Chapter V

5.1 Post Conflict Peacebuilding in Sierra Leone

The Sierra Leone conflict officially ended in 2002. Since then, different peacebuilding activities have been embarked upon by the international community and the state itself. The international community in exercising its responsibility to rebuild the community set up both the Special Court of Sierra Leone\(^{500}\) and the Truth and Reconciliation Commission.\(^{501}\) The cessation of hostilities and the end of the war also saw a democratic election being held in Sierra Leone which brought back Ahmed Tejan Kabbah as the president of Sierra Leone.

Post conflict peacebuilding is one of the three or four pillars in Peace Support Operations (PSO). The others are peacemaking, peacekeeping and peace enforcement. However, in its strict sense, peace enforcement is not a peace support operation since it is usually a Chapter VII action under the UN Charter. Peacebuilding facilitates the establishment of lasting peace and tries to prevent the recurrence of violence by addressing the root causes of conflict and the effects of conflict through reconciliation, institution building, and political, as well as economic transformation.\(^{502}\) The end of conflict is often marked by the signing of cease-fire agreements and peace settlements, but these do not in any way ensure peace and human security.\(^{503}\) The World Bank estimates that in a post conflict state, there is a 50-50 chance of a violent conflict being renewed, especially if the conflict is over control of resources.\(^{504}\) The responsibility of states and the international community to protect people in conflict extends also to the responsibility to rebuild, especially, after a military intervention.\(^{505}\) The Commission on Human Security is of the opinion that the measure of success of any intervention is not the military victory but the

\(^{500}\) The Special Court was set up by an agreement between the Sierra Leone government and the UN.

\(^{501}\) The TRC was established under the Lomé Accord. It only came into effect after the end of the war. An Act of Parliament was subsequently passed to bring it into force.


\(^{503}\) Op cit note 354 p. 57.


\(^{505}\) Op cit note 51 Para 5.1
quality of peace it leaves behind.\footnote{Op cit note 426 p. 57.} In order to avoid a relapse to violent conflict in Sierra Leone, the peace achieved must be sustainable. This is characterised by the “absence of physical and structural violence, the elimination of discrimination, and self-sustainability. The successful disarmament, demobilisation and reintegration (DDR) of ex-combatants are crucial to achieving a lasting peace”.\footnote{Luc Reychler, “From Conflict to Sustainable Peacebuilding: Concepts and Analytical Tools”, in Luc Reycheler and Thania Paffenholz (ed), \textit{Peacebuilding: A Field Guide} (Boulder, Colorado: Lynne Rienner Publishers Inc.) 2001 p. 12.} The demobilisation of combatants is the single most important element that determines the success of peace operations. This is because every other aspect of the peace operation spectrum relies on demobilisation to succeed. Without demobilisation, the democratisation, security sector reform, and developmental aspects of peacebuilding have a very slim chance of taking off, much less succeeding.\footnote{Ibid.} Demobilisation, however, has to go \textit{pari pasu} with reintegration and rehabilitation in order to be more effective and have a lasting impression.\footnote{Ibid.} If this is not done, the tendency is that the post-conflict situation might develop to unemployment amongst the youth and this can lead to development of criminal gangs and violence, resulting in a relapse into conflict.\footnote{Ibid.} Peacebuilding initiatives try to fix the core problems that underlie the conflict and change the patterns of interaction of the parties involved.\footnote{Op cit note 502.}

Post conflict peacebuilding involves the Disarmament, Demobilization and Reintegration of the ex-combatants.\footnote{Michael Doyle and Nicholas Sambianis, “Building Peace: Challenges and Strategies after Civil War”, available at \url{http://www.worldbank.org/research/conflict/papers/building.pdf} last visited on October 15 2005.} This process is very important because there can be no viable peacebuilding with the presence of armed combatants. The June 2001 report of the UN Secretary-General on the prevention of armed conflict, for example, recognized that lasting DDR is a key component in conflict prevention.\footnote{Prevention of Armed Conflict, Report of the Secretary-General, UN Doc. A/55/985-S/2001/574 (7 June 2001).} As at 2002, safe access to the whole of Sierra Leone was restored and peaceful development resumed. This was partly due to the success of the long process of DDR that started in 1997 with the first of three phases. Phase II was launched in October 1999, as indicated by the Lomé Peace
Agreement, with the support of the World Bank, and the British Department for International Development (DFID). Phase III ran from May 2001 to January 2002. 72,500 combatants were disarmed and demobilized; 42,330 weapons and 1.2 million pieces of ammunition were collected and destroyed over the three phases, in four years.514

5.2 The Sierra Leone Truth and Reconciliation Commission (TRC)

The Sierra Leone TRC was established by the Truth and Reconciliation Commission Act of 2000 in line with Article XXVI of the Lomé Peace Agreement of 1999.515 It took the Commission more than two years to finalise its work. In its 403 page report, it extensively documented both economic and political causes of the Sierra Leone conflict and the roles the different parties played in the conflict.516 The report stress that the national reconciliation of Sierra Leone which is a long-term effort should be championed by the political leadership of the country. It also stresses that just as the national reconciliation is a long-term project, community reconciliation is also a long-term project which requires the commitment of the community chiefs.517 In achieving individual reconciliation, the Commission stressed the need for both the perpetrator and the victim to meet. However, it cautioned that it is not very important that the victim forgive the perpetrator, nor for the perpetrator to express remorse.518 While it might be difficult to secure the forgiveness of the victim, one is of the view that individual reconciliation cannot take place without an act of forgiveness. The commission further recommends the implementation of a reparations programme. It stressed that reparations are the primary responsibility of the government. The Commission’s reasoning is that states may be held responsible for human rights violations when committed by them or by their agents. It further argued that states may also be held responsible in certain circumstances for

