JUSTICE, PEACE AND RECONCILIATION IN POST-CONFLICT SOCIETIES
THE CASE OF SIERRA LEONE

Master of Arts in Law and Diplomacy Thesis
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Justice, Peace and Reconciliation in Post-Conflict Societies:

The case of Sierra Leone

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Justice, Peace and Reconciliation in Post-Conflict Societies: the Case of Sierra Leone

INTRODUCTION

The subject of this thesis between law, philosophy and political science could easily fall into the trap of a scholar discussion of the given subject, away from the daunting realities of the people those subjects are dealing with. Justice and Policy-making in post-conflict societies have a face, the one of the victims, perpetrators, ‘most responsible ones’ and bystanders. One should not forget the crucial human dimension of those issues, as war crimes are born in flesh, heart and mind.

This paper aims at reviewing the literature existing on the subjects of peace, justice and reconciliation and their links in the post-conflict agenda and reality. Indeed, it appears that post-conflict has become a field in itself, resulting in the three notions being conceived as concomitant, though very little evidence of the well-founded of this approach has been proven yet.

This analysis will attempt to demonstrate that the recurrent association over the past year of those three notions of peace, justice and reconciliation, in the post-conflict locus and agenda, has resulted in its auto-validating use, and the progressive erosion of the necessary prudence its largely axiomatic nature requires.

The chosen angle to approach the subject will evaluate post-conflict theory and experiences around the challenge and goal of justice faced by countries emerging from protracted conflicts such as Sierra Leone. Indeed, while justice has long been the victors’ prerogative, tainting the very enterprise with selective bias, one has seen with the end of the Cold War the appearance of a new pragmatic paradigm. This new paradigm intends to connect post-conflict justice’s implementation with the concomitant challenges of fostering peace and reconciliation.
Such a paradigm results from a syncretic association of many trends born out of the identification of justice as the force capable of legitimizing a given peace agreement (not necessarily enforced on the ground) and stabilizing in the meantime, and beyond, the post-conflict transition.

From this perspective, the locus of justice is used to frame a comprehensive approach encompassing both peace and reconciliation in post-conflict settings. Moreover, the authoritative use of the legal discourse offers a legitimization of this concomitant approach.

Yet, if the limited corpus of endorsed positive experiences should have undermined the high expectations associated with post-conflict justice, the latter seems to have benefited paradoxically from the legal experiments led in the former Yugoslavia and Rwanda. In fact, more than concrete (or rather lack of) successes on the ground, it appears that the repetitive use of the theoretical dimension of this enlarged justice approach has led to its self-validation among the post-conflict agenda’s actors.

Incidentally, it seems that as for the challenges/ goals of peace and reconciliation, the definition of what should be understood by post-conflict justice remains evasive, in spite of the large consequences it has in the post-conflict agenda’s determination, and the very commitment of International Community (IC).

As such, I have taken the party to approach the subject of post-conflict justice in exploring the conventional/agreed association of justice and peace (I.) as well as of justice and reconciliation (II.) in order to assess the ground, both scholarly and in reality, that founds the conception of justice currently displayed in on-going post-conflict cases.

This analysis will try to highlight the limits of the present definition of post-conflict justice and the lack of realism and clarity of its objectives, through the perspective of past experiences as well as in the light of post-conflict Sierra Leone.
Indeed, due to its tragic history over the last ten years, Sierra Leone finds itself at the confluence of these recent evolutions in the ‘fields’ of post-conflict justice, peace and reconciliation.

Sierra Leone (III.) is indeed in the unprecedented situation of having made the choice of an internationalized Court given with the mandate of judging the ‘most responsible ones’, the Special Court for Sierra Leone (part A.), as well as of a Truth and Reconciliation Commission (part B.). Moreover, as a result of the scope of the crimes committed during the ten-year conflict, as well as due to the role played by amnesty in the peace settlement, an important part of the legacy is being left to the respective communities, emphasizing the importance of local processes of dispute resolution and reconciliation (part C.).

While an attempt to design a post-conflict agenda that would address the challenge of justice and reconciliation in a coherent, complementary and reinforcing mode has been envisioned, little of this idea has been yet implemented in Sierra Leone. Therefore, Sierra Leone will provide a crucial and much needed reality test to the post-conflict justice-peace-reconciliation approach, through the establishment of both the TRC and the SCSL, and their respective jurisprudence. Additionally, this experience is taking place at the time of the take off of the International Criminal Court (ICC) and could also impact the development of this instance. Indeed, the United States are adamant promoters of Sierra Leone mixed-tribunal, as a counter-strategy against the ICC. Ironically, Sierra Leone finds itself caught up between those divergent dynamics, having signed a bilateral impunity agreement with the United States while being part of the ICC…

However, it is important to keep in mind that the ‘experiment’ dimension of Sierra Leone with regard to the post-conflict agenda should not ultimately prove detrimental to those the populations it is supposed to serve.
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I. The Uncertain Link Between justice and Peace

A. Towards the ‘criminalization’ of IL and history of the link between justice and peace since Nuremberg

The importance of understanding the evolution and development of international justice and the different approaches to justice, peace and reconciliation can’t be underlined enough in the case of Sierra Leone. Indeed, the country finds itself in the primal situation of being the scene of a *sui generis* experience of *mixed tribunal* in the Special Court (SCSL), combined with a Truth and Reconciliation Commission (TRC). Thus, while being part and resulting from previous experiences of international justice, Sierra Leone is very much likely to become a turning point in this process, emphasizing the need for grasping at its historical background in relation to peace (I.) and to reconciliation (II.).

The End of the Cold War as the Turning Point in the Approach of Criminal Prosecution

The link between peace and justice as more than a subordination of the second one to the first one corresponds to a recent emergence of a new approach of conflict, and primarily of civil conflict, as well as to the progressive shift from state to individual responsibility. From this shift, closely connected with the redefinition of State’s sovereignty resulting from the end of the Cold War, one has seen the rapid development of International Law through its ‘laws of armed conflicts’\(^1\) constituent. Eventually, a progressive tendency towards criminal prosecution as a mean to punish and enforce international law was to emerge.

In particular, it is interesting to notice the reciprocal and concomitant dynamic of development between international criminal law (ICL) and IHL, feeding each through

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1 AKA. International Humanitarian Law (IHL). Though the two appellations refer to a similar body of laws, their use reflect the complex reality that still surround the given field, as well as its political dimension.
jurisprudence. Indeed, both advocates\textsuperscript{2} of the development of ICL as a mean to fight impunity in relation with the most serious crimes, having found in international law a mean of regulating the ‘New World Order’, re-discovered IHL as a trigger to a larger movement in favor of criminal prosecution.

As mentioned earlier, the proponents of a more western conception of justice at an international level have found with the end of the Cold War\textsuperscript{3}, and the development of a:

“New ‘harmony’ among the Big Five, together with the intense media coverage of such events, that unprecedented opportunity has been created for the prosecution and punishment of those responsible for serious violations of international humanitarian law.”\textsuperscript{4}

Antonio Casessese (1998) identifies several factors illustrating the ‘relative optimism’ which has emerged at the end of the Cold War of which one can note:

“(i.) There has been a clear reduction in the distrust and mutual suspicion that frustrated friendly relations and cooperation between the Western and Eastern blocs;

(ii.) The successor states to the USSR – Russia and the Confederation of Independent States – are coming to accept and respect some basic principles of international law”\textsuperscript{5}

Thus if previous experiences of justice were associated with the uncontested victory of one of the parties, and thus turned into so-called “victors’ justice”\textsuperscript{6}, an evolution of the approach has been perceptible.

\textsuperscript{2} As well as actors, and primarily states.
\textsuperscript{3} It was only at the end of the Cold War, in 1989, that the General Assembly requested the International Law Committee (ILC) “to address the question of establishing an international criminal court” (Res. 44/39 of 4 December 1989) after several attempts to raise this issue had been undertaken since 1919.
\textsuperscript{5} Ibid.
\textsuperscript{6} The most outstanding and yet founding case being the Nuremberg tribunal and its Far Eastern counterpart, the Tokyo tribunal.
Indeed, since the end of the Cold War, an unprecedented development of international law has been observed, following two very distinct conflicts, in Yugoslavia and in Rwanda. Their civil nature, as well as the international community’s incapacity to address them at an earlier stage, has resulted in a redefinition of peacemaking and peacekeeping, where an approach to peace closely linked to an international justice constituent is privileged.

The International Community’s answer in the form of the International Criminal Tribunal for the Former Yugoslavia (ICTY)\(^7\), established in 1993, and the International Criminal Tribunal for Rwanda (ICTR)\(^8\), established in 1994, raises several comments on the intended merits of criminal prosecution and punishment by an international criminal court.\(^9\)

**The ICTY Experience: the Concomitant Approach of Justice and Peace\(^{10}\)**

This parallel approach of peace and justice found in the establishment of the ICTY its first real materialization as well as its ‘fields of experimentation’ due to the unprecedented nature of the mandate given.

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8 The ICTR was established by Security Council Resolution 955 of November 8, 1994, and is based in Arch, Tanzania. http://www.ictr.org/ (last accessed April 16, 2003)
9 As noted by Cassese (1998) those merits can be identified as:
- Enabling through an impartial tribunal the determination of *individual* criminal responsibility of individual offenders, avoiding the simplistic and dangerous assimilation under *collective* guilt;
- Upholding the rule of international law in holding accountable its violators;
- Through ‘judicial reckoning’ of perpetrators of IHL violations and the application of ‘impartial justice’, can be presumed [though controversially] as dissipating the hatred of the victims and their desire for revenge;
- Such an easing of tensions, through the meting out of impartial justice, is seen as creating the conditions for a return to peaceful relations on the ground;
- The proceedings of an international criminal tribunal build an impartial and objective record of events, constituting a crucial element as an historical account of events;
- Trials through international justice instances also serve the purpose to break with the past, sending a message of the international community’s will to stigmatize the deviant behavior [more than delivering through punishment a form of retribution].
- Regarding the last point the dimension of both symbolism and jurisprudence needs to be identified as core to the present argumentation and will be further developed along this thesis.
10 Peace is very much related in this present argument to peacekeeping.
Indeed, the ICTY Statute states that its work is aimed to “bring justice” to the perpetrators and “contribute to the restoration and maintenance of peace”.\textsuperscript{11} This expansion of the mandate signals a crucial turning point in the approach to peace and justice in post-conflict societies, contrasting with the Nuremberg and Tokyo trials\textsuperscript{12} that were designed as punishing instances, in the context of the Allies undisputed victory of the Allies.

In addition, it is important to notice that unlike the Nuremberg and the Tokyo tribunals, the ICTY and ICTR are civil tribunals created by the UN Security Council through resolutions adopted under Chapter VII of the UN Charter\textsuperscript{13}. As such, resolutions setting up both tribunals are binding on all states, adding to the intended supremacy of the tribunal’s jurisdiction over national jurisdictions.

In fact, the trend in international law materialized by the ICTY presents the following unprecedented specificities (list non-exhaustive) of:

- Being born out of a recurrent attempt to see international justice enlarging its arena of debate and support; incidentally the ICTY finds one of its most striking premise in the revived effort led by then Prime Minister of Great Britain, Margaret Thatcher, and then President of the United States, Georges Bush, in August-September 1990 to establish a criminal court to deal with international crimes such as aggression and war crimes committed by Saddam Hussein’s regime.\textsuperscript{14}

\textsuperscript{11} ICTY Statute, Preamble. Available at http://www.un.org/icty/legaldoc/index.htm (last accessed on April 17, 2003)

The ad hoc Tribunal for the former Yugoslavia was created by the United Nations Security Council in May 1993, S.C Res. 827, UN SCOR, 48th Session, 3217th meeting, U.N Do. S/RES/955 (1993) [hereinafter ICTY Statute]

\textsuperscript{12} See Opening Statement of Justice Jackson (21 November 1945) in 2 Trial of the Major War Criminals Before The International Military Tribunal 98-99 (1947);

See also: Telford Taylor, The Anatomy of Nuremberg Trials: A Person Memoir , 1993, p. 85-90 (Telford Taylor was the American Chief Prosecutor at the Nuremberg Tribunal)

\textsuperscript{13} Chapter VII of the UN Charter relates to “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression”; The charter is available online at: http://www.un.org/aboutun/charter/ (last accessed on April 16, 2003)

- Being based on “Violations of International Humanitarian Law”, i.e. a body of Conventions conceived to regulate international armed conflicts; in fact, not only did the ICTY gave the first legal venue to judge violations of IHL, but its jurisprudence actually enlarged the applicability of IHL, in particular through the Tadic case; Such a crucial jurisprudence is also to be found at the ICTR with the Akayesu case in particular;

- Being conceived as a key component of both the peace process, to the extent that peace isn’t achieved on the ground while the process is undertaken, and of the post-conflict reconciliation and reconstruction phases;

- Being designed as both a tool to anchor the rule of law in the given country through the fight against impunity, and the establishment of an impartial (at least intended as such) account of crimes committed, expected to trigger a cathartic process, which is postulated, in this scheme, as opening the path to reconciliation.

However, such a link between peace and justice raises nonetheless several questions which will be further discussed along this analysis. Indeed, its axiomatic nature has been

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The term of International Armed Conflict “describes armed conflicts between two or more states (GCI –IV common Article 2). (...) The rules of humanitarian law were developed mainly in the context of international armed conflict. Today, the regulations for these conflicts are still the most detailed, establishing limitations of the means and methods of warfare and imposing obligations on the parties to the conflict in terms of relief and protection of civilian populations. (...) The rules applicable in situations of international armed conflict are based mainly on the four Geneva Convention of 1949 and Additional Protocol I of 1977” (p.162)

“Often referred to as “civil war”, a non-international armed conflict is a conflict that takes place on the territory of one state, between its armed forces and dissident armed forces or other organized armed groups that, under responsible command, exercise such control over a part of the territory in a way which enables them to carry out sustained and concerted military operations. The rule of law applicable is situations of non-international armed conflicts is based on:
The second 1977 Protocol additional to the Geneva Conventions Article 3 common to the four Geneva Conventions of 1949” (p.257)


17 See: AKAYESU, Jean Paul (ICTR-96-4) - Appeals Chamber Judgment, September 2, 1998

See also: Arnold, Roberta “The Development of the Notion of War Crimes in Non-International Conflicts through the Jurisprudence of the UN Ad Hoc Tribunals” Bern Universtiy, Mars 2002 Available at: http://www.oefre.unibe.ch/forschung/arnold.pdf (last accessed on April 18, 2003)
relatively unchallenged throughout its expansion, though its results may not be as conclusive as publicly stated.

Furthermore, the political dimension of the so-called transitional justice’s development was demonstrated in the larger debate surrounding the establishment of an International Criminal Court (ICC). Indeed, this growing interest for international justice built on the experience of the Nuremberg tribunal, also meant the revival of proposals for the establishment of a permanent criminal court\textsuperscript{18}, an idea dating back to the 1919 Treaty of Versailles\textsuperscript{19} (art.227), which was to be given a stronger echo with the experience of UN ad hoc tribunals.

Though very much influenced by the UN ad hoc tribunals, the ICC has also taken a momentum of its own in placing victims at the center of its jurisdiction. Thereby, unlike the ICTY and ICTR where ‘victims’ could only be heard as ‘witness’ following a common law-type of approach, the ICC provides individual victims with an instance where they can be heard as such. Albeit numerous limitations to the Court’s jurisdiction, if only for its complementary (subsidiary) nature, it represents a crucial shift, crystallizing both individual responsibility and the central role and place of victims in international justice.\textsuperscript{20} This jurisdictional shift signifies that the victim status in international law has unprecedentedly moved away from its passivity, although much of its articulation with the post-conflict reconciliation agenda remains to be achieved.

Today the establishment of tribunals of ‘mixed-nature’, such as in Sierra Leone (Special Court) and as drafted for Cambodia (Special Tribunal) have significantly been influenced

\textsuperscript{18} See under the terms of Resolution 780 (1992) http://www.ohr.int/other-doc/un-res-bih/pdf/s92r780e.pdf (last accessed on April 16, 2003), the final report of the Commission of Experts (UN Doc. S/1994/674) available at: http://www.ess.uwe.ac.uk/comexpert/1-II.htm (last accessed on April 16, 2003): “since the nations are expecting a new world order based on international public order, there is a need to establish permanent and effective bodies to dispense international justice”

\textsuperscript{19} Treaty of Versailles of June, 28th 1919 available at: http://history.acusd.edu/gen/text/versailles treaty/vercontents.html (last accessed on April 16, 2003)


\textsuperscript{20} A shift very likely to influence the SCSL
by the context of national and international political dynamics, and in particular the United States’ hostile position towards the ICC, which has resulted in privileging ad hoc or even sui generis instances to address violations of IHL and the legacy of those conflicts. Therefore, those dynamics are well illustrated by both:

- US impunity agreements (so-called art. 98 agreements).

In fact, those acts highlights the strong connection of the criminalization of international law to the evolution of the concept of peacemaking and peacekeeping following the end of the Cold War, and the emergence of International Humanitarian Law (IHL) as applicable to internal conflict through the jurisprudence developed by the ICTY and the ICTR.

Nonetheless, it is important to notice the “top-down” approach of the development of international justice and transitional justice, very much related to the notion of the “international legal community”, a crucial actor in the approach and arbitrage of peace and security in post-conflict contexts.

21 As in the case of the Special Court for Sierra Leone which is based on an agreement between the United Nations and the Government of Sierra Leone; Agreement available at: http://www.sierra-leone.org/specialcourtagreement.html (last accessed on April 19, 2003)
22 One can quote on that respect Pierre-Richard Prosper, the US ambassador-at-large for War Crimes: “The ICC does not have the oversight and the safeguards that the Security Council created body has. The ICC really leaves it at the discretion of the Prosecutor and the Judges to pursue cases. They are not enough safeguards to prevent a case being brought forward based on politics rather than facts and law….In creating this Court [for Sierra Leone], we decided to make it a court that provides as much ownership of the matter to the State as possible. Making it a UN subsidiary organ would not achieve that purpose. It would have been possible to have state participation but not state responsibility. Here we reached an independent court through an international agreement that shares the responsibility between the Sierra Leone government and the Security Council and the Secretariat of the United Nations. It fits into our global philosophy. It’s not part of the UN and it’s not part of the Sierra Leonean legislative body.” Interview with Pierre-Richard Prosper in Diplomatie Judiciaire, 9 February 2002, available at www.diplomatiejudiciaire.com. (last accessed June 13, 2003)
24 For further information on art.98 agreements between the United States and other countries see fact sheet at: http://www.iccnow.org/documents/otherissues/impunityart98/CICCImpunityTable11April03.pdf (last accessed June 13, 2003); also for the latest updated list on the agreement signatories see: http://www.iccnow.org/documents/otherissues/impunityart98/Art98Signatories_11June03.pdf (last accessed June 13, 2003)
The Notion of the “International Legal Community” and its Implications on Post-Conflict Decisions

If debates over the establishment of an international criminal tribunal can be traced back to (at least) 1919 and the Treaty of Versailles, it is really with the Declaration of Human Rights (1948),\(^{25}\) that the establishment of an ‘international legal community’ can be dated. Its consequences in the post-conflict justice agenda are of utmost influence.

The “international legal community” is very much associated with the Western conception and development of human rights norms and protections. As noted by Fletcher and Weinstein,

“[This] dominant model is right-based and rooted in the philosophical tradition of John Locke and the belief that individuals have moral rights to life, liberty, and autonomy. Therefore, it is not surprising that in the aftermath of the Second World War, human rights became the justification to establish an international framework of laws to enforce obligations by states to guarantee and protect individuals from the barbarities of state action. Thus, lawyers have assumed a prominent role in the development of the modern human rights movement.”\(^{26}\)

Such a prominent role is to be kept in mind while trying to understand political and strategic choices made over justice following a civil conflict. It is crucial to recognize the impact of the nature of the peace agreement itself in post-conflict challenges and choices to be made in terms of justice, peace and reconciliation.

Therefore, one has to wonder about the impact of this western approach to justice on the determination of priorities in terms of prosecution and reconciliation. Indeed, while those standards are presented as universal, and certainly are to the extent that universal is understood as encompassed by international legal instruments, a need for a better assessment of their influence exists with regards to the country given context, as well as the population needs and aspirations. Such a questioning takes a capital importance in the case of Sierra Leone as hyperbolic and high-profile specificities could lead to a

\(^{25}\) which illustrates the development of human rights norms, institutions and enforcement mechanisms
\(^{26}\) Fletcher and Weinstein (2002: 582)
perception or an *exploitation* of the country as a field of experiments, with limited safeguards since unlike the ICTY and ICTR, the SCSL is not an international tribunal placed under Chapter VII of the UN Charter.

Specifically, if this human rights movement and the development of this legal framework resulted in the conception of law as the mean to restore social norms after gross human rights violations, some assumptions have been made regarding the link between peace, justice and reconciliation that are not necessarily validated in reality as we will see later.

In their article, Fletcher and Weinstein observe that:

“While transitional justice scholars recognize that many forms of reckoning are necessary, [their] readings of the human rights literature and international practice suggest that individual criminal trials – whether national, international or hybrid – have become a benchmark of accountability against which all other forms of reckoning such as truth commissions, must be judged”. 27

Furthermore, it is important to note that most of the criticisms addressed to *ad hoc* tribunals have been made on the failures of those instances to succeed in their own terms. As noted by Fletcher and Weinstein, “commentators have not advocated that justice be displaced by truth commissions or other models of accountability.” 28

In this context, Sierra Leone can be seen as both an on-going unique experience of justice and reconciliation, as well as a turning point in the field. Yet, as its 'real' impact will only be determined by its long term outcomes, when little margin for change will exist, a clearer monitoring and adaptation strategy is needed.

However, developments on the question in Sierra Leone have already paved the way for questions regarding the collaboration of the Special Court and the TRC. 29 In reference to

27 Fletcher and Weinstein (2002:582)
28 Ibid.
the previously mentioned ICC, one should note that as a complementary jurisdiction, the International Criminal Court does not prevent other post-conflict country to opt for a justice/reconciliation of the Sierra Leonan type. Such a disposition emphasizes the cornerstone role of the SCSL and TRC jurisprudence with regards to this type of post-conflict strategies to address the conflict’s legacy.

While the field of transitional justice is still largely at a childhood stage, prominent scholars such as Diane Orentlicher and Naomi Roth-Arriaza have developed theoretical justification for criminal trials in response to the transformation of countries emerging from dictatorships and civil wars such as in Latin America. 30 Those researches have contributed to the institutionalization of the field, in giving it a legal and scientific type of approach. Such an approach certainly plays an important role in Sierra Leone where advocates of this type of strategy can support their argumentation on the scholar analysis based on legal and political philosophy grounds. Previous experiences also play an important role in the validation of those approaches, though contradicting perspectives could be easily found depending on the case-study elected.

**The Case for Accountability**

Put first and foremost at the forefront of the argumentation in favor of international prosecution was the concept of accountability, which one finds closely echoed by the well polished warriorish/ethical/moralistic formula of the “fight against impunity”. As recalled by Fletcher and Weinstein:

“The International Tribunal for the former Yugoslavia (ICTY) was created in the midst of the war and one justification for its existence was the argument that war criminals must not evade accountability if there were peace in the region.” 31

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30 Roth-Arriaza, Naomi, Impunity and Human Rights in International Law and Practice, Oxford University Press, 1997
31 (Fletcher 2002:584)
Such a credo was to be largely heard in Sierra Leone as well and plays an important role in both the SCSL and the TRC discourses. Yet, while the first indictments have been made public, and the Court has received so far a rather positive reception, the SCSL still has to prove itself up for the expectations instilled, while numerous challenges remain. Additionally such a discourse from foreign countries supporting the process need to be put in a larger context where it can be proven quite contrasted when not apparently contradictory. Such is the case of the United States in their support to the SCSL, which is largely undermined by the country’s position on the ICC, which has led to the signature of an ‘Impunity Agreement’, so called art.98 –agreement at the end of March 2003. Incidentally, this situation proves again the political weight surrounding notions of the post-conflict justice agenda that are presented as neutral under the legal discourse, as for instance the notion of ‘accountability’.

On that respect, it is important to keep in mind that, ultimately, the creation of the ICTY resulted more from the international community reluctance to intervene militarily to stop the war, rather than from an unconditional stand for justice and accountability in the Balkans. In fact, unlike the previous experiences of international tribunals in Nuremberg and Tokyo, the decision was taken in a context where peace had not only not being achieved but also where military victory of any side was unclear.

This situation was to be found in an even more unstable context since the Lomé Peace Agreement of July 7th 1999. Indeed, the accord signed was not followed by action on the ground and peace failed to be implemented. Incidentally while the TRC was already

32 For a list and details on Special Court’s indictments see: http://www.sierra-leone.org/documents-specialcourt.html (last accessed on May 10, 2003)
33 Though largely misunderstood by the strategy of ‘impunity agreement’, Article 98 of the Rome Statute says: in regards to Cooperation with respect to waiver of immunity and consent to surrender:
1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.
2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.
part of the Lomé Accords, the Special Court only became a possible option once Foday Sankoh was arraigned on May 26. Ultimately, President Kabbah’s letter to Secretary-General Annan on June 16, 2000 to request that the Security Council establish a Special Court for Sierra Leone that would prosecute “the most responsible violators and the leadership of the RUF” under a combination of international and domestic law for war crimes and crimes against humanity, gave force to the Lomé Peace Accords which are now retrospectively referred to as the Peace agreement on which the peace has been achieved.\(^3\)

Furthermore, one needs to recall the ICTY as the cornerstone of this new approach to peace and justice, as unlike previous international tribunals, it was not conceived as a post war tribunal but strove to become precedent-setting for later post-conflict instances. In fact, the ICTY was envisioned as a mean to convey not only justice but to achieve reconciliation, through the neutralization of war criminals and the promotion of accountability and of the ‘fight against impunity’. In addition, the ICTY was explicitly established by the Security Council as a peace making measure\(^3\)\(^6\), a situation also found in the case of the ICTR.

Incidentally, such precedents were to play an important role in the decision to opt for an instance such as the Special Court. In fact, it is no chance that President Kabbah happens to be himself a former UN diplomat, with all the trust such a position can have conferred upon him in such a trouble context. Yet, while both tribunals have been in place for close to a decade, there are still themselves on-going experiences which invites us to take them as model with utmost precaution are there final outcome remain to be proven.

In the end, pragmatism and realism prevail to the extent that once political and legal decisions have been taken at an international level with (or without?) consultation of national representatives (even if non elected), the articulation of the relation between peace and justice comes down to its applicability on the ground. In all the previously


mentioned cases, the complexity on the ground, plagued with chronic unsustainability, as well as the lack of technical and financial means to enforce arraignment and indictment, have left much of the reality of those jurisdiction into the Chief Prosecutor’s hands.

Indeed, in the case of the ICTY, the connection between the mandates of justice, peace and reconciliation was realized through the choice of the Chief Prosecutor, who was to also assume this position for the ICTR. In fact, the rallying of votes on Richard Goldstone’s candidacy, who was known for his leadership in the South African peaceful\textsuperscript{37} transition from Apartheid, illustrates the superposition of previously separate processes, which was to be ultimately concretized in Sierra Leone. On that respect, it is to be noted that the Chief Prosecutor’s leadership counts among the crucial factors that have ultimately given to the Tribunal its independence, credibility and outreach. As such he can be largely credited in the development of international criminal law and the field of \textit{transitional justice}.

Accordingly, while decisions relative to post-conflict justice are largely drawn at the supranational level with a tenuous connection with the reality on the ground, one should note the relative importance of some key leading individuals\textsuperscript{38} from Richard Goldstone to Carla del Ponte and now David Crane for the Special Court in Sierra Leone (SCSL).

Interestingly, Richard Goldstone was one of the first prominent figures on the criminal prosecution side to take a stand in favor of the complementarity between international justice bodies and Truth Commissions. Indeed, at the first ‘super-indictment’ proceeding Goldstone likened national truth commissions and criminal prosecutions declaring that:

\begin{quote}
“The public record will assist in attributing guilt to individuals and be an important tool in avoiding the attribution of collective guilt to any national or collective group.”\textsuperscript{39}
\end{quote}

\textsuperscript{37} The crucial place of South Africa in the transitional justice/reconciliation literature and issues will be further developed in part II. C.

\textsuperscript{38} One can recall here the figure of Lemkin and its role in the definition of the crime of genocide; See. Power, Samantha, \textit{A Problem From Hell: America and the Age of Genocide}, 2002; see also: Martin, Joseph James, \textit{The Man who Invented Genocide: The Public Career and Consequences of Raphael Lemkin}, Inst. For Historical Review, 1984

\textsuperscript{39} See Opening Statement by Justice Goldstone para.12 Rule 61 Hearing (October 9, 1995) cited by Ruti Teitel
Such a link was to be concretely experienced for the first time in Sierra Leone with both the Special Court (SCSL) and the Truth and Reconciliation Commission (TRC), bringing up even more accurately the question of the link and interactions between justice and reconciliation in post-conflict societies.

**B. The role of justice in post conflict societies: From Theory to Reality**

While after the ICTY justice and peace have been considered as unquestionably intertwined, some questions have been left unanswered on both the nature of the peace context in which this justice was to take place, as well as the challenges to be faced by this endeavor on the ground.

**From the Nature of Peace in Post-Conflict Context…**

> “What do war and peace have in common? Answering this question is particularly important if we hope to understand *transitions*: the transitions from peace to war and the transition from war to peace.”

As developed by David Keen, the transition from war to peace isn’t clear cut, and very much influences the very sustainability of the given peace settlement or agreement. In fact, “It may be difficult to account for mass violence or civil war without examining the violence embodied in peace.” Such a notion strongly refers to Johan Galtung’s research on “Structural Violence”.

