

THE TRUTH AND RECONCILIATION COMMISSION IN POST CONFLICT SIERRA LEONE

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DECLARATION

I, Lansana Dumbuya, hereby declare that this dissertation is my own original work and that it has not been submitted for any degree in any other University, and that all sources in this work have been duly acknowledged.

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DEDICATION

To the glory of God and to victims and survivors of the civil conflict in Sierra Leone

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The success of this work depends on several factors. The singling out of few names does not exhaust my moral and intellectual debts. I am indebted to Dr Jean Alain who offered critical comments and advice, which helped me clarify and fairly present my thought.

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I am alone responsible for the deficiencies of this paper.

ABBREVIATIONS

TRC	Sierra Leone's Truth and Reconciliation Commission
SC	The Special Court for Sierra Leone
UN	The United Nations
RUF	Revolutionary United Front
SLPP	Sierra Leone Peoples' Party
APC	All Peoples' Congress
ECOWAS	Economic Community of West African States
ECOMOG	ECOWAS Monitoring Group
NPRC	National Provisional Ruling Council
AFRC	Armed Forces Revolutionary Council
ICCPR	International Covenant on Civil and Political Rights
ACHPR	African Charter on Human and Peoples' Rights

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CHAPTER ONE

INTRODUCTION

1.1 Introduction to the Study

A society emerging from a regime marked by grave and serious violations of human rights faces the complex challenge of how best to deal with the past¹. This process of dealing with past violations in the context of transitional governance is a problem that many emerging democracies have faced and will continue to face.² The present transition under way in Sierra Leone and the household familiarity with grievous human rights violations highlights the immediacy of the vexing question of what to do with past atrocities when attempting to start anew.

The mechanism responsible for addressing this question in Sierra Leone is the Truth and Reconciliation Commission (TRC). Early in the year 2000, an Act was promulgated by the Government of Sierra Leone to set up a Truth and Reconciliation Commission³. In doing so it formerly established one of the pillars of the Lome Peace Accord of July 1999.⁴ Notwithstanding this development some questioned the credibility of the TRC. They did so because Article IX of the Lome Peace Accord wiped out, by a blanket amnesty the possibility of trials of those responsible for gross human rights abuses committed during the conflict.

Article IX was criticised by international and domestic human rights groups, on the basis that it provided a poor form of compensation for peace.⁵ The object of The Truth and Reconciliation Commission is to record an accurate account of the atrocities committed during the armed conflict. Consideration now turns to a critical examination of the Commission so as to assess the level of protection afforded to victims of human rights abuses. It is true that a war crime tribunal has now been created,⁶ and it is argued that it

¹ See Strategic Choices In The Design Of Truth Commissions, accessed on < www.truthcommission.org > on 14 October 2003.

² Christensen M. J., Book Review: 'The Promise of Truth Commissions in Times of Transition: Priscilla B. Hayner, Unspeakable Truths: Confronting State Terror and Atrocity' 23 Mich. J. Int'l L. 695.

³ See Sierra Leone's Truth and Reconciliation Commission Act 2000.

⁴ This is the peace accord signed by the Sierra Leone Government and the Revolutionary United Front (herein after referred to as the RUF), in Lome Togo in 1999.

⁵ Moment of Truth in Sierra Leone, Conceptualizing the Truth and Reconciliation Commission Accessed on <www.dtronline.org/pressroom/publications/sierraleonetruth.pdf> on 6 July 2003

⁶ The Special Court for Sierra Leone established by an Agreement between the Government of Sierra Leone and the United nations.

should now be the main priority.⁷ However, a credible and effective TRC should nonetheless play a crucial role in establishing at least minimum levels of accountability for human rights abuses, as nothing more could provide a process through which ordinary people's experiences and voices could be heard. This will help in the longer-term to build the foundations for a future Sierra Leone in which impunity no longer goes unchallenged. Recent studies show that there has been limited success in judicial approaches to accountability; therefore there is obvious need for other measures to address and confront, punish or reform those persons and institutions that are responsible for violations. Many new governments have turned to mechanisms outside the judicial system to confront, as well as learn from the horrific crimes of the past.⁸

1.2 Relevance of the Subject

Few would dispute that truth, justice, and reconciliation are crucial elements in building a sustainable peace based on respect for human rights where there has been violent internal conflict. While it can legitimately be claimed that they are conceptually distinct, it has been argued that it is a mistake to separate them.⁹ There are many indications of public ignorance about the TRC. Many have, since its inception, expressed doubt about the need for a TRC, saying that without a truth commission Sierra Leoneans can simply forgive and forget.¹⁰ Others say that it has no power to punish therefore it can serve no useful purpose. As a result this dissertation will seek to create the atmosphere that will assist people to fully understand the work of the TRC. At the moment no comprehensive academic study has been undertaken regarding the TRC. Several papers have been written, but these are only in the form of short articles. In academic research, the choice of the subject is the result of certain considerations; these include the relevance of the topic to society, its contribution to science and the statement of the extent of the problem¹¹.

⁷ See Amandiame I. And An-Na'im A., *The Politics of Memory: Truth, Healing and Social Justice* (2000) 52, where Ifi Amandiame commenting on this issue stated that truth commissions and legal accountability heal the war wounds of shattered communities and broken lives at the expense of social justice.

⁸ Hayner, P 'Same species, different animal: how South Africa compares to truth Commission worldwide: Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa' in Villa-Vicencio C. and Verwoerd W (eds) 34 (2000).

⁹ As in footnote 5 above

¹⁰ International Crisis Group, *Sierra Leone Truth and Reconciliation Commission: A Fresh Start*, African Briefing, Freetown/Brussels, 20 December 2002, Accessed on <www.crisisweb.org> July 6 2003

¹¹ See Nomoyi N.C. *Trauma Experience By Women Who Made Submission at the Truth and Reconciliation Commission Hearings 2000*, at 11.

Because there is misinformation and lack of understanding in Sierra Leone as to what a truth commission is, there is the need to analyze the role of the TRC and its importance to society in the present transition period. This is vital because truth, justice and reconciliation initiatives can obstruct rather than assist each other, if not managed properly. Aspects of human rights above and beyond judicial punishment are sometimes too lightly dismissed. Judicial process can be no less selective or problematic than truth and reconciliation commissions. This work will help those who are leery of the Commission to believe that transitions to democracy in Sierra Leone is impossible without reconciliation that looks beyond the judicial process to crimes and human rights abuses suffered in the context of protracted armed conflict.¹²

The purpose of the TRC is 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 need of victims, to promote healing and reconciliation and to prevent a repetition of violations and abuses suffered.¹³

The fact that the Special Court will only try those perpetrators, who bear the greatest responsibilities for crimes committed during the civil war in Sierra Leone¹⁴ approximately twenty, has created reservations about the outcome of the Commission's role in addressing impunity, healing and reconciliation.¹⁵ In most countries perpetrators have been prosecuted after the findings of truth commissions have been published, can Sierra Leone follow this trend? The Special Court for Sierra Leone is now functioning concurrently with the TRC; this simultaneous functioning of both institutions raised doubt as to the effect it will have on the smooth functioning of the Commission. Perpetrators were initially unwilling to testify as they initially saw the Commission as an investigative arm of the Special Court.

It has been argued that each conflict has its own conditions, dynamics and cultural issues. Therefore each country emerging from an armed conflict will need to find those

¹² The Revolutionary United Front attacked Sierra Leone In 1991, this war resulted in tens of thousand of deaths, and the displacement of about two million people many of whom were refugees in neighboring countries

¹³ The functions of the TRC are provided for under Part III section 6 of the TRC Act. 2000

¹⁴ The word those who bear the greatest responsibility is a worrying acronym as few leaders may not only be those who bear the greatest responsibility

¹⁵ The Commission will therefore be handling the bulk of human rights matters; it is therefore the most important mechanism in the post transition period

mechanisms that best suit its situation. Such mechanisms must be rooted in the culture, traditions and worldview of that society; while the people should assume ownership of the process: otherwise the exercise will prove fruitless¹⁶. Having said that, it is clear that Sierra Leoneans have chosen a truth Commission therefore there are many lessons they can learn from those countries that have emerged from a civil war. This is why consideration will be given to the experiences of truth commissions of other states.

1.3 Literature Survey

This dissertation seeks to contribute to the argument that a truth commission, notwithstanding its weaknesses may contribute to the present reconciliation process in Sierra Leone significantly. In an endeavor to contribute to this debate, books, journals articles, and websites have been consulted. There is however no books written specifically on the Truth and Reconciliation Commission (TRC). The most relevant writings have been a booklet in which a few writers have contributed short articles. The articles by Matterollo and Lax have been very useful, they highlights the need for a TRC and appeal to the Sierra Leone audience that there is great benefit to be derived from such a structure.

Asmal, Boraine, Jeffery, Krog, and Shea have written generally on truth Commissions. They have all strived in their books to argue why fragile societies should face the past. They analyzed the essence of official acknowledgement of the past whether by criminal method or truth commission, they emphasized that truth commissions can provide a form of justice, which is lacking in judicial system. Though Asmal would dispose of judicial justice in apartheid South Africa, his argument is that judicial system focused too much on perpetrators to the exclusion of victim. He nevertheless indicated that any such trials should maximize the underlying values of ubuntu.¹⁷ However these works were too South African Centered as their focus was more on the South African Truth Commission.

This dissertation relies heavily on Priscilla Hayner's *Unspeakable Truth* (2003).¹⁸ In 'Unspeakable Truths', Hayner clarifies exactly what truth commissions are; their potential to contribute; and what their limitations are. With that intention, she systematizes different experiences to learn from various models of past commissions, in order to better

¹⁶ Same as in footnote 5 above

¹⁷ Kader Asmal, Louise Asmal, Ronald Suresh Roberts, *Reconciliation Through Truth A Reckoning of Apartheid's Criminal* (1998)

¹⁸ See Hayner P. B., *Unspeakable Truths: Confronting State Terror and Atrocity: How Truth Commissions Around the World Are Challenging the Past and Shaping the Future*, 12 (2001),

understand them. Hayner describes and compares those commissions, which are considered more successful in terms of their impact on the transition to democracy in their countries, or for the national or international attention they have received. She analyzes the abuses to be covered by the report or the scope of the commission's mandate. There is already an interesting body of literature on this matter, and Hayner demonstrates familiarity with it as well as with differing positions on what their mandates should be.

However Hayner correctly pointed out that international law compels states to prosecute and punish perpetrators of the most serious human rights abuses. She warned that truth commissions should not be taken as a substitute for the judicial system. As a final point in the complex relationship between truth and justice, Hayner notes that truth commissions have made worthy contributions in revealing the role and complicity of the judiciary with former regimes. These commissions have also recommended judicial reforms that will promote the rule of law. *Unspeakable Truths* has been described as the most up-to-date, comprehensive and comparative study of truth commissions, providing to governments and human rights organizations interested in official truth-telling a complete guide to the many topics that need to be kept in mind in establishing a truth commission.¹⁹

There are abundant articles and websites on truth commissions. Prominent amongst these are the articles by Jeremy Sarkin and Audrey Chapman and Patrick Ball, they specifically addressed the necessity of truth commissions; Sarkin contends that truth commissions facilitate a national catharsis and that its legacy is of vital importance to future generations.²⁰ He emphasized on the legalities of the establishment of truth commissions resting on the assumption that though there is no set model of truth commissions, it should be such that people feel they are part of the process. Chapman like Sarkin addressed the issue of restorative dignity for victims and punishment of shame on the perpetrators, and the conceptualization of the truth within and out of the commission's hearings.²¹ While Sarkin's objective was to use truth commissions generally as a model to advocate for the establishment of a Truth Commission in Rwanda, Chapman and Ball have taken a broader perspective of a comparative study on TRCs drawing lessons from Haiti, South Africa and Guatemala. Tomuschat's article on reparation and Roth-Arriaza and Gibson's article on amnesty have been very useful.

¹⁹ See Mendez's book review on Hayner's *Unspeakable Truth* (2002) in *Human Rights Quarterly* 25.1 (2003) 237-256

²⁰ Sarkin J., 799-800

²¹ Chapman and Ball 3

The journals/articles on Sierra Leone have not comprehensively dealt with the TRC. Most of the articles dealt with the Sierra Leone conflict or the Special Court but nevertheless addressed the TRC in passing. These writers (Schocken, Juma, Akinrinada, Udombana) have argued that the investigation, prosecution and punishment of individuals responsible for international crimes, is consistent with the overall objective of creating peace in Sierra Leone. They emphasized that people in positions of power must know that they will be held accountable for violations of human rights not only by history but also by agencies of the law. They indicated that the Special Court would serve as a procedural laboratory for the enforcement of the laws of war. They however highlight the importance of the TRC as a complementary body to the Special Court. These articles could be of great value for researchers on the Sierra Leone conflict and the Special Court. Specific articles, which attempted to address some aspects of the TRC, are the ones written by Tijan-cole and Hall and Kazemi. These articles though useful have only literature on the relationship between the special court and the TRC.

1.4 Methodology

This study is informed by both primary and secondary sources. Primary Sources such as the Lome Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), signed on the seven-day of July 1999,²² the Truth And Reconciliation Commission Act, 2000,²³ Resolutions of the UN in relation to Sierra Leone, especially Resolution 1315 (2000) establishing the Special Court and the Statute of the Special Court for Sierra Leone have been used. Secondary Sources consist of books, published articles, journals publication, and academic materials from the Internet. These materials have been used not only in evaluating the peace process but also on the comparative study of truth commissions and their relationship with the criminal justice system.

1.5 Overview of Chapters

This work is arranged into six parts. Beyond the introduction, Chapter Two highlights atrocities of the war and evaluates the diplomacy process, which eventually resulted in the creation of the TRC. It briefly examines the Abidjan and Conakry Peace Plan and specifically elaborates on the Lome Peace Accord, which finally culminated in the

²² See the Lome Peace Accord

promulgation of the Truth and Reconciliation Act of 2000. The human rights and humanitarian law dimension of the conflict will also be addressed.

Chapter Three gives a general description of truth commissions and analyse the TRC with specific reference to its structure, function, jurisdiction, mandate, proceedings, evidence, and its investigative methods, which is the backbone of the truth commission.²⁴ It will also assess whether naming names would be a potent tool for the Commission to bring perpetrators to shame.²⁵ From a human rights perspective Chapter Four addresses issues such as healing and reconciliation, truth, forgiveness, and assesses whether they are effective remedies for human rights violations. The issue of amnesty, especially, Article IX of the Lome Peace Accord will be evaluated. This chapter will also discuss the issue of impunity.

Chapter Five deliberates on the relationship between tribunals and truth commissions generally and specifically elaborates on the TRC and the Special Court with specific reference to their legal framework, composition, jurisdiction, information sharing, and whether both institutions serve as accountability mechanisms. Chapter Six concludes the dissertation by determining whether or not there are any lessons one can learn from the commission. It closes by making recommendations for the smooth functioning of the Commission and how it can effectively contribute to the needs of traumatised societies.

²³ As in n5 above

²⁴ Here researcher intend to do his analysis with specific reference to the TRC act of 2000

²⁵ Rodolfo Mattarollo, What To Expect Of A Truth Commission, accessed on <www.sierra-leone.org/trcbook-rodolfomattarollo.html> on 12 September 2003

CHAPTER TWO

EVENTS LEADING TO THE CREATION OF THE TRUTH AND RECONCILIATION COMMISSION

2.1 Introduction

The Sierra Leone civil war -- which started in 1991 and ended in 1999 left over a million people internally displaced, 500,000 made refugees, 400,000 amputated, and thousands of children illegally conscripted, raped, and killed -- has been described as one of the most brutal and most over looked war in recent memory.²⁶ The Revolutionary United Front (RUF) regularly chopped off the arms, legs, lips, and ears of innocent men, women and children.²⁷ The war witnessed the complete political, economic, social and territorial fragmentation of Sierra Leone. How then can one understand the Sierra Leone Truth and Reconciliation Commission (TRC) without an idea of the Sierra Leone conflict and the different peace agreements that eventually led to its creation?

2.2 Background

Sierra Leone became a British Crown Colony in 1808, one of the first modern political states in sub-Saharan Africa. It gained its independence from Britain in 1961. The dispensation was not immediately followed by elections but rather adopted the political structure that had been in place since the 1957 elections, this created tension between the ruling party Sierra Leone People's Party (SLPP) and the opposition the All Peoples' Congress (APC).²⁸ When the SLPP took power in 1962 they sought to hold on to it by intimidating and weakening opposition groups. The then Prime Minister Milton Maggai created a strong government controlled by a small clique of wealthy elite.²⁹ After the death of Milton Maggai, his brother Albert Maggai became the Prime Minister. His reign was characterized by high levels of corruption, mismanagement, and political highhandedness.³⁰

²⁶ Schocken, C 'The Special Court for Sierra Leone: Overview and Recommendations' 20 Berkeley Journal of International Law 436 at 1.

²⁷ Udombana, N. J 'Globalisation of Justice and the Special Court for Sierra Leone's War Crimes' 17 Emory Int'l L. Rev. 55

²⁸ Akinrinade, B 'International Humanitarian Law and the Conflict in Sierra Leone' 15 Notre Dame J. L. Ethics & Pub. Pol' y 391 at 4

²⁹ Juma, L 'The Human Rights Approach to Peace in Sierra Leone: The Analysis of the Peace Process and Human Rights Enforcement in a Civil War Situation' 30 Den. J. Int' l L. & Pol' y 325 at 3

³⁰ Bangoura I., And Nhinson Williams, Sierra Leone: The Pre And Post War Overview; A Combination Of Tragedy, Threat And Insecurity, African Analysis International accessed on <www.africananalysis.org/westafrica/prepostsalone.htm> on the 16 August 2003.

In 1971 Sierra Leone became a republic with Siaka Stevens as the first Executive President. Steven ruled for seventeen years, during which time he was seen by many as having become a corrupt politician and dictator. Economic decline followed, and by the mid-1980s the country descended into growing foreign debts, rampant inflation, currency devaluation, budget deficits, corruption and a decline in exports, which led to chronic fuel, power, and food shortages.³¹

In 1985 Joseph Saidu Momoh became President. He came to power riding a wave of public enthusiasm, as it was hoped that he might improve the situation regarding the country's economy and revive the collapsing state; however the political atmosphere remained the same.³² Thus, when the Revolutionary United Front (RUF) invaded the country from neighboring Liberia in 1991 most Sierra Leoneans welcome the effort to rid the country of corruption and ineffective leadership. This chapter proceeds to examine the nature of the conflict and the peace processes, the events that led to creation of the Truth and Reconciliation Commission for Sierra Leone.

2.3 Nature of the Conflict

There have been a lot of arguments and contradictions as to whether the Sierra Leone conflict is an international armed conflict because of the involvement of countries such as Liberia and Burkina Faso supporting the rebels and the Economic Community of West African States (ECOWAS) comprising of Nigeria, Ghana and Guinea supporting the democratically elected government. Generally, while a conflict can be international or non-international armed conflict it can also be mixed.

The principle of protection of civilians is at the core of both human rights and humanitarian law. They may not be subject to deliberate individualised attack since they pose no threat to the adversary.³³ Also members of government or insurgent forces that are wounded, sick, unarmed or in captivity are included as protected persons. Both Common Article 3 and Protocol II of the Geneva Conventions bind all parties to internal armed conflict, including the insurgent party.³⁴ Sierra Leone is a party to the Geneva Convention of 1949 and its two 1977 additional Protocols. Therefore it is bound to observe the law of wars,

³¹ Bangoura (n 30 above)

³² As above

³³ See ICRC commentary on the additional protocols 1987, p. 1472

³⁴ See Human Rights Watch, Human Rights Abuses Committed by Members of the AFRC/RUF, A War of Terror against Civilians on <www.hrw.org/reports98/sierra/Sier988-03.htm#P212_31176> See also Akinrinade B. (n 28 above) .

which establishes inter alia minimum standards applicable to internal and international armed conflict, as well as customary laws of war.³⁵

The conflict in Sierra Leone is an armed conflict and not a mere internal disturbances, as all parties were organized under a single command and have been capable of sustaining military operations over a period of time. As the conflict was an internal armed conflict, common Article 3 of the Geneva Conventions and customary international law governs government and insurgent forces' conduct. Article 3 expressly binds all parties to internal conflict, including insurgents although they do not have the legal capacity to sign the Geneva Conventions.³⁶

2.4 Violation of Human Rights and Humanitarian Law

During the conflict in Sierra Leone there were serious violations of the rules of international humanitarian law applicable to internal conflicts. The RUF, the Sierra Leone government, the Armed Forces Revolutionary Council (AFRC), and the ECOWAS Monitoring Group (ECOMOG) serving as peacekeepers committed serious acts of brutality, including murders, looting and pillaging.

Common Article 3 of the Geneva Convention of 1949 prohibits violation against persons including murder, mutilation, cruel treatment, and torture.³⁷ Despite this provision and its adherence to the 1949 Geneva Conventions and its additional protocols, the government forces and the RUF engaged in these prohibited acts. There were summary execution of prisoners and non-combatants, several cases of rape, mutilation, and civilian killings.³⁸ All sides to the conflict showed little respect for captured combatants, with extra-judicial execution following surrender. Prior to the 1996 elections, both RUF and government forces terrorized many villages, cutting off fingers, hands, arms, ears, or lips with machetes.³⁹ Summary executions usually took place within the context of joint operation involving ECOMOG and the Civil Defense- Kamajo forces.

³⁵ Human Rights Watch, Sierra Leone: International Law accessed on <www.hrw.org/campaigns/sierra/int-law.htm> 15 August 2003.

³⁶ See ICRC commentary (n 33 above) 1345

³⁷ Growing Risk Of Malnutrition And Disease Among Displaced accessed on <www.afrol.com/News/sil014_malnutrition_displaced.htm> 19 September 2003

³⁸ Human Rights Report for Sierra Leone, Arbitrary or Unlawful Deprivation of Life, accessed on <www.ncbuy.com/reference/country/humanrights.html?code=sl&sec=1aon> the 19 September 2003,

³⁹ Akinrinade B (n 28 above).

Deleted:

When the war broke out in 1991 the All Peoples Congress (APC) government led by Joseph Saidu Momoh dismissed the insurgence as inconsequential, believing they posed no threat to his hold on power. Disgruntle military officers overthrew the APC and Captain Valentine Strasser as Chairman of the National Provisional Ruling Council (NPRC) promised to end the war but no effort was made to negotiate peace with the RUF.⁴⁰ Instead it secure the services of the Executive Outcomes, a private, South African military outfit to engage the RUF and directed its effort towards securing the mineral rich district of kono. Strasser was overthrown by his deputy Maada Bio, the new government more receptive to peace started negotiations with the rebels.⁴¹ The RUF responded positively and confirmed their willingness to participate in the peace talks.⁴²

In February 1996, parliamentary and presidential elections were held and the army relinquished power to the democratically elected government of Dr. Ahmed Tijan Kabbah. The conflict still continued as RUF did not participate in the elections and would not recognized the results. Special Envoy, Mr. Dinka, assisted in negotiating a peace agreement in November 1996, between the government and RUF known as the Abidjan peace Accord.⁴³

2.5 The Peace Process

2.5.1 Pre-Lome

Subject to the constraint of international law, countries have always decided for themselves the means and method by which they end their conflicts and by which they make peace. In the case of Sierra Leone the weakness of the government gave it no option but to negotiate peace. The Abidjan Peace Accord affirms that parties to a conflict maybe ready to negotiate when they realised that their objectives may no longer be tenable through violence. The parties therefore negotiate to convert their weakness into strength and to maintain whatever gains they had previously achieved.⁴⁴ The accord, however failed to provide adequate measures for resolving conflict with the parties.⁴⁵

⁴⁰ Juma L (n 29 above).

