

**BOTTOM-UP OR TOP-DOWN?: EVALUATING THE TRANSITIONAL JUSTICE  
PROCESSES IN SIERRA LEONE**

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**ABSTRACT**

*The decade-long civil war in Sierra Leone, characterized by population displacements, gruesome killings and massive human rights abuses, required the implementation of effective transitional justice (TJ) measures to redress past abuses and promote national healing. The implemented measures, however, turned out to be mechanisms that were not tailored to respond adequately to the Sierra Leonean context. The Truth and Reconciliation Commission, for instance, was designed to suit international practices to the neglect of traditional reconciliation measures embedded in Sierra Leonean society. International actors who largely crafted the TJ programmes neglected reparations, a process that would have given direct material benefit to victims. The effectiveness of the Special Court of Sierra Leone was similarly compromised to advance the interests of international actors. These developments vitiated the efficacy of the post-conflict TJ mechanisms in Sierra Leone. In general, the TJ system became elite-dominated and western-led and thus failed to engage meaningfully with existing local traditions and aspirations. Consequently, the Sierra Leonean post-conflict TJ system lacked local ownership – a crucial factor for confidence building and success.*

**KEYWORDS:** Conflict, human rights, Special Court for Sierra Leone, Transitional Justice, Truth and Reconciliation Commission.

**1.1 Introduction**

The civil war in Sierra Leone occurred at a time when the international community had become cognizant of the need for justice to be integrated into transitional processes. Historically, Transitional Justice (TJ) came into vogue in post-conflict peacebuilding in the 1990s for two crucial reasons: First, the escalation of conflicts in some parts of the world required that the international community stepped-up efforts towards promoting accountability. These accountability measures were carried out in two ways –prosecuting perpetrators as was the case in Rwanda and former Yugoslavia or cajoling them to testify before Truth and Reconciliation Commissions and requiring them to apologize for their actions as was the case in South Africa

and Ghana. In some cases, both approaches were adopted. The latter was, however, the exception and not the rule, as the international community favored criminal prosecutions in post-conflict states. The second reason for the dominance of TJ was to seek redress for victims.

Efforts at ensuring post-conflict peacebuilding in Sierra Leone required the implementation of various TJ mechanisms. Although the transitional process has been relatively successful as Sierra Leone has not relapsed into conflict and is at the verge of consolidating its democratic gains, the TJ mechanisms implemented were rife with flaws. This article sets out to examine the transitional justice models implemented as part of the post-conflict reconstruction process in Sierra Leone. It assesses the level of engagement of the TJ process with local expectations, needs and culture. Drawing on literature from conflict and peace studies, it argues that the TJ mechanisms in post-conflict Sierra Leone failed to meaningfully engage with existing local traditions, aspirations and demands, thus making it difficult for citizens to take ownership of the process. The paper is divided into four sections: the first section sets out the conceptual framework underpinning the study. The second expounds the background to the conflict, while the subsequent sections analyze the various TJ mechanisms implemented including the Truth and Reconciliation Commission, the Reparation Program as well as the Special Court for Sierra Leone.

## **1.2 Conceptualizing Transitional Justice**

The International Centre for Transitional Justice defines it as a “response to systematic or widespread violations of human rights. In this case, TJ seeks recognition for victims of abuse and the promotion of possibilities for peace, reconciliation and democracy” (ICTJ, 2009:1). The aim of transitional justice is to aid societies recovering from prevalent human rights abuses to rectify the atrocities of the past while entrenching democratic values and the culture of peace into the new “social fabric”. TJ is often implemented in countries emerging from oppressive regimes or from conflicts. Boraine (2006) argues that a country in transition is a state that is “emerging from one particular order” and yet is unsettled on the best approach to respond to the “challenge of the new” (Boraine, 2006: 17). This uncertain condition usually paves the way for global actors to influence the transitional process in post-conflict states with the consent of the countries involved.

