

**SEEKING JUSTICE IN THE WAKE OF TRANSITIONS FOR VICTIMS
OF SEXUAL VIOLENCE: A CASE STUDY OF SIERRA LEONE**

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ABSTRACT

Sexual violence against women and girls during conflicts has been regarded as one of the gravest violations of human rights in modern times. During the 11 years conflict in Sierra Leone, thousands of women were sexually abused by various armed combatants. The establishment of the Special Court for Sierra Leone and the Truth and Reconciliation Commission which had the mandate to deal with past human rights violations provided forums through which victims of sexual violence can realise their right to justice. The thesis seeks to examine the extent to which the said transitional justice processes sought to fulfil the victim's right to justice in post-conflict Sierra Leone. Through an examination and analysis of the operations of the said institutions, it is undoubtedly the case that the victims' right to justice cannot be obtained merely by retributive and restorative means of justice; but rather retributive and restorative justice should be combined with the provision of medical, psychology, and socio-economic services that would respond to the needs of victims in the post-conflict era.

DEDICATION

For my late cousin, Marie Justina Bangura, with whom I shared my dreams and ambitions and together we bragged about how rich we would be and how we would serve humanity. You are gone but thoughts of you will forever linger in my mind and in every step of my career to which you contributed and inspired. Sleep on and take your rest!

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TABLE OF CONTENTS

ABSTRACT	1
DEDICATION	II
ACKNOWLEDGMENT	III
TABLE OF CONTENTS	IV
LIST OF ACRONYMS	VI
INTRODUCTION	1
1. BACKGROUND TO THE STUDY	1
2. STATEMENT OF THE THESIS PROBLEM	5
3. HYPOTHESIS AND RESEARCH QUESTIONS	7
4. METHODOLOGY	8
5. THESIS STRUCTURE	9
CHAPTER 1	12
SEXUAL VIOLENCE DURING THE CONFLICT SEXUAL VIOLENCE DURING THE CONFLICT AND ITS IMPACT ON VICTIMS	12
1.1.1 INTRODUCTION	12
1.1.2 SEXUAL VIOLENCE DURING THE CONFLICT	12
1.1.3 THE CONSEQUENCES OF RAPE AND SEXUAL VIOLENCE ON THE VICTIMS 15	
CHAPTER 2	19
TRANSITIONAL PROCESSES: THE SPECIAL COURT FOR SIERRA LEONE AND THE TRUTH AND RECONCILIATION COMMISSION	19
2.1.1 INTRODUCTION	19
2.1.2 THE SPECIAL COURT FOR SIERRA LEONE (SCSL)	20
2.1.3 THE TRUTH AND RECONCILIATION COMMISSION	29
2.1.4 CONCLUSION	34
CHAPTER 3	36

THE LEGAL STATUS OF WOMEN IN SIERRA LEONE AND THE REPARATION PROGRAMME.....	36
3.1.1 INTRODUCTION.....	36
3.1.2 LEGAL AND SOCIAL JUSTICE LEGISLATIONS FOR WOMEN.....	37
3.1.3 THE REPARATION PROGRAMME: BEYOND THE TRC RECOMMENDATIONS 40	
3.1.4 CONCLUSION.....	47
CHAPTER 4.....	49
LESSONS LEARNED FROM THE SIERRA LEONE EXPERIENCE.....	49
4.1.1 INTRODUCTION.....	49
4.1.2 ACCOMPLISHMENTS AND SHORTCOMINGS	49
4.1.3 NEEDED SUPPORT	55
4.1.4 CONCLUSION.....	58
BIBLIOGRAPHY	61
BOOKS	61
JOURNALS AND ARTICLES	61
REPORTS.....	63
PAPERS AND OTHER DOCUMENTS	65

LIST OF ACRONYMS

AFRC	ARMED FORCES REVOLUTIONARY UNITED FRONT
CDF	CIVIL DEFENCE FORCES
CEDAW	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
ECOMOG	ECOWAS MONITORING GROUP
ECOWAS	ECONOMIC COMMUNITY OF WEST AFRICAN STATES
ICC	INTERNATIONAL CRIMINAL COURT
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ICTJ	INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE
ICTR	INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
IDPs	INTERNALLY DISPLACED PERSONS
IOM	INTERNATIONAL ORGANISATION FOR MIGRATION
NaCSA	NATIONAL COMMISSION FOR SOCIAL ACTION
RUF	REVOLUTIONARY UNITED FRONT
SLA	SIERRA LEONE ARMY
SCSL	SPECIAL COURT FOR SIERRA LEONE
TRC	TRUTH AND RECONCILIATION COMMISSION
UN	UNITED NATIONS
UNAMSIL	UNITED NATIONS MISSION IN SIERRA LEONE
UNIFEM	UNITED NATIONS DEVELOPMENT FUND FOR WOMEN

INTRODUCTION

1. BACKGROUND TO THE STUDY

In 1991, the Revolutionary United Front (RUF), lead by Corporal Foday Sankoh invaded Sierra Leone from Liberia.¹ The war which lasted for ten years was “characterised by grave human rights abuses” reported to have been committed by the Revolutionary United Front (RUF), the Armed Forces Ruling Council (AFRC), government backed forces, that is the Sierra Leone Army (SLA) and the Civil Defence Forces (CDF), and by Economic Communities Monitoring Group (ECOMOG) peacekeeping forces.² In the early years of the war, and until 1996, the fighting mostly took part in the countryside where the RUF committed grave human rights violations including killings, maiming civilians, as well as raping and sexually abusing women.³ This resulted in the government signing the Abidjan Accords with the RUF which were however “short-lived.”⁴

Hostilities between the government and the RUF continued, and in 1997, the Armed Forces Revolutionary United Front (AFRC) too over power and overthrew the then President, Ahmed Tejan Kabbah and his government.⁵ The AFRC formed an alliance with the RUF and remained in power until 1998 when the Economic Community of West African States monitoring Group (ECOMOG) drove the AFRC/RUF out of the city, Freetown and reinstated

¹ Beth K. Dougherty ‘Right-Sizing International Criminal Justice: The Hybrid Experiment at the Special Court for Sierra’ International Affairs (Royal Institute of International Affairs 1944-), Vol. 80, No. 2, Israeli-Palestinian Conflict (March 2004) at p 314

² Noah B. Novogrodsky ‘Speaking to Africa—The Early Success of the Special Court for Sierra Leone’ 5 Santa Clara J. Int’l L. 194, (2006) at p. 196

³ Laura R. Hall, Nahal Kazemi ‘Prospect for Justice and Reconciliation in Sierra Leone’ 44 Harv. Int’l L. J. 287(2003) at p. 288

⁴ Ibid

⁵ Ibid

the government of Ahmed Tejan Kabbah.⁶ During the rule of the AFRC/RUF the rule of law and economic situation in the country was said to have deteriorated.⁷

Again in January 1999, the AFRC/RUF invaded Freetown and committed mass atrocities of human rights violations, but they were again pushed out of the city by ECOMOG troops.⁸ Later that year, the Lomé peace agreement which among other things provided for a ceasefire and granted amnesty to fighting combatants, and provided for the establishment of a truth commission, was signed between the government of Sierra Leone and the RUF.⁹ The hostilities however continued despite the signing of the Lomé peace agreement and this period also witnessed the killings of civilians by the RUF during a demonstration, the taking of hostage of peace keepers, etc.¹⁰

Responding to the request by the President, Ahmed Tejan Kabbah to the United Nations Secretary to create an independent court for Sierra Leone to try those responsible for the atrocities during the war,¹¹ the Security Council of the United Nations passed resolution 1315 which called for the establishment of the Special Court for Sierra Leone.¹²

In post-conflict countries, it is imperative for the government together with the international community to hold accountable those responsible for committing serious crimes during the conflict. This is crucial in promoting and strengthening democracy and the rule of law; and in particular, to bring justice to the victims, and punish perpetrators. Throughout the history of

⁶ Abdul Tejan-Cole 'The Complementary and Conflicting Relationship Between the Special Court for Sierra Leone and the Truth and Reconciliation Commission' 6 Yale Hum. Rts. & Dev. L.J. 139,(2003), at p. 141[hereinafter The Complementary and Conflicting Relationship Between the SCSL and the TRC]

⁷ Ibid

⁸ Ibid

⁹ Ibid, at p. 142

¹⁰ Ibid

¹¹ Ibid, p. 143

¹² Prospect for Justice and Reconciliation in Sierra Leone, supra note 3, at p. 2

armed conflict, whilst men have been killed, women are often abducted, raped, and sometimes killed after been raped.¹³ In World War II, thousands of women were said to have been abducted and raped by Japanese soldiers in the Chinese city of Nanjing.¹⁴ Soviet soldiers were also reported to have raped many women in Romania, Hungary, and particularly so in Germany at the fall of the city of Berlin.¹⁵ In Bosnia, Bosnian Serb forces carried out a systematic rape against Bosnian Muslim women.¹⁶ In the continent of Africa, the conflicts in Rwanda,¹⁷ Liberia¹⁸ and Sierra Leone¹⁹ were marked by wide spread and systematic rape against women.

Like in many other conflicts in history, sexual violence was wide spread throughout the conflict in Sierra Leone. According to a report released by Physicians for Human Rights (PHR) in 2002, conducted among internally displaced persons (IDPs) for various human rights abuses, the report concluded that during the civil war, there was a prevalence rate of war-related sexual violence of about (8% to 9%.); out of which 89% participants reported rape.²⁰ Based on this prevalence rate, the report estimates that as many as 50,000 to 64,000 women (including girls) may have been subjected to sexual violence offences.²¹ The report points out on the footnote of page two that there was the likelihood of underestimating the prevalence of the said abuses in the study due to the non-disclosure and lack of privacy during the conduct of the interviews.

¹³ See generally, Susan Brownmiller, *Against our Will: Men, Women and Rape* (New York, Fawcett Columbine, 1993)

¹⁴ Elizabeth Jean Wood, 'Sexual Violence during War: Explaining Variation' Presented at the Order, Conflict and violence conference at Yale University, (April 30-May 1, 2004,) at page 5[hereinafter Sexual Violence During War]

¹⁵ Ibid, at page 2

¹⁶ Ibid, at page 2

¹⁷ Ibid, at page 2

¹⁸ News Release, Liberia: Support War Crimes Prosecutions. Act on Truth and Reconciliation Panel Recommendation for Trial, (December 10, 2009), available at: <http://www.hrw.org/en/news/2009/12/10/liberia-support-war-crimes-prosecutions>

¹⁹ Sexual Violence During War, supra note 14

²⁰ Physicians for Human Rights 'War Related Sexual Violence in Sierra Leone: A Population-based Assessment (2002), at p. 2 [hereinafter War Related Sexual Violence in Sierra Leone].

²¹ Ibid., at p. 3

In July, 1999, the Government of Sierra Leone signed the Lomé Peace Accord with the Revolutionary United Front (hereinafter RUF), which was to mark the end of the civil war.

The Accord under article IX granted blanket amnesty and pardon to the RUF leader, and all combatants for anything they did in pursuit of their organisation.²²

However, the decision by the UN representative to add a disclaimer to the amnesty helped in defining the justice framework in post-conflict Sierra Leone, Priscilla Hayner, argues.²³ The disclaimer stated that the amnesty and pardon contained in article IX of the Peace Accord did not apply to international crimes of genocide, crimes against humanity, war crimes and other serious international humanitarian law.²⁴ Most importantly, the parties in dealing with humanitarian, human rights and socio-economic issues agreed on the establishment of a truth and reconciliation commission ‘to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, and get a clear picture of the past in order to facilitate genuine healing and reconciliation’²⁵ Later in 2002, the Special Court for Sierra was also established due to an agreement between the Government of Sierra Leone and the United Nations.²⁶ By this time Foday Sankoh, the RUF leader, had flagrantly violated the peace accord and it became imperative for perpetrators to be held accountable for violations of international law and humanitarian law.

²² The Lomé Peace Agreement, article XI[hereinafter the Lomé Accord]

²³ Priscilla Hayner, ‘Negotiating Peace In Sierra Leone: Confronting the Justice Challenge’ International Centre for Transitional Justice, (December 2007) Report, at p. 5, available at: <http://www.ictj.org/static/Africa/SierraLeone/HaynerSL1207.eng.pdf> [hereinafter Negotiating Peace in Sierra Leone]

²⁴ Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone UN Document S/1999/836, 30 July 1999, para.7 available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/221/28/IMG/N9922128.pdf?OpenElement>

²⁵ The Lomé Accord, supra note 22, Article XXVI

²⁶ Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN Document S/2000/915, 4 October 2000, at pages 15-29
Establishment of a Special Court for Sierra Leone (2000), Annex S/2000/915

Due to the wide spread violations of human rights, the Special Court for Sierra Leone and the Truth and Reconciliation Commissions were established through which post-transitional justice issues were to be addressed to bring impunity to an end and achieve long-term reconciliation.

2. STATEMENT OF THE THESIS PROBLEM

Following the establishment of the Truth and Reconciliation Commission and the Special Court for Sierra Leone at the end of the conflict, which had different mandates, the rights of victims were to be largely realised through the institutions of the Commission and the Court during the transition period. As the mandate of the Special Court was limited, in that only those who bear the greatest responsibility could be prosecuted,²⁷ the Truth and Reconciliation Commission had the responsibility of bringing justice to a greater number of victims of sexual violence as it provided a forum for victims of sexual violence (and perpetrators alike) to tell their story.