⁴¹ Chege, M 'Sierra Leone: The State That Came Back From The Dead' 25 Washington Law Quarterly No.3 (2002) 154.

⁴² Juma L (n 29 above).

⁴³ Chawla, S 'United Nations Mission in Sierra Leone: A search for Peace, 'Strategic Analysis:' A Monthly Journal of IDSA, December 2000 (Vol. XXXIV No. 9).

⁴⁴ Miall H, Et Al., Contemporary Conflict Resolution 162-163 (1999).

⁴⁵ Schocken C. (n 26 above).

The ceasefire guaranteed by the agreement never materialized as both sides continued fighting. The bright hope guaranteed by the agreement faded away. Foday Sankoh opposed the deployment of UN peacekeepers to oversee the peace process, and the situation became compounded when he was arrested in Nigeria. The agreement was further derailed by a military coup in May 1997. The Army joined forces with the RUF to form the AFRC/RUF. President Kabbah and his government then went into exile into neighboring Guinea.⁴⁶

The OAU meeting in Harare condemned the coup and called for the immediate returned of constitutional order. The UN Secretary-General addressing the same meeting made similar appeal.⁴⁷ A lot of pressure was put on the AFRC/RUF, the ECOWAS foreign ministers meeting on June 26, 1997, a month after the coup, recommended a three-pronged approach to the Sierra Leone problem i.e. negotiations, embargo, and the possible use of force.⁴⁸ In October the Security Council imposed oil and arms embargo on the regime, and authorized ECOWAS to ensure its implementation using ECOMOG troops.⁴⁹ The economic situation deteriorated to an extent that there were hardly any petrol in the country. These developments coupled with the extreme military pressure and diplomatic effort forced the AFRC/RUF to participate in a peace plan signed in Conakry on October 1997.⁵⁰

This peace plan sponsored by Nigeria sets out a six-month peace plan that called for an immediate end to the fighting, disarmament and demobilization of troops, resumption of humanitarian relief and, return of refugees and displaced persons and the restoration of the civilian government. It also granted unconditional immunity to the plotters of the coup.⁵¹ ECOMOG however intervened forcefully and removed the regime from power when it became apparent that AFRC/RUF would not hand over power peacefully to the constitutionally elected government. Notwithstanding this intervention fighting still continue between the AFRC/RUF and the government forces and ECOMOG.

⁴⁶ Schocken. (n 26 above).

⁴⁷ Juma (n 29 above).

⁴⁸ Ndumbe, J. A 'Diamonds, Ethnic, and Power: The Case of Sierra Leone' 12 Mediterranean Quarterly No.4 (2001), 97.

⁴⁹ Chawla S. (n 43 above).

⁵⁰ Conakry Peace Plan 1997, available at <www.c-r.org/accord9/keytext.htm> (last visited July 17, 2003)

⁵¹ As above

2.5.2 The Lome Peace Accord (1999)

The Lome Peace Accord occurred against the backdrop of waning public support for the Sub-regional military activity, with seventy percent of the Country under the control of the RUF and with the possibility of an RUF overrun of Freetown.⁵² The accord followed intense pressure on President Kabbah to come to some form of understanding with the rebels, as there appear to be no immediate military solution to end the conflict. The contributing countries to ECOMOG, realizing that the war was a drain on their economies, pressured Kabbah to negotiate with the rebels.⁵³ A Peace Accord with the assistance of the international community was signed in July 1999 in Lome, Togo.⁵⁴ Detailed negotiations began in May 1999, and after two months of negotiations, the RUF and the Government of Sierra Leone reached a settlement. On July 7 all parties to the conflict signed the agreement to end hostilities and form a government of national unity.

The preamble to the agreement established that the government of Sierra Leone and the RUF were committed to promoting full respect for human rights and humanitarian law. Human rights were actually dealt with as a post conflict management issue.⁵⁵ The basic civil and political liberties recognised by the Sierra Leone legal system that contained the declarations and principles of human rights adopted by the UN and OAU, especially the Universal Declaration of Human Rights and the African Charter on Human and People's Rights, were to be fully protected and promoted within Sierra Leonean society.⁵⁶ A Human Rights Commission, which was to function as a quasi-judicial body was established to address the grievances of the people in respect of alleged violations.⁵⁷ It would appear from the preamble that the Commission was intended to deal with violations occurring after the signing of the Accord.⁵⁸

Controversially the Accord granted blanket amnesty to all combatants.⁵⁹ The government was given the task of taking legal steps to grant Foday Sankoh absolute and free pardon in the name of lasting peace.⁶⁰ The same was extended to combatants and collaborators.⁶¹ The amnesty provision did not go down well with the UN Special

⁵² Udombana (n 27 above).

⁵³ Akinrinade (n 28 above).

⁵⁴ See Peace Agreement Between the Government of Sierra Leone and the RUF July 7, 1999, accessed at <www.sierra-leone.org/lomeaccord.html> 6 September 2003.

⁵⁵ Article VI of the Lome Accord 1999.

⁵⁶ See Article XXIV of the Lome Accord.

⁵⁷ See Article XXV of the Lome Peace Accord.

⁵⁸ See Preamble of Lome Accord.

⁵⁹ See Article IX of Lome Peace Accord.

⁶⁰ Lome Peace Accord Article IX (1).

⁶¹ Lome Peace Accord Article IX (2).

Representative present at the meeting who at the time of signing inserted a hand written disclaimer to the final draft, to the effect that the UN interprets the amnesty clause not to include international crimes of genocide, crimes against humanity, war crimes and other serious violations of humanitarian law.⁶²

The Accord also established a Truth and Reconciliation Commission to deal with the question of human rights violations since the beginning of the conflict in 1991 to the signing of the Lome Peace Agreement in 1999. The Commission is to address impunity, break the circle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, and get a clear picture of the past in order to facilitate genuine healing and reconciliation.⁶³

2.6 Human Rights Approach to the Lome Peace Accord

Human rights and conflict resolution are intimately entwined. Conflict in most cases result in human rights abuse, therefore resolution of conflict and adherence to human rights must go hand in hand because, in the long run, one will not work without the other.⁶⁴ The concept of human rights encapsulates notions of justice and fairness to all humans. They are the benefits that are deemed essential for the individual well-being, dignity and fulfillment that reflect a common sense of justice and fairness. The different peace processes in Sierra Leone are conflict resolution mechanism, which addressed the human rights abuses of the war.

Human rights must be a central part of peace because peace belongs not only to states, but also to each and every citizen. The sovereignty of States must no longer be used as a shield for gross violations of human rights. Peace must be made real and tangible in the daily existence of every individual in need.⁶⁵ Human rights place justice, tolerance, natural respect and human dignity at the heart of our activity. Human rights do not confer upon individuals privileges that they might never have expected. They are not a special benefit, granted by accident of birth or luxury. They are an articulation of the moral consensus, which have been established in law and as such must be available to all.⁶⁶

⁶² Juma (n 29 above).

⁶³ Lome Accord Article XXVI.

⁶⁴ Conflict Resolution And Human Rights Contradictory Or Complimentary accessed on <www.incore.ulst.ac.uk/home/publication/conference/Conflict_resolution.pdf> on September 30 2003.

⁶⁵ Kofi Annan on his 2001 Nobel Peace Prize Lecture accessed on <<http://www.thesustainablevillage.com/essays/Kofi-Annan.html>> 28 september 2003.

⁶⁶ Juma (n 29 above).

The heated criticism by human rights activists on certain provisions of the various peace accords, especially the provision regarding amnesties can be seen from the point of view that human rights advocates and mediators share similar goals but use contradictory approaches to achieve that goal. Mediators eager to achieve a negotiated settlement to a conflict with minimum loss of life may fail to give sufficient weight to the relevance of human rights to the long-term success of their work. Human rights advocates on the other hand, may under-value the pressure under which mediators operate to bring about an immediate end to loss of life. They, therefore, may miss opportunities for improvements in human rights situation that could be achieved through the use of negotiation and diplomatic techniques.⁶⁷

The question however remains, once the conflict is over, and the process of reconciliation has begun, how should we deal with those who have perpetrated crimes: should they be pardoned or punished? This is a complex question and there is no one solution. A successful negotiation usually depends on compromises by all parties. In these circumstances, as was the case in Sierra Leone, justice became a bargaining chip. The greatest tension in Lome was between justice for violations of human rights and the desire to promote reconciliation or at least peaceful future co-existence between the warring factions.⁶⁸

2.7 Conclusion

It is however important to note that the conflict in Sierra Leone resulted in serious violation of human rights.⁶⁹ The reason for the outbreak of the rebellion, and its persistence over nearly a decade are the stuff of every revolt against the State by a disaffected people, blaming the state of rampant corruption and misrule. The initial reasons were probably justified.⁷⁰ This could not however justify the atrocities that follow. It will be a miscalculation if one is to underestimate the value of the peace processes in Sierra Leone. The Lome Peace Accord brought relative peace, it also brought substantial reduction in the killings, after nine years of fighting the peace accord brought tangible results to the daily lives of Sierra Leoneans. Human rights have been a central part of that peace; therefore the peace process was a step in the rights direction. In a bid to implement the objective of

⁶⁷ Lutz E. L., Babbitt E. F and Hanum, H 'Human Rights and Conflict Resolution from the Practitioners Perspectives' 27 Fletcher Forum of World Affairs Journal,173.

⁶⁸ Juma (n 29 above).

⁶⁹ Akinrinade, B 'International Humanitarian Law and the Conflict in Sierra Leone' 15 Notre Dame J. L. Ethics & Pub. Pol' y 391 at 4.

⁷⁰ Akinrinade (N 28 above).

Article XXVI of the Accord, the Parliament of Sierra Leone in February 2000 approved legislation establishing the TRC for Sierra Leone.⁷¹ The Commission is seen as part of the effort to achieve healing and reconciliation.

⁷¹ See Truth and Reconciliation Act 2000 .

CHAPTER THREE

THE TRUTH AND RECONCILIATION COMMISSION

3.1 Introduction

Generally, truth commissions are bodies established to research and report on human rights abuses over a certain period of time in a particular country or in relation to a particular conflict.⁷² Truth commissions are not created in a vacuum; they are established in states that have endured violent conditions and where human rights have been systematically violated. Sometimes they are set up in countries where there has been war or where there has been a transfer of power from an authoritarian regime to democratic rule,⁷³ and where the number of perpetrators can be so overwhelming such that the judicial system is not capable of dealing with consequences of the past.⁷⁴ Ignoring history leads to collective amnesia, which is unhealthy for the body politic. An unresolved past will inevitably return to haunt citizens.⁷⁵

International experience has shown that addressing past human rights violations is a necessary step in the process of reconciliation and nation building. The purpose of the Sierra Leone Truth and Reconciliation Commission (TRC) is to demonstrate a break with a past record of human rights abuse, to promote national reconciliation and/or sustained political legitimacy.⁷⁶ The Chilean Commission, which has been said to be renowned, has acted as a model for many subsequent commissions. Countries such as, Uganda, Rwanda, El Salvador, South Africa and Argentina established commissions to deal with past human rights abuses. This enriched form of justice, which is a product of negotiated settlement is not a technical enterprise for the court.⁷⁷ As was the case in South Africa the government of Sierra Leone understood that there would be no certainty that it could succeed in imposing victors' justice. Therefore it faces the risk of political balance of forces

⁷² See United States Institute of Peace, Truth Commissions Digital Collection, accessed on <<http://www.usip.org/library/truth.html>> 30 August 2003.

⁷³ See Schlunk, A 'Truth and Reconciliation Commissions' 4 ILSAJICL 415.

⁷⁴ See Hayner P. B., *Unspeakable Truths: Confronting State Terror and Atrocity: How Truth Commissions Around the World Are Challenging the Past and Shaping the Future*, 12 (2001).

⁷⁵ Sarkin, J 'The necessity and Challenges of Establishing a Truth and Reconciliation Commission in Rwanda' (1999) 21 *Human Rights Quarterly* 799, he further argues that only by publicly and collectively acknowledging the horror of past human rights violations is it possible for a country to establish the rule of law and the culture of human rights.

⁷⁶ *African Journal on Conflict Resolution* Vol. 1 No. 1 (1999-2000), Accord, 31.

⁷⁷ Asmal K., Asmal L. and Roberts S., *Reconciliation Through Truth: A Reckoning of Apartheid's Criminal Governance*, 13 (1997).

in order to punish individual perpetrators, and the quest for reconciliation.⁷⁸ This chapter evaluates the truth and Reconciliation Commission.

3.2 Truth Commissions

Truth commissions are public bodies with non-judicial powers. Hayner defines truth commissions as bodies set up to investigate past historical violations of human rights in a particular country.⁷⁹ Their degree of authority, legal capacity, moral acceptance, the size of their budgets and number of staff vary.⁸⁰ A large number of commissions allow for diverse political interest groups.⁸¹ The use of truth commissions dates back at least to Uganda in 1974, through the more successful commission in Argentina in 1984 and Chile in 1991, South Africa in 1998,⁸² and recently Sierra Leone in 1999. Truth commissions focus on the past, and investigate abuses over a period of time. They are temporary bodies,⁸³ officially sanctioned by the state.⁸⁴ The extent of a truth commission's authority will depend greatly on the strength of the new government⁸⁵ and its acceptance by society as a whole as well as the commissioners.

A truth commission's legal scope depends on the mechanism available to unearth evidence of human rights violations and its ability to link up with the judicial system that will ultimately prosecute perpetrators. It is the expectations of those who suffered directly that truth commissions would represent their interest and be reliable. Many truth commissions have been set up over the past 20 years, the most renowned being the South African and the Chilean Commissions. As these truth commissions are set up in countries experiencing transition, they are therefore born out of a compromise between two extremes, institutional justice versus silence and sanctified impunity. Their existence arises from the struggle of a

⁷⁸ Asmal (n 77 above) 18.

⁷⁹ Hayner (n 74 above) 14.

⁸⁰ Schlunk (n 73 above).

⁸¹ Hayner P. B, *Fifteen Truth Commissions, 1974 to 1994: A Comparative study*, 227-228. Also see <www.truthcommission.org/factor.php?fid=3&lang=en> accessed on 30 August 2003.

⁸² Bowman M. *Analyzing the Past, Prescribing the Future: An Examination of Truth Commission and Reconciliation*, Accessed on <www.turning-point.ca/turning/index.php/filemanager/download/15/Truth%20commission.doc> on August 30 2003.

⁸³ Chapman A R and Ball P. *The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala*, 23 *Human Rights Quarterly* 2001, 2.

⁸⁴ Hayner (n 74 above) at 14. Also see Villa-Vicencio C. and Verwoerd W. *South Africa compares to truth commission worldwide: Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* at 35 (2000).

⁸⁵ Sarkin (n 75 above) 770.

right to truth, the right to stop repression and the right to protest against an unfair and brutal society.⁸⁶

3.3 Sierra Leone Truth and Reconciliation Commission

3.3.1 Background

Prior to the Lome Agreement, the Abidjan and Conakry Peace Agreement signed by the Sierra Leone Government and the RUF did not provide for a truth commission. The Abidjan Peace Agreement however provided for a human rights commission to deal with human rights abuses that occurred during the war.⁸⁷

The first serious discussions about the possibility of a truth commission in Sierra Leone took place in the meetings of the Sierra Leone Human Rights Committee in Conakry in January 1999 amongst exiles from the January invasion of Freetown. The issue was debated at length at a workshop in Freetown in April in 1999; this workshop set out the human rights agenda for subsequent discussion at Lome. At Lome the Negotiating Committee on humanitarian and human rights issues agreed very quickly that a truth commission should be established. This was seen as an alternative to accountability in the face of the amnesty provision.

Before the conclusion of the Lome Peace Agreement the UN High Commissioner for Human Rights Mrs. Mary Robinson during her visit to Sierra Leone, together with the Special Representation of the Secretary General, the Sierra Leone Government, the National Commission for Democracy and Human Rights and the National Forum for Human rights signed a human rights manifesto for Sierra Leone. This manifesto provided for a truth commission as an important step in the search for peace with justice and respect for human rights. The UN pledged to provide and encourage appropriate technical assistance necessary for its establishment.⁸⁸

The Lome Peace Agreement established a Truth and Reconciliation Commission (TRC) to address impunity, break the circle of violence, and provide a forum for both the victims and

⁸⁶ Hayner (n 74 above) 14 and 17 (2001).

⁸⁷ See the Abidjan Peace Accord signed on the 30 November 1996 between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone.

⁸⁸ Bennett R. National Institutions, Specialist UNAMSIL- The Evolution of the Sierra Leone TRC, accessed on <www.sierra-leone.org/trcbook-richardbennett.html>, (last visited on the 24, July 2003).

perpetrators of human rights violations to tell their story and get a clear picture of the past in order to facilitate genuine healing and reconciliation.⁸⁹ Pursuant to this objective on 22, February 2000 the parliament of Sierra Leone approved legislation creating the TRC for Sierra Leone.⁹⁰ One valid reason for the establishment of the TRC is the non- feasibility to prosecute all the alleged offenders, an effort to do so would likely lead to thousand of person languishing in prison for a long period of time.⁹¹

3.3.2 Composition of the TRC

Generally individual Commissioners appointed to truth commission are highly visible and often seen as representing the seriousness of the effort to face the past of human rights abuses, they should not be persons already in a position with a high political profile.⁹² The TRC is composed of seven members.⁹³ They are persons of integrity and credibility; they are impartial in the performance of their duty and should enjoy the confidence of the people of Sierra Leone.⁹⁴

Commissioners could be persons having competence as Lawyers,⁹⁵ social scientists, religious leaders or psychologists. This is important because the professional background of commissioners of truth commissions can reflect the primary focus of a commission's work.⁹⁶ A commission made up of lawyers will likely convey an image of justice, a commission made up of human rights figures will likely convey the will to face the truth, a commission made up of religious leaders and / or psychologists will likely convey the attempt to reach healing and forgiveness.⁹⁷ The Commissioners of the TRC came from different professional background. Bishop Humper the Chairman of the Commission is a religious figure; he is President of the Council of Churches in Sierra Leone. Justice Marcus

⁸⁹ See Article XXVI of the Lome Accord 1999.

⁹⁰ The Truth and Reconciliation Act 2000 Accessed at <www.sierra-leone.org/trc.html> (last visited on 20, July 2003).

⁹¹ Chapman and Ball (n 83 above) at 2, the same argument was proffered by Chapman and Ball. This was also the case in Rwanda where over 100,000 accused were put in prison awaiting trial. Though they resorted to the traditional gacaca system they are still grappling with this problem.

⁹² Hayner (n 74 above) 216.

⁹³ See Article 3(1) of the TRC Act.

⁹⁴ See Article 3(2)(a) of the TRC Act.

⁹⁵ See Boraine A, Levy J, and Scheffer R, *Dealing With The Past , Truth and Reconciliation in South Africa*, at 50. This was the case of Chile were the Commission was staffed with 60 people many of whom were lawyers.

⁹⁶ Chapman and Ball (n 83 above) 17 and 18. Writing on the Haiti, South Africa and Guatemala truth Commissions Chapman and Ball expressed similar view.

⁹⁷ See <www.truthcommission.org/factor.php?fid=3&lang=en> Accessed on the 30 August 2003.

Jones had been a judge of the Sierra Leone High Court. Professor Kamara had a very distinguished career for several years as principal of Njala University College.

Mr. Torto is a teaching Fellow at the Institute of Public Administration and Management (IPAM) University of Sierra Leone, Freetown. Ms Sooka is the Director of the Foundation for Human Rights in South Africa. She was a Truth Commissioner on the South African Truth and Reconciliation Commission; she is a distinguished human rights lawyer in South Africa and is an expert on transitional justice. Mrs Jow is a renowned educationalist she was Minister of Education and Secretary of State for Education in the Gambia. Professor William A. Schabas is Director of the Irish Centre for Human Rights at the National University of Ireland, Galway.

A commission can be made up solely of nationals of the country in question, as happened in Bolivia, Argentina and Chile. It can be made up solely of foreigners who are well known international figures as occurred in El Salvador.⁹⁸ The Sierra Leone TRC is made up of foreign personalities and nationals;⁹⁹ in this respect it is similar to that of Haiti and Guatemala.¹⁰⁰ This therefore reflects the degree of divisiveness and distrust that prevails in the society. It has been argued that foreigners are chosen were domestic personalities cannot be trusted to gain respect from all sides to the conflict or would be put in personal danger by serving on a truth commission. Foreigners however lack familiarity with present and past history of the conflict.¹⁰¹

The President appoints Commissioners to the TRC. This is done after the selection panel, made up of six people¹⁰² has approved them.¹⁰³ In all cases before commissioners of truth commissions were appointed a wide range of skills and experiences was sought in order to ensure that the commission had the independence, objectivity and impartiality necessary to give it moral authority.¹⁰⁴

It is important for a commission to allow for the representation of both victims and perpetrators for it to be perceived as impartial. The argument has been that the inclusion of victims lends credibility to the fact that their claim will be addressed, and the inclusion of

⁹⁸ Sarkin (n 75 above) 808.

⁹⁹ Ms Sooka, Mrs. Jow, and Professor William A. Schabas are foreigners while the others are Sierra Leoneans.

¹⁰⁰ Mattarollo (n 25 above).

¹⁰¹ As in n 98 above.

¹⁰² See Schedule (a) (iii) of the TRC Act.

¹⁰³ Sarkin also suggested a selection panel for the Rwandan TRC (n 75 above) 807.

¹⁰⁴ See Mattarollo (n 25 above).

former perpetrators may improve chances of implementation.¹⁰⁵ It is important to ensure that the composition of the Commission is balanced and reflect a broad cross-section of society.¹⁰⁶ Because the TRC allows for the inclusion of foreigners it does not allow for the full political spectrum of the Sierra Leone society. It is however important to note that an international commission compose of foreigners may appear to be more objective and impartial than a national commission due to the distance of its members from the events and interest at stake. It may however be seen as a foreign intervention and they are less likely to have an in-dept knowledge of the events to be investigated.¹⁰⁷

3.3.3 Mandate of the TRC

The mandate of a commission delineates its purpose, powers, and limitation. The term of reference usually defines a commission's investigatory powers, limit or strengthen its investigative reach, it sets out the timeline and geographic scope of the commission's investigation. It also generally state when and to whom the final report must be submitted.¹⁰⁸ In the case of the TRC the report must be submitted to the president.¹⁰⁹ The mandate as defined in the instrument must be clear, as it requires political, legal and moral judgment.¹¹⁰ The greater the operational clarity of the mandate the less time a commission has to spend in internal clarification or political struggles.¹¹¹

A commission's mandate can be broad or limited. A limited mandate can be applied creatively if the commissioners are minded to do so and a broad mandate can be applied restrictively if questionable views about what is politically expedient prevail or if an excessive formalistic approach is taken. The TRC like most truth commissions has been given broader mandate. The Commission is charged under Article 6 as follows: -

[T]o create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the Lome Peace Agreement; to address impunity,

¹⁰⁵ Strategic Choices In The Design Of Truth Commissions, accessed on <www.truthcommission.org/factor.php?fid=3&lang=en> on 14 October 2003.
¹⁰⁶ Sarkin (n 75 above) 803 and 805.
¹⁰⁷ Sarkin (n 98 above).
¹⁰⁸ Strategic Choices <www.truthcommission.org/factor.php?fid=2&lang=en> Accessed on 11 September 2003.
¹⁰⁹ See Section 15(1) of the TRC Act.
¹¹⁰ Mattarollo (n 25 above).
¹¹¹ Strategic Choices <www.truthcommission.org/factor.php?fid=2&lang=en#16> accessed on 11 September 2003.

to respond to the needs of the victims to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.¹¹²

[T]o investigate and report on the causes, nature and extent of the violations and abuses referred to in subsection (1) to the fullest degree possible including their antecedents, the context in which the violations and abuses occurred, the question of whether those violations and abuses were the result of deliberate planning policy or authorization by any government, groups or individual and the role of both internal and external factors in the conflict.¹¹³

[T]o work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victim to give an account of the violations and abuses suffered and for perpetrators to relate their experiences and by creating a climate which foster constructive interchange between victims and perpetrators, giving special attention to the subject to the subject of sexual abuses and to the experiences of children within the armed conflict and.¹¹⁴

[T]o do all such things as may contribute to the fulfillment of the object of the Commission.¹¹⁵

A commission's mandate is usually defined in the instrument, in Sierra Leone the TRC Act of 2000. This is usually as a result of a formal decision taken by the executive or parliament. Article 6 indicates that the Commission should investigate violations and abuses of human rights and international humanitarian law; this it is intended will help restore the human dignity of victims and promote reconciliation. The Commission in its duty should give special attention to the subject of sexual abuses and to the experiences of children within the armed conflict.¹¹⁶

3.3.4 Scope of Investigations

In order for a truth commission to be effective, in providing truth, healing or justice, it is important that the most prevalent types of human rights violations are open up for investigation. It is a requirement of international human rights treaties for a government to investigate and make known to victims or their families all that can be established about crime against humanity.¹¹⁷ The scope of investigation can either be comprehensive,

¹¹² See Section 6(1) of the TRC Act.

