the temporal jurisdiction of the Sierra Leonean criminal statutes, i.e. the Prevention of Cruelty to Children Act and the Malicious Damage Act, is also set at November 30, 1996. However, given that the Secretary-General insisted that the amnesty provision could not bar the prosecution of international crimes only, the same is not true with regards to prosecutions of domestic crimes. Contrarily, following the reasoning of the Secretary-

107. See *supra* Part IV.

108. Report, *supra* note 20, art. III, § B.1, ¶ 24 (emphasis added).

109. See *Id.* at Enclosure, art. 10.

110. See *Id.* art. III, § B.1, ¶ 24.

111. See *Id.* at Enclosure, art. 10.

112. See *Id.* at Enclosure, art. 1. The intention of the Special Court to prosecute both international and domestic crimes from the starting date of November 30, 1996, is also apparent in Article 15 of the draft Statute, which states that "[t]he Prosecutor shall be responsible for the investigation and prosecution of persons most responsible for serious violations of international humanitarian law *and crimes under Sierra Leonean law* committed in the territory of Sierra Leone since 30 November 1996." *Id.* art. 15, ¶ 1 (emphasis added).

General, it would seem that the Sierra Leonean crimes *are* barred by the amnesty provision, at least until July 7, 1999. Therefore, the assertion in Article 1 of the draft Statute, that the Special Court may prosecute those responsible for violations of Sierra Leonean law starting November 30, 1996, cannot stand.¹¹³

The government of Sierra Leone, represented by President Kabbah, granted "absolute and free pardon" to Foday Sankoh and all combatants, on July 7, 1999.¹¹⁴ The obvious question, in light of the creation of the Special Court, is how the government can now participate in a Special Court that will have possibly four Sierra Leonean nationals as judges,¹¹⁵ to try those most responsible? Unlike the Yugoslavian and Rwandan tribunals, which were created by the Security-Council either without the consent or even over the objections of the respective countries,¹¹⁶ the Special Court is created through an agreement between the UN and Sierra Leone.¹¹⁷ Sierra Leone actively participated in all of the negotiations leading up to the creation of the Court. The Lomé Peace Agreement is the law of the land, it even calls for the establishment of a Constitutional Review Committee to ensure that the Sierra Leone's Constitution does not prevent its implementation.¹¹⁸ Since there has been no change in the Sierra Leonean government that would possibly justify the Agreement's abrogation, how can the government now disregard the full force of the amnesty provision contained in the Lomé Peace Agreement? If the government of Sierra Leone can tender no cogent argument that would discharge its duties under the Peace Agreement, then prosecutions under domestic criminal law must be for vio-

113. See *Report*, *supra* note 20, at Enclosure, art. 15, ¶ 1.

114. See *Sierra Leone Peace Deal Signed*, *supra* note 7.

115. See Press Release, *supra* note 28.

116. "On February 22, 1993, the Security Council of the UN decided that the establishment of an international tribunal was necessary." Mary M. Penrose, *Lest We Fail: The Importance of Enforcement in International Criminal Law*, 15 AM. U. INT'L REV. 321, 336 (1999). "Despite its recognition of need for international assistance, the Rwandan government objected to the ultimate inception of the ICTR." *Id.* at 342.

117. *Report*, *supra* note 20, art. I, ¶ 1.

118. See *Lomé Peace Agreement*, *supra* note 8, art. X (entitled "Review of the Present Constitution").

lations that occurred only after July 7, 1999. Clearly, this would severely limit the number of prosecutable crimes under domestic law.¹¹⁹

VII. CAN SIERRA LEONE IGNORE THE AMNESTY PROVISION OF THE PEACE ACCORD?

In order for the Sierra Leonean government to set the temporal jurisdiction of the Court at November 20, 1996, it needs to make the persuasive argument that the amnesty provision of the Lomé Peace Agreement no longer applies. This will be very difficult, especially in light of the most recent events occurring in Sierra Leone. This Part of the note will explore the different defenses that the government of Sierra Leone could utilize to justify abrogating of the amnesty and pardon contained in the Agreement.