Indeed, Johan Galtung\(^{42}\) distinguishes ‘structural violence’ from ‘direct violence’, using the former to include processes of exploitation and marginalization, that is to say anything that limits human well being to levels below what is possible. Such rhetoric

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41 Keen (2001: 8)
finds its echoes in works such as the ones of Professor Peter Uvin\textsuperscript{43} who wrote about the ‘humiliations’ of the development in Rwanda and its contribution to violence and genocide. David Keen\textsuperscript{44} also refers to the work of Jenny Edkins – in her critique of Amartya Sen and his limited consideration of the role of violence in creating famine – who has rightly emphasized the violence embodied in the law in times of peace.\textsuperscript{45}

This element takes an acute dimension in the issue of post-conflict legal reform, such as the one undertaken in Sierra Leone, where the comprehension of the dynamics at play are determining the very sustainability of peace through the definition of the post-conflict agenda. In particular, the understanding of what is customary and the place this dimension should be given in the post-conflict reform and reconstruction bears consequences with regard to violence institutionalization if only because the notion of the 'customary domain' is often more an outsider perspective than it is an insider one opening the way to manipulation.

\textbf{To the Issue of the Institutionalization of Violence…}

While the international community and NGOs’ outcry against widespread crimes, terror and violence endured by civil populations may be making them subscribe to nearly any peace settlement in a first time, it’s important to wonder about the nature of the peace which has been put on the table.

Indeed, as noted by David Keen:

\begin{quote}
“In one sense, everybody wants peace; it just that they want their own version of peace.”\textsuperscript{46}
\end{quote}

Such a question appears to have as little answer in the case of the Balkans war as it did in Sierra Leone, as the Lomé Peace Agreement which served as the base of conciliation

\begin{flushright}
\textsuperscript{43} Uvin Peter, Aiding Violence: The Development Enterprise in Rwanda, West Hartford, CT: Kumarian Press:1998
\textsuperscript{44} Keen (2001: 9)
\textsuperscript{46} Keen (2001: 18)
\end{flushright}
between the parties neither brought peace nor security on the ground. Moreover, the Agreement was clearly used by the RUF and Sankoh himself to reinforce their position and personal gains. Eventually it was the combined intervention of the United Nations (UNOMSIL) and the British paratroopers and warships that made the transition towards a more sensible peace\textsuperscript{47}.

This military intervention which also sent, for the first time in the given conflict, the message of a commitment of the international community to insure the respect of the agreed peace, paved the way for its justice constituent. Indeed, this commitment was the basis for President Kabbah to request the UN assistance to establish the Special Court, after having neutralized Foday Sankoh, under Sierra Leonan law. The former RUF was indicted for its responsibility in the death of seventeen demonstrators killed on May, 8\textsuperscript{th} 2000, during a skirmish between Sankoh’s RUF bodyguards, Nigerian peacekeepers and civil society demonstrators. Ironically, the purpose of the given demonstration was to request Sankoh to release the 500 Kenyan and Zambian peacekeepers made prisoners in the north and east part of the country in early May 2000\textsuperscript{48}.

Accordingly, the IC support prevented a major uproar and destabilization from the RUF, at least in the symbolic capital of Freetown. Nonetheless, long after their intervention tensions and violence remained latent, kept under control by a 17,000 UN peacekeeping force (now reduced to 15,000 peacekeepers).

Eventually, one can see justice as having been part of a pragmatic ‘peace settlement’, which may have both contributed to address war crimes and impunity, and yet has also institutionalized violence as well. For instance, in limiting the scope of violations of IHL

\textsuperscript{47} “Seven hundreds paratroopers arrived [in may 2000] to restore security in and around the capital, and to bolster the morale and resolve of the UN peacekeepers. Seven Royal Navy Warships with a fleet of helicopters and jet aircraft anchored offshore to provide logistical support and air-combat capability. It was the largest British expeditionary force since the Falklands war in 1982. Their presence was clearly a major psychological boost for the battered population.” In. Hirsch, John L. Sierra Leone: Diamonds and the Struggle for Democracy, International Peace Academy Occasional Paper Series 2001, Lynne Rienner Publishers. P. 87

\textsuperscript{48} For more information on the unfolding of the given events see: www.sierra-leone.org
to the “most responsible ones”, when clearly such crimes have been committed on a large scale by various parties and actors expected to re-integrate the society, post-conflict justice can take the party of letting some war-inherited violence unanswered.

In addition, neighboring Liberia\(^49\) also contributes to this institutionalization of violence in Sierra Leone through the integration by the population of survival strategies and resilience. Incidentally, the internalization of this institutionalized violence can be seen in the ‘wait and see’ sort of approach of large parts of the population. This posture means that while giving a chance to peace, present events should be placed in the larger context of a ten-year civil war that has seen numerous hopes for peace and security disillusioned.

Indeed, while the institutionalization of violence might be an unavoidable consequence of peace, it might as well be that it is a necessary constituent or compromise to achieve peace itself. As noted by David Keen:

“A ‘transition from war to peace’ is unlikely to see a clean break from violence to consent, from theft to production, from repression to democracy, or from impunity to accountability. Peace is likely to institutionalize violence in some form; indeed, peace may not be possible without institutionalizing violence in some form.” \(^50\)

Henceforth, Keen insists on the importance of the parties to have a sustained interest in peace for the process to crystallize and come to some reality. This argument emphasizes the need for this 'sustained interest' to be defined in concert with the parties at play, including the international community, so as to avoid the danger of violence institutionalization.

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49 Liberia is also quite a relevant example on the issue of peace and justice with the present debate over Charles Taylor’s indictment by the SCSL, and its request for it to be lifted as a precondition for peace talks to be held with Liberian rebels. See http://www.sierra-leone.org/slnews.html: On June 12, 2003 Liberian President Charles Taylor told reporters that there could be no peace in his country unless an indictment for war crimes is lifted. "The question of this indictment is principal for peace in Liberia," he said. "That whole stigma must be removed. How they do it is up to them, but it has to be removed." Sierra Leone's Special Court announced on March 5th that it had indicted the Liberian leader for war crimes and crimes against humanity committed during Sierra Leone's civil war. Taylor angrily denounced the indictment as racist an attempt by the prosecutor "to disgrace an African president

50 Keen (2001: 10)
“It is tempting to imagine (…) that ‘all good things go together’, and that the solution to conflict lies in a package of justice, reconstruction, development, democracy, cease-fires and liberalization. However, one also needs to ask why people should accept these apparently benign phenomena? Do the key actors (whether elites, fighters, or ‘ordinary people’) have an interest in justice, reconstruction, development, democracy, ceasefires and/or liberalization?51

Yet, this interest needs to be renewed as well by the outcomes of the given peace. Similarly, commitment to peace needs to be relatively genuine, unlike in the case of Sankoh whose position as the chairman of the Commission for the Management of Strategic Resources, National Reconstruction, and Development (Article V. of the Lomé Peace Accords) did not prevent him from breaking the Peace agreement signed.52

**And the Peace-Justice Agenda in Post-Conflict Settings**

In the context where the perspective of international justice has changed in recent years, being brought up much before the situation on the ground is fully, if at all, secured, the issue becomes to send the clear message of an impartial and balanced process. Indeed, post-conflict justice instances53, face the risk, in being perceived as part of a peace process, to be considered as forum for grievances to be heard for those who have failed to impose themselves on the ground.

Yet, the perception of an international tribunal as impartial can also prove to be problematic to the extent that the different belligerents will be eager to see their adversaries punished for the crimes they may have committed, and yet do not wished to see the same treatment applied to them.

Thus, as Charles King notes:

“The prospects of War crimes tribunals, the arrest of belligerent leaders and assigning blame for atrocities committed during the war, all create great

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51 Keen (2001: 11)
52 One should note that to this position corresponded “the status of Vice President” and “therefore answerable only to the President. See: Lomé Peace Agreement, Article 5, Section 2, July 7, 1999, S/1999/777. available at: http://www.sierra-leone.org/lomeaccord.html (last accessed on May 11, 2003)
53 though not the original mandate of those instances.
disincentives for leaders to enter negotiations and generate equally strong incentives for them to reneg on commitments during the implementation of peace agreements.\textsuperscript{54}

Such an assessment seems to advocate for the amnesty approach which was long privileged, including by the UN, and emphasizes once more the importance of incentives to engage in the peace process, and notably economic incentives.

“The art of facilitating a transition from war to peace may lie, to a considerable extent, in ensuring that some of those benefiting from war are in a position to benefit to a greater extent from peace. In practice, these benefits may (at least initially) be secured under some kind of ‘armed peace’ in which a number of players remain in a position to use the threat of force to underwrite control of economic activity.”\textsuperscript{55}

The acceptance of an armed peace, beyond the previously mentioned incentive, seems to rely on a large extent on the international community’s will to enforce the contracted deal. As in the case of Sierra Leone, such a political and financial will might also need to be militarily materialized to be considered credible.

**The Emphasis on Criminal Trials as a Mean to Achieve Justice and Its Limitations**

Once a peace deal has been brokered, even in as little as an armed peace context, the popular continuum of peace, justice, reconciliation, development is seen by many as ready to be unfolded, though no link has been yet proven in reality. More importantly, one finds that criminal trials have evolved to the point of been considered as the trigger to justice, peace and reconciliation, a stretch of the mind at most, that fits more scholar works than the complex reality of post-conflict societies. The assumption is that a focus on legal processes is adequate to resolve the individual and social harm, an axiom which has not found in previous experience of transitional justice from the former Yugoslavia to Rwanda, much ground confirming it.

\textsuperscript{54} See: King, Charles Ending Civil Wars, Adelphi Papers #308, Oxford University Press, December 1997
\textsuperscript{55} Keen (2001: 12)
In particular, one can note echoing Fletcher and Weinstein that:

“Little attention has been paid to the role of law in different cultures and how populations' expectations for justice may differ.” 

In addition, they argue that:

“The emphasis on criminal trials overshadows attention to other options to achieve these goals. In addition the legal emphasis ignores the vast literature on collective violence [which] suggest that [while] it is critical to acknowledge the contribution that individual trials can make, the limitations of the law to address the collective nature of the legacy of mass violence or gross human rights violations [are to be recognized].”

In the aftermath of the Nuremberg and Tokyo trials, writers such as Karl Jaspers or Hannah Arendt, writing on the issue of The German Guilt, advocated for a focus on individual responsibility, distinguishing blame from responsibility. To them, blame could be understood as implying intent whereas responsibility was to be understood as referring to the liability. Those powerful analysis and stances played a resoundingly important role in the development of the discourse on individual criminal responsibility and its extension to the fields of peace, justice and reconciliation.

Yet, while the determination of the responsibility of individuals is incontestably crucial both by legal and social standards, as a primal condition for justice to be possible, as well

56 Fletcher (2002:584)
57 Fletcher (2002:584)
Karl Jaspers identifies 4 categories of guilt and degrees of responsibility: Criminal guilt (the commitment of certain acts and judgment by a trial), Political guilt (how involved one is within one's government), Moral guilt (your own private or circle of friends consciences), and Metaphysical guilt (an universally shared responsibility to choose to live rather than protest evil).
as to avoid the stigmatization of the entire population/community, such a limited focus can also result in non-addressing important issues such as bystanders. Overall, a risk exists of giving to the community a sense of innocence, or to validate their claims of being victims themselves.

As noted by Jaspers:

“Everyone tends to interpret great losses and trials as a sacrifice. But the possible interpretations of this sacrifice are so abysmally different that, at first, they divide people” 60

In fact, one of the major weaknesses of the trials proposed by the international community as part of the post-conflict peace and justice package, lay in the absence of mechanism to address the question of bystanders. 61 Indeed, as noted by Fletcher and Weinstein (2002), bystanders constitute a crucial element of the implementation of mass violence, to the extent that they “are implicated in the establishment and maintenance of societal structures that facilitate the onset and implementation of mass violence” 62

The unaddressed issue of bystanders appears to be challenging the sacrosanct postulate of ‘individualized guilt’, developed after the Second World War and enshrined by the Nuremberg and Tokyo trials. Indeed, Fletcher and Weinstein question in their article:

“Whether individualized guilt may contribute to a myth of collective innocence. Criminal trials single out intellectual authors and actual perpetrators of atrocities while leaving to broader initiatives in rule of law, humanitarian assistance, democracy building and economic development the task of resuscitating a “sick society” 63

Such question is also central in Arendt’s works especially those following a visit in Germany in 1950 where she was appalled by what she described as:

60 Jaspers, Karl, The Question of the German Guilt, p. 21 (1947)
62 Fletcher and Weinstein (2002: 580)
63 Fletcher and Weinstein (2002:580)
“A deep-rooted, stubborn, at times vicious refusal to face and come to terms with what really happened” among the population.

Yet again, Arendt and Jaspers have extensively developed the risks resulting from ‘collective guilt’. In particular, Jaspers has been later criticized for having drawn in his cornerstone book an over-clear distinction between morality and politics as autonomous spheres of responsibility, and situated the burden of coming to terms with the past squarely in the moral sphere of individuals. In fact, it has been argued, for instance by Rabinbach and Zipes, that:

“While the First Government of the Federal Republic of Germany certainly accepted a liability for reparations, it is commonly argued that Germans tended to ‘instrumentalize’ the issue of collective responsibility. Through reparations, the new state sought to settle accounts once and for all with those persecuted by the Nazi regime, to forget the past and move on.”

Though Arendt’s assessment takes place in a very different context which differs radically from the situation experienced by Sierra Leone, lessons must be learnt from the thinking generated by the choice made to answer the vast challenges faced when entering the post-conflict phase. Certainly, a more objective appreciation of criminal trials-centered strategy need to be developed if one is to assess its benefits for the community from justice to reconciliation.

Incidentally, while the notion of ‘victim’ can be blurry in a post-conflict situation where all the parties tend to claim such a status, its definition tends to be very much determined by the type of peace and justice negotiated and settled through the peace agreement.

68 Schaap (2001: 754)
In fact, the empirical experience of the joint approach of peace and justice in the individualization of responsibility has led to a restrictive definition of the justice to be achieved. The given definition is largely accepted as addressing in the first place “the most responsible ones”, in an axiomatic strategy postulating on catharsis and symbolism supposed to reflect the context of pragmatic necessity resulting from post-conflict complexity.

Yet, as the previous experience of the ICTY and ICTR have shown, the issue of trying the “most responsible ones”, widely recognized for their crimes and exactions, can still be challenged on the ground that:

- The definition of the ‘most responsible ones’ remains under construction and is to be interpreted in the context of the given conflict. This makes it possible for its interpretation to be along the lines of a reinvented history of the conflict, with lines of blame and responsibility following those of the winner and loser, and thus exacerbating the risk of the conflict’s resurgence. On this particular point, one can recall the case of Rwanda.

- It might be difficult both technically, financially, politically and diplomatically to arraign the identified ‘most responsible’ as in the case of Radko Mladic and Radovan Karadzic, who by remaining at large undermine the ICTY credibility and efficiency, while infuriating populations they have victimized.

- Those not indicted by those institutions, while not being innocent, have not been found guilty due to the focus chosen, are being seen by their very same victims in the streets, nearly untroubled. Such a situation is particularly vivid in Sierra Leone where the issue of demobilized former combatants, in spite of the reconciliation discourse and TRC process, remains problematic. Incidentally, traditional systems of dispute resolution have been revisited as possible answer to cope with the size of the challenge as in the case of Rwanda's gacaca. It remained to be seen if such...

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69 AKA. ‘Those who bear the greatest responsibility’
70 It should be noted that in any case trying all those who have committed crimes in times of war can never constitute a feasible option in a post-conflict situation, and most likely ever after.
an option can be adapted to Sierra Leone and how to articulate it with the other dynamics and organizations involved.

**The ICTY Precedent**

As previously mentioned, the ICTY has constituted an unprecedented development for international criminal law, and the trigger of a new conception of peace and justice. The tribunal represents the first institutionalization of the discourse to reject collective guilt (to be more developed in part II. C and part III. A) which had resulted from World War II and the work of philosophers such as Japers and Arendt. This focus constitutes the basis of the post-conflict justice agenda ranging from ‘ending impunity’, to ‘establishing an objective record of past abuses and of the conflict’, ‘neutralizing wrongdoers’, and serving as a deterrent factor vis-à-vis violations of international law. However, the Tribunal has a number of difficulties in reality from financial means to political will and collaboration of third parties, as well as the rather distant and negative perception by the given population which have greatly undermined the Tribunal’s efficiency in reality.

One needs to keep those limitations in mind, in particular in the context of the Special Court (SCSL), as those limitations are to be added to the initial axiomatic focus on criminal prosecution and ‘the most responsible ones’. Most importantly, while the ICTY and ICTR were placed under Chapter VII of the UN Charter, the SCSL results from a negotiated agreement between the Government of Sierra Leone and the United Nations. As such, the SCSL is not financed by the United Nations but by voluntary contributions, and do not have the upper hand on other national jurisdiction, a notable limitation in terms of extradition.

Incidentally, while a step further seems to have been made in the case of Sierra Leone in associating reconciliation to the peace-justice couple, limitations seem little addressed on their axiomatic postulates. Indeed, the tendency so far appears to have been favoring building up on previous experiences, where rather positive aspects are taken out of their context and applied to a very different and complex setting.
Nevertheless, the SCSL is expected to provide answers to previous criticisms addressed to the ICTY and ICTR. This is the case for instance on the issue of its localization in Sierra Leone or the presence of Sierra Leonan judges which are expected to result in a tangible ownership by the people of Sierra Leone…

Albeit the previously mentioned pitfalls and difficulties encountered by the ICTY and even more painfully by the ICTR, an uncontested success of those jurisdiction has been the development of jurisprudence in the field of international humanitarian law (IHL). Thus jurisprudence has largely paved the way for the definition agreed in article 5 of the ICC Statute, which in turns has reinforced international justice jurisdiction since its ratification by 60 countries in April 2002. Incidentally, one should note the crucial presence of Sierra Leone among the states parties to the Statute, though the country has unfortunately signed a BIA (“Bilateral Impunity Agreement”) with the United States.

The Development of the War Crimes Jurisprudence and the Extension of the Notion of Grave Breaches

Since Nuremberg, the jurisprudence on international law, and IHL in particular, has known an unprecedented expansion which, while not ensuring its preventive respect, has set a record of its legal enforcement. The SCSL is to be understood in line with those developments, portraying itself as not only the most recent development in the field of transitional justice, but also as a new trend in the given field due to both its agreement-based origins and its mixed nature jurisdiction.

Thereby, the jurisprudence elaborated by the ICTY and ICTR corresponds to a major development of international law, to the extent that the divide between the two regimes of IHL has been reduced, with its unprecedented extension to non-international conflicts.

71 Rome Statute of the International Criminal Court. Jurisdiction, Admissibility and Applicable Law Art. 5 to 21, available at: http://www.un.org/law/icc/statute/romefra.htm (last accessed on May 18, 2003); Art. 5 enumerates crimes within the jurisdiction of the Court: The crime of genocide; Crimes against humanity; War crimes; The crime of aggression (once defined since no agreement has yet been found)
72 Which came into force on July 1st 2002
73 the notion of mixed nature resulting from the fact that the SCSL is both based on IHL and Sierra Leonan Law.
One is forced to admit that such a development would have been unthinkable only ten years ago. Moreover, such developments intervene in a shift of post-conflict justice not only towards individual criminal responsibility, as previously mentioned, but also towards a victims-oriented approach as exemplified by the ICC.

The notion of ‘War Crimes’ lies at the heart of the collaborative and concomitant approach of peace and justice in post-conflict societies. Incidentally, the given crimes defined by the Geneva Conventions are to be found as central to the SCSL jurisdiction, granted with the enlarged jurisprudence established by the two *ad hoc* tribunals.

“The term war crime indicates the breach of norms that have been criminalized, i.e. entitling criminal. This is an umbrella definition. It encompasses all infringements of IHL that imply penal consequences including the smaller category of the most serious violations of IHL, defined in the Geneva Conventions and Additional Protocol I as “grave breaches”. However, the grave breaches provisions do not set out themselves set out specific penalties or provides for a tribunal to try offenders. They require rather states to enact criminal legislation to punish or extradite those responsible.”

A landmark evolution was to be established by the extension of the notion of grave breaches to non-international conflicts through the jurisprudence set by the ICTY in the *Tadic* case. Indeed, while

“all grave breaches are war crimes, not all war crimes are grave breaches. (…) Unlike war crimes, grave breaches can only be committed against individuals

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74 Meron, Theodor, *War Crimes Law Comes of Age: Essays*, Oxford University Press, 1999
See also, the ICRC position DDM/JUR 93/422B March 25, 1993 : “[…]According to International Humanitarian Law as it stands today, the notion of war crimes is limited to situation of international armed conflicts” quoted by. Arnold, Roberta “The Development of the Notion of War Crimes in Non-International Conflicts Through the Jurisprudence of the UN ad hoc Tribunals” 2002, available at: www.oefre.unibe.ch/forschung/arnold.pdf (last accessed on May 18, 2003)
75 Arnold, Roberta “The Development of the Notion of War Crimes in Non-International Conflicts through the Jurisprudence of the UN Ad Hoc Tribunals” Bern Universtiy, Mars 2002 Available at: http://www.oefre.unibe.ch/forschung/arnold.pdf (last accessed on April 18, 2003) p.2
qualifying as protected persons under the respective Geneva Conventions. Moreover, whereas war crimes are subject to discretionary universal jurisdiction, grave breaches are subject to mandatory universal jurisdiction.”

Thus, before the Tadic jurisprudence, the notion of grave breaches had been voluntarily limited by States to international armed conflict cases, afraid that an extension to internal armed struggle would result in infringements on their respective sovereignty. Therefore, the jurisprudence of the two ad hoc tribunals has contributed to pave the road to a reassessment of the Westphalian model of States' sovereignty vis-à-vis international criminal law, though both issues of compliance and deterrence “ultimately hinge on, and depend upon, the goodwill of states”.

Nonetheless, the jurisdiction provided by the 1949 Geneva Conventions is universal and cannot be abridged by amnesty under national criminal jurisdiction, individual criminal responsibility in the eyes of international humanitarian law knowing no laches. Thus, it comes down to the existence of a political will to make those provisions being respected, as in the case of the SCSL, though with a jurisdiction limited to “the most responsible ones”.

C. Accountability Vs. Amnesty: Peace Vs. Justice?

While peace and justice have been increasingly linked in their formulation and organization in post-conflict societies, a long track record of the opposition of the two notions can be recalled. In fact, if accountability has become a buzzword, widely associated with “the fight against impunity”, the resort to amnesty as an incentive and a mean to secure a peace deal, remains at the very least a common temptation, and more than often a reality, if only partially.

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77 Arnold (2002: 2)
78 CASSESE note / article
79 “Doctrine of laches (as defined by the Black’s Law Dictionary- Sixth Edition): is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party operates as bar in court of equity.”
In the case of Sierra Leone, the mention of a blanket amnesty appears clearly in the Lomé Peace Accords, and it is only thanks to the UN Special Envoy Okelo that an *handwritten* caveat that the United Nations does not acknowledge the application of this amnesty to “acts of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law” was added, opening the door to the later agreement on the SCSL. One can note that the UN Special Envoy was originally told not to sign the Lomé Accords, but that Mr. Okelo protested knowing that the Accord would collapse without his signature, accordingly emphasizing on the importance of pragmatism in the negotiation for peace.

**Issue of Pragmatism in Peace:**

Pragmatism is key in the transition from conflict to appeasement and peace. The perspective of justice can constitute a disincentive to engage in the negotiation, follow on the agreement and later disarm. Indeed, the belligerents negotiating know themselves to be likely to be listed as eligible to be judged for their responsibility and crimes during the conflict, which is why amnesty has long be perceived as an integral part of negotiation, a form of ‘proof of goodwill’ and commitment to achieve a sustainable peace. It is in this context that one must look at the history of amnesty for peace, and the UN inconsistent approach of the question.

As noted by Keen:

> “An alternative policy to punishing those who have perpetrated violence is to reward them for giving up violence. In practice, peace often has a quality of pragmatism”

Two cases can be taken here to illustrate the point: the case of Cambodia, whose draft for the establishment of a Special Tribunal to judge the Khmer Rouge has served as the basis for the SCSL, and South Africa, whose TRC appears to be crucially influential on the Sierra Leonan TRC.

**Case of Cambodia**

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80 Keen (2001: 13)
“In Cambodia, some progress towards peace was achieved through a combination of offering rewards for impunity and tightening economic sanctions. (...) Ieng Sary and his supporters were offered a pardon and access to lucrative gem and timber concessions within the Cambodian government system. The links that Sary had build up with traders, army commanders and the Cambodian government contrasted with the more isolated and ideologically ‘pure’ world inhabited by Pol Pot himself, and these links seem to have prepared the way for Sary’s defection from the Khmer Rouge.”

Yet, after nearly twenty years of paralysis regarding the Khmer Rouge Genocide, a silence very much related to the Cold War context and equilibrium in which this bloody conflict took place, the call for justice regarding the Khmer Rouge perpetrated genocide is starting to be listened to, and the granted amnesty to be challenged in the case of the “most responsible ones”.

Indeed, on January 2nd, 2001 Cambodia’s National Assembly approved the law on the establishment of Extraordinary Chambers in The Courts of Cambodia For the Prosecutions of Crimes Committed During The Period of Democratic Cambodia (“Law on Extraordinary Chambers”) The Extraordinary Chamber was to be the three tiered (Trial, Appeal, and Supreme courts), with Cambodian judges forming the majority at each level. Besides, the law was to be two Co-prosecutors and two Co-Investigating Judges.

The Court’s jurisdiction covers the crimes of: Genocide, Crimes against humanity, Graves breaches to the Geneva Conventions, Violations of the 1954 Hague Convention

81 Keen (2001: 13)
for Protection of Cultural Property in the Event of Armed Conflict\textsuperscript{84}, Crimes against internationally protected persons pursuant to the Vienna Convention on Diplomatic Relations of 1961\textsuperscript{85}, Homicide, torture and religious persecution can be prosecuted under the 1956 Cambodian Penal Code.

While the existence of advanced negotiation constitutes in itself a challenge to the status quo inherited from the “amnesty for peace” trade, this challenge remains limited as the Law on Extraordinary Chambers is restricted to senior leaders of Democratic Kampuchea and those most responsible for the atrocities, and is tied to the 1975-1979 period.

Nevertheless, the January 2001 legislation differed markedly from what had been agreed on. For instance, this legislation was most notably deleting the provision that prior amnesties would not be a bar to prosecution, but also on the death penalty issue, the given legislation appeared to be differing from the agreed position following the talks between the United Nations and the government.

Such changes in the legislation in comparison to the agreed position was actually resulting, in particular, from an attempt to insure that key people, such as former Khmer Rouge Foreign Minister Ieng Sary, granted a royal pardon in 1996 could still be brought to justice.

Quite expectedly and definitive rightfully, on February 9th, Kofi Annan announced that the UN was pulling out of talks on the setting up a the special tribunal. Fred Eckhard, the UN spokesman stated on this occasion that:

“The United Nations has concluded that as currently envisaged, the Cambodian court would not guarantee independence, impartiality and objectivity, which is required by the United Nations for its cooperate with such a court”.

While the negotiation have resumed last year, much remains to be done for peace in Cambodia to move beyond the bitterness of impunity provided by amnesties.

\textsuperscript{84} Convention of the Protection of Cultural Property on the Event of Armed Conflict (1956) 249 U.N.T.S 240; Much of Cambodia’s rich cultural heritage was destroyed during the reign of the Khmer Rouge. Thus, by article 7, Cambodia is taking the necessary steps to “prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach to the present Convention.”

\textsuperscript{85} Vienna Convention on Diplomatic Relations (1961) 500 U.N.T.S 95
Furthermore, one should note in the case of Cambodia that while the Special Tribunal for Cambodia’s draft has served as a basis for the SCSL, the on-going process in Sierra Leone could now serve back Cambodia. Indeed, a potential exists for the present SCSL to in turn be an incentive for the Cambodian Government to work with the United Nations on the realization of the given jurisdiction, beyond the recently agreed framework for a trial of surviving leaders of the Khmer Rouge for mass killings in the 1970’s.  

*Case of South Africa*

While South Africa is widely appreciated as a relative success, having paved the way to a peaceful, yet painful, transition ending the Apartheid era, the given context is hardly transferable as such to any post-conflict situation in Africa as it is still largely viewed. The amnesty for truth and reconciliation approach was chosen in a context of *Unspeakable Truths*, where the State was identified as central to the commission of the given crimes. Thus the given specificity made it possible for the country to opt for a Commission where amnesty would be given for those coming forward to testify and acknowledge, truthfully and remorsefully, their fault and responsibility during the Apartheid, and this in spite of the largely publicized track of human rights and international law abuses.

While such a choice is often portrayed as a positive one, one has to recall that very little options were in fact opened for this transition to happen. Indeed, if both sides were drained and driven into their respective corner, mass prosecution was simply not an option to trigger the needed societal change and address the apartheid crimes and legacy.

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86 See: NYT March 17, 2003: UN and Cambodia Reach an Agreement on Khmer Rouge Trial"  
See also: Strategic Choices in the Design of Truth Commissions at [www.truthcommission.org](http://www.truthcommission.org) (last accessed on May 20, 2003)  
88 One can note here the ambiguity of art.6 para. 5 of Additional Protocol II to the Geneva Conventions relating to the Protection of Victims in Non-International Armed Conflicts: “At the end of hostilities, the authorities in power shall endeavor 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.”
In particular, the army constituted a hard-line bastion that would have been unlikely to go by another option. Indeed,

“It is doubtful whether South Africa’s security services would have accepted the end of apartheid without the prospect of some kind of amnesty for abuses that could be shown to be politically motivated.” 89

Nevertheless, if pragmatism does seem to lie at the heart of peace, numerous cases have proven the amnesty option as more of a fool game than a sustainable solution.