¹¹³ See Section 6(2)(a) of the TRC Act.

¹¹⁴ See Section 6(2)(b) of the TRC Act.

¹¹⁵ See Section 6(2)(c) of the TRC Act.

¹¹⁶ See Children and the Truth and Reconciliation Commission For Sierra Leone Accessed on < www.sierra-leone.org/trc-trcforserraleone.html> on 13 September 2003.

¹¹⁷ Hayner (n 74 above) 106.

covering all types of abuses as indicated by section 6 (2)(a) and section 7 (1)(a) of the TRC Act or limited to certain significant cases otherwise known as window cases.¹¹⁸

The TRC's reference period is to investigate abuse of human rights and international humanitarian law during the conflict from the beginning of the war in 1991 to the signing of the Lome Peace Accord in 1999. It is therefore obvious that its reference period is the past. However not all commission's reference period are limited to the past, as in the case of the Philippines and Rwandan Truth Commissions, their reference periods were extended to the present.

It would appear from the wording of section 6 (2)(a) that the TRC could investigate acts committed within and beyond the borders of Sierra Leone i.e. to investigate whether the violations and abuses were the result of deliberate planning policy or authorization by any government, groups or individual, and the role of both internal and external factors in the conflict. Section 7 (1)(a) states that: -

"The Commission shall, subject to this Act, solely determine its operating procedures and mode of work with regard to its functions which shall include the following three components:
-Undertaking investigation and research into key events, causes, patterns of abuse or violation and the parties responsible¹¹⁹

The independence, objectivity and impartiality of all truth commissions are an essential prerequisite if its investigation is to be credible.¹²⁰ The use of database and its consistency is vital to the investigation. A powerful database is essential to a commission's task.¹²¹ Investigations started in November 2002 and about 600 statement takers were distributed all over the country. They were issued with statement lists that provided a checklist of information and issues to be collected and reported on. The statement takers were trained how to articulate the necessary information to enhance an accurate data and effective analysis.¹²² This is central to the process of truth finding.¹²³

¹¹⁸ Chapman and Ball (n 83 above) 7, 8, and 22, the South African Truth Commission referred to significant cases as window cases. The Argentina, Uruguay, and Sri Lanka Commissions were restricted to only disappearance cases.

¹¹⁹ See Section 7(1)(a).

¹²⁰ Sarkin (n 75 above) 803 and 808.

¹²¹ Hayner (n 74 above) 80. One reason for such a data base is that it could facilitate aspect of corroboration and proof of allegation.

¹²² See The TRC Website, The Truth And Reconciliation Commission For Sierra Leone <<http://www.sierra-leone.org/trc-trcforsieraleone.html> > accessed on the 15 September 2003.

¹²³ Chapman and Ball (n 83 above) 23 and 27.

3.3.5 Statements

Statement taking is part of an investigation. Written and oral statements have been the primary sources of the TRC's mandate. The Commission receives statements under oath and unattested as indicated by section 7 (1) (c). Oral statement is contemplated by section 7(1) (b). This would indicate a normal procedure of taking a witness' statement before he or she testifies.¹²⁴ In so far as statements implicate others, they therefore warrant particular caution. Independent verification of such evidence is vital.¹²⁵ These statements are invaluable in revealing the truth about human rights abuses.¹²⁶ Hearsay testimony should be received with caution. In any case events leading to fundamental abuses of human rights maybe recollected and interpreted quite differently by various victims, even by a single person depending on stimuli and specific questions, let alone by a victim and a perpetrator.¹²⁷

The deployment phase of the TRC started in November 2002. This began with the recruitment and training of statement takers, including regional and district coordinators. Each district in the country was assigned five statement takers. A rigorous three day training program followed, held at Kenema and Freetown respectively. This effectively prepared the statement takers for deployment all over the country on 4th December 2002 after a formal launching ceremony at Bomaru the town in Kailahun district where the first gunshot in the conflict was fired on 23rd March 1991.¹²⁸

3.3.6 Time Horizon for Investigation

Some commission such as those established in Argentina, El Salvador and Haiti had mandates that lasted for about nine months. The TRC has a mandate for twelve months with an optional extension period of six months based on good cause.¹²⁹ While the length of a commission's mandate is largely determined by its objectives, the length of the period under investigation, the size of the caseload to be studied and the resources available have to be realistic and the program of work to be undertaken must be feasible. Putting a

¹²⁴ ILax I., Strategies And Methodologies For Finding The Truth, accessed on <<http://www.sierraleone.org/trcbook-ilanlax.html>> on 11 September 2003.

¹²⁵ Jeffery A., The Truth About the Truth Commission 1999, 9.

¹²⁶ Chapman and Ball (n 83 above) 27.

¹²⁷ Chapman and Ball (n 83 above) 5 and 6.

¹²⁸ See <<http://www.sierra-leone.org/trc-trcforsierraone.html> > accessed on the 15 September 2003.

¹²⁹ Section 5(1) of the TRC Act.

time limit on the mandate and requiring the commission to produce a final report is an indispensable pre-requisite.¹³⁰

3.3.7 Naming Names

The individual naming of perpetrators and the exposure of their violations constitutes punishment through public stigma, shaming, and humiliation.¹³¹ This is a powerful instrument at truth commission's disposal. It addresses the need for full disclosure, justice and even revengeful desire to strip the perpetrator of his normal façade and prosperous future in the aftermath of gross human rights violations. On the other hand the naming of names and the individualization of responsibility may threaten a new regime¹³²

The mandate can explicitly called for the naming of names or explicitly banned the commission from revealing individual perpetrators identities. It would appear that the TRC Act requires the naming of names, in the sense that section 7 (1) makes direct reference to parties responsible. This is an effective way of addressing impunity, particularly where perpetrators would have received amnesty. The issue of naming names has been seriously contested since the Sabato Commission's report in 1984 and the Rettig Commission's report in 1991,¹³³ both of which withheld names. The Sabato Commission's discussion on naming names was difficult and lasted for hours, not all the commissioners were against naming names but the ultimate decision was taken by a majority vote. Chile also decided to withhold names of perpetrators from the Rettig Report, this decision was taken with considerable disagreement within the Commission, and it almost led to a revolt within the Commission's staff.¹³⁴ However, the opposite decision was taken by other commissions such as the Chad Commission, which was the first to name names in its report published in May 1992, followed by the El Salvador Truth Commission in March 1993.¹³⁵

It is not yet clear whether the TRC intends to name names. The argument for such an option to be undertaken is that proper and due process demands that individuals accused

¹³⁰ In cases where commissions, such as the Sierra Leone TRC is set up in the course of peace negotiations, the issue of timing is determined by the agenda of the negotiations. Decisions about the length of the commission's mandate and when it should start its work usually emerge from the agreements and depend on what progress is made in implementing them.

¹³¹ Sarkin (n 75 above) 801.

¹³² Strategic Choices In The Design Of Truth Commissions, accessed <<http://www.truthcommission.org/factor.php?fid=2&lang=en#12>> accessed on 11 September 2003.

¹³³ Mattarrallo (n 25 above).

¹³⁴ Hayner (n 74 above) 109-113.

of crimes be allowed to defend themselves. In particular the rules of natural justice and administrative fairness and soliciting of legal representation would be required as a minimum.¹³⁶ The El Salvador Commission's report indicated that the commission has no alternative but to name names and that the whole truth could not be told without naming those responsible.¹³⁷ On the contrary Jose Zalaquett former member of Amnesty international's Executive Board argued that to name culprit who had not defended themselves and were not obliged to do so would be a contradiction with the spirit of the rule of law and human rights principles.¹³⁸ It would therefore be a necessary prerequisite as part of fulfilling Article 6 for the TRC to name those responsible for the violations of human rights and humanitarian law, when there is sufficiently convincing evidence to do so.

3.3.8 Proceedings of The TRC

It is important for the commission to take input from the communities and victims that it is going to work with before it starts its hearing and investigations. It is advisable to start out with a survivor needs if it wants to effectively address healing. The assessment of community and victims needs is usually done before a commission starts its work.¹³⁹

It is important to draw up appropriate rules of procedure and evidence in order to guide the investigations, so that all the circumstantial, documentary and material evidence available can be properly evaluated.¹⁴⁰ The Commissions can hold interviews¹⁴¹ and hearing with victims, their families and perpetrators.¹⁴² It may either be in public or in private.¹⁴³ The TRC Act of 2000 uses the word sessions in place of proceedings. This may be due to the fact that it does not conduct a proper judicial sitting. It will organize four types of hearings i.e. individual witness hearings, thematic hearings, event- specific hearings, and institutional hearings.¹⁴⁴ Where the session or hearing entails adversarial aspects including the leading of procedures for hearing would include aspects like the discovery of documents, and agreement or determination as to the factual disputes arising. Parties

¹³⁵ As in n 133 above.
¹³⁶ Hayner (n 74 above) 107.
¹³⁷ Hayner (n 74 above) 117.
¹³⁸ Hayner (n 74 above) 127-128.
¹³⁹ See <<http://www.truthcommission.org/factor.php?fid=5&lang=en>> Accessed on 11 September 2003.
¹⁴⁰ As in n 133 above.
¹⁴¹ See 8(1)(c) of the TRC Act 2000.
¹⁴² See 7(1)(b) of the TRC Act 2000.
¹⁴³ See 7(1)(b) of the TRC Act 2000.
¹⁴⁴ See 15th Bi-Monthly Media Briefing On The Truth And Reconciliation Commission (Trc), Held On Wednesday 9th April 2003 By The Chairman, Bishop Joseph C. Humper, accessed on <www.sierra-leone.org/trcbriefing040903.html> accessed on the 15 September, 2003.

could be given time to present their version, cross-examination, if permitted, could be limited to serious areas of contentions.¹⁴⁵

It is for the Commission to choose what kind of environment it wants to create. On the one hand it can create an empathic or therapeutic environment in which witnesses are invited to tell their stories to unburden themselves of the horrors they have witnessed, experienced or perpetrated. On the other it can focus on verifying testimony through a court-like cross-examination of witnesses, this testimony merit greater weight in making findings of accountability.¹⁴⁶ However as a result of the nature in which human rights have been violated the TRC like most Commissions have not allowed for cross-examination of victims. Each testimony is generally followed by a question-and-answer session with the Commissioners present. The TRC proceedings are carried live on national radio, and edited highlights go out nightly on Sierra Leone Broadcasting Television Services.¹⁴⁷

The success of a commission in uncovering the truth about past human rights abuses depends in part on the cooperation of victims, survivors, witnesses and perpetrators. The ease and willingness with which all of these groups will come forward and testify depends on how safe they feel. The higher the risk that they associate with testifying for their own life, or that of family members and others, and for their future in society the less likely they will testify or testify truthfully.¹⁴⁸

3.3.9 Standard of Proof

Truth commissions are not courts of law, but they do have quasi-judicial characteristics, such as adhering to clearly defined standards of proof so that they make fair and reasoned findings.¹⁴⁹ The TRC Act requires an impartial historical record. Impartiality is an attribute of a free and fair trial in ordinary courts. It therefore implies a properly considered and well-argued set of conclusion.¹⁵⁰

Since a truth commission is less adversarial and the purpose is not to find a party guilty of a crime but rather to know who is responsible for a particular crime. The heavy onus of

¹⁴⁵ Lax (n 124 above).

¹⁴⁶ Jeffery(n 125 above) 118.
Roughneen S., But War Hurts More on <www.opendemocracy.net/debates/article-3-76-1372.jsp> accessed on the 15 September 2003.

¹⁴⁸ See <<http://www.truthcommission.org/factor.php?fid=5&lang=en#36>> accessed on 12 September 2003.

¹⁴⁹ ILax (n 124 above).

¹⁵⁰ As above.

proof beyond reasonable doubt does not apply as in criminal matters. It would appear that the civil onus, which is on the balance of probability, has been used i.e. choosing the more probable version of events from amongst those tendered by the various parties.¹⁵¹

The El Salvador Truth Commission described the standard of proof they used as overwhelming evidence, conclusive or lightly convincing evidence to support the commission's findings. According to the Commissioners the Commission needed substantial, sufficient or more evidence to support the Commission's findings than to contradict it.¹⁵² Commissions are generally allowed greater latitude in relation to the types of evidence they can hear or take account of. The crucial issue has always been what weight to attach to the evidence in question, and that generally depends on the circumstances of each case in relation to the evidence available.¹⁵³

3.3.10 Risk of Participation in Hearings

The safety of victims and witnesses is paramount as reprisals on victims and witnesses maybe an obstacle on the work of the TRC. The willingness and number in which victims come forward to provide testimony will in part depend on the identity of those who take their statements. This is important especially for women victims that have suffered rape and other sexual related offences.¹⁵⁴ The less accepted and/or trusted statement takers are due to their identity, political affiliation or lack of familiarity with the conflict, professionalism or knowledge the less likely witnesses are to report fully and at ease.¹⁵⁵

The issue of whether an investigation is to be carried out in public should depend on the climate of fear or anxiety that often prevail during period of transition to democracy, even in cases where one might expect the presence of a UN Mission to have a deterrent effect.¹⁵⁶ The ease and willingness with which all of these groups will come forward and testify depends on how safe they feel. The problem therefore, which the TRC was faced with is how to protect these victims, their relatives, witnesses and also experts who wanted to testify before the TRC during the period of transition.

¹⁵¹ Jeffery (n 125 above) 8 and 14.

¹⁵² Mattarrallo (n 25 above).

¹⁵³ As in n149 above.

¹⁵⁴ Hayner (n 74 above) 78-79.

¹⁵⁵ Strategic Choices In The Design Of Truth Commissions, accessed on <<http://www.truthcommission.org/factor.php?fid=5&lang=en> > on 13 October 2003.

¹⁵⁶ As in n152 above.

The higher the risk associated with testifying the less likely they will testify or testify truthfully. In the case of perpetrators, if sweeping amnesty laws have been passed in the wake of establishing a truth commission, or if a tradition of impunity of state actors or perpetrators is to continue, they may feel less pressure to cooperate.¹⁵⁷ The simultaneous operation of both the TRC and the Special Court, initially created unrest among ex-combatant, the former fighters were unwilling to testify before the TRC when they felt that their information might be given to the Special Court, which could then call them as defendants or witnesses.

An attempt has been made to codify series of guarantees, these entails victims being called to testify before the commission only on a strictly voluntary bases, Anonymous testimony in the case of victims of sexual violence provided that a member of the commission can vouch for the victim's identity and the testimony is included in the commission's report, that victims be assisted by specialised personnel, able to speak the victims language, especially when sexual violence is involved and that the state pays expenses incurred by witnesses.

3.4 Conclusion

The TRC is one of the most significant pillars of peace, justice and reconciliation ever created in Sierra Leone. The most important accomplishment of this Commission, it is hoped, will be the reconciling of Sierra Leoneans, and ensuring that Sierra Leone shall never again experience the evils of the past. We must not forget, however, that the work of this Commission is more than just finding out and hearing the story told, truthfully, of what happened during the civil war. The most important purpose of the Commission is its therapeutic contribution to the entire peace process and to the search for lasting national reconciliation.¹⁵⁸

It is difficult and expensive to repair the physical damage done during the rebel war. It is more difficult to heal the physical wounds inflicted on the thousands of victims who survived the onslaughts. Even more difficult still is the healing of the trauma and removal of the emotional scars of the armed conflict. It would be painful and humiliating for people to come forward and relate their experiences publicly. However, the process of healing and reconciliation demands that the Commission goes beyond the taking of individual

¹⁵⁷ Strategic Choices In The Design Of Truth Commissions, accessed on <<http://www.truthcommission.org/factor.php?fid=5&lang=en> > on 13 October 2003.
¹⁵⁸ Address By The President His Excellency Alhaji Dr Ahmad Tejan Kabbah At The Start Of <<http://www.sierra-leone.org/kabbah041403.html>> accessed on the 16 September 2003.

statements in private, the gathering of information and the collection of written submissions from victims, perpetrators, observers and others, as has already been done. Hence the TRC will not only serve as a platform for a sort of national catharsis, but will also see its work have a direct impact on how Sierra Leone's formal adjustment to peace evolves.

CHAPTER FOUR

TRUTH AND RECONCILIATION COMMISSION AND EFFECTIVE REMEDY FOR VIOLATIONS OF HUMAN RIGHTS

4.1 Introduction

Throughout history, coming to terms with widespread human rights abuses and atrocities has been such a painful and protracted struggle, politically, socially, and legally, that people prefer to consign such events to the past and try to forget about them. In recent years, however, there has been a growing trend in transition states towards directly addressing human abuses committed in the past as part of an effort to understand exactly what happened, assign culpability, and allow victims the opportunity to be heard. The human rights dimension of truth commissions has been a complex issue, especially when issues such as forgiveness, reparation, reconciliation and amnesty are involved.

This chapter considers the human rights dimension of the Sierra Leone Truth and Reconciliation Commission (TRC). It proceeds to address the issue of reparation, whether forgiveness, apology, truth and reconciliation are sufficient remedies for human rights abuses. It highlights the issue of impunity and presents the controversial issue of amnesty and its relationship to the Commission and the Lome Peace Accord.

4.2 What Constitute Effective Remedy in International Human Rights Law

It is a settled principle of international human rights law that a person suffering from a breach of human rights should have the right to remedy.¹⁵⁹ While under international law the violation of any human rights give rise to a right to reparation for the victims, particular attention has been paid to gross violations of human rights and fundamental freedoms.¹⁶⁰

¹⁵⁹ Russell-Brown, S.L. 'Out of The Crooked Timber of Humanity: The Conflict Between South Africa's Truth and Reconciliation Commission and International Human Rights Norms Regarding "Effective Remedies"' 26 *Hastings Int'l & Comp. L. Rev.* 227. See also UN Doc. E/CN.4/Sub.2/1993/8, 2 July 1993, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report submitted by Mr. Theo van Boven, Special Rapporteur, p. 7 (para. 13).

¹⁶⁰ Boven T. V., Appendix C: United Nations: Economic and Social Council: Distribution: General: E/CN.4/SUB.2/1993/8, 2 July 1993: 'Original: English: Commission on Human Rights: Sub-Commission on Prevention of Discrimination and Protection of Minorities: Forty-Fifth Session: Item 4 of the Provisional Agenda: Review of Further Developments in Fields With Which the Sub-Commission Has Been Concerned: Study Concerning the Rights to Restitution, Compensation and Rehabilitation For Victim of Gross Violations of Human Rights and Fundamental Freedoms: Final Report Submitted by Mr. Theo Van Boven, Special Rapporteur' 59 *Law and Contemp. Prob.* 283.

Following a period of widespread abuse, victims and survivors suffered a range of physical and psychological violence and sometimes live under extreme economic conditions as a result of the loss of the breadwinner, destruction of property or inability to work. In most of these cases many victims would win substantial awards from the State if they had the means to bring a case to court and the evidence to back up their claims. It is true that no amount of money can make up for the loss of a loved one, but a relatively modest payment can be critical to those living in poverty and can serve an important psychological role of acknowledging wrongs and providing an official symbolic apology.¹⁶¹ The major argument for the state to pay reparation is: the duty of the state to protect citizens, the inadequacy of civil remedies, the inequities of income distribution, and the view that crime is the fault of society in general.¹⁶²

It is therefore important to note that financial compensation for human rights abuse, and to have perpetrators of such an abuse prosecuted and punished, which is a fundamental human rights cannot be taken away from a victim or waived by a government.¹⁶³ Wole Soyinka a renowned African writer described the issue of reparation in the following words “We can argue over specifics but what refuses to go away is the underlying principles of reparations, restitution, social or racial justice or whatever presents itself as a prerequisite of healing and reconciliation”.¹⁶⁴

There are a good number of both universal and regional human rights instruments containing provisions relating to the rights of every individual to an effective remedy by a competent national tribunal for acts violating human rights. Such a formulation is contained in Article 8 of the Universal Declaration of Human Rights (UDHR). This notion is also included in Article 2(3)(a) of the International Covenant on Civil and Political Rights and in Article 6 of the Declaration on the Elimination on All Form of Racial Discrimination.¹⁶⁵

What then is remedy? Remedy could either connote a legal action, which can be brought before a judicial or other body entitled to settle the dispute concerned, or a measure design to make good for damages caused. It may take the form of restitution,

¹⁶¹ Hayner (n 74 above) 170.

¹⁶² Meiners R. E., *Victims Compensation*, 2 (1978).

¹⁶³ Dyke, J. M. V ‘The Fundamental Human Rights To Prosecution And Compensation’ 29 *Denv. J. Int’ l L. & Pol’ y* 77

¹⁶⁴ Wole Soyinka, *Memory, Truth and Healing, The Politics of Memory: Truth, Healing and Social Justice in Amadiume, I and An-Na’im, A* (eds) 22 (2000).

¹⁶⁵ Boven (n 160 above)

compensation, rehabilitation, satisfaction, or guarantee of non-repetition.¹⁶⁶ Restitution is designed to put the offended party back in the position he would have been had the breach not occurred, and may include performance of the obligation, revocation of the offending act, or abstention of the unlawful conduct. Compensation involves the payment of money to the offended party for any losses incurred by the illegal act, including any lost profit or value of lost property. Satisfaction on the other hand includes almost every other form of reparation and is meant to address any nonmaterial damage. Examples of satisfaction include a formal apology or discipline of guilty individuals; it might consist of public acknowledgements that a wrong was committed and formal apologies to those who experienced harm.¹⁶⁷ It includes damage awards for hardships encountered as a result of the long term and cumulative effects from the original breach of obligation. Although a judicial remedy is preferable Article 2(3) (a) of the ICCPR states that an effective remedy for the violations of any of the rights listed therein is not limited to a judicial remedy. Professor Oscar Schachter a prominent international law scholar suggested that “undoing, repairing and compensating for violations” constitutes appropriate remedies under Article 2(3) (a) of the ICCPR.¹⁶⁸

Effective remedy for violations of human rights includes the obligation of state parties to investigate the human rights abuses, promptly and impartially, to prosecute those indirectly or directly responsible, to provide compensation, and to prevent future abuses. Therefore amnesty laws, which prevent the ability of the state to prosecute or to provide compensation violates the right to effective remedy under the ICCPR.¹⁶⁹ The ICCPR obligate state to provide monetary compensation. Specific provisions on compensation are contained in Article 9, paragraph 5, of the Covenant, which provides that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Article 14, paragraph 6, provides for compensation when a person has suffered punishment as a result of miscarriage of justice.