TJ as an academic field evolved in the 1980s as part of efforts to address abuses emanating

from repressive regimes in Latin America and Eastern Europe (Haldemann, 2016). With time, TJ contributed towards promoting global peace, democratic transitions and ensuring the continuous redress of justice for human rights violations. TJ has achieved this through such mechanisms as truth commissions, reparation programs and criminal prosecutions. Yet, the field has been confronted with challenges, including the neglect of victims and the inability of justice processes to satisfactorily address the structures, hierarchies and biases that shape human rights abuses (Vasuki, 2016). Challenges faced by TJ resonate from the high level of global economic inequality among nations of the world. This usually results in developing countries depending on the developed world to finance TJ initiatives. Accordingly, the implementation of TJ mechanisms may often either reflect the interest of Western donors or result in compromises that are not necessarily tailored to suit the context and interest of transitional states. Thus, there are currently “more challenging concerns about the narrow discourse of impunity in transitional justice and the need to develop a more robust approach to accountability for economic crimes” (ibid:12). Moreover, in the process of transitioning, states are confronted with challenges emanating from the quest to redress past abuses, ensure sustainable peace and advance economic growth and development (Boraine, 2006). These states are further confronted with the hurdle of establishing and preserving democracy and good governance. Where these challenges are not satisfactorily addressed, countries often relapse into conflict as evidenced by the second Liberian civil war in 2002 and the 2010 post-election conflict in Cote d’Ivoire.

### **1.3 Background to the Civil War**

The Sierra Leonean civil war can be characterized as part of the new war phenomenon (Kaldor, 2012). Like most African conflicts, the causes of the war were complicated and multi-dimensional. An understanding of the underlying causes of the conflict is thus relevant in evaluating the efficacy of the post-conflict TJ mechanisms in the country. The United Nations Development Program (UNDP) attribute the underpinning conditions for the conflict to the weakness of state authority, the pervasiveness of corruption, patronage and mismanagement of state resources (UNDP, 2011). In addition to these internal factors, external pressure for the adoption of the ubiquitous Structural Adjustment Program (SAP) contributed towards weakening the governments’ capacity to provide basic services and further shrank its revenue base (ibid). SAPs further led to the marginalization of the youth in Freetown and many hinterland dwellers. The pressures of SAPs on society were exacerbated by the All People’s

Congress' (APC) tyrannical one-party rule from 1968 until 1992 (Ainley, et al (2015). Together, these developments created auspicious conditions for the uprising.

Yet, regional developments, including the raging war in neighboring Liberia, contributed towards triggering the bloodbath in Sierra Leone. The Sierra Leonean conflict started in 1991 after a section of the Revolutionary United Front (RUF) launched an attack on two small towns in the Kailahun district (Hawkins & Losee, 2014). Although the RUF was led by Corporal Foday Sankoh, its activities were supported by Charles Taylor, the leader of Liberia's rebellion. The insurrection was also supported by Muammar al-Gaddafi and Blaise Compaore, the leaders of Libya and Burkina Faso respectively (UNDP, 2011). The involvement of Tripoli and Ouagadougou in the conflict was not surprising; these countries had previously supported the insurrection in Liberia. However, the rationale behind Gaddafi and Compaore's involvement in the Sierra Leonean conflict remained unclear. What was clear, however, was that Compaore allowed Burkina Faso to be used as a conduit through which arms from Eastern Europe were channeled to the rebels in Sierra Leone, in contravention of UN arms embargo on the latter (Sesay, 2009). On the other hand, government forces were supported by Executive Outcomes (a South African-based mercenary group), the British military and the ECOWAS Monitoring Group, ECOMOG (Kadlor, 2006). Unlike most conflicts in Africa, the Sierra Leonean civil war had no ethnic undertones. Some scholars, however, highlight the abundance of alluvial diamonds in Sierra Leone and the competition for them as one of the primary, if not the main cause, of the war. While this may be partially plausible, diamonds served more as a "spoil of war" used in funding the conflict, rather than being its original cause.

Characterized by gross human rights violations, the Sierra Leonean conflict was estimated to have caused about 100,000 deaths and the displacement of over 2.5 million people over a period of 11 years (Sesay, 2009). Similarly, about 4000 civilians were amputated and several thousand injured. Further, widespread use of rape as a weapon of war with hundreds of women compelled to serve as "bush wives" to the combatants became visible (ibid). In addition, children were recruited as fighters by the warring factions (Shaw, 2007). Beyond its palpable ramifications, the conflict also resulted in rifts within communities due to the localized nature of the violence, the disintegration of families and the deepening sense of mistrust between marginalized communities and the government in Free Town (Ainley et al, 2015). The intransigent posture of the warring factions resulted in the signing of many unsuccessful peace

agreements including the Abidjan Peace Accords (1996), Conakry Peace Plan (1997) and the Lomé Peace Agreement (1999). However, on 10 November 2000, a peace agreement resulting in a ceasefire was signed in Abuja by the warring factions under the auspices of ECOWAS. Subsequently, the war was declared officially over in January 2002 (UN, 1999).