Under international law, victims have a right to justice. In particular, the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* provides that victims of gross human rights violations have a right to remedies which includes:

²⁷ Statute of the Special Court for Sierra Leone, article I

Equal and effective access to justice, adequate, effective and prompt reparations for the harm suffered, and access to information concerning violations and reparations.²⁸

At an International meeting held in Nairobi from 19 to 21 March 2007, the *Nairobi Declaration on Women's and Girls' Right to Remedy and Reparation* was adopted by women's rights advocates and activists, as well as survivors of sexual violence from conflict regions. The Declaration among other things recognised that women and girls' have a right to a remedy and reparation as victims. But the Coalition was concerned that "initiatives and strategies at the local, national, regional and international levels to ensure justice have not been effective from the perspectives of victims and survivors of these crimes and violations in a holistic manner"²⁹

The Sierra Leone experience seeks holistic solutions to promote accountability and render justice to victims of sexual violence during the conflict through retributive and restorative justice, and the implementation of reparation programmes through the mandates of the Special Court and the Truth Commission. In this regard, the thesis seeks to examine whether these mechanisms are fulfilling, or have fulfilled their mandate in bringing justice to victims of sexual violence. This is important in determining whether Sierra Leone's approach in seeking justice for victims could properly be regarded as holistic.

Thus, the thesis will explore the extent to which the processes of the Special Court and the Truth Commission, such as prosecutions against perpetrators and the reparation programmes as recommended by the Commission have and/or are effectively ensuring justice for victims

²⁸ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Part VII, para. 11

²⁹ Preamble to the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, March 2007.

and their right to remedies. As the establishment of the Court and the Commission were laudable initiatives which were necessary in a period of transition, it is the assertion of this thesis that daunting challenges remain in providing meaningful justice to victims of sexual violence in Sierra Leone, amidst the massive and systematic violations committed during the conflict, and considering the number of victims. Many victims still face the consequences of the abuse. Challenges such as access to basic health services, education, rejection by the communities and families, psychological trauma and living in fear of speaking out about the abuse etc.³⁰ Victims are also faced with socio-economic and cultural injustices as there are still structural inequalities in Sierra Leone. Women are still not adequately represented in politics and in other decision-making bodies where important decisions that affect them are made. The lack of strong sexual offences laws coupled with a dysfunctional justice system to redress ongoing violations and to prevent repetition are factors that continue to affect victims in realising their long term needs and protection.

3. HYPOTHESIS AND RESEARCH QUESTIONS

Despite Sierra Leone's attempt to bring justice to victims by providing for their rights to a remedy and reparations for violations of their human rights through the processes of the Special Court and the Truth and Reconciliation Commission, the thesis argues that Sierra Leone as a state has failed partly, in its obligation both under international and domestic law to bring justice to victims. In this regard, the thesis will seek to answer the following questions. Have the Special Court and the TRC fulfilled their mandate towards victims of sexual violence? What are the obligations of the state (at international and national levels) to

³⁰ See Amnesty International Report, "*Sierra Leone: Getting Reparations Right for Survivors of Sexual Violence*" November 2007, AI Index: AFR 51/005/2007, pages 7 to 10 [hereinafter *Getting Reparations Right for Survivors of Sexual Violence*]

victims? Has the State complied with its obligations both under national and international law towards victims of sexual violence? If no, what can the government do in the circumstances? If partly as the thesis asserts, what has been done, and what needs to be concretely done to ensure that victims realise their rights and justice is done.

Bearing these challenges in mind, which victims continue to suffer and the lapses on the part of the State in fulfilling its obligations, the thesis will explore what the government, the Sierra Leone community and the international community can further do and/or undertake to adequately respond to the needs of victims. The thesis will *inter alia*, argue for further prosecutions of perpetrators in the national courts in addition to those already undertaken by the Special Court for Sierra Leone, and for the government to undertake legal reforms, such as enacting strong sexual violence laws. It will make suggestions for the implementation of further policy measures to be undertaken by the government in order to effectively accomplish and complement its reparation programme—that is addressing structural and systematic inequalities that continue to affect victims of sexual violence.

Further, the thesis will examine how the continued commitment from and cooperation of the international community, international and non-governmental organisations, and civil society, may better be optimised to ensure efficient accountability and the implementation of the reparation programmes aimed at bringing justice to victims. This means an examination of the question of the responsibility of non-state actors, and what appropriate interventions may be undertaken in order to complement ongoing efforts already undertaken by the state.

4. METHODOLOGY

The research will rely mostly on secondary sources such as reports of Non-Governmental organisation, scholarly articles and journals, internet sources—that is organisation's websites, press and news releases, and letters etc. Primary sources such as statutes, legislations, and agreements will also be used. The sources will be analysed and discussed throughout the research.

5. THESIS STRUCTURE

The thesis will have Four Chapters, with an introduction and conclusion. Chapter One will examine sexual violence during the conflict, the impact it had on the victims, and how the consequences continues to affect their everyday lives. Amnesty International reports that, years after the end of the conflict, victims still face immeasurable physical, psychological, and socio-economic problems resulting from the violations during the conflict.³¹ The consequences as reported by Amnesty range from physical injuries, health problems, social stigma, isolation and rejection by their communities, among others, will be examined in light of Sierra Leone's response to rebuilding victims' lives and ensuring their rehabilitation and reintegration into their communities.

Chapter Two will examine and discuss the processes of the Special Court and the Truth and Reconciliation Commission. In each case the thesis will examine and discuss whether each institution has so far fulfilled its mandate towards victims of sexual violence. It will analyse further, how the Court and Commission through its work has addressed and responded to the justice needs of victims of sexual violence. This Chapter calls for a comparative analysis of the Special Court for Sierra Leone with the International Criminal Tribunal of Rwanda

³¹ Ibid, at p. 5

(ICTR) with respect to fulfilling their mandates towards victims of sexual violence. It will focus on long term protection of victims at post-trial rather than deal with procedural guarantees of the trials.

When examining the TRC, comparative viewpoints will be drawn from the South African Truth and Reconciliation Commission experience. The objective is to evaluate the extent to which the Sierra Leone TRC took into account sexual violence crimes in its mandate, composition and operations, and secondly, to determine whether the Sierra Leone TRC model as compared to that of South Africa offers a good example for providing justice for victims of sexual violence in other post-conflict societies.

Chapter Three will analyse and discuss the legal status of women in Sierra Leone, and critically examine the protections guaranteed under the current legal framework for victims of sexual violence. This is crucial in ensuring justice and the right to a remedy for victims of sexual violence during the conflict—that is preventing and addressing future violations through a strong and responsive legal system. Amnesty International argues that “in order to address the complex social and individual impact of sexual abuse, reparations must be provided in a context that seeks to prevent future violations, addresses the deep-seated discrimination against women, promotes equality and improves women’s status.”³² This Chapter will thus argue that the right to justice and the right to effective remedy for victims of sexual violence must be provided within the above context. To ignore this aspect in any transition process will amount to providing justice that will in effect be illusory to the victims in the long term—as they may be exposed to future violations.

³² Ibid, at p.4

Furthermore, the Chapter will examine the current implementation process of the reparation programmes as recommended by the Truth Commission with a view to analyse and evaluate the needs and challenges faced by victims of sexual violence in the process. The Chapter will explore whether the measures taken by the Government of Sierra Leone and the International Community have adequately addressed the current problems faced by victims which are a direct consequence of the abuses they suffered; and attempt to identify the gaps and/or the lapses in meeting the needs of victims with a view to suggest how this can be remedied or complemented by other non-governmental efforts. Based on the analysis, it will propose recommendations on how the process can better ensure the rights of victims.

Finally, Chapter Four will examine the accomplishments and shortcomings in the Sierra Leone experience in seeking justice for victims of sexual violence. It will explore further, the roles and responsibilities of Government, the International Community, Non-Governmental organisations, and civil society in ensuring that victims' rights to remedy and protection are achieved in the long term.

CHAPTER 1

SEXUAL VIOLENCE DURING THE CONFLICT SEXUAL VIOLENCE DURING THE CONFLICT AND ITS IMPACT ON VICTIMS

1.1.1 INTRODUCTION

This Chapter will discuss the prevalence of sexual violence during the conflict. Women suffered various forms of sexual violence at the hands of the fighting combatants. The Chapter will in particular examine the consequences that sexual violence had and continues to have on victims. Even though the abuses had taken place several years back, the consequences are still obvious as they continue to affect the everyday lives of the victims. Victims face immeasurable consequences which are both physical and psychological, and they face rejection from communities which results in their isolation.

1.1.2 SEXUAL VIOLENCE DURING THE CONFLICT

The eleven years of civil war in Sierra Leone was marked with extraordinary brutality, witnessing the commission of grave human rights violations.³³ As part of the fighting forces campaign of terror over the civilian population, thousands of women were captured and abducted, during which period they were systematically raped and subjected to various forms of sexual violence by the different fighting forces involved in the war.³⁴ Rape and sexual violence to which women were subjected to was characterised by brutality and perpetrated in various forms, which included “individual and gang rape, and rape with objects such as

³³ Human Rights Watch Report ‘Bringing Justice: The Special Court for Sierra Leone. Accomplishment, Shortcomings and Needed Support’ (2004), Vol. 16 No. 8 (A), at p. 1

³⁴ Human Rights Watch Report ‘We’ll Kill You If You Cry’ Sexual Violence in the Sierra Leone Conflict’ Vol. 15 (No. 1 (A) – January 2003), at p. 3[hereinafter We’ll Kill You If you Cry]

weapons, firewood, umbrellas, and pestles.”³⁵ A report by Human Rights Watch states that “[t]hese crimes of sexual violence were generally characterized by extraordinary brutality and frequently preceded or followed by other egregious human rights abuses against the victim, her family, and her community.”³⁶

According to a report released by Physicians for Human Rights (PHR) in 2002 conducted among internally displaced persons (IDPs) for various human rights abuses, the report concluded that during the war, there was a prevalence rate of war-related sexual violence of about (8% to 9%.); out of which 89% participants reported rape.³⁷ Based on this prevalence rate, the report estimates that as many as 50,000 to 64,000 women (including girls) may have been subjected to sexual violence offences.³⁸ These figures were said to have been an underestimation of the prevalence of sexual violence during the war due to the non-disclosure of and lack of privacy during the conduct of the interviews; as pointed out in its footnote.

Rapes were “preceded” and “followed” by other forms of abuses, sometimes in the presence of family members or the public.³⁹ The first part of the testimony of twenty four years’ old M. P. who was raped when the Revolutionary United Front (hereinafter RUF) attacked a village in Kailahun district in the Eastern region of Sierra Leone in May 1991, illustrates the trend of abuses during the conflict:

I was captured together with my husband, my three young children and other civilians as we were fleeing from the RUF when they entered Jaiweii. Two rebels asked to have sex with me but when I refused, they beat me with the butt of their guns. My legs were

³⁵ Ibid

³⁶ Ibid

³⁷ War Related Sexual Violence in Sierra Leone; supra note 20, at p. 2. The report details other sexual related violations including forced marriage, sexual slavery, stripping off of women’s clothes etc., and other human rights abuses such as torture, abductions, amputations, killings, forced labour etc.

