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Justice and peacebuilding  
in post-conflict situations:  
An argument for including  
gender analysis in a new  
post-conflict model



*By Lesley Connolly*

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# Justice and peacebuilding in post-conflict situations: An argument for including gender analysis in a new post-conflict model

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## **ACCORD**

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## **About the author**

Lesley Connolly is a Junior Research Fellow in ACCORD's Knowledge Production Department, with a particular focus on peace and security in Southern Africa. Connolly holds an M.Phil degree in Social Justice from the University of Cape Town in South Africa. In her thesis, Connolly focused on Sierra Leone's transition to democracy. She also holds a B.Soc.Sci in Political Science, Sociology and History and a B.Soc.Sci (Honours) in Transitional Justice, both from the University of Cape Town. Her areas of interest include transitional justice, peacebuilding, post-conflict development and gender issues in sub-Saharan Africa. This paper is a continuation of the research that Connolly did for her Masters thesis.

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ACCORD

Private Bag X018

Umhlanga Rocks, 4320

South Africa

Language editing: David Barraclough

Quality control: Petronella Mugoni and Sabrina Ensenbach

Layout and design: Keegan Thumberan

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**List of Acronyms**

AFRC	Armed Forces Revolutionary Council
APC	All People’s Congress
CDF	Civil Defence Force
DDR	Disarmament, Demobilisation and Reintegration
ECOMOG	Economic Community of West African States
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
NaCSA	National Committee for Social Action
NGO	Non-Governmental Organisation
NPRC	National Provincial Ruling Council
RUF	Revolutionary United Front
SLANGO	Sierra Leone Association of Non-Governmental Organisations
SATRC	South African Truth and Reconciliation Commission
SCSL	Special Court for Sierra Leone
SLTRC	Sierra Leone Truth and Reconciliation Commission
SLPP	Sierra Leone People’s Party
TRC	Truth and Reconciliation Commission
USA	United States of America
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone

### **Abstract**

After the 1991–2001 civil war, Sierra Leone employed a new model of transitional justice, concurrently utilising a Truth and Reconciliation Commission (TRC) and a Special Court. Encouragingly, this process incorporated special gender considerations, by expanding the mandate of both the TRC and Special Court to address sexual violence and encourage women to come forward and testify without fear of retribution. Both these institutions have been praised for successfully fulfilling their specific mandates and for aiding the country's transition to peace. However, some parts of Sierra Leone's society were left largely untouched by the process, as evidenced by widespread discrimination and gender inequalities which still occur today. It is proposed that this is not just a fault of Sierra Leone's approach, but that it is an inherent flaw of the transitional justice process as a whole as the process is not suitable for use in addressing the root causes of conflict. For this reason, it is argued that a new mechanism of transitional justice, one which incorporates a peacebuilding process, would better address the needs of a post-conflict society. This would be done by focusing on transformation and promoting a long-term sustainable peace.

### **Introduction**

Countries in transition face difficult choices when deciding how to deal with the violence and conflict of their past in a way that increases their chances of a better, conflict-free, future. The transition may be from armed conflict to a peaceful state (e.g. Burundi, Mozambique, Rwanda and Sierra Leone), from dictatorship to democracy (e.g. Argentina and Chile), or a combination of both, as was the case in South Africa (Moghalu 2009). Francis (2000:357) argues that 'peace agreements...do not in themselves end wars or bring about lasting peace. In most cases, pre-war conditions and the war mentality jeopardize the prospects of a consolidated peace and post-war reconciliation'. The fact that half of all peace accords tend to fail within the first five years, the so-called conflict trap, highlights the need to address the root causes of conflict in order to prevent a recurrence. However, there is also the issue of justice, accountability and truth in post-conflict societies. The notion of dealing with the past after violent conflict has been defined as transitional justice. Importantly, the concept of transitional justice, as its name hints, closely links transition with the pursuit of justice. It is based on the assumption that in order to move on politically and socially, some form of dealing with gross human rights abuses, crimes against humanity and war crimes is necessary.

Sierra Leone introduced a new transitional justice mechanism by utilising both a TRC and a Special Court which operated concurrently. Both institutions had individual mandates, but sought to complement each other in the post-conflict development process (Nowrojee 2005). At the time, the combination of retributive and restorative justice into one process was considered a 'best-practice' model for international justice. The civil war in Sierra Leone was one plagued by gender and sexual violence, said to be rooted in the widespread inequality inherent in the country before the conflict. The combined transitional justice mechanism adopted by the country aimed to address these silent and somewhat invisible gender-based inequalities and injustices which were present in the country (Moghalu 2009). It was believed that the inclusion of gender issues in post-conflict justice and development processes would help to condemn these horrors and hold perpetrators accountable for their past brutality (Nowrojee 2005). Nevertheless, despite the innovation this model introduced, there were several challenges it faced. Notably, there were still groups of the social strata, particularly women, who were largely untouched by the process. There was what Lederach (1999) terms a 'justice gap', meaning that the international community did not adequately integrate a peacebuilding framework into the transitional justice process to ensure a reduction in direct violence and ensure social and economic justice.

This paper examines the case study of Sierra Leone and the relationship between justice and peacebuilding. It illustrates how, even with the new transitional justice mechanism used, the elements of peacebuilding which aim to address everyday structural violence and inequality, specifically with regard to gender, were excluded. Ultimately, this paper argues for a more integrated approach to justice, one which incorporates truth, accountability and peacebuilding, if all the needs of a post-conflict society are to be addressed.

### **The introduction of transitional justice**

Transitional justice seeks to provide a framework for democratic transition. It aims to restore or create the conditions for peace and stability, through a process in which factors such as truth, accountability and reconciliation are central. Transitional justice is relevant to a time and process of change, for instance following a key transformative event such as a peace accord, a power-sharing deal, or elections (Rotberg 2000). This period usually follows an era of violence and mass human rights violations brought about as a result of dictatorship style of rule, an apartheid-type system, genocide, or civil war, which leaves the society divided and with many survivors still suffering (Moghalu 2009). This process requires a comprehensive set of strategies

that must deal with the events of the past, but must also look to the future, in order to prevent a recurrence of conflict and abuses. These strategies need to include elements of truth and justice. They examine the ways in which societies address legacies of past criminal regimes which committed mass violations of human rights, in order to build more democratic, just and peaceful societies (Bhargava 2000).

The first notion of transitional justice can be traced back to the International Military Tribunal at Nuremberg<sup>1</sup> after World War II (WWII), when top Nazi officials were prosecuted and 'de-nazification' programmes were introduced (Teitel 2000). At that time, there was a view, in the United States of America (USA) in particular, that criminal justice was the best method to deal with perpetrators. However, following the Nuremberg Trials, some analysts criticised the process as a travesty of justice; a case of victor's justice involving the selective prosecution of individuals only from the 'losers', whilst no prosecution of individuals who committed acts of equal intensity from the 'winning' governments were indicted (Minow 1998). As a result of the critique of Nuremberg and the changing nature of the international arena, a new accountability debate emerged, one which placed more emphasis on truth than on justice. This position ushered in the rise of truth commissions. A truth commission is a body set up to investigate a past history of violations of human rights in a particular country. This can include investigations of violations by the military, other governments and opposition forces (Hayner 1995). Truth commissions are often tasked with coming up with an 'official truth' of what happened during the conflict. This 'official truth' can help inoculate future generations against revisionism and empower citizens to recognise and resist a return to abusive practices (Van Zyl 2005).