#### **1.4 Transitional Justice in Sierra Leone**

The Lomé Peace Accord (LPA) stipulated the TJ mechanisms to be implemented after the cease-fire agreement. However, the government of Sierra Leone only reluctantly acceded to the LPA out of coercion from external actors, notably Britain, Sierra Leone's former colonial rulers and key aid donor. US officials were reported to have "drawn entire sections" of the pact (Cooper, et al., 2011: 1999). The practice of influencing post-conflict peace processes in Africa by external actors is becoming prevalent. While this has benefits, it generally marginalizes local actors and expectations. Thus, most TJ models, fashioned along the liberal peacebuilding approach, tend to fulfil the expectations of the international community rather than post-conflict communities (Millar, 2011: 530).

The initial efforts at ensuring recognition and accountability for crimes committed during the civil war were deliberately frustrated by the RUF. Against a backdrop of the atrocious crimes committed by the RUF, it attempted to either exclude or make ineffective TJ mechanisms included in the LPA (Sesay, 2009). The RUF and other minor rebel groups argued that the inclusion of TJ in the peace process would threaten peace and stability – the ultimate objective of the agreement. Consequently, concerns raised by civil society organizations on the need for accountability were marginalized in the agreement. Article 9 of the agreement *inter alia* states that "... 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" (LPA, 1999). Accordingly, the agreement exempted combatants of the RUF from any judicial action, in the quest to promote peace.

With the denial of victims the much needed justice and the seeming rewarding of impunity, the implementation of relevant TJ mechanisms were relegated to the backseat. The granting of amnesty to rebels was not a new phenomenon in peace processes in Africa. Amnesty is usually leveraged by rebel factions as a bargaining chip during negotiations. The Lusaka protocol that

sought to end the Angolan civil war, for example, provided amnesty to all individuals and groups who committed crimes during the conflict (Lusaka Protocol, 1994). While this obstructs justice, it may in the short term pave way for peace. The granting of amnesty to perpetrators of crimes during conflicts can be an important way of recognising “the moral justice of acts which are illegal” (Pankhurst, 1999: 242). However, the mass granting of amnesty to perpetrators may generate a sense of injustice, which potentially threatens peace in post-conflict situations. In general, post-conflict peace is not sustainable without justice. Justice, however, cannot be limited to criminal prosecutions, the prevalent approach in the developed world. This makes it necessary for TJ practitioners to explore local mechanisms for justice to be included in TJ processes.

In the light of the incessant human rights violations perpetrated by the RUF and especially the infamous abduction of 500 UN peacekeepers, the government was compelled to call for the prosecution of RUF leaders (Sieff, 2001). Shortly after, President Kabbah officially requested United Nations assistance in prosecuting perpetrators of the crimes committed during the conflict (Ainley et.al, 2015). Subsequently, the UN negotiated with Free Town to establish an Independent Special Court. Since that period, a number of TJ mechanisms have been initiated as a way of ensuring accountability and redress for victims. The transitional justice mechanisms implemented comprised of the establishment of a Truth and Reconciliation Commission, Reparations Programme and a Special Court for Sierra Leone. In the next section, we analyze these TJ mechanisms designed to ensure lasting peace in post-conflict Sierra Leone.

### **1.5 Truth and Reconciliation Commission (TRC)**

The creation of the Truth and Reconciliation Commission (TRC) in Sierra Leone was championed by civil society organizations (Sesay, 2009). Provision for the establishment of the TRC was first stipulated in the Lomé Peace Agreement and was supported by all parties to the conflict. The initiative was further embraced by the UN and other “international partners who sought to act as moral guarantors for the Commission” (ibid: 8). However, the TRC did not become operational until February 2002 when legislation was passed by the Sierra Leonean parliament for its establishment. The primary task of the TRC was to “create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement. The Commission was also tasked with the responsibility

to address impunity, respond to the needs of the victims, promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered” (Web, 2000:6).

In achieving the mandate entrusted to it, the Act further required the Commission, which comprised national and international personnel, to undertake research and hold public hearings in order to gather testimonies from victims, perpetrators and observers while giving special attention to women and children who were abused during the conflict (ibid). Within the two-year period of its operations, the TRC (from 2002 until 2004) collected about 9000 personal statements and some 200 written submissions from both national and international organizations (Ainley, et al 2015). The recommendations submitted by the TRC sought to address issues such as preserving human rights, broadening democratic participation to involve women and the youth and efforts to combat corruption (Kadlor, 2006).