The rebels failed miserably to follow the terms of the Lomé Peace Agreement. Human rights violations continued,¹²⁰ and the rebels were reluctant to disarm.¹²¹ In May 2000, the situation became critical as rebel leader Foday Sankoh denounced the presence of the UN peace-keeping forces.¹²² Sadly, the peace process completely collapsed the same month, when several hundred UN peacekeepers were taken hostage.¹²³ Perhaps it was the capture and replacement of Foday Sankoh as rebel leader, the creation of the Special Court, or simple readiness to end

119. The government is already aware of this limitation. Solomon Berewa, the Attorney-General and Minister of Justice of Sierra Leone, admitted in a recent statement that violations of Sierra Leonean law would be prosecutable only for the period after the signing of the Peace Accord. It is unclear from the newspaper article, however, whether this statement reflects the official position of the government, especially in light of the language of the draft Statute of the Special Court. See *UN Special Court on Sierra Leone to Start Seating Soon*, THE PROGRESS, Nov. 24, 2000, available at <http://allafrica.com/stories/200011270182.html>.

120. See *supra* Part II.

121. See Justin Pearce, *Rebel's Broken Promises*, BBC NEWS ONLINE (May 18, 2000), at http://newsvote.bbc.co.uk/hi/english/world/africa/newsid_735000/735062.stm ("By the end of April only 4,000 RUF weapons had been handed over to the UN.").

122. *Id.* (describing how Foday Sankoh "delivered a stinging attack on the UN and its troops [declaring] '[w]e have no business with you. You are not helping us.'").

123. *Id.*

this abominable conflict, but after seven months of rebel recalcitrance, the RUF seemed willing to resume the peace process. Consequently, on November 10, 2000, the two parties met in Abuja, the capital of Nigeria, to renew the peace effort in Sierra Leone.¹²⁴ After only one day of talks, the two sides agreed to commence a cease-fire at midnight of the same night, that would span for thirty days.¹²⁵ The cease-fire also called for the return of all weapons, ammunition and other equipment seized by the RUF.¹²⁶ The July 7, 1999 Lomé Peace Agreement was also revived, both sides agreeing to disarm, demobilize and reintegrate according to the terms of the Peace Agreement.¹²⁷ The government in particular expressed a desire to honor the Lomé Peace Agreement,¹²⁸ both in statements to the press as well in the text of the cease-fire agreement.¹²⁹ According to the cease-fire, the government and the rebels would meet after thirty days to reconsider the failed peace accord.¹³⁰ Whether this agreement ultimately works hinges on whether the rebels will allow the peace-

124. *New Truce in Sierra Leone*, BBC NEWS ONLINE (Nov. 11, 2000), at http://news.bbc.co.uk/hi/english/world/africa/newsid_1017000/1017549.stm.

125. See Segun Adeyami, *Fresh Problems as New Agreement Jump-starts Lomé Accord*, PANAFRICAN NEWS AGENCY, Nov. 15, 2000, available at <http://allafrica.com/stories/200011150009.html>. See also Sierra Leone Web, *Cease-fire Agreement Between the Government of Sierra Leone and RUF*, Nov. 10, 2000, ¶ 10, available at <http://www.sierra-leone.org/ceasefire1100.html> [hereinafter *Cease-fire Agreement*].

126. See *Cease-fire Agreement*, *supra* note 125, ¶ 6.

127. *Id.* ¶ 7.

128. Paul Ohia, *ECOWAS, UN Representatives in Abuja for Sierra Leone's Peace Talks*, THE POST EXPRESS, Nov. 12, 2000, available at <http://allafrica.com/stories/200011120141.html> ("the Kabba government still considers [the Lomé Peace Agreement to be] a viable instrument for achieving durable peace.").

129. *Id.* See also *Cease-fire Agreement*, *supra* note 125, at pmb1. ("[R]eaffirming [RUF and the government of Sierra Leone's] commitment to the Lomé Peace Agreement. . . . Desirous of adopting effective confidence-building measures so as to create a conducive environment for fresh application of the Lomé Peace Agreement.").

