TRANSITIONAL JUSTICE: THE PATH TO PEACE
A CASE STUDY OF SIERRA LEONE

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LAW FACULTY
VICTORIA UNIVERSITY OF WELLINGTON

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ABSTRACT

This paper looks at the process of transitional justice in post-conflict Sierra Leone.

It examines whether Sierra Leone, by granting amnesty to all combatants in the Lomé Peace Agreement, infringed a duty under international law to prosecute grave violations of international humanitarian law and international human rights. Considering the particularities of transitional societies emerging from conflict and facing political and social instability, it is ascertained that amnesties should, by way of exception, be allowed in order to ensure peace and stability in a politically fragile post-conflict country.

The paper continues to discuss the legitimacy that conditional amnesties, as opposed to blanket amnesties, have with respect to justice and accountability. It addresses truth and reconciliation commissions as the suitable mechanism to achieve both accountability and reconciliation.

The mandate and the work of the Sierra Leone Truth and Reconciliation Commission as well as its relationship with the subsequently established Special Court for Sierra Leone are discussed. The establishment of the Special Court is regarded as contrary to the Government’s amnesty promise under the Lomé Peace Agreement. It is determined that, although there were substantial issues in the relationship between the Truth and Reconciliation Commission and the Special Court, and although the number of perpetrators participating in the truth and reconciliation process was limited, the combined efforts of both the Truth and Reconciliation Commission and the Special Court are capable of bringing justice and lasting peace to Sierra Leone.

Statement on word length

The text of this paper (excluding cover page, table of contents, abstract, footnotes, and bibliography) comprises approximately 15,476 words.
I  INTRODUCTION

The past, it has been said, is another country. (…) The spotlight gyrates, exposing old lies and illuminating new truths. As a fuller picture emerges, a new piece of the jigsaw puzzle of our past settles into place.¹

(…)

[T]he future, too, is another country. And we can do no more than lay at its feet the small wisdosms we have been able to garner out of our present experience.²

(…)

We need to know about the past in order to establish a culture of respect for human rights. It is only by accounting for the past that we can become accountable for the future.³

(…)

Having looked the beast of the past in the eye, having asked forgiveness and having made amends, let us shut the door on the past – not in order to forget it but in order not to allow it to imprison us.⁴

Building bridges between a past characterised by human rights violations having occurred under a repressive regime or during a civil war and a future hoped to be designed by a democratically elected government and realised by a local population with full respect for human dignity and fundamental rights is the task of what is called transitional justice.⁵ The concept applies to certain historical situations of political transition, in which past authoritative regimes collapse and are replaced by democratic ones dedicated to promote reconciliation and peace.⁶ It is also applicable to describe post-conflict situations in countries that have been ravaged by a

² Tutu, above n 1, para 19.
³ Tutu, above n 1, para 28.
⁴ Tutu, above n 1, para 91.
violent civil war and struggle to find their way to peace.\textsuperscript{7} Transitional Justice has various forms, both judicial and non-judicial.\textsuperscript{8} Truth finding schemes, pursuing justice through prosecution and reparation, institution-building and removing human rights violators from power are answers to previous serious human rights violations.\textsuperscript{9} The New York based International Center for Transitional Justice (ICTJ) mentions, as achievements in the area of transitional justice in recent years, the establishment of the International Criminal Tribunals for the former Yugoslavia and for Rwanda, the entry into force of the Rome Statute of the International Criminal Court as well as the work of over 20 truth commissions set up in the past 30 years, among others.\textsuperscript{10}

This paper is going to discuss the various issues that have arisen in the context of transitional justice in Sierra Leone. A decade long civil war has left the country trying to come to terms with a legacy of most serious human rights violations that occurred during the conflict. To end the hostilities, the government offered unconditional amnesty to all armed groups. Simultaneously, a Truth and Reconciliation Commission (TRC) was established to address impunity among the rank and file of the combatants and to produce a comprehensive record of the war with the aim of national healing and reconciliation.\textsuperscript{11} The TRC published its Final Report in October 2004. After re-eruption of the conflict, a so-called “mixed” criminal tribunal, the Special Court for Sierra Leone (SCSL) was additionally

\begin{itemize}
\item \textsuperscript{7} See ICTJ, above n 6. The introductory words to the concept of transitional justice are as follows: “As a political transition unfolds after a period of violence or repression, a society is often confronted with a difficult legacy of human rights abuse. Countries as diverse as Bosnia-Herzegovina, Sierra Leone, Peru, and East Timor are struggling to come to terms with crimes of the past. (…)” This general description can be applied to both the presumably traditional - notion of transition that refers to countries, which have just emerged from an authoritative regime, and to the more recent one of countries that have just negotiated peace to an internal armed conflict. Furthermore, the mandate of the ICTJ covers countries recovering from both situations. <www.ictj.org> (last accessed 22 November 2004).
\item \textsuperscript{8} ICTJ, above n 6, <www.ictj.org> (last accessed 03 September 2004).
\item \textsuperscript{9} ICTJ, above n 6, <www.ictj.org> (last accessed 3 September 2004).
\item \textsuperscript{10} ICTJ, above n 6, <www.ictj.org> (last accessed 02 September 2004).
\item \textsuperscript{11} In the following, the abbreviation TRC will only be used to refer to the Sierra Leone Truth and Reconciliation Commission. For the generic term “truth and reconciliation commission”, which is going to be used for reference to the institution as such, no capital letters will be used.
\end{itemize}
established to try those most responsible for atrocities committed during the

This paper is going to examine whether the amnesty granted to the
combatants in return for peace is reconcilable with the notion of criminal
accountability. It is argued that a conditional rather than an unconditional
blanket amnesty would have served the concepts of justice and
accountability better.

As regards the SCSL, this paper determines the advantages and
disadvantages that such a “mixed” tribunal has over international criminal
tribunals.

With respect to the relationship between the TRC and the SCSL, this
paper ascertains that the establishment of the SCSL was, as far as other
armed groups than the RUF are concerned, contrary to the Government’s
deal amnesty for peace in the Lomé Peace Agreement. As regards the RUF
rebels, their previous breach of the peace agreement required judicial action
to bring peace to the country.

The paper further talks about the different mandates of the TRC and the
SCSL as well as the discords that have arisen from their co-existence. It is
determined that, despite there having been substantial issues arising from
the simultaneous operation of two different bodies of transitional justice,
their co-existence has the potential to ensure justice and accountability at all
levels and bring lasting peace to the country.

Essential to all mechanisms of transitional justice is a contextual
approach tailored to the social, historic and political specificities of the
country concerned. Each transitional country’s path to peace looks
different. This paper looks at issues that have been raised and answers that
have been found in Sierra Leone in the various segments of transitional

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12 Erin Daly “Transformative Justice: Charting a Path to Reconciliation” (2001/2002) 12
Int’l Legal Persp 29 (page numbers not available).
justice. It intends to have a holistic view at the path of transition that this particular country is following. In consequence of that, explicit reference to other countries and processes of transition in the past is made in the form of general observations only. However, while being based on the particularities of Sierra Leone, this paper can nonetheless be the source of general conclusions with regard to aspects of transitional justice, namely, that of accountability in post-conflict societies.

II THE CIVIL WAR IN SIERRA LEONE AND THE LOME PEACE AGREEMENT

Ever since gaining independence in 1961, Sierra Leone has been politically unstable and economically weak. At the beginning of 1991, shortly before the outbreak of the civil war, the rural population was so severely impoverished that the newly formed rebel movement, the Revolutionary United Front (RUF), easily recruited large numbers of people. In March 1991, RUF rebels started the civil war by attempting to overthrow the government. In the eight years that followed brutal and violent fight involving RUF rebels, the army and the government-aligned Civil Defence Force as well as the Economic Community of West African States (ECOWAS) Military Observer Group (ECOMOG) units shattered the country. The fighting was characterised by extreme brutality of the combatants in the form of mass amputations following the destruction of entire communities, systematic rape and sexual slavery and the involvement of great numbers of child soldiers. After numerous unsuccessful attempts to negotiate peace, in July 1999, the Lomé Peace Agreement was signed between RUF and Sierra Leone’s president Kabbah. It granted complete

14 Webster, above n 13, 736.
16 ICTJ, above n 15, 1.
amnesty to the combatants “in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.”

Amnesty can be defined as the exemption from criminal and civil liability. However, it has to be distinguished from the notion of impunity. Impunity has been defined as

the impossibility, de iure or de facto, of bringing the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried, and if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.

It is understood as not only the absence of investigation and punishment, but as an all-embracing lack of respect for the victims of violations of norms and a consequent absence of ‘lecture’ that such violations are wrongful. Amnesty is not necessarily equivalent to that wide concept. It is tantamount to impunity only insofar as it averts every form of accountability by denying what has happened.

The Lomé Peace Agreement, simultaneously, provided for the establishment of a truth and reconciliation commission that was authorised, among others, to “address impunity” and “facilitate genuine healing and

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21 Sarkin and Daly, above n 19, 719.
22 Sarkin and Daly, above n 19, 719.
reconciliation.  

It is debatable whether the amnesty clause in the Lomé Peace Agreement laid the foundation for impunity or whether, considering the establishment of the Sierra Leone Truth and Reconciliation Commission, accountability is provided for. The following section is going to elaborate on the role of amnesty and accountability in post-conflict Sierra Leone.

III AMNESTY AND ACCOUNTABILITY: RECONCILABLE NOTIONS?

This section is going to examine the implications of the amnesty provision in the Lomé Peace Agreement. To establish if the amnesty clause caused impunity, it first has to be determined what scope the amnesty provision had and whether Sierra Leone had an obligation under international law to prosecute and punish the perpetrators of serious violations of international humanitarian law and human rights. To this extent, conventional as well as customary international law is going to be assessed. In this analysis, particular emphasis is put on the special circumstances transitional societies find themselves in. Subsequently, it is ascertained that a truth and reconciliation commission that is authorised to grant conditional amnesty and works alongside a criminal tribunal is the most adequate mechanism to address human rights violations that previously occurred during an internal armed conflict and to reconcile amnesty and accountability.

A The Legality of Amnesties under International Law

1 The Scope of the amnesty provision in the Lomé Peace Agreement

The amnesty provision in the Lomé Peace Agreement, article IX (2) and (3) reads as follows:

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

3. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.

When the Lomé Peace Agreement was signed, the Special Representative of the UN Secretary-General added, on behalf of the United Nations, the disclaimer that the United Nations regarded the amnesty clause to be inapplicable with regard to violations of international humanitarian law. As a consequence, the amnesty clause only applies to crimes committed under Sierra Leonean law, not to violations of international law. The United Nations reservation does not alter the amnesty for crimes under domestic law as stipulated by the agreement. Since the United Nations is a mere moral guarantor to the agreement, not a party, its reservation is not applicable with regard to national prosecution of violations of international law either. The relationship between the government and the rebels, both being the sole parties to the agreement, is not affected by the United Nations.

26 Lomé Accord Amnesty, above n 25, para 41.
The amnesty clause is therefore invalid with respect to international prosecution and trial under United Nations auspices, but remains effective in relation to national prosecution of violations of international humanitarian law and to national trial of violations of domestic law.

The scope of the amnesty under the Lomé Peace Agreement can be depicted as follows:

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<th>Violation of international law</th>
<th>Violation of domestic law</th>
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<tr>
<td>National prosecution</td>
<td>Amnesty</td>
<td>Amnesty</td>
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<tr>
<td>International</td>
<td>No amnesty/ UN reservation</td>
<td>Amnesty</td>
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<td>effective</td>
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As far as the amnesty with regard to the national trial of violations of international humanitarian law is concerned, it is debatable whether the granting of amnesty violates obligations that the government might have under international law. The amnesty granted to the combatants for violations of international law constitutes a blanket amnesty, granted without any condition other than the one that the acts had to be committed by the combatants in pursuance of their objectives. That means that atrocious violations of fundamental norms of international humanitarian law might go unpunished.  