Thus, in the case of Sierra Leone, the award of the chairmanship of the Commission for Strategic Resources to Foday Sankoh failed to achieve the peaceful outcome desired by its American architects. 90

“Indeed, the RUF appears to have built up its military muscle with the help of officially-sanctioned control of mining revenue. The distinction between rewarding someone for giving up violence and rewarding them for the violence they gave up may not always be clear. In Sierra Leone, elements of the old government army used hostage taking to draw attention to their dissatisfaction at being largely excluded from the peace agreement between the Ahmed Tejan Kabbah government and the rebel RUF. Violence in Sierra Leone has been a response to exclusion, underlining the danger in peace agreements that include some but exclude large numbers of others. What looks to some people like realism and pragmatism may look to others like appeasement and a prolongation of impunity.” 91

Such an unsustainable situation was also found in Somalia, where the pragmatic agreements never led to their enactment on the ground. On the contrary, as argued by

89 Keen (2001: 13)
91 Keen (2001: 14)
Menkaus and Prendergast, the UN intervention in Somalia actually did the opposite by giving resources and legitimacy to the major warlords, and encouraging conflict over central authority in a context where resources were concentrated in Mogadishu.

“The failure of the UN mission in Somalia is to a large degree the extension of a bankrupt donor policy which for decades supported overly centralized, unsustainable government structure in Mogadishu whose legitimacy came primarily from the barrel of a gun.”\textsuperscript{92}

Therefore, one cannot underline enough the importance of addressing the conflict root-causes in Sierra Leone, and primarily the issues of corruption and resource management, both of which will be crucial for the peace to be sustainable.

**Issue of Former and Demobilized Combatants**

Former combatants are central to both the peace and justice processes, and in the case of Sierra Leone also notably crucial to the reconciliation one as well.\textsuperscript{93}

Indeed, former combatants lay at the heart of war and peace as they are the needed link to trigger the transition from one state to another. Yet for this transition to happen, (ex-)combatants tend to request not only an insurance against prosecution for actions they have undertaken during the conflict, thus pushing for amnesty clauses in peace agreements, but they also advocate for substantial incentives to abandon their previous rebellious and lucrative activities. The combination of those requests can easily lead to the impracticability of those agreements, even in cases where the commitment to peace can be real.

In the post-conflict context, the issue becomes the re-integration of those former combatants now demobilized through the DDR process, for those who have entered the

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\textsuperscript{93} See part III. For further analysis: former combatants are central to the TRC in Sierra Leone because unlike in South Africa, which is largely referred to as a reference at minimum when not taken for a model, amnesty was granted to former combatants in the Lomé Peace Accords (except for the crimes falling in the jurisdiction of the Special Court which will only address crimes of the ‘most responsible ones’). Thus the true commitment, participation and repentance of ex-combatants is crucial to the very viability of the TRC and its answer to victims’ aspirations for truth and understanding.
given programs.\textsuperscript{94} Indeed, while disarmament and demobilization can be problematic, it is most certainly the re-integration component which determines the sustainability of the entire process and of the peace in general.

As noted by Keen about El Salvador:

\begin{quote}
“The failure to fulfill expectations of demobilized combatants jeopardized security and contributed to the high crime rates (…)”.\textsuperscript{95}
\end{quote}

Again this comment emphasizes the issue that while pragmatism is required at the peace agreement stage, the agreement in order to be sustainable needs to take into account economic and governance issues, as poverty indeed increases the risk for a country to revert into war.\textsuperscript{96}

Commenting on peace agreements signed in January 1992 in El Salvador, one Oxfam report noted:

\begin{quote}
“Generally it was recognized that whilst the Agreements dealt in details with issues related to the demobilization and demilitarization processes, limited attention was given to fundamental economic and legal issues which constituted the root causes of internal conflict.”\textsuperscript{97}
\end{quote}

A similar situation is to be found in Sierra Leone where little attention has been given in the post-conflict discourse to a strategy addressing the root causes of the war, in spite of numerous publicized researches on the influence of corruption and natural resource mismanagement in the civil war. Indeed,

\begin{quote}
“In Sierra Leone, the advent of democracy in 1996 (something the UN and its members states failed to back with peacekeeping) proved unacceptable
\end{quote}

\textsuperscript{94} Indeed, the criteria used to qualify for the DDR process left many former combatants, demilitarized and yet not integrated to the official process and its benefits, increasing the risk for them to cross the Liberian border to fight and/or rearm, or to form local gangs. Additionally, women former combatants were largely left out of the process. For more information on the DDR in Sierra Leone see: http://www.worldbank.org/afr/findings/infobeng/infob81.pdf

\textsuperscript{95} Keen (2001: 16)


\textsuperscript{97} Oxfam/ Community Aid Abroad, “United Nations Interventions in Conflict Situations”, A submission to Ambassador Richard Butler, Chair of the UN Preparatory Committee of the Fiftieth Anniversary, Oxford, 1994, p.A.3
to rebels and soldiers alike who saw it an end to their impunity, an end to
the lucrative war economy and a return to corrupt pre-war politics – hence,
in large part, the May 1997 coup.”

Incidentally, the crucial question becomes: what kind of peace are we working towards?
In defining the answer to this question NGOs and Civil Society are to play a central role
in unveiling reprehensible compromises. In Liberia and Sierra Leone, civil society
groups were eventually marginalized in the peace agreements reached respectively in
1995 and 1999, a situation later proven to have weaken the ‘peace’ settlements...

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<th>What Makes a Peace Agreement Succeed?</th>
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“In a sense, for a peace agreement to succeed, two factors are essentials:

1. One need an agreement between leaders;
2. These leaders must be legitimate individuals who can maintain a following that
   encompasses all important sector of the population and who, moreover, do not
   sacrifice any important part of this following by the very act of making a peace
   agreement.”

Additionally,

“Rather than simply concentrating on negotiations between the ‘two sides’ in war, it may
be useful to try to map the benefits and costs of violence for a variety of parties and to
seek to influence the calculations they make. This will include:

1. Attempts to reduce economic benefits from violence (…)
2. To increase the economic benefits of peaceable activities (…)
3. To reduce the legal impunity that may be enjoyed by a variety of groups (…)

We need to investigate what international interventions (aid, diplomacy, publicity, investment, trade) are doing to accelerate or retard the processes by which the people fall
below the protection of the law.”

(Keen 2001: 19)

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98 Keen (2001: 17)
Evolution and Criminalization of Modern Warfare

When talking about Sierra Leone, one commonly finds the reference to the evolution of modern warfare, notably when addressing the issue of internal wars, the targeting of civilians, and the widespread recourse to war crimes and terror. Such an evolution seems to have been accompanied by limited questioning on the strategy to adopt in addressing those conflicts and their legacies. Such an absence has let the domain open to be reinvested by those advocating for amnesty, and contributing the perpetuation of the permissiveness of the issue of impunity.

Indeed, if the end of the Cold War resulted in the modification of the nature of warfare, of which Sierra Leone has often been considered as a case-study, the question of its consequences on approaches to conflict termination and transition towards peace seem to have been left to empirical experiment.

The evolution of modern warfare can be streamlined as:

“The novelty of new forms and dynamics of internal war and especially the ‘criminalization’ of war – the shift from conflict motivated by ideology and ethnic claims to predatory warfare and armed banditry. The best-known contemporary examples are predatory wars in Columbia, Sierra Leone and Angola.”

(Emphasis added)

Consequently, one can read the renewed subscription to the “fight against impunity” principle as a result from the trend of criminalization of warfare. This trend, which is well represented by the case of Sierra Leone, signifies the end of the principle to commit into peace negotiations to insure immunity to the rebel or warring factions in exchange for a the cessation of hostilities and disarmament. Indeed, the above mentioned evolution within warfare dynamics has resulted in the decredibilization of such agreements, after

repeated violations of those given accords between the different parties. Sierra Leone exemplifies this situation, and has become a case-study of this evolution.

In fact, the primacy of accountability over amnesty results much more of this evolution on the amnesty issue, as well as power dynamics within the international community, than from an ethical breakthrough of world politics and international law.

Indeed, if international humanitarian law has been put at the forefront of the fight against impunity, such a consciousness took over 50 years to be endorsed in actions. The cornerstone has come with both international tribunals (ICTY and ICTR), which were to become later part of the peace and post-conflict agendas, principally backed by the United Nations, thereby putting an end to a rather inconsistent approach on amnesty issues.

**Evolution of the UN Position on Amnesty Issues:**

The position of the United Nations “has long been characterized by two features:

1. A contradictory position with regard to amnesty clauses, ranging from endorsement of rather general amnesties as a means of restoring peace to their condemnation;

2. A rather strict distinction between the concepts of national reconciliation and international prosecution”.

For a long time, a tension between UN human rights and peacekeeping activities resulted in an ambivalent position of the organization on the issue of amnesty. Indeed, while human rights bodies have been rather constant in their condemnation of amnesties, peacekeeping imperatives were presented as arguments in favor of more flexibility with regards to this issue.


101 In 1985, United Nations Special Rapporteur Louis Joinet suggested in a report that international crimes should not be subject to amnesties. See ‘Study on amnesty laws and their role in the safeguard and promotion of human rights”, Preliminary Report by Louis Joinet, Special Rapporteur, UN Commission on
Cases of El Salvador, Haiti, Guatemala and DRC:

The TRC in El Salvador was not originally conceived as a replacement for judicial proceedings but following the Commission’s report the government adopted a law which granted amnesty to all persons charged with serious crimes, even those mentioned in the given report.102

The UN was to take another controversial position on the issue of amnesty in Haiti, where the United Nations helped the negotiation of the “Governors Island Agreement”103 allowing President Aristide to return to Haiti after agreeing to the amnesty of the military leaders who had taken over the country.

The third case of Guatemala also illustrates the ambivalent position of the United Nations of the issue of Amnesty, and represents the organization’s admission of amnesty as a necessary element while negotiating and securing peace in the given country.104

Although not admitted, TRC were largely considered as a trading bargain for international prosecution in dealing with past crimes and violations. However, a notable difference is to be found in the case of Guatemala where the Commission included, along with two national members, an international member appointed by the UN Secretary-General. It is to be noted that some amnesty laws were to be revised by domestic courts such as in the case of Argentina, Chile, El Salvador or Honduras105, a situation that could

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102 The General Amnesty Law for the Consolidation of Peace of March 20, 1993 (Decree 486) granted full, absolute and unconditional amnesty to all those who participated in any way in the commission of political crimes or crimes in which the number of persons involved exceeded twenty persons.


104 Law of National Reconciliation of December 18, 1996. However, the law was not extended to the crimes of genocide, torture and forced disappearances (Art. 8). The given law remains controversial.

also be found in Sierra Leone if the country was to prove itself capable of remaining at peace for one.

A more recent position of the UN on the debate over ‘peace vs. justice’ has been the signature of the UN supported - Lusaka Accords in 1999 in the Democratic Republic of the Congo (DRC).106 Those Accords provide that the parties “together with the UN” shall create conditions favorable to the arrest and prosecution of “mass killers”, “perpetrators of crime against humanity” and “other war criminals”, while admitting that these conditions “may include the granting of amnesty and political asylum, except for genocidaire”.107

The UN position on the issue of amnesty presents the second feature of “the dissociation of the international prosecution of crimes from the furtherance of national reconciliation. [Indeed,] the United Nations has embarked on one or the other course, but has not combined them. The prosecution of crimes was usually left within the sole authority of the government involved in a peace settlement, and was carried out by the United Nations only when no reasonable alternative appeared to be in reach.”108

Furthermore, it should be noted that:

“If the United Nations decided to act, it was with the Security Council which took in this task opting for the model of a systematic and fully internationalized prosecution of serious crimes. The creation of mixed national-international institutions, acting under the auspices of the international community, was limited to the area of truth commissions.”

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108 Stahn (2002:195)
Here again the political nature of the exercise appears in all its complexity and ambiguities. On that respect a relevant example can be pointed out regarding the negotiation of the Rules of Procedure of the ICTY on immunity. Indeed,

“It is worth noting that during the negotiation of the Rules of Procedure of the International Tribunal for the former Yugoslavia (ICTY), the United States submitted a proposal that perpetrators of low-level crimes be given immunity from prosecution in return for their testimony. The Tribunal practice, however, has been to reject claims for immunity of low-level perpetrators. In a statement to members of diplomatic missions, the President of the Tribunal noted: “The persons appearing before us will be charged with genocide, torture, murder, sexual assault, wanton destruction, persecution and other inhumane acts. After due reflection, we have decided that no one should be immune from prosecution for such crimes as these, no matter how useful their testimony may otherwise be.”

Following the conflict in Kosovo and East Timor, and the implementation of ‘transitional administrations’, the United Nations adopted a new approach which has:

“Invented new forms and mechanisms for the prosecution of serious crimes, acting on the borderline between the national and international legal order. Moreover, it has also made additional efforts to support and establish combined justice and reconciliation models, treating truth commissions and prosecutions as

110 See, United Nations, “Statement by the President Made at a Briefing to Members of Diplomatic Missions”, UN Doc. IT/29, art 5 (1994)
111 Stahn (2002:195-196)
112 As noted by Stahn, “UNMIK intended to create a Kosovo War and Ethnic Crimes Court for the Prosecution of war and ethnically motivated crimes. However, owing to budgetary restraints and the number of cases simultaneously pending before the domestic courts, UNMIK decided to deal with these cases within the existing framework by providing the local courts with the international judges and prosecutors.” See, www.osce.org/kosovo
113 UNTAET Regulation 2000/15 on the establishment of panels with exclusive jurisdiction over serious criminal offences of June 6, 2000; Available at: http://un.org/peace/etimor/untaetn.htm
complementary rather than as competing and mutually exclusive mechanisms for dealing with the injustices of the past.” 114

In particular, the regional dimension of the conflict has been increasingly taken into account linking peace, justice and reconciliation in a locus privileging sustainability of the given goals at the regional level, thereby tackling the challenge of regional security.

D. Regional Security

Regional security is a crucial dimension of the debate over peace and justice, in a context of the evolution of modern warfare towards civil and internal types of conflict.

Indeed, beyond the debate over the strategies to promote justice and reconciliation, little can be achieved without peace and security. The case of Sierra Leone certainly echoes those concerns in the context of the protracted instability that characterizes the Mano River Region, and beyond West Africa.

In fact, regional security constitutes the prerequisite to a sustainable peace, and to the success of justice and reconciliation processes, while those given processes are expected under the current paradigm to also play a role in promoting peace.

Challenging the “Evolution” of Modern Warfare

While the notion of the evolution of modern warfare has been widely publicized, one has to admit that this evolution has had an impact on the conduct of hostilities, the application of IHL, the commission of its violations as well as on the conception and design of processes to address them in the post-conflict phase. Yet, one comment is to be made regarding the qualification of “evolution” applied to modern warfare isn’t neutral and carries its connotation as well as political agenda.

Indeed, while the notion of ‘evolution’ has been widely used in reference to conflict such as the one which has torn apart Sierra Leone, it should be noted in fact this statement does not reflect the emergence of a groundbreaking or never-experienced form of

114 Stahn (2002:196)
combat. In fact, by no mean can this so-called evolution be associated with the shift represented in the field by, for instance, the introduction of the nuclear bomb. Hence, one can decipher beyond the use of the evolution discourse the reference to a regressive trend towards pre-state type of conflicts, insidiously echoing ethnocentric discourses on ethnic, tribal or barbarian variants.\(^\text{115}\)

Thus, the regretted unsuitability of laws of war/ IHL is questionable as one can wonder if it calls for an adaptation of those laws, conceived for international type of conflicts, to better fit the reality on the ground, or for a better enforcement. Such an approach needs to be acknowledged as it plays a crucial role in the decision made over the post-conflict agenda, and the given strategies at stake to contain or achieve security in the given country and region. On that respect, the transition of modern armed conflicts towards internal and civil types of confrontation has challenged the world order inherited from the Cold War and incidentally the international community response to it, from peace to justice.

**The Question of Internal and Internationalized Conflicts**

While the Laws of Armed Conflicts\(^\text{116}\) now constitute the basis of the jurisdiction\(^\text{117}\) of the Special Court of Sierra Leone (SCSL), the Geneva Conventions as this body of principles and rules was originally conceived to address the situation of conflicts between states, i.e. of an international nature. Incidentally, the above mentioned evolution of

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115 For instance, the American political scientist Robert Kaplan views the erosion of the state and its failure to maintain law and order as the main source of conflict. As the state concedes its authority, it turns into a breeding ground for gang warfare and clashes between criminal groups. According to Kaplan, the future will bring "chaos theory" forms of conflict and they will spread everywhere. See the controversial writings of Robert D. Kaplan: The Coming Anarchy: Shattering the Dreams of the Post-Cold War, Vintage Books, February 2001;

See also of the same author: The Ends of the Earth: From Togo to Turkmenistan, from Iran to Cambodia a Journey to the Frontiers of Anarchy, Vintage Books February 1997.

116 today better known as International Humanitarian Law (IHL),

117 The SCSL jurisdiction comprises crimes against humanity, war crimes, other serious violations of international laws such as attacks against peacekeepers, and conscription of children under the age of fifteen, as well as certain crimes under Sierra Leonan law like abuse of girls under age fourteen and wanton destruction of property. The SCSL has primacy over Sierra Leone national courts, but is not placed under Chapter VII of the UN Charter.
modern warfare clearly indicates a shift towards civil/ internal conflict, thus representing a challenge to the application of IHL.

In fact, one sees that through the jurisprudence of the ICTY and ICTR, the IHL has been progressively accepted as being applicable to internal conflict, as the recognition of its customary law nature was more firmly established. Notably, the Tadic (ICTY) and Akayesu (ICTR) cases have confirmed this crucial development, reinforced by the Rome Statute establishing the ICC, and its entry into force in July 2002. Such an evolution presents a considerable potential as part of a strategy to prevent regional spill-over.

The Spill over Effect and its Consequences on the Post-Conflict Agenda

Parallel to the evolution of ‘modern’ conflicts towards internal and civil types, the prevention of regional spill-over has occupied an increasingly important part of the agenda following the conflict that has torn apart the Balkans. This dimension has also become a priority as part of the larger perspective of empowerment of regional mechanisms of peace and security such as ECOWAS in West Africa.

In his 1992 report, An Agenda for Peace, former UN Secretary–General Boutros Boutros-Ghali argued that regional security arrangements should be used to lighten the UN’s heavy peacekeeping burden as foreseen in chapter 8 of the UN charter. This approach to security in the African continent was to be reinforced by the peacekeeping debacles in Somalia (1993) and Rwanda (1994), which led to a greater reluctance to engage into UN mission. The International Community position confirmed the long-time acknowledged need for a strong and responsive regional security mechanism, such as the 1999 ECOWAS initiative. Eventually, the case of Sierra Leone exemplifies the needed link between regional security organizations and interventions under UN auspices. In fact, the

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118 One can note on that respect the development of the notion of ‘balkanization’ to express the stalemate and risk of regional spill-over resulting from the absence of early action to prevent the worsening of the crisis.
See also from the same author, Supplement to an agenda for peace, S/1995/1, 3 January 1995. Available at: http://www.un.org/Docs/SG/agsupp.html
120 Protocol Relating to the Mechanisms for Conflict Prevention, Management, Resolution and Peacekeeping, and Security; Lomé, December 10, 1999; p. 10
advertised success of the present mission in Sierra Leone (UNAMSIL) could contribute to send a more optimistic image of the region, if ECOWAS was to confirm its strength in learning from its past lessons.

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<th>The 5 major flaws of the three ECOMOG interventions</th>
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<td>In Liberia (1990-1997), Sierra Leone (1998) and Guinea-Bissau (1999):</td>
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<tr>
<td>1. ECOMOG peacekeepers were deployed to Liberia, Sierra Leone and Guinea-Bissau before detailed logistical and financial arrangements were made.</td>
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<tr>
<td>2. The ECOMOG forces in Liberia and Sierra Leone were dominated by Nigeria, resulting in a lack of sub-regional unity and depriving the force of important legitimacy in fulfilling its tasks.</td>
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<tr>
<td>3. The ECOMOG force in Guinea-Bissau was deployed without Nigeria, denying the peacekeepers the logistical and financial muscle of the sub-region’s dominant force</td>
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<tr>
<td>4. The ECOMOG missions in Liberia and Sierra Leone were under the operational control of ECOMOG commanders in the field rather than the ECOWAS secretariat</td>
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<tr>
<td>5. The ECOMOG mission in Guinea-Bissau, under a Togolese commander reported directly to Togolese leader Gnassingbe Eyadema, the ECOWAS chairman.</td>
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The principal challenge for security, peace and justice in West Africa is largely connected to and depending on the situation in Liberia, on the capacity of the IC and ECOWAS to stabilize the country, which requires the removal of Charles Taylor as a beginning.

**The Mano River Region and the Liberian Challenge**

If Sierra Leone appears to be presently stabilized, if only artificially thanks to the presence of 15,000 UN peacekeepers, Liberia’s unsettled situation remains a crucial

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121 Adebajo (2002: 147)
122 UNAMSIL is planned to be dismantled by December 2004.
source of concern for the stability and security of the region. The persistence of fighting and the combatants flows over the different borders, not to mention the issue of Charles Taylor himself, presents the potential of triggering a new regional conflict, a concern quite well exemplified by the present situation in Cote d’Ivoire and its links back to Liberia.  

The establishment of UNMIL is expected to bring some stability to the country, although the challenge remains of Herculean proportions and will most certainly requires the IC long term commitment.

Liberia is also crucial to the understanding of the regional dimensions of the economics of war, indicting countries such as Cote d’Ivoire and Burkina Faso for having extensively benefited from the conflicts in both Liberia and Sierra Leone.

If corruption, ethnic favoritism, poverty and bad governance lie at the heart of the region’s chronic crisis, the economics of war perpetuated by the region’s natural resources such as diamond or rutile, laid the ground to the protraction of those conflicts and their “spill over” threats.

One cannot underestimate the crucial role played by Liberia in the region’s instability, being as such the main key to any solution or strategy aiming at insuring security to West Africa. Indeed, from the issue of non-state actors, such as mercenaries, to the “Libyan connection” it establishes between the different countries of the region, Liberia lies at the heart of the problem and its solution. Thus, the issue of security in Liberia constitutes a crucial challenge for ECOWAS, a challenge that has been addressed

125 See Paul Collier’s works: http://econ.worldbank.org/staff/pcollier/
with difficulty in the past, largely due to the intricate dynamics and actors at play, such as Colonel Qaddafi. The IC political will to tackle the Liberian question could well mean the best shot at peace the Region has known for a long time.

**On the Nature of West African States and the Challenge of Peace and Justice**

West Africa rather peaceful *decolonization* has failed to be enacted into durable peace and stability. Unscrupulous leaders looking to secure personal interests have stepped on the ideal of democratic institutions and development.

“The term ‘quasi-state’, coined by Robert Jackson\(^{128}\), is widely recognized as a label that fits most West African states. The term is used as a description of states, which enjoy international recognition, but lack substantial and credible statehood by the criteria of international law. In their international relations, quasi-states place the main emphasis on formal and absolute sovereignty – maintenance of existing borders and the principle of non-intervention in domestic affairs – because it enhances the power of the governing political elite and its ability to stay in power\(^ {129}\)\(^ {130}\)

Indeed, since decolonization, personal rulers have been the most common form of institutionalized power in West Africa. Through the use of the state’s coercive instruments, those rulers have been monopolizing power in order to further their own interests. Eventually, bad governance, poverty and ethno-favoritism are a chronic plague of West African states, as in most of Africa, and among the principal causes of war in the region. Thus, to a larger extend the core issue regional security is trying to tackle is the one of governance.

As noted by Adebajo:

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“The search for durable peace in West Africa is directly related to issues of governance and democratization and (...) civil society groups are important to such efforts.”

The size of the challenge of “governance” is to be appreciated under the light of the high-profile leaders that have monopolized power in the region. Indeed, West Africa’s insecurity has several faces, one of them being the one of Samuel Doe and Charles Taylor in Liberia, Siaka Stevens and Joseph Momoh in Sierra Leone. Those leaders exemplify West Africa tendency to antidemocratic regime and ethnic favoritism.

Thereby, the challenges of peace, security and justice in post-conflict Sierra Leone lie as much in the determination of the International Community to commit its support on the long term needed to secure them, as in Sierra Leone itself and in particular in its capacity to move away from the puppet state that has characterized its recent history.

One can here call upon the Weberian definition of essential characteristic of the state as a needed threshold on which to build the post-conflict agenda. Max Weber defines the utmost characteristic of a State as:

“Successfully upholds a claim to the monopoly of the legitimate use of physical force in the enforcement of its order within a definite territory”

Yet beyond the national level, most of the peace and post-conflict agenda need to be played at the regional level in order to be sustainable and for the regional mechanisms to take over from foreign interventions.

Several examples can be underlined here:

- The cases of Johnny Paul Koroma, Charles Taylor, or Sam Bockarie all indicted by the SCSL;

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131 Adebajo (2002: 38)
133 Bockarie was recently confirmed dead after his body was found in Liberia, most likely fighting. Sierra Leone Web's article available at: http://www.sierra-leone.org/slnews0503.html (last accessed July 20, 2003)
- The outside support provided to the rebellion in Sierra Leone from Liberia, Burkina Faso and Libya;
- Issues of former combatants, refugees and diasporas also call for a regional perspective on peace and security.

Last but not least, regional security is also crucial for justice to operate in post-conflict Sierra Leone since the SCSL isn’t placed under chapter VII of the UN Charter. An increased cooperation is therefore needed to face up the challenge of extradition and arraignment. The size of this challenge can be appreciated when one considers that in spite of its additional authority, power and means, the ICTY has not yet been able to arraign Radko Mladic and Radovan Karadzic.\textsuperscript{134}…

Yet another challenge to be faced by Sierra Leone will be the reality of the justice and reconciliation endeavor which have been defined as concomitant and complementary in the strategy designed to answer war’s legacies and open the way forward. Indeed, as we will see in this next part, while the relation between justice and reconciliation has been widely publicized in recent years, caveats remain that are encouraging a closer look at the grounds on which the assumption is based.

\textbf{II. The Questionable Relation Between Justice and Reconciliation}

While the relation between peace and justice (I.) has been part of the post-conflict literature and agenda for some time, the association between justice and reconciliation appears to be more recent. In fact, the protean and largely axiomatic approach to justice in post-conflict settings, seem to have been fed with the relative success of previous experiments, albeit the fact that this success was not necessarily the result of the given association…

\textsuperscript{134} See: Radko Mladic and Radovan Karadzic initial indictment by the ICTY (IT-95-5-I)on: http://www.un.org/icty/indictment/english/kar-ii950724e.htm (last accessed on May 25, 2003)
Thus, one can see in the exponential development of transitional justice and its advocacy for reconciliation, the result of a comparable dynamic centered around the teleological confirmation of the postulate established mostly through scholars’ literature.

For instance, Ruti Teitel argues that in fact, the ICTY mission of achieving peaceful reconciliation in the region resulted in being less dependent on the actual infliction of punishment, relying on the use of ‘super indictment’ proceedings in order to construct truthful narratives of past abuses\textsuperscript{135}. Such a position is consistent with the theory-policy that establishing truth over a state’s repressive past can lay the foundations for national reconciliation. This argument followed the experiences of TRC in Chile, Argentina and South Africa, where the commissions where touted with the countries’ successful political transition.

Yet, the connection between justice and reconciliation has been mostly achieved through symbolism, allegations and transplant from the fields of medicine and psychology to an enlarged notion of justice. Incidentally, questions regarding the manageability and outcome might have been overlooked in the enthusiasm to bring a venue to address the question of impunity and to give the victims a forum to be heard and possibly to be compensated. Such a limited track record raises the concerns regarding the possible frustrations that can result from the failure to achieve those Herculean goals.

\textbf{A. From the Evolution of the Notion of Transitional Justice to Its Challenges}

The present analysis does not intend to cover the full scale of the evolution of transitional justice\textsuperscript{136}, but to highlight its main features and their consequences on the articulation of justice and reconciliation in post-conflict societies.

\textsuperscript{135} Teitel Ruti “Bringing the Messiah Through the Law” in. Human Rights in Political Transitions: Gettysburg to Bosnia, ed. Carla Hesse and Robert Post, Zone Books, Cambridge (MIT), 1999 p.181
“The term transitional justice characterizes the choice made and quality of justice rendered when new leaders replace authoritarian predecessors presumed responsible for criminal acts in the wake of the “third wave of democratization”\(^1\)\(^3\)\(^7\). Many such new regimes and policies confront conflicting perceptions, demands, hopes and fears concerning justice, truth, national reconciliation, and the building of more stable democracies.”\(^1\)\(^3\)\(^8\)

Transitional justice is a field in becoming, which has seen its institutionalization largely connected with the *ad hoc* tribunals’ advent. Central to the notion of transitional justice is the principle of ‘individual responsibility’ and a victim-oriented type of approach, reinforced by the jurisprudence of both international tribunals, the coming-to-age of the International Criminal Court (ICC), and the development of internationalized jurisdiction such as the SCSL.

Yet, such an approach leaves unaddressed several crucial issues such as bystanders or collective memory that are to be dealt with in the reconciliation forum, although the outcome of such a *task-sharing* remains unclear. Sierra Leone is expected to contribute to the evolution of the approach, coordination and achievement of justice and reconciliation through the jurisprudence and experience of the Special Court for Sierra Leone (SCSL) and the Truth and Reconciliation Commission (TRC).

**From the ‘Fight against Impunity’ to Personal Jurisdiction**

Since the Nuremberg trial limited change seems to have been occurring in the approach of criminal prosecution as the centerpiece of social repair in spite of a relative lack of scientific confirmation of a positive relation between the two processes. In fact, those high-profile trials have been put forward by the ‘*international legal community*’ and transitional justice scholars as the panacea in a limited spectrum of options to address the issue of social repair and reconciliation, notably using the reference to *catharsis* and *symbolism* to support the given argument.