Truth commissions also serve to provide recommendations regarding legal, administrative and institutional measures that should be taken to prevent the recurrence of human rights abuses by the governments of the countries involved (Crocker 2000). These could include governments adopting vetting programmes, where they ensure that persons responsible for human rights abuses are either removed from public service or prevented from being employed in government institutions (Van Zyl 2005). In addition, truth commissions can make recommendations on what reparations a government should provide to victims (Crocker 2000). Under international law, states have an obligation to provide reparations to victims of gross violations of

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1 This option comprised prosecution-based court trials used after WWII, for trying prominent members of the political, military and economic leadership of Nazi Germany. The Nuremberg trials were held in Nuremberg, Germany, from 1945 to 1946. The trials were conducted by members of the Allied Forces.



human rights. These reparations can take many forms, including material assistance (e.g. compensation payments, pensions, bursaries and scholarships), psychological assistance (e.g. trauma counselling) and symbolic measures (including the erection of monuments and memorials and observance of national days of remembrance) (Teitel 2000). The first example of a truth commission was the National Commission on Truth and Reconciliation of Chile which was established in 1991 to deal with some of the abuses of the Pinochet regime (Hayner 1995). The Commission was mandated to examine the acts of the past. What was particularly significant about this process was that after the Commission had completed its work, the National Corporation for Reparations and Reconciliation was established to continue the search for the remains of the missing persons. This was done to resolve cases left open and to organise the Commission's files so that they could be made available to the public.

A third role or function of truth commissions is to seek to promote reconciliation in the post-conflict society (Villa-Vicencio 2000). Reconciliation is vital to building a peaceful and stable society. Societies that emerge from periods characterised by mass atrocities and widespread conflict often have deep suspicions, grievances and animosities. These divisions almost always endure after the period of conflict, creating the potential for a return to violence and a recurrence of human rights abuses (Bhargava 2000). This is particularly true where conflicts were underpinned by an identity dimension, in which religion, language, race or ethnicity were used to sow division and justify human rights abuses (Kiss 2000). The South African Truth and Reconciliation Commission (SATRC) was the first commission to attempt to rectify the balance between truth and reconciliation. The SATRC added some unique features to the transitional justice process, including the new element of a conditional or earned-amnesty process. The Amnesty Committee, one of the three committees set up by the SATRC<sup>2</sup>, was established to adjudicate and facilitate the granting of amnesty to persons who, in the committee's opinion, fulfilled the criteria laid down in the Promotion of National Unity and Reconciliation Act 34 of 1995. These criteria were: individuals must themselves apply for amnesty for acts which they had committed; group applications were not permitted; individuals had to provide full disclosure about their role in the act and they had to illustrate that the act was politically motivated (see The Promotion of National Unity and Reconciliation Act 1995).

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2 The SATRC had three main aims: promoting reconciliation, uncovering the truth about the past and establishing some form of accountability and amnesty for past abuses. In order to fully achieve these goals, the SATRC set up three committees with mandates to pursue these aims. They were: the Human Rights Violations Committee, the Reparations and Rehabilitation Committee and the Amnesty Committees.

Despite the many successes of the South African process, in the last decade there has been a widespread abandonment of amnesties in the international human rights community. This has involved a move back towards retributive justice in the form of trials. Examples of this are the United Nations (UN)-run International Criminal Tribunal for the former Yugoslavia (ICTY) where perpetrators from the 1990s Balkan wars were prosecuted and the International Criminal Tribunal for Rwanda (ICTR) which prosecuted perpetrators from the 1994 Rwandan genocide. This illustrates the third transition in international justice (Bickford 2005).

### **The move towards retributive justice**

International accountability mechanisms have been developed to respond to a wide range of crimes in conflicts involving massive casualties. Unfortunately, they are often only able to pursue a small number of perpetrators. The International Criminal Court (ICC) in The Hague is currently engaged in investigations of situations in five African countries – the Central African Republic, the Democratic Republic of the Congo, Sudan, South Sudan and Uganda. While an international court was established for Rwanda and Yugoslavia, the first hybrid court, combining both international and domestic judicial processes, was established for Sierra Leone. The mandate of these tribunals is to prosecute those who have perpetrated massive human rights violations, but only focusing on those who bear the most significant responsibility. Tribunals use the theory of retributive justice (Sriram 2009). This theory emphasises that no one is above the law and no one should be condemned or sanctioned outside the legal procedures. The rule of law creates the community in which each member is both fenced in and protected by the law and its institutions. To bring violators of mass human rights under this system implies the belief that these mass abuses can and should be treated as punishable criminal offences perpetrated by identifiable individuals (Minow 2000). Advocates of criminal justice believe the process shows a commitment to redress the harms of the past, establishes a formal system which provides a warning to perpetrators that law breaking will not be tolerated and provides a sense of justice for victims which is often seen as lacking from truth commissions (Teitel 2000).

Ever since the Nuremberg Trials, the international community has established treaties that prohibit and punish international crimes such as genocide, serious breaches of the Geneva Conventions and torture. Certain human rights violations and violations of international humanitarian law are infringements of *jus cogens* obligations. States are obliged to prosecute or extradite individuals suspected of perpetrating these crimes (Sooka 2009).

There are a number of arguments for using prosecutions in post-conflict situations. Firstly, justice (and accountability through punishment) has a deep psychological impact on individuals and, by extension, on societies. When justice is seen to be done, it tends to provide a catharsis for those who have been physically and psychologically scarred by violations of international humanitarian law. Secondly, trials establish responsibility for crimes adjudicated, thereby negating the risk of a belief in collective guilt. This often allows other members of the group to be spared the weight and shame of guilt for crimes they did not commit and they are therefore free to participate in national life on equal terms. The problem with this form of justice, however, is that courts may not always be truly independent or impartial (Moghalu 2009).

Sierra Leone sought to get around the dilemma of truth commissions versus criminal tribunals by having both a TRC and Special Court operating concurrently. Both institutions had individual mandates, but sought to complement each other in the post-conflict development process (Nowrojee 2005). At the time, these two co-existing mechanisms were seen to provide a 'best practices' model for international justice, combining both retributive and restorative justice in one process. They also aimed to vocalise and highlight the fact of widespread sexual violence in Sierra Leone, rather than treat it as a silent and invisible crime, as had been the case in a number of conflicts and mass atrocities elsewhere (Moghalu 2009). It was thought that the inclusion of gender considerations in the post-conflict and development world of international justice would help to condemn these horrors and hold perpetrators accountable for their acts of brutality. These two institutions offered a vital opportunity to examine and fully record crimes of sexual violence inflicted upon women, while providing an opportunity to address the gender inequalities present in society and in the application of the law in Sierra Leone (Nowrojee 2005).