The human Right Committee under the international Covenant on Civil and Political Rights has created a doctrine of full reparation for any damages caused by a breach of the

¹⁶⁶ Hayner (n 74 above) 171.

¹⁶⁷ Examples of public apology as reparation include statements and written apologies by the United States government to Japanese families imprisoned in U.S. internment camps during World War II; or, apologies from President Clinton to the indigenous people of Hawaii for unlawful seizure of a the lands and resources of a sovereign nation by past administrations of the United States government.

¹⁶⁸ Schachter, O 'The Obligation To Implement The Covenant in Domestic Law, in The International Bill of Rights' 311, 326 (L. Henkin ed., 1981).

¹⁶⁹ Russell-Brown (n 159 above).

commitments flowing from the covenant. It has done so though neither the Covenant nor the optional protocol contained any explicit provision to that effect.¹⁷⁰

The African Charter on Human and Peoples' Rights (ACHPR) only reference to reparation is article 21, which states that "the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. However Article 27 of the Protocol ACHPR specifies that: "if the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation. In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary." However the UN Human Rights Committee has developed a comprehensive body of law relating to the right to remedy for human rights violations.

The Human Rights Committee under the optional protocol to the International Covenant on Civil and Political Rights may receive and consider communications from individuals who claim to be victims of a violation by a state party of any rights set forth in the Covenant. Its decisions are referred to as views. After the Committee has made a finding of violation of one or more provisions of the Covenant, it usually proceeds to ask the state party to take appropriate steps to remedy the violation.¹⁷¹ At an early stage in its jurisprudence the Committee concluded that the state concerned was to desist from the unlawful practice, and to compensate the victims for any damage sustained.¹⁷² The Committee has ruled on many occasion that compensation be paid to the family for wrongs suffered.¹⁷³ The Committee has also ruled that victims had the right to know the truth about what happened to their relations.¹⁷⁴ In its view in response to communications, which alleged violations of Articles 6(1), 7 and 9(1) of the ICCPR,¹⁷⁵ the Committee has urged states parties to carry out independent investigations, and to institute criminal proceedings leading to the prompt

¹⁷⁰ Tomuschat, C 'Reparation for Victims of Grave Human Rights Violations' 10 Tul. J. Int' l & Comp. L. 157.

¹⁷¹ See Article 2(3) of the ICCPR.

¹⁷² See Neismann v Uruguay, Communication No.8/1977.

¹⁷³ Case No. 45/1979 Pedro Pablo Camago V Columbia, Case No. 84/1981 Guillermo Ignacio Dermit Barbato and Hugo Harold dermig Barbato V Uruguay, Case No. 146/1993 and 148-154/1983 John Khemraadi Baboeram et al V Suriname.

¹⁷⁴ Case No. 107/1981 Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros V. Uruguay.

¹⁷⁵ These provisions prohibit arbitrary deprivation of life, torture, cruel and inhuman or degrading treatment or punishment, medical or scientific experiment.

prosecution and conviction of persons responsible for the prohibited act.¹⁷⁶ States often ignore the Committee's reports, as they are simply recommendations, the optional protocol designates them as views. The recommendation by the Committee that states comply with its decision within 90 days has not persuaded states that they are under a legal obligation to do so.¹⁷⁷

The Committee in addition to stating that state parties are under an obligation to take effective measures to remedy violations has spelled out specific types of remedies that are called for depending on the nature of violations and the condition of the victim(s). The Committee has repeatedly expressed the view that a state party is under an obligation to investigate the fact, to bring to justice those found to be responsible, to provide medical care to victim(s), to pay compensation to victim(s) or their families. The determination of compensation is not based solely on the physical injury or damage but also mental injury or damage.

4.3 Can Truth, Reconciliation, Forgiveness, and Apology be Effective Remedies for Human Rights Abuse?

4.3.1 Truth and Reconciliation

As indicated above International as well as Regional Human Rights mechanisms have always emphasized on the obligation on state parties to properly investigate human rights abuse. This is so because once state authorities failed to investigate the facts and to establish criminal responsibility; it becomes very difficult for victims or their relatives to carry on effective legal proceedings aimed at obtaining just and adequate reparation.¹⁷⁸ Since effective remedy is not limited to judicial remedy, it would be a valid argument to state that the mandate of the TRC if carried out effectively is one of the requirements necessary for effective remedy. As Hayner pointed out, offering an apology, and respecting the memory of victims are some aspects of reparations¹⁷⁹ The TRC has no specific provision on reparation, however, it could effectively realise section 6(2)(b) i.e. to restore the human dignity of victims with some form of reparation.

¹⁷⁶ Russell-Brown (n 159 above). Also see Communication No. 821/1998 Zambia Hum. Rts Com 70th Session Annex, P7, UN Doc. CCPR/C/70/D/821/1998(2000), See also communication No. 563/1993: Columbia Hum. Rts. Comm., 55 Sess., Annex, P10, UN. Doc CCPR/C/55/D/563/1993(1995).

¹⁷⁷ Tomuschat (n 170 above).

¹⁷⁸ Boven (n 160 above).

The TRC though limited to the investigation of gross violation of human rights has the advantage to make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise, needed to achieve its objective.¹⁸⁰ According to the wording of this section it is possible for the TRC to recommend that compensation be paid to deserving victims, and that prosecution be brought against perpetrators in the future, as the act itself is silent on the issue of the amnesty provision in the Lome Peace Accord. Though, Hayner has advised that the commission recommend non-criminal sanction against known perpetrators.

The insistence of victims and relatives of victims on the revelation of the truth as the first requirement of justice makes the Sierra Leone TRC an important institution necessary towards the realization of effective remedy as required by international human rights law. It has however been contended that with the passage of time the need for reparation becomes out dated,¹⁸¹ and that compensation or prosecution standing alone are inadequate for gross violations of human rights. However situations involving internal conflict as happened in Sierra Leone shows that international law cannot prescribe fixed parameters for situations of large-scale injustices during national cataclysm. This, it has been argued must be left to the people to decide how they want to deal with their past, though moral rehabilitation should never be denied, in financial terms certain choices must be made, as full compensation may not always be a realistic alternative since the wealth of every nation is limited.¹⁸²

One of the role of the Truth Commission is to promote healing and reconciliation.¹⁸³ To achieve this end the Commission may seek assistance from traditional and religious leaders.¹⁸⁴ For reconciliation to be achieved, it is necessary to address the past and uncover the truth, not in order to dwell on old injuries and grievances, but, to understand what happened and why it happened, and perhaps most importantly, how to prevent it from happening again. According to Piet Meiring, Professor in the Department of Science, Religion and Missiology at the Theological Faculty of the University of Pretoria, the quest for truth has a deeper side to it, it is a spiritual exercise, and it goes beyond establishing historical and legal facts. It has to do with understanding, accepting accountability, justice,

¹⁷⁹ Hayner (n 74 above) 171.
¹⁸⁰ Section 15(2) of the TRC Act of 2000.
¹⁸¹ Boven (n 160 above).
¹⁸² Tomuschat (n 170 above).
¹⁸³ Section 6(1) of the SL TRC Act of 2000.
¹⁸⁴ Section 7(2) of the SL TRC Act of 2000.

restoring and maintaining the fragile relationships between human beings as well as the quest to find the ultimate truth.¹⁸⁵

For a country such as Sierra Leone to come to terms with its past and to turn to its future, it is essential that the truth of the past be officially established, this would serve as a national catharsis that will finally result in the establishment of the rule of law and a culture of human rights. There can be no reconciliation if people refuse to accept that something was wrong and if there is no acknowledgement of the suffering it has undergone or of the ultimate responsibility for that suffering. The victimized population is often clear about what abuses took place and who carry them out. It has therefore been acknowledge that the importance of truth commissions might be described more accurately as acknowledging the truth rather than finding the truth.¹⁸⁶ One would agree with the notion that truth seems to be an elusive notion clear to all who are involved or interested in redressing past abuses, but that truth like justice and reconciliation is an elusive concept that defies rigid definition.¹⁸⁷

The past in Sierra Leone is essential for a number of reasons. The victims must feel that their suffering has been recognised and acknowledged. Perpetrators or beneficiaries of the oppression must also recognised that harm was done, and that they benefited from it or were responsible for it. Victims and perpetrators must finally come to a common understanding of the country's history; reconcile their stories as a basis on which to build a future, what Anjie Krog referred to as justice in it deepest sense.¹⁸⁸ This process of truth telling and reconciliation must be facilitated by the TRC. Truth is dependent on the community in which we participate. All the TRC can do is to narrow the number of permissible lies that can be circulated unchallenged in public discourse.¹⁸⁹

The central aim of the TRC is not only therapy. It should also gather as much detailed information from the greatest number of victims as possible to allow an accurate analysis of abuses over a period of time. Reconciliation allows a Country such as Sierra Leone to go forward together, without always returning to the past for a re-examination resulting from a sense of a people wronged. Reconciliation cannot be achieved by a few words of

¹⁸⁵ Meiring, P 'The Baruti Versus the Lawyers: The Role of Religion in the TRC Process' in Villa-Vicencio C. and Verwoerd W (eds) Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa at 128 (2000).

¹⁸⁶ Hayner, P. B 'Fifteen-Truth Commissions-1974 to 1994: A Comparative Study' 16 Hum. Rts. Q.607 (1994).

¹⁸⁷ Chapman and Ball (n 83 above) 4.

¹⁸⁸ Krog A., Country of my Skull: Guilt, Sorrow, and the Limits of forgiveness in the new South Africa, 22 (1998).

¹⁸⁹ See Hayner (n 74 above) 25.

sorrow followed by a handshake or hugs. It requires making the wrong that occurred, and a fair and full acknowledgement of the wrong followed by a real settlement, which may require the transfer of money and/or property, and the punishment and/or disgrace of those who committed the wrong.¹⁹⁰ A formal apology is a crucial element of any reconciliation process.¹⁹¹

However, this societal reconciliation does not allow truth commissions to provide the long-term support that grieving witnesses may require. In allowing for public airing and understanding of grief, the TRC gives former adversaries the opportunity to hear and understand each other in new ways. In the interest of reconciliation it is important for perpetrators to be given the opportunity to become human again rather than simply demonised, and given the opportunity to apologise. This reestablishment of the humanity of adversaries is essential in rebuilding trust relationship.¹⁹² This can only happen where there is assurance that the whole truth has come out and that all sides have participated despite the pains of the past.¹⁹³

In his argument the Chair for South Africa's Truth and Reconciliation Commission Bishop Desmond Tutu rejects judicial justice not only because it is vengeful and that revenge is intrinsically wrong but also because punishment, he claims impedes reconciliation. He advocated for amnesty and forgiveness as the best way to promote reconciliation. He advocated for the spirit of ubuntu, a form of restorative justice characteristics of the African traditional jurisprudence.¹⁹⁴ The central concern is the healing of wounds, the redressing of imbalances, the restoration of broken relationships, a seeking to rehabilitate both the victim and perpetrator, who is given the opportunity to reintegrated into the society those he has injured by his offence.¹⁹⁵ The past therefore cannot be avoided, any attempts to conceal or ignore past violations of human rights could make reconciliation more difficult.¹⁹⁶

¹⁹⁰ Dyke (n 163 above).

¹⁹¹ As above.

¹⁹² Krog (n 188 above) 143.

¹⁹³ See <www.turningpoint.ca/~turning/index.php/filemanager/download/15/truth9020Commissions.doc> accessed on 12 September 2003.

¹⁹⁴ Crocker D. A, Punishment, Reconciliation, And Democratic Deliberation, 5 BFCRIMLR 509

¹⁹⁵ Same as above.

¹⁹⁶ Boraine A., A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission, 33 (2000).

4.3.2 Forgiveness

Forgiveness has been described as a personal moral virtue that involves a change in one's inner feeling, which is overcoming on moral grounds.¹⁹⁷ Professor Murphy defines forgiveness as a moral virtue that is essentially a matter of the heart that involves a change in inner feeling more than a change in external action. He contends that the change in feeling is the overcoming, on moral grounds, of the intense negative reactive attitudes, the vindictive passions of resentment, anger, hatred, and the desire for revenge, that are quite naturally occasioned when one has been wronged by another responsible agent. A person who has forgiven has overcome those vindictive attitudes and has overcome them for a morally creditable motive e.g., being moved by repentance on the part of the person by whom one has been wronged.¹⁹⁸ The argument has been that Truth Commissions have the prospect of creating national reconciliation through truth telling, which is tied to the notion of forgiveness.¹⁹⁹

The religious tradition of Sierra Leoneans, the vast majority being Muslims and Christians, presents the atmosphere for individuals to personally pardon perpetrators. Forgiveness requires the participation of the forgiver and the forgiven, in dialogue with one another. The argument here is that victims are only able to forgive if they know who and what they are forgiving, and if they can comprehend the reasoning behind a particular action.²⁰⁰ Repentance on the part of the forgiven is necessary. For the concept of forgiveness to be possible, one is not seeking to remove the event of wrong doing, but rather with recognizing that a wrong has been committed. An apology on behalf of the wrongdoer to the injured party would most likely help in the process of repairing these damaged relations, this will open the door to making amends,²⁰¹ and may even serve as an admissible form of reparation in its own rights.²⁰² However, the act of forgiveness will always lie with the injured party not the Commission.

According to Murphy a victimized person will allow vindictiveness to take over him, turning him into a self-righteous fanatic so involved in his outrage that he would be satisfied only

¹⁹⁷ Braun, S 'Forgiveness, South Africa's Truth Commission, And Military Trials: America's Option in Dealing With Against Humanity in Light of The Terrorist Attacks on September 11' 2001, 23 HAMJPLP 493.

¹⁹⁸ Murphy, 'The Role Of Forgiveness In The Law' 27 FDMULJ 1351.

¹⁹⁹ Klosterman, T 'The Feasibility and Propriety of a Truth Commission in Cambodia: Too Little Too Late' 15 Ariz. J. Int'l & Comp. Law 833.

²⁰⁰ Forgiveness and the narrative project of truth commissions, Paper given at the Twenty-fifth Annual Scientific Meeting of the International Society of Political Psychology, Berlin, Germany 16-19 July 2002 See <www.uel.ac.uk/cnr/updates/Grandnational.doc> accessed on the 11 August 2003.

²⁰¹ Braun (n 197 above).

with the utter annihilation of the person who has wronged him. Such a person Murphy said is sometimes even willing to destroy, persons who have done him no wrong or who may even be totally innocent. Such a person is said to be a danger to himself and poses a threat to the morality and decency of the social order.²⁰³ A person under the power of such vindictiveness can, often unconsciously, even use the language of justice and crime control as a rationalization for what is really sadism and cruelty. However if there is to be readiness to forgive, it is important to know what evil is being forgiven and who caused it.²⁰⁴

It is important to note here that no one can dictate to aggrieved survivors what should be taken as an acceptable state of affairs, therefore any form of forgiveness in the reconciliation process of the TRC should come from victims and not from the Commission.²⁰⁵ The Truth is necessary, as victims would want above all else to find out the truth about their loved ones. In South Africa a woman whose son had been shot 19 times by security police said, "I do not know if I can forgive... I must know who did this to my son, when I see the face of the one who killed him, and he tells me why, then perhaps I can forgive".²⁰⁶ Without the truth there can be no forgiveness.

4.4 Impunity

Impunity, in the human rights context, refers to the lack of accountability for human rights violations committed, or condoned, by agents of the state. In the vast majority of countries, when agents of the state, members of the military, police and other armed forces tolerated by the government, commit human rights abuses, they are not punished for their actions.²⁰⁷ This lack of punishment sends a very clear message to the perpetrators of such crimes that those activities are condoned by the state, and that government agents can kill, and torture without fear of being brought to justice. Impunity is the torturer's most relished tool, the dictator's greatest and most potent weapon, the victim's ultimate injury, and the international community's most capricious failure.²⁰⁸ Impunity can be either de jure or de facto, legitimized by amnesty laws or enshrined by corrupted or incompetent judicial systems.

²⁰² Asmal (n 77 above) 17.

²⁰³ Murphy (n 198 above).

²⁰⁴ Boraine (n 196 above) 33.

²⁰⁵ Asmal (n 77 above) 23.

²⁰⁶ Lansing P and King J C., South Africa Truth and Reconciliation Commission: Conflict Between Individual Justice And National Healing In Post Apartheid Age 8-9.

²⁰⁷ See Human Rights Links without Impunity on < <http://www.derechos.net/links/law/icty.html>> Accessed on 1 Sept 2003.

Where there is complete absence of a mechanism for demanding accountability or for punishing perpetrators or providing redress to victims of violations it is said to be a situation of impunity.²⁰⁹ Impunity therefore is the source of decay of every free society. It creates a sense of lawlessness that destroys the value system of society. The term itself is derived from the French word *impunité* meaning absence of punishment or compensation for serious and large-scale violations of human rights.²¹⁰ Even in the absence of amnesty laws, prosecutors are often reluctant to prosecute, and national courts are reluctant to punish, human rights violators. Often times prosecutors and judges are in fear of physical harm if they turn against human rights violators or they are afraid that their careers may be compromised.²¹¹ Impunity therefore, is a violation of human rights, as well as a direct threat to the rule of law, which is the necessary basis of a democratic society. States have the obligation to both respect and promote human rights; impunity encourages human rights violations and thus it is a violation of these state obligations. In addition, impunity violates the rights of victims to justice that is established in many human rights covenants.

The Lome Peace Accord, which provided for a blanket amnesty, has been criticized on the basis that it encourages impunity. Prof. Bassiouni C. M., President of the International human Rights Law Institute, of Paul University College of Law argues that impunity for international crimes and for systematic and widespread violations of fundamental human rights will be a betrayal of human solidarity with the victim to whom a duty of justice is owed.²¹² However since prosecution is not the only means of addressing violations of human rights. The TRC is another form of mechanism through, which impunity can be addressed. An amnesty that permits prosecution to be foregone must not allow for complete impunity.²¹³ In response to those who claim that the past should be left behind once a conflict is over, the victims of such acts have insisted more and more that there can be no justice and no healing of society unless the truth is told, and unless violators are held accountable or confess their guilt and ask for forgiveness and give concrete sign of repentance. The past therefore, should not be abandoned, because a people who do not preserve their memory are a people who have forfeited their history.²¹⁴

²⁰⁸ Penrose, M. M 'Impunity –Inertia, Inaction, and invalidity: A literature Review' 17 BUIJLJ 269
²⁰⁹ Obiagwu C., Impunity and Human Rights, Global News Wire- Asia Africa Intelligence Wire Vangaurd(Nigeria) - AAGM
²¹⁰ As above
²¹¹ See without Impunity on < <http://www.derechos.net/links/law/icty.html>> Accessed on 1 Sept 2003
²¹² Bassiouni, C. M 'Peace and Justice' (Autum 1996) 59 Law and Contemporary Problems 27.
²¹³ Gallagher, K 'No Justice, No peace: Legalties and Realities of Amnesty in Sierra Leone' 23 Thomas Jefferson Law Review 149.
²¹⁴ Soyinka (n164 above) 3.

4.5 Amnesty and the TRC

4.5.1 What is Amnesty

Transitions to democracy are rarely possible without some form of amnesty for crimes and human rights violations that the previous regime has perpetrated. Unless the prior regime has suffered devastating defeat at the hands of the democratic forces,²¹⁵ the old elite and the military that relinquish their own rule are usually in the position to negotiate for amnesty in return for their peaceful retreat from power.²¹⁶ Equally in the context of protracted armed conflict that is ended by negotiations, neither party is likely to completely forego amnesty provisions.²¹⁷

Black's Law Dictionary defines amnesty as an act of forgiveness that a sovereign state grants to individuals who committed offensive acts.²¹⁸ States grant amnesty to achieve peacekeeping, nation building, and reconciliation objectives.²¹⁹ States involved in conflict have always considered amnesty a necessary means to end conflicts,²²⁰ to maintain tranquility, and to establish democracy. Political actors often used amnesty as a bargaining tool, promising dictators immunity from prosecution in exchange for relinquishing power.²²¹ The international community recognised blanket amnesties, covering all types of crimes in order to end violence. Regimes in transition often have fragile judiciaries. Granting amnesty therefore allows newly created regime to build judicial and political structures without the strain of prosecution. Amnesty is thus a part of nation building.²²² However certain factors must be considered for the granting of amnesty. Any form of amnesty should serve the ultimate purpose of reparation and prevention. It should be based on the truth otherwise one would not know what the amnesty is for, and above all it must be the will of the people.²²³ This is where the Sierra Leone amnesty falls short. It has no purpose other than compensation to perpetrators for peace.

²¹⁵ Sarkin, J 'Reconciliation Through Truth: A Reckoning Of Apartheid's Criminal Governance, By Kader Asmal, Louise Asmal And Ronald Suresh Roberts (David Philip Publishers In Association With Mayibuye Books, University Of Western Cape 1996' 21 Human Rights Quarterly, 1130.

²¹⁶ Hayner (n 74 above) 12.

²¹⁷ Strategic Choices In The Design Of Truth Commissions, accessed on <www.truthcommission.org/factor.php?fid=6&lang=en> on 14 October 2003.

²¹⁸ Black's Law Dictionary 82-83. See also the case of Azania Peoples' Org. V. President of the Republic of South Africa, 1996(4) salr 671, 690,692(CC).

²¹⁹ Azanian People Org V. Rep. Of S. Afr. 1999(4) salr 671-672.

²²⁰ Roht-Arriaza, N and Gibson, L 'The Developing Jurisprudence on Amnesty' 20 Human Rights Quarterly 846.

²²¹ Young G. K., Amnesty And Accountability, 35 UCCLR 427.

²²² As above.

²²³ Shea D., The South African Truth Commission: The Politics of Reconciliation, 12-13 (2003).

Without some form of amnesty the Commission will probably encounter widespread and serious opposition from the armed forces, or from the outgoing government or in the case of a civil war, as is the case in Sierra Leone from combatants. With a sweeping amnesty a commission will probably be seen as a fig leaf with no punitive and little restorative, powers. Amnesty can either be declared before the beginning of operations of a truth commission or after it has concluded its work. Prior declarations of general amnesty are likely to limit the credibility of a commission's work in the eye of the public. Amnesty can either be passed as a blanket rule applying to all ranks and automatically or limited to certain ranks or crimes within a period of time, conditional upon application and investigation. Generally limited and conditional amnesty is more acceptable for human rights organizations.²²⁴ Three forms of amnesties have developed over time. These are blanket amnesty or self amnesty, transitional or discrete amnesty and post conflict amnesty.