The TRC was initially established as an independent institution, however, for administrative and legal reasons it operated as a project under the Office of the High Commissioner for Human Rights – OHCHR (Hayner, 2004:3). With the OHCHR assisting the Commission with fund raising and other administrative initiatives, the envisioned independence of the TRC was compromised. Issues pertaining to the budget of the TRC could only be finalized upon consultation with the OHCHR. The asymmetrical relationship between the TRC and the OHCHR retarded the pace at which the former operated and resulted in divergent stance on what the priorities of the Commission was (ibid:4). The composition of the the Commissioners further underscored the lack of local ownership in the TRC. For instance, out of the seven commissioners, four were Sierra Leoneans while the three others were foreign nationals. Among the local Commissioners, there was no representation from various interest groups that had been affected by the conflict such as the amputees. Bishop Joseph Humper chaired the Commission with Laura Marcus-Jones, a former High Court judge, acting as his deputy. The two other members of the Commission – John Kamara and Sylvanus Torto – were both professors (Hayner, 2004:2). This affirmed the assertion by some scholars that the transitional justice enterprise was unduly dominated by the West and a few privileged intellectuals to the neglect of victims of conflicts (Millar, 2011: 531). The hybridity of the Commission led to occasional disagreements between the national and international commissioners on issues such as the modalities for appointing staff.

Similarly, although the core staff of the Commission were Sierra Leoneans, most of the heads of the various departments were foreign nationals. The composition of the TRC therefore made it difficult for indigenous truth and reconciliation techniques to be employed in its operations. Although the Act that established the Commission allowed for the inclusion of customary institutions and resources –paramount chiefs, traditional and religious leaders – to be part of the truth and reconciliation process, the Commission hardly engaged with these resources. The TRC only engaged with traditional institutions during hearings that occurred outside Freetown. This approach was a strategy to get traditional leaders to mobilize their subjects to participate in the activities of the TRC.

To climax the TRC's activities, the Commission organized a reconciliation ceremony in some communities where perpetrators and victims were reunited. During these events, perpetrators usually underwent a local cleansing ceremony to purge them of their evils after which they were "reaccepted" into the community (Hayner, 2004:5). Despite the significance of these ceremonies in promoting reconciliation, they were underutilized by the TRC. The approach of the TRC has been defended by some observers on grounds that its operations were significantly hindered by financial challenges. As a result, the Commission could only conduct public hearings for a week in the various provinces – an insufficient time frame to adequately probe the issues (Ainley, et al 2015). Consequently, the Commission had to select a few people to testify with a limited amount of time allocated to each person while many others were denied the opportunity to testify (Shaw, 2007). Local models of reconciliation are generally considered to be cost-effective and "local community friendly" (Sesay, 2007:43). It is plausible to argue that the undue influence of the TRC's international partners dissuaded the Commission from vigorously incorporating local alternatives into the reconciliation process. Donor states were unlikely to support traditional reconciliation initiatives that were unknown to them (ibid).

With the availability of indigenous reintegration models in many communities in Sierra Leone, the initiatives of the TRC would have been more meaningful to local communities had the Commission altered the internationally supported "collective truth telling" approach it adopted. Post-conflict states are usually saddled with challenges which make it necessary for external actors to be involved in the reconstruction process. However, international actors often lack sufficient understanding of the local context, cultural values and norms embraced by the "ordinary people" in the countries they seek to salvage. Accordingly, local-international



partnership could be detrimental if the international community becomes oblivious of local realities and systems. Unfortunately, this is often the case due to the universalization of truth commissions.

The inability of the Commission to utilize traditional approaches adversely affected the reintegration of ex-combatants into their communities (Svärd, 2010: 43). Kelsall (2005) argues that, the public hearing of the Commission would have been more successful had the truth-telling process “been more heavily invested with ritual practices”. Kelsall (2005) further postulates that, beyond the Quran and the Bible, individuals who testified before the Commission would have been more inclined to speaking the truth had the TRC resorted to using traditional swearing techniques. However, this approach would have been opposed by some staff of the Commission (particularly the international staff) who would have perceived these techniques as irrational and contradictory to the principles and spirit of human rights (ibid:386).