514 Op cit note 489.
517 Ibid. Chapter 1 Para 72-73.
518 Ibid. Para 74.
violations of non-state actors. Applying the responsibility to protect principle to the issue of reparations, one could argue that since the primary responsibility to protect the people lies with the state, where it fails in its responsibilities, it may be held liable. Since the government of Sierra Leone did not protect the people of Sierra Leone from the RUF and later the AFRC rebels, the government by extension, should be liable for such violations of international human law and international humanitarian law.

In the Commission’s findings, forced displacement rated highest on the list of seventeen violations considered. The table below shows the total reported violations and percentages thereof:

<table>
<thead>
<tr>
<th>Violation Type</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forced Displacement</td>
<td>7983</td>
<td>19.8</td>
</tr>
<tr>
<td>Abduction</td>
<td>5968</td>
<td>14.8</td>
</tr>
<tr>
<td>Arbitrary Detention</td>
<td>4635</td>
<td>12.0</td>
</tr>
<tr>
<td>Killing</td>
<td>4514</td>
<td>11.2</td>
</tr>
<tr>
<td>Destruction of Property</td>
<td>3404</td>
<td>8.5</td>
</tr>
<tr>
<td>Assault / Beating</td>
<td>3246</td>
<td>8.1</td>
</tr>
<tr>
<td>Looting of Goods</td>
<td>3044</td>
<td>7.6</td>
</tr>
<tr>
<td>Physical Torture</td>
<td>2051</td>
<td>5.1</td>
</tr>
<tr>
<td>Forced Labour</td>
<td>1834</td>
<td>4.6</td>
</tr>
<tr>
<td>Extortion</td>
<td>1273</td>
<td>3.2</td>
</tr>
<tr>
<td>Rape</td>
<td>626</td>
<td>1.6</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>486</td>
<td>1.2</td>
</tr>
<tr>
<td>Amputation</td>
<td>378</td>
<td>0.9</td>
</tr>
<tr>
<td>Forced Recruitment</td>
<td>331</td>
<td>0.8</td>
</tr>
<tr>
<td>Sexual Slavery</td>
<td>191</td>
<td>0.5</td>
</tr>
<tr>
<td>Drugging</td>
<td>59</td>
<td>0.2</td>
</tr>
<tr>
<td>Forced Cannibalism</td>
<td>19</td>
<td>0.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>40,242</strong></td>
<td><strong>100.2</strong></td>
</tr>
</tbody>
</table>

The above table is adapted from the TRC report.

Interestingly, the Commission in its findings indicted Libya for its part in the training of a small number of Sierra Leonean dissidents, including Foday Sankoh, and its contribution

---

519 Ibid. Para 77-79.
520 Op cit note 516 Chapter 2 Para 88.
to the conflict. It also confirmed that the RUF benefited financially from Libya.\textsuperscript{521} The Commission further indicted Charles Taylor for being used as a conduit for the transfer of arms and ammunition to the RUF, especially when he became the president of Liberia in 1997. It further indicted Taylor’s NPFL fighters for committing serious atrocities against the Sierra Leoneans, chief amongst them being cannibalism.\textsuperscript{522}

The Commission noted the unassailable role played by ECOMOG during the conflict. Short of commending the ECOMOG troops, it noted its major contributions and weaknesses. It however noted the human rights violations perpetrated by some ECOMOG troops during the January 1999 invasion of Freetown by the AFRC/RUF. In concluding its findings on ECOMOG, the Commission states that “…it was ECOMOG that ultimately prevented the RUF from occupying the entire country. Sierra Leone owes a debt of gratitude to those that comprised the ECOMOG peace forces, in particular, the Nigerian troops who comprised the majority of the force”.\textsuperscript{523}

The Commission expressed the disappointment of Sierra Leoneans at the late intervention of the United Kingdom. It however, states that the British government has, since 2000, provided a sustained military assistance to Sierra Leone and that Britain was also instrumental in neutralising the West Side Boys in 2000.\textsuperscript{524}

The Commission equally indicted the international community for abandoning Sierra Leone in its “greatest hour of need during the early 1990s”. This is an echo of the failure of the international community to put into effect its implied responsibility to protect the people of Sierra Leone. It noted that the weakness of the UN mandate to its peacekeepers in 1999 led to the exploitation of the vulnerability by the RUF. However, it praised the UN peacekeepers for not abandoning the country and that the upgrading of the mandate from a Chapter VI to a Chapter VII mandate, demonstrated the UN’s commitment to securing peace in Sierra Leone.\textsuperscript{525}

