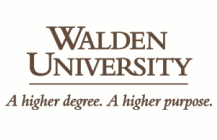

2008

Transitional justice in postconflict contexts: The case of Sierra Leone's dual accountability mechanisms

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ABSTRACT

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by

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Dissertation Submitted in Partial Fulfillment
of the Requirements for the Degree of
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ABSTRACT

Literature on in-depth studies of dual transitional justice mechanisms in postconflict settings is inadequate. This qualitative case study sought to understand the practice of dual transitional justice by examining the Truth and Reconciliation Commission (TRC) and the Special Court engaged for transitional justice in postconflict Sierra Leone. Data consisted of documentary sources, observational field notes and 31 individual semi-structured interviews with open-ended questions of Sierra Leonean public officials, United Nations officials, and TRC and Special Court officials, as well as civil society actors. Data were analyzed through detailed “description”, “categorical aggregation”, “direct interpretation”, establishment of “correspondence and patterns”, and development of “naturalistic generalizations”. It was found that because the 2 institutions were not planned and coordinated as different parts of the same tool, they were pitched against each other, undermining their respective mandates and creating tensions in their efforts to implement their plans. Also, the Sierra Leonean populace, civil society organizations, the government and the international community, including the United Nations, were divided in their opinions, sentiments and support for the 2 mechanisms. The implication of this study is that the policy choice, design and packaging of restorative and retributive mechanisms for postconflict transitional justice should not create conflict so that they can link seamlessly to the strategic goal of peace and stability. The knowledge of the dynamics of dual transitional justice is useful for governments, policy makers, the United Nations and especially the International Criminal Court whose intervention in a country may run parallel to a restorative process.

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DEDICATION

To my husband, Kwabena Panin Nkansah, for his unconditional love and support, and our lovely daughters, Nyamekye and Awurama.

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INTRODUCTION TO THE STUDY

Introduction

On March 23, 1991, an internal armed conflict broke out in Sierra Leone between the government and the Revolutionary United Front (RUF), a rebel opposition group in the country. This event marked the beginning of a 10-year civil war in Sierra Leone that left in its wake massive human rights violations, destruction of life and property, and a nation deeply and badly scarred (Bangura, 2001; Hirsch, 2001; Koroma, 2001). It is estimated that out of a Sierra Leonean population of 5.4 million, the civil war left about "50,000 dead, 4,000 amputation survivors, 2,000,000 displaced internally, 500,000 refugees and at least 5, 000 children turned into brutal combatants" (Evenson, 2003, p. 733). The war also claimed the lives of about 800 peacekeepers from the subregion (Rashid, 2000).

After the civil war ended, the government of Sierra Leone and the international community worked collaboratively to confront the issues that may have led to the war, redress the atrocities resulting from the war, and forge ahead in unity towards national development (Berewa, 2001). In pursuit of these goals, Sierra Leone engaged two accountability mechanisms as part of its peace-building policy framework to address human rights abuses and international humanitarianism and impunity. In this regard, the Truth and Reconciliation Commission (TRC) and the Special Court for Sierra Leone were established. The TRC was set up to administer restorative justice, and the Special Court, retributive justice as precipitated within the contexts of the transition (Berewa,).

This study seeks to understand the practice of dual transitional justice by examining the mechanisms adopted by Sierra Leone namely, the Truth and Reconciliation Commission and Special Court, to bring about peace and stabilize the country.

Sierra Leone's transition from violence to peace came about as a result of a peacefully negotiated settlement between the government of Sierra Leone and the RUF by the signing of the Lome Peace Agreement of July 7, 1999. The war, which started in March of 1991, escalated in the following years and progressed through successive governments (Gberie, 2000). The first concrete attempt by the government of Sierra Leone to find a lasting solution to the armed conflict took place with the signing of the Abidjan Peace Accord in November 1996 and the Conakry Peace Plan in October 1998 (Evenson, 2004).

Diplomatic efforts by the UN and other subregional initiatives resulted in the signing of the Abidjan Peace Accord in 1996 (Gberie, 2000). The Abidjan Peace Accord provided for an immediate ceasefire; political, social, economic, police, electoral and judicial reform; disarmament, demobilization, and a reintegration process; government accountability; human rights protection; and ceasefire-monitoring arrangements. Article 13 of the Abidjan Accord granted amnesty to the rebels, but it did not provide any accountability mechanism for addressing human rights violations that had occurred during the conflict. Outside the main terms of the agreement there was a power-sharing arrangement (Gberie, 2000).

The Abidjan Peace Accord soon broke down and hostilities ensued (Gberie, 2000). The junior officers of the Sierra Leone Army staged a coup in May 1997 and

President Kabbah and his democratically elected government fled into exile (Campaign for Good Governance (CGG), 2002). The junta formed the government of the Armed Forces Revolutionary Council (AFRC) and subsequently merged with the RUF to form the Peoples Army. The RUF leader, Sankoh, was pronounced vice-chairman. After tremendous international pressure had been mounted against the AFRC, they met with representatives of the Guinean and Nigerian foreign ministries in Conakry to sign a 6-month peace plan in October 1997 (CGG). The peace plan demanded, among other things, that the toppled government of Kabbah be restored to power by April 22, 1998 and that Sankoh be released from the Nigerian prison where he was being held and returned to Sierra Leone to partake in the peace negotiations.

These peace-making efforts did not yield the desired peace and the war raged on. In February 1998, the Economic Community of West African States Cease-Fire Monitoring Group (ECOMOG), with the support of the Civil Defense Forces (CDF), a group of traditional warriors and a coalition of Sierra Leoneans flushed out the junta from the “seat of power” and forced them out of Freetown and some of the provinces. Finally, Tejan Kabbah was restored to power in March 1998 (Bangura, 1997). The UN established the United Nations Observer Mission in Sierra Leone (UNOMSIL) in June 1998 for the purpose of exploring the means to bring the conflict to an end. The UN subsequently evacuated the UNOMSIL staff due to hostilities on the ground (United Nations 2000).