However, one could argue that the duty to prosecute has to be balanced with political necessity, namely inciting the combatants to negotiate peace in return for amnesty. An assessment of the legality of the amnesty provision therefore entails, first, the examination of whether there is an obligation under international law to prosecute serious offences of international humanitarian law. Second, the existence of such a duty provided, it has to be investigated whether this duty has to be mitigated in

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consideration of the particularities of transitional societies.

2 Obligations under International Law to Prosecute Serious Violations of International Humanitarian Law and Human Rights

(a) Obligations to prosecute in conventional international law

(i) The Geneva Conventions

Articles 49, 50 of the first Geneva Convention stipulate an explicit obligation to prosecute grave breaches of its provisions, namely “wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

The High Contracting Parties have to either try those persons alleged to have committed these breaches before their own courts or hand them over to other countries (which is described by the principle of aut dedere aut iudicare). However, the first Geneva Convention is only applicable in cases of international armed conflict and thus cannot be invoked in the case of amnesty being granted to rebels in an internal conflict like that in Sierra Leone.

Article 3 common to the Geneva Conventions addresses internal conflicts and sets up a minimum standard of rules to abide by, but does not contain an explicit obligation to prosecute violations of its provisions. Since article 3 stands by itself as a ‘miniature convention’, subsequent provisions stipulating a duty to prosecute cannot be related to article 3.

Article 6(5) of the Additional Protocol II to the Geneva Conventions, relating to non-international armed conflict, encourages governments to “grant the broadest possible amnesty to persons who have participated in the armed conflict.” The provision was designed to “encourage gestures of
reconciliation, which can contribute to re-establishing normal relations” in a post-conflict society. However, the granting of amnesty is seen as a matter of domestic discretion.

(ii) Specific international human rights instruments

A specific international convention relevant in the examination of whether there is an obligation to prosecute under international law in the present case of Sierra Leone is the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. It does not require a link to an international armed conflict and is, therefore, applicable in the case of Sierra Leone. At the time of signing the Lomé Peace Agreement, in 1999, Sierra Leone had only ratified the Geneva Conventions and its Additional Protocols. It had signed the Convention against Torture in 1985, thus prior to the Lomé Peace Agreement, but did not ratify it before 2001. However, while not yet establishing the consent to be legally bound by the provisions of the treaty, the signature does entail the obligation to refrain from any acts that might compromise the object and purpose of the treaty. Article 4 of the Convention against Torture sets up the State parties’ obligation to make all acts of torture a criminal offence under their domestic criminal law and to establish appropriate penalties. Considering the abovementioned obligation arising from the signature, it is ascertained in

37 United Nations Treaty Collection: Multilateral Treaties Deposited with the Secretary-General: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) 1465 UNTS 85.
38 United Nations Treaty Collection: Multilateral Treaties Deposited with the Secretary-General: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) 1465 UNTS 85.
41 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) 1465 UNTS 85, article 4.
this paper that the duty under article 4 to prosecute acts of torture constitutes an essential duty that contributes to the realisation of the objectives and the purpose of the Convention. To comply with it is therefore included in the duty under the Vienna Convention not to defeat the aims of the treaty prior to ratification. An obligation to prosecute acts of torture and other cruel, inhuman or degrading treatment or punishment is therefore effectively established for Sierra Leone under the Convention against Torture.

The views expressed by the Committee Against Torture (CAT) in *O.R., M.M. and M.S. v Argentina* do not impact on this finding. In this communication, the Committee concluded that no obligations (other than a moral one to provide remedy) would arise for Argentina under the Convention against Torture with respect to a law precluding prosecution for alleged acts of torture that had occurred before Argentina signed and ratified the convention and before it entered into force for Argentina, yet before it was even drafted. In both Argentina and Sierra Leone the acts of torture happened before the Convention entered into force for the respective country. Also, the amnesty laws were enacted before the Convention became effective. However, while in Argentina the acts of torture occurred prior to signing the Convention, the war in Sierra Leone, in which acts of torture occurred happened after Sierra Leone, had signed the Convention. The abovementioned legal effects of the signature were therefore effective at the time of the acts of torture. There is not just a mere “moral” obligation to offer a remedy to the victims as the Committee had established for Argentina. The link to the duty to prosecute these acts as established under the Convention is thus more express in the case of Sierra Leone. The communications regarding Argentina can thus not be invoked to deny a duty to prosecute, which exists for Sierra Leone.

(iii) General international human rights instruments: The International Covenant on Civil and Political Rights

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43 Cited in Orentlicher, above n 29, 2537, footnote 128 (not available online).
Furthermore, general international and regional human rights instruments have to be scrutinised as to whether they contain obligations to prosecute serious human rights violations.\footnote{Henrard, above n 5, 616.} Article 2(3) of the International Convention on Civil and Political Rights (CCPR) requires State parties to offer effective remedies to victims of violations of Covenant rights.\footnote{International Covenant on Civil and Political Rights (19 December 1966) 999 UNTS 171, article 2(3).} When read in conjunction with article 7, the prohibition of torture, article 2(3) sets up the obligation to undertake investigation of alleged acts of torture, guarantee freedom of such acts, and offer effective remedies.\footnote{General Comment No. 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Article 7): 10/03/92, CCPR General Comment No. 20, (General Comment No. 20) para 14 <www.unhchr.ch> (last accessed 6 November 2004).} Under the CCPR, providing effective remedies against acts violating Covenant rights embraces taking measures to prevent the reoccurrence of such acts in the future, in particular, through bringing to justice those who committed them.\footnote{General Comment No. 31 Nature of the General Legal Obligations Imposed on States Parties to the CCPR: 26/05/2004 CCPR/C/21/Rev.1/Add.13 (General Comments), para 18.} As the Human Rights Committee, later in the same Comment, refers to the issue of impunity, one can deduce from the Committee’s words that ‘bringing to justice’ means prosecution and punishment.\footnote{Contrast Emily W Schabacker “Reconciliation or Justice and Ashes: Amnesty Commission and the Duty to Punish Human Rights Offences” (1999) 12 NY Int L Rev 1, 25, 36.} More specifically, according to the Human Rights Committee, amnesties are generally incompatible with the requirements of investigation and providing remedies.\footnote{General Comment No. 20, above n 46, para 14.}

The previous examination of various sources of conventional international law that are relevant to Sierra Leone does not present a uniform picture of international law with respect to the existence of a duty to prosecute serious violations of international humanitarian law and human rights. While the Second Protocol to the Geneva Conventions allows for amnesties as a means to achieve peace, the Convention against Torture contains an explicit obligation to punish acts of torture. The Human Rights Committee considers amnesties to be impermissible with the CCPR. To
determine whether international law allows for amnesties, it is therefore necessary to look at customary international law.

(b) Obligations to prosecute in customary international law

Customary international law consists of two elements: a uniform and general State practice and the recognition by the States concerned of this practice as arising from a legal duty, the opinion iuris. 50

(i) Conclusion of treaties as evidence of State practice

Treaties may give evidence of the formation of custom. 51 Their conclusion and the contents of their provisions, as seen in their evolution over time, are illustrative of what States regard to be sufficiently relevant to be put into legally binding words within the framework of an international treaty. Arguably even more than policy statements or diplomatic correspondence, 52 the fact that States sign an international convention can be regarded as a clear evidence of legal motivation based on a sense of legal duty, thus of opinio iuris. 53 A number of multilateral treaties establish a duty to prosecute those who have committed serious human rights violations. 54

By way of example, the Genocide Convention requires in article IV the punishment of acts of genocide, 55 so does the Convention against Torture and the Draft Code of Crimes against the Peace and Security of Mankind. 56

(ii) State practice

50 Brownlie, above n 39, 5-7.
51 Brownlie, above n 39, 3.
52 See Brownlie, above n 39, 5.
53 General Comment No. 20, above n 46, para 14 in contrast to the previous General Comment No. 07: Torture or Cruel, Inhuman, or Degrading Treatment or Punishment (Art 7): 30/05/82, CCPR General Comment No 7, para 1, which does not address the issue of amnesties, but simply calls on State parties to investigate alleged acts of torture, hold perpetrators responsible and provide remedies for the victims. <www.unhchr.ch> (last accessed 19 November 2004).
55 Convention on the Prevention and Punishment of the Crime of Genocide (09 December 1948) 78 UNTS 277, article IV.
It is crucial to also investigate the actual practice of those States that are directly affected by the question of whether or not to grant amnesty to rebels, that is those that have found themselves in a post-conflict situation.\textsuperscript{57} Practice of these States in recent years cannot be said to be uniform in prosecuting and punishing those responsible for grave human rights violations; it is rather the absence of prosecution that seem to have emerged as a rule.\textsuperscript{58} There is hence a discrepancy between States’ obligations as established in conventional international law and their actual compliance with these.\textsuperscript{59} It is questionable what impact this lack of congruence between what States sign in international treaties and what they abide by in political reality has on the determination of a rule of customary international law. Some have argued that the divergence between the legal norms and the factual practice behind it hinders the development of a rule of customary law.\textsuperscript{60} Others have stated that custom can nonetheless be established due to the abovementioned repeated incorporation of the duty to prosecute into international treaties.\textsuperscript{61} International law seems to going towards the prohibition of amnesties, which is illustrated by the preamble of the Rome Statute as the most recent instrument established in international criminal law and that requires prosecution and punishment of the most serious crimes at the national level.\textsuperscript{62} As a result, it is ascertained that a duty to prosecute human rights atrocities is at least emerging as a rule of customary international law based on increasing consideration in conventional international law,\textsuperscript{63} while it has not yet been established as such.\textsuperscript{64} Diane Orentlicher, amicus curiae to the SCSL, finds the following words to

\textsuperscript{57} Emily W Schabacker “Reconciliation or Justice and Ashes: Amnesty Commissions and the Duty to Punish Human Rights Offences” (1999) 12 NY In L Rev 1, 38.
\textsuperscript{58} Dugard, above n 54, 698; Schabacker, above n 57, 44; Gallagher, above n 28, 181 (listing a number of countries that have recently granted amnesty).
\textsuperscript{59} Schabacker, above n 57, 47.
\textsuperscript{60} Steven R Ratner “New Democracies, Old Atrocities: An Inquiry into International Law” (1999) 87 Geo L J 707, 726.
\textsuperscript{61} Schabacker, above n 57, "47 referring to Orentlicher, above n 29, 2585 (with respect to grave violations of physical integrity).
\textsuperscript{62} The Rome Statute if the International Criminal Court (17 July 1998) UNDCPEICC, UN Doc A/CONF/183/9, <www.icc-cpi.int> (last accessed 6 November 2004); Dugard, above n 54, 698.
\textsuperscript{63} Orentlicher, above en 29, 2585 (with respect to grave violations of physical integrity).
\textsuperscript{64} Cassese, above n 6, 315; Ratner, above en 60, 716; Jessica Gavron “Amnesties in the Light of Development in International Law and the Establishment of the International Criminal Court” (2002) 51 ICLQ 91, 92.
describe the uncertain legality of amnesties: “An amnesty that encompasses crimes against humanity, serious war crimes, genocide or torture would be of doubtful validity under international law.”

3 Particularities of Transitional Societies

However, despite such rule of customary international law condemning amnesties emerging, amnesties have to be evaluated in the light of the particular circumstances they were granted in. Political reality and necessity might prevail over norms of international law. A contextual approach to every individual amnesty is required to determine the demands of reality that impacted on the government’s decision to exempt the opposing rebels from prosecution. In Sierra Leone, amnesty was given within the framework of a peace agreement. This raises the question whether the particularities of transitional societies emerging from conflict and searching for peace, reconciliation and stability, not have to be considered in the sense that the duty to prosecute, if one regards such to exist, has to be mitigated or modified. This question is going to be addressed in the following.

(a) Political and social instability

Several arguments in favour of prosecution of serious human rights violations that occurred during a previous conflict have been raised. Thus, it has been said that trials represent a clear cut with the past of a country. They would foster stabilisation and credibility of the new regime just as deter future human rights violation.