## **1.6 Reparations**

The need for reparations for victims of war crimes is imbedded in international humanitarian law. The UN Principles and Guidelines on the Right to a Remedy and Reparation stipulate that victims of conflicts have the right to “adequate, effective and prompt reparation for harm suffered as well as access to relevant information concerning violations and reparation mechanisms” (UN, 2005:6). In providing social justice to victims of war and redressing the breaches of international human rights law, the affected individuals (including their immediate family and dependants) are entitled to reparations that commensurate the harm suffered or the degree of violation (UN, 2005). This provision is, however, vague and may be unattainable in reality. In practice it is difficult to quantify harm suffered by victims in a particular conflict, or determine the extent to which reparation would be proportionate to the harm suffered. Hundreds of civilians suffered amputation while many more painfully witnessed the gruesome killing and mutilation of their family members during the Sierra Leonian war. The critical question here is: how do such victims get compensated for the trauma they endured for the rest of their lives? Arguably, it may not be possible for victims of war crimes to be adequately compensated in a manner that restores them to the quality of life they enjoyed prior to the war (quality of life used in this context refers to the physical, emotional, spiritual and psychological well-being of a person). Accordingly, reparations should only be viewed as a

means of acknowledging past wrongs and a minimal way of appeasing victims of war.

Victims can achieve reparations either through political or judicial means, in which case they resort to civil courts (STRC, 2016: 229). The latter option may, however, be difficult to pursue since it is often impossible to establish which individuals may be responsible for specific crimes committed during conflicts. Again, the approach may be a daunting task, given that conflicts usually result in the deterioration, even weakening, of state institutions, including judicial systems. With regards to Sierra Leone, the report of the TRC indicated that Freetown lacked the judicial capacity to redress crimes committed during the war. This was due to the lack of “functioning courts and access to formal justice” in many parts of the country (ibid: 229). This leaves political options as the more plausible alternative approach to compensate victims.

Despite its significance in ensuring sustainable peace and meting out justice to survivors, reparations received very little attention from the international community and the transitional government in Freetown. Although reparations were not explicitly stated in the Act that resulted in the creation of the TRC, the Commission was required to make recommendations that would “address the needs of the victims,” and “restore the human dignity of victims” (STRC, 2016:227). The mandate of the commission implicitly required that it makes proposal on appropriate reparations for victims. During the hearings of the TRC, some victims who testified before the Commission did so with the aim of gaining material benefit in return (Shaw, 2007). One victim bemoaned the lack of reparations and the potential consequence:

We the amputees, how are we in the world now? I am not speaking for myself here. The government should not leave our case behind. It is not for us, it is for our children. If my child grows up and asks me who chopped off my hand, I shall say these people did it to me. That will bring the war again. If you say peace should come, we the amputees should bring the peace. I cannot be struggling and say that I am living in peace. That is why our case should be pushed forward. If our problem is left behind, the war will not end. We the amputees, we all have children (Shaw, 2007:206 ; STRC,2016).

By testifying before the TRC, victims of the war anticipated two outcomes, one of which was to bring to the lime light the abuse and trauma they endured during the war. The second and perhaps the most important, was to solicit for support from the government and the international community to enable them deal with the dire impact of the war on their lives and their communities. The expectation for material benefit from the TRC, however turned out to be an illusion. Where reparations were mentioned, they served merely as tools to entice victims, community leaders and civil society organizations to participate in the Commissions activities

(Conteh & Berghs, 2014: 5). Victims of the war were assured that by testifying before the TRC, they would be guaranteed provisions from the government (ibid). However, since the implementation of reparations transcended the mandate of the TRC, victims were referred to the National Commission for Social Action – the agency responsible for ensuring the welfare of victims (Sesay, 2009).

The reparation programs recommended by the TRC were twofold: the first pertained to the provision of a service package geared towards meeting the needs of victims. The second related to “a symbolic measure meant to acknowledge the suffering of the victims” (ibid:19). The TRC adopted a victim-centered approach in its recommendations on reparations. The Commission recommended that the special fund set-up for the casualties of the war should focus primarily on meeting the basic needs of victims such as providing them with education, free medical care, training, housing and pension benefits (STRC, 2016). Further, it proposed the inclusion of victims in the governance process and the acknowledgement of the ordeals of victims during the war. The reparations program was therefore focused on meeting the socio-economic needs of victims (Kadlor,2006).

Although reparation initiatives were expected to begin within six months of the release of the TRC’s report, attempts at implementing these proposals did not commence until 2006. In 2006, the office of the Vice President established a special reparations task force comprising former officials from the TRC, civil society organizations, UN and the victims of the war (ibid). The UN Peacebuilding Fund made available \$3 million to expedite reparation initiatives. Yet, the reparations program was limited to only victims who were in dire need of assistance such as amputees, individuals who had been sexually abused, persons wounded as a result of the war, children and affected communities. While this list of beneficiaries covered a wide range of people vulnerable to abuse during conflict, it did not include the aged and individuals who were physically challenged prior to the conflict. The different categories of victims were, however, given distinct benefits to meet their respective needs. Generally, all victims were given \$100, a meagre amount compared to the devastating lasting impact of the war on their lives. Victims who were extremely affected by the war such as amputees were later given \$1400 each in 2013 and were obliged to sign documents indicating they would not make future claims for reparations (Kirsten et.al, 2015). While the reparation program was commended for not discriminating against non-citizens, the meagre amount paid to victims underscored its

inadequate funding, but also how little the program offered vis-à-vis heightened victim expectations.

