

Restorative Justice in Transitional Sierra Leone

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Abstract

Intense debate surrounds truth commissions as to their mission, perceived roles and outcomes. This paper seeks to contribute to the understanding of truth commissions in post-conflict settings. It examines the Truth and Reconciliation Commission (TRC) for Sierra Leone, the first truth commission to be engaged concurrently with a retributive mechanism, the Special Court for Sierra Leone for transitional justice. The study finds that the TRC provided an opening for conversation in Sierra Leonean communities to search for the meanings of truth about the conflict. In this way the communities simultaneously created understanding of the situation from the process of *creative conversation*. The TRC report became a reference for the government and non governmental institutions and as a basis for challenging and holding government accountable. This notwithstanding, the TRC did not have the needed public cooperation because the people were not sure the war was over and feared that their assailants could harm them if they disclosed the truth. The presence of the Special Court also created tensions and fears rendering the transitional environment unfriendly to the reconciliation and truth telling endeavors of the TRC. The study has implications for future truth commissions in that the timing for post-conflict reconciliation endeavors should take into consideration the state of the peace equilibrium of the societies involved and be packaged for harmonious existence in a given transitional contexts, particularly where it will coexist with a retributive mechanism.

Keywords: Post-conflict, Peace-building, restorative justice, retributive justice, Sierra Leone, transitional justice, truth commissions.

1. Introduction

The Truth and Reconciliation Commission (TRC) for Sierra Leone was one of the transitional justice mechanisms established by Sierra Leone in collaboration with the United Nations to address the baggage of human rights abuses which had occurred during the civil war in that country. Emerging democracies like Sierra Leone, transitioning from war to peace or from oppressive political regimes are often characterized with the worst forms of human rights abuses. Hence seek to address the past, by restoring the dignity of victims, and holding perpetrators accountable, for their actions in order to break the cycle of impunity for sustainable peace (Humphrey, 2003). Because the abuses may have occurred on a large scale for which existing mechanisms are not usually designed to be able to address, short-term juridical accountability mechanism(s) are employed by the countries concerned to administer justice, hence the practice of transitional justice. Transitional justice therefore refers to “the full range of processes and mechanisms associated with a society’s attempts to come to terms with the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (Report of the Secretary-General on the rule of law and transitional justice, 2004, p.4). Several tools are used for transitional justice to bring about accountability for past abuses. These include, criminal trials or prosecutions, restorative processes through truth commissions, or commissions of inquiry as the case may be, reparations, lustrations and purges (Hayner, 2002).

The TRC is a truth commission. The phrase “truth commission” is a generic term of recent adoption given to bodies that carry out official truth seeking inquiry into past abuses (Hayner, 2002). The idea of truth commission has become popular and emerging democracies and countries transitioning from oppressive political pasts or civil conflicts have sought to account for their abusive past through the truth process (Shifter & Jawahar, 2004). For example, post-apartheid South Africa announced a truth commission, the end of Pinochet dictatorship in Chile witnessed the establishment of one, post-conflict Liberia and Sierra Leone utilized truth commissions, likewise transitional Ghana from a successive and intermittent military rule. The “truth business” has been described as the greatest innovation in post transition justice (Tapperman, 2002). As a transitional justice tool, truth commissions offer restorative justice devoid of punitive component.

The concept of restorative justice is a new world view of justice which seeks to restore and redeem society from what has been lost by the perpetration of abuses. According to the TRC of Sierra Leone “restorative justice focuses on restoring relations, as far as possible, between victims and perpetrators and between perpetrators and the community to which they belong”(p.434). In this regard “a restorative system of justice includes accountability, truth telling, acknowledgement, and reparations” (TRC Report, 2004, p.434). These are to facilitate reconciliation—“finding the mechanisms and the space to live together peacefully and with tolerance of diversity” (TRC Report, 434). Restorative justice seeks to restore the dignity of victims by validating their sufferings, addressing their needs, with reparation or compensations offered in deserving cases. Further, it offers victims the public assurance that what happened to them was wrong and measures are being taken to prevent reoccurrence (Hayner, 2002). In this case, victims experience justice that answers their needs in the manner

that the conventional criminal justice system fails to provide (Zehr, 1998). Restorative justice also offers perpetrators the platform to make confessions, explain their actions, and ask for forgiveness and be reconciled with their *community*. The idea is that holding perpetrators accountable for the truth and other forms of accountability will bring about reconciliation of masses of victims with perpetrators and ward off any future retaliatory action that the abuses may occasion (Berewa, 2001). A truth process is expected to benefit both victims and perpetrators in the overriding interest of reconciliation (Berewa, 2001). This is in contrast with the old world view of justice as punitive which demanded that alleged perpetrators of abuses be tried and punished where found guilty. Table 1 below shows the development trend of restorative justice is in contrast with retributive justice as shown on.