³⁸ Ibid., at p. 3

³⁹ We’ll Kill You If You Cry, supra note 34 at p. 31

*bruised and I lost my three front teeth. Then the two rebels raped me in front of my children and other civilians. Many other women were raped in public places. I also heard of a woman from Kalu village near Jaiweii being raped only one week after having given birth. The RUF stayed in Jaiweii village for four months and I was raped by three other wicked rebels throughout this period.*⁴⁰

According to reports, the RUF fighters were primarily said to have been the perpetrators of the rape, and other forms of sexual violence during the conflict.⁴¹ Rebel forces were reported to have abducted thousands of women and girls in order to forcibly subject them into “sexual slavery,” conscript them into their forces, or “married” them.⁴² This resulted to the women been held by rebels for prolonged periods of time.⁴³ However, reports indicate further that other factions like the Armed Forces Revolutionary Council (AFRC), the Sierra Leone Army (SLA), the Civil Defence Forces (CDF), a civilian militia which consisted of traditional hunters were also involved in raping and sexually abusing women.⁴⁴ Furthermore, some cases of sexual violence were also reported to have been committed by peace keepers of the United Nations Mission in Sierra Leone (UNAMSIL).⁴⁵ It thus seemed that throughout the conflict, women were systematically targeted and raped for various reasons by the fighting forces. The Truth and Reconciliation Commission in its final report concluded that “...there were deliberate policies systematically to target women and girls and systematically to rape and sexually violate them.”⁴⁶

⁴⁰ Ibid., at p.31 (quoting Human Rights Watch Interview, Lebanese IDP Camp March 2, 2002)

⁴¹ Negotiating Peace in Sierra Leone, supra note 23, at p. 3-4

⁴² Binaifer Nowrojee ‘Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone’s Rape Victims’ Harvard Human Rights Journal, Vol. 18(2005), at p. 89

⁴³ Ibid

⁴⁴ Ibid, at p. 90

⁴⁵ Ibid, at p. 91

⁴⁶ Final Report of the Sierra Leone Truth & Reconciliation Commission, Volume II, Chapter 3, Para. 330

1.1.3 THE CONSEQUENCES OF RAPE AND SEXUAL VIOLENCE ON THE VICTIMS

It is well reported that the impact of rape and sexual violence on victims during armed conflict is immeasurable, and the consequences are both long-term term and short-term consequences. Victims endure suffer from physical injuries, emotional and/or psychological, and others been behavioural and material consequences.⁴⁷ They often suffer further brutality in the hands of their abusers; such as beatings, the use of objects into the vagina of the victim which results in serious health complications like fistula and other reproductive health problems.⁴⁸

Victims of rape and sexual violence during the conflict in Sierra Leone suffered from similar consequences as those mentioned above, and they continue to suffer even now as a result of these abuses. There were reports of deaths which resulted from the manner in which victims were raped, and others resulting from AIDS.⁴⁹ There were also reports of sexually transmitted diseases like HIV/AIDS, reports of reproductive health complications, forced pregnancies, and consequently children born from these pregnancies continue to be stigmatised since they are often referred to as “rebel children.”⁵⁰

Years after the end of the conflict, Amnesty International reports that victims still face immeasurable physical, psychological, and socio-economic problems resulting from the

⁴⁷ Liz Kelly, *‘Surviving Sexual Violence’* (University of Minneapolis Press, 1988), at p. 186

⁴⁸ Jeanne Ward and Mendy Marsh “*Sexual Violence Against Women and Girls in War and Its Aftermath: Realities, Responses, and Required Resources*” Symposium on Sexual Violence in Conflict and Beyond, 2006, available at <http://www.unfpa.org/emergencies/symposium06/docs/finalbrusselsbriefingpaper.pdf>

⁴⁹ Amnesty International Report “*Sierra Leone: Rape and other Forms of Sexual Violence Against Girls and Women*” (November 2007), AI Index: AFR 51/005/2007, available at: <http://www.sierraherald.com/amnesty-international-rapesierraleone.htm>

⁵⁰ Ibid

violations during the conflict.⁵¹ The consequences as reported by Amnesty International *inter alia*, range from physical injuries, health problems, social stigma, isolation and rejection by the communities etc. The report found that due to the repeated rapes, many victims continue to suffer from health problems like fistula, damage to their reproductive organs, and “gynaecological problems affecting their uterus.”⁵² Although it is reported that in 2009, 235 victims of sexual violence received fistula surgery and other forms of medical treatment,⁵³ the lack of access to appropriate and specialized health care services for victims continues to affect their daily lives even after the end of the conflict.⁵⁴

The above problem is exacerbated by the fact that victims continue to face social isolation and the fear of being rejected by their communities.⁵⁵ Victims are living in silence, they refuse to talk about been sexually abused due to the fear of rejection, and consequently, they cannot access the basic services (like health care services) meant for them.⁵⁶ The interview with a mammy queen⁵⁷ conducted by Amnesty International puts this point into perspective:

*“the women in our village did not speak to the TRC because they would have to say that they had been raped not once but many times, and they were not prepared to let others know this truth about what happened to them. This has prevented them from accessing many of the other services they need.”*⁵⁸

⁵¹ Ibid at p. 5

⁵² Ibid at p. 12

⁵³ Integrated Regional Information Networks (IRIN), *Sierra Leone: Compensating war victims*, 9 December 2009, available at: <http://www.unhcr.org/refworld/docid/4b28a141c.html> [accessed 8 July 2010]

⁵⁴ Getting Reparations Right for Survivors of Sexual Violence, *supra* note 30, at p 12.

⁵⁵ Ibid at p. 7

⁵⁶ Ibid

⁵⁷ A “Mammy Queen” in Sierra Leone is a women’s leader of a particular community who is usually responsible for addressing minor matters affecting that community. She also serves as a liaison between community members and traditional leaders.

⁵⁸ *Supra* note 30, at p. 7 (Quoting Amnesty International Interview).

Even though it has been argued that the creation of the institutions of the TRC and the SCSL which openly engaged the public and victims alike on sexual violence crimes will contribute to breaking the silence and stigma that shrouds these crimes, demonstrate to victims the extent of such violations, and in a way lessen the shame and isolation often experienced by victims,⁵⁹ it is evident from the above interview that little was achieved in this sense. Instead, victims continue to be identified as “rebel wives” which again contributes to their exclusion and isolation from their communities.⁶⁰ Consequently, they have been unable to integrate into their communities due to the discrimination they continue to face.⁶¹ The interviews conducted by Amnesty International reveals the trend of isolation, rejection, and other impacts that victims continue to face in the aftermath of the conflict:

“They tolerate us here but we are not really welcome. In 2002 we were released from the rebels but, because we all stayed so long with them, when it finally was time to return many did not have relatives left, or they felt that they would not be accepted if they tried to go back; some tried and were rejected. Where we are now, no one really speaks to us; we have no house and no land to farm. We are occupying more than 40 villages. None of the men are around as most went to the mining areas to find work and have met other women. None of us spoke to the TRC; we were ashamed.”⁶²

The above interview reveals that victims are not merely rejected and isolated from their communities, but they also lack access to basic services like housing, food, and are not economically self-reliant to care for their daily survival. Given the egregious abuses that women suffered during the conflict, and the effects of these abuses which continues to hunt their daily lives, it is imperative on the government to take all necessary steps to implement

⁵⁹ Kelli Muddell, “Capturing Women’s Experiences of Conflict: Transitional Justice in Sierra Leone” Mich. St. J. Int’l L. (2007), at p. 94[hereinafter Capturing Women’s Experiences of Conflict]

⁶⁰ Getting Reparations Right for Survivors of Sexual Violence, supra note 30, p. 3

⁶¹ Ibid

⁶² Ibid, at p. 8 (Quoting Amnesty International Interview)

the reparations programme as recommended by the TRC, without which victims' will not realise their right justice a remedy. Chapter Three will examine the reparation programme that is currently being implemented by the government.

CHAPTER 2

TRANSITIONAL PROCESSES: THE SPECIAL COURT FOR SIERRA LEONE AND THE TRUTH AND RECONCILIATION COMMISSION

2.1.1 INTRODUCTION

Following the end of the conflict in 2002 and the signing of the Lomé peace agreement between the government of Sierra Leone and the RUF, the Special Court for Sierra Leone (hereinafter SCSL) and the Truth and Reconciliation Commission (hereinafter the TRC) were established. The establishment of these institutions was for the purpose of addressing the impunity of the human rights abuses committed against individuals during the conflict by the various fighting factions involved in the war, which included among other abuses rape and other forms of sexual violence, killings, amputations, abductions, and the conscription of child soldiers, burning of houses etc.⁶³ It has been argued that in order to address impunity and ensure that justice is done to victims of human rights violations in a transition process, prosecuting those responsible for the violations must be conducted, the truth must be told and reparations should be provided for victims.⁶⁴

In this Chapter, I will critically examine the processes of the SCSL and the TRC with a view to analysing their mandate towards victims of rape and sexual violence during the conflict. The Chapter will discuss the institutions' mandates towards victims of sexual violence, and critically examine whether the said institutions fulfilled their mandates. Since the thesis asserts that the State of Sierra Leone has only partially fulfilled its obligations towards

⁶³ Amnesty International, "Sierra Leone, *The Implementation of Key TRC Recommendation: Priorities of 2008 and Beyond*" March 2008, AI Index: AFR 51/001/2008, at p. 2 [herein after *The Implementation of Key TRC Recommendations*]

⁶⁴ Ibid

victims, this Chapter will argue for further action to be undertaken by the government, such as pursuing further prosecutions of perpetrators in the national courts as is the case in Rwanda, in addition to the prosecutions already done by the SCSL. The Chapter will compare these institutions to that of the International Criminal Tribunal for Rwanda (ICTR) and the South African Truth and Reconciliation Commission, respectively.

2.1.2 THE SPECIAL COURT FOR SIERRA LEONE (SCSL)

In July 1999, in the search for sustainable peace, and after the failure of the Abidjan peace agreement⁶⁵ the government of Sierra Leone and the RUF signed another peace agreement in Lomé, Togo.⁶⁶ The Lomé peace agreement granted *inter alia*, unconditional amnesty to the leader of the RUF, Corporal Foday Sankoh and his fighters, and all other factions involved in the conflict, like the ex-Sierra Leone (ex-SLA), the Civil Defence Forces (CDF), the ex-Armed forces Revolutionary Front (AFRC) etc.⁶⁷ Amnesty meant that no “official or judicial action” will be taken against any combatant for anything they did “in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the agreement.”⁶⁸ This meant that the government was to take all necessary measures, such as legislative to ensure that no action was taken against any combatants for crimes they committed during the war. However, in signing the agreement on behalf of the United Nations, the UN representative at the peace talks signed the agreement with a disclaimer to the amnesty provisions; stating that the UN did not recognise amnesty for crimes against

⁶⁵ J. Shola Omotola “*The Sierra Leone Lomé Peace Accord*” Book Review, Conflict Trends at p. 40, available at: http://www.accord.org.za/downloads/ct/ct_2007_3.pdf?phpMyAdmin=ceeda2df659e6d3e35a63d69e93228f1

⁶⁶ Ibid

⁶⁷ The Lomé Accord, *supra* note 22, article IX. The Accord also provided for the demobilization, disarmament and reintegration of ex-combatants, the establishment of a Commission for the consolidation, and a commitment on the part of the fighting forces to end the hostilities etc.

⁶⁸ Ibid, article IX (3). The government also undertook to take legislative and other measures that will guarantee immunity to combatants, those in exile and other persons who were outside the country for purposes relating to the armed conflict.

humanity, war crimes, acts of genocide, and other serious violations of international humanitarian law.⁶⁹ The insertion of a disclaimer to the amnesty provisions by the UN representative and the provision for the establishment of a Truth Commission under the Lomé Agreement that had a mandate to among other things to address human rights violations commencing from the outbreak of the war in 1991 and to make recommendations to be taken for the rehabilitating victims defined the justice framework in post-conflict Sierra Leone.⁷⁰ The establishment of the SCSL was to a large extent a response to the blanket amnesty granted to combatants in the Lomé Peace Agreement because the national courts were prevented from pursuing prosecutions against combatants due the amnesty provision in the peace agreement.⁷¹

The SCSL was established in 2002 resulting from an agreement between the government of Sierra Leone and the United Nations.⁷² It had a mandate to prosecute those who “bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law” within its territory beginning from 30 November 1996.⁷³ Among other things, the SCSL had a mandate to prosecute the offences of “[r]ape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence” as crimes against humanity,⁷⁴ and “[o]utrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault” as violations of the Geneva Conventions.⁷⁵

⁶⁹ Elizabeth M. Evenson, ‘Truth and Justice in Sierra Leone: Coordination Between Commission and Court’ *Columbia Law Review*, Vol. 104, No. 3 (Apr., 2004), at p. 737

⁷⁰ *Ibid*

⁷¹ William A. Schabas, “*The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone*” *Human Rights Quarterly*, Vol. 25, No. 4 (Nov., 2003), at p. 1041???

⁷² United Nations, Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (2000), Annex S/2000/915

⁷³ The Statute of the Special Court for Sierra Leone, article 1 (1)

⁷⁴ *Ibid*, article 2 (g)

⁷⁵ *Ibid*, article 3 (e)

In addition to providing a gender-specific mandate, the Statute in article 15 directs the Prosecutor to duly consider in his appointment of staff (like prosecutors and investigators) people who are experienced in gender-related crimes.⁷⁶ The inclusion of such provisions in the Statute was widely noted as promising developments in the mandate of the Court, paying special attention to offences of rape and other forms of sexual violence.⁷⁷

Similarly, the statute of the International Criminal Tribunal for Rwanda (ICTR) provided the tribunal with a mandate to prosecute sexual violence crimes after the Genocide in 1994 which hardly been committed largely against Tutsi women,⁷⁸ and the statute referred to “rape, enforced prostitution and indecent assault” as violations of Common Article 3 of the Geneva Conventions and Additional Protocol II.⁷⁹ But unlike the SCSL which included charges of rape and sexual violence in its first indictments issued by the prosecutor,⁸⁰ the ICTR made no initial attempt to include charges of rape or sexual violence in its indictments until 1997, as little attempt was made to seriously and comprehensively investigate sexual violence offences.⁸¹ As such, the prosecutor’s office of the ICTR failed to initially recognise and prosecute sexual violence crimes despite the existence of reports by nongovernmental organisations at the time which had focused specifically on the prevalence of sexual violence in some areas in Rwanda.⁸² Whereas, in the case of SCSL, out of the 13 indictments initially issued by the prosecutor, 11 contained charges of rape and other forms of sexual violence,

⁷⁶ Ibid, article 14 (4) states “...[g]iven the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.”