\textsuperscript{521} Ibid. Para 375-377.
\textsuperscript{522} Ibid. Para 378-386.
\textsuperscript{523} Ibid. Para 396.
\textsuperscript{524} Ibid. Para 399.
\textsuperscript{525} Ibid. Para 401-411.
The Commission made recommendations that if implemented, will address the root causes of the conflict and will prevent the reoccurrence of conflict of such magnitude in Sierra Leone. The recommendation which covers a broad range of issues include the protection of human rights, establishing the rule of law, promotion of good governance, reorganisation of the security services, and addressing the special problems of women and children in armed conflict.526

Chapter three of the report documents the list of victims of different violations. A total of 11,991 victims were documented. Out of this number, 1012 were women and children who suffered acts of sexual violence and forced conscription.527 The quest for peace in Sierra Leone is not about revenge for the sufferings inflicted on the people of the erstwhile peace loving nation. There is no punishment that can be sufficient to redress the inhumanity that has been inflicted on the nation.528

The Commission’s creation while being hailed by some as a veritable component of a peace process is also being lampooned by others as representing the enthronement of impunity in Africa. It also speaks to the controversy that exists between retributive justice and restorative justice in the broader context of transitional justice. Transitional justice refers to a view of justice that is associated with states transiting from a violent political past to a more democratic era.529 This type of justice has been associated with “diverse nation-building projects and related local understandings of the rule of law and legitimacy”.530 The purpose of justice and reconciliation in a post-conflict situation is two fold: one is to establish the truth as to what happened before and during the conflict, thereby upholding justice for the victims and punishing the perpetrators.531 The other is to establish the rule of law, develop a human rights regime and strengthen the judicial system.532

526 See Chapter 3 of the Report.
527 Op cit note 516.
528 Op cit note 148 p. 65.
530 Ibid.
532 Ibid.
The end of the cold war played a significant role in the development of the concept of transitional justice. The meaning attached to it in the post World War II era, which was limited to human rights definition has been extended. The concept of transitional justice in the post cold war era involves a flexible understanding of the rule of law which is tied to a particular local community’s political condition. The rise and popularity of truth commissions has come to be associated with post-conflict situations, that any “newly minted” leader of a post-conflict state sets up one in order to show his/her democratic bona fides, and curry favour from the international community. In 2000, after Yugoslavia’s first free election Vojislav Kostunica announced the creation of such a commission to investigate crimes committed during the wars of Yugoslavia secession. Alejandro Toledo of Peru also announced the creation of a truth commission the same day he took over from Alberto Fujimori. While the South African truth commission is one of the easily recognized ones, it is definitely not the first and neither is it the last. The development of Truth Commission can be traced to 1974, with wide usage in Latin America in the 1980’s. Over 22 countries have set up Truth Commissions in the past 30 years though many have not received international coverage and recognition like that of South Africa. The increased interest in Truth Commissions can be attributed in part to the limited success in judicial approaches to accountability and the need to recognize past wrongs and confront, punish, or reform those institutions or persons that were responsible for such violations.

536 Ibid.
537 Ibid.
538 Ibid.
540 Ibid.
It is primarily used by traumatized countries to set historical records straight and it gives the new government the opportunity to investigate the crimes of past regimes.\textsuperscript{541} While the initial aims of restorative justice were the establishment of the rule of law and democracy, in the last decade following the change in the dynamics of conflicts, this aim shifted to the maintenance of peace and stability in a post conflict situation.\textsuperscript{542} A variety of conciliatory mechanisms are being employed in societies that were in political transition with the express aim of stabilizing those societies’ internal political orders.\textsuperscript{543} These processes include, rather than exclude, the political actors involved in the conflict which will be acceptable to all, so as to provide a basis for a stable transition.\textsuperscript{544} Truth Commissions have become so acceptable that in 2001, the world’s first Truth Commission Consulting firm - the International Centre for Transitional Justice - set up business in a Wall Street office suite in the United States.\textsuperscript{545}

The essential aspect of a truth commission is that it does not hold a traditional court trial. This lack of trial by the commission has been described as it’s “identity and a lightning rod for supporters and critics alike”.\textsuperscript{546} They do not seek to punish or to exact vengeance on perpetrators. Mostly, they are given the power to grant amnesty.\textsuperscript{547}

The dilemma is which course of action to take after the cessation of hostilities. Is it better to pursue the perpetrators and get justice or is it better to call for a national reconciliation through the Truth Commission system? As mentioned earlier, the dynamics of world conflicts have changed. Instead of inter-state, conflicts are more intra-states. At the end of conflicts, there is hardly any victors or vanquished. This therefore rules out the rendition of ‘victors’ justice’ system against the vanquished as was the case during the Allies defeat of the Axis power in World War II, giving rise to the Nuremberg trials. As Desmond Mpilo Tutu rightly pointed out in his defence of the South African Truth Commission, the situation in South Africa was different from post World War II

\textsuperscript{541} Op cit note 529.  
\textsuperscript{542} Ibid. 898.  
\textsuperscript{543} Ibid.  
\textsuperscript{544} Ibid.  
\textsuperscript{545} Op cit note 535.  
\textsuperscript{546} Ibid.  
\textsuperscript{547} Ibid p. 2.
situation: “[W]hile the Allies could pack up and go home after Nuremberg, we in South Africa had to live with one another”. The overall goal of the peace process is therefore taken into consideration to determine which course of action to take after the conflict. However, the Sierra Leone model of post-conflict justice is two-fold; the Truth and Reconciliation Commission model and the retributive model, namely; the Special Court.