Table 1.

Development Trends in Restorative and Retributive Justice

Justice as retributive	Justice as restorative
Justice as punishment	Justice as healing
Justice according to law	Justice according to truth
Justice as adversarial	Justice as reconciliatory
Justice as retaliatory	Justice as forgiveness
Justice as condemnation	Justice as merciful
Justice as alienation	Justice as redemptive
Justice as impersonal	Justice as human centered
Justice as blind	Justice as sensitive
Justice as humiliation	Justice as honor

Note. Adapted from Apori-Nkansah, L. (2005). Apori-Nkansah, 2008.

The popularity of truth commissions notwithstanding, they constitute a subject-matter of “intense debate” as regard their mission, perceived roles and outcomes (Posner, 2004: Tapperman, 2002). Some scholars have hailed the truth process. For example Call (2004) consider them as “instruments of social peace and harmony (p.104); Tepperman (2002) as “tools” used “to set the historical record straight” (p. 10); Grandin (2005), as a channel for the

creation of modern-day nationalism because they present past violence as parables and due to “a breakdown of social order” rather than “political ethos” (Grandin, 2005, p.48) In the view of the South African Truth and Reconciliation Commission, they construct a “historic bridge” between “a deeply divided past of untold suffering” and “a future founded on the recognition of human rights” (as quoted in Grandin, 2005, p.46). Conversely, some scholars have been critical of the truth process. In the view of Mendeloff (2004) the truth process is imperfect, their claim to providing social healing and reconciliation, justice, creating official historical record, educating about the past, ensuring institutional reforms, stabilizing democracy, and deterrence against future abuses are unfounded. Others have argued that there is no need to revisit the past as it will reopen old wounds; truth commissions deal with the devil and compromise justice; the bargain of choosing truth commissions over trials is unnecessary as trials are now easy to achieve; and that a version of the past constituting the notion of truth leading to reconciliation is untenable (Shifter and Jawahar 2004; Tepperman, 2002). Brouneus (2008) maintains that the “assumptions about truth-telling may be based more on theoretical thinking than on reality” (p.72)

This paper seeks to contribute to the understanding of the truth phenomenon within a post-conflict setting by examining the role of the TRC in Sierra Leone’s peace process. Again, being the first truth commission to be engaged concurrently with a retributive mechanism, the experiences of the TRC will contribute to the framing and designing of truth commissions in the future.

2. The TRC within the Contexts of Sierra Leone’s Peace Process

The decade old war which broke out in Sierra Leone in March, 1991 between the Revolutionary United Front (RUF) and the government of Sierra Leone left in its wake massive human rights abuses (Gberie, 2000; Smillie, Gberie & Hazleton, 2000). It is estimated that out of 4.5 million people, over 75,000 died (Smillie, Gberie & Hazleton, 2000). The war left approximately “4,000 amputation survivors, 2,000,000 displaced internally, 500,000 refugees, and at least 5, 000 children turned into brutal combatants” (Evenson, 2003, p.733). The war also claimed the lives of about 800 peacekeepers from the sub region (Rashid, 2000). Those who suffered the abuses were mostly civilians and all sides to the conflict allegedly committed atrocities (Dougherty, 2004; TRC Report, 2004). After the invasion of Freetown in January 1999, it became increasingly evident to both the government, the RUF, likewise their supporters that there was no win-win situation and local movements and international pressure was put on the then president, Kabbah to settle the conflict (Hirsch, 2001).

The President, Kabbah initiated a peace talk on the premise of an earlier peace pact, the 1996 Abidjan Peace Accord, which had broken down. Civil society groups supported the move to negotiate the end of the conflict but advocated for the inclusion of an accountability mechanism to break the circle of impunity in Sierra Leone, as the Abidjan Peace Accord had none (Bennett, 2001). However, the government’s peace initiative was not going to receive any favorable response from the RUF to end the conflict except on the basis of an amnesty (Bennett, 2001; Berewa, 2001). Whilst the RUF and Government were negotiating peace, the

government of Sierra Leone, UN High Commissioner for Human Rights, the Special Representative of the UN Secretary-General (SRSG), National Forum for Human Rights and National Commission for Democracy and Human Rights signed a manifesto and agreed to a truth and reconciliation commission as accountability mechanism for addressing human rights violations in Sierra Leone. The Lome negotiation also resulted in granting a blanket amnesty to all the warring factions for alleged abuses. The Lome Accord provided for the establishment of a Truth and Reconciliation Commission to administer restorative justice. The Parliament of Sierra Leone passed the Truth and Reconciliation Act in 2000 to provide for the establishment of the TRC.