⁷⁷ Letter from the Coalition for Women’s Human Rights in Conflict Situations to ICTR Prosecutor dated 12 March 2003, available on line at <http://www.ichrdd.ca/english/prog/women/coalitionLetterRwanda.html>

⁷⁸ United Nations, Division for the Advancement of Women, Department of Economics and Social Affairs “*Sexual Violence and Armed Conflict: United Nations Response*” Women 2000, available at: <http://www.un.org/womenwatch/daw/public/cover.pdf>

⁷⁹ Statute of the International Criminal Tribunal for Rwanda, article 4 (e)

⁸⁰ Making the Invisible War Crime Visible, supra note 42, “Making The Invisible War Crime Visible: Post-conflict Justice for Sierra Leone’s Rape Victims” at p. 98 & 99

⁸¹ Ibid, at p. 63

⁸² Rhonda Copelon, ‘Gender Crimes as War Crimes: Integrating Crimes Against Women into International Law’ McGill Law Journal (November 2000), at pages 223 & 224.

and in the CDF case, the prosecutor later sought to amend the charges in a bid to include charges of rape and sexual slavery against the CDF leaders after the prosecutor's office had had sufficient evidence to that effect.⁸³

More so, the early commitment of the SCSL to prosecute sexual violence offences was made possible due to the strategy employed by the prosecutor of the SCSL who at the outset incorporated sexual violence offences in his investigation and prosecution strategy and it was consequently and consistently followed by the staff.⁸⁴ In Rwanda on the other hand, reports indicated that the prosecution staff lacked training to effectively undertake the investigation of sexual violence crimes thus demonstrating a lack of willingness to treat rape seriously.⁸⁵ Binaifer describes the Rwandan situation as a lack of political will on the part of the prosecutor's office to investigate and comprehensively reflect sexual violence⁸⁶ crimes in his indictments. She further argues that the prosecution had no prosecutorial strategic to identify how rape fitted into the "policies of the architects of genocide" nor was there any strategy to investigate fully crimes against women which include sexual violence crimes; and that various prosecutors had also adopted varying strategies to prosecute sexual violence which had resulted no unified approach pursued to investigate and prosecute these crimes which consequently resulted in various setbacks in prosecuting sexual violence crimes.⁸⁷

⁸³ Making the Invisible War Crime Visible, supra note 42, at pages 98 & 99. The Prosecutor sought to amend the indictment after uncovering evidence of sexual violence crimes by the CDF leaders. The Court however denied the prosecutor's request on the ground that it would amount to prejudice on the part of the defence due to the late notice.

⁸⁴ Ibid, at p. 99. There were two experienced female investigators who ensured that the victims were provided with conducive and comfortable atmosphere in order to enable them recount their experiences, and an attorney was dedicated to the prosecution plan of sexual violence offences. See page 100

⁸⁵ Human Rights Watch/Africa, Human Rights Watch Women's Rights Project & Fédération Internationale des Ligues des Droits de L'Homme, 'Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath' (New York: Human Rights Watch, 1996), at p. 224

⁸⁶ Binaifer Nowjoree "'Your Justice is too Slow' Will the IRCT Fail Rwanda's Rape Victims?" Occasional Paper, United Nations Research Institute for Social Development, at p. 8

⁸⁷ Making the Invisible War Crime Visible, supra note 42, at p. 99

Even more so, the prosecutor's office of the SCSL did not only dedicate resources and staff to follow through these charges during the trial, outreaches were also conducted extensively with women's groups and the public at large; for the purpose of educating the public and explaining the purpose of the charges.⁸⁸

Also, unlike the Rwandan experience which merely restricted sex crimes to rape, the prosecutor of the SCSL expanded the forms of sexual violence by including the charges of "sexual slavery" and "forced marriage" as crimes against humanity in addition to charges of rape.⁸⁹ The successful conviction of three RUF leaders on the charge of "forced marriage" was the first time an international Court has convicted on such a charge.⁹⁰ Additionally, the SCSL has handed convictions on charges of rape and other sexual violence crimes against the RUF, and the AFRC leaders, respectively.⁹¹ However, despite the initial blunders by the office of the prosecutor to prosecute cases of rape and sexual violence, it is worth noting that the ICTR was the first international tribunal to convict a person of rape and sexual violence offences and to hold that rape in itself constitute genocide, thereby recognising and establishing for the first time that rape is a crime under international law.⁹²

Furthermore, scholars have argued that even though the SCSL paid special attention to addressing the crimes of rape and other forms of sexual violence as discussed above, by

⁸⁸ Capturing Women's Experiences of Conflict, *supra* note 59, at pages 93 & 94

⁸⁹ Making the Invisible War Crime Visible, *supra* note 42 at. p. 101. The charge of "forced marriage" which is a new crime under international law has been said to expand international jurisprudence and has been recognised as a form of sexual violence that women suffered during armed conflict. It was common during the war in Sierra Leone for women to be abducted by rebels as "wives" and were forced to have sex with their rebel "husbands," to perform chores such as cooking and been porters. The prosecutor successfully argued that "forced marriage" falls under "other inhuman acts" as a crime against humanity.

⁹⁰ IRIN African News "Sierra Leone: 'Forced Marriage' Conviction a First" available at <http://www.irinnews.org/Report.aspx?ReportId=83160> [accessed on the 2 September, 2010]

⁹¹ Press Release "Appeals Chamber Upholds Sentences for Convicted Revolutionary United Front Leaders" Freetown, Sierra Leone, 26 October 2009

⁹² Alex Obote-Odora, 'Rape and Sexual Violence in International Law: ICTR Contribution' 12 New Eng. J. Int'l & Comp. L. 135 (2005), at p. 137

taking additional steps protect victims of sexual violence,⁹³ the Court's temporal jurisdiction is limited in that it only has a mandate to prosecute crimes which were committed after November 1996. This means that the Court could not prosecute crimes committed since 1991 when the war started. Consequently, many perpetrators who committed sexual violence offences before this period (that is before 1996) have not been held accountable by the SCSL. Thus, the twenty four years' old M. P. who was raped and beaten by RUF rebels in front of her children and other civilians is left without a remedy as far as the Court is concerned.⁹⁴ Abdul Tejan-Cole has thus argued that the Court's temporal jurisdiction is "most unsatisfactory"⁹⁵.

Secondly, many victims of sexual violence, like twenty four years old M. P., have felt unrepresented by the SCSL. In the CDF case, after the appeals Chamber upheld the decision of the Trial Chamber; refusing the prosecutor to amend the indictment in order to include charges of sexual violence, the court subsequently disallowed and expunged from the record evidence of sexual violence which the prosecutor attempted to adduce under existing charges of "physical violence and mental suffering."⁹⁶ In effect, evidence of sexual violence was excluded in the trial against the CDF leaders and women were prevented from speaking out about their experiences in court—as such they were silenced.⁹⁷

Further, the SCSL has only prosecuted leaders of the various factions involved in the war—those who bear the greatest responsibility. Considering however the thousands of women

⁹³ The Victims and Witness Unit of the Court provides support for victims and witnesses who participate in the trials. This is significant particularly for victims of rape and sexual violence. The ICTR has also adopted additional efforts to protect victims, such as establishing a Rape and Sexual Violence Section which is headed by a woman lawyer investigator.

⁹⁴ The testimony of M. P. is narrated in Chapter 1, at p 12

⁹⁵ The Complementary and Conflicting Relationship of the SCSL and the TRC, *supra* note 6, at p. 149

⁹⁶ Capturing Women's Experiences of Conflict, *supra* note 59, at p. 98

⁹⁷ See generally Sara Kendall and Michelle Staggs, 'Silencing Sexual Violence. Recent Developments in the CDF Case at the Special Court' (U.C. Berkeley War Crimes Studies Centre, June 2005), available at: http://socrates.berkeley.edu/~warcrime/Papers/Silencing_Sexual_Violence.pdf

raped and sexually abused during the conflict, and bearing in mind the number of persons responsible for committing these crimes, prosecuting just a handful of perpetrators to my mind brings into question the State's and the international community's obligation to address impunity. Though it has been argued that it would be burdensome on the Court to extend its temporal mandate, it is my submission that impunity remains untouched in such circumstances and it does not represent justice for the many victims of sexual violence during the war who have been alienated from the Court due to the restrictive nature of the Court's mandate.

Nonetheless, Jane Stromseth however argues that "...ensuring that perpetrators of atrocities face some reckoning can be critical to moving forward on both an individual and community level in societies recovering from violent conflict. She argues that ensuring some measure of accountability may help victims come to terms with the past..."⁹⁸ even though this might not mean having all individuals of sexual violence testifying before the Court. To a large extent, I agree with this argument, and considering the wide spread violations which make it practically impossible to prosecute all perpetrators, it is equally important to pursue accountability for atrocities for the purpose of reinforcing broader reform efforts in the justice system which will not only ensure that such abuses do not recur in future,⁹⁹ but also ensures that victims of sexual violence are protected in the long term and they can seek redress in the national courts in the future (if they wish to) for such abuses.

But that notwithstanding, there remains an obligation on the part of government to pursue additional prosecutions of perpetrators in the national courts under the Prevention of Cruelty to Children Act 1926 (Cap 30) of the Laws of Sierra Leone which forms part of the Laws to

⁹⁸ Jane E. Stromseth, 'Pursuing Accountability for Atrocities After Conflict: What Impact on building the Rule of Law?' 38 Geo. J. Int'l L, 251(2007), at pages 251 & 252

⁹⁹ Ibid

be applied under the Statute of the SCSL. The national courts exercise concurrent jurisdiction with the SCSL, thus giving them the jurisdiction to prosecute perpetrators for human rights violations.¹⁰⁰ Shana pointed out however, that the exercise of this jurisdiction is plagued with problems that specifically affect victims of sexual violence.¹⁰¹ Shana argues that the Act is “...steeped with cultural stereotypes” because the Act would only apply to prosecuting rapes committed against girls under the age of fourteen, thereby perpetuating the idea that only a virgin can be raped.”¹⁰² The Act, Shana argues is less protective and therefore fall below international standard.¹⁰³

In the Rwandan experience, specialized chambers were established in 1996 to try genocide crimes in the national courts.¹⁰⁴ Tens of thousands of prosecutions have been undertaken in the domestic courts and continues to be pursued.¹⁰⁵ The Rwandan national court unlike Sierra Leone is in effect exercising its concurrent jurisdiction as provided for by its statute.¹⁰⁶ Sierra Leone has pursued no single prosecution in the national courts against the perpetrators of rape and sexual violence.

However, despite the above mentioned limitations, it has been argued that the SCSL than any other tribunal has addressed gender-based violations in a more “systematic and effective” way than other tribunals.¹⁰⁷ The Court’s gender- specific mandate, the strategy employed by the prosecutor’s office which was followed through the trial by resources and dedicated staff, the prosecutor’s initial indictments which included charges of rape etc., could be said to

¹⁰⁰ Statute of the Special Court for Sierra Leone, article 8

¹⁰¹ Shana Eaton, ‘Sierra Leone: The Proving Ground for Prosecuting Rape as a War Crime’ 35 Geo. J. Int’l L. 873, (2004), at p. 912 [hereinafter Sierra Leone: Proving Ground for Prosecuting Rape]

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ William Schabas, ‘The Rwandan Courts in Quest of Justice. Genocide Trials and Gacaca Courts’ Journal of International Criminal Justice 3 (2005), at p. 886 [hereinafter Genocide Trials and Gacaca Courts]

¹⁰⁵ Longman, Timothy (2009) ‘An Assessment of Rwanda’s Gacaca Courts’, Peace Review, 21: 3, at p. 305.

¹⁰⁶ The Statute of the International Criminal Tribunal for Rwanda, article 8

¹⁰⁷ Capturing Women’s Experiences of Conflict, supra note 59, at p. 93

demonstrate the Court's willingness to make visible sexual violence crimes and to follow through its mandate to prosecute those crimes, thus holding the perpetrators accountable and bringing justice too victims.

Another forum where victims may possibly redress is by the use of local justice mechanisms. In Rwanda, the Gacaca Courts which are modelled on indigenous traditional justice system was established by the government to try perpetrators of genocide as a way of dealing with the many atrocities committed during the genocide for which Rwandans have consistently demanded for full accountability.¹⁰⁸ The Court allows perpetrators to voluntarily and fully confess, and to apologies for their wrongdoings in exchange for reduced penalties.¹⁰⁹ Under the Gacaca courts, victims of sexual violence can request for closed hearings in order to testify or report about their experiences during Gacaca proceedings as allowed under the Gacaca Laws of 2001.

In Sierra Leone however, the local justice mechanisms which wholly apply customary law will not be a suited option through which victims of sexual violence can seek redress because most customary laws and practices perpetuates inequality and discrimination against women.¹¹⁰ Also, even though section 15 of the Constitution promulgates the principle of equality, section 27 (4) (d) of the same Constitution states that inequality will not apply to issues of divorce, marriage, property inheritance, any other issues relating to customary law and practices etc. Clearly, Sierra Leone's local justice mechanism will not be forthcoming with women's issues in terms of equality, justice and redress.