On January 6, 1999 Freetown, the capital city of Sierra Leone, was invaded by the AFRC-RUF. This invasion lasted for about 6 weeks. Freetown and its environs were

devastated and its citizens deeply traumatized (Hirsch, 2001: Rashid, 2000). ECOMOG eventually managed to repel the attack and the AFRC–RUF retreated into the interior of the country. After the invasion of Freetown, the government of Sierra Leone, the RUF, and their supporters were finally convinced that there was no win-win situation. Therefore, negotiating for peace became the way forward (Rashid,). Pressure mounted on Kabbah internally and internationally to end the conflict (Berewa, 2001; Hirsch, 2001). In the words of Hirsch:

> ECOWAS was no longer prepared to assist the Kabbah government in seeking a military solution. President Obasanjo of Nigeria was under domestic pressure to bring the conflict to a close and draw down Nigeria's long-standing troop presence. The toll of Nigerian casualties as well as the costs, coupled with the dire official budgetary picture after years of state corruption, were major considerations for the new president. The United Kingdom and the United States also had concluded that the only responsible way forward was a negotiated political settlement. (pp.84-85)

The President of Sierra Leone initiated a peace talk on the premise of the Abidjan Peace Accord to end the hostilities.[1] Civil Society supported the President's initiation of peace talks, but cautioned him on the need to include accountability measures for the abuses that had occurred since the Abidjan Peace Accord had none. Civil society groups vehemently pointed out that it was necessary to deal with the past abuses in order to break the circle of impunity in Sierra Leone as a precondition for ensuring peace in Sierra Leone and forge ahead with the future.[2] Civil Society took steps towards influencing the Lome negotiations in that regard by forming a human rights working group (Bennett,

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[1] President Almed Tejan Kabbah addressed the nation on February 7, 1999 after the RUF invasion of Freetown. He invited Sierra Leoneans and Civil Society for consultation and consensus building on the Abidjan Peace Accord to serve as a basis for negotiating with the RUF.

[2] Recommendations adopted by the Human Rights Committee on February 19, 1999 regarding Sierra Leone peace process, paragraph 3.

2001). This was followed by a Civil Society workshop in April 1999 during which the human rights agenda was set prior to the Lome negotiations, to the effect that there should be a mechanism that would ensure justice, truth, and reconciliation (Bennett, 2001). The United Nations, the Commonwealth, the Organization of African Unity, the government of the United States, and ECOWAS made efforts to get the rebels to negotiate with the government of Sierra Leone (CGG, 2002; Rashid, 2000). In May 1999, the Sierra Leonean government met with the RUF-AFRC in Lome to negotiate a peaceful settlement of the conflict.

Whilst the Lome peace negotiations were ongoing, Mrs. Mary Robinson, the United Nations High Commissioner for Human Rights, visited Sierra Leone in June 1999. During her visit, the UN High Commissioner signed a Human Rights Manifesto with the Special Representative of the UN Secretary- General, the Sierra Leone government, the National Commission for Democracy and Human Rights, and the National Forum for Human Rights.[3] By the Human Rights Manifesto the parties agreed that a Truth and Reconciliation Commission should be the accountability mechanism "as a key step in the search for peace, with justice and respect for human rights" (as quoted in Bennett, 2001, p. 40). The UN High Commissioner made an undertaking that the UN would provide and encourage the provision of appropriate technical assistance necessary for the establishment of the TRC (Bacre, 2001; Bennett, 2001).

[3] Human Rights Manifesto of Sierra Leone, 1999

At the end of the Lome peace talks, a blanket amnesty was granted to all parties to the conflict for the human rights abuses they may have committed in pursuance of their political objectives. Again, the government and the RUF-AFRC agreed that there should be an accountability mechanism provided through the TRC. The Lome Peace Agreement did not provide for judicial accountability, because it was believed that amnesty in exchange for peace was better than bloodshed and without amnesty the RUF would not have agreed to stop fighting (Berewa, 2001). All the parties to the conflict as well as the witnesses signed the Agreement. The United Nations signed the Agreement as a moral guarantor but with a reservation that the unqualified *amnesty and pardon* granted therein would not be applicable to international crimes perpetrated during the conflict (Bennet, 2001; United Nations Security Council Resolution 1315, 2000). In pursuance of the Lome Peace Agreement, the Parliament of Sierra Leone passed the Truth and Reconciliation Act (2000) to set up the Truth and Reconciliation Commission in February 2000 (Berewa).

Peace-building efforts did not occur without incident. Hostilities broke out, which delayed the establishment of the TRC (International Crisis Group, 2002). In May 2000, the RUF took 500 peacekeepers hostage and shot into a crowd of demonstrators who had come out against the hostage-taking, killing some of them (Truth and Reconciliation Commission Report (TRC), 2004). Based on this incident, the President of Sierra Leone appealed to the United Nations and the Security Council for assistance to set up a court to

try those who were violating human rights after the brokered cease-fire.[4] In response to this request, the United Nations reached an agreement with the government of Sierra Leone to establish the Special Court for Sierra Leone (United Nations Security Council Resolution 1315, 2000; Agreement between the United Nations and Government of Sierra Leone on the establishment of a Special Court for Sierra Leone, 2002). The Agreement, in part, consisted of a Statute that set out the framework of the Special Court. The Parliament of Sierra Leone passed the Special Court