### **Social inequality in transitional justice and the neglect of gender**

Despite the inclusion of gender commissions, amnesty, reconciliation and reparations in the field of transitional justice, there was still widespread neglect of social justice and gender issues during implementation of these processes. The need to address the root causes of conflict and violence links to arguments made by key authors<sup>3</sup> who argue that by looking at the structural dimensions of a society, one can highlight the underlying causes of conflict and the factors that have legitimised these causes over time. If one can identify these elements in a society, they can be transformed so as to eliminate the potential for future

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3 Pablo De Greiff (2009), John Lederach (1997), Rama Mani (2002) and Roger Duthie (2009)

violence. In addition, by addressing the structural oppression of people, one would be better able to make recommendations for ensuring a more egalitarian society, which promotes sustainable peace and social justice (Duthie 2009).

This analysis builds on Johan Galtung's work, where he asserts that if underlying structural violence is not addressed after conflict has ceased, peace is unlikely to be sustainable, or in fact, universal (in LaPlant 2008). Galtung describes peacebuilding as an action where efforts are made to identify the 'structures of peace'; structures which must be found and removed in order to address the causes of war and offer alternatives to conflict in situations where war may occur (Galtung 1969). Peacebuilding, as Lambourne elaborates, is a process designed to 'promote the secure and stable lasting peace in which the basic human needs of the population are met' (Lambourne 2004:15). Furthermore, according to Rebecca Spencer, 'peacebuilding calls for new attitudes and practices which are flexible, consultative and collaborative in nature and which operate with an understanding of the root causes of conflict' (Spencer 2001, cited in Lamborne 2040:3). Peacebuilding is a process which is directed at building structural and cultural peace (Galtung 1969).

Structural violence often takes the form of poverty, marginalisation and a widespread lack of capabilities; it does not always present as physical violence, especially with regard to traditionally marginalised groups. Furthermore, marginalisation, poverty, ill health and social, physical and sexual abuse are characteristic of societies with high levels of gender inequality. Research shows that violence against women often soars during and after political conflict (Parkhurst 2004). An increase in incidences of domestic violence is often symptomatic of societies that have become stressed and hardened to violence as a result of war. Increased violence also occurs when no alternatives or gainful means of livelihood are provided to men who may feel emasculated by the end of conflict and the loss of their only source of identity and meaning, gained through their involvement in violent conflict (Mani 2002a).

When it comes to issues of everyday violence specifically, some societies in transition have tried to include in their processes a specific gender committee, or a gender perspective, or have provided platforms and programmes specifically for the vulnerable as a way of examining the 'gendered' aspects of everyday violence. However, there is much criticism about the level of analysis in transitional justice mechanisms and post-conflict policy and the resultant lack of transformative potential for a better future for women (Valji 2010). Lederach argues that one needs to integrate the fields of conflict transformation, restorative justice and socio-economic development so as to create a more succinct process which can promote sustainable, long-term peace

(Lederach 1997). Justice, both legal and socio-economic, should not be seen as mutually exclusive to reconciliation and peacebuilding. All three areas need to be integrated in order to fully move a society forward (Lambourne 2004). The value of looking at gender issues and notions of everyday and structural violence in the Sierra Leone process would have been that it could have eradicated some of the stigma surrounding sexual violence. Furthermore, the process would have attempted to start correcting the inequalities present in Sierra Leonean society; inequalities which existed before the conflict and subsequently became enhanced through violence.

### **The Sierra Leone conflict and peace process**

The conflict in Sierra Leone officially started on 23 March 1991, when a group of trained fighters belonging to the Revolutionary United Front (RUF), led by Foday Sankoh, launched a rebellion against the All People's Congress (APC) government. The intention of the RUF was to remove Joseph Saidu Momoh and his government from power. Momoh had been in power since 1967, during which time he tolerated wholesale corruption and led the country to complete economic collapse. With the state unable to pay its civil servants, those desperate enough ransacked and looted government offices and property. The government reached its lowest point when, by the late 1980s, it could no longer pay school teachers and the entire education system in Sierra Leone collapsed. By 1991, Sierra Leone was one of the poorest countries in the world, despite having ample natural resources, including diamonds, gold, bauxite, iron ore, fish, coffee and cocoa. The RUF was able to draw on the discontent emanating from this environment to garner widespread support in the country. The RUF was also supported by external actors and patrons such as presidents Muammar Gaddafi of Libya, Blaise Compaoré of Burkina Faso and Charles Taylor of Liberia, who provided training, ammunition, funding and fighters to support the RUF rebels (Gberie 2004).

It took the RUF one year to remove President Momoh and his APC government from power through the staging of a military coup which succeeded in April 1992. The RUF then established the National Provisional Ruling Council (NPRC), installing Captain Valentine Strasser as its chairman (Hayner 2007). The overthrow of the deeply corrupt APC regime was immensely popular in the country, not because people preferred the young and inexperienced officers of the RUF, but rather because Sierra Leoneans were fed up with more than two decades of one-party dictatorship (Abrahams 2004).

In 1996 the NPRC kept its promise and held the first multiparty elections in Sierra Leone in decades. However, the election campaign was marked by brutal violence and widespread intimidation, including, remarkably, the amputation of limbs of some people. This was done in an attempt to prevent them walking to voting stations, or marking the voting form with their hands (Human Rights Watch 2004). These outrageous attacks were conducted by both the NPRC and the RUF. The NPRC was defeated by the Sierra Leone People's Party (SLPP), which won the legislative vote overwhelmingly in the country's southern and eastern provinces. The SLPP was headed by Ahmad Tejan Kabbah, who was sworn in as president on 29 March 1996. However, yet another coup, this one exceptionally violent, struck Sierra Leone on 25 May 1997. This coup, which was staged by breakaway army forces, saw the overthrow of Kabbah. The rogue officers freed Corporal Johnny Paul Koroma from prison<sup>4</sup> and made him head of the newly-formed Armed Forces Revolutionary Council (AFRC).

The usurper AFRC regime was deeply unpopular with the majority of the population and the international community never recognised it. This new regime banned protests and political parties, suspended the constitution and invited the RUF to join the government (Besada and Goetz 2010). There was widespread looting of property, vandalism, raping of women and mass killings during this time. Over 100 people were reportedly killed during the first week of the new regime's tenure. The National Treasury, parts of the Bank of Sierra Leone and other important public buildings were burnt down. This was a signal that the formal bureaucratic state structures, particularly those representing accountability, were no longer functional in the country (Gberie 2004).

In February 1998, a combination of Nigeria-led Economic Community of West African States Monitoring Group (ECOMOG) troops and civilian militias intervened in Sierra Leone, recaptured Freetown and restored Kabbah's government to power. Despite this change, much of the country still remained in rebel hands, most notably at this point, in the northern parts of the country (Besada and Goetz 2010). On 6 January 1999, the AFRC attempted to recover power through another coup. This coup resulted in massive loss of life and destruction of property in Freetown and its environs, as a result of an operation referred to as 'Operation No Living Thing'.<sup>5</sup> An estimated 3,000 people were killed, women and girls were raped, children were abducted and subsequently

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4 He was in prison for a failed attempted coup which had been staged the previous year.