\(^1\) Huntington, Samuel P., *The Third Wave: Democratization in the Late Twentieth Century* (1991)
\(^3\) Siegel (1998: 433)
The ‘fight against impunity’ appears to be a rather recent phraseology in the post-conflict justice discourse, resulting from the combination of several factors among which one can find:

1. The adjournment and revision of the benefits of amnesty as a mean to secure a lasting peace;
2. The emergence of the so-called international civil society pushing for war criminals to be held accountable for their crimes;
3. The concomitant development of international tribunals (ICTY and ICTR) and the ICC, which puts at the forefront the establishment of a track-record and the expression of a political, will to set standards in addressing impunity regardless of the official capacity of the accused.139

Privileging ‘Super-Indictment’

The notion of super-indictment emerged with the novelty of the jurisdiction of the ICTY, as the tribunal was not to hold trials in absentia. Indeed, for those who do not surrender, the prosecutor may present evidence to a panel of three judges, who may then issue an arrest warrant that if ignored, for instance by Serbia, will become an international arrest warrant good forever. In addition, since the super indictment results from a jurisdiction placed under Chapter VII of the UN Charter, all member states are obligated to turn over

139 See art. 27 of the Rome Statute (ICC) on the Irrelevance of official capacity
1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.
Yet, the ICJ’s jurisprudence appears to cantilever such a trend for instance in the DRC v. Belgium decision (February 2002); on this issue see: http://www.asil.org/insights/insigh82.htm (last accessed June 22, 2003)
these wanted men, though political will appears to be again the most crucial factor in this ‘game’ of cat and mouse.

While the ‘most responsible’, AKA. ‘big fishes’ type of approach was not originally determined as the ‘party line’ on the ICTY and ICTR prosecution’s strategy, trying to get also at the middle-men as in the case of Carla Del Ponte in Rwanda, it soon became clear that such a strategy due to limited financial, human and political means was the most pragmatic and efficient way to indeed manage to set a first record in the fight against impunity.

Yet, as pointed out by Hannah Arendt, personal jurisdiction, strongly reinforced in “super-indictment” strategies, carries the risk of leading to a construction of a ‘collective innocence’. Such an occurrence is certainly found in the case-study realized conjointly by the University of California (Berkeley) and the University of Sarajevo on the perceptions of Bosnian Judges and prosecutors on “Justice, Accountability and Social Reconstruction”. The study reports that:

“All participants seek to present the war experience of their national group as that of victims. However, the international community sees Bosnian Serb and Bosnian Croats as aggressors. This disparity in viewpoints may explain the responses that were defensive or evasive. (...) While the experience of each national group provides a unique perspective on the conflict, the lack of a public discussion within each national group critical of the war atrocities carried out in the name of that national group solidifies and privileges one “truth” at the expense of all others. Although the findings indicate this pattern is observed in response to

140 One can note the recent division between of the Prosecution responsibilities between the ICTY and the ICTY, previously assumed by the same person, in the present situation Carla Del Ponte. Such a unity was largely conceived to insure the coherence of the jurisprudence established by both ad hoc tribunals, but had proven quite difficult to operate and was heavily criticized in particular in Rwanda. See the BBC article on the Security Council’s decision of August, 28th 2003 to split the Chief Prosecutor position between the ICTR and the ICTY: http://news.bbc.co.uk/2/hi/africa/3189045.stm (last accessed September 10, 2003) See also the nomination of former SCSL appeal judge Hassan Jallow (Gambia) as the new ICTR Chief Prosecutor on August 29th, 2003: http://news.bbc.co.uk/2/hi/africa/3190833.stm (last accessed September 15, 2003)

questions about accountability and responsibility in general, nowhere is it more pronounced than in the responses to the topic of genocide."\(^{142}\)

As clearly exemplified by this abstract, the notion of *victimhood* appears to be central to the transitional justice process, loaded with all its political weight and search for recognition, acknowledgment and legitimacy.

As such, the indictment of the ‘most responsible ones’ carries the responsibility of tackling impunity and set a record of the crimes committed in a neutral way, or at least perceived as such. While the SCSL was originally feared to be privileging one vision of the conflict, namely the one of the government and of President Kabbah’ SLPP (Sierra Leone People Party), the prosecutor David Crane seems to have taken good note of the importance for the SCSL to represent all the parties that have played an important role in the conflict and the commission of war crimes.\(^{143}\) In particular, Charles Taylor’s super-indictment, if followed by action,\(^{144}\) could give to the SCSL a much needed assertion beyond its limited mandate\(^ {145}\), a situation reinforced by the recent death of former RUF leader Foday Sankoh depriving the SCSL of a major symbol to get its justice message through.

Nevertheless, if super-indictment has been a new feature of the field of transitional justice in recent years, one of the most crucial aspects of this evolution has been the shift of focus towards a more victim-oriented process epitomized by the Rome Statute and the ICC.

\(^{142}\) Ibid. p.48

\(^{143}\) For an updated list of the SCSL indictments see: [http://www.sc-sl.org](http://www.sc-sl.org) (last accessed November 29, 2003). As of September 2003 the list includes thirteen indictees: Ten of the indictees – Foday Sankoh, Issa Sesay, Morris Kallon and Augustine Ghao from the RUF, Alex Tamba Brima and Brima "Bazzy" Kamara, Santigie Kanu of the AFRC, and former Internal Affairs Minister Sam Hinga Norman, Moinina Fofana and Allieu Kondewa from the CDF are in court custody. Three others Charles Taylor, Johnny Paul Koroma and Sam Bockarie, are being sought under international warrants. Bockarie is reported to have been killed in Liberia, but the indictment will remain open until the court can do a forensic identification to verify that the body is indeed that of the former RUF commander.

\(^{144}\) Charles Taylor has been offered exile by Nigeria following its indictment by the SCSL in June 2003.

\(^{145}\) Since the SCSL is not placed under Chapter VII. It is to be noted that in June 2003, the President of Sierra Leone's Special Court, Justice Geoffrey Robertson, wrote a letter to United Nations Secretary-General Kofi Annan asking for a Security Council resolution which would give the court Chapter VII authority [http://www.un.org/aboutun/charter/chapter7.htm](http://www.un.org/aboutun/charter/chapter7.htm) under the United Nations charter.

http://www.sierra-leone.org/slnews0603.html
A Victim-Oriented Process and the Influence of the ICC Process

Indeed, the discourse in relation to the fight against impunity is to be understood in the larger spectrum of the unprecedented place given to victims of crimes long reprehended by the Geneva Conventions, in particular. In fact one sees the victim as central to the discourse of transitional justice in connection with reconciliation and social reconstruction. As noted by Michael Humphrey, the victims are sacrificed by the community on the altar of reconciliation after having been the vector of the transition both in terms of justice and reconciliation.

“In tribunals ‘truth’ is established through the credibility of the performance of the victim in telling their story and the empathy witness feels. Testimonies to suffering before tribunals are not aimed at securing justice but at constructing the victim as the foundation for moral and social reconstruction”.

One can find the sacrificial nature of the victim in the justice and reconciliation process well expressed by Cobb (1997:406):

“Persons must mark themselves as victims which in turn exclude them from the very communities that are brought forth through their own sacrifice. Testimony reveals the truth about individual experience of violence but it also ritually repositions the speaker as victim. Violence stories construct the self as victim, and public witnessing produces the victim as a sacrificial category in order to reconstitute social relations”.

Incidentally the most peculiar feature of transitional justice is its intertwined connection with ‘reconciliation’ and ‘social repair/reconstruction’. Yet the definition of social reconstruction appears quite unclear and confusing, as its large referent base is likely to be confronted with the pitfalls of encompassing nearly every possible field. Notwithstanding, one can note that the notion of national reconciliation has been clearly

146 Humphrey, Michael, Politics of Atrocity and Reconciliation: From Terror to Trauma (Routledge Studies in Social and Political Thought), Routledge May 2002, p. 107
147 as quoted by Humphrey (2002:107)
connected to international justice through its inclusion in international tribunal statutes, such as the ICTR’s\textsuperscript{148}, thus making Sierra Leone a new benchmark in the given exercise.

Nevertheless, this centrality of the victim in the process carries itself some danger as the \textit{feeling of being a victim} is widely shared in a post-conflict context, including by those who end up being the one to be put on trial as ‘the most responsible ones’. We tackle here again the political nature of justice and reconciliation in post-conflict settings. As noted by Former President of the ICTY, Gabrielle Kirk McDonald:

\begin{quote}
“First of all, we are a political court. We were established by the Security Council and that makes us political because the Security Council is a political body. And as President, I have acknowledged that. That does not mean that we act in a political way. The judges are independent.”\textsuperscript{149}
\end{quote}

The distinction between politics and independence is to be included in the larger scope of the "fight against impunity’ and the “promotion of accountability” locus. Yet, if victims are placed at the center of the discourse, the question remains regarding whom those processes are really accountable to. Incidentally, the political dimension of the process is again brought at the forefront and can also be appreciated in the emphasis on the term, and the quantifiable end of it, in the discourse regarding peace and reconciliation. Sierra Leone proves to be particularly concerned by this insistence on a term/end to be delivered.

\textbf{The Issue of the Notion of Term in Both Justice and Reconciliation}

First, a comment can be made on the notion of term in the understood perspective for peace and reconciliation in post-conflict societies. Indeed, while the complexity of the situation is widely admitted, and can hardly be forgotten in facing the processes’ reality

\begin{itemize}
\item \textsuperscript{148} See the ICTR statute and its preamble at: http://www.un.org/ictr/statute.html (last accessed on May 25, 2003) The Security Council, convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.
\end{itemize}
on the ground, the notion of a closure in the form of a final product to be delivered has been repeatedly underlined. Nonetheless an inconsistency exists in the portrayal of the justice and reconciliation as processes with an end, when in fact the determination of this given termination remains a major undefined issue.

Indeed, despite the different forms of discourse, one can identify some recurrent elements with diverse meaning and hierarchy of priority, varying upon the identity and agenda of the given interlocutor. The given discourse includes notions such as: “restorative/redistributive justice”, “forgiveness/reconciliation”, “forgive not forget”, “accountability”, “fight against impunity”, “closure”, “impartial historical record”, “reparation”, “reintegration”, “repair”. As an illustration one can call on the ICTY precedent and the UN Legal Counsel and Under-Secretary General for Legal Affairs Carl-August Fleichhauer who stated:

“These three important goals [ending war crimes, holding perpetrators accountable and breaking the cycle of ethnic violence and retribution] are intertwined in the fundamental reason for the establishment of this Tribunal . ..”

Yet an even greater focus/importance is given to this term perspective through the strategy of privileging criminal trials as the centerpiece of social repair.

**Criminal Trials as the Centerpiece of Social Repair**

“While transitional justice scholars recognize that judicial and truth-seeking mechanisms constitute one important component of the response to mass violence, events of the last decade suggest that many diplomats and human rights advocates conceive international criminal trials as the centerpiece of social repair”.

The criminalization of IL (developed in Part I.) has resulted in the redefinition of the dynamics of social repair in post-conflict societies, as viewed by the international community, around international criminal trials.

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151 Fletcher and Weinstein (2002: ???)
As noted by Laurel E. Fletcher and Harvey M. Weinstein (2002), “social reconstruction” has become part of international tribunals’ mandate. For instance, the statute of the ICTR explicitly states that through criminal trials the court: “would contribute to the process of national reconciliation”. Nonetheless, and as it is found in Sierra Leone, little attention has been paid to the follow-up of the expectations instilled by criminal trials conducted under the auspices of international tribunals. Indeed, while the discourse of international tribunals has emphasized the role of criminal prosecution in national reconciliation and the fight against impunity, the selective process of prosecution and the limited results achieved by both tribunals may have easily led to the crystallization of some resentment towards the international community.

In the absence of an agreed definition of reconciliation or social reconstruction, and even less on how to achieve it, it is widely recognized that the given stage is of a fragile alchemy. Thus, while precautions need to be taken on how to trigger it, most likely by different means and ways, it seems important to call for attention regarding the implementation and follow-up of the given process.

This evolution is also reflected in the statute of the International Criminal Court (ICC), which links prosecution of grave crimes with “peace, security and well-being of the world”, in general and to ending impunity for and ensuring prevention of such crimes. Yet, the limited outcome achieved by both the ICTY and the ICTR is certainly an expression of the limits faced by both institutions in their large scope and far-reaching mandate, as in placing criminal trials at the centerpiece of the process of “social repair, reconstruction and reconciliation”, such a confrontation between high expectations and

limited results blurred by an imprecise focus ended up undermining the overall effort and strategy.

Thus, if the “judicial process is essential for reconciliation to begin”, as noted by the former ICTY prosecutor Richard Goldstone,154 the given process can’t be expected to bring reconciliation in itself, being at best a trigger to a larger process that requires addressing the roots of the conflict. We can quote here again Gabrielle Kirk McDonald, former President of the ICTY stating that:

“[T]hrough this process, it is our hope that we will deter the future commission of crimes and lay the groundwork for reconciliation. I do not expect the Tribunal to . . . somehow magically create reconciliation, but at least we can lay the groundwork.”155

On the Role of Negotiated Settlement in Transitional Justice and Reconciliation

Negotiated settlements such as the one signed in Sierra Leone are a common form of peace deal from which countries attempt to trigger post-conflict transition. In spite of the publicized attention paid to international legal standards156, which has led for instance to the withdrawal of the United Nations from the negotiation with the Cambodian government over the establishment of a Special Tribunal157, the given negotiated nature reflects the trade-off necessary to achieve the result.

Incidentally, the negotiated nature of the settlement is key to understand the expansion experienced by the field of transitional justice in recent years. Here again the political nature of the transition is clearly perceptible. On that regard, one should here emphasize

156 As in the case of the signature of the Lomé Peace Agreement with the previously mentioned reserve regarding amnesty to former combatants.
157 now resumed and which have led to the redefinition of the given instance as 'mixed courts'. The definition of this hybrid court has undoubtedly been influenced by the relative success of the SCSL in setting up the Court. Yet the 'mixed courts' unlike the SCSL, will be Cambodian led with international judges sitting as well. For further information see: Global Policy page on Cambodia at: http://www.globalpolicy.org/intljustice/camiindx.htm (last accessed September 5, 2003)
the ambiguous nature of the link between negotiated settlement, i.e. peace made with criminals, and transitional justice, i.e. not yet justice (?) as privileging the ‘most responsible ones’.

The Special Court of Sierra Leone (SCSL) represents a new step which outcome will be determinant to its posterity as an option for post-conflict countries facing the challenge of addressing troubled war legacy and justice outcry. Here again the ‘negotiated’ nature echoes the limited capacity of the given instances, both in the case of the SCSL and the TRC. This is notably the case in terms of funding\textsuperscript{158}, although some latitude to the ‘human component’ of that process exists, namely as the Prosecutor David Crane in the case of the SCSL, while one recognizes the size of the task he has live up to.

**Role and Place of Truth and Reconciliation Commission in the Evolution of Transitional Justice**

While TRC will be further developed in part c. and in part III., it should be said here that the concomitant development of TRC in Latin America and South Africa has opened a new dimension to Transitional Justice\textsuperscript{159}. Indeed, there is little debate on the fact that South Africa represents a crucial experience, which is notably important in the case of Sierra Leone. In this case, the given experience has been taken more as a model in spite of a radically different context expect for the location of the SA TRC on the same continent…

“The project of national reconciliation pursued by truth commissions addresses suffering as both a product of state violence and a culturally constructed experience to (re)create moral national communities.\textsuperscript{160} Individual suffering is the fulcrum used to convert the effect of repression into a vehicle for social reconstruction. (...) The idea of reconciliation is politically focused on the social recovery of the victim with the purpose of reconstituting the national whole. The threshold of moral vision is adjusted by recognizing the victims in the testimony

\textsuperscript{158} This is in itself an expression of the international community political commitment.

\textsuperscript{159} See Strategic Choices in the Design of Truth Commission at: www.truthcommission.org (last accessed September 5, 2003)

\textsuperscript{160} Das 1996, quoted by Humphrey 2002 (see note infra)
of their suffering. Truth Commissions seek to invert the state politics of pain by shifting the focus from terror to trauma. With pain as their fulcrum they seek to objectify and institutionalize truth claims through the testimony of victims. Indeed, the TRC intends to address the legacy of suffering and violence through individual testimony in the construction of a record which aims at bringing the truth in opposition to a lenient and accommodating ‘official memory/history’. The power of the words voiced in TRC’s setting is not legal but empathetic, a subjectivity that needs to be acknowledged in addition to the previously mentioned limitations to this approach which tends to axiomatically rely on its therapeutic postulates. Here again, the SL TRC will bring a new dimension to the development of this type of post-conflict strategy.

**B. The IC Agenda V. /and Population’s Needs**

Sierra Leone’s challenges of peace, justice and reconciliation intervene at a crossroads in the evolution of the conception and strategies in those respective and intertwined (at least see as such) realms. While justice in post-conflict has been largely submitted to the persistence of amnesty as a needed compromise to achieve peace and security, or at least perceived as such, its assertion has largely been dependent on the political will of the International Community (IC) to trigger it and grant the means for it to come to reality. As such, the IC agenda has largely occupied the place of post-conflict justice, soon investing the reconciliation realm through the development of a concomitant type of approach of both challenges, following the experience of the ICTY and ICTR. Yet, the limited outcome achieved by the respective institutions calls into question the adequacy of the given strategies to the population needs and realities.

**International Civil Society Vs. / With National Civil Society?**

While the use of the notion of civil society can induce one to take such a notion as technical and well-defined, it is important to underline here the absence of such a

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161 Foucault 1979, quoted by Humphrey 2002
162 Humphrey (2002: 106)
consensus, when the reality of its dynamic remains under construction\textsuperscript{164}, the case of Sierra Leone being on that respect notably complex. Yet, such a notion needs to be identified as initiatives such as the World Bank PRSP (Poverty Reduction Strategy Paper)\textsuperscript{165} do refer to the notion of ‘civil society’, calling for its consultation and participation.

This notion is also widely used in the realm of reconciliation and justice due to its rather voluntary-type of nature, emphasizing on ‘consensus in diversity’. In fact, ‘civil society’ as a broad notion appears to be the intercessor between the side of the IC, who eagerly would like to see itself portrayed under a more humanist/neutral/technical light, and the local/national side looking to be seen as cohesive, collaborative and overall legitimate in order to attract funding and attention.

This element is crucial to understand the interactions taking place between the respective dimensions and to assess their influence on the choices eventually made in the fields of justice and reconciliation. This influence will be further discussed below with regard to the legal paradigm dominating the post-conflict justice discourse.

As for the local civil society, it is faced with the challenge of being credited as a legitimate, trusted and incorporated party and partner. Additionally, it has to navigate through the IC nebula which encompasses radically different positions, approaches and interests, a first clue at the overwhelming agenda proposed to post-conflict countries. One can note that such a sudden attention tends to contrasts with the lack of coverage and


\textsuperscript{165} See IMF and IDA Joint Staff Assessment and PRSP on Sierra Leone, July 16, 2001 available at: http://poverty.worldbank.org/files/Sierra_Leone_JSA_of_PRSP.PDF (last accessed on May 18, 2003)


focus received previously by the given country, Sierra Leone being no exception to this irony.

Accordingly, it comes as no surprise that the relations between the IC, the given government, and civil society can range from the submission of the second one to the first one if only in order to attract funding to the defiance and distrust of competitive actors. Indeed, as a result of the initial ‘providential assistance’\(^\text{166}\) taking place in the upsurge of hope for change born out of the transition to post-conflict, the confrontation and the development of a disparaging mentality echoing the gap between the community needs and the IC agenda is a rather common feature of the dynamics between the two sides. The given situations can both be found in Sierra Leone and is also reflected in the division between Freetown and its provinces.

Indeed, while such a division could appear as an oversimplification\(^\text{167}\), undoubtedly the war has widened the gap between Freetown and the provinces, the capital having been relatively protected from the conflict until quite late\(^\text{168}\), thus adding to the different perspective that can be heard in terms of the possibility for peace, justice and reconciliation to happen in Sierra Leone. Indeed, while the discourse heard in Freetown on those respective issues appears to be quite in tune with the discourse that the IC could be expecting and would like to be hearing, chanting on ‘forgiving but not forgetting’ or on the need for reconciliation to take place, the provinces were sending back quite a different message beyond the similar yearning for peace.

Back in the provinces the local communities appeared to be much more skeptical of the capacity of the IC publicized agenda to achieve peace, justice and reconciliation for them and Sierra Leone. Indeed, those communities founded their posture in putting the present situation in the larger context of the duration of the conflict, the deception it had brought

\(^{166}\) An interesting parallel could be drawn with the analysis developed by Raoul Girardet regarding the ‘providential man’ in. Mythes et Mythologies Politiques, Points-Histoire, 1990

\(^{167}\) An extensive literature on the relation between the rural and the urban can be found in African studies literature, for further analysis see: Mamdani, Mahmood, Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism, Princeton Paperbacks, 1996.

\(^{168}\) See the documentary "Cry Freetown" (1999) by Sorious Samura. More information on the documentary can be found at: http://www.cryfreetown.org/ (last accessed September 5, 2003)
in terms of broken peace deals, and of the persistent turmoil in the region, if only for Liberia. Besides, the argument of ‘a different band playing the same music’ was a common argument emphasizing the lack of attention and concrete measures put into addressing the roots causes of the conflict. Moreover, it should be noted that politics do play an important role on those issues, and while the conflict in Sierra Leone was not of ethnic nature, the political parties in the given country very much follow ethnic lines.

The IC Agenda and the Legal Paradigm

‘Commitment’ is undoubtedly at the ‘heart of the matter’ for Sierra Leone as so much has been undertaken in recent months that one can question the coherence of the global strategy, as well as its enactment in reality, with an IC reduced focus on SL and rampant unaddressed roots of the conflict. Here again the legal paradigm that we are going to further develop here, has been the stage of a recent oversimplification of the history of the conflict that has torn apart Sierra Leone, as well as of the post-conflict strategy needed to secure peace and security for the country and overall of West Africa.

Indeed, with the indictment of Charles Taylor on June 3rd 2003, the long unaddressed influence of the President of Liberia became portrayed as THE factor responsible for West Africa’s instability over the last ten years, his indictment been thus presented as the needed answer to bring peace and security to West Africa. While one cannot underline enough the importance of Charles Taylor in the wars that have torn apart the region, it is certainly quite a stretch of mind, not to talk of hypocrisy, to portray him as the sole factor and last obstacle in order to achieve peace and reconciliation in Sierra Leone and in West Africa, no matter how seductive such a strategy can appear to the IC. After ‘blood diamonds’ and other catch phrases, Taylor has become the focus of the attention, a

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169 The IC Legal Paradigm for Post-Conflict Society:
1. Discovering and publicizing the Truth
2. Punishing perpetrators
3. Responding to the needs of the victims
4. Promoting the rule of law
5. Promoting reconciliation
situation reinforced by Foday Sankoh’s death\textsuperscript{170}, alienating an important dimension of the symbolic-cathartic dimension of the strategy deployed in terms of peace, justice and reconciliation.

The legal paradigm\textsuperscript{171} at the heart of the post-conflict agenda promoted by the IC is made of 5 different levels accepted as concomitant where they used to be considered as progressive steps. Yet, this paradigm is not only largely still in formation but also mostly based on axioms that have been formulated in a very different context. Besides, the unfolding of this paradigm’s benefits remains to be proven. At any rate, one needs to emphasize the importance to acknowledge the subtle alchemy for justice and reconciliation to be achieved, as well of on the uncertainty of such goals to be ever reached, perceptions, resilience and perspectives of development playing here crucial roles in avoiding a reversion into war\textsuperscript{172}.

Also, the validity of the given legal paradigm is seriously under question when one looks into the scope and size of the strategy undertaken. Indeed, while this paradigm is presented as some sort of neutral reference, some empirical wisdom brought to post-conflict countries, its political nature appears quite easily once the surface of the legal discourse is slightly scratched.

Besides, the important reliance of the paradigm on symbolism, example and visibility requires, in order to be efficient as a mean to trigger and achieve justice and reconciliation, to secure not only the population’s consent and participation but also the sincerity of the global commitment from the government to the former combatants participating to unravel the \textit{Truth}. Yet, we are touching here two delicate constituents of

\textsuperscript{170} Though the medical decision was not yet been taken when Sankoh’s died on July 30\textsuperscript{th}, it was the writer’s experience at the RUF national trial, that little doubt existed on the reality of Sankoh’s mental condition. It is said that Sankoh’s psychiatrist has diagnosed the leader’s insanity as early as 1996. At any rate, little could have been expected if the trial had gone due Sankoh’s condition, no matter how much symbolism in the fight against impunity was coming into play.

\textsuperscript{171} For a thorough analysis of this paradigm see Fletcher and Wenstein (2002)

\textsuperscript{172} One can note on that respect that according to a recent study conducted by Paul Collier under the auspices of the World Bank estimates that a typical country reaching the end of a civil war faces around 44% risk of returning to conflict within the next 5 years. Moreover, the study gives the percentage of 50% of newly peaceful countries reverting into war within a decade. The study is available on the World Bank website at: http://econ.worldbank.org/prr/CivilWarPRR/ (last accessed on July 16, 2003)
the dynamics in the challenge of peace, justice and reconciliation, with good faith and sincerity and remorse.

**Social Reconstruction: From Remorse to Reconciliation**

Indeed, if good faith and sincerity appear to be crucial to secure peace as developed earlier with the case of Foday Sankoh and the Lomé Peace Agreement, it is also quite clear that such an element plays a central role in the politics of justice and reconciliation. Yet, if this element is hard to assess and secure, it should not lead to a wishful thinking from the IC and the government. Indeed, the denial of such a reality would result in discrediting the entire enterprise and possibly leading to counterproductive and destabilizing manipulations. This is where the *apology* comes as the cornerstone of reconciliation. Yet as noted by Elizabeth Spelman:

“A genuine apology (…) involves a rather raw exposure of the apologizer: Having done the deeds, one now not only reiterates having done it, but strips away any suggestion that there are extenuating circumstances that could relieve one of blame; it must be clear that he regrets what he has done and feels sorrow over what he has wrought. He doesn’t just wish that things were otherwise; he fully acknowledges his role in bringing them to this sorry state. (…) In short, sincere apology is deeply personal, both in bringing attention to one’s person – mea culpa – and in laying bare one’s emotions. It is revelatory of significant beliefs and commitments, announcing one’s investment in the rule by which our relationships with other are governed, and acknowledging that I and those I’ve harmed are joint members of the community governed by such rules. To apologize to someone is to say that there is harm worth attending to, a relationship worth mending, a rule worth honoring, a community worth preserving”.

Incidentally, the issue of remorse and resentment encompasses several challenges typical of post civil conflict settings where truth can only achieve so much and needs to be

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173 Spelman (2002: 83)
echoed by remorse and repentance in a realm where the victim status is so widely claimed that it is threatened of being trivialized.

Additionally,

“Once the apology is proffered, the spotlight turns on the one to whom it is addressed. Will [the victim] give up her resentment? Even in the absence of an apology, there is likely to be great pressure to give up resentment. As Jean Améry\(^\text{174}\) learned while trying to figure out how to recover from his treatment at the hands of the Nazi soldiers and their sympathizers, there may well be attempts to shame one out of resentment, insinuation that people who hold on to resentment are either emotionally unhealthy – suffering from “concentration syndrome” – or morally small – harboring pathetic and unrealistic visions of revenge. They are charged with refusing to let time heal their wounds, with holding so tightly their resentment that they are unable or unwilling to do their share of the continuous repair work that makes society possible.”\(^\text{175}\)

It should be noted that:

“The scene of apology, then, is by its very nature emotionally charged. It is impossible in the absence of sorrow and remorse in the one who apologizes. At the same time, apology presupposes hurt and resentment in its recipient and is incomplete in the absence of some emotional change in her as a result of the apologizer’s admission of guilt and expression of sincere regret.”\(^\text{176}\)

Moreover, Langer insists on the fact that the ruins that are the survivors’ memories are still-festering injuries, not yet and not likely to be sealed by healing scar tissue: “A scar is a reminder of a curable condition, a past injury healed in the present. What we are rally speaking of…is festering wound, a blighted convalescence.”\(^\text{177}\)

\(^{174}\) Améry, Jean, At the Mind’s Limits: Contemplations by a Survivor of Auschwitz and Its Realities, Schocken Books, New York 1986, p.62-81

\(^{175}\) Spelman (2002: 87)

\(^{176}\) Spelman (2002: 87)

The pitfalls and consequences of such an absence of remorse appear quite clearly in this context and show the perverseness of a process that promotes reconciliation and justice and yet can lead to either or both the delegitimization and re-victimization of the victims of those crimes (1) as well as to the expansion and confirmation of the widespread feeling for the accused to be themselves victims, *de-responsibilizing* them from the crimes they have committed (2). A parallel with the challenge faced in post-genocide Rwanda can be drawn here.

Such a demonstration calls on the IC and the GoSL to display the utmost prudence on this question unlike South Africa, which TRC was proven to be not only quite a legal challenge to the South African law$^{178}$ but also very daunting for the victims and their family. Additionally the SL TRC, unlike the SA TRC, has already seen amnesty granted through the Lomé Peace Accords, increasing the pressure on the issues of victim status, remorse and reconciliation, in parallel to the justice process taking place with the SCSL for ‘the most responsible ones’.

Thus this demonstration shows the political dimension of the status of victim, as well as the importance of remorse and personal commitment from the parties, that will be further developed in the next part, calling on both the IC and the country’s government to acknowledge this dimension and include it more constructively within the post-conflict justice and reconciliation agenda as it is key to the population needs to truly move on ‘forgiving but not forgetting’.