On the other hand, it has been presumed that the newly established governmental institutions might be destabilised by the issues trials bring about. Judicial institutions might still be fragile, society be divided over support for the accused, both factors potentially threatening the consolidation of the government and the recovery of the society from

65 *Lomé Accord Amnesty*, above n 25, para 34.
67 Henrard, above n 5, 634.
conflict. Mere political convenience does certainly not exempt governments from prosecuting members of the previous regime or rebels who are responsible for most serious violations of international humanitarian law and human rights. However, this essential duty should not put a newly established democratic regime’s survival or post-conflict consolidation at risk. If the country’s political and social stability is severely at stake, the government should be exempt from the duty to prosecute. International treaties determining the duty to prosecute should hence be interpreted in a way that does not impose obligations on governments, which would prove to be disadvantageous for the country’s vital interests.

Thus, one of the reasons to set up the TRC of South Africa, empowered to grant amnesty, instead of establishing a criminal tribunal, was the belief that the security establishment would not have contributed to the peace negotiations had they had reason to fear to be brought to trial. The creation and consolidation of peace would have therefore been compromised by the decision to prosecute the perpetrators of human rights violations. Similarly, many transitional Latin American countries faced the realistic threat of the military reclaiming power, which made abstaining from criminal prosecution and granting amnesty to the members of the previous regime the only viable way to secure stability and ultimately survival of the new government. Likewise, in Sierra Leone, amnesty was granted to the combatants in hope for consolidation of the peace and national reconciliation after a decade-long brutal war.

The Sierra Leone Truth and Reconciliation Commission considers amnesty granted under these prerequisites “the least bad of available alternatives.” Considering the positive impact amnesties potentially have
on peace negotiations, the Commission strongly criticises the establishment of the SCSL, which entails criminal prosecution despite the previously granted amnesty, indicating that this has signalled to combatants in conflicts to come that they cannot trust amnesty clauses.\textsuperscript{76}

(b) Need for understanding and reconciliation

There is another crucial reason that can be mentioned to support the view that prosecution by the help of criminal trials is not necessarily the best option to address human rights violations that occurred during a civil war. Post-internal-conflict societies need to understand their past and learn what issues caused the conflict and how these can be tackled in order to prevent confrontation to reoccur in the future. This seems especially true in the case of civil wars that targeted and involved many civilians, as was the case in Sierra Leone,\textsuperscript{77} and that were not a mere struggle for power carried out by rebel groups against the government in power. Citizens wish to find out why certain groups of society became involved in the conflict, whether their neighbour played a role in the killings, why their family was targeted. In other words, they strongly desire to learn about the truth behind the atrocities in the hope to be able to come to terms with what has happened, to forgive and thus find their inner peace.\textsuperscript{78} At a communal and national level, this forgiveness will lead to mutual approach and reconciliation. Reconciliation is the precondition for the country’s and society’s rebirth as it embodies a collective forward-looking positively restorative attitude rather than a backwards-looking punitive one.\textsuperscript{79} Punishment as the last stage of a criminal trial seems less capable of reunite society than reconciliation

\begin{flushright}
\textit{Respect of the TRC and the SCSL for Sierra Leone, para 553, 562, <www.ictj.org> (last accessed 11 November 2004).}
\end{flushright}

\textsuperscript{76} Sierra Leone TRC Findings: Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 553, 562.


\textsuperscript{79} Sarkin and Daly, above n 19, 693.
as it entails a less positive and ‘creative’ psychology.  

Erin Daly uses the term “transformation” to appropriately describe the process of society changing from one that has experienced, even condoned, oppression to one that values and protects human rights and the principles of democracy. According to her, transformation is equivalent to the reinvention of society through dealing with past abuses and promulgating new values in order to deter future human rights violations. She considers criminal trials to be inappropriate for transformative societies, saying that they are designed for stable societies, where, as opposed to those in transition, crimes are an exception rather than the rule. Criminal trials of those responsible for violations of human rights and humanitarian law do not have the potential to initiate a transformative healing process of society as a whole that is required to establish long-lasting peace and reconciliation. They seek to establish guilt or innocence and do not question the causes and history of the conflict. They are characterised by formalistic procedures and happen in an environment detached from and inhibiting the active involvement of society. However, to achieve national reconciliation, the active participation of as many individuals as possible in the truth finding process is desirable and required. People have to work closely together to achieve national reconciliation. Only in that way can the full picture of the past be composed and the full lesson for the future be learnt.

(c) Importance to ensure alternative accountability

In light of this reasoning, refraining from formal prosecution and punishment of those responsible for serious human rights violations during

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80 See Orentlicher, above n 29, 2550; Boraine, above n 78, 141, 147.
81 Daly, above n 12.
82 Daly, above n 12
83 Daly, above n 12
85 See Minow, above n 84, 238.
87 Daly, above n 12.
an internal conflict and granting amnesty to the combatants instead is an appropriate and desirable answer to a country’s wish to come to terms with its past and to step into the future in unity and reconciliation. Thus, the Sierra Leone Truth and Reconciliation Commission finds the amnesty granted in the Lomé Peace Agreement “well intentioned” “given the reality of the conflict”, as it was “meant to secure peace.” However, to achieve successful transformation, it is vital to find alternative and inclusive methods of dealing with the past and to hold those responsible accountable.

The work of a truth and reconciliation commission can reach the aims of learning about the past through comprehensive truth finding and of achieving healing transformation of society. As an alternative means of finding justice, this type of commission is capable of holding human rights violators accountable in a manner different from traditional criminal trials and tailored to the specific needs of transitional societies, thus ensuring that serious violations of human rights do not go unpunished. The nature and advantages of truth commissions are going to be examined in the following section.

B Ensuring Accountability: Truth and Reconciliation Commissions and the Advantages They Have over Criminal Tribunals

Truth commissions have been said to be a middle way between prosecution, which would potentially destabilise the country, and amnesty, which would be contrary to obligations under international law and none of which are desirable for the national reconciliation process. A truth and reconciliation commission seeks and examines what is vital for the country’s backwards-looking understanding of its past and its forward-looking rebuilding of society and values: the truth. It encourages victims and perpetrators to look each other into the eye and get together in a mutual effort to reunite society and thus initiates reconciliation. Although differing

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88 Sierra Leone TRC Findings: Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 553, 553 559.
89 Henrard, above n 5, 637, 639.
one from another in an attempt to reach a highest possible degree of
certainty and adaptation to the requirements of each particular
country,\(^{90}\) truth and reconciliation commissions have a number of
advantages compared to criminal tribunals in the settling of a transitional
society. These are going to be elaborated on in the following.

1 Truth finding as the primary concern

Truth and reconciliation commissions are conceptualised to disclose the
truth. Trials, on the contrary, only disclose as much truth as is required to
determine the guilt or innocence of the accused.\(^{91}\) They do not aim at
drawing a comprehensive picture of the events and their interrelationship as
truth and reconciliation commissions do, but offer what Madeline H. Morris
has called a “patchwork” of records.\(^{92}\) Truth finding is a secondary objective
of a criminal procedure,\(^{93}\) whereas it is the primary purpose of the work of a
truth and reconciliation commission. In transitional societies, establishing
what has happened to whom by whom and why, or to make the people who
are generally already known to have committed particular acts acknowledge
these acts is the pivotal concern and should be the principal endeavour.\(^{94}\) In
contrast to criminal trials that focus on a particular individual, truth
commissions that are capable of questioning systems, which is crucial in the
examination of the antecedent of an internal conflict.\(^{95}\)

2 Focus on the victim

Truth and reconciliation commission proceedings are victim-centred.
They place the victim’s personal story and fate at the centre of attention.\(^{96}\)
The less formal atmosphere, free from rules of procedure and potentially
intimidating legal language, provides a much more personal and considerate

\(^{90}\) Daly, above n 12.
\(^{91}\) Minow, above n 84, 238.
\(^{92}\) Madeline H Morris “International Guidelines Against Impunity: Facilitating
\(^{93}\) Daly, above n 12.
\(^{94}\) Hayner, above n 66, 607.
\(^{95}\) See Donald W Shriver, Jr “Truth Commissions and Judicial Trials: Complementary or
\(^{96}\) Mariah Jackson Christensen “The Promise of Truth Commissions in Times of
environment.\textsuperscript{97} That makes it likely to produce the desired broad historical record of incidents and their connections.

As opposed to a criminal trial, where victims function as witnesses and have to abide by rules of evidence, in a truth and reconciliation commission hearing, the victim has the unique chance to give a personal narrative of his/her experiences to a degree that he/she considers appropriate to feel relieved from the burden of memory and to add his/her piece to the mosaic. No trial would allow for this type of narrative truth that gives the victim the freedom to decide what to tell in which manner and when instead of being interrogated conforming to rules of taking evidence.\textsuperscript{98} By giving his/her account of the events, the victim changes from the former, passively suffering person to one that actively contributes to the truth finding process. Instead of enduring, he/she can create. The hearings therefore have the wonderful potential of giving the victims back their dignity.\textsuperscript{99} It is the view of this paper that the personal and encouraging atmosphere that responds to the needs of those who speak out and that distinguishes truth commission hearings from ordinary criminal trials is the crucial factor in achieving the principal aim of establishing the truth.

3 \textit{Scope for Forgiveness}

Hearings also allow for personal encounter between victims and their perpetrators. Often victims feel the wish to meet those who have inflicted harm on them or their family. Some feel the desire to forgive that person and,\textsuperscript{100} even more, to be forgiven, while often not knowing for what to be pardoned. Thus, in a TRC of South Africa hearing, a woman called Beth expresses her feelings towards the man who threw a grenade towards her at a Christmas party and badly injured her in the following words:\textsuperscript{101} “It is not important for me, but I would really, really like this, I would like to meet

\textsuperscript{97} Minow, above n 84, 246.
\textsuperscript{98} Minow, above n 84, 238; Sarkin and Daly, above n 19, 716.
\textsuperscript{99} Shriver, above n 95, 14.
\textsuperscript{100} Boraine, above n 78, 150.
this man that threw that grenade in an attitude of forgiveness and hope that he could forgive me, too, for whatever reason. But I would very much like to meet him.“ Following an actual meeting with the man after his amnesty hearing, she stopped having nightmares about the attack. These encounters also help the perpetrator to accept what he/she has done, to apologise and benefit from the victim’s desire to meet and approach each other in the sense that they realise they are not confronted with feelings of hatred and vengeance for what they have done.

4 Disseminating the stories and adopting recommendations

Wide publication of the stories of both victims and perpetrators as uncovered in commission hearings enable the wider public to share the stories and, with them, the truth. Getting every member of society involved in this process of finding and learning the truth can launch truth finding and reconciliation initiatives at every level of society and in various informal ways and thus contribute to the consolidation of peace. It also makes impossible any further denial of the events in the war or, as in South Africa, the violence during the apartheid era.

The findings can be the basis for comprehensive recommendations for the government on how to mend the wounds of the war and prevent grave human rights violations from reoccurring in the future. The Sierra Leone Truth and Reconciliation Commission submitted comprehensive recommendations over a length of 100 pages in its final report, addressing the issues of impunity, prevention of future conflict, and reparations for the victims, as well as healing and reconciliation. It must be said, though, that, due to their lack of implementing power, the commissions depend on the will of the governments to see their advice become reality.

103 Daly, above n 12.; Boraine, above n 78, 152.
Leone TRC, therefore, emphasises its confinement to recommendations that it considers to be realisable with a view to government funds and capacity-building ability.106

C Conditional Amnesty as a Means to Achieve Justice and Accountability

1 Conditional and blanket amnesty

As far as amnesty is concerned, truth and reconciliation commissions can operate in different ways. By way of example, the TRC of South Africa granted amnesty only when a number of requirements were fulfilled. Perpetrators had to formally apply with the TRC’s amnesty committee for amnesty in respect of any act, omission or offence associated with a political objective committed between March 1960 and 10 May 1994.107 Amnesty was thus granted on an exclusively individual basis based on applications that had to relate to a particular type of offence committed during a particular period of time and that had to be submitted by a certain closing date and on the condition of full disclosure of the truth in a public hearing.108 It was a conditional, thus individual amnesty. The application process did not automatically lead to amnesty; the Committee could refuse to grant amnesty where there was a disproportion between the act and the political objective pursued. Those whose applications were refused or who did not apply for amnesty could be prosecuted and brought before criminal tribunals.109

In Sierra Leone, on the contrary, the Lomé Peace Agreement granted blank and global amnesty to all combatants without any conditions to be fulfilled other than that their acts had to be committed in pursuit of their objectives.