Advocates of Truth Commissions have argued that the inability to punish perpetrators of atrocities is not a weakness of the system. This is because there is no guarantee in such a transitional government that the courts would be able to satisfy the required threshold of proof in a criminal trial. The Nuremberg trials of post World War II covered 85,882 individual cases but could only secured 7,000 convictions. It should also be kept in mind that most times, the outgoing regime goes to great length to destroy evidence that would have assisted in their prosecution. Also is a fact that sometimes, their loyalists might still be in office years after the regime has been ousted and can thwart the ends of justice. Truth commissions therefore, have comparative advantage of providing a historical record of what transpired. It offers the nation a chance at reconciliation. Its focus on the victims also offers opportunity for victims to be heard and psychologically expunge the trauma they could have been experiencing and most importantly, the threshold of proof is low.

Criticisms against the process seem to outweigh the praises. The controversy surrounding the truth commission raises a lot of questions; is it not a sacrifice of justice at the expense of peace and stability? Which one should be a top priority; justice strictly called or peace and stability? While it is possible that peace can lead to the advancement of democracy and rule of law, it is not evident that peacemaking alone in the form of short term conflict management, can lead to rule of law.

550 Ibid p. 3.
It has also been critiqued on the basis that truth is subjective and that history is murky, that even a well intentioned investigation cannot establish it.\textsuperscript{552} While this might be true of truth commissions, it can also be true of court trials. Another critique of the system is that it normally reflects the prejudices and agendas of its framers.

It has also been argued that the upsurge of truth commissions in the 1980’s was due to the belief then, that leaders and heads of states could not be prosecuted. However, given the “internationalization of human rights and the humanization of international law”,\textsuperscript{553} especially with the prosecution of Chile’s Augusto Pinochet and Belgium’s conviction of Rwandan Nuns for complicity in Rwanda’s genocide, the international community has proved that justice can still be achieved and hence, truth commissions should be done away with.\textsuperscript{554}

The proponents of truth commissions have risen in defence of the process. They insist that prosecution focuses mainly on one set of individuals, namely the perpetrators, while ignoring the victims. Truth commissions on the other hand focus on the victims.\textsuperscript{555} They also contend that the truth commission process and prosecution are not mutually exclusive but complimentary.\textsuperscript{556} Desmond Tutu points out that the cost of pursuing justice can be very expensive. In defence of the South African Truth Commission, he maintains that the country had to decide whether it will pursue prosecution at so much cost as against focusing on other priorities like health, education, housing and other fields.\textsuperscript{557}

The issue of reconciliation which is the hallmark of some of the truth commissions has also come under attack. The question normally asked is whether such a process can reconcile the divided society. A distinction needs to be made between individual

\textsuperscript{552} Op cit note 535 p. 5.
\textsuperscript{553} Op cit note 362.
\textsuperscript{554} Op cit note 535 p. 7.
\textsuperscript{555} Ibid p. 2.
\textsuperscript{556} Ibid p. 7.
\textsuperscript{557} Op cit note 548 p. 23.
reconciliation and advancing national or political reconciliation.\textsuperscript{558} The strength of a truth commission is in advancing national or political reconciliation. Sierra Leone is a state that is extremely in need of such national and political reconciliation, given the fact that the country was ravaged by 11 years of conflict and trust takes time to build. Individual reconciliation is however much more difficult to achieve through such a commission.\textsuperscript{559} It needs the involvement of other capacity building initiatives and social agencies for individual reconciliation to be achieved. The reconciliation aspect in the South Africa TRC could be traced to the religious undertone due to the involvement of Desmond Tutu and Alex Boraine, two “men of God” as chairman and deputy respectively.

The amnesty powers of truth commission have also been a subject of criticism as it has been said that it would encourage impunity.\textsuperscript{560} However, it has been argued that it would not encourage impunity because it is only granted to those who plead guilty and accept responsibility for what they did.\textsuperscript{561} The granting of amnesty creates a \textit{tabular rasa} effect so that the slate becomes wiped clean.\textsuperscript{562} Any other act of crime committed by the person whom amnesty was given will be subject to prosecution. It should also be understood that if the granting of amnesty is not included in the negotiations for a truth commission, the tendency is that the armed group or opposition might not lay down its weapons. However, the granting of amnesty does not extend to crimes regarded as crimes under international law and these include; crimes against humanity, genocide, torture, the crime of aggression, war crimes and other violations of the Geneva Conventions.