On that respect one can refer to the interview Study of Bosnian Judges and Prosecutors conducted on Justice, Accountability and Social Reconstruction, aiming to

> “Study (...) the attitudes of judges and prosecutors in Bosnia [towards] war crimes trials and their views on the efficacy of domestic and international trials in social reconstruction. One of the most striking findings of the study was that universally individuals identified their national group as *victims*. Respondent

adhered to the principle of individual accountability and rejected the concept of collective guilt. They looked to war crimes trials to reaffirm the victimization of their own national group. There was no evidence that respondents acknowledged that war crimes were committed in their name.”\textsuperscript{179}

This finding echoes in a painful way the Sisyphus-type of reenactment of the issue of the victim status and responsibility tackled by Arendt and Jaspers regarding the Holocaust, crucial issues related and relayed by the challenges of sincerity and remorse.

Elizabeth Spelman calls our attention on the fact that:

“Apology is more about the wrongdoer than it is about the wrong done and the person to whom the wrong was done. After all, there are means independent of all apology for establishing that someone has been injured; indeed there has to be, in order to decided whether there is nothing to apologize for (some deeds are just too morally grotesque to allow for apology) [ She adds that ]Once it has been offered, an acknowledgment of wrongdoing has been given, and neither the victim nor any other agents of justice needs to spend time rehearsing the harms that have been done or trying to pry a confession out of the wrongdoer.”\textsuperscript{180}

This remark underlines the intricate relation between justice and reconciliation in the post-conflict agenda, as unlike professed, both processed present very different modes of operation and logic, in particular from the victims’ perspective.

Indeed, while the IC emphasizes its agenda on reconciliation, only a minor attention has been given to the depth and sincerity of this reconciliation and reconstruction process, an objective much more difficult and uncertain to achieve, and politically of little rewards. Yet, remorse as forgiveness and reconciliation are first and foremost acts of personal conscience and will, and while no strategy can dictate them, better consideration of their importance needs to be achieved at the political and executive levels. Due to its individual and intangible nature this cornerstone dimension is unfortunately ruled out at

\textsuperscript{179} Cited by Fletcher and Weinstein (2002: 581)
\textsuperscript{180} Spelman (2002: 96)
an early stage by both the IC and the country’s parties to the setting of the agenda at the national and local level. This dimension will be here developed through the need, challenges and tension of the ‘urge to repair’ and its implication for justice and reconciliation.

C. Repair: From the Urge “to Restore a Fragile World” to the Debate on Restorative Justice and its Implication for Justice and Reconciliation in Post-Conflict Societies

The association of the rhetoric of Justice and Reconciliation has to be understood in the larger context of the urge for repair which appears to be so crucially entrenched in the approach and philosophy founding the IC’s strategy, also shaping the post-conflict communities’ responses. Indeed, as we will see in this part, repair appears to be at the cornerstone of the post-conflict agenda, though questions on the nature and modalities of what is attempted to be restored are less heard and encouraged.

Again, the political nature of the agenda finds in the notion of ‘repair’ a welcomed positiveness and a pro-activity. Yet, the vagueness of the notion also unleashes a profusion of interpretations of what is actually encompassed and the goal towards which all the given efforts should be aiming at and coherent with.

In Sierra Leone as in previous post-conflict settings, one is faced with the case of a discourse organized around the logic of ‘repair’, be it under the word of reconstruction and/or reconciliation, formulated over a rather tenuous knowledge of the stage in which it is supposed to be taking place. Thus, a tangible risk of inducing the ‘restoration’ of a misperceived reality is to be added to the political nature of the given exercise, as well as to the attempt to induce change. Incidentally, this dimension’s articulation with the previous one appears to be fluctuating and rather blurry, for fear of being criticized under neo-colonialist whiffs as the case may be.
More than often an idealized ‘state of Eden’ is being presented, emphasizing on harmony for instance, ignoring the more complex reality that was already existing in before the conflict, and that eventually played a role in laying down and/or fueling the conflict, as in Sierra Leone, if only in terms of corruption and natural resources management.

As such, it is important to explore what one understands in terms of repair and the grounds for the urge to trigger it from a smaller scale to national/international justice and reconciliation.

**Repair: on the Urge to “Restore a Fragile World”**

As identified by Elizabeth Spelman,

“The Human Being is a repairing animal. Repair is ubiquitous, something we engage in everyday and in almost every dimensions of ours lives. Homo Sapiens is also Homo reparans.”

While she covers in her analysis a wide range of settings proving her point on the urge felt by humans to ‘repair’, echoing the need to secure one’s environment in an unstable world, the author takes it to the next level in applying it to justice and reconciliation. Indeed, she notes that:

“The English language is generously stocked with words for the many preoccupations and occupations of H. reparans: repair, restore, rehabilitate, renovate, reconcile, redeem, heal, fix and mend—and that’s the short list. Such a linguistic variety is not gratuitous. These are distinction that makes a difference.”

Yet this diversity seems to have been given little attention in qualifying and articulating the discourse regarding peace, justice and reconciliation in post-conflict Sierra Leone. This rhetoric situation carries the risk for unmet expectations, born out of the imprecision of idealistic goals, to nurture resentment and disengagement from the process both at the public-support level and on the personal path dimension. Additionally, the portrayal of

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182 Spelman (2002: 5)
the given processes as endowed with a final term is certainly another source of concern for anyone aware of the complexity of the given context.

Elizabeth Spelman brings an interesting reminder of the depth of the need for ‘repair’ in connection with our humanity. She notes that:

“We humans don’t just leave in a world of breakables; we are breakables, our bodies, our souls by their very nature subject to fracture and fissure. And we are social animals, our dependency upon each other given by the connections we find and forge among ourselves. These relationships are by their very nature subject to damage, dissolution, collapse – sometimes for the better and sometimes for the worse.” 183

The human specificity of the ‘urge to repair’ is crucial to be understood as indeed the accents of the questioning and shock to our humanity brought by the Holocaust, and later the Balkans and Rwandan conflict, have triggered the present approach of post-conflict justice and ‘reconciliation’. To some extent, one could see how the unease brought by those turning points, in the assessment of our humanity, can paradoxically result in the search for far-reaching and yet distance-keeping agendas and strategies. Indeed, their technicalities and highly idealistic tones reflect the need not only to repair but also to bring an answer, a solution to the unthinkable, in order to be able to live. The victim’s position is quite relevant and symbolic of this complexity as the voice of the suffering, vector’s of the supposed ‘healing’ through the truth uncovered by testimonies, and yet ultimately ‘sacrificed’ for representing so much this duty and obligation to remember the past.

Such an assessment is crucial to be remembered as beyond the repair’s ‘good intentions’ lays a long term complexity which could easily prove them not only foolish but also possibly hurtful from the global to the individual level, starting with the stigmatized victims. However, by no mean this observation implies the choice of a waiting-and-see and/or disengaging attitude from the IC or the national authorities, but rather calls for a

183 Spelman (2002: 50)
more global perspective of the issues at stake while not sacrificing the individual dimensions of the most vulnerable ones, that is to say to take with maximum precautions strategies implying, openly or not, a form of ‘creative destruction’\textsuperscript{184}. Indeed the objective uncertainty of the identified goals makes it quite dangerous and questionable to ‘sacrifice’ some to ‘save’ the majority through a supposed \textit{repair}.

\textbf{Individual Victims, Accounts of Trauma and the Issue of Healing: Repair in Question…}

While the field of post-conflict justice and reconciliation is often presented as recent, and to a large extent rightfully is, this presentation also echoes the selective approach of past ‘experiences’ which limited or negative outcome do not incite endorsement. Thus, while the Holocaust and the Nuremberg trials serve as a reference in the field of international and post-conflict justice and reconciliation, some of their long-term lessons have received much less attention although their teaching calls for a radical rethinking of the given approaches.

As usefully noted by Elizabeth Spelman:

“(…) Some scholars of the Holocaust survivor testimonies insist that we seriously misread those accounts if we take their point to be some kind of healing or repair:

“All attempts to investigate the effects of atrocity on a group a community must begin with the narratives of individual victims…which mock the very idea of that traumas can be healed”\textsuperscript{185v, 186}

Although we touched on this idea in previous parts of the present analysis, and will further return to this issue in part III., one cannot underline enough the need to remain conscious of the axiomatic nature of the paradigm of post-conflict justice and reconciliation. This paradigm is presented with scientific tones to distressed population

\textsuperscript{184} Referring here to the concept developed by Joseph Alois Schumpeter and applied to economics. The term "creative destruction" was coined in 1942 by Joseph Schumpeter in his work, Capitalism, Socialism and Democracy, to denote a "process of industrial mutation that incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one."


\textsuperscript{186} Spelman (2002: 7)
and countries maybe not so much concerned with those issues but much more with retaining the IC’s attention on their plight, willing, in order to secure this support, to adopt a low profile posture. Such dynamics can easily lead to forgetting the axiomatic grounds of the given theories and agendas, and the fact that they have not yet proven satisfactory. Nonetheless, they have at least been the illustration of the change and willingness of the IC to tackle the long unaddressed impunity following civil conflict’s legacies.

This element brings us to question the real place of victims and criminals in the post-conflict society beyond their limited exposure to either (if any) of the TRC or the SCSL. Indeed, from the strategies adopted by both sides, it appears quite clearly that they are well aware of most of the dynamics coming into play and that their capacity to mobilize the attention on their needs is rather limited, hence their respective attempts to leverage their media-appealing assets, the disruptive fashion (including the threat of it) being by far the most capable to achieve a result.

Such a situation was well illustrated in the case of Sierra Leone from ex-combatants to victims. Having previously touched on the ex-coms attempts to bargain their support to the post-conflict transition, one finds quite important to acknowledge similar strategies on the side of the ‘victims’. In particular, the war amputees have adopted a firm stance in literally threatening not to testify or participate to the TRC and SCSL proceedings if they were not given insurance that they would be indemnified.\(^{187}\) They eventually renounced to this bargain approach of their testimony, largely turned down by the pressure from the respective figures of the justice and reconciliation process from the SCSL prosecutor to the TRC chairman, through an emphasis on the importance of their participation to the global enterprise as well as on the symbolic coining dimension.

However, such a solution do not bring any answer to the latent imprecision of the nature of post-conflict justice, a nature largely connected to the ‘repair’ function conceived as an

integral part of the post-conflict justice agenda, though no consensus seems to exist on this issue. This comment calls for further developments on the role played by ‘restorative justice’ in the definition of post-conflict justice agendas, in particular. One should note the risk that can rise from the confusion over the financial retribution of the process, in terms of compensations for instance, a crucial importance for the population of those post-conflict countries plagued by poverty, incidentally one of the principal causes of reversion into war\textsuperscript{188} …

\textbf{On the Role of Restorative Justice in the Post-Conflict Agenda}

If one looks for a place where justice and repair are intertwined from their very conception, ‘restorative justice’ certainly is the direction into which one should direct his attention. Indeed, as pointed out by Elizabeth Spelman:

\begin{quote}
“‘Restorative Justice’ isn’t only about fixing the flaws and making up for the imperfections in existing legal institutions; it’s about putting the repair of victims, offenders and the communities of which they are part at the center of justice.”\textsuperscript{189}
\end{quote}

Restorative is thus conceived as part of a global agenda at the convergence of peace, justice and reconciliation, with tones ranging from publicized \textit{neutrality} to echoes of idealism. For ‘Restorative Justice’ advocates/activists,

\begin{quote}
“Restorative Justice asks: who has been harmed; and how the offender, community and criminal justice system can help repair the harm”\textsuperscript{190}
\end{quote}

Yet if the question appears quite valuable, one cannot be misguided by its limited application in reality, which contrasts sharply with its originally publicized extent.

In current legal scholarship the restorative movement is described as “based on a set of values that promotes healing, repairing harm, caring, and rebuilding relationships among the victim, and offender, and the community.”\textsuperscript{191} Such an approach is largely inspired and

\begin{flushright}
\textsuperscript{188} See. Collier
\textsuperscript{189} Spelman (2002: 51)
\textsuperscript{190} Lerman, David, “Restoring Justice”, Tikkun, September/ October 1999, p.13
\end{flushright}
has benefited from the experience led in South Africa through the TRC. Indeed, one can note that the SA TRC goals were described as:

“The taking of measures aimed at granting of reparations to, and the rehabilitation and the restoration of the human and civil dignity of victims of violations of human rights”.

Several years after the end of the TRC’s work, if some results can be granted to the Commission, most of the goals have not be achieved at a satisfactory level, if at all. Yet, the rather peaceful transition remains an undeniable landmark on which most of the TRC’s strategies refer to, extrapolating their potential benefits.

Other works have led to developments such as those of the Australian criminologist John Braithwaite who crafted the word of “re-integrative shaming”. This notion means that:

“Offenders appear in the courtroom in the presence of significant community members who make clear their disapproval of the offender’s behavior but also shoulder responsibility for figuring out how the offender might be brought back into the fold of the community. Incarceration is treated as a last resort, to be used for hard-core violent offenders who must be incapacitated for the safety of the community, not as the principal means of punishment.”

Such experiment and research are not necessarily as new as they intend to be portrayed, but have the merit of pointing out the importance to take into account the peculiar form of justice, reconciliation and dispute resolution existing in the given post-conflict society.

Furthermore, restorative justice calls into question the place of the victim in the process:

“Proponents of restorative justice points out that the harm done to the victim is not necessarily repaired by the formal endorsement of the victim’s rights not to have been injured nor by the victim’s knowledge that the tormentor has been punished. While the harm are essential to the case brought by the representatives of the law against the offender, the law focuses on those harms only to the extent

192 Promotion of National Unity and Reconciliation Act, No. 34 of 1995 in. I 1995 JSRSA 2-385, Preamble P.I.
necessary to establish the guilt of the offender and the appropriate level of punishment to be meted out. There is not enough attention to the range of the injuries victims have endured or their own understanding and assessment of them (…)”. ¹⁹⁴

This assessment leads Elizabeth Spelman to point out that beyond failing the victim, the current criminal justice:

“Ignores important needs of the community. (…) Serious conflicts between and among members of the same community are rips and tears in the social fabric. They are not mended by the removal of the offender to some spot at the desolate edge or desolate dead center of the community, nor are they mended by the struggle of victims to tend to injuries that are seen as marking them at a separate form, rather than parts of, their communities by the turning over of crime to experts and professionals is a loss of a sense that the community can repair itself, can figure out how to deal with conflict by itself.”¹⁹⁵

Here again it should be kept in mind that a contradiction is more than often found between punishment and repair. Indeed,

“Punishment is aimed not at repairing the harm offenders did to the victims, nor at repairing offenders or their relationship to the victims and the community. Indeed, if anything, punishment seems geared to trying to break offenders and rupture their connection to the larger society – not just by putting up all manner of physical, social and emotional barriers, but by making offenders think that the only consequences of their acts they need to think about are the punitive consequences for themselves; offenders don’t have to confront the consequences for the victims and for their community.”¹⁹⁶

¹⁹⁴ Spelman (2002: 55)
¹⁹⁶ Spelman (2002: 56)
In this context, restorative justice has received a renewed interest and has become an integral part of the locus of transitional justice, though it appears that the given approach has been more the norm than the exception in the larger scope of legal systems history. Indeed,

“According to some legal historians, legal systems based on retributive justice are the anomaly across time and culture; restorative justice “has been the dominant model of criminal justice throughout most of human history for all the world’s people”.”

For example, Danielle Allen has argued that in classical Athens wrongdoing was seen as a kind of “communal disease”, and responses to it were expected to attend to disrupted relations among members of the community.

In legal systems based on the English model, the movement toward retributive justice did not begin until eleventh and twelfth century, and it wasn’t until the nineteenth century that the state, or the crown, had successfully arrogated to itself the authority and power to condemn and punish offenders. Until that time retribution was not the norm but resorted to with regret and only after conflict resolution within communities failed.

In many pre-colonial African societies it is said that offenders were dealt with much more along the lines of a restorative justice model: the aim of the proceedings was to help out victims and to restore harmony within the community. Here we find again the widely publicized notion of ubuntu which gained a new audience and attention in the context of the South African TRC (SA TRC). Indeed, in the case of the TRC:

“Justice was not associated with punishment but with ubuntu, an African concept (...) that focuses on an interconnectedness of people that makes harm to any harm to all.”

197 Llewellyn and Howse, “Restorative Justice”, 4, quoting John Braithwaite
199 Llewellyn and Howse, “Restorative Justice”, 8
200 Spelman (2002: 67)
201 Spelman (2002: 67)
While the notion of *ubuntu* is widely brought in the reconciliation and justice discourse, through a form of claim to instill *African* ownership in the process, Sierra Leone being no exception on that regard, the bias as to the extent to which one should call for consensus represents an underestimated risk. Indeed, as underlined by Elizabeth Spelman:

“There is, in short, anxiety in some quarters about whether the ready importation of the language of repair and restoration as a response to human conflict misleadingly invites us to think of democracies as things that ought to run smoothly, of groups within democracy as seamlessly joined together, of there being a social fabric the inevitable rips and tears to which should be quickly mended.”

In fact, disharmony, when dealt with peacefully, can ironically constitute a sign of *recovery*, a sign of the capacity of the community to deal with its differences.

“Reconciliation is an illiberal aim if it means expecting an entire society to subscribe to a single comprehensive moral perspective...In the democratic politics that the new South Africa seeks, a substantial degree of disharmony is not only inevitable but also desirable. It can be both a sign and a condition of a healthy democracy.”

Finally, It should be noted that no criminal system, no matter on how much it can be developed and experienced, would be capable of facing the sort of legacy that have to be dealt with by post-conflict countries, due to the scale and the nature of the atrocities committed and the challenge they mean for the very core of the fabric of the given societies. Speaking about the limitations of punitive justice in Rwanda, one of the TRC commissioners, Professor William Schabas, observes:

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202 A parallel can be drawn here with the Rwandan gacaca, which have eventually little to do with the traditional conception of gacaca, and was largely used by the Rwandan government as a way to assert its position in the confrontational context of its relationship with the ICTR and the issue of over-crowded prisons.

203 Spelman (2002: 75)


205 Spelman (2002: 75)
“It should be kept in mind that no judicial system anywhere in the world has been designed to cope with the requirements of prosecuting genocide. Criminal justice systems exist to deal with crimes on an individual level. They are unsuited for crimes committed by tens of thousands, and directed against hundreds of thousands...Even a prosperous country, with a sophisticated judicial system, would be required to seek special and innovative solutions to criminal law prosecutions on such scale.”

Such a comment also points into the direction of the importance of legal reform as part of the legacy to live on past the post-conflict transition. The issue of legacy will be further addressed in part III.

Ultimately, such a perspective calls for humility in our attempt to try ‘solve’ and bring answers to post-conflict countries. Moreover, this analysis emphasizes the importance for post-conflict countries to remain involved in the process of justice, peace and reconciliation and move away from being mere recipients. This posture also applies to the given population which participation from the personal to the community levels is decisive for justice, peace and maybe reconciliation to occur. Indeed, beyond the International Community’s search for answers to post-conflict countries facing the challenge of justice and reconciliation, and the government’s willingness to echoes those concerns in a donors’ fashion framework, justice and reconciliation are primarily left for the populations to make them into prospects of lasting peace, hence the concern of the present distance and limited interest expressed by Sierra Leonans towards the SCSL and the TRC.

III. The Hybrid Experience of Justice and Reconciliation in Sierra Leone: From the SCSL to the TRC and Beyond
In this section we will address the specificity of the choices made in the case of Sierra Leone to address the war legacy in the justice and reconciliation realms, from the international to the local level, and how they interlace in drawing on the lessons, questions and flags raised in part I. and II.

Sierra Leone finds itself in the unprecedented situation of having made the choice of an internationalized Court given with the mandate of judging the ‘most responsible ones’, the Special Court for Sierra Leone (part A.), as well as a Truth and Reconciliation Commission (part B.). Those objectives are:

- “Create an impartial historical record of violations and abuses of human rights and international humanitarian law;
- Address impunity;
- Respond to the needs of the victims;
- Promote healing and reconciliation;
- Prevent a repetition of the violations and abuses suffered.”

As a result of the scope of the crimes committed during the ten-years conflict, as well as due to the role played by amnesty in the peace settlement, an important part of the legacy is being left to the respective communities, emphasizing the importance of local processes of dispute resolution and reconciliation (part C.).

While an attempt to design a post-conflict agenda that would address the challenge of justice and reconciliation in a coherent, complementary and reinforcing mode has been envisioned, little of this idea has been yet implemented and experienced. This lack of coherence calls for a better understanding of the given instances and their respective dynamics, imperatives and capacities to achieve their publicized goals. This part is intended to decipher the realities of the post-conflict agenda institutions in demonstrating that much of their articulation remains to be defined. This definition has to be established

between them, in order to provide some solid grounds to the postulate of the concomitant approach to peace, justice and reconciliation, but also in the respective goals they can really be expected to achieve.

Incidentally, it is important to recognize that the definition of the post-conflict agenda in terms of justice and reconciliation depends on the portrayal of the conflict, from the perception to the understanding of its complexity\textsuperscript{207}. The very nature of conflict is of utmost importance to the transition to and process of peace, justice and reconciliation. For instance, Human Rights Watch notes that due to:

“The lack of ideological aspect and the limited ethnic dimension of the civil war in Sierra Leone and the all-perverseness of abuse, victims of human rights abuses, including survivors of sexual violence, generally feel free to talk openly about their experience”\textsuperscript{208}

This part does not intend on being exhaustive on the history of the conflict that has torn apart Sierra Leone as an extensive literature exists on the given subject\textsuperscript{209}. However some key facts are to be kept in mind in order to understand the size and nature of the challenge faced by Sierra Leone.

A. The Special Court for Sierra Leone (SCSL)

At the request of the Government of Sierra Leone, the United Nations proposed establishing an international court for prosecution of those most responsible for the commission of atrocities during the war. UN Security Council Resolution 1315, adopted on August 14, 2000, requested negotiations for creation of a court to prosecute “crimes against humanity, war crimes and other serious violations of international humanitarian law”\textsuperscript{210} and to try those “persons who bear the greatest responsibility”\textsuperscript{211} for these crimes.

\textsuperscript{207} See Annex 5 On the portrayal of civil conflicts
\textsuperscript{210} UN Security Council Resolution Occasional Paper Series, Lynne Reinner Publishers, 2001
\textsuperscript{211} available at: www.un.org/Docs/scres/2000/res1315e.pdf
The SCSL has primacy over Sierra Leone national courts, and is independent from any government. The SCSL cannot impose the death penalty, which is still in use in Sierra Leone resulting in a legal challenge previously experienced in the case of Rwanda and the International Criminal Tribunal for Rwanda (ICTR).

The SCSL: from the Sui Generis body to the Internationalized Alternative

In contrast with the previous experience of the ICTY and ICTR, the Special Court for Sierra Leone represents a new evolution of the international community approach to justice in post-conflict societies on several respects:

1. A Negotiated Agreement Nature: The Special Court is not an international tribunal to the extent that it was not created by a resolution from the Security Council, but by an Agreement between the United Nations and the Security Council;

2. A Hybrid Nature: the SCSL has jurisdiction over acts committed in violation of international humanitarian law as well as certain crimes under Sierra Leonan law.\(^2\)\(^1\)

3. A Limited Jurisdiction: the SC establishes the limited the jurisdiction of the Special Court to “those who bear the greatest responsibility”, a distinction that was not contained in the ICTY and ICTR Statutes. However it should be noted that both tribunals have also experienced institutional limits.\(^2\)\(^1\)\(^3\)

4. Funding: unlike the both UN tribunals, the SCSL budget is to be collected through voluntary contribution.

5. Extradition Issue: the SCSL is based on an Agreement between the United Nations and Sierra Leone. Unlike the ICTY and the ICTR, the SCSL cannot assert primacy over national courts of other states, thus limiting the Court’s capacity in

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212 See Statute of the Special Court of Sierra Leone. Available at www.un.org/Docs/sc/reports/2000/915e.pdf
terms of extradition. Such a situation is quite well exemplified in the context of both the cases of Charles Taylor and Johnny Paul Koroma.

6. Credibility: After Charles Taylor’s indictment by the SCSL many new questions have been raised on the SCSL capacity to handle its mandate and the high goals it has given itself.

Being the first Court of this nature, the SCSL is facing those additional challenges while still being expected to produce a result not only meeting its particular mandate, but also taking into account the criticisms that were addressed to the ICTY and ICTR.

While much excitement was born out of the creation of the SCSL, one must acknowledge that most of the positive aspects of the novelty were in fact contained in two points: ownership and cost-efficiency. Under the label ‘ownership’ one should understand the increased role played by the country in the process from its creation, localization, and jurisdiction. While those elements could have easily been tuned down given the incredulity that was surrounding this initiative, its cost-efficiency and limited liability in the context of the extensive criticisms that were made about the ICTR and ICTY, reinforced by the anti-ICC campaign led by the United States, won it quite a crucial support.

To be fair, the SCSL has proven already some of this critics wrong, though it has also raised some concerns, for instance in the case of the indictment of Charles Taylor and the opportunity of such a move during the Liberian peace talks held in Accra (Ghana).

**A Hybrid Composition of the SCSL for a Mixed Body**

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214 Notably because the SCSL is not placed under Chap VII of the UN Charter, but also because the increased role of Sierra Leone, through its Government and the participation of its judges. Such a situation also means a hands-off type of posture from the IC, with just enough control to assert the Court’s adequacy to international standards and its supposed ground-breaking nature.

215 For instance regarding the SCSL relations with the TRC.
The negotiated nature of the Agreement creating the SCSL is reflected on numerous aspect of the Court as for instance in its composition. Indeed the SCSL is composed of international and Sierra Leonans staff, prosecutors and judges.216

The appointment of those judges reflects the mixed nature of the SCSL, its *sui generis* and UN-sponsored nature. One can see in the indictment of Charles Taylor the wanted ownership of Sierra Leonans over the SCSL process in the respect of the law. For instance, Bankole Thompson of Sierra Leone was the judge to sign Charles Taylor’s warrant on March 7, 2003 (made public on June 5, 2003), a rather symbolic move considering Charles Taylor’s responsibility in the conflict in Sierra Leone.

It is to be noted that the recent nomination of SCSL appeal judge Hassan Jallow (Gambia) as the new ICTR Chief Prosecutor further indicates both the role of African judges in post-conflict justice jurisdiction in Africa, as well as the SCSL influence on international justice dynamics.217

**Jurisdiction of the SCSL and the Prosecutor**

While the jurisdiction of the SCSL seems to be opening some new possibilities for post-conflict countries to set up international (mixed) tribunals, many questions on the outcome of this new type of jurisdiction to address war crimes legacy remained unanswered.

The SCSL is to try ‘those who bear the greatest responsibility’ for the worst offenses committed since November 30, 1996, date of the signature of the Abidjan accords, the first peace accords to have been signed between the government and the RUF. Since the war has been going on since 1991, this choice to start the Court mandate in 1996 was decided so that the Court would not be overburdened. It is to be noted that neither the SCSL Statute nor the Agreement between the UN and the Government of Sierra Leone

217 See the nomination of former SCSL appeal judge Hassan Jallow (Gambia) as the new ICTR Chief Prosecutor on August 29th, 2003: http://news.bbc.co.uk/2/hi/africa/3190833.stm
address the question of the Court’s life span, thought concordant declarations from SCSL officials have publicized a time-frame of three years.

The Court has jurisdiction over acts committed in violation of international humanitarian law such as crimes against humanity, war crimes as well as other serious violations of international law, namely attacks against peacekeepers and conscription of children under age fifteen. Moreover, the SCSL’s jurisdiction comprises certain crimes under Sierra Leonan law like abuse of girls younger than fourteen and wanton destruction of property.218

While the Lomé Agreement offers amnesty to former combatants, excepting the case of violations of IHL and the given crimes under Sierra Leonan law, allegations of challenge of this Agreement by the Prosecutor of the SCSL, David Crane, have been heard. However, due to the SCSL limited capacities, if only financial, such an option appears rather unlikely, pinning down ‘the most responsible ones’ being enough of a Herculean challenge for the Court.

Additionally, the amnesty has been negotiated as a key to peace, and while Sankoh’s death combined to the RUF’s debacle at the May 2002 elections, largely dismiss the rebel group’s resurgence, most of the root causes that have led partisans to join, are still enough of a catalyst for it to mobilize if the given clause was to be put into question. One needs to keep in mind in that regard that the present stability and attention given cannot hide the long-term context of rampant poverty and limited perspectives for the population, former combatants included.

This issue highlights the crucial role played by the Prosecutor, presently David Crane (USA), which has proven pro-active beyond expectation and rather to the irritation of the United Nations. On two occasions, Charles Taylor’s indictment and the Bronthe prison219 compliance with international standards, the SCSL and UNAMSIL relations heightened notably and a whiff of suspicion has lingered on. Such a situation proves the complexity

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218 See Statute of the Special Court of Sierra Leone. Available at: www.un.org/Docs/sc/reports/2000/915e.pdf
219 On Sherbro Island, off the Southwestern Coast of Sierra Leone.
of the relation between the United Nations and the post-conflict institutions when the latter ones are not reporting to the Security Council and yet maintain an inextricable link with the UN. In addition, the issue is also the one of the capacity of mixed tribunals to indeed meet international standards given their limited legal and financial capacities.

The Budget Issue or the Price of Justice in Post-Conflict Societies?