A further critique of the reparations program was the prioritization of ex-combatants over victims. While this approach was perhaps taken to prevent the former from reigniting the conflict in Freetown, it usually stalls reconciliation and sustainable peace. One victim who testified before the TRC indicated that "...what puzzles me is that the perpetrators are cared for and those of us who are victims are left out. What will happen to us in the future?" (STRC, 2016). This remark reaffirmed the disconnection between the demands of victims and the programs initiated. The involvement of victims in the decision-making process was limited, leaving the TJ process to be driven by the interests of policy makers, international actors and NGOs rather than by the concerns of the masses and victims.

### **1.7 The Special Court for Sierra Leone (SCSL)**

As stated earlier, the incessant attacks on civilians and the abduction of UN peacekeepers influenced the decision of the Sierra Leone government to request the assistance of the UN in the establishment of a court to prosecute RUF leaders and combatants. President Alhaji Ahmad Tejan Kabbah argued that the RUF had planned and engineered the decade-long conflict that had resulted in the massive atrocities (Jalloh, 2011:398). Kabbah further asserted that the leadership of the RUF had breached international law. With Sierra Leone lacking the resources to ensure a credible trial, Kabbah advocated for international support in prosecuting the perpetrators of the war crime (Jalloh, 2011). Although the quest for justice is an instrumental aspect of peacebuilding, selective justice can be detrimental to sustainable peace in post-conflict societies. Selective justice occurs when one faction to a conflict is held liable for the crimes committed during a war, without attempts to investigate and prosecute other parties to the conflict who may equally have contributed to the sustenance of the war.

Attempts at establishing a justice regime to uphold the principles of accountability culminated in the signing of the agreement on the creation of the Special Court of Sierra Leone (SCSL) in January 2002 (Kadlor, 2006). The creation of the court was the idea of president Kabbah with the support of the international community. The SCSL was established to prosecute individuals responsible for war and other crimes of concern to the international community. This mandate was consistent with the responsibility entrusted to the International Criminal Court (ICC).

However, due to the non-operationalization of the ICC at the time of the establishment of the SCSL, criminal prosecutions could not be carried out at the Hague. With the intensification in efforts at establishing a permanent international criminal justice regime in the 1990s, international actors involved in resolving the Sierra Leone war were inclined to pursuing retributive justice. Increasingly, the international community and human rights organizations have come to embrace the need for prosecution as part of peacebuilding efforts. In this regard, punishing perpetrators was perceived as a conduit for serving justice (Pankhurst, 1999: 242). Whereas criminal justice may promote peace by preventing vengeance from victims, the excessive focus on retributive justice risk shifting attention from casualties of conflict to perpetrators, as prosecution does not necessarily amount to direct material benefit to victims.

The SCSL was mandated to prosecute individuals who bore the greatest responsibility for human rights violations committed during the war, specifically from 30 November 1996 until the end of the conflict (Sieff, 2001). The court had to adopt this approach since it was impossible to prosecute all the perpetrators given the sheer size of the numbers involved. It was estimated that no fewer than 30,000 perpetrators, including children, were involved. Moreover, mass prosecutions have proven to be costly and time-consuming, thus making it preferable to concentrate on individuals most responsible for crimes to be punished. Attempts to prosecute all perpetrators may also adversely hinder reconciliation and sustainable peace, especially in instances where TRCs operate concurrently with criminal prosecutions. In such situations, perpetrators are unlikely to cooperate with truth commissions out of fear of being indicted based on their testimonies. The limited prosecutorial mandate of the Court was, however, a digression from that of the international tribunals established in Yugoslavia and Rwanda that had the authority to prosecute “serious violations of international humanitarian law” (Hawkins & Losee, 2014: 55).

The SCSL comprised of Sierra Leonean and international judges and lawyers and used both Sierra Leonean and international law, making it a hybrid court. The hybrid system was relevant for the Sierra Leonean context because it granted the court process some level of legitimacy. Any attempts by Freetown to prosecute crimes committed during the war would have been discredited as it would have been perceived as exemplifying victor’s justice. On the other hand, should Western states have taken the initiative to prosecute war crimes in Sierra Leone without recourse to the hybrid court, such an approach would have been perceived as undermining the

sovereignty of the country (Hawkins & Losee, 2014). The independent court was thus the best approach. In all, the court indicted 13 leaders of the various armed groups including Charles Taylor, the former president of Liberia, for his involvement in the conflict despite opposition from the US government (ibid).