130. *Id.* ¶ 10 ("[T]he parties agree to undertake with the participation of the ECOWAS Committee of Six of the Mediation and Security Council on Sierra Leone and the United Nations, a review of the implementation of the Agreement, thirty (30) days after its entry into force, to evaluate the timeliness of commencing a fresh application of the Lomé Peace Agreement.").

keeping forces into the diamond territory of Sierra Leone,¹³¹ and whether or not the rebels can resolve tensions within their own movement.¹³² For the moment, the cease-fire and disarmament seem to be working, as more and more rebel and government forces hand over their weapons.¹³³

Set in the middle of this latest call for lasting peace is the Special Court, which is still getting under way.¹³⁴ The government of Sierra Leone is in a precarious position, for it needs to strike a balance between guaranteeing peace in its ravaged country through reconciliation with the rebels, and at the same time, vindicate the citizens of Sierra Leone who have suffered so profoundly during the last decade, by punishing the worst of the offenders.¹³⁵ Undoubtedly, there are several potential problems if the government proceeds with its intention to prosecute those most responsible for violations of Sierra Leonean law from November 30, 1996. First, allowing the government to participate in the prosecution of the same people it granted amnesty to creates a sense of "victor's justice" that threatens the impartiality and legitimacy of the process.¹³⁶ Unlike the Allies at the end of War World II, the government in Sierra Leone has not "won" the bat-

131. The last attempt of the UN peacekeepers to enter the diamond areas of Sierra Leone proved disastrous. See Pearce, *supra* note 13.

132. Following the signing of the Cease-fire Agreement, "a majority of the rebel movement no longer recognizes Gen. Issa Sesay as their leader since according to [RUF spokesperson] Massaquoi, Gen. Issa is not interested in the ongoing peace process." See *Sierra Leone Rebels Split Over Peace Accord*, THE PROGRESS, Nov. 23, 2000, available at <http://allafrica.com/stories/200011270309.html>.

133. *Disarmament Figure Swells to 24,127*, CONCORD TIMES, October 23, 2001, at <http://allafrica.com/stories/200110230500.html>.

134. *UN Special Court on Sierra Leone to Start Seating Soon*, THE PROGRESS, Nov. 24, 2000, available at <http://allafrica.com/stories/200011270182.html>.

135. See generally Henrard, *supra* note 52.

136. The defendants challenged the legitimacy of the Nuremberg Tribunal, calling it victor's justice. The Allies sought to refute this accusation. See *Final Judgment of the International Military Tribunal at Nuremberg*, in 1 INTERNATIONAL MILITARY TRIBUNAL, 171 (1947), reprinted in BURNS H. WESTON ET AL, SUPPLEMENT OF BASIC DOCUMENTS TO INTERNATIONAL LAW AND WORLD ORDER 1221 (3d ed. 1997) [hereinafter SUPP. TO ILWO] ("The Charter is not an arbitrary exercise of power on the part of the victorious Nations, but in the view of the Tribunal, . . . it is the expression of international law existing at the time of its creation.").

tle,¹³⁷ and an aggressive campaign by the government to bring all RUF violators to justice would only prolong the conflict. Second, since the government has expressed its desire to resuscitate the Lomé Peace Agreement, it cannot now pick and choose which provisions of the agreement it believes are still applicable. If the expressed desire of the government is to continue to be bound by the terms of the accord,¹³⁸ then it follows that the amnesty provision is in full effect, and no member of a group identified in the amnesty can be charged with violations of Sierra Leonean criminal law up to July 7, 1999.

A. What Can a Country do When a Peace Agreement Collapses?

One argument that the Sierra Leonean government could make is that the RUF breached its duties under the peace agreement, and therefore is not bound by it. If the government of Sierra Leone were to argue that the Lomé Peace Agreement had been violated, then it would follow that the agreement would no longer be in effect. This is highly unlikely, since the latest developments between the RUF and the government show that both sides are still committed to the peace process, and in particular, reviving the failed accord. However, a look at the history of the peace process in Sierra Leone reveals that this argument is not so tenuous.

