

# WAR DON DON

## Teaching Resources January 2011

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## Objectives

In 2011 the Special Court for Sierra Leone prepares to be the first major war crimes tribunal to conclude its cases since the Trials at Nuremberg more than sixty years ago. This landmark moment in international criminal justice is a timely call for introspection, dialogue, and critical analysis. We created this resource packet to provide background information on the issues addressed in *WAR DON DON* and to facilitate discussion around the questions brought to light in the documentary. We hope that this packet will serve as a catalyst for thoughtful exchanges and informed conversations about current issues in transitional justice and the future of international criminal law.

## Questions for Discussion

1. *WAR DON DON* portrays Sierra Leoneans with different and conflicted perspectives on the Special Court for Sierra Leone. Does an institution have to be popular to be successful? How should an international criminal tribunal measure its own success?
2. Issa Sesay was forcibly conscripted to join the RUF as a teenager, but chose to stay loyal to the rebel movement long after the reality of its tactics became clear. Can someone be both a victim and a perpetrator? To what extent are these categories useful in understanding the realities of mass atrocity? How might one go about assigning relative weight to each of these conditions?
3. During the United Nations Radio interview in *WAR DON DON*, Wayne Jordash, Sesay's defense lawyer, argued that the message Sesay's sentence sends to other rebel leaders is that there is no incentive to disarm if they will inevitably spend the rest of their lives in prison. Rebutting this claim, Prosecutor Stephen Rapp says the message of Sesay's punishment is: do not commit crimes in the first place. Discuss the idea of deterrence in international criminal law. Which perspective do you find more persuasive and why?
4. *WAR DON DON* depicts some of the outreach efforts of the Special Court. Unlike the international courts created to prosecute those responsible for the crimes committed in Rwanda and the former Yugoslavia, the Special Court is the first major tribunal since Nuremberg located in the country where the crimes took place. Compare and contrast the outreach efforts of the other ad hoc tribunals and the International Criminal Court. What sorts of outreach efforts might be relevant to the success of these institutions? How would you measure the success of an outreach campaign?
5. The United States government has refused to ratify the Rome Statute, thereby declining to serve as a member state to the International Criminal Court (ICC). At the same time, the U.S. is the largest donor to the Special Court for Sierra Leone, and has assumed this role on a voluntary basis. Can you account for what appears to be a disconnect in U.S. policy when it comes to international criminal law?

6. Both the prosecution and the defense called insider witnesses to testify in Issa Sesay’s trial. In addition, some of the teams at the Special Court, such as Augustine Gbao’s defense team, actually employed former combatants, such as Francis Musa, on their payrolls. Many of these “insiders” and former combatants were themselves implicated in very serious crimes. In his article, [Dancing with the Devil: Prosecuting West Africa's Warlords: Building Initial Prosecutorial Strategy for an International Tribunal after Third World Armed Conflicts](#), David Crane wrote that the “devils we dance with everyday are not only the criminal actors being prosecuted, but the peripheral players who have been involved in this decade long tragedy.” What are some of the challenges of relying on insider witnesses and investigators? Where would you draw the line in determining who should be prosecuted and who should be used as part of the prosecutorial strategy?
7. The defense team featured in *WAR DON DON* raises criticisms of the Special Court with regard to some of the procedural safeguards designed to uphold the rights of the accused, specifically, the prosecution’s use of insider witnesses. However, many of these criticisms are not unique to Issa Sesay’s trial. In the U.S. criminal justice system, insider witnesses—who may themselves have been complicit in the commission of crimes—are offered protective measures, relocated, and granted reduced sentences or immunity. Are these sorts of bargains necessary components of criminal law? Or do they compromise the integrity of the legal system? Which critiques are unique to the Special Court and which are relevant to other criminal justice systems?
8. Over the course of its eight-year existence, the Special Court expended more than 200 million USD to prosecute ten people. Consider some other numbers in context. For the years 2008 and 2009 alone, the International Criminal Tribunal for the former Yugoslavia (ICTY) spent over 300 million USD (though the ICTY was generally running six or seven trials simultaneously, most against multiple accused, during these years). And for a domestic trial, the 1997 case of Oklahoma City bomber, Timothy McVeigh, cost 13.8 million USD. According to some predictions, prosecuting terror suspect Khalid Shaikh Mohammed in a New York City courtroom might cost as much as 250 million USD.<sup>1</sup> Should monetary concerns factor into the decision to pursue international criminal trials? Are there ways of reducing the expense without compromising the legitimacy of the process?
9. Issa Sesay was convicted for war crimes and crimes against humanity, largely on the basis of the legal doctrine of Joint Criminal Enterprise (JCE). In the article, [Failure to Carry the Burden of Proof: How Joint Criminal Enterprise Lost its Way at the Special Court for Sierra Leone Definition of JCE](#), Wayne Jordash and Penelope Van Tuyl argue that future international criminal proceedings should abandon what they claim to be the unprecedented and overreaching interpretation of JCE employed by the Special Court. Do you agree that the Special Court employed an expansive interpretation of JCE? If so, what are the dangers of attributing guilt so broadly?