107 Promotion of National Unity and Reconciliation Act (1995) (ZA), s 18(1).
109 Schabacker, above n 57, 19.
This section is going to examine these two fundamentally different types of amnesty with respect to the notion of justice. The idea of justice embodies the concepts of, in the negative, retribution, and, in the positive, compensation or balancing. It has been said that amnesty provisions cause an inequality of sacrifice as they exempt the perpetrator from judicial consequences for his wrongdoings while the victim is left with his/her grief and suffering. In other words, amnesty can be equated with impunity and impunity with injustice. This is not true with regard to conditional amnesty, though. Justice can be said to be achieved by the fact that the perpetrator and applicant for amnesty has to reveal the full truth in a public hearing and has to admit responsibility for his acts. In a way, public shaming is thus provoked. Neighbours, friends and family either learn for the first time that someone in their middle committed atrocities or now know for sure what they have long been guessing. From the part of the perpetrator, it is either admittance or acknowledgement of his/her wrongdoings. These circumstances embrace a notion of justice that has nothing to do with retribution or punishment. Justice as pursued by truth and reconciliation commissions is a more forward-looking concept that seeks healing and reconciliation. In contrast to the traditional notion of retributive justice, it has been called restorative justice.

By publicly assuming responsibility, the perpetrator is also held accountable. These two essential concepts of criminal law, justice and accountability, therefore have to be assessed under a different perspective with respect to transitional societies. As the term “transitional justice” illustrates itself, justice in this settling is a distinctive form of justice. It has to take into account the particularities of transition and transformation of the country concerned. Retributive justice has no place in the concept of

110 See Tutu, above n 1, para 35.
111 Daly, above n 12.
112 Tutu, above n 1, para 35.
113 Tutu, above n 1, para 35.
114 Tutu, above n 1, para 35.
115 See Minow, above n 84, “247.
116 See for example Sarkin and Daly, above n 19, 692.
The notion of transitional justice goes beyond the established understanding of retribution. Instead, it touches values such as harmonisation, reconciliation and reunion. Consequently, amnesty granted as response to full disclosure of the truth to someone who held him/herself accountable for serious crimes is a just response.

Things are different with respect to blanket amnesty, such as the one granted in Sierra Leone. Amnesty is given without the perpetrators having to do anything in return. Their appearance in commission hearings is purely voluntary and they are not required, only asked and expected, to reveal the full truth. If they do not do so, no legal consequences will arise. Linking this back to the primary objective of commission hearings, establishing the truth, it is questionable whether the hearings in the case of blanket amnesty having previously been granted, reveal an identical degree and a similar quality of truth as hearings that are part of an application for amnesty procedure. The case of blanket amnesty can therefore illustrate, in reverse conclusion, the value of a conditional amnesty and the fact that the perspective of amnesty and amnesty actually being granted are an integral part of the quest for truth. Truth as sought by societies in transformation and as told by perpetrators with the aim to be pardoned leads to justice.

3 Cooperation of a truth and reconciliation commission with a criminal tribunal

Conditional amnesty, however, seems to be only truly effective when the possibility of being tried by a criminal tribunal in fact exists, that is when a truth and reconciliation commission and a criminal tribunal work alongside each other. Without criminal trials being a realistic factor in the minds of the perpetrators, the latter do not have any legal constraint to appear in hearings and reveal their stories. The situation would thus be similar to a blanket amnesty. In both cases, the only incentive that

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117 Daly, above n 12.
118 Daly, above n 12; Tutu, above n 1, para 36.
119 Tutu, above n 1, para 36.
120 See Daly, above n 12.
121 Daly, above n 12.
122 Daly, above n 12; Shriver, above n 95, 18.
perpetrators have to speak out before the commission and the general public is one that might be simply described as personal: They either carry the burden of guilt and hope for relief after having spoken, or they have realised the effects of their wrongdoings on the country as a whole and wish to apologise. In South Africa, criminal trials were held parallel to the TRC hearings for those, whose application for amnesty had not been granted. In Sierra Leone, the SCSL was authorised to try those bearing the greatest responsibility for serious violations of international human rights and the laws of Sierra Leone. The jurisdiction of the SCSL is going to be examined in detail in Section V.

As a result, one can ascertain that the preferable approach to transitional justice is a conditional amnesty, granted only in return for full disclosure of the truth in a public hearing and only for a specific type of crimes. A formal application procedure involving standardised application forms and closing dates makes the amnesty procedure uniform and credible. For its lack of incentive to contribute to the national truth finding process and its lack of 'equality of sacrifice' and justice, blanket amnesty is to be rejected as being an inappropriate tool in the quest for justice and reconciliation.

D Reparations as an Integral Part of Accountability

It has further been argued that full effectiveness of the amnesty process can only be achieved if reparation for the victims is provided for. Reparation can be financial or purely symbolic. Financial compensation is usually granted on an individual basis while symbolic reparations are provided collectively. It can be based on both legal and moral arguments.

126 Joinet, above n 20, para C.40. and 41.
Given the concern about an equality of sacrifice, reparation seems to be an indispensable contribution to the quest for restorative justice and reconciliation, particularly in those cases where amnesty also exempts from civil liability.\(^{127}\) The duty to provide reparation as a form of remedy for human rights violations can be found in international and regional human rights instruments. By way of example, the Human Rights Committee has just determined in its General Comment on the Nature of the General Legal Obligations Imposed on State Parties that the CCPR contains a general duty to provide compensation for violations of the rights set up therein that goes beyond the specifically established duties to compensate.\(^{128}\) According to the Committee, reparation can involve, among others, financial restitution and satisfactory measures such as apologies in public or the creation of public memorials.\(^{129}\)

In view of that, the TRC of Sierra Leone suggests in its final report as measures of reparations, among others, the improvement of national health services for war victims and lifelong free health care and prosthetic devices as well as monthly pensions for amputees.\(^{130}\) It further recommends symbolic reparations, especially, the erection of memorials as places for acknowledgement and interactive dialogue.\(^{131}\)

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\(^{128}\) General Comment No. 31 Nature of the General Legal Obligations Imposed on States Parties to the CCPR: 26/05/2004 CCPR/C/21/Rev.1/Add.13 (General Comments), para 16.

\(^{129}\) General Comment No. 31 Nature of the General Legal Obligations Imposed on States Parties to the CCPR: 26/05/2004 CCPR/C/21/Rev.1/Add.13 (General Comments), para 16.

\(^{130}\) Sierra Leone TRC Sierra Leone Truth and Reconciliation Commission Final Report: Volume 2 Chapter 3: Recommendations: Reparations, paras 482, 485-487, 492, <www.ictj.org> (last accessed 11 November 2004). Having in mind its condition that recommendations should be realistic in terms of the government’s financial and human resources, see above section II B, the Commission suggests the cooperation with the international community in order to allocate sources for the implementation of its recommendations, in particular, those entailing substantive expenses such as lifelong free health care. National sources should be the exploitation of mineral sources, taxes, and the recovery of assets removed from the country, paras 505-506.

E Summary and Interim Conclusion

While State practice with respect to the granting of amnesties has been inconsistent in the past years, it is ascertained that, due to the increasing incorporation in international treaties, a duty to abstain from amnesties and to prosecute serious violations of international humanitarian law and international human rights is at least emerging as a rule of customary international law. Particularities of transitional societies, trying to end a violent conflict or recovering from one, have nonetheless to be taken into account in the evaluation of their duty to prosecute war criminals.

In Sierra Leone, the political reality demanded amnesty to be granted as a promise for the parties to the conflict to lay down their weapons and end the decade long brutal fighting. Although the amnesty granted was regrettably a blanket one, the concurrent establishment of the Sierra Leone TRC provided, at least partly, for the possibility to achieve justice and accountability. The TRC proceedings were flawed by the fact that perpetrators had no incentive to appear before the Commission as they had already been granted unconditional amnesty. Despite this, the TRC was able to set up a comprehensive record, based on thousands of statements, of what had happened during the war and why. The work of the TRC as well as facts and issues of its co-existence with the SCSL for Sierra Leone is going to be discussed in the following sections.

IV THE TRUTH AND RECONCILIATION COMMISSION OF SIERRA LEONE

Each person’s story is a part of the truth. Each story is like a piece of a very large puzzle. Nobody can tell the truth alone. At first, when you collect the stories from many different people, it is only a jumble of separate pieces. But when the pieces

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132 Above A 2 (c) (ii).
133 Above A 2 (b) (ii), (iii), (v) and (c) (i).
134 Above A 2 (c) (ii).
135 Above A 3.
136 Above C 2.
are arranged together and put into place, then the whole picture can be seen. ... Just imagine that every one of us carries in our pocket one small treasure. ... That is our very own story to tell. It will be most precious, and it may be very painful to recall. Only when we collect the stories together will we begin to see the whole truth, which is as vast and as infinite as the night sky. If we study the truth very carefully, we will come to understand each other, and we will come to understand what happened in our country. ... Once the stories are all collected together in one place - in one book - then we will share the book for everyone to read. We will be able to understand what happened and what went wrong. We will learn from the story how to make sure that the war never happens again. ... When all has been told, we will work together to repair the wrong and build a just and fair future. Together we will create a vision of a peaceful Sierra Leone.137

A The Mandate and Composition of the TRC

By virtue of the Lomé peace agreement, the Commission was endowed with the power to138

address impunity, break the cycle of violence, provide for both the victims and the perpetrators of human rights violations to tell their story, [and] get a clear picture of the past in order to facilitate genuine healing and reconciliation.

The Truth and Reconciliation Act 2000 converted this mandate into domestic Sierra Leonean law. This act substantiates the mandate by instructing the Commission to draw up139

an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.

In sum, the Commission was entrusted with the tasks of establishing the roots and the context of the conflict, promoting reconciliation and submitting recommendations to the government on preventing future human rights violations.\textsuperscript{140}

The TRC consisted of seven members, four from Sierra Leone besides three international commissioners, proposed by the United Nations Office of the High Commissioner for Human Rights (OHCHR). The Sierra Leonian Bishop Joseph Humper chaired the TRC.\textsuperscript{141} The commissioners from Sierra Leone were Laura Marcus-Jones, a former judge at the Sierra Leone High Court, who acted as Deputy Chair, Professor John Kamara, a college principal, and Professor of public administration Sylvanus Torto. The international members were Satang Jow, a former Minister of Education of the Gambia, William Schabas, a human rights expert from Canada and currently head of the Irish Centre for Human Rights, and Yasmin Sooka, a human rights lawyer from South Africa.\textsuperscript{142}

Ongoing violence delayed the start of the TRC’s work for a couple of years, and internal problems caused a decrease in credibility in its first months of operation.\textsuperscript{143} It eventually started operating in late 2002. In October 2003, President Kabbah extended its initial one-year mandate for six months.\textsuperscript{144} The TRC officially closed its office 31 March 2004.\textsuperscript{145} The final report of the Commission was published 5 October 2004.\textsuperscript{146} An

\begin{footnotesize}
\begin{enumerate}
\item See TRC Documents 20 Questions and Answers on the TRC No. 19 and 20 <www.sierra-leone.org> (last accessed 09 September 2004).
\item ICTJ, above n 15, 2.
\item ICTJ, above n 15, 2.
\end{enumerate}
\end{footnotesize}
overview, the findings as well as the recommendations are publicly available at this stage.\textsuperscript{147} The complete report will not be released until early 2005.\textsuperscript{148}

\section*{B The Work of the TRC: Establishing the Truth and Initiating Reconciliation}

The Commission looked into the past in order to tell the story of civil war and to make recommendations to prevent a repetition of conflict. The Commission also looked to the future for the purpose of describing the kind of future post-conflict society that the recommendations were designed to achieve. (…)