As of October 2001, the RUF and the government have attempted four times to end the conflict in Sierra Leone. In these various agreements, both sides have agreed to a cease-fire, to disarm and to promote everlasting peace. There have been a number of amnesties granted to the RUF during the ten-year conflict. One of the first attempts at lasting peace in Sierra Leone was the Abidjan Accord, an agreement between the government and the RUF on November 30, 1996.¹³⁹ Contained in the

137. *Id.*

138. See *supra* notes 128-30.

139. *Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone*, Nov. 30, 1996, at <http://sierra-leone.org/abidjanaccord.html> [hereinafter *Abidjan Accord*]. Note that this is the commencement date of the temporal jurisdiction of

agreement was an article promising that “no official or judicial action” would be taken against a member of the RUF.¹⁴⁰ The following year, as the situation grew exceedingly worse,¹⁴¹ the government and the RUF, with pressure from the Economic Community of West African States (“ECOWAS”), met in Conakry, Guinea, to attempt again to renew the peace process. These discussions led to the signing of the ECOWAS Peace Plan on October 23, 1997.¹⁴² The agreement primarily sought to restore the deposed President Kabbah back to power,¹⁴³ commencing May 22, 1998, on which date all involved in the May 25, 1997 overthrow would receive prosecutorial immunity.¹⁴⁴ The peace plan made almost no mention of the Abidjan Accord,¹⁴⁵ arguably, the overthrow of the government “unraveled”¹⁴⁶ the Abidjan Accord. The Lomé Peace Agreement mentioned the previous two accords in its preamble, but made no mention of revitalizing either of these

the Special Court.

140. *Id.* art. 14 (“To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL in respect of anything done by them in pursuit of their objectives as members of that organization up to the time of the signing of this Agreement. In addition, legislative and other measures necessary to guarantee former RUF/SL combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.”).

141. President Ahmed Tejan Kabbah was “ousted by elements of his own military that had been working in collusion with RUF.” See Sean D. Murphy, *U.S. Support for Sierra Leone Peace Agreement Involving Amnesty*, 94 AM. J. INT’L. L. 369, 369 (2000).

142. ECOWAS Six-Month Peace Plan for Sierra Leone, 23 October 1997 - 22 April 1998, at <http://www.sierra-leone.org/conakryaccord.html> (last visited Oct. 1, 2001) [hereinafter *ECOWAS Peace Plan*].

143. See *id.* at art. 5 (entitled “Restoration of Constitutional Government and Broadening of the Power Base”).

144. See *id.* art. 8 (“Immunities and Guarantees: It is considered that unconditional immunities and guarantees from prosecution be extended to all involved in the unfortunate events of 25 May, 1997 with effect from 22 May, 1998.”).

145. The only mention made of the previous accord is in Article 5, which states that “[in] the spirit of the Abidjan Accord and in the context of this Agreement, Corporal Foday Sankoh is expected to return to his county to make his contribution to the peace process.” *Id.* art. 5.

146. See Murphy, *supra* note 141, at 369.

agreements.¹⁴⁷ The latest Cease-fire Agreement of November 10, 2000, is the first that specifically aims to refresh an imperiled past agreement.¹⁴⁸ Although the government is firmly committed to the success of the Lomé Peace Agreement, should the cease-fire and disarmament ultimately fail, the government could conceivably refuse to honor any of the accord.

B. The Truth and Reconciliation Commission

The government could endow the newly-created Truth and Reconciliation Commission with the power to make determinations concerning the applicability of the amnesty provision on individuals before the Commission. The government recently enacted the Truth and Reconciliation Commission Act of 2000 ("Commission")¹⁴⁹ which creates a commission specifically provided for in Article XXVI of the Lomé Peace Agreement.¹⁵⁰ The Commission is modeled after the like-named Truth and Reconciliation Commission ("TRC") of South Africa,¹⁵¹ in that it has been endowed with broad powers to conduct its investigations.¹⁵² Indeed, like South Africa's TRC, failure to comply

147. See *Lomé Peace Agreement*, *supra* note 8, at pmb. ("Recalling earlier initiatives undertaken by the countries of the sub-region and the International Community, aimed at bringing about a negotiated settlement of the conflict in Sierra Leone, and culminating in the Abidjan Peace Agreement of 30 November, 1996 and the ECOWAS Peace Plan of 23 October, 1997.").

148. See Cease-fire Agreement, *supra* note 125.

149. See The Truth and Reconciliation Commission Act 2000, at <http://www.sierra-leone.org/trc.html> (last visited Oct. 1, 2001) [hereinafter TRC Act].