The TRC had the mandate to provide an impartial historical record of violations and abuses of human rights and international law relating to the armed conflict in Sierra Leone from the beginning of the conflict in 1991 to the signing of the Lome Peace Agreement 7th July 1999; to address impunity; to respond to the needs of victims; to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered (Section 6 of TRC Act, 2000). It was to “help to restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered” (Section 6 (2)). Likewise, the TRC was to provide an opportunity “for perpetrators to relate their experiences” and to facilitate “a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict” (Section 6(2) (b)). It could hold sessions which could be made public or otherwise to hear from the victims and perpetrators of any abuses or violations. At its discretion, it could permit anyone to provide it with information on a confidential basis. And in its dealings with victims and witnesses, it was enjoined to take into consideration the concerns of witnesses and victims on issues such as security (Section 7(3)). The TRC could “seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation”(section 7(2) of TRC Act, 2000). At the end of its work, it had to submit a report to the government and publish its findings widely (Sections 15 & 16 of TRC Act). The government was required to submit a copy of the report to the United Nations with a request that it should be tabled before the Security Council within 30 days upon receipt. Moreover, within 30 days of the receipt of the report, the government was enjoined to submit it to Parliament with a request that a copy should be lodged in the archive of Parliament (Section 16). Further, by Section 19 of the TRC Act (2000), the TRC was required to organize its records and safe-guard its archives before rounding up its administrative activities. For its purposes the TRC was to pursue purely restorative justice devoid of any punitive components.

It should be noted that before the TRC was set up, hostilities broke out which brought about a shift in the accountability policy. In breach of the cease fire agreement, the RUF attacked and kidnapped UN peacekeepers. This led to demonstrations and subsequent attack by the RUF on demonstrators, resulting in casualties. Foday Sankoh, the RUF leadership fled but was arrested and put into custody. Consequently, the government of Sierra Leone requested the Security Council to set up a court to prosecute the RUF which culminated in the

establishment of the Special Court for Sierra Leone (Berewa, 2001) also a transitional justice mechanism. The TRC was made to proceed on its mandate and its implementation coincided with the Special Court, creating a side by side existence of the two transitional justice mechanisms. This paper examines the role of the TRC as a co-existing accountability mechanism in Sierra Leone's peace-building process.

3. The Research Method

This is a bounded qualitative case study of the TRC from 1999 to 2004; the period when the TRC idea was conceived to when the TRC submitted its final report to the government and people of Sierra Leone. Data were collected between December 2006 and February 2007, and 2010. The study utilized four sets of data; interviews, observational field notes, focus group discussions and documentary sources. Interviews were semi-structured with 31 individuals who were central to the implementation of the TRC. These individuals include UN officials, Sierra Leonean public officers, TRC officials, Special Court officials and civil society activists. These were key informants with useful information and insight into the issues involving the TRC and its role in Sierra Leone. Documents include archival sources, records and secondary sources. Focus group discussion was conducted with selected Sierra Leoneans on August 2010 to clarify the initial findings and feedback was included. Data were coded through the constant comparison method and analyzed by Stake's (1995) analytical approaches of "categorical aggregation", "direct interpretation", "detailed description", and "naturalistic generalization". Findings were validated through peer review, member checking, detailed description and use of multiple sources of data. The design for this study is consistent with methodological approaches recommended by Creswell, 1998; Goulding, 2002; Polkinghorne, 2005; Singleton & Straight, 2005, Strauss and Corbin, 1990; Trochim, 2001 for qualitative inquiry of this nature.

4. Emerging Themes

4.1 Policy Fitness

Although all the participants interviewed were of the view that the policy choice of the TRC was appropriate in facilitating peace-building in transitional Sierra Leone, they were divided in their views as to whether the TRC should have been a sole accountability mechanism or complementary to trials. Those who thought the TRC should have been a sole accountability mechanism argued that first, it was the main building block for peace because the TRC was borne out of consensus; it emanated from the peaceful settlement of the conflict; the Lome Peace Agreement which all the warring factions signed as an accountability mechanism for addressing the aftermath of the conflict. It had domestic ownership and legitimacy and provided spaces for all concerned. All the warring factions committed atrocities including pro government forces and peacekeepers i.e. the Sierra Leone Army (SLA) and ECOMOG forces so it gave a common face to all, unlike the Special Court which did not indict the SLA and ECOMOG forces.