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<sup>1</sup> Yearly budgets for SCSL: <http://www.sc-sl.org/DOCUMENTS/tabid/176/Default.aspx>; ICTR: <http://www.pambazuka.org/en/category/features/68014>; ICTY: 2008-2009: [http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual\\_report\\_2008\\_en.pdf](http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2008_en.pdf); Timothy McVeigh: <http://www.guardian.co.uk/world/mcveigh> and <http://www.guardian.co.uk/world/2001/jun/30/mcveigh.usa>; Khalid Sheik Mohammed: [http://www.nydailynews.com/news/national/2010/11/13/2010-11-13\\_khalid\\_sheik\\_mohammed\\_will\\_be\\_held\\_in\\_military\\_prison\\_without\\_a\\_trial\\_indefinite.html](http://www.nydailynews.com/news/national/2010/11/13/2010-11-13_khalid_sheik_mohammed_will_be_held_in_military_prison_without_a_trial_indefinite.html)

10. The mandate of the Special Court was to prosecute “those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.” In his article [Terrorists, Warlords, and Thugs](#), David Crane says that the Court succeeded because of specificity of its mandate, noting that the “mandate allowed [him] to accomplish [his] goals within a politically acceptable time frame.” Yet, in the film, Wayne Jordash comments, “You can’t select these few people and expect the historical narrative to be particularly balanced or accurate.” Why should we be concerned with the accuracy of the historical narrative? Does, for instance, the pursuit of justice require that the narrative be balanced? What are the risks—specifically with respect to constructing an accurate historical narrative of civil wars, genocide, and mass atrocities—of prosecuting only those who bear the greatest responsibility? What other transitional justice mechanisms might render more accurate historical narratives?
11. Sierra Leone had a Truth and Reconciliation Commission (TRC) that operated at the same time as the trials at the SCSL. The mandate of the TRC was to “create an impartial historical record of violations and abuses of human rights... to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.” One of the challenges of post-conflict reconstruction is to encourage different transitional justice mechanisms to work in concert with one another. What are some of the tensions that might arise between a criminal trial and a truth commission? What are some of the ways they might compliment each other?

## **Brief Timeline of the Conflict**

- 1991 RUF rebels invade Sierra Leone, the war begins
- 1996 President Ahmad Tejan Kabbah is democratically elected and signs a peace treaty with RUF
- 1997 Military Coup: AFRC rebels overthrow government and invite RUF to join
- 1998 Nigerian-led West African Peacekeepers reinstate President Kabbah’s government
- 1999 Lome Peace Accord signed
- 1999 Rebels invade Freetown
- 2001 Rebels abduct 500 United Nations Peacekeepers
- 2001 Issa Sesay appointed Interim Leader of the RUF
- 2002 Peace agreement signed, the war is over
- 2003 Issa Sesay and nine others arrested by the Special Court
- 2004 Special Court trials begin
- 2006 Liberian President, Charles Taylor arrested
- 2009 Issa Sesay convicted and sentenced by the Special Court



## Articles by the Prosecution

### David Crane

**Dancing With The Devil: Prosecuting West Africa’s Warlords: Building Initial Prosecutorial Strategy For An International Tribunal After Third World Armed Conflicts (2005)** <http://www.case.edu/orgs/jil/vol.37.1/Crane.pdf>

David Crane provides a brief overview of the structure of the Special Court for Sierra Leone, while commenting on the changing nature and dynamic of armed conflict since the Cold War. Crane also outlines the prosecutorial strategy, noting that a prosecutor must be “visible, focused, situationally aware, and flexible” and describes “peripheral actors” in the conflict like “gun runners, diamond dealers, the Russian and Ukrainian mafia, other international criminal organizations, and terrorists, to include Hezbollah and Al Qaeda” with whom a prosecutor may have to “dance.”