5 'Operation No Living Thing' was one of the names of the rebel offensives. Others were 'Operation Burn House', comprising waves of arson attacks and 'Operation Pay Yourself', a programme of looting. 'Operation No Living Thing' was the most sinister and destructive of all.

conscripted, limbs were amputated and much property in and around Freetown was destroyed (Hayner 2007). This attempted seizure of power was eventually ended by armed intervention led by the ECOMOG troops. After six more months of fighting experienced throughout the country, all factions agreed on a peace deal in the form of the Lomé Peace Accord, signed in Lomé, Togo, on 7 July 1999 (Human Rights Watch 2003).

The Lomé Peace Accord established a ceasefire and officially ended the civil war. It included commitments to end hostilities, re-established the Commission for the Consolidation of Peace, provided for a demobilisation and disarmament process and aid for the reintegration of combatants into society. This was an outcome of negotiations, supported by international actors, between the Kabbah government and the RUF. The agreement granted amnesty to Foday Sankoh and all RUF combatants, as well as all other rebel combatants. Furthermore, the RUF was allowed to become a political party. The agreement also required that all Nigerian/ECOMOG troops leave Sierra Leone. Finally, the agreement established a Sierra Leone Truth and Reconciliation Commission (SLTRC), which only became operational in July 2002, even though it was created by law in February 2000 (Schabas 2009).

The peace negotiated did not last. Within days of the last ECOMOG troops departing Sierra Leone in May 2000, the RUF took about 500 UN peacekeepers hostage and confiscated their weapons. Just as the RUF was about to move into Freetown, 800 British paratroopers were deployed to evacuate citizens and to secure parts of the city. The British subsequently freed the hostages (Besada and Goetz 2010). The May 2000 incident signalled the return to low-intensity conflict throughout the country. This unrest lasted until a new ceasefire was negotiated in November 2000, in Abuja, Nigeria. This new agreement was signed by the Government of Sierra Leone and the RUF on 10 November. The agreement was an attempt to secure an immediate ceasefire and pave the way for the long-lasting implementation of the Lomé Peace Agreement (Besada and Goetz 2010). However, demobilisation, disarmament and reintegration (DDR) efforts did not progress and fighting continued. In late 2000, Guinean forces entered Sierra Leone to attack an RUF base near the border that had been used to launch attacks against Liberian dissidents on Guinean territory. The attacks by the Guinean troops significantly weakened and reduced the number of RUF contingents. A second Abuja Agreement was negotiated in May 2001. This agreement was also reached between the Government of Sierra Leone and the RUF. At the end of the talks, the RUF and Civil Defence Force (the civilian militia which supported the SLPP government and which had fought against the brutality of the RUF) signed a communiqué

that explicitly stated their agreement to ensure the cessation of hostilities. This agreement finally laid conclusive foundations for a resumption of DDR efforts by the UN, contributing to a major decrease in fighting (Besada and Goetz 2010). However, the years of fighting since the 1999 Lomé Peace Agreement had outraged the international community. In January 2002 the UN signed an agreement with the Government of Sierra Leone to create the Special Court for Sierra Leone (SCSL) to try those who bore the greatest responsibility for the decade of violence. This agreement paved the way for the establishment of the mechanism which combined retributive and restorative justice; a first of its kind.

### **The quest for justice in Sierra Leone**

The SLTRC and SCSL were established under the Lomé Peace Accord in order to address the issues of the past. A TRC was first suggested to the government by Sierra Leone's civil society groups in early 1999. It was subsequently discussed during the negotiations between the government and RUF/AFRC. Those who negotiated the Lomé Peace Agreement recognised that Sierra Leone as a nation had:

a need to express and acknowledge the suffering which took place, a need to relate their stories and experiences, a need to know who was behind the atrocities, a need to explain and contextualise decisions and conduct, a need to reconcile with former enemies, a need to begin personal and national healing and a need to build accountability in order to deal with impunity (Sierra Leone Truth and Reconciliation Commission Report 2004:7).

They also considered that this would be best done through a TRC (Sierra Leone Truth and Reconciliation Commission Report 2004). This would involve a combination of international and local involvement, drawing on the example of the South African TRC, while adapting their process to counteract perceived flaws or weaknesses of the South African process. The South African process was an ambitious one, being the first to incorporate three transitional justice instruments into one process. These included the investigative process of seeking truth, developing a reparations programme and considering the issue of amnesty for thousands of perpetrators. It was a massive and expensive undertaking, one which proved to be too large to be done comprehensively or in a fully satisfactory way, given the limited time and mandate it had. The SLTRC was more modest in its ambitions.



In 2000, the parliament of Sierra Leone passed the Truth and Reconciliation Commission Act, after consultation with civil-society groups and the UN High Commissioner for Human Rights. The law specified how the TRC would be set up and how it would operate. Parliament then took some time to set up the TRC, with substantial international support and involvement. The SLTRC was finally inaugurated in July 2002 (Sierra Leone Truth and Reconciliation Commission Report 2004).

The Commission was mandated to:

create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement in 1999; 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 (The Truth and Reconciliation Commission Act 2000:24).

The SLTRC was further urged to work towards sensitising the nation and creating awareness around occurrences during the conflict. Information campaigns were to be adapted so that all strata in Sierra Leone, including children, would learn about the SLTRC, how it worked and where they could testify if they wished to come forward. It was felt that if people understood the workings of the SLTRC, they would remain sensitive to the testimonies and experiences, especially those of women and children, which were revealed (Sierra Leone Truth and Reconciliation Commission Report 2004). The Act also provided the SLTRC with a broad scope of inquiry and powerful investigatory tools to accomplish its goals, especially with regards to conducting gender-specific hearings. Furthermore, the Act allowed for the international community to be involved in the organisation of the Commission and its hearings. Although not all citizens of Sierra Leone welcomed the involvement of foreigners, others saw it as adding an aspect of impartiality and credibility, thus promoting possibilities of the SLTRC's success (Addo 2002).

In line with the Commission's concern for gender issues, special attention was given to issues of sexual violence and the experiences of children. While the treatment of women was not explicitly mentioned in Sierra Leone's Truth and Reconciliation Act, section 6(2) (b) mandated the Commission to focus on restoring the dignity of survivors. This was interpreted to mean paying special attention to the sexual abuse of girls and women (Sierra Leone Truth

and Reconciliation Commission 2004). Additional importance was placed on prioritising women, because of the fact that the implementation of the SLTRC process coincided with the adoption, by the UN, of international instruments calling for the inclusion of women in peace processes. The most notable was UN Security Council Resolution 1325<sup>6</sup> which called for special consideration to be given to the needs of women and girls in post-conflict reconstruction (Ekiyor 2009). In order to meet this requirement, the SLTRC made special provisions to encourage women to come forward. One such provision was to hold special hearings for women (Nowrojee 2005). Another arrangement, aimed at making women feel more comfortable, was the questioning of female survivors of rape by female commissioners only (Nowrojee 2005).