The funding of the Court is realized through voluntary contributions\(^220\) in spite of the Secretary General’s calls for a budget funded by the UN.\(^221\) Indeed, this mechanism is problematic, and differs drastically from the position of most of the countries at the Rome conference on the methods of financing. An important reliance on donors might result in the endangerment of the Court’s independence. Besides, voluntary funding is very much likely to burden the running of the Court.\(^222\) Incidentally, the Security Council itself has recognized the guarantees to secure funding are nonexistent.\(^223\) One can note that the previous experience of the ICTY on that respect appears to be more than relevant to the present situation in Sierra Leone.\(^224\)

The ICTY and ICTR experiences, while founding for the field of post-conflict justice, appears to have made the international community rather reluctant to establish such mechanisms in other countries dealing with justice issues after a civil conflict. This opposition to the creation of international tribunals often refers to the contested efficiency of both jurisdictions, but has in reality much more to do with cost-related concerns, as illustrated by the comments of America’s ambassador at large for War Crimes, Pierre-

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\(^220\) UN Security Council Resolution 1315 8(c)
\(^221\) Report of the Security Council Mission to Sierra Leone (S/2000/992), para. 71. This is also the wish of the Government of Sierra Leone, para. 48
\(^222\) Even before the setting of the SCSL The Secretary-General required 12 months of financing available, as well as pledges for the second year, Letter p. 2. The UN Secretariat Office of Legal Affairs has estimated that the Special Court’s budget for the first three years will be about $57 million of which some $16.8 million will be required for the first year of operation. At the end of November 2001, the UN had received contributions for $14.8 million for the Court’s first year. It had only received pledges for some $20.4 million for the next two years. Nevertheless, the decision was eventually taken to start the SCSL without the full commitment from donors initially wanted.
\(^223\) Revised Article 6 provides that “should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary- General and the Security-Council shall explore alternate means of financing the Court”.
\(^224\) ICTY 1994 Yearbook, pp.90-91, the ICTY claimed that funding problems meant that it “was operating with one hand tied behind its back.”
Richard Prosper, on the current U.S. administration’s will to see those given tribunals finish their work by 2007-2008. Indeed, both the ICTY and the ICTY are run entirely by the United Nations and draws, each, about $100 million a year in UN funds.225

Such is the context in which the decision to create the Special Court is to be understood, building on the previously mentioned constraints that are proper to post-conflict Sierra Leone. Thus the SCSL represents a new form of post-conflict internationalized jurisdiction designed initially for Cambodia and also adopted by East Timor (Timor Leste) as an alternative to UN ad hoc tribunals, and also as a counterstrategy sponsored by the United States against the ICC.226

An important point needs to be made on the relation existing between the choice made of a mixed tribunal and financial as well as political concerns. Indeed, the International Community focus, the limited funding available and the complexity of post-conflict Sierra Leone have made of the SCSL more the result of political and financial post-conflict concomitant concerns than a real option taken at the theoretical level to which it is compared and elevated. Such a situation also explains the crucial role played and expected from symbolism in the context of the high-profile criminal prosecution of ‘the most responsible ones’.

**From Symbolism to Setting Standards: High-Profile Indictment at the SCSL from Foday Sankoh to Charles Taylor**

While there has been some suspicion over the risk of manipulation of the indictment procedure in order to re-write the history of the conflict,227 in an attempt to immunize the

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225 For instance, the ICTY had almost 1200 employees and an annual budget of more than $96 million in 2001. The ICTR has more than 700 employees and an annual budget greater than $86 million in 2000. This means that the combined cost of the tribunals now equals more than 10 percent of the regular UN budget. 226 See Press Briefing by Deputy Legal Adviser, UN Mission in East Timor, Press Briefing (April 19th 2000)www.un.org/peace/etimor/db/db20000419.htm: “The credibility of these trials would be insured because the model under consideration for Cambodia was being used in East Timor”. According to Minister Sok An, who introduced the law on Extraordinary Chambers to Cambodia’s Parliament on December 29th 2000 and January 2nd 2001, Cambodia’s model is the basis for the Sierra Leone Special Court: www.camnet.com.kh/ocm/government60.htm 227 in order to attribute the responsibility of the conflict to the RUF
power and other factions from the responsibility of the crimes committed, the recent list of indictment by the SCSL seems to indicate a more representative indictment strategy.

The updated list of indictees indicates an attempt from the Prosecutor, David Crane, to draw the history of the conflict that has torn apart Sierra Leone through the indictments of the ‘most responsible ones’. Eventually the given list and the rumors of its future additions appear to be reflecting the Prosecutor’s ambitions for the SCSL, though the Court’s capacity and the international support to an enlarged outreach are more than questionable. The case of Charles Taylor will be decisive on that respect.

To date the SCSL has indicted thirteen persons.228 Ten of the indictees – Foday Sankoh229, Issa Sesay, Morris Kallon and Augustine Gbao from the RUF, Alex Tamba Brima and Brima "Bazzy" Kamara, Santigie Kanu of the AFRC, and former Internal Affairs Minister Sam Hinga Norman, Moinina Fofana and Allieu Kondewa from the CDF are in court custody. Three others Charles Taylor,230 Johnny Paul Koroma and Sam Bockarie, are being sought under international warrants. Bockarie is reported to have been killed in Liberia, but the indictment will remain open until the court can do a forensic identification to verify that the body is indeed that of the former RUF commander.

Among the publicized indictments Foday Sankoh’s, Sam Hinga Norman and Charles Taylor are the most high-profile and are thus expected to set up the standards and reference of the proceedings, the judgments and their application. Indeed, one of the forefront goals advocated by the SCSL prosecutor David Crane has been the fight against impunity and the demonstration to the people of Sierra Leone that none is above the Law.

"Why is it important that the people of Sierra Leone and international communities stand up and say ‘wait a minute, no more, never again’ to the impunity that took place wantonly for the past ten years?" he asked. "Because it

228 All the indictments can be found at: http://www. www.sc-sl.org/
229 Sankoh died on July 29, 2003
has to be done. No one, no human being, should go through what (Sierra Leoneans) have gone through, regardless of the reason, whatever the reason may be. So why is it important? Because impunity cannot stand and it should not stand anywhere, and to include West Africa.” 231

As such, the importance of symbolism increases the pressure put on the outcome. Thus one can express some doubts after Sankoh’s death, and when in spite of his indictment, Charles Taylor is uncertain to be extradited to Sierra Leone to be judged for crimes against humanity and war crimes by the SCSL after having been granted exile in Nigeria. Speculations over the indictment of Colonel Qaddafi have also been heard, and while the Libyan leader responsibility in the conflicts that have wretched West Africa is damning, a real risk of over-stretching the Court’s mandate and capacity can be identified. Furthermore, a risk if opening a Pandora box exists if the SCSL is to indict Colonel Qaddafi, as in order to be impartial the Court would have to look into indicting other foreign leaders such as Blaise Compaoré, as well as to look into the responsibility of foreign powers, France certainly qualifying on that respect. Here again, the tendency of the post-conflict agenda’s tenants to achieve multiple goals deemed concomitant and complementary.

Ultimately, the SCSL might end up been weakened by its own symbolism and this far-reaching strategy, triggering the frustration of a population that has had little to cling onto in terms of justice regarding the conflict. Additionally, one cannot help to acknowledge the contrast with which the population must be living, confronted with the reality of those who have victimized them left unworried.

Another issue in the indictment procedure has been the clear-cut language between the victims and perpetrators adopted by the Prosecutor. True, David Crane has been using the ‘diamond argument’ as the core of the conflict, separating hastily ‘good’ from ‘evil’. Yet, such a Manichean vision is largely rejected by scholars and researchers as overly simplistic in a context where very deeper roots to the conflict needed to be extracted in

231 David Crane, June 2003
order to accurately understand the conflict’s dynamics and rational. This situation underlines the discrepancy between those who define and deploy the post-conflict agenda, and the sphere of those familiar with the country’s complexity.

Last but not least, the crucial and symbolic issue of reparations has progressively been eluded from the post-conflict justice discourse. Its contentious nature reflects the unanswered question of the nature and price of post-conflict justice, in a complex context which needs to be understood beyond the proper justice challenge. This issue also highlights the limited means to address a Herculean task, which to a large extent is more of a Sisyphus –type as no reparation can bring closure to most of the victims. However, the satisfaction of the population to see Foday Sankoh or Charles Taylor indicted should not be underplayed, it also confirms the integration of the jurisprudence established by other international tribunals, but also in the development of this jurisprudence.

**On the Role of Jurisprudence**

As already noted, the SCSL is a *sui generis* body of a mixed nature, based on a negotiated agreement, placing it in an unprecedented position regarding jurisprudence. Indeed, as much as the SCSL is expected to integrate in its proceedings the jurisprudence set by the ICTY and ICTR, as well as by Sierra Leonan law\(^2\), it is also to set its own jurisprudence. This jurisprudence will be certainly decisive in the future recourse to *ad hoc* mixed tribunals. For instance, the ICTR’s rules of procedure and evidence will apply *mutatis mutandis* to the Special Court’s proceedings.\(^3\) However, the judges will have the power to amend or adopt additional rules if a specific situation is not provided for.\(^4\)

A central issue once the SCSL trials will begin, most likely by 2004, will be the consistency of the law and jurisprudence created by those different jurisdictions. Such a

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\(^2\) Like abuse of girls younger than fourteen and wanton destruction of property as defined by the Court’s Statute
\(^3\) Article 14 of the Statute of the Special Court.
\(^4\) Ibid.
question is of utmost importance and takes an increased relevance in the context of the division of the Prosecutor’s position for the ICTY and the ICTR, a position long conceived as unique in order to preserve the Tribunals’ jurisprudence coherent.

In the context of the beginning of the ICC proceedings, the multiplication of the instances granted with the choice of the direction of their jurisdiction’s jurisprudence could well be proven a major source of concerns, as they obey to different logic, dynamics and constraints although their respective mandate appear on the same line. In particular, the United States support to the SCSL, largely conceived as an alternative to UN tribunals such as the ICTY and ICTR as well as a counter-strategy to the ICC, will be quite decisive in the Court’s capacity to bring some reality to its mandate, opening the door for other post-conflict countries to opt for such a strategy.

The present debate over Charles Taylor’s indictment is likely to bring some elements of directions. On that respect one can note that Taylor’s indictment when he was still president of Liberia235 counters the jurisprudence set by the ICJ regarding heads of State immunity in the case DRC v. Belgium236, though it receives the IC’s support in spite of the unease brought by its announce during the Liberian peace talks in Ghana. The call the IC’s cooperation to secure Taylor’s extradition highlights the SCSL mandate’s limitations, and emphasizes the political nature of the exercise and the need for international commitment.

Moreover, the multiplication of those units of post-conflict justice’s jurisprudence underlines the questionable cohesion of the theory of post-conflict justice and reconciliation. On that respect the present situation in Sierra Leone is expected to achieve more than what the ICTY and ICTR have been able to. Indeed, in spite of an additional challenge regarding extradition237, the SCSL is expected to enhance the supposed reconciliation tenants that have been postulated through its concomitant process with the

235 The election of former warlord Charles Taylor was considered, in its time, as rather democratic by the IC.
236 For more analysis on the DRC v. Belgium case see: http://www.asil.org/insights/insigh82.htm
237 Since the SCSL does not have a superior jurisdiction over foreign courts. It should be noted that Lord Robertson has asked, in June 2003, for the SCSL to be placed under Chap. VII of the UN Charter.
TRC. Furthermore, an emphasis on legacy has been added to the respective mandate of both instances, making it the place where they intertwine both in terms of sustainability for Sierra Leone and of precedent-setting in the larger realm of post-conflict strategies.

It should be noted here that while the question of the relationship between the SCSL and the TRC is now being solved, much concern was voiced around the issue of the information provided in the TRC forum and its use by the SCSL to prosecute former combatants. While most of the controversy was sparked off in order to discredit the TRC and SCSL, the case also illustrates the empirical approach which is taking place in reality.

**On the Place of the SCSL in the Development of Transitional Justice**

The SCSL confirms the importance of the prosecutor asserted in the cases of the ICTY and ICTR. Indeed, the wide latitude of prosecutorial and judicial discretion takes all its importance in the case of the SCSL since the court is not placed under the authority of the United Nations (Chapter VII)\(^{238}\), with a hybrid *ad hoc* nature requiring a largely recognized independence, credibility and charisma from the prosecutor.

Besides, unlike the ICTY and the ICTR which until recently were sharing a common prosecutor, the SCSL has its very own in the person of David Crane (USA) granting to the Court the United States’ support. In that regard, one should note the importance of the Charles Taylor indictment, whose extradition to Sierra Leone would certainly reinforce the Court’s authority in spite of the absence of a legal obligation of third countries to extradite SCSL indictees.\(^{239}\)

Incidentally, the fact that the indictment list has, so far, rather representatively included ‘the most responsible ones’ from the different *sides* of the conflict is also a strong

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\(^{238}\) It should be noted that the president of the SCSL asked for the Court to be placed under Chapter VII of the UN Charter on June 2003. See Sierra Leone Web at: [http://www.sierra-leone.org/slnews0603.html](http://www.sierra-leone.org/slnews0603.html)

\(^{239}\) It should be noted that the United States have been credited of having offered a $2 million reward for the capture of Charles Taylor. The reward is said to be part of the bill signed by President Bush authorizing $87.5 billion for emergency spending in Iraq and Afghanistan. See “In $87.5 Billion Bill, $2 Million Bounty for Exiled Liberian President”, New York Times, November 10, 2003.
message of the Court’s independence, though the political nature of the exercise should certainly not be forgotten. Yet, after a series of setbacks: the death of major indictees Foday Sankoh and Sam Bockarie, the escape of Johnny Paul Koroma and the asylum of Charles Taylor in Nigeria, the SCSL is in need of success and support

Another important ‘innovation’ of the SCSL in comparison with the ICTY is to be found in the extension of the Court’s jurisdiction to cover transgression by peacekeepers and related personnel present in Sierra Leone pursuant the Status of Mission Agreement in force between the UN and the Government of Sierra Leone (Government of Sierra Leone) or agreement between Sierra Leone and other government or regional organization. This measure corresponds to a clear attempt to learn from the publicized biases and pitfalls faced by the ICTY and the ICTR.

Additionally, the SCSL will extend the jurisprudence in the field of the definition of personal jurisdiction of the Special Court, and more precisely to what should be understood by the notion of “those who bear the greatest responsibility”. Indeed, if the notion of command responsibility can be found clearly documented by the jurisprudence in international humanitarian law, the Nuremberg trial being a founding precursor on that regard, the notion of “the most responsible ones” displays the prosecutor’s latitude and the political dimension of the exercise in absence of a strong jurisprudence on which one could rely to determine, through some sort of framework, one’s eligibility to such a threshold.

While the SCSL will certainly contribute to this jurisprudence, one should note that the Court has never intended to judge more than 20 people at most.\textsuperscript{240} Once again, the political nature of those choices is demonstrated and needs to be taken into account to understand the dynamics at play.

\hspace{1cm}\textsuperscript{240} Estimations tend to vary greatly on that regard though a maximum of twenty indictments is commonly found in interviews and literature dealing with the SCSL. One can note here that the eventuality of the Prosecutor to challenge the Lomé amnesty in a second phase of the SCSL has been evoked, and still remain a small possibility, though financial means certainly lack at that point to achieve such an Herculean task, granted that such a move would not endanger the fragile peace in the first place…
Another issue proven political appears in the interpretation of those falling in the definition of amnesty and pardon granted by the Lomé peace agreement. Indeed, in its article IX, the Lomé agreement indicates that:

“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”

Again the appreciation and definition of what should be understood by and included in the notion of “in pursuit of their objectives” leaves an important magnitude to the prosecutor’s leadership for instance in the determination of whether ‘rape’ as a war-terror strategy used by the RUF falls in this category. Such issue highlights another crucial aspect of the complex dynamics between justice and reconciliation: the coordination of the IC agenda for post-conflict societies with the population needs.

**B. The TRC in Sierra Leone**

The Truth and Reconciliation Commission of Sierra Leone finds its legal base in the Lomé Peace Agreement signed between the Government of Sierra Leone and the RUF. Though the Agreement did not originally manage to achieve peace on the ground, its posterity was to come from this measure to create the TRC, supposed to balance the amnesty clause accorded to former combatants.

The TRC in Sierra Leone is largely inspired by the previous experience led in South Africa, and also functions under the postulate that truth and the acknowledgment of crimes committed are to open the way to reconciliation.

An important distinction to establish here is that the TRC in Sierra Leone, as in the case of South Africa, is supposed to promote ‘healing and reconciliation’ and not necessarily to achieve these goals. Yet, the confusion can easily occurs as a result of a discourse.

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241 Lomé Peace Agreement (July, 7th 1999) - ARTICLE IX: PARDON AND AMNESTY  
242 The Lomé Peace Accords were signed on July, 7 1999. With the peace agreement between the Sierra Leone government and the Revolutionary United Front of Sierra Leone, the two sides agreed to end eight years of war. They Include the provision to establish a Truth and Reconciliation Commission. Available at: http://www.sierra-leone.org/lomeaccord.html  
243 Lomé Peace Accords - ARTICLE IX: PARDON AND AMNESTY
mixing the notion of ‘promotion’ with the publicized ‘end’ of the process, once the report will be finally made public.

While several experiences of TRC can be counted, the field of reconciliation remains largely in transitions itself, a situation largely resulting from the absence of tangible results in most of the given cases. Yet, the South African TRC remains a great source of influence, and quite notably for African countries facing the challenge of post-conflict justice and reconciliation.

Role and Place of Truth and Reconciliation Commission in the Evolution of Transitional Justice
While TRC will be further developed later in this article, it should be said here that the concomitant development of TRC in Latin America and South Africa has opened a new dimension to Transitional Justice. Indeed, there is little debate on the fact that South Africa represents a crucial experience, which is notably important in the case of Sierra Leone. In that case, the given experience has been taken more as a model in spite of a radically different context expect for the location of the SA TRC on the same continent.

“The project of national reconciliation pursued by truth commissions addresses suffering as both a product of state violence and a culturally constructed experience to (re)create moral national communities. Individual suffering is the fulcrum used to convert the effect of repression into a vehicle for social reconstruction. (...) The idea of reconciliation is politically focused on the social recovery of the victim with the purpose of reconstituting the national whole. The threshold of moral vision is adjusted by recognizing the victims in the testimony of their suffering. Truth Commissions seek to invert the state politics of pain by shifting the focus from terror to trauma. With pain as their fulcrum they seek to objectify and institutionalize truth claims through the testimony of victims.”

244 See www.truthcommission.org
245 See Strategic Choices in the Design of Truth Commission at: www.truthcommission.org
246 Das 1996, quoted by Humphrey 2002 (see note infra)
247 Foucault 1979, quoted by Humphrey 2002
Indeed, the TRC intends to address the legacy of suffering and violence through individual testimony in the construction of a record which aims at bringing the truth in opposition to a lenient and accommodating ‘official memory/history’. The power of the words voiced in TRC’s setting is not legal but empathetic, a subjectivity that needs to be acknowledged in addition to the previously mentioned limitations to this approach which tends to *axiomatically* rely on its therapeutic postulates. Here again, the SL TRC will bring a new dimension to the development of this type of post-conflict strategy.

**The Influence of the South African TRC (SA TRC)**

The SA TRC represents the institutionalization of the association syncretism between the notions of reconciliation, traditionally associated with local processes and traditions, and truth as understood in a more legalistic approach. While reconciliation has been long purported as not been achievable without amnesty, in order to prevent the opening-up of ‘old wounds’

249, the SA TRC has been working to associate both notions, in a context where the choice for justice was more than limited.

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In the context of post-Apartheid South Africa, truth was considered to be the vector helping the people to come to terms with the country’s troubled legacy, and as such banners reading:

> “Reconciliation is Healing”
> “Truth is the Road to Reconciliation”
> “The Truth Hurts but Silence Kills”

were to be found hung during the SA TRC sessions. Similar banners can also be encountered in Sierra Leone.

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248 Humphrey (2002: 106)
249 thus supporting the party of impunity
250 Indeed, while the SA TRC is now portrayed as a society choice, one should recall that the role of the military in South Africa’s history, made it impossible to advocate and implement a body in charge of dealing with the legacy of the Apartheid, and that it was more the catch 22- situation on both sides that brought the final choice to be made on a TRC form of transitional
Notwithstanding, while the SA TRC was promoting a *true reconciliation*, the notion of reconciliation was never defined, nor was the level at which the commission was aiming to target it. Such a pitfall was to be acknowledged in the SA TRC final report.\(^\text{251}\)

Another criticism addressed to the SA TRC dealt with the over-emphasis on forgiveness that had encouraged expectation amongst the public that reconciliation would actually be reached in the course of the TRC’s process.\(^\text{252}\) Such expectations seem to have also been largely instilled in Sierra Leone and reinforced once the long confusion over the nature and difference of the TRC vis-à-vis the Special Court was slightly dissipated.

Yet, the presentation of closure as the logical unfolding of the truth unveiled by the TRC represents a tricky and dangerous expectation as eventually little closure can be given to those who have suffered of the crimes at stake. To that extent and as pointed out by Priscilla Hayner, the influence of the psychological discourse is as tremendous as possibly misleading, postulating that:

> “As long as there is crying going on, there is an assumption that healing is taking place”.\(^\text{253}\)

Thus, the cathartic discourse elaborated around the notion of truth which has been exported to the SL TRC, presents the same serious reserves as for previous TRCs concerning the supposed benefits of the psychoanalysis’ notion of private confession in the public and dramatic forum of the TRC.

In fact, the South African TRC’s influence is such in Sierra Leone that the discourse of reconciliation is strongly derived from the South African experience. Yet, the necessity to take into account the specificity of the SL context seems to have been acknowledged. For instance, one can find in the UNAMSIL TRC booklet published in December 2001, the point that:

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\(^{252}\) See, Hayner (2000: 156)

\(^{253}\) Brandon Hamber quoted in Hayner (2000: 141)
“Such a success story will impress anyone whose country is torn by armed conflict but there is the danger of wanting to adopt a TRC process in Sierra Leone, for example, without a close study of the different operational context”.254

Again, while one can understand the need for some reference in a field of unacknowledged ‘experimentation’, little of the South African experience is in fact applicable to Sierra Leone, if only because amnesty has already been granted to former combatants by the Lomé peace agreement. As we will see, the importance of the SA TRC’s model in Sierra Leone calls again on the influence of axiomatic postulates into the post-conflict strategy.

**On the Place of the SL TRC in the Post-Conflict Agenda in Sierra Leone**

As previously mentioned Sierra Leone finds itself in the unprecedented situation of having been granted with both a TRC and a hybrid tribunal in charge of judging the ‘most responsible ones’, i.e. the SCSL. In this context, the TRC has been conceived as the principal vehicle for reconciliation, providing the venue for the victims to be listened to and maybe heard, as well as establishing a record of the crimes committed.

Such high expectations from the NGO community and the civil society can be understood in the light of several factors:

1. The granted amnesty prior to the TRC results in a limited capacity of the SC to deal with the larger legacy of war crimes, thus relying on the SA TRC experience as representing an alternative venue to address such a daunting legacy.

2. The approach of justice favored by the local civil society organization has been the one of the TRC, as the process seemed to give more latitude to those organizations to participate to the process, including the financial aspect of such a role, notably vis-à-vis donors.

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254 Koroma, Alimany Philip (General Secretary, Council of Churches in Sierra Leone & Secretary General, Inter-Religious Council of Sierra Leone), “Ethical and Religious Perspective of the Truth and Reconciliation Process Within Sierra Leone’s Current and Future Contexts” in. UNAMSIL booklet on the TRC, December 2001 p. 96
Furthermore one can point out the *confrontation* between two different approaches of the so called *real* reconciliation and justice:

- The IC and the so-called international civil society have favored an approach based primarily on justice, as advocated by Amnesty International for instance.
- Other more locally based organizations such as the International Human Rights Law Group (IHRLG) have opted for a strategy where reconciliation is seen as central and nearly as more important than justice itself. This approach is to be understood in the context of the limited outreach of justice to the ‘most responsible ones’ and the perceived need to repair the social tissue to allow a sustainable peace to germinate.

**Sensitization or the Link between the TRC and the Population, Between National and Local Levels**

One primary emphasis of the reconciliation process run by the civil society has been on sensitization, i.e. on the education of the population about their rights and the respective missions of the SCSL and the TRC. This objective echoes the capacity building dimension of the NGO discourse, and it thus comes as little surprise that indeed this field has been left open to this expression of ‘local civil society’.

The notion of sensitization is based on the postulate that the TRC’s function needs to be well explained to the people, as it could serve as a catalyst to resurrect unsolved issues and could turn out to be a threat to peace in indeed re-opening the wounds. This concern appears quite valid under the light of post-conflict Sierra Leone, if only in dealing with the crucial issue of former combatants.

However, several limits can be underscored that reflect the shoestring capacity of the TRC as well as the scope of the challenges tackled. The lack of usable roads in Sierra Leone and the limited reach of radio and papers resulted in the UNAMSIL strategy to diffuse simply-written leaflets in various local languages with cartoons including: “20 Questions and Answers on the TRC” and “TRC Fo Wan Salone”.255 Other initiatives

included the distribution of T-shirts reading messages like: “I’m for peace – Are you?” or posters saying:

“Save Salone” from another war / Reconcile Now/ the TRC Can Help”

“Truth Hurts – But War Hurts More”

The use of drama is also common and certainly represents a good vector to convey the TRC message in a country plagued with illiteracy.

The radio has also proven to be a crucial element of the reconciliation strategy and process, as the omnipresence of this medium makes it the primary source of information, particularly in the context of oral communication that remains predominant in Sierra Leone. Projects such as Talking Drums Radio (Search for Common Grounds) or Radio UNAMSIL are central to the reconciliation strategy of carrying the message to the nation, also bringing some credibility to the coordination at the national level of the process.

For instance, according to the PRIDE report on “Ex-Combatants’ Views of the TRC and SC in Sierra Leone”, 67% of those questioned had heard about the TRC through the radio. Yet radio coverage remains an issue in itself. Indeed, the PRIDE report showed that amongst ex-combatants, who have a clear motivation to understand the TRC process, 72% had heard of the TRC and 54% believed they understood it. Nevertheless, the number was found to drop to 37% of ex-combatants who had heard about the TRC in Kailahun, one of the RUF strongholds in the South West of the Country which has played a central role in the conflict. Such numbers underlines the limits of such a mean to convey the message of ‘reconciliation’.

The subtle reconciliation alchemy certainly calls on a good understanding of the TRC process, as well as of what can be truly expected from it. If some form of reconciliation is to germinate it has to principally come from the people themselves and their respective

256 ‘Salone’ corresponds to the Krio name for Sierra Leone
257 See the work of the NGO Search for Common Ground at: http://www.sfcg.org/locdetail.cfm?locus=SL&name=programs&programid=306
258 See the report "Ex-Combatants Views on the TRC and the Special Court" at: http://www.ictj.org/downloads/PRIDE%20report.pdf
259 PRIDE report p. 24-25
communities. However, sensitive issues like sexual violence and child soldiers are likely to remain largely left to the personal sphere as the scope of the crimes committed and the representative strategy privileged by the TRC will bring little of a closure.

Incidentally one can note the importance of religion in the post-conflict reconciliation strategy as it officially promoted. Indeed, ethnic and religious differences having played a limited role in the conflict in Sierra Leone, the peace and reconciliation discourse as promoted by the Council of Churches is more favorably received by the communities. A similar comment can be made regarding Muslim communities, though the venue seems to be rather privileged at a local level, through more traditional modes of dispute resolution.

**How Relevant is Reconciliation in Sierra Leone?**

While the discourse around reconciliation has been put at the forefront of the post-conflict agenda, one needs to recognize both its axiomatic basis and its own limits even if it were to work as envisioned. Indeed, if the reconciliation discourse comes across as a logical, part of a larger continuum aiming at development, much of a challenge remains in that regard, for Sierra Leone continue to be one of the poorest countries in the world. Moreover, the very idea of a continuum of development has been successfully challenged, though it seems that the post-conflict agenda remains quite inspired by such type of logic, conceivably intellectually comforting.

Besides, despite the formal acknowledgment of the specificity of Sierra Leone conflict’s context and history, the reality of the given discourse has failed to integrate those dimensions, certainly undermining the end result.

For instance, a rather Manichean approach of the conflict has been adopted in both the reconciliation and justice discourses and processes. The discourse of the US prosecutor of the SCSL, David Crane, appears quite illustrative of this issue:

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261 For more data on Sierra Leone economic/ development situation see the World Bank website at: [http://lnweb18.worldbank.org/AFR/afr.nsf/06c63e39724293d5852567cf004c6ef0/d50bf3dfb189b0b6b652567d1005c7d1c?OpenDocument](http://lnweb18.worldbank.org/AFR/afr.nsf/06c63e39724293d5852567cf004c6ef0/d50bf3dfb189b0b6b652567d1005c7d1c?OpenDocument)
"I have never seen a more black-and-white case, a situation of good versus evil, (...) the war was about diamonds from the beginning."\textsuperscript{262}

Yet, when talking with people one is confronted with a blurrier reality, well exemplified by the sobels\textsuperscript{263}, soldiers-rebels, soldiers by day and rebels at night, protecting the population at day and targeting it at night. This side-trading was to become even more destructive as the Army joined forces with the RUF after the 1997 coup.

As such a real need exists to take into account the porous nature of the conflict lines and its consequences on the complexity of the reconciliation and justice processes, as well as the potential of insecurity represented by unaddressed issues. For instance, one can hear from those in Sierra Leone familiar with the SL TRC the comment that the Commission presents two risks:

- The risk of re-opening old wounds, thus echoing the Sierra Leonean saying advising to: "let sleeping dogs lie"
- To serve as a forum for former combatants to legitimize their crimes and to mobilize followers in case of a deceptive outcome or of a disagreement on the justice (SCSL) constituent of the process.

So far, at the early stage of the TRC and the SCSL, those two dangers have been proven rather limited.