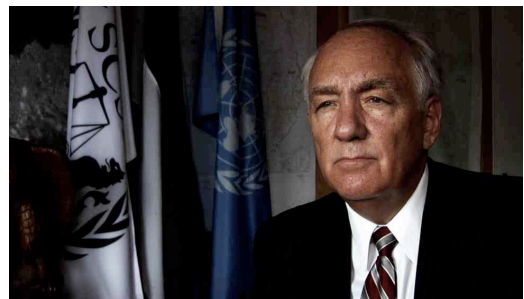
**White Man’s Justice: Applying International Justice after Regional Third World Conflicts (2006)** <http://www.cardozolawreview.com/content/27-4/DAVID.CRANE.WEBSITE.pdf>

David Crane poses the question: “Is the international justice we seek to impose, the same justice the victims of third world conflicts seek?” He also discusses the idea of “African solutions to African problems,” noting that this mantra could be used “to avoid the various the international norms that the various nations in Africa signed on to in order to avoid a just solution to impunity and criminal prosecution of one of their own.” Crane also provides his “six truisms” with respect to international justice, as well as emphasizing the importance of regional sensitivity.

### Stephen Rapp

**The Compact Model in International Criminal Justice: the Special Court for Sierra Leone (2008)** <http://www.law.drake.edu/students/docs/Rapp.pdf>

This Drake Law Review article provides an overview of the events leading up to and surrounding the violence that took place in Sierra Leone from 1991 to 2002. It juxtaposes the different approaches to international justice that were taken by the ICTY/ICTR and, alternatively, the Special Court for Sierra Leone, with a focus on the decision to prosecute former Liberian President, Charles Taylor. The article concludes by briefly discussing the effects of the tribunals on potential future international prosecutions, including Sudan.



**INTERVIEW: Stephen Rapp: Obama's Point Man on War Crimes  
(Time Magazine 09/14/2009)**

<http://www.time.com/time/world/article/0,8599,1922094,00.html>

Stephen Rapp was appointed Ambassador-at-Large for War Crimes Issues by President Obama in 2009. This interview provides Rapp's perspective on a number of issues, including the U.S.'s refusal to ratify the Rome Statute of the International Criminal Court and the practice of diplomatic engagement with alleged war criminals. With regard to his experience as chief prosecutor for the Special Court for Sierra Leone, Rapp says, "[If I was] to do it over, I would try to develop a court within the national system. That would be my preference. Maybe not a court that costs \$30 million a year like the Special Court, but an appropriate court."

## Christopher Santora

**Examining the Role of the International  
Criminal Court (2009)**

<http://bigthink.com/ideas/14217>

Chris Santora addresses common criticisms of international criminal prosecutions ranging from their cost to the idea that prosecutions might destabilize a region. In addressing these points, Santora poses the question, "What is the alternative?" He considers the examples of Sierra Leone and Liberia where "the respective players and factions would come to the peace table when it suited their interests and break the peace just as easily." In places like Sudan, he argues that "the arrest warrant against [Sudanese] President Bashir may be the crucial impetus needed to change the current political equation" in the country and ultimately promote peace.



**El Bashir And The Real Hypocrisy in International Justice (2009)**

<http://bigthink.com/ideas/14310>

What are the standards for applying international criminal law in developing countries versus those applied in developed countries? Chris Santora examines some of the inconsistencies and critiques of international justice—focusing on the international community's tendency to avoid prosecuting multi-national corporations and western commercial entities for their association with many of the world's worst atrocities.

## Articles by the Defense

### Sareta Ashraph

#### **How Things Fall Apart: Sierra Leone (2010)**

[Link forthcoming](#)

Much like in any modern conflict, war did not “descend without warning on Sierra Leone.”

Sareta Ashraph describes a long history of failed governance in Sierra Leone and explains why the Revolutionary United Front (RUF) was an attractive political movement to some. She addresses the history of distrust and divisiveness that characterized British colonialism and the political corruption that came to define the All People’s Congress party (APC) in the 1970s. During the 1980s, rampant poverty took hold of Sierra Leone, as Foday Sankoh and future Liberian President Charles Taylor forged a relationship in Libya that would ultimately devastate West Africa. The RUF’s ideological hold grew during this time, and those conscripted into the cause began to see armed struggle as the solution to “rid Sierra Leone of the corruption, nepotism and [the] undemocratic one party state that had ruined the country.” In 1991 joined by Liberian rebels, the RUF began launching attacks in eastern Sierra Leone. Alliances and partnerships shifted throughout the eleven years of the war—the RUF at one point joining with the Armed Forces Revolutionary Council (AFRC)—and thousands of civilians were raped, mutilated and murdered during this time. Combatants were disarmed in 2002.