4.5.2 Blanket Amnesty

Executives often issue this type of amnesty to ensure that once they relinquished power they will not face prosecution.²²⁵ It generally covers specific individuals but is blanket and covers an array of crimes.²²⁶ It exonerates these individual and/or their agents from human rights violations.²²⁷ The military regime in Argentina attempted such an approach when it passed a self-serving amnesty law shortly before leaving power. These amnesties were later nullified when a democratically elected government came to power.²²⁸ These form of self-serving amnesties are inconsistent with general principles of law forbidding self-judging.²²⁹ The Chilean decree 2191 was a blanket amnesty covering all crimes committed. The Chilean government justified it as necessary to preserve the fragile political stability during its transition to democracy.²³⁰

²²⁴ Strategic Choices In The Design Of Truth Commissions, accessed on <www.truthcommission.org/factor.php?fid=6&lang=en> on 14 October 2003.

²²⁵ See the Mexican Commission's Report on 12 January 1994. The Mexican Government declared a general amnesty.

²²⁶ See the Chilean Decree 2191.

²²⁷ Gallagher (n213 above) 16.

²²⁸ As above.

²²⁹ Roht-Arriaza, N. and Gibson, L. 'The Developing Jurisprudence on Amnesty' 20 Human Rights Quarterly 846-848. The Chilean amnesty law has been challenged at least twice, the Supreme Court in both cases held that the amnesty law was constitutional and consistent with international law. See Insunza Bascunan Case, Recurso de Inaplicabilidad, Corte Suprema de Chile, Revista de Derecho y Jurisprudencia y Gaceta de los Tribunales, pt. 2, ss 4, at 64 (May-August 1990); Romo Mena Case, Corte Suprema de Chile (26 Oct. 1995).

4.5.3 Discrete Amnesty/Transitional Amnesty

A transitional government may grant amnesty for acts committed by the state's previous regime.²³¹ It may be granted for facts surrounding crimes. The Republic of South Africa provides the most noted example of a transitional amnesty. The apartheid government and the African National Congress (ANC) negotiated a new constitution and a change in power. The new government headed by Nelson Mandela, sought to maintain an already fragile peace by establishing the Truth and Reconciliation Commission in which both victims and perpetrators participated. The TRC Act includes provisions allowing amnesty in exchange for full disclosure of the facts surrounding politically motivated crimes committed under the apartheid regime. This does not cover crimes for personally motivated malice or gained. The commission granted amnesty only in exchange for the truth.²³²

4.5.4 Post Conflict Amnesties

A government may grant an amnesty for crimes committed during an internal conflict. The policy behind this type of amnesty is that, in order to negotiate an end to a conflict, states may choose to offer amnesty to combatants in exchange for peace and reconciliation.²³³ Mozambique unable to defeat a secretive army of rebel for 16 years signed a peace agreement in 1992 granting amnesty to combatants. Sierra Leone falls squarely in this position. The agreement signed in 1999 granted blanket amnesty to Foday Sankoh and all combatants.

4.5.5 The Legal Question of Amnesty and the TRC

As discussed above, the Lome Peace Agreement granted wide concession to the RUF. The agreement also granted Sankoh an immediate and absolute pardon and a power sharing government, which gives him some position in the interim government.²³⁴ The accord finally provided a complete and unconditional blanket amnesty to all combatants, in order to consolidate the peace and promote the cause of national reconciliation. The agreement called for the government to take no judicial action against the RUF, ex-AFRC,

²³¹ As in n227 above.
²³² Young (n 221 above).
²³³ See the Lome Peace Accord of 1999.
²³⁴ As in n133 above.

ex-SLA, or civil defence militias for anything done after 1991 in pursuit of their objectives.²³⁵

At the time of signing the agreement the UN Special Representative of the Secretary-General for Sierra Leone was instructed to append to his signature a disclaimer indicating that the amnesty provision in the agreement would not apply to international crime of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. This disclaimer became a very important tool of the UN in negotiating the creation of the Special Court.²³⁶ This last minute reservation by the UN Representative did not alter the terms of the agreement as far as the government and the RUF were concerned. While clarifying the UN intention to keep its options open regarding the possibility of future international prosecutions, the government and the RUF were the sole parties to the agreement and were bound by the amnesty provisions with regard to national prosecutions despite the UN reservation.²³⁷

4.5.6 Amnesty in the Lome Accord and International Law

The offer of amnesty in Sierra Leone was by no means unique. Amnesties have been granted for human rights violations numerous times in the past. For example Argentina, Guatemala,²³⁸ Romania, Haiti, El Salvador, Mozambique and South Africa have provided some form of amnesty for gross human rights abuses.²³⁹ Though the Secretary-General in his report to the UN held that amnesties did not protect perpetrators from international crimes, such as genocide and crimes against humanity,²⁴⁰ yet they are important tool of negotiations during a post-conflict society. They allow a society to move on from the past. The importance of amnesty in helping to resolve conflict should not be discounted.²⁴¹

Few treaty provisions specifically prohibit amnesty and some actually allow broad grant of amnesty. Article 18 of the Declaration on the Prevention of All Persons from Enforced

²³⁵

As in n 213 above.

²³⁶

Macaluso, D. J '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 BKNJIL 347

²³⁷

Gallagher (n 213 above).

²³⁸

Roht-Arriaza and Gibson (n 229 above) 851-853m. See also Guatemalan Constitutional Court Opinion on Amnesty, No. 8-97 & 20-97 (Oct.1997), the Court found the amnesty laws to be Constitutional.

²³⁹

Mattarollo (n 25 above).

²⁴⁰

See Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN. SCOR. 55th Sess., 915th mtg., UN. Doc., s/2000/915, (2000), available at <www.un.org/Docs/sc/reports/2000/915e.pdf>.

²⁴¹

Roht-Arriaza and Gibson (n 229 above) 844.

Disappearance does not allow for amnesty, the Convention Against Torture and other Cruel, inhuman or Degrading treatment or Punishment does not contained a specific provision prohibiting amnesty, however Article 7, which requires states to extradite or submit to competent authorities those suspected of act of torture has been interpreted as prohibiting amnesty.²⁴² International law obligates states to prosecute and investigate individual suspected of international crime, but there is surprisingly little international law that directly address the legitimacy of amnesty.²⁴³ Supporting this view Bassiouni argued that crimes such as genocide, crimes against humanity and war crimes characterized as jus cogens, which are presumably erga omnes imposes a duty to prosecute that is non-derogable even in times of war. He further states that granting impunity to violators for such crimes is contrary to international law. He however agreed in his argument that state practice does not conform to these views and that states practice shows more often than not, that impunity has been allowed for jus cogens crimes and that the theory of universality has been far from been universally recognized and applied.²⁴⁴

Sierra Leone is a party to the four 1949 Geneva Conventions and their supplemental protocols. Article 6 (5) of the second Additional Protocol to the Geneva Conventions permits broad grant of amnesties for those involved in civil wars and non-international armed conflicts.²⁴⁵ It is therefore unclear whether the Secretary-General's allegation that amnesty does not pardon international crimes, standing alone, could allow the UN to ignore the amnesty granted in the Lome Peace Agreement.²⁴⁶ The statute of the Special Court for Sierra Leone declares that any amnesty granted in the Lome Peace Agreement shall not apply to international crimes enumerated in Articles 2 through 4 of the Statute of the Special Court. Notwithstanding this statement, it is important to note that Sierra Leone's amnesty arose out of a civil war therefore protocol II Additional to the Geneva Convention applies. Protocol II supplement and develops Common Article 3 of the 1949

²⁴² See the case of *Selmouni v. France*, Eur. Ct. H. R. app. 25803/94, reprinted in 38 I.L.M. 1491, 1505, 1511(1999) The European Court of Human Rights ruled that the Convention does not allow torture.

²⁴³ Syle, R 'Justice and Amnesty' in Villa-Vicencio C. and Verwoerd W (eds) (2000) *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* 175-176.

²⁴⁴ Bassiouni, C *international Crimes Jus Cogens and Obligatio Erga Omnes On* <www.sos-attentats.org/juridique/etudes_articles/27.pdf> 14 October 2003.

²⁴⁵ See the Protocol Additional to the Geneva Convention of 12 August 1949, Relating to the Protection of victims of Non-international Armed Conflicts (Protocol II). It entered into force on Dec. 7, 1978.

²⁴⁶ Macaluso (n 236 above).

Conventions and provides one of the only references to amnesties in major international instrument. Article 6 (5) reads:

“ At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.”²⁴⁷

This article leave matters generally to the parties by requiring only that states endeavour to grant the broadest possible amnesty. The plenary meeting notes for Protocol II reveals that the policy behind the provision was to promote reconciliation in post conflict situations, such as the position that prevailed in Sierra Leone. While it does not obligate state to grant amnesties after internal conflict, the mere existence of it indicates that there is not the same duty to prosecute as the case is with international conflicts. The notes further reveal that an attempt to exclude crimes against humanity was defeated. This rejection indicates a desire to keep the provision broad and allow individual states to determine the parameter of an amnesty.²⁴⁸ It is difficult for the UN and the international Community to dismiss Protocol II altogether. The amnesty in Sierra Leone was granted as a means of reconciliation after an internal conflict and thus is clearly in conformity with protocol II, which explicitly permits amnesty.²⁴⁹

Sierra Leone’s amnesty differs from most post conflict amnesties, for example it differs from that of El Salvador where most of the abuses were committed or condoned by the state. Crimes committed by rebel may not entail the same obligation as those committed by state actors. In any case the government has always stated that the amnesty was necessary to bring an end to the protracted conflict.²⁵⁰ There has, however been a counter argument to this reasoning, which states that article 6(5) only allows states a limited power to grant amnesties. The ICRC has argued that this section is inapplicable to amnesties that extinguished penal responsibility and does not apply to those who have violated international law.²⁵¹

²⁴⁷ See Protocol II specifically Article 6(5).

²⁴⁸ Gallagher (n 213 above).

²⁴⁹ Roht-Arriaza, N 'Combating Impunity: Some Thought on the Way Forward' 59-AUT LCPR 93.

²⁵⁰ Gallagher (n 213 above).

²⁵¹ Roht-Arriaza and Gibson (n 229 above) 865.

4.6

Conclusion

In light of the serious institutional crisis inflicted by the occurrence of massive human rights violations in the past and the demand to reconstruct the foundations of peaceful coexistence, the people of Sierra Leone have created a truth commission in order to solve the demands for accountability, providing reparation to victims of violations and promoting national reconciliation. A further aim of the commission, of course, is to ensure that past atrocities never happen again.

The situation in Sierra Leone at the time of the conflict was such that few people would refuse amnesty for relative peace. Yet most people would agree that leaders who organize mass murder, torture and the like should be brought to justice. History reveals that until very recently, leaders like Pinochet, Idi Amin, Ferdinand Marcos, Anastasio Somoza and Mengistu Haile Mariam were less likely to end up behind bars than a free man in the streets of New York. Transitional practices show trials to be few in the contemporary period. However it was sometimes pragmatic that these tyrants were offered a way out to induce them to hand over power without making their people suffer further.²⁵²

It is impossible to prosecute all perpetrators in Sierra Leone, selective prosecutions, which may create the notion that justice was not relegated to the dustbin can also create injustice. It is therefore the duty of the commission to properly address the issue of impunity followed by a strong recommendation for reparation. This may create a sense of justice that will allow people to appreciate that the Commission is best placed to gather and present a picture of the past, which has often been systematically denied. It is important to reflect upon the significance of the Commission in being an educating tool for the coming generations. It is for these reasons that we must consider that an improved understanding of the role that truth commissions have played in the democratization process will help us ensure that human rights violations do not repeat themselves in the future.

²⁵²

See The Right To Reparation Of Victims Of Human Rights Violations, accessed on <<http://www.sudnordnews.org/repar.html>> on September 14 2003.

CHAPTER FIVE

THE SPECIAL COURT AND ITS RELATIONSHIP WITH THE TRUTH AND RECONCILIATION COMMISSION

5.1 Introduction

The Special Court and the Truth and Reconciliation Commission (TRC) are two institutions working for the same purpose with the capacity of reaching different people. They have been operating contemporaneously with overlapping jurisdiction. It is therefore important at this point to understand the strengths and weaknesses of both the Truth and Reconciliation Commission and the Special Court (SC). This chapter, however begins with a consideration of the relationship between truth commissions and war-crime tribunals (specifically the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda) Since a lot has already been said about the TRC a consideration will be given to the creation of the Special Court for readers to have a clear understanding on the preceding discussion on the relationship between the SC and the TRC. Suffice it to say that this chapter does not attempt an in-depth study on international criminal tribunals. It merely looks at the relationship between tribunals and truth commissions.

5.2 Truth Commissions versus ad-hoc International Criminal Tribunals

At the international level, reconciliation and prosecution are in most situations pursued separately, even in the same country as the case is in Sierra Leone and Rwanda. In recent times domestic truth commissions and international war crimes trials have become a familiar feature of the political landscape, for example in Brazil, Chile, Argentina, South Africa, and with regards to Yugoslavia and Rwanda.²⁵³ The 1993 international Criminal Tribunal for the former Yugoslavia (ICTY) was authorized to prosecute persons responsible for serious violations of international humanitarian law in the Territory of the former Yugoslavia since 1991.²⁵⁴ The 1994 Criminal Tribunal for Rwanda (ICTR) was

²⁵³ Schiff B., War Crimes and Truth and Commissions: Constructing International morality and Constraining the State [working papers], Oberlin College Department of Politics, International Studies Association, March 1998, accessed on <www.ciaonet.org/conf/scb01> 10 September 2003.

²⁵⁴ Article 1 of the Statute of the International Tribunal for the former Yugoslavia.

established to prosecute those responsible for the genocide in Rwanda. It has however been argued that being far and remote from the local people, these prosecutions are unlikely to produce a lasting peace, to insure the continuous maintenance of the rule of law, to deter future crimes, or to bring an end to the conflict.²⁵⁵

Many truth commissions fall under the concept of social and community rehabilitation, therefore some scholars and practitioners have argued that this new concept may not fit well with traditional concept of truth, justice and reconciliation (i.e. retribution), they argued that forgiveness might not be what a society wants. For example Rwanda is very keen on justice because everyone knew who did what and wants them to be punished.²⁵⁶ However Sierra Leone is more supportive of both a truth commission and a war crime tribunal.

Truth commissions and war crime tribunals are distinctive bodies, however both force their respective communities to confront the past, forge a collective memory, acknowledge atrocities of the past, move towards reconciliation, and move through a process of historical catharsis. The purpose of both bodies is to create lasting peace and justice.²⁵⁷ However tensions have arisen between these two bodies not only in Sierra Leone but also between the ICTY and those who were looking at a truth commission in Bosnia. Initially there was skepticism or worry that any non-judicial commission would cause problem for the tribunal by interviewing the same people that the ICTY wanted to access and that it would receive information and evidence that is extremely difficult and need to be verified on strict judicial principles.²⁵⁸ This tension would not suggest that Truth Commissions pose a challenge to accountability, as they do not prejudice the subsequent application of the criminal law. Indeed, truth commissions may facilitate accountability by serving as precursors to the adoption of measures of accountability that may include reparations, restitution, civil remedies, lustration laws, and even criminal prosecutions.²⁵⁹

There are obvious distinction between truth commissions and war crime tribunals and the implications of these distinctions. The ICTY and ICTR are international criminal tribunal with powers to prosecute. They are external bodies with no domestic involvement and

²⁵⁵ Monshipouri, M and Welch, C. E 'The Search for International Human Rights and justice: Coming to Terms with the New Global Realities' 23 Human Rights Quarterly No. 2 (2001), 389.

²⁵⁶ Fullerton P., Addressing the Expectation Gap between the ICC and Truth and Reconciliation Commissions, accessed on <www.gjp.ubc.ca/_media/srch/030708trc_icc_relationship.pdf> on 10 October 2003.

²⁵⁷ Rakate, International Criminal Justice and Reconciliation: Lessons From the TRC and the ICTY accessed on <<http://www.igd.org.za/pub/papers/rakate.doc>> 14 October 2003.

²⁵⁸ Hayner (n 74 above) 206-210.

²⁵⁹ Sadat, L.N The International Criminal Court and the Transformation of International Law 53 (2002).

were created by foreign political powers. Most truth commissions have high degree of domestic legitimacy, tribunals such as the ICTY and ICTR have a low degree of domestic legitimacy in those areas where they have jurisdiction.²⁶⁰

While post-conflict truth commissions and criminal trials for mass atrocities have broadly similar aims of contributing to reconciliation, they approach these goals from fundamentally different angles.²⁶¹ The objective of Truth Commissions is to reconcile a deeply divided society, the primary objective of tribunals on the other is to put an end to crimes by taking steps to bring to justice those responsible for committing international crimes with the hope of maintaining peace.²⁶² Some argued that an international justice system, which apportions guilt and punishes individuals, would prevent national truth and reconciliation processes especially in cases where amnesty is granted. It is however important to note that victims of crimes against humanity, genocide and war crimes have a right to justice that cannot and should not be erased by the work of a Truth Commission. However a Truth Commission can reach thousands of victims who would otherwise never have access to legal justice.²⁶³

5.3 The Special Court

The creation of the Special Court (SC) must be viewed against the backdrop of the peace plan in Abidjan and Lome. The later granted amnesty for crimes committed by combatants while undertaking the creation of a truth commission.²⁶⁴ Soon afterwards the Revolutionary United Front (RUF) resume attacks on the government's forces and the civilian population,²⁶⁵ taking 500 UN Peacekeepers hostage.²⁶⁶ It therefore became evident that a solution was necessary to punish as the statute of the SC puts it 'persons who bear the

²⁶⁰ Payam, A., 'Justice in the Hague, peace in the former Yugoslavia? A Commentary on United Nations War Crimes Tribunals' (20) Human Rights Quarterly, 1998, p1.
²⁶¹ Moghalu K., Between Truth Commissions And Criminal Trials, accessed on <www.nigerdeltacongress.com/barticles/between_truth_commissions_and_cr.htm> on 10 October 2003.
²⁶² Payam (n 260 above).
²⁶³ Plachta M., International Criminal Court *versus* Truth Commissions and National Amnesties: How to Reconcile Retributive with Restorative Justice, accessed on <www.iusetex.pl/doc/konferencja/icc.doc> 10 September 2003.
²⁶⁴ Schocken (n 26 above).
²⁶⁵ Scharf M. P., The Special Court for Sierra Leone, ASIL Insights accessed on <www.asil.org/insights/insigh53.htm> on the 5 October 2003.
²⁶⁶ Lawyers Committee for Human Rights, The Special Court for Sierra Leone, Accessed on <www.lchr.org/international_justice/w_cont_04.htm> on 5 October 2003.

greatest responsibility for crimes against humanity, war crimes and other serious violation of humanitarian law'. The solution was the creation of a Special Court for Sierra Leone.²⁶⁷

With serious criticism from human rights activists and a direct request from the Government of Sierra Leone,²⁶⁸ the UN Security Council in Resolution 1315²⁶⁹ requested that the Secretary General negotiate an agreement with the Sierra Leone Government to establish a Special Court. The Secretary-General presented a model for the Court, which is neither a UN body along the line of a Chapter VII mandate²⁷⁰ as was the case with the ICTY and the ICTR; nor a domestic tribunal, but rather a hybrid court that will be jointly administered by the UN and the Sierra Leone Government.²⁷¹ Following the successful completion of negotiation with the Sierra Leone government on 4 October 2000 the Secretary-General issued his report to the Security Council, which eventually lead to the creation of the Special Court.²⁷²

The Special Court (SC) is a treaty-based court composed of both international and Sierra Leonean judges,²⁷³ prosecutors, and staff. The Court has two trial Chambers, each with two judges appointed by the Secretary-General and one judge appointed by the Government of Sierra Leone, and a five-member Appeals Chamber with three judges appointed by the Secretary General and two judges appointed by the Government of Sierra Leone²⁷⁴ the Statute also creates a registry, which is responsible for the administration and servicing of the SC.

The personal jurisdiction of the SC extends to 'persons who bear the greatest responsibility for serious violation of international humanitarian law and Sierra Leonean law'.²⁷⁵ The subject matter jurisdiction of the Court extends to War crimes, crimes against humanity and certain crimes under Sierra Leonean law, including abusing a girl under 14 years of age, abduction of a girl for immoral purposes, and setting fire to dwelling houses

²⁶⁷ Miraldi M., U.N. Report: Overcoming Obstacles of Justice: The Special Court of Sierra Leone, 19 N.Y.L. Sch. J. Hum. Rts. 849.

²⁶⁸ Udombana (n 27 above).

²⁶⁹ See S. C. Res./1315, U. N. SCOR, 4186th mtg., U. N. Doc. S/RES/1315(2000).

²⁷⁰ Chapter VII of the UN Charter gives the United Nations power to intervene in the affairs of sovereign states to restore international peace and security. It was under this mandate that the ICTY and the ICTR were created.

²⁷¹ Seiff M., A "Special Court" for Sierra Leone's War Crimes, Global Policy Forum-Security Council, accessed on <www.globalpolicy.org/security/issues/sierra/court/2001analysis.htm> on 5 October 2003.

²⁷² Report of the Secretary General on the Establishment of the Special Court for Sierra Leone, U. N. SCOR, U. N. Doc. S/ 2000/915(2000).

²⁷³ See Agreement Between The United Nations And The Government Of Sierra Leone On The Establishment Of A Special Court For Sierra Leone 16 January 2002.

²⁷⁴ Scharf (n 265 above).

²⁷⁵ Article 1 (1) of the Statute of the Special Court for Sierra Leone.

or public buildings.²⁷⁶ Its temporal jurisdiction runs from 30 November 1996 to a date to be fixed by the parties.²⁷⁷ Though human rights activists have acclaimed the establishment of the SC, its relationship with the peace process has also caused controversial jurisdictional difficulties. An initial question was whether the Court should recognized the blanket amnesty given to all parties by the Lome Accord, this has been addressed by Article 10 of the Special Court Statute. This article states that:

An amnesty granted to any person falling under the jurisdiction of the Special Court in respect of crimes referred to in articles 2 and 4 of the present Statute shall not be a bar to prosecution.²⁷⁸

The second issue was the determination of the relationship between the Special Court and the Truth and Reconciliation Commission.

5.4 Bridging the Gap between the TRC and the Special Court

5.4.1 Legal Basis

The legal basis for the Truth and Reconciliation Commission is the TRC Act of 2000, which was an implementation Act for a provision of the Lome Peace Accord. By this Act the TRC became a fully national body, though it is composed of both international and national commissioners. It is a quasi-judicial body that can issue subpoenas.²⁷⁹ The Special Court is established by treaty i.e. An Agreement between the Sierra Leone Government on the one hand and the United Nations on the other, pursuant to Resolution 1315(2000).

5.4.2 Jurisdiction

The Truth and Reconciliation Commission (TRC) subject matter jurisdiction overlaps with the SC. The Special Court's jurisdiction is limited to serious violations of international humanitarian law and crimes under Sierra Leonean law, whereas the Commission can

²⁷⁶ Article 5 of the Statute of the Special Court for Sierra Leone.

²⁷⁷ As in n274 above.

²⁷⁸ See Article 10 of the Special Court Statute.