Second, it was in consonance with the traditional way of settling disputes in Sierra Leone. Some of the participants pointed out that the people of Sierra Leonean were not against

retributive justice per se but by culture were forgiving and preferred settlement as a means to dispute resolution. A civil society activist pointed out “I think Sierra Leoneans have always said that they prefer the reconciliation solution...I guess because our culture is one of forgiveness more than prosecution,” A UN officer who happened to have worked in the provinces disclosed, “the generality of the people accepted the reconciliation and the fact that there was an amnesty... if the people have settled to resolving their conflict amicably and wanting to forgive, I thought that was a better option”. A Special Court official admitted that Sierra Leoneans were forgiving not because of culture but they have no avenue for justice.

Third, the people of Sierra Leone were tired of war and wanted rest and the TRC mechanism was soothing but the indictment and arrest by the Special Court created tension. A TRC official disclosed that when they went to the provinces some communities said they had accepted the government plea to accept the amnesty and reconciliation “which they did and there was peace— they could go about their farms and surrounding areas without fear of being attacked by rebels, that was the end of the matter!”

Fourth, The TRC was justified as the preferred mechanisms for addressing the aftermath of the conflict by virtue of the nature and to the causes of the conflict. A UN official pointed out “the conflict was not based on religion, it was not based on tribe; it was based on inaptitude of government. And the people were really averse to government’s actions”. According to a TRC officer it “offered a potential for wholesale reform of a society that was not only destroyed by war; it had decades of bad governments before the war”. The TRC produced a report on the conflict with recommendations for the way forward. A civil society activist said “the best thing we ever had in Sierra Leone is the TRC report” because it has become a reference for the government and non governmental institutions and the basis of challenging and holding government accountable.

Fifth, the priority concern of Sierra Leone was to reconcile the nation by addressing the needs of victims and perpetrators. The victims needed to be heard in a way that a conventional criminal mechanism would not make possible. The perpetrators included children and others who were forcibly abducted by warring factions to fight. It was therefore necessary to create a platform not only for victims but perpetrators as well to enable them reconcile and reintegrate into society. A TRC official said;

“We were dealing with people who went through incredible trauma and suffering and who were victims of some of the worst human rights ever experienced in human history. Or, on the other hand, it could have been the perpetrators of such violations, many of whom were kids when they perpetrated those violations. The perpetrators could hardly comprehend what they had done, and the victims could hardly speak about what happened to them. On both sides you needed an environment which was protective of those people, an environment which offered them a forum in which they could speak without fear of consequence or prejudice”.

The TRC was thus of a universal value to Sierra Leone. Evenson’s (2004) also found that in Sierra Leone reconciliation by the TRC was more of a priority than a punitive mechanism. Above all since it was not possible to try every perpetrator the TRC platform provided mass

justice for “TRC is for every Sierra Leonean.”

All the participants considered the TRC desirable but some thought that the TRC alone was inadequate to provide justice. The reasons were that first, a segment of the people of Sierra Leone wanted retributive justice which was not part of the TRC framework. In the words of a participant the Special Court was the “balancing factor” Second, the transitional contexts of Sierra Leone were characterized with impunity and a retributive mechanism was needed to quell the impunity. A TRC official explained that after the war had been peacefully negotiated, the RUF continued to engage in perpetration of violence which ceased the moment the idea of the Special Court came into play. Fourth, the war had international dimensions; hence the need for an international court, the Special Court to bring the perpetrators to book to bring sanity in the sub region, a function the TRC mechanism would not have been able to provide. A minister of state had this to say;

“When Charles Taylor was brought here, it sent home the message loud and clear that impunity will not be tolerated. Charles Taylor seemed such an invincible person, such a powerful figure, but he was not above the law. That is the message that came out; nobody is above the law. If you take a look at Charles Taylor, his aura, the invincibility ... and later for him to be was brought to Freetown in handcuffs! They kept him behind bars and then he was moved out to The Hague. So that is the message that is loud and clear”.

Fourth the rule of law had broken down, so it was important for the Special Court to administer justice to facilitate the rebuilding and restoration of the rule of law.