### Wayne Jordash

#### **Failure to Carry the Burden of Proof: How Joint Criminal Enterprise Lost its Way at the Special Court for Sierra Leone (2010)**

by Wayne Jordash and Penelope Van Tuyl

<http://www.doughtystreet.co.uk/files/JCE.WJ%20and%20PV.pdf>

What standards of culpability should be applied in international law? In this article, Wayne Jordash and Penelope Van Tuyl argue that future international criminal proceedings should abandon the unprecedented and overreaching interpretation of Joint Criminal Enterprise (JCE) employed by the Special Court for Sierra Leone. The authors explain how the Special Court’s interpretation of JCE “is incapable of delineating between the collective pursuit of a war, and concerted action in furtherance of a crime.” Stated otherwise, the Special Court’s interpretation is dangerously close to simply attributing guilt by association.



**Due Process and Fair Trial Rights at the Special Court: How the Desire for Accountability Outweighed the Demands of Justice at the Special Court for Sierra Leone (2010)** by Wayne Jordash and Scott Martin

<http://www.doughtystreet.co.uk/files/Due%20Process%20FairTrial%20Rights%20SCSL.pdf>

Wayne Jordash and Scott Martin argue that certain procedural safeguards—such as the presumption of innocence of the accused and the prosecutor’s duty to prove guilt beyond a reasonable doubt—are staples of criminal law. Jordash and Martin examine whether the safeguards “contained in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda” were applied to those tried in the Special Court for Sierra Leone. Close attention is paid to the alleged (1) denial of the defendants’ right to be informed of the evidence and charges against them and (2) misapplication of Joint Criminal Enterprise. They conclude, “the RUF trial remains a worthy object for study and reflection. It ought to be soberly examined by those entrusted with the law... It should also be recalled that the long-term legitimacy of international criminal law rests at least in part on the understanding that these critical objectives – national reconciliation and the maintenance of peace – depend as much on justice being done and being seen to be done as they do on the final tally of convictions.”



## **Additional Resources: Sierra Leone**

### **Special Court for Sierra Leone**

<http://www.sc-sl.org/>

The Special Court for Sierra Leone was set up jointly by the Government of Sierra Leone and the United Nations. It is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

#### **Read More**

*The Prosecutor vs. Sesay, Kallon and Gbao* (RUF Case)

<http://www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/tabid/105/Default.aspx>

### **Sierra Leone Truth and Reconciliation Commission**

The mandate of the Truth and Reconciliation Commission's was to "create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lome Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered." (*Sierra Leone's Truth and Reconciliation Commission Act of 2000*)

#### **Read More**

Final report of Sierra Leone's Truth and Reconciliation Commission

<http://www.sierra-leone.org/TRCDocuments.html>

### **Center for Accountability and Rule of Law, Sierra Leone (CARL-SL)**

<http://www.carl-sl.org/home/>

CARL-SL is an independent organization working towards a just society for all persons in Sierra Leone, through monitoring, advocacy for institutional transparency, capacity building and empowerment of citizens.

#### **Read More**

Interview with Joseph Kamara Former Acting Prosecutor For the Special Court for Sierra Leone [http://www.carl-sl.org/home/index.php?option=com\\_content&view=article&id=384:interview-with-joseph-kamara-former-acting-prosecutor-for-the-special-court-for-sierra-leone-&catid=5:reports&Itemid=20](http://www.carl-sl.org/home/index.php?option=com_content&view=article&id=384:interview-with-joseph-kamara-former-acting-prosecutor-for-the-special-court-for-sierra-leone-&catid=5:reports&Itemid=20)

Report and Proposals for the Implementation of Reparations in Sierra Leone [http://www.carl-sl.org/home/index.php?option=com\\_content&view=article&id=377:ictj-and-carl-sl&catid=5:reports&Itemid=20](http://www.carl-sl.org/home/index.php?option=com_content&view=article&id=377:ictj-and-carl-sl&catid=5:reports&Itemid=20)

Special Court Appeals Chamber Delivers Judgment in the RUF Case [http://www.carl-sl.org/home/index.php?option=com\\_content&view=article&id=350:special-court-appeals-chamber-delivers-judgment-in-the-ruf-case&catid=5:reports&Itemid=20](http://www.carl-sl.org/home/index.php?option=com_content&view=article&id=350:special-court-appeals-chamber-delivers-judgment-in-the-ruf-case&catid=5:reports&Itemid=20)

## **Additional Resources: International Organizations**

### **Human Rights Watch (HRW)**

<http://www.hrw.org/>

Human Rights Watch is dedicated to protecting the human rights of people around the world. HRW stands with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice.