¹⁰⁸ Genocide Trials and Gacaca Courts, *supra* note 104 at pages 880 & 881

¹⁰⁹ *Ibid*, at p. 885

¹¹⁰ Capturing Women's Experiences of Conflict, *supra* note 59 page 89

Also, when due considerations is given with respect to the application of international standards and the protection of victims under such local mechanisms, I would argue that local justice mechanisms should only have a role in facilitating the reintegration of victims into the society rather than handling sexual violence cases with a view to adjudicate, even though scholars have argue that local justice mechanism are also well suited to promote “accountability”, “reconciliation”, “victim satisfaction” etc.¹¹¹

2.1.3 THE TRUTH AND RECONCILIATION COMMISSION

As stated earlier, the TRC was borne out of the Lomé Peace Accord signed in 1999 between the government of Sierra Leone and the RUF. The Commission was mandated to create an impartial historical record of the abuses committed during the war from 1991 to 1999.¹¹² Due to the amnesty provisions granted too ex-combatants, the objective for establishing a TRC was to provide a mechanism “...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.”¹¹³

Similarly, South Africa TRC was established *inter alia*, to investigate human rights violations committed during the apartheid regime, to grant amnesty to perpetrators, who fully confessed and tell the truth about crimes they committed, to make recommendations to government for

¹¹¹ Lars Waldorf, ‘Mass Justice for Mass atrocity: Rethinking Local Justice as Transitional Justice’ 79 Temp. L. Rev. 1 (2006), at p. 1

¹¹² The Truth and Reconciliation of Act 2000, section 6 (1) [hereinafter The TRC Act of 2000]

¹¹³ Ibid

the provision of reparations for victims etc.¹¹⁴ Generally, it is argued that even though the Commission provided “a forum for the acknowledgement of wrongs done,” acknowledgment of the violations committed during the apartheid era mostly came from the Commission rather than from the perpetrators.¹¹⁵ This is in contrast with what obtained in Sierra Leone TRC hearings where perpetrators were said to have publicly acknowledged their wrongdoings by way of apologies and asking for forgiveness and acceptance by the communities as would be discussed in Chapter IV.

The Act establishing the South African TRC¹¹⁶ was criticised to be “gender-neutral” without any specific reference to women or gender based-violence crimes, such as sexual violence crimes.¹¹⁷ The Act merely categorised rape as a severe ill treatment rather than a crime against humanity as in the case of Sierra Leone or genocide as seen in Rwanda.¹¹⁸ Caron also argues that the TRC identified rape as a social issue rather than a crime that was politically motivated, as it is his view that rape during the apartheid regime was politically motivated.¹¹⁹

In responding to the needs of victims as part of its objectives, the Sierra Leone TRC Act mandated the Commission to pay special attention to victims of sexual violence with a view to help them restore their human dignity and to promote reconciliation.¹²⁰ The Commission

¹¹⁴ Paul Lansing, Julie C. King, ‘South Africa’s Truth and Reconciliation Commission: The Conflict Between Individual Justice and National Healing In Post Conflict Apartheid Age’ 15 *Ariz. J. Int’l & Comp. L.* 753, (1998), at p. 761 [hereinafter *The Conflict Between Individual National Healing In Post Apartheid Age*]

¹¹⁵ Catherine Jenkins, ‘A Truth Commission for East Timor: Lessons from South Africa?’ 7 *J. Conflict & Security L.* 233 (2002), at p. 242 [hereinafter *A Truth Commission for East Timor*]

¹¹⁶ National Unity and Reconciliation Act 34 of 1995

¹¹⁷ Rashida Manjo, ‘The South Africa Truth and Reconciliation Commission: A model for Gender Justice?’ A Paper prepared for the United Nations Research Institute for Social Development (UNRISD) Report ‘Gender Equality: Striving for Justice in an Unequal World’ (2004), at p. 13 [hereinafter *The South African TRC, A Model for Gender Justice?*]

¹¹⁸ *Ibid.*, at p. 18

¹¹⁹ Caron E. Gentry “*Has anything Changed? Sexual Violence in South Africa*” Abilene Christian University Conference, Montreal, (March 17-20 2004) available at http://www.allacademic.com/meta/p_mla_apa_research_citation/0/7/4/6/1/pages74612/p74612-1.php

¹²⁰ The Truth and Reconciliation Commission Act, 2000, section 6 (2) (b)

interpreted this mandate beyond merely looking at the prevalence of sexual violence during the conflict; but it also captured the “complete gendered experiences” of women and girls “at a political, legal, health and social welfare level.”¹²¹ Thus, throughout its operations, the Commission took concrete steps to ensure that the experiences of victims of sexual violence were fully reflected in the process.

Firstly, there was a political will on the part of government to address gender crimes.¹²² This was reflected in the appointment of Commissioners and senior staff members who had previous experience in dealing with women’s rights issues, and were responsible to ensure that the Commission fulfilled its mandate towards victims of sexual violence amidst other commissioners who had no previous experiences in dealing with such issues and whose insensitivity to victims was evidenced throughout the hearings.¹²³ On the contrary, no deliberate steps were taken by South Africa’s TRC to address sexual violence crimes; no specific mandate to deal with rape and sexual violence crimes, nor was there any indication in the appointment of commissioners or staff of persons who are experienced in dealing with such crimes.¹²⁴ Rashida thus argues that, throughout the conceptualisation of the commission and in appointing commissioners, there appeared to have been no clear indication or strategy to address sexual violence crimes in the process.¹²⁵

In Sierra Leone, in addition to holding special hearings on women’s issues, the commissioners and staff of the TRC were among other things, trained on international law pertaining to sexual violence, how to interview rape victims, and on issues relating to the

¹²¹ Capturing Women’s Experiences of Conflict, supra note 59, at pages 88 & 89

¹²² Making the Invisible War Crime Visible, supra note 42, at p. 93

¹²³ Ibid. Commissioner Jow, a Gambian was said to have worked on women’s issues with nongovernmental organisations in the Gambia, and commissioner Sooka had worked for the South African Truth and Reconciliation Commission and she was said to have helped organized hearings on women’s issues.

¹²⁴ The South Africa TRC, A model for Gender Justice, supra note 117, at pages 14-16

¹²⁵ Ibid, at pages 11-12

support and protection of victims and witnesses.¹²⁶ Binaifer thus argues that, the training which was attended throughout by commissioners sent a strong message that gender violence was an “institutional priority.”¹²⁷ Also, the special hearings on women’s issues helped the Commission to record and examine fully the crimes of sexual violence perpetrated during the conflict, thus making sexual violence crimes more visible.¹²⁸

Further, the Commission was commended for providing an enabling environment of comfort and privacy for victims to recount their experiences.¹²⁹ In addition to allowing only female commissioners to question the victims, victims were given the option to either testify in camera or openly wherein their testimonies could be heard but their identities concealed, or they could testify in public openly.¹³⁰ Giving the victims these options ensured that women’s experiences were heard by the wider public, thus helping to break the silence and stigma that is mostly associated with such crimes.¹³¹ Shattering the silence and stigma associated with sexual violence crimes has been argued to be an important goal of gender justice.¹³²

In South Africa, even though special hearings were heard on women’s issues upon the insistence of women’s groups, it was reported that only few women came out to testify, out of which a minority were prepared to publicly talk about being sexually abused,¹³³ and it was also acknowledged that the hearings did not result in full disclosures about sexual abuse and

¹²⁶ Ibid at p. 93

¹²⁷ Ibid, at p. 93

¹²⁸ News Release “Women Talk of Rape Before the Sierra Leone Truth Commission” May, 2003, available at: http://www.womensrightscoalition.org/site/newsReleases/2003-05-sierraleone_en.php

¹²⁹ Making the Invisible War Crime Visible, supra note 42 at p. 94

¹³⁰ Ibid at p. 94

¹³¹ Ibid at p. 94

¹³² Ibid p. 94

¹³³ The South Africa TRC, A Model for Gender Justice?, supra note 117, at p. 17

torture; as Rashida puts it “...the hearings merely scratched the surface” when it came to disclosing the said violations.¹³⁴

However, notwithstanding the abovementioned limitations, the three special hearings conducted by the Commission gave women a safe environment to talk about rape and sexual violence perpetrated against women rather than talking about the violations committed against male victims which had appeared to be the trend during the hearings.¹³⁵

More so, outreaches organised by the Commission to reach out to women’s groups, and organisations, in order for women to participate in the special hearings, and the special workshops conducted for the said groups/organisations enabled them to submit written submissions to the Commission on issues of sexual violence and those affecting women generally.¹³⁶ The Family Support Unit of the Sierra Leone Police¹³⁷ and the Ministry of Gender, and Children’s Welfare were among some of the institutions that were invited by the Commission to attend the special hearings.

Most importantly, in its final report, the Commission dedicated an entire part of its report titled “Women in Armed Conflict” which highlighted the abuses suffered by women during the conflict. Among other things, the Commission in recognising the abuses suffered by victims recommended that “[t]he physical and emotional well being of women victims of rape and their children born as a result of rapes should be protected,” and it further called on communities “to make special efforts to encourage acceptance of survivors of rape and sexual violence as they integrate into society” These recommendations demonstrates the

¹³⁴ Ibid, at p. 18

¹³⁵ Beth Goldblatt “*Evaluating the Gender Content of Reparations: Lessons from South Africa*” International Center for Transitional Justice, available at: <http://www.ictj.org/en/research/projects/gender/country-cases/1825.html>

¹³⁶ Making the Invisible War Crime Visible, supra note 42 at p. 94-95

¹³⁷ The Family Support Unit is a Special Unit of the Police that handles matters dealing with women and children, including but not limited to cases of rape, sexual violence domestic violence etc.

Commission's commitment to the protection and well being of victims in the post-conflict era.¹³⁸

Generally, in South Africa, the Reparation and Rehabilitation Committee was charged among other things, with the responsibility of recommending to the government for the provision of reparations for victims.¹³⁹ Similar to the recommendations made by the Sierra Leone TRC, the Committee recommended to government the payment of reparations to victims in the form of grants, symbolic reparations for the construction of memorials, monuments, cleansing ceremonies, the provision of interim assistance for victims that had urgent needs etc.¹⁴⁰ A detailed examination of the TRC recommendations for victims of sexual violence will be dealt with in Chapter III when looking at the reparation programme.

2.1.4 CONCLUSION

Both the SCSL and the TRC have been widely credited for their sensitivity to rape and sexual violence crimes and in their effort to seek justice and accountability for victims of sexual violence irrespective of how limited this may be. It has also been argued that the efforts by the Court and the Commission in this respect is an important step in making the experiences of women visible and the steps taken to protect victims in the two processes are laudable both now and in protecting victims of sexual violence in armed conflicts in the future.¹⁴¹

Also, even though the two institutions had different mandates towards victims of rape and sexual violence, and they were in a way limited in their operations for a number of reasons, it

¹³⁸ Final Report of the Truth and Reconciliation Commission, Volume II, (2004), at p. 169, paragraph 325 [hereinafter The TRC Report]

¹³⁹ The Conflict Between Individual National Healing In Post Apartheid Age, supra note 114 page 765

¹⁴⁰ Ibid at p. 766

¹⁴¹ Making the Invisible War Crime Visible, supra note 42, at p. 104-105

is worth noting that having the two institutions established in the post-conflict era was a positive step in itself in that both retributive and restorative justice could be realised at the same time by victims. This is not always the case in most post-conflict situations where the choice of having either restorative or retributive justice mechanism to deal with gross human rights violations of the past has to be made. For instance, due to the limited mandate of the SCSL which only prosecuted those most responsible for the crimes committed during the conflict, having the TRC as another forum ensured that the voices of many more victims were heard as very few of them testified before the SCSL.

On a whole, it has thus been argued that the SCSL and the TRC have played a role in providing a “sense of comprehensive justice” for women victims, and such efforts have been said to have stood out despite the limitations from which the two institutions suffered.¹⁴²

¹⁴² Capturing the Experiences of Women of Conflict, *supra* note 59, at p. 100

CHAPTER 3

THE LEGAL STATUS OF WOMEN IN SIERRA LEONE AND THE REPARATION PROGRAMME

3.1.1 INTRODUCTION

It has been argued, and agreed upon by experts on violence against women that the violence suffered by women during conflicts results from their social and legal status in the society.¹⁴³

As such, women are subjected to abuses not only as a result of a conflict, but also because of the violence they are usually subjected to prior to a conflict.¹⁴⁴ Thus, such violence as Noeleen describes it “takes place along a continuum—moving from conflict to post conflict situations and gradually becoming a fact of life”¹⁴⁵ As already discussed in Chapter 2, sexual violence against women results in consequences that are both short term and long term. In the case of Sierra Leone, the consequences of sexual violence continue to affect the victims’ everyday lives and such consequences are slowly becoming a fact of their lives.

Bearing these realities in mind currently on the lives of victims, this Chapter will examine the legal status of women in Sierra Leone with a view to determine the extent to which victims of sexual violence are protected under the laws in order to prevent abuses in the future. Also, the Chapter will examine the current implementation process of the reparations as recommended by the TRC in its final report. I will analyse the services currently being provided for victims and evaluate the extent to which such services meet the needs of victims with the goal to rehabilitate and reintegrate them into the society.