The SCSL was established jointly by the Government of Sierra Leone and the UN, in terms of UN Security Council Resolution (1315) of January 2002. It started its proceedings in July 2002. This court was not originally part of the Lomé Peace Accord, but was created as a result of the violence which ensued in May 2000. In its wake, the Government of Sierra Leone asked the UN to help establish a Special Court to prosecute those bearing the greatest responsibility for human rights and humanitarian law violations (Schabas 2003). The SCSL was an innovation in international criminal justice. It was the first hybrid system where a court was established in the country where the crimes were committed and presided over by both nationals and non-nationals, using a mix of international and local judges working together (Schocken 2002). The reasoning behind the creation of the SCSL was the view, held by both the government and the international community, that without a clear designation of responsibility for the conflict at all levels and a public acknowledgement of the individual responsibility of perpetrators for their roles in the conflict, social structures would remain unsettled and public faith in the solidity of the

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6 The UN Security Council adopted resolution 1325 (S/RES/1325) on women and peace and security on 31 October 2000. The resolution reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peacebuilding, peacekeeping, humanitarian response and in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. Resolution 1325 urges all actors to increase the participation of women and to incorporate gender perspectives in all UN peace and security efforts. It also calls on all parties to a conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict. The resolution provides a number of important operational mandates, with implications for member states and the entities of the UN system. For more information, see: [http://www.un.org/events/res\\_1325e.pdf](http://www.un.org/events/res_1325e.pdf).

peace would be undermined. Moreover, the reality that Sierra Leone's judicial system had been largely destroyed by the war meant that it lacked the capacity to deal with the crimes in question. Thus, an international tribunal operating as a hybrid body was a necessity (Horn et al 2009).

The SCSL was mandated to prosecute both crimes against humanity and war crimes, as well as other offences which included the sexual assault of young girls and arson (Statute of the Sierra Leone Special Court 2010). The intention of this mandate was to bring justice to those who bore 'the greatest responsibility' for serious violations of international humanitarian law and domestic law committed in the territory of Sierra Leone. The SCSL had a temporal jurisdiction, limiting its mandate to events after 30 November 1996. The mandate did not include events pre-1996, because it was thought that adding the first five years of the civil war to the mandate would overburden the court (Noworjee 2005).

The SCSL was given the mandate to pay specific attention to sexual and gender-based violence. The Office of the Prosecutor has been praised for the emphasis placed on investigating and prosecuting gender crimes and handling them with sensitivity (Barnes and Albrecht 2007). Additionally, the SCSL has been commended for setting an important international precedent, by finding that forced marriages in a time of warfare were a crime against humanity. In detailing the crimes against humanity that could be prosecuted in the court, the mandate listed 'rape, sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual violence, when committed as part of a widespread systematic attack against civilians' (Statutes for the Special Court of Sierra Leone, Article 2, Section g: Crimes against Humanity). The court also expressly defined 'rape, enforced prostitution and any other form of indecent assault' (Statutes for the Special Court of Sierra Leone, Article 2, Section h: Crimes against Humanity) as a violation of international humanitarian law, as enshrined in the Geneva Convention. This formulation was an important step towards broadening the scope for prosecutions around sexual violence and gender discrimination (Barnes and Albrecht 2007).

The SCSL was granted a budget of US\$58 million and a mandate to run for three years (Schocken 2002). In retrospect, this was neither enough money, nor enough time to achieve the intended objectives. Given the relatively short timeframe, the SCSL could only focus on a limited number of cases. In all, it conducted four trials, involving only ten accused persons. The first three were conducted between June 2004 and March 2005. They involved members

of the Civil Defence Forces (CDF)<sup>7</sup>, the RUF<sup>8</sup> and the AFRC<sup>9</sup>. All but one of those arrested and indicted were tried and found guilty of one or more of the following: crimes against humanity, war crimes, unlawful killings, physical violence and suffering inflicted on victims, looting and burning, terrorising the civilian population and collective punishment and the use of child soldiers.

The fourth trial involved Charles Ghankay Taylor, former President of Liberia, who was indicted under seal on 7 March 2003, during his first trip outside of Liberia. In August 2003, Taylor resigned as President of Liberia and went into exile in Nigeria. Fearing arrest, Taylor attempted to flee his refuge in Nigeria in March 2006, but was arrested as he attempted to cross the border. He was transferred to custody in Sierra Leone. However, due to concerns about regional security, it was decided that he would be transferred to the Netherlands for trial at the International Criminal Court in The Hague. He was moved there on 30 June 2006. Charges against Taylor involved crimes against humanity, war crimes, sexual violence, terrorising the population, physical violence, unlawful killings, looting, the use of child soldiers, abduction

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- 7 This trial involved as the accused, Chief Hinga Norman, Moinina Fofana and Allieu Kondewa. It began on 3 June 2004. The three were tried for crimes against humanity, war crimes, unlawful killings, physical violence and suffering inflicted on victims, looting and burning, terrorising the civilian population and collective punishment, and the use of child soldiers. All three were found guilty. One, Chief Hinga Norman, died in custody before judgment was issued. Fofana was sentenced to 15 years in jail and Kondewa to 20 years. For more information on this case, see <http://www.sc-sl.org/CASES/ProsecutorvsFofanaandKondewaCDFCase/tabid/104/Default.aspx>.
  - 8 The second trial began on 5 July 2004 and involved three members of the former RUF - Issa Hassan Sesay, Morris Kallon and Augustine Gbao. They were charged with terrorising the civilian population and collective punishments, sexual violence, physical violence, the use of child soldiers, abductions and forced labour, looting and burning and attacks on United Nations Mission in Sierra Leone (UNAMSIL) personnel. On 25 February 2009, the Trial Chamber found Sesay and Kallon guilty on 16 counts and sentenced them to 52 and 40 years in prison, respectively. Gbao was found guilty on 14 counts and sentenced to 25 years. For more information on this case, see: <http://www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/tabid/105/Default.aspx>
  - 9 The third trial began on 7 March 2005 and involved three members of the former AFRC - Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu. The trial concluded on 22 January 2008 when the Appeals Chamber Judgment was handed down with sentences of 50 years. For more information on this case, see: <http://www.sc-sl.org/CASES/ProsecutorvsBrimaKamaraandKanuAFRCCCase/tabid/106/Default.aspx>  
<http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx>

and forced labour. In April 2012, Taylor was convicted of aiding and abetting rebels in Sierra Leone during the 1991–2002 civil war. He was sentenced to 50 years in jail (Special Court for Sierra Leone 2012).<sup>10</sup>

In addition to the ten people who stood trial, three other persons were indicted by the Special Court's prosecutor. They were former RUF leader Foday Sankoh, former RUF Battlefield Commander Sam Bockarie and former AFRC leader Johnny Paul Koroma. The indictments against Sankoh and Bockarie were withdrawn in December 2003 following their deaths. Koroma was never apprehended and his whereabouts and fate are unknown. He is presumed to be dead (Kerr and Lincoln 2008).

A unique feature of the SCSL was that it was seen as a hybrid, by incorporating and using both Sierra Leonean and international law (Schocken 2002). This combination not only broadened the scope for prosecution, but was seen as a way to strengthen Sierra Leone's legal system and rule of law after years of neglect. Furthermore, in order to try to strengthen the local justice system, the court hired staff members to work on the SCSL's legacy. However, that came late in the life of the Court, in 2008. As a result of this delay, there was an almost insignificant relationship between the SCSL and the national judiciary in Sierra Leone. Created as a separate and distinct entity from the local judiciary, the SCSL always maintained its distance. One result was that the notion of prosecuting crimes of sexual violence did not filter down to the local judiciary (Tejan-Cole 2009). An unfortunate case in 2008 illustrates this. In March of that year, an 11 year-old girl was dragged to a tailor's stall within a few metres of the SCSL's main gate and raped. When the family tried to have the perpetrator charged for the offence, the police failed to investigate properly and the case never made it to trial. In addition, some have argued that the Special Court paid too little attention to the enduring influence and impact of the tribunal (Kerr and Lincoln 2008). Had the SCSL developed a close relationship with the local judicial system, it is suggested that a more effective, long-term improvement of the national justice system could have occurred, which would have helped to create a culture of justice and accountability and would have ensured that the legacy of the SCSL had a long-lasting effect (Tejan-Cole 2009).