150. *Lomé Peace Agreement*, *supra* note 8, art. XXVI, ¶ 1 ("A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.").

151. For a description of South Africa's Truth and Reconciliation Commission, see Emily W. Schabacker, *Reconciliation or Justice and Ashes: Amnesty Commissions and the Duty to Punish Human Rights Offenses*, 12 N.Y. INT'L L. REV. 1, 18 (1999).

152. See TRC Act, *supra* note 149, § 8(1), ¶¶ (a)-(h) (including the power to compel production of records, reports, etc.; to visit any establishment or place without notice; to compel the attendance of any individual; and to issue summons and subpoenas as necessary).

with summons and subpoenas of the commission can lead to criminal sanctions.¹⁵³ It seems natural that the Commission and the Special Court, both created to address the ubiquitous human rights abuses in Sierra Leone, should be working hand in hand. For example, the legislature could have empowered the Commission, a fact-finding body, to make recommendations to the Special Court regarding likely prosecutions. In addition, the legislature could have also statutorily endowed the Commission with the power to make recommendations to the Special Court regarding amnesty. However, the statute creating the Commission does not mention the Special Court at all.¹⁵⁴

Although these additional powers would certainly aid the function of the Special Court, they could also damage the object of the Commission to "create an impartial record of violations and abuses of human rights."¹⁵⁵ First, the language of the amnesty is hard to ignore, it is broad and all-encompassing and grants "absolute and free pardon."¹⁵⁶ Any parting from the absolute pardon could discredit the Commission and lead to further conflict. Second, since international criminal violations have already averted the amnesty provision of the Lomé Peace Agreement,¹⁵⁷ an attempt to make the amnesty discretionary could cast further doubt on the Secretary-General's statements regarding the amnesty in his report to the Security Council.¹⁵⁸ Third, although abuse and abduction of girls is a human rights violation as criminalized in the domestic law to be included in the Special Court, arson, although contemptible, does not rise to the level of a human rights or international humanitarian law violation. To allow the Commission to separate the two would be confusing and possibly ineffective. Finally, one

153. *Id.* § 8(2) ("Failure to respond to a summons or subpoena issued by the Commission, failure to truly or faithfully answer questions of the Commission after responding to a summons or subpoena, or intentionally providing misleading or false information to the Commission shall be deemed equivalent to contempt of court and may, at the discretion of the Commission, be referred to the High Court for trial and punishment.").

154. *See generally id.*

155. *Id.* § 6(1).

156. *Lomé Peace Agreement*, *supra* note 8, art. IX.

157. *See supra* Part IV.

158. *See Report*, *supra* note 20, art. III, § B.1, ¶¶ 22-24.

could argue that the language of the Lomé Peace Agreement simply does not permit the Commission to consider the amnesty provision, and an attempt on the part of legislature to do so would pervert the accord.¹⁵⁹

C. The Breach of Peace Accord Argument

Generally, what happens when a peace agreement is breached? When two states negotiate a peace agreement, and it is broken, they have the possibility of addressing the breach before the International Court of Justice ("ICJ").¹⁶⁰ At the state level, the governing treaty on the interpretation of the peace agreement is the Vienna Convention on the Law of Treaties.¹⁶¹ However, in the present situation, the agreement is between a state and a rebel movement. Therefore, there is no impartial body, like the ICJ, that can conclusively decide whether the treaty was broken.¹⁶² In addition, the applicable law of interpretation of the peace agreement is unclear as between a state and a rebel movement.¹⁶³ Ultimately, it is up to the government of Sierra Leone, judging the willingness of the rebels to cooperate, to decide whether or not to honor the agreement. The government should therefore look to other situations where a peace deal has been brokered between a state and a rebel movement to decide how best to make its decision.

In some cases, the failure of a peace accord is unmistakable and reversion back to the peace accord impos-

159. See *supra* note 130.

160. See Statute of the International Court of Justice, June 26, 1945, art. 24, 59 Stat. 1031, T.S. No. 993, reprinted in SUPP. TO ILWO, *supra* note 136, at 35 ("Only states may be parties in cases before the court.").