A controversy that surrounded the establishment of the court revolved around the unwillingness of the UN Security Council to grant it Chapter VII authority, unlike the international tribunals established in Yugoslavia and Rwanda (Sesay, 2009). Thus, the SCSL did not have the legal mandate to enforce the arrest of non-Sierra Leoneans indicted for crimes within the jurisdiction of the court. The Court was unable to instigate the surrender of Charles Taylor by the Nigerian government to face trial. It also partly contributed to the inability of the court to indict heads of states such as Muammar Gaddafi and Blaise Compaore for their roles in the conflict. It should be noted that the disposition of Western States towards Gaddafi had changed significantly by 2003, after the Libyan strongman handed over the two suspects of the Lockerbie plane bombing in 1999 and subsequently accepted responsibility for the attack (Sipress & Mintz, 2003). Gaddafi further denounced the 9/11 attacks and subsequently pledged Libya's support to the US-led war on terrorism. In addition, Tripoli agreed to dismantle its weapons of mass destruction in 2003 after talks with the US and the United Kingdom (Kerr, 2004). These series of engagements culminated in improved relations between Tripoli and Washington, which consequently resulted in the US and UN lifting sanctions imposed on Libya. Tripoli was thus in the good books of the West and with its newly found friendship in Gaddafi, Washington was logically disinclined to support his prosecution (Hawkins & Losee, 2014: 62), although at the expense of justice. Moreover, as one of the leading funders of the SCSL, along with the UK and Netherlands who account for 80% of the court's budget (Web, 2000), the US exercised considerable influence over the court's decisions. Thus, with the opposition of Washington, the recommendation of the TRC for Libya and Burkina Faso to compensate survivors of the war could therefore not be implemented.

An aspect of the establishment and operation of the SCSL that had escaped the attention of scholars pertained to the kind of judicial system that was favored by the key stakeholders in the peacebuilding process in Sierra Leone. President Kabbah requested for UN assistance to establish a "special court" to prosecute Foday Sankoh and the other "senior members" of the RUF. Although the interpretation of Kabbah's request for assistance became a subject of

contestation, this request implied the recognition of the potential of the Sierra Leone judicial system to prosecute perpetrators of the crimes committed during the conflict. This assumption was contrary to the widely held opinion that the judicial system in Free Town had completely deteriorated at the time of the request and therefore necessitated the involvement of the UN. Consultations between the UN and the relevant stakeholders in Sierra Leone divulged the preference for a “national court with a strong international component in all its organs (judges, prosecutors, defence counsel and support staff), and for international assistance in funding, equipment and legal expertise”(UN, 2000:2). The need for international involvement in the court was therefore aimed at augmenting the capacity existing judicial system in Sierra Leone, rather than replacing it. However, the UN favored the establishment of an international court “with strong national elements”(Jalloh, 2011:401). The stance of the UN was partly influenced by the unwillingness of the global organization to “be associated with a legal process which favored the imposition of the death penalty” (UN, 2000:2). Thus, none of the individuals prosecuted was indicted based on the Sierra Leonean legal system. The court’s reliance on international humanitarian law and jurisprudence rather than domestic laws questioned the motivation for the establishment of a ‘hybrid’ court. Essentially, hybridity was leveraged to gain “local legitimacy for enforcing international norms”(Graeme, 2013:10)

A challenge with the SCSL pertained to the ambiguity of the mandate of the court. The focus of the prosecution on individuals responsible for the greatest violation of international humanitarian and Sierra Leonean law was subjective, as the decision could only be based on the discretion of the chief prosecutor. Also, the legal framework establishing the court did not explicitly specify what the “greatest responsibility” meant (Jalloh, 2011). The critical concern that emanated from this provision was the need for an explanation on the factors that influenced the prosecutors’ choice of certain perpetrators and not others within that range. Beyond individuals prosecuted, were there no other leaders of the various factions who shared responsibility for the crimes committed during the war? Compared to the International Criminal Tribunals for Rwanda and Yugoslavia, which indicted over 70 and 100 perpetrators respectively, the SCSL could only prosecute 13 individuals (HRW, 2004). Human Rights Watch argued that the narrow interpretation of the mandate of the special court in some way exonerated other “perpetrators who, while not at the top of the chain of command, were regional or mid-level commanders who stood out above similarly ranking colleagues for the