#### **Read More**

Materials on Sierra Leone and international justice

<http://www.hrw.org/international-justice/120>

Trying Charles Taylor in The Hague: Making Justice Accessible to Those Most Affected (2006)

<http://www.hrw.org/en/reports/2006/06/21/trying-charles-taylor-hague>

Selling Justice Short: Why Accountability Matters for Peace (2009)

<http://www.hrw.org/en/reports/2009/07/07/selling-justice-short-0>

Justice in Motion: The Trial Phase of the Special Court for Sierra (2005)

<http://www.hrw.org/en/reports/2005/11/01/justice-motion-0>

Bringing Justice: The Special Court for Sierra Leone: Accomplishments, Shortcomings, and Needed Support (2004)

<http://www.hrw.org/en/node/11983/section/1>

### **International Center for Transitional Justice (ICTJ)**

<http://www.ictj.org>

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies.

#### **Read More**

ICTJ's Sierra Leone Home Page  
<http://www.ictj.org/en/where/region1/141.html>

From the Taylor Trial to a Lasting Legacy:  
Putting the Special Court Model to the Test (2009)  
[http://ictj.org/static/Publications/ICTJ\\_SLE\\_TaylorTrialtoLastingLegacy\\_pb2009.pdf](http://ictj.org/static/Publications/ICTJ_SLE_TaylorTrialtoLastingLegacy_pb2009.pdf)

The Special Court for Sierra Leone Under Scrutiny (2006)  
<http://www.ictj.org/static/Prosecutions/Sierra.study.pdf>

## Open Society Justice Initiative (OSJI)

<http://www.soros.org/initiatives/justice>

The Open Society Justice Initiative supports international justice by working on various aspects of these fledgling institutions. It monitors courts to ensure the fairness and effectiveness of investigations, prosecutions, and trials, and it works to bring information about courtroom events to diplomats who control the purse-strings and to affected populations — many of whom are often thousands of miles away.

### Read More

**Charlestaylortrial.org** features daily updates from the courtroom as well as legal analysis of the proceedings. The site has become an important source of information for international and West African media, and a popular site for discussion, particularly for diaspora communities of Sierra Leoneans and Liberians living abroad.  
<http://www.charlestaylortrial.org/>

## UC Berkeley's War Crimes Study Center (BWCSC)

<http://socrates.berkeley.edu/~warcrime>

The War Crimes Study Center is a university based research organization dedicated to promoting the rule of law, accountability, and human rights around the world, particularly in post-conflict societies. BWCSC pursues its mission through work in four areas: trial monitoring and research; archival resource development education and civic outreach; and justice sector capacity building.

### Read More – including week by week summaries of the RUF-accused trial

BWCSC's Sierra Leone Home Page  
<http://socrates.berkeley.edu/~warcrime/SL.htm>

Interim Report on the Special Court for Sierra Leone (2005)  
<http://socrates.berkeley.edu/~warcrime/Papers/BWCSC%20Interim%20Report%20on%20the%20Special%20Court%20for%20Sierra%20Leone.pdf>

Second Interim Report on the Special Court for Sierra Leone (2006)  
[http://socrates.berkeley.edu/~warcrime/documents/SecondInterimReport\\_003.pdf](http://socrates.berkeley.edu/~warcrime/documents/SecondInterimReport_003.pdf)

Defence Office at the Special Court for Sierra Leone: A Critical Perspective (2007)

<http://socrates.berkeley.edu/~warcrime/documents/DefenceOfficeReport.pdf>

Effective, Efficient, and Fair? An Inquiry into the Investigative Practices of the Office of the Prosecutor at the Special Court for Sierra Leone (2008)

[http://socrates.berkeley.edu/~warcrime/SL-Reports/Effective\\_Efficient\\_andFair.pdf](http://socrates.berkeley.edu/~warcrime/SL-Reports/Effective_Efficient_andFair.pdf)

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