Despite the modern international advances in the area of human rights and international criminal law, not many of the so called perpetrators are brought to book or eventually convicted. The choice often faced today is not between truth commission and trials, but between truth commission and nothing.\textsuperscript{563} Experience around the world has shown that a legacy of past abuse does not easily fade away from memory.\textsuperscript{564} However, an effort by the officials to address these abuses can at least lead to an erasure of the pain and anger

\begin{flushright}
\textsuperscript{558} Op cit note 548 p. 33
\textsuperscript{559} Ibid.
\textsuperscript{560} Op cit note 535 p. 2.
\textsuperscript{561} Ibid
\textsuperscript{562} Ibid.
\textsuperscript{563} Op cit note 535 p. 8.
\textsuperscript{564} Op cit note 548 p. 40.
\end{flushright}
from the individual and national psyche. It also helps in instituting measures to avoid a reoccurrence of such atrocities. “Those who forget the past are doomed to repeat it”, these are George Santayana’s words at the entrance to the Dachau Concentration Camp Museum.\footnote{565}

5.3 The Sierra Leone Special Court

The setting up of the Sierra Leone Special Court was in keeping with the expressed abhorrence of impunity in the world. Although some of the events that resulted in the setting up of the Sierra Leone Special Court preceded the International Criminal Court Tribunal for Rwanda (ICTR),\footnote{566} the inspiration for such request could be said to have been drawn from the existence of the ICTR. The Special Court was set up at the request of the President of Sierra Leone to the UN Security Council, that it establish a Special Court to prosecute those responsible for committing crimes during the civil war in Sierra Leone in the 1990’s.\footnote{567} It should be noted that the Special Court is different from the ICTR and other International Criminal Tribunals established in the aftermath of violent conflict in a number of ways. However, for the purposes of this research, the discussion will be limited to the creation and jurisdiction. Whilst the ICTR was created through the UN Security Council Resolution,\footnote{568} the Special Court is a result of negotiation between the government of Sierra Leone and the UN Security Council.\footnote{569} Whilst the ICTR has jurisdiction over only international crimes,\footnote{570} the Special Court has concurrent jurisdiction with primacy over the domestic courts of Sierra Leone.\footnote{571} As part of its vision for the future and in keeping with the UN principle that amnesties cannot be

\begin{itemize}
\item \footnote{565}{Op cit note 548 p. 29.}
\item \footnote{566}{Statute of the International Criminal Tribunal for Rwanda (1994) (Hereinafter referred to at ICTR Statute). Art. 3}
\item \footnote{567}{Letter Dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations Addressed to the President of the Security Council, UN Doc. S/2000/786 (2000). Attached to this letter was an annex containing the letter the President of Sierra Leone and an enclosure entitled, “Framework for the Special Court for Sierra Leone”.}
\item \footnote{568}{SC Res. 955, UNSC, 3453\textsuperscript{th} Mtg., UN Doc S/RES/955 (1994).}
\item \footnote{570}{Op cit note 566 Article. 1.}
\item \footnote{571}{Sierra Leone Special Court Statue 2000, Article. 1.}
\end{itemize}
granted with respect to international crimes, including genocide, crimes against humanity, and other serious violations of international humanitarian law, Article 10 of the Special Court Statute provides that the granting of amnesty is not a bar to prosecution.572

The drive to prosecute war crimes in Sierra Leone came about in June 2000 when the RUF took some 500 UN peacekeepers hostage. The creation of the Special Court for Sierra Leone was accompanied by high expectations for a new approach to international justice based upon cooperation between the United Nations and the government of the country where the crimes to be adjudicated had occurred. It was hoped that this model, which builds upon the cooperative efforts of international and Sierra Leonean participants, would provide accountability in a way that could contribute to the establishment of the rule of law, the development of domestic judicial institutions, and would serve the needs of the people of Sierra Leone in the aftermath of the conflict. The Court, which is a hybrid body,573 has primacy over the Sierra Leone national courts.574

The court will be jointly administered by the United Nations and the Sierra Leone government. Given that the court will combine local and international jurisprudence, it is hopeful that the Special Court provides a new model for the prosecution of war crimes if the UN Security Council decides to set up a special criminal tribunal to try war crimes and crimes against humanity and any other crimes resulting from violent conflicts.

The Special Court is empowered to “prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.”575 In particular, the international crimes include crimes against humanity,576 particular war crimes applicable in non-international armed conflict in violation of Article 3 common to Geneva Conventions and

572 Ibid Article. 10.
573 The Statute provides for the adjudication of International and domestic crimes. See Articles 2-5 of the Statute.
574 Op cit note 571 Article 8.
575 Op cit note 571 Article 8.
576 Ibid. Article 2.
of Additional Protocol II,\(^{577}\) and other serious violations of international humanitarian law relating to civilians, civilian objects and child soldiers.\(^{578}\) Given the dynamics of the conflict, and given its applicable law, its “mixed” or “hybrid” character, the Statute also provides for the prosecution of criminal offences under Sierra Leonean law, including particular sexual offences against girls and the wanton destruction of property.\(^{579}\) Similarly modified to the dynamics of the conflict, and unlike most international criminal tribunals, the Court can prosecute accused persons over 15 years of age.\(^{580}\)

There are a number of limitations and qualifications to the Court’s jurisdiction. First, the Special Court does not automatically have primacy over domestic jurisdiction. Domestic courts can entertain applicable case but must defer to Court’s competence if it so requests.\(^{581}\) Second, while the Court has jurisdiction over the nationals of any State, it only extends to crimes committed on the territory of Sierra Leone.\(^{582}\) Third, prosecutions can only be brought in respect of acts committed “since 30 November 1996”.\(^{583}\) The temporal jurisdiction of the court is one of the sore points in its establishment, as many had hoped that the temporal jurisdiction would extend to crimes committed throughout the entire conflict so that all perpetrators could be brought to justice. Realistically, the temporal jurisdiction of the court should have been extended to cover the period when the conflict started, which was in March 1991.