Yet, a third risk can be identified in the difficulty to address the victims' needs and demands for justice and reparations. In fact, while it had been difficult to explain the TRC process and goals, and to establish it as separated from the SCSL, a bigger task will be to face the need and later frustration of the victims to be heard. Indeed, the SL TRC, as the other previous experiences, is very much based on a symbolist approach, where a picture of the conflict will be drawn from selected testimonies supposed to reflect and give a voice to the victims. However, the victim status can be in itself a source of tension,


being closely associated with the notion of legitimacy. Indeed, a risk of *ostracization* can materialize as beyond the institutionalized reconciliation process, victims portraying themselves through this status, as well as the *visible* victims such as the amputees, can be seen as reminder of the conflict and its divisive consequences.

Thus, while the SL TRC can only do so much in addressing the victims need to be heard and their extrapolated aspiration for truth, even in the case scenario where the TRC would have filled most of its agenda’s goals, it could easily sour into frustration. The case of the war amputees negotiating their testimony in exchange of financial compensation, has been quite illustrative of those challenges that will not die out at the end of the TRC proceedings.

On that respect, the conception of the South African TRC as a nation-building aiming to reconcile different group of the divided society is hardly applicable to Sierra Leone. Thus, while the notion of reconciliation has been very much associated to the notion of *reparation* of the State-nation, an greater emphasis on the local and community level is very much needed for the reconciliation to be given its small chance. However, a common worry formulated by Sierra Leonans about reconciliation has been the extent to which the process, though presented as needed to be coming from the SL society itself, was in fact driven by *outsiders* and foreigners.264

Nevertheless, the prescriptive approach, conveyed by the NGO community, might well be right in its presentation of an end of the reconciliation process in so long as this end ultimately will be achieved through the shift of focus of the international community towards other conflicts and issues. Incidentally one can appreciate the inherent risk of frustration carried in by the given process of reconciliation. Such a comment happens to be largely applicable to the SCSL.

**From Freetown to the Provinces…Different Perspectives on Reconciliation**

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264 A similar suspicion can also be found vis-à-vis the SCSL. On this issue see Special Court Watch (a publication of a local NGO, LAWCLA)p. 7 : http://www.lawcla.org/SCWatch_Vol1No1_Oct02.pdf
While in Freetown the language of reconciliation seemed to be well embedded in the common language, with yet a rather contrasted reality, a radically different situation was to be found in the provinces. Indeed and as previously stated, both the justice and reconciliation discourses in Freetown seem well in tune and echoing the language promoted by the international organizations and NGO community. The credo of forgiveness and the need of reconciliation for peace and development were notably recurrent nearly to the point of becoming suspect.

On the other hand the provinces had a very different approach of both institutions (TRC and SCSL) when they actually knew about them, frequently confusing them, and displaying an overall skepticism on the perspectives of peace, justice and reconciliation. Unlike in Freetown where the information about both the TRC and the SCSL has been flowing rather well, different levels of awareness can be found in the provinces, mostly depending on radio coverage. An interesting point can be made on the impact of radio and of the reconciliation official discourse when in fact, people singing the TRC jingle could also easily express their reserves and generally tended to adopt a non-committal approach of a ‘wait and see’ type, expecting little from the TRC, and hoping for it not to reopen wounds they clearly stated as being far from closed.

Indeed, the perspective over peace appeared to be very different in the provinces which have suffered on a larger period of time of the war whereas Freetown was specifically confronted to the war in 1998, i.e. more or less seven years after the first regions of the country had to face the war throes. As such the yearning for peace to finally come is tainted by skepticism of its reality in the global spectrum of the war that is to say in front of the numerous failed attempts to restore peace.

Overall the locus of peace, justice and reconciliation, in their attempt to be seen as time markers, are expected by the population to be confronted with a longer period, i.e. to face the reality and complexity of time. On that respect, none of those three issues have yet

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265 “If you’re uman and something done to you, go to TRC to tok
If you don bad, go to TRC and beg for forgiveness
Come blow your mind, come clear your chest, the Truth and Reconciliation Commission”
gained the populations’ trust regarding their long term duration in a region where none of them had a real meaning since time immemorial.

C. The Paramount chiefs, Secret Societies and Customary Law

Local processes of justice and reconciliation are keys to insure the sustainability of the processes the TRC and the SCSL are trying to trigger and set a norm for. Unfortunately, those dimensions, that are so crucial to the syncretic approach of peace, justice and reconciliation adopted by the IC and the Government of Sierra Leone, have not been explored to the full extent of their capacity to bring a reality to the population concerned. Additionally, the lack of interest of the population towards both the SCSL and the TRC, in spite of the relatively positive track record of both processes at this point, emphasizes even more the importance of local instances to deal with war legacies, secure a sustainable peace as well as ensure the continuation of communities as the cornerstone of Sierra Leonan’s society.

Sierra Leone represents a case-study example of the persistent influence of colonial heritage through its local institutions and instances, directly resulting from the system of indirect-rule adopted by British authorities. In fact, the given term of ‘paramount chief’ has been coined by British colonial authorities, as the privilege interlocutor with local communities, embodied by designated local notables. Eventually, the imported structure was to know an impressive posterity still visible in today’s role of Paramount chiefs and their recognition by local communities.

Moreover, in 1972, during Siaka Stevens’ presidency (1967-1985), local government institutions were suppressed, letting to an increased influence of the paramount chieftaincy, now left as the principal administrative instance in the rural provinces of Sierra Leone. Consequences of this measure is still very much visible today and present on several respects, unexplored leverages to yield peace, justice and reconciliation to Sierra Leone as a country and beyond Freetown which remains the first recipient of assistance and attention.
On the Prospects of Traditional Chieftaincy for Peace, Justice and Reconciliation

As previously noted, Sierra Leone’s local governance is based on the chiefdom structure, which has its roots in both the traditional authority and the system imposed by the British in organizing the Protectorate over a century ago. The country’s provinces are now divided into districts and each district is divided into chiefdoms numbering 149. At the chiefdom’s head stands the paramount chief.

A traditional hierarchy unfolds as follow:

1. Paramount Chief
2. Chiefdom Speaker
3. Section Chief
4. Village/ Town Chief

If the town is large, a further subdivision can be found into:

5. Quarter Head
6. Tribal Head
7. Family Head

The Traditional Chieftaincy in Sierra Leone

At the apex, the national government oversees this traditional governance and hierarchy, though its day-to-day involvement in chiefdom issues is designed to be minimal. The district officer, the national government official in charge of the districts, works directly with the paramount chiefs in his district. This interaction marks the nexus between the customary and national government.266

The chief, while an elected government official, is chosen for a life term in accordance with customary principles.267 Exceptions to this practice occur in four general cases: when the chief is

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266 This is not to imply that this is the only nexus between customary and national government. The issue of electing chiefs, along with the presence of the SLP are two examples of national government’s involvement on the local level.
267 The people perceive the chief as more than a government official. He is revered by his community, often called “Pa”, or father, and considered to possess enlightened wisdom.
rendered incapable of rule; in case of the chief’s death, before a new chief is elected; or when the people revolt against him. In the current post-war conditions, the first two exceptions are common since chiefs fled from their homes during the war and have yet to return, or died during the war with elections yet to be held.\footnote{In our time in the provinces, we did not come across any report of revolts against the chief that date after the beginning of the war.} In the interim, regent chiefs fill the ruling function.\footnote{Regent chiefs are appointed by the Minister of Local Government through the provincial and District Administrations. The recommendations come from the members of Parliament of the area and some party activists. The election of paramount chiefs is scheduled before the end of 2002, and thereafter no regent chief should be ruling}

The life term, traditional reverence, and political interconnectedness, which characterize the chieftaincy structure, bring to question whether any checks and balances provide accountability or limit chiefs’ actions.\footnote{Political interconnectedness also refers to the hidden hierarchy of leaders of the Secret Societies, which is said to directly reflect the hierarchy in the government. Given that one Secret Society governs an entire region, and every member of the Society purportedly must support its leadership, the Secret Society is no forum for opposition to a chief.} In theory, residents have the option to petition the government to take a chief out of power. Success in this sort of insurrection is so rare, however, and the risk of an eternal grudge from the chief is so ominous, that this option is extremely unpopular. The people, however, tend to perceive a check because they assured us that no chief will ever misbehave to begin with. The chief, it was claimed, has an interest in being good to his people, because if he is bad, his ruling house will not win the next paramount chief seat.\footnote{Candidates for chief emerge from ruling houses, aristocratic families with a history of role in leadership. See Appendix E for discussion of election mechanisms for chiefs. Therefore, familial/ancestral pressure to maintain control of the community in the family tree is purportedly enough to keep the chief in check.} As usual, though, these observations may not be reliable, possibly tainted by the fear of the consequences for speaking against the chiefs.

Reports of local autocrats abound, however, and questionable legitimacy often begins during elections of chiefs. The system de facto gives the chief enough freedom to emerge a corrupt, nepotistic, opportunistic despot. And because the people turn to their chief for dispensation of customary law, these characteristics automatically transfer into the realm of dispute resolution and law enforcement.\footnote{For a more thorough discussion of election mechanisms and the corrupt practices that emerge from their politicization, see Appendix E}

“The Law People See: The Status of Dispute Resolution in the Provinces of Leone in 2003” (project designed and report drafted by a four-student team including the present
In a context of post-conflict Sierra Leone where much remains to be done on nearly every respects, governance, justice and administration fall largely onto the traditional chieftancy system which has proven its resilience in the midst of the conflict. Indeed, the extended disruption and displacement experienced by numerous communities, be it internally in Sierra Leone or in neighboring Guinea for instance, have led to a form of reinforcement of those instances, perceived as the community’s identity and stability link.

However, the chieftancy system is not immune from criticisms. Those range from the lack of consistency between the different chiefdoms and Paramounts chiefs, to the extent that most of the laws applied are unwritten, but also to the issue of the lack of institutional accountability, appeal being nearly impossible in reality. Moreover, some districts such as the crucial Kailahun in the south of the country have experienced the replacement of paramount chiefs by RUF-affiliated/supporters, generating some distrust towards the institution.

Nonetheless, the chieftancy structure may well represent the determinant link in making the post-conflict and reconstruction agenda work.

For one,

“Paramount chiefs systems may be a useful stopgap measure, [thought] it cannot substitute for decentralized government administration or democratic governance”

In fact, the key role to be played by the chieftaincy system and local communities is to be appreciated under the light of the challenge of peace and security they face. The case of former combatants is quite illustrative on that respect. Indeed, one needs to recall here that the formation of the ‘kamajors’ as a fighting force was primarily driven out of security concerns at the very local communities level.

As a result, the ‘kamajors’ have always found their originality in the conflict in Sierra Leone in their community-based nature, as well as the importance of rituals and superstitious beliefs largely inspired by and associated with traditional secret societies rites. Now ex-combatants as the other factions, the ‘kamajors’ due to their very nature, remain much more active than any other group, with a significant capacity to mobilize, though this capacity remains difficult to evaluate.

While in post-conflict Sierra Leone ex-combatants have been feared for their reactions towards the SCSL seen as incriminating their former leaders, ‘kamajors’ have not expressed much willingness to mobilize and counter the SCSL indictments. In fact, kamajors have been keener on emphasizing on the issue of security as core of their engagement, i.e. the protection of the community. In fact, though the ex-coms’ disarmament was officially completed by January 2002,

“Community arms collection efforts continue, and some civilians are handing in weapons, but this efforts are voluntary and unable to sway those who believe they need to keep their arms for self-defense or other endeavors.”

This shows the importance of local processes of dispute/conflict resolution in the sustainability and reality of peace, justice and reconciliation in Sierra Leone. Ultimately, the justice and reconciliation are expected at the local level. Indeed, if Sierra Leonans appears satisfied by the SCSL’s indictment, the given institution remains remote from the concrete realities faced by local communities, hence the relative lack of interest towards the SCSL and the TRC.

The paramount chief is central institution and figure in the SL society, in charge of a wide ranging responsibility calling for its better involvement in post-conflict ‘strategies’ of justice and reconciliation. Indeed, traditional rulers and paramount chiefs play an

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275 The responsibilities falling to the Paramount chief include: Interpreting the customs and traditions of the community; Communicating central government policies; Settling matrimonial and family disputes; Superintending the collection of local revenues; Monitoring the performances of local courts; Chairing chiefdom councilor meeting; Attesting citizenship; Protecting territorial possession; Protecting lives and properties; Preserving the dignity of the ruling houses.
equally important role in the realm of symbolism, which is so crucial to both the TRC and the SCSL. In fact, ‘traditional’ methods of reconciliation can be identified, that are to play a role in the sustainability of the TRC processes but also in the acceptance of the limited mandate, and most likely outcome, of the SCSL.

However, an accurate knowledge of those mechanisms in their theory and reality is indispensable as no endorsement of any ‘traditional’ practice can be blindly granted, a wide range of realities being encompassed under this label. Additionally while the preservation of traditional values that have been harshly trampled on is of utmost importance, similarly some practices need to be questioned and possibly rejected.  

276 Such is FGM (Feminine Genital Mutilation) a.k.a. ‘excision’, which is an integral part of the traditional initiation process into secret societies. While this practice is commonly found in Sierra Leone, it has been argued that the large extent of sexual crimes during the conflict has started to challenge the ‘legitimacy’ of this practice conceived as a guarantee of female virginity and fidelity. Much remains to be done for mentalities to evolve regarding this practice.
The Chief in the Customary Law Context

“In practice, the chief often fulfills the role of judge in the customary law setting. While customary law is most institutionalized in the form of local courts\(^{277}\), the public tends to consider the chief’s audience as the initial formal forum of customary law adjudication. Even where local courts are accessible and operational, the people turn to the chief in their disputes when their informal mediations or arbitrations in auxiliary social groups fail.\(^{278}\) This is true even though district officers and Freetown officials speak against the practice and official government laws do not officially recognize chief’s adjudications.

There seems to be no rigid appeals structure within the customary law system. Those unsatisfied with a ruling have the option of appealing their cases up the hierarchy of chiefs, from their town all the way to the paramount chief of the chiefdom, and onto the local court, the district officer and the customary law officer. However, there are differing reports as to whether the chief’s audience is the court of first instance and parties must pass through it, or whether the choice is up to complainants as to where to bring their case – to a chief or directly to the local court.\(^{279}\) There seems to be no rigid governing structure, with each chiefdom and village developing its own pattern of resolving disputes. In many areas, the choice between chief and local court is the complainant’s, providing a fluid system of forum shopping.”


Traditional Methods of Conflict Resolution and Reconciliation

In spite of the 16 ethnic groups that compose the SL society, a remarkable homogeneity can be found in the traditional background and conflict resolution practices carried out in the different communities. Indeed, those communities seem to share rather similar belief

\(^{277}\) “Institutionalized” refers to the fact that the local court is the only legally recognized means of dispensing customary law.

\(^{278}\) Both the chief and the court deal with civil disputes and minor crimes. Serious crimes are taken straight to the SLP and potentially to the magistrate courts.

\(^{279}\) Expenses seem to play a decisive role in the decision of where to bring the case. The chief may be more amenable to negotiating the price of adjudication than the local court, and some interviewees claimed that the money paid for adjudication transfers from chief to chief as the case is appealed. It may be speculated that the more well-to-do take their complaints straight to the local court.
systems which are core to the communities’ adherence to traditional conflict resolution mechanisms.

However, one should note that in spite of the amnesty, part of the Lomé peace agreement, traditional forms of dispute resolutions do not seem well-fitted to deal with war crimes type of case and other related abuses. One explanation is that a large consensus emerge from the SL population that such crimes were not common before the war.\textsuperscript{280} Such a belief is likely to trigger a form of rejection of those crimes, as the population would like to see them being addressed to more a \textit{conventional} justice system, though such expectations are unlikely to be met by reality.

This element is important to understand the size of the challenge to be faced by the entire Sierra Leonan society to the very depths of its system of values and beliefs. It is therefore crucial to include those dimensions in the ‘global’ approach of peace, justice and reconciliation designed by the IC and the GoSL, in connecting the different dimensions of those respective processes. Those processes of dispute resolution cannot be expected to solve concerns and issues non addressed by the TRC and the SCSL, but constitute nonetheless an important dimension of the work to be done by communities themselves integrated in the larger effort at building a society at peace.

Several methods and processes of reconciliation and dispute resolution seem to be common among the various SL ethnic groups\textsuperscript{281}:

- Purification and Cleansing
- Pouring of Libation
- Mass Initiation and Festivity
- Inter-Marriages
- Reproach and Public Annihilation
- Swearing

\textsuperscript{281} See annex\# 7 for further details on Traditional Methods of Conflict Resolution and Reconciliation in Sierra Leone.
The large emphasis of those mechanisms on symbolism and the realm of beliefs make them a good venue for communities to rebuild themselves as well as a reference and barometer of the evolution of the processes of peace, justice and reconciliation. Yet, while paramount chiefs and local dispute resolutions enjoy a wide support at the local level, if only in the name of tradition, it appears that their status vis-à-vis the national/central authorities is closer to unease than to cooperation. The replacement of elected paramount chiefs by RUF proponents282 in the bastions held by the rebel group illustrates the importance of this institution, as well as the central authorities' unease towards this local instance. The recent elections283 aiming to replace imposed RUF chiefs and those who had died raise some expectation that a new partnership can be envisioned and enacted, for the reality of the country’s unity to be given a better chance out of the traumatic and divisive war experience.

It is to be noted that one of the Government of Sierra Leone fears is to see local institutions exceeding their responsibilities thanks to stronger allegiances to Paramount chiefs and local authorities, a situation reinforced by central institutions being largely disconnected de facto from the reality in the provinces. Yet, local mechanisms could well constitute the crucial link that will make the justice and reconciliation endeavor real in giving it a face and density, as well as adapting it to the peculiar situations encountered by the respective communities.

**On the place of Secret Societies in Sierra Leone: the case of the Poro**284

If the role to be given to local authorities and dispute resolution mechanisms is a challenge for both the IC and the Government of Sierra Leone, the first one has to face an additional challenge in grasping the country’s dynamics and realities in assessing the role played by Secret Societies. Without falling into the trap of the overestimation of the role played by those societies due to the silence surrounding their modus operandi, it is safe to

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282 As well as the killing of former paramount chiefs that had not fled.


284 The most common secret societies found in Sierra Leone are the Poro reserved to man in the Mende, Temne and Sherbro ethnic communities
say that they undoubtedly play a much larger role than what is acknowledged officially, especially to foreigners, by fear of being perceived as a form of archaic obscurantism, as well as because they do indeed operate out of silence which is the initiation’s seal.

“The secret society operates under its own, isolated, legal system. The societies obey their own laws, procedures, and punishments. They possess their own jurisdiction, and any conflicts or crimes arising “out of the bush” stay within the secret society purview. Furthermore, the hierarchy of leadership in the chieftaincy structure closely reflects the hierarchy within the secret societies of the region.”

Secret Societies and Auxiliary Conflict Resolution Mechanisms

Secret societies play a concrete role as an auxiliary conflict resolution mechanism in many ways. First of all, solidarity develops among individuals who were initiated in the same ceremony, at the same time, to the secret societies. Such “age grades” provide support networks among members of the secret society, but also between societies. Thus the groups of people initiated in the same year to both male and female societies may intermarry, resolve conflicts among themselves, and provide mutual support.

The secret society operates under its own, isolated, legal system. The societies define their own laws, procedures, and punishments. They possess their own jurisdiction, and any conflicts or crimes arising “out of the bush” stay within the secret society purview. It is unclear, however, whether secret society jurisdiction remains within secret society matters, or whether its borders span beyond into conflicts between secret society members, or even between members and nonmembers. The secret society world is religiously kept apart from the open community sphere in that it is a punishable crime to divulge any information about it to non-members. Furthermore, betraying one’s secret society invites curses on the individual and his or her close ones. Secret societies also have positive influences in the community. Societies played an integral role in organizing opposition to the RUF during the war.

The Poro society is for example credited with instigating the Kamajors movement in the Kenema District. The Manifesto 99 Report, “Report for the Study of Traditional Methods of Conflict Management/Resolution of Possible Complementary Value to the Proposed Sierra Leone Truth and Reconciliation Commission” mentions that certain society ceremonies involve rehabilitative and cleansing aspects, such as pouring of libation, a ritual sacrificing of dyed rice to cleanse the evil spirits out of the person. Perhaps societies are playing a role in the reconciliation between ex-combatants and the returnees. This is interspersed with rumors of merciless vigilantism in regards to ex-combatants, however, and the issue is therefore murky.

Secret societies have been an integral part of Sierra Leonean culture. They incorporate a spiritual and traditional element that is evidently highly prized by the entire Sierra Leonean community,

286 For example, if a man has sexual relations with an uninitiated woman, this is often considered a crime under secret society law. The common law or customary law may not consider this a crime.
287 Even society members who have left Sierra Leone, such as immigrants to the United States, refuse to divulge the secrets of the societies for fear of a curse.
since every person keeps it in such loyal secrecy. But secret societies, because of their lack of transparency and integrated impact on Sierra Leone’s governance and law, may be a bar to establishing true democracy, ending corruption, enforcing human rights, and implementing legal reform.

However, the preciousness of the institution, the ardent attitude of all members that keeps non-members and especially foreigners out, and the long history of the institution provide a sizable counterweight to addressing secret societies with an eye of reform. (…)


In fact, while much uncertainty surrounds secret societies, their importance should not be underestimated as they do represent a potential in terms of peace and reconciliation, and ultimately their role and place need to be better understood by all those who intervene on the issues of peace, justice and reconciliation. On that respect, it should be noted that one of the key elements referred to as a life-saving and strength of Sierra Leonans who have lived through the war is their ‘resilience’. Incidentally it may well be that this characteristic, while enhanced by the conflict duration and the hardships it has brought, lies at the heart of the very principle of initiation which is the introductory ritual to Secret Societies.

Ultimately, Secret Societies represent the most secretive and exclusive manifestation of the larger practice of corporatism and association in Sierra Leone, from religious leaders to professional and gender circles, that ought to be taken into account in the post-conflict strategy and processes of peace and reconciliation. It is only with a better understanding of those mechanisms and beliefs that a comprehensive strategy will indeed be made capable to given a real meaning to the notion of complementarity which might well be the trigger to the long term outcome of the peace, justice and reconciliation processes.
Indeed, while a global perspective is most certainly needed at a national and international level, the local level will have to be the resort for national cohesion to emerge from the different pieces of the puzzle, either produced or left non-addressed. As for the other levels this requires not only leadership but also hope and determination, echoing St. Augustine:

“Hope has two beautiful daughters: anger and courage.

Anger at the way things are, and courage to create things as they should be…”

CONCLUSION

In conclusion, the present analysis has been trying to underline the dynamics coming into play in the post-conflict equation of peace, justice and reconciliation. Beyond the analysis, the present thesis has attempted to raise flags at common assumptions that have grown reinforced from the recent development of the field of transitional justice and its extension to issues of peace and reconciliation.

We have tried to demonstrate that the relation between peace, justice and reconciliation is far from evident, and does not rely on strong empirical evidences. Indeed, no experience has demonstrated that a concomitant approach can be achieved or that it would be beneficial to the final outcome posted under the post-conflict agenda.

First, the approach toward justice and reconciliation taken as a model in the case of Sierra Leone, has not been supported by any conclusive achievements on the grounds, be it under the TRC label or under the international ad hoc tribunals;

Yet, in spite of its limited achievement in reality, this approach still appears as the dominant post-conflict paradigm, as experienced most recently in Sierra Leone. Paradoxically, past failures or mixed successes have been mostly explained by contingent
difficulties rather than by an intrinsic weakness of the model. The approach’s posterity has also certainly benefited from its strong symbolic and idealistic appeal towards the IC. For the author, a significant weakness of this approach has to be found in its lack of relevance in the context of unstable and still vulnerable societies. Indeed, legal and reconciliation paradigms are relying on perfect and iconic state’s institutions. However, in reality, such institutions are largely imperfect, even in the context of those states that serve as model for these paradigms (as it is the case for the US). Noting that in post-conflict societies those institutions are either non-existent or malfunctioning, one can assess the scope of the challenge.

Sierra Leone presents in many respects the ‘perfect’ profile of a case-study. Through the combined experiences of the TRC and the Special Court, but also the parallel programs, projects and policies undertaken in the undefined scope of ‘reconstruction’, the country has been the forum of implementation of patches of experiences, occurring together for the first time in a single environment.

The post-conflict justice approach has indeed generated high and unrealistic expectations regarding the outcome of the TRC and the SCSL. It is therefore crucial to recognize this situation and focus on what could realistically be achieved, while avoiding a cynical approach. Indeed, the TRC and the SCSL have the potential to achieve significant progress on the way to peace and reconciliation and to set valuable jurisprudence. In this regard, strong and sustained political support from the IC, crucially from the US, will be of the essence, especially in terms of extradition given the high profile of the SCSL’ indictment list. This list already includes such high profile figures as Charles Taylor or Sam Hinga Norman, and is looking towards charging Colonel Qaddafi… Therefore, the Court’s credibility will depend on the support of the IC and its willingness to commit itself, politically and financially, in the medium term.

On another level, as crucial for the success of the TRC and the SCSL as the IC’s support will be the mobilization of the Sierra Leonans themselves and their trust in these institutions' capacity to bring peace and justice. However, achieving such goals appear
beyond the scope of both the TRC and the SCSL and will rather depend on the political commitment and institutional capacity of Sierra Leone’s central government and local judicial system. In fact, these institutions will have to trigger a larger and longer process within the population, while addressing the roots of the conflict. The local population is still waiting for answers and the capacity of the government to address its concerns will be of utmost importance for the viability and long term sustainability of the process.

“The only victor that will prevail in this endeavor will be the truth”
Madeleine Albright's discourse for the establishment of the ICTY before the Security Council.
ANNEX 1

MAP OF SIERRA LEONE

Population: 4.89m (1997 est.)
National capital: Freetown
Climate: Tropical
Terrain: Coastal mangrove swamps, wooded hills, upland plateau, mountains
Natural resources: Diamonds, titanium ore, bauxite, iron ore, gold, chromite
Languages: English (official, regular use limited to literate minority), Mende (main vernacular in south), Temne (main vernacular in north), Krio (language of re-settled ex-slave population of the Freetown area)

288 Map reproduced from the BBC news website. http://news.bbc.co.uk
ANNEX # 2

BACKGROUND ON THE CIVIL WAR IN SIERRA LEONE

"WE'LL KILL YOU IF YOU CRY"

Sexual Violence in the Sierra Leone Conflict

Human Rights Watch Report 2003

Sierra Leone is a coastal West African country that shares borders with Guinea and Liberia. It has a population of close to five and a half million (July 2001 estimate) composed of sixteen ethnic groups. These are the Fullah, Gola, Koranko, Kissi, Kono, Krim, Krio, Limba, Loko, Mandingo, Mende, Sherbro, Susu, Temne, Vai and Yalunka. The Mende, in the south, and the Temne, in the north, are the largest ethnic groups (around 30 percent each). The Krio, who are descendants of freed slaves, were settled in the area of Freetown (now the capital) in the late eighteenth century and make up 10 percent of the total population. The educated Krio minority generally still occupies a higher social and economic position and has traditionally been resented by the other groups. Sierra Leone was a British colony, and English is Sierra Leone's official language. Krio, largely based on English vocabulary but with its own grammar, is the first language of the Krios as well as Sierra Leone's lingua franca. Though there are no reliable figures, Sierra Leone is a predominantly Muslim country (around 60 percent) with the remainder of the population practicing indigenous religions (10 percent) and Christianity (30 percent).

In 1961, Sierra Leone gained its independence from the United Kingdom. For most of the next three decades, Sierra Leone was governed by the All People's Congress (APC), dominated by the northern Temne and Limba ethnic groups, which came into power in 1967. The corruption, nepotism and fiscal mismanagement under the one-party rule of the APC led to the decay of all state institutions and the impoverishment of Sierra Leone's population, notwithstanding the country's large deposits of diamonds, gold, rutile, and bauxite. Frustration with government corruption and mismanagement led to

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289 The report is available online at: http://hrw.org/reports/2003/sierraleone/sierleon0103.pdf
the formation of the Revolutionary United Front (RUF) in 1984. The RUF claimed to be a political movement with the aim of salvaging the country and overthrowing the APC. Its invasion of Sierra Leone from Liberia on March 23, 1991 triggered the civil war that was to last ten years.

At its inception, the RUF consisted of a mixture of middle class students with a populist platform, unemployed and alienated youths, and Liberian fighters from Charles Taylor's National Patriotic Front of Liberia (NPFL), who had helped Charles Taylor in his quest to become the president of Liberia. A lesser-known covert sponsor of the RUF was the Sierra Leone People's Party (SLPP), with its ethnic base among the Mendes from the south, which also sought the overthrow of the APC.293 The RUF was led by Foday Sankoh, a former army corporal who had been imprisoned in 1971 for his alleged involvement in an attempted coup against the APC. Sankoh had also reportedly received training in Libya with Taylor.294 The RUF initially consisted of two small groups of only 150 combatants in total. As the RUF captured border towns and villages in Kailahun and Pujehun districts, they used tactics similar to those used to terrorize civilians during the Liberian civil war: seizing and summarily executing chiefs, village elders, traders, government agents and suspected SLA collaborators.295 The violence and looting of "jah-jah," especially by the Liberian mercenaries within the RUF, was sanctioned by Sankoh who justified them as reward for the mercenaries' support.296 The RUF's ideology of salvation quickly degenerated into a campaign of violence whose principal aim was to gain access to the country's diamond and other mineral wealth. From the very beginning, the RUF's campaign of terror included sexual violence and sexual slavery, committed on a widespread and systematic basis.

In April 1992, APC President Joseph Momoh was overthrown in a military coup by twenty-six-year-old army captain Valentine Strasser, who formed the National Provisional Ruling Council (NPRC). Strasser vowed to end corruption and create opportunities for all Sierra Leoneans. The new regime, however, was as corrupt as the old. The RUF continued to gain strength and was joined by numerous soldiers from the Sierra Leone Army (SLA) who were disgruntled with their poor conditions. These soldier-rebels or "sobels" discarded their uniforms at night to loot but wore government uniforms and continued to work for the government during the day. The "sobels," who included officers, also provided weapons, ammunition, and intelligence to RUF forces.