exceedingly brutal nature of the crimes they committed” (HRW, 2004). In addition, the mandate did not extend to ECOMOG and other international peacekeepers who were involved in looting and indiscriminate attacks on civilian targets as well as the Executive Outcome (Ainley, et al 2015). Similarly, foreign businessmen and racketeers who financed the conflict and benefited from the booty of the war were spared from prosecution (Graeme, 2013: Jalloh, 2011). As stated earlier, the extraction of diamonds in Sierra Leone contributed in many ways towards sustaining the conflict. Although this was an open secret, the financial beneficiaries of the conflict have not been held accountable for their actions that literally destroyed Sierra Leone. This is mainly because these businessmen were nationals of Western states.

Another challenge regarding the operations of the SCSL was with regards to the temporal and short jurisdiction of the court (Graeme, 2013: 9). Although the war started in 1991, the court’s jurisdiction was limited to abuses committed after 1996, thus denying justice to victims abused prior to this period (Web, 1999). The jurisdiction of the court was limited to the period after the signing of the Abidjan Peace Accord since the agreement marked a significant step towards ending the conflict. However, since the warring parties did not allude to the provisions of the pact, it was necessary that crimes committed prior to 1996 be probed and perpetrators prosecuted. However, the Court would have been overburdened and its operations unduly prolonged had its mandate been extended to include crimes committed prior to 1996. Moreover, critics of the SCSL argued that the resources allocated to the court – about \$250 million dollars (Kadlor, 2006) – could have been channeled into other beneficial programs, given the enormous economic challenges confronting the country at the time. There are however, limits of this argument. Sierra Leone has endured a gruesome war which created victims. Sustainable peace could not be restored without some form of reconciliation, accountability and justice whose attainment required funds. For progressives and victims, the money spent on post-conflict TJ programs to get the country back on track was worth it.

### **1.8 Conclusion**

The uneven distribution of resources during the TJ process, especially towards the SCSL rather than the reparations program was geared towards serving the interests and priorities of the international community and the Sierra Leone government. These actors prioritized the prosecution of crimes over providing for the material needs of the victims of the war. The government in Freetown pursued this approach for two reasons. Firstly, the



transitional government sought to consolidate its authority in the war-torn country. This required the elimination of any form of potential threats to political stability. Since this was unattainable through the Truth and Reconciliation Commission or the Reparations Program, the government resorted to the pursuit of criminal justice as the alternative approach to stemming political rivalries. Also, the government and its international partners sought to send a strong message to all rebel factions that impunity would neither be condoned nor tolerated. The SCSL was thus a symbol of deterrence in Sierra Leone. Criminal prosecutions constitute an essential aspect of the accountability and justice processes. However, the excessive focus on juridical mechanisms robbed victims of the needed attention they desired during the transitional period. The focus of criminal prosecutions was often on perpetrators, not victims.

For true justice to be achieved during the transitional period and beyond, there is need for a significant digression from the top-down approach that often characterizes TJ in post-conflict states. This requires a reconceptualization of the victim. There is the need for governments, donors, NGOs and international organizations to interpret the needs of victims based on what the latter articulate and not what actors consider as best practice. Best practices in transitional justice may only be “best” for the context within which it was designed and implemented and not in other distinct socio-economic and cultural settings. This makes it imperative for TJ practitioners to foster sufficient local engagements in the process of securing justice. If the goal of TJ is to redress past abuses and in so doing realize a reasonable level of justice, then the people for whom justice is sought must be given space to contribute to the debate on what they perceive as just.

Retributive justice may be relevant in promoting accountability and ensuring justice for victims. However, that should not be the preoccupation of TJ processes. The incarceration of individuals most responsible for war crimes does not necessarily imply the prevalence of peace. Durable peace can only be attained when the grievances and needs of victims are prioritized. Looking back, a greater part of the funds to support TJ was channeled into prosecuting nine individuals while the larger population continued to wallow in poverty. Perhaps, the budget of the court could have been reduced so as to use the surplus funds to support other development projects or the reparations program since victims seem to have direct material benefit from these programs rather than prosecutions. Similarly, the marginalization of traditional reconciliation mechanisms by the TRC undermined the ability of the Commission to maximize

its impact among ordinary Sierra Leoneans. As such, the TJ process did not create enough space for the advancement of the needs, values and aspirations of local actors. Ultimately, the TJ processes only advanced the interests of Sierra Leone's political elites and those of international stakeholders.

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