The relationship between the Court and the peace process has also caused controversial jurisdictional difficulties. Initially, the question was whether the Court should recognise the blanket amnesty given to all parties under the 1999 Lomé Agreement, which were concluded by the Government of Sierra Leone and the AFRC/RUF junta. The UN Security Council Resolution 1315 stated clearly that “the amnesty provisions of the agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law”. This is further

---

\(^{577}\) Ibid. Article 3.
\(^{578}\) Ibid. Article 4.
\(^{579}\) Ibid. Article 5.
\(^{580}\) Ibid. Article 7.
\(^{581}\) Ibid. Article 8.
\(^{582}\) Ibid. Article 1.
\(^{583}\) Ibid.
enhanced by the provision of Article 10 of the Special Court Statute. By the wording of Article 10, crimes, which fall under Article 5 of the Statute, are not affected by the amnesty bar.

The Special Court has so far indicted a total of thirteen persons, including Charles Taylor, Major Johnny Paul Koroma, Sam Bockarie, and Foday Saybana Sankoh. However, due to the death of Sam Bockarie and Foday Sankoh, the indictment against them was withdrawn on December 8 2003.584

The question however, is whether the Special Court has contributed to the much desired peace in Sierra Leone.

5.4 Controversy between Regional and International Actors

Controversy exists in international discourse over whether regional and international actors which one is best suited to intervene in a situation of intra state conflict.585 Despite the international nature of the conflict in Sierra Leone, it was apparent that the international community, acting through the UN failed to respond in time. The earlier intervention by ECOWAS speaks to the fact that sometimes, regional or sub regional organisations might be better placed to act in such intra state conflicts. It is in the immediate interest of regional/sub regional actors to see that conflicts are contained since they have the advantage of understanding the dynamics involved better than international actors. However, the risk involved in relying on local actors is that it can lead to the pursuit of parochial and self-centred objectives.586 West Africa is ahead of other African regions in establishing a sub regional security mechanism to manage conflicts.587 The euphoria of African independence in the early 1960s, initially led African states placing great hopes in the UN, believing that it would deal with all the security problems on the

584 See Case No SCSL-2003-02-PT and Case No SCSL-2003-04-PT.
586 Op cit note 146 p. 16.
The experience of superpower manipulations during the Congo crisis of 1960-1964 led many African governments to become pragmatic and less trusting of the UN’s ability to manage regional conflicts. It is perhaps not equally surprising that the UN did not lift its finger to assist and resolve conflicts in Africa, especially during the heydays of the OAU. The perhaps because the OAU refused to deal with matters considered internal – such cases like, the Sudan civil war which started in the 1950s, the Nigerian civil war of 1967-1970, and the massive human rights violations in Uganda during the presidency of Idi Amin.

Notwithstanding the risk involved in relying on regional actors, they remain critical entry points for the UN to supplement local conflict management initiatives. With the change in the dynamics of conflicts in Africa, neither international, nor regional actors can intervene alone. However, the intervention should be organised in such a way that international actors who have better organisation, cannot replace and undermine regional initiatives. Despite the obstacles involved in regional and international collaboration in peace missions, the UN and ECOWAS worked together relatively well in Sierra Leone. On a sub regional level, it can be argued that sub regional organisations are more competent than even regional organisations to handle field security operations. This is principally because the sub regional organisation’s force is expected to understand the culture, the terrain and all other issues relevant for a successful peacekeeping. Given the interconnectedness of African conflicts, regional approaches to peacekeeping would be more advantageous than international approach. This interconnectedness clarifies the need for a regional security framework and the establishment of an African security mechanism. The former ECOMOG Force Commander, General Victor Malu, observed that regional peacekeeping is more effective than the UN peacekeeping.

588 Op cit note 225 p. 320.
589 Ibid.
590 Ibid.
592 Ibid.
593 Op cit note 55 p.231.
594 Op cit note 465.
595 Ibid.
aptly captured the importance of regional actors when it stated that “it has long been acknowledged that neighbouring states acting within the framework of regional or sub regional organisations are often (but not always) better placed to act than the UN”. Since it usually takes about three months to fully deploy UN troops to a particular region in conflict, it is therefore important that the UN collaborate with regional forces in order for a quicker on the ground operations. External donors tend to emphasise African responsibility for the continent’s security, and would prefer to assist through capacity building instead of direct intervention in the continent. The effect of the Somali debacle where the United States peacekeepers were killed still leaves a sour taste in the mouth of the US. The efforts of the regional organisations in the area of maintaining peace and security need not contradict the UN’s efforts and it does not absolve the UN of its primary responsibility for international peace and security.