²⁷⁹ Briefing Paper on: Relationship between the Special Court and the Truth and Reconciliation Commission: Legal Analysis and Policy Considerations of the Government of Sierra Leone for the Special Court Planning Mission, accessed <www.specialcourt.org/documents/PlanningMission

investigate all or any abuses and violations of human rights and international humanitarian law related to the armed conflict in Sierra Leone.²⁸⁰

The temporal jurisdiction of the Special Court (SC) is open ended. It has been argued that the open-ended nature is to accommodate the possibility of continued fighting.²⁸¹ The commencement date of the temporal jurisdiction of the SC is 30 November 1996. Whatever sound argument has been proffered for this choice has not gone down well with many victims. On the contrary the Commission's temporal jurisdiction runs from May 1991 to July 1999. The temporal jurisdiction of the two institutions therefore overlaps between November 30 1996 and July 7 1999.²⁸²

According to the Statute of the Special Court, the personal jurisdiction of the Special Court apply to those who bear the greatest responsibility for the commission of crimes against humanity war crimes and certain crimes under Sierra Leone law. This gives the prosecutor authority to decide whom to try. The term those who bear the greatest responsibility is ambiguous, however the U. N. Secretary-General clarified this ambiguity by indicating that the term does not limit personal jurisdiction to political and military leaders. Since the Commission's personal jurisdiction is not limited to such acronym as those who bear the greatest responsibility, it can therefore listen to everyone who comes before it irrespective of the level of criminal responsibility. There is definitely an overlap in this area as it is possible for the Commission to subpoenaed an accused or witness from the Special Court and the Special Court can in turn if it finds it necessary indict a witness form the TRC.

5.4.3 Information Sharing

There has been a lot of concern about the relationship between the Truth and reconciliation Commission (TRC) and the Special Court (SC), especially with regards information provided in confidence. The Special court has a broader mandate with regards to information gathering. Therefore it has been argued that if it could not gained access to relevant information from the Commission because of the blanket amnesty, the result would be a total denial of justice.²⁸³

²⁸⁰ /BriefingPapers/SLGovTRC_SpCt_Relationship.doc> on 11 October 2003.
Tijan-Cole, A 'The Complementary and Conflicting Relationship Between the Special Court for Sierra Leone and the Truth and Reconciliation Commission' 6 YHRDLJ 139.
²⁸¹ Schocken (n 26 above).
²⁸² Tijan-Cole (n 280 above).
²⁸³ Hall, L. R. and Kazemi, N 'Recent Development : Prospect for Justice and Reconciliation in Sierra Leone' Harv. Int'l L. J. 287 (2003).

Since it is the rule of substantive law that a subsequent and conflicting act of parliament must prevail, the law indicates that the SC have the authority to demand any information from the TRC. This power comes from the Special Court implementing legislation ratified by parliament in 2002.²⁸⁴ Though this power is a breach of section 7(3) of the TRC Act of 2000, which assumes confidentiality for certain information, it prevails over the TRC Act where there is conflict. As a result of this dilemma combatants have made it clear that their cooperation with the TRC depends on the relationship between the Special Court and the TRC. However the Commission has stated that the TRC will not share any confidential information with the SC.²⁸⁵ This issue was further clarified when the prosecutor of the Special Court David Craine on 10 December 2002 stated that:

'The Court and the Special Court will operate separately but that both institutions would work to address the entrenched problem of impunity and to ensure accountability for human rights abuses committed during Sierra Leone's decade long civil war. Victims, perpetrators and witnesses who testify before the TRC should do so without fear of having their statements subpoenaed by my office. My team of investigators and prosecutors are hard at work putting together cases against key individuals responsible for serious violation of international humanitarian law. We are doing this separately of the TRC.'²⁸⁶

One Argument for information sharing is that the amnesty provided to lesser offenders who testify need not translate into absolute secrecy, since the guarantee of non-disclosure would frustrate the work of the Commission as well as the Court. It is important to note that to ensure the independence of the Commission both prosecution and defense should request information from the Commission only after formerly and openly requesting such information and during pending prosecution and not during general investigations.²⁸⁷ Otherwise the Commission would be seen as an information gathering body for the SC.

However Human Watch made a distinction between information sharing from the TRC and the Special Court and from the Special Court and the TRC. With regards to the former they recommended that witnesses testimony provided at closed TRC sessions and statement taken on a confidential basis should remain confidential and only to be

²⁸⁴ See section 21(2) of the Statute of the Special Court.

²⁸⁵ See Pride Ex-Combatants Views of the Truth and Reconciliation Commission and the Special Court for Sierra Leone accessed on <www.ictj.org/downloads/PRIDE%20report.pdf> on the 5 October 2003.

²⁸⁶ See Sierra Leone News on <<http://www.sierra-leone.org/slnews1202.html>> accessed on 14 October 2003.

²⁸⁷ Hall and Kazim (n 283 above).

disclosed on limited circumstances and that witnesses' statement that were not made in confidence should be readily available to the Special Court. As far as information sharing from the Special Court to the TRC is concerned,

they recommended that statements made to the Special Court, should be made available to the TRC as long as disclosure would not compromise the Special Court's work.²⁸⁸

5.4.4 Accountability

The Special Court and the TRC will both be involved in the process of establishing the truth behind the conflict in Sierra Leone, and bringing a measure of accountability for victims. Many have questioned the extent to which the TRC will serve as an accountability mechanism for human rights violations. To them prosecution is preferable to reconciliation, they argued that truth commissions have important limitations on the basis that they cannot ensure or enforce accountability for serious human rights violations, and that commissions ultimately fail to address the yearning of the victims for justice.²⁸⁹ However one must bear in mind that, states have made use of a variety of accountability options. It is important to note that each form of accountability has been tailored to the unique situation of the state involved.²⁹⁰ A contentious issue between the Special Court and the TRC could be seen from the argument between prosecution and reconciliation. Adopting the prosecutorial model advances the ideal of building or reconstructing a morally just order. The criminal justice system works most efficiently in punishing individuals for individual crimes. However one would agree that a genuine sense of remorse and regretful acknowledgment of atrocious crimes would be lost in the formality of a courtroom. Further, the adversarial process may actually add to the suffering of the victim. Forcing the victim to undergo grueling cross-examination in the hostile atmosphere of a courtroom may increase his animosity toward the perpetrator rather than reach a desperately needed closure.²⁹¹

²⁸⁸ See Human Rights Watch Policy Paper on the Interrelationship Between the Sierra Leone Special Court and Truth and Reconciliation Commission, accessed on <www.hrw.org/press/2002/04/sierraleoneTRC0418.htm> 13 October 2003

²⁸⁹ Moghalu (n 261 above).

²⁹⁰ Steven R. Ratner European Journal of International Law, Immunity Versus Human Rights: The Pinochet Case accessed on <<http://ejil.org/journal/Vol9/No2/br2.html#TopOfPage>> 15 October 2003.

²⁹¹ Mcgregor L., The Individual Accountability In South Africa: Cultural Optimum Or Political

An initial contention was whether the Court should recognize the blanket amnesty given to all parties by the 1999 Lomé Agreements, which were concluded by the Government of Sierra Leone under heavy international pressure. In Resolution 1315, the UN Security Council determined that immunities, including those in the Lomé Agreements, cannot bar prosecution for international crimes.²⁹² However, the Special Court will have to determine whether the amnesties apply to the domestic crimes²⁹³ as a matter of Sierra Leonean law.²⁹⁴ Notwithstanding the Lomé peace Accord and the amnesty, which practically apply to combatants as well as non-combatants, Sierra Leone realised that for it to move forward and achieve lasting peace there must be prosecution for those most responsible for the atrocities committed in the course of the conflict.²⁹⁵ It has been clearly stated that only a small number of perpetrators will be tried, whether this serves the purpose of accountability as indicated by human rights activists is still an unresolved puzzle. Accountability is now, routinely demanded by international human rights groups, it is no longer seen as a question of national choice. The Ad-hoc tribunals on Yugoslavia and Rwanda have advanced the law by signaling that at least in theory, certain international crime must be prosecuted.²⁹⁶

While amnesties maybe necessary in difficult peace negotiations the benefit of prosecution must not be overlooked. The argument is that prosecution provides much needed reinforcement of the rule of law that has been seriously weakened during the conflict, the failure to address human rights violations, may lead to future abuse.²⁹⁷ While this is true, it is important to appreciate that the TRC provides a tool in a spectrum of accountability mechanisms. Several scholars have proposed the right to truth as a fundamental aspect of accountability.²⁹⁸ In Sierra Leone accountability for gross human rights abuse have been addressed through the Special Court, which includes the full prosecution and punishment of crimes, as in the case of the Nuremberg trial, and the system that focused on the truth as a way of effecting justice. Persons who participated in the planning, preparation or execution of serious violation of international humanitarian law must be accountable individually.

Facade? American Journal Of International Law [Vol. 95:32] accessed on <[Http://Www.Asil.Org/Ajil/Recon3.Pdf](http://www.asil.org/AJIL/Recon3.Pdf)> 20 October 2003.

²⁹² See Resolution 1315 and Article 10 of the Statute of the Special Court.

²⁹³ Article 5 of the Special Court Statute.

²⁹⁴ See Article 6 of the Special Court's Statute.

²⁹⁵ See Special court Statute.

²⁹⁶ Bassiouni, M. C 'Combating Impunity For International Crime' 71 UCOLR 409. See also Roht-Arriaza, N 'Combating Impunity: Some Thought on the Way Forward' 59-AUT LCPR 93.

²⁹⁷ Gallagher (n 213 above).

²⁹⁸ Penrose (n 208 above).

Since prosecution of all perpetrators is impossible because of the weakened judicial structure, a hand full of notable prosecutions could provide Sierra Leoneans with at least some sense that justice was not completely forsaken.²⁹⁹ To this end the TRC and the Special Court have started their work. The TRC has almost completed its work and the Special Court is now fully operational. Key figures such as Foday Sankoh,³⁰⁰ Johnny Paul Koroma³⁰¹ and the former minister of defense Sam Hinger Norman have been indicted.³⁰²

Finally, criminal trials and the punishment they impose serve a deterrent function, though they cannot create a perfect world. Trials make it clear that there is a price to pay for impunity. Truth and reconciliation mechanisms sometimes create situations where, following the public airing of grievances without real accountability, the victims watch the perpetrators of the crimes they have suffered walk away free and continue to enjoy their freedom despite their acts of impunity. Therefore it has been convincingly argued that this recipe for lingering bitterness is only avoided where the truth and reconciliation mechanisms serve as a first step to the prosecution of selected individuals deemed uniquely responsible for certain heinous crimes.³⁰³

5.5 Conclusion

Since the Special Court (SC) is no less a judicial institution that applies the rules of evidence, the information to be shared should be judicious,³⁰⁴ it should only obtained confidential information from the Commission if the information or evidentiary material sought can only be obtained from the Commission.³⁰⁵ So far the fears initially anticipated have not practically manifest itself on the work of the two institutions as they have been working side by side for quite some time with no serious confrontation from both sides.

Though Truth Commissions have asserted the justiciable illegality of acts, their reprehensible nature and society's need to expose, and in future to deter them, war crime tribunals are promising as precedents though they have not operated well enough to warn

²⁹⁹ Gallagher (n 213 above).

³⁰⁰ He was the Leader of the RUF who is now deceased.

³⁰¹ He was the Chairman of the Armed Forces Revolutionary Council that overthrown President Kabbah in 1997, and later formed an alliance with the RUF.

³⁰² He was the Deputy Minister of Defense in the Kabbah Government, he was also the head of the Kamajor pro government-militia.

³⁰³ Moghalu (n 261 above).

³⁰⁴ Tijan-Cole (n 280 above).

³⁰⁵ Same as in n 288 above

perpetrators that misdeed will be punished, however the fact that such tribunal have been empanelled at all shows that international norms formalised at the time of the Nuremberg trials continue to be moving towards greater institutionalization.³⁰⁶

³⁰⁶ Schiff B (n 253 above).

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

The various activities and programs that started since the inauguration of the Commission late 2002 have progressively reached a crescendo. The hearing phase, which seemed a long way off when the Commission started taking statements in December 2002, has suddenly come to an end.³⁰⁷ The Truth and Reconciliation Commission (TRC), regardless of who created it, will only be seen as successful if it publishes a comprehensive and accurate report on past human rights violations. This report should be accepted and believed by the community, who can see sincere efforts on the part of the commission to reconstruct the events and contexts of cases of systematically committed human rights violations. The Commission is obligated to uncover facts, not just an invention of facts. It should give a report that accord with international morals. Equally important, the TRC must explain its findings correctly and honestly. It cannot be allowed to cover up issues that are particularly sensitive or that may complicate the question of primary responsibility. Action such as this would damage community trust in the TRC.

Truth Commissions can play a useful role in those unstable and sensitive situations where a country is moving from dictatorship and repression to a more open, accountable democratic government. While building for the future, accounts must be made for the past and these commissions may give some moral relief to victims, survivors and families in establishing objectively what happened and why. Admittedly, there is no model for the reconciliation process, which would apply to all. Each country's history, experience, goals, and culture will inform the debate regarding the relative worth and desirability of truth commissions, prosecutions, and reparations.³⁰⁸

It is virtually impossible for Sierra Leoneans to go through the process of reconciliation very quickly, as every individual will have to devise his or her own personal method of coming to terms with the past. It is however hoped that giving survivors an opportunity to address their traumatic experiences will provide those who suffer from trauma related illness a sense of closure. It may also help them deal with psychological and

³⁰⁷ 15th Bi-Monthly Media Briefing On The Truth And Reconciliation Commission (Trc), Held On Wednesday 9th April 2003 By The Chairman, Bishop Joseph C. Humper.

³⁰⁸ Plachta (n 263 above).

psychosomatic illness.³⁰⁹ As the case was in South Africa the process of healing and moving forward will not be easy. There will be those who feel that justice has not been done and that the whole truth has not been exposed. These feelings are understandable, as it cannot be argued with certainty that telling the truth will deter future violations of human rights, though it may to some extent redeem the suffering of victims.

On an individual level, it would be very difficult to accept a loss of personal justice for the good of the nation. While national healing is important, the loss of justice is a high price to pay for the individual victims. It is true that conditions in Sierra Leone may improve as a result of the experience of the TRC, however a young man whose hands were cut off or a young girl who has been raped may still feel strongly upset if he or she happen to pass persons who cut off his hands or gagged raped her. The Commission may alleviate such suffering but cannot make them disappear completely. Forgiveness in such cases must occur on individual level, while the government's focus on forgiveness may help to encourage forgiveness on an individual levels, it cannot demand or ensure it.³¹⁰

The truth about what happened in an officially sanctioned manner is considered essential to a fragile democratic foundation, to strengthen the rule of law and to affirm human rights practices. Moreover the fact that government is listening to and validating the stories of victims affirm their dignity. Some may even acknowledge justice and compensation in the form of welcome information about missing relatives or sincere apologies from individuals or governments rather than reparations or strict prosecution of perpetrators.³¹¹

The truth and reconciliation Commission is a more effective way of dealing with the present human rights violation than a domestic or international prosecution. Overall the Commission should not be seen as a substitute for traditional judicial process, as it offers a different kind of justice, with a more restorative approach focused on rebuilding the future rather than on punishment.

6.2 Recommendations

It is important to note at this point that the preparation and dissemination of a report has always played a very important role in communicating and disseminating the truth. The report is what the Commission leaves for history. Therefore the TRC should be very

³⁰⁹ Klosterman (n 199 above).

³¹⁰ Lasing and King (n 206 above).

³¹¹ Weston, R 'Facing the Past, Facing the Future: Applying the Truth Commission Model to the Historic Treatment of Native Americans in the United States' *Ariz. J. Int'l & Comp. Law* 1017.

serious about its report and gives enough time and attention to it. The Commission should avoid trying to reduce the volumes of reports, as this may lead to embarrassing omission. One would suggest that the report be put in several volumes with rich analytical and contextual materials. The work of the Commission to investigate the truth is vital, but the legacy of the Commission is what gives ordinary people the hope that all was not lost. This legacy should be reflected in its report by way of identification, strong denunciation of abuses and recommendations for reparations.

In light of the above this work recommends that the Commission's report a complete picture of the truth as related by victims and perpetrators, and name those responsible where the evidence is overwhelming. It should consider urgent interim assistance, which will help survivors in immediate need, this may be through individual reparation grants, symbolic reparation through legal and administrative matters, which might include a national day of remembrance and reconciliation, the creation of memorials and monuments, helping the family of victims obtained death certificates and finalise outstanding legal matters, having victims exhumed and reburied or given headstone, naming streets and places in honour of individuals or events. This is important because for many people putting their loved ones to rest in a proper ceremony is a key to healing.

It should also recommend that effort be made to support the development of a viable rule-of-law infrastructure, which could include: development and training of indigenous law enforcement personnel, the establishment of an independent judicial system, construction of key judicial infrastructures, including prisons and courts, revision of the constitution and out dated legal codes, and training of indigenous human rights monitors. It may also consider that a parallel effort be developed to support vital institutions dealing with civil society and nongovernmental activities promoting reconciliation and healing. The appointment of an independent ombudsperson for the citizenry, and to help create programs to support the rebuilding of communities, including programs in areas such as public education, mass media, as well as cultural exchange.

The commission should put in place a coordinated strategy for the dissemination of its findings. A good number of copies should be printed and distributed to the different parties of the Lome Peace Agreement, political parties, the press, schools, universities, libraries, nongovernmental organisations and every facet of civil society. A permanent website should be dedicated and the reports made available for all those who want to access it.

(Word Count: 23,000 minus bibliography, preliminary pages and annexes but includes footnotes)

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ANNEXES

THE TRUTH AND RECONCILIATION COMMISSION ACT 2000

Supplement to the Sierra Leone Gazette Vol. Cxxxi, No. 9 dated 10th February, 2000.

IX. THE TRUTH AND RECONCILIATION COMMISSION ACT 2000

ARRANGEMENT OF SECTIONS

Section

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Schedule [Subsection (1) of Section 3]

Being an Act to establish the Truth and Reconciliation Commission in line with Article XXVI of the Lomé Peace Agreement and to provide for related matters.

Enacted by the President and Members of Parliament in this present Parliament assembled.

PART 1 - PRELIMINARY

1. In this Act, unless the context otherwise requires -

"Chairman" means the Chairman of the Commission appointed under subsection (3) of section 3;

"Commission" means the Truth and Reconciliation Commission established by section 2;

"Lomé Peace Agreement" means the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone signed in Lomé on 7th July, 1999;

"Moral Guarantors" means the Moral Guarantors referred to in Article XXXIV of the Lomé Peace Agreement;

"Selection Coordinator" means the UN Special Representative of the Secretary-General in Sierra Leone;

"Selection Panel" means the selection panel of six persons referred to in subparagraph (iii) of paragraph (a) of the schedule composed of one member appointed by each of the following : - The President, the Revolutionary United Front of Sierra Leone, the erstwhile Armed Forces Revolutionary Council, the Inter-Religious Council, the National Forum for Human Rights and the National Commission for Democracy and Human Rights (or the Human Rights Commission, as set out in the Lomé Peace Agreement, if such a Commission has been inaugurated).

PART II - ESTABLISHMENT OF COMMISSION

2.(1) There is hereby established a body known as the Truth and Reconciliation Commission.

(2) The Commission shall be body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether moveable or immovable and of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as bodies corporate may by law perform.

(3) The Commission shall have a common seal the use of which shall be authenticated by the signatures of the Chairman and the Deputy Chairman or by any other members designated in that behalf by the Commission.

3.(1) The Commission shall consist of seven members, four of whom shall be citizens of Sierra Leone and the rest shall be non-citizens, all of whom shall be appointed by the President after being selected and recommended in accordance with the procedure prescribed in the schedule.

(2) The members of the Commission shall be -

persons of integrity and credibility who would be impartial in the performance of their functions under this Act and who would enjoy the confidence generally of the people of Sierra Leone; and

persons with high standing or competence as lawyers, social scientists, religious leaders, psychologists and in other professions or disciplines relevant to the functions of the Commission.

(3) The Commission shall have a Chairman and a Deputy Chairman both of whom shall be appointed by the President from among persons recommended by the Selection Coordinator and the United Nations High Commissioner for Human Rights.

(4) Where a vacancy occurs in the membership of the Commission because of the death, disability, resignation or dismissal of a member, the President shall appoint a replacement-

where the vacancy is in respect of a citizen of Sierra Leone, from among the short-listed persons considered by the Selection Panel in accordance with the Schedule, giving due consideration to the rankings and comments of the Selection Panel, if any; and

where the vacancy is in respect of a non-citizen, a person recommended by the United Nations High Commissioner for Human Rights.

(5) A member of the Commission may resign his office by written notice to the President and may be removed from office but only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for a misconduct under this Act.

4. Members of the Commission shall work full-time or nearly as full-time as possible and shall, accordingly, be paid such remuneration as the President may determine, on the recommendation of the Selection Coordinator, acting on the advice of the United Nations High Commissioner for Human Rights.

5. (1) The Commission shall be inaugurated within two weeks of the appointment of its members and shall operate for one year. Provided that for good cause shown, the President may, by statutory instrument, extend the term of the Commission for a further six months.

(2) Before the commencement of the period of one year specified in subsection (1), the Commission shall have a preparatory period of three months during which it may undertake all tasks necessary to ensure that it is able to work effectively from the commencement of its operations.

(3) The tasks to be undertaken during the preparatory period shall include procurement of office space, preparing a budget, securing funds for the Commission, hiring staff, discussing questions of methodology, designing and undertaking a public education campaign for the purposes and procedures of the Commission, designing and putting in place a database, undertaking a preliminary background research, collecting supporting materials for its investigations and prioritising its work.

(4) Both during the preparatory period and after it commences operations, the Commission shall endeavour to inform the public of its existence and the purposes of its work, and, when appropriate, shall invite all interested parties who may wish to do so, to make statements or submit information to the Commission.

PART III - FUNCTIONS OF COMMISSION

6. (1) The object for which the Commission is established is 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 Lomé 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.

(2) Without prejudice to the generality of subsection (1), it shall be the function of the Commission -

to investigate and report on the causes, nature and extent of the violations and abuses referred to in subsection (1) to the fullest degree possible, including their antecedents, the context in which the violations and abuses occurred, the question of, whether those violations and abuses were the result of deliberate planning, policy or authorisation by any government, group or individual, and the role of both internal and external factors in the conflict;

to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict; and

to do all such things as may contribute to the fulfilment of the object of the Commission.

7. (1) The Commission shall, subject to this Act, solely determine its operating procedures and mode of work with regard to its functions which shall include the following three components : -

undertaking investigation and research into key events, causes, patterns of abuse or violation and the parties responsible;

holding sessions, some of which may be public, to hear from the victims and perpetrators of any abuses or violations or from other interested parties; and

taking individual statements and gathering additional information with regard to the matters referred to in paragraphs (a) or (b).

(2) The Commission may seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation.

(3) At the discretion of the Commission, any person shall be permitted to provide information to the Commission on a confidential basis and the Commission shall not be compelled to disclose any information given to it in confidence.

(4) The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may wish to recount their stories in public and the Commission may also implement special procedures to address the needs of such particular victims as

children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations.

(5) Decisions of the Commission shall, as far as possible, be taken by consensus and in the absence of consensus, by the majority vote of members of the Commission and the Chairman shall cast the deciding vote where there is a tie.

(6) During the course of its operations, the Commission may provide information or recommendations to or regarding the Special Fund for War Victims provided for in Article XXIV of the Lomé Peace Agreement, or otherwise assist the Fund in any manner the Commission considers appropriate but the Commission shall not exercise any control over the operations or disbursements of that Fund.

8. (1) The Commission shall have power generally to organise its work and shall, in its operations, have power -

to gather, by means it deems appropriate, any information it considers relevant, including the ability to request reports, records, documents or any information from any source, including governmental authorities, and to compel the production of such information as and when necessary;

to visit any establishment or place without giving prior notice, and to enter upon any land or premises for any purpose which is material to the fulfilment of the Commission's mandate and in particular, for the purpose of obtaining information or inspecting any property or taking copies of any documents which may be of assistance to the Commission, and for safeguarding any such property or document;

to interview any individual, group or members of organisations or institutions and, at the Commission's discretion, to conduct such interviews, in private;

subject to adequate provision being made to meet his expenses for the purpose, to call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the Commission, and to compel the attendance of any person who fails to respond to a request of the Commission to appear and to answer questions relevant to the subject matter of the session or hearing;

to require that statements be given under oath or affirmation and to administer such oath or affirmation;

to request information from the relevant authorities of a foreign country and to gather information from victims, witnesses, government officials and others in foreign countries;

to issue summonses and subpoenas as it deems necessary in fulfilment of its mandate; and

to request and receive police assistance as needed in the enforcement of its powers.