### **The challenges in the Sierra Leone justice model**

This new system used in Sierra Leone aimed to overcome the issues of past transitional justice mechanisms and to reach a wider audience, while achieving

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10 For more information on this case, see <http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx>

deeper impact. In hindsight, however, it was too ambitious for the SCSL and SLTRC to address truth, justice, accountability and the underlying structural issues of conflict. This section will highlight the specific areas which neither the SCSL nor the SLTRC were able to address, identifying how a new approach, utilising aspects of peacebuilding and transitional justice, might be better suited for situations involving women. This is in no way a comprehensive evaluation of the SCSL and the SLTRC, it merely reflects on selected gender aspects.

With regard to the SLTRC, the Commission was unable to reach a wide audience and impact on society as they had intended. For one, some of the local impact and value of the report was lost due to its being written only in English, which is not understood by the vast majority of the population in Sierra Leone. No local translations were produced. One must acknowledge that at the time, the literacy rate in the country was very low, explaining why the reports were not translated; perhaps it was assumed that the English version would be used to educate others. However, the language used in this version was too sophisticated for many members of the public to understand, including many teachers who were expected to use it as a teaching tool. A version of the report was eventually produced for high school learners, but this too has been criticised as being too advanced (Dougherty 2004). Despite the production of a video of the report by the non-governmental organisation Witness, knowledge of its contents and its recommendations remains limited, even among policy makers and lobbyists. The Deputy Minister for Social Welfare, Gender and Children's Affairs commented that the report might be useful as a historical document, but conceded that it would not be useful in influencing policy decisions (Interview with Deputy Minister for Social Welfare, Gender and Children's Affairs 2007). One activist noted that 'these documents are just piled up in our cupboards - people are not acting on them' (Interview with Director of Graceland Counselling 2007, cited in Teale 2009:84). This could have been because of the language barrier or the lack of buy-in and support from the government. As a result, the legacy and impact of the SLTRC has been rather short-lived in the country.

Furthermore, the impact of the report was lost on areas outside of Freetown. This was due to the fact that there was a lack of continuous presence by the Commission in the communities (Interview with Director of the Sierra Leone Association of Non Governmental Organisations (SLANGO) 2007, cited in Teale 2009:84). The fact that SLTRC delegates only spent one week in most areas of the country outside Freetown and that some areas were ignored altogether, meant that the SLTRC was more like a temporary 'guest' in the community, one with limited effect (Dougherty 2004). Many Sierra

Leoneans also questioned the degree to which the hearings raised public awareness of gender-based violence. Attitudes towards women in Sierra Leone are deeply ingrained and there is a culture of silence surrounding sexual abuse (Dougherty 2004). Women have few rights under customary law and there is a tremendous stigma attached to being raped. The survivor is viewed as spoiled or damaged and when survivors are identified, authorities often suggest that the woman concerned marry the perpetrator. According to the prominent legal academic, Beth Dougherty, many girls and women also feared being shamed and blamed for having served as so-called 'rebel wives'. These criticisms all culminated in one main critique – that the SLTRC did not do much in terms of improving the long-term status of women in Sierra Leonean society (Dougherty 2004).

Further, some female activists have argued that they would have liked the SLTRC to try to integrate traditional healing and reconciliation ceremonies at community level. This, they believe, would have enhanced the restoration of individual dignity and community harmony. It should be noted, however, that the SLTRC did at times attempt to combine traditional ceremonial elements into the process, especially when interacting with small rural communities which had a history of violence before the war and with perpetrators within their communities. The intention was to try to recognise the different cultural aspects and gender inequalities that exist in Sierra Leone and to try to incorporate these into the reconciliation process, so as to reach more people (Varvaloucas 2009). Thus, at the end of the week, in each district, the SLTRC would hold a staged ceremony where local perpetrators would symbolically apologise for their actions; the SLTRC's one attempt at traditional forms of reconciliation in a process that was widely perceived as western. However, these activities were not widespread and did not receive the full participation of communities (Interview with women activists 2007, cited in Teale 2009:86). With more funding, the SLTRC could have undertaken more traditional reconciliation ceremonies like these, which may have addressed some of the concerns that women had.

Despite the special provisions made for women by the SLTRC process, many women expressed a view that after testifying they felt an initial relief, but then soon returned to the difficult everyday realities of their lives where they were still living in fear, experiencing nightmares, flash-backs and stress-related physical pain in their bodies (Interviews with female victims 2007, cited in Teale 2009:81). The SLTRC provided little follow-up support for the survivors who testified before it. A former counsellor with the SLTRC reported feeling guilty about having persuaded people to testify and promising support, but then not being able to deliver on this commitment (Interview with

former SLTRC staff member 2007, cited in Teale 2009:81). Disappointment was frequently expressed by the survivors, with one stating ‘once you have the truth, then what do you do with it?’ (Ekiyor 2009:159). Moreover, some argued that it seemed the SLTRC was more focused on problems of the general population and on providing a roadmap for the future based on an impartial record of the past and therefore did not make much headway in promoting healing and reconciliation, or in addressing the reality that men largely enjoy impunity for gender-based violence (Teale 2009).

Lastly, in terms of the reparations recommended by the SLTRC in the report, massive strides forward were made by considering this and making recommendations to various sections of society, including women. The report argued that while the state should acknowledge the suffering of all Sierra Leoneans, it should also prioritise the most vulnerable survivors of the conflict for reparations, including:

- amputees or those who lost their upper/lower limb(s), or both, as a result of the conflict;
- ‘other war wounded’ or those who have become temporarily or permanently physically disabled, either totally or partially, as a consequence of the conflict and who as a result had experienced a 50 percent or more reduction in earning capacity;
- women and girls who were subjected to sexual slavery, rape, forced marriage, as well as brutal mutilation of genital parts or breasts;
- ‘war widows’ or women who lost their husbands as a direct result of human rights abuses during the conflict; and
- children who suffered either as victims of physical and/or psychological violence and children who are dependents of eligible survivors.

In terms of reparations for these survivors, the SLTRC recommended free physical healthcare, mental health counselling and psychosocial support, educational support for children, skills training, microfinance grants for individuals and collective beneficiaries, community reparations, housing, pensions for individual beneficiaries and symbolic reparations (Sierra Leone Truth and Reconciliation Commission Report 2004).