\subsection*{1 Establishing the truth}

In order to draw a complete and true picture of Sierra Leone’s recent past, the TRC adopted several approaches: Firstly, staff was sent around the country over a period of four months, from December 2002 to March 2003, to collect statements.\textsuperscript{149} Following this, some people were invited to testify in hearings.\textsuperscript{150} Hearings were held across the country from April to August 2003, those addressing rape and sexual abuse being closed to the public.\textsuperscript{151} Some of them were thematic, dealing with topical issues like children, women, or management of mineral resources.\textsuperscript{152} Public hearings were broadcasted entirely via radio and, as a 30-minute summary, on television each night.\textsuperscript{153} In total, about 13 percent of the 8,000 individual statements come from perpetrators.\textsuperscript{154} One third of those who appeared in hearings admitted their own wrongdoings.\textsuperscript{155} Over the entire time, research and investigation was undertaken all over the country to collect further

\begin{thebibliography}{99}
\bibitem{wadland04} According to Email from Jake Wadland, Communication Associate at the ICTJ, from 11 November 2004.
\bibitem{sierra2004} Sierra Leone TRC Child-Friendly Version 2004, above n 137, 10.
\bibitem{sierra2004} Sierra Leone TRC Child-Friendly Version 2004, above n 137, 12.
\bibitem{ictj04} ICTJ, above n 137, 10; ICTJ, above n 15, 4.
\bibitem{ictj04} ICTJ, above n 15, 4.
\bibitem{ictj04} ICTJ, above n 15, 4.
\bibitem{ictj04} ICTJ, above n 15, 4.
\bibitem{ictj04} ICTJ, above n 15, 4.
\bibitem{ictj04} ICTJ, above n 15, 4.
\end{thebibliography}
Particular consideration was given to the stories of the children. Up to 10,000 children were abducted and forcefully recruited into the armed forces, all of which deliberately used children as soldiers. When fighting, they were often heavily drugged to overcome their fear and their guilt. Half of them were under the age of 13. Another 10,000 children were abducted for sexual slavery and forced labour. There was widespread abduction, rape and sexual slavery of girls.

Having been abducted and forced to commit horrible crimes, the child soldiers were both perpetrators and victims. All children had lost their identity, their memory of the past and their hopes for the future during the war. Some were so young; all they could remember was war and the use of violence.

It has been said that how society responds to the child combatants may influence the future stability of the country. Children were given special attention throughout the truth and reconciliation process. They were regarded as witnesses in all TRC hearings, so that there was no need to separate them into groups of perpetrators and victims. Hearings with children were confidential such that their name and identity were kept hidden and no information was passed to authorities outside the TRC.

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Children could give their statement or testimony in the presence of a social worker; only women would conduct girls’ hearings.\textsuperscript{166} Children were actively involved in the reporting procedure, and a child-friendly version of the TRC’s Final Report was published.\textsuperscript{167}

2 Initiating reconciliation and follow-up measures

In its Final Report, the TRC suggests a variety of activities to initiate and enhance reconciliation. It recommends an official apology from all actors in the conflict, the diffusion of its report, the creation of a national peace day, and other symbolic activities as well as traditional and communal events.\textsuperscript{168} A nationwide project called “National Vision for Sierra Leone” invited all citizens to communicate their vision for a peaceful future of the country. A large collection of drawings, poems, essays and other mediums of creativity were assembled as a result. The TRC suggests this to be transformed into a permanent exhibition and to be shown to as many people as possible by way of a national, even international tour or a publication.\textsuperscript{169}

The TRC suggests the future independent national Human Rights Commission to act as the follow-up body to observe the implementation of its recommendations as was determined by the Truth and Reconciliation Act 2000.\textsuperscript{170} Under the Act, the government is required to submit a report detailing the progress of implementation three times a year, which then has

\textsuperscript{166} Sierra Leone TRC \textit{Child Friendly Version 2004}, above n 137, 12.
\textsuperscript{167} Sierra Leone TRC \textit{Child Friendly Version 2004}, above n 137, Methodology.
to be published by the Committee. \textsuperscript{171} The TRC further recommends that the Committee produce an annual report evaluating the government’s performance. \textsuperscript{172}

The work of the TRC enjoyed general support from society and NGOs and the government. It is looked upon as playing a crucial role in the country’s coming to terms with its most recent past. \textsuperscript{173} In total, the Sierra Leone TRC operated over a period of almost two years, which seems reasonable when balancing the need for a thoroughly conducted research on the one hand and for a publication of the findings that ought to be close to the actual events on the other. With 8,000 statements collected, the TRC has reached a considerable number of people. With only 13\% of these being former offenders, only a small number of perpetrators came forward, though. Considering that not all of them appeared in hearings and of those who did only a third admitted their wrongs, one can support the case made above that conditional amnesty, which requires the perpetrator to admit his wrongs in a public hearing, contributes significantly more to accountability than blanket amnesty where participation in the truth finding process is merely voluntary.

V \textit{THE SPECIAL COURT FOR SIERRA LEONE (SCSL)}

A \textit{The Situation after the Conclusion of the Lomé Peace Agreement}

Despite the conclusion of the Lomé Peace Agreement in 1999, fighting resumed in 2000. RUF rebels took hostage 500 peacekeepers of the United Nations Mission in Sierra Leone (UNAMSIL), which had been set up in


\textsuperscript{173} ICTJ, above n 15, 6.
1999 to help implementing the Lomé Peace Agreement. Consequently, the United Nations Security Council’s authorised a significant increase in the number of peacekeeping military personnel. UN involvement helped to end the fighting and move the country towards stabilisation and peace through disarmament, demobilisation, reconstruction of infrastructure, and realisation of democratic elections.

By Security Council resolution 1562, in September 2004, the mandate of UNAMSIL was extended till 30 June 2005. The mandate comprises, among other tasks, monitoring the security situation in the country as well as watching over the reintegration of former combatants, the observance of human rights and the re-establishment of the government’s authority. Military and civilian police tasks focus on support and assistance of Sierra Leonean military and police forces. Concurrently, the Security Council urges the Government to take steps to develop its police and armed forces as well as its criminal law system and to establish a functioning independent judiciary in order to be able to take over, as soon as possible, full responsibility from UNAMSIL for the maintenance of law and security in the country.

B The Establishment of the SCSL and its Specificity

175 ICTJ Case Study Series “The SCSL for Sierra Leone: The First Eighteen Months” <www.ictj.org> (last accessed 31 August 2004), 1. The mission reached its maximum strength in military personnel with 17,500 in March 2001, thus being the largest peacekeeping mission at the time and to date (United Nations Peacekeeping: UNAMSIL: Background, <www.un.org> [last accessed 02 September 2004]).

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After hostilities re-erupted in 2000, the Government of Sierra Leone approached the United Nations, asking for assistance in trying those responsible for the atrocities during the civil war.\textsuperscript{181} By Resolution 1315, the Security Council requested “the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent Special Court for Sierra Leone [...]”.\textsuperscript{182} That agreement was signed on the 16 January 2002 and provided for the establishment of the SCSL for Sierra Leone. According to the Statute of the Court, it has personal and subject matter jurisdiction over persons bearing “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 [...]”.\textsuperscript{183} As a starting date for the temporal jurisdiction, a date had to be chosen that included the most serious human rights violations while, at the same time, reasonably limited the jurisdiction so that the Court would not be overloaded and marked the beginning of a new phase in the war.\textsuperscript{184} 30 November 1996 was chosen as it coincided with the signing of the Abidjan Peace Agreement, the first peace accord between the Government and the RUF, after the conclusion of which hostilities re-erupted.\textsuperscript{185}

Being set up to try those bearing greatest responsibility for the atrocities, a very limited number of defendants is going to appear before the Court. As of November 2004, indictments against eleven individuals have been issued, two of which have been withdrawn due to the death of the accused.\textsuperscript{186} Among the individuals are three leaders of the former Civil Defence Force (CDF), three of the former Revolutionary United Front (RUF), and three of the former Armed Forces Revolutionary Council (AFRC). Trials against the CDF accused began 3 June 2004, trials against the RUF leaders 5 July 2004.

\begin{footnotesize}
\begin{enumerate}
\item ICTJ, above n 175, 1; Daryl A. Mundis “New Mechanisms for the Enforcement of International Humanitarian Law” (2001) 95 AJIL 934, 935.
\item Statute of the SCSL for Sierra Leone (annexed to the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a SCSL for Sierra Leone), article 1(1), <www.sc-sl.org> (last accessed 05 September 2004).
\item Kofi Annan, above n 24, para 25.
\item Kofi Annan, above n 24, para 26 (a).
\item Foday Sankoh and Sam Bockarie died in 2003. SCSL for Sierra Leone: Cases: The RUF Accused: Background, <www.sc-sl.org> (last accesses 23 November 2004).
\end{enumerate}
\end{footnotesize}
The trials against the AFRC leaders are scheduled to begin later this year.\textsuperscript{187}

The Statute determines, as subject matter jurisdiction of the SCSL, the prosecution of crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and other violations of international humanitarian law as well as of certain crimes under Sierra Leonean law, namely offences relating to the abuse of girls and the wilful destruction of property as established in the respective Sierra Leonean acts.\textsuperscript{188} This subject matter jurisdiction By doing so, they made the subject matter jurisdiction of the Court reflect the particularities of the conflict in Sierra Leone, where abuse of girls and the destruction of entire villages were widespread and relate the jurisdiction to domestic criminal law norms that were already in existence.\textsuperscript{189}

By virtue of its being established by an agreement between the United Nations and the Government of Sierra Leone, the Court, in its legal nature and in composition and jurisdiction, differs from those criminal courts that were established in the 1990s to address regional serious violations of international humanitarian law on the Balkans and in Africa, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).\textsuperscript{190} As the first tribunal of its kind,\textsuperscript{191} the SCSL for Sierra Leone is a “treaty-based sui generis court

\textsuperscript{187} SCSL for Sierra Leone: Cases: Background, <www.sc-sl.org> (last accessed 22 November 2004).
\textsuperscript{188} Statute of the SCSL for Sierra Leone (annexed to the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a SCSL for Sierra Leone), articles 2-5, <www.sc-sl.org> (last accessed 05 September 2004). The abuse of girls relates to the Prevention of Cruelty to Children Act, 1926 (Cap.31), the wanton destruction of property to the Malicious Damage Act, 1861.
\textsuperscript{190} Kofi Annan, above n 24, para 9; Amnesty International “Establishing a SCSL for Sierra Leone” <www.amnesty.org> (last accessed 31 August 2004); Schocken, above n 25, 443.
\textsuperscript{191} ICTJ, above n 175, 2; While the United Nations Transitional Administration in East Timor (UNTAET) and the United Nations Interim Administration Mission in Kosovo (UNMIK) had established tribunals in East Timor and Kosovo respectively in 2000 and 1999 already, the SCSL is the first court that was set up with the consent of a fully
of mixed jurisdiction and composition”, that is a “mixed” tribunal. This hybrid character makes it different from the two International Criminal Tribunals in several respects. Among the distinguishing positive aspects are the following.

The SCSL has a much closer connection to the country where the violations of humanitarian law took place: it is situated in Freetown, the capital of Sierra Leone, and thus benefits from the identification of the local population that was affected by the crimes. People in Rwanda, on the other hand, do not necessarily feel that the tribunal (located in Tanzania) is related to their history. Locating a criminal tribunal in the country where the crimes were committed, not only conveys to the people a sense of association of their destiny with the trials, it is also designed to impact on the development of the local judiciary, still in its infancy after a change of regime. Most importantly, the Court has a mixed staff, consisting of local and international judges, prosecutors, head of registry and other staff members. While the presence of international personnel ensures respect for international procedural standards, the involvement of local and expatriated legal experts helps building bridges between the international dimension of the work and local customs, language, and mentalities. Including both these perspectives seems crucial for the outcome in the pursuit of truth and justice after an internal conflict.
The following aspects are disadvantageous for the SCSL. Unlike the two international tribunals that were established by Security Council Resolutions, 198 the Court has no formal link to the UN system. As a result, the Court functions on voluntary contributions and financial shortages are frequently faced. 199 With regard to enforcement of its mandate, the Court lacks the crucial UN Charter Chapter VII powers that the two International Criminal Tribunals possess by virtue of their having been established under Chapter VII. Consequently, the Court depends on States’ voluntary cooperation in matters of arrest, extradition and detention. 200

Having presented the two institutions separately, the next chapter is going to examine the interrelationship between the Commission and the Court.