(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.

9. (1) All persons, including members and officers of the Government and political parties, shall cooperate with and provide unrestricted access for the Commission and

its staff for any purposes necessary in the fulfilment of the Commission's mandate under this Act, as determined by the Commission.

(2) Any person who wilfully obstructs or otherwise interferes with the Commission or any of its members or officers in the discharge of the Commission's functions under this Act, commits an offence and shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or both such fine and imprisonment.

PART IV - ADMINISTRATIVE PROVISIONS

10. (1) To assist it in the performance of its functions, the Commission may appoint such committees as it may consider necessary.

(2) A committee under this section shall include persons who are not members of the Commission but who are appointed, taking into account gender representation and regional participation in the work of the Commission.

(3) A member of a committee who is not a member of the Commission shall be paid such allowances as the Commission may determine.

11. (1) The Commission shall have such offices and may employ such staff, including citizens of Sierra Leone, as it may consider necessary for the efficient performance of its functions.

(2) Public officers may be seconded or otherwise render assistance to the Commission.

(3) The staff of the Commission shall be employed on such terms as the Commission shall, after consultation with the Selection Coordinator, determine.

12. (1) The operations of the Commission shall be financed by a fund consisting of moneys and other resources -

paid or made available to the Commission by the Government; and

obtained by the Commission as gift or donation from foreign governments, intergovernmental organisations, foundations and non-governmental organisations.

(2) In accordance with the Lomé Peace Agreement, the Commission shall seek technical assistance from the international community, as it deems appropriate.

13. (1) The funds of the Commission shall be utilized only on the basis of the budget prepared under subsection (3) of section 5.

(2) The Commission shall keep proper books of account and other records in relation to the operation of the Commission and shall prepare quarterly statements of accounts in a form designed to -

indicate monthly expenditures;

provide data for up-to-date budget control based on the management information system of the Commission; and

ensure correct use of the funds of the Commission.

(3) The accounts of the Commission kept under subsection (2) shall be audited by an auditor, being a professional accountant of high standing, appointed by the

Commission and the statement of accounts together with the auditor's report thereon shall be submitted to the Government and other contributors to the funds of the Commission.

14. (1) Subject to this Act, the Commission shall, in the performance of its functions under this Act, not be subject to the direction or control of any person or authority.

(2) Each member of the Commission and member of staff of the Commission shall serve in his individual capacity, independent of any political party, government or other organisational interests, and shall avoid taking any action which could create an appearance of partiality or otherwise harm the credibility or integrity of the Commission.

(3) No member of the Commission or member of staff of the Commission shall make private use of or profit from any confidential information gained as a result of his work in the Commission or divulge such information to any other person except in the course of his functions as a member or staff of the Commission and any contravention of this provision may result in dismissal from the Commission.

(4) No member of the Commission or staff of the Commission shall be held liable for any acts carried out within the scope of his duties.

(5) Any member or member of staff of the Commission who contravenes subsection (2) shall be guilty of misconduct and liable to be dismissed from the Commission.

PART V - REPORT AND RECOMMENDATIONS

15. (1) The Commission shall submit report of its work to the President at the end of its operations.

(2) The report shall summarise the findings of the Commission and shall make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise, needed to achieve the object of the Commission, namely the object of providing impartial historical record, preventing the repetition of the violations or abuses suffered, addressing impunity, responding to the needs of victims and promoting healing and reconciliation.

16. (1) Immediately upon submitting the report to the President, the Commission shall publish the report in The Gazette by the insertion of the appropriate Government Notice and in such other publications as it may consider appropriate and shall, in collaboration with the Government of Sierra Leone, make copies of the report or summaries thereof, widely available to the public.

(2) The President shall -

immediately upon receiving the report of the Commission, submit a copy to the United Nations Secretary-General with a request that it be tabled before the Security Council of the United Nations within thirty days; and

within thirty days of receiving the report of the Commission, submit a copy to Parliament with a request that it be lodged in the archive of Parliament.

17. The Government shall faithfully and timeously implement the recommendations of the report that are directed to state bodies and encourage or facilitate the implementation of any recommendations that may be directed to others.

18. (1) The Government shall, upon the publication of the report of the Commission, establish a committee or other body, including representatives of the Moral

Guarantors of the Lomé Peace Agreement, hereinafter referred to as "the follow-up Committee" to monitor the implementation of the recommendations of the Commission and to facilitate their implementation.

(2) The Government shall, during the period of eighteen months or such longer or shorter period after the establishment of the follow-up Committee as that Committee shall determine, provide quarterly reports to the follow-up committee summarizing the steps it has taken towards implementation of the recommendations of the Commission.

(3) The follow-up Committee shall publish the reports of the Government under subsection (2) in the appropriate form and submit quarterly reports to the public evaluating the efforts of the Government and the efforts of any other person or body concerned to implement the recommendations of the Commission.

19. (1) The President shall, not later than three months after the submission of the report of the Commission to him, dissolve the Commission by notice in a statutory instrument.

(2) Before it is dissolved, the members of the Commission shall, among the final administrative activities of the Commission -

organise its archives and records, as appropriate, for possible future reference, giving special consideration to -

what materials or information might be made available to the public of Sierra Leone, either immediately or when conditions and resources allow; and

what measures may be necessary to protect confidential information; and

organise the disposal of the remaining property of the Commission.

SCHEDULE - (Subsection (1) of section 3)

Procedure for the Selection of Nominees for Appointment to the Commission

To best ensure the Commission's independence and credibility, the members of the Commission shall be selected through a consultative process relying on both national and international expertise as follows:

(a) The four national members of the Commission shall be selected as follows: -

Nominations, which may be put forward by anyone within or outside Sierra Leone, should be submitted to the United Nations Special Representative of the Secretary-General in Sierra Leone, who will serve as Selection Coordinator.

With the assistance of an advisory committee, and after broad consultation with a cross-section of Sierra Leonean society and with the United Nations High Commissioner for Human Rights, the Selection Coordinator shall draw up a list of 10 to 20 finalists. The advisory committee shall include a representative of the National Council of Paramount Chiefs, a representative of the Inter-Religious Council, and a member of the international community based in Sierra Leone, and perhaps others, at the discretion of the Selection Coordinator.

Each of the finalists will be interviewed by a Selection Panel of six persons, composed of one member appointed by each of the following: - the President, the Revolutionary United Front, the erstwhile Armed Forces Revolutionary Council, the Inter-religious Council, the National Forum for Human Rights and the National

Commission for Democracy and Human Rights (or the Human Rights Commission, as set out in the Lomé Peace Agreement, if such a Commission has been inaugurated).

The Selection Panel shall then rank and provide comments regarding each of the finalists to the Selection Coordinator on a confidential basis. Where possible, the Selection Panel should submit consensus views on finalists, though each panelist may submit comments individually if views differ. In addition, the Selection Panel should suggest a possible Chair for the Commission, especially if consensus can be reached on such recommendation. The Selection Coordinator shall assist the Selection Panel as needed and may establish a deadline for its submission.

Based on the recommendations from the Selection Panel and the criteria established in subsection (2) of section 3, the Selection Coordinator shall recommend four citizens members for appointment to the Commission, and will suggest a possible Chair. Both the Selection Panel and the Selection Coordinator should take into account gender representation and regional considerations in making their selections. While the four members might not necessarily be from each of the four regions of the country, the Commission as a whole should represent the interests and perspectives of the country at large. If further regional representation is later desired, the Commission itself might co-opt representatives from each of the country's four regions.

(b) Suggestions for non-citizen members may be submitted directly to the United Nations High Commissioner for Human Rights, or to the Selection Coordinator who will forward them to the High Commissioner. Giving due consideration to those suggestions, but not limited to those, the High Commissioner for Human Rights will recommend three persons who are not citizens of Sierra Leone for appointment to the Commission, including one person proposed as possible Chair. The High Commissioner for Human Rights shall first submit these recommendations to the Selection Panel, with an invitation to make comments, before submitting them to the President.

MEMORANDUM OF OBJECTS AND REASONS (attached to the Bill)

The object of this Bill is to establish the Truth and Reconciliation Commission proposed by Article XXVI of the Lomé Peace Agreement as part of the process of healing the wounds of the armed conflict, which began in 1991. By clause 2 of the Bill, the Commission is being established as a body corporate.

Section 1 of Article XXVI of the Peace Agreement envisaged the proceedings of the Commission as a catharsis for constructive interchange between the victims and perpetrators of human rights violations and abuses and from this catharsis the Commission is to compile 'a clear picture of the past'. Accordingly, by clause 6, the principal function of the Commission is to create an impartial historical record of events in question as the basis for the task of preventing their recurrence.

To best ensure the Commission's independence and impartiality, the members of the Commission are to be appointed after a selection process involving both national and international expertise as stipulated in the Schedule to the Bill and involving a Selection Panel on which all the protagonists to the conflict and other interested parties are represented; (clause 3). By clause 5, the Commission shall operate for one year preceded by a period of three months during which the Commission is to carry out all the groundwork necessary for its effectiveness when operations begin.

For good cause shown, the President may extend the term of the Commission by statutory instrument for a period of six months.

Under clause 12, the Commission is required to raise the funds to finance its operations from both governmental and international non-governmental sources to which it is required to submit quarterly reports to account for the moneys donated (clause 13). Under clause 15, the Commission reports to the President who will then arrange to send copies of the report to the U.N. and Parliament. By clause 18, the Government is required to set up a follow-up Committee to monitor and stimulate the progress of the implementation of the Commission's findings. Under clause 19, the President is required to dissolve the Commission by notice in a statutory instrument not later than three months after the submission of the Commission's report.

SOLOMON E. BEREWA
Attorney-General and Minister of Justice
Freetown, Sierra Leone
February 2000

**PEACE AGREEMENT BETWEEN THE GOVERNMENT OF SIERRA LEONE AND
THE REVOLUTIONARY UNITED FRONT OF SIERRA LEONE**

**THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE and
THE REVOLUTIONARY UNITED FRONT OF SIERRA LEONE (RUF/SL)**

Having met in Lome, Togo, from the 25 May 1999, to 7 July 1999 under the auspices of the Current Chairman of ECOWAS, President Gnassingbe Eyadema;

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;

Moved by the imperative need to meet the desire of the people of Sierra Leone for a definitive settlement of the fratricidal war in their country and for genuine national unity and reconciliation;

Committed to promoting full respect for human rights and humanitarian law;

Committed to promoting popular participation in the governance of the country and the advancement of democracy in a socio-political framework free of inequality, nepotism and corruption;

Concerned with the socio-economic well being of all the people of Sierra Leone;

Determined to foster mutual trust and confidence between themselves;

Determined to establish sustainable peace and security; to pledge forthwith, to settle all past, present and future differences and grievances by peaceful means; and to refrain from the threat and use of armed force to bring about any change in Sierra Leone;

Reaffirming the conviction that sovereignty belongs to the people, and that Government derives all its powers, authority and legitimacy from the people;

Recognising the imperative that the children of Sierra Leone, especially those affected by armed conflict, in view of their vulnerability, are entitled to special care and the protection of their inherent right to life, survival and development, in accordance with the provisions of the International Convention on the Rights of the Child;

Guided by the Declaration in the Final Communiqué of the Meeting in Lome of the Ministers of Foreign Affairs of ECOWAS of 25 May 1999, in which they stressed the importance of democracy as a factor of regional peace and security, and as essential to the socio-economic development of ECOWAS Member States; and in which they pledged their commitment to the consolidation of democracy and respect of human rights while reaffirming the need for all Member States to consolidate their democratic base, observe the principles of good governance and good economic management in order to ensure the emergence and development of a democratic culture which takes into account the interests of the peoples of West Africa;

Recommitting themselves to the total observance and compliance with the Cease-fire Agreement signed in Lome on 18 May 1999, and appended as Annex 1 until the signing of the present Peace Agreement;

HEREBY AGREE AS FOLLOWS:

PART ONE

CESSATION OF HOSTILITIES

ARTICLE 1

CEASE-FIRE

The armed conflict between the Government of Sierra Leone and the RUF/SL is hereby ended with immediate effect. Accordingly, the two sides shall ensure that a total and permanent cessation of hostilities is observed forthwith.

ARTICLE II

CEASE-FIRE MONITORING

1. A Cease-fire Monitoring Committee (hereinafter termed the CMC) to be chaired by the United Nations Observer Mission in Sierra Leone (hereinafter termed UNOMSIL) with representatives of the Government of Sierra Leone, RUF/SL, the Civil Defence Forces (hereinafter termed the CDF) and ECOMOG shall be established at provincial and district levels with immediate effect to monitor, verify and report all violations of the cease-fire.

2. A Joint Monitoring Commission (hereinafter termed the JMC) shall be established at the national level to be chaired by UNOMSIL with representatives of the Government of Sierra Leone, RUF/SL, CDF, and ECOMOG. The JMC shall receive, investigate and take appropriate action on reports of violations of the cease-fire from the CMC. The parties agree to the definition of cease-fire violations as contained in Annex 2 which constitutes an integral part of the present Agreement.

3. The parties shall seek the assistance of the International Community in providing funds and other logistics to enable the JMC to carry out its mandate

PART TWO

GOVERNANCE

The Government of Sierra Leone and the RUF/SL, recognizing the right of the people of Sierra Leone to live in peace, and desirous of finding a transitional mechanism to incorporate the RUF/SL into governance within the spirit and letter of the Constitution, agree to the following formulas for structuring the government for the duration of the period before the next elections, as prescribed by the Constitution, managing scarce public resources for the benefit of the development of the people of Sierra Leone and sharing the responsibility of implementing the peace. Each of these formulas (not in priority order) is contained in a separate Article of this Part of the present Agreement; and may be further detailed in protocols annexed to it.

Article III Transformation of the RUF/SL Into a Political Party

Article IV Enabling Members of the RUF/SL to Hold Public Office

Article V Enabling the RUF/SL to Join a Broad-Based Government of National Unity Through Cabinet Appointment

Article VI Commission for the Consolidation of Peace

Article VII Commission for the Management of Strategic Resources, National Reconstruction and Development

Article VIII Council of Elders and Religious Leaders.

ARTICLE III

TRANSFORMATION OF THE RUF/SL INTO A POLITICAL PARTY

1. The Government of Sierra Leone shall accord every facility to the RUF/SL to transform itself into a political party and enter the mainstream of the democratic process. To that end:
2. Immediately upon the signing of the present Agreement, the RUF/SL shall commence to organize itself to function as a political movement, with the rights, privileges and duties accorded to all political parties in Sierra Leone. These include the freedom to publish, unhindered access to the media, freedom of association, freedom of expression, freedom of assembly, and the right to mobilize and associate freely.
3. Within a period of thirty days, following the signing of the present Agreement, the necessary legal steps shall be taken by the Government of Sierra Leone to enable the RUF/SL to register as a political party.
4. The Parties shall approach the International Community with a view to mobilizing resources for the purposes of enabling the RUF/SL to function as a political party. These resources may include but shall not be limited to:
 - (i) Setting up a trust fund;
 - (ii) Training for RUF/SL membership in party organization and functions; and
 - (iii) Providing any other assistance necessary for achieving the goals of this section.

ARTICLE IV

ENABLING MEMBERS OF THE RUF/SL TO HOLD PUBLIC OFFICE

1. The Government of Sierra Leone shall take the necessary steps to enable those RUF/SL members nominated by the RUF/SL to hold public office, within the time-frames agreed and contained in the present Agreement for the integration of the various bodies named herein.
2. Accordingly, necessary legal steps shall be taken by the Government of Sierra Leone, within a period of fourteen days following the signing of the present Agreement, to amend relevant laws and regulations that may constitute an impediment or bar to RUF/SL and AFRC personnel holding public office.
3. Within seven days of the removal of any such legal impediments, both parties shall meet to discuss and agree on the appointment of RUF/SL members to positions in parastatals, diplomacy and any other public sector.

ARTICLE V

ENABLING THE RUF/SL TO JOIN A BROAD-BASED GOVERNMENT OF NATIONAL UNITY THROUGH CABINET APPOINTMENTS

1. The Government of Sierra Leone shall accord every opportunity to the RUF/SL to join a broad-based government of national unity through cabinet appointments. To that end:
2. The Chairmanship of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD) as provided for in Article VII of the present Agreement shall be offered to the leader of the RUF/SL, Corporal Foday Sankoh. For this purpose he shall enjoy the status of Vice President and shall therefore be answerable only to the President of Sierra Leone.
3. The Government of Sierra Leone shall give ministerial positions to the RUF/SL in a moderately expanded cabinet of 18, bearing in mind that the interests of other political parties and civil society organizations should also be taken into account, as follows:

(i) One of the senior cabinet appointments such as finance, foreign affairs and justice;

(ii) Three other cabinet positions.

4. In addition, the Government of Sierra Leone shall, in the same spirit, make available to the RUF/SL the following senior government positions: Four posts of Deputy Minister.

5. Within a period of fourteen days following the signing of the present Agreement, the necessary steps shall be taken by the Government of Sierra Leone to remove any legal impediments that may prevent RUF/SL members from holding cabinet and other positions.

ARTICLE VI

COMMISSION FOR THE CONSOLIDATION OF PEACE

1. A Commission for the Consolidation of Peace (hereinafter termed the CCP), shall be established within two weeks of the signing of the present Agreement to implement a post-conflict programme that ensures reconciliation and the welfare of all parties to the conflict, especially the victims of war. The CCP shall have the overall goal and responsibility for supervising and monitoring the implementation of and compliance with the provisions of the present Agreement relative to the promotion of national reconciliation and the consolidation of peace.

2. The CCP shall ensure that all structures for national reconciliation and the consolidation of peace already in existence and those provided for in the present Agreement are operational and given the necessary resources for realizing their respective mandates. These structures shall comprise:

(i) the Commission for the Management of Strategic Resources, National Reconstruction and Development;

(ii) the Joint Monitoring Commission;

(iii) the Provincial and District Cease-fire Monitoring Committees;

(iv) the Committee for the Release of Prisoners of War and Non-Combatants;

(v) the Committee for Humanitarian Assistance;

(vi) the National Commission on Disarmament, Demobilization and Reintegration;

(vii) the National Commission for Resettlement, Rehabilitation and Reconstruction;

(viii) the Human Rights Commission; and

(ix) the Truth and Reconciliation Commission.

3. The CCP shall have the right to inspect any activity or site connected with the implementation of the present Agreement.

4. The CCP shall have full powers to organize its work in any manner it deems appropriate and to appoint any group or sub-committee which it deems necessary in the discharge of its functions.

5. The Commission shall be composed of the following members:

(i) Two representatives of the civil society;

(ii) One representative each named by the Government, the RUF/SL and the Parliament.

6. The CCP shall have its own offices, adequate communication facilities and secretarial support staff.

7. Recommendations for improvements or modifications shall be made to the President of Sierra Leone for appropriate action. Likewise, failures of the structures to perform their assigned duties shall also be brought to the attention of the President.
8. Disputes arising out of the preceding paragraph shall be brought to the Council of Elders and Religious Leaders for resolution, as specified in Article VIII of the present Agreement.
9. Should Protocols be needed in furtherance of any provision in the present Agreement, the CCP shall have the responsibility for their preparation.
10. The mandate of the CCP shall terminate at the end of the next general elections.

ARTICLE VII

COMMISSION FOR THE MANAGEMENT OF STRATEGIC RESOURCES, NATIONAL RECONSTRUCTION AND DEVELOPMENT

1. Given the emergency situation facing the country, the parties agree that the Government shall exercise full control over the exploitation of gold, diamonds and other resources, for the benefit of the people of Sierra Leone. Accordingly, a Commission for the Management of Strategic Resources, National Reconstruction and Development (hereinafter termed the CMRRD) shall be established and charged with the responsibility of securing and monitoring the legitimate exploitation of Sierra Leone's gold and diamonds, and other resources that are determined to be of strategic importance for national security and welfare as well as cater for post-war rehabilitation and reconstruction, as provided for under Article XXVIII of the present Agreement.
2. The Government shall take the necessary legal action within a period not exceeding two weeks from the signing of the present Agreement to the effect that all exploitation, sale, export, or any other transaction of gold and diamonds shall be forbidden except those sanctioned by the CMRRD. All previous concessions shall be null and void.
3. The CMRRD shall authorize licensing of artisanal production of diamonds and gold, in accordance with prevailing laws and regulations. All gold and diamonds extracted or otherwise sources from any Sierra Leonean territory shall be sold to the Government.
4. The CMRRD shall ensure, through the appropriate authorities, the security of the areas covered under this Article, and shall take all necessary measures against unauthorized exploitation.
5. For the export or local resale of gold and diamonds by the Government, the CMRRD shall authorize a buying and selling agreement with one or more reputable international and specialized mineral companies. All exports of Sierra Leonean gold and diamonds shall be transacted by the Government, under these agreements.
6. The proceeds from the transactions of gold and diamonds shall be public monies which shall enter a special Treasury account to be spent exclusively on the development of the people of Sierra Leone, with appropriations for public education, public health, infrastructural development, and compensation for incapacitated war victims as well as post-war rehabilitation and reconstruction. Priority spending shall go to rural areas.
7. The Government shall, if necessary, seek the assistance and cooperation of other governments and their instruments of law enforcement to detect and facilitate the prosecution of violations of this Article.
8. The management of other natural resources shall be reviewed by the CMRRD to determine if their regulation is a matter of national security and welfare, and recommend appropriate policy to the Government.
9. The functions of the Ministry of Mines shall continued to be carried out by the current authorized ministry. However, in respect of strategic mineral resources, the CMRRD shall be

an autonomous body in carrying out its duties concerning the regulation of Sierra Leone's strategic natural resources.

10. All agreements and transactions referred to in this Article shall be subject to full public disclosure and records of all correspondence, negotiations, business transactions and any other matters related to exploitation, management, local or international marketing, and any other matter shall be public documents.

11. The Commission shall issue monthly reports, including the details of all the transactions related to gold and diamonds, and other licenses or concessions of natural resources, and its own administrative costs.

12. The Commission shall be governed by a Board whose Chairmanship shall be offered to the Leader of the RUF/SL, Corporal Foday Sankoh. The Board shall also comprise:

- (i) Two representatives of the Government appointed by the President;
- (ii) Two representatives of the political party to be formed by the RUF/SL;
- (iii) Three representatives of the civil society; and
- (iv) Two representatives of other political parties appointed by Parliament.

13. The Government shall take the required administrative actions to implement the commitments made in the present Agreement; and in the case of enabling legislation, it shall draft and submit to Parliament within thirty days of the signature of the present Agreement, the relevant bills for their enactment into law.

14. The Government commits itself to propose and support an amendment to the Constitution to make the exploitation of gold and diamonds the legitimate domain of the people of Sierra Leone, and to determine that the proceeds be used for the development of Sierra Leone, particularly public education, public health, infrastructure development, and compensation of incapacitated war victims as well as post-war reconstruction and development.