161. See Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, reprinted in SUPP TO ILWO, *supra* note 136, at 69 ("The present Convention applies to treaties between States.").

162. Two states asking the ICJ to consider their peace agreement would also be more likely to adhere to the court's judgment, than a rebel movement.

163. Arguably, the parties could apply the principles of the Vienna Convention on the Law of Treaties, since the document "restate[s] existing customary law." See BURNS H. WESTON ET AL, INTERNATIONAL LAW AND WORLD ORDER 104 (3d ed. 1997). Still, the document only clarifies a state's obligations in its *international* relations.

sible. The case of Rwanda is exemplary. The Hutus and Tutsis shared a common animosity, sparked during the colonial era, due to Belgian favoritism of the Tutsis.¹⁶⁴ In October of 1990, a group of rebel Tutsis, called the Rwandan Patriotic Front ("RPF"), began to raid Rwanda from neighboring Uganda.¹⁶⁵ This went on for about three years, until the government of Rwanda and the RPF signed the Arusha Peace Accords on August 4, 1993.¹⁶⁶ Eight months later, on April 6, 1994, the President of Rwanda was shot down as he was returning from a meeting in Tanzania. This event, never attributed to anyone, was the catalyst that brought about the commencement of the genocide and other atrocities that shocked the world.¹⁶⁷ Although the methodical nature of the killings evidenced a preplanned strategy to exterminate the Tutsis,¹⁶⁸ the plane crash can be seen as the incident that signaled the end of any discussion of the Arusha Peace Accords.

The government of Sierra Leone could make a similar "breach of peace accord" argument to in order to get out of the amnesty requirement. The first paragraph of the amnesty pays special attention to the former rebel leader, Foday Sankoh. It undertakes to grant him, and him alone, absolute and free pardon.¹⁶⁹ After signing the accord, Foday repeatedly violated the mandates of the peace agreement.¹⁷⁰ Therefore, as to Foday Sankoh, the amnesty provision can no longer apply. The same argument could also be made for the other rebels, but not easily, given their latest efforts to abide by the Agreement.

Alternatively, the government could also argue that the peace agreement is still in effect, but that the human rights abuses that occurred after the signing abrogated the amnesty provisions of the peace accord. The situation became so dire, both before and after the signing of the accord, that it was necessary to create a Special Court to

164. The facts of the awful fate of Rwanda, available everywhere, were taken from Madeline H. Morris, *The Trials of Concurrent Jurisdiction: The Case of Rwanda*, 7 DUKE J. COMP. & INT'L L. 349, 350 (1997).

165. *Id.* at 351.

166. *Id.*

167. *Id.*

168. *Id.*

169. For the text of the amnesty, see *supra* note 53.

170. See *supra* note 121.

deal with the problem. The government could argue that surely this is proof enough that it intended to prosecute all violations of Sierra Leonean and international law, that the rebels' flagrant disregard of the peace agreement was the event that sparked the need for punishment of the worst offenders.

In general, though, breaches of a peace agreement are not as manifest as in the case of Rwanda. Sierra Leone has not reached a point of no return, in fact, the government and the RUF, for the moment, seek to revive the peace accord.¹⁷¹ In order to ensure the legitimacy of the accord, it is probably best that the government not dissect and refuse to honor parts of the accord.

D. Prosecutorial Discretion

The decision whether or not to try an individual for a Sierra Leonean crime before July 7, 1999, in the Special Court could also be left to prosecutorial discretion. The Prosecutor will ultimately have the discretion to decide who will be brought before the Special Court. Therefore, the question of the applicability of the amnesty could be brought up on an individual basis, the accused proffering evidence to show that he or she complied with the provisions of the Lomé Peace Agreement.¹⁷² Such a scenario, however, is highly unlikely, since this thoroughly discretionary decision would be decried by accusations of fraud and prejudice.¹⁷³ Although the contracting parties have addressed the problem of prosecutorial impartiality¹⁷⁴ - by

171. See *supra* notes 128-30.

172. For instance, those seeking amnesty before the Truth and Reconciliation Commission of South Africa "must fully disclose all relevant facts and meet the burden of proving that the acts for which he or she seeks amnesty were associated with a political objective." Schabacker, *supra* note 151, at 19. Those who do not meet the burden are subject to prosecution, with use immunity. *Id.*