VI COMPLEMENTARY ACCOUNTABILITY: 201 Issues and Achievements of the Interrelationship Between the Commission and the Court

The SCSL was established after the TRC, while the two institutions operated simultaneously, 202 which gave rise to a number of legal and practical questions of cooperation, which neither the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a SCSL nor the Statute of the Court regulated. This chapter is going to present these issues and answer the question of whether the cooperation has been satisfactory, based on the Sierra Leone TRC Final

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199 Schocken, above n 25, 444; ICTJ, above n 175, 10.
200 ICTJ, above n 175, 10-11.
201 ICTJ (Marieke Wierda, Priscilla Hayner and Paul van Zyl) “Exploring the Relationship Between the SCSL and the Truth and Reconciliation Commission of Sierra Leone” Executive Summary <www.ictj.org> (last accessed 31 August 2004).
202 With respect to the TRC, statements were taken from December 2002 to March 2003, followed by hearings from April to August 2003, Sierra Leone TRC Child-Friendly Version 2004, above n 137, 10. As for the SCSL, indictments were issued throughout the year 2003, SCSL for Sierra Leone: Cases, <www.sc-sl.org> (last accessed 23 November 2004).
A The Complementary Character of Accountability

At first glance, the co-existence of a truth commission and a criminal court seems to compromise the task of each of these two institutions, for their mandates appear mutually exclusive. While a truth commission seeks to find the truth about the past in order to achieve healing and reconciliation among perpetrators and victims, a criminal tribunal is set up to convict those responsible for serious crimes. One could thus express concerns about the possibility of ex-combatants being unwilling to testify before the truth commission for fear of then being prosecuted by the court.

However, in Sierra Leone, the SCSL was set up to try those who bear “greatest responsibility" for the crimes. The defendants are therefore persons formerly in a very high position in the military, numbering nine as of November 2004.

The TRC, on the other hand, was brought to life to set up a broad historical record of the human rights violations by listening to the voices of the victims and the perpetrators, the vast majority of whom are not prosecuted by the Court. In particular, the Prosecutor has made clear that he would not indict any children, that is anyone under the age of 18, of whom there were thousands in the armed forces during the war. Their part in the conflict can therefore be adequately examined in hearings before the TRC.

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204 See Evenson, above n 17, 755.


206 Above section V B.

The Commission thus has, as President Kabbah put it in its speech at the launch of public hearings in April 2003, a “therapeutic” effect on the national reconciliation process.\footnote{Address by the President His Excellency Alhaji Dr Ahmad Tejan Kabbah at the Start of Public Hearing of the Truth and Reconciliation Commission, Freetown 14 April 2003 <www.sierra-leone.org> (last accessed 06 September 2004)}

Accountability for the atrocities committed is sought at different levels and with different intentions. This concept embraces well the approach of transitional justice, that is promoting understanding of society through comprehensive truth finding projects. Notwithstanding this clear separation of the mandates, in the public opinion, confusion regarding the tasks of the two institutions was prevailing.\footnote{Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, paras 553, 555, 567.} Many people who might have been willing to give statements or appear in a hearing decided not to participate in the truth finding process because they feared their information might be transferred to the SCSL.\footnote{Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, paras 553, 555, 568.} This was especially the case among former perpetrators.\footnote{Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, paras 553, 555, 568.} Plus, while resource sharing would have been practicable and financially desirable, the closer the two bodies are operationally interrelated, the more the different mandates will be blurred in the impression of the public.\footnote{Abdul Tejan-Cole “The Complementary and Conflicting Relationship between the Special Court for Sierra Leone and the Truth and Reconciliation Commission” (2003) 6 Yale Hum Rts & Dev L J 139, 158.}

\subsection*{B The Amnesty Provision in the Lomé Peace Agreement}

As discussed in part II and III, the Lomé Peace Agreement, in combination with the establishment of the TRC, granted full amnesty to the combatants in return for peace. When the SCSL for Sierra Leone was set up in 2002, this approach had to be re-considered, as full amnesty would have made the operation of the Court impossible. When the Lomé Peace
Agreement had been signed, though, the Special Representative of the UN Secretary-General had added, on behalf of the United Nations, the disclaimer that the United Nations regarded the amnesty clause to be inapplicable with regard to violations of international humanitarian law. On adopting Resolution 1315 (2000), the Security Council referred to the reservation made upon signing the Peace Agreement in the preamble. Furthermore, the Statute of the Court states in article 10 that

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\text{[a]n amnesty granted to any person falling within the jurisdiction of the SCSL in respect of the crimes referred to in articles 2 to 4 of the present Statute [violations of international humanitarian law as opposed to violations of Sierra Leonean law in article 5] shall not be a bar to prosecution.}
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As a consequence, the amnesty clause does not apply to international prosecution of violations of international law. The overlap of the jurisdiction of the SCSL with the mandate of the TRC thus presents itself as follows: International crimes committed prior to Lomé and after 1991 are covered by the mandate of the TRC, those committed after 1996 are also covered by the jurisdiction of the SCSL. International crimes committed after Lomé are only covered by the jurisdiction of the Court. Domestic crimes committed between 1991 and 1999 fall under the mandate of the TRC, but are exempt from prosecution and trial before the Court as the amnesty clause in the peace agreement prevails. Domestic crimes committed after 1999 can be prosecuted under article 5 of the Statute of the Court if applicable. They are not covered by the mandate of the Commission. As a table, the interrelated mandates of the TRC and the SCSL can be depicted as follows:

\[\text{\begin{tabular}{|c|c|c|}
\hline
\text{Year} & \text{Mandate of the TRC} & \text{Mandate of the SCSL} \\
\hline
1991-1999 & Domestic crimes & International crimes \\
1999-2001 & International crimes & Domestic crimes \\
2001-2006 & International crimes & Domestic crimes \\
2006-2013 & International crimes & \\
\hline
\end{tabular}}\]

213 Kofi Annan, above n 24, para 23.
215 Overview in ICTJ above n 201, 3.
216 ICTJ, above n 201, 3.
The power of the SCSL to exercise jurisdiction over combatants who allegedly committed crimes prior to the Lomé Peace Agreement was challenged by a preliminary motion filed on behalf of the defendants Kallon and Bazzy Kamara. They argued that the Government of Sierra Leone was bound by the amnesty provision in Lomé. As the SCSL was a “hybrid” court, not a purely international one, established with the consent of the Government, the amnesty provision had a legal effect on the jurisdiction of the SCSL such that it was not authorised to assert jurisdiction over crimes committed before the granting of amnesty.

The Appeals Chamber finds that the Lomé Peace Agreement does not have the quality of an international treaty and therefore has effects only on Sierra Leonean domestic law. Regardless of its effects on prosecution in national courts, it would not affect the jurisdiction of an international court such as the SCSL. The Chamber emphasises that the SCSL, although being a “mixed” tribunal, is not part of the Sierra Leonean legal system, and the Prosecutor acts in complete independence. This was further elaborated on in the decision on a preliminary motion on the invalidity of the agreement establishing the SCSL. The Appeals Chamber characterises

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217 *Lomé Accord Amnesty*, above n 25.
218 *Lomé Accord Amnesty*, para 1, 55.
220 *Lomé Accord Amnesty*, above n 25, para 85.
the SCLS as an entirely new body operating under its own statute “in the sphere of international law.”\footnote{SCSL Prosecutor against Augustine Gbao Decision on Preliminary Motion on the Invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone (25 May 2004) SCSL-2004-15-PT-141, para 6, <www.sc-sl.org> (last accessed 29 November 2004).} According to the judges, the Court exercises its judicial power in the interest of the international community. As a result, article IX of the Lomé Peace Agreement could not be a bar to the exercise of this jurisdiction.\footnote{Decision on Preliminary Motion on the Invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, above n 221, para 7.}

While this paper agrees with the position that the SCSL operates regardless of the amnesty provision and therefore has the competence to assert jurisdiction over crimes committed prior to Lomé, it nevertheless asserts that the Government of Sierra Leone violated the Lomé Peace Agreement by consenting to the creation of a criminal tribunal.

As has been established earlier, in contrast to the two international criminal tribunals in Yugoslavia and Rwanda, the SCSL is based on an agreement between the United Nations and a national government. Due to this and its mixed composition as well as the application of both international and domestic laws, it is not an international, but a “mixed” tribunal. It is ascertained that, for a number of reasons, the international character, as opposed to the national one, prevails. The SCSL operates independently from the national penal jurisdiction; it is created by an international agreement that sets internationally valid standards of fair trial; and the number of judges appointed by the United Nations is higher than that of those appointed by Sierra Leone. An amnesty provision in an agreement concluded between a national government and a rebel group can therefore not impact on the jurisdiction of a tribunal with suchlike international character.

However, the SCSL was created and article 10 inserted by an agreement
to which the Government of Sierra Leone consented. In his letter to the President of the United Nations Security Council, Sierra Leone’s President Kabbah links his request for an initiative to establish a special court on the RUF rebels’ having breached the peace agreement. He considers mechanisms to ensure individual accountability of the RUF leaders to be the only way to achieve lasting peace. The process to establish a special court was therefore initiated with the specific aim to try the leaders of the RUF as those responsible for the breach of the peace agreement.

However, the Statute of the SCSL makes no difference as to what armed group those most responsible the Court has personal jurisdiction over belong to. While the Government could argue that the RUF breached the Peace Agreement first, which exempted the Government from its obligations, no such conclusion can be drawn with regard to the members of other armed groups who abode by Lomé. Prosecuting members of armed groups that had nothing to do with the RUF’s breach of the Peace Agreement violates the deal amnesty in return for peace.

The Appeals Chamber finds that the requirement set up in article IX(3) of the Lomé Peace Agreement to “ensure that no official or judicial action is taken against any member” of any armed group, ought to be interpreted in the way that it can only relate to the national official and judicial powers of Sierra Leone, over which the Government has authority and power. It would therefore only relate to domestic prosecution, not to international. However, by negotiating with the United Nations the Agreement establishing the SCS, the Government was in the position to suggest that only members of the RUF be prosecuted.

It is thus ascertained that the Government reneged its amnesty promise under the Lomé Peace Agreement by consenting to the creation of the SCSL

223 Fritz and Smith, above n 189, 425.
224 Lomé Accord Amnesty, above n 25, para 9.
225 Lomé Accord Amnesty, above n 25, para 9.
226 Fritz and Smith, above n 189, 426.
227 Lomé Accord Amnesty, above n 25, para 63.
228 See Fritz and Smith, above n 189, 426.
with jurisdiction over those bearing greatest responsibility for the atrocities regardless of what armed group they belong to and whether or not this armed group has abided by the Peace Agreement.

Notwithstanding the above, the signing of the Agreement establishing the SCSL has no legal effect on the legitimacy of the SCSL or the validity of article 10 of its Statute. The only grounds, on which a provision of an international agreement may be regarded unlawful, are a violation of a peremptory norm of international law, error, fraud or coercion none of which has been raised in the present case.

The establishment of the SCSL has been viewed critically by the Sierra Leone TRC. While it does not assert the creation of the SCSL to be a breach of the Government’s amnesty promise under Lomé, in its Final Report, the Commission criticises the fact that the breach of the peace negotiated under Lomé solely by RUF combatants lead to the prosecution of leaders of various armed groups apart from the RUF who had nothing to do with the RUF’s breach of the agreement, calling such action “unwise and legally unsound.” In the view of the TRC, the actions of the RUF should not have been made the basis for depriving others of the “benefit of amnesty.” Furthermore, the TRC condemns the creation of the SCSL for its negative potential of signalling to future conflict parties that amnesty clauses in peace agreements might be unreliable and that they therefore cannot trust the agreement. Conversely, the TRC is certainly of the

229 Fritz and Smith, above n 189, 426.
230 Lomé Accord Amnesty, above n 25, para 63.
232 Sierra Leone TRC: Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 560.
233 Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 562.
opinion that breaches of peace accords should not be tolerated. \(^{234}\)

With respect to the United Nations, they had made clear on signing the Lomé Peace Agreement that the amnesty provision did not apply to international prosecution.