The establishment of a UN office in Senegal, West Africa, and the appointment of Ahmedou Ould-Abdallah as the Special Representative of the UN Secretary-General in 2002 to head that office has helped to strengthen the cooperation between ECOWAS and the UN. The recognition that ECOWAS has played a vital role in the maintenance of relative peace and security in the region pre-supposes that, the international community is obligated to ensure that regional forces such as ECOMOG be well provided for, financially and logistically, to accomplish their tasks. While the UN might not want to send in its peacekeeping force where the regional or sub regional force is already on ground, the UN can subsume the force under its operations as happened in Sierra Leone, or, it may take over the funding of such regional/sub regional operations. The UN Charter does not prohibit the financing by the UN of a regional peacekeeping force.

Recognising the enormous task of maintaining international peace and security, Article 52(1) of the UN Charter permits regional organisations to act in the maintenance of peace
and security in matters that affect their regions. The question that needs to be asked is; does ECOWAS qualify as a regional organisation? One may argue that Security Council Resolution 788 of 1992, which imposed an embargo on Charles Taylor’s NPFL and called upon ECOWAS to continue its efforts to resolve the conflict, brought ECOWAS under the purview of a regional organisation.604 Granted that there is no express provision in the ECOWAS Treaty for it to involve in matters of peace and security, in 1978, the Heads of States of ECOWAS, recognising that economic integration cannot be achieved in a non-peaceful environment, adopted the Protocol on Non Aggression.605 When the RUF insurgency reared its head in 1991, it was necessary to take adequate steps to nip it in the bud and the regional organisation or a single state acting on its behalf is best suited for the action. This would have been followed by a UN operation with a robust Chapter VII mandate.606

The pertinent question one might ask at this stage is, if ECOWAS is entitled to determine the existence of a threat to international peace and security and hence embark on an enforcement action without recourse to the UN Security Council.607 Article 39 of the UN Charter empowers the UN Security Council with the determination of such threats. The role of the regional organisation is to bring to the notice of the UN Security Council such matters if it feels such a situation poses threats to international peace and security in its region.608 However, there is still a grey area in the understanding where the UN Security Council delays in acting or does not act at all. Going strictly by the wordings of Article 53, one is left with no doubt that “unilateral” action by regional bodies is prohibited.609 The practice is however, different from the legal prescription.

5.5 Lessons Learned

605 Op cit note 138.
606 Op cit note 69.
607 Op cit note 372 p. 411
608 Article 52 of the Charter.
609 “…But no enforcement action shall be taken under regional arrangement or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state…”
There is no gainsaying the fact that ECOWAS intervention in Sierra Leone has yielded both positive and negative lessons in the continuous quest to better peacekeeping efforts in the world and Africa in particular. The sub region’s development of its security mechanism is the first in Africa. The ECOMOG intervention in Sierra Leone underscores the continuous cooperation between UN peacekeeping force and regional peacekeeping force.\(^{610}\) With the interdependency of security in West Africa, the importance of a regional approach to peacekeeping has been highlighted by the Sierra Leone experience.\(^{611}\) A UN Inter-Agency Mission to West Africa in May 2001 recommended that the UN Security Council adopt such an approach to managing the sub region’s interconnected conflicts.\(^{612}\)

A positive aspect of the Sierra Leone conflict is its reinforcement of the African concept of \textit{ubuntu} and brotherliness. As emphasised by Nwolise in his analysis of the effects of the Liberia crisis on West Africa, ECOMOG’s actions in that country have demonstrated to the whole world that Africans can be their brothers’ keepers.\(^{613}\) The actions of ECOMOG in Sierra Leone clearly drove that lesson home. The development of an institutionalised mechanism for crisis prevention, management and resolution by ECOWAS was as the result of the Liberia and Sierra Leone conflicts.\(^{614}\) The crisis has also demonstrated to all, how the greed or obstinacy of one man or a group of men can lead a country downhill. Despite the fact that the RUF failed in its campaign of terror, the country and indeed the continent, need to pay more attention to the frustration that energizes the disenfranchised and marginalised citizens and its youths who are becoming politically active.\(^{615}\) The lessons of the RUF’s agenda and phenomenon should not be lost

\(^{610}\) See Agenda for Peace, where Boutrous Boutrous-Ghali argued for regional security arrangements to be used in order to lighten the heavy burden on UN’s peacekeeping efforts. Available at \url{http://www.un.org/Docs/SG/agpeace.html} last visited on November 17 2005.

\(^{611}\) Op cit note p. 18.


\(^{613}\) Op cit note 463 p. 67.


\(^{615}\) Op cit note 95 p. 16.
on other African countries with such restive and youthful population.\textsuperscript{616} While ethnicity and regionalism may not have been a significant factor in the early stages of the conflict in Sierra Leone, subsequent events tend to support the view that this factor was a powerful undercurrent in the conflict, and needs to be properly addressed.\textsuperscript{617} For instance, a prominent northern politician is quoted as saying that when the RUF attacked a northern town in May 1997, everybody was killed, with the exception of one woman who spoke Mende.\textsuperscript{618} Violent conflict, even in the outrageous form exhibited by the RUF and the AFRC, is an indication of a much deeper malaise.\textsuperscript{619} The failure of the UN in Rwanda marks a watershed in international peacekeeping, as its upshot witnessed an increase in the clamour for a more robust mandate to be given to UN peacekeeping missions in order for them to respond adequately should the occasion arise, especially where the civilian population is under threat.\textsuperscript{620} Probably, the apparent lack of concern by the UN in Rwanda must have influenced ECOWAS in its decision to intervene without getting a UN Security Council approval. The UN’s failure in Rwanda and the subsequent allegations of complicity in the genocide levelled against some of the Western countries further fuelled the continued call for “African solutions to African problems.”\textsuperscript{621} ECOWAS’ intervention in Sierra Leone can be interpreted in the light of the above.