The wide acceptance of the TRC whether as a sole or complementary accountability mechanism contradicted with Shaw’s (2005) findings on the TRC’s acceptability by Sierra Leoneans. Shaw pointed out that the TRC idea is encapsulated in the individual and societal memorization of what happened, yet the idea of remembering is contrary to some respective cultures of Sierra Leonean communities where forgetfulness is an acceptable way of dealing with such catastrophes. Shaw wrote “there was little popular support from bring the Commission to Serra Leone, since most people favored instead a “forget and forget” approach” (p.4) As a result, whole communities took the decision not to participate in the TRC process or to do so with twisted stories.

4.2 Restorative Justice as Linguistic Symbolism

Restorative justice in Sierra Leone was encapsulated in linguistic symbolism. The TRC officials used metaphor, rhetoric, allegory, analogy and stories to articulate the mandate, vision and goals of the TRC. These included “*come clear your chest make peace sidon na Salone* (Come and speak out so peace could sit down in Sierra Leone)” “Truth hurts” “but war hurts more”; “TRC for one Salon” (TRC is for the unity of Sierra Leone) “Truth today peaceful Sierra Leone tomorrow”, “*Bio maind to TRC en ge pis*” (Blow your mind to the TRC and get peace) Others were “*No bad bush for troway bad pikin*” (There is no dumping ground for bad children). “*Tru at fo tok but na im nomo go bring pis*”(Speaking truth will bring about peace); “Save Sierra Leone From another war, Reconcile now, the TRC Can help”; “Learn from Yesterday for a better Tomorrow”; “*Disarm your Mind! Tell the Truth to*

the TRC” “If pikin burn in os you nor go sen di pikin bak nar di fire” (If a child set a house of fire you don’t throw the child into the fire) ((Shaw, 2005: TRC Report, 2004). These were used for jingles on radio and television, displayed on bill boards and banners and also as vignettes in its final report. Stories were told by the commissioners when they engaged the public and the phrases were used in church and mosque to appeal for peaceful coexistence.

In a focus group discussion, participants were asked about what the symbolic language used by the TRC meant to them. It emerged that within the respective cultures of Serra Leone proverbs, wise sayings etc are employed to communicate hurtful or difficult situations or matters. Giving the atrocities committed an appeal had to be made to Sierra Leoneans in the language they understood for the acceptance of restorative justice because people were initially enraged by it. The symbolic language by the TRC employed values with strong appeal as well as beliefs which helped Sierra Leoneans to accept the TRC as well as to identify with it. Again, they were soothing and helped to calm tensions.

4.3 Truth Telling and Reconciliation

The TRC was mandated to ensure reconciliation of varied kinds. The TRC considered “reconciliation” a “fluid concept which is not easily defined” and with no common model for operationalization but with “many components: national reconciliation; community reconciliation; and reconciliation between individuals, such as between victims and perpetrators at an inter-personal level” (435 TRC Report, 2004). The TRC policy on reconciliation was informed by two central principles that is “first, the process of reconciliation should be based on the country’s own culture, traditions and value system, which requires that traditional and religious leaders play a role in the process; second, existing structures need to be utilized as much as possible so as not to “reinvent the wheel” (TRC Report, 2004, p.439). On the basis of this conceptual framework, the TRC carried individual, Inter-personal, community and national reconciliation.

Through the individual and inter-personal reconciliation drive, the TRC provided the opportunity for persons including victims and perpetrators to make statement about their experiences during the conflict; Out of the population of about 4.5 million 7,706 gave statement to the TRC. After the statement taking the TRC conducted hearing sessions which were mainly public in the capital city and the provinces to hear witnesses. The hearing on sexual violations on women and children were held in camera. Victims had the opportunity to narrate their sufferings. The TRC referred some victims to identifiable organizations for needed assistance. Perpetrators were also offered the same platform as victims to make statements and narrate their sufferings and wrongs committed during the conflict and asked for forgiveness. This in some cases led to inter-personal reconciliation between victim and their perpetrators, whereby perpetrators asked victims for forgiveness and victims signified forgiveness by shaking hands and hugging each other often in tears. Witnesses were transported from their homes to the hearing venues and back. Victims and perpetrators were offered counseling sessions prior to the hearings and also after the hearings. The hearings were carried life on radio and there were times where the nation mourned while a perpetrator narrated his wrongs and begged for forgiveness (TRC Report, 2004).