¹⁴³ Noeleen Heyzer, International Symposium on Sexual Violence in Conflict and Beyond, UNFPA, European Union and Belgian Development Cooperation (21-23 June 2006), at p. 3

¹⁴⁴ Ibid

¹⁴⁵ Ibid

3.1.2 LEGAL AND SOCIAL JUSTICE LEGISLATIONS FOR WOMEN

The legal system in Sierra Leone is dual, consisting of the general law inherited from colonial British rule and customary law.¹⁴⁶ Customary law forms part of the laws of Sierra Leone and is applied in many parts of the country.¹⁴⁷ The Constitution which is the highest law in the land guarantees equality of all persons before the law¹⁴⁸ and the principle of non-discrimination is embedded in the Constitution.¹⁴⁹ However, the same constitution sanctions discrimination with respect to marriage, divorce, the devolution of property etc.¹⁵⁰ A provision in the Constitution stating that discrimination does not apply “with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law...”¹⁵¹ authorises discrimination against women. This is so because in Sierra Leone, under customary law, women are largely discriminated against in issues such as marriage, divorce property inheritance etc. Thus, it could therefore be concluded that the constitutional status of women in Sierra Leone is low.

Additionally, women continue to be marginalised and are excluded from equally participating in the social, economic and political life of the country.¹⁵² They are poorly educated and they consequently suffer from a high illiteracy rate of up to 80%, particularly among rural women who live in a highly patriarchal society.¹⁵³ They are mostly unemployed, disadvantaged by high birth rates, and they suffer further from the highest maternal mortality rate in the

¹⁴⁶ Vivek Maru “*Between Law and Society, Paralegals and the Provision of Primary Justice Services in Sierra Leone*” Open Society Institute, 2006, at p. 22. The general law comprises of the Constitution, Acts of Parliament, the Existing law (written and unwritten laws that existed before the 1991 Constitution came into effect), and the Common Law. Customary Law is a separate body of laws that is unwritten, and the rules of customary law forms part of the Common law of Sierra Leone.

¹⁴⁷ The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991), section 170

¹⁴⁸ Ibid, section 15

¹⁴⁹ Ibid, section 27

¹⁵⁰ Ibid, section 27 (4) (d)

¹⁵¹ Ibid, section 27 (4) (d)

¹⁵² UN Integrated Peacebuilding Office In Sierra Leone “*Joint Vision For Sierra Leone of the United Nations’ Family*” (May 2009), at p. 32 [hereinafter Joint Vision for Sierra Leone of the United Nations’ Family]

¹⁵³ Ibid

world.¹⁵⁴ Thus, all of these combined (that is the unequal status and marginalization of women), was exacerbated and solidified by the conflict, in which combatants used rape and sexual violence as weapons of war.¹⁵⁵

Further, rape laws in Sierra Leone are archaic. Rape is still regulated under the English common law and it is committed when a man has sexual intercourse with a woman against her will. Rape in Sierra Leone still requires the proof of sexual penetration, force and lack of consent of the woman. Apart from the Domestic Violence Act 2007, which attempts to criminalise sexual abuse and harassment even between married persons, the laws do not recognise marital rape. Other laws protecting women and girls from sexual abuse, procurement and defilement, include the Protection of Women and Girls Ordinance (Chapter 30), the Prevention of Cruelty to Children Act (Chapter 31). These Acts date back to the 1920s and are still in force with the strict definition of what constitutes unlawful carnal knowledge.¹⁵⁶

Sierra Leone has however ratified a number of international and regional instruments that guarantee the rights of women; protect them from discrimination and other harmful traditional practices that affects their status in society. It has ratified the UN International Covenant on Civil and Political Rights¹⁵⁷, the UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women¹⁵⁸, the

¹⁵⁴ Ibid. It is estimated that women in Sierra Leone suffer at 1,300 deaths per 100,000 births.

¹⁵⁵ Joint Vision for Sierra Leone of the United Nations' Family, *supra* note 152, at p. 32

¹⁵⁶ In order for there to be an offence, there is the requirement of penetration of the penis into the vagina. Where other objects are used other than the penis, it would instead constitute an offence of indecent assault (section 9 of Chapter 31) rather than unlawful carnal knowledge. Indecent assault has a lesser penalty of only 2 years imprisonment which is far less than 15 years imprisonment if an accused is found guilty of unlawful carnal knowledge under section 6 of Chapter 31.

¹⁵⁷ Ratified on the 23 August 1996, status as of 20-10-2010, available at: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-4&chapter=4&lang=en

¹⁵⁸ Ratified on the 11 November 1988, status as of 20-10-2010, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-8&chapter=4&lang=en

African Charter on Human and People's Rights,¹⁵⁹ Protocol to the African Charter on Human and Peoples' Rights on the Welfare of Women in Africa etc.¹⁶⁰ These instruments impose an obligation on the government of Sierra Leone to adopt measures that protects women from discrimination and violence.

In 2007, in a bid to comply with its international obligations, and due to immense pressure from civil societies for the protection of women, Parliament passed the Domestic Violence Act, the Devolution of Estate Act, and the Registration of Customary Marriage and Divorce Act which give more protection to Women thereby enhancing their legal and social status in the society with respect to marriage, divorce, and property inheritance.¹⁶¹ In particular, the Domestic Violence Act protects women from sexual abuse and harassment.¹⁶² It is an offence under the Act for any person to sexually harass or abuse another person.¹⁶³ However, the Act is limited because it only applies to persons having a domestic relationship and not otherwise. If there is no domestic relationship between the woman who is abuse or harassed and the perpetrator, the Act does not apply.¹⁶⁴ The "Gender Acts" mean greater rights and protection for women, but as commonly known, there is usually a gap btw what the law is, and what happens in practice.¹⁶⁵

¹⁵⁹ Ratified on the 21/09/1983, available at <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf>

¹⁶⁰ Sierra Leone signed the Maputo Protocol, as it is commonly known on the 09/12/2003, available at: <http://www.africaunion.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20Rights%20of%20Women.pdf>

¹⁶¹ Parliament also domesticated the UN Convention on the Rights of the Child into the Child Rights Act, 2007, thereby providing strong protection for children. The Act is silent on measures protecting children from sexual abuse and exploitation. Section 11 (2) (e) merely obliges the National Commission for Children to disseminate the UNCRC through trainings and promotional activities aimed at eliminating sexual violence against children.

¹⁶² Domestic Violence Act, 2007, section 2 (2)

¹⁶³ Ibid

¹⁶⁴ Ibid, section 2 (1). The definition of domestic relationship is quite broad, and it includes a husband, a fiancé, anyone having a blood relationship with the victim, co-tenants, etc.

¹⁶⁵ The Three Acts are generically and commonly referred to as the "Gender Acts" of 2007

Women however, continue to suffer from violence and discrimination irrespective of the new gender laws and of the State's regional and international obligations. They are deprived from rights and the protection guaranteed under the Constitution and under international law. When the CEDAW Committee considered Sierra Leone's combined report, it was deeply concerned about the persistence of harmful practices and traditions, cultural norms, and "of patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life" which it says perpetuates discrimination and violence against women.¹⁶⁶ Reports further indicate that sexual violence continues unabated and unpunished in the country.¹⁶⁷

3.1.3 THE REPARATION PROGRAMME: BEYOND THE TRC RECOMMENDATIONS

In recognition of the many human rights violations committed against victims during the conflict and in pursuit of its mandate, the Truth and Reconciliation Commission in its final report provided extensive recommendations for reparations.¹⁶⁸ Victims of sexual violence were among the different categories of victims provided for in the reparation programme.¹⁶⁹ The provision of reparations to victims like any other reparations are intended to address the needs of victims, encompass a broader sense of justice, recognise the harm suffered by victims etc.—thereby restoring human dignity and promoting healing and reconciliation .¹⁷⁰

¹⁶⁶ Concluding Comment of the UN CEDAW Committee on the combined initial, second, third, fourth and fifth periodic report of Sierra Leone (CEDAW/C/SLE/5), paragraph 20 [hereinafter Concluding Comment of CEDAW]

¹⁶⁷ United Nations Development Programme Newsroom "*Sierra Leone: Sexual Violence Remains Unpunished*" available at: <http://content.undp.org/go/newsroom/2010/february/sierra-leonesexual-violence-carrying-on-with-impunity.en>

¹⁶⁸ Under Article XXVI of the Lome Peace Accord, the Commission among other things was obliged to make recommend to the government, measures that are to be undertaken for the rehabilitation of victims.

¹⁶⁹ The reparations programme also provided for amputees, children, other war wounded, and war widows.

¹⁷⁰ The TRC Report, *supra* note 138, at p. 227

The Commission recommended that victims of sexual violence should be provided with free physical health care services as need,¹⁷¹ including the provision of free fistula surgeries.¹⁷² For child victims and children of victims, free health care services are to be provided until they are 18 years.¹⁷³ It also recommended free testing and treatment for victims (including their family members) who test positive for the HIV/AIDS and for any sexually transmitted diseases.¹⁷⁴

Furthermore, the Commission recommended that victims are to be provided with free counselling and psychosocial support, including dependant if needed,¹⁷⁵ free education until senior secondary school level for children of victims of sexual violence,¹⁷⁶ and that victims be provided with skills training and micro-credit facilities in order for them to become economically independent.¹⁷⁷

More so, symbolic reparations, public apology by those responsible for the grave human rights violations, and the construction of memorials, and the commemoration of ceremonies and dates to honour victims formed part of the reparations recommended by the Commission on behalf of all victims.¹⁷⁸

¹⁷¹ Ibid, at p. 255

¹⁷² Ibid, at p. 256

¹⁷³ Ibid, at p. 255. The Commission recommended further that health care services are to be made available at primary health units, district hospitals and tertiary health units in order to enhance accessibility of the services to victims; and that government in the long term should strengthen referral systems between hospitals in order to meet the medical needs of victims.

¹⁷⁴ Ibid, at p. 257. Treatment should include the provision of drugs/medicines to treat sexually transmitted diseases and anti-retroviral medication for the treatment of HIV/AIDS

¹⁷⁵ Ibid, at p. 258

¹⁷⁶ Ibid, at p. 261

¹⁷⁷ Ibid, at p. 262

¹⁷⁸ Ibid, at p. 263-264

In Sierra Leone, the Commission placed the responsibility on the National Commission for Social Action (NaCSA) to implement the reparations,¹⁷⁹ and according to the Commission's final report, the government has the primary responsibility to implement reparations and to ensure that the programme is adequately funded.¹⁸⁰ On the other hand, the payment of reparations to victims was not well thought through in the case of South Africa at the time the TRC was established as the emphasis was centre around "truth-seeking" for achieving reconciliation.¹⁸¹ Even though the some form of compensation was paid to victims, the government later rejected the recommendations on reparations on the basis that the reparations were too expensive.¹⁸² It is argued that this situation resulted in the victims' right been extinguished in instances where amnesty had been granted to the perpetrator.¹⁸³ On the contrary, the TRC in Sierra Leone had a gender-specific mandate as already discussed above, particularly so for victims of rape and sexual violence. Initial efforts to implement the reparations in Sierra Leone started in 2008, which was made possible by a 3 million USD funding received from United Nations Peace Building Fund (PBF).¹⁸⁴ The funding received was a one year project, and it was meant to *inter alia*, build the institutional capacity needed to implement the reparation programme, and as part of five year strategic plan to provide reparations for victims.¹⁸⁵ The one year programme among other things undertook the registration of victims, and by the end of 2009, a total of 4,148 victims of sexual violence were registered by NaCSA.¹⁸⁶

¹⁷⁹ The Implementation of Key TRC Recommendations, *supra* note 63, at p. 2-3

¹⁸⁰ IRIN News "Sierra Leone: Compensating War Victims" December 2009, available at <http://www.irinnews.org/Report.aspx?ReportId=87380>

¹⁸¹ A Truth Commission for East Timor, *supra* note 115 at page 246

¹⁸² *Ibid*

¹⁸³ *Ibid*

¹⁸⁴ Mohamed Suma and Cristian Correa "Report and Proposal for the Implementation of Reparations in Sierra Leone" International Centre for Transitional Justice (ICTJ), 2009, at p. 1 [hereinafter Report and Proposal for the Implementation of Reparations]

¹⁸⁵ *Ibid*, at p. 1

¹⁸⁶ Registration Statistics Document obtained from the National Commission for Social Action (NaCSA), at p. 1

Out of this number, 235 victims received medical examination, and were referred to medical centres for treatment, including fistula surgeries, other treatments for less severe cases, and others received drugs as prescribed.¹⁸⁷ Child victims and children of victims received reimbursements for school fees, books, and uniforms as a form of educational support.¹⁸⁸ Also, victims received interim payment of the sum of Le 300,000 (the equivalent of \$100 at the time) which was meant to provide immediate support and relief to them.¹⁸⁹ Currently, 650 victims are receiving training and micro grants made possible by a \$1 million grant received from the UN Development Fund for Women (UNIFEM).¹⁹⁰ The training will last over a period of two years and 300 hundred women are currently been trained in various skills, while another set of 350 will be trained in 2011 and given start-up grants.¹⁹¹

Generally, symbolic reparations to honour and remember victims have been conducted in 40 chiefdoms, plus the Western Area, and there are plans to conduct same in the remaining 109 chiefdoms.¹⁹² Activities such as holding vigils and dance, the construction of monuments, ceremonial slaughtering of cows, reburials etc. have been conducted in many communities.¹⁹³ Additionally, 40 communities benefitted from funding provided by International

¹⁸⁷ Report and Proposal for the Implementation of Reparations, *supra* note 184, at p. 10. The International Mercy Ships and Marie Stopes provided fistula surgeries and other gynaecological assistance to victims. NaCSA merely facilitated the provision of the said services.