It is interesting to note that due to the change in the dynamics of conflict in Africa, the African Union (successor to the OAU) has jettisoned the OAU’s strict observance of the non intervention principle and instead opts for intervention in cases of genocide, war crimes, and crimes against humanity. However, the Constitutive Act also in its principles gives member states the prerogative to intervene in cases of genocide, war crimes, or other gross violations of human rights.\textsuperscript{622}

\textsuperscript{616} Ibid.  
\textsuperscript{617} Op cit note 94 p. 26.  
\textsuperscript{618} Ibid. Foday Sankoh was a Temne, but many of his fighters were Mende.  
\textsuperscript{619} Op cit note 144.  
\textsuperscript{620} Op cit note 77 p. 27.  
\textsuperscript{621} Ibid.  
Conflict erodes trust in people, communities and government institutions. To recapture the pre-conflict peace situation is always a very trying effort on the part of all the stakeholders. If the effects of conflict are not adequately addressed, it might result in situations of “radicalised identity politics, manipulation, and grievances – which in turn can lead to renewed violence, human rights abuses and conflicts”. The inclusion of justice and reconciliation in almost all new peace agreements drafted recently have been seen as an integral part of peacebuilding and governance. It is however arguable whether the mere provision or reference to reconciliation can actually lead to reconciliation. What needs to be done perhaps is the crafting of a variety of confidence and trust building mechanisms which will be aimed at bringing parties together in a more congenial social and economic forum. This can achieve better reconciliation than what the Truth and Reconciliation Commissions are presently doing. Instead of hauling persons to these commissions to tell the “truth” and be “reconciled”, the commissions, which should be aptly named “Reconciliation Commissions”, should craft such mechanisms as mentioned above and also oversee their implementation. From a human security perspective, a community centred approach involving as many people as possible is essential to complement the justice and reconciliation processes.

The deployment of peace enforcement and peacekeeping forces, while essential in the termination of conflicts, do not sufficiently cater for long term enduring peace. For a longer lasting peace to be achieved, the concept of peacebuilding should be addressed in a multidimensional manner in order to avoid a relapse to conflict. The Sierra Leone case study has revealed that military intervention is not enough to end conflict whose basic cause is collapse of state structures, but, it is a necessary ingredient in engaging the road to ending the conflict. At the same time, the conflict also exposed the non-holistic nature of conflict management which postulates that a conflict can be terminated by negotiating with one’s enemy and that parties to the conflict should be parties to the

---

624 Ibid. p. 66.
625 Ibid p. 61.
626 Ibid.
627 Op cit note 144.
Conflict solutions should not be treated as a one size fits all approach. Each conflict should be analysed given its own unique dynamics before adopting the “best” approach possible. However, this decision is not as easy as it sounds. Since the conflict began in the failure of governance, dissolution of the economy and the complete breakdown of the social structure of the Sierra Leone state, these elements must be restored in order for peace to be restored.

The intervention by ECOMOG and its inability to effectively defeat the RUF/AFRC insurgents has also revealed the extent to which the operational capability of the regional/sub regional peacekeepers is lacking. The ill equipped nature of the ECOMOG troops made it difficult for them to defeat the RUF/AFRC alliance that resorted to guerrilla war tactics. For an effective regional impact in peacekeeping and peace enforcement, the military needs to be trained both in conventional warfare tactics and guerrilla war tactics. The criticism of Nigeria’s domination of ECOMOG calls for the diversification of troop contribution. However, the domination dilemma might be difficult to dispense with if the other ECOWAS states, do not contribute troops, as is often the case. Given that, it might be difficult to think that Nigeria would not be in domination of the military High Command when it provides 90% of the troops.

The lesson for the UN Security Council in failure to act in conscience shocking situations is firstly, that concerned states or regional organisations may flout the norm of collective security and intervene unilaterally. Secondly, if a coalition of states or a state carries out the intervention having met all the threshold of legitimacy with a preponderance of international opinion support, then the stature and credibility of the UN will be questioned. The peacekeeping efforts in Sierra Leone also revealed that it is possible to

---

628 Ibid.
629 Ibid.
631 Ibid.
have a coexistence of UN and regional forces if proper arrangement is made regarding the division of labour between both organisations.\textsuperscript{633}

It is better for the UN to intervene or give authorisation where necessary in order to curb the tendency of abuses that might arise from “unilateral” regional initiatives. In order to forestall the explosion of conflict, a regional organisation like ECOWAS should have a head-start in condemning acts of human rights violations and other violations that might eventually lead to a full scale war.\textsuperscript{634}

\textsuperscript{633} Op cit note 225 p. 342.
\textsuperscript{634} Op cit note 372 p. 417