Community reconciliation was a feature of the TRC hearings. After the close of a hearing session, the TRC organized reconciliation ceremonies. Present at these ceremonies were the traditional leaders, religious leaders and community leaders. The names of all those who lost their lives in the community during the conflict which had come up in the course of the hearings were called out and a solemn quietness was observed. Another feature was community reconciliation ceremony. Where perpetrators had confessed and indicated their intentions to be reconciled with their communities; the TRC requested the assistance of traditional and religious leaders for community reconciliation. Invariably, the communities were receptive to reconciliation where they thought that the perpetrator in their view had spoken the truth. In such situations the community leaders performed a traditional ritual to accept perpetrator back. What went on into the reconciliation ceremonies depended on the community involved. These included breaking of kola followed by traditional and Christian or Muslim prayers as the case may be, while the perpetrator sometime knelt or prostrated before the community elders. In situations where there had been mass killings the community involved requested the TRC officials to accompany them to perform rituals to bid farewell to the departed souls. Monuments were also built in some cities and places where abuses had taken place (TRC Report, 2004 pp). As part of its national reconciliation drive the TRC organized a national reconciliation day with a peace procession in the streets of Freetown on August 6, 2003 and various institutions offered apologies for the role they played in causing the carnage in Sierra Leone. These included political parties and security services. The TRC in conjunction with the Inter-Religious Council of Sierra established District Reconciliation Committees to carry with reconciliation.

It came out that the truth telling and reconciliation interventions helped to avert what would have otherwise been reprisals in some communities. Again, some families learnt for the first time of the death of their loved ones whose whereabouts were unknown to them through the confessions of the killers and closed the chapter on that. Others also found out who killed their loved ones. UN official said the presence of the TRC in the communities was in itself a signal to the people of Sierra Leone that the government was desirous in addressing the factors of the conflict and gave confidence to the peace building process. Thus the ordinary person felt a sense of recognition and importance through the TRC platform. And some perpetrators had opportunity to be accepted home. Awareness of the truth brought a resolution of “never again” and resilience to work through difficult situations to avoid conflict. In the view of a civil society actor Sierra Leone would have gone to war but for the intervention of the TRC.

4.4 Challenges

The TRC experienced challenges with its truth seeking and reconciliation endeavors by virtue of its coexistence with the Special Court which rendered the environment distrustful. First there was the problem of conceptual incongruity. A UN official explained during the interviews that the TRC was conceived to provide restorative justice in consequence to the blanket amnesty provided for by the Lome Peace Agreement. This was at the time where judicial accountability by way of trials was not envisaged, because the government negotiated peaceful settlement of the conflict and provided an amnesty as a compromise. A shift in the

accountability policy later brought the Special Court and changed the transitional contexts which churned out the TRC. Yet the TRC was made to proceed with its restorative endeavors as contemplated by the Lome Peace Agreement to enforce the amnesty which had been revoked by the Special Court. This made the TRC incongruous in the new transitional arrangements as the environment was no longer congenial to its endeavors.

The mere presence of the Special Court as a retributive mechanism created new fears. Victims were afraid as to what could happen to them if they participated in the TRC process. Commandants and foot soldiers who allegedly carried out atrocities failed to appear before the TRC to give their side of the story. Perpetrators who appeared did not speak the full truth. This was because perpetrators were afraid of the consequences to themselves and their leaders who had been indicted; arrested and detained by the special court if they appeared before the TRC and confessed their involvement in the conflict. A civil society activist pointed out that perpetrators were initially receptive to the TRC idea but withdrew their cooperation when the Special Court came on the scene.

The interviews revealed a perception that the TRC would share information with the Special Court or that the Special Court would demand information from the TRC for which the TRC must comply. A civil society activist said the TRC was perceived as a witch-hunting body for the Special Court. This perception was compounded by the close geographic proximity of the two institutions. It was thought by the generality of the populace that a tunnel linked the two institutions which channeled information from the TRC to the Special Court. The effect was succinctly put by a TRC officer: “If anyone who could take part in that process thought for a moment that the information was going to be passed on to the Special Court, they could not participate with an open mind”.

There was also the problem of structural incongruity which undermined the mandate of the TRC. The TRC and Special Court were not coordinated as two coexisting transitional justice mechanisms working towards the same goal of building peace and stability in Sierra Leone. The laws setting them out did not delineate their respective jurisdictions. Their mandates overlapped in terms of their personal, subject-matter and temporal jurisdictions (Apori-Nkansah, 2004). Hence, “the same events, witnesses, victims, perpetrators, and evidence were relevant to them” (Evenson, 2004,). Thus while the TRC invited the public for reconciliation the Special Court chased them for retributive purposes. In consequence, “many people in Sierra Leone were not able to distinguish between the roles of the two bodies; they both dealt with impunity; they addressed accountability for atrocities committed during the war; and... focused on violations of international humanitarian law” (TRC Report, p.377). The legal relationship between them was not determined by their normative laws and the Special Court considered itself superior to the TRC by virtue of Section 21 (2) of the Special Court Act, which stated “Notwithstanding any other law, every natural person, corporation, or other body created by or under Sierra Leone law shall comply with any direction specified in an order of the Special Court” At the operational level, the two institutions did not coordinate their operations and implemented their activities simultaneously.