With regard to the Government of Sierra Leone, the TRC’s critique is justified as has been determined above.

Consequently, the TRC recommends the inclusion of a clause in future peace agreements that explicitly provides for legal consequences in case of a breach of the accord, thus retracting the protection of amnesty from those who have violated the provisions of the peace accord without abrogating the amnesty provision towards any other former parties to the conflict. \(^{235}\) This approach considers the political reality in war torn countries whose only perspective to end the suffering seems to be the granting of amnesty for those responsible for the atrocities. At the same time, it provides for legal consequences for the case of parties not abiding by the peace accord requirements. Thus, it sends a signal to those who are likely to breach a mutually negotiated peace accord that such action is intolerable. Not only do they breach provisions of a treaty, they also inflict even greater suffering on the population by destroying their renewed hopes for peace and greatly impact on the government’s efforts to stabilise the country. In the case of Sierra Leone in particular, taking international peacekeepers hostage furthermore endangers the willingness of the international community to engage in peacekeeping activity in a country that has proven to be so dangerous.

Implicitly regretting that no such safeguard stipulation was included in the Lomé Peace Agreement, the TRC is generally in favour of the co-

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existence of a truth and reconciliation commission and a criminal tribunal, stating that “Sierra Leone, with its two institutions of transitional justice in operation at the same time, (…) had the opportunity to offer the world a unique framework in moving from conflict to peace.” However, the TRC found several points of friction in the simultaneous operation of itself and the SCSL. They will be addressed in the following section.

C Confidentiality and Information Sharing

A crucial question was that of information sharing between the TRC and the SCSL. That question was essential because the passing of information gathered by the TRC in hearings and statement taking to the SCLS could have kept ex-combatants from testifying before the TRC for fear of subsequently being called before the SCSL as defendants or witnesses. Conversely, the disclosure of details in public hearings before the Commission might have compromised criminal proceedings and caused suspects to elude prosecution through flight.

The TRC Act in section 7(3) imposes a duty of confidentiality on the TRC with regard to any information received. However, the SCSL Agreement (Ratification) Act stipulates a hierarchy between the two institutions in favour of the SCSL, saying that “[n]otwithstanding any other law, every (…) body created by or under Sierra Leonean law shall comply with any direction specified in an order of the SCSL.”

The relationship between the two institutions was thus, by law, characterised by the predominant position of the Court, which could override the confidentiality of information.

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236 Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 563.
238 Evenson, above n 17, 755.
stipulation and request information from the TRC.\footnote{ICTJ, above n 201, 5.} This situation, unsatisfying in light of the aims of the Commission, called for the negotiation of an agreement.\footnote{ICTJ, above n 201, 5.} However, no such agreement was ever concluded.\footnote{Evenson, above n 17, 732.} Major problems of coordination in this aspect have nonetheless been absent, since the Prosecutor David Crane explicitly stated that he did not intend to use TRC information in proceedings before the Court.\footnote{Evenson, above n 17 at 756; see also SCSL for Sierra Leone: The Office of the Prosecutor, Press Release 27 February 2003 SCSL Prosecutor Addresses Seminar Participants: Encourages Perpetrators to Talk to the TRC <www.sc-sl.org> (last accessed 08 September 2004). The issue as to whether a defence counsel could use exculpatory material gathered by the TRC remained unsolved, though (Evenson, above n 17, 756). Abdul Tejan-Cole remarks that this scenario would be of little concern to the TRC as a perpetrator would not be kept from making a testimony knowing that his information would be exculpatory, Abdul Tejan-Cole “The Complementary and Conflicting Relationship between the SCSL for Sierra Leone and the Truth and Reconciliation Commission” (2003) 6 Yale Hum Rts & Dev L J 139, 155.}

\section*{D Access of the TRC to SCSL Detainees}

The SCSL has some of the former leaders in custody.\footnote{Above section VI A.} It was crucial for the Commission to gain access to these detainees in order to obtain their testimonies, as these were essential for a comprehensive understanding of the history of the war.\footnote{See Evenson, above n 17, 757.} The Court granted this access and adopted a Practice Direction on the procedure to be followed.\footnote{SCSL for Sierra Leone “Practice Direction on the procedure following a request by a State, the Truth and Reconciliation Commission, or other legitimate authority to take a statement from a person in the custody of the SCSL for Sierra Leone” adopted 9 September 2003, amended 4 October 2003 <www.sc-sl.org> (last accessed 23 November 2004).} It denied, on the contrary, the TRC’s request to obtain a detainee’s statement in a public hearing. In October 2003, the TRC submitted a request to the SCSL asking to let CDF leader and SCSL detainee Samuel Hinga Norman appear in a public hearing, characterising him as a crucial figure in the war and therefore of importance to the TRC proceedings.\footnote{The Request of the TRC, the submission of the Defence Counsel as well as the response of the Prosecution are reproduced in the SCSL for Sierra Leone Trial Chamber decision SCSL-2003-08 PT The Prosecutor against Samuel Hinga Norman Decision on the Request by the Truth and Reconciliation of Sierra Leone to Conduct a Public Hearing with Samuel} While the detainee
himself was willing to testify before the TRC,\textsuperscript{249} the Prosecution rejected the request as being contrary to the interests of justice and the integrity of proceedings before the SCSL.\textsuperscript{250} According to the abovementioned Practice Direction, these are the two sole justifications that can support a refusal of request for access to a detainee with the aim of conducting a public hearing with him.\textsuperscript{251} As said by the Prosecution, there was a risk of Hinga Norman telling a different version of the events in the public TRC hearing than in the SCSL trial under oath. Such contradictions would endanger the credibility of the entire criminal procedure and thus the standing of the Court.\textsuperscript{252} It was furthermore asserted that Hinga Norman was different from ordinary citizens and that the appropriate place to examine his role in the war was a criminal court.\textsuperscript{253} The Trial Chamber of the SCSL denied access of the TRC to Hinga Norman. It primarily based its reasoning on the fundamental principle of the presumption of innocence. According to Thompson J, the nature of the TRC proceedings was such that it related only to those who,
allegedly, were perpetrators and were willing to confess their guilt.\textsuperscript{254} For that reason, the request of the TRC was based on Hinga Norman allegedly being a central figure among the perpetrators.\textsuperscript{255} Conducting a public hearing with someone who has pleaded not guilty would impact on the impartiality and fairness of the subsequent criminal trial.\textsuperscript{256} It would therefore be inappropriate for someone who, like Hinga Norman before the SCSL, has pleaded innocent.\textsuperscript{257} In the balancing of the opposing interests, the interest that all accused may have a fair and impartial trial and the valuable role of the TRC in establishing a comprehensive record of the past, the fundamental right to a fair process prevails. Similarly, the rule of law that demands a contentious matter be brought before a court where the accused enjoys a range of procedural guarantees triumphs over the right of the accused to exercise his free will (and decide to appear in a public hearing).\textsuperscript{258}

The decision of the Trial Chamber was brought before the Appeals Chamber. The Appeals Chamber, similarly to the Trial Chamber, emphasised the need for procedural safeguards, non-existent in hearings before the TRC, where the interviewee faced “impromptu questions (...) by skilled (...) commissioners”,\textsuperscript{259} as well as the danger of a biased trial before

\textsuperscript{254} SCSL for Sierra Leone Trial Chamber decision SCSL-2003-08 PT The Prosecutor against Samuel Hinga Norman Decision on the Request by the Truth and Reconciliation of Sierra Leone to Conduct a Public Hearing with Samuel Hinga Norman, 29 October 2003, Bankole Thompson J, para 12, <www.sc-sl.org> (last accessed 23 November 2004).

\textsuperscript{255} SCSL for Sierra Leone Trial Chamber decision SCSL-2003-08 PT The Prosecutor against Samuel Hinga Norman Decision on the Request by the Truth and Reconciliation of Sierra Leone to Conduct a Public Hearing with Samuel Hinga Norman, 29 October 2003, Bankole Thompson J, para 14, <www.sc-sl.org> (last accessed 23 November 2004).

\textsuperscript{256} SCSL for Sierra Leone Trial Chamber decision SCSL-2003-08 PT The Prosecutor against Samuel Hinga Norman Decision on the Request by the Truth and Reconciliation of Sierra Leone to Conduct a Public Hearing with Samuel Hinga Norman, 29 October 2003, Bankole Thompson J, para 12, <www.sc-sl.org> (last accessed 23 November 2004).

\textsuperscript{257} SCSL for Sierra Leone Trial Chamber decision SCSL-2003-08 PT The Prosecutor against Samuel Hinga Norman Decision on the Request by the Truth and Reconciliation of Sierra Leone to Conduct a Public Hearing with Samuel Hinga Norman, 29 October 2003, Bankole Thompson J, para 16, <www.sc-sl.org> (last accessed 23 November 2004).

\textsuperscript{258} SCSL for Sierra Leone SCSL-2004-014 (formerly SCSL-2003-08) The Prosecutor v Sam Hinga Norman Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman JP against the decision of his Lordship Mr Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC’s request to hold a public hearing with Samuel Hinga Norman JP, para 21.
the Court subsequent to the hearing. It objected to the idea of a “full-scale public hearing broadcast ‘life’ before the nation.” Instead, the Court referred to the alternative option of a written statement submitted to the Commission. This would allow for the mandate of the Commission to be fulfilled and the fundamental right to freedom of speech of the detainee to be respected. As can be deduced from the reasoning of the SCSL, written statements had previously been used to receive accounts from SCSL detainees.

However, it is questionable, whether the Truth and Reconciliation Act 2000 actually provided for the submission of written documents to the TRC, in other words, whether it is a legitimate tool for the TRC’s work. A few sections that potentially allow for written accounts are examined in the following.

<www.sc-sl.org> (last accessed 23 November 2004).

260 SCSL for Sierra Leone SCSL-2004-014 (formerly SCSL-2003-08) The Prosecutor v Sam Hinga Norman Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman JP against the decision of his Lordship Mr Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC’s request to hold a public hearing with Samuel Hinga Norman JP, para 17,
<www.sc-sl.org> (last accessed 23 November 2004).

261 SCSL for Sierra Leone SCSL-2004-014 (formerly SCSL-2003-08) The Prosecutor v Sam Hinga Norman Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman JP against the decision of his Lordship Mr Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC’s request to hold a public hearing with Samuel Hinga Norman JP, para 21,
<www.sc-sl.org> (last accessed 23 November 2004).

262 SCSL for Sierra Leone SCSL-2004-014 (formerly SCSL-2003-08) The Prosecutor v Sam Hinga Norman Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman JP against the decision of his Lordship Mr Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC’s request to hold a public hearing with Samuel Hinga Norman JP, para 21,
<www.sc-sl.org> (last accessed 23 November 2004).

263 SCSL for Sierra Leone SCSL-2004-014 (formerly SCSL-2003-08) The Prosecutor v Sam Hinga Norman Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman JP against the decision of his Lordship Mr Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC’s request to hold a public hearing with Samuel Hinga Norman JP, para 21,
<www.sc-sl.org> (last accessed 23 November 2004).