Since the publication of the report in 2004, however, the Government of Sierra Leone has not abided by its obligation under international law to



implement the recommendations.<sup>11</sup> There has been little structural follow-up to ensure that the recommendations were carried out, in part because of a lack of funding to put an independent monitoring institution into place (Interview with former SLTRC staff member 2007, cited in Teale 2009:81). Attempts by civil society to lobby for a 'SLTRC Omnibus Bill' have so far been unsuccessful, not least because of a seeming change in political priorities. President Ernest Bai Koroma, elected in 2007, promised in his first major speech as president to establish a follow-up commission to ensure the implementation of the recommendations of the SLTRC. It took just over a year to establish the implementing institution, known as The National Commission for Social Action (NaCSA) and another year before it received funding of US\$500,000 from the government. This was supplemented by a grant of US\$3 million from the UN Peacebuilding Fund (The Rabat Report 2009). The NaCSA, as a first step towards delivering reparations, established a committee made up of representatives from local councils, traditional leadership structures, civil society, religious groups, victims' organisations and other partners to assist with the 'outreach' of reparations (The Rabat Report 2009). The second step was to register all the eligible survivors. The process, which started in December 2008 and continued until June 2009, involved the registration of approximately 30,000 survivors to receive some form of reparation.

In terms of the SCSL, many female survivors felt that the NaCSA did make advances in terms of its inclusion of sexual crimes and forced marriage as a crime against humanity. Prosecutor David Crane and the SCSL were seen to uphold their mandate to address sexual violence very well (Rabat Report 2009). Out of the ten investigators on his team, Prosecutor Crane committed two female investigators whose primary role was to undertake investigations involving sexual assault. The SCSL believed that having two experienced female investigators on the staff ensured that the prosecutor's interviewing methodology and environment would help make rape survivors feel comfortable enough to recount their experiences. Given the stigma attached to rape, failing to use

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11 Customary international law provides the legal foundation for victims' right to compensation. Various international treaties have recognised that victims of gross human rights violations and war crimes have a right to restitution, compensation and rehabilitation. Furthermore, the obligation to provide compensation for victims of injustice has become part of international humanitarian law. Article Eight of the Universal Declaration of Human Rights, for example, states that everyone has the right to an effective remedy, while Article 10 of the American Convention on Human Rights refers to a right to be compensated in accordance with the law. Such laws stress the importance of publicly recognising the damages caused by injustice and of addressing the needs of victims. For more information see: <http://www.beyondintractability.org/essay/compensation/>

sensitive interviewing techniques can prevent an interviewer from establishing the trust necessary to elicit testimonies about rape. However, others have argued that, considering the prominence of sexual violence in the civil war in Sierra Leone and the wide variety of violations of human rights which the SCSL had to address, there is the question of why the entire team of investigators was not trained in how to deal with sexual violence (Human Rights Watch 2004).

Another argument about deficiencies relating to the outcome of the report, which were expressed by female survivors in particular, was that the Special Court did not adequately deliver justice because it conducted very few trials. A number of Lotta Teale's interviewees observed that rape was such a personal crime and that there could be no justice for the victim if the individual was not punished (Interviews with Staff at International Rescue Committee 2007, cited in Teale 2009:69). Furthermore, however, according to the SCSL's mandate, the SCSL could only address specific violations and only target those bearing the greatest responsibility for serious violations of international humanitarian law (Statute of the Sierra Leone Special Court 2002). The fact that women did not feel justice was delivered to them might be a challenge to the nature of a special court in general and not specifically the SCSL.

In terms of the value and impact of the Court, a major critique of it has been the limited flow of information (Kerr and Lincoln 2008). It was found that even in Freetown, people were not fully informed of the processes, procedures and mandate of the Special Court and as a result many misperceptions about the Court were developed by residents (Teale 2009). Beyond the capital, in the provinces, there was very little chance of residents ever seeing or visiting the Special Court, as at the time of the Court's sittings, they would have had little or no opportunity to travel to Freetown (Teale 2009). Some people, it seems, knew the Special Court existed and that it was trying the 'big men' and using 'white man's law', but not much beyond that (Kerr and Lincoln 2007:8). As a solution, it was suggested by SLANGO, that the Special Court could make justice more comprehensible and tangible, especially for women in a community, by asking the community what they wanted from the perpetrators. This could, perhaps, be vocalised by the perpetrators saying that they were remorseful and offering some kind of apology. In addition, it has been suggested that the SCSL should have engaged in a process to inform and educate communities about the specific atrocities that were found to have been committed in their communities and what specific punishments had been meted out for these crimes (Interview with Director of SLANGO 2007).

The neglect of gender issues by the SCSL and SLTRC meant that issues of gender inequality, everyday violence and discrimination remained in place in

society. These matters may have been outside of the mandate of the transitional justice mechanism used, but they were, nevertheless, vital issues to address in order to move the country towards sustainable peace.

### **The way forward: Recommendations for a new post-conflict model**

On the whole, the transitional justice process in Sierra Leone did improve, compared to other countries, on some of the processes that had already taken place and did overcome some of the challenges faced during implementation of those past processes. Thus, while the SLTRC and SCSL may, together, have been somewhat successful in fulfilling their specific mandates, it is argued that there were still gaps left by the process and that the transitional justice mechanisms did not do enough to promote equality and real social justice in Sierra Leone. However, this gap is not limited to the Sierra Leone model alone. One could reformulate the mechanism used to try and make it more far-reaching, but even involving more funding, personnel and time will not address the core issue of its inability to address the notions of everyday and structural violence in a post-conflict society. If one looks at how transitional justice has been applied elsewhere in the past two decades, what happened in Sierra Leone was not unusual. The transitional justice paradigm, as it has been applied to date, does not dig deep enough into societal factors. Socio-economic justice issues have largely not been incorporated into the mandates of either truth commissions or special courts. It is apparent that justice, reconciliation and peacebuilding have become mutually exclusive terms. While truth commissions have, in most cases, established levels of truth, they have invariably failed to address the root causes of the conflict in order to understand how to prevent future violence. While truth is seen as vital to a post-conflict situation due to the fact that it allows people to learn about the past and, in theory, aids the process of societal recovery, the fact is that these do not address socio-economic development and the underlying factors of structural discrimination and inequality in the country concerned (Ekiyor 2009). Similarly, while special courts and prosecutions in general are important as instruments of truth and accountability contributing to healing processes, they cannot (because of the gaps in the transitional justice paradigm) on their own overcome societal divisions that undermine peace and security (Mani 2002b).

There are several reasons for the neglect of social justice and peacebuilding issues and there are several lessons we can take forward and apply to future post-conflict development situations. Neither of Sierra Leone's chosen transitional justice instruments had the mandate, nor the resources,

to look at structural, everyday violence before or during the 1990s. With regard to the latter, one cannot ignore the fact that in 2001 Sierra Leone was the second poorest country in the world, characterised by low literacy levels, endemic corruption, a weak justice system and significantly high levels of gender inequality and discrimination against women (Sierra Leone Human Development Report 2007). Even so, it is argued that without addressing the structural roots of societal violence, discrimination and inequality, any processes aimed at building peace and supporting development and social justice in a post-conflict society will be hard to achieve. Without deep analysis, the danger lies in that the transitional justice process only looks at overt physical violence between a specific set of dates and not at the deep-seated and routine violence, which exists in the society.