173. See Press Release, *supra* note 28.

174. See *Report*, *supra* note 20, at Enclosure, art. 15, ¶ 1 ("The prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive any instructions from any Government or from any other source."). See also *id.* at ¶ 3 ("The prosecutor shall be appointed by the Secretary-General for a four-year term He or she shall be of a high moral character and possess the highest level of professional compe-

making the office a separate branch of the Court, by prohibiting governmental and other influences, and by delegating the appointment of the Prosecutor to the Secretary-General, who will ensure that the Prosecutor is highly qualified and of "high moral character" - the possibility of abuse is still a concern.¹⁷⁵ The strength of the blanket amnesty of the Lomé Peace Agreement is hard to defy. The language of the pardon is clear and leaves no room for interpretation. Unfortunately, Sierra Leone is not in the position to use its amnesty discretely, a method that was highly successful in the case of South Africa.¹⁷⁶ The statute creating the International Criminal Court provides little guidance. It makes no mention of amnesties, but the section on prosecutorial power allows the Prosecutor to mitigate or limit a charge as justice requires, taking into account other circumstances.¹⁷⁷ Therefore, the government could ignore the obligations of the amnesty provision for the moment, leaving the question of the applicability of the pardon to the Prosecutor.

tence and have extensive experience in the conduct of investigations and prosecution of criminal cases.").

175. Keep in mind that the Prosecutor, although he or she will have the ultimate authority to decide who should be prosecuted, is only one person. The Prosecutor will be assisted by a Deputy Prosecutor, who will be Sierra Leonean, and by "such other Sierra Leonean and international staff as may be required." Therefore, most of the investigatory work will be carried out by the staff and Sierra Leonean authorities, who could easily influence what evidence the Prosecutor will see. *See id.* at Enclosure, art. 15, ¶¶ 2, 4.

176. *See* Henrard, *supra* note 52, at 645.

[W]hereas blanket or unconditional amnesties would not be acceptable, something can be said for discrete amnesties, conditional on the complete disclosure of the atrocities committed, as was the case with the TRC process in South Africa. Discrete amnesties furthermore do not preclude the possibility of prosecution for those who chose not to apply for amnesty or whose amnesty application were refused. Such balanced combination could also achieve the reconciliation between ethical imperatives (the demands of justice) and political constraints.

Id.

177. *See* ICC Statute, *supra* note 31, art. 53, §§ 1(c) & 2(c) ("In deciding whether to initiate an investigation, the Prosecutor shall consider whether . . . [t]aking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.").

VIII. CONCLUSION

The creation of the Special Court of Sierra Leone is a bold statement of the government of Sierra Leone and the international community to punish the worst of the offenders in the decade-long conflict. The Special Court, different from its sisters, the ICTY and the ICTR, will attempt to take the *ad hoc* international tribunal one step further, by indicting criminals using its own criminal code, in addition to international criminal law. Whether or not the Special Court will be able to avail itself of domestic laws remains to be seen, but in light of the amnesty provision found in the Lomé Peace Accord of July 7, 1999, this will inevitably be difficult.

As in any agreement, the different sides assume that the various provisions of the agreement will be honored. Normally, if one of the parties reneges on its duties, it follows that the other parties are absolved from their duties under the agreement. The government could respond to the rebels' initial (and possible future) failure to honor the accord in many ways. It could declare the Lomé Peace Agreement void, and risk further civil strife. The government could endow the Truth and Reconciliation Commission with the power to weigh the effect of the amnesty in individual cases, or it could leave this matter to prosecutorial discretion. In the end, the government, balancing the need to end the brutal conflict with the need to punish the guilty, will have to decide whether or not it wants to honor the amnesty provision in the Lomé Peace Agreement. If it does honor the provision, then it has rendered virtually ineffectual its domestic criminal law in the Special Court as well as the domestic courts.

*Daniel J. Macaluso**

* The author would like to dedicate this Note to all who have suffered in both the Sierra Leonean and Liberian civil wars in West Africa, in hopes that one day justice will be served.