The structural and operational incongruity brought about a fight between the two institutions when their relationship intersected. Some detainees of the Special Court wanted to participate in the TRC process but this was not made possible by the Special Court. One of such persons was Hinga Norman, the Internal Affairs Minister at the time of his arrest, and also the former Deputy Defense Minister and Coordinator of the Civil Defense Force during the conflict. The Trial Chamber of the Special Court rejected his application to participate in the TRC process on the basis that as an accused his : “procedural and substantive due process rights..., as long as he remains in the custody (actual or constructive) of the Special Court” must be protected (*Prosecutor v. Norman*, 2003, Trial Chamber, p.6). Again, the Trial Chamber maintained that the administration of justice as instituted by the Special Court Statute would be weakened if its indictees pending trial were permitted to plead their case elsewhere (*Prosecutor v. Norman*, 2003, Trial Chamber). Upon appeal, the Appeal Chamber of the Special Court held that the detainees could give testimony to the TRC in writing but could not appear before it publicly (*Prosecutor v. Norman*, 2003, Appeal Chamber). Hinga Norman and other detainees involved did not accept the procedure prescribed by the Special Court to submit their testimony to the TRC. A TRC official disclosed that one of the detainees had agreed for an interview with the TRC but was arrested a day to the time the interview was scheduled to take place. Decrying the predicament of the TRC under the circumstances a TRC official disclosed;

As consequence, one of the TRC Commissioners and some participants believed the TRC did not get the full truth because its report did not include the stories of the detainees of the Special Court who played a vital role in the conflict as their investigations had revealed. According to a civil society activist the TRC had mostly “victims’ stories—the familiar stories and not the unknown stories”. This civil society activist maintained that everyone knew how people suffered so what they wanted to know were the perpetrators’ version of “why they did what they did”. And that could have led them to understand the conflict, but that was missing as the TRC had victim stories.

It also emerged that the attention of donors was shifted from the TRC to the Special Court the preferred accountability mechanism of the international community. A TRC official disclosed that funds donors had initially earmarked for the TRC was given to the Special Court and the TRC could not engage effectively in its reconciliation effectively. One of the TRC Commissioners disclosed that the TRC found a number of perpetrators; southerners settled in the northern part of the country who were yearning to go back home. The TRC was able to reconcile some of them but could not do much for lack of time and funds. Some perpetrators were still permanently displaced. A civil society activist confirmed that issues of social reintegration were still lagging in the respective communities. Those in civil society recognized the need for extension for the TRC in that regard, but the international community was not prepared to spend on the TRC. This would not have been the case but for the existence of another transitional justice mechanism.

These difficulties notwithstanding, two of the Special Court officials felt that the TRC had cooperation from the public because the first Prosecutor of the Special Court assured the public that the Court would not make use of any information given to the TRC and therefore

encouraged the public to cooperate with the TRC. But whether or not that was enough was a different thing but that there was cooperation and the TRC produced its report. Moreover, on its part, the TRC said that indeed the assurances given by the Prosecutor and other officials of the Special Court offered the TRC “some sense of security” (TRC Report, 2004, p.377), but it still encountered difficulties in accessing witnesses and information. A civil society actor indicated that the TRC was advantaged because the Special Court mandate was limited to only the political leadership of the various factions. This left a wide field for the TRC to attract the perpetrators. A TRC officer vehemently maintained that the foot soldiers did not cooperate with the TRC because of the simultaneous coexistence of the two mechanisms.

The problems of the TRC were caused by other factors other than the presence of the Special Court. A UN official and a Special Court Official maintained that the TRC lacked power to grant pardon because the Lome Peace Agreement had already granted pardon to perpetrators. Unlike the South African TRC, which could grant amnesty exchange for truth the TRC in Sierra Leone did not have any such powers. As such there was no incentive to attract perpetrators to cooperate with it or speak the truth. Further, perpetrators were going to be integrated into their communities so they did not generally admit their misdeeds to incur the possible wrath of their communities. Victims were equally afraid in coming to the TRC or in some cases speaking the truth because they were not sure the war had ended and seeing their assailant moving about freely they were afraid their assailant might harm them if they disclosed what they suffered at their hands. The TRC framework failed to provide for witness protection and did not make provision for witness protection as done by the South African and Ghana bodies hence there was no guarantee that anything said would not be used against them. Finally it came out that the TRC defined its mandate as a victim-based and hence, concentrated on victims.