264 SCSL for Sierra Leone SCSL-2004-014 (formerly SCSL-2003-08) The Prosecutor v Sam Hinga Norman Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman JP against the decision of his Lordship Mr Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC’s request to hold a public hearing with Samuel Hinga Norman JP, para 21: “There was not, indeed never has been, any inhibition against an indictee volunteering or communicating information to the TRC, either directly or through his lawyer. (…) It is surprising that the TRC does not appear to have requested information in written form from this indictee.” <www.sc-sl.org> (last accessed 23 November 2004).
Section 8(1) of the TRC Act 2000 enumerates the competencies of the TRC regarding the collection of statements, evidence and other information to fulfil its mandate. While section 8(1)(a) of the TRC Act 2000 gives to the TRC the power to “gather, by means it deems appropriate, any information it considers relevant (...) from any source”, this widely phrased competence seems to refer primarily, if not exclusively, to the Commission’s background research and investigative work, established in section 7(1)(a), not to the conduct of hearings. The authority to interview individuals is explicitly set up in section 8(1)(c), thus separately from the information gathering in subparagraph (a). Also, section 8 establishes a wide range of competencies in order to facilitate the work of the Commission through greatest possible access to information of all kind. It is therefore meant to make the work of the TRC as effective as possible. Receiving written statements rather than public and oral accounts in a hearing, on the contrary, is rather a limitation of the work of the Commission as this is build on the concept of participants delivering “open and transparent” stories before the Commission. Section 8 can therefore not be invoked with the aim to assert the competence of the TRC to collect written statements.

Section 7(3) allows individuals to submit information to the TRC on a confidential basis. However, this provision is based on the concern for particularly vulnerable groups like children, women or girls who might not want to talk about very personal and difficult experience in a public hearing. Confidentiality is not an issue with respect to SCSL detainees, though. According to the SCSL, they do not have to be personally protected from giving a public account. It is rather, as was elaborated on above, the

266 Compare the enumeration of the “functions” of the TRC in section 7(1) and the following determination of its “powers” in section 8(1).
267 Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 553, 573 (a).
integrity and credibility of the following criminal proceeding that are at risk to be damaged by the appearance of the detainee in a hearing.

However, the idea behind the Truth and Reconciliation Act 2000 is to equip the TRC with the widest possible range of competencies to effectively exercise its mandate. Despite the power to request written statement from a SCSL detainee as a substitute for an oral account in a public hearing not being explicitly determined in the Truth and Reconciliation Act 2000, it is an efficient means to achieve the TRC’s goal to receive crucial information from the detainee, who is, pursuant to the mandate of the SCSL, a former high rank military leader in the war and can therefore give an account, which is vital for the truth finding process. Although the principles of openness and transparency as well as direct contact of the people with the detainee cannot be fulfilled, and interactive dialogue between the Commissioners and the detainee cannot be established, when the detainee does not appear in person, it is ascertained that truth can nonetheless be found. A written statement contributes to the aim of truth finding to a lesser degree than a testimony in a public hearing. However, it provides a certain amount of truth, and, in a transitional society, every single piece of the picture of the past is appreciated. Despite not being explicitly provided for in the Truth and Reconciliation Act 2000, the collection of written statements is therefore covered by the powers of the TRC and a legitimate means to establish the truth. The requirement of the SCSL expressed towards the TRC in its appeal decision to ask detainees to submit written statements as a substitute for appearance in a public hearing therefore suggested a mechanism that would have been covered by the competencies of the TRC as set up in the Truth and Reconciliation Act 2000.

The TRC, in its Final Report, sees in the decision of the SCSL to deny detainees the direct participation in the TRC proceedings a denial of the rights of all Sierra Leoneans to see the truth finding process become reality
with respect to those most responsible for the violence during the war. The Commission also characterises the decision as a refusal of the SCSL to let the detainees exercise their right to free speech. With respect to the Practice Direction, the Commission finds that it lacks consideration of the nature and spirit of the truth finding process. The Final Report does not address the suggestion of submission of written statements.

A public hearing with commissioners asking questions and the general public being present, presumably in very high numbers when the perpetrator is a former rebel leader, indeed entails the possibility of the latter incriminating him-/herself in the omnipresent atmosphere of truth-telling and seeking forgiveness. In order for him/her not to compromise his/her fundamental right to presumption of innocence, he/she should be allowed to submit a written statement to the TRC as a substitute for his/her personal account in a hearing. This would ensure both the rights of the detainee, namely freedom of expression and the presumption of innocence, and the functioning of the TRC, which is certainly interested in including the testimonies of those bearing greatest responsibility in its findings. Although a written statement is unable to capture the essence of a public hearing, specifically the communal effort to understand, forgive, and reconcile, it is a second-best, yet viable alternative. Without it, the TRC would not receive any statement at all. It is therefore regrettable that the TRC did not seize the opportunity offered to it by the SCSL to request information in written form from Hinga Norman as a prominent SCSL detainee willing to testify before the TRC.

As a result of the issues arising from the TRC requesting information from SCSL detainees and the resulting discrepancies in the case of Samuel

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269 Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 553, 557, 573.

270 Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 553, 557, 573.

271 Sierra Leone TRC Findings in Respect of the TRC and the SCSL for Sierra Leone, above n 75, para 553, 569.
Hinga Norman, the TRC deplores the failure of the two institutions to agree upon a definition of the nature of the co-existence and of mechanisms of cooperation. The saddening resumé of the TRC is that "(...) the two bodies had little contact and when they intersected at the operational level, the relationship was a troubled one."\(^{272}\) Surely, a determination of the relationship at an operational level would have been desirable and would have made the co-existence effective and valuable for the national process of transition.\(^{273}\)

**E Contrasting Findings of the TRC and the SCSL**

It has been argued that the potential issue of the TRC and the SCSL reaching divergent conclusions about a particular individual might lead to a friction in the two-pronged process of transitional justice, impairing the path to reconciliation.\(^{274}\) In the specific case of Sierra Leone, though, it is questionable whether the nature of the interrelationship between the two institutions substantiates this concern.\(^{275}\) As has been illustrated above in part VI A, their mandates are complementary. In the abovementioned decision on appeal, the Court expresses the concern that a condemnation by the TRC in its report might provoke expectations vis-à-vis the Court to pronounce a respective sentence.\(^{276}\) However, it raises this point with regard to the possible risk of deterring potential defence witnesses, not in consideration of a loss of credibility among the population due to divergent findings.\(^{277}\) In such a case, given the extent of the involvement of the


\(^{273}\) Evenson, above n 17, 739.

\(^{274}\) Evenson, above n 17, 759.


\(^{276}\) SCSL for Sierra Leone SCSL-2004-014 (formerly SCSL-2003-08) The Prosecutor v Sam Hinga Norman Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman JP against the decision of his Lordship Mr Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC’s request to hold a public hearing with Samuel Hinga Norman JP, para 17.

\(^{277}\) SCSL for Sierra Leone SCSL-2004-014 (formerly SCSL-2003-08) The Prosecutor v Sam Hinga Norman Decision on Appeal by the Truth and Reconciliation Commission for
accused in the atrocities, it seems highly unlikely, anyway, that the Court would not sentence that person. The reverse case of the TRC exculpating an individual, which the SCSL convicts, seems very unrealistic given the Court’s mandate over those bearing the greatest responsibility.

VII CONCLUSION

Conventional international law does not offer a clear answer to the enquiry as to whether Sierra Leone had a duty to prosecute the serious violations of international humanitarian law and international human rights law that occurred during the civil war. Pursuant to the increasingly frequent and explicit incorporation of an obligation to prosecute in international treaties, it is ascertained that such a duty a duty is at least emerging as a rule of customary international law.²⁷⁸ By granting blanket amnesty in the Lomé Peace Agreement, Sierra Leone therefore violated this obligation under international law.

However, the amnesty was granted to put an end to a brutal internal armed conflict and to enhance the process of transition to peace and stability. This kind of extraordinary political reality in transitional societies requires the adoption of an equally out-of-the-ordinary framework of justice and accountability for serious violations of international law, that of transitional justice. Transitional justice looks at the concepts of justice and accountability not through the traditional lens of retribution and punishment, but through that of restoration and reconciliation. Under these circumstances, amnesty should, by way of exception and to meet the demands of political reality, be allowed.²⁷⁹

In the context of some post-conflict societies, a truth and reconciliation commission, rather than a criminal tribunal, is the appropriate institutional

²⁷⁸ Above section III A 2 (c) (ii).
²⁷⁹ Above section III A 3.
instrument of transitional justice.\textsuperscript{280} Truth commissions are most valuable when they are entrusted with the task to grant amnesty that is conditional upon full disclosure of the truth and acceptance of responsibility. Accountability is more likely to be reached this way than by blanket, general amnesty, because nothing needs to be done to receive the benefit of the latter.\textsuperscript{281}

In Sierra Leone, where the war mainly targeted civilians, a comprehensive truth finding process, involving all members of society, was indispensable to understand the context of the conflict. Although amnesty had already been granted to the combatants, the Sierra Leone TRC could make a valuable contribution to the process of transition. Interviews, hearings, and research helped to determine the causes and the evolution of the conflict. The truth finding process before the TRC gave victims a unique role, namely the opportunity to tell to the world the full narrative of their experience, rather than being bound to the role of a functional witness in a trial.\textsuperscript{282} Reconciliation and re-integration ceremonies helped re-uniting society.\textsuperscript{283} Although accountability and justice might not be achieved to the same degree as they would have with conditional amnesty, the potential of the truth and reconciliation process to heal the wounds of the war seems to be the decisive factor.

With regard to the SCSL, the fact that it was established to prosecute military leaders of all groups, while solely RUF rebels committed the previous breach of the peace agreement, constitutes a breach by the Government of the Lomé amnesty promise.\textsuperscript{284} As the TRC observes, this might make future parties to conflicts less willing to respond to the offer of amnesty in return for peace. To make amnesties a functioning and credible tool of peacemaking in transitional societies, a clause should be added to amnesty clauses that any breach of the p Nicole Fritz and Alison Smith “Current Apathy for Coming Anarchy: Building the Special Court for Sierra Leone” (2001) 25 Fordham Int’l L J 391, 425.

peace would retract the protection of amnesty from the responsible party, but not from those who abide by the ceasefire.\textsuperscript{285}

\textsuperscript{280} Above section III B.
\textsuperscript{281} Above section III C.
\textsuperscript{282} See Minow, above n 84, 238
\textsuperscript{283} ICTJ, above n 15, 5.
\textsuperscript{284} Above section VI B.
\textsuperscript{285} Above section VI B.
The mixed character of the SCSL makes it an adequate tool in the quest for justice, taking into account local customs while guaranteeing international standards in prosecution that are to become an integral part of the country’s future judicial system.

The TRC and the SCSL have had complementary functions. While the SCSL addresses impunity of those few who were ultimately responsible for the most serious violations of international law, the TRC helped the general population, victims and perpetrators, to find the truth by telling and hearing stories, to experience relief and forgiveness, and to obtain a comprehensive picture of the sources of the conflict.

However, with two institutions of transitional justice working alongside each other, a clear demarcation of the mandates of the two bodies plus an understandable transmission of their role to the general public would have been required. Although the Sierra Leone TRC was able to collect a considerable number of statements and testimonies, the number of perpetrators coming forward was relatively small. As the TRC remarks in its Final Report confusion about the role and the powers of the TRC and the SCSL respectively were predominant in the public and potentially barred some perpetrators from appearing before the Commission in fear of their information being transferred to the SCSL.

Furthermore, a comprehensive regulation of the relationship of these two institutions prior to their operation would have been necessary to prevent important questions like that of access of the TRC to SCSL detainees from causing friction. In the view of the TRC, the lack of a clear definition of the coordination between the two bodies has significantly impacted on the efficiency of the TRC’s truth finding process and on the model role the two-pronged transitional process in Sierra Leone could have had in the world.

286 Above section IV B.
287 Above section V A.

Despite issues in the relationship between the TRC and the SCSL, overall, the combination of these two institutions of transitional justice has hopefully helped Sierra Leone to find its way into a peaceful future. The TRC has suggested a number of promising societal and governmental activities in all areas of concern such as the promotion of human rights and the rule of law, women, children, mineral resources and reparations. A follow-up body is going to be established to observe the implementation progress. The SCSL is going to sentence those most responsible for unspeakable atrocities. It might be a long way to peace, and considerable support from the international community will be necessary, but, as the children of Sierra Leone say in the child-friendly version of the TRC's Final Report, "[t]he future is our challenge, and we cannot refuse."\footnote{Sierra Leone TRC \textit{Child-Friendly Version 2004}, above n 137, 12, <www.unicef.org> (last accessed 3 November 2004).}
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