Starting in January 1991, Momoh and later Strasser embarked on a recruitment drive that swelled the army's ranks to approximately twelve thousand, aiming to dislodge the RUF including by offering its youthful constituency a lucrative alternative. Many of the new soldiers were unemployed drifters, petty criminals, and street children as young as

293 Paul Richards, Fighting for the Rainforest: War, Youth and Resources in Sierra Leone (London: The International African Institute in association with James Currey and Heinemann, 1996), p. 7. When the RUF first invaded from Liberia, villagers in Kailahun were ordered to cut palm fronds—the symbol of the SLPP—"in support" of the rebels.
295 Ibid., p. 178.
296 Ibid., p. 180.
twelve. Given the inability of the undisciplined and ill-trained SLA to drive out the RUF, in March 1995, Strasser invited Executive Outcomes (E.O.), a South African private security company, to fight the RUF and guard the mining areas, in return for concessions over their production. The RUF was by that time approaching Freetown and controlled most of the diamond mining areas. By December 1995, E.O. had retaken a number of key diamond areas and began to collaborate with the pro-government militia known as the Civil Defense Forces (CDF), of which the Kamajors are the largest and most powerful.

The CDF movement began with the establishment of the Eastern Region Defence Committee in 1993-4 and was greatly expanded in 1996 when regent chief Hinga Norman was appointed deputy minister of defense in Kabbah's government and head of the CDF, with the government providing the CDF with training, weapons and food. The CDF movement consists of groups of traditional hunters and young men who were used by the government to defend their native areas. The Kamajors operate mainly in the south and east, the Tamaboros in the far north, the Gbettis in the north and the Donzos in the far east. Civilians who joined the CDF underwent initiation ceremonies, which were said to bestow magical powers, making them immortal and invincible. Units of fighters were initially deployed only in their own chiefdoms to ensure their loyalty and discipline and make the best use of their superior bush knowledge. The CDF, in contrast to the SLA and the RUF, had the support of the local civilians and were very effective, overrunning main RUF camps in late 1996 with the support of E.O. and the army.

In January 1996, Strasser was overthrown by his deputy, Brigadier Julius Maada Bio. Bio initiated peace negotiations with the RUF, which had begun to suffer a number of defeats, as well as a program to return Sierra Leone to civilian rule. In March 1996, elections were held, and Ahmad Tejan Kabbah of the SLPP, who pledged to bring about an end to the war, became president of Sierra Leone.

In November 1996, the RUF and Kabbah's government signed the Abidjan Peace Accord, which provided for a ceasefire, disarmament, demobilization, an amnesty to the RUF, and the withdrawal of all foreign forces. The ceasefire was broken in January 1997, however, when serious fighting broke out in southern Moyamba district. In January 1997, Sankoh was arrested in Nigeria on an arms charge and imprisoned by the Nigerian government.

In May 1997, fourteen months after assuming power, President Kabbah was overthrown in a coup led by Major Johnny Paul Koroma, who formed a new government called the Armed Forces Revolutionary Council (AFRC). Koroma had escaped from prison, where he had been held following an earlier attempted coup in September 1996. The AFRC suspended the constitution, banned political parties, and announced rule by military decree. Days of looting by soldiers followed the coup, which also ushered in a period of political repression characterized by arbitrary arrests and detention. An attempt by

297 Ibid., p. 185. By 1999, the CDF had grown into a movement of an estimated fifteen thousand fighters who had to be disarmed and demobilized.
298 Ibid. This is a throwback to the venerated esoteric Mende cult of invincible traditional hunters who were given power through initiation ceremonies. These powers enabled the hunters, inter alia, to turn into an animal in order to catch their prey.
Nigerian and Guinean troops (who had been in Sierra Leone since 1995 as part of bilateral security accords to give support to the NPRC), supported by South African mercenaries, to oust Koroma failed.299

The AFRC consisted primarily of disgruntled ex-SLA soldiers who had become disillusioned by President Kabbah's decision to cut back support for the military. Koroma also cited the government's failure to implement the peace agreement as the reason for the coup. The SLA accused Kabbah of having put greater confidence for the country's defense in and giving more economic resources to the CDF than to the army. Formalizing an alliance between the army and the rebels based on joint opposition to President Kabbah and the SLPP, the AFRC invited the RUF to join its government in June 1997.

From exile in Guinea, President Kabbah mobilized international condemnation for and a response to the coup makers. In response to a plea from Kabbah, hundreds of Nigerian troops based in Liberia as part of the Economic Community of West African States Monitoring Group (ECOMOG) moved to Freetown, reinforcing ECOMOG colleagues already based at the Freetown airport to defend it from attacks by the RUF. Nigerian vessels stationed off Freetown shelled the city, reportedly killing at least fifty people. Nigerian forces were, however, eventually forced to withdraw from around the capital. In August 1997, following the AFRC's announcement of a four-year program for elections and return to civilian rule, which represented a breakdown in negotiations initiated by the Economic Community of West African States (ECOWAS), ECOWAS established a strict economic embargo against Sierra Leone. In October 1997, the U.N. Security Council adopted a resolution also imposing mandatory sanctions on Sierra Leone, including an embargo on arms and oil imports, which ECOMOG forces were mandated to enforce.

After negotiations in Guinea under the auspices of ECOWAS, the Kabbah government-in-exile and the RUF/AFRC signed an agreement on October 23, 1997, providing for the return to power of President Kabbah by April 1998. The RUF/AFRC, however, undermined the implementation of the accord by stockpiling weapons and attacking the positions of ECOMOG forces. In February 1998, ECOMOG forces together with Kamajor militia launched an operation that drove the RUF/AFRC forces from Freetown. In March 1998, President Kabbah was reinstated. Over the succeeding months ECOMOG forces were able to establish control over roughly two-thirds of the country, including all regional capitals: as of mid-1998, the ECOMOG contingent in Sierra Leone was composed of approximately 12,500 troops, predominantly Nigerian with support battalions from Guinea, Gambia, Ghana and Niger.300 Sankoh was transferred to Sierra Leone from Nigeria and incarcerated in July 1998. In October 1998, the Supreme Court of Sierra Leone tried and sentenced Sankoh to death for his role in the 1997 coup.

Once expelled from Freetown, the AFCR/RUF rebels tried to consolidate their own positions in other parts of the country. The Kabbah government, which had negligible forces of its own, had to rely on ECOMOG to stay in power. Through a series of offensives, the RUF/AFRC managed to gain control of the diamond-rich Kono district and several other strategic towns and areas. By late 1998, the rebels had gained the upper hand militarily and were in control of over half of the country, including all the mineral-rich areas. From this position, the RUF/AFRC launched a major offensive on Freetown in January 1999.

The battle for Freetown and ensuing three-week rebel occupation of the capital were characterized by the systematic and widespread perpetration of a wide range of abuses against the civilian population, and marked the most intensive and concentrated period of human rights abuses and international humanitarian law violations in Sierra Leone's ten-year civil war. At least five thousand civilians were killed and one hundred civilians had limbs amputated, including twenty-six double arm amputations. Thousands of women and girls, including girls as young as eight, were raped and subjected to other forms of sexual violence. In addition, the rebels used civilians as human shields, both while advancing towards ECOMOG positions and as a defense against ECOMOG air power. They also burnt whole neighborhoods, often with the residents in their houses.

Government and the Nigerian-led ECOMOG forces also committed serious human rights abuses, though on a lesser scale, including over 180 summary executions of rebels and their suspected collaborators. Prisoners taken by ECOMOG, some of who had surrendered and many of whom were wounded, were executed on the spot often with little or no effort to establish their guilt or innocence. Officers to the level of captain were present and participated in the executions. ECOWAS officials have yet to initiate a formal investigation into these killings.

As the RUF/AFRC were driven out of Freetown in February 1999, they abducted thousands of civilians, who were used to carry looted goods and ammunition, forcibly conscripted into fighting or used for forced labor. Thousands of girls and women were used as sex slaves by the rebels and forced to "marry" rebel husbands. As they moved eastward, the rebels continued to commit egregious human rights abuses, including killings and amputations, particularly in the villages around the towns of Masiaka, Lunsar, and Port Loko.301

In the months following the January invasion, and as a result of intense international pressure, Kabbah's government and RUF rebels signed a ceasefire agreement on May 18, 1999,302 followed by a peace agreement in Lomé, Togo, on July 7, 1999.303 Sankoh was released from prison by the Sierra Leonean government to participate in the peace negotiations. The accord, brokered by the U.N., the Organization of African Unity (OAU), and ECOWAS, committed the RUF/AFRC to lay down its arms in exchange for

representation in a new government. Sankoh was given the chairmanship of the board of the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD) and the status of vice-president.304 Johnny Paul Koroma was made the chairman of the Commission for the Consolidation of Peace (CCP), provided for under Article 6 of the peace agreement.305

The peace agreement also included a general amnesty for all crimes committed by all parties during the civil war until the signing of the peace agreement.306 At the last minute, the U.N. secretary-general's special representative attending the talks added a handwritten caveat that the U.N. held the understanding that the amnesty and pardon provided for in Article 9 did not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. In addition, the peace agreement mandated the establishment of a Truth and Reconciliation Commission (TRC) and a national human rights commission.

The United Nations Observer Mission in Sierra Leone (UNOMSIL), initially established in July 1998 to monitor the military and security conditions, was transformed into a much larger peacekeeping mission307 in October 1999, months later than had been planned, UNOMSIL, which at its maximum deployment included 192 military observers as well as a small human rights unit of four persons, was transformed into the United Nations Mission in Sierra Leone (UNAMSIL). UNAMSIL was mandated to maintain the peace and monitor the ceasefire and had a maximum authorized strength of 6,000 military personnel, including 260 military observers.308 The human rights unit was authorized to expand to a total of fourteen human rights officers. Two further Security Council resolutions followed, increasing the authorized troop strength to 11,100309 and then 13,000. 310

The peace process was marred by cease-fire violations, missed deadlines and infighting within rebel ranks. The RUF/AFRC failed to comply with several commitments, including the release of all civilian abductees. There was a relative decrease in human rights abuses following the peace agreement, although the RUF/AFRC continued to terrorize the civilian population in the north and east, which largely remained under its control. Sexual violence, in particular against the thousands of abducted women and girls, continued. In addition, a splinter group of the AFRC known as the West Side Boys established numerous bases in the Occra Hills near Freetown, from where they staged looting raids. The West Side Boys abducted hundreds of civilians, including girls and

304 Article 5 (2) of the Lomé Peace Agreement.
305 The RUF delegation to the peace talks in Lomé included members of the AFRC who were also appointed as ministers as part of the agreement to share power.
306 Lomé Peace Agreement. Under Article 9 (1) of this agreement, the Government of Sierra Leone was required to grant Sankoh absolute and free pardon. Article 9 (3) refers to the amnesty granted to all combatants of the RUF/SL, ex-AFRC, ex-SLA or CDF for any crimes they may have committed in pursuit of their objectives (See below, p. 61, for a discussion on the amnesty).
women, whom they raped and kept as sex slaves. In August 1999, they took hostage for one week forty-two members of a U.N.-led delegation composed of ECOMOG soldiers, religious leaders, aid workers, and journalists, who had gone to the Occra Hills to have abducted children released to them.

The Disarmament, Demobilization and Reintegration (DDR) program progressed slowly, with only 25,000 out of a total 45,000 combatants demobilized by May 2000.311 There was also considerable delay in the deployment of U.N. peacekeeping forces, with only 8,700 peacekeepers deployed by the same month. The peace process then broke down completely, when, in early May, the RUF captured over five hundred UNAMSIL peacekeepers and military observers deployed in the north and the east, holding them for several weeks.312 The conflict erupted again throughout the country and many of the combatants, including child combatants, who had been disarmed and demobilized, were re-conscripted. The human rights situation deteriorated sharply with numerous reports of RUF abuses, including murder, widespread rape, abduction, forced labor, and looting. During a demonstration in Freetown to protest the collapse of the peace process and hostage taking of the peacekeepers, twenty-two civilians were killed outside the house of the RUF leader, Sankoh. On May 17, 2000, several days after the demonstration, Sankoh was arrested by the government and held in custody, together with over 125 members of the RUF, without charge, using powers under a state of emergency declared in 1998.

There was also a disturbing intensification of abuses by pro-government forces. The Sierra Leonean government caused numerous civilian casualties through helicopter gunship attacks during May and June 2000 against the RUF strongholds of Makeni, Magburaka, and Kambia. Abuses by both the government forces and the RUF caused the displacement of some 330,000 civilians from behind rebel lines. Civilians leaving RUF territory were often captured and accused of being rebel sympathizers by the CDF. Whereas previously sexual violence against women had been very uncommon among the CDF, numerous cases of sexual violence were reported, including gang rape by Kamajor militiamen and commanders.

When, in May 2000, it seemed as though the fighting would threaten Freetown again, several hundred British soldiers were rapidly deployed to Sierra Leone—in the first instance to evacuate foreign nationals who wished to leave, but also to secure the airport, allow reinforcement of the U.N. contingent, and assist in the reorganization of the pro-government forces as an effective fighting force. At their maximum, there were more than 1,200 British soldiers in Sierra Leone, though they began to withdraw within two months of the first deployment. UNAMSIL was rapidly brought up to strength: by June 5, 2000 there were 11,350 U.N. troops in the country.


312 The hostages in the north were released on May 28, 2000. The hostages in the east, however, were not released until June 29, 2000. Two hundred and thirty-three peacekeepers and military observers who had been encircled by the RUF were finally freed by the U.N. military operation "Khukri" on July 15, 2000.
At the behest of Johnny Paul Koroma, the West Side Boys in May 2000 briefly fought on the government side to prevent the RUF from entering Freetown. However, they continued to commit human rights abuses, and in August 2000 abducted eleven British soldiers of the International Military Advisory and Training Team (IMATT) and one SLA officer. In September 2000, the West Side Boys bases were destroyed during an operation by British paratroopers to free the captured soldiers. Numerous West Side Boys, including their leader, were arrested and incarcerated.

From September 2000 through April 2001, RUF rebels and Liberian government forces acting together attacked refugee camps and villages accommodating several hundred thousand Sierra Leonean and Liberian refugees just across the border with Guinea. Following the attacks, Guinean security forces and the local population retaliated against the refugees, frequently looting, raping, and unlawfully detaining them. Guinean forces also responded to these RUF raids by killing and wounding dozens of Sierra Leoneans in indiscriminate helicopter and artillery attacks in the rebel-held areas in the north of Sierra Leone. Guinean troops conducted several ground attacks during which several civilians were gunned down and girls and women were raped.

In November 2000, the government and RUF signed a cease-fire, which committed both parties to restarting the disarmament process, the reestablishment of government authority in former rebel-held areas, and the release of all child combatants and abductees. On March 30, 2001, the U.N. Security Council authorized the further expansion of UNAMSIL to 17,500 military personnel, including 260 military observers. These forces, contributed by Bangladesh, Ghana, Guinea, Kenya, Nepal, Nigeria, Pakistan, Ukraine, and Zambia, were deployed into RUF strongholds, including the diamond-rich Kono district. The DDR program recommenced in May 2001, and by the end of 2001 over three thousand child soldiers, abductees, and separated children had been released by the RUF and the CDF.

During this period, serious human rights abuses continued to be committed, though on a reduced scale. Fighting between the RUF and the CDF broke out in the east of the country in June through August 2001, leaving tens of civilians dead. RUF forces committed scores of serious abuses including rape, murder, and abduction. The victims of these abuses included Sierra Leoneans returning from refugee camps in Guinea; Guinean civilians who were attacked during the cross-border raids by the RUF from September 2000 through April 2001; and Liberians fleeing renewed fighting in Lofa county of Liberia from April 2001. While the RUF released or demobilized more than 1,500 male child combatants, they were reluctant to release Sierra Leonean and Guinean female abductees, most of whom are believed to have been sexually abused.

The human rights situation continued to improve in 2002, with the disarmament and demobilization phases declared completed. By January 2002, 47,710 combatants had been disarmed and demobilized. On January 18, 2002, the armed conflict was officially declared to be over in a public ceremony attended by many dignitaries. In addition, the state of emergency was lifted for the first time in four years on February 28, 2002.

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Following the end of the state of emergency, the government charged Sankoh, and the other RUF and West Side Boys members held in custody since May 2000, with a number of crimes, including murder and related charges. The resettlement of internally displaced persons (IDPs) and returnees from Guinea and Liberia was ongoing as of the writing of this report. By July 2002, approximately 250,000 refugees and IDPs had been resettled. The RUF transformed itself into a political party and nominated presidential and parliamentary candidates for elections held on May 14, 2002.

In the elections, President Kabbah's SLPP was re-elected for a second term and faced the challenge of rebuilding the country and its economy. After a decade of war, Sierra Leone ranks last out of 162 countries in terms of life expectancy at birth; adult literacy; combined enrolment in primary, secondary and tertiary education; and GDP per capita.\textsuperscript{314} Fifty-seven percent of Sierra Leone's population struggles to survive on only U.S. $1 per day.\textsuperscript{315} Unemployment is rampant and the current economy is driven by the presence of UNAMSIL and other international organizations. Investors who could create desperately needed jobs remain cautious given the rampant corruption that permeates all levels of Sierra Leonean society and their concerns about regional security.

\textsuperscript{315} Ibid., p. 151.
ANNEX # 3

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:

a. Murder;
b. Extermination;
c. Enslavement;
d. Deportation;
e. Imprisonment;
f. Torture;
g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
h. Persecution on political, racial, ethnic or religious grounds;
i. 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:

a. 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;
b. Collective punishments;
c. Taking of hostages;
d. Acts of terrorism;
e. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
f. Pillage;
g. 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;
h. 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:

a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
b. 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;
c. 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:

a. Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31):
   
   i. Abusing a girl under 13 years of age, contrary to section 6;
   ii. Abusing a girl between 13 and 14 years of age, contrary to section 7;
   iii. Abduction of a girl for immoral purposes, contrary to section 12.

b. Offences relating to the wanton destruction of property under the Malicious Damage Act, 1861:
   
   i. Setting fire to dwelling - houses, any person being therein, contrary to section 2;
   ii. Setting fire to public buildings, contrary to sections 5 and 6;
   iii. 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:

   a. The act for which he or she was tried was characterized as an ordinary crime; or
   b. 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:

   a. 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;
   b. 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;
   c. To be tried without undue delay;
   d. 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;
   e. 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;
   f. To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;
   g. 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. A procedural error;
   b. An error on a question of law invalidating the decision;
   c. 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:

   a. Reconvene the Trial Chamber;
   b. 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.
ANNEX# 4

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
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

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

Ms. Adwoa Coleman  
Representative Organization of African Unity

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

AGREEMENT ON CEASEFIRE  
IN SIERRA LEONE

President Ahmed Tejan KABBAH and Rev. Jesse Jackson met on 18 May 1999 with Corporal Foday Saybana SANKOH, under the auspices of President Gnassingbe EYADEMA. At that meeting, the question of the peace process for Sierra Leone was discussed.

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The Government of the Republic of Sierra Leone and the Revolutionary United Front of
Sierra Leone (RUF/SL),

- Desirous to promote the ongoing dialogue process with a view to establishing durable peace and stability in Sierra Leone; and

- Wishing to create an appropriate atmosphere conducive to the holding of peace talks in Lome, which began with the RUF internal consultations to be followed by dialogue between the Government and the RUF;

- Have jointly decided to:

1. Agree to ceasefire as from 24 May 1999, the day that President EYADEMA invited Foreign Ministers of ECOWAS to discuss problems pertaining to Sierra Leone. It was further agreed that the dialogue between the Government of Sierra Leone and RUF would commence on 25 May 1999;

2. Maintain their present and respective positions in Sierra Leone as of the 24th of May 1999; and refrain from any hostile or aggressive act which could undermine the peace process;

3. Commit to start negotiations in good faith, involving all relevant parties in the discussions, not later than May 25 in Lome;

4. Guarantee safe and unhindered access by humanitarian organizations to all people in need; establish safe corridors for the provision of food and medical supplies to ECOMOG soldiers behind RUF lines, and to RUF combatants behind ECOMOG lines;

5. Immediate release of all prisoners of war and non-combatants;

6. Request the United Nations, subject to the Security Council’s authorisation, to deploy military observers as soon as possible to observe compliance by the Government forces (ECOMOG and Civil Defence Forces) and the RUF, including former AFRC forces, with this ceasefire agreement.

This agreement is without prejudice to any other agreement or additional protocols which may be discussed during the dialogue between the Government and the RUF.

Signed in Lome (Togo) 18 May 1999, in six (6) originals in English and French

For the Government of Sierra Leone
ALHADJI Dr. Ahmad Tejan KABBAH
President Of The Republic Of Sierra Leone

For the Revolutionary United Front Of Sierra Leone
Corporal Foday Saybana Sankoh, Leader Of the Revolutionary United Front (RUF)
WITNESSED BY:

For the Government of Togo and Current Chairman of ECOWAS
GNASSINGBE EYADEMA
President of the Republic of Togo

For the United Nations
Francis G. Okelo
Special Representative of the Secretary General

For the Organisation of African Unity (OAU)
Adwoa COLEMAN
Representative of the Organization of African Unity

US Presidential Special Envoy for the Promotion of Democracy in Africa
Rev. Jesse JACKSON
“Deficiencies in the portrayal of civil conflicts are more than deficiencies in understanding; they frequently play directly into the hands of those manipulating or profiting from violence. The idea that a conflict is bipolar – in other words that conflict is ‘really’ about government troops fighting rebel troops or about Serbs fighting Muslims or about Hutus fighting Tutsis – has proven extremely useful to elites protecting their own privileges.

There are three main reasons for this:

1. **International confusion and pessimism** in the face of ‘intractable ancient ethnic hatred’ or ‘irrational rebels’ allows time for planning and carrying out human rights abuses with minimal international repercussions. These abuses are often carried out by forces linked with the government; yet government responsibility is obscured when the focus is on ‘ethnic’ conflict or on a particularly reviled rebel group such as (…) the Revolutionary United Front (RUF) in Sierra Leone.

2. **The image of a bi-polar conflict** helps in suppressing political dissent since dissenters can be readily labeled as supporters of the ‘other side’ (whether these are ‘rebels’ or some reviled and demonized ethnic groups). It is precisely the distinction between ‘us’ and ‘them’ which those **manipulating conflict** which to encourage. Once this distinction is established, it follows that if you are not with us, you are against us. (…)

3. **The image of an enemy** may assist those benefiting from the political economy of conflict. (…) [For instance, ] in Turkey, the government has blamed the burning of villages by the army on the rebel PKK (Kurdistan Workers’ Party), and the distortion has usually been uncritically reported by the Turkish press. Paradoxically, as the Kurdish dissident Yasar Kemal notes, resisting this conspiracy of silence and pursuing an objective truth can be seen as taking
sides\textsuperscript{316}. We have seen the same thing in Cambodia and Sierra Leone. (…) Philip Knightley\textsuperscript{317} in his analysis of truth as the first casualty of war [has] suggested that is wartime, those who try to be ‘objective’ may quickly be accused of complicity with the enemy and/or undermining the morale of friendly forces.” (Keen 2001:7)

RQ. “For those seeking to divide the world into ‘us’ and ‘them’, any neutrals or undecideds’ may constitutes a powerful cognitive threat, a threat to the world view and moral universe of the chiefs combatants, as Antonius Robben has argued in relation to Argentina’s ‘dirty war’ in the 1970s\textsuperscript{318}. This argument can be extended onto the world stage to help explain the strong hostility to analysts like Noam Chomsky and Edward Said.” (Keen 2001: 8).

ANNEX #6
TRC SIGNS
Several methods and processes of reconciliation/dispute resolution seem to be common among the various SL ethnic groups.

- **Purification and Cleansing:**
  According to the Mendes, this is a major source of reconciliation in their community. This process takes different forms depending on the type and gravity of the crime. Normally crimes that are bound to bring shame to the individual. Home and community require cleansing of the perpetrator(s), on some occasions both the perpetrator and the victim and in some other instances the community and the place of commission of those crimes are purified. Such crimes include rape, incest, and “violating a bush”. Serious crimes such as accidental killings and shedding of kinsman’s blood also require cleansing of the perpetrator. In the case of rape and incest both the victim and the perpetrator are cleansed. In the case of violating a bush the perpetrators and the bush are symbolically cleansed so as to avert the anger of the spirits. This is done in consonance with spiritual intervention by njayei, humui, and kpkei among the Mende, semoi among the Kono, ladiet among the Kissi, yokaa and temgbe among the Northern tribes, including the Temne and the Limba.

Purification and cleansing have the symbolic value of expiating the sin of the perpetrator or “washing him/her” from any curse he/she might have incurred. Specifically among the Kono, in a case of rape or incest, the perpetrators are taken to a kpokoi where they are

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319 Source: National Forum Human Rights (Freetown, Sierra Leone), Report of Five Workshop Hosted For National Rulers/ Paramount Chiefs in Sierra Leone.
320 This often refers to having sexual intercourse in a bush particularly in a bush that could be used for farming in near future or sacred bush that is believed to be inhabited by the spirit of their ancestors.
symbolically washed along side a dog or at times the man and the woman are made to carry a dog on their backs and asked to walk around the community. The reason for this is that a belief exists that the act of incest is only accepted among dogs. In other ethnic groups the concerned people are asked to bring rice, palm oil, a dog and salt.

• **Pouring of Libation**

The belief that the dead and the spiritual continue to have influence inn the day-to-day life on the living is common among Sierra Leonans ethnic groups. The belief is furthered by the fact that the commission of a crime in the community may anger the Dead against not only the perpetrators but also the community as a whole. In order to avert or appease the anger of the ancestral spirits, their intermediaries in the community perform the hemagolei (among the Mende), a ceremony during which a haagboi (red rice) and njalei (cool water) is offered in a shrine in the sacred bush, and is followed by a feast. During the ceremony there is an apparent communication between the living and the dead in which the spirits purportedly answer in acceptance of the offerings. Such rites are normally performed when crime is considered to have been committed by a community or against a community.

• **Mass Initiation and Festivity**

Secret societies play an important socio-cultural role in the communities. They do not only serve as puberty rite passages for young men and women but also serve to cement broken communities as a result of inter-communal violence or disputes etc. This is common particularly in ethnic communities where the Poro and the Sande secret societies are prevalent. The massive initiation of young men and women into these societies serve as a forum where people from different backgrounds could converge and one more dance, eat and sleep together in the societal ceremonies. By coming together and bringing reminiscences of their initiation days, the occasion will serve as a therapy for aggrieved individuals and groups, and for the aggressors to give them the opportunity to talk about their actions and reasons behind these actions. In some cases these mass initiations are exchanged between closer communities.
• **Inter-Marriages**

Marriage is not only a symbol of bringing two people together for the purpose of procreation, but it is also used as mean to seal agreement between communities, homes and families, gaining access to ruling families and also enhancing reconciliation among individuals, families and communities.

In case of disputes/ conflict between communities, the elders of such communities come together in a bid to resolving the conflict. The success of such an attempt is followed by consummation of several marriage arrangements between the two communities. It is believed that the product of such relationship in terms of the accompanied festivities and child birth will help cement the future relation between the two communities and help heal the grudge that may have developed as a result of the conflict.

• **Reproach and Public Annihilation**

One of the most occurring means of resolving conflict in Sierra Leone, particularly with regards to those relating to crimes like theft and other shameful acts, is the practice of exposing the perpetrators to public reproach and annihilation. In specific cases, among the Mende for instance, when it has been established that an individual has committed theft or some shameful acts, the perpetrator is made to dance publicly and came be submitted to some treatment that could well be qualified as torture. Concerns about the human rights implication of such methods was highlighted.

Such method clearly underpin the punitive rather than the reconciliatory approach to conflict resolution.

• **Swearing**

This act practiced by every ethnic group in Sierra Leone is the appeal for some supernatural intervention in unresolved cases. The practice involves the invocation of specific spirits to bring curse on a suspected perpetrator. When an act is committed and the perpetrator is identifiable, the community or the affected parties resort to this kind of action, which involve cursing the perpetrators by various spiritual or invincible means. This appel comes in various forms depending on the ethnic communities. Among the Southeastern ethnic groups such as the Mende, the Kono, Sherbro. *Ngelegbaa*
(Thunderbolt), *humui, tilei, fogbokoi* and among the Temne and the Limba *gbom* are some of the few swearing means. These can bring a number of curses on the individual and in some situations, on the offspring of the perpetrator(s) including death, barrenness to a woman, ill-luck etc.

Such action gives satisfaction to victim(s) though it strengthened suspicion. Such a mechanism is controversial appreciated with regards to its role in the reconciliation process as its emphasis is rather on the punitive side.
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ANNEX # 9
ACRONYMS

- AFRC: Armed Forces Revolutionary Council
- CDF: Civil Defense Forces
- ECOWAS: Economic Community of West African States
- ECOMOG: ECOWAS Monitoring Group
- E.O: Executive Outcomes
- GoSL: Government of Sierra Leone
- IC: International Community
- ICC: International Criminal Court
- ICTY: International Criminal Tribunal for Yugoslavia
- ICTR: International Criminal Tribunal for Rwanda
- IHL: International Humanitarian Law (A.K.A laws of Armed Conflicts)
- IL: International Law
- NPFL: National Patriotic Front of Liberia
- NPRC: National Provisional Ruling Council
- RUF: Revolutionary United Front
- SA TRC: South Africa Truth and Reconciliation Commission
- S.C: Security Council
- SLA: Sierra Leone Army
- SCSL: Special Court for Sierra Leone
- SLPP: Sierra Leone People’s Party
- SL TRC: Sierra Leone Truth and Reconciliation Commission
- TRC: Truth and Reconciliation Commission