5. Discussions, Conclusions and the Way Forward

The wide acceptability of the TRC either as a sole or complementary accountability mechanism for addressing the aftermath of the conflict indicates that a mechanism of this nature may be required to administer restorative justice for peace-building after a protracted civil conflict irrespective of whether retributive mechanism existed. The popularity of the TRC as found by this study contrasts with Shaw’s assertions that the TRC was not in consonance with the culture of Sierra Leone where forgetfulness is espoused as a means of dealing with traumatic experiences. The issue which comes to the fore is whether Sierra Leoneans should have been let alone to forget the experiences of the conflict as Shaw implied? Does it mean that the TRC process of truth telling which brought back the past forced them to remember against their will? Or has it translated them from the culture of amnesia as a way of addressing the past abuses to a norm of remembering? Has the TRC then forced or facilitated a paradigm shift in Sierra Leonean culture to let them remember the past as opposed to amnesia? Sierra Leoneans probably now see the importance of remembering through the TRC’s framework since the slogans “we are now aware” and “never again” came up throughout the interviews. A further study would be needed as to the TRC legacy in this regard.

It also came out that given the transitional contexts and the nature of the conflict a retributive mechanism was needed in addition to the TRC. This suggests that the truth mechanism alone may not be capable to address the aftermath of a protracted civil conflict and that divergent tools and approaches might be required to address the intricate contexts of a post-conflict society. This seems to be in line with the observation by Hayner (2002) that truth and justice have different roles; hence, under no circumstances should criminal prosecutions be exchanged for truth mechanisms. It also confirm the position of the International Center for Transitional justice (ICTJ) (2004/2005) which encouraged the use of truth commission alongside with trials, likewise on the position of the Inter-American Commission on Human Rights (IACHR) on transitional justice. According to the IACHR transitional justice consists of the right to truth, which finds expression in the public acknowledgement and validation of violations as well as their prosecution and punishment (*Ignacio Ellacuría and others v El Salvador*, 1999; *Carmelo Soria Espinoza Vs Chile*, 1999). In future the choice of a truth commission whether as sole or coexisting transitional justice mechanism should be premised on the needs of the societies involved as different accountability options may be required.

Language of persuasion and other symbolic gestures were evoked to articulate the goals of the TRC for acceptance. The symbolic language by the TRC derived from the conceptual resources of Sierra Leone vividly communicated truth, justice, and reconciliation to Sierra Leoneans. The importance of words is captured in the analysis of Conger (1989) who maintained that language creates perceptions, the use of rhetoric; metaphors, analogies, and organizational stories create vividness, clarification, or express certain emotions, intellect and imagination. These language tools illustrate and interpret realities as well as teach complex lessons and goals in a powerful manner. This has implication for future TRCs in that they should have leaders who are conversant with the language patterns of the society of their interventions to be relevant.

The reconciliation endeavors through the hearings provided a discourse for creating meaning of truth of what happened during the conflict. It primarily provided an opening for conversation in Sierra Leonean communities to search for the “many colors of truth”. In this way the communities simultaneously created understanding of the situation and set reconciliation agendas from the collective meaning of what happened during the conflict. The reconciliation ceremonies which were fashioned after the cultures of the respective communities of Sierra Leone made the process possible for local consumption. The TRC adapted to the local contexts of their operations. The normative framework of future TRCs should make that possible as was done in Sierra Leone.

The findings on challenges basically bring to light the difficulties in using a truth process in post-conflict settings as well as the complexities involved when a truth commission is engaged alongside trials. It also shows the need to create an enabling environment for the effective functioning of a truth process whether as a sole or coexisting accountability mechanism. As seen some people were afraid to participate in the TRC process or could not do so with an open mind because they were not sure that the war was over and feared that their assailants who were roaming about could harm them if they disclosed the truth to the TRC. The presence of the Special Court also rendered the transitional environment unfriendly

to the reconciliation and truth telling endeavors of the TRC. This is because the TRC had been conceived and designed as a response to a blanket amnesty which the Special Court revoked creating fears and tensions in the peace process. The study has implications for future truth commissions in that timing for post-conflict reconciliation endeavors should take into consideration the state of the peace equilibrium of the societies involved and be packaged for harmonious existence in a given transitional contexts, particularly where it will coexist with a retributive mechanism.

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Notes on Contributor

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