¹⁸⁸ *Ibid*, at p. 11

¹⁸⁹ *Ibid*, at p. 7

¹⁹⁰ The Sierra Leone Reparations Programme Perspective Document obtained from NaCSA, at p. 1 [hereinafter Reparations Programme Perspective Document]

¹⁹¹ National Commission for Social Action, Information Leaflet [hereinafter Information Leaflet]

¹⁹² Reparations Programme Perspective Document, *supra* note 190. Sierra Leone is politically divided in three provincial areas (the East, South and North), and the Western Area which includes the city of Freetown and its environs. The Provincial areas are further divided into twelve districts, and the districts are further divided into 149 chiefdoms, being the smallest political units in the country.

¹⁹³ See Hope-Sierra Leone, Report on the Symbolic Reparations Programme, 2009, available at: http://www.hopesierraleone.org/Symbolic_Reparations_Bomaru_21-23_March_2009_with_corrections_22_Jan_2010_1_.pdf

Organization for Migration (IOM) to hold symbolic reparation events at community level.¹⁹⁴

Psychosocial support sessions have also been held in different parts of the country.¹⁹⁵

In another event and in a bid to comply with the TRC recommendations, the President of Sierra Leone, Dr. Earnest Bai Koroma, apologised to women victims for the harm they suffered during the conflict.¹⁹⁶ The TRC recommended that the President who symbolises the “Father of the Nation” must apologise to women on behalf of the government and previous governments as a way of acknowledging the harm that women suffered during the conflict.¹⁹⁷ The International Centre for Transitional Justice (ICTJ), David Tolbert described the President’s apology as the “simplest” but yet “most fundamental” for a government to fulfil the right to reparations towards victims, and such gesture represents symbolic reparation.¹⁹⁸

The above initiatives indicate the government’s good will to provide reparations for victims. However, these measures have been regarded as been temporary because they merely met the immediate needs of victims. Therefore, it has been recommended that building on the framework already established by the one year project, government should take concrete measures to implement long term and meaningful reparations for victims in the areas of health care services, education, and pensions for victims.¹⁹⁹ Such efforts require continued support from Nongovernmental organisations and civil society, and collaboration of government ministries such as the Ministry of Health and Education.

¹⁹⁴ International Organization for Migration “*Support for the Sierra Leone Reparations Programme*” available at: <http://www.iom.int/jahia/Jahia/support-for-the-sierra-leone-reparations-programme>

¹⁹⁵ Sierra Express Media “NaCSA, Graceland Carries Psychosocial Reparation” available at <http://www.sierraexpressmedia.com/archives/519>

¹⁹⁶ Sierra Express Media “*Sierra Leone: Apology to Women Victims a Welcome Step*” available at <http://www.sierraexpressmedia.com/archives/6990>

¹⁹⁷ The TRC Report, supra note 130 at p. 168, paragraphs 317 and 318

¹⁹⁸ Sierra Express Media “*Sierra Leone: Apology to Women Victims a Welcome Step*” available at <http://www.sierraexpressmedia.com/archives/6990>

¹⁹⁹ Report and Proposal for the Implementation of Reparations, supra note 148 at page 14

The Ministry of Health for example did not participate in the services provided for victims in 2009, and is still unclear whether it will provide services to victims.²⁰⁰ So far, it is my submission that services provided to victims have made little or no difference to their livelihoods or rehabilitation. The ICTJ report argues this point further with respect to *inter alia* the educational support provided to child victims and children of victims, stating thus: “[r]eimbursement of educational expenses incurred over the course of a few months or one year, or providing conditional cash transfers for a limited period will make very little difference in one child’s life.”²⁰¹ Contrary to the recommendations made by the TRC that victims should be given monthly pensions in order to be able to sustain themselves and their families, NaCSA has so far made a one off payment to victims in order to take care of their immediate needs.²⁰² This in my opinion will not sustain the victims for too long.

Additionally, it is worth noting that there is no concrete plan for the provision of housing or land for victims who live in new communities and have been rejected by their communities or have not returned home for fear of stigmatisation. The provision of housing for the “most vulnerable” victims under the reparations programme is dependent only on the availability of funding,²⁰³ and no housing has been provided so far for victims even though they continue to be the most vulnerable in the post-conflict era. Also, there is no plan or initiative directed at community level that will fight against stigmatisation. Stigmatisation as previously noted is a serious problem that victims continue to face—victims cannot speak about the abuse and as a result they suffer in silence and are deprived from benefitting from services provided for their welfare.

²⁰⁰ Ibid, at p 11

²⁰¹ Ibid

²⁰² The TRC Report, supra note 138 at page 259, para. 168

²⁰³ Information Leaflet, supra note 191

Even though implementation of reparations is ongoing, the government however, continues to face huge challenges in the process. One of the major challenges faced by NaCSA is inadequate funding to implement reparations.²⁰⁴ The government relies mostly on donor funding, and as of date, it has merely contributed 246,000 USD, which is about 8.2 % of the total cost estimated for the reparation programme.²⁰⁵ If meaningful reparations are to be provided for victims, government should be seen to own the process by increasing its financial commitment to the programme. In as much as it may rely on some form of international support, the government is bound to fulfil its duty towards victims by providing them with reparations in order to restore their livelihood and dignity. Not until recently, the government launched the “Victims Trust Fund,” and the fund is meant to serve as a pool where contributions (from Sierra Leoneans and other donors) could be made in order to serve victims’ welfare. The fund was only launched in December, 2009, falling far behind the recommendation made by the TRC its final report to open the fund within 3 months after the submission of its report in October 2004.²⁰⁶

Secondly, registering victims remains a huge challenge. As discussed in Chapter 2, many victims of sexual violation failed to tell their stories to the TRC neither did they register for fear of stigmatisation and rejection by their families and communities, and as such, they have not benefitted from the services currently being provided. According to the report by ICTJ, the number of victims registered does not reflect the estimated number of victims of sexual violence which is 5,000,²⁰⁷ and it is reported that victims of sexual violence preferred to be registered under the category of “war widow” than been registered as a victim of sexual

²⁰⁴ Reparations Programme Perspective Document, supra note 190

²⁰⁵ Report and Proposals for the Implementation of Reparations, supra note 184, at p. 14

²⁰⁶ The TRC Report, supra note 138 at p. 269, para. 225

²⁰⁷ Report and Proposal for the Implementation of Reparations, supra note 184, at p 4. This estimation is made by NaCSA’s based on the five years reparations plan.

violence due to the stigma associated with sexual violence.²⁰⁸ Even the 5,000 estimation grossly under-represents the total number of victims reported to have been sexually abused during the conflict.²⁰⁹ It therefore follows that the number of victims that have been registered and benefitted from services provided so far does not reflect the number of victims reported to have suffered sexual abuse during the conflict, and consequently, the services provided do not reflect what is needed in terms of providing reparations and responding to the needs of the victims of sexual violence.

3.1.4 CONCLUSION

Remarkable progress has been made to ensure that women are protected from violence and discrimination by the passing of new legislations, the implementation of government policies such as the National Gender Strategy Plan, the introduction of the free maternal health care services by the President in early 2010,²¹⁰ and more so, the implementation of the recommendations of the TRC which are among other things, will ensure that victims of sexual violence are rehabilitated and reintegrated into society. Providing protection and redress for victims of sexual violence in post-conflict situation is fundamental in achieving peace and reconciliation. However, there remain limitations and challenges that need to be addressed in a sustained and systematic way if the victims' rights to justice and a remedy are to be achieved in the post-conflict era. Government should re-enact new sexual offences laws that will reflect modern notions of equality in order for victims to be adequately protected and to punish perpetrators. Also, section 27 (4) (d) of the Constitution should be repealed to

²⁰⁸ Ibid, at p. 6. Other problems generally associated with registering victims included the availability of limited access of information in rural areas about registration, registration was done hurriedly and under tight time constraint, mobile registration teams were hampered by logistical problems.

²⁰⁹ War Related Sexual Violence in Sierra Leone, supra note 20. The report estimated that between 50,000 to 64,000 internally displaced women experienced sexual violence during the conflict.

²¹⁰ Amnesty International News and Events "*Sierra Leone Launches Free Maternal Health Care*" available at: http://www.amnesty.org.uk/news_details.asp?NewsID=18729

guarantee equality of rights between women and men thereby enhancing their status in the society as recommended by CEDAW committee.²¹¹ Additionally, women should be sponsored in order to increase their participation in the social, economic and political life of the country as a way of consolidating peace and to advance sustainable development.²¹²

²¹¹ Concluding Comment of CEDAW, supra note 166, paragraph 13

²¹² Only few women are engaged in politics. For example, there is only 13.7% female representation in Parliament. This is far below the 50% target of the African Union.

CHAPTER 4

LESSONS LEARNED FROM THE SIERRA LEONE EXPERIENCE

4.1.1 INTRODUCTION

As noted in earlier chapters, the Sierra Leone experience seeks a holistic approach in providing justice and a remedy for victims of sexual violence by combining retributive justice through the establishment of the SCSL to punish those who bear the greatest responsibility for human rights violations under international law and offences under national laws, restorative justice through the establishment of a TRC, and the provision of reparations to victims of gross human rights violations based on the recommendations of the TRC report in an effort to rehabilitate and reintegrate them into the society. The first part of this Chapter will examine the accomplishments and shortcomings in the process of providing justice for victims. The second part will explore what sort of support is needed to complement the efforts of government. This calls for an examination of the role of the international community, non-governmental organisations and civil societies.

4.1.2 ACCOMPLISHMENTS AND SHORTCOMINGS

The Sierra Leone experience has been described as unique and innovative in the history of transitional justice. The combination of both retributive and restorative justice in the post-conflict period has presented a unique picture from which future post-conflict countries may learn from its experiences. When the SCSL was established to operate alongside the TRC, it was expected that both institutions would mutually complement and support each other in

their operations respecting each other's distinct but related mandates.²¹³ Bearing this in mind, I will turn to the accomplishments of the two institutions with respect to their gender-specific mandate.

Firstly, both the Court and the Commission had specific mandates to deal with rape and other forms of sexual violence offences during their operations. This was a great accomplishment for women who have advocate for years to bring sexual violence in the fore front of international humanitarian law. Binaifer argues that the efforts made by the SCSL and the TRC to pay attention to sexual violence offences and to acknowledge fully and responsibly the sufferings of women during the conflict would help "to reverse the legacy of impunity and that ... [i]t represent an important step forward toward countering the deeply engrained cultural and legal attitudes that tend to minimize rape and other sexual violence crimes"²¹⁴

The convictions by the SCSL and the fact that perpetrators acknowledged publicly the wrongs they committed against women and apologise for such wrongs during the TRC hearings helped victims in their healing process, and helped foster reconciliation. As already stated in Chapter Two, the SCSL among other things found senior members of the RUF and AFRC guilty of rape, outrages on personal dignity including sexual slavery. With respect to the TRC, Amnesty International argues that "[t]ruth is, in itself, a form of reparation, which can start to restore the dignity of victims by providing acknowledgement of their suffering and establishing the facts about crimes committed against them."²¹⁵ Both the SCSL and the TRC through their operations have played an important role in achieving these for victims of

²¹³ Letter dated 12 Jan. 2001 from the Secretary-General addressed to the President of the Security Council (S/2001/40), available at: <http://www.undemocracy.com/S-2001-40.pdf>

²¹⁴ Making the Invisible War Crime Visible, supra note 42, at p.105

²¹⁵ Getting Reparations Right for Survivors of Sexual Violence, supra note 30 at p. 29

sexual violence by establishing an important record of the facts and establishing the sufferings of victims.²¹⁶

The operation of a “hybrid” court is in itself unique in the history of international criminal justice. Having the SCSL operate alongside a truth commission presented unique opportunities, alternatives and successes in the transitional process that would not have been achieved otherwise. One such opportunity is the provision for the payment of compensation under the TRC Act that was not provided for under the statute of the SCSL. The TRC, in pursuance of the Lomé Peace Agreement, alternatively made recommendations for the provision of reparations to victims of human rights violations including victims of sexual violence and for the establishment of a trust fund for victims.²¹⁷ The statute of the SCSL did not provide for the payment of compensation to victims nor did it follow the example set by the Rome Statute of the International Criminal Court (ICC) which provides for the provision of reparations to victims in the form of compensation, restitution and rehabilitation, and the establishment of a trust fund for victims and their families.²¹⁸ However, in the case of Sierra Leone because the two institutions operated concurrently, it was possible for them to complement each other and as a result; the transitional process provided valuable alternatives for victims of sexual violence.

Thus, the reparations programme recommended by the TRC made it possible for victims to be compensated for the abuses they endured in the hands of combatants, in addition to been

²¹⁶ Ibid

²¹⁷ The TRC report, *supra* note 138, at pages 227-270

²¹⁸ Article 75 of the Rome Statute of the ICC provides for the provision of reparations to victims either from the accused where possible or from the trust fund, whereas article 79 provides for the establishment of a Trust Fund for the purpose of providing compensation to victims and their families.

provided with services which would help them reintegrate into society and regain their livelihood. However, it is unclear how well the provision of such services is coordinated given the limited resources available and the fact that donors only provide funding for a specific number of victims and not for the whole category of “victims of sexual violence.” It is my submission therefore those services must be provided to victims in a more systematic and coordinated way by NaCSA and other partners in a systematic and coordinated way in order to ensure that victims benefit equally.