The forms of everyday violence are grounded in the same structures that feed into political conflict and these should receive priority attention if lasting peaceful societies are to be built. This argument is made by Galtung (1969), who asserts that if underlying structural and everyday violence is not addressed after conflict has ceased, peace is unlikely to be sustainable or universal. Galtung argues that in order to ensure a proper transformation to sustainable peace and peacebuilding, the twin objectives of preserving 'negative peace' (absence of physical violence) and building 'positive peace' (presence of social justice) need to be pursued. In Sierra Leone, women did not have access to either negative or positive peace (Lambourne 2009). Women suffered both from physical violence and a lack of social justice. Galtung argues that in order to work towards positive peace, one needs to look at two issues surrounding violence: the use and forms of violence and the factors that legitimise that violence. If the institutions which operate in a society serve to legitimate societal violence, then there cannot be sustainable peace and human development. Peacebuilding is a process which is directed at building structural and cultural peace (Galtung 1969). It is this process that was absent from Sierra Leone.

A possible solution to the neglect of these social justice and peacebuilding issues, which has been advocated for in the post-conflict development arena, would be to broaden the mandates of the transitional justice instruments, so as to allow them to adopt a wider, more holistic approach to societal disadvantage. This holistic model would include a combination of approaches to post-conflict development, using different forms of justice and instruments; including legal justice (trials), rectificatory justice (amnesties and truth commissions) and distributive justice (Mani 2002b). However, the broadening of the mandate could do more harm than good, as it could overburden an already overcharged system, whose responsibilities are too

heavy in a context of unrealistic expectations and lean finances. The result could be a half-hearted attempt in each of these mooted areas (Duthie 2008). Even what transitional justice instruments have up till now been asked to undertake in terms of finding the truth and setting up accountability processes, amongst other tasks, has sometimes proved to be too great a task. One should not expect transitional justice instruments to take on more responsibility when it is not always clear whether they can successfully achieve the original, far more modest, tasks of establishing truth and promoting justice (Hayner 2001). Recognising that a country needs more in terms of human development by merely instructing a truth commission, for example, to do more does not solve the logical dilemmas of the limitations these commissions have in addressing deep social problems.

It is therefore recommended that a mechanism which combines transitional justice and peacebuilding should be used in post-conflict situations. This model would allow a transformative approach to transitions, which would address the root causes of conflict, the notions of everyday structural violence and concerns about truth and justice. Many authors<sup>12</sup> argue that taking a more transformative approach to post-conflict societies necessitates the integration of elements of transitional justice and peacebuilding into one process, during which the three elements act together to reinforce each other. This would create a shift in focus from 'transition' as an interim process that links the past and the future, to a longer-term perspective of 'transformation'. For there to be a better opportunity to ensure an improved quality of life for all who have come through a period of severe societal conflict, one needs to examine the underlying social inequalities and dynamics of a society (Duthie 2008). In other words, there needs to be an integrated approach, which would look beyond the scope of the immediate conflict to the underlying factors of violence and the reasons why it has become normalised in society (Lenzen 2009). Lambourne (2009) elaborates that by combining the two approaches, one would allow the international post-conflict development community to explore structural violence and to look at how one could achieve justice for these communities. This would be done with the aim of trying to dismantle the structures which legitimised the injustice and violence in the first place, such as mechanisms which lead to and support discrimination against women (Eriksson 2009). Forms of structural violence remain the most stubborn form of continued violence in a community, usually leading to the perpetuation of violence from past events, such as a civil war.

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12 Including John Lederach (1997), Wendy Lambourne (2009), Marcus Lenzen (2009) and Roger Duthie (2008).

One needs to analyse these structures in society and to look at how they continue to replicate this violence and discrimination in the present (Boesten et al. 2010).

The value of an analysis of structural and everyday discrimination and violence is that it recognises that injustice is not just a consequence of conflict, but also a cause of it (Mani 2002b). To restore justice after conflict, Mani argues, it is necessary to look at the symptoms, causes and consequences of the conflict. In order to get a deeper understanding of the conflict and society as a whole, one needs to look closely at the relationships which exist in the society. Lederach argues that one of the most important needs is for peacebuilders to 'find ways to understand peace as a change process based on relationship building' (Lederach 1997:35). In other words, in addition to focusing on the political and legal aspects of peace agreements, namely truth commissions and criminal tribunals, one also needs to focus on the society as a whole and what has led to violent behaviour in it. One then needs to focus on the task of transforming these relationships and structures in that society, as well as the processes and institutions that legitimise them. By using this approach and looking at the structural dimensions of the society, one can then highlight the fundamental causes of conflict and what has legitimised these causes over time. Through this approach, it could be possible to transform them so as to eliminate the potential for future violence and promote sustainable peace in a post-conflict situation (Lenzen 2009). If one can identify these elements in society, especially in a resource-limited and violence-plagued society like Sierra Leone where there is widespread structural inequality, then one can start the process of tackling them so as to reduce or eliminate the potential for future violence. Such an initiative would enable governments to adopt long-term policies and programmes, as well as to undertake a review of any legal obstacles to change. In addition, by addressing the structural oppression of disadvantaged groups, such as women, one would be able to develop recommendations to ensure a more egalitarian future (Lambourne 2009).

This paper does not argue for a new model altogether, but an integration of existing mechanisms into one process. Peacebuilding processes would function alongside the transitional justice machinery and focus on the underlying structural inequalities in the society. This would ensure delivery on reparations and enhance the development of a long-lasting transitional effect, in order to provide for more sustainable development in the post-conflict situation (Sooka 2009). The combination of a truth commission, a court and a peacebuilding process will allow for a more transformative approach to post-conflict transitions, an approach which would include a closer and more in-depth analysis of conflict, the structures within the society and the

needs of the people, including women (De Greiff 2010). Together, these three aspects of post-conflict human development could, it is argued, provide a long-term approach to implementing and maintaining sustainable peace in a post-conflict situation.

### **Conclusion**

The process applied in Sierra Leone was an important one in the evolution of transitional justice, as well as being a unique experiment in the history of recent transitions to democracy (Minow 2000). It came about after a decade in which Africa had experienced extreme levels of violence in the form of the 1994 Rwandan genocide and brutal levels of internal conflict, mainly in the form of civil wars, in the Horn of Africa and throughout much of West Africa. Furthermore, the process in Sierra Leone avoided the difficult choice between the retributive and restorative justice approaches to post-conflict situations, by using both. The country has been praised for this. The SCSL and SLTRC were able to successfully fulfil their mandates in parts and were able to aid the country in a process towards achieving sustainable peace. The fact that a decade has passed without a return to violence and corruption says much about the process. However, despite this praise, there were gaps left by the process, most notably for the women of Sierra Leone.

It has been argued that the two key post-conflict institutions did not examine the underlying structures of conflict in Sierra Leone and that social injustices and gender inequalities are still evident in the society today. Based on this gap, it has been suggested that there needs to be a shift in the thinking behind post-conflict development agendas, towards a model which aims to transform the society, rather than merely assist with its political transition. This model would examine and address not only what happened during the conflict, but also the root causes of the violence and the structures in society which are likely to support the repetition of inequality, discrimination and violence. This process would integrate peacebuilding into the transitional justice process, to form a more complete mechanism which would allow for more of a transformation in society, thus enhancing the likelihood of sustainable peace.

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