ARTICLE VIII

COUNCIL OF ELDERS AND RELIGIOUS LEADERS

1. The signatories agree to refer any conflicting differences of interpretation of this Article or any other Article of the present Agreement or its protocols, to a Council of Elders and Religious Leaders comprised as follows:

- (i) Two members appointed by the Inter-Religious Council;
- (ii) One member each appointed by the Government and the RUF/SL; and
- (iii) One member appointed by ECOWAS.

2. The Council shall designate its own chairperson from among its members. All of its decision shall be taken by the concurrence of at least four members, and shall be binding and public, provided that an aggrieved party may appeal to the Supreme Court.

PART THREE

OTHER POLITICAL ISSUES

The Part of the present Agreement Consists of the following Articles

Article IX Pardon and Amnesty

Article X Review of the Present Constitution

Article XI Elections

Article XII National Electoral Commission

ARTICLE IX

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 time of 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 organisations, since March 1991, up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former 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.

ARTICLE X

REVIEW OF THE PRESENT CONSTITUTION

In order to ensure that the Constitution of Sierra Leone represents the needs and aspirations of the people of Sierra Leone and that no constitutional or any other legal provision prevents the implementation of the present Agreement, the Government of Sierra Leone shall take the necessary steps to establish a Constitutional Review Committee to review the provisions of the present Constitution, and where deemed appropriate, recommend revisions and amendments, in accordance with Part V, Section 108 of the Constitution of 1991.

ARTICLE XI

DATE OF NEXT ELECTIONS

The next national elections in Sierra Leone shall be held in accordance with the present Constitution of Sierra Leone.

ARTICLE XII

NATIONAL ELECTORAL COMMISSION

1. A new independent National Electoral Commission (hereinafter termed the NEC) shall be set up by the Government, not later than three months after the signing of the present Agreement.
2. In setting up the new NEC the President shall consult all political parties, including the RUF/SL, to determine the membership and terms of reference of the Commission, paying particular attention to the need for a level playing field in the nation's elections.

3. No member of the NEC shall be eligible for appointment to political office by any government formed as a result of an election he or she was mandated to conduct.

4. The NEC shall request the assistance of the International Community, including the UN, the OAU, ECOWAS and the Commonwealth of Nations, in monitoring the next presidential and parliamentary elections in Sierra Leone.

PART FOUR

POST-CONFLICT MILITARY AND SECURITY ISSUES

1. The Government of Sierra Leone and the RUF/SL, recognizing that the maintenance of peace and security is of paramount importance for the achievement of lasting peace in Sierra Leone and for the welfare of its people, have agreed to the following formulas for dealing with post-conflict military and security matters. Each of these formulas (not in priority order) is contained in separate Articles of this Part of the present Agreement and may be further detailed in protocols annexed to the Agreement.

Article XIII Transformation and New Mandate of ECOMOG

Article XIV New Mandate of UNOMSIL

Article XV Security Guarantees for Peace Monitors

Article XVI Encampment, Disarmament, Demobilization and Reintegration

Article XVII Restructuring and Training of the Sierra Leone Armed Forces

Article XVIII Withdrawal of Mercenaries

Article XIX Notification to Joint Monitoring Commission

Article Notification to Military Commands.

ARTICLE XIII

TRANSFORMATION AND NEW MANDATE OF ECOMOG

1. Immediately upon the signing of the present Agreement, the parties shall request ECOWAS to revise the mandate of ECOMOG in Sierra Leone as follows:

(i) Peacekeeping;

(ii) Security of the State of Sierra Leone;

i. Protection of UNOMSIL.

i. Protection of Disarmament, Demobilisation and Reintegration personnel.

2. The Government shall, immediately upon the signing of the present Agreement, request ECOWAS for troop contributions from at least two additional countries. The additional contingents shall be deployed not later than 30 days from the date of signature of the present Agreement. The Security Council shall be requested to provide assistance in support of ECOMOG.

3. The Parties agree to develop a timetable for the phased withdrawal of ECOMOG, including measures for securing all of the territory of Sierra Leone by the restructured armed forces. The phased withdrawal of ECOMOG will be linked to the phased creation and deployment of the restructured armed forces.

ARTICLE XIV

NEW MANDATE OF UNOMSIL

1. The UN Security Council is requested to amend the mandate of UNOMSIL to enable it to undertake the various provisions outlined in the present Agreement.

ARTICLE XV

SECURITY GUARANTEES FOR PEACE MONITORS

1. The Government of Sierra Leone and the RUF/SL agree to guarantee the safety, security and freedom of movement of UNOMSIL Military Observers throughout Sierra Leone. This guarantee shall be monitored by the Joint Monitoring Commission.
2. The freedom of movement includes complete and unhindered access for UNOMSIL Military Observers in the conduct of their duties throughout Sierra Leone. Before and during the process of Disarmament, Demobilization and Reintegration, officers and escorts to be provided by both Parties shall be required to facilitate this access.
3. Such freedom of movement and security shall also be accorded to non-military UNOMSIL personnel such as Human Rights Officers in the conduct of their duties. These personnel shall, in most cases, be accompanied by UNOMSIL Military Observers.
4. The provision of security to be extended shall include United Nations aircraft, vehicles and other property.

ARTICLE XVI

ENCAMPMENT, DISARMAMENT, DEMOBILIZATION AND REINTEGRATION

1. A neutral peace keeping force comprising UNOMSIL and ECOMOG shall disarm all combatants of the RUF/SL, CDF, SLA and paramilitary groups. The encampment, disarmament and demobilization process shall commence within six weeks of the signing of the present Agreement in line with the deployment of the neutral peace keeping force.
2. The present SLA shall be restricted to the barracks and their arms in the armoury and their ammunitions in the magazines and placed under constant surveillance by the neutral peacekeeping force during the process of disarmament and demobilization.
3. UNOMSIL shall be present in all disarmament and demobilization locations to monitor the process and provide security guarantees to all ex-combatants.
4. Upon the signing of the present Agreement, the Government of Sierra Leone shall immediately request the International Community to assist with the provision of the necessary financial and technical resources needed for the adaptation and extension of the existing Encampment, Disarmament, Demobilization and Reintegration Programme in Sierra Leone, including payment of retirement benefits and other emoluments due to former members of the SLA.

ARTICLE XVII

RESTRUCTURING AND TRAINING OF THE SIERRA LEONE ARMED FORCES

1. The restructuring, composition and training of the new Sierra Leone armed forces will be carried out by the Government with a view to creating truly national armed forces, bearing loyalty solely to the State of Sierra Leone, and able and willing to perform their constitutional role.
2. Those ex-combatants of the RUF/SL, CDF and SLA who wish to be integrated into the new restructured national armed forces may do so provided they meet established criteria.
3. Recruitment into the armed forces shall reflect the geo-political structure of Sierra Leone within the established strength.

ARTICLE XVIII

WITHDRAWAL OF MERCENARIES

All mercenaries, in any guise, shall be withdrawn from Sierra Leone immediately upon the signing of the present Agreement. Their withdrawal shall be supervised by the Joint Monitoring Commission.

ARTICLE XIX

NOTIFICATION TO JOINT MONITORING COMMISSION

Immediately upon the establishment of the JMC provided for in Article II of the present Agreement, each party shall furnish to the JMC information regarding the strength and locations of all combatants as well as the positions and descriptions of all known unexploded bombs (UXBs), explosive ordnance devices (EODs), minefields, booby traps, wire entanglements, and all other physical or military hazards. The JMC shall seek all necessary technical assistance in mine clearance and the disposal or destruction of similar devices and weapons under the operational control of the neutral peacekeeping force. The parties shall keep the JMC updated on changes in this information so that it can notify the public as needed, to prevent injuries.

ARTICLE XX

NOTIFICATION TO MILITARY COMMANDS

Each party shall ensure that the terms of the present Agreement, and written orders requiring compliance, are immediately communicated to all of its forces.

PART FIVE

HUMANITARIAN, HUMAN RIGHTS AND SOCIO-ECONOMIC ISSUES

1. The Government of Sierra Leone and the RUF/SL recognizing the importance of upholding, promoting and protecting the human rights of every Sierra Leonean as well as the enforcement of humanitarian law, agree to the following formulas for the achievement of these laudable objectives. Each of these formulas (not in priority order) is contained in separate Articles of this Part of the present Agreement

Article XXI Release of Prisoners and Abductees

Article XXII Refugees and Displaced Persons

Article XXIII Guarantee of the Security of Displaced Persons and Refugees

Article XXIV Guarantee and Promotion of Human Rights

Article XXV Human Rights Commission

Article XXVI Human Rights Violations

Article XXVII Humanitarian Relief

Article XXVIII Post War Rehabilitation and Reconstruction

Article XXIX Special Fund for War Victims

Article XXX Child Combatants

Article XXXI Education and Health

ARTICLE XXI

RELEASE OF PRISONERS AND ABDUCTEES

All political prisoners of war as well as all non-combatants shall be released immediately and unconditionally by both parties, in accordance with the Statement of June 2, 1999, which is contained in Annex 3 and constitutes an integral part of the present Agreement.

ARTICLE XXII

REFUGEES AND DISPLACED PERSONS

The Parties through the National Commission for Resettlement, Rehabilitation and Reconstruction agree to seek funding from and the involvement of the UN and other agencies, including friendly countries, in order to design and implement a plan for voluntary repatriation and reintegration of Sierra Leonean refugees and internally displaced persons, including non-combatants, in conformity with international conventions, norms and practices.

ARTICLE XXIII

GUARANTEE OF THE SECURITY OF DISPLACED PERSONS AND REFUGEES

As a reaffirmation of their commitment to the observation of the conventions and principles of human rights and the status of refugees, the Parties shall take effective and appropriate measures to ensure that the right of Sierra Leoneans to asylum is fully respected and that no camps or dwellings of refugees or displaced persons are violated.

ARTICLE XXIV

GUARANTEE AND PROMOTION OF HUMAN RIGHTS

1. The basic civil and political liberties recognized by the Sierra Leone legal system and contained in the declarations and principles of Human Rights adopted by the UN and OAU,

especially the Universal Declaration of Human Rights and the African Charter on Human and People's Rights, shall be fully protected and promoted within Sierra Leonean society.

2. These include the right to life and liberty, freedom from torture, the right to a fair trial, freedom of conscience, expression and association, and the right to take part in the governance of one's country.

ARTICLE XXV

HUMAN RIGHTS COMMISSION

1. The Parties pledge to strengthen the existing machinery for addressing grievances of the people in respect of alleged violations of their basic human rights by the creation, as a matter of urgency and not later than 90 days after the signing of the present Agreement, of an autonomous quasi-judicial national Human Rights Commission.

2. The Parties further pledge to promote Human Rights education throughout the various sectors of Sierra Leonean society, including the schools, the media, the police, the military and the religious community.

3. In pursuance of the above, technical and material assistance may be sought from the UN High Commissioner for Human Rights, the African Commission on Human and Peoples Rights and other relevant international organisations.

4. A consortium of local human rights and civil society groups in Sierra Leone shall be encouraged to help monitor human rights observance.

ARTICLE XXVI

HUMAN RIGHTS VIOLATIONS

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.

2. In the spirit of national reconciliation, the Commission shall deal with the question of human rights violations since the beginning of the Sierra Leonean conflict in 1991.

This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.

3. Membership of the Commission shall be drawn from a cross-section of Sierra Leonean society with the participation and some technical support of the International Community. This Commission shall be established within 90 days after the signing of the present Agreement and shall, not later than 12 months after the commencement of its work, submit its report to the Government for immediate implementation of its recommendations.

ARTICLE XXVII

HUMANITARIAN RELIEF

1. The Parties reaffirm their commitment to their Statement on the Delivery of Humanitarian Assistance in Sierra Leone of June 3, 1999 which is contained in Annex 4 and constitutes an integral part of the present Agreement. To this end, the Government shall request appropriate

international humanitarian assistance for the people of Sierra Leone who are in need all over the country.

2. The Parties agree to guarantee safe and unhindered access by all humanitarian organizations throughout the country in order to facilitate delivery of humanitarian assistance, in accordance with international conventions, principles and norms which govern humanitarian operations. In this respect, the parties agree to guarantee the security of the presence and movement of humanitarian personnel.

3. The Parties also agree to guarantee the security of all properties and goods transported, stocked or distributed by humanitarian organizations, as well as the security of their projects and beneficiaries.

4. The Government shall set up at various levels throughout the country, the appropriate and effective administrative or security bodies which will monitor and facilitate the implementation of these guarantees of safety for the personnel, goods and areas of operation of the humanitarian organizations.

ARTICLE XXVIII

POST - WAR REHABILITATION AND RECONSTRUCTION

1. The Government, through the National Commission for Resettlement, Rehabilitation and Reconstruction and with the support of the International Community, shall provide appropriate financial and technical resources for post-war rehabilitation, reconstruction and development.

2. Given that women have been particularly victimized during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programmes, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone.

ARTICLE XXIX

SPECIAL FUND FOR WAR VICTIMS

The Government, with the support of the International Community, shall design and implement a programme for the rehabilitation of war victims. For this purpose, a special fund shall be set up.

ARTICLE XXX

CHILD COMBATANTS

The Government shall accord particular attention to the issue of child soldiers. It shall, accordingly, mobilize resources, both within the country and from the International Community, and especially through the Office of the UN Special Representative for Children in Armed Conflict, UNICEF and other agencies, to address the special needs of these children in the existing disarmament, demobilization and reintegration processes.

ARTICLE XXXI

EDUCATION AND HEALTH

The Government shall provide free compulsory education for the first nine years of schooling (Basic Education) and shall endeavour to provide free schooling for a further three years. The Government shall also endeavour to provide affordable primary health care throughout the country.

PART SIX

IMPLEMENTATION OF THE AGREEMENT

ARTICLE XXXII

JOINT IMPLEMENTATION COMMITTEE

A Joint Implementation Committee consisting of members of the Commission for the Consolidation of Peace (CCP) and the Committee of Seven on Sierra Leone, as well as the Moral Guarantors, provided for in Article XXXIV of the present Agreement and other international supporters shall be established. Under the chairmanship of ECOWAS, the Joint Implementation Committee shall be responsible for reviewing and assessing the state of implementation of the Agreement, and shall meet at least once every three months. Without prejudice to the functions of the Commission for

the Consolidation of Peace as provided for in Article VI, the Joint Implementation Committee shall make recommendations deemed necessary to ensure effective implementation of the present Agreement according to the Schedule of Implementation, which appears as Annex 5.

ARTICLE XXXIII

REQUEST FOR INTERNATIONAL INVOLVEMENT

The parties request that the provisions of the present Agreement affecting the United Nations shall enter into force upon the adoption by the UN Security Council of a resolution responding affirmatively to the request made in this Agreement. Likewise, the decision-making bodies of the other international organisations concerned are requested to take similar action, where appropriate.

PART SEVEN

MORAL GUARANTORS AND INTERNATIONAL SUPPORT

ARTICLE XXXIV

MORAL GUARANTORS

The Government of the Togolese Republic, the United Nations, the OAU, ECOWAS and the Commonwealth of Nations shall stand as Moral Guarantors that this Peace Agreement is implemented with integrity and in good faith by both parties.

ARTICLE XXXV
INTERNATIONAL SUPPORT

Both parties call on the International Community to assist them in implementing the present Agreement with integrity and good faith. The international organisations mentioned in Article XXXIV and the Governments of Benin, Burkina Faso, Côte d'Ivoire, Ghana, Guinea, Liberia, Libyan Arab Jamahiriya, Mali, Nigeria, Togo, the United Kingdom and the United States of America are facilitating and supporting the conclusion of this Agreement. These States and organisations believe that this Agreement must protect the paramount interests of the people of Sierra Leone in peace and security.

PART EIGHT
FINAL PROVISIONS

ARTICLE XXXVI
REGISTRATION AND PUBLICATION

The Sierra Leone Government shall register the signed Agreement not later than 15 days from the date of the signing of this Agreement. The signed Agreement shall also be published in the Sierra Leone Gazette not later than 48 (Forty - Eight) hours after the date of registration of this Agreement. This Agreement shall be laid before the Parliament of Sierra Leone not later than 21 (Twenty-One) days after the signing of this Agreement.

ARTICLE XXXVII
ENTRY INTO FORCE

The present Agreement shall enter into force immediately upon its signing by the Parties.

Done in Lomé this seven day of the month of July 1999 in twelve (12) original texts in English and French, each text being equally authentic.

Alhaji Ahmad Tejan Kabbah
President of the Republic of Sierra Leone

Corporal Foday Saybana Sankoh
Leader of the Revolutionary United Front of
Sierra Leone

His Excellency Gnassingbe Eyadema
President of the Togolese Republic
Chairman of ECOWAS

His Excellency Blaise Compaore
President of Burkina Faso

His Excellency Dahkpanah Dr. Charles Ghankey Taylor
President of the Republic of Liberia

His Excellency Olusegun Obasanjo
President and Commander-in-Chief of the Armed Forces
of the Federal Republic of Nigeria

His Excellency Youssoufou Bamba
Secretary of State at the Foreign Mission in charge of

International Cooperation of Cote d'Ivoire

His Excellency Victor Gbeho
Minister of Foreign Affairs of the Republic of Ghana

Mr. Roger Laloupo
Representative of the ECOWAS Special
Representative

Ms. Adwoa Coleman
Representative Organization of African
Unity

Ambassador Francis G. Okelo
Executive Secretary of the United Nations
Secretary General

Dr. Moses K.Z. Anafu
Representative of the Commonwealth of
Nations

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NOTE: ALL ANNEXES TO THIS AGREEMENT HAVE BEEN OMITTED

STATUTE OF THE SPECIAL COURT FOR SIERRA LEONE

Having been established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone (hereinafter "the Special Court") shall function in accordance with the provisions of the present Statute.

Article 1 **Competence of the Special Court**

1. The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.
2. Any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending State.
3. In the event the sending State is unwilling or unable genuinely to carry out an investigation or prosecution, the Court may, if authorized by the Security Council on the proposal of any State, exercise jurisdiction over such persons.

Article 2 **Crimes against humanity**

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

Murder;

Extermination;

Enslavement;

Deportation;

Imprisonment;

Torture;

Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;

Persecution on political, racial, ethnic or religious grounds;

Other inhumane acts.

Article 3 **Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II**

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:

Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

Collective punishments;

Taking of hostages;

Acts of terrorism;

Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

Pillage;

The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

Threats to commit any of the foregoing acts.

Article 4

Other serious violations of international humanitarian law

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

Article 5

Crimes under Sierra Leonean law

The Special Court shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law:

Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31):

Abusing a girl under 13 years of age, contrary to section 6;

Abusing a girl between 13 and 14 years of age, contrary to section 7;

Abduction of a girl for immoral purposes, contrary to section 12.

Offences relating to the wanton destruction of property under the Malicious Damage Act, 1861:

Setting fire to dwelling - houses, any person being therein, contrary to section 2;

Setting fire to public buildings, contrary to sections 5 and 6;

Setting fire to other buildings, contrary to section 6.

Article 6
Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.
2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.
5. Individual criminal responsibility for the crimes referred to in article 5 shall be determined in accordance with the respective laws of Sierra Leone.

Article 7
Jurisdiction over persons of 15 years of age

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.
2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

Article 8
Concurrent jurisdiction

1. The Special Court and the national courts of Sierra Leone shall have concurrent jurisdiction.
2. The Special Court shall have primacy over the national courts of Sierra Leone. At any stage of the procedure, the Special Court may formally request a national court to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence.

Article 9
Non bis in idem

1. No person shall be tried before a national court of Sierra Leone for acts for which he or she has already been tried by the Special Court.
2. A person who has been tried by a national court for the acts referred to in articles 2 to 4 of the present Statute may be subsequently tried by the Special Court if:

The act for which he or she was tried was characterized as an ordinary crime; or

The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Special Court shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10 **Amnesty**

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.

Article 11 **Organization of the Special Court**

The Special Court shall consist of the following organs:

The Chambers, comprising one or more Trial Chambers and an Appeals Chamber;

The Prosecutor; and

The Registry.

Article 12 **Composition of the Chambers**

1. The Chambers shall be composed of not less than eight (8) or more than eleven (11) independent judges, who shall serve as follows:

Three judges shall serve in the Trial Chamber, of whom one shall be a judge appointed by the Government of Sierra Leone, and two judges appointed by the Secretary-General of the United Nations (hereinafter "the Secretary-General").

Five judges shall serve in the Appeals Chamber, of whom two shall be judges appointed by the Government of Sierra Leone, and three judges appointed by the Secretary-General.

2. Each judge shall serve only in the Chamber to which he or she has been appointed.

3. The judges of the Appeals Chamber and the judges of the Trial Chamber, respectively, shall elect a presiding judge who shall conduct the proceedings in the Chamber to which he or she was elected. The presiding judge of the Appeals Chamber shall be the President of the Special Court.

4. If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 13 **Qualification and appointment of judges**

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source.

2. In the overall composition of the Chambers, due account shall be taken of the experience of the judges in international law, including international humanitarian law and human rights law, criminal law and juvenile justice.

3. The judges shall be appointed for a three-year period and shall be eligible for reappointment.

Article 14
Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda obtaining at the time of the establishment of the Special Court shall be applicable *mutatis mutandis* to the conduct of the legal proceedings before the Special Court.

2. The judges of the Special Court as a whole may amend the Rules of Procedure and Evidence or adopt additional rules where the applicable Rules do not, or do not adequately, provide for a specific situation. In so doing, they may be guided, as appropriate, by the Criminal Procedure Act, 1965, of Sierra Leone.

Article 15
The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source.

2. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Sierra Leonean authorities concerned.

3. The Prosecutor shall be appointed by the Secretary-General for a three-year term and shall be eligible for re-appointment. He or she shall be of high moral character and possess the highest level of professional competence, and have extensive experience in the conduct of investigations and prosecutions of criminal cases.

4. The Prosecutor shall be assisted by a Sierra Leonean Deputy Prosecutor, and by such other Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently. Given the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.

5. In the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation programme is not placed at risk and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability.

Article 16
The Registry

1. The Registry shall be responsible for the administration and servicing of the Special Court.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the Special Court and shall be a staff member of the United Nations. He or she shall serve for a three-year term and be eligible for re-appointment.

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such

witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children.

Article 17
Rights of the accused

1. All accused shall be equal before the Special Court.
2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

To be tried without undue delay;

To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;

Not to be compelled to testify against himself or herself or to confess guilt.

Article 18
Judgement

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 19
Penalties

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Article 20
Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:

A procedural error;

An error on a question of law invalidating the decision;

An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

3. The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda. In the interpretation and application of the laws of Sierra Leone, they shall be guided by the decisions of the Supreme Court of Sierra Leone.

Article 21
Review proceedings

1. Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of the judgement.

2. An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

Reconvene the Trial Chamber;

Retain jurisdiction over the matter.

Article 22
Enforcement of sentences

1. Imprisonment shall be served in Sierra Leone. If circumstances so require, imprisonment may also be served in any of the States which have concluded with the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for the former Yugoslavia an agreement for the enforcement of sentences, and which have indicated to the Registrar of the Special Court their willingness to accept convicted persons. The Special Court may conclude similar agreements for the enforcement of sentences with other States.

2. Conditions of imprisonment, whether in Sierra Leone or in a third State, shall be governed by the law of the State of enforcement subject to the supervision of the Special Court. The State of enforcement shall be bound by the duration of the sentence, subject to article 23 of the present Statute.

Article 23
Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Special Court accordingly. There shall only be pardon or commutation of sentence if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 24
Working language

The working language of the Special Court shall be English.

Article 25
Annual Report

The President of the Special Court shall submit an annual report on the operation and activities of the Court to the Secretary-General and to the Government of Sierra Leone.