Also, since the SCSL focuses mostly on prosecuting those who bear the greatest responsibility, its jurisdiction is limited in terms of the number of perpetrators to be tried and the number of victims to testify before the Court. It is argued that even though the few convictions represent a significant step in ensuring accountability for sexual violence crimes, many other perpetrators of sexual violence have escaped justice and as such impunity remains largely unaddressed.²¹⁹ Alternatively, the TRC provided a wider forum for victims and it is argued that giving voices to women is essential for them to define their experiences and for self empowerment.²²⁰ Similarly, the SCSL by prosecuting and convicting few individuals for sexual violence crimes provided an opportunity for perpetrators to be held accountable for the abuses committed against victims in disregard of the amnesty given to combatants under article XI of the Lomé Peace Accord and as implemented by the TRC. Thus, despite the fact that only few individuals were prosecuted by the SCSL for sexual violence crimes, it represents justice for some victims who wanted punishment for perpetrators.²²¹ According to the report by Physicians for Human Rights, 42% of victims interviewed thought that perpetrators of sexual violence should be punished.

²¹⁹ Getting Reparations Right for Victims of Sexual Violence, *supra* note 30, at p. 29

²²⁰ Proving Ground for Prosecuting Rape, *supra* note 101 at page 915

²²¹ War Related Sexual Violence in Sierra Leone, *supra* note 20 at page 53

Further, since the temporal jurisdiction of the SCSL was limited in that it only covered violations after November 30, 1996, the broad jurisdiction of the TRC which covers the period since the commencement of the war in 1991, provided a form of justice and redress for many victims whose abuses would have gone unnoticed and unpunished had it been that it was only the Court that was set up in the transitional era as is the case in Rwanda. Being that one of the mandate of the TRC was to examine the impact of the war on women, the TRC served as a forum through which many victims of sexual violence were able to narrate their experiences thereby breaking the culture of silence surrounding sexual violence crimes, and the TRC with an objective to restore the dignity of victims, recommended for the provision of reparations for victims of sexual violence. The functions of the TRC among others provided thus: “to help restore the dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict...”²²²

Further, unlike what happened in Rwanda, both the Court and the Commission operated in the country. This ensured the participation of victims in the process, and reports indicate that victims were reasonably aware of what the institutions were to achieve in terms of justice and providing redress on their behalf.²²³ In the case of SCSL, it has been reported that the location of the Court in Freetown made the Court more accessible to victims, and they can attend and watch the proceedings firsthand.²²⁴ Similarly, the hearings conducted by the TRC in different parts of the country, coupled with the special hearings conducted on women’s issues ensured

²²² The TRC Act 2000, *supra* note 112, Part III, section 6 (2) (b)

²²³ War Related Sexual Violence in Sierra Leone, *supra* note 20, at pages 51 to 55

²²⁴ Antonio Cassese “Report of the Special Court for Sierra Leone” December 2006, at p. 10

that women's issues such as rape and sexual violence were brought to the forefront, consequently giving voice to the many women victims who testified before the Commission.

Additionally, it has also been argued that because the SCSL and the TRC operated concurrently, much awareness on the seriousness of sexual violence crimes has been raised among Sierra Leoneans and it is hoped that the prosecution of such crimes would be enhanced in the national courts and help mobilize women to organise around the issue.²²⁵ It is however worth noting that the operations of the SCSL and the TRC have not enhanced the prosecution of rape and sexual violence in the national courts. On the contrary, reports indicate that sexual violence is in the increase and remains unpunished.²²⁶ It is however, evident that women's groups and non-governmental organisations have over the years organised themselves around the issue of gender-based violence and have remained very instrumental in advocating for women's rights including the enactment of the sexual offences Bill.²²⁷

Inasmuch as having the SCSL and the TRC operate simultaneously had positive effects on the transitional process as already discussed above, it also had its shortcomings. One of such shortcomings was that many victims refused to testify before the TRC for fear of being subpoenaed by the SCSL even though it was said to have been made clear by the prosecutor of the Court that he will not use witnesses from the TRC.²²⁸ Notwithstanding the

²²⁵ Making the Invisible War Crime Visible, supra note 42, at page 104

²²⁶ United Nations Development Programme Newsroom "Sierra Leone: Sexual Violence Remains Unpunished" available at: <http://content.undp.org/go/newsroom/2010/february/sierra-leonese-sexual-violence-carrying-on-with-impunity.en>

²²⁷ This is based on my experience working with Timap for Justice which collaborating and working with other non-governmental organisations. There is currently a draft Sexual Offences Bill in the office of the Attorney-General and Minister of Justice. The Bill is currently being reviewed in order for it to be table before Parliament for enactment. The Act consolidates the previous laws relating to sexual violence. it broadens the definition of rape to include use of objects on a woman other than just the penis and it increases the term of imprisonment and fines for some of the offences like indecent assault.

²²⁸ Making the Invisible War Crime Visible, supra note 42, at p. 103

prosecutor's assurances, victims refused to testify before the TRC. Secondly, it has also been argued that because the SCSL restricted the Commissioners' access to the accused persons who were in the Court's custody, the TRC's ability to investigate and discover the truth was said to have been "fundamentally impeded."²²⁹ It could therefore be concluded that because the accused persons could not testify before the TRC, and been that they were the leaders for the various fighting combatants, the record of the nature and causes of the conflict may be regarded as incomplete even though it could be argued that their testimonies in the trials at the SCSL could fill in the gaps in the records of the TRC report.

In conclusion, it could be safely said that the Sierra Leone experience which combined restorative and retributive justice in its post-conflict era succeeded in capturing the experiences of women and have included a significant part of it in the history of the conflict. This is important in itself because in many post-conflict countries, truth commissions and courts alike have not adequately addressed the violence suffered by women or explore the gender effects of political violence due to lack of political will and resources.²³⁰ Consequently, this limits the findings of such institutions thereby excluding women's experiences from the history of the conflict which forms an important aspect for posterity.

4.1.3 NEEDED SUPPORT

Even though it is primarily the responsibility of government to provide reparations for victims, IOM on the eve of a donor and investment conference held in London in 2009, states that "[t]he reparation needs of Sierra Leone's civilian victims of war must not be overlooked

²²⁹ Ibid

²³⁰ Capturing Women's Experiences of Conflict, supra note 59, at p. 87

if there is to be real peace-building in the country”²³¹ The TRC report categorically put the responsibility on the government to provide reparations for victims, but at the same time recognises the need for non-state actors to support and complement government’s efforts.²³² As such, non-state actors can also play a role in ensuring that the welfare of victims is adequately met.

It is thus clear from the above statement from IOM and from Chapter 3(that highlights some of the challenges facing the implementation of the reparations programme) that more funding is needed from external donors/the international community to complement the ongoing efforts by the government. The Commissioner for NaCSA, Saidu Conton Sesay acknowledged that the resources needed for providing reparations for victims are “significant” and that government alone cannot provide such reparations due to its limited resources. There is therefore the need for external support in terms of funding to help integrate victims and to consolidate peace.²³³ IOM thus stated that unless funds are raised beyond 2009 (that is, the first year of the implementation process), victims will have no redress and this will consequently reinforce their sense of injustice.²³⁴ Financial support from the international community and voluntary contributions into the War Victims Fund by Sierra Leoneans is therefore needed in order to provide the needed assistance to victims. As of 23rd March, 2010, Diane Bailey of the United Nations stated that despite the funds previously

²³¹ International Organisation for Immigration Press Briefing Notes Europe “*Reparations for Sierra Leone’s War Victims Essential for Country’s Future*” available at : <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnEU/cache/offonce?entryId=26642> [hereinafter Reparations for Sierra Leone’s War Victims]

²³² The TRC Report, supra note 138, paragraph 28, at p. 120. The report specifically directed all recommendations to the government and its various organs and agencies; and where it was otherwise the report specifically stated so.

²³³ Reparations for Sierra Leone’s War Victims, supra note 231

²³⁴ Ibid

received from the UN Peace Building Fund, the Germany government and UNIFEM, the sum of US \$ 8 million is urgently needed to provide much needed assistance to all victims.²³⁵

The United Nations, international and national organisations can also provide technical assistance to the NaCSA, in the implementation of programmes. For instance, the IOM which is known to have extensive expertise in providing large compensation and restitution programme is providing technical support to a programme currently implemented by NaCSA for victims of sexual violence.²³⁶ Also, given that some non-governmental organisation (like the International Mercy Ships and the International Rescue Committee) have been providing assistance like health care services and surgeries to victims of sexual violence, more support could be sort in the provision of such services to victims, and also efforts could be made at equipping the government hospitals with the necessary skills and/or expertise and the tools to enable them to provide the same services in order to increase and expand the accessibility of the services to victims.

As recommended by the TRC, the role of civil society is to monitor the implementation of the TRC recommendations which includes the provision of reparations to victims of sexual violence.²³⁷ Civil society can ensure accountability on the part of government to increase its financial commitment to the reparations programme by engaging them through advocacy programmes on behalf of victims, and educating the general public (including the victims) about the government's obligations thereby empowering and enabling the public and the victims alike to hold the government accountable on same. It can also monitor the implementation process to ensure that victims are benefitting from the process, by providing

²³⁵ United Nations Radio "*IOM Assists Programme for Sexual Violence Victims in Sierra Leone*" available at: <http://www.unmultimedia.org/radio/english/detail/92633.html>

²³⁶ Ibid

²³⁷ The TRC report, supra note 138, paragraph 30, at p. 121

evidence base information for further action and effective advocacy such as that of making further efforts to register victims in order for them to benefit from the services being currently provided, and to ensure that the provision of reparations for victims remains a top priority in the government's agenda.

It is clear from the previous chapters that some victims failed to testify before the TRC and their names are not included in the victims list which forms part of the TRC final report, only few testified before the SCSL, and others also failed to register with NaSCA due to fear of stigmatisation and rejection by the community. It is reported that feelings of shame, social stigma and rejection stood out as the first three reasons why victims did not speak to anyone about the abuse.²³⁸ This is more the reason why additional efforts should be made by NaCSA to encourage more victims to register.

4.1.4 CONCLUSION

In conclusion, despite the shortcomings, it can be argued that the Sierra Leone experience has contributed to re-establishing the rule of law through the Court's trial by holding individuals' accountability for crimes of sexual violence, and equally, the TRC through its findings and recommendations has laid the foundation for reforms that are crucial in ensuring that the crimes of sexual violence perpetrated during the conflict will not re-occur in the future, and has provided for a means through which victims of sexual violence can be compensated and reintegrated into society. The recommendations by the TRC to provide reparations for victims and its current implementation in the transitional process would to a large extent help to rehabilitate victims and reintegrate them into society. Both institutions in different ways

²³⁸ Getting Reparations Right for Survivors of Sexual Violence, *supra* note 30, at p. 54

addressed the question of responsibility in their operations and this is important in providing justice for victims and addressing impunity.

However, despite the above achievements by the SCSL and the TRC in addressing sexual violence crimes that affected women in Sierra Leone continue to face discrimination largely under customary practices and traditions. Despite the passing of the “Gender Acts” in 2007 which enhanced the rights of women in the society, the Constitution impliedly sanctions discrimination against women and there have been calls for the amendment of the provision that sanctions discrimination.²³⁹ Scholars have argued that in addition to addressing the “plethora of roles” experienced by women during a conflict, women should be involved in post-conflict reconstruction, integrating gender and in government policies and reform of laws that discriminate against women should be part of the post-conflict processes.²⁴⁰ Until adequate steps are taken to address discrimination; and as argued by Amnesty International “[r]eparations cannot achieve their stated aims, unless the underlying causes of discrimination which compound the crimes of sexual violence against women are also addressed.”²⁴¹

By way of conclusion, it is my opinion that amidst the lapses and challenges in the transitional process and in the implementation of reparations for victims of sexual violence, the Sierra Leone experience provides a unique model that will inform future transitional processes in war affected countries. As Naomi Cahn argues, the right of victims to justice and a remedy should not be limited to criminal and restorative justice as it is incomplete; rather criminal and restorative justice should be combined with a “third kind of justice” that

²³⁹ The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991), section 27 (4) (d)

²⁴⁰ Naomi R. Cahn, ‘Women in Post-Conflict Reconstruction: Dilemmas and Directions’ 12 Wm. & Mary J. Women & L. 335 (2006), at p. 338 [hereinafter Women in Post: Conflict Reconstruction]

²⁴¹ Supra 30, at p. 33

responds to the needs of victims in post-conflict transitional justice—that is, providing medical and socio-economic services to victims.²⁴² To sum it up, the experience in Sierra Leone has been described to have “provided a more comprehensive and far-reaching sense of justice” for victims, and the model could be a viable and promising one to address in future transitional processes for addressing and/or responding to the needs of victims of sexual violence.²⁴³

²⁴² Women in Post-Conflict Reconstruction, *supra* note 240, at page 267

²⁴³ Capturing Women’s Experiences of Conflict, *supra* note 59, at p. 100

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