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## Peace and Unquiet: The Failure of Transitional Justice Mechanisms in Sierra Leone

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**Peace and Unquiet:**

**The Failure of Transitional Justice Mechanisms in Sierra Leone**

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PhD Law

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## **Abstract**

This thesis uses Nancy Fraser's theory of justice and participation as a tool of critical analysis to critique transitional justice initiatives in Sierra Leone.

The decade long civil war in Sierra Leone was one marked by some of the most violent and heinous violations of human rights in the twentieth century. Since the end of the conflict the nation has been regularly highlighted for endemic poverty and unemployment. In Fraser's theoretical framework of justice, these phenomena are not mutually exclusive; the endemic poverty – or injustice of maldistribution – is directly related to, and mutually supporting of, violent outbreaks and cultural segregations – or the injustice of misrecognition. Regardless, or perhaps because of, the establishment of the Special Court for Sierra Leone, a truth and reconciliation commission and numerous grassroots development projects, both misrecognition and maldistribution remain prominent in Sierra Leonean society.

This thesis argues that institutions of transitional justice in Sierra Leone have failed to engage with or understand root causes of civil strife or hostilities and as such have led to the development of inappropriate measures for resolving conflict in Sierra Leone. As a result the current research argues, mechanisms of transitional justice in their capacity as justice mechanisms, serve to re-establish and further entrench injustices that initially led to the civil conflict. As a means of overcoming this cycle of injustice, this thesis discusses the necessity of situating transitional justice mechanisms locally, engaging comprehensively with local perspectives of both the injustice suffered and the justice mechanisms implemented. The voice of local populations must be heard and materially realized if the judicial endeavours that will shape their future lives are to be relevant and binding.

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## Maps



Map obtained from Google Maps.



Map obtained from Google Earth.

## **Acronyms**

<b>ACC</b>	Anti-Corruption Commission
<b>AFRC</b>	Armed Forces Revolutionary Council
<b>AMNet</b>	Advocacy Movement Network
<b>APC</b>	All People's Congress
<b>CDF</b>	Civil Defence Force
<b>CGG</b>	Campaign for Good Governance
<b>FBC</b>	Forah Bay College
<b>FGM</b>	Female Genital Mutilation
<b>HRW</b>	Human Rights Watch
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for Yugoslavia
<b>IMF</b>	International Monetary Fund
<b>iNGO</b>	International Non-Governmental Organization
<b>KOCEPO</b>	Knowledge to Community Empowerment Organization
<b>LAWYERS</b>	Legal Access for Women Yearning for Equal Rights and Social Justice
<b>MRD</b>	Movement for the Restoration of Democracy
<b>NGO</b>	Non-Governmental Organization
<b>NMJD</b>	Network Movement for Justice and Democracy
<b>NPRC</b>	National Provisional Ruling Council
<b>OTP</b>	Office of the Prosecutor
<b>RBD</b>	Rights Based Development
<b>RUF</b>	Revolutionary United Front
<b>SAP</b>	Structural Adjustment Program
<b>SBU</b>	Small Boy Unit
<b>SCSL</b>	Special Court for Sierra Leone
<b>SLA</b>	Sierra Leone Army
<b>SLAJ</b>	Sierra Leone Association of Journalists
<b>SLPP</b>	Sierra Leone People's Party
<b>SSD</b>	Special Security Division (AKA Siaka Stevens' Dogs)
<b>TRC</b>	Truth and Reconciliations Commission
<b>UN</b>	United Nations
<b>UNAMSIL</b>	United Nations Mission in Sierra Leone
<b>UNIPSIL</b>	United Nations Integrated Peacebuilding Office in Sierra Leone
<b>WANEP</b>	West African Network for Peacebuilding

# **Peace and Unquiet: The Failure of Transitional Justice Mechanisms in Sierra Leone**

## **Chapter 1: Introduction**

On January 18, 2002 the Sierra Leonean civil war was declared officially over (Kabbah, 2002). For more than a decade Sierra Leone had been plagued by a civil war which had come at the cost of at least 75,000 lives, the displacement of more than half of its 5 million population, and countless cases of mutilation, amputation and rape (Hoffman, 2004). Moreover, the physical and structural damage to the country has never been estimated, but the conflict was regularly highlighted for its destruction of homes, buildings and villages. The destruction of a cache weapons at Lungi in 2002 was meant to mark the “symbolic conclusion of the disarmament process and an historic expression of deep sense of national triumph” (Kabbah, 2002).<sup>1</sup> While January 18, 2002 is highlighted for being the end of the conflict, it also represents the beginning of this thesis.

Since the end of the civil war, Sierra Leone has been host to both an international criminal tribunal – the Special Court for Sierra Leone (SCSL) – and an internationally sponsored truth and reconciliation commission (TRC); as well as a plethora of other transitional and developmental initiatives (Schabas, 2006). Whilst the official declaration of the war being over may have caused a moment of national relief, more than a decade after the ceremony at Lungi, this moment has clearly passed. Regardless of the international attention and assistance, Sierra Leone remains at the bottom of the UN Development Index,<sup>2</sup> has the fifth lowest GDP/capita, and one of the

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<sup>1</sup> Speech by the President of Sierra Leone, His Excellency, Alhaji Dr. Ahmad Tejan Kabbah, at the ceremony marking the conclusion of disarmament and the destruction of weapons, Lungi, 18 January 2002. Available at: <http://www.sierra-leone.org/Speeches/kabbah-011802.html>

<sup>2</sup> 177 out of 186 countries ranked



worst youth employment rates in the world (UNDP, 2012).<sup>3</sup> Beyond that, Sierra Leone is regularly highlighted for endemic corruption, political violence and extreme levels of poverty. Regardless of the ongoing international and developmental presence in Sierra Leone, more than a decade after the official declaration of the end of the war, the country faces many of the same problems that it did before the outbreak of war in 1991 (Shaw, 2010; Hoffman, 2011; Fithen & Richards, 2005). This thesis begins an examination of *why* this remains the case in Sierra Leone and *how*, despite multiple transitional justice initiatives, Sierra Leone remains in this position. Furthermore this thesis examines how mechanisms of transitional justice, in their capacity as justice mechanisms, serve to re-establish and further entrench injustices that initially led to the civil conflict. Finally as a means of overcoming this cycle of injustice, this thesis discusses the necessity of situating transitional justice mechanisms locally, engaging comprehensively with local perspectives of both the injustice suffered and the justice mechanisms implemented.<sup>4</sup> The voice of local populations must be heard, and materially realized if the judicial endeavours that will shape their future lives are to be relevant and binding (Fraser, 1997, 2003 & 2008; Shaw & Waldorf, 2010; Young, 1990).

Whilst a contested topic itself, and the subject of much debate, for the purposes of this thesis justice is taken to mean the ability of all adult members of society interact *on par* with each other and participate *on par* in the political processes that affect their lives (Fraser, 2003). More specifically, injustice is understood to mean “institutionalized obstacles that prevent some people from participating on a par with

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<sup>3</sup> UNDP development index, available at: <http://hdrstats.undp.org/en/countries/profiles/SLE.html>

<sup>4</sup> To situate locally does not refer to the physical location of the transitional justice mechanism, but rather creating mechanisms of discourse that allow local populations to have a say in what institutions of justice are implemented and how.

others, as full partners in social interaction” (Fraser, 2008: 16).<sup>5</sup> While this thesis argues that populations must be free to determine their own forms and routes of justice, the above definition provides a starting point for the discussion of justice, while allowing sufficient space for interpretation by individuals and groups.

### *Transitional Justice*

This thesis argues that failure to understand root causes of civil strife or hostilities has led to the development of inappropriate measures for resolving conflict and building peace in Sierra Leone. Moreover, it shows that transitional justice mechanisms, in their capacity as international mechanisms of justice, institutionalize and exacerbate those injustices that led to the civil war in Sierra Leone in 1991. Underlying this argument is the realization that methods of transitional justice have become standardized, insofar as conflict or atrocity is almost always responded to with either an international criminal tribunal and/or a truth and reconciliation commission, and as such fail to engage with the specific historical moment from which conflicts emerge. Since the trials at Nuremburg and Tokyo and the fall of the Latin American dictatorships, the routes that transitional justice can take have been normalized (Shaw & Waldorf, 2010; Weinstein et al., 2010). Justice may take the form of criminal trials *or* truth and reconciliation commissions, or perhaps both, but there are no alternatives to these options, at least not on an international scale (Osiel, 1999; Teitel, 2000). Problematically however, what is not understood is that these initiatives – individual criminal responsibility after WWII and revealing of truth in Latin America – emerged from specific “historical junctures” (Fraser, 2008: 72) where these were perhaps the most appropriate responses to the injustices of the time. However not all conflicts or

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<sup>5</sup> While at times justice is also taken to mean a more generic ‘criminal justice’ in reference to the prosecution of perpetrators, or more generally the ‘justice sector’ in reference to all systems of law in Sierra Leone, all effort is made to make note of this in the specific reference.

disputes about justice are the same, nor are the people involved in such disputes; thus it stands to reason that the same initiatives may not be appropriate in all cases. Moreover, the discourse surrounding the possible routes of transitional justice has become standardized and dichotomized and transitional justice is never discussed outside of these normative views (Fletcher & Weinstein, 2002; Fraser, 2005; Deleuze & Guattari, 1987).

This homogeneity of the dialogue may very well be due to the traditional understandings of what causes conflict, particularly with reference to sub-Saharan, African ‘civil’ conflicts. The dialogue surrounding these conflicts, predominantly the discourse surrounding Sierra Leone, has revolved around the “greed or grievance” argument (Richards, 1996; Berdal & Malone, 2000; Collier, 2000; Stewart, 2008; Keen, 2012; Harris, 2012). On the greed side of the debate, commentators argue that the decade long civil war in Sierra Leone was largely about disenchanting youth seeking self-enrichment and access to the country’s vast diamond deposits (Collier, 2000; Abdullah, 1998; Bangura, 1997). The greed argument does not allow for political motivation or goals on the part of the combatants and maintains that the purpose of the conflict was “the overall takeover of the resource rich areas of West Africa by cynical criminal actors, warlords and heads of state” (SCSL, 2004c).<sup>6</sup> Moreover, the labelling of the economic foundation of war as greed lends a derogatory tone to the discussion. Indeed, youth in Sierra Leone may have been fighting about access to resources, but this may have been more altruistic than ‘greed’ insinuates.

Those who hold to the grievance argument however, state that the beginning of the war was the work of “excluded intellectuals” (Richards, 1996; Stewart, 2000 & 2008; Keen, 2012), who had been violently oppressed during the years of Siaka

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<sup>6</sup> *The Prosecutor v The RUF Co-Accused* [July 5, 2004]. Available at: <http://www.sc-sl.org/LinkClick.aspx?fileticket=Ozfyb8ohNBM=&tabid=156>

Stevens' presidency. Having been exiled to the surrounding nations many returned carrying revolutionary ideas, copies of Gaddafi's Green Book and calling for a more egalitarian system of rule (Richards, 1996).

The problem with exploring conflict in such narrow terms is that not only does it dichotomize the conflict, but it dichotomizes solutions to the conflict. If selfish greed were indeed the primary causal factor leading to the civil war, then the answer is simple: once violence ends, find those who instigated the conflict and punish them, individually and criminally. Similarly, if the cause of the conflict were legitimate grievance, those involved should be assisted in establishing a more egalitarian system and helped in coming to terms with their violent and oppressive pasts. However conflicts are seldom simple and not only may they involve both greed and grievance, in a variety of measures, but they are also intertwined with other calls for justice, informed by both greed *and* grievance, such as identity politics or group recognition, more equitable distribution of wealth or more democratic systems of governance (Harris, 2012).

If greed is taken to mean more than the selfish pursuit of financial gain, as argued by this thesis, then a clear resonance with Nancy Fraser's concept of justice becomes apparent. Where war is taken to be a consequence of greed *or* grievance, it can also be understood as a war of redistribution and recognition. In the singular pursuit of justice based on either greed *or* grievance, the parallels with Fraser's theory of the decoupling of forms of justice are clear.

The purpose of this thesis therefore, is to engage with these questions and critically evaluate structures of transitional justice in Sierra Leone and investigate how the standardization of understanding of conflict and justice can not only impede peace and justice but can *misframe* the question altogether and result in further conflicts and injustices. This is accomplished by using Nancy Fraser's theories of justice as a lens

through which to view transitional justice and transitional justice mechanisms in Sierra Leone. While other authors have used Fraser's theory to engage in such criticisms (Stanley, 2005; 2009), Fraser's theory has not been used to examine how transitional justice mechanisms may impede justice and create injustice, nor has Fraser been used to specifically discuss transitional justice in Sierra Leone. This thesis then fills an existing gap in the discourse and aims to show how through the process of misframing transitional justice mechanisms may become tools of injustice.

Fraser's theory is discussed in detail elsewhere (see chapter three) however it is useful to have a brief overview before it is examined in-depth. Many justice theorists have argued that there are, fundamentally, two types of injustice, the injustice of maldistribution and the injustice of misrecognition. Maldistribution pertains to injustices that occur in the economic sphere, or within the class structure. Misrecognition, however, refers to problems associated with identity politics and the status hierarchy. Fraser refers to these as the "*folk-paradigms of justice*" (Fraser, 2003:11)

The folk paradigm of redistribution paints group distinctions as socially created and as the unjust implementation of an unfair political economy; the folk paradigm of recognition however, paints the distinctions as either existing harmless ethnic/cultural differences that are abused and transformed into a status hierarchy or differences created in order to maintain or create an unjust hierarchy (Fraser, 2003: 15). The problem with these conflicting understandings of group differences is that it creates conflicting notions of remedies. Due to these conflicting responses, "redistribution and recognition are portrayed as mutually exclusive alternatives." (Fraser, 2003: 15).

As Fraser points out and as will be shown throughout this thesis, in modern society virtually all injustices can be treated as two-dimensional. Regardless of its

roots, all injustice implicates both maldistribution and misrecognition therefore the goal should be to develop an integrated approach that can include both forms of social justice (Fraser, 2003).

What sets Fraser apart from other justice theorists including Rawls, Dworkin, Young, Taylor, Honneth etc is that she argues that each of these forms of injustice is a *primary* injustice, in that one cannot be subsumed within the other. Thus what is needed to resolve any injustice is for both forms be integrated into a single, normative framework of justice. She calls this a “two-dimensional conception of justice” (Fraser, 2008: 16-17). “A two-dimensional conception treats distribution and recognition as distinct perspectives on, and dimensions of, justice. Without reducing either dimension to the other, it encompasses both of them within a broader overarching framework” (Fraser, 2003: 35).

The core of Fraser’s two-dimensional framework of justice is the idea of *participator parity*; which allows for all adult members of society to interact on par with each other (Fraser, 2000). In order for participatory parity to be met, two conditions must be satisfied: (i) the “objective condition”; and (ii) the “intersubjective condition” (Fraser, 2003: 35-36).<sup>7</sup>

There is no method of applying participatory parity universally to all problems of injustice. In order to ensure that claims for redistribution or recognition are legitimate they must be tested rigorously through a process of public debate (Fraser,

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<sup>7</sup> The objective condition is the distribution of material resources in such a way that all participants are independent. This precludes therefore, “social arrangements that institutionalize deprivation, exploitation and gross disparities in wealth...” (Fraser, 2003: 36). The objective condition is associated with redistributive justice. The intersubjective condition on the other hand is associated with the justice of recognition and requires that there be equal opportunity for all participants to achieve social esteem and that equal respect be paid to all participants. This then “precludes institutionalized norms that depreciate some categories of people and the traits associated with them” as well as patterns of misrecognition that “deny some people the status of full partners in interaction – [either] by burdening them with excessive...difference or by failing to acknowledge their distinctiveness.” (Fraser, 2003: 36). As the objective condition is concerned with redistribution and the intersubjective with recognition, then both forms of justice are oriented around the norm of participatory parity, therefore encompassing both, but not reducing either one to the other.

1997). It is a process that must be open for all to see, and a place where arguments are exchanged in order to sift through conflicting judgements and interpretations, and decide if the “existing institutionalized patterns of cultural value impede parity and if the proposed alternatives would foster it” (Fraser, 2003:43). However, the free and open debate about claims for justice also requires parity of participation, so that all (legitimate) views are represented. This creates something of cyclical argument, but one that Fraser argues is not vicious, but rather reflects “the reflexive nature of justice...in the democratic perspective” (Fraser, 2003: 44). Fraser goes on to say that in the democratic perspective, justice is not something that can be externally imposed. Rather it must be debated and decided on by those who are to be bound by its implementation (Fraser, 2000).

This then leads to Frasers final addition to the justice debate, that of overcoming the injustice of *misframing*. In this, where all adults are given participatory parity to publicly debate the injustices facing them and there is a level of agreement about what these injustices are, the frame of justice set. However, as this thesis shows, this is seldom the case, and not only can transitional justice mechanisms misframe populations by not allowing them the ability to participate on par in justice initiatives, but they misframe the entire question of justice by addressing questions that are irrelevant to local populations, and ignoring what it is they do want.

Thus the separation, dichotomy and the binary logic inherent in many theories of justice are central themes running throughout this thesis and are highlighted in a variety of ways. Nancy Fraser’s theory of justice was selected precisely because it seeks to overcome these binaries and pursues approaches to justice ‘rhizomatically’ rather than ‘arboreally’. The images of the rhizome and the tree as a means of conceptualizing theory stems from Deleuze and Guattari’s 1987 work, *A Thousand Plateaus: Capitalism*

*and Schizophrenia*. While Fraser does not reference their work directly,<sup>8</sup> her call for a varied, reflexive and organic approach to justice clearly resonates with their appraisal that all theories are connected, nothing is separate, but specific ‘nodes’ of the rhizome are more relevant than others at any given time. When Deleuze and Guattari state:

A rhizome may be broken, shattered at a given spot, but it will start up again on one of its old lines, or on new lines ... Every rhizome contains lines of segmentarity according to which it is stratified, territorialized, organized, signified, attributed, etc ... these lines always tie back to one another. *That is why you can never posit a dualism or a dichotomy, even in the rudimentary form of the good and the bad ... good and bad are only the products of an active and temporary selection, which must be renewed* (Deleuze & Guattari, 1987: 9-10, emphasis added).

What they mean is that nothing can be excluded because everything is somehow connected, even when those connections are temporarily severed, at some juncture they will be re-established, possibly in slightly different ways or through another node. Furthermore, what is considered “the good and the bad” is in constant flux and must be re-evaluated in each separate instance. Fraser mirrors this sentiment when she argues that normalizing or standardizing justice, codifying structures in such a way as to *exclude* possibilities, is to sever the relevant connections and thus close possible lines of inquiry or solution.

...[R]e-normalization risks prematurely closing down new avenues of contestation before they have had a fair shot at establishing their plausibility ... it risks instating a new, restrictive predefinition of what counts as an intelligible claim for justice, thereby entrenching new exclusions ... [and] enshrining a fixed set of justice assumptions at a historical juncture ... [The ideal] would be a grammar of justice that incorporates an orientation for closure...but that treats every closure as *provisional* – subject to question, possible suspension, and thus to reopening. Cultivating responsiveness to emergent exclusions ... that invite reflexive self-problematization, which the aim of disclosing injustices that were previously occluded (Fraser, 2008: 72-73, emphasis in original).

The current ‘grammar’ of transitional justice has fallen victim to these very problems.

No longer engaging reflexively with the discourse results in an either/or approach to

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<sup>8</sup> One of the final chapters of Fraser’s most recent work *Scales of Justice* (2008) does acknowledge that her theory is “seemingly more rhizomatic and Deleuzian than disciplinary and Foucauldian...” (Fraser, 2008: 129), but this is the only specific reference of Deleuze and Guattari.



justice, which is represented in many ways: criminal tribunal *or* TRC; peace *or* justice; justice *or* truth. Do transitional justice initiatives aim to address greed *or* grievance; engage with victims *or* perpetrators; provide redistribution *or* recognition *or* representation; or recommend punishment *or* reparation? The understanding of transition, conflict and justice so parochially, precludes the inclusion of the myriad ways people and groups interact with each other and how different interactions, social constructions or cultural relativisms may impact the onset of conflict, its cessation and how claims to justice can be realized (Fletcher & Weinstein, 2002; Fraser, 2008; Harris, 2012). Furthermore, the current grammar of transitional justice forecloses further discussion of what constitutes the ‘good’ or the ‘bad’. This applies to even the most basic of assumptions surrounding transitional justice, such as ‘revealing as healing’. By stating that purging is necessary for healing while silence is intrinsically damaging, both to oneself and the reconciliation process, transitional justice mechanisms exclude even the discussion of processes that may understand silence and memory differently. Inherent in processes of transitional justice are ideas of what constitutes the ‘good life’ and how it is to be achieved, foreclosing discussion not only on how it might be achieved, but not engaging with what the good life is, and how it may be different for everyone (Fraser, 2003; Lambourne, 2009).

This thesis argues for the use of Nancy Fraser as a tool for understanding the narrow scope of transitional justice and does so in a multi-pronged approach. On the one hand this thesis examines the ways in which institutions of transitional justice, through the process of misframing, become tools of *injustice*. The discussion of misframing investigates the ways in which transitional justice mechanisms depoliticize both victims and perpetrators in the aftermath of civil conflict and impede their participation in the judicial and transitional endeavours that shape their lives (Fletcher

& Weinstein, 2002; Shaw & Waldorf, 2010; Harris, 2012; Shaw, 2007; Roche, 2005; Stovel, 2008; January 2009; Kelsall, 2005, 2009). On the other hand this thesis examines ‘first-order’ claims to justice as they occur on the ground in Sierra Leone; specifically those of misrecognition and maldistribution, and the variety of ways these two injustices mix and reinforce one another causing further injustices. When placed in the context of transitional justice and misframing, a new way of understanding suffering in Sierra Leone becomes apparent, a phenomenon I have called *violent poverty* (chapter seven). Through using Fraser’s tripartite theory of justice, representation, redistribution and recognition, this thesis critically analyzes the Special Court for Sierra Leone and the Truth and Reconciliation Commission and investigates how, in their function as institutions of justice, they marginalize Sierra Leoneans’ calls to justice and thus create further injustice. Moreover the failure of these institutions to engage with the causes of the civil war results in not only failure to address the systemic injustices that led to the civil war initially but also those which continue to plague Sierra Leone today (see chapters five and six) (Shaw,2010; Hoffman, 2011; Denov, 2010; Kelsall, 2005, 2009). As long as transitional justice mechanisms fail to engage materially with the perspectives of populations who are affected by the initial injustice, and who will be affected by the justice mechanisms implemented, they will continue to act as tools of injustice. Local voices must not only be heard in transitional justice discourse, but must be acted upon (Fraser, 2003; Shaw & Waldorf, 2010).

### *Historiography*

While this thesis is predominantly concerned with those institutions that were implemented in the aftermath of the conflict, the persistence of suffering felt by Sierra

Leoneans necessitates an historical analysis, however brief, so the continuity of suffering is visible.

Sierra Leone gained independence from Britain in April 1961 (Fyfe, 1979). The British had administered Sierra Leone in a typical colonial fashion of indirect, decentralized rule, running much of the country through roughly 200 paramount chiefs (Fanthorpe & Maconachie, 2004).<sup>9</sup> When Milton Margai and the Sierra Leone People's Party (SLPP) took over administration in 1961, they inherited a country with less than 8% literacy and a severely declining economy (Hanlon, 2005). While Margai tried to lead the country through its infancy, he was very much a tool of the British regime and held power with the assistance of British forces (Smillie, et al., 2000). The colonial system was still very much in place; resources were still extracted and exported to Britain, there was still a strong segregation between the capital at Freetown and the provinces (the former protectorate), and the reliance on paramount chiefs and indirect rule remained (Fithen & Richards, 2005).

An election in 1967 saw Margai and the SLPP lose to the newly founded All Peoples' Congress (APC) under Siaka Stevens (Zack-Williams, 1999). Stevens came to power calling for the nationalization of the diamond fields and greater access to resources for the average Sierra Leonean. However, Stevens' strategy was to turn the national economy into a personal resource, used to fund his patrimonialist project and enrich himself and his followers (Fanthorpe, 2001). Under patrimonialism, a 'big man' or chief looks after those below him, and protects them. In return followers owe allegiance and duties to their chief or big man, almost a familial relationship (Utas, 2012; Fanthorpe & Maconachie, 2004). The process takes on a neo-feudalist formula where those at the bottom pay 'rents' to work land or mine and pay the landlord,

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<sup>9</sup> Although it had been largely self governing until the late 1890s

paramount chief, or district officer through their profits and would earn a small wage in return (Kandeh, 1999). Patrons are linked vertically, thus everyone's big man is another big man's follower (Utas, 2012). By the 1980s the entire bureaucracy of Sierra Leone was subsumed within this patrimonialist network. Patronage became a prerequisite for entry into state education and employment. Everything from paramount chieftaincies, ministerial positions, to placements at Forah Bay College (FBC) and artisanal diamond mining licenses were up for sale under the APC regime (Fanthorpe, 2001).<sup>10</sup> In 1978, President Stevens had succeeded in outlawing opposition parties to the APC, making Sierra Leone a one party state (Keen, 2005). After consolidating power, Stevens banned labour unions and outlawed strikes. He heavily coerced the press, student unions and even the college and university faculty and administration to support his regime (Bangura, 1997).

Patrimonialism runs up against a particular problem in Africa, in that the sheer number of those who seek sponsorship from a patron for education or employment exceeds the capacity of the system to absorb them. In Sierra Leone specifically, half of the population was under 18, making it a logistical impossibility to keep the patrimonialist system running indefinitely (Fithen & Richards, 2005). As a result, many youth were left without patrons and a major effect of a patrimonialist strategy is that it completely marginalizes those who are excluded from a patrimonial relationship (Zack-Williams 1997). It was throughout this time that student groups began to organize as a means of protest against the corrupt regime (Rashid, 1997). Stevens was able to temporarily control this problem by creating a personalized militia, the Special Security

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<sup>10</sup> To be appointed as a district officer, assistant district officer in a diamond mining town, one could pay a 10,000Le fee to the appropriate official and make subsequent monthly payments of Le8,000 to keep the position (Kandeh, 1999). Prices dropped accordingly for either an assistant district officer role or administrators in non-mining areas. As a civil servant in these areas you were able to charge for mining or agricultural contracts, establishing a quasi independent system of patrimonialism.

Division (SSD).<sup>11</sup> Composed of approximately 200 youths the SSD were used to protect the state's (Stevens') interests and discourage dissent. Potential challengers to the systematic looting by the state were met with intimidation, violence, political thuggery and extra-judicial execution (Silberfein, 2004; Zack-Williams, 1997).

The impact of patrimonialism and indirect rule meant that the administration of the districts and villages fell to the paramount chiefs and district officers, middle ranking members of the patrimonialist network. Under this system, these individuals also represented the judicial face of the state and adhered to customary law. Complaints of theft, assault, etc. would be brought to the paramount chief who, ostensibly, would sit in impartial judgement and render a decision. This system too, however, fell victim to patrimonialism and corruption, and chiefs often used falsified or trumped up claims of 'woman damage'<sup>12</sup> to ensure continued indentured servitude of young men under their patronage (Fithen & Richards, 2005). The levying of inordinate fines for such 'indiscretions' meant that young men worked for paramount chiefs for free rather than earn wages, precluding them from advancing in society.<sup>13</sup>

By the 1980s the funding for the patrimonialist system was drying up, and Stevens turned to the international financial community for support. The International Monetary Fund (IMF) demanded fiscal restraint in order to continue loans. Mandatory devaluation of the currency caused rampant inflation and decimated the salaries of average Sierra Leoneans (Kandeh, 1999). By the time Stevens hand-picked Joseph Momoh as his successor in 1985 the Sierra Leonean state was on the verge of collapse (Kandeh, 1999; Zack-Williams, 1999).

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<sup>11</sup> Known colloquially as the Siaka Stevens Dogs

<sup>12</sup> 'Woman damage' is the interference by a youth with someone else's wife. Typically a paramount chief or district officer would accuse a young man of this offence and bribe the official sitting in judgment to ensure a favourable outcome (Fithen & Richards, 2005).

<sup>13</sup> Youth in Sierra Leone has deeper connotations than an age. A person is considered a youth until he has secured an income and is able to marry. Forcing young men to work for nothing meant that they could never marry and never join society as adults (Christensen & Utas, 2008).

Momoh lacked the political support of the party that Stevens had enjoyed and as a result lacked sufficient power to alter the system in his own favour (Reno, 1999). In an attempt to build capital, Momoh agreed to implement the IMF's Structural Adjustment Program without alteration, as a result what few social services still existed disappeared all together: health care ceased; education was declared a privilege, not a right; teachers were not paid and even those who had purchased their place at the university or civil service did not receive the benefits of their position (Kandeh, 1999). As a means of keeping dissent down, and "mopping up" unemployed youth, Momoh reinstated the Sierra Leone Army (SLA) and paid them using the rice subsidies he was receiving from the IMF. When Sierra Leone defaulted on its debt payments, even these subsidies ceased (Silberfein, 2004).

It was in this context that a small band of rebels, calling themselves the Revolutionary United Front (RUF) began forays into the Eastern provinces of the country, calling for the removal of the APC regime and the implementation of a more egalitarian and socialist government (Richards, 1996). Momoh refused to acknowledge that the skirmishes taking place on the border were anything more than banditry, and as a result the RUF had established a foothold in the East before a response from the capital was organized (Hirsch, 2001).

Whilst most literature is unanimous in the critiques of Stevens' and Momoh's rule, the cause of Sierra Leone's descent into a protracted civil war is the subject of much debate. Some believe that it marked the beginning of 'new barbarism' and the 'coming anarchy' inherent in the perfect storm of African barbarism, cheap weapons and the spread of drug culture (Kaplan, 1994); while others believed it was a crisis of patrimonialism and excluded intellectuals searching for their political place in society (Richards, 1996; Reno, 1995). Others still believe that it was a combination of these

two, conceding that there was indeed a political agenda of the initial revolutionary force but that this agenda, far from being ‘intellectual’, was aligned more with the logics of self-enrichment, self-aggrandizement and brutality (Bangura, 1997; Abdullah, 1998). Furthermore, this argument states that rather than a patrimonialist crisis, the crisis in Sierra Leone leading to the civil war was a fiscal one and stemmed from the “informalization of key industries like diamonds” (Bangura, 1997: 133).

The specifics of the Sierra Leone civil war, and how it developed, are the subject of much research and debate. Atrocities committed during the civil war have been regularly highlighted for their particularly heinous nature.<sup>14</sup> A variety of explanations regarding *why* the conflict descended into such atrocity have been submitted to the intellectual debate: from the ‘barbarism’ argument submitted by Kaplan (1994) and Collier (2000); to violence as a manifestation of disgust and shame discussed by Keen (2005) and Mitton (forthcoming 2014); to the use of violence as a tool of empowerment, humiliation and revenge against former paramount chiefs as discussed by Richards (1996) and Peters (2011); to the deliberate use of extreme violence and atrocity as a means of gaining both promotion within one’s given faction, as well as garnering international attention and thus achieving the status of a place in power sharing deals submitted by Hoffman (2004, 2006, 2011); Utas (2012); and Käihkö (2012). While valid and interesting debates in their own right, such discussion is outside the scope of this thesis. The current research is not concerned with how certain atrocities occurred, but rather with why the civil war happened at all and what has been done to stop it from occurring again. The current research does reject the ‘new barbarism’ thesis and takes the stance that the atrocities in the civil war stem from a particular historic juncture, arguing that the war would not have taken the same form

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<sup>14</sup> Amputations, rape, forced service and violent abduction/conscription of child soldiers are all atrocities that are synonymous with the Sierra Leone civil war.

had the history of Sierra Leone been different (Keen, 2005; Hoffman, 2006, 2011, 2004). This thesis, however, investigates the history of the war as a means of specifying that justice initiatives need to address the historical juncture from which atrocities emerge, rather than the form of atrocity itself.

This thesis holds that the war in Sierra Leone *was* politically motivated and *was* a direct response to the stimuli of patrimonialism, corruption, failure in the local justice system and youth disillusionment. This thesis argues that both greed and grievance were fundamental to the outbreak of civil war in Sierra Leone, but understands both greed and grievance as claims to the justice of redistribution and recognition respectively. The focus of transitional justice mechanisms in Sierra Leone on the specifics of atrocity in the conflict - rather than on the origins of the conflict itself - is precisely why these initiatives fail in establishing justice for Sierra Leoneans and why Sierra Leoneans view the prewar, war and post war periods as analogous (Fieldwork, 2010-2011).

### *Thesis Structure*

Chapter two introduces and explains the nature of the research paradigm and methodology employed. It explains how the decision to use Fraser's theory of justice as a framework emerged out of an initial fieldtrip to Sierra Leone and how this fieldtrip helped shape both the collection and analysis of the data. The chapter also explains how data was collected and analyzes the challenges and rewards of undertaking empirical research in Sierra Leone.

Chapter three introduces and examines, in detail, Nancy Fraser's theory of justice and tests its relevance to both transitional justice discourse and the Sierra Leone specific



case. This chapter investigates the historical moments from which transitional justice emerged and analyzes its impact on the development of justice discourse. The dichotomies inherent in transitional justice are first outlined here and Fraser's theory of justice is used as tool of critique to begin the explanation of how these mechanisms can result in greater injustices.

Chapter four introduces the historical juncture which saw the implementation of the transitional justice initiatives of the SCSL and the TRC in Sierra Leone. It overviews and examines the failed peace processes and the moments which produced the Special Court for Sierra Leone and the Truth and Reconciliation Commission. This chapter also investigates the unique structure of transitional justice in Sierra Leone which saw a criminal tribunal run concurrently with a truth commission for the first time. This chapter therefore includes a critique of the overlap of the TRC and SCSL and explores how they impeded each other and the pursuit of justice in Sierra Leone.

Chapter five contains a specific critique of the Special Court of Sierra Leone and analyzes how its focus on criminal activity occurring during the civil war began the process of misframing calls to justice in Sierra Leone. This chapter examines the removal of political considerations from the courtroom and how this may impact both the historical record and access to justice. Moreover, this chapter highlights the need for a more localized approach to justice.

Chapter six uses Fraser's theory of misframing, maldistribution and misrecognition as a lens through which to view the undertaking of the TRC in Sierra Leone. In the absence of the need to uncover truth, from which TRCs developed, the focus shifted to the

cathartic experience of testimony. This chapter examines how the focus on the notion of ‘revealing as healing’ and the assimilation of locally held views on forgiveness and memory, combined with the application of ‘universal’ rights, served to misframe calls for justice in Sierra Leone.

Chapter seven examines first-order claims to justice in Sierra Leone and examines the point at which the injustice of misrecognition becomes the injustice of maldistribution. By focusing on the experience of youth in Sierra Leone, I have developed a conceptualization of poverty in Sierra Leone best understood as a violent affliction – poverty as a war waged against the people. I have termed this experience violent poverty. By understanding how Sierra Leoneans feel their claims to first order justices of recognition and distribution are being neglected, an understanding of the injustice of misframing, caused by transitional justice mechanisms, can be attained.

Chapter eight summarizes the findings of this research and demonstrates that a new and worthy contribution to knowledge has been presented. This chapter expands on where the research may develop further and supplies modest suggestions for the localization of transitional justice in Sierra Leone.

## **Chapter 2: The Trials and Tribulations of Putting Justice on Trial: Undertaking Fieldwork in Sierra Leone**

### *Background*

The fieldwork for this thesis was conducted in Sierra Leone, in the course of two fieldwork trips from January – April 2010 and January – March 2011. Empirical work in Sierra Leone was essential, if at times difficult, in order to understand the impact and perception of international transitional justice mechanisms established in Sierra Leone after the civil conflict. Not only did the fieldwork undertaken in Sierra Leone prove fundamental to the critique of transitional justice mechanisms, but it proved essential in uncovering how local populations engage with transitional justice mechanisms, as well as the extent of ongoing structural and systemic injustice that continues unabated.

This thesis is something of an integrated study, stemming from past research in peacebuilding and international development and separate work on international state-corporate crime in the diamond trade in Sierra Leone. Research, particularly for the latter, included in-depth research on patrimonialism (Richards, 1996; Peters & Richards, 1998), the creation of the shadow state (Reno, 1995) and the phenomenon of ‘economic violence’, or the perpetuation of conflict as a means of gaining economic benefit – such as low taxation and cheap extraction cost (Keen, 2005). Research for the latter uncovered the statute of the Special Court for Sierra Leone. The statute outlines the mandate of the Special Court as prosecuting those “who bear the greatest responsibility for violations of human rights and international humanitarian law” (SCSL, 2002). My research raised serious questions about who was the most responsible? How are these people identified? And how would a criminal tribunal bring justice to the people of Sierra Leone? Many of these questions focused on the dichotomous structure of law, which necessitates that if you are not 100% guilty, then you are 100% innocent; there is no means or method of managing the variety of ways that individuals, groups and

organizations are involved with conflict (Fletcher & Weinstein, 2002). Viewing the post-conflict state of Sierra Leone in this way then begged the question that if criminal tribunals, the focus for post-conflict justice both in Sierra Leone and globally, could not adequately address the questions of responsibility and justice, what might?

Recognizing justice discourse to be dominated by a Western socio-legal dichotomy based on guilt and innocence, a new perspective was needed and travel to Sierra Leone necessary to gain this.

The theoretical lens applied to this study is examined in depth elsewhere (chapter three) but the fieldwork helped narrow the field of inquiry. The use of a grounded theory method (Strauss & Glaser, 2012) confirmed the use of Fraser's theory of justice as the most valuable framework through which to view and interrogate justice initiatives in Sierra Leone. The nature of the research undertaken, a complex study of local perspectives of justice and justice institutions, lent itself to a qualitative approach.

#### *Pursing a Qualitative Approach through Case Study*

There are a variety of ways to perceive the macro-scale theories that make up the core of transitional justice discourse, yet these 'universals' – whether they be justice, human rights or democracy – take no concrete form unless they are put within a context (Tsing, 2005). Universalizing theories that are not explored empirically have limited explanatory or comprehensive capacity (Coffey & Atkinson, 1996). "Universals are effective within particular historical conjectures that give them content and force" (Tsing, 2005: 5); the social change or impact of the universal or macro theory can only be judged by how it is lived and experienced (Mason, 2006). Theoretical accounts of social change are presented as seamless, comprehensive packages, to be applied in their entirety to existing problems; the whole-sale application of these theories will ostensibly

cure all ills in the recipient locality. However, “qualitative, empirical research tends to expose the contradictory, tangled complexity of real life experiences...” (Gillies & Edwards, 2005: 13). Thus a methodological approach that allows for a foray into how these macro theories of transition and justice are lived – through interviews, immersion and observation – was essential for the project. One of the foundational dilemmas in transitional justice is that it is based on universalizing precepts which take the individual and the collective to be analogous. As a result, a study on transitional justice particularly lent itself to a qualitative study.

Macro-scale theories make claims about far-reaching, sometimes global phenomena, these are manifested in the everyday lives and cultures of people and populations. In this sense, they are wanting to be macro and micro, global and local, socio-cultural and individual, all at the same time...(Mason, 2006: 14).

Not only is transitional justice discourse designed globally to facilitate change locally, it equates both the collective (macro) to the individual (micro), thus “...it is something of a challenge to conceptualize what form of empirical ‘evidence’ might be required to support this” (Mason, 2006: 14). The variety of sources available through a qualitative approach allows us to gain an understanding of how “people socially and symbolically construct their own organizational realities” (Rowlands, 2005: 83). The fact that this thesis calls for localized approaches to justice necessitated obtaining a local perspective, failure to do so would have been to commit the same methodological failure as the institutions that this thesis critiques.

The structure of the current study, while appropriate for a qualitative approach, similarly lent itself to the use of a case study. Case studies alone, of the methodological approaches available for a social-scientific study, have the ability to manage a variety of sources and evidence including “documents, artefacts, interviews and observations” (Yin, 2009: 11). The pursuit of a case study stems from a necessity to understand the “texture and weave” of how everyday political life is experienced by others (Mason,

2002). Yin (2009) argues for a bilateral definition of a case study; on one hand it is a study that explores current and on-going experiences contextually and empirically; on the other hand it relies on multiple sources of evidence as a means of mitigating subjectivity – referred to as triangulation (Yin, 2009). Case studies strive towards a comprehensive understanding of cultural systems of action, how populations act and engage in social situations, and which activities they engage in (Feagin, Orum & Sjoberg, 1990; cited in Tellis, 1997). A case study is undertaken in such a way that it integrates the views of the actors in the case under study (Zonabend, 1992; cited in Tellis, 1997). As the focus of the current research is to find ways of integrating local perspectives on justice into international transitional justice discourse, the decision to undertake a case study seemed simple. It is worth noting that case study and ethnography are often used interchangeably (White, Drew & Hey, 2009), and the current study used both research methods. Whereas a case study is interested in an individual case (Stake, 2005), there is the implication that a researcher simply has to ‘gather’ the stories of participants, that experiences are waiting to be collected “like shells on a beach” (White, Drew & Hey, 2009: 20); whereas ethnography indicates the necessity of “gathering data in authentic (i.e. real world) environments that put the researcher *inside* the case” (Willis, 2007: 237, emphasis added).

The case study serves as an all encompassing research strategy (Cameron, 2012). In a case study, data collecting is not standardized, opening opportunity for imaginative and multidisciplinary methods of collection (Yin, 2009). Through the inclusion of a variety of methods of data collection, the researcher increases the *types* of data that are permitted in the study. Multiple sources and types of data are necessary to confirm the validity of the processes through triangulation (Yin, 1989).

Triangulation is one of the key elements in overcoming the main criticism of both a qualitative approach and the use of case study, investigator subjectivity or researcher bias. Yin (1993) suggests three methods of mitigating this subjectivity: use multiple sources of evidence; establish a chain of evidence; and have a draft case study report reviewed by key informants (Yin, 1993). In the context of the current study, this meant that the researcher was open to ideas and concepts emerging from the fieldwork itself. Indeed the notion of violent poverty, discussed in greater detail in chapter seven, was a concept that emerged from the research directly. The concept emerged from being open to the ways participants, particularly youth, described their poverty outside of the boundaries set by the questions. Moreover, when youth depictions were triangulated with the ways in which other groups described the plight of youth in Sierra Leone, the concept of violent poverty was solidified.

By using a case study, the researcher was more open to, and receptive of, the general tone or feeling of interviewees and this became a form of communication itself. Many times during interviews it was not what the participants said, rather what was not said that was the most informative. The dismissive gestures, aversion of eyes or sounds of derision that regularly met questions regarding the Special Court or the TRC were crucial in gaining insight into how local populations viewed these institutions of transitional justice.

The current study examines the pre-conflict, historical roots of injustice in Sierra Leone and maps these injustices through the conflict and transitional justice periods. The fieldwork was undertaken after the completion of the TRC and after the completion of the Sierra Leonean phase of the SCSL, but concurrently with Phase II of the SCSL which was the trial of Charles Taylor, taking place in The Hague, Netherlands. The research was thus optimally timed to map the chain of historic and ongoing injustices.

The timing of the case study is imperative as the temporal relativity of the events or experiences under scrutiny varies widely. Investigating events ‘too soon’ after they happen means that there would be little or no access to, or availability of, government documents, court reports or leaked internal communiqués. However, if researching after too long a period the “early history has mellowed” (Schramm, 1971), meaning it may no longer be part of the local narrative. While both the TRC and the Sierra Leonean trial phase of the SCSL had been completed at the time of fieldwork, Phase II of the SCSL – the Charles Taylor Trial – was nearing completion during the first fieldwork trip, bringing it back into the public consciousness. Moreover, what people are not saying about an occurrence is just as important as what they are saying about it. The speed with which an event leaves the broad public narrative is an important indicator of how an event or occurrence was received and how it resonated with the public consciousness. For example, although the Charles Taylor trial was wrapping up and the presentation of closing remarks occurred during fieldwork, the trial was not part of everyday dialogue for the majority of populations interviewed or observed. This speaks volumes about how the trial was removed from the populations of Sierra Leone.<sup>15</sup>

The current research also sought to overcome investigator subjectivity by accessing a variety of sources. Interviews in Sierra Leone took place across a broad spectrum of the class and status hierarchy. By focusing on three overlapping but distinct groups; from elites and policy makers, through NGO staff and transitional justice practitioners to local, recipient populations, the researcher ensured a broad spectrum of response. Additionally, undertaking fieldwork in both the Western and Eastern districts of Sierra Leone assured a variety of source material and responses. My

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<sup>15</sup> Fieldwork (2010-2011)



findings were then cross referenced and triangulated against and within the existing discourse, strengthening the results “by replicating pattern-matching” (Tellis, 1997: 3).

While this study uses Yin’s framework for overcoming research bias – triangulation and historical mapping – understanding and engaging with investigator subjectivity can actually enrich the research undertaken. However, far from being detrimental, taking a “partisan objectivity” can open up new avenues of inquiry as it allows “the researcher to recognize and communicate with an audience what hitherto was obscured or mystified” (Tombs & Whyte, 2002: 231). Researcher bias is inherent in all forms of research or analysis (Tombs & Whyte, 2002), but can be mitigated by problematizing and openly engaging with the effects of this bias (MacManus, 2012). Moreover, by being open about researcher bias the researcher can overcome the “dangerous illusion” of “value-neutrality” (Tombs & Whyte, 2002: 230). Case studies, as “multiple-perspectival analyses ... give voice to the powerless and voiceless” (Tellis, 1997: 5) thus making the researcher “answerable to the ... powerless” (Tombs & Whyte, 2002: 230). By taking an “ethical orientation” (Scheper-Hughes, 1992), the researcher becomes directly accountable to the researched (Green & Ward, 2011). By being open about researcher bias, not only is this accountability engendered, but it may also serve to gain the trust of exploited or disadvantaged groups, therefore expanding the scope of the research undertaken. Partisanship doesn’t have to hamper the research, indeed, “declaring oneself as on the side of the powerless may have little meaning unless it involves an assault on the powerful” (Tombs & Whyte, 2002: 230). By acknowledging and engaging with investigator subjectivity that aligns itself with the powerless, the researcher writes to, and for, the disadvantaged group, showing “a commitment to audiences beyond universities” (Tombs & Whyte: 230). Moreover, awareness of the fallacy of ‘value-neutrality’ and the inevitability of ‘critical partisanship’ allows the

researcher to problematize their subjectivity and therefore address how their bias may impact the outcome of their research. It acts not so much as a filter through which the research is undertaken and analysis made, but rather becomes a source of information in itself.

In the present study, negative views of the Special Court for Sierra Leone, the Truth and Reconciliation Commission and international transitional justice theory in general, derived from a background in peace studies, research on ‘humanitarian’ intervention and my LLM dissertation on economic violence in Sierra Leone, did inform the research undertaken. However, far from damaging the data collected, being aware of this bias allowed me to engage with it and ensure that it did not act as a filter when collecting and analyzing data. Being honest and open with participants about my subjectivity allowed for engaged debates, particularly with transitional justice practitioners, resulting in a more complete narrative. In the attempt to persuade me of the validity of their cause, members of transitional justice initiatives enriched their narratives with stories, anecdotes or beliefs that may have otherwise been absent. By being honest about my own subjectivity, participants were similarly open about their own.

### *Engaging with a Post-Colonial Context*

The subjective bias of the researcher is not the only aspect that needs to be problematized, engaged with and understood in order to ensure an accurate collection and analysis of the data. When undertaking fieldwork in foreign countries, the historical context of the host country, the relativity of the researcher’s background and their role in the host country – both historically as a nationality and presently – must be

acknowledged, problematized and placed contextually in order to analyze how it may impact the research undertaken.

There is a long history of European involvement in West Africa, dating from at least the 15<sup>th</sup> century (Fyle, 1981). From that point there has been a continual Western, predominantly British, presence in Sierra Leone; arguably little of it positive. While Sierra Leone may have had an atypical colonial experience (see chapter one) its post-colonial experience has been more standard, on both micro and macro levels of investigation. At the macro level an ongoing international presence largely takes the form of neo-colonialism; a relationship geared toward the “[domination of] African peoples and the exploitation of their resources” (Daima, 1998: 57). The individual (micro) level is informed by the national (macro) experience. Thus the researcher has to engage with the context of colonial past and association with the existence – both historical and ongoing – of a European authority whose presence in Sierra Leone has meant oppression or exploitation for local populations (January, 2009). The history of exploitative relationships by Western powers has created a level of mistrust of foreigners in Sierra Leone. By pursuing an ethnographic approach, as a means of “apprehending and elaborating the mysteries of ‘culture’” (Lassiter & Campbell, 2010), founded on cultural immersion in the host country, I managed to engage with this mistrust and, to a large extent, overcome it. The vast majority of expatriates living in Sierra Leone live/stay in Freetown and reside in the more exclusive areas of the city. They associate largely with other expatriates and traverse Freetown and the provinces in their own vehicles, thus seldom engaging with local culture in social environments. Travel and transit in Sierra Leone is a very social environment, travelling through Freetown or ‘upcountry’ in a shared taxi or *poda poda*, can be an overwhelming experience, but a valuable one for understanding the culture. Europeans, by shunning

this form of integration (usually out of fear), are seen as keeping themselves aloof and segregated. As a means of overcoming the segregation of expatriate life, on my first fieldtrip I stayed with a local family in Freetown's Murray Town and travelled the city using public transit exclusively. Many locals expressed shock and delight when I hopped into a *poda poda* or taxi, seemingly appreciative of my willingness to immerse myself amongst them. Moreover, I sought to engage with my local community, through watching football matches at my local 'leisure centre' and attending neighbourhood parties; through this I managed to establish a level of familiarity with my community that facilitated greater trust and helped overcome neo-colonial suspicions.

The individual experience of neo-colonialism is not merely informed through the national experience, it is felt directly by the individual. While discourse on neo-colonialism focuses extensively on the exploitation of natural resources in Sierra Leone, particularly in the mining and extractive sector, there is another form of exploitation that needs to be addressed. Elizabeth Stanley (2010) cautions researchers to take care when exploring phenomena affecting vulnerable populations who have been "researched to death", and Marx reminds us that it is not enough to simply observe and interpret the world, but that we must also attempt to change it (Marx, 1845). Each year Sierra Leone is host to a number of researchers and journalists, searching for stories of extraordinary exploitation or suffering that can be used for their own research or writing and sold back in their home nations. Similar to the problems experienced by the TRC (see chapter six), there lies a danger in simply collecting stories of suffering with no effort taken to alleviate such suffering (Pettersson, 2003). When no immediate or discernible efforts at reparation are made, there is a risk of further alienating participants, particularly vulnerable groups like victims and ex-combatants. Researchers can overcome this problem by ensuring that they are open about the purpose of their research and their

ability to compensate participants for their contribution or the impact that their research may have. By explaining to participants, before interviews started, that I was a student struggling to get by myself, and not a journalist seeking to profit from their stories, I made them aware of my limited ability to compensate them. I made an effort to make clear that I would not profit from selling stories of their suffering. Moreover, I explained that while I was criticizing the current state of the justice sector, my research was unlikely to read by many people or have much of an impact. I did offer each of my participants the chance to listen to their interviews, retract their statements and read and review the final product, thus making myself accountable to the researched. After all, just as the researcher “should not conduct research exclusively in league with powerful groups nor should they communicate research exclusively to such powerful groups” (Tombs & Whyte, 2002: 230).

The foreign presence in Sierra Leone, while dominant, is not exclusively exploitative. Sierra Leone is host to a plethora of development and justice projects, predominantly run by international non-governmental organizations (NGOs) (Schabas, 2006). The purpose of many of these bodies, at least to some degree, is advocacy. Some organizations are seeking to address women’s rights, some the rights of children and youth and yet others the establishment of better mechanisms of governance, but at some level, each of these groups acts as an advocate for vulnerable populations. The majority of these projects, at least the most visible of them, are set-up, run and organized by European or American NGOs. The result of an abundance of foreign advocacy is the creation of the expectation of a similar level of advocacy or international exposure from the independent researcher. Because of the abundance of NGOs with international ties, the lone researcher is also expected to have international connections that could facilitate immediate and perceptible amelioration for

participants. As a regular prelude into my interviews participants would mention that sharing their story with me would ensure that their story was heard elsewhere and could perhaps result in benefits for them or their organization. As one member of a women's civil society group mentioned in our meeting:

*We need finance, we need funding. As we are still finding our way, when you go back I will write you a proposal for funding and send it with you. You can share it in England.*<sup>16</sup>

This can present a challenge to the researcher, not only for the obvious reason that in this case the researcher did not have the intention or accessibility to become an advocate, but also because it raises questions about the business of storytelling. It is entirely possible that participants were eager to tell me what they thought I wanted to hear as means of establishing a reciprocal relationship from which they could benefit, either from me, or from any contacts I may have. As a means of maintaining trust, I made a point of reminding participants that I was a doctoral researcher, with limited contacts and minimal influence. I was careful to explain that while my research sought to expose ways in which Sierra Leonean populations continue to suffer from pre-war injustices, my ability to actually *do* anything about it was limited. I reminded them of their option to leave the interview at any time and that their decision to participate or not would not have a negative impact on their relationship with me or any other group that I might have contact with.<sup>17</sup> Simultaneously the researcher's fear of participants providing a filtered narrative – as means of securing a beneficial relationship – was overcome through the process of triangulating multiple sources of evidence (Yin, 1993).

### *The Call of Ethnography*

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<sup>16</sup> Interview with Princess Rogers, Women in Action Against Gender Based Violence, MRD, Kenema 17/02/2011.

<sup>17</sup> In accordance with King's College London's Ethics Sub-Committee protocol.

The role of the foreign researcher is an interesting case. As much as one tries to prepare for the difficulty of fieldwork, many problems are not illuminated until the researcher has arrived in the host country. Preparation for the fieldwork under study was particularly difficult as, at the time of undertaking, there was little information available about travel to and within Sierra Leone. Many of the mainstream travel guides do not offer a Sierra Leone specific volume. I picked up both the *Lonely Planet: West Africa* and the *Rough Guide: West Africa*, both of which promised a comprehensive overview of each West African nation. Each of these volumes contained limited information dedicated to travel in Sierra Leone. Proportionally Sierra Leone sections contained the least information in both books, and were thus inadequate preparation for travel to Sierra Leone.<sup>18</sup> The British High Commission travel website did have information on travel to and within Sierra Leone, however it advised extreme caution, travel within Freetown and the country only with privately hired cars or marked convoys and only in daylight hours. They also recommended against independent travel, the use of public transit – *ocadas*, taxis and *poda podas* – and strongly recommended the hiring of personal security<sup>19</sup> (British High Commission, 2009).<sup>20</sup> While the Bradt travel guide (Mason & Knight, 2009) provided an excellent and detailed overview of travel and life in Sierra Leone, the nature of life in Sierra Leone cannot be accurately documented and analyzed without the experience of immersion. There is the belief that everything we are interested in or need to know exists in either language or text, however this belies information gleaned from observation and presence (Mason, 2002). Furthermore, just as reading about a place cannot suffice as

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<sup>18</sup> *Lonely Planet West Africa* (2009) and *Rough Guide West Africa* (2008)

<sup>19</sup> Mainly for personal property.

<sup>20</sup> Government of the United Kingdom, available at: <https://www.gov.uk/foreign-travel-advice/sierra-leone>. Accessed on: November 17, 2009.

preparation for arrival, and mere observation cannot suffice as means of methodology, particularly not when researching the vulnerable.

The complexity of life on the ground requires not just empirical knowledge of history and economics, but a human understanding of the everyday lives lived by local populations. This knowledge can help the researcher wade through the reams of often conflicting data. Narratives often “...collide into contentious assemblages of partial truths, political fictions, personal foibles, military propaganda, and cultural lore” (Nordstrom, 1995: 140). By adopting an ethnographic approach – which facilitates an understanding of events, phenomena, experience and people that would otherwise be missed (Cameron, 2012) – conflicting narratives can be triangulated to gain a more complete picture of crimes, class relations and perspectives of victimhood. Moreover cultural immersion allows for a “multidimensional perspective on a phenomenon”; one where the researcher may engage with a problem from many angles (Mason, 2002: 103). Increasingly ethnographers are dismissing traditional ethnographic methods which have been characterised as disengaged, aloof, or neutral in favour of a more immersive approach (Richardson, 2000). In the current study, immersion was made easier by living away from expatriate communities and living locally in more deprived areas (Cameron, 2012). Both living and acting locally facilitated the building of trust between my community and me. I ensured that I was very visible in my community, running through the neighbourhood daily and partaking in neighbourhood events. Fontana and Frey (2000) caution against researchers becoming too close with their subjects and highlight the danger of ‘going native’ which can come at the expense of the researcher’s credibility, however immersion and a sympathetic attitude allowed for greater access and an atmosphere of openness.



The ethnographic framework also allowed me to engage with my own role as a researcher and as a potential tool of transitional justice; asking the question if I was guilty of pursuing the same fallacy as the TRC and the Special Court, as argued by this thesis? In other words, through my research was I making normative claims about what Sierra Leoneans *need* and what they *ought* to be doing rather than remaining open to ideas and suggestions? Being aware of this issue was the first step to overcoming it. This awareness ensured that I made no recommendations about what I thought was needed or how it should be obtained, but rather encouraged participants to speak candidly about their own experiences and asked for their thoughts on how the system may be improved.

By using an ethnographic approach, the researcher is able to recognize, problematize and engage with phenomena that might have otherwise gone unnoticed. Only through immersion was I able to recognize how local populations viewed outsiders and gain the level of trust I thought was necessary for people to open up to me about their experiences. The familiarity created by close cultural contact helped in gaining the trust of participants. Similarly, only through cultural immersion did I become aware of the simultaneous fear of exploitation and desire for advocacy, discussed above, and as such I was able to overcome these issues. Furthermore, the ethnographic approach and the trust it engendered facilitated access to groups I may otherwise not have been able to access.

Cultural immersion, facilitated by an ethnographic approach helped develop a greater engagement of Fraser's theory of justice. Meeting local populations in socially relevant areas, such as the local leisure centre or bar, I engaged with them in a similar way as to how they interact with each other. By sitting in the Ambrosia Leisure Centre, taking public transit and hanging out at local restaurants and bars, I observed how locals

engage with each other, outside of the influence of a formal or semi-formal interview. What grabbed my attention the most was the extent to which young Sierra Leoneans are socially and politically engaged, and how frequently social justice issues form the basis of their conversations. From food security to corruption in the fishery industry or the lack of employment opportunity, young Sierra Leoneans are very active in their ‘political space’. The extent to which social justice issues permeate their lives and inform their dialogue makes the marginalization and misframing they experience in the formal justice sector much more grievous. It was through observing this ongoing dialogue, combined with their expressions of frustration at the lack of progress for Sierra Leone since the end of the war, which made Fraser’s theory of justice seem real and relevant. From observation it was clear that local populations *want* a say in the justice initiatives that affect them but feel they are being barred from participation by their social and economic standing. Hearing Sierra Leoneans express these feelings, not just in the context of an interview with the researcher, where grievances may be exaggerated, but in discourse with *each other*, allowed for real engagement with Fraser’s work.

### *Fieldwork*

The fieldwork portion of this study took place over the course of two fieldtrips. The first from January – April 2010 and the second January – March 2011. An application was made to, and approved by, the University’s Research Ethics Sub-Committee and the protocol was adhered to during the course of fieldwork.<sup>21</sup> The 2010

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<sup>21</sup> Considerations included ensuring that participants remained free from duress during the course of the interview and they understood their rights to leave the interview, withdrawal participation and rescind their authorization to use their statements in the final write up. All participants were given the option of anonymity, although only one participant chose to utilize this option. As illiteracy rates can present a problem throughout Sierra Leone I feared causing embarrassment by showing participants a piece of paper they could not read, therefore this information was recited to participants and their consent gained

fieldtrip was more *exploratory* in nature, than *explanatory* or *descriptive* in that it was undertaken prior to the final definition of the research question and the establishment of hypotheses (Tellis, 1997). While the framework of the study had been established, it was not anticipated what would be found. The observations and findings from the first fieldtrip helped confirm the relevance of the proposed theoretical framework – Nancy Fraser’s theory of justice – and helped establish a more focused second trip, meaning that questions could be added or dropped based on the outcome of the initial study. The second trip was more explanatory in that it sought to ‘pattern-match’ findings from the case study with Fraser’s theory of justice (Tellis, 1997).

Interviews during both sets of fieldwork were semi-structured. Dictated by the nature of the questions asked, semi-structured interviews allowed for flexibility and the ability to change the structure of the interview as it progressed. Using a semi-structured method allowed for open ended questions creating a natural flow to the conversation and allowing for probing where appropriate, without alienating the interviewee (Burnham et al., 2004). The use of semi-structured interviews means that there can be both more and less structured parts integrated into a single interview and the interviewer may vary between these (Rubin & Rubin, 1995).

Depending on the comfort level and accessibility of participants, interviews were either individual or group based. When travelling to rural villages in Eastern Sierra Leone, for example, the difficulty of travel for both the researcher and the participants meant that group interviews were the most reasonable. Individual interviews lasted roughly 1 hour with group interviews lasting substantially longer.

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orally. As means of maintaining consistency, this method was used across all groups. Their consent was also gained for the use of a small digital recorder and brief note taking during interviews. One participant declined the use of the digital recorder, but consented to the taking of hand written notes during the course of the interview, two other participants requested that parts of the interview be left ‘off the digital record’ but consented to the information appearing in the final report, one under the condition of anonymity.

Interviews were held at a variety of locations, from UN and NGO head offices to private residences, sidewalks, cafes, restaurants and town barrys – an open sided structure, usually in a central part of town where town business is transacted. Most were deliberate, sit-down affairs; however there were several, impromptu, informal interviews that took place. In one particular instance in Calaba Town, I was surrounded by roughly 20 market women who had witnessed the local councillor giving me a tour of the market. Primarily they were curious to learn my story and after discovering my purpose in Sierra Leone they asked to tell me their own experiences. While the significant number of participants made this particular instance noteworthy, it was far from an isolated experience, and I was often granted impromptu interviews from street merchants, taxi drivers and other observers on the streets. Such instances were treated as informal ‘fact-finding’ meetings and were used as a gauge for overall sentiment and observational rather than focused research.

The vast majority of interviews were conducted in English with a few conducted in Krio. Intensive Krio lessons were procured by the researcher during the first fieldtrip as a means of fact checking. While a translator/facilitator was used during the interviews conducted in Krio, my comprehension was sufficient to ensure that the translator was asking the questions in a true manner and was relaying information back without embellishment.

Most interviews were recorded using an Olympus digital voice recorder and were transcribed over a 9 month period. Transcription proved a difficult task as accents tended to be harder to discern from the recording than they had been in person. Additionally, because of the variety of places that interviews took place, the recordings are often overwhelmed by background noise such as traffic or generators. Informal and impromptu meetings were also recorded, but as there were often a number of people

speaking at once during these meetings, and no record had been kept of who said what when, these meetings were used as observational rather than substantive. Due to the time consuming nature of the transcription – top speed of 1.5 hours for 15 minutes of interview – a professional transcriptionist was hired to transcribe 6 interviews totalling nearly 500 minutes of interview. While the need for assistance was very real, the use of outside help created further delays. Not only were the transcripts received incomplete and poorly done, but by removing myself from the transcription process I also failed to fully understand the transcribed interviews. Each of these 6 interviews were transcribed a second time by the researcher so that all the relevant data was retrieved.

Transcription and analysis were also made difficult by the loss of a valuable field journal between the first and second fieldtrips. While most interview names and dates had been preserved, valuable observational analysis, my Krio notes and some interview notes had been lost.

As a means of triangulation, participants were categorized into 3 distinct yet overlapping groups by the researcher: 1) the elites or the policy makers, which included government officials, ministers, leaders of government initiatives or NGOs and which included representatives of the Special Court for Sierra Leone; 2) the implementers: this incorporated NGO sector workers and development officers and former employees of the TRC. This also included administrative staff of local jurisdictions; essentially those whose role it is to implement justice initiatives and development strategies as they are handed down from the elite category; and 3) the ostensible recipients of transitional justice initiatives but who had no official say in the format, local populations. While members of the other two groups certainly make up part of the Sierra Leonean local population, this term is used to refer to those for whom the justice initiatives were designed; those who stood to gain the most from their implementation. This final group

was the broadest and most encompassing, including anyone from taxi drivers to friends made at football matches. While this was a large and expansive group, the research tended to focus on those who are considered, and consider themselves, youth. While this is often taken to refer to young men, the current study also made attempts to incorporate women into this group.

### *Access and Navigation*

The initial fieldtrip in January 2010 was taken with the intent of mapping the various NGO and development initiatives that sought to implement or facilitate justice. The intent was to find the ‘major players’ in the transitional justice sphere and use this as a springboard from which to launch into a study of how these initiatives play out ‘on the ground’. Upon arrival it was quickly apparent that this was an impossible endeavour. Whereas in Europe, governmental organizations and NGOs have a corporate-style internet presence, this is simply not the case in Sierra Leone. While some local NGOs had a basic website they were rudimentary at best. Details provided for contacts were usually personal mobile numbers for employees or members of the NGO and these were seldom answered. Additionally, Sierra Leone has hosted a number of NGOs, not all of which continue to function in the country, however the little internet presence that they do have is seldom removed; therefore when contacting potential participants whether they did not answer because the NGO no longer exists, the individual no longer worked for the NGO or they simply were not interested in taking the interview remains a mystery. There is also considerable turnover in NGO and development projects in Sierra Leone. Separate groups or NGOs may find that they are working in similar areas or on similar projects and will merge, remove one of the organizational names or adopt a new group name for the project. Some projects may

fold due to lack of funding and many are smaller, sub-projects to some of the larger NGOs such as The Campaign for Good Governance (CGG), Network Movement for Justice and Development (NMJD) and West African Network for Peacebuilding (WANEP), meaning it was extremely difficult to map NGOs and development projects in Sierra Leone and access ‘major players’ for interviews.

As a means of securing interviews, a more productive method was to physically show up at the office, introduce myself to the first person I saw and ask if someone would be willing to speak with me regarding my research. This was particularly effective with the NGO/implementer group. While disorganized, this method only once failed to secure me an interview. Once I had gained a foothold into an NGO it was much easier to find participants based on snowball sampling (Coleman, 1958) or the recruitment of participants by recommendation and introduction. On the second fieldtrip this method was most effective in securing interviews outside of Freetown. Contacts I had made in Freetown would meet me in Koidu City, Kenema, Calaba or Waterloo, and facilitate meetings with their colleagues or members of their NGO community.

During the second field trip I met a fellow Canadian who had been working on a free-lance basis, writing various reports for a variety of NGOs.<sup>22</sup> Through her I managed to secure the names and contact details for a number of people in the elite/policy maker and implementer categories. Regardless of the fact that I was ‘cold calling’ individuals and asking for a meeting, the vetting provided by the use of a familiar name resulted in agreements to meet me, often later that same day. On a few occasions within the elite group, cold calls were met with anger and annoyance, including accusations of invasion of privacy or giving insufficient notice to request an

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<sup>22</sup> Special thanks to Noelle Rancourt for her help in this regard.

interview. Several individuals contacted from the elite and implementer groups promised to call me back when they had more time and were not heard from again. Subsequent calls to their numbers were diverted or not answered.

The second fieldtrip also saw the employment of a local '*fixa*' to help secure contacts and interviews. *Fixa* is a Krio term literally meaning fixer or facilitator, someone who will help researchers make contacts in various districts. Some Sierra Leoneans have made a profession of making introductions for people and for a small fee (travel arrangements, phone credit etc.) will facilitate meetings with either other fixers or participants. The main problem associated with the use of facilitators is that they often lead researchers to the same groups of people, which raises some concerns about exposure to a small group of people who have been the focus for multiple studies. In some cases it was felt that participants had their "NGO narratives" (Shaw, 2010) ready, before the first question was asked. While the focus for the current research is experiences of post conflict justice and injustice, participants - particularly from the local population group who had been accessed through a facilitator - would launch into stories of their war-time experiences, thinking that was what I wanted to hear. This issue was largely circumvented by stopping the conversation and trying to establish a rapport with the participant, usually engaging them in conversation about football, work or providing anecdotes about my own travels. For a short duration the researcher had sustained a black eye from an awkward incident involving an open gutter on a late night; many participants were curious about the black eye and upon hearing the story were highly amused and seemed much more at ease. Establishing this rapport was felt to not only establish a more genial atmosphere, but also created a space where I could work in what my research was actually about and engage them in a dialogue about the information I sought, rather than what they thought I wanted. The information gained



from interviews arranged by facilitators was triangulated with data obtained from independent interviews and outside sources, ensuring its reliability to a greater extent.

Interviews that were gained independently, neither through a fixer nor through a third party introduction, were obtained through a variety of ways. While it was predominantly interviews within the local populations group that were obtained independently, the access to elites that was facilitated by local interviews was remarkable. Many of the local contacts made were done on a very informal basis. Cultural immersion can be facilitated by living in more deprived areas (Cameron, 2012), but immersion in the local community was ameliorated by a shared interest in sports between the researcher and many young people in the community. Being an avid football fan and a dedicated supporter of Arsenal FC, I frequented my local 'leisure centre' to watch Premiership and Champions League football matches. I was often a rarity at these gatherings, being not only one of the few women present but the only Westerner. Standing out in this way meant that a lot of local youth approached me, curious about what I was doing in Murray Town. Upon finding out why I was there, many young men volunteered to be interviewed. Establishing a rapport with participants, based on an interest outside of the research subject matter, and allowing them to initiate contact meant that inclusion in the study was based on genuine interest and willingness to share rather than feeling forced to share by a third party – like a facilitator – or as a means of economic gain. The practice of snowball recruitment was exercised through this group as well and many young men whom I met through watching or playing sports organized meetings for me with their friends and families. While the vast majority of these meetings were of youth in the local populations category as well, it was through a friendship developed with a group of local squash players that resulted in the researcher playing squash at the Presidential Lodge with His

Excellency President Earnest Bai Koroma. While His Excellency did not consent to being interviewed for the present study, such experiences provided a wealth of data for observational research. Moreover this ‘bottom up’ approach to accessing the elites, resulted in a meeting with the head of Sierra Leonean immigration who resolved a small visa issue for the researcher. Again while an interview was not secured, it highlighted structures of nepotism and patrimonialism that might have otherwise gone unnoticed.

### *Combating a Culture of Silence*

One of the major issues impacting the current research during fieldwork is the culture of silence that is pervasive in Sierra Leone. While affecting all populations’ willingness to speak, particularly about the past, this culture of silence is predominantly apparent when discussing the war years with participants, especially when interviewing ex-combatants. I was initially alarmed when interviewing ex-combatants whose narratives were remarkably similar. These similarities spanned faction affiliation and geographic location; meaning a former CDF soldier in Kenema, had a remarkably similar narrative to a former member of the RUF in Grafton - just outside of Freetown – or in Kono, more than 300 km away. I was told long, rambling narratives of movements from camp to camp, stories of conscription and famous people met, but participants were very evasive about their role in the actual conflict. Stories told by ex-combatants tended to focus on clarifying that they were not in fact combatants at all, but bodyguards, drivers or errand boys for specific commanders. As interviews developed, the semi-structure nature adopted allowed for probing into certain areas and it became apparent that they had been involved in violent operations, but they were culturally bound from discussing this outright. For the purposes of the research undertaken, this didn’t present a problem. Explaining to groups, particularly ex-combatants that my

interest in their past, extended only so far as knowing which faction they had belonged to, and how they felt this had impacted their access to justice initiatives resulted in more productive interviews. Once participants realized that I was not out to record the specifics of their war-time actions, they relaxed and became much more open about their experiences.

While the pervasiveness of the culture of silence amongst ex-combatants was apparent very quickly, it was less perceptible amongst other groups. The depth of the culture of silence was made manifest to me when, one night on my way to buy food from a street vendor, my local housemate gave me a plastic bag to carry my pot and food and that could be used to ‘hide [my] business’. When I questioned his reason for doing this he told me it is always wise to “hide your business”, whether it be social, professional, political or economic.<sup>23</sup> In a political-economic context in which “indirectness, evasiveness and secrecy have been valorized” (Kelsall, 2005: 383) it is unsurprising that this evasiveness would trickle down. Reassuring participants that they could withdraw their statements and/or names from the study at a future date, or even contribute anonymously, helped open the doors of communication. Moreover, emphasizing that the research was not focused on their war-time experiences but rather their impressions of the injustices they have suffered since the end of the conflict and whether they believe pre-conflict injustices have been adequately dealt with, helped reassure participants that their ‘business’ would be sufficiently safe.

The necessity of hiding one’s business was also noteworthy amongst female respondents; although similar to ex-combatants this reticence pertained almost exclusively to their conflict era experiences. For women in particular, war-time experiences can mean ongoing injustice, especially with regard to reintegration into

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<sup>23</sup> Special thanks to Frank Bio (Freetown, February, 2011) for bringing this to my attention.

communities (Denov & Maclure, 2006). By explaining that what they had been through was less relevant than the injustice that they felt they were suffering at the time of interview, we managed to circumvent painful or difficult discussions about victimization, and focus on the present. Many participants were more than willing to detail how they felt their needs were being neglected.

### *Under Siege from 'Below'*

A major problem that needed to be overcome during fieldwork was the seizure, reshaping and manipulation of interviews 'from below'. This was most prevalent in the implementer group, but was also represented in the other groups. On many occasions during interviews with the NGO group, participants would turn the conversation to their financial and material needs, both personal and organizational. Often this would take the form of NGO employees asking me to spread the word, back home in London, of their organization and the work they are doing as a means of increasing their international exposure and increasing their donor support. As mentioned previously, the role of the foreign researcher is a delicate balancing act, one where the researcher must ask participants to share for little or no compensation. There is an assumption that the position of the foreign researcher as a foreigner somehow connects them to the international community. By sharing with me respondents hoped to enter into a reciprocal relationship through me that gained them access to the international community. From the perspective of participants, such a relationship and access would give them access to more abundant resources that would help them rebuild their lives and contribute to their organizational ability to do the same for others (Shaw, 2007).

*You see those women outside? They are here for documents, but for the last few days we cannot afford the printing and we don't want to ask them for money, we*

*don't do that. But now you are here, you can help us. You go around, back to England and tell people about us...maybe they will want to send us money.*<sup>24</sup>

It was hoped conversations heading in this direction could be deflected by reminding participants that I was merely a student, with little influence and fewer resources, and while I supported their endeavours, and the name and mandate of their organization may appear in my final report, it was unlikely to be read by many people and was exceedingly unlikely to facilitate their international exposure. Honesty in this regard was usually met with a curt nod and a continuation of the interview, but a few participants in this group refused to let the idea drop and the quality of the data was compromised. The tendency of participants to attempt to seize and 'retool' the project from below and seek to gain out of their participation resonates with how local populations managed the transitional justice mechanisms of the Special Court for Sierra Leone and the Truth and Reconciliation Commission (see chapters five & six). Taking a more exploratory approach to the research in the first fieldtrip allowed this occurrence to impact the direction of the research and the analysis of the theory under study. The way participants sought to manipulate the interview for their own purposes led to questions of how local populations may have done the same of transitional justice mechanisms. While this thesis has always aimed at calling for more integrated and locally based approaches to justice, the experience of the first fieldtrip taught me that while transitional justice mechanisms like the Special Court for Sierra Leone and the Truth and Reconciliation Commission are primarily 'top down' they are simultaneously influenced by grassroots resistance that operates from the 'bottom up'. Thus, even when local populations were being excluded from the justice mechanisms that were meant to impact and improve their lives, they were simultaneously engaged in a rigorous manipulation of these same structures to make them relevant and binding.

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<sup>24</sup> Interview with Madieu Barrie, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

Understanding this in the first fieldtrip made apparent the relevance of Nancy Fraser's theory of justice to the Sierra Leone case study and how populations, excluded from participation, were securing their own participation in unexpected ways. The observation of the experiences of individual Sierra Leoneans provided a lens through which to view and understand the theory of transitional justice, and a concrete form of the structures of justice argued for by Nancy Fraser.

The next chapter explores Fraser's theory of justice in more detail and begins the process of placing it within the context of Sierra Leone as a test of its viability.

### **Chapter 3: Theoretical Framework: Nancy Fraser, Transitional Justice and the Creation of Dichotomy**

#### *Introduction*

There is an ongoing debate about the nature of war and how it is waged (Hoffman, 2010; Harris, 2012). On the one hand there is the argument that war, since the end of the Cold War, is fought increasingly within national boundaries rather than between nation-states. Further it is argued that war has become more criminal; being increasingly highlighted for gross violations of human rights, mass atrocity and its predatory nature (Kaldor, 2001). On the other hand there is the argument that wars have always been waged in this way and that current wars are neither more heinous than in the past, nor are they as insular as commonly believed (Hoffman, 2010).<sup>25</sup> Running alongside this debate, and often intersecting with it – particularly regarding civil wars – is the question of whether ‘greed’ or ‘grievance’ is the most important cause of war (Keen, 2012, Archibald & Richards, 2002). The grievance perspective analyzes wars from within a framework which addresses inequalities in the political or social spheres, whereas the greed scholars tend to focus on “the importance of economic agendas” in civil war (Collier, 2000; Berdal & Malone, 2000).

On the greed side of the debate, commentators argue that the decade long civil war in Sierra Leone was largely about disenchanting youths seeking self-enrichment and access to the country’s vast diamond deposits (Collier, 2000; Abdullah, 1998; Bangura, 1997). Those who hold to the grievance argument however, state that the beginning of the war was the work of “excluded intellectuals” (Richards, 1996; Stewart, 2000 & 2008; Keen, 2012), who had been violently oppressed during the years of Siaka Stevens’ presidency. Having been exiled to the surrounding nations many returned

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<sup>25</sup> See, for example, Human Rights Watch (2005) “Youth, Poverty and Blood” on the Mano River regional phenomenon of “Regional Warriors”, groups of armed youth who travel from country to country in sub-Saharan West Africa joining various factions and conflicts.

carrying revolutionary ideas, copies of Gaddafi's Green Book and calling for a more egalitarian system of rule (Richards, 1996).

Regardless of the outcome of these debates, international responses to conflict have become somewhat standardized. Since the trials at Nuremburg and Tokyo, following the end of the Second World War, the international community has focused largely on judicial responses to conflict, both civil and international (Fletcher & Weinstein, 2002).<sup>26</sup> This type of response has become solidified with the establishment of the permanent International Criminal Court to ensure that "...the most serious crimes of concern to the international community as a whole [do not] go unpunished and that their effective prosecution [is] ensured..." (ICC, 1998). This phenomenon is particularly visible on the African continent where, to date, all ICC prosecutions/indictments have been pursued (Harris, 2012).

On the other hand, since the fall of the Latin American and Eastern European dictatorships, there has been increased focus on alternative forms of transitional justice, predominantly in the form of truth and reconciliation commissions (Schabas, 2004; Stanley 2010; Weinstein et al., 2010). Where criminal tribunals are ostensibly established in pursuit of 'justice', truth commissions seek to establish 'peace' or 'truth' (Lutz, 2006).

Immediately in the discourse surrounding the separate routes and missions of transitional justice mechanisms, we see a parallel with the discourse surrounding the causes of conflict. Criminal tribunals in the pursuit of justice can arguably be said to be addressing greed; where greed is understood as the pursuit of war as a means of gaining personal power, wealth and/or personal access to resources (Collier, 2000; Bangura, 1997). Truth and reconciliation commissions on the other hand, in the pursuit of truth

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<sup>26</sup> For example the International Criminal Tribunals for Yugoslavia (1993) and Rwanda (1995), the Special Court for Sierra Leone (2002) and the Extraordinary Chambers in the Courts of Cambodia (2003)



or peace, can arguably be said to be addressing the political and social aspects of conflict and helping populations come to terms with their violent pasts (Teitel, 2000). The association of TRCs with the political and social sphere, means that they can be understood to be addressing the grievance side of the conflict debate. Through this association we can begin to build a picture of how transitional justice becomes separate and dichotomized, with the pursuit of justice separate from the pursuit of peace or truth.

Furthermore the use of criminal tribunals to address greed creates a narrow understanding of conflicts emerging from greed, where greed is inherently criminal and selfishly motivated. This precludes a wider understanding where greed can be politically motivated, overlapping and intertwined with calls for a more egalitarian distribution of wealth (Richards, 1996; Fithen & Richards, 2005; Keen, 2012). If we take greed to mean more than self-enrichment and appropriation of national resources, then a parallel with Nancy Fraser's theory of justice becomes clear, and instead of using the terms of greed and grievance to discuss conflicts and transitional justice mechanisms, we can begin to use other terms in justice discourse, redistribution and recognition.

Whether the justice under discussion is addressing the issue of 'greed' in a more altruistic sense or redistribution, grievance or recognition, the problem remains the same. Transitional justice discourse separates these two claims to justice and pursues them individually. This separation, defined by the dichotomy of both the understanding of conflict and the nature of transitional justice mechanisms, resonates with Nancy Fraser's decoupling of justice. The purpose of this chapter therefore, is to outline Fraser's theory of justice as well as transitional justice more generally and see how Fraser's theory of justice can be used as a tool of critical analysis to explore questions of transitional justice, see how routes of justice become separated and what the

consequence of this is. Moreover, through the separation of transitional justice mechanisms, a further injustice is created. By focusing exclusively on the pursuit of criminal justice or truth seeking, many initiatives fail to engage with root causes of conflict, whether greed or grievance based. Truth Commissions seeking to build an accurate historical record (TRC Act, 2002) may highlight causes of war, but are unable to engage with or compel responses to these.<sup>27</sup> International Criminal Tribunals are closed to what they deem the ‘political considerations’ of conflict (SCSL, 2002) and thus are not only unable to provide solutions to political problems, but are uninterested in making recommendations. Thus through the separation into criminal prosecution and truth seeking, transitional justice mechanisms ‘misframe’ the question of justice and may not address causes of the conflict or may even create new structures of injustice. By preventing local populations from participating in the decision making process about what transitional justice mechanisms they *do* want, TRCs and criminal tribunals, as implemented by the international community and interested states, may misframe populations and, in so doing, create further injustices (Shaw & Waldorf, 2010; Weinstein et al., 2010).

The case of Sierra Leone is particularly interesting to examine as it has been the setting for both an international criminal tribunal, the Special Court for Sierra Leone (SCSL) and a truth and reconciliation commission, the Sierra Leone Truth and Reconciliation Commission (SLTRC or TRC), as well as numerous, ongoing development projects. Yet regardless – or perhaps because of – the efforts of the international and domestic communities, the factors leading to the civil war not only remain pervasive in Sierra Leone, but large sections of Sierra Leonean society are arguably in a worse condition than they were before the outbreak of war in 1991

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<sup>27</sup> The TRC in Sierra Leone for example highlighted five ‘pillars’ of a sustained peace, but nearly 10 years after the completion of the TRC, none have been implemented (TRC, 2004).

(Hanlon, 2005; January, 2009; Shaw, 2010; Stensrud, 2009; Stovel, 2008; Kelsall, 2009; Hoffman, 2011; Denov, 2010).

Before this chapter delves into a discussion and critique of transitional justice, an understanding of Nancy Fraser's theory of justice is necessary as a means of highlighting how it resonates with the broader discourse on transitional justice. This resonance is visible in the conceptual separation of forms of injustice and the creation of contrasting means of addressing them, rather than an overarching, integrated framework of justice. Secondly this chapter will discuss the development of transitional justice more generally and the common discourse surrounding it. By problematizing the discourse and dichotomy surrounding transitional justice we can see how the separation of truth and justice has become woven into the very fabric that makes up transitional justice. This separation has become so deeply ingrained, I argue, that it is not understood to be problematic. With the dichotomy accepted as integral the justice of truth continues to be pursued separately from the goal of criminal justice. While this resonates with Nancy Fraser's theory of the decoupling of the justice of redistribution from that of recognition – discussed in greater detail in the next section – if we probe a little deeper, we begin to see that while on the surface these two types of justice are pursuing differing goals – namely truth and justice – they are in fact focusing strictly on one branch of Fraser's concept of justice, and that is the justice of *recognition* (see chapters five & six).

The purpose of this chapter, therefore, is to outline and problematize the current discourse on transitional justice. While there is considerable academic work on this issue, the chapter will focus on the wider internationally accepted concept of transitional justice as it is pursued and implemented by international organizations. This is done as a means of investigating how transitional justice is implemented practically and as such

reifies and reiterates this dichotomy. This focus is not pursued to the neglect of the critical works of scholars such as Rosalind Shaw (2007, 2010) and Tim Kelsall (2005, 2006, 2009) but to show how these dichotomies make up and occupy such a fundamental part of transitional justice that they are not only neglected but assumed.

Finally this chapter investigates Fraser's theory of *misframing* and explores how the debate about transitional justice is barred from local populations and how mechanisms are applied in an authoritarian, top-down fashion by international bodies such as the UN, the transitional mechanisms themselves and local facilitators. Through this application local populations are depoliticized, marginalized, become passive recipients of justice and are precluded from having a voice regarding the justice mechanisms that affect them. By removing local populations from the debates about justice, not only do the justice mechanisms fail to resonate with and bind populations, but they are vulnerable to manipulation from below, which may result in the return to and exacerbation of pre-war injustices.

### *Nancy Fraser's Theory of Justice*

The purpose of the current section is to give a brief, yet detailed overview of Fraser's theory of justice so that the resonance with transitional justice theory becomes clear. This section does not engage in detail with other theories of justice, nor with criticisms of Fraser's work. Primarily this is because Fraser's work itself is a critique of standard justice discourse and as such those that critique Fraser tend to argue for a more traditional approach to justice –which this entire thesis argues against. Secondly and perhaps more importantly, this chapter does not seek to argue that Fraser's theory is the only or necessarily the best method of understanding and critiquing transitional justice and instead only aims to show that her method of understanding all injustice as

multifaceted lends itself to a critique of transitional justice discourse. This is not to deny the works of other justice theorists such as Young (1990), Honneth (2003), Taylor (1992), Rawls (1971) or Dworkin (1981) or Marx (1845), only that Fraser's unique vision of all injustices encompassing the injustice of maldistribution, misrecognition and misrepresentation/misframing *in equal measure and non-subsumable* within one another, makes her theory specifically a useful tool in understanding how transitional justice mechanisms may fail to achieve justice. Moreover, Fraser's supposition of misframing as an injustice itself helps to show how transitional justice mechanisms may create greater injustices. This failure of justice, according to Fraser's paradigm, stems from the pursuit of justice of redistribution as separate from the justice of recognition; as all injustices are inherently both maldistribution and misrecognition, so too do justice mechanisms need to incorporate both forms of justice. Thus the failure of transitional justice mechanisms in Sierra Leone stems from the separation and pursuit of justice against greed and for grievance individually. While Fraser's approach was created for struggles for equality amongst groups in liberal democracies, and as such might be difficult to transpose to the transitional state of Sierra Leone, what follows is an attempt to explore the relevance of Fraser's theory for understanding post-conflict justice in Sierra Leone.

Justice theories are generally broken down into two types of justice addressing two distinct types of injustice. There is the justice of distribution or redistribution, which understands the "conception of justice as providing in the first instance a standard whereby the distributive aspects of the basic structure of society are to be assessed" (Rawls, 1971: 9). Distributive justice focuses on equal access to capacity building mechanisms such as education or income generating labour, where equal self respect flows from an equal distribution of resources (Armitage, 2006). As Young (1990)

points out, the focus on justice of distribution is flawed for two reasons; firstly, the focus on the material distribution of “things” such as income and wealth or of social positions like employment, ignores the social structures that may determine “distributive patterns”, and secondly, it fails to provide an explanation of how non-quantifiable ‘goods’ like power, opportunity or self-respect are functions of social relations and processes (Young, 1990: 16). Young therefore calls for a different approach to justice and she is echoed in this call by other commentators such as Taylor (1992) and Honneth (1997) who argue that rather than distribution providing the starting point for conversations about justice, the debate should begin with “concepts of domination and oppression” (Young, 1990: 16).

The recognition argument then calls for claims to justice that focus on the recognition of what makes groups different and addresses their specificity. Young’s recognition theory challenges the set of ruling norms that are based on ideas of normalizing precepts of what people *ought* to be, culturally, politically and socially. A system of justice focused on recognition of difference exposes how these ruling norms “position some people as deviant in relation to standards or expectations of who the bearer of rights is supposed to be” (Young, 1999: 416).

Problematically, however, understanding justice or injustice in this way dichotomizes approaches to justice. Nancy Fraser’s work on justice understands that injustice is seldom monistic – and even then only in hypothetical situations – and as a result argues that remedies for injustice cannot be monist either. While other justice theorists understand that maldistribution and misrecognition are forms of injustice, those who approach justice through redistribution tend to subsume cultural and identity based injustices within a framework of distribution based injustices. Similarly, those who approach justice from the perspective of recognition, subsume economic and class

disparity within a framework of the 'politics of difference'. Fraser labels this as the 'decoupling' of justice, which pursues claims for recognition separately from claims for redistribution. While it is arguable that the decoupling of the forms of justice allows for each approach to more fully address the injustice they are meant to remedy (i.e. exclusively redistribution to solve maldistribution), Fraser argues that the problem with this discourse is that it separates (and places in opposition with each other) the different forms of justice and they become dissociated from one another. Justice, therefore, becomes about an either/or choice between redistribution, class politics and multiculturalism *or* recognition, identity politics or social democracy (Fraser, 2003: 8). Immediately the resonance with transitional justice mechanisms is apparent. The separation of justice mechanisms addressing greed and grievance also results in either/or approaches to justice. In order to combat these injustices one must develop an approach that addresses both maldistribution and misrecognition. While many theorists have tackled these issues, Fraser is unique in that she understands each injustice to be a *primary* injustice and thus non reducible to the other form of injustice.

If an injustice occurs at the ends of a spectrum (with maldistribution on one end and misrecognition on the other), the solution to the problem is straightforward. If there were a society where all social division was derived entirely from the political economy, then it is clear that the remedy to an injustice occurring within such a society would be redistribution, but as Fraser points out, this does not happen in the real world. In modern society virtually all injustices can be understood as two-dimensional. Regardless of roots, all injustice implicates both maldistribution and misrecognition, therefore the goal should be to develop an integrated approach that can include both forms of social justice (Fraser, 2003). This phenomenon is clearly demonstrated by the youth in Sierra Leone. While in western conceptions youth is a term referring to age, in

Sierra Leone it is a more complex social attribute. A person, usually a young man, is considered a 'youth' until he is educated, employed and/or married (Abdullah, et al., 1997; Christensen & Utas, 2008). However, marriage usually comes after employment and/or education, and both of those opportunities are severely limited in Sierra Leone. Thus young men find it exceedingly difficult to leave behind the distinction of youth and join society as men (Abdullah, 1998). While this may seem a harmless distinction, youth has political and social connotations as well. Youth, particularly ex-combatants who fall within this group, are relegated to a specific cultural sphere where they are undervalued because of specific traits that are associated with this sphere, including drug addiction, alcoholism, theft and violence (Rashid, 1997). In this example, explored in greater detail in chapter seven, it can be clearly seen how the youth of Sierra Leone not only suffer the injustice of maldistribution (from lack of employment and educational opportunities) but also the injustice of misrecognition.

The plight of youth in Sierra Leone was one of the main factors contributing to the outbreak of war in 1991 (Richards, 1996; Hoffman, 2004; Peters, 2011), a problem that transitional justice mechanisms, whether pursuing truth or justice, greed or grievance have neglected to address. Youth to a great extent are still facing the same problems that they were pre-1991 (Fithen & Richards, 2005; Peters, 2011; Zack-Williams, 2010). While in the calls for redistribution and recognition we see efforts that would improve their standing in society, both culturally and economically, their claims to these justices are marginalized by the very transitional justice mechanisms that are meant to address injustice and in this we see the emergence of another form of Fraser's justice theory, the injustice of misframing (Fraser, 2008).

Fraser argues that claims for justice of recognition and redistribution make up 'first-order' claims to justice, which can most readily be addressed when the frame of



justice is set. That is, “[in] a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles” (Rawls, 1971: 5). However in a transitional state, the frame is not set, there is no innate agreement about principles of justice, and the problems created by this are exacerbated by the implementation of foreign grown ideas of what justice is (MacKenzie & Sesay, 2012).

In the bifurcation of injustice into selfish greed and grievance, transitional justice mechanisms not only decouple and dichotomize justice discourse, but they focus on a very narrow and specific set of actions, thus neglecting the historical juncture from which injustices arise. By failing to engage with the reasons *why* injustice occurs, transitional justice mechanisms may misframe the entire question of justice and implement irrelevant or non-binding methods of justice (Fraser, 2008).

Moreover, transitional justice mechanisms are premised on ‘universal’ claims to justice. Arguably, in this process common humanity acts as Rawls’ ‘ordered society’ insofar as universal principles of justice are presumed to be the same for everyone. Transitional justice discourse assumes that populations share the same normative assessments, that they interpret the lessons of justice the same, whether this be understanding criminal tribunals as a deterrent or accepting that TRCs lead populations through episodes of catharsis.<sup>28</sup> The types of justice offered by transitional mechanisms presume that all people share the same underlying assumptions about how to address painful experiences or victimization, thus neglecting not only how people experience justice and injustice differently, but also how these ideas may change over time (Fletcher & Weinstein, 2002). Additionally, universalizing precepts remove populations from the debates about what justice is and how it is achieved. Through the

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<sup>28</sup> These issues are discussed in more depth in chapters five and six respectively.

application of universal justice, Sierra Leoneans were removed from the same structures which were meant to facilitate transition to a just society, and as a result created and reified structures of *injustice*. As Young tells us “for a norm to be just, everyone who follows it must...have an effective voice in its consideration and be able to agree to it without coercion. For a social condition to be just, it must enable all to meet their needs and exercise their freedom; thus justice requires that all be able to express their needs” (Young, 1990: 34). Moreover, “in the democratic perspective, justice is not an externally imposed requirement, determined over the heads of those whom it obligates. Rather, it binds only insofar as its addressees can also rightly regard themselves as its authors” (Fraser, 2003: 44). Thus by removing populations from the debates about justice and what constitutes the ‘good life’, transitional justice mechanisms depoliticise, misinterpret and misframe populations, which in itself is an injustice, but may also further entrench existing structures of injustice. By not engaging with populations about the injustices that they are experiencing or have experienced, transitional justice mechanisms fail to address the root causes of the conflict, thus misframing the entire question of justice and fail to adequately consider the historical juncture from which injustices occurred.

What follows is an historical analysis of transitional justice mechanisms and the historical moments that produced them. Within this analysis is a critique of how transitional justice mechanisms become separated and what this means for justice discourse. Furthermore, the following sections will investigate the authoritarian application of transitional justice and how this further misframes populations.

*Transitional Justice: The Historic Juncture of Criminal Tribunals and Truth and Reconciliation Commissions*

A transitional state is one that is shifting from a period of war to one of peace, from an illiberal regime to a liberal one, or both. Transitional justice refers to how transitional states address their violent pasts. How states go about this is often a contested subject. In fact, there is little that is uncontested with regard to transitional justice. From definitions, goals, recipients, mechanisms and providers, each element is surrounded by an ongoing discourse. While this discourse is often pursued in academic circles, the international dialogue on transitional justice has become somewhat standardized (Keen, 2012; Collier, 2007). This has resulted in a very ‘either/or’ approach to transitional justice internationally and institutionally (Shaw, 2007; Kelsall, 2009; Keen, 2005; Roht-Arriaza, 2006; Osiel, 2009; Teitel, 2000; Minow, 1998; Fletcher & Weinstein, 2002; Weinstein et al., 2010; Lutz, 2006; MacKenzie & Sesay, 2012; Millar, 2010, 2011). International actors respond to the vast majority of transitions with the implementation of *either* a truth commission for the pursuit of truth *or* the establishment of criminal tribunals for the pursuit of justice. Seldom are these two goals pursued contemporaneously – at least beyond the superficial – and even more rarely are these two mechanisms implemented concurrently.

This section first focuses on the development and standardization of transitional justice as a two pronged approach to justice, focusing primarily on those mechanisms that are “characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Roht-Arriaza, 2006: 1). Thus this section looks exclusively at the international focus on criminal trials and truth commissions as routes of transitional justice. Again this is not to ignore the reality that there are numerous transitional justice mechanisms available. Transitional justice can be defined narrowly or broadly and if defined broadly it can encompass everything a society believes deals with a legacy of conflict or widespread human rights violations (Roht-Arriaza, 2006). But this thesis

concentrates on those transitional justice mechanisms that occupy the majority of space, attention and funding internationally. While ostensibly sharing the same goal of justice, these two mechanisms developed independently and as a response to different conditions and this section investigates these historic junctures and conditions and explores how these mechanisms are theorized and developed to address these conditions.

Secondly, this section highlights how the standardization of transitional justice mechanisms and discourse begins to manifest itself as a dichotomous relationship and one that precludes alternative understandings of, or routes to, justice. While the current dichotomy of pursuing either justice or truth, peace or justice, is a difficult one, as mentioned above it has not gone unnoticed in academic circles. As Deleuze and Guattari (1987) and Fraser (1997, 2003; 2008) point out, the arboreal hierarchy of dichotomous relationships results in either/or choices. By framing justice as dichotomous, we preclude conceiving justice to be *more* than either truth commission or criminal tribunals, or more than peace or justice. In this context we begin to understand how transitional justice as both criminal tribunals and truth commissions focuses exclusively on the dichotomies inherent in transitional justice, such as guilt or innocence, victim or perpetrator and thus fails to acknowledge or recognize injustices that disallow “challenges to institutionalized patterns of inequality discrimination and oppression” (Stanley, 2005).

Thirdly, this section investigates the implementation of transitional justice mechanisms both in Sierra Leone and other transitional states and explores how authoritarian, top-down implementation alienates and misframes populations. Moreover the top down approach to justice pursued by transitional bodies misframes the question of justice altogether, potentially institutionalizing and exacerbating new and

existing structures of injustice. As a result of the authoritarian implementation of routes of justice, these mechanisms are vulnerable to appropriation and manipulation ‘from below’; which may include seizure by local powerful elites, the re-establishment of structures of injustice or using the public forum of the TRC for their own ends, any of which may result in unintended consequences.

### *Development of Transitional Justice*

#### *Criminal Tribunals*

The entire doctrine of transitional justice is based on the question of how to deal with the past. This question first emerged after the end of World War II and the Allies sought individual accountability for the horrors of the Holocaust (Osiel, 2009). The discourse then faded amidst the context of the Cold War, but re-emerged from the end of the Cold War and the transitions of Latin America and Eastern Europe from oppressive regimes to more liberal ones (Hayner, 2001). The notion of transitional justice as a means of coming to terms with violent and oppressive pasts then grew to cover countries/regions emerging from violent civil wars and mass scale human rights violations. By 1995 transitional justice as a term and concept had entered into the “lexicon of international law and relations”, and as an accepted term, it was established that the past could not be ignored, “lest stability be purchased on the cheap, grievances left festering and violence simmering just below the surface” (Weinstein et al., 2010: 33). The two branches of transitional justice, criminal tribunals and truth commissions, emerged from two distinct historical moments: criminal tribunals have their roots in the post World War Two era; while truth commissions emerged mainly from the post Cold War era, both in Latin America and post communist Eastern Europe. The context of the

emergence of these mechanisms is important to understand as it has shaped the ongoing discourse of transitional justice.

The criminal trials of Nuremburg emerged during a period of unprecedented optimism about international cooperation. During this time, not only were the International Military Tribunals at Nuremburg and Tokyo established, but the United Nations was established as a body of international cooperation and regulation; it was a period of great growth for international law. At this time numerous conventions and treaties were signed that delineated what constituted war crimes (Teitel, 2000). The trials at Nuremburg ushered in a new way of conceiving crime and justice. It “implied a wholly novel and international judicial forum, multinational criminal procedure as well as offenses such as the ‘crime against humanity’” (Teitel, 2000: 31). As a result of Nuremburg the entire discourse of accountability, and how it is understood as part of international law, has changed. The use of international law as a response to atrocity has become the dominant mechanism for pursuing and discussing accountability for war crimes (Osiel, 2009).

Moreover, Nuremburg established the individual as the focus of post conflict justice. The notion of individualized guilt for the types of pervasive crime that occurs during war or civil conflict is based upon the legal assumption that only individuals can commit crimes and therefore only individuals can be held responsible for them. Karl Jaspers (1947) writing on German guilt after the Second World War stated:

It is nonsensical...to lay moral guilt to a people as a whole. There is no such thing as a national character extending to every single member of a nation...the differences which may exist...are so great that people talking the same language may remain as strange to each other as if they did not belong to the same nation... There is no such thing as a people as a whole...One cannot make an individual out of a people. A people cannot perish heroically, cannot be a criminal, cannot act morally or immorally; only it's individuals can do so...The categorical judgement of a people is always unjust. It presupposes a false substantialization and results in the debasement of the human being as an individual (Jaspers, 1947: 34-35).

While Jaspers argument is useful in establishing how not everyone is equally guilty, such an understanding of responsibility and guilt, leaves many types of people untouched by criminal responsibility; including those not prosecuted, bystanders, and states outside of the area of conflict (Fletcher and Weinstein, 2002). In the binary dichotomy of law and responsibility, those who are not absolutely guilty are absolutely innocent (Deleuze & Guattari, 1981), there is no legal way of addressing how individual action is influenced by societal context or how individuals participate in mass violence in a myriad of ways, “from killing to quiescence” (Fletcher & Weinstein, 2002: 612).

Criminal trials serve the purpose of showing that individuals, not groups, are responsible for atrocity. This is based on the assumption that if there is no individual accountability then the entire group in whose name the criminal action was taken can be considered guilty (Fletcher & Weinstein, 2002). If it is indeed the case, that everyone is guilty, then simultaneously no one is; collective guilt absolves everyone from wrongdoing (Osiel, 2009). If everyone is absolved, then who is to say there has been any crime at all? In these circumstances, denial of any criminal action at all becomes a plausible conclusion (Cohen, 2001). While individualized guilt establishes that there has been some form of wrongdoing, there is no social challenge associated with individualized guilt; there is no investigation into the way society is structured, how the masses are susceptible to being swept up into violent enterprises or even how social structures can facilitate and aggravate violence (Fletcher & Weinstein, 2002: 605). One of the main problems with criminal trials, and why transitional justice resonates so clearly with Fraser’s perspective on justice is that the individualization and criminalization of justice separates punitive justice from social justice. This leaves the rebuilding, or the transition, of the state to other groups, essentially decoupling this form of justice from the broader transition.

The trials at Nuremburg solidified the role of individual criminal justice as a mainstay of transitional justice; Nuremburg also had a major impact in two ways, both dealing with precedent. On the one hand it has established precedent on the convening of international tribunals and on the other the doctrinal precedent established by its judgements (Teitel, 2000). Teitel goes on to argue that it is the former, the precedent of trying international criminals, that is the most unstable, and that has had the most impact, “[t]he weight of the precedent is not in the proceedings but rather how it has shaped the pervasive understanding of transitional criminal justice ... Nuremburg has shaped the dominant scholarly understanding of successor justice...” (Teitel, 2000: 31), insofar as international criminal justice has become the dominant language of successor justice; other routes of justice may be pursued, but criminal justice remains the central focus. Furthermore, Nuremburg established the precedent of trying international criminals with international law in an international forum. “The greatest legacy of the Nuremburg precedent is that the question of state accountability would never again be confined within national borders but instead would be a matter of international import” (Teitel, 2000: 39).

The decades immediately following the Nuremburg trials were marked by an absence of further internationalized criminal trials for war crimes or crimes against humanity. This was largely attributable to the Cold War and the deadlock in the UN Security Council (Stanley, 2011). However, towards the end of the Cold War and 20<sup>th</sup> century, international responses to atrocity began to increase dramatically and it saw the establishment of two international ad hoc tribunals for Yugoslavia and Rwanda, as well as the application of several European judges to indict former Chilean dictator Augusto Pinochet under the principle of Universal Jurisdiction<sup>29</sup> (Roht-Arriaza, 2006). A

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<sup>29</sup> In defiance of existing amnesty and diplomatic immunity for heads of state



number of other ad hoc tribunals were set up during this time period,<sup>30</sup> and the trend has been solidified with the establishment of the permanent International Criminal Court (ICC) in 2002, cementing criminal justice as the cornerstone of transitional justice.

Internationalized, ad hoc or special tribunals remain the central mechanism for transitional justice for several reasons. They are preferred both nationally and internationally as they draw a clear line between law and politics and are thus viewed as apolitical; they draw a clear line between predecessor and successor regimes; they can help re-establish the rule of law; and they are perceived as drawing up an accurate history of oppression or violence under the previous regime (Teitel, 2000; Roht-Arriaza, 2006; Roche, 2005).

International ad hoc tribunals and the ICC are predicated on the understanding that transitioning states are unable or unwilling to prosecute war criminals and/or members of the predecessor regime (Stanley, 2011). This reluctance or inability may be politically motivated or a result of physical and legal limitations. In situations such as the former Yugoslavia where structural inequalities had been written into the constitutions of the newly emerging states, reliance on national law would have been unreliable at best and inflammatory at worst (Fletcher & Weinstein, 2002). Similarly in Rwanda, the divisive and reactionary nature of the political structure meant that reliance on national law from before independence would have favoured Tutsi domination, while recourse to national law from after the 1959 revolution could have been seen to support the Hutu dominated laws that led to the conflict (Longman, 2005). By turning to international law in these contexts, the successor regimes can assuage fears of political motivation. Furthermore, the convening of trials by international personnel

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<sup>30</sup> Special Court for Sierra Leone, The Extraordinary Chambers in the Courts of Cambodia, Special Panel for Serious Crimes (Timor Leste)

was designed to prevent the influence of local political bias and rivalry in the indictments (Horowitz, 2006).

There are also cases, however, where international involvement in establishing a criminal trial emerges not from the fear of politically motivated trials but rather are a result of the physical inability to try war criminals in the affected state's legal system or structures. In Sierra Leone, for example, much of the physical presence of the law – courthouses, prisons, police stations, etc. – had been destroyed during the war, and the rule of law had been absent for sometime even before the outbreak of war. As a result, the successor regime was physically and legally unable to pursue criminal justice when the conflict was over (Reno, 2005; Kandeh, 1999). In these cases, the establishment of an international tribunal for the prosecution of war criminals is necessary not only to facilitate retributive justice against those deemed responsible, but to also facilitate the transition of the state and help re-establish a functioning legal system and a society based on the rule of law (Fletcher & Weinstein, 2002; Teitel, 2000; Roht-Arriaza, 2006; SCSL, 2002c).

Internationally, transitional criminal justice's focus on war crimes, crimes against humanity and violations of human rights, not only allows for the involvement of the international community and the use of international law, but demands it (Archibald & Richards, 2002; Fletcher & Weinstein, 2002). The creation of the concept of 'crimes against humanity' during the Nuremburg Trials, meant that the nature of the crimes in question, by their scale and violence, permitted the international community to bypass the principle of sovereignty and become involved in the affairs of other states (Hazan, 2010). Additionally, application of the principle of universal jurisdiction also allows states to manoeuvre around the issues of amnesty – either amnesty granted in peace

deals,<sup>31</sup> or that traditionally granted to heads of state and diplomats – everyone is accountable under universal principles (Roht-Arriaza, 2006). The use of ‘humanity’ as the victim, means the involvement of outside states can be perceived as apolitical; the justice being pursued is not victor’s justice, but justice for humanity (Archibald & Richards, 2002; Osiel, 2009). As a result, “[i]nternational efforts to bring perpetrators to justice are inspired by sincere humanitarian sentiment and by remorse at not having done more to prevent the wrong, not naked self interest” (Osiel, 2009: 10).

The pursuit of justice through criminal trials can also mean the verification of a particular history or historical narrative (Teitel 2000; Kelsall, 2009). Because of due process and the burdens of proof and evidentiary support in a criminal trial, the history that emerges is understood to be true *beyond a reasonable doubt*, and is therefore more widely accepted, particularly by outside observers (Kelsall, 2009). Furthermore the public nature of criminal trials can put to rest demons of the past, particularly in states that are emerging from oppressive and secretive regimes. The public exposure of past atrocity not only reveals truth to victims and victims’ families, but the vetting of truth by the court itself allows for that truth to be believed in a way it might not have been had the facts not been scrutinized by legal proceedings (Horowitz, 2006). However, this is also problematic as the ‘truth’ as ascertained by criminal tribunals represents a partial truth at best (Ross, 2010). The removal of political consideration from the courtroom removes half the history and focuses only on the criminality of the action; motive, when discussed at all, is selfish greed.

Finally, the criminal sanctioning of an oppressive or violent regime is a way of ensuring individuals, rather than an entire society are held responsible for violations of human rights. While there are certainly gradients of guilt embedded into the society,

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<sup>31</sup> States emerging from civil war will often overlook or negate the possibility of criminal sanction in peace negotiations, believing that the threat of criminal prosecutions, and fear of possible prosecution would inhibit negotiation and peace (Lambourne, 2009).

criminal trials ostensibly ensure that only those who are the *most* guilty are tried (Osiel, 2009). It serves the purpose of rooting out the few ‘bad apples’ rather than declaring the entire orchard poisoned (Jefferson, 2009b). The focus of trials on those who are the most responsible helps minimize the chance of accusations of politically motivated trials. Arguably those that are deemed the most responsible had held positions of status and/or authority, or are associated with particularly notorious crimes. While it may be argued that prosecuting individuals on such grounds precludes a right to presumed innocence,<sup>32</sup> it decreases the likelihood that the indictment will be questioned by the population at large (Teitel, 2000: 44).<sup>33</sup> The trial of a few perpetrators is more manageable than the restructuring of an entire state, and is also more cost effective; results are seen immediately and funding is more easily justified. However it does raise questions in a context like Sierra Leone, where political thuggery had been part of daily life for decades, and had been well established as a way of working one’s way up through the class and status hierarchy (Hoffman, 2004). Before the conflict, local youth were recruited by politicians to intimidate voters and harass political rivals (Bangura, 1997). The more effective a youth was at this, the more attention he received and potential notice from elite patrons. More than one high ranking official in Sierra Leone made his way to the top in this manner (Hoffman 2004, Richards, 2006). This mentality carried over into the conflict where combatants were known to exaggerate their feats and violence in the bush as a means of establishing fear and status amongst their peers (Hoffman 2004). In a context such as this, how is it possible to establish the ‘bad apples’?. Whilst the question of individual responsibility is an important one, and inherently tied up with discussions of transitional justice. It is a difficult topic and one

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<sup>32</sup> In fact both the CDF and RUF accused appealed indictment on these very grounds (Kelsall, 2009).

<sup>33</sup> Arguably when the crimes being investigated are more clandestine or less grave, the trial becomes more vulnerable to accusations of politically motivated prosecution (Teitel, 2000).

that deserves greater attention than can be afforded to it in the present study. However it is worth noting the irrelevance of such a basis of justice in Sierra Leone.

In each of the above arguments for criminal trials, we can see what Teitel (2000) calls the 'core dilemma' of transitional justice, in that mechanisms need to be both forward and backward looking. In this sense the transitional justice mechanism in place – criminal trials – is assisting the successor regime in drawing a clear line of division between the new regime and the old, between the oppression and violence of the old regime and the new open and transparent nature of the successor. Criminal tribunals also try to establish a clear history and identify the facts of what actually happened, separate out perpetrators from victims and uncover the extent of state complicity in violence and oppression. In this sense the goals pursued by criminal sanctions are backward looking; they are looking to discover and sever ties with the past.

However, criminal trials also contain forward-looking elements as mechanisms of transitional justice. By condemning the actions of the predecessor regime, successor regimes are severing a link to a criminal past and are looking to show that they are establishing a society based more on transparency, responsibility and the rule of law (Teitel, 2000); thus successor regimes are looking to the future. By establishing an accurate historical record, stamping out impunity and investigating culpability, successor regimes can vet future leaders and politicians, ensuring that past atrocities do not happen again (Bosire, 2006). The dilemma associated with this duality of forward and backward looking mechanisms is that it can lead to further oppression or violence if carried too far. If government offices are purged of suspected predecessor regime sympathizers, and no formal process is undertaken to distinguish guilt or culpability, then arguably there may be little to distinguish the successor regime from the predecessor. Furthermore there is a clear political agenda underlying the use of criminal

trials as a transitional mechanism. If the purpose of the criminal trial is to lay a new societal foundation based on the rule of law while simultaneously delegitimizing predecessor regimes, the driving force behind the use of the trial is a political one; the successor regime is seeking to use the trial for a political end. This, then, is in tension with the rule of law, that it is to remain above political agendas and not be swayed by political influence (Teitel, 2000: 30).

### *Problematizing the Focus on Criminal Tribunals*

While the discourse surrounding the use of criminal tribunals as tools of transitional justice appears sound, the focus on criminal prosecution as the preferred response to human rights abuses belies the extent of the criticisms regarding criminal tribunals. This critique goes so far as to question the international reliance on criminal tribunals as the de facto transitional justice mechanism.

As discussed above, a large portion of the preference for criminal tribunals is predicated on the separation of law and politics that is demanded by the courtroom. Such discourse, however, ignores the clear political underpinning regarding such decisions as which injustices demand a criminal tribunal and which do not, and how it is decided who is prosecuted. Furthermore it is arguable that the very establishment of a criminal court is a political endeavour (Kelsall, 2009). If the purpose of the criminal trial is to lay a new societal foundation based on the rule of law while simultaneously delegitimizing predecessor regimes, the driving force behind the use of the trial is a political one; the successor regime is seeking to use the trial for a political end. The use of the criminal trial in this case is political, and intentionally so. This, then, is in tension with the conventional understanding of the rule of law, that it is to remain above political agendas and not be swayed by political influence (Teitel, 2000: 30).

The implementation of international ad hoc tribunals is meant to address situations where domestic trials are not possible either because of unwillingness or inability to prosecute, as a result of fear or due to either the absence of a coherent legal system or the presence of some form of immunity (Roht-Arriaza, 2006). However, even in cases where local populations are seemingly in agreement about the undesirability of criminal prosecution, the international community persists in issuing indictments and prosecuting those it deems responsible (Clarke, 2009); such instances happened in both Uganda and Sierra Leone. In Uganda the ICC issued indictments for leaders of the Lord's Resistance Army while the conflict was still underway. Populations in Northern Uganda, predominantly the victims of the LRA crimes, pleaded for the indictments to be dropped, arguing that the knowledge of prosecution would deter indictees from agreeing to a peace deal (Siebert, 2010). Of the five indictees, three are still at large, one is presumed dead and proceedings have been terminated against the last as a result of his confirmed death (Siebert, 2010).

In Sierra Leone many of the local population were in shock when the SCSL unsealed an indictment against deputy defence minister and former Civil Defence Force (CDF) commander Samuel Hinga Norman (Hoffman, 2004). While the CDF had committed atrocities, along with the other factions involved in the conflict, the CDF had been established as a means of civilian protection. Many Sierra Leoneans viewed Norman and the CDF as their saviours (Malan, 2003). In these cases the suitability of a criminal indictment can and should be questioned. While the indictment of alleged war criminals is based on universal jurisdiction, it should not be carried out without consideration of the realities on the ground. In the Ugandan case, the indictment of the LRA leaders may have exacerbated and prolonged the conflict (Siebert, 2010) and in Sierra Leone it invalidated the views of the local population.

The use of criminal trials to establish an uncontested version of truth beyond a reasonable doubt can also be questioned. While criminal trials seek to establish who is guilty and how, a necessary consequence of this is that it also identifies who is not guilty, or rather who is innocent and a victim. The punishment of perpetrators is not only to punish the perpetrator for their crime, but to acknowledge the suffering and innocence of the victim. “Accountability provides a direct, moral and ethical response to victims on behalf of society that demonstrates that the state is validating their innocence and their lack of culpability in the deeds” (Fletcher & Weinstein, 2002: 590). Thus criminal trials not only prove guilt, but innocence. By prosecuting only a few of the ‘most responsible’, criminal tribunals inherently offer complete innocence to those who are not prosecuted. While this may create an authoritative historical record regarding those who have been prosecuted, it ignores the variety of ways that people can engage in conflict.

The focus of criminal prosecutions neglects the historical context of violent outbreaks and precludes an understanding of why or how such outbreaks happen. In all of these criticisms – from the politics of criminal tribunals to the narrow version of truth – we see not only a separation in transitional justice but also a misframing of both populations and the routes that transitional justice may take. Many of the arguments and justifications supporting the use of criminal trials are mirrored in the other commonly pursued branch of transitional justice, the truth commission. Although the truth commission emerged from very different contexts and supposedly aspires to different goals, the goal of the truth commission is to establish a clear line between successor and predecessor regimes as well as legitimize the transition by remaining apolitical. Truth commissions also fall victim to Teitel’s core dilemma, and as is investigated later, entrenches the dichotomous discourse of transitional justice.



### *Truth Commissions*

While criminal trials emerged from the aftermath of World War Two, the use of truth commissions or truth and reconciliation commissions as a transitional justice mechanism emerged from a very different historic juncture. The first truth commissions developed in the wake of the fall of dictatorships throughout Central and South America. These commissions were sought as a way for the populations of Latin American states to come to terms with their violent and oppressive pasts. This trend was adopted by other transitions characterized by insidious state sponsored violence, such as the former communist states of Eastern Europe and - most famously - South Africa after apartheid (Millar, 2011). What made the Latin American cases of Argentina, Chile and Guatemala unique and particularly differentiated from the post WWII era, was that the violence and oppression suffered, was not only state sponsored, clandestine and pervasive but most importantly it was *internal*; states had committed atrocity and violations against their own populations (Harris, 2012).

The justification for criminal prosecutions for war crimes and crimes against humanity is based on the idea of superior responsibility; thus the focus on prosecuting those who are the *most* responsible. Truth commissions, however, emerge in situations where responsibility is seen as more diffuse and where the line between order and action is deliberately obfuscated (MacKenzie & Sesay, 2012). This blurring is also a result of the clandestine nature of crimes under oppressive regimes. Due to the secrecy that surrounds such actions, truth commissions allow for a broader historical narrative than trials, including acknowledging the different levels of culpability. Because truth commissions originated in states that had suffered internal conflict in the form of

dictatorship or civil war, the transitional justice mechanisms implemented were meant to focus more on reconciliation rather than retribution (Ilf, 2012).

Unlike criminal tribunals, truth commissions have tended to emerge from situations where there is insufficient will or power to pursue indictments, or where the balance of power is skewed so that such indictments would be impossible (Stanley, 2011). However there are also practicalities to consider when deciding whether a truth commission or criminal sanction would be more appropriate. In the states of Latin America and Eastern Europe, for example, criminal activity was so pervasive that the sheer volume of those implicated would preclude prosecutions. In East Germany more than a third of the population was under surveillance and more than third of the population was doing the surveillance on behalf of the communist party (Teitel, 2000). The implausibility of not only prosecution but merely identifying culpable parties is a logistical problem that many states emerging from repressive regimes must face. Moreover, when such a vast number of people are in league with the government, it raises questions not just about the practicality of such prosecution, but the morality as well. In a state of such skewed morality that spying is the norm, how are individuals prosecuted? Surveillance, however, even under a repressive regime, does not constitute a crime against humanity, a war crime or a grave violation of human rights (Roberts & Guelff, 2000) and would therefore not be tried, even if a criminal tribunal had been set up. A surveillance culture breeds mistrust and suspicion, affecting the overall stability of a state, but it is not an international crime. It is thought, therefore, that a truth commission is better suited to dealing with this type of diffusion of responsibility, where culpability cannot be traced to a few political or military leaders (MacKenzie & Sesay, 2012).

Because of the clandestine nature of crime that occurs under oppressive regimes, the ties that link those undertaking surveillance and reporting, to those making arrests and torturing, to those giving the orders are often blurred. The trials at Nuremburg were largely based on documentary evidence, confirming military status and political hierarchy and providing evidence of orders issued and undertaken (Teitel, 2000), that is, a clear chain of command could be argued and proven. In states where secrecy prevails however, this evidence is often deliberately removed from the record, making it that much more difficult to prove prior knowledge, intent and culpability in a court of law (Dobbins, et. al., 2013). Thus, by removing the burden of proof necessary for a prosecution, truth commissions hope to uncover a wider and farther reaching historical narrative. Moreover, one of the core premises behind truth commissions is that the removal of the threat of prosecution, either through granting a general amnesty,<sup>34</sup> or amnesty conditional on full disclosure to the commission,<sup>35</sup> will encourage perpetrators to reveal a more complete version of the truth (Stanley, 2011). As a result of the ‘complete’ and accurate testimony given, by both perpetrators, victims and witnesses, stories that might be considered hearsay or speculation in a court of law are given full consideration. Therefore, secret and concealed ties from crime to upper echelons of government or leadership can be uncovered and can help to reveal the full extent of state complicity and state facilitated violence (Kritz, 1995).

Under repressive regimes, crimes themselves are also hidden and obfuscated under veneers of legitimacy (Green & Ward, 2004). Official documents may be forged or fabricated, meaning the official fate of victims does not reveal the true extent of their suffering or even an accurate record of their eventual fate. In Latin America, for example, many young people were disappeared without a trace, leaving family members

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<sup>34</sup> Many of the truth commissions in Latin America pursued this approach (Hayner, 2001).

<sup>35</sup> South Africa, however, made amnesty from prosecution conditional on full disclosure to the commission (Hayner, 2009).

with no more information than that their loved one was accused of political dissent (Teitel, 2000). Similarly, in South Africa many African prisoners died whilst in captivity. The official record of their incarceration often revealed cause of death as ‘falling down stairs’ or ‘heart failure’, with no further information as to what their crimes may be, whether they were convicted or even why individuals in otherwise perfect health would perish so quickly (Teitel, 2000). By allowing victims and perpetrators to speak without fear of repercussion or criminal sanction and, in fact, encouraging perpetrators to speak through conditional amnesty, the South African TRC was able to disclose more of suffering by prisoners as well as paint a more clear picture of the cover up and suppression by authorities (Hayner, 2001).

Truth commissions are also lauded for their ability to address crimes that are seldom, if ever, prosecuted in international courts. This might be because either the action does not fall under the remit of international law, or because it is too difficult to prove in a court of law. This can include anything from financial crimes of predecessor regimes, or crimes such as forced marriage and/or rape (Ross, 2010). By expanding the scope of the crimes that can be investigated, truth commissions can highlight issues such as international complicity and systemic and historical inequalities that lead to crime and can also bring attention to the structural or systemic nature of crime. This expansion also allows for the discussion of crimes that might otherwise go unheard and unanswered. Rape is seldom prosecuted under international law and until the 21<sup>st</sup> century was not considered a war crime or a crime against humanity, regardless of how widespread or systemic in nature (Kelsall & Stepakoff, 2007). The inclusion of not only violations of rape but discourse on how it is ingrained in society and used systemically as a weapon of torture and control allows victims an opportunity to regain

their voices and may open the discussion to the recognition of women's role in society and lead to debates on societal beliefs (Kelsall & Stepakoff, 2007).

The notion of giving victims voice is a central theme to truth commissions as transitional justice mechanisms. As Elizabeth Stanley (2011) points out, much of state violence is centred on making victims voiceless and therefore powerless. The torturer tells his victim 'Go ahead and scream. Nobody will hear you', not only as a way of isolating his victim, but as a means of demoralizing them and reminding them that they have no voice, no one will ever know what has happened to them (Stanley, 2011). By giving victims the space and time to be heard regarding their experiences, truth commissions seek to overcome this isolation and re-empower victims.

Allowing victims to be vocal about their experiences also serves the purpose of correcting damaging or defamatory information that might exist about them or their relatives. As mentioned previously, in Latin America, most *desaparecidos* were publicly labelled as political dissidents or terrorists; by allowing their stories to be heard, or the truth about their disappearance and deaths to be publicly discussed, the name of the victim is cleared (Roht-Arriaza, 2006). This is particularly important in states in transition as information held about victims might be used in vetting by the successor regime (Roht-Arriaza, 2006). "Establishing that victims were unarmed civilians, and not combatants, both refutes the predecessor truth regime of [the] claim of a war against terrorism and accordingly establishes that what happened under prior rule was systematic state-sponsored persecution" (Teitel, 2000: 85). Of course there are problems with the discourse surrounding TRCs as well. Primarily they presume that the truth is generally unknown. As truth commissions emerged from historic moments where truth had been deliberately obfuscated by the state, the edifying power of truth commissions was necessary to make the history known. However in many African

nations, this was not the case. Indeed as Hoffman (2004, 2011), Richards (2005b) and Käihkö (2012) argue, the Sierra Leone conflict was more focused on ensuring crime was known rather than clandestine. This was both as a means of gaining international attention (Hoffman, 2011; Käihkö, 2012) as well as spreading rumours of infamy as a means of quelling resistance before it was organized (Richards, 2005b). Thus the historic juncture from which truth commissions originally emerged – the necessity to reveal the crimes of the previous regime – becomes irrelevant. In the absence of the necessity to reveal the criminal past, the focus of the TRC turns to the conciliatory mandate it is purported to have (Stovel, 2008).

Finally, truth commissions as transitional justice mechanisms are often argued to focus more on reconciliation and repair than the punitive pursuit of criminal trials and sanctions (Kritz, 1995). Truth commissions facilitate transitions by focusing on reparatory issues from “national reconciliation to advancing healing for individual victims, from ending impunity to putting in place protections to prevent the repetition of abuses in the future” (Hayner, 2001: 15-16). This is because they are thought to be less aggressive, allowing for a coming together of historical narratives and experiences rather than validating one particular truth over others (Hayner, 2001). This wider narrative can help uncover the full extent of state crime as well as how it was perpetuated for any duration of time; this understanding can help prevent future abuses. Furthermore it is argued that the catharsis associated with speaking about experiences, by both victims and perpetrators, gives them strength through vocalization; that only by purging their minds and hearts about what has happened to them, or what they have done, will they be able to move forward (Shaw, 2007).

In truth commission discourse we again see Teitel’s core dilemma represented. Arguably most of the discussion surrounding truth commission is backward looking, but

there are forward looking elements that cannot be neglected. Primarily though, the focus on collecting and producing an accurate and complete history, one of the central tenements of truth commissions, is a backward looking exercise. It seeks to establish what happened, why and how. However, truth commissions differ from criminal trials in that while they seek to sever ties with previous regimes, they also seek to reaffirm a continuity from the predecessor regime through the maintenance of the rule of law (Teitel, 2000).

When the new truth regime is presented and the successor regime's representative apologizes to the people on the nation's behalf for acts committed under the predecessor regime, what is implied is a certain continuity of the state and of the rule of law. The transitional apology allows for the continuity of state responsibility... (Teitel, 2000: 84).

Thus, truth commissions are inherently forward and backward looking. While they try to address the past and make formal acknowledgement of government wrongdoing, they also seek to ensure the stability of the state. The ability of government to apologize for state crimes stems from the fact that it is *still* the state; the state has endured, even though the predecessor government did not. A statement of this sort reaffirms the strength of the state, even as it begins to sever the past. Furthermore, the conciliatory goal of truth commissions is also forward looking. By highlighting the shared suffering of victims and the remorse of perpetrators through truth commissions, successor regimes seek to establish their government on transparency and openness rather than secrecy and clandestine activity.

### *Dichotomy*

Through the investigation of the history, arguments and logic on which both criminal tribunals and truth commissions are based, a more clear understanding is gained as to why states in transition, as well as the international community, tend to

focus on either one transitional justice mechanism or the other. The narratives that drive and the principles that underlie criminal tribunals and truth commissions are diametrically opposed, even as they ostensibly pursue the same goals of peace, justice and reconciliation. Primarily, criminal tribunals are seen as apolitical pursuits, while truth commissions are explicitly political endeavours. While the political motives underlie both types of transitional justice mechanism, criminal trials, by focusing on law and fact - rather than stories and opinions - are perceived as appealing to a body of governance that is beyond national politics. Furthermore, criminal trials are not focused on establishing the cause of war or political strife; they are focused on establishing guilt for particular crimes. Thus, while criminal tribunals might have the forward looking political goal of establishing a society based on law and order, it is not established to judge the general context of crime (Kelsall, 2009). Truth commissions on the other hand are seen to be more political in their nature. By focusing on uncovering the underlying causality of conflict, or the full extent of state complicity, oppression or violence, truth commissions are engaging in more political endeavour. They are attempting to show how overall state structures could have had an impact on the way conflict developed, rather than focus on individual crimes (Schabas, 2004). The focus on the bigger picture facilitates the political goal of devising ways of rectifying wrongs and rebuilding the country. Furthermore, the political messages of truth commissions, predominantly the apologies issued by successor regimes, solidify its place in the political sphere. While truth commissions seek to occupy political space, criminal tribunals must avoid it at all costs.

Additionally, tied up with the political/apolitical dichotomy apparent in transitional justice are a number of other dichotomies that can be categorized as either political or apolitical, grievance or greed. Criminal trials are punitive and focus on legal



concepts as well as the development of law. They do this through the indictment of a few individuals focusing on the responsibility of the few most responsible perpetrators and as a result neglect the possible political motivations of the entire faction. Truth commissions meanwhile are meant to be conciliatory and investigate societal structures of oppression and how these can be renegotiated to ensure future violence and oppression do not occur. This is accomplished by collecting a multitude of stories and creating a broad historical narrative that encompasses as much as possible and looks to the social responsibility of the state and how the state can be improved. Improvements to the state could include increased transparency and rigorous monitoring of government practices to monitor corruption, development of a more effective and fair domestic justice system, the facilitation of a robust civil society to act as a check on government power and the implementation of basic social services such as basic education or healthcare. Fundamentally, truth commissions are established for the pursuit of peace and reconciliation, both political goals, while criminal trials are about criminal justice, an apolitical end (Osiel, 2009).

Regardless of which transitional justice mechanism is implemented and which goals it seeks to attain, due to the dichotomous nature of the relationship each transitional justice mechanism could hold with others, there are areas of justice that are neglected. Thus if a state implements a truth commission as a means of pursuing peace, it may ignore the more punitive and retributive calls for justice that demands a criminal tribunal. Here we can see what Nancy Fraser (2003) calls the decoupling of justice. While Fraser uses the term to refer to the decoupling of the justice of recognition from the justice of redistribution, the sentiment is mirrored here. Transitional justice discourse is predicated on the dichotomy that states can only pursue peace or justice, justice or truth, but not both (Lutz, 2006). Once the state, or international community,

has decided to implement one mechanism over the other, that form of justice is pursued to the detriment of all other forms. As Fraser (2003) points out, the association of one particular form of justice to a particular remedy is problematic. Moreover, approaching justice in this way results in stagnation, where alternative mechanisms or initiatives are not created nor considered because the answer *must* be justice or it *must* be peace (Deleuze & Guattari, 1987). The problem becomes framed only in terms of itself, and thus misframed as a question of justice. If the answer is not criminal tribunals then it *must* be truth commissions. If one does not work, it is for no other reason than the other should have been implemented. It means that solutions to the problem stay within the realms of the known, even permutations to existing remedies remain within the frame of those remedies. The result of the dichotomy in this case is stagnation as remedies are only sought within the existing discourse. This precludes discussion and debate and therefore the solutions become, and remain, standardized.

### *Top down Approach*

While the previous section of this thesis examined the history of transitional justice and problematized the discourse surrounding it, this section investigates more specifically how transitional justice mechanisms fail, as well as how and why they failed in Sierra Leone.

The establishment of concurrent transitional justice mechanisms in Sierra Leone marked a deviation from standard transitional practices. Not only was Sierra Leone the first time a truth commission ran concurrently with criminal tribunals, but the Special Court for Sierra Leone (SCSL) also marked the establishment of ‘hybrid’ international tribunals.<sup>36</sup> It was hoped, by international and domestic stakeholders, that through the

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<sup>36</sup> Hybrid in the sense that they would use both domestic and international law to pursue justice.

simultaneous operation of these initiatives, Sierra Leone would serve as a model for other nations on how ‘truth’ did not have to come at the expense of ‘justice’ – as pursued by a truth commission and the Special Court respectively (Schabas, 2004; Lutz, 2006).

One of the problems with the standardization of justice as discussed above, is that local stakeholders together with international organizations select readymade solutions from a ‘toolkit’ (Shaw & Waldorf, 2010) or ‘menu’ (Schabas, 2004) of options. As discussed previously this toolkit includes criminal trials and truth commissions, but also rights education, memorial projects and a whole host of other mechanisms (Roht-Arriaza, 2006). However, transitional justice scholars critical of the wholesale or even selective application of the transitional toolkit have pointed to the gap that exists between “the idealized goals and assumptions of transitional justice and the realities of life on the ground” (Shaw & Waldorf, 2010: 7). This gap can exist for a multitude of reasons.

Transitional justice interventions rely heavily on legal and Western normative notions of what is moral and right as the justification for intervention, as well as grounds for which types of intervention are used (Weinstein et al., 2010). As discussed in the previous section the use of Western dominated thought results in a dualist approach to transitional justice; one that precludes discourse beyond the either/or choices defined by the dualism (Weinstein, et al., 2010). International initiatives tend to be top-down in their implementation. Having been developed outside the recipient state, there is little space for local actors to engage with initiatives before they are implemented. As a result, initiatives are implemented by powerful international and local elites (Shaw, 2007). A top-down, closed-frame approach is problematic for several reasons. Primarily, top-down approaches do not allow for local practices,

memories, customs or projects to have an impact on the structure or method of transitional justice. Both the TRC and the SCSL, at some level, were engaged with building a historical narrative; each mechanism gathers information, bringing it together and disseminating one, authoritative narrative from the information received – in one sense, telling a story of the history (Fletcher and Weinstein, 2002). Storytelling is educational because recipients can engage with the universals they hear in the narrative; they can begin a dialogue about their own experiences and draw meaning, lessons and messages from shared experiences (Rosenthal, 2003). By doing this, individuals and populations engage in dialogue, both internal and verbally, about experiences and history and undergo a process of determining which messages and lessons to take away from events and experiences (MacKenzie & Sesay, 2012). These messages are by no means universal, nor fixed. They are prone to change within and between groups, as well as over time; however they have been debated privately and publicly, and have developed internally. By establishing an authoritative historical story that fails to materially engage with the way that affected populations view their own experiences, TRCs and criminal tribunals make the internalization of the historical narrative an improbability by authoritatively telling populations what messages they *should* be receiving. Discourse surrounding the TRC and the SCSL tells affected populations that they should feel conciliatory and forgiving after speaking or hearing the truth, they should feel vindicated after criminal prosecution and peaceful as a result of these initiatives (Fletcher and Weinstein, 2002). Deviance from these emotions is the fault of the affected population. If, as an example, a rape victim does not want to forgive her attacker after his apology, or even if the victim does want to testify, the problem lies with the victim, not the system (Ross, 2010). Because the rhetoric supporting TRCs states that victims *should* want to testify and forgive, if the victim does not feel this

way, her reticence is a moral failure, due primarily to a lack of education about rights (Ross, 2010).

Transitional justice mechanisms seek to overcome this educational failing by creating dedicated outreach programs and starting sensitization initiatives (Shaw & Waldorf, 2010). While outreach programs are based on the idea of ‘we’ll tell you what we’re doing’, so the local population can understand and engage with what is happening in their country, these programs also serve the purpose of publicizing the message affected populations are expected to take away from the transitional justice mechanisms (Shaw & Waldorf, 2010: 25).<sup>37</sup> Thus the second problem with top-down approaches to transitional justice is that by distributing messages in this way, outreach programs and transitional justice mechanisms may prevent populations from being able to vocalize what they want. By not creating an environment where populations can engage in debates about the establishment of transitional justice and participate in its implementation, these initiatives are misframing affected populations, creating a further injustice (Fraser, 2008; Young, 1990). As discussed in chapter one, injustice is understood to be the “institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction” (Fraser, 2008: 16); by disallowing populations to participate in the process of justice, transitional justice mechanisms are creating and institutionally executing a process of *in*justice. Moreover, failure to engage with local populations on how they will respond to the process of justice leaves room for manipulation from below that may also result in injustice, such as the return to patrimonialism and patronage.

However, while transitional justice initiatives are top-down, they are not impenetrable monoliths, prevailing over all before them, nor are the ideologies driving

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<sup>37</sup> This phenomenon is outlined briefly here and is discussed in greater detail below with respect to both the Special Court for Sierra Leone and the Truth and Reconciliation Commission

them able to remain universals (Shaw, 2007). While transitional justice initiatives are ostensibly based on universal principles of human rights, questions are raised about how ‘universal’ the assumptions underlying these rights really are (Fraser, 2008). Moreover, the universality of the right does not ensure that all people or populations understand each right the same and therefore may have disparate ways of implementing and ensuring the right. Thus whilst it may be true that all populations have the universal rights to “life, liberty and security of the person” (UN, 1948), it does not necessarily follow that all populations understand these rights the same, internalize them identically, or agree on the best method of realizing them (Fraser, 2008). While transitional justice mechanisms may seek to educate affected populations about these rights, they are not able to dictate how they should be internalized or realized. Isaac Newton’s third law stipulates that for every action there is an equal and opposite reaction, and this may be seen as holding as true for transitional justice as it does for the physical world. Thus the third problem of top-down approaches to transitional justice is that they are simultaneously met by processes that operate from below (Millar, 2010). While this seizure from below may not seem problematic, after all this entire thesis calls for a more localized approach to justice, problems may occur at the point where the top-down theory of justice collides with divergent ‘bottom-up’ assumptions or claims. The problems that emerge are manifold, and are discussed in greater detail in chapters five and six. It is, however, worth highlighting that it is at the point where differing concepts of rights clash that we can see the emergence of misframing (Fraser, 2008).

While there are dangers associated with the seizure of transitional justice from below, problems also emerge when bottom-up approaches are seized ‘from above’ and implemented in a top down fashion (Roche, 2003; Shaw, 2007; Stovel, 2008; Fletcher & Weinstein, 2002; Weinstein et al., 2010). The fourth problem of top-down

transitional justice therefore necessitates the distinction between local and customary initiatives. Local initiatives are locally developed processes that are specific to communities and peoples; customary initiatives, by contrast, are initiatives that may have started locally but have been reshaped by national and international actors and then redeployed in a top down fashion (Shaw & Waldorf, 2010). While lauded for the consideration of local perspectives, the repressive method of implementation defeats the purpose of local involvement; what is right for one community, might be entirely wrong for another.<sup>38</sup> Some communities found ways to adapt communal processes as of means of reconciliation or reparation. However, national and international actors may seize upon community specific practices, rework them and forcibly implement them elsewhere (Shaw & Waldorf, 2010).

There is a tendency internationally to romanticize non-violent, locally grown initiatives as inherently restorative and conciliatory and therefore ideal for wider use (Roche, 2003). Thus the logic behind the appropriation of local mechanisms and redeploying them customarily is understandable. Not only are these mechanisms interpreted by outside observers conciliatory as opposed to retributive, but they are understood to be culturally relevant (Roche, 2003). Regardless of the fact that these mechanisms are often based on very specific community held views, they are projected as nationally held norms, shared within societal boundaries defined by state borders. Not only does this misframe populations by assuming they share ideas of justice simply because they share the same geographical space, but it takes for granted the healing power of local projects. By not engaging with the underlying assumptions of local

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<sup>38</sup> The manipulation of local practices into customary law is visible in the *gacacas* courts of Rwanda (Longman, 2006), the *mato oput* (drinking of the bitter root) ceremonies of Uganda (Finnström, 2010) and the *bad bush nor dae for troway bad pekin* (there is no bad bush to throw away a bad child) expression and Landlord/Stranger relationships of Sierra Leone (Stovel, 2008; Archibald & Richards, 2002). Each of these initiatives was developed locally or had roots in traditional society.

practices, they may in fact serve to entrench structural injustices that led to conflict initially (Roche, 2003; Fraser, 2008).

There is evidence that the top-down application of local practices may also alienate local populations. While developed locally as a means of resolving local issues, when taken out of context, the underlying messages that make these processes meaningful can go awry. By making the use of and attendance at the *gacacas* courts mandatory, for example, the Rwandan government removed the integral element of voluntary local participation; a core requirement at the local level<sup>39</sup> (Longman, 2006). Not only did this remove the participation of local populations from deciding what mechanisms they *do* want, an integral element of justice (Fraser, 2003), but it also removed the voluntary aspect of reconciliation, forcing populations and perpetrators to integrate and reconcile, rather than allow them to decide if they *want* to do these things, thereby leading to misframing and injustice.

While the appropriation and manipulation of local initiatives is cause for critique, a further problem of top down justice is created when local perspectives and responses are sought and collected, but are then ignored, trivialized or hidden. From 1998 to 2003, the UNDP in Sierra Leone funded a country-wide consultation process on elections and governmental representation. It found that Sierra Leoneans wanted more diversity and representation in local government (Fanthorpe, 2004). The report recommended that candidates should be elected on a non-party basis, that paramount chiefs should not have reserved seats on elected district councils, and that women, youth and disabled war victims should have special representation in local government (Fanthorpe, 2004). However, the Local Government Act passed in 2004 ignored all of these recommendations. Furthermore, this Act gave *more* powers to non-elected

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<sup>39</sup> In some areas local defence forces were used to go house to house to round people up and attendance at the trials. Failure to attend the *gacacas* court was punishable by law, usually the issuing of a fine (Le bon, 2007; HRW, 2011)



Paramount Chiefs, legally codifying their role as the head of local justice systems (Local Governance Act, 2004). Local populations would be understandably frustrated with this process and outcome. This sentiment is not dissimilar to those expressed by those who testified to the Sierra Leone Truth and Reconciliation Commission, which is discussed in greater detail in chapter six.

Finally, top down approaches to transition marginalize criticisms of transition by failing to use these criticisms to engage with how transitional justice as a broad concept can be rethought and re-imagined. Rather, criticisms of transitional justice emerging from engagement with the population of Sierra Leone are used as a means of establishing ‘best practices’ or ‘lessons learned’ for other nations *within* the existing structure. Thus the fear, mistrust and resentment that many Sierra Leoneans hold for both the Special Court and the TRC will never be used to engage with whether TRCs or criminal tribunals are appropriate mechanisms of justice. Local criticisms are used as a means of determining how to educate populations about these institutions, rather than cause to rethink the structures of transitional justice. This is not to suggest that criticisms of transitional justice emerging from the Sierra Leonean experience alone should form the basis of a broad restructure of transitional justice as we understand it, but does suggest that by acknowledging that these criticisms go to the core of transitional justice discourse and not merely to the specifics of the current mechanisms, transitional justice generally can be adapted to allow a wider perspective on truth and justice than it currently contains. By disregarding local perspectives, in both the specific and broader discourse, populations begin to feel that their experience of transition or reconciliation is less important than the model they may serve for other cases (Shaw, 2010). Populations are thus not only barred from engaging in their own

judicial endeavours, but barred from engaging with the processes that may get their perspectives heard (Fraser, 2008).

In both the implementation of TRCs and criminal tribunals, transitional justice mechanisms create dichotomies both within and around the potential routes of justice. By separating the pursuits of transitional justice into gaining either truth or justice, political or apolitical ends, and addressing conflicts of grievance or greed, through either TRCs or criminal trial, transitional justice mechanisms potentially misrepresent and misunderstand the question of justice and fail to address the root causes of conflict and may exacerbate existing injustices, or even create new ones. Moreover, the transitional justice mechanisms on which the current discourse is shaped emerged from specific historic moments; thus transitional justice mechanisms developed to address the specific needs of these moments. The continued use of these mechanisms for unique transitions holds the potential for the misframing of the purpose of justice in general and creating irrelevant and unbinding mechanisms.

Furthermore, in rare cases where both transitional justice mechanisms are implemented and run concurrently – such as the case in Sierra Leone – they tend to run in parallel, seldom intersecting or working together. The pursuit of justice, therefore, remains decoupled and some avenues of reconciliation or reparation are sought at the expense of others, or even at the expense of creating new routes of justice. In Sierra Leone this is precisely what happened. We turn our discussion therefore to the civil war in Sierra Leone and the transitional justice initiatives that were implemented in its aftermath. By showing how the Special Court for Sierra Leone and the Truth and Reconciliation Commission for Sierra Leone developed and operated, it is hoped that a clearer understanding of the decoupling of transitional justice emerges and why the discourse must change in order for justice to be effected.

## **Chapter 4: Transitional Justice in Sierra Leone and the Overlap of the Truth and Reconciliation Commission and Special Court for Sierra Leone**

### *Introduction*

The transitional process in Sierra Leone is both complex and unique. Sierra Leone is frequently referred to as a laboratory where transitional justice mechanisms can, and have, been tested. Sierra Leone was the first time a criminal tribunal was established to run concurrently with a truth and reconciliation commission, and thus became the test case for other countries. Sierra Leone was also the laboratory where the first hybrid court was established; hybrid in the sense that it was to use both domestic and international law as a basis for its prosecutions, be run by both local and international staff, and be located *in situ*. While the latter two properties will be discussed in more detail in the Special Court section of this chapter, the main focus here is the coexistence of the Special Court for Sierra Leone (SCSL or Special Court) and the Truth and Reconciliation Commission for Sierra Leone (TRC). The two were implemented simultaneously, both commencing their mandates in Sierra Leone in 2002, as a means of offering a more well rounded approach to justice. This chapter demonstrates how not only did neither mechanism achieve its stated goals independently, but their coexistence impeded the full functioning of either, particularly in the case of the TRC. In order to fully understand the consequences of this duality a short history of the peace and justice process in Sierra Leone must be undertaken, paying particular attention to the creation of these parallel justice mechanisms. The discussion then turns to the nature of the coexistence of these two institutions. It is hoped that this chapter can show how not only the transitional justice mechanisms failed in their attempt to bring justice to Sierra Leone but also how these mechanisms entrenched structures of *injustice*. Furthermore it is hoped that this chapter will exemplify how the concurrent nature of the justice mechanisms in Sierra Leone did not

facilitate the transition to peace, but rather impeded it. Finally this chapter will highlight how the dual mechanisms established in Sierra Leone reifies the transitional justice dichotomy of peace or justice, as well as show how these initiatives embody a second, more subtle dichotomy of only recognizing the victimhood or criminality of Sierra Leoneans.

### *History*

The Sierra Leone civil war began in March 1991 with the incursion of Liberian supported Revolutionary United Front (RUF) rebels into Eastern Sierra Leone. The war was officially declared over nearly 11 years later with the ceremonial burning of weapons at Lungi (Fanthorpe & Maconachie, 2004). The ceasefire itself is cause for confusion amongst Sierra Leoneans as many believe the violence ended as a result of general exhaustion and frustration amongst combatants rather than as the result of a decisive victory or fundamental societal change.<sup>40</sup> International observers, on the other hand, date the end of the conflict from the incursion of British Special Forces who were sent in to rescue a small unit of Royal Irish Regiment soldiers who had been abducted along with 500 peacekeepers by the rebel forces. Acting beyond their mandate, Brigadier David Richards pledged arms, munitions and logistical support to then President Tejan Kabbah, resulting in a defeat of the rebel forces (Little, 2010; Hoffman, 2004).

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<sup>40</sup> Interview with Doris Kanneh, Chair Woman, Women's Forum, Freetown, 03/02/2011; Interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011; Interview with Kenneth 'King Shining' Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011; Interview with MK Sei, TRC Regional Coordinator, Kenema, 16/02/2011; Interview with Kizito Bangura and Jilifa Jojo, UNIPSIL, Kono, 10/02/2011; Interview with Paul Gabar Saquee V, Paramount Chief, Koidu Town, Kono 10/02/2011; Interview with Alie, ex-combatant - RUF (Jalloh translating), Koidu Town, Kono, 10/02/2011.

The peace process in Sierra Leone did not follow a straight path. The first peace agreement between RUF and Sierra Leonean government forces was the Abidjan Peace Agreement signed on November 30, 1996. The Abidjan Agreement makes no reference to criminal tribunals, amnesties or truth commissions, but does allow that:

To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL in respect of anything done by them in pursuit of their objectives as members of that organization up to the time of the signing of this Agreement (article 14, 1996).

Thus while not explicitly delineating an official amnesty at this stage (see later developments described below); RUF members had been explicitly exempted from prosecution.

The Abidjan Peace agreement did not hold and in May 1997 the newly formed Armed Forces Revolutionary Council (AFRC) led by Johnny Paul Koroma had undertaken a coup, deposing the SLPP government under Tejan Kabbah, seizing control of Freetown and inviting the RUF to form a coalition government with them (Hoffman, 2004). Less than a year later, however, they were ousted by joint ECOMOG and pro-government forces (Gberie, 2005).

While the civil war from the outset was marked by atrocity and terror, the rule of the AFRC/RUF military junta began a period of pervasive and systemic violence against civilians. In late 1998, Sam Bockarie, alias Mosquito, infamously announced operation 'No Living Thing' on the BBC African Service; an operation which he pledged would see the death of everyone in the country, down 'to the last chicken' (Gberie, 2005: 120). This announcement marked the start of an AFRC/RUF offensive. The purpose of the January 1999 offensive was the AFRC/RUF's attempt at reasserting control and allegedly Mosquito's attempt at freeing RUF leader Foday Sankoh from Pademba Road Prison in Freetown (Gberie, 2005). The incursion began in the RUF

strongholds of the eastern provinces of Kailahun and Kono, moving steadily towards Freetown, targeting civilians throughout (Hoffman, 2011). While the RUF had been terrifying the population with amputations in the bush leading up to the 1996 elections – as a disincentive to vote – it was during the AFRC 1999 offensive that amputations became ubiquitous and largely synonymous with the Sierra Leonean civil war (Peters, 2011).

After the 1998 reassertion of government control by ECOMOG forces, the pro-government Sierra Leone Army (SLA) that had assisted in the transition were largely disarmed and demobilized. This is allegedly because they were not trusted by the Kabbah regime (Gberie, 2005). However when the AFRC/RUF began operation ‘No Living Thing’, the CDF embarked on a more ambitious recruitment scheme, including the implementation of forced recruitment, particularly of captured RUF combatants, where until that point it had been largely voluntary (Hoffman, 2011).<sup>41</sup>

After a three week siege of Freetown, the AFRC/RUF were once again repelled from Freetown, again by coalition CDF and Nigerian led, ECOMOG forces. By mid-March 1999 the AFRC/RUF had largely retreated to the bush (Gberie, 2005). On May 18, 1999 Foday Sankoh, leader of the RUF and President Tejan Kabbah signed an initial ceasefire agreement at Lomé, Togo. This ceasefire agreement led to negotiations and ultimately the signing of the Lomé Peace Accord on July 7, 1999 (Lomé Peace Accord, 1999).

The Lomé agreement marks an interesting point in the Sierra Leonean conflict, because even as it was signed by both parties and the mechanisms promised therein were initiated (i.e. the TRC was mandated by law) it had little impact on the war itself. While the AFRC/RUF coalition officially disbanded, a number splinter groups,

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<sup>41</sup> Voluntary being used in the loosest sense of the term. A number of young men have testified to voluntarily joining the Kamajors, but simultaneously share stories of being told to join by family members or chiefs (Denov, 2010), arguably taking any voluntarism out of the equation.

including the West Side Boys under Foday Kallay, continued to plague civilians and government forces alike, culminating with the abduction of roughly 500 UN peacekeepers including a patrol unit of the Royal Irish Regiment of the British Army (Hoffman, 2004). As a result of this abduction, the British Army became directly involved in the Sierra Leone Civil war, sending several units to engage in active combat.<sup>42</sup> While many militia groups had already lost interest in fighting by this point, it is largely this intervention in May 2000, together with the British Military taking over the training of the Sierra Leonean Army that is credited with finally ending the civil war (Little, 2010).

On January 18, 2002, President Tejan Kabbah declared the civil war officially over at a ceremonial burning of weapons and ammunition at Kaffu Bullom Chiefdom in Lungi (Kabbah, 2002).<sup>43</sup> While this was the official declaration of the end of the war, the local and international community, including the UN and the American and British Governments, had already been busy planning and establishing transitional justice mechanisms including, but not limited to, the Truth and Reconciliation Commission and the Special Court for Sierra Leone.<sup>44</sup> The specifics of each institution are discussed in detail below.

### *Truth and Reconciliation Commission for Sierra Leone*

The creation of the Sierra Leone Truth and Reconciliation Commission is provided for in the Lomé Peace agreement. Article 25 of the 1999 Accord states:

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<sup>42</sup> Although the official purpose of the deployment was to facilitate the flight of British nationals from Freetown (Little, 2010).

<sup>43</sup> Speech by the President of Sierra Leone, His Excellency, Alhaji Dr. Ahmad Tejan Kabbah, at the ceremony marking the conclusion of disarmament and the destruction of weapons, Lungi, 18 January 2002. Available at: <http://www.sierra-leone.org/Speeches/kabbah-011802.html>

<sup>44</sup> According to a talk given by Courtenay Griffiths QC, lead defence council for Charles Taylor, the Americans were instrumental in setting up the Special Court specifically as a means of being able to prosecute Charles Taylor for his refusal to grant them extraction concessions in Liberia's offshore oil deposits. (18/05/2012).

A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation (Lomé Peace Accord, 1999).<sup>45</sup>

Regardless of ongoing violence and hostilities, the creation of the TRC was passed into law in February 2000 with the passing of the Truth and Reconciliation Act. Part 3, article 6.1, outlines the purpose of the Commission:

The object for which the commission is established is 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 Lome peace agreement; to address impunity, to respond to the needs of victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered (TRC Act, 2000).<sup>46</sup>

Further, the function of the TRC was to “report on the causes, nature and extent of the violations and abuses [and]...help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered” (TRC Act, 2000: Section 6, subsection 2, subsections a-b). The Commission was initially given one year to complete its mandate with the potential for a 6 month extension provided that good cause was shown for the extension (TRC Act, 2000: Section 5, subsection 1). Additionally, Sierra Leone’s TRC was granted a 3 month preparatory period, primarily to secure its own funding for the duration of its mandate. The funds for the Commission were to be secured from the Sierra Leone government, foreign governments, international NGOs and intergovernmental organizations (TRC Act, 2000: Section 12, subsection 1).

The language of the Act is exceedingly legalistic. In order to fulfill its mandate the Commission, under the Act, was permitted to “visit any establishment ... without giving prior notice...to enter...any land or premises for any purpose which is

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<sup>45</sup> Lomé Peace Accord, 1999. Available at: <http://www.sierra-leone.org/lomeaccord.html>

<sup>46</sup> Truth and Reconciliation Commission Act, 2000. Available at: <http://web.archive.org/web/20051230045239/www.sierra-leone.org/trcact2000.html>



material...to *compel* the attendance of any person who fails to respond to a request of the Commission...to *issue summons and subpoenas*...and to receive *police assistance* in the enforcement of its powers” [emphasis added] (TRC Act, 2000: Section 8, subsection 1). Furthermore, section 9 of the Act calls on all people to cooperate with the Commission and to “provide unrestricted access...” to any materials and/or locations that the Commission deems necessary to access in pursuit of its mandate (TRC Act, 2000: Section 9, subsection 1). This coercion of information and materials does not seem in harmony with the call for the creation of an impartial historical record nor the creation of the opportunity for victims and perpetrators to tell their stories. Moreover, failure to comply with the Commission’s subpoenas or summons, or “failure to truly or faithfully answer questions of the commission...or intentionally providing misleading or false information to the commission...” could have resulted in a referral to the High Court for trial and punishment for the “equivalent to *contempt of court*” [emphasis added] (TRC Act, 2000: Section 8, subsection 2); whilst anyone found to be wilfully obstructing the functioning of the Commission or interfering with the Commission or any of its officers in the fulfillment of its mandate could have potentially faced a fine of up to 1 million Leones and/or a jail sentence of up to one year (TRC Act, 2000: Section 9, subsection 2). While the Commission might simply have been wanting assurance that their efforts would record a verifiable and accurate history, the legal and threatening tone of the Act does not seem in line with its mandate to pursue reconciliation, nor encourage people to share, particularly about potentially damaging information.

In the text of the Act, the recommendations made by the Commission in its final report are passed to the government for implementation (TRC Act, 2000: Section 17), as was the responsibility for the oversight of the implementation of recommendations

made to other bodies (TRC Act, 2000: section 17). Furthermore, the Government of Sierra Leone was to create a ‘follow up committee’ to ensure that the recommendations contained in the Commission’s report would be implemented “faithfully and timeously” (TRC Act, 2000: Sections 17 & 18). The follow up committee was mandated to submit quarterly reports “*to the public* evaluating the efforts of the Government and the efforts of any other person or body concerned to implement the recommendations of the Commission” [emphasis added] (TRC Act, 2000: Section 18, subsection 3).

While the text of the TRC Act (2000) is remarkably legalistic, it is important to note that under the Lomé Peace Accord (1999) the Government of Sierra Leone granted an “absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement” (Lomé Peace Accord, 1999: Art. 9, para. 2).<sup>47</sup> In Article 9, paragraph 3, Lomé went a step farther in allaying fears of prosecution by all combatants by declaring:

[T]he Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement. In addition [we] guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict... (Lomé Peace Accord: Art. 9, para. 3).

Therefore, regardless of the legal language used in the TRC Act, former combatants should have had little reason to doubt the sincerity of the Lomé Accord and the amnesty contained therein. As long as they spoke truthfully to the Commission and did not try to obstruct its goal, they were protected.

*Special Court for Sierra Leone*

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<sup>47</sup> Lomé Peace Accord, 1999. Available at: <http://www.sierra-leone.org/lomeaccord.html>

Whilst the Lomé Accord granted a full amnesty to combatants from the Government of Sierra Leone, the UN Security Council's special representative at the Lomé negotiations, Francis Okelo, appended a hand written caveat to the text of the Accord stating that the UN would not recognize amnesty for acts of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law (Bosire, 2006).<sup>48</sup> While this might have been cause for concern for those who potentially fell within this mandate the UN demonstrated little desire for pursuing war crimes and crimes against humanity at the time (Tejan-Cole, 2003).

Less than a year later, on June 12, 2000, President Tejan Kabbah wrote to the UN Security Council and requested the establishment of a "special court for Sierra Leone", with the purpose "to try to bring to credible justice those members of the Revolutionary United Front ...for committing crimes against the people of Sierra Leone ..." (Kabbah, 2000).<sup>49</sup> The Security Council agreed and in August, 2000 passed resolution 1315 which began the process of the creation of the Special Court for Sierra Leone.

In his letter, Kabbah directly acknowledged his renege on the Lomé Peace Accord amnesty, stating that "as a prize...my Government ...conceded to the granting of total amnesty to the RUF leadership and its members in respect of all the acts of terrorism committed by them up to the date of the signing of that Peace Agreement" (Kabbah, 2000). However he justified his u-turn by claiming that the RUF broke the Lomé Accord first, by abducting the 500 UN Peacekeepers. Kabbah also appealed directly for the use of international law, citing that Sierra Leonean criminal law did not have the requisite sophistication to address the crimes committed by the RUF (Kabbah,

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<sup>48</sup> Although this caveat is not appended to any publicly available copy of the Lomé Agreement that the researcher has found.

<sup>49</sup> Letter from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council. Doc: S/2000/786 Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/602/89/PDF/N0060289.pdf?OpenElement>

2000). Finally, Kabbah concluded his letter by stating that only through an international court, would it be possible “to do justice to the people of Sierra Leone” (Kabbah, 2000).

The Special Court was officially established on January 16, 2002 with the signing of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (2002c), ratification of The Statute of the Special Court (2002a) and the adoption of the Rules of Procedure and Evidence (2002b).

Under these documents the Special Court for Sierra Leone was established “to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law” (SCSL, 2002a). The Court’s authority and investigation starts from the signing of the signing of the Lomé Peace Accord on November 30, 1996, up until the establishment of the Court (SCSL, 2002a: Art 1.1). The first article also noted that any transgressions committed by international peacekeepers and “related personnel” who acted under an agreement from, or with the consent of, the Government of Sierra Leone, could not be tried by the Court, but would fall under the jurisdiction of their home countries (SCSL, 2002a: Art. 1.2).

Articles 2-5 of the Statute of the Court outlined which crimes the Court claims jurisdiction over. Primarily this states that the Court will exercise jurisdiction over those who committed crimes, such as murder, displacement, torture etc. as part “of a widespread or systematic attack against any civilian population” (SCSL, 2002a: Art. 2); as well as those who “committed or ordered the commission” of violations of the 1949 Geneva Conventions (SCSL, 2002a: Art. 3). While the Court largely relied on existing international law as a basis for its prosecutions, it also had to create new laws – such as “conscripting or enlisting children under the ages of 15 years into armed forces or groups or using them to participate actively in hostilities” (SCSL, 2002a: Art. 4, c) – as

well as using existing Sierra Leonean law that covered such things as wanton damage of property and the burning of public buildings or private dwellings (SCSL, 2002a: Art. 5, b, i-iii).

The statute of the Court also determined that individuals can be both indirectly and directly responsible for crime. While stating that “a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime...shall be individually responsible for the crime” (SCSL, 2002a: Art 6.1) and “the fact that the act ...was committed by a subordinate does not relieve his or her superior of criminal responsibility” (SCSL, 2002a: Art. 6.3); the Court simultaneously maintained that “the fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility...” (SCSL, 2002a: Art. 6.4). Therefore the Court established that neither authoritative distance from the commission of the crime, nor due obedience would suffice as a defence; the Court confirmed that both direct and indirect responsibility could be prosecuted.

Article 10 directly countermanded the Lomé Peace Accord Amnesty, stating that any amnesty granted to any person would not hold for the crimes listed in articles 2 – 4 of the statute.

Finally, the Rules of Procedure and Evidence (SCSL, 2002b) were passed into law on the same day as the Statute. The document largely governed how the Court would operate with regards to election of judges, calling of witnesses, etc. The relevant rule that is essential to the current discussion does not come until Rule 87 A which states that after closing statements by both parties and the judges retire to deliberate the verdict, “a finding of guilty may be reached only when a majority of the Trial Chamber is satisfied that *guilt has been proved beyond a reasonable doubt*” (SCSL, 2002b: 87

A). The impact of this statement is discussed in greater detail in the next chapter, but in a situation of widespread destruction and loose command structures, there is very little to implicate defendants beyond eyewitness testimony. Much of the testimony presented in the SCSL cases was conflicting and uncorroborated, and many were directly refuted by defence witnesses. When guilty verdicts are found on unsubstantiated evidence, the question must be asked if justice is truly served.

Between March and September 2003, the Prosecutor for the Special Court issued 13 indictments including, surprisingly, former leader of the Civil Defence Force, Samuel Hinga Norman and then serving president of Liberia, Charles Taylor. The Court would proceed with prosecutions of the accused for the next 10 years. The Trial Chamber issued its final verdict in Sierra Leone on April 26, 2012 with the conviction of Charles Taylor. Whilst the Court issued indictments against 13 individuals, 9 concluded and resulted unanimously in conviction. Foday Sankoh, founder and head of the RUF died whilst incarcerated by the Special Court before his trial started. Samuel Hinga Norman died during the CDF trial and proceedings against him were terminated. Sam Bockarie and Johnny Paul Koroma managed to escape arrest by the SCSL. Sam Bockarie died in Liberia in 2003 and the proceedings against him were dropped. Johnny Paul Koroma's indictment remains active, but he is presumed to also have died in 2003 (SCSL 2002-2012).

Having outlined the two mechanisms of transitional justice in Sierra Leone we can turn to a more in-depth discussion of their role in the wider transitional justice discourse. In the next section it becomes clear that not only did the transitional justice mechanisms in Sierra Leone fail in their own mandates, but they failed the wider goals of transitional justice discourse as well. As the transitional justice mechanisms in Sierra Leone marked the first time that such institutions operated concurrently, unique issues

arose from this overlap. The next section, therefore, outlines where the two mechanisms overlapped and how they influenced the other's operation and fundamentally impeded the course of justice in Sierra Leone.

*Falling through the cracks – the space created by the overlap of the TRC and the SCSL*

Now that the general challenges of transitional justice and of localizing transitional justice have been outlined, the next section of this chapter looks at these problems in more depth and in the specific context of existing transitional justice mechanisms in Sierra Leone. By showing how the global justice community failed to adequately localize the transitional justice mechanisms in Sierra Leone we can see how these mechanisms may not only have not facilitated transition, justice, reconciliation and reintegration, but in fact served to reintegrate structures of *in*justice that led to the conflict in the first place.

As discussed above, Sierra Leone was host to both a truth and reconciliation commission (TRC) and an international criminal tribunal (SCSL), which operated contemporaneously. While it may seem counterintuitive, the contextual discussion of the failure of transitional justice in Sierra Leone begins with the problems arising from this overlap. Not only does this serve the purpose of setting the appropriate scene – by clarifying the specifics of the overlap – but it ensures that the problems arising immediately from the institutions themselves, rather than from interference with each other, remain the focus of the critique. The critique of the “conjoined twins of transitional justice” (Schabas, 2004: 1082) is followed by more specific criticisms of each institution individually.

While the Special Court for Sierra Leone operated for more than 10 years, the TRC undertook its mandate and wrapped up operations within 8 months, with the publication of the final report taking an additional year (Schabas, 2006). The TRC was

officially legislated in 2000, but due to ongoing hostilities was unable to begin fulfilling its mandate until July 2002, which started with the recruitment of commissioners, statement takers and other staff (Schabas, 2004). In late 2002 the TRC was able to begin undertaking investigations, sending employees out to the provinces in order to collect information as well as to solicit and collect witness or confessional statements (Shaw, 2007). The TRC began the public hearings phase of its mandate in April 2003 (Kelsall, 2005) and had concluded them in 4 short months. The TRC officially completed its investigative mandate in August 2003 and issued its final report in October, 2004 (Schabas, 2006).

The Special Court for Sierra Leone was simultaneously a much faster and much longer process. The Court was officially recognized by UN resolution 1315 in August 2000. Like the TRC the security situation in Sierra Leone was too unstable for activities to begin immediately and it was not until January 2002 that the Court was officially legislated (SCSL, 2002c). By April 2002 the UN Secretary General had appointed the Registrar and the lead prosecutor. The investigative arm of the Court would not have started before July/August 2002 when the Registrar and the lead prosecutor arrived in Freetown; the remainder of the Court officials were sworn in on December 2, 2002 (SCSL, 2002-2012). The first 8 indictments were issued by the Court on March 7, 2003 and were followed by 4 more before June 25, 2003. The final indictment was issued on September 16, 2003.<sup>50</sup>

While the Special Court operated for a much longer period than the TRC, clearly the entirety of the TRC's mandate fell within the temporal frame of the Court. Thus during 2003, when the TRC was at the height of its activities, was the precise time when

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<sup>50</sup> Although it is only history that tells us that this was the final indictment, as the Court did not issue a statement proclaiming that there would only be 13 indictments or that the indictment of Santigie Kanu in September 2003 would be the final one. The only caveat to indictments that the Court issued was that there would be a 'limited number', probably less than 50, for the purpose of expediency and cost effectiveness (Kelsall, 2009).



the Court was in the midst of investigations, indictments, arrests and pre-judicial hearings (Schabas, 2004). Although this was anticipated to cause some confusion and distress amongst the local populations, this was largely downplayed and the plans for simultaneous operation went ahead (Kelsall, 2005).

Discourse in transitional justice before the Sierra Leone case suggested that, without amnesty, perpetrators would be reluctant to testify to a truth commission (Shaw, 2010). As discussed in the previous section, the general amnesty initially offered in the Lomé Peace Accord, was rescinded with the establishment of the Special Court. Therefore, without amnesty and in light of the operations of the Special Court, it was debatable how many perpetrators would testify. Thus, Sierra Leone became “a laboratory in which to examine how the two bodies, special ‘institutionalized’ courts and truth commissions, relate to each other” (Schabas, 2003: 1065). Furthermore, while truth commissions are considered alternatives to criminal trials, the “unprecedented experiment [in Sierra Leone] revealed some of the tensions that might exist between the two approaches” (Schabas, 2004; 1088). It was the hope of many policy makers that the Sierra Leone experiment of concurrent justice would help show that justice (defined as retributive justice) no longer had to come at the expense of truth (Shaw, 2010: 119). This view of the simultaneous operation of various transitional devices as a means to “help us understand that post-conflict justice requires a complex mix of complementary therapies...” (Schabas, 2006: 21) gives rise to the image of Sierra Leone as a laboratory and the officials of the TRC and the SCSL as “white-coated scientists” (Shaw, 2010: 119) where the emergent information is used as a model for other countries, rather than for the amelioration of Sierra Leone itself. As a result of the focus on ‘lessons learned’ or ‘best practices for next time’ the inconsistencies and injustices and structural inequalities leading to the civil war are not resolved; additionally, the injustices created

by the concurrent operation of the TRC and SCSL in Sierra Leone are not only ignored, but are given a veneer of legitimacy because of the presence of international transitional justice institutions (Dobbins et al., 2013).

Not only do the multiple and concurrent mechanisms of justice fail to address and serve to mask the underlying systemic issues in Sierra Leone, but the very existence of multiple agencies or mechanisms can result in the inability to create a focused, coherent vision of transition (Fletcher & Weinstein, 2002). The very fact that there are multiple agencies following different paths, logics and mechanisms to different goals, underlines the fact that there is no single vision of what justice is and how it should be pursued. Not only is this detrimental to a consistent and articulate vision of justice, but it can create tension and competition between different mechanisms; even if those mechanisms are ostensibly pursuing the same overarching goals of ‘peace’, ‘justice’ or ‘reconciliation’ (Schabas, 2004). In a situation like Sierra Leone, where poverty is endemic and funding is entirely reliant on voluntary assistance from other states, the focus on one project over the others can result in the severely diminished capacity of one to fulfil its mandate.

In international institutions for transitional justice, criminal or retributive justice is given the overwhelming majority of support, both financially and ideologically (Osiel, 2009). Due to the simultaneous functioning of the Special Court and the TRC, the TRC was largely marginalized, both in its budget and its mandate.

Both the TRC and the SCSL were funded entirely by voluntary donations from UN member states (TRC Act, 2000; UN Res 1315, 2000). The TRC was given an initial operating budget of US\$10 million, with the potential for the government to allocate more donor funds if necessary (TRC Act, 2000). With significant input from the United Nations discretionary fund, the TRC was able to raise less than half of the

projected budget, raising approximately US\$4 million to cover the entirety of its mandate (Schabas, 2004). As a result, the TRC had to curb its initial mandate of operation over a one year period – with the potential of extending for a further 6 months – to completion of its mandate in less than 9 months; thus the overall achievement of the TRC suffered significantly. From a conflict that saw half of the 5 million population displaced, an estimated 75,000-100,000 killed, untold numbers maimed or left as amputees, and roughly 70,000 combatants demobilized, the TRC managed to gather between 7,000 and 9,000 statements and heard testimony from 450 witnesses, victims and ex-combatants (Hoffman, 2004; Kelsall, 2005; Hanlon, 2005). While this is not to deny the work accomplished by 70 statement takers covering the entirety of the country, it can similarly not be denied that the international focus on criminal tribunals, combined with the simultaneous establishment of a criminal tribunal in Sierra Leone, had an adverse effect on Sierra Leone's TRC.

While the Special Court also notoriously suffered from financial difficulties, its operating budget for three years alone was 14 times that of the TRC at US\$56 million. 13% of which (or over US\$7 million) was allocated to administrative costs (Schabas, 2004). Overall the Court cost more than US\$200 million in operational costs alone (SCSL, 2002-2012). The international response to the funding needs of the Court over those of the TRC speaks volumes about the value of criminal justice over the TRC in the international sphere. That states were willing to donate to the SCSL's budget over the TRC shows that criminal justice is the preferred form of transitional justice internationally. Yet the financial woe of the TRC is only half of the problem. When the difficulty of securing operating funds is combined with the lack of international attention – both financial and otherwise – it becomes clear that the TRC was also hampered in achieving its mandate by the presence of the Special Court.

While the mandate of the TRC was to “create an impartial historical record”, “promote healing and reconciliation”, “address impunity”, “prevent repetition” and investigate “all violations and abuses of human rights...*related to the conflict*” (TRC Act, 2000 [emphasis added]), the TRC interpreted the mandate to create an impartial history, address impunity and investigate all violations and abuses of human rights to include the pre-war era (TRC, 2004).<sup>51</sup> While many institutions were only concerned with violations that occurred during the war, the TRC also investigated *why* the war happened and why it took the shape it did (TRC, 2004).<sup>52</sup> While it was also the remit of the Special Court to record an impartial history, the separation of law and politics precludes the consideration of political arguments in the courtroom. While the Court may highlight the history of the crimes it was investigating, it was not able to consider the political context of the crime. The TRC, by contrast, was not a legal entity and as such was unburdened by the separation of law and politics; therefore the TRC sought to uncover a complete historical record and consider the political underpinnings of Sierra Leone’s civil war (TRC, 2004).

In 2003, during the hearings phase of the TRC, Chief Samuel Hinga Norman - former deputy defence minister and de facto leader of the Civil Defence Force (CDF) and one of those indicted by the Special Court – submitted a request to the TRC to be permitted to make a public statement from his cell in Freetown, to the TRC (Kelsall, 2009). Norman’s request specified that he had hoped to address his case in the courtroom, but as his trial had yet to commence and the TRC was about to wrap up, he

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<sup>51</sup> This is argued in the first chapter of the “Witness to Truth” (2004) report. In this section, the TRC makes clear that while the TRC Act stipulates that they need only investigate violations during the civil war, the commissioners found this inconsistent with the TRC’s mandate to compile “a clear picture of the past” (Memorandum of Objects and Reasons, addendum to TRC Act in parliament, 2000) as well as with the Commission’s “principal function...to create an impartial record of events in question as the basis for the task of preventing their recurrence” (TRC Act, 2000: subsection 6); thus the Commission sought to understand the underlying causes of the conflict in order to prevent its recurrence (TRC, 2004: paragraph 11).

<sup>52</sup> “Witness to Truth: The Final Report of the Truth and Reconciliation Commission” (2004), available at: <http://www.sierraleonetr.org/index.php/view-the-final-report/table-of-contents>

wanted to be able to make his personal case heard (Schabas, 2004). The TRC readily agreed, as one of the leaders of the conflict, they saw Norman's testimony as invaluable to the recording of an accurate history (Schabas, 2004). Furthermore, the public nature of the testimony would allow the public of Sierra Leone to listen to Norman's testimony and judge it for themselves, putting it against their own experiences and knowledge and giving it meaning or disregarding it accordingly (MacKenzie & Sesay, 2012).

Subsequent to Norman's request, his two co-accused, Moinina Fofana and Allieu Kondewa, also submitted requests for public testimony to the TRC (Kelsall, 2009). The Special Court's Office of the Prosecutor (OTP) sought an injunction against Norman's testimony, claiming that Norman's testimony would impact the impartiality of the trial (Schabas, 2006). The argument went before the Court and the Court Registrar and resulted in the "Practice Direction" (2003)<sup>53</sup>.

The original practice direction stipulated that the TRC could make an application to interview an accused of the Court to a judge presiding at the Court. The application had to contain the list of questions to which the interview would be restricted (pending Judge approval). The interview would be monitored by a Court official, as well as being recorded and transcribed. After the interview all transcripts and recordings were to be turned over to the prosecution with the intent for their use in trial (Schabas, 2004). The practice direction was later amended so that the transcript no longer had to go directly to the prosecutor, but the prosecutor could apply to a Judge to gain access to it (Schabas, 2004). The TRC, as well as Norman and his defence counsel, were not willing to accept this. They wanted an open and public testimony, identical to those the rest of the country had been exposed to (Kelsall, 2009). After an

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<sup>53</sup> The Practice Direction on Procedure following a request by a state, the Truth and Reconciliation Commission, or other legitimate authority to take a statement from a person in custody of the Special Court for Sierra Leone (2003).

initial rejection and appeal,<sup>54</sup> Judge Robertson denied the request for Norman and his co-accused to testify in public. Judge Robertson reasoned that such public testimony, being broadcast from the Special Court, being surrounded by court officials and administrators, would give the appearance of being trial-like without being a trial. The accused would also have the chance to make an “uninterrupted political broadcast” (SCSL, 2003).<sup>55</sup> Judge Robertson concluded that he could not permit the testimony of the CFD defendants if the overlapping nature of the TRC and Special Court were to serve as precedent to “produce post-conflict justice in other theatres of war” (Judge Robertson, quoted in Schabas, 2004: 36-37).

Immediately the problem of the overlapping mandates of the Court and the TRC is apparent. In this example, the presence of the court explicitly impeded the TRC from pursuing its purpose of creating an impartial and accurate history. The Special Court’s negation of even the discussion of the political incentives of the CDF precludes a complete and accurate history. Furthermore, while the political consideration might be outside the scope of the Special Court,<sup>56</sup> it is certainly within the remit of the TRC; the Court had no authority to prevent the testimony of Norman and his co-accused. If those the Court indicted did indeed bear “the greatest responsibility for violations of human rights...” (SCSL, 2002), then surely their unimpeded testimony is necessary for understanding *why* the conflict and crimes happened the way they did. In fact, because

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<sup>54</sup> Justice Bankole Thompson was the first judge to decide on the request of the TRC to allow Norman to testify. He rejected it on the grounds that the TRC, by stating that Norman was one of the leaders of the conflict as the reason why they were so keen on getting his testimony, that they were violating Norman’s right to presumed innocence. This is an interesting argument as the defence team for the CDF used this very argument in their appeal of the indictment; that by choosing to prosecute Norman on the basis of prosecuting “those who bear the greatest responsibility...” that Norman’s right to presumed innocence was violated (Schabas, 2006).

<sup>55</sup> *The Prosecutor v. Sam Hinga Norman* [28 November, 2003], “Decision on appeal by the Truth and Reconciliation Commission for Sierra Leone (‘TRC’ or ‘The Commission’) and Chief Samuel Hinga Norman JP against the decision of His Lordship, Mr Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC’s request to hold a public hearing with Chief Samuel Hinga Norman JP”. SCSL, Available at:

<http://www.sc-sl.org/LinkClick.aspx?fileticket=8%2Bf1%2B9mgUJw%3D&tabid=193>

<sup>56</sup> A distinction which will be debated later in chapter five.

political considerations are barred from the Special Court entirely (Kelsall, 2009) the TRC is the only place where the politics of the civil war can be aired formally and openly. While there were certainly problems with the TRC itself, the willingness of the accused to testify should have been seized as an opportunity to put the political incentives to go to war in the public forum, in a place where Sierra Leoneans could listen and ascertain truth, history and motivation for themselves.

The fact that the Special Court did not allow the interaction between the CDF accused and the Sierra Leone population to occur, strongly suggests that top-down approaches to transitional justice disregard local context and the capabilities of the local population. Judge Robertson's reasoning that he could not allow the testimony to go forward as it would have the appearance of a trial without being a trial and how this would serve to confuse the population, presumes the passive acceptance of information of Sierra Leoneans rather than their material engagement with it. Additionally, possibility for confusion is blamed on the population rather than on the institution. If it is only location and surroundings that would have viewers believing that a trial is taking place, then surely the adequate response is to change the setting so that it didn't seem trial like, or perhaps engage with locals as to how they would view such a testimony, rather than presume their ignorance and misunderstanding.

Moreover, Judge Robertson's reasoning is concerned with the impact that the testimony before a TRC of those criminally accused by a criminal tribunal could have on future transitional justice initiatives, rather than the impact of Norman's testimony on the process for Sierra Leone. While his reasoning also outlines concern for the conciliatory aspect of the TRC, this is not particularly well reasoned and his larger argument is based on the precedent of the ICTY and ICTR and the legacy that the

Special Court will leave (SCSL, 2003).<sup>57</sup> The sentiment that Sierra Leone is to act as a test case demonstrates the overarching issue of top-down approaches to justice, that the discourse becomes more important than the result (Shaw, 2010).

While Judge Robertson's reasoning for the refusal of public testimony by CDF indictees is debatable, his argument that the TRC appears trial like without actually being a trial is not far wrong. In fact, when it was announced that there would be a Special Court and it would run alongside the TRC, there was widespread concern that confusion between the two institutions would ensue or that fear of prosecution would inhibit ex-combatants from coming forward to testify (Schabas, 2004). Furthermore, there were fears of crossover between the TRC and the Court and that the TRC would act as a "feeder court" or vetting system for the Special Court (PRIDE, 2002).<sup>58</sup>

*Everyone knows who talked with these agents of the TRC. I did not go to the TRC. I heard about the meetings but I never go. I was not too happy because I was thinking that when I arrive, they will arrest me. I have the fearness [sic] in me.*<sup>59</sup>

*The problem is that the leaders, the boss men were arrested first and only then did they [the TRC] call for reconciliation. And so we junior ones did not want to go because we would be in jeopardy. We were afraid of the Special Court, if the big ones were there, we will all have to go there. If first we talk to the TRC, then they will get us.*<sup>60</sup>

This fear may have been exacerbated by the fact that the TRC was located on Pademba Road, very close to the notorious Pademba Road Prison. Later when the TRC was moved to Brookefields, it was very close to the Special Court – indeed there were local rumours of an underground tunnel linking them – and this physical proximity was

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<sup>57</sup> *The Prosecutor v. Sam Hinga Norman* [28 November, 2003]. "Decision on appeal by TRC and accused against the decision of His Lordship Justice Bankole Thompson to deny the TRC request to hold a public hearing with Chief Norman" Judge Robertson. Available at: <http://www.sc-sl.org/LinkClick.aspx?fileticket=8%2bf1%2b9mgUJw%3d&tabid=193> and <http://www.sc-sl.org/LinkClick.aspx?fileticket=rYK5weliv5I=&tabid=193>

<sup>58</sup> Interview with Alie, ex-combatant - RUF (Jalloh translating), Koidu Town, Kono, 10/02/2011; Interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011.

<sup>59</sup> Interview with 4 ex-combatants, Abbas speaking. Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011.

<sup>60</sup> Interview with Alie, ex-combatant - RUF (Jalloh translating), Koidu Town, Kono, 10/02/2011;



enough to confirm the suspicions of many Sierra Leoneans (Shaw, 2010). While the UN and international sponsors were aware that this fear might result in few ex-combatants coming forward to testify, this was not considered a problem; in fact some commentators argued that the timing of the TRC presented an opportunity to use it as an investigative tool of the Special Court, and to not use it as such would be a missed opportunity (Schabas, 2004). Furthermore, since international institutions tend to favour criminal justice over truth commissions, the parallel operation of the TRC and Special Court was an opportunity to either marginalize the TRC altogether, or turn it into a grand jury for the Court (Schabas, 2006). Therefore, the fears of prosecution held by local populations, and ex-combatants in particular, were well founded. In the researcher's own fieldwork, ex-combatant participants were asked if they had testified to the TRC. Almost all of them had refused to do so. Further questioning revealed that they were afraid of being called before the Special Court. Some of them were afraid of prosecution, but others were afraid of being forced to testify against commanders and friends.<sup>61</sup> As one participant put it:

*I used to be scared because people knew me as the bodyguard to Foday Sankoh and they arrested Foday Sankoh so I was afraid. When they used to come [the TRC], I used to hide. When others come and tell me about the Special Court...I never agreed, I refused to go, that's why I ran away from this country. But I had the fearness in me. I wanted to come home, but they know I'm a bodyguard for Foday Sankoyh, they know I fought in Monrovia and was a bodyguard for Charles Taylor. They know I can give true information, but I was afraid. I wanted to go to school, to use the DDR, but I was afraid they would arrest me.<sup>62</sup>*

Additionally, a formal statement was never issued from either the Court or the TRC that ensured that information, statements or testimony gathered by the TRC would not be used or subpoenaed by the Court. While David Crane, lead prosecutor for the Special Court verbally assured people that the Court had its own investigative arm and

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<sup>61</sup> Fieldwork (2010-2011).

<sup>62</sup> Interview with Abbas, ex-combatant, (Allie translating), Kenema, 16/02/2011.

would not use evidence presented to the TRC, this was never formalized. Defence counsels, however, did not issue a similar statement and surely they would have sought as much information in those testimonies as possible to exonerate their clients (Kelsall, 2005). Even with the statement from the Office of the Prosecutor (OTP) that information would not be amalgamated, staff were often shared between the two institutions. Several staff worked at both the TRC and the Special Court (including a participant in the current research), and even those who only worked at one were often seen socializing and lunching together in Freetown, thus raising fears of informal information sharing between the institutions (Kelsall, 2005). After the end of the TRC's mandate, the SCSL hired a number of staff from the TRC, who could not only pass on knowledge and information of former combatants to their new employers, but who were also allegedly used as formal witnesses by the prosecution (Shaw, 2010). This fear of informal information sharing was not unfounded, "according to some of those working with the TRC, a senior individual in the Commission was wont to declare that if he came across evidence useful to the Special Court, he would pass it on to the Special Court 'under the table' because 'justice is justice'" (Shaw, 2010: 122-123).

The international community, proponents of the concurrent operation of Court and truth commission, failed to understand the historical context that would lead to Sierra Leoneans mistrusting state apparatuses. Instead, the confusion between the Special Court and the TRC were dismissed as ignorance and lack of education. As the International Commissioner on the TRC, William Schabas (2006) noted:

Yet confusion about the mandates and functions of these two bodies would seem to be not only inevitable but quite natural and understandable. After all, most European law students have trouble explaining the distinction between the European Court of Human Rights and the European Court of Justice. The average citizen of the United States would be challenged to distinguish between the Chief Justice of the Supreme Court and the Attorney-General. Who can really expect *uneducated, illiterate peasants in the countryside of Sierra Leone to do better?* [emphasis added] (Schabas, 2006: 38).

Schabas understands the problem to be Sierra Leoneans' lack of education and ability to understand the mechanisms that are being offered to them. By rejecting these fears as the product of irrationality and ignorance, ex-combatants and victims were summarily dismissed as "implicitly primitivized" (Shaw, 2010: 122). Schabas, in this assessment creates a further *injustice* in Sierra Leone as he simultaneously misrecognizes them, and through this misrecognition, misframes their calls to justice. They are misrecognized because they are poor, uneducated peasants who cannot possibly come to understand institutions of the SCSL or the TRC. By dismissing fears of overlap between the TRC and the SCSL as ignorance, he invalidates Sierra Leonean concerns. Through this misrecognition, they are misframed because the clear criticism of the relevance of these institutions held by Sierra Leoneans – manifested in their fear and confusion – is dismissed. They are barred from participating *at all* in the justice mechanisms that shape their lives.

At the very least, the fear and mistrust with which Sierra Leoneans viewed these institutions should have highlighted the inadequate public discussion and dissemination of information about them. More importantly, however, by disregarding these fears, the international community missed an opportunity to materially engage with and understand the mistrust Sierra Leoneans have for national mechanisms and institutions of 'justice' (Shaw, 2010). Blaming local ignorance for the suspicion surrounding the transitional justice initiatives in Sierra Leone precludes Sierra Leonean participation in these justice initiatives, from their theoretical underpinnings to their implementation. Particularly when local suspicions and criticisms are not without grounding. As one ex-combatant commented:

*I don't see a reason for Charles Taylor being caught. If he is caught, our own president should be caught [speaking of Tejan Kabbah] but they don't catch him.<sup>63</sup>*

Or as another put it:

*At first we thought that maybe the leaders would receive clemency, especially Hinga Nomran, but that did not happen. So we were afraid, you see?<sup>64</sup>*

If either the Court or the TRC were to listen to remarks of this sort from local populations, an understanding might be gained as to how they viewed the prosecution of Sam Noman, the then deputy Minister of Defence, and the simultaneous refusal to prosecute Tejan Kabbah, the then President of Sierra Leone and Minister of Defence. Both transitional justice mechanisms then missed an opportunity to make these initiatives relevant and binding to Sierra Leoneans, but also failed to seize an opportunity to open a wider dialogue about the relevance of these forms of transitional justice.

In this section I have sought to demonstrate the problems emerging from the overlap of the TRC and the Special Court. While this section explored the nature of the overlap between the two institutions and how this impacted the development of justice overall, the following chapters will look at these very same institutions in detail and show how each institution managed to fail in its pursuit of justice individually. Moreover the next chapters not only outline how these mechanisms failed, but how they reified the dichotomy evident in transitional justice discourse and further decoupled justice by misframing the question of justice and focusing only on the justice of recognition, thereby further entrenching existing structures of inequality and injustice in Sierra Leone.

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<sup>63</sup> Interview with Kenneth 'King Shining' Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011

<sup>64</sup> Interview with Alie, ex-combatant - RUF (Jalloh translating), Koidu Town, Kono, 10/02/2011;

## **Chapter 5: International Criminal Tribunals and the Special Court for Sierra Leone**

### *Introduction*

The failure to engage local populations in discourse regarding transitional justice has far reaching consequences. In the previous chapter we saw how failure to engage with Sierra Leoneans about the establishment of the TRC and its overlap with the Special Court resulted in mistrust and fear surrounding both institutions. While this anxiety was largely blamed on the ignorance of local populations (Schabas, 2006; Horowitz, 2006), the investigation thus far has shown us how transitional justice may misframe populations and the question of justice and thus implement irrelevant or unnecessary mechanisms. There is, however, discourse surrounding the lack of local engagement in transitional justice mechanisms, but much of this discourse is centred around how to educate populations about what transitional justice is, rather than ask them what needs to be done (Shaw, 2007). A common criticism of the ICTY and ICTR was that their location outside of the affected countries impeded local ownership. By locating the Special Court in Sierra Leone, it was hoped that the local populations would engage more readily with the ideas surrounding the Court and with transitional justice more generally (McAuliffe, 2008). However, as this section discusses, ownership entails much more than geography (Lutz, 2006).

Of the ongoing debates regarding transitional justice, a consistent trend is the call for the localization of transitional justice mechanisms (Shaw, 2007, 2010; Fletcher & Weinstein, 2007; Annan, 2004; Kelsall, 2005, 2006; Shaw & Waldorf, 2010; Weinstein et al., 2010; Young, 1990; Fraser, 2008; Millar, 2011; MacKenzie & Sesay, 2012; Roche, 2005). As with the concept of ownership, localization must reach farther than simply physically locating justice mechanisms in the affected country; the ideas, perspectives, and needs of local populations must be taken into consideration when

identifying and creating mechanisms, legislation and organizations to facilitate transition. However, localizing transitional justice and its mechanisms is not always a straight forward process (Shaw, 2007). This chapter, therefore, delves deeper into the discourse, implementation and action of the Special Court for Sierra Leone and seeks to highlight how the SCSL misframes populations by precluding local engagement. Even in its pursuit of localization and engagement through its physical location and outreach programs, the SCSL still failed to resonate with local populations (Kelsall, 2009); this chapter investigates why. Moreover, this chapter explores how the Special Court failed in its mandate as a transitional justice mechanism to establish the rule of law, develop the justice sector and address impunity.

#### *Misframing – Removing Sierra Leoneans from the Processes of Justice*

Historically the problem of engagement has been theorized to be exacerbated by the location of international tribunals outside of the affected country.<sup>65</sup> The UN and the international community sought to overcome this problem by physically locating the Special Court for Sierra Leone, in Sierra Leone. The argument for local ownership was threefold: not only would the Court be located on home soil and thus be physically available to local populations, but it would employ local staff and would operate under a hybrid system that used both domestic and international laws (Schabas, 2004). Yet the physical placement of the Court does not necessarily facilitate engagement (Stensrud, 2009). The purpose of this section, therefore, is to investigate how the Special Court for Sierra Leone, in undertaking its stated mandate, served to misframe the Sierra Leonean population, and removed them from engaging with and participating in the transitional activity of the Special Court. The injustice of misframing in this case took several

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<sup>65</sup> The ICTY which was in was held in the Hague, Netherlands and the ICTR which was held in Arusha, Tanzania.

forms. Primarily, Sierra Leonean populations were not consulted on whether they wanted a court and thus it did not necessarily resonate with how they would have wanted justice to look. Secondly, the Court always remained physically distant from the Sierra Leonean people and thirdly, through attempts to overcome the physical frame, the Special Court's outreach project misrepresented Sierra Leoneans by presenting a very narrow version of the truth. While the outreach program sought to engage populations through their work and thus ensure their representation, by failing to engage with the historical juncture leading to injustice in Sierra Leone, the program served to further misframe (Stensrud, 2009).

The Special Court for Sierra Leone was established with neither public consultation nor debate. The then President, Tejan Kabbah unilaterally wrote to the UN requesting the construction of a Special Court for the prosecution of RUF criminals (Kabbah, 2000),<sup>66</sup> OTP decided to expand the remit to cover individuals from the CDF, the Armed Forces Revolution Council (AFRC) and Charles Taylor, the then serving president of Liberia (Perriello & Wierda, 2006). At no point was the Sierra Leonean population at large consulted about whether they were desirous of a Court to prosecute war criminals (Shaw, 2010). It is arguable that the act of requesting an institution of justice and subsequently having it implemented would facilitate ownership greater than the physical proximity of a courthouse, as then the subjected group would be involved in the decision of the justice mechanism (Fraser, 2008). Moreover, while the Special Court was physically present, it was hardly accessible – either physically or figuratively – to local populations, thus denying them the chance to engage with its messages.

### *Location, Location, Location*

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<sup>66</sup> Kabbah letter to UN, 2000, UN doc S/2000/786. Available at: <http://www.un.org/News/Press/docs/2000/20000814.sc6910.doc.html>

The Special Court for Sierra Leone sits atop a hill in Freetown, demarcated by a 20 foot high, barbed wire topped, cinder block fence, with guards in army fatigues, carrying automatic weapons, surrounding it 24 hours per day (Fieldwork, 2010 & 2011). Research undertaken for this thesis in Freetown, after the conclusion of the Sierra Leone portions of the trials,<sup>67</sup> revealed that access to the Court was not easy. Only with an established and verified appointment or with accompaniment from a Special Court security guard was I able to access the Special Court compound.<sup>68</sup> While access may have been easier during the Freetown trial phase of the Court's operations, in 6 months and many interviews, I did not meet a single local person who did not work for the Court who had been there; as either an observer or visitor. Even Abbas, an ex-combatant who had been recruited to serve as a witness at the Court, had never set foot in the Special Court.<sup>69</sup>

The Special Court for Sierra Leone is located in Freetown, on the Western coast of Sierra Leone. While Sierra Leone is not a large country, it can be difficult to traverse. As a legacy of colonialism that focused on the capital and largely neglected the provinces (Hirsch, 2001), there are few roads connecting Freetown to the other districts. Additionally, Sierra Leone's sole rail line connecting the Western province to the Southern has been defunct since the reign of Siaka Stevens in the 1970s (Smillie et al., 2000). Much of the Sierra Leonean population live in rural villages and travel to Freetown is uncommon. Freetown is physically distant from the provinces and derelict

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<sup>67</sup> Only 9 of the 10 indictees were tried in Freetown. The final indictee, Charles Taylor was tried in the Hague, Netherlands for security purposes,

<sup>68</sup> It is worth noting that both initial contacts at the SCSL were met in social situations. Only through these contacts was I able to gain physical access and further contacts at the Special Court. Only *after* meeting Saleem Vahidy of the Victims and Witnesses unit of the SCSL were my phone calls to other members of the SCSL returned.

<sup>69</sup> Abbas, an ex-RUF combatant, had been recruited to testify by the SCSL against the RUF co-accused. He travelled to Freetown and stayed in accommodation paid for by the court, but never did testify. Abbas discovered that the Court representatives who were assigned to ensure his care and security were stealing his Court appointed living stipend. When he complained of this, he was told there was no truth to his story and as a result he refused to testify and returned to Kenema. Interview with Abbas, ex-combatant, (Allie translating), Kenema, 16/02/2011.



roads combined with unreliable transport do not make for easy commuting (Fieldwork, 2011).<sup>70</sup> Secondly, the vast majority of Sierra Leone's population is reliant on public transit which can prove to be expensive and many are unable to afford it. Thirdly, because of the distances and quality of roads and transport involved, many are not able to take the necessary time to travel, nor was the Court able to step in to help this.

*People have to walk to reach outreach programs. If this is the centre village, we send messages to the surround villages that you tell your people to come. You cannot get to all the villages, so they send representatives to the meeting. We are not responsible for transport, because it is the Sierra Leonean Court, it's everybody's...if you want to know what's going on, you will come here.*<sup>71</sup>

Thus in-depth monitoring of the Court required dedication and resources that even the most dedicated of private citizens could not afford.<sup>72</sup> As a result, even though the Special Court is physically located in the affected country, ownership of Court processes was not assured by its geography (Stensrud, 2009).

### *Outreach Programs*

As a means of combating the physical distance of the proceedings, the Court established a dedicated Outreach and Public Relations (PR) sections of the Press Office (PO) used to inform local and rural populations of what was happening at the Court in Freetown (Perriello & Wierda, 2006). The Registry had an internal press office that made video documentaries to summarize the trials. These videos were screened in the 13 provinces and radio broadcasts were also used in an attempt to reach those communities that could not access the video screenings.<sup>73</sup> While the outreach program

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<sup>70</sup> Personal experience on several trips from Freetown to Kono, Kenema and Makeni. I had the privilege of travelling with a friend who had a driver, but most local populations are reliant on public transit in the form of *poda-poda*, or small bus. Most *poda-podas* are in a state of disrepair and are no guarantee of safe arrival at your destination; they are notoriously unreliable and are known to breakdown en route. Travel to the provinces is marked by abandoned vehicles along the highway.

<sup>71</sup> Interview with Prince Phillip Mansaray, TRC Statement Taker, SCSL Outreach Officer, MRD, Kenema, 17/02/2011.

<sup>72</sup> Ibid.

<sup>73</sup> Interview with Rhoda Kargbo, Senior Lawyer Appeals Chamber SCSL, Freetown, 04/02/2011.

sought to engage populations and thus ensure their participation in the ongoing justice dialogue and debate, the practise used by the outreach program served to further misrepresent as it failed to understand and engage with the ways Sierra Leoneans view power and secrecy.

In Sierra Leone, situations of political danger are managed with secrecy, ambiguous practices and surreptitious discourse (Ferme, 2001). As a result of this tradition, it was imperative that the Special Court operate with as much transparency as possible. Not only would this help local populations trust the proceedings as being pure and incorruptible, but it would open up the practices of the Court to popular, informed debate, and therefore facilitate the participation of the population. “Ideally, the representation of Sierra Leonean transitional justice unfolds as a narrative in which the local population participate, rather than as a political exercise of authoritarian rule of law that is fed, via factual programming to a passive audience” (January, 2009: 211).

Sierra Leone has a history, and ongoing legacy, of corrupt and dishonest leadership (Kandeh, 1999; Zack-Williams, 1999; Fanthorpe, 2001; Hoffman, 2011). The context of a society that is not used to trusting its leaders or its judicial systems (Fithen & Richards, 2005) created a unique space for the implementation of an authoritative apparatus like the Special Court. By not engaging with local populations about their suspicions regarding authority and domestic justice structures, the SCSL failed to understand how its work and message would be received by Sierra Leoneans and ignored the historical juncture from which injustice in Sierra Leone emerged.

A post-colonial audience’s ‘will to truth’ [how it decides which statements are true and which are false] is based on and born of expectations of secrecy. Truth is rarely unambiguous. The agency of the affected population must be honoured in efforts to engage and develop relationships between author and subject, until each affected civilian is not only satisfied with the information he or she receives from the Court press office, but is also invested in the story and how it unfolds (January, 2009: 220).

While every minute of trial proceedings was recorded, very little of that footage made it into the Outreach screenings;<sup>74</sup> this resulted in a filtered narrative of the justice process reaching the wider population of Sierra Leone. The Court ruled that defendants could only be shown in the courtroom. After the RUF and CDF refused the jurisdiction of the Court and insisted on being tried in absentia they were not seen on camera again. As the defendants were never seen in handcuffs, wheelchairs, cells or anything other than groomed, healthy and court-ready, a distorted sense of their power and ability was presented to the public (Kelsall, 2009). Failing to show the defendants' vulnerability and humanity, whilst discussing their power and strength at length, meant that defendants were only portrayed as men to be feared. Furthermore, many witnesses, particularly so called 'insider witnesses,'<sup>75</sup> were permitted to testify *in-camera*. Not only were they not visible to the Court and the subsequent documentary film audience, but the defence, accused and prosecutors were not permitted to divulge any information in their questioning or cross examination that might lead to identification of the witness (Kelsall, 2009). While anonymity is understandable in some cases, particularly victims of sexual assault or abuse, the apparent secrecy which hid the identities of these witnesses would resonate with local experiences of corrupt judicial practices (Ferme, 2001). Additionally, as a result of this protection, witnesses were not accessible to public scrutiny; the public was unable to make an informed decision about what was really happening at the Court. This not only limits the ability of the public to debate the proceedings of the Court, but also the Court and criminal justice in general as effective mechanisms of transitional justice.

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<sup>74</sup> For every 160 feet of film footage from the Court, only 1 foot made it to the Outreach videos (January, 2009).

<sup>75</sup> Usually 'mid-level commanders' who were guilty of crimes themselves, but were offered lucrative resettlement packages to testify against their leaders (*War Don Don*, 2010).

The removal of Sierra Leoneans from engaging with the activities of the Court was clear in their blatant disregard of it. Throughout fieldwork, particularly amongst local, recipient populations,<sup>76</sup> discussion of the Court was met with blank stares or dismissive gestures. Whilst the Charles Taylor trial was ongoing during fieldwork, only those who worked at the Court were interested or aware of what state the trial was at.

*We are not much interested in following the proceeds, you know? How the court is going and everything. Because to the people down here [Koidu Town], the Special Court is nothing to them. It hasn't changed anything for them.*<sup>77</sup>

Furthermore, in the days leading up to the reading of the judgement in the Charles Taylor case, local youth in Freetown were more interested in the upcoming Champions League matches than the trial outcome.<sup>78</sup>

*I've never been to the Special Court, because, well to tell you the truth, I don't see the need for the Special Court. I don't believe in the whole thing. All those things...the money is just too much for one person, it could have benefitted the community too much. Sierra Leoneans have never benefitted from it.*<sup>79</sup>

Ferme (2001) asserts that mistrust of authority in Sierra Leone stems from years of human rights abuses and secrecy of government actions. As such, most Sierra Leoneans carry little trust and doubt the integrity of any governing body.

*What does it matter when the court officials are bribed anyway? They start right from the prosecutors, the court clerks, everyone. If you can afford to give a bribe, and say you cannot come when you are summoned, then you can postpone the matter, maybe they will lose your case.*<sup>80</sup>

*The ruling government is spending much money on training a certain sector of police. It is a special unit attached to the police but they are the security police for the ruling party. They are very close to the ruling powers, so maybe the ruling powers use them for vote rigging or whatever.*<sup>81</sup>

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<sup>76</sup> See chapter two.

<sup>77</sup> Interview with Mohammed Jalloh, Project Manager KOCEPO, Koidu town, Kono, 09/02/2011.

<sup>78</sup> Special thanks to Kieran Mitton who was in Freetown during the release of the judgement and raised this point with me.

<sup>79</sup> Interview with Kenneth 'King Shining' Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011

<sup>80</sup> Interview with Madiou Barrie, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

<sup>81</sup> Interview with Mohamed Yemoh, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

This entrenched suspicion can be minimized by inviting local populations to observe and evaluate the internal activities of the court, including the judges' chambers (to see deliberations), the preparation of the prosecution and defence teams, reactions from witnesses, to view the accused (regardless of what state they are in), etc. However, the Court did not do this and barred cameras and members of the public from these observations (Kelsall, 2009). The opening of the Court would have opened the path to participation to Sierra Leoneans. By viewing the inner workings of the Court and getting a more complete picture of the goings on, they could have made a well informed decision about whether to accept or reject the influence of the Court. "[P]ublic deliberation counteracts the authoritarian tendencies which [have led and continue to lead] to weakening of the democratic system and massive human rights violations" (January, 2009: 210). By failing to give Sierra Leoneans a complete picture of what was actually happening at the Court, the outreach program hampered their ability to engage in an ongoing dialogue both about and with the Court, effectively removing populations from debates on the Court's efficacy. When local Sierra Leoneans are removed from this debate, we can see what Fraser (2008) calls the injustice of misframing; they are unable to participate in the judicial endeavours that affect them. Not only is this an injustice on its own, but it removes populations from debates where they could have their claims to justice heard and realized, thereby precluding real representation or participation and the creation of relevant solutions to the injustices that led to the conflict and which continue to plague their lives.

*Removing populations from their history – the Court's creation of a filtered narrative*

The SCSL, in its top down approach to transitional justice not only misframed Sierra Leoneans by impeding their ability to critique and engage with the work of the

Court, but also created a filtered, narrow narrative of the past that affected local populations' ability to create their own collective memories and highlight the relevant points. As discussed previously, this filtered narrative may manifest itself through the limited story that reaches the local population through the press office and outreach program of the Special Court, but this also happens through the labelling of violent acts by the tribunal process. The Special Court used specific language to obtain a particular version of truth from a contested history (Kelsall, 2006), thereby deciding the relevant historical moments to address. This was done in two ways: the first was accomplished by construing the acts of leaders of the violent movements as being 'criminal' rather than 'political'. In this endeavour, the Court sought to delegitimize the leaders and their movements (Harris, 2012). The Court focused exclusively on specific criminal actions of a few leaders, picking them out of "the continuous flow of political events" (Kelsall, 2006: 593), and by doing so removed both the men, and their actions, from their political contexts. This removal from the political sphere created the problem of misframing, as it framed the justice initiatives specifically around the crimes during the conflict, rather than the historical juncture from which those crimes emerged. Removing the action from its historical context may result in an incomplete version of truth, and an incomplete analysis of what happened, thus creating an incomplete justice (Harris, 2012). Combined with the removal of local populations from participation in the judicial practice, the misframing was complete.

The Court embodied this misframing by delineating what was allowed in the Courtroom; to create a divide between what was considered political and what was criminal. The historical and political context of action was not considered 'material' to the case and so was not allowable in court; it was dismissed as a political consideration. As Fraser reminds us, justice must be relevant to the historic moment from which the

injustice emerged (Fraser, 2008). By removing half of the story (the political), the Special Court impeded the relevance of the justice. Moreover, through its authoritarian status, the Special Court may have impeded further dialogue regarding the historical context, ensuring that the injustices leading to the civil war were not addressed. In the cases tried by the SCSL, motivation for action, when discussed at all, was listed as pure greed and evil (Kelsall, 2009). In his opening statement to the Special Court at the trial of the three CDF indictees, lead prosecutor David Crane stated:

The issues before you are not – cannot be political...Political acts must remain barred from these proceedings... We have not charged political crimes...We allege that the accused committed international crimes, their actions were criminal, their mindset criminal, not political... these so called defenders of the nation were really offenders of the nation looking out for their own self interest (SCSL, 2004a: Crane opening statement).<sup>82</sup>

In his opening statement two days later at the opening of the RUF trial he went further:

These rebels consisted of Sierra Leoneans and Liberians were assisted by Libyan Special Forces [sic]. Among their goals was [sic] the diamond fields of Eastern Sierra Leone. Their motive: power, riches, and control in furtherance of a joint criminal enterprise that extended from West Africa north into the Mediterranean Region, Europe, and the Middle East. Blood diamonds are the common thread that bound together this criminal enterprise. The rule of the gun reigned supreme... The Revolutionary United Front, the infamous RUF, was backed by a wide-ranging joint criminal enterprise that had little political motive other than to assist in the overall takeover of resource rich areas of West Africa by cynical criminal actors, warlords and heads of state...(SCSL, 2004c: Crane opening statement).<sup>83</sup>

Not only did this establish the grounds for action to be greed – as opposed to grievance – but it disallowed the argument of political motivation, before it was even made. By firmly removing the actions of the accused from the political sphere and placing them within the criminal, the actions of the accused fell under the scope of the law and were thus debatable in Court, but their motivation for those same actions were considered political and were therefore barred from public debate (Kelsall, 2006).

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<sup>82</sup> *The Prosecutor v CDF Co-Accused*, [June 3, 2004]. Available at: <http://www.sc-sl.org/LinkClick.aspx?fileticket=S5UdSAv95zk%3d&tabid=154>

<sup>83</sup> *The Prosecutor v RUF Co-Accused* [July 5, 2004]. Available at: <http://www.sc-sl.org/LinkClick.aspx?fileticket=Ozfyb8ohNBM=&tabid=156>

Crane, however, went so far as to acknowledge the political underpinnings of the Sierra Leonean civil war:

We are not going to question whatever initial politics surrounded the RUF. We are going to show, however, that this abuse of a political process and the discontent of the citizens of Sierra Leone was a mask for these actors' own criminal purposes. This trial is not, cannot be, about this subterfuge of frustrated political aspirations, but about war crimes, the crimes against humanitarian [sic].... These were the leaders after 1996, the commanders of an army of evil, a corps of destroyers and a brigade of executioners bent on the criminal takeover of Sierra Leone, once the Athens of West Africa. Today, due to these indictees, a sodden backwater, marred and broken, lapping against the shores of civilisation. Ruin was their motto, and destruction was their creed (SCSL, 2004c: Crane opening statement).<sup>84</sup>

Not only does Crane acknowledge the political history of the rebel movement in Sierra Leone, but he alluded to political objectives of his own. Crane referenced the history of Sierra Leone as the 'Athens of West Africa', a name by which it had been known prior to independence in 1961. However following that date, and with increasing speed after the conversion to a one party state under Siaka Stevens in 1978, Sierra Leone slid rapidly into a kleptocratic, so-called 'failed state' (Keen, 2006). By the time the RUF made its first incursions into the East of Sierra Leone, it had been three decades since Sierra Leone had been the Athens of West Africa (Reno, 1999). To place this decline exclusively at the feet of the RUF, specifically the three indictees, is a political act. Repeatedly throughout his opening statements, Crane refers to the "beast of impunity" (SCSL, 2004a; SCSL, 2004c: Crane) and how it is to be slain by the Special Court and other transitional justice institutions. However, 'impunity' is not a crime; there is no law forbidding impunity. Impunity is the consequence of an undeveloped, inefficient or corrupt legal system. Crane's reference to impunity calls attention to the historical moment from which the crimes in question developed, a corrupt state in which impunity ruled. Simultaneously however, the barring of politics in the courtroom closes the door

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<sup>84</sup> Ibid.



on further discussion of this. Moreover, to expand a legal system, like the Special Court, to address impunity was a political action. Additionally, blaming the three RUF indictees for the degradation of the entirety of Sierra Leone – a process which started many years before, and one which the RUF was ostensibly fighting against (Richards, 1996)<sup>85</sup> – is a political argument. The defence councils for the accused saw it as much, and raised multiple objections to the Bench, all of which were overruled.<sup>86</sup>

The defendants and defence teams, however, did try to counter this. They used their own language to try and broaden the narrative and bring the politics of the conflict into the courtroom. They also tried to expand the debate to include both micro and macro political considerations (Kelsall, 2009). Each of the defence teams launched an appeal regarding the legitimacy and jurisdiction of the Special Court, and this was being reviewed by the Appeals Chamber when the CDF and RUF cases began. In his opening statement, RUF indictee Augustine Gbao – who elected to present his own opening statement – addressed explicitly the political nature of the Court:

Let me hasten to tell the people who set up the Special Court – the countries forming the Special Court and the entire world that we, the indictees, now held as forerunners of the RUF organisation for bearing the greatest responsibility, are not afraid of any court system that constitutionally carry the mandate of the people of Sierra Leone. But we are strongly against the manner in which the Special Court for Sierra Leone was established...[he is interrupted by Judge Thompson, reminding him that legality of the Court is not relevant at this time and Gbao must stick to the evidence he will be presenting] Your Honour, it will be very difficult to convince any critical mind that this Court is not political and it will be also very difficult to...[interrupted and warned a second time by Judge Thompson] Your Honour, I still stand to say there is no judicial – judicial exercise without politics.. (SCSL, 2004d: Gbao opening statement)<sup>87</sup>.

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<sup>85</sup> Interview with Lion, former RUF commander, Grafton, 23/03/2010.

<sup>86</sup> The objections were addressed by the Bench directly. While the defence councils argued that the opening statements of Prosecutor Crane were emotive and political (SCSL, 2004c: Clayson), and beseeched the Bench to ensure that either the Prosecutor stayed within the remit of Rule 84, “each party may make an opening statement confined to the evidence he intends to present in support of his case” (SCSL, 2002b), or that the Defence be given the same latitude during their own opening statements. The Bench, particularly Judge Bankole Thompson, took exception to this and seemed to think that the defence was insinuating that the Judges were insufficiently trained to “not to be carried away by emotionalism and hyperbolic statements...” (SCSL, 2004c: Thompson), and overruled the objection.

<sup>87</sup> *The Prosecutor v. RUF Co-Accused* [6 July, 2004]. Available at: <http://www.sc-sl.org/LinkClick.aspx?fileticket=AHLSTfcbVIA%3d&tabid=156>

Gbao persisted in pursuing his point a little longer, including questioning the impartiality of the Court due to the fact that it was not established by a neutral party, but by those who were directly involved in the conflict (SCSL, 2004d: Gbao opening statement). Eventually Gbao's microphone was cut off and he was prevented from finishing his opening statement. After the second day of trial Augustine Gbao refused to recognize the jurisdiction of the Court and was tried in absentia.

The CDF trial saw a similar fight to broaden the political landscape of the trial. In a stroke of tactical brilliance, after the first day of the trial, Samuel Hinga Norman dismissed his entire legal team and opted instead to represent himself (Kelsall, 2009). In light of the role of patrimonialism in Sierra Leone, Norman was then in a position to use his character as Chief and CDF leader to his advantage. During his cross examination of an initial witness, Norman's questioning focused on his role as a leader and local chief, asking the witness if he liked Norman, if he thought Norman was a good person, if Norman had been a good chief and if the witness thought that Norman had been trying to save the country when he recruited the *Kamajors* and created the CDF (Kelsall, 2006). Norman sought to broaden the debate, to include discourse on the context of the war and to address the wider social forces leading to war, essentially to "have the testimony evaluated on consequentialist rather than de-ontological grounds" (Kelsall, 2006: 598). However, time and again, Norman's line of questioning was interrupted by the Bench, and regardless of the fact that the witness agreed that Norman had indeed been trying to protect the country, that testimony was considered political and barred from the Court (SCSL, 2004b).<sup>88</sup>

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<sup>88</sup> *The Prosecutor v CDF Co-Accused* [June, 15, 2004]. Available at: <http://www.sc-sl.org/LinkClick.aspx?fileticket=dNvD8tCYqyw%3d&tabid=154>

Furthermore, by permitting many witnesses, particularly ‘insider witnesses’ to testify *in camera*, the Court not only refused to hear the broad political basis of the conflict, but also neglected the chance to understand the local or micro-political foundations of what happened (*War Don Don*, 2010). During questioning and cross examination, neither prosecution nor defence were able to reveal certain facts about a witness, including their name and where they were from. As a result of the protection of witnesses, defendants and counsels could not give voice to the possibility of ulterior motives for testimony – such as Samuel Hinga Norma’s controversial ascension to the Chieftaincy of Jaima Bognor (Kelsall, 2009). Furthermore, the local antagonisms that might have led to either acts of violence by perpetrators or perjury by witnesses in pursuit of revenge for some past, unrelated altercation were neither discussed nor debated. Not only could this have led to the creation of reasonable doubt, but could also have helped defendants prove that not all actions were a result of their orders. Due to the protection offered to witnesses, these possibilities were never properly opened up for discussion (Clarke, 2009).

As stated above, the Prosecution’s case was based on two related themes. Primarily the OTP argued that any breach of international law is inherently criminal (Harris, 2012); and secondly that any attempt to influence the Court through popular appeal was political. As a result, any person who infringed on international law was a criminal no matter their motivation or how popular their actions were at the time (Kelsall, 2006: 594). If transitional justice initiatives do not take into account the supposed beneficiaries of transitional justice they may risk building a controversial and disputable record of international law and a simplistic history of both the conflict and transitional justice initiatives (January, 2009). Whilst the Special Court felt the need to uphold the separation of law and politics by refusing to even acknowledge the micro

and macro political underpinnings of the civil war and how these affected the actions of the indictees, they not only created a narrow, filtered narrative of the past, but limited the beneficial effect of criminal tribunals. Kelsall (2006) argues, that “[i]f defendants can convince the public that the acts they committed were politically justified, even where technically illegal, then the normative force of the law would be considerably weakened” (Kelsall, 2006: 592). Moreover, in a situation like Sierra Leone where local populations are engaged with the discussions surrounding the conflict and the political foundations and motivations are widely understood – if contested – the Court, and the ameliorating impact it tries to have, are damaged by its narrow focus (Fletcher & Weinstein, 2002). “Most arguments about the positive link between international justice and local peace processes are based on assumptions about the liberalizing and civilizing force of law...therefore, tribunals must be legitimate in an on-the-ground sense in order to generate positive learning effects” (Stensrud, 2009: 8). If a criminal tribunal negates the historical context of the crimes it is ostensibly meant to uncover and solve, how can it effect any change at all, let alone positive change? How can it remain relevant and ensure that it is even solving the right problems? If the frame of justice is incorrect, how can it be said that justice is served? The problem of politics and the denial of politics of international criminal tribunals in civil war contexts is based on a foundational dichotomy. The commission of criminal acts in political contexts lends a political narrative to those acts; regardless of whether the acts themselves were politically motivated (Ross, 2010). Additionally, courtrooms, particularly international tribunals, and especially the SCSL, are “conditioned by politics on at least three levels: international, national and local” (Kelsall, 2006: 594). Failure to acknowledge – and indeed concerted attempts to deny – the political foundation of both crimes and

courtroom leads to a filtered narrative, one that alienates local populations and stifles the ‘civilizing force of law’ (Stensrud, 2009).

*Most of us are still disgruntled that some of our leaders are detained. They fought for this country. If I fight for the country I should not be detained. Those that did the action should be punished, but not the head, because the head did not send them to commit atrocities. He send them to fight for the country, but they did the rest themselves.<sup>89</sup>*

*I don't see a reason for Charles Taylor being caught. If he is caught, our own president should be caught, but they don't catch him. The Special Court? I don't see the justice of it, 100%. They caught the president of Liberia and say he is a supporter of the war, but someone who was working as defence minister, our defence minister who was president back then [Tejan Kabbah] isn't? You can catch him[Charles Taylor] and leave our own president, the defence minister alone? I don't see justice in that. I believe they wanted Charles Taylor and they just used Sierra Leone as a screen to get him. These guys [Issa Sesay, Samuel Hinga Norman etc.], they just don't deserve to be there.<sup>90</sup>*

#### *Failure in Mandate*

While the SCSL failed to properly frame its judicial ambitions in Sierra Leone, it also failed to fulfil its ambitions outlined in its mandate and by transitional justice discourse more generally.

In general, advocates of international criminal trials for perpetrators of mass violence believe that trials will help communities rebuild because trials support one, if not all of the following goals: 1) to discover and publicize the truth; 2) to punish perpetrators; 3) to respond to the needs of victims; 4) to promote the rule of law in emerging democracies; and 5) to promote reconciliation (Fletcher & Weinstein, 2002: 586).

As chapter four outlines, those who worked to establish the Special Court for Sierra Leone held equally lofty goals. Not only was the Court intended to prosecute those “who bear the greatest responsibility...” (SCSL, 2002a), but also as a means to develop Sierra Leone’s justice sector, establish the rule of law and address impunity, whilst acting as a deterrent to future would-be war criminals, both foreign and domestic

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<sup>89</sup> Interview with Kenneth ‘King Shining’ Koker, ex-combatant – RUF, Aberdeen, Freetown, 15/02/2011.

<sup>90</sup> Interview with Mohammed Labian, ex-combatant (Alie translating), Kenema, 16/02/2011

(McAuliffe, 2008). As the previous section discusses in detail, not only did the Special Court fail to determine and record an accurate and complete historical narrative, it actually facilitated the creation and diffusion of a filtered, narrow and contested historical record. The purpose of this next section, therefore, is to show how the Special Court also failed in its mandate to facilitate the transition of Sierra Leone into a state governed by the rule of law and to oversee an end to impunity.

### *Development in the Justice Sector*

The Special Court for Sierra Leone was to act as a catalyst for development, particularly in the justice sector (Stensrud, 2009; McAuliffe, 2008).<sup>91</sup> The Sierra Leonean legal system was to be updated and brought into accordance with international law.<sup>92</sup> This meant the reconstruction of the physical symbols of the law, such as prisons and courthouses, as well as the rewriting and reworking of the law and the retraining of legal professionals (Perriello & Wierda, 2006).<sup>93</sup> One of the focuses for development of the justice sector through the implementation of an international tribunal is that local populations – both legal professionals and lay people – will develop a sense of *how* law should be practiced; this was to happen through a variety of methods.

Primarily, by recruiting and employing local judges, lawyers and paralegals, it was the intent of the Special Court, and indeed is part of transitional justice discourse more generally, that exposure to an institution based on international law and held to a higher standard than local courts would re-educate local practitioners on the basic standards of the rule of law (Horowitz, 2006: 43). Ideally, at the end of the Special

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<sup>91</sup> Interview with Rhoda Kargbo, Senior Lawyer Appeals Chamber SCSL, Freetown, 04/02/2011; Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011.

<sup>92</sup> Passing of the three gender laws, the banning of FGM.

<sup>93</sup> Interview with Charlie Hughes, Chairman – Monuments and Relics Commission, Freetown, 08/02/2010.

Court's mandate, or their specific role at the Court, these practitioners would rejoin the local justice system and bring this knowledge with them, holding their own justice system to these same standards and facilitating a transformation in the justice sector.<sup>94</sup> These retrained practitioners would also share the knowledge they have gained from the Special Court with colleagues and new practitioners, creating a new dialogue in the system.<sup>95</sup> Moreover, the establishment of the Court created a demand for trained legal professionals that previously had not existed, meaning that more lawyers needed to be trained. The Court undertook this itself, training many paralegals and some lawyers, or sponsoring those in local universities (Perriello & Wierda, 2006).

While the development in the justice sector was being undertaken by the Special Court internally through the training and retraining of legal practitioners, it also sought the development of the justice sector externally by serving as a model of an ideal justice process (McAuliffe, 2008). By pursuing conviction only when "beyond a reasonable doubt" (SCSL, 2002b: 87 A)<sup>96</sup>, the Court would show observing local populations how a court should be operated, what kinds of rights and treatment the accused are entitled to and how a case should be argued. While lawyers and judges were being trained to new standards internally, local populations were learning the standards that judges and lawyers could be held to (McAuliffe, 2008). While most of this seemed viable in theory, the reality was markedly different. In fact most of the high level positions at the Special Court were held by international staff, and even most of the local staff were internationally trained or educated, limiting their actual experience within Sierra Leone (Perriello & Wierda, 2006). Of the 15 justices, 3 were Sierra Leonean, 2 in the appeals chamber, 1 in Trial chamber I (for the trials taking place in Sierra Leone) and 0 for Trial

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<sup>94</sup> Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011.

<sup>95</sup> Ibid.

<sup>96</sup> Rules of Procedure and Evidence of the Special Court of Sierra Leone, (SCSL, 2002b). Available at: <http://www.sc-sl.org/LinkClick.aspx?fileticket=1YNrqhd4L5s%3D&tabid=176>

Chamber II (for the Charles Taylor trial in The Hague). 4 others were nationals of other African nations. In 2013 American lawyer Shireen Avis Fisher was replaced as the President of the Special Court by George Gelaga King, a Sierra Leonean, albeit foreign educated. The Court has also had 2 registrars, the first being British and the second and current serving registrar is Binta Mansaray who is not only a Sierra Leonean citizen, but is domestically educated (SCSL, 2002-2012).<sup>97</sup>

The international presence at the Special Court created a two-fold problem. Internally this meant that local practitioners were not necessarily gaining the exposure or education that they were intended to receive. Furthermore, the foreign face and administration of law at the Special Court is particularly pertinent in a post-colonial context where European presence has meant oppression (Clarke, 2009).

*They had one guy, an advisor for the Court from the EU, he alone got paid something like 15 million Leones while the entire rest of the [local] staff got 60 million total. So the bulk of the money goes back to Europe. So you bring them here, you take them to the big hotels for dinner, you pay their rent, you provide a driver for them, give them vehicles and a lot, a lot of money, but that's all for European people. We make nothing from it. All the money for the project just stays away from Sierra Leoneans.*<sup>98</sup>

This, combined with its physical and psychological distance as discussed above, limited its relevance to the local population. What lessons were the population generally meant to have learned from men in robes distributing justice that had no cultural significance to them?

The use and education of domestic legal professionals did have an effect on the wider domestic legal system, although not necessarily the intended one. Local legal professionals were employed at the Special Court, although primarily in lower ranking/paying positions. While this was ostensibly for the benefit and development of the Sierra Leonean justice sector, it arguably had the opposite effect. By removing the

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<sup>97</sup> Special Court for Sierra Leone Annual Reports 2002 – 2012. Available at: <http://www.sc-sl.org/DOCUMENTS/tabid/176/Default.aspx>

<sup>98</sup> Interview with Kenneth 'King Shining' Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011



few trained, and potentially best, practicing lawyers and judges from the domestic legal system, the Special Court acted as a sort of ‘brain drain’ from the local justice sector, leaving a dearth of practicing and qualified lawyers (Horovitz, 2006). Additionally, although the Special Court adjusted salaries between domestic and international staff, local staff were still paid at significantly higher rates than were available in the domestic system. This had a two-fold impact when they re-entered the domestic system. Primarily, those who worked at the Special Court were used to earning more and either took high profile, higher paying jobs in the domestic sector, or used their newly gained international experience to look for work at other international institutions outside of Sierra Leone. Many also refused to take *pro bono* cases.<sup>99</sup> While beneficial for the individual lawyers, this was problematic for the domestic legal system as a whole, leaving a broad section of the most vulnerable without access to legal counsel.<sup>100</sup>

*There is no juvenile remand home in the Eastern Region, only in Freetown and Bo. So often, before they are brought to Freetown or Bo for a trial, they are left among the adults in the prison. Sometimes for weeks. When Boys go there, instead of refining [reforming] them, they are contaminated with more crimes.<sup>101</sup>*

*People are detained on remand more than for the crimes committed. People may spend 5 or 3 years in prison without ever appearing in court.<sup>102</sup>*

Additionally, beyond the disparity in individual salaries amongst legal professionals in Sierra Leone, a further problem with the establishment of mechanisms like the Special Court, that are set up *in situ*, is that for the period of their existence they artificially support the local economy with their foreign funds, employees and increased wage structure (Horovitz, 2006). When the Special Court leaves it may “seriously destabilize

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<sup>99</sup> Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011; Interview with Rhoda Kargbo, Senior Lawyer Appeals Chamber SCSL, Freetown, 04/02/2011.

<sup>100</sup> This experience is discussed in greater detail in the chapter seven. Additionally, several attempts to create a public defender’s office in order to ensure all accused have appropriate legal counsel have met dead ends (Bundu, 2010).

<sup>101</sup> Interview with Milton Dassama, Movement for the Restoration of Democracy, Kenema, 17/02/2011

<sup>102</sup> Interview with Madiou Barrie, Movement for the Restoration of Democracy, Kenema, 17/02/2011

the economy, risking further impoverishment and an increase in the already high unemployment level” (Horovitz, 2006: 61).

Furthermore, the inflated wages earned by those employed by the Special Court for Sierra Leone may also have opened the door to increased corruption in the justice sector. During fieldwork several participants, including domestic employees at the Special Court who were interviewed, believed that the expectation of greater funds would encourage judges and lawyers alike to solicit or accept bribes from clients or opposition in order to supplement their decreased income once rejoining the local justice sector.<sup>103</sup> Whilst there are no official statistics on this type of behaviour, a common complaint amongst interviewees was the necessity of having to pay bribes for justice.<sup>104</sup>

Furthermore, the Special Court was to help facilitate the transition to a justice sector held to a higher standard for successful prosecution, particularly noting in the Rules of Procedure and Evidence (SCSL, 2002b) that “guilt must be proved beyond a reasonable doubt” (SCSL, 2002b: 87 A). However, the Court itself did not necessarily provide the example it hoped to lead by. Throughout the trials witness testimony changed, little physical evidence was provided, motive was never argued and defence witnesses provided plausible alternative accounts of events – when permitted and not barred due to ‘politics’ (Kelsall, 2005).<sup>105</sup> Further, prosecution witnesses often offered conflicting testimony on events they were meant to be corroborating; particularly from

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<sup>103</sup> Interview with Milton Dassama, Movement for the Restoration of Democracy, Kenema, 17/02/2011; Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011. Interview with Rhoda Kargbo, Senior Lawyer Appeals Chamber SCSL, Freetown, 04/02/2011; Interview with Peter Ngu Tayong, Media Related Outreach, UNDP, Founder of Musicians for Democracy, Freetown, 25/02/2010.

<sup>104</sup> For more on this see chapter seven, Violent Poverty.

<sup>105</sup> For example, during the conflict, local populations coined the term *sobel* a combination of soldier and rebel to exemplify the similarities and lack of distinction between the two groups. During the TRC, a man giving his testimony was asked by a Commissioner “are you sure it was the RUF [who hurt you]?” The victim responds ‘I cannot distinguish a rebel from a soldier...there is not [sic] difference; these are the people who destroyed us’” (Kelsall, 2005: 373).

insider witnesses who had a vested interest in making the accused seem as guilty as possible (*War Don Don*, 2010; Kelsall, 2009, 2006). Yet regardless of these glaring inconsistencies, any of which individually would suffice in creating reasonable doubt in many courtrooms, each of the 10 accused who's trials were taken to verdict were convicted (Dobbins et al., 2013).<sup>106</sup> The question must therefore be asked, if the SCSL was indeed to act as an example for the practice of law, what lessons were actually learned?

The Special Court, through its work, sought to improve the justice sector in Sierra Leone and while the above examples show how the Court was to help facilitate development in the justice sector through presence and example, the SCSL also had an impact on the wider development of law. Members of the Special Court Bench were also taking direct action in the development of Sierra Leone's laws and legislation. Justice Renate Winter has served as a judge in the Appeals Chamber of the Special Court since its inception in 2002 and served as the president of the Special Court from 2008-2010 (White, 2010). Justice Winter was fundamental in the creation and implementation of the Three Gender Acts which sought greater rights for Sierra Leonean women and girls; including the signing of a Memorandum of Understanding criminalizing female genital mutilation (FGM) among girls under the age of 18 (IRIN, 2012).<sup>107</sup> Justice Winter, from her position at the Court, had also been very active in the areas of child rights and rights for child combatants (White, 2010). However, many of these laws, particularly those pertaining to women's rights and the ban on FGM were not accepted by the local communities, particularly communities with a strong tradition of and membership in secret societies (IRIN, 2012; Ferme, 2001). This is not to say that legal reform was not necessary, nor that Justice Winter's attempts were wrong, however

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<sup>106</sup> Three others having died during or preceding the trial proceedings and one remaining at large although presumed dead (*War Don Don*, 2010).

<sup>107</sup> Available at: <http://www.irinnews.org/report/97066/sierra-leone-the-political-battle-on-fgm-c>

as Nancy Fraser (2003) argues, “in the democratic perspective, justice is not an externally imposed requirement, determined over the heads of those whom it obligates. Rather, it binds only insofar as its addressees can also rightly regard themselves as its authors” (Fraser, 2003: 44), meaning that the imposition of laws or legislation, or even the dissemination of information regarding rights by external actors, particularly the Special Court, can alienate local populations.

### *Rule of Law*

Together with and as a part of developing the local justice sector, criminal tribunals generally, and the Special Court for Sierra Leone in particular, were mandated with helping to establish or re-establish the rule of law in the affected country (Teitel, 2000; Roht-Arriaza, 2006; Fletcher & Weinstein, 2002).<sup>108</sup> In Sierra Leone, the Special Court failed in their mandate to help establish the rule of law for two reasons: 1) it was too far removed from the people of Sierra Leone and 2) the Court failed to engage with the historical moment from which the conflict and the injustices of the conflict emerged.

As discussed at length above, the inner workings of the Special Court were kept separate from the people of Sierra Leone. Deliberations by judges, prosecutors and defence teams were not open to the public, not only removing this valuable discourse from the population, but also creating an air of suspicion around the Court’s activities. In Sierra Leone, situations of political danger are identifiable by their ambiguity and secrecy; by keeping the inner workings of the Court under wraps, the local population felt there was something to fear from the Court, rather than learn from it (January, 2009). Moreover, rather than help establish a rule of law based on transparency and

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<sup>108</sup> For a more detailed explanation of this see chapter three.

honesty, by hiding its actions and deliberations, the Court could be said to have re-established the pre-war tendencies towards clandestine activities and corruption.

Even more problematic than the secrecy surrounding the Court, however, was the fact that the Special Court neglected to materially engage with the policies of the previous regime. While the Special Court was mandated to address impunity and punish those who bear the greatest responsibility for violations of human rights (SCSL, 2002a), it focused entirely on the *responses* to a corrupt regime, rather than the causes for these responses. Whilst violent, the civil war in Sierra Leone, at least at its outset, was a politically motivated action (Richards, 1996; Harris, 2012).<sup>109</sup>

*When the rebels first started, I was only small then, but I think they could have pressurized the government [to change]. We were a one party state then, it was a very good cause, but it was lost. They lost the way, they started with support but lost it.*<sup>110</sup>

*I went to war because I believe in what Popay Sankoh say to us. This country was rotten, the APC were corrupt. I wanted change.*<sup>111</sup>

By focusing exclusively on the war alone, the Court rejected, condemned and criminalized the radicalized discourse of the civil war. The civil war in Sierra Leone – at least in its initial incarnation – was a politically motivated reaction to the actions of a corrupt and kleptocratic regime. By criminalizing and denying this reaction, the Special Court reinforced and supported the actions of the initial regime. In the binary logic of transitional justice, discussed at length in the chapter three, the criminalization of the political movement of the rebellion *does* mean the reinforcement of what came before (Deleuze & Guattari, 1981). As a result, the Court not only failed to engage with the policies of the previous regime, but stifled public and popular discussion of it as well, as

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<sup>109</sup> Interview with Lion, former RUF commander, Grafton, 23/03/2010; Interview with Kenneth ‘King Shining’ Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011; Interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011; Interview with Alie, ex-combatant - RUF (Jalloh translating), Koidu Town, Kono, 10/02/2011

<sup>110</sup> Interview with Kenneth ‘King Shining’ Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011

<sup>111</sup> Interview with Lion, former RUF commander, Grafton, 23/03/2010

this discussion – albeit in violent forms – had been criminalized. The Special Court, therefore, failed to address *why* the people of Sierra Leone did not feel bound by the laws of the previous regime, *why* the need for a revolution was felt, *why* this political act took a violent form, *why* the previous regime was being rejected, and fundamentally, *why* the people acted as they did. As a result, the Special Court failed to address where the rule of law broke down. If the point at which the rule of law was no longer applicable to, and binding of, a people is not discussed, how can it possibly be re-established in a real and relevant way? By failing to engage with the political discourse sounding the civil war, the Special Court lost the opportunity to create the space for a political dialogue regarding the previous regime and its actions, facilitating the loss of discourse sounding the rule of law, what it means, and how it can be established.

#### *Deterrence and Impunity*

Along with the developmental goals of criminal tribunals, both directly in the justice sector as well as on the rule of law, criminal tribunals and the Special Court were tasked with addressing impunity and acting as a deterrent to future, would-be warlords and war criminals (Fletcher & Weinstein, 2002; Roht-Arriaza, 2006; Teitel, 2000). Indeed, as already noted, lead prosecutor David Crane (SCSL, 2004a, 2004c) made several references to slaying the “beast of impunity” throughout the trials and the Agreement (SCSL, 2002c) between the UN and the government of Sierra Leone clearly highlights the need to address the “prevailing situation of impunity” in Sierra Leone as incentive for the establishment of a Special Court.

The high level and public punishment of perpetrators is assumed to serve a dual purpose: potential threats to successor regimes were removed and both the trials and punishment of individuals are thought to have a deterrent effect on potential future

abusers or abuses (Fletcher & Weinstein, 2002). However, as the deterrent effect of international tribunals is difficult to measure (Stensrud, 2009), there is no evidence to suggest or prove that trials deter or prevent war crimes or gross violations of human rights (Fletcher & Weinstein, 2002). In fact, in much transitional justice discourse, the use of criminal tribunals is not seen as a deterrent force and they “are not highly correlated with the consolidation of a peaceful democracy” (Weinstein, et al., 2010: 32). Indeed, “the narrow focus of the Court, combined with political, temporal and financial constraints, leads to impunity for many high level perpetrators” (Stensrud, 2009: 9). This was particularly the case in Sierra Leone, where regardless of the widespread nature of the war and criminal activity, only 13 individuals were indicted by the Special Court and only 10 saw a completion of prosecution and conviction (Dobbins et al., 2013). The Demobilization, Disarmament and Reintegration (DDR) project alleges to have disarmed more than 45,000 combatants after the civil war (Horovitz, 2006). While potentially a woefully inadequate estimate on the number of combatants,<sup>112</sup> if the number is taken as a baseline, it means the Court decided to prosecute 13 individuals out of more than 45,000, meaning that perpetrators faced less than a 0.03% chance of prosecution. This is not to say that all combatants were committing crimes or gross violation of human rights, but the nature of the civil war implicates complicity, if not active participation on many levels (Fletcher & Weinstein, 2002), and the vast, vast majority of these ‘crimes’ were left unpunished. The prosecution of so few perpetrators begs the question of whether the efforts of the Special Court are justified (Stensrud, 2009). One commentator put it succinctly:

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<sup>112</sup> The DDR only accepted ex-combatants who presented themselves at its registration centres with weapons, a cache of ammunition or a weapon large enough to be considered a ‘group’ weapon (i.e. an RPG) (Hoffman, 2003). As many combatants didn’t have access to weapons at the end of the conflict, they were not permitted to join the DDR. Moreover, many combatants avoided the DDR’s official processes, preferring instead to find integration in their own way (Utas, 2012).

*The Special Court left me feeling that there was no proper justice. For example if Mr. Jalloh [a friend sitting with us] is my commander and maybe he gives me a command, but I execute far beyond it. For instance if he asked me to go and get all of those who have gone into the bush and bring them out, but I went in there and start raping and killing, at the end of the day I off scot free and Mr. Jalloh is held responsible. But people have seen me doing these things ... it doesn't make proper sense to me.*<sup>113</sup>

The public nature of many of the crimes in Sierra Leone meant that local populations were often aware of who was committing crimes. Not only did many of these perpetrators not face prosecution, but some 'mid' or 'high level' commanders from the various fighting factions were used as insider witnesses by the Special Court prosecution team (*War Don Don*, 2010). Many of these insider witnesses received lucrative resettlement packages for themselves and their families in exchange for their testimony against the leaders of their faction.<sup>114</sup> Some of these individuals were resettled outside of Sierra Leone, ostensibly for their protection from retaliation,<sup>115</sup> while many were resettled in Sierra Leone, but had been well compensated for their testimony.<sup>116</sup>

*I am not saying these are good guys, they're not. They're dirty rats a lot of them, but they are turning on their boss you see and We have a policy that by virtue of testifying a witness does not come to harm, physical or mental harm and that they should not lose out financially. So we made a witness expense policy and practice directive whereby when they are called to testify they're given a minimum of transportation, food and medical subsistence allowance. They all get this you see. But some witnesses are more equal than others and these guys have the most information.*<sup>117</sup>

Many local people felt that these insider witnesses not only escaped prosecution, but were rewarded for their testimony. The use of insider witnesses inherently undermined

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<sup>113</sup> Interview with Komba Manga and 4 others at KOCEPO, Koidu town, Kono, 09/02/2011

<sup>114</sup> Personal communication with Mohamed, a Security Guard for the Witnesses and Victims Unit, Freetown, 3/03/2010.

<sup>115</sup> Interview with Saleem Vahidy, Chief - Witnesses and Victims Unit and Security, SCSL, Freetown, 31/01/2011.

<sup>116</sup> Personal communication with Mohamed, a Security Guard for the Witnesses and Victims Unit, Freetown, 3/03/2010; Interview with Saleem Vahidy, Chief - Witnesses and Victims Unit and Security, SCSL, Freetown, 31/01/2011.

<sup>117</sup> Interview with Saleem Vahidy, Chief - Witnesses and Victims Unit and Security, SCSL, Freetown, 31/01/2011.



the mandate of the Court to address impunity. Not only were few perpetrators prosecuted, but some of those who were widely known to have committed terrible human rights abuses were given, along with their families, a fresh start in a new country or city (*War Don Don*, 2011).<sup>118</sup>

While insider witnesses have garnered some international attention, locally there are instances of known war criminals who did not act as insider witnesses, but who have also not faced prosecution, and now enjoy elevated status in society (Hoffman, 2011). Two such occurrences are Idrissa Kamara, alias Leather Boot and General Joe, both of whom were notorious criminals during the civil war and who both maintain high social and economically lucrative positions in Sierra Leonean society, regardless of, or perhaps even a result of, their roles and positions during the civil war.<sup>119</sup> Perhaps the most blatant misdirection of prosecutorial justice was the indictment of Samuel Hinga Norman, the head of the CDF, deputy Defence Minister and de facto head of the SLA. While Norman was widely known as the leader of the *Kamajors* and the CDF, he was also popularly viewed as a saviour; organizing the CDF as a means of defence for civilians against rebels and soldiers alike (Hoffman, 2011).

*If you go to Bo or Tonokili and talk about Hinga Norman, he and the Kamajors are heroes for them.*<sup>120</sup>

What makes Norman's prosecution remarkable, however, is not his indictment but rather the lack of indictment for the Minister for Defence and the official head of the

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<sup>118</sup> Interview with Saleem Vahidy, Chief - Witnesses and Victims Unit and Security, SCSL, Freetown, 31/01/2011.

<sup>119</sup> Leather Boot was regularly highlighted during fieldwork as an example of the failure of the Special Court to address criminality, both during the civil war and after. As addressed elsewhere since the end of the civil war, Leather Boot has become the head of President Earnest Bai Koroma's personal security service enjoying the privileges of such a rank, including, but not limited to, ongoing impunity for crimes committed after the civil war in an attack on SLPP headquarters in March 2009.

General Joe is another interesting case as one who was a commander in his own right during the conflict but has since managed to reintegrate into society as a local 'big man'. The local respect that General Joe commanded meant that international monitors turned to him as a local consultant or expert of sorts during the establishment of the DDR. General Joe used this position to ensure that his friends, family and patrimonialist network received the benefits from the DDR (Hoffman, 2004).

<sup>120</sup> Interview with Mohammed Jalloh and 4 others at KOCEPO, Koidu town, Kono, 09/02/2011.

SLA, the then serving President Tejan Kabbah. Surely if the SCSL were pursuing a policy of prosecution based on superior responsibility, then the head of the army, the individual responsible for creation and dissemination of policy, and the man who knowingly made the CDF the de facto governmental force – being aware of their controversial recruiting and combat tactics – should be the *most* responsible (Schabas, 2006). Failure to indict Kabbah, together with the prosecution of both Norman and Charles Taylor (indicted whilst still serving President of Liberia) meant impunity at the highest level. To the population of Sierra Leone, Kabbah’s escape from justice, combined with his maintenance of the presidency, would have resonated with their patrimonial past (Christensen & Utas, 2008).

Finally, the binary logic of transitional justice and criminal tribunals is highlighted in the impunity debate. Under law, including international law, if you are not guilty – beyond a reasonable doubt – you are innocent. There is no mechanism for addressing the variety of ways people may participate in violent conflict (Fletcher & Weinstein, 2002). The sheer volume of alleged crimes precluded the Special Court from prosecuting each alleged perpetrator, meaning that there was widespread impunity for the lower ranks (Stensrud, 2009). Moreover, there was a disconnect between what local populations felt was justice and what was allowable and possible in the Special Court. The prosecution can never reflect the magnitude of crime; “[n]o tribunal can possibly address all perpetrators of crimes or crimes against humanity, but the impunity problems are more serious with the very limited prosecution of the mixed courts...” (Stensrud, 2009: 9). Thus, the actions of the rank and file or deceased were neither prosecuted nor even discussed. Even for those crimes that were prosecuted, the punishment meted out failed to address the concerns of local observers (Stensrud, 2009).

## *Conclusion*

The frame of justice is affected by the Special Court in two ways. Firstly, the inaccessibility of the court combined with its closed doors policy and authoritarian dissemination of information served to alienate the Sierra Leonean population and remove them from the initial and ongoing dialogue about transitional justice in Sierra Leone. By disallowing participation from the affected population, the Special Court both misframes and misrecognizes locals as political actors in their own judicial undertakings. Secondly, the refusal to engage with the political underpinnings of the conflict, and denial that such politics exists, served to misframe the entire discussion of justice. The SCSL, through investigating only the violence of the conflict itself, rather than the political rhetoric surrounding it, closed the door on alternative understandings of what happened. Those who perceived events differently from the Court therefore were misframed and precluded from engaging in the dialogue about the war and why it happened in Sierra Leone. The lack of engagement around the political context of the war serves to narrow the scope of discussion around justice generally. The debate becomes about whether certain acts are criminal or not, instead of how they happened or why.

Trials that stifle public discussion that questions or contradicts nationalist rhetoric or local and international assumptions about the conflict/society not only significantly limit the discourse in general, but can impede the international trial record from being considered authoritative and can impede the impact both the trial and the narrative may have (Fletcher & Weinstein, 2002). Similarly, it is problematic to give any one narrative of events authoritarian status, as Mark Osiel (1997) points out, “the worst abuses of power are always committed by those most convinced of the moral

superiority of their cause, their civilization, or their history” (Osiel, 1997). This can be extended to cover those who are most convinced of their moral superiority as a civilizing or developmental force; it essentially forecloses debate on the efficacy of established transitional mechanisms. Considering that one of the central mandates of international criminal tribunals and the Special Court, as a mechanism of transitional justice, was to facilitate the development of Sierra Leone, particularly its justice sector, the failure to materially engage with the politics of the country, combined with the failure to critically understand its own political role, the SCSL failed in this mandate.

Additionally, failure to engage with the public discourse on the politics of both the Special Court itself and the crimes committed during the war closes the door on the debate *about* justice itself; what is considered appropriate justice, what will elicit change and even what change is desirable and what is not. Refusal to engage in the very foundation of what justice means, *at this historic juncture*, means that the justice implemented may be irrelevant to the specific context. This irrelevance may be minimized through participation of those whom the justice mechanisms are meant to impact, thus renegotiating the frame of justice.

## **Chapter 6: The Truth and Reconciliation Commission in Sierra Leone**

### *Truth and Reconciliation Commissions and the Sierra Leone TRC*

As discussed in the previous chapter, the purpose of a truth and reconciliation commission is to build an accurate historical record and to uncover truth; particularly events or actions that may have been deliberately obfuscated (Teitel, 2000; Roht-Arriaza, 2006, Millar, 2011). Proponents of transitional justice emphasize the necessity of a dynamic and rigorous TRC as a complement to criminal prosecution (Schabas, 2004); although increasingly, TRCs are seen as *only* that, a complement to a full criminal trial, rather than a sufficiently rigorous form of independent investigation (Schabas, 2006). Because TRCs are not restricted by the same rules of procedure, evidence and due process as criminal tribunals or trials, they may be able to uncover a more complete version of the truth. Additionally, because TRCs are not bound by the separation of law and politics, they are more able to encompass a wider picture of what happened, including the micro and macro political context of events (Kelsall, 2006). Thus the part of the discursive purpose of TRCs is to make leaders accountable, expose the lies of the previous regime and overcome contested versions of the truth (Teitel, 2000).

It is important to remember that truth commissions, as a tool of transitional justice, emerged from very different contexts than criminal tribunals. While criminal tribunals largely sought punishment for known crimes – with an addendum of uncovering truth – truth commissions developed from states where crimes had been kept deliberately clandestine; both crimes and cover ups often originating from the highest reaches of government (Millar, 2011). Truth commissions, therefore, emerged as a means of making public and clear the hidden actions of the previous regime (Teitel,

2000). This then begs the question that in a situation of very public and widespread criminal action, what purpose does a TRC really serve?

In a case like the Sierra Leone civil war, there was little attempt at hiding crimes or covering them up. Indeed, the argument exists that crimes were committed in the most public form possible as a means of gaining international attention (Hoffman, 2004). As a result, there was little for the TRC to uncover or reveal; most of the atrocity was already well known. Thus in the absence of the investigative and revealing powers of a TRC, the focus lends itself to the conciliatory effects they are purported to have (Millar, 2011). This reconciliation is facilitated through the public purging of experience and emotion, by both perpetrators and victims. Not only does the emotional purge act as a cathartic exercise for the one speaking, but also for those listening as they may sympathize, reflect on their own suffering or gain answers to questions of why certain things happened (MacKenzie & Sesay, 2012). Additionally, the public nature of the testimony ensures that innocence or guilt is disseminated widely. In situations like Latin America, where loved ones disappeared amid allegations of political activism and terrorism, the public acknowledgement of their innocence served to clear the name of the accused and confirm their role, and that of their family, as victims (Fletcher & Weinstein, 2002).

The focus on truth telling in TRCs, particularly in Sierra Leone, serves the further purpose of reconciliation by focusing on the reintegration of ex-combatants into society. On the one hand ex-combatants were encouraged to speak about their crimes – and victims about their victimization – as a way of purging emotion and gaining a settled heart as a result. This allowed the emotional space, in both victims and

perpetrators alike, for ex-combatants to join or rejoin a community (Shaw, 2007).<sup>121</sup> On the other hand, only by having a full accounting of crimes and gaining an understanding of the suffering they had caused, could ex-combatants display the requisite remorse that would allow them to reintegrate (Kelsall, 2005).

The notion of truth telling and the investigative measures of the TRC as facilitating reintegration are based on several assumptions. Primarily, TRCs are rooted in the idea that the truth is not already generally or widely known and that there are secrets to be uncovered. Secondly, the focus on truth telling is based on the western dominated notion that purging is cathartic or that ‘revealing is healing’. Thirdly, truth focused transitional justice measures assume that people do not want to live alongside criminals; or at least not alongside criminals who have not shown remorse or repented for their crimes. Fourthly, truth commissions are predicated on the assumption that truth exercises and trials can establish who is responsible for what. And finally TRCs are based on the notion that there are those who are not guilty or who are *less guilty* amongst ex-combatants than those who are the *most* guilty and thus prosecuted by the SCSL. The TRC therefore covers ground left bare by a criminal trial (Millar, 2010, 2011; MacKenzie & Sesay, 2012). In this regard a TRC has the ability to address a wider scope of ways individuals, or even groups or organizations, are involved in conflict. Additionally, there is a pseudo-medical discourse that surrounds truth and reconciliation commissions. The focus on individual purging is based on the assumption that to keep either crimes or victimization hidden is to allow the guilt, remorse, shame, or anger to fester; causing resentment, shame or vengeful thinking. Corollary, by speaking about guilt or victimization, the wounds can be opened, cleaned

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<sup>121</sup> Summed up in the Krio phrase *blow main fo kol at* or “blow your mind to gain a cool heart”, a local idea that was seized upon by the Sierra Leonean TRC, this is discussed in greater detail below.

and treated and individuals can let go of damaging feelings, apologize and forgive (Tutu, 2003).<sup>122</sup>

There are a number of problems surrounding the discourse of truth and reconciliation commissions generally and the TRC in Sierra Leone specifically. The purpose of this chapter, therefore, is to analyze this discourse and identify where the TRC in Sierra Leone broke down and how it failed in its mandate to “...create an impartial historical record of violations and abuses of human rights and international humanitarian law...to address impunity, to respond to the needs of victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered” (TRC Act, 2000).<sup>123</sup>

Similar to the Special Court of Sierra Leone, discussed in the previous chapter, the TRC failed to resonate with local populations; fundamentally failing to address local understandings of justice and going so far as to reify existing structures of injustice and engender the further injustice of misframing. Dominated by Western ideology and the psychology of truth telling and purging, the Sierra Leone TRC failed to make itself resonate with local populations; this lack of ownership meant that local beliefs on memory, loss and reconciliation were not acknowledged or addressed. Additionally, the role of truth in Sierra Leonean society, the trauma of testimony and the influence of patrimonialism were all neglected when setting up and operating the TRC. As a result of this neglect, ‘truth’ was seldom an element in the truth commission. Failing in this most fundamental mandate, local populations increasingly mistrusted the discourse of the TRC and began to find ways to make it work for them. As such, the TRC started to be ‘retooled’ from below and took on unexpected forms (Shaw & Waldorf, 2010). This retooling or reshaping meant that the TRC in Sierra Leone had unanticipated

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<sup>122</sup> From a speech given by Archbishop Desmond Tutu (2003) at the University of Toronto.

<sup>123</sup> Part 3, article 6.1, Truth and Reconciliation Commission Act, 2000. Available at: <http://web.archive.org/web/20051230045239/www.sierra-leone.org/trcact2000.html>



consequences, resulting in neither the intended nor desirable outcomes. In many cases the TRC not only failed to address past injustices sufficiently, but exacerbated and aggravated existing injustices. Finally, by failing to allow the Sierra Leonean population to identify their own injustices and methods for managing these injustices, the TRC fundamentally misrecognized and misframed them, becoming a tool of *injustice* and merely exchanging one set of injustices for another.

### *Background*

Sierra Leone's TRC was provided for in the Lomé Peace Accord (1999) and began operations in December 2002. Having secured less than half of its allocated \$10 million budget – receiving only \$4 million<sup>124</sup> - the mandate of the TRC was cut back significantly (Schabas, 2004). The TRC was initially granted one year, with potential for a 6 month extension to complete its mandate (TRC Act, 2002); however the funding shortfall resulted in all of its operations from recruitment and training of commissioners through investigation, to the completion of the public hearings, being completed in 8 months (Schabas, 2006). The writing of the final report of the Commission took an additional 12 months, meaning the writing of the report took longer than the commission itself (MacKenzie & Sesay, 2012).

The TRC operated from December 2002 until August 2003. The format for the TRC was such that statement takers at regional offices would be on hand at given times to solicit and obtain statements from victims or perpetrators wanting to tell their stories. Statements were gathered privately and confidentially. The statement taking phase was followed by a public hearing phase. Statements were then written up for examination by the Commissioners who travelled to the various districts in order to oversee the

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<sup>124</sup> For more details on the TRC see chapter four. In brief, the TRC was mandated to be funded through voluntary contributions from UN member states. After raising very little money, almost the entire operating budget of US\$4 million was paid out of the UN discretionary fund (MacKenzie & Sesay, 2012).

public hearings. These hearings served the purpose of allowing those who had given statements and who chose to do so to give public testimony about their experience during the conflict (Schabas, 2004). Statement taking lasted from January 2003 to April 2003, collecting between 7,000 and 9,000 individual statements.<sup>125</sup> Public hearings for the TRC began in April 2003, also lasting 4 months and hearing roughly 450 testimonies (Schabas, 2006). While the focus of the TRC was largely on reintegration of ex-combatants, the vast majority of public testimonies were made by victims participating as a means of gaining reparation, rather than ex-combatants seeking redemption (Shaw, 2007, 2010).

The TRC was pushed for by a small but vocal minority, consisting of both international commentators and some local populations. While most local commentators were likely to voice scepticism of the TRC, there was some support for those who stood to gain from its presence, predominantly government officials and those working in the NGO field. Most local populations in the recipient groups interviewed expressed a greater interest in ‘forgiving and forgetting’ than truth telling (Millar, 2011).

*But the people who are left out, who are not indicted or who did not talk to the TRC, I do not fear them at all, most Sierra Leoneans will not fear them at all, because if you are indicted or not, you know in your mind what you have done. [These people] are continually judging themselves for doing something bad.<sup>126</sup>*

*No I did not go to the TRC, those who did the crimes, they will have to answer to god.<sup>127</sup>*

The Post-Conflict Reintegration Initiative for Development and Empowerment or PRIDE organization, a local NGO in partnership with the International Centre for

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<sup>125</sup> Interview with MK Sei, TRC Regional Coordinator, Kenema, 16/02/2011; Interview with Prince Phillip Mansaray, TRC Statement Taker, SCSL Outreach Officer, MRD, Kenema, 17/02/2011.

<sup>126</sup> Interview with Madiou Barrie, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

<sup>127</sup> Fitzgerald, in group interview with Reverend Spencer, Mohamed M, Raphael Vandi, Fitzgerald and Braima Conteh, Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010

Transitional Justice in New York, published a 2002 report on “Ex-combatant views of the truth and reconciliation commission and the Special Court for Sierra Leone”. As part of the data collection for this report, they held focus groups amongst ex-combatants in Eastern Sierra Leone; particularly in former RUF strongholds. While 79% of the 176 ex-combatants interviewed expressed support for the establishment of the TRC, 54% of the same group admitted to not knowing what the TRC meant and to not completely understanding its mandate (PRIDE, 2002). PRIDE reporters believed that ex-combatants expressed support for the TRC and the Special Court in the hope that this support would divert attention away from them. Moreover, they hoped that in the case of an indictment, their professed support for the Court would be viewed favourably by the prosecutor (PRIDE, 2002). This concurrent ignorance of and support for the TRC created a unique position for the TRC and the commissioners, whereby they were simultaneously soliciting participation – through statement giving or testifying – and educating the population as to what they should get out of the Commission – primarily catharsis, healing and reconciliation (Millar, 2010).

The TRC itself was neither particularly effective, nor particularly well set up. The budget was dismal and regional offices were largely left to run on nothing or very little (Kelsall, 2006). The Commission hired 70 statement takers, who had no previous training, received very little training from the TRC and almost none of whom had served on a commission before (Schabas, 2006; Kelsall, 2005). In practical terms this meant that by the time the district hearings were due to begin in April 2003, few statements had been collected and commissioners seldom had time to review or read those statements that had been obtained before the hearings (Kelsall, 2005).<sup>128</sup> In the aftermath of the civil war, there was renewed enthusiasm for human rights and human

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<sup>128</sup> When the TRC arrived in Tonkolili to begin the public hearings, only 2 statements had been recorded (Kelsall, 2005). Tonkolili was a former RUF stronghold and Foday Sankoh’s birthplace.

rights discourse, especially in rural Sierra Leone (Archibald & Richards, 2002), however this was not necessarily representative of widespread acceptance of the global doctrine of rights, but rather “an aspect of global and social renewal, constrained and shaped by wartime experiences” (Archibald & Richards, 2002: 340). Local populations had taken the discourse of the TRC and changed and adapted it to suit their needs and the situation in Sierra Leone (Archibald & Richards, 2002).

Similar to the Special Court for Sierra Leone, the location of the TRC, along with the use of local commissioners and statement takers was anticipated to create a sense of ownership amongst local populations (MacKenzie & Sesay, 2012). The TRC, to a greater extent than the Special Court, made the effort to reach people in their own areas, attempting to increase ownership by making both statement and testimony giving physically accessible. The open and public nature of the district hearings was meant to overcome the propensity for, and fear of, clandestine or secretive activity in the upper echelons of Sierra Leonean society (Ferme, 2001; Millar, 2010). Finally, the focus on purging and reconciliation that was adopted by the TRC was supported by the assimilation of local phrases explaining these in order to create a sense of familiarity and continuity. However, as with the Special Court, not only did the TRC fail in the exercise to foster a sense of ownership in local populations, but also those administering it failed to understand how local populations would seize ownership for themselves and retool the process from below (Shaw & Waldorf, 2010).

### *Reluctance to Testify*

The TRC employed 70 statement takers from various districts across Sierra Leone, and sent them out to investigate areas where crimes had taken place (Schabas, 2004). Not only would they recommend where the TRC should establish its district

hearings, statement takers would also travel farther into rural Sierra Leone in order to listen to and record statements from those wanting to share their stories (Schabas, 2004). However, far from making the TRC seem more accessible, the TRC created a sense of fear and resentment. As discussed, the concurrent nature of the TRC and the Special Court caused a substantial amount of anxiety amongst local populations; many Sierra Leoneans feared that information given to the TRC in the form of statements, testimony or confession would result in notice by Special Court.<sup>129</sup> As a result, not only were the number of statements and testimonies limited, but the district hearings were poorly attended. Ex-combatants, fearing both notice from the Special Court but also being ‘named and shamed’ during the public hearings, often left town, or pretended to have left town for the duration of the hearing. They were seldom seen in public at these times and for the most part did not attend the TRC (Millar, 2011). When an interviewee who had been a statement taker for the TRC was asked if he found ex-combatants willing to come forward, he responded:

*No. It was difficult, really. Sometimes you would get to a village and they would all run away and only leave behind the chiefs and the women in the town.*<sup>130</sup>

When a former combatant corroborated this and expressed his fear of prosecution:

*I heard about these TRC meetings, but I never go. I do not trust this TRC. They would arrest us. So when the TRC came, we left the town. We avoided it all.*<sup>131</sup>

Not all of those who avoided the TRC due to fear were afraid of potential prosecution, but many were also afraid of being subpoenaed and forced to testify; thereby putting themselves and others in potential danger.

*If I go to the TRC to testify, they would make me go to the Court. They all know I was bodyguard to Charles Taylor. I have the fearness in me If I go to the*

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<sup>129</sup> Interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011.

<sup>130</sup> Interview with Prince Phillip Mansaray, TRC Statement Taker, SCSL Outreach Officer, MRD, Kenema, 17/02/2011.

<sup>131</sup> Lusine Kango in an interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011.

*Court, and stand before Charles Taylor he would know me. I cannot talk because he is my leader. I fought for him. I cannot talk.*<sup>132</sup>

Victims may also have been afraid to speak about their victimization for fear of the stigma that may surround them if details of their suffering came to light, such as those who suffered sexual abuse or forced marriages. Many of these, predominantly women, who suffered these crimes remain silent for fear of rejection from their families or communities (Kelsall & Stepakoff, 2007). The danger here lies not only with testifying themselves, as they would have been given the option to do so *in camera*, but that their attacker may give details of the crime in his testimony, creating that stigma and essentially victimizing her a second time (Kelsall & Stepakoff, 2007). One particular narrative stands out here. During the conflict three girls were abducted from the same village. All three of them were taken by the RUF and made ‘bush wives’. One of them managed to escape, whilst the other two remained in captivity. After the end of conflict, the three girls independent of each other managed to return to the village from which they were abducted. The two who did not escape captivity were by then married to their captors, were living with them and raising families. Whilst the third woman had approached the TRC to give a statement and possible testimony, she was threatened by the other two for fear that she would draw legal attention to their ‘husbands’ and cause them to be arrested. She never testified to the TRC or the SCSL.<sup>133</sup>

Moreover, the level of money and perceived wealth surrounding the TRC was aggravating to locals (Millar, 2011). The TRC was seen as arrogant and boastful, and stirred resentment amongst the general population. As one commentator stated, “they come with their Land Cruiser, boastful, arrogant TRC. Big men for themselves, not for us...if they want to heal the wounds, let them bring jobs” (Shaw, 2007: 198). The

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<sup>132</sup> Abbas speaking in interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011.

<sup>133</sup> Interview with Saleem Vahidy, Chief - Witnesses and Victims Unit and Security, SCSL, Freetown, 31/01/2011.

perceived wealth and connectivity of the TRC to the international community had further effects. Almost without exception, those who testified to the TRC would finish their testimony with a plea for financial and material assistance. While the TRC had no funds to offer as reparation or compensation to victims who testified, they encouraged locals to participate by indicating that by making their needs known to the TRC, the TRC could find ways to assist them, normally by promising to make recommendations to the government or international community. While this was not a direct promise, many respondents took it to be such. They saw the apparent wealth of the TRC and its links to the international community as signs of its prosperity and thought they would get access to some of this wealth as a result of sharing their stories. “It became clear that most people who testified had done so because of their expectation that the TRC, the government, or the international community would help them rebuild their lives” (Shaw, 2007: 201). In this case not only did the TRC distance itself from local populations through its unfamiliar, irrelevant structure, but its focus on formality and quasi court like proceedings created a sense of both fear and expectation. Fear of what may happen if one did testify, predominantly perpetrators, and expectation of what they would receive if they overcame those fears and testified. By failing to properly and localize itself in Sierra Leonean culture, the TRC did not understand how it would be viewed by local populations. This failure resulted in alienation of the public; both through the fear that they created and the false sense of expectation that was understood. When people did overcome their fear and testify, then received nothing, this sense of resentment only grew.

*No I did not go to the TRC. There was nothing for me there. ECOMOG killed my brother and I still have no food for this pot.*<sup>134</sup>

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<sup>134</sup> Interview with Annie, no affiliations, Freetown, 22/02/2010.

### *Misframing and Reframing in the TRC*

As discussed in the previous chapters, failure for transitional justice mechanisms to engage with affected populations prior to the establishment of justice initiatives carries the potential of misframing the question of justice, resulting in irrelevant or even incendiary initiatives. The failure to understand the historical juncture from which the injustices emerged may have resulted in the wrong injustices being addressed, or the reinstatement of some injustices. The very notion of a TRC in Sierra Leone neglected the political history of Sierra Leone and overlooked why potential participants might have been reluctant to testify (Ferme, 2001). In Sierra Leone, “indirectness, evasiveness, and secrecy have been valorized in a political-economic context in which individuals shift between economic activities and geographical locations and in which they seek to maintain an open-ended and adaptable stance to powerful patrons” (Kelsall, 2005: 383). Not only do these lingering structures of patrimonialism inform Sierra Leoneans’ reticence about speaking about crimes, either committed or suffered, but the patrimonialist dynamics of Sierra Leone include status and class hierarchies not prepared for by the international experts.

It is worth mentioning here that the loose command structures of all factions during the civil war often followed patrimonialist configurations (Peters, 2011). These command structures often persisted after the civil war, resulting in high and mid level commanders becoming local or regional ‘big men’ (Utas, 2012). Power, wealth and status in Sierra Leone are intrinsically linked and all, to some extent, are measured through a ‘wealth in people’ (Utas, 2012; Christensen, 2012). A wealth in people refers to the number of followers a patron may have. Ex-combatants, and particularly former child soldiers often remained tied to their commanders/patrons from the war years, giving these men a social and economic boost when rejoining society. As a result mid-



to-high level commanders often maintained or obtained positions of influence in their communities (Utas, 2012; Hoffman, 2004; Kelsall, 2005). These lingering command structures, combined with underlying patrimonialism and the resultant necessity to maintain cordial and beneficial relations with the local patron may have influenced the willingness of some victims or ex-combatants to come forward. Tonkolili district is the former home of the father of the revolution and the founder of the RUF, “Popay” Foday Sankoh. During the TRC Sankoh’s cousin was the paramount chief of Tonkolili, while one of the former RUF commanders, Base Marine, was a local ‘big man’ with the favour of both the paramount chief and the international community (Kelsall, 2005). Tonkolili was an RUF dominated area during the conflict and many ex-combatants hailed from there. Base Marine had established an internationally sponsored community agricultural project, employing up to 600 local youth (Kelsall, 2005). These facts, the powerful position of both a known RUF sympathizer and a former RUF commander, as well as their role in rebuilding the community, would likely have dissuaded local people from testifying about the crimes of the RUF; either through fear that they would lose the favour of the patron, or that the patron would be removed from their position of power, decimating one of the few economic prospects available to them (Kelsall, 2005). In light of this information, the inability of the TRC’s statement takers to collect more than 2 statements in Tonkolili does not seem remarkable.

Not only does the above example show how the TRC misframed the question of justice in Sierra Leone by failing to acknowledge and understand the pervasive role that patrimonialism played, and continues to play, in Sierra Leonean society. In misrepresenting local populations in debates about justice, the TRC, and the transitional justice community at large also failed to perceive the desire for more distributive forms of justice and the necessity for it, compounding the injustice of misframing. In the

above case, the local paramount chief, who is the arm of justice in the region, was supportive of the RUF during the conflict. Similarly, the man who provides one of the few employment opportunities in the district was an RUF commander. Asking people to potentially harm their position – politically, socially and economically – without offering any form of compensation, demonstrates a lack of understanding or caring about local needs, desires and calls for justice one on hand, and local power structures and command on the other. Furthermore, it is unlikely that if Base Marine had not set up his agricultural project, that the local community would be in a position to forgive and forget about the crimes of the RUF.

### *Forgiveness*

Forgiveness, or reconciliation, is nominally one of the core goals and ideals of truth commission discourse (MacKenzie & Sesay, 2012). Forgetting, however, does not necessarily always go hand in hand with forgiveness in transitional justice. Indeed TRCs are fundamentally based on the notion of recollection and memory; that it is necessary to draw forth the past as a means of reconciliation. They are predicated on a “confessional approach to justice where ‘the truth will set you free’ or ‘revealing is healing’” (Weinstein et al., 2010: 30). The English phrase or mentality to ‘forgive and forget’ found fertile ground in Sierra Leone in the aftermath of the conflict and it was pervasive, particularly in rural areas of the country. While ‘to forgive and forget’ is not a local concept, it did resonate with the locally grown idea of obtaining a ‘*kol at*’ or rather a ‘cool heart’ as a means of reconciliation (Bolten, 2008). A cool heart, in rural Sierra Leone societies is deemed the necessary foundation for reconciliation and social repair. When the heart is cool, it is settled and peaceful. This is opposed to a ‘warm heart’ which is unsettled, angry and potentially violent (Berghs, 2012). The notion of

gaining a *kol at* was seized upon by the truth commission and was epitomized in the Krio phrase ‘*blow main fo kol at*’ which was translated as ‘blow your mind to gain a cool heart’; or rather ‘get the war off your mind so you can forgive (gain a settled heart) and reconcile’ – whether that be with your community, your family, your victim or attacker (Bolten, 2012). While Sierra Leoneans generally accepted the message, there was a distinct disconnect between what international spectators and the TRC meant by ‘*blow main*’ and how local populations understood it. The TRC used the phrase to encourage people to absolve themselves of their emotion at the crimes they had committed or suffered or to clear their chests of the guilt or shame that was precluding them from gaining a settled heart, to cleanse the festering wound of suffering, but rural populations thought to gain a settled heart in another way. The ‘cool heart’ in Sierra Leone is achieved through local rituals, tied to both conciliation and repair, but tied more closely with what Shaw (2007) refers to as “directed forgetting”.

Open dialogue about the war is actively discouraged in Sierra Leonean culture.

Deliberate recollection of war time events is seen as the inability to move on.

*The people were not settled...we engaged ourselves with taking these people from their camps to new lives, vocations, communities... they needed this so they could settle their minds so that they can forget the war and move on. They can forget whatever they might have gone through in the war period and focus on development.*<sup>135</sup>

Remembering in Sierra Leone, especially in the rural North is particularly loaded with meaning (Millar, 2011). Recalling past events is a way of bringing the past into the present and creating a bridge between the event and the person remembering it (Ferme, 2001). Outside of the ritualized practices of directed forgetting, articulated recollection and public discussion of the war was frowned upon (Bolten, 2008). By remembering the war and articulating the memories, not only were individuals creating a link between

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<sup>135</sup> Interview with Milton Dassama, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

themselves and the past, but they were extending that link to others listening to the dialogue. This active pursuit of violent memories would have prevented the attainment of a cool heart (Shaw, 2007). During fieldwork this reticence was particularly visible. When asked to reflect on war time experiences or injustices, participants preferred instead to discuss ongoing injustices. The above quote from Annie, a local woman in Freetown is poignant. She is willing to concede that ECOMOG killed her brother and this was her victimization from the conflict, but we are immediately brought back on track by her referral to the empty food pot.<sup>136</sup> One of the foundational roles of a truth commission is to ascertain what really happened, to overcome *contested* versions of the truth (Teitel, 2000); but the TRC in Sierra Leone had the additional problem of overcoming the “irreconcilability of the different projects of memory” (Shaw, 2007: 185). “The idea that social forgetting might be more conducive to national healing in the aftermath of civil conflict runs directly counter to the overwhelming idea of a confessional approach to justice” (Weinstein et al., 2010: 30). Truth commissions are based on the idea that full verbal disclosure of the past is necessary for justice as well as facilitating social repair. While most people acknowledge transitional justice needs to be adapted to be relevant to the people it is meant to impact – as a means of addressing the historical juncture and thereby establishing an appropriate frame of justice – increasingly, the model of revealing as healing has become synonymous with transitional justice, the sole mechanism on which it is based (MacKenzie & Sesay, 2012). Thus the TRC in Sierra Leone set out on an extensive project of sensitization, trying to teach people that the appropriate method of forgetting was to verbalize their horrific ordeals in order to forget the past (MacKenzie & Sesay, 2012). However, as mentioned previously, transitional justice is not a story of complete subjugation. While

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<sup>136</sup> Interview with Annie, no affiliations, Freetown, 22/02/2010.

the TRC applied downward pressure for local populations to conform to its method of ‘revealing as healing’, there was a simultaneous opposite reaction from local populations who sought to turn their revelations to their own advantage (Shaw & Waldorf, 2010).

Although victims – including ex-combatants – described their initial victimization in terms of physical violence or material loss, they were not seeking reparation or compensation for these harms, rather for tools and skills that would allow them to build a better future (Schabas, 2006). Some ex-combatants used the TRC as a forum for to complain against former commanders who had commandeered – usually in their entirety – their DDR packages and funds (Hoffman, 2004, 2011). Most witnesses spoke dispassionately and without detail, instead focusing on how their losses, either personal or material, continued to disadvantage them financially (Millar, 2011). Even while the TRC was struggling for funds, it was seen as a source of resources itself. Statement takers were often asked for compensation for testimony and when commissioners solicited recommendations to facilitate transition from those who testified, almost unanimously these recommendations referred to their ongoing economic hardships and the need to overcome them (Kelsall, 2005). Some respondents focused individually and others put this within the broader context of the village, region or Sierra Leone as a whole. They focused on how the war had affected their ability to earn or make a living (Millar, 2011). Shaw (2007) writing about her fieldwork during the district hearings, states she was told repeatedly, “I cannot forget...when I cannot rebuild my house/cannot get married again/cannot get a job/cannot feed my children/cannot pay my school fees” (Shaw, 2007: 196). The Commission in Sierra Leone became viewed primarily as a means of staking claim for reparation against the government; it became part of a deal in which local participants exchanged their stories

for resources (Kelsall, 2005: 371). In this case the TRC unequivocally negated the act of directed forgetting; for Sierra Leoneans the art of forgetting had become linked with, and dependent on, the ability to build a future (Schabas, 2006).

Not only did the TRC not provide material compensation for those who testified, but it asked them to relive painful experiences in the absence of material support. While Sierra Leoneans accepted the message that they need to *blow main fo kol at*, they ‘retooled’ it and expected to be compensated by the TRC, even though they were told that they would not be.

For them, telling their stories before an audience was part of what they hoped would become a reciprocal relationship. By participating in this national and international forum, they had hoped to become part of a circuit connecting them to the national and international resources that would help them rebuild their lives...*this* rather than the reliving of their memories of mutilation and death, would bring healing. (Shaw, 2007: 205).

In many ways the TRC became a public grievance forum; one in which local populations told of their war time trauma as the price of admission to a forum that would allow them to air their grievance about their current situation. While specifically requesting access to material and economic or financial support, participants were also stating very clearly that there is something very wrong with the current system and they were doing it in the most public forum possible. Inherent in each testimony that ended in a plea for assistance is a statement that is calling for the justice they need. In the absence of an appropriate forum for debates about social justice, what it means and what needs to be done, Sierra Leoneans were attempting to participate in the debates in a new way. My own research was not immune to this form of ‘re-tooling’. Most discussions of past victimization or injustice suffered were linked intrinsically to the suffering local populations continue to experience. While this is covered more extensively in chapter seven, link participants drew between past and present suffering

served a dual purpose of pushing the memory of the conflict to the background and highlighting their current need, that of redistribution.<sup>137</sup> Moreover:

*The money we spend at the Special Court should be used to compensate the victims. You can see the victims outside, begging, suffering, while they [the Special Court] shows you a picture of Issa Sessay...*<sup>138</sup>

By identifying the injustice suffered as one of maldistribution, Sierra Leoneans were rejecting the recognition of their status as only victims *or* perpetrators, and rejecting justice based on this misrecognition. By forcing Sierra Leoneans into the framework of redemptive remembering, the TRC sought to deliver justice based on the recognition of people's status as either victims or perpetrators. The local populations rejected these labels and sought to establish their own claims to justice based on redistribution. The presumption of the TRC that public verbal recollection is a path to healing for all people, misframes the population of Sierra Leone, negating their perspectives on how to move beyond traumatic experiences. By misframing them in this way, the TRC precluded the local population from making first-order claims to justice that were real and relevant to them (Fraser, 2008).

While local populations succeeded, to some extent, in manipulating the TRC from below, it cannot be deemed a complete success for local creativity. As long as “conditions of their post-conflict lives remained as a constant mnemonic for violence and loss” (Shaw, 2007: 207) the blowing of the mind, or the clearing of the chest remained insufficient as a tool of justice. The fact that locals are still suffering in ways that they were before and during the conflict means that they cannot conceivably move

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<sup>137</sup> Fieldwork (2010-2011). Specifically: *The factors that were working to bring the war still exist. They still exist. If you look at the desires among the young Sierra Leoneans, they want education, they want work, if they are in society and are not educated it is a problem* (Interview with Doris Kanneh, Chair Woman, Women's Forum, Freetown, 03/02/2011). *There is no change in this country. Even in our political arena there is no change. All those things that got the war, still happen* (Interview with Princess Rogers, Women in Action Against Gender Based Violence, MRD, Kenema 17/02/2011).

<sup>138</sup> Interview with Alpha A Conteh, Administration Finance, and 4 others at KOCEPO, Koidu town, Kono, 09/02/2011

forward, regardless of how many cathartic episodes they may have had (Fanthorpe & Maconachie, 2004).

Part of the legacy of injustice in Sierra Leone is that this dialogue continues today. As is clear from the previous discussion at least a portion of the Sierra Leonean population has clearly stated that their ability to leave the lingering legacy of the conflict behind is thwarted by their inability to rebuild their lives or livelihoods. Fieldwork undertaken in Sierra Leone, nearly a decade after the end of the civil war, and 6-9 years after Shaw's and Kelsall's – who witnessed the district hearings personally – experienced almost identical dialogue. People's ability to move forward from the conflict is directly related to their ability to move forward in or re-enter society.<sup>139</sup> “[T]he future lay in the vindication of their economic and social rights, rather than some classic legal concept of *restitution in integrum*” (Schabas, 2006: 25). Local populations understand that they are currently barred from joining society as equals, that they currently lack access to mechanisms that would allow them to develop, what Fraser (2003) would call *esteem*. Only when everyone in society has the ability to gain similar amounts of esteem can they engage on par with the rest of society. The economic and financial hardships and the disparity in wealth faced by Sierra Leoneans affects their ability to be recognized as full members of society. They were asking for this to be addressed in the TRC (by repeatedly asking for change) only to have it ignored. Not only were they misrecognized by the TRC, which focused exclusively on their role as victims or perpetrators of physical suffering, but they were silenced from declaring the nature of their persistent sense of injustice.

### *Recognition and Misrecognition*

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<sup>139</sup> For more on this see chapter two on methodology and chapter seven on Violent Poverty.



TRCs and transitional justice mechanisms more generally are established on the basis of recognition as a form of justice; where the purpose of justice is to overcome the injustice of misrecognition, or the denial of an individuals or group's full status in society.<sup>140</sup> The justice of recognition addresses inequalities in the status order. In the case of the TRC, ex-combatants are maligned as a result of their participation in the civil war; they are viewed with fear and suspicion; the TRC sought to overcome this inequality by restoring lost value (Fraser, 2003). Ostensibly, by emphasizing their remorse, shame and guilt for past atrocities, the barriers built between victims and perpetrators would break down, thus recognizing the shared humanity of the participants and facilitate the reintegration of former combatants.

Similarly, the justice the TRC offered to victims was based on recognition in the sense that it sought to acknowledge the universality of suffering in Sierra Leone. The TRC was largely based on the idea of recognizing the victimization of all Sierra Leoneans, and minimizing the differences between different *types* of suffering. Part of the rhetoric of sharing traumatic experiences, in a forum like the TRC, is not only to release the anger and pain of the primary injustice in order to allow room for reconciliation, but also to find common ground with other victims, to feel a common empathy (Ross, 2010; MacKenzie & Sesay, 2012). By focusing on the commonality of victimization, individual suffering is minimized and individual reparation is downplayed in the name of communal healing. Individual need for repair, particularly material reparation is sacrificed on the altar of collective reconciliation. Moreover, the use of the body/wound metaphor – where purging is to open the festering wound of guilt and anger and allow for healing – facilitates the collectivization of reconciliation as it equates the national populace to a body, whose healing mechanisms are

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<sup>140</sup> As opposed to the justice of redistribution. For more on this see chapter three

simultaneously individual and collective. Thus “the healing efficacy of truth-telling operates simultaneously on personal and national levels that are homologous” (Shaw, 2007: 190-191).

In Sierra Leone this went a step further. As a result of the of guilt/innocence or victim/perpetrator dichotomy, all Sierra Leoneans needed to be placed into one of the two categories; there was no other way for transitional justice mechanisms to understand them. The unique position of many ex-combatants as both victims and perpetrators put them in a distinctive position of using the TRC to highlight their own victimization, placing them firmly in the sphere of those deserving reparation, rather than punishment (Kelsall, 2005). Ex-combatant testimonies were infamous for their lack of explicit detail regarding crimes. Rather, perpetrators would detail their abduction or recruitment into certain factions, their struggle with and anger against former commanders and explain how they were not involved in violent episodes (Kelsall, 2005). By emphasizing their own suffering, and minimizing their involvement in the conflict, ex-combatants sought to stake their own claim to possible compensation.

While the ex-combatants reshaped the TRC from below to ensure their recognition as victims and thus their worthiness for reparation and reconciliation; recognition of the universality of suffering had unintended consequences. Claiming universal jurisdiction over victims or perpetrators reduces people to being *only* victims *or* perpetrators, neither of which is a political entity (Fraser, 2008). Victims become helpless recipients of justice that is created by others, rather than active participants in their own judicial endeavours (Shaw & Waldorf, 2010). Perpetrators, on the other hand, receive nothing but punishment, effectively removing them from the discussion as well. By focusing on the actions of the perpetrators and not their history or motives, we disallow an understanding of the “range of social, political and economic injustice...that

brought and sustains conflict” (Shaw & Waldorf, 2010: 9). Victims and perpetrators alike become passive recipients of justice as disseminated by international institutions. The universal nature of their crimes or their suffering in this process precludes discussion of *how* the crimes happened or *what* they feel their suffering to be. The application of universals neglected the way people experience suffering differently and thus misrecognized them (Fraser, 2008). By failing to engage populations on what they felt their suffering was and thus allowing them to decide how to respond to it, the TRC also misframed Sierra Leoneans and the question of justice.

Misframing in this way removes victims and perpetrators from the judicial processes that affect them, effectively depoliticizing them. Removing victims and perpetrators from the political realm has several consequences in terms of the justice circulated. Primarily, removing populations from the political processes surrounding justice discourse gives them no say in what happens next (Shaw & Waldorf, 2010). Populations become reactive rather than proactive, the beneficiary rather than the benefactor, with no forum for critiquing or debating the justice ‘given to’ them (Fraser, 1997; 2008). The justice that focused on recognizing the distinctive groups of victim and perpetrator ensured that victims received sympathy and perpetrators punishment, and simultaneously misrecognized and misframed both groups as being unable, unwilling or uninterested in deciding their own fate(s) (Fraser, 2008). In the lead up to the operation of the TRC, there were ‘sensitization’ programs throughout the provinces, informing people what the TRC was about.<sup>141</sup> However, sensitization was focused on education, telling people what the TRC offered rather than asking populations what they

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<sup>141</sup> In fact it was argued that lack of sensitization led to the breaking of the Abidjan peace agreement in 1996. *Leading up to the overthrow of Tejan Kabbah in 1996, people were not given enough information about the Court and the TRC. The sensitization was not enough, the people were not adequately informed and so it led to the fighting again.* Interview with Prince Phillip Mansaray, TRC Statement Taker, SCSL Outreach Officer, MRD, Kenema, 17/02/2011; Interview MK Sei, Regional Coordinator TRC, Kenema, 16/02/2011;

wanted or needed as a means of reconciliation. As a result the ‘justice’ offered by the TRC did not resonate with local populations (Millar, 2010).<sup>142</sup> Many victims and perpetrators chose not to participate because they felt it did not suit their needs.<sup>143</sup>

*When they [the TRC] came, I had the pictures of me and Sam Bockarie, they wanted them [the pictures]...I saw that they wanted everything for them...that is why I never partake in it...I really want to keep most of these things for myself.<sup>144</sup>*

Those who did participate in the TRC used it as a forum to air their opinions about what was needed to facilitate peace. The fact that there was no material response to these beliefs removed populations from the political process of deciding what justice is necessary and thereby depoliticized them. They were no longer political actors, only the recipients of politics.

Secondly, the depoliticization of victims and perpetrators resulted in their narratives becoming little more than sources of information. The stories and testimonies given to the TRC by deponents were taken, collected and recorded as part of a process. Participants’ thoughts, opinions and criticisms were merely recorded within the framework of the TRC, rather than used to critically engage with the TRC and the process of the TRC directly. As discussed above, the seizure of the TRC testimonies as a means for local populations to stake claims to possible compensation was neither intended nor anticipated and as a result it was summarily ignored. By disallowing these narratives to impact the way in which the TRC functioned, and therefore its outcome, resulted in the process becoming less an outlet for the suffering of local populations and more about the process itself - about data collection, categorizing participants and building an accurate historical record (Ross, 2010; Kelsall & Stepakoff, 2007).

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<sup>142</sup> Interview with Braima Conteh, Fixer - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

<sup>143</sup> Interview with Kenneth ‘King Shining’ Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011; Interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011.

<sup>144</sup> Interview with Kenneth ‘King Shining’ Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011.

However this last task, the creation of an accurate historical record, was also impeded by the inflexibility of the process the TRC took. By categorizing participants into victims and perpetrators the TRC was inherently disregarding fundamental parts of the story. By their pejorative status as perpetrators, the narratives offered by ex-combatants were often dismissed. They were seen as merely confessional rather than critical. By disallowing perpetrators participation – either literally by disallowing their narrative to be heard at all, or figuratively by not addressing or acknowledging their political motivations – the process denied the opportunity to explore perpetrator motivations and justifications. As such there was no opportunity to explore whether these justifications were valid and therefore no opportunity to investigate the structural causes of the conflict. By validating some narratives over others, the marginalization of perpetrators had an impact on how transitional justice mechanisms gathered and treated testimonies and even who was allowed to testify. This in turn affects the potential accuracy of the ‘historical record’ (Shaw & Waldorf, 2010).

The historical record would have been further altered by the gender and status of those who testified. During the TRC women and youth were largely peripheral to the proceedings, both during its establishment and in terms of more general participation. The TRC was thought to be within the realm of politics and international politics.

*Women have a culture of silence surrounding them. Not caused by themselves, but because of culture and traditions. Women are not outspoken, they are outside, they do not advocate, even for their welfare. Women are not given the opportunity to talk, women are not allowed to talk. Even when we go to meetings now, the men will be in front, the women at the back...these meetings are about them. They need to give themselves the opportunity, but there is this culture of silence, inherent in them.<sup>145</sup>*

*Men are dominating the political parties so women cannot even get an opening for them to get their way. Not even just get into the party, but to get an advisory position to a man in a political party...<sup>146</sup>*

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<sup>145</sup> Interview with Randolph Katta, Project Manager 50/50 group. Freetown. 27/01/2011.

<sup>146</sup> Interview with Milton Dassama, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

Due to the ongoing legacy of patrimonialism and patriarchy, most women and youth believed themselves barred from attendance and participation. The TRC hearings were attended predominantly by older men, the traditional heads of communities (Shaw, 2007). This oversight becomes even more glaring when considering that youth in Sierra Leone is a far more encompassing label than it is in most other societies (Christensen & Utas, 2008). Most of the ‘rank and file’ soldiers during the conflict would still have been considered youth at the end of the civil war, regardless of their rather advanced age (Christensen & Utas, 2008). Additionally, not only did women make up a substantial number of the victims of crimes during the conflict, particularly from those crimes not traditionally pursued for prosecution by international criminal tribunals such as sexual assault or forced marriage but they also played significant roles in the conflict itself – as combatants, porters and cooks – for the various factions (HRW, 2003; Denov, 2010; Denov & Maclure, 2006).

*Because women largely stayed in the villages during the war, they comprise the villages. They are the [continuity] of the village. They were also the most vulnerable during the war and the most vulnerable after the war.<sup>147</sup>*

As a result of the structures of injustice in Sierra Leone, the narratives offered by women and youth were either not heard at all or filtered beyond recognition or usefulness through the manipulation of commissioners (Ross, 2010). By precluding and excluding the narratives offered by these groups, the TRC failed in its mandate to record an accurate and impartial history. Additionally, the stories offered by women and youth became little more than sources of largely ignored information, rather than critics of the existing structure. They were more valuable for the suffering they had undergone, than what they might have said about the current system.

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<sup>147</sup> Interview with Randolph Katta, Project Manager 50/50 group. Freetown. 27/01/2011.

## *Trauma*

Because victims and perpetrators, men, women and youth alike, were depoliticized by the TRC (and the labelling they receive as a consequence of its work), their narratives did not have an impact on the political or judicial processes that surrounded them. Thus the incentive to testify was reliant on the healing powers of truth telling. The conciliatory effects of truth telling are taken for granted; like suffering, the healing impact of revealing and sharing are considered universals. Again, this put the emphasis on what the participants *should* be getting from the process, rather than what they were saying about it (Iliff, 2012). The process of truth telling became about the fact that they were speaking, not what they were saying. While this focus placed the local population at the centre of the TRC, it ignored what deponents go through before, during and after testimony. The focus on what deponents ‘ought’ to have gained from testifying or giving a statement, or how those who were in the audience felt about testimony, overlooked and negated the trauma of testimony (Ross, 2010).

TRCs are premised on the idea of purging unpleasant thought; of opening a festering wound and drawing out the infection before proper healing can begin (Tutu, 2003). “We discovered that people experienced healing through telling their stories. The process opened wounds that were festering. We cleansed them, poured ointment on them, and knew they would heal” (Tutu, 2003).<sup>148</sup> However, humans by nature are prone to repressing unpleasant experiences.

To embrace the unbearable idea, especially in public, requires a special sort of recklessness or courage. This applies to both victims and perpetrators. Many people would require intensive preparation and coaching in order to strip away

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<sup>148</sup> From a speech given by Archbishop Desmond Tutu (2003) regarding the necessity and success of the TRC in South Africa, conveniently omitting that while many did come forward to offer testimony (as victims) as many as 50-60% of those who testified experienced difficulty after and regretted doing so (Shaw, 2007).

the psychological defenses for the purpose of a national spectacle, and would probably require therapy afterwards to help them recover (Kelsall, 2005: 382).

Truth commissions tend to underestimate the danger or trauma experienced by those speaking or testifying, particularly publicly. Because TRCs are based on models that envisage sharing and speaking about experiences as cathartic, necessary, healing and purging, those who choose not to testify or whom remain silent are seen as reticent, recalcitrant or poorly educated about rights (Ross, 2010). However this assessment neglects the difficulty people undergo when attempting to speak about painful experiences (Millar, 2010). This difficulty would be multiplied in a public setting because it opens a person, their experiences and their story to the assessment of others (Ross, 2010). Even though the audience was advised to remain silent during public testimony in Sierra Leone's district hearings, professions of innocence by ex-combatants were often met with voiced derision or muttering, and victim or witness testimonies were occasionally interrupted by denials from the perpetrator in question or other audience members (Kelsall, 2005). While the purpose of testifying was to 'clear the chest' of victims or perpetrators, the rejection of the testimony by the audience would have created greater distress to those testifying. The public nature of the testimonies allowed for the immediate denial of particular narratives.

The consequence of silence in a system that valorizes speaking about traumatic experiences, is that the problem is seen to be the victim themselves; that it is a moral failure for them to maintain silence (Millar, 2011). Part of the discourse of truth commissions is not just the catharsis of the individual, but how storytelling can resonate even with those who choose not to testify; how it has an impact on the individual and the collective simultaneously (Shaw, 2007). Thus, those who choose not to share, or who question those who do, are not only impeding their own reconciliation, but endangering the peaceful reconciliation of the entire country. This precludes the



understanding of the institutional failures that do not protect victims, not only from the initial crime, but also from ongoing structural violence against them (Ross, 2010; Horn, Charters & Vahidy, 2009). This moral failing is taken a step further in situations like Sierra Leone where there has been an absence of reparation and material compensation; where catharsis was publicized as being the end result of testimony, and those seeking financial aid or material support were portrayed as selfish, exploitative and greedy (Keen, 2012).

I have discussed at some length the way Sierra Leoneans retooled the TRC from below in order to use it as a public forum to call for, and stake a claim to, any form of material support that was forthcoming. However, what has not been considered is that in a culture highlighted for its focus on forgetting the past, where suffering is not shared, there is little incentive to publicly admit to crime or suffering (Shaw, 2007). There is however, a danger behind simply collecting requests for assistance as the TRC did in Sierra Leone. If the establishment of a reparation program is not pursued, it risks further alienating witnesses and victims (Pettersson, 2003). Pledging to bring up specific stories of need to the government and the international community was effectively promising participants a form of reparation, however, material reparation, when received at all, was extremely limited. The use of reparations as a carrot to lead Sierra Leoneans to testify would have a double impact: not only would this increase already ingrained mistrust for 'official' intuitions, it would also run the risk of re-victimizing many who testified.

### *Limited Narrative and the Categorization of Suffering*

The Commission in Sierra Leone took on a very court-like, adversarial approach to truth telling. Cross-examiners who worked for the Commission were there to help

elicit truth from victims, witnesses and ex-combatants. However they were not always helpful. They often quizzed victims about dates, facts and events, praising brevity and discouraging too much detail or emotion during their testimony. Conversely deponents were often derided for using a narrative approach (Kelsall, 2005). Despite the fact that there were several cross-examiners on hand to help draw out the truth and facilitate testimonial healing, the Commissioners were almost entirely unsuccessful in “leading victims through a process of catharsis or in prising the truth from the tight lips of perpetrators” (Kelsall, 2005; 376). Most of these Commissioners and cross-examiners had never served on a commission before and they had received minimal training (Schabas, 2006).<sup>149</sup> As a result, they were occasionally insensitive or inappropriate with witnesses, victims and perpetrators and placed their own emphasis on their testimony, highlighting the ‘sound bites’ that fit with their desired outcomes (Ross, 2010). This became particularly problematic when crimes such as property damage, displacement or even sexual assault were relabelled in order to fit into existing categories of crime. Relabeling of this kind tended to focus on the more violent forms of suffering. Focusing specifically on acts of violence, and categorizing victims according to what type of violence they have suffered, precluded gaining an understanding of how people experience violence and oppression differently. The typical focus on torture, amputation, abduction, severe ill treatment, etc. created a picture of the past where suffering is predominantly masculine (Ross, 2010; Denov & Maclure, 2006). Moreover this type of categorization acted as a filtering mechanism where only certain types of suffering were seen as valid (Ross, 2010).

The validation of only certain forms of suffering not only created a filtered narrative of the past, but had the added consequence of compounding the

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<sup>149</sup> Considering the whole process took 8 months, there was little time to receive *any* training (Schabas, 2006).

depoliticization of both victims and perpetrators. Not only were local populations ignored when they clearly stated what they needed to move forward from the conflict, but they were also silenced about identifying their own forms of suffering. The TRC further misrecognized victims by misidentifying and misframing the causes and forms of their suffering. While the TRC did not promise reparations for affected populations, they did agree to act as a record keeper for requests and bring such requests forth in their final report. While the TRC clearly meant this as a general statement, many people took it as a pledge to bring forward individual claims; they saw the wealth of the TRC and its links to the international community as signs of its prosperity and thought they would get access to some of that wealth as recompense for sharing their stories.

*The money we spend at the Special Court should be used to compensate the victims. You can see the victims outside, begging, suffering... To the ordinary beggar, that is a big difference... People are saying ... they are spending so much money, billions of dollars and we're left with nothing, nothing to compensate them.*<sup>150</sup>

“It became clear that most people who testified had done so because of their expectation that the TRC, the government, or the international community would help them rebuild their lives” (Shaw, 2007: 201). By playing on this expectation and on the poverty that overwhelms Sierra Leone more generally, the TRC effectively removed the coping mechanisms locals had created for themselves – such as directed forgetting – and in its place ushered in the irrelevant discourse of catharsis and misleading promises. Shaw (2007), who was present at the district hearings, witnessed one woman pleading with the TRC for reparation - highlighting how everything had been taken from her, including her children who were to be her security and who were to provide for her as she aged. The Commissioner, Shaw observed, brought this woman back to the purpose of the hearing, reminding her of what the message of the TRC truly was: “yes it is not

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<sup>150</sup> Interview with Alpha A Conteh and 4 others at KOCEPO, Koidu town, Kono, 09/02/2011.

pleasant to remember such events...but you have decided it is in the best interest of the country for you to testify...” (Shaw, 2007: 202). This woman had only managed to escape one form of injustice for another. “Thus for this widow, testifying did not consist of replacing silence with voice, but of being silenced by the TRC’s model of redemptive memory” (Shaw, 2007: 202).

### *Truth*

While part of the mandate of the TRC was to “create an impartial historical record”, it failed in this mandate as well. The TRC in Sierra Leone was seldom affected by truth, particularly from ex-combatants (Kelsall, 2005). Ex-combatants frequently gave “NGO narratives” which focused on their own abduction or recruitment into combatant groups (Shaw, 2010). Ex-combatants were particularly reticent to speak about specific crimes or actions that occurred during the conflict (Kelsall, 2005). This tendency continues to the present day, as highlighted by the researcher’s own experience interviewing ex-combatants. Ex-combatants tend to give long and rambling narratives about movements through the jungle and to various bases, and talk about times when they have met famous people such as Foday Sankoh or Sammy Norman. Ex-combatants seldom admit to being present during actual combat or violence. If specific acts of atrocity were referenced during interviews, participants distanced themselves from such events by claiming to only have heard about it from others, rather than direct witnessing or participation.<sup>151</sup> Former soldiers seldom admitted to being soldiers at all and were more likely to confess to being ‘bodyguards’, ‘drivers’, or ‘the

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<sup>151</sup> Observational fieldwork over 2 fieldtrips, 2010 and 2011. Also: Interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011; Interview with Kenneth ‘King Shining’ Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011; Interview with Alie, ex-combatant - RUF (Jalloh translating), Koidu Town, Kono, 10/02/2011

young boy who carries the talismans of protection'.<sup>152</sup> In my own experience the longer the interview went on for, or the better the rapport that was established between interviewer and interviewee, the more candid and complete the story became.<sup>153</sup> However during the TRC there were witnesses who knew of specific acts that the deponents had participated in, and audience members were often frustrated by the quality and content of the brief statements made by ex-combatants, and at times the district hearings were in danger of breaking down because of the reluctance of ex-combatants to admit to participation in crimes (Millar, 2011). The whole premise of truth commissions is the explicit verbal acknowledgement of wrongdoing with no expectation of forgiveness and no attempt at excuses; what occurred in the TRC in Sierra Leone was largely the opposite of this. Ex-combatants blamed their superiors, god and even their victims, but never conceded any personal wrongdoing. "According to liberal understandings of transition, an apology involves a statement of individual responsibility and contrition based on truth, however, neither truth telling nor individual responsibility figured in these...ex-combatant statements" (Shaw, 2010: 129).

In an effort to elicit truthful testimony from ex-combatants, Commissioners asked pointed questions and demanded specific facts, not just from combatants, but from witnesses about a specific ex-combatant's actions at a given time. This adversarial and very court-like approach to extracting truth would have put its own filter on the narratives that emerged<sup>154</sup> and denied ex-combatants, witnesses and victims alike the opportunity to state their own understanding of what happened and why. Not only did this compound the depoliticization but it directly countered the TRC's mandate to create an accurate historical record. By disallowing the political or emotional narratives of

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<sup>152</sup> Ibid.

<sup>153</sup> For more on this see chapter two

<sup>154</sup> This court-like approach would have resonated with fears of ex-combatants that testimony could be used against them at the Special Court for Sierra Leone.

victims and perpetrators alike, the TRC missed a substantial portion of the overall story. By failing to acknowledge, or even recognize, how the historical status and class hierarchies in Sierra Leone may have impacted participation in the truth commission, the TRC and the transitional justice community as a whole misframed the question of justice in Sierra Leone. As a result a valuable opportunity to engage with some of the existing structures of injustice and find locally meaningful ways of addressing them was lost. Moreover, failure to acknowledge the very existence of patrimonialism and the injustices that it may create, would have further entrenched these very same injustices in Sierra Leonean society.

As a result of the dichotomy of transitional justice, where discourse is focused on fine tuning existing mechanisms rather than reconceptualizing them entirely, even if patrimonialism in the TRC had been acknowledged, the solution would have been how to mitigate its influence on the TRC's processes, rather than focus on a wider discourse of how to engage with the misrecognitions present in patrimonialism as a whole (Weinsten et al., 2010). By failing to acknowledge patrimonialism altogether, the TRC was tacitly giving its stamp of approval to these structures of injustice, further ensconcing them in Sierra Leone (Dobbins, et al., 2013). The reification of these forms of misrecognition would have been compounded by the consistent presence of community elders and heads of religious communities at district hearings, traditionally positions held by older men, and those in central roles of the clientelist/patrimonialist networks (Kelsall, 2005). The presence of these community leaders also had an impact on the reconciliation and reintegration ceremonies, a phenomenon that is discussed in greater detail below.

The denial and omission of political narratives is compounded when considering that former CDF leader, Deputy Minister of Defence and de facto head of the SLA,

Samuel Hinga Norman, second only to then serving President Tejan Kabbah, was barred – by the Special Court – from testifying to the TRC entirely (Schabas, 2006).<sup>155</sup> Not only did the omission of Norman’s testimony hamper the creation of a complete and impartial history, it served to reject the very discourse of the TRC. If the expression of truth, responsibility and remorse was so fundamental to the creation of justice, the surely the testimony of such a key player would have been an immeasurable asset.<sup>156</sup>

### *Reconciliation*

While the TRC completely failed in the truth aspect of its mandate, the same cannot be said of its conciliatory mechanisms. Whereas local populations were frustrated with the lack of candour from ex-combatants in particular, the ritualized reconciliation ceremonies had much greater impact, although again, not necessarily beneficial.

Truth and confession do have roles in traditional Sierra Leonean society and they do serve as a link to reconciliation, but truth, and the conciliatory effects that it may have, are reached through the use of powerful ritual assistance and black magic (personal communication Edward ‘Song’ Bangura, 2011).<sup>157</sup> Since the rituals used to

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<sup>155</sup> For a more detailed discussion of this see chapter four

<sup>156</sup> Kabbah on the other hand did testify to the TRC, but refused to acknowledge any responsibility or wrongdoing, either personally as Minister of Defence and leader of the Sierra Leone Army (SLA). Kabbah also refused to apologize for any actions that were carried out by the SLA under his command (Schabas, 2006). Again this leads to a filtered narrative, where superior responsibility is being used to condemn those ‘most responsible’ for the crimes of the conflict, but those at the top are refusing to accept that responsibility. Moreover, when placed within the context of Teitel’s (2000) analysis of apology as necessary to show both the end of the previous regime and the continuity of the state (chapter three), Kabbah’s refusal to apologize is clearly problematic.

<sup>157</sup> A local man the researcher lived with whilst on fieldwork gave the following narrative to explain this phenomenon: At a market in Koidu City, a young man had been accused of theft, a serious crime by local standards. Since he was not found with the goods and he denied any wrongdoing, a local religious or secret society leader or ‘shaman’ was brought forward and enacted a ritual to coerce truth from the youth in question. The shaman heated a knife and stated, before the crowd that if the youth were telling the truth, the heated knife would not sear his tongue. If he were lying, the knife would burn him and cause him great injury. The shaman demonstrated the effect on himself. The young man in question, broke free

ensure that confessions are truthful were banned by the TRC, there was little incentive for ex-combatants to speak the truth. However, because the reconciliation ceremonies were more resonant with local practices of forgiveness and reconciliation, they were more accepted and thus more useful in re-establishing community ties (Kelsall, 2005).

Each of the TRC district hearings were completed with a ritualized apology and reconciliation ceremony. At these ceremonies, perpetrators or ex-combatants were given an opportunity to apologize for their transgressions and ask for forgiveness from the community, represented by town or village elders and/or religious leaders. At these ceremonies, religious elements were amplified and local elders, in full ceremonial garb, were present for the first time (Kelsall, 2005). The presence of local leaders in ceremonial dress would have resonated with ex-combatants to a far greater degree than the completely alien notion of cathartic sharing.<sup>158</sup> Because cathartic truth telling does not have historical roots in Sierra Leone, there is a distinct lack of ritual and cultural inducement to testify and publicly purge. However, ritual ceremonies of repentance, combined with acts of forgiveness resonate deeply with local cultures and thus are more likely to have an impact, even without the truth being told (Kelsall, 2005). The presence and expectation of local leaders and community members would have had a significant impact on the participants. The community's collective expectation of remorse and apologies from the perpetrators would have influenced participants to ask

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from the crowd and ran (Special thanks to Edward 'Song' Bangura who related these events to me). "In oath taking, the strong belief that God and the ancestors would not tolerate perjury influences the culprit to own up or the witness to give true testimony. The fear of death, disease, death of children or any other misfortune when the cult system is employed to cast a spell (or curse) on the culprit persuades the guilty party to confess their crime, even at the eleventh hour" (Kelsall, 2005: 385).

<sup>158</sup> Particularly those who were members of the CDF who's war time experiences would have been shaped predominantly by secret society initiations and rituals. Initiation into the CDF, and the *Kamajors* specifically, was steeped in traditional black magic practices. For example the widespread practice of 'bulletproofing', which was a cult practice designed to keep soldiers safe from bullets, was upheld on the basis of strict adherence to a set of restrictions. Members needed to be chaste, respectful etc. in order to maintain their bulletproofing (Hoffman, 2011). The ritualization of reconciliation ceremonies, before traditional heads of local pseudo-religious groups would have resonated with these experiences, causing a more sincere and truthful reaction (Hoffman, 2011).



for forgiveness; the presence of the local leaders in ceremonial vestments would have “squeezed” the apology from them (Kelsall, 2005: 388). Whereas the testimonies of ex-combatants were empty of any truth or remorse, their apologies were markedly different. The presence of the elders and religious leaders at the ceremonies seemed to bring forth a true sense of repentance in ex-combatants. While there was some speculation about the authenticity of the apologies – particularly from Western observers – many local spectators took the repentance as genuine (Kelsall, 2005). This was not because a full accounting had been made, but because those repenting acted within the moral norms essential to local understanding of forgiveness and reintegration (Mackenzie & Sesay, 2012). This relativity is twofold because not only did this show humility, which the accepting population needed to see – particularly in contrast to the arrogance of youth during the war (Hoffman, 2006) – but also the forgiveness of the elders, both for the perpetrator and the population, that resonates deep within Sierra Leonean culture (Shaw & Waldorf, 2010).

While the presence of the town elders and local leaders seemed to yield genuine remorse and apologies from perpetrators, Shaw (2007; 2010) argues that their presence, and the impact that they had on events, would simply reify the power structures that gave rise to the civil war in the first place (Shaw, 2010). As discussed in greater detail elsewhere, the patrimonialist structure of much of Sierra Leone’s society was the cause of much resentment and strife amongst youth in Sierra Leone (Richards, 1996; Fithen & Richards, 2005; UNDP, 2006). The abusive power structures wielded and fiercely maintained by local elites, combined with the nepotism of patrimonialism, and the inability of youth to break into these ranks were major causes of the outbreak of civil war in 1991 (Richards, 1996; Utas, 2012). While local populations reshaped the reconciliation ceremonies ‘from below’ in order to ensure their relevance to those

affected, the presence of local elites, and the submissive and acquiescent nature of the apologies they oversaw (Kelsall, 2006), would have more deeply embedded these structures of *injustice* – further entrenching the misrecognition of youth – rather than create an atmosphere in which justice might thrive.

### *Bad Bush Nor Dae For Troway Bad Pekin*

The presence of local elders and big men at reconciliation ceremonies was not the only traditional mechanism adopted by the TRC in order to encourage reconciliation and reintegration in the communities. Like the Krio concept of *blow main fo kol at*, the common Krio phrase '*bad bush nor dae for troway bad pekin*' which translates to 'there is no bad bush to throw away a bad child', was adopted by the TRC and widely disseminated throughout Sierra Leone (North, 2003). In a practical sense, this phrase means that no matter what a child has done, the community always has a place for him/her. The lived meaning of the expression extends beyond the individual and his or her community and may equally be applied to adults. It speaks to the "ideal African society that holds that an African will always want to be in her community, amongst her people, and that the community will always support or have a place for her" (Stovel, 2008: 306). This expression in particular was adopted by the TRC and the international transitional justice community generally, and repeated mantra-like, throughout the provinces as a means of facilitating ex-combatant reintegration (Caulker, 2011). However, the problem with the internationalization of tradition-based conciliatory mechanisms is that they "say nothing about the *terms* of reconciliation – especially terms of justice and equality. Indeed they may reinforce the very tensions and power structures that contributed to the war in the first place" (Stovel, 2008: 306). The problem of romanticizing local, traditional and/or customary practices as a means of

facilitating transition has been identified elsewhere (Roche, 2003). These practices or customs are often presented as enduring, historically relevant and, most importantly, peaceful, harmonious and restorative. However, ‘traditional law’ has been shaped and reshaped over centuries, importing ideas from colonialism, and establishing new and changing methods of social control and manipulation (Roche, 2003). In Sierra Leone, traditional law thrives in rural areas, and was not only a major contributing factor to the war (Richards, 1996), but remains a highly contentious and problematic issue.<sup>159</sup> While customary law can provide stability and familiarity, it can also help “reconstitute pre-conflict structures of exploitation (Shaw & Waldorf, 2010: 16).

There is some confusion regarding the use of customary and local initiatives. The two terms are often used interchangeably; Shaw & Waldorf (2010), however, make a convincing argument that this is not the case. The danger in conflating the two ideas is that local initiatives are those that are created and implemented from the ‘bottom-up’, while customary initiatives are locally grown ideas that are implemented in a ‘top-down’ manner.<sup>160</sup> Local initiatives are the locally developed processes that are specific to communities and peoples. These coping, conciliatory, or restorative initiatives seldom move beyond the communities in which they have developed - they exist only within the structure from which they came (Iliff, 2012). Customary practices, by contrast, are initiatives that may have started locally, but have been reshaped by national and international actors and redeployed in a ‘top down’ fashion.<sup>161</sup> By synonymizing these two distinct developmental processes, problems associated with customary practices are imposed upon local approaches, and thus puts local approaches in danger

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<sup>159</sup> See chapter seven on violent poverty.

<sup>160</sup> See also chapter four.

<sup>161</sup> This is evidenced both in the *kol at* and *bad bush* phenomena in Sierra Leone, but is also witnessed in other transitional states: the *Gacacas* courts in Rwanda for example or the *Mato oput* in Uganda. Each of these are locally developed ideas, relevant to particular groups at particular times, that were seized upon by the international community and widely disseminated and celebrated as locally grown ideas, but no longer in their initial format (Roche, 2003).

of being discredited entirely (Shaw & Waldorf, 2010). This is clearly exemplified in the ritualization of the reconciliation ceremonies after the district hearings. While ritualized confession, remorse and reconciliation are all part of local practices, the reshaping of these practices – from both above and below for the purposes of the TRC – saw them tainted by the presence of patrimonialism. Because these ceremonies can be seen to reify patrimonialism in this context, they are in danger of being discredited as a suitable means of confession and reintegration in local circumstances where patrimonialism may not play such a major role. “Traditional governing institutions and process are tremendous resources for achieving peaceful co-existence in the aftermath of war, but they should not be taken for granted, romanticized or blindly reinforced” (Stovel, 2008: 321), to do so once again both misframes and misrecognizes both the host and the recipient communities, potentially exchanging one set of injustices for another.

The international adoption of the phrase *‘bad bush nor dae for troway bad pekin’*, is problematic because it removed the local population from the process of deciding whom they wished to apply this phrase to and the conditions of integration a returnee must meet. The phrase was manipulated (and populations’ decision making misframed) by making the reintegration of all returnees unconditional. The external manipulation of *‘bad bush ...’* into a recognised and hierarchical form of customary justice and its redeployment as a means of reconciling and reintegrating ex-combatants into society resulted in a fundamentally problematic approach (Berghs, 2012). Primarily it embodied a set of empirically unfounded assumptions. Those assumptions are: 1) that local populations were reconciling with and forgiving ex-combatants; 2) that ex-combatants and displaced people *wanted* to return to their home communities; 3) that all people are equally valued and that their contributions to society are equally valued;

4) that return to the pre-war situation is ideal; and 5) that communities have the capacity to absorb those returning (Stovel, 2008: 318).

Because civilians, victims and ex-combatants live in close proximity and in relative peace does not mean that they feel reconciled or reintegrated in a deeply felt or meaningful way. There may be contentions regarding the reintegration of ex-combatants that are not apparent to outside observers. Whilst there are those who live quietly alongside ex-combatants, this does not mean that the ex-combatant is a full member of society, deserving of full trust and status. Whilst there may be lingering issues of fear, and thus direct confrontation is undesirable, many locals devise ways of overcoming the lack of trust for ex-combatants. This is primarily done through watchfulness on the part of the community and the community elders (Archibald & Richards, 2002).

The adoption of '*bad bush...*' carries the underlying assumption that an African is at home in their community and that the community will always have a place for them (Caulker, 2011). Corollary to that is the assumption that displaced persons, and ex-combatants in particular, want to return to their home communities. This assumption is not necessarily true. Many ex-combatants preferred to remain in the company of their former comrades and commanders (PRSP II, 2009) with whom they shared experiences and who, in some sense, replaced families during the conflict (*Jew Man Business*, 2011). Moreover, many ex-combatants moved to Freetown or Bo, the urban centres seeking greater economic opportunity (Murphy, 2003).

Returning 'home' may also have meant more to ex-combatants than simple geography. It could also have meant reintegration into a patriarchal or patrimonialist society that they fought for years to overcome and overthrow (Diouf, 2003). Additionally, not all people are considered equal and as such they are not all equally

welcomed back to home communities. Just as *some witnesses are more equal than others*<sup>162</sup>; so are some returnees more welcome. Amputees and women with small children seeking to return ‘home’ often faced exclusion by family and social groups for returning and putting an additional burden on already strained resources. In these cases, ex-combatants may have been reintegrated more readily than victims for what they may contribute to the community (Denov, 2010).

By encouraging ex-combatants and displaced people to return to home communities, and simultaneously encouraging these communities to accept returnees – with no advice on how this should be accomplished – the TRC tacitly facilitated the reinforcement of structures of inequality and injustice (Fithen & Richards, 2005). Reintegration into communities was smoother for ex-combatants who could bring resources back to the household, particularly if they had established a livelihood (Shaw, 2010). Young, male ex-combatants were far more likely to be able to do this as the DDR and various other development initiatives focused almost exclusively on male child soldiers (Denov, 2010; Denov & Maclure, 2007) giving them some training and skills necessary for reintegration. Thus, they were more likely to be accepted back into communities. Reintegration for women returning to communities was far more difficult.<sup>163</sup> Whereas young men received training, skills or education, two female NGO workers in Kenema, Princess Rogers and Mariama Koroma, saw that women were ineligible for much reintegration and only eligible for micro-loans from NGOs. They saw this as problematic as money was likely to be stolen or coerced from women by husbands or male family members.<sup>164</sup> Moreover many women were left with small children to take care of after the civil war; these may be a product of rape or partners

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<sup>162</sup> Interview with Saleem Vahidy, Chief - Witnesses and Victims Unit and Security, SCSL, Freetown, 31/01/2011.

<sup>163</sup> Interview with Princess Rogers and Mariama Koroma, Women in Action Against Gender Based Violence, MRD, Kenema 17/02/2011.

<sup>164</sup> Ibid.

being killed or lost during the war, but reintegration into communities, or even ability to gain employment was hampered by the responsibility of child rearing (HMW, 2003; Denov, 2010).<sup>165</sup>

The TRC's focus on reintegration based on the locally developed idea of 'there's no bad bush...' resulted in local communities manipulating these ideas from below. As a result, communities developed their own methods of reintegration. Ex-combatants needed to exemplify and adhere to a standard of moral and social obligation before they were accepted by the community (Shaw, 2010). By embodying and adhering to the normative values of the community – typically humility, work ethic, sobriety, etc. – ex-combatants were able to reintegrate into their communities. Of course this was not the case for all youth. Young people looking to return were expected to bring back “expressions of support for their families” (Shaw, 2010: 117) as well as act with moral respect and responsibility towards their families and the community. Support for their families may include spoils gained from the civil conflict (i.e. looted or stolen property), skills or education that will help them secure wage generating work or even the support of a new patron that would help them advance socially and economically. Since many ex-combatants were unable to secure these resources, or a means of gaining them, they were reluctant to return to their communities (Christensen, 2012). While through work and contribution ex-combatants were able to prove their worth, earn respect and reintegrate into the community, not all of these options were readily available for those seeking to integrate, leaving large swathes of ‘footloose’ or rootless youth,<sup>166</sup> arguably

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<sup>165</sup> During a tour of a market in Calaba Town market, I had an impromptu focus group with about 20 market women, all of whom wanted to share their story of how they had been left with small children. For many this was recent, although a few indicated that this had happened to them in the aftermath of the civil war. Interview with Princess Rogers and Mariama Koroma, Women in Action Against Gender Based Violence, MRD, Kenema 17/02/2011; Interview with Annie, no affiliations, Freetown, 22/02/2010.

<sup>166</sup> Interview with Mohamed Jabbie, Youth commissioner Eastern Region, Campaign for Just Mining, Koidu Town, Kono 09/02/2011; Interview with MK Sei, TRC Regional Coordinator, Kenema, 16/02/2011; Interview with Peter Ngu Tayong, Media Related Outreach, UNDP, Founder of Musicians for Democracy, Freetown, 25/02/2010.

one of the things that led to the conflict in the first place (Richards, 1996; Rashid, 1997; Bangura, 1997); and which has the potential to draw them back into war.

*After the DDR we were so idle that a general came from Guinea and recruited us. He recruited us, gave us money to wage war in Guinea. So we went straight to Guinea and we fight.*<sup>167</sup>

Moreover, these methods of integration also reintegrated former combatants into the structures of injustice that led to the civil conflict initially (Peters, 2008).

As a means of reintegrating ex-combatants, under the auspices of the TRC disseminated ‘no bad bush’ campaign, communities drew on other customs, in particular the tradition of the landlord-stranger relationship. In this relationship a newcomer to a town pays a small amount to the village chief and provides services when the chief requires. In return, the chief and the town elders do not ask questions regarding the stranger’s past. Instead they gauge him on his actions and attitude within the town, placing particular emphasis on humility and modesty (Gberie, 2005; Shaw, 2010).<sup>168</sup> This humility was in direct contrast to the arrogance of combatants during the war, where weapons gave the historically down trodden power over leaders and civilians alike during the war (UNDP, 2006; Peters & Richards, 2003). During the war this power was often used to humiliate and degrade those from positions of power, such as elders and chiefs (Richards, 1996; Diouf, 2003; Hoffman, 2004 & 2011). Humility, therefore, had deeper implications for integration as it meant the submission to local leaders, older elites and non-elected ‘big men’. “‘Humility’ thus references both ex-combatants’ respect for civilians and their reintegration into pre-conflict structures of inequality and marginalization” (Shaw, 2010: 126).

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<sup>167</sup> Lusine Kango in an interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011.

<sup>168</sup> See also reference to this in introductory chapter, noting that this is a colonial era system that has been manipulated and adopted, giving credence to the argument that even ‘traditional’ mechanisms evolve over time and may be heavily influenced themselves.



Local chiefs, elders and leaders would observe reintegrating ex-combatants to ensure that they had obtained the requisite *kol at* necessary for integration. They were watched by the community for drug abuse and alcoholism, and also had their movements monitored within the village; if they were found to behave appropriately, they were officially reintegrated into the community and the surveillance was curtailed and eventually ceased.<sup>169</sup> ‘Strangers’ or community outsiders were not only viewed with suspicion, but they were also considered ‘legal minors’. Only local citizens or townspeople can bring complaints before the chief as the head of the local, customary courts and because only some customary law has ever been codified or standardized, it can change from chiefdom to chiefdom, resulting in confusion over what is permissible behaviour. Because there is no standardization of law or local custom, and travel between districts is unlikely,<sup>170</sup> there is no way to compare ‘rights’ across chiefdoms. Thus ex-combatants reintegrating into a community that used landlord stranger, charged exorbitant fees for mining licenses or high rent for land to farm, had no way of knowing if life or integration would have been better elsewhere. Moreover as ‘strangers’ or legal minors, they had no means of addressing unfair practices. They are misframed by their inability have a say in the processes that govern them (Archibald & Richards, 2002).

By making local mechanisms of integration ‘customary’, transitional justice mechanisms generally, and the TRC specifically, facilitated a return to the pre-war condition. While this may give the impression of a return to enduring social norms and ingrained traditional culture, it does not engage with either how these very customs may have been influenced by previous structures of injustice (i.e. colonialism) or engage with how these factors would have contributed to the civil war in the first place (UN,

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<sup>169</sup> *That is the African situation. You are always afraid of what one village will say what you're like and what your uncle will say and what your auntie will say and what have you.* Interview with Gebremedhin Hagoss, Chief Political Affairs and Peace Consolidation Section, UNIPSIL, Freetown, 24/02/2010.

<sup>170</sup> See chapter five.

2007).<sup>171</sup> By focusing on the recognition of suffering and the categorization of populations as either guilty or innocent, the TRC expedited the depoliticization and remarginalization of victims and perpetrators alike. The TRC also focused primarily on the atrocities committed *during* the conflict. By failing to engage with the misrecognition and maldistribution of the pre-war era in any meaningful way, they managed to tacitly reconstruct the structures of injustice that instigated the civil war.

While the TRC may be applauded for highlighting the legacy of bad governance, corruption, colonialism and the marginalization and disillusionment of youth as contributing factors to the conflict in its final report, it can also be accused not only of failing to address these structures of injustice but of re-establishing them through its own work.

[T]he war in Sierra Leone was largely the result of failures in governance and institutional processes in the country. Successive governments diminished the state's capacity to meet such critical challenges as the security and livelihood of its citizens, let alone provide for democratic *participation in decision-making processes*. The Commission shares the view that unsound governance provided a context conducive for the interplay of poverty, marginalization, greed and grievance that caused and sustained the conflict (TRC, 2004: 7) [emphasis added].<sup>172</sup>

Yet many of these 'root causes' remain prominent in Sierra Leone today and "there is little or no commitment by those who govern the country to any meaningful attempt to address these factors" (Schabas, 2006).

### *Conclusion of the Commission*

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<sup>171</sup> Observational fieldwork, 2010-2011. In particular Interview with Princess Rogers and Mariama Koroma, Women in Action Against Gender Based Violence, MRD, Kenema 17/02/2011; Interview with Alpha Kay Koroma, Employee Resource Centres on Urban Agriculture and Food Security (RUAF)/ Freetown Urban and Peri-Urban Agriculture Project (FUPAP), Freetown 25/03/2010; Group interview with Reverend Spencer, Mohamed M, Raphael Vandi, Fitzgerald and Braima Conteh, Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010; Interview with Patrick, UN compound, Freetown, 05/03/2010; Interview with Doris Kanneh, Chair Woman, Women's Forum, Freetown, 03/02/2011.

<sup>172</sup> Witness to Truth: the Report of the Truth and Reconciliation Commission (2004) vol. 2.

Under the TRC Act (2000), the Government of Sierra Leone was to create a follow up committee to “faithfully and timeously” (TRC Act, 2000) implement the TRCs recommendations, and to report back to the public on progress or explanations as to why recommendations had not been implemented (TRC Act, 2000). Nearly a decade after the conclusion of the TRC and the release of its final report, there is no follow up committee, and the vast majority of its recommendations have fallen by the way-side. In the potent words of a participant in the researcher’s fieldwork:

*Nothing had changed, nothing is changing at this point...There is no changes in this country. Even in our political arena there is no changes. All those things that got the war, still happen, they still happen...*<sup>173</sup>

As Fletcher and Weinstein have argued “Unless the findings of a truth commission are linked to concrete efforts to restructure institutional arrangements and personnel who promoted or enabled structural violence, the work of a commission potentially may be undermined and its impact weakened” (Fletcher & Weinstein, 2002: 630). The continuity of suffering experienced by many Sierra Leoneans means that regardless of their ostensibly cathartic testimonies before the TRC, many feel that they cannot move forward with their lives (Schabas, 2006). Not only did the TRC fail to address existing and ongoing injustices, but it both created new injustices and exacerbated others. By not allowing Sierra Leoneans to meaningfully participate in the creation of the transitional justice mechanisms they also suffer the injustice of misframing, disallowing them to make claims to the justice of redistribution and recognition.

The TRC created new injustices not only through its failure to realize and address, in some form, the maldistribution rampant in Sierra Leone, but also by misrecognizing Sierra Leoneans’ pleas for material support and reparation as greed and

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<sup>173</sup> Interview with Princess Rogers, Women in Action Against Gender Based Violence, MRD, Kenema 17/02/2011.

their reluctance to testify as ignorance. The focus on local populations as the problem, rather than engaging with them about what they need, made locals become depoliticized, marginalized and unable to participate in their own judicial endeavours (Shaw & Waldorf, 2010). The TRC essentially misframed the Sierra Leoneans as a group incapable of making its own political and judicial decisions. As a result, the TRC failed to engage with the underlying causes of the conflict and even served to reintegrate these injustices into society. By neglecting the role of patrimonialism, the marginalization of youth and women and the ongoing oppression of economic disparity – even when deponents attempted to draw attention to it through testimony – the TRC merely exchanged once set of injustices for another.

While the TRC found that much remains unchanged from the pre-conflict to post conflict eras (TRC 2004), it did not engage with the question of how the TRC, and other institutions like it, can facilitate this continuity. While local populations attempted to retool the TRC from below, by using it as a forum to ask for reparations and elucidate on how important the justice of redistribution was to them, they were blocked in this endeavour by the TRC itself. Thus by giving local populations a voice, the TRC effectively silenced them, by giving them justice the TRC heaped greater injustices on them, by recognizing their suffering as victims, the TRC misrecognized their potential as political actors and removed them from the very processes that would affect their lives.

## **Chapter 7: Violent Poverty**

### *Introduction*

The last three chapters of this thesis have investigated mechanisms of transitional justice and explored, through examination of their implementation in Sierra Leone, how and why they failed to resonate with local populations and facilitate a transition in Sierra Leone. The previous chapters used Nancy Fraser's theory of both misframing and the decoupling of justice to show how transitional justice mechanisms dichotomize and misframe the question of justice and thus fail to connect with local populations and facilitate any meaningful change. Moreover, the previous chapters examined how transitional justice institutions in Sierra Leone misframed and marginalized local populations, removing them from the debates surrounding the justice that is meant to improve their lives.

Thus far this thesis has focused on the injustice of misframing, and calls for recognition and redistribution within a shifting frame of what is justice and who it should apply to. When the frame of justice is under flux, first-order claims to justice – those of recognition and redistribution – can get confused within discussion about the frame. Therefore this chapter sets the frame of justice by specifically examining the youth of Sierra Leone and therefore examining in greater detail their calls for first order claims to justice. Moreover, this chapter examines the dichotomy of greed versus grievance and explores the possibility that the war in Sierra Leone, rather than being fought as a war of selfish greed as argued by the Special Court, was rather a war based on legitimate grievance, where 'greed' can be taken to be a claim for a more egalitarian distribution of wealth and resources.

Significant portions of fieldwork were dedicated to gaining local perspectives on the causes of the civil war as well as the greatest challenges facing Sierra Leone today.

Across all groups interviewed endemic poverty, corruption, lack of education and employment, youth problems and inadequate judicial system were listed as challenges.<sup>174</sup> Amongst grassroots populations, and youth specifically, poverty was regularly highlighted as the most pervasive, difficult, and important hardship to overcome. The way that youth in particular described their relationship with poverty was striking, often describing it as a ‘war’ that is being waged against them, or as understanding it as a violent affliction. What is interesting about this description is that it acts as a point of interplay between greed and grievance, or as conceptualized by Fraser, the point at which the injustice of maldistribution is synonymous with the injustice of misrecognition

As discussed above, Fraser’s theory of justice investigates different forms of injustice and how they may be remedied. Briefly, Fraser argues that there are two types of injustice, the injustice of misrecognition – pertaining largely to identity politics – and the injustice of maldistribution, referring mainly to economic inequalities, but that virtually all injustices have elements of both maldistribution and misrecognition (Fraser, 1997, 2003, 2008). The problem with remedies to injustice, Fraser argues, is that they become ‘decoupled’. Justice initiatives seek to address either the injustice of maldistribution *or* the injustice of misrecognition, but not both. Immediately the parallel between Fraser’s identification of injustices and the ongoing debate regarding causes of civil war becomes apparent. In this case wars of greed are viewed as a violent response to maldistribution, and wars of grievance as a violent response to misrecognition. What makes poverty in Sierra Leone particularly interesting is that it is a clear meeting point between these two types of injustice. In Sierra Leone, poverty amongst youth has taken on a dual connotation of being both an injustice of

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<sup>174</sup> However how much ‘weight’ each factor was granted depended greatly on which participant group the interviewee was from. See chapter two for specifics on how participants were grouped.

misrecognition as well as maldistribution, and has been fought as a war of both greed and grievance. The oppression youth suffer is influenced and aggravated by their position as socially *and* economically marginalized persons. Their poverty is exacerbated by their marginalized position as youth and their marginalization is agitated by their poverty; it is this point of interplay then that this chapter investigates. The blending of these two types of injustice is a phenomenon that I have called Violent Poverty.

The purpose of this chapter, therefore, is to expand on the idea of violent poverty and show how it emerged and continues to manifest itself in Sierra Leonean society; this happens in three distinct yet interrelated ways. Primarily the idea of violent poverty was developed through interaction with local youth and as such this chapter focuses almost exclusively on the plight of young men in Sierra Leone. This chapter examines how youth, including ex-combatants, civilians and victims of Sierra Leone's civil war experience poverty and how they react to it. Secondly, this chapter highlights how violent poverty is exhibited institutionally. This is accomplished by investigating local justice in Sierra Leone, both judicial and traditional, and examining how the justice sector is understood from the local perspective and how it impacts daily lives. Lastly, this chapter looks at violent poverty in relation to both the causes of the civil war and the ongoing problems plaguing Sierra Leone. Specifically this section explores local perspectives on how factors contributing to the civil war have been dealt with and what is to be done to ensure a continued, if incomplete, peace.

It is my hope that this chapter will exemplify how poverty is perceived and experienced by youth in Sierra Leone as a tool of oppression. By probing the point at which greed and grievance, maldistribution and misrecognition meet and take on characteristics of each other, I hope to show how current understanding of the causes of

war and injustice and remedies to them are insufficient to building a lasting or cogent peace.

### *What is Violent Poverty – Explaining a Concept*

Before the concept of violent poverty can be explored contextually, it must first be discussed theoretically; how it emerged and what it entails. The decision to use the term ‘violent’ as a descriptor of poverty was not an easy one, but it helped me bring together several concepts. Firstly it helped conceptualize the greed/grievance debate in Sierra Leone. The decade long civil war in Sierra Leone, and the factors leading to it, has created a dichotomous discussion. On one hand there exists the grievance argument that the war was fought for legitimate political concerns; that it was a valid, if undeveloped, pursuit of political change by politically and socially marginalized youth (Hoffman 2006; Richards, 1996). On the other hand, there is the greed argument, that the war was perpetrated and perpetuated for personal gain. The greed perspective also has subdivisions, where researchers focus either on the pursuit of personal gain by the combatants themselves (Collier, 2000; Rashid, 1997; Abdullah, 1997; Coker, 2003) or on politicians and/or international stakeholders maintaining warlike conditions in order to reap the economic benefits of political instability (Smillie et al., 2000; Keen, 2005; Gberie, 2005). While there remain legitimate claims to the greed argument in Sierra Leone’s war, particularly relating to economic violence of warlordism and the failed state (Reno, 2000; Keen, 2005; Utas, 2012), the experience of youth is markedly different. The war, and the ongoing struggle fought by youth for economic empowerment, while it is often classified as a war of greed, has taken on the form of calls for recognition, or as a battle of grievance. Youth in Sierra Leone experience marginalization because of their position as youth, but also through the specific



economic disadvantage that they suffer. Access to wage generating labour, education and skills training is notoriously absent and as such youth can neither join society as adults, nor improve their economic standing. The injustice they experience as maldistribution is intertwined with the injustice of misrecognition; the two are inseparable and mutually reinforcing. The war and the ongoing violence cannot be seen as a struggle of greed *or* grievance but rather a combination of the two. By conceptualizing poverty as a violent affliction and the war as the physical manifestation of violent poverty, or as a reaction to it, I was better able to understand this confluence.

Secondly, the use of the term ‘violent’ stems from the way Sierra Leoneans express their experience of poverty. Poverty remains endemic in Sierra Leone and as such many locals do not differentiate between the pre-war, war and post war periods. For both civilians and ex-combatants alike, the causes leading to the civil war and what caused many soldiers to take up arms have not only not been addressed, but are in fact in a worse state than before the war (Fanthorpe & Maconachie, 2004).<sup>175</sup> The aggravation of these problems is not blamed on the war; rather it is seen as a continuity from pre-war to the present.<sup>176</sup>

*The factors that were working to bring the war still exist. They still exist. If you look at the desires among the young Sierra Leoneans, they want education, they want work, if they are in society and are not educated it is a problem.*<sup>177</sup>

Locals will use the war as an indicator of temporal changes, but not of social changes:

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<sup>175</sup> Interview with Doris Kanneh, Chair Woman, Women’s Forum, Freetown, 03/02/2011.

<sup>176</sup> The exacerbation of these problems is not seen as a result of the civil war but simply natural progression, insofar as the civil war is not blamed for the current state of affairs. Indeed this occurrence is represented in fact as well as feeling in the Human Development Index. As controversial as the HDI is, Sierra Leone remains in the bottom 10 countries evaluated, growth over the period from 1980 – 2010 is minimal and there is very little change in the HDI value between the pre-war, war and post war years (UNDP, 2010). Considering Sierra Leone suffered a devastating civil war for over 10 years, surely the development indicators should be down during those years. Yet they are not. The HD indicators for Congo for example, who also suffered civil war in the mid 1990s represent this, as during the years of conflict (1996-2008) the HDI value for Congo decreases (UNDP, 2010).

<sup>177</sup> Interview with Mohamed Jabbie, Youth commissioner Eastern Region, Campaign for Just Mining, Koidu Town, Kono 09/02/2011.

*It doesn't seem as if the people of Sierra Leone have learnt their lessons from the past war because the levels of injustice and poverty have become very endemic.*<sup>178</sup>

*There is no change in this country. Even in our political arena there is no change. All those things that got the war, still happen.*<sup>179</sup>

Additionally there is the impression that poverty, as experienced by youth, is oppressive, structural and deliberate, and that it is to be fought, violently if necessary.

The discourse surrounding the initial outbreak of war was similar. Young men were/are disgruntled, they were frustrated with the oppression they suffered.

*Disadvantage, the main of cause of the war was disadvantage, disadvantage from the authorities. If you don't have money you don't have any political backing, whatever you do will be in vain.*<sup>180</sup>

*Because you suppress a man's freedom for too long...you don't listen to him, you don't even give him the permission to express himself, if you push him to the level that he no longer has justice at his disposal, he ends up at war to get justice; that is exactly what happened. That was what we were facing here [before the war], there was suppression here, there was no justice... so he [Foday Sankoh] decided to collect the marginalized... our people took the bait.*<sup>181</sup>

Sierra Leoneans, young men in particular, felt powerless to improve their position in society; they were uneducated, unemployed and unable to gain access to education or employment. They saw these opportunities as being withheld from them by local elites and they saw the war as chance to revenge themselves against the politicians (Richards, 1996, UNDP, 2006).<sup>182</sup> Moreover, violence is viewed as way of obtaining what one needs in society. In a conversation with Mohamed Jabbie, a youth commissioner in the Eastern region, as to why some youth took up arms so enthusiastically at the outset of conflict, he replied:

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<sup>178</sup> Interview with Mohamed Yemoh, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

<sup>179</sup> Interview with Princess Rogers, Women in Action Against Gender Based Violence, MRD, Kenema 17/02/2011.

<sup>180</sup> Interview with Mohamed Labian, ex-combatant (Alie translating) Kenema 16/02/2011.

<sup>181</sup> Interview with Kenneth 'King Shining' Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011.

<sup>182</sup> Interview with Mohamed Jabbie, Youth commissioner Eastern Region, Campaign for Just Mining, Koidu Town, Kono 09/02/2011.

*He believes that holding the gun will give him the opportunity of entering university.*<sup>183</sup>

As discussed above, the same issues are plaguing Sierra Leone today. Youth are marginalized, they don't have access to education or employment, and even when they are educated, they are unable to secure work after they finish their education or skills training (Hoffman, 2011).<sup>184</sup> Furthermore, they feel they are not given a voice in the country because of their impoverished state. Regularly highlighted in the interviews was the association of money with justice and with being heard.

*People always suffer like this because you don't have money...*<sup>185</sup>

*The ordinary man cannot access justice because of lack of money.*<sup>186</sup>

*People do not get access to their justice because of money, and this country is so poor.*<sup>187</sup>

Increasingly, this economic and social marginalization<sup>188</sup> has violent consequences; not only within Sierra Leone but also internationally. At the time of fieldwork, numerous young men were signing up for potential employment in Iraq. Ostensibly this was for maintenance or mechanical work, but there was an understanding that they would likely engage in training local militia units or even in combat.<sup>189</sup> This phenomenon is also seen in the wider Mano-region<sup>190</sup> where ex-combatants, unable to reintegrate into their communities, travel from country to country offering their services as mercenaries (HRW, 2005). Even if they do not engage

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<sup>183</sup> Interview with Reverend Spencer, Founder, Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

<sup>184</sup> Interview with 4 ex-combatants, Hamatu Kamara, Abbas, Lusine Kango, Mohammed Labian, (Alie translating), Kenema, 16/02/2011.

<sup>185</sup> Interview with Doris Kanneh, Chair Woman, Women's Forum, Freetown, 03/02/2011.

<sup>186</sup> Interview with Madieu Barrie, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

<sup>187</sup> Ibid.

<sup>188</sup> Sierra Leone remains bottom of the UN development index at 177 out of 186, although it has seen steady improvement over the last 5 years. In 2008 it was 177 out of 178 (UN, 2012). Furthermore youth unemployment hovers around 60% (World Bank 2012), a figure which many claim is low, but which does not include those who are employed in the informal sector.

<sup>189</sup> Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011, Interview with Reverend Spencer, Founder, Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

<sup>190</sup> Including neighbouring countries Liberia, Guinea, Ghana, and Cote d'Ivoire and even as far as Libya.

directly in the conflict, they are putting themselves at risk and in violent situations, a decision that is compelled by poverty, as one commentator demanded of his colleague during the interview:

*if you were not destitute, would you still say, 'I'll go to Iraq?'*<sup>191</sup>

Finally, the idea of violent poverty emerged from the fieldwork itself. In one of the last interviews of the first fieldwork trip, a participant by the name of Alpha<sup>192</sup> gave voice to a theme that had been running, unrecognized, through a significant portion of interviews; particularly interviews with young men and ex-combatants. Alpha described poverty as a second war that is being waged against the people of Sierra Leone.

*We have always been fighting two wars in this country. There have always been two wars. The physical war of the 11 years civil war and the war of poverty. They say the war is done, but we still have poverty. We still have no jobs, no work. Nothing has changed. Nothing will ever change.*<sup>193</sup>

This statement by Alpha encompasses the characteristics of violent poverty outlined above. It highlights the continuity in issues facing Sierra Leone, it underscores the perception of oppression and subordination of poverty held by local populations and it draws attention to the point of convergence of greed and grievance or maldistribution and misrecognition. In short, it helped highlight the violent nature of poverty in Sierra Leone.

It was also a theme that was reiterated throughout fieldwork in various interviews. The use of 'war' to describe poverty took on several forms. It was often used as Alpha used it, as a direct link to the war, as one unemployed local woman, Annie, stated:

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<sup>191</sup> Interview with Mohamed M, Teacher - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

<sup>192</sup> A civilian survivor of the war, currently engaged in a local initiative aimed at reintegrating youth with their rural communities and facilitating a drive towards subsistence farming.

<sup>193</sup> Interview with Alpha Kay Koroma, Employee Resource Centres on Urban Agriculture and Food Security (RUAF)/ Freetown Urban and Peri-Urban Agriculture Project (FUPAP), Freetown 25/03/2010.

*The war is not over, it is still going. We have nothing to eat. I want to buy rice, it is 5000Le, how am I to get that when I don't work. How are we to eat?...I lost my sisters, they left me with four children, my brother left me with one children [sic], who is to take care of them?*<sup>194</sup>

This statement also has an additional element of violent poverty because it takes into account the poverty created by war. In this case, Annie had become the sole provider for her siblings' 5 children. Two of Annie's siblings had been killed in the war and one had died after. This not only affected the children's opportunities, but Annie's as well, as she became further impoverished by having to raise 5 additional children, whilst already lacking the capacity to maintain herself.

The final element in violent poverty and its relationship to war is how it influences local perspectives on peace. While the war was officially declared over in 2002, local narratives do not view the absence of declared war as peace; but rather view peace as conditional on much more than merely the absence of physical violence. In a group interview at a school/orphanage for orphans of the civil war, one teacher – a former resident who had returned to teach – made a poignant statement:

*If we are talking about peace, it's not merely the silence of the guns, it is about survival, about putting food on your plate.*<sup>195</sup>

Again here, the relationship between war and poverty is highlighted as well as the continuity of violent structures of poverty. Moreover, the types of violence that Sierra Leoneans are experiencing, while not officially 'war' do not differentiate substantially from the violence of the civil war, particularly if you adhere to the greed argument.

*Right now we are not enjoying peace in Sierra Leone because at night here there is this burglary, armed robbery [hijacking], harassment in the streets of Freetown, roadblocks...*<sup>196</sup>

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<sup>194</sup> Interview with Annie, no affiliations, Freetown, 22/02/2010.

<sup>195</sup> Interview with Raphael Vandi, Volunteer Teacher - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

<sup>196</sup> Interview with Reverend Spencer, Founder Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

These types of crimes, while not committed on the scale that they were during the conflict, are similar to those committed with impunity during the crisis, further blurring the line between war and peace and violence and poverty. In fact many former mid-level commanders maintain elevated positions in society, especially in rural Sierra Leone. Many 'manage' informal road blocks, which ostensibly stop travelers to look for contraband or smuggled goods, but which are really extortion points (Christensen, 2012). Road blocks were a frequent occurrence during the conflict, often used as sites of ambush. While the violence of these new road blocks is not on the same scale as during the war, their occurrence combined with management by former combatants, would resonate with local populations (Christensen, 2012).

Because of this interplay between violence and poverty and the relationship they have in the narratives of Sierra Leonean populations, I have conceptualized the term violent poverty as a way of depicting the extreme form of poverty in Sierra Leone and how it takes on characteristics of violence, maldistribution and misrecognition. The remainder of this chapter gives context to the theory of violent poverty and investigates the precise ways in which it manifests itself.

### *Case Study*

The purpose of this chapter is to investigate the concept of violent poverty; this exploration is both conceptual and contextual. The first section of this chapter explored the idea of violent poverty conceptually, developing the idea from the fieldwork and explaining how and why it emerged. The second part of this chapter takes the theory of violent poverty and places it back within the context of Sierra Leone and examines how it manifests itself in Sierra Leonean society. This happens in three separate yet interconnected ways. The idea of violent poverty was developed through the

researcher's interaction with local youth and as such this chapter focuses almost exclusively on the plight of young men in Sierra Leone. This is not to say that there are no other marginalized groups in Sierra Leone that experience violent poverty as severely or more severely than youth, but rather this focus stems from the fact that participants in the research were largely drawn from the group categorized as youth – a categorization that comes from both them and society in general (O'Brien, 1996). As a result, this chapter examines how Sierra Leonean youth, both ex-combatants and civilians, experience violent poverty and how they react to it. Secondly, this chapter highlights how violent poverty is institutionalized in Sierra Leone and explores its structural persistence. This is accomplished by investigating the very institutions that are ostensibly there to manage this type of injustice, including both customary and legal forums ( i.e. traditional and national courts and local and international development initiatives). Finally this chapter looks at violent poverty in relation to both the causes of the civil war and the ongoing problems plaguing Sierra Leone, focusing extensively on youth and judicial structures. It is my hope that by examining these manifestations of violent poverty in Sierra Leone, we can begin to understand poverty as an injustice of both misrecognition and maldistribution and as a cause for wars of both greed and grievance. Once the true nature of the challenges facing Sierra Leone today are fully understood, mechanisms for addressing these challenges can be developed.

### *Youth*

The concept of youth is a complicated one in Sierra Leone, as it is tied up with cultural assumptions and traditions that make it markedly different from even internationally standardized definitions of youth. Unlike many western states, youth in Sierra Leone is not age specific or exclusive an demarcation. Indeed the transition

between youth and adulthood is complicated by many factors including, access to wage generating employment, marital status and level of education (Christensen & Utas, 2008; O'Brien, 1996).

*One of the requirements of being an adult is to have a wife, how can you get a wife if you don't have a job?...<sup>197</sup>*

*In this country everybody calls himself a youth as long as he doesn't have grey hairs, even if they have grey hairs, even if they have no hairs, they call themselves youth.<sup>198</sup>*

But as one participant explained:

*they identify themselves as youth because they identify themselves with the capacity to become adults.<sup>199</sup>*

They understand that they have not joined society as recognized participants and have yet to attain full development.

Furthermore, youth in Sierra Leone carries with it its own cultural assumptions that do not necessarily resonate with western ideals. Youth, and specifically childhood, is seen as a transitional period for people in Sierra Leone. This transition is not from childhood to adolescence or adulthood, but rather between the real world and the spirit world. Children in particular are viewed as ideal conduits for spirits seeking to return to earth (Hoffman, 2006; Ferme, 2001). During their youth, children are more 'available', even unwillingly, for interference from supernatural beings (Ferme, 2001; Beah, 2007). Because of this association with the occult, children and youth are not associated with the innocence that children and youth in the West are. Youth, and children specifically are viewed with a certain amount of distrust and are watched as creatures to be feared (Hoffman, 2011; Ferme, 2001).

In Sierra Leone this stigma both facilitated and is aggravated by the civil war. Due to the cultural assumptions that surround children in Sierra Leone, they were not

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<sup>197</sup> Interview with Patrick, UN compound, Freetown, 05/03/2010.

<sup>198</sup> Interview with Mohammed Jalloh, Project Manager KOCEPO, Koidu town, Kono, 09/02/2011.

<sup>199</sup> Interview with Jilifa Jojo, Civil and Political Affairs Officer, UNIPSIL, Kono, 10/02/2011.



overlooked as participants in the civil war (Denov, 2010; Richards, 2005). Certainly Sierra Leone has been regularly highlighted for its use of child soldiers, even making history as the first nation to prosecute war criminals for the recruitment and use of child soldiers (SCSL, 2002). Furthermore, child soldiers or Small Boy Units (SBUs) were often noted for their fearlessness and savagery. Children made ideal soldiers, obeying unquestioningly and remaining fiercely loyal (Denov & Maclure, 2007).<sup>200</sup> While the associations with the occult and savagery largely pertain to children, the problem remains that those who were recruited into the war as children were adolescents or young adults (by age reckoning) by the time the war was declared over. The problem this creates is twofold: on the one hand there is a need to reintegrate them into society, specifically their home communities, but because of the crimes they may have committed and the atrocities they may have participated in – i.e. the violent stigma that surrounds them – they are often rejected by these communities,<sup>201</sup> leaving them homeless and rootless (Murphy, 2003). Furthermore, this physical removal from their community is mirrored in their removal from their family units. Many youth lost one or both parents during the war, either through death or being separated, resulting in a loss of stability (Murphy, 2003).<sup>202</sup> On the other hand because their formative years were spent either in combat or – as often – on the run from warring factions they have lost educational opportunities they may have otherwise had (Denov, 2010).

*After the civil war, many youth, saw themselves as too old to re-enter the education system...they remain uneducated. They do not discuss their own marginalization because they do not feel capacitated to do so.*<sup>203</sup>

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<sup>200</sup> However it should be noted that “evidence before [TRC] indicated that the military leaders of both the RUF and the pro-government militias had begun their careers as child-soldiers themselves. They had been recruited to British colonial forces in the 1950s, when they were in their early teens...it was the British who coined the term ‘Small Boy Units’... (Schabas, 2006: 33).

<sup>201</sup> Interview with Mohamed Jalloh (Jalloh) KOCEPO, Koidu City, Kono, 09/02/2011.

<sup>202</sup> Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011.

<sup>203</sup> Interview with Braima Conteh, Project Manager - AMNet, Freetown 09/02/2010.

At the end of the conflict some ex-combatants were offered reintegration packages, including some rehabilitation and skills training as well as a ‘starter kit’ in their chosen trade, but the DDR process was fraught with problems including corruption, theft and patrimonialism (Hoffman, 2011).

While children and ex-combatants share these stigmas, youth in general suffer from similar labelling. Leading up to the civil war politicians had taken to recruiting local youth as ad hoc members of their political parties. Young men, bribed with alcohol, drugs or promises of aid if the politician were elected, would attack rival politicians and parties (Bangura, 1997). These groups were, and still are, used as political thugs.<sup>204</sup> They can be engaged in intimidation tactics against voters or opposition parties or in overt violence against opposition and opposition supporters (Christensen & Utas, 2008).

*They are plenty in number. They are scattered all over the country, traveling in groups. You'll go and find them, sitting in the ghettos, doing nothing. Indulging and cigarette smoking, drug abuse, alcoholism...during political campaigns you'll see politicians going to these places providing these youths with alcohol. When they are intoxicated they'll tell them, go out and campaign for me. You see them in the streets, shouting, fighting...and after the election; there is no contact with them any longer. Instead they'll send police to raid them, capture them, arrest them, take them away to prison...these are situations that are far beyond their control...a good number of them are single parentage, a good number don't have parents, a good number are completely destitute, they don't even have a source of income for survival per day, so they are faced with a situation where they have no alternative.<sup>205</sup>*

*Politicians create problems for youth...they use youth to intimidate, sabotage and injure political rivals. Politicians seduce youth with promises to help them when they gain power, and then forget about them.<sup>206</sup>*

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<sup>204</sup> During fieldwork Jan- April 2010, a parliamentary by-election in Tongo Fields broke out in violence because of this phenomenon. A youth group leader was paid in alcohol and offered a ‘promotion’ if he led an attack on a rival party during the election (Interview with Patrick, UN compound, Freetown, 05/03/2010).

<sup>205</sup> Interview with Braima Conteh, Project Manager - AMNet, Freetown 09/02/2010.

<sup>206</sup> Interview with Fitzgerald, Teacher - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

There are those who argue that the civil war was really just an extreme form of this political thuggery (Abdullah, 1997; Rashid, 1997), explaining the violence as ‘lumpen youth culture’. Yet many ex-combatants felt they did have a political agenda when taking up arms (Richards, 1996).<sup>207</sup> Due to this type of exploitation by those in power, youth are marginalized by their association with this anti-social and violent behaviour.

Although the exclusion of youth in this case can be seen as an injustice of misrecognition, in that they are associated with political thuggery, it is compounded and intensified by the injustice of maldistribution. The impoverished state of youth leaves them vulnerable to this type of appropriation into violent political gangs. The loyalty that SBUs showed their direct commanders stems largely from the fact that they relied on these commanders for everything. The commanders were the combatants’ *in locus parentis* and as such their source of food, money, protection and safety (Denov, 2010; Murphy, 2003). If youth had not been in such a disadvantaged state to begin with, recruitment would have been more difficult and they would have had other options.<sup>208</sup> This remains the case today, youth engage in political violence both as a livelihood and as means of improving their place in the status hierarchy (Christensen, 2012).<sup>209</sup>

*There are chiefdoms where youth say they prefer the war period. They understand that peace is better for everyone, but during the war period the authorities listened to them, they had a say in the political process, but now they don't even know what is happening, they don't know where their fate lies.*<sup>210</sup>

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<sup>207</sup> Interview with Lion, former RUF commander, Grafton, 23/03/2010.

<sup>208</sup> Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011.

<sup>209</sup> Idrissa Kamara AKA Leather Boot, former minister under the AFRC military junta and former number one security agent for President Earnest Bai Koroma. Kamara had a made name for himself as one of the members of the RUF and as a notorious criminal amongst them. Being from the same ethnic group, and having a fierce reputation, upon the election of President Koroma, Kamara was made head of the president’s personal security. In this case it can be seen that Kamara directly benefited from being the most violent thug around.

<sup>210</sup> Interview with Mohamed Jalloh (Jalloh) KOCEPO, Koidu City, Kono, 09/02/2011.

This theme also came up in fieldwork. In reference to politically motivated attacks in Tongo Fields<sup>211</sup> during the parliamentary by-election:

*I know exactly the guy who went to get the youth and take them, [who] led the attack. And the person who did it, [did it] because they promised him something, the party, they promised pay out, it doesn't make sense to do it unless they pay out and that's why they do these things, because he can't handle [the stress] by not giving them access to things like wealth or creation of wealth.<sup>212</sup>*

Furthermore, gang activity, particularly in the east end of Freetown, often stems from combat groups from the civil war (Christensen, 2012). The leaders of these gangs, typically former mid-level commanders, use their status from the war to maintain some control over people and resources:

*everything is good and fine for them, they seize their freedom.<sup>213</sup>*

In this last quote it becomes clear that youth learn to use violence to overthrow poverty. It also shows how the structures from the war period, both those of oppression and retribution, carry over into the post war period.

The association of youth with violence also has an impact on their place in wider society. They are seen as violent by nature; there is an understanding that they are being used by those in power, but they are also seen as active and eager participants in this:

*most of the time, the youth, they are not elite, and because of the nature of their life, they are afraid of peace. Some go to drugs, some go to other things like violence...the youth are being used as weapons against the populace.<sup>214</sup>*

Because of this association of youth with violence, drug and alcohol abuse and other criminal activity, they are not trusted by wider society and have difficulty securing wage generating work (Hoffman, 2011; Christensen, 2012). One witness in Freetown commented:

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<sup>211</sup> Kenema District, South Eastern Sierra Leone.

<sup>212</sup> Interview with Patrick, UN compound, Freetown, 05/03/2010.

<sup>213</sup> Interview with Mohamed M, Teacher - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

<sup>214</sup> Interview with Jilifa Jojo, Civil and Political Affairs Officer, UNIPSIL, Kono, 10/02/2011.

*they can't get a job because no one wants to give them work because they are a problem and they are a problem because they can't get a job.*<sup>215</sup>

A volunteer teacher at an orphanage in Waterloo, added:

*Ex-combatants in particular are excluded from society. Many will not use their services even if they have training as a mechanic or a carpenter. Many do not trust ex-combatants...especially ex-RUF.*<sup>216</sup>

From this it is clear that the marginalization that youth suffer flows from both the injustice of association with a maligned identity and the injustice of unequal economic circumstances. Youth are vilified in Sierra Leonean society for their association with violence, drugs, alcohol and criminal behaviour. Their impoverishment is both a result of, and a contributor to, their continued mistreatment. They are forced into a world of drugs and violence because of their poverty, and they are mistreated due to their position as one of the most economically disadvantaged groups (UNDP, 2006).

What is particularly striking about youth in Sierra Leone is they are the focus for the majority of domestic and INGO projects. Vast numbers of projects aimed at development in Sierra Leone are designed with the intent of engaging youth and the energy they harness, yet regardless of this, they not only remain structurally disadvantaged, but are identified as responsible for their own impoverishment. While many interviewees lamented the state of youth and seemed to commiserate with them in their ongoing plight, many participants, particularly from the elite/policy maker group – although youth themselves were not immune to this – were quick to criticize youth as idle, lazy and ignorant and unwilling to work for gain. This was particularly shocking amongst those whose stated mandate was to engage youth and help them become and remain full members of society. Youth themselves were not immune to thinking this of

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<sup>215</sup> Interview with Patrick, UN compound, Freetown, 05/03/2010.

<sup>216</sup> Interview with Raphael Vandi, Volunteer Teacher Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

their colleagues. Even those who had completed their education, including higher education, and were still unable to obtain work blamed other youth for their lack of desire for work.

*The youth are their own problem...in my own village there is a training centre...and I have spoken to them to come there to learn something, but my brothers want money. They want to get the money, but they don't want to work. And most of them didn't go to school. They don't learn anything. So I am telling them to learn something so they can be self employed but that is the problem, the youth today don't want to work, they don't want to learn anything. We can't expect politicians to come and feed us. That is our problem.<sup>217</sup>*

The above quote was from a civilian man, Raphael Vandi, who classified himself as youth. What was interesting about Mohamed was that he had completed his education, having studied economics at FBC and qualified as an accountant, but for 3 years since he graduated he had been unable to secure employment. At the time of interview, he was volunteering as a teacher at the orphanage where he spent his childhood. The distinction that Mohamed makes between himself and the 'other' youth is salient. Regardless of the hardships he has faced attempting to access employment as an educated man, he is scornful of those who lack the capacity to pursue education. His scorn is particularly interesting when noting that lack of educational opportunity is usually due to financial concerns, and lacking in education, these individuals would likely have an even more difficult time finding work. What is also interesting is Mohamed's insistence that his peers get educated or obtain some form of skills training. From his own experience there should be some understanding that there is simply no demand for workers, whether skilled, unskilled, educated or uneducated. Moreover, since 2004 there has been a glut in the Sierra Leonean labour force of those trained as carpenters, car mechanics and tailors, as well as those educated to a primary level, as these were the skills and education offered by the Disarmament, Demobilization and

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<sup>217</sup> Interview with Raphael Vandi, Volunteer Teacher - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School, Waterloo, 11/02/2010.

Reintegration (DDR) program (Malan, 2003). This therefore creates an interesting conundrum. While there is substantial focus on the development of youth themselves, there is no corresponding focus on creating an economic or political space for them to move into (Diouf, 2003).

Furthermore, this lack of opportunity shows how youth are marginalized both by their poverty and their status as youth and how these two are mutually reinforcing. The youth are suffering the injustice of both misrecognition and maldistribution and the two are inseparable. The structures that are in place that keep them impoverished are systemic and their poverty prevents them from gaining the stature to overthrow the system, thus the violent nature of their poverty.

To date, the vast majority of youth centred development programs have been focused on rights based development (RBD), such as the passing of the Three Gender Acts, the Moratorium on Female Genital Mutilation or the banning of corporeal punishment in schools. While there is considerable debate surrounding rights based development, in the Sierra Leone specific context it has taken the form of teaching local populations about their rights, and largely leaving it to local populations and civil society groups to pressure government for change. In Sierra Leone this has resulted in a great amount of frustration amongst youth,<sup>218</sup> as attempts to claim the rights they ostensibly possess are met with various obstacles. For example, youth are told that they have the right to free, basic education, but many are charged ‘school fees’, that are beyond their means to pay. As such this right is barred to them. This phenomenon is perhaps most visible and prevalent in the justice sector; specifically in community courts.

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<sup>218</sup> Also amongst women, but that is a considerable topic and as such deserves a much more meaningful discussion than can be offered here.

The next section of this chapter, therefore, discusses problems in the local justice sector in more depth. Specifically it looks at problems in the community or local chieftaincy courts, including the types of justice and arbitration available, problems with a rights based development approach and how these mechanisms combine resulting in increased frustration and decreased faith in the judicial system.

### *Local Justice*

Officially Sierra Leone has something of a dual court system as the people are governed by both customary law and common law. The common law system was brought in by the British and is meant to supersede the customary law system.<sup>219</sup> Of course due to location, finance and transport issues, not all people have access to a court where cases are tried under the common law. In this case locals are encouraged to approach their local paramount chief with their complaint and s/he acts as a mediator in local disputes. There are, ostensibly, regulations surrounding the capacity of paramount chiefs to try cases. For example, they are not permitted to levy fines over 250,000 Le (roughly US\$60) and are only intended to hear cases regarding ‘non-serious’ or ‘non-violent’ crimes.<sup>220</sup> Thus they are primarily intended to arbitrate on such disputes as land claims, inheritance, petty theft etc. This then leaves ‘serious’ or ‘violent crimes’ to the local magistrates and judges to decide upon. Immediately some causes for confusion become clear. Locals are often unsure of which ‘court’ they are supposed to bring their case to, they are confused about which type of law takes precedence and, in many ways, they are unfamiliar with the laws that ostensibly govern them (Kelsall, 2009).

Secondly, physical access to justice is problematic, with few magistrates and even fewer judges serving the rural areas, gaining access to a court is exceedingly

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<sup>219</sup> Interview with Kizito Bangura, Human Rights Officer, UNIPSIL, Kono, 10/02/2011.

<sup>220</sup> Sierra Leone Chieftaincy Act, 2009.



difficult. Additional to the physical barriers to justice, locals often perceive access to justice as being barred from them in the abstract sense as well. Corruption is ongoing and endemic in the justice system (Kelsall, 2009; Hoffman, 2007) and there is the regular correlation of possessing money to gaining justice. This corruption is rife and as long as justice needs to be bought, locals and youth specifically lack the means to gain full access to justice, whether it is legal, social or both. As discussed in chapter one, the levying of heavy fines against youth – as a means of ensuring their indentured servitude – was a factor leading to the conflict (Fithen & Richards, 2005). This is ongoing today and was regularly highlighted during fieldwork. As youth are unable to pay either fines or bribes – to make the charge disappear – they are either forced to work for very little, or will run away to escape the fine, thereby becoming ‘footloose’, another contributing factor to the war.

Again the injustice that youth suffer is manifold; ironically, this suffering occurs at the hands of the justice sector. This section of the chapter examines how the justice system fails the youth of Sierra Leone in its capacity to grant them equal access to both legal and social justice. This is accomplished by looking at the disparate nature of what Sierra Leonean youth are promised through rights based development approaches and what they are offered in the justice sector.

Throughout fieldwork, the link between securing access to wealth and accessing justice was regularly highlighted. What is particularly interesting is that this association was noted by nearly all groups, although again, the relationship differed depending on which group the participant came from. Youth and grassroots populations and those in the NGO sector were most likely to make the direct correlation between justice and money, referring specifically to the endemic corruption that plagues the justice system. Those in the elite or policy maker category were also likely to make this association but

were more likely to relate it to being deprived of justice because of lack of access to things such as qualified lawyers and legal aid. Regardless of how the problem manifests itself, the important point is that all groups felt that there was a relationship between access to wealth and access to justice. This then emphasizes the structurally violent nature of poverty against youth. Amongst the most impoverished, youth lack the ability to pay the necessary fines or bribes to court officials or plaintiffs and they do not have the funds to access formal legal aid (Carlin, 2011).<sup>221</sup> In addition, because of the stigma attached to them (as discussed in the previous section), they are also amongst the most likely to be accused of crimes or, by force of their inability to secure gainful employment, the most likely to commit crimes. What is also important to note is that because of their position as both socially and economically marginalized persons, youth lack the capacity to bring cases forward themselves, particularly against those with a higher social or economic position in the status and class hierarchy.<sup>222</sup>

What is most interesting, however, is the domestic and international response to this gap in the justice system. These responses have taken one branch of a two pronged approach. Either they have focused on the youth themselves – educating them about the types of rights they possess; or they focus on the professionalism of the employees in the justice sector, but neither approach engages with nor addresses the true problems in the justice sector.

The latter branch of professionalism is an interesting case. The stated purpose behind this focus is to help weed out corruption in the judicial system and help develop respect for the rights of the accused, perpetrators, convicts, etc. However, this seldom has the desired effect. Whilst court buildings are rebuilt and court officials see their

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<sup>221</sup> Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011.

<sup>222</sup> Mistreatment by an employer for example, particularly in the rural areas. This is especially prevalent amongst women who are unable to bring complaints against men because of their position in society are not given the same considerations as men.

salaries increase, the complaints against them remain largely the same.<sup>223</sup> The institutions of justice are being rebuilt but the institution of justice remains inherently corrupt and decimated (Jefferson, 2009a).<sup>224</sup> As one participant commented:

*While there has been lot of money put into the justice sector in Sierra Leone, only the physical structures have changed. The courthouse, police stations, and personnel are better equipped and uniformed but the actual procedural structures have not changed...[it is] only the structures that are being improved, the lawyers and the judges they have very good salaries now... They have decent quarters, decent vehicles, decent court houses. The police they have decent houses, with decent vehicles with decent uniforms. Apart from that it is really difficult and if not impossible [to access justice]. If we fail to put our concerted efforts together we are gradually marching backwards towards the 11 years war.*<sup>225</sup>

While it is important that the physical structures be rebuilt, they are still largely inaccessible to local populations, particularly rural populations. With one magistrate serving more than 500,000 people in the Kenema district, few roads and even fewer modes of transportation, many locals cannot physically access the new or rebuilt courthouses. Moreover, as the participant above stated, regardless of the physical changes and increased salaries, justice remains inaccessible and *this* will “march them backwards” to the civil war. He is drawing a clear line from the current period to the pre-war and war eras. As discussed below, the physical absence of justice for rural populations is a leading cause of frustration and disillusionment.

The former branch, the focus on rights based development, is similarly problematic. While teaching youth about the rights they possess is an important step in the development process, exclusively teaching them about their rights is a disservice to them. Many NGOs and NGO employees interviewed were focused on educating youth about their rights, specifically rights that have come into ‘force’ since the end of the conflict. This includes things like the three Gender Acts, which are about training

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<sup>223</sup> Interview with Rhoda Kargbo, Senior Lawyer Appeals Chamber SCSL, Freetown, 04/02/2011

<sup>224</sup> Presentation by Andrew Jefferson, King’s College London, 25 March 2009.

<sup>225</sup> Interview with Milton Dassama, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

women that they have the same rights as men in society, that they cannot be beaten, that they have rights to inheritance, and that it is not their fault if they are raped (CARL, 2008). Furthermore youth are trained on their rights in the justice system. For example that local chiefs cannot try cases of ‘violent’ crimes nor are they permitted to levy fines higher than 250,000 Le (approximately US\$60) (Chieftaincy Act, 2009). Knowing these rights, however, is not the same as being able to use them or claim them. Frequently, youth are charged exorbitant fines for petty crimes or are forced to use their local chieftaincy based court for serious crimes because of a lack of access to alternatives (Fithen & Richards, 2005).<sup>226</sup> This became starkly clear in a conversation with one respondent. Hamatu is a former combatant,<sup>227</sup> since the end of the war she has been trying to earn a living through ownership of a fruit and vegetable stall at the local market.<sup>228</sup> One day she witnessed a woman beating her own child. Hamatu had been to a series of seminars educating them on the rights of the child, so she went to the woman and told her she could not beat her child. There was an altercation between the two women. Several days later Hamatu was summoned to the local chief’s house to address the matter of assault between the women. Hamatu was ordered to pay a fine to the woman for the assault. She refused, on the grounds that the fine was over the legal limit and that she had done nothing wrong. Several days later when trying to cross a check point at Badema, Hamatu was arrested and held for her refusal to pay the fine and refusal to honour further summons from the chief. She had since become aware – through a friend in the police force – that the woman in question had bribed the Chief with 10,000 Le and the Chief had bribed the police at the checkpoint. Hamatu had tried

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<sup>226</sup> Interview with Braima Conteh, Project Manager - AMNet, Freetown 09/02/2010.

<sup>227</sup> Hamatu is one of the number of former girl child soldiers who is marginalized because of her status as an ex-combatant but more importantly because she is a *female* ex-combatant. This group is regularly overlooked by local and international aid organizations (Denov, 2010).

<sup>228</sup> She did not qualify for DDR assistance. Interview with Hamatu Kamara, ex-combatant (Alie translating), Kenema, 16/02/2011.

to bring the case to the local magistrate but has been met with dead ends; the magistrate does not live in the area, he does not come every day and does not show up when he says he will.<sup>229</sup> Hamatu has also brought this issue to the local Women's group, hoping for assistance. The women's group has approached the Chief and demanded that he give back the initial bribe to the woman in question and drop the charges, but he refuses. Meanwhile Hamatu faces stigma in the village where she lives, her market stall has suffered as she claims people will no longer buy from her and she is frequently harassed by police.<sup>230</sup>

The above anecdote starkly outlines the dissonance between what youth are taught and what they have access to. While they are taught that they have the right to be free from heavy fines and have access to legal justice, the reality is that there is no space for them to claim these rights. As in Hamatu's story, attempts to use these rights against the corrupt system are often met with dead ends, threats, and occasionally violence (Utas, 2012).

What is also underlined in Hamatu's story is the pressure most youth face in accessing their local chieftaincy courts, or Kangaroo courts as they are referred to in local vernacular. As mentioned previously, Kenema district, where the interview with Hamatu was carried out, has a population of nearly 550,000 people and covers an area of more than 6000 km<sup>2</sup> (Sierra Leone Census, 2004). What is more, most of the population of Kenema lives in remote villages. There are few roads connecting towns and villages and those that do exist are in extremely poor condition. Furthermore, many locals do not have access to transportation. Privately owned vehicles are exceedingly rare and public transportation is unreliable and can be expensive. Due to these physical and economic boundaries, many people cannot access the local magistrate court.

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<sup>229</sup> This argument was corroborated by a number of interviewees in the Kenema district, which has over 500,000 residents and only one magistrate.

<sup>230</sup> Interview with Hamatu Kamara, ex-combatant (Alie translating), Kenema, 16/02/2011.

In addition, because the Magistrate himself has to cover such a large area, he is seldom available. He has offices in the major towns in Kenema district, including Kenema, Blama, Tongo and Yomboma but does not make trips to the more rural villages, meaning rural populations must travel to him. A frequent complaint of the current magistrate during fieldwork was that he was never available when he was scheduled to be, and when he was present he would arrive late to the office and leave early, hearing maybe one case before closing for the day. Because of the travel and expense involved, locals cannot simply rush to the city where the magistrate is that day. Travel often takes hours over poor roads and because he often closes early, they seldom make it on time.<sup>231</sup> At the time of writing, the magistrate for neighbouring Kailahun had died and not been replaced, thus the Magistrate for Kenema district was covering Kailahun as well. Kailahun has a population of more than 400,000 people (Sierra Leone Census, 2004), leaving one man to hear the cases of nearly 1 million people.<sup>232</sup>

As a result of this combination of factors, many locals have no alternatives to use their local courts, regardless of the problems associated with them. Again, youth are the most likely victims of this type of injustice, particularly being fined inordinate amounts of money.<sup>233</sup> Here again, the violent nature of poverty that youth suffer becomes obvious. In their role as socially marginalized persons they are more likely to be brought before a court, and thus are affected by the misrecognition of their identity. In their capacity as the most economically marginalized, they are unable to pay fines or bribes or even make appearances or complaints to their local magistrate, and thus are affected by the unequal distribution of wealth. The bipartite character of injustice is

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<sup>231</sup> Interview with Milton Dassama, Movement for the Restoration of Democracy, Kenema, 17/02/2011.

<sup>232</sup> Interview with Mariama Koroma, Women in Action Against Gender Based Violence, MRD, Kenema, 17/02/2011.

<sup>233</sup> Interview with Braima Conteh, Project Manager - AMNet, Freetown 09/02/2010.

clear; youth are subjected to both misrecognition and maldistribution through justice institutions in Sierra Leone.

The above discussion largely pertains to access to justice in rural areas where courts and trained personnel are scarce. However there are also problems in major city centres where access to more formal routes of justice is supposedly more readily available. Freetown and Bo are Sierra Leone's two largest cities, housing just over a quarter of the total population of Sierra Leone within them. As such, they are the residence for the vast majority of legal personnel, particularly Freetown, as it is also the site of the Special Court for Sierra Leone. While there has been an increase in trained legal personnel in Sierra Leone since the end of the civil war and with the establishment of the SCSL, there are very few who are willing to take on *pro bono* cases.<sup>234</sup> As a consequence of their economic woes, youth are unable to pay for the services of trained legal personnel and regardless of a 2010 pilot project, Sierra Leone does not have court appointed defence attorneys nor a public defenders' office (Bundu, 2010). As a result, those accused of crimes, particularly children and youth in Freetown, are often held in prison awaiting trial and legal representation.<sup>235</sup> When their trial comes up, because they have no legal representation and no one is willing to take their case *pro bono*, they are returned to prison, sometimes for years.<sup>236</sup> While it is problematic enough that juveniles and youth are being held for extended periods of time without trial or representation, in many cases there is insufficient room in the prisons and they are imprisoned with adult offenders (Carlin, 2011).<sup>237</sup> Here the violent nature of poverty is stark. Because of their poverty, youth are unable to secure fair treatment in the justice system, both at the customary and common law courts and their treatment by the courts

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<sup>234</sup> Interview with Rhoda Kargbo, Senior Lawyer Appeals Chamber SCSL, Freetown, 04/02/2011.

<sup>235</sup> Interview with Jennifer Betley-Betts, Lawyer in Appeals Chamber, SCSL, Member of LAWYERS, Freetown, 03/02/2011.

<sup>236</sup> Ibid.

<sup>237</sup> Interview with Rhoda Kargbo, Senior Lawyer Appeals Chamber SCSL, Freetown, 04/02/2011.

further exacerbates their position as maligned segments of society. It is understandable that youth find these structures oppressive and violent.

The level of frustration expressed by youth because of these issues is distinctive, particularly when put in context of the rest of this chapter. The way the current plight of youth is described, both in the relevant literature and by contemporary populations, is remarkably similar to the condition of youth in the pre-war era (Richards, 1996; Fithen & Richards, 2005; Bangura, 1997; Rashid, 1997; Kandeh, 1999; Fanthorpe & Maconachie, 2004). The final section of this chapter investigates the dialogue surrounding the condition of youth, the increasing frustration of youth, their lack of faith in the system as a whole and how this is similar to the pre-war dynamic and the causes leading to the civil war.

### *Causes of Civil War*

There is a strong debate surrounding civil war and the causes leading to it; the case of Sierra Leone is no different. The pre-war and war literature is largely divided into two factions, those who support the greed argument and those who support the grievance argument (Archibald & Richards, 2002). As detailed above, the grievance faction supports the argument that the war was started by students/youths whom Richards (1996) refers to as 'excluded intellectuals' pursuing legitimate political matters under the *aegis* of Gadaffi's Green Book (Richards, 1996). What is more, this argument can be viewed as a fight for recognition. In this argument the civil war was started by marginalized youth ('the excluded intellectual'), searching for their place in society.

Alternatively there is the greed argument, that inequality in the economic system pressured youth to take up arms to seize wealth for themselves (Kaplan, 1994; Bangura, 1997; Collier, 2000). This branch of the argument also has subdivisions. There is the



section that looks at the economic violence of war, that is the maintenance of war and war like conditions in order to benefit economically (Reno, 2000; Keen, 2005) and those that look at the personal greed of those engaged directly in the war (Kaplan, 1994). Although this thesis has called for a more expansive understanding of the greed argument to include calls for a more egalitarian distribution of wealth and as such this branch of the debate resonates with calls for redistribution.

From what has been outlined above and what is discussed in further detail below, the civil war in Sierra Leone was neither about greed nor grievance, neither recognition nor redistribution, but both greed *and* grievance, both recognition *and* redistribution. What is interesting in the Sierra Leone case is that regardless of the civil war, the causes leading to this conflict are still prevalent today, in the form of what I have called Violent Poverty. This final section, therefore, investigates in more depth the causal forces of the civil war in Sierra Leone, with particular focus on responses, thoughts and feelings of fieldwork participants. It then links this back to the previous two sections of marginalized youth and the justice sector and illustrates how these very same factors are plaguing Sierra Leone today. It is hoped that by highlighting this continuity in oppression, more comprehensive methods of peacebuilding and development can be created and adopted.

There are a variety of reasons that people put forward as causes of the civil war in Sierra Leone, but by far the most predominant is oppression and poverty. The two are largely synonymous in the minds of many Sierra Leoneans. Particularly amongst ex-combatants, the combination of these two factors is regularly highlighted as their reason for joining the war and/or for being susceptible to recruitment. As a group of ex-combatants from Kenema and Kailahun districts answered:

*Your rights [were] always being suppressed. When you have a problem with an elder, the elder will suppress you, suppress the youth, shut them away...so when the opportunity arose, it was easy for Foday Sankoh to recruit most of us.*<sup>238</sup>

Another from Jimaibagbo, a small village in Pujehun district replied:

*The government in power then, they had everything at their disposal, they did what they wanted to do, [Foday Sankoh] used that as one of the major factors to get the people... he decided to collect the marginalized.*<sup>239</sup>

Yet another from Koidu City in Kono responded:

*The politicians had taken everything, we had nothing, Foday Sankoh said it was time to take it back.*<sup>240</sup>

These sentiments are reiterated by those who witnessed the war but were not parties to it:

*The civil war was because of marginalization... youth marginalization...high governance, they created the civil war...it is part of the marginalization, and the ground was very fertile...they needed to look at the war as a way to revenge the politicians.*<sup>241</sup>

*One of the principle causes of the war in this country was the neglect of youth, unemployment, youth abandonment...drug abuse, alcoholism, this kind of oppression...*<sup>242</sup>

*There are many things that are responsible for the almost 11 years civil war, ranging from injustice, marginalization, corruption, etc. When they launch their onslaughts in 1991 [it was] because many of the young men were disgruntled and angry and they were going to fight for justice.*<sup>243</sup>

The above quotes are just a few examples of the prevalent feelings that were expressed during interviews, but it makes clear the link local populations make between the war and calls for recognition *and* redistribution, even if they do not express it in those terms. By emphasizing both the economic and social aspects of oppression, local populations are demonstrating their understanding of the multifaceted forms of injustice

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<sup>238</sup> Interview with Mohamed Labian, ex-combatant (Alie translating) Kenema 16/02/2011.

<sup>239</sup> Interview with Kenneth 'King Shining' Koker, ex-combatant - RUF, Aberdeen, Freetown, 15/02/2011.

<sup>240</sup> Interview with Alie, ex-combatant - RUF (Jalloh translating), Koidu Town, Kono, 10/02/2011.

<sup>241</sup> Interview with Mohamed Jabbie, Youth commissioner Eastern Region, Campaign for Just Mining, Koidu Town, Kono 09/02/2011.

<sup>242</sup> Interview with Peter Ngu Tayong, Media Related Outreach, UNDP, Founder of Musicians for Democracy, Freetown, 25/02/2010.

<sup>243</sup> Interview with Saa Emerson Lamina, Deputy Chief Administrator for Kono District, Koidu City, Kono, 10/02/2011.

that they suffer and highlighting the point where the injustice of maldistribution becomes the injustice of misrecognition and vice versa; they are, in effect, talking about violent poverty.

One of the elements that also became clear through fieldwork and is noted in the last quote above, was the association of the civil war with lack of access to justice; both the physical justice of the courts and law, but also justice in the abstract sense, such as equal access to education, employment and other methods of gaining esteem.<sup>244</sup>

Specifically, many participants referenced the phenomenon of Kangaroo Courts leading up to the conflict, especially the levying of large fines against youth for petty crimes:

*when they went to court, they were fined, they were fined with heavy fines.*<sup>245</sup>

The charging of large fines that youth could not conceivably pay led the youth to run away from their villages. This caused the youth to become ‘disgruntled’ and ‘rootless’.

Rootlessness is often highlighted as one of the major causes of the civil war (Rashid, 1997; Fithen & Richards, 2005). As the Chief of Political Affairs and Peace

Consolidation Section of the United Nations Integrated Peacebuilding Mission in Sierra Leone (UNIPSIL) commented, in Africa there is a sense of shame associated with deviant behaviour:

*if you misbehave here, you are always afraid of what they will say in the village, what your auntie will say and what have you...*<sup>246</sup>

By being rootless and being forced to leave the village because of their inability to pay their fines, youth were no longer under the social control of their family and extended family units, they were freed from the fear of shaming by their families.

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<sup>244</sup> See chapter three for more detail.

<sup>245</sup> Interview with MK Sei, TRC Regional Coordinator, Kenema, 16/02/2011.

<sup>246</sup> Interview with Gebremedhin Hagoss, Chief Political Affairs and Peace Consolidation Section, UNIPSIL, Freetown, 24/02/2010.

The other term that is frequently used to describe youth in the pre-war period is ‘disgruntled’. Fallah Bockarie, the regional coordinator for Movement for the Restoration of Democracy, Kenema District, defined it:

*they have become disgruntled when they don't have opportunity...they are lost to society. They have lost belief in themselves and they have lost hope in our system.*<sup>247</sup>

When analyzed in the context of the previous two sections of this chapter, youth in Sierra Leone and problems in the justice sector, it is clear that the same problems that lead to the civil war continue to plague Sierra Leone today. This of course leads to the perceived continuity in oppression from the pre-war to the post war eras. This is represented in the language used by the local populations. The youth are disgruntled, they are angry, they are rootless and they have lost all faith in the system, particularly the justice system. According to:

The Deputy Chief Administrator in Kono:

*I must confess to you the truth, justice and what affected Sierra Leone in almost 11 years of war, today we are seeing the same thing*<sup>248</sup>

A journalist and political commentator in Freetown:

*like I said, most of the factors that led to the war are yet to be addressed.*<sup>249</sup>

A member of Women’s Forum and a self-styled business woman in Freetown

*It was this kind of poverty that led to civil war in the first place... so I am just praying because what really brought the civil war in this country was poverty and it is repeating again.*<sup>250</sup>

And a civil society organization member in Kenema:

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<sup>247</sup> Interview with Fallah Albert Bockarie, Program Support for MRD and Movement for Resettlement and Development, Kenema, 17/02/2011.

<sup>248</sup> Interview with Saa Emerson Lamina, Deputy Chief Administrator for Kono District, Koidu City, Kono, 10/02/2011.

<sup>249</sup> Interview with Theophilus Gbende, Journalist SLAJ on Mining and Extractives/Culture Radio, Freetown, 27/01/2011.

<sup>250</sup> Interview with Doris Kanneh, Chair Woman, Women’s Forum, Freetown, 03/02/2011.

*Most of the evil that took place as causes of the war, they are still there...political marginalization...weak justice system, access to justice. They are still very sick which is not good.*<sup>251</sup>

Through these quotes, a picture begins to form. From across all swathes of the Sierra Leonean public, the lack of distinction between the pre-war and present periods is highlighted. They each speak to the consistency of injustice, both of misrecognition and maldistribution that is one of the elements of violent poverty.

### *Violent Poverty and Patrimonialism*

The issue of violent poverty and its basis in both maldistribution and misrecognition raises questions of potential solutions. The causal relationship between poverty and disillusionment of youth in Sierra Leone frequently results in calls to justice (outside of the transitional mechanisms of the TRC and the SCSL) focusing largely on the justice if redistribution; although this too is fraught with problems. As discussed at length throughout this thesis, patrimonialism is still very much prevalent in Sierra Leonean society, both unacknowledged and exacerbated by the TRC and the SCSL. As a result justice initiatives focusing on redistribution can be commandeered and appropriated by patrimonial elites.

Archibald and Richards (2002) have written extensively on precisely this phenomenon, in rural central Sierra Leone, in the immediate aftermath of the conflict. In the case analyzed by Archibald and Richards, when displaced paramount chiefs began to make their way back to their rural communities they were joined by humanitarian agencies. Aware of the danger of misappropriation of funds and goods, these agencies circumvented the chiefs and instead formed Village Development Committees (VDCs) that were given the task of managing and overseeing the

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<sup>251</sup> Interview with Fallah Albert Bockarie, Program Support for MRD and Movement for Resettlement and Development, Kenema, 17/02/2011.

distribution of aid within their communities. However these VCDs were “often in practice thinly disguised surrogates for chiefly power” (Archibald and Richards, 2002: 358). The humanitarian agency staff had not understood the role of patrimonialism in Sierra Leone and, as a result, didn’t notice that the vast majority of VCD members were already part of the local elite. Consequently, local community members, youth or reintegrating combatants did not receive the benefits of this distribution and many of “items that had been laboriously distributed in villages were sometimes collected up and taken back to feed the urban-based relatives of committee members” (Archibald and Richards, 2002).

A similar phenomenon was witnessed by Danny Hoffman who observed the registration process for some of the DDR initiatives in rural Sierra Leone. As discussed previously (fn. 119) General Joe, a CDF commander during the conflict had managed to gather enough support that he re-established himself in society as a local ‘big man’ in the aftermath of the civil war. As a result of his status – or rather his ‘wealth in people’ – he was used as an agent of international monitors when setting up the DDR. Hoffman witnessed General Joe singling out former members of his combat unit during the registration process and ensuring they: a) were noticed by the officials of the DDR and b) had the appropriate weapon or ammunition to be eligible for registration (Hoffman, 2004). In one particular instance Hoffman witnessed General Joe taking a weapon from one ex-combatant and giving it to another, ostensibly more loyal, follower as a means of ensuring his registration in the DDR process (Hoffman, 2004). Experiences such as this were common amongst ex-combatants and were often repeated to the researcher during fieldwork:

*When first we finished to fight, my commander he say to me, 'give me your gun' then you will be disarmed and you can go to the DDR. So I did this thing, then I find out that I needed it to be in the DDR.*<sup>252</sup>

*There was a lot of corruption in the DDR process. We were told that if we disarm we will be registered. Most of us after we disarmed and were registered we would go for training and were told that our names were not registered for there, that our names were being sent to Freetown and we had to wait. So I went the long way to Freetown, but then I was sent back because my name was not 'on the computer'.*<sup>253</sup>

Due to the prevalence of patrimonialism in Sierra Leone, methods of redistribution need to be thought out within that context, they need to be appropriately localized to reflect the situation on the ground. Archibald and Richards (2002) call for a system of seed distribution in which each member of a community is given the same amount, regardless of their status, gender or class. They argue that this would not only ensure an egalitarian distribution, but address revolutionary sentiment as a result of unequal distribution of aid, thus addressing injustice based on economic grounds as well as those based on the status hierarchy, thus managing to include the justice of both redistribution and recognition.

### *Conclusions*

The intention of this chapter was to explain and explore the concept of violent poverty; the point at which the injustice of misrecognition merges with the injustice of maldistribution, when the two take on characteristics of each other. By investigating youth, local justice and the causes of the civil war in Sierra Leone, this chapter shows how violent poverty manifests itself in Sierra Leonean society. The oppression youth suffer as a consequence of their status as both socially *and* economically marginalized persons sheds new light on the greed versus grievance debate. While not articulated as

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<sup>252</sup> Interview with Alie, ex-combatant - RUF (Jalloh translating), Koidu Town, Kono, 10/02/2011.

<sup>253</sup> Interview with Abbas, ex-combatant, (Allie translating), Kenema, 16/02/2011

such, the above chapter begins to show how the civil war in Sierra Leone was neither a struggle for greed or grievance, a call for neither redistribution nor recognition, but both. Because of the dual nature of the injustices they suffer, the youth, and the Sierra Leonean population in general, require a dual framework for justice to address these issues.

As this thesis argues current, justice initiatives are insufficient to address these problems as they are focused on addressing greed *or* grievance, misrecognition *or* maldistribution but not both simultaneously and certainly not at the point where the two converge. By understanding the oppressions facing Sierra Leoneans as one problem – violent poverty – with multiple facets, both cultural and social, political and economic, we can start to develop more appropriate methods for rectifying these issues.

Nancy Fraser's theory of justice results in what she calls *participator parity*, which allows for all groups in society to engage in debates about justice, not simply debates on how to access the good life, but debates on what constitutes the good life. When youth in Sierra Leone have the ability to function in society *on par* with their contemporaries, and have a say in what it is they want, rather than what they should have (RBD) only then will justice reach Sierra Leone.



## Chapter 8: Conclusion

The purpose of this thesis has been to demonstrate how transitional justice mechanisms, in their capacity as international mechanisms of justice, may create and reify pre-existing structures of injustice. The discourse surrounding transitional justice was analyzed through the lens of Nancy Fraser's theory of justice. This thesis examined some of the core dichotomies inherent in transitional justice discourse: truth or justice, justice or peace, criminal tribunal or truth commission, apolitical or political, greed or grievance, and fundamentally, redistribution or recognition. The case study of Sierra Leone has served to illustrate and develop my critique of transitional justice. The establishment of both a truth and reconciliation commission for the purpose of revealing truth, establishing peace and addressing grievance (Park, 2007), and a criminal tribunal to facilitate justice, stamp out impunity and address greed (Fithen & Richards, 2005) lent itself to a critique based on the decoupling and dichotomization of justice as argued by political theorist Nancy Fraser. The nature of transitional justice has been such that when mechanisms are deemed to have failed to facilitate an effective transition, the overall system is rarely critiqued; rather criticism has tended to focus on the population in the process of transition, the lack of donor support or the selection of the wrong type of justice (Stensrud, 2009; Shaw & Waldorf, 2010). The last, however, only extends to discussions *within* the framework of official forms of transitional justice; for example, if a criminal tribunal was selected as *the* mechanism of transitional justice, it ought to have been a TRC and vice-versa. Sierra Leone, having been host to both a criminal tribunal and a TRC was an ideal case for investigating how each of these institutions may fail in facilitating transition, both individually and in conjunction with each other.

While both transitional justice and its manifestations in Sierra Leone have been discussed and critiqued elsewhere (Shaw, 2007, 2010; Harris, 2012; Kelsall, 2005, 2006;

2009; Keen, 2006, 2012; Fithen & Richards, 2005; MacKenzie & Sesay, 2012; Hoffman, 2004, 2006, 2007; Denov, 2010; Schabas, 2004, 2006; Lutz, 2006; Lambourne, 2009; Stensrud, 2009; January, 2009; Fanthorpe, 2001, 2003; Millar, 2010, 2011; Fanthorpe & Maconachie, 2010; and many more), the present study addresses several gaps in the research. Primarily, the empirical work undertaken uses Fraser's theory in a novel way. While Elizabeth Stanley (2011) successfully demonstrated that the recognition and redistribution elements of Fraser's theory of justice could be used to critique transitional justice in Timor Leste, her critique did not extend to those elements of the theory which captured misframing, marginalization and de-politicization. The current research extends Fraser's paradigm to how transitional justice mechanisms themselves, through the separation of justice and the failure to address the appropriate historical moment from which injustice emerged, can misframe, marginalize and depoliticize populations and thus cause greater injustices. Secondly, and perhaps more importantly, this study offers the concept of violent poverty to the discourse as a means of understanding how youth in Sierra Leone experience and express the injustices against them. Fraser's critique of justice is fundamental in this analysis as violent poverty underscores the point at which the injustice of recognition becomes the injustice of maldistribution and explores the validity of calling for an integrated approach to justice.

### *Summary of Findings*

This thesis has sought to demonstrate how the Special Court for Sierra Leone and the Truth and Reconciliation Commission in Sierra Leone, in their capacity as mechanisms of international and transitional justice, not only failed in their mandate to

facilitate an effective transition in Sierra Leone – or indeed, any transition at all – but also exacerbated existing injustices and even created new ones.

The Special Court, by focusing on the criminality of the conflict, expressed the discourse surrounding the conflict exclusively in terms of greed and selfish motivation for wealth and power (Kelsall, 2009). In doing this the Court neglected the political underpinnings of the war and misframed the question of justice by denying the legitimate grievances surrounding the outbreak of war. The depoliticization of the conflict removed crimes from their political context and as a result any discussion of *how* or *why* crimes occurred in the way that they did is shunted to the side. Rather than focus on the overriding structure of Sierra Leonean society as a means of understanding the depth of atrocity, the Court examined individual cases of crime and somehow expected this to facilitate a general change. The Court sought to establish and separate those who bore the ‘greatest responsibility’ from the rest of society, thus distinguishing the perpetrator deserving of punishment from the victim deserving of reparation in simple binary terms. Not only does this neglect the myriad ways in which people engage in violent acts – from “killing to quiescence” (Fletcher & Weinstein, 2002: 611-612) – but also separates populations into victims and perpetrators, thereby defining which processes they have access to. There is also the official expectation that this dualism and separation will somehow facilitate integration and reconciliation. Moreover, in the desire to remain apolitical and maintain the separation of law and politics, the SCSL did not engage with the political and historical dimensions of the civil war. The Special Court thus failed to engage with the political, social and economic context which had led to the civil war.

The failure to engage with the historical moment of injustice in Sierra Leone also helps to explain the failure of the Special Court to have an ameliorating impact on

the rule of law, the domestic justice sector or to address impunity and corruption in the country. Underlying each of these mandates is the presumption that return to the pre-conflict state or regime is desirable, but as Stovel (2008) points out, “internally driven mass violence rarely emerges from Utopia” (Stovel, 2008: 317). The failure to critically engage with the causes leading to the conflict resulted in only the crimes of the conflict being addressed. This thesis argues that the Special Court’s focus on crimes stemming from an initial injustice, without investigating *why* these crimes occurred, investigated the wrong crimes. The civil war did not spring from nowhere, there were a series of injustices that led directly to the outbreak of conflict in 1991 and had a distinct impact on the heinous nature of crimes committed (Richards, 2005b; Hoffman, 2004). Failure to examine these causes in any detail precluded the ability to transform Sierra Leone into a state based on the rule of law as there was no notion of what the state was transitioning *from*. The specific causes of the war and those injustices that directly influenced how the war was waged were never adequately addressed. In the failure to address the causes of the war not only did the SCSL fail its mandate to facilitate a transition, specifically in Sierra Leone’s justice sector, but it reinforced previous injustices by returning power to those who oversaw the decline of the state in the 1970s.

The TRC, on the other hand, was more political in its mandate in that it did seek to understand the causes of the war and report on them. The TRC even went so far as to highlight five pillars of transition that would help create a positive peace in Sierra Leone,<sup>254</sup> and address the causes leading to the conflict (Sierra Leone TRC, 2013). These five broad pillars are: 1) the protection of human rights and the rule of law; 2) promoting good governance, fighting corruption and mineral resources; 3) women, children and youths; 4) reparations; and 5) follow up mechanisms. Under each of these

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<sup>254</sup> As opposed to a negative peace which is simply the absence of guns, a positive peace entails a more socially just society (RUSI, 2013).

pillars were more specific recommendations of the TRC which were believed would facilitate the transition of Sierra Leone. While the TRC made the effort of elaborating on what institutions needed to be developed as a means of facilitating transition, almost none of its recommendations have been implemented and even those that have been are fraught with problems. For example, since the end of the civil war, Sierra Leone has seen the establishment of the Anti-Corruption Commission (ACC). As a means of stamping out corruption, the ACC was granted the power to directly prosecute corruption charges without recourse to the Attorney General/Minister of Justice, but there have been accusations of manipulation of this power. Primarily, by circumventing the mainstream justice sector the ACC is able to set their own punishments and these almost always take the form of fines and settlements out of court rather than referring the case back to the legal system. However, the fines have come under scrutiny for being insignificant or negligible in light of the crimes they are meant to be deterring (Sierra Leone TRC, 2013).<sup>255</sup> Moreover, the government of Sierra Leone has failed to implement a number of other governance guidelines such as the separation of the office of the Attorney General and Minister for Justice, the repeal of the seditious libel laws which make sedition punishable by death, the repeal of the death penalty, the establishment of a public defender's office and to review the powers allotted to paramount chiefs in the provinces, just to name very few (UN, 2007). In addition, the 2000 TRC Act called for a government-established 'follow up committee' that would

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<sup>255</sup> An instance that was regularly highlighted during fieldwork was the government group which was charged with the procurement of 2 ferries to facilitate travel from the airport at Lungi to the Freetown peninsula (this is across a wide river estuary). The National Social Security and Interest Trust (NASSIT) spent nearly £3 million procuring 2 dilapidated and not seaworthy ferries which reportedly cost £500,000 each. The question is raised of course of what happened to the other £2 million. The ACC decided to settle the matter out of court and fined each of the individuals deemed responsible 500,000 Leones, which is roughly £70,000. Many participants found this sum negligible compared to what these individuals had taken from the state, and they were incensed that these individuals had escaped criminal prosecution. Interview with Mohamed Yemoh, Movement for the Restoration of Democracy, Kenema, 17/02/2011; Interview with Fallah Albert Bockarie, Program Support for MRD and Movement for Resettlement and Development, Kenema, 17/02/2011; Interview with Prince Phillip Mansaray, TRC Statement Taker, SCSL Outreach Officer, MRD, Kenema, 17/02/2011.

ensure that the recommendations of the report were implemented “faithfully and timeously” (TRC Act, 2000: Sections 17 &18). Nearly a decade after the conflict no such committee exists and many of the recommendations of the TRC have fallen by the wayside.

Whilst almost entirely ineffectual, the TRC should nonetheless be lauded for its attempt at highlighting the political origins of the war, however, its overall focus on the political/grievance based origins of the conflict led to a failure to engage with Sierra Leoneans’ plea for material assistance, financial reparation and the general call for redistribution. The TRC failed to understand local projects of memory, where the past is best left forgotten, and instead encouraged populations to share their pain as a cathartic process, urging them to be healed through revealing and completely neglecting that such practices are dissonant with cultural practices of many local populations (Ferme, 2001; Shaw, 2007; Millar, 2011; MacKenzie & Sesay, 2012). Additionally, through the appropriation of local practices of reintegration and forgiveness, reshaped and applied in a top down fashion, the TRC effectively rebuilt the structures of injustice and patrimonialism that led to the conflict initially (Fanthorpe & Maconachie, 2004). Finally, when local populations attempted to reshape the TRC from below and use it as a forum to ask for financial and material assistance to rebuild their lives, they were blocked in this endeavour by the TRC itself. Thus while the TRC gave local populations the ability to give voice to their suffering, the TRC silenced them from engaging in the discussion about what would alleviate this suffering.

In the removal of Sierra Leoneans from the discourse and debate surrounding transitional justice institutions in Sierra Leone, the mechanisms of the SCSL and the TRC *misframed* the population of Sierra Leone. When populations or groups are barred from having an impact on the judicial mechanisms that shape their lives not only will

the mechanisms emerge non-binding and irrelevant (Young, 1990; Fraser, 2003), but those populations were barred from creating and engaging in debates that might create more relevant and binding structures of transitional justice.

The failure of transition and the peripheral nature of the transitional justice mechanisms in Sierra Leone were made clearly evident during fieldwork where participants did not differentiate between the pre-war, war and post-war periods, as they still face many of the same injustices that led to the civil conflict initially (Fanthorpe & Maconachie, 2004). When local participants were asked their thoughts on what had caused the outbreak of war, their answers across all groups were almost identical: corruption, poverty, lack of capacity building mechanisms, an inadequate justice system and problems with youth were all regularly highlighted for their role in the civil war. Moreover, Sierra Leone remains in much the same condition as it was 22 years ago. Youth unemployment hovers around 60%, maternal and infant mortality is amongst the worst in the world and nearly 80% of its population lives below the poverty line (World Bank, 2012). What is perhaps more important is how populations themselves express the situation in Sierra Leone. Local populations and the NGO/implementer groups were clear in their assessment of the homogeneity of problems facing Sierra Leone since the 1970s.

Princess Rogers, a self-styled activist and member of Movement for the Restoration of Democracy and Women in Action Against Gender Based Violence captures the essence of the argument being made:

*Some people think the absence of guns is the only peace, we feel, as activists that this is not the end of peace at all, when there is no gun sounds, we are not at peace...from the time of the war up to now, nothing has been done, nothing positive has been done because all that brought the war or all that was happening during the war is still here now...Nothing has changed at this point,*

*there is no changes in this country. Even in our political arena there [are] no changes. All those things that got the war still happen.*<sup>256</sup>

Similarly another member of the implementer group, Mohamed Jabbie, the youth coordinator for the Kenema district, supported this claim:

*The factors that were working for the war are still existing. If you look at the desires among the young Sierra Leoneans, they want of education, education and employment...if they are in your society and not educated, if your society is not educated it's a problem.*<sup>257</sup>

And perhaps most poignantly, a young woman in Freetown, was clear in her views:

*The war is not over, it is still going. We have nothing to eat. I want to buy rice, it is 5000Le, how am I to get that when I don't work. How are we to eat?...I lost my sisters, they left me with four children, my brother left me with one children [sic], who is to take care of them?*<sup>258</sup>

It is clear from the above quotes as well as from the many interviews reported throughout the thesis, both formal and informal, that Sierra Leoneans are experiencing a continuity in suffering, where they see the war and the post-war reconstruction projects as having effected little change from the pre-war period.

The removal of Sierra Leoneans and their perspectives from the transitional justice process has precluded understanding or engagement with these sentiments. The misframing experienced by Sierra Leoneans, where they are not permitted to participate as equals in the creation or implementation of justice institutions that shape their lives, impedes their ability to make or address first-order claims to the justice of redistribution and recognition. The inability to address these claims has affected the youth in Sierra Leone in a unique way, one I have conceptualized as *violent poverty*. Violent poverty summarizes the experience and expression of the unique form of injustice as lived by the youth of Sierra Leone. The term encompasses the injustice of misrecognition youth

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<sup>256</sup> Interview with Princess Rogers, Women in Action Against Gender Based Violence, MRD, Kenema 17/02/2011.

<sup>257</sup> Interview with Mohamed Jabbie, Youth commissioner Eastern Region, Campaign for Just Mining, Koidu Town, Kono 09/02/2011.

<sup>258</sup> Interview with Annie, no affiliations, Freetown, 22/02/2010.



face through their association with anti-social behaviour and violence (Abdullah, 1997; Bangura, 1997) and the injustice of maldistribution they experience through the disparity in wealth, education and other capacity building mechanisms and their inability to secure wage generating work. Without employment, social standing and marriage, youth in Sierra Leone find it almost impossible to escape the social stigma of youth and join society as adults. Simultaneously, their identity as youth, and the negative connotations associated with it, means that they are less likely to be able to secure employment and gain social standing. Violent poverty as a concept incorporates the frustration expressed by Sierra Leonean youth in their impotence to effect change and ameliorate their standing in society. Moreover, the idea of violent poverty helps show the inadequacy of the greed/grievance conceptualization of conflict. The youth in Sierra Leone, many of whom fought in the civil war, regularly emphasize the social factors leading to the war and the ongoing necessity for a more egalitarian distribution of wealth. Thus the greed that is discussed by them is not the selfish, power-hungry greed that has been the focus of institutions like the SCSL and the TRC, but a call for redistribution, obscured and co-opted by violence (Archibald & Richards, 2002).

Thus not only are youth, and the Sierra Leonean populations more generally, barred from obtaining the 'good life' but they are precluded from the discussion that would help them decide what the 'good life' is. When populations are excluded from participating *on a par* with each other and with the political processes that shape their lives they are experiencing the injustice of misframing; it is this injustice that prohibits their participation in first-order claims to justice of redistribution and recognition.

While many justice theorists call for participation in debates about justice, Fraser and Young are more challenging than most, as they highlight how justice mechanisms are only binding insofar as those whom it is meant to obligate have agreed

to it without coercion and can “rightly see themselves as its authors” (Fraser, 2003: 44; Young, 1990). Justice theorists are mirrored in this call for participation by transitional justice scholars under the banner of localization.

### *Localization*

Frequently, political, economic, and social priorities of international programs are developed under intense time-pressures and often without adequate consultation with relevant stakeholders, as a result, well-intentioned interventions may be perceived by the intended beneficiaries as irrelevant or even demeaning (Fletcher & Weinstein, 2002: 627).

As a means of overcoming irrelevant and, as this thesis has argued, potentially injurious forms of transitional justice, this thesis supports the call of various justice scholars in establishing mechanisms for the localization of justice mechanisms in the affected countries (Shaw & Waldorf, 2010; Weinstein et al., 2010; Stovel, 2008; Fletcher & Weinstein, 2002; Archibald & Richards, 2002; Fithen & Richards, 2005; Kelsall, 2006, 2009). As discussed early in this thesis and as exemplified by the SCSL and the TRC, in Sierra Leone localization entails much more than geography (Stensrud, 2009). “If transitional justice is indeed to be transformative...transitional justice options must be expanded and evolve into interventions that reflect a broadened view of responses to human rights violations” (Weinstein et al., 2010: 48); included in this expanded view must be local perspectives on not just what justice they want, but what justice is and how it is to be achieved (Fraser, 2003).

The localization of justice and the integration of local perspectives into justice discourse would be difficult as justice and perceptions of justice vary between individuals, communities, identity groups, cultures and countries. Because of these differences, how communities choose to respond to atrocity will inevitably vary from place to place, situation to situation, and these responses may be resoundingly different

from traditional Western dominated models of justice and accountability. Furthermore, these responses and perceptions change over time, leading to the problem of which kind of intervention at what time? Additionally, what if local aspirations vary markedly from international law? Which takes precedence and how can variations across the local landscape be accounted for (Weinstein et al., 2010; Fletcher & Weinstein, 2002). In addition, due to of the prevalence of patrimonialism in Sierra Leone specifically, there is a danger that justice mechanisms will be co-opted by local elites and ‘big men’ who will use justice mechanisms to enrich themselves and improve the standing of their friends and family (Hoffman, 2004). As a means of overcoming such appropriation and manipulations, the localization of transitional justice necessitates the participation of all adult members of society *on par* with the others so that illegitimate claims that might restore structures of *injustice* may be filtered out and removed from the discourse (Fraser, 1997).

Shaw & Waldorf (2010) call for a two pronged approach to transitional justice that firstly takes into account local views and experiences of the very mechanisms that are ostensibly designed to address needs, thus opening institutions like the SCSL and the TRC to local scrutiny and critique, and secondly listens to and engages with the views of survivors and their priorities for post-conflict reconstruction. By shifting the focus of transitional justice discourse from the mechanisms themselves to local populations, we can create what Shaw & Waldorf (2010) refer to as the ‘shifted centre’. Thus, rather than the local being evaluated by transitional justice mechanisms and discourse, the local becomes the starting point from which the rest of the world is viewed. Starting from the local gives a basis for justice mechanisms that contains an understanding of what justice, social repair, reconstruction and reconciliation look like,

or should look like, to local populations. Without these perspectives transitional justice cannot be effective, legitimate or binding (Shaw & Waldorf, 2010).

Of course the question remains *whose* views count and *whose* claims to justice are perceived as legitimate. Fraser and Young agree that one of the major problems of social justice discourse is that it presumes that social science “possess[es] uncontroversial facts about who is affected by what” and thus is able to authoritatively decide whose experience and opinions matter (Fraser, 2008: 67-68; Young, 1990). Thus localization discourse calls for the participation of all those who are “subjected to a given governance structure” (Fraser, 2008: 65), which would include institutions of transitional justice. The people who are to be subjected to the governance and justice structures that are created in the process of transition need to have a say in their creation if they are to be relevant and binding. Fraser refers to this as the ‘all-subjected principle’ (Fraser, 2008).

A key question [in transitional justice] is ‘With which partners?’ Choices have to be made, reflecting the range of local debate about justice. In this respect, academic emphasis on the political economy of conflict in Africa may prove unhelpful. Materialist analysis of African wars as ‘greed not grievance’ risks masking local concern with justice (Archibald & Richards, 2002: 363).

While we must ask transitional societies what they want to gain and take from these perspectives this is not a straightforward process. Variations exist across different genders, classes, income groups, villages and education levels (Weinstein et al., 2010), yet the all-subjected principle is dynamic enough that it allows for constant fluidity amongst who or what is relevant at a given time. As discussed in chapters one and three, pursuing justice in this manner is supported by a multifaceted or ‘rhizomatic’ approach to justice which recognizes that everything is connected, but puts emphasis on different ‘nodes’ or aspects of justice at the appropriate time (Deleuze and Guattari, 1987). A multi-nodal approach allows affected populations to decide what the greatest

injustices are and how they are to be addressed. Thus, simultaneously, first-order claims to justice are addressed and the problem of misframing is resolved as the populations participate and are represented in the justice initiatives enacted.

Furthermore the rhizomatic, all-subjected, local approach precludes dichotomies of truth or justice, justice or peace, greed or grievance, victim or perpetrator and redistribution or recognition as it is sufficiently nuanced to address a range of issues, including groups like ex-combatants or youth who occupy multiple places in the class and status hierarchy. As discussed in chapters seven and eight, ex-combatants and youth in Sierra Leone are both perpetrators and victims and as such they cannot occupy a single location in the status hierarchy. Remedies to injustices that are implemented must somehow take into account their position as both politically and economically marginalized persons, but also their role in committing injustices against others. This thesis has argued for the centrality of a rhizomatic approach to justice, an approach which engages with local perspectives and includes the discourse on the justice of redistribution *and* recognition, which incorporates greed *and* grievance perspectives and is sufficiently nuanced as to manage these cross-cutting axes of subordination and oppression. This thesis, however, does not call for the establishment of set institutions or codes of conduct to ensure that the all-subjected principle is used. To do so would run the risk of creating a new 'normal' and thus closing the door on yet other routes and approaches to justice (Fraser, 2008; Deleuze & Guattari, 1987). This thesis, therefore, calls for a rhizomatic, dynamic and organic approach to justice that engages with local populations not only on what form of justice they desire, but also what they understand justice to be. Only through real material engagement with the perspectives of affected populations can transitional justice mechanisms develop relevant and binding forms of justice, facilitate an effective transition and build a lasting peace.

### Annex A: List of Interviews

#	Date	Name	Location	Organization/Affiliation	Was this a part of a group interview?
1	08/02/2010	Charlie Hughes	Freetown	Chairman - Monument and Relics Commission	No
2	09/02/2010	Braima Conteh	Freetown	Project Manager - AMNet	No
3	25/02/2010	Peter Ngu Tayong	Freetown	Media Related Outreach UNDP, Founder Musicians for Democracy	No
4	24/02/2010	Gebremedhin Hagoss	Freetown	Chief Political Affairs and Peace Consolidation Section - UNIPSIL	No
5	11/02/2010	Reverend Spencer	Waterloo	Founder - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School	Yes, interviews 5-9
6	11/02/2010	Mohamed M (no last name provided)	Waterloo	Teacher - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School	Yes, interviews 5-9
7	11/02/2010	Raphael Vandi	Waterloo	Teacher - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School	Yes, interviews 5-9
8	11/02/2010	Fitzgerald (no last name provided)	Waterloo	Teacher - Fountain of Mercy Secondary School and Makripodis Baptist Secondary School	Yes, interviews 5-9
9	11/02/2010	Braima Conteh	Waterloo	Project Manager at AMNet – arranged meeting at Fountain of Mercy Secondary School and Makripodis Baptist Secondary School	Yes, interviews 5-9
10	25/03/2010	Alpha Kay Koroma	Freetown	Employee - Centres on Urban Agriculture and Food Security (RUAF)/Freetown Urban and Peri-Urban Agriculture Project (FUPAP)	Yes, three others present, not quoted

11	05/03/2010	Patrick (no last name provided)	Freetown	UN Compound, did not want organization or position listed	No
12	22/02/2010	Annie (no last name provided)	Freetown	No Affiliation	Yes in reviews, 12 & 13
13	22/02/2010	Santos Kargbo	Freetown	No Affiliation	Yes
14	23/03/2010	Lion	Grafton	Former-RUF Commander	Yes, but not quoted
15	03/03/2010	Mohamed (no last name provided)	Freetown	Security Guard, Witness and Victims Unit- Special Court for Sierra Leone	No
16	23/01/2011	Samuel Panda	Freetown	Chief – Penguia Chiefdom	No
17	26/01/2011	James Vincent	Freetown	Independent Researcher and local fixer	No
18	27/01/2011	Theophilus Gbende	Freetown	Journalist – Sierra Leone Association of Journalists on Mining and Extractives	No
19	27/01/2011	Randolph Katta	Freetown	Project Manager – 50/50 Group	No
20	27/01/2011	Philip Langlotz	Freetown	Project Manager – Justice and Peace Commission	Yes, interviews 20-22
21	27/01/2011	Phibian Matta	Freetown	Para Legal/employee – Justice and Peace Commission	Yes, interviews 20-22
22	27/01/2011	Ioma Duada	Freetown	Paralegal/employee – Justice and Peace Commission	Yes, interviews 20-22
23	31/01/2011	Saleem Vahidy	Freetown	Chief Witnesses and Victims Unit and Security– Special Court for Sierra Leone	No
24	03/02/2011	Doris Kanneh	Freetown	Chair Woman – Women’s Forum	No
25	03/02/2011	Jennifer Betley-Betts	Freetown	Lawyer in the Appeals Chamber – Special Court for Sierra Leone. Member of LAWYERS	No
26	04/02/2011	Rhoda Kargbo	Freetown	Senior Lawyer in the Appeals Chamber – Special Court for Sierra Leone. Member of LAWYERS	No

27	09/02/2011	Mohamed Jalloh	Koidu Town, Kono	Project Leader - KOCEPO	Yes, interviews, 27-30
28	09/02/2011	Komba Manga	Koidu Town, Kono	Program Manager – KOCEPO	Yes, interviews, 27-30
29	09/02/2011	Alpha A Conteh	Koidu Town, Kono	Administration Finance – KOCEPO	Yes, interviews, 27-30
30	09/02/2011	Ishaka Turay	Koidu Town, Kono	Projects Officer – KOCEPO	Yes, interviews, 27-30
31	09/02/2011	Mohamed Jabbie	Koidu Town, Kono	Youth Commissioner for Eastern District/Campaign for Just Mining/Budget Oversight Committee	No
32	09/02/2011	Sahar Emmanuel Yambasu	Koidu Town, Kono	Chief Administrator of City Council – Koidu Town	Yes, but not quoted
33	10/02/2011	Saa Emerson Lamina	Koidu Town, Kono	Deputy Chief Administrator – Kono District	No
34	10/02/2011	Rebecca Yei Kamara	Koidu Town, Kono	Gender Consultant – KOCEPO	No
35	10/02/2011	Paul Gabar Saquee V	Koidu Town, Kono	Paramount Chief	No
36	10/02/2011	Alie (no last name provided)	Koidu Town, Kono	Ex-combatant, RUF	Yes, Jalloh translating
37	10/02/2011	Kizito Bangura	Koidu Town, Kono	Human Rights Officer – UNIPSIL	Yes, interview 37-38
38	10/02/2011	Jilifa Jojo	Koidy Town, Kono	Civil and Political Affairs Officer - UNIPSIL	Yes, interviews 37-38
39	15/02/2011	Kenneth ‘King Shining’ Koker	Freetown	Ex-Combatant – RUF	No
40	16/02/2011	MK Sei	Kenema	Regional Coordinator TRC	No
41	16/02/2011	Alie	Kenema	Local fixer/translator	Yes, interviews 41-45



42	16/02/2011	Hamatu Kamara	Kenema	Ex-combatant	Yes, interviews 41-45, Alie translating
43	16/02/2011	Lusine Kango	Kenema	Ex-combatant	Yes, interviews 41-45, Alie translating
44	16/02/2011	Abbas (no last name provided)	Kenema	Ex-combatant	Yes, interviews 41-45, Alie translating
45	16/02/2011	Mohamed (no last name provided)	Kenema	Ex-combatant	Yes, interviews 41-45, Alie translating
46	17/02/2011	Madieu Barrie	Kenema	Movement for the Restoration of Democracy	Yes, interviews 46-47
47	17/02/2011	Mohamed M Yemoh	Kenema	Movement for the Restoration of Democracy	Yes, interviews 46-47
48	17/02/2011	Prince Phillip Mansaray	Kenema	MRD, Special Court Outreach Officer, statement taker, TRC	No
49	17/02/2011	Princess Rogers	Kenema	MRD and Women in Action Against Gender Based Violence	Yes, interviews, 49-50
50	17/02/2011	Mariama Koroma	Kenema	MRD and Women in Action Against Gender Based Violence	Yes, interviews, 49-50
51	17/02/2011	Milton Dassama	Kenema	Movement for the Restoration of Democracy	No
52	17/02/2011	Fallah Albert Bockarie	Kenema	Program Support – movement for the restoration of Democracy and Movement for resettlement and development	No

## **Annex B: Semi-Structured Interview Questions**

Are you affiliated with an organization?

What is the remit of your organization?

What do you think justice means? What do you think it means with respect to the civil war?

Have you ever been to the Special Court? Why/why not?

Did you attend the Outreach sessions? Why/why not?

Did you testify to the TRC? Why/Why not?

Did you attend the public hearings? Why/Why not?

Why do you think the civil war happened?

Do you think that the causes leading to the civil war have been resolved?

What do you think the biggest problems facing Sierra Leone today are?

Do you think the Special Court captured those who bear the greatest responsibility for the civil war?

Has the Special Court facilitated development in Sierra Leone?

What ended the civil war?

What has done the best job of implementing peace in Sierra Leone?

Whose job is it to implement the recommendations of the TRC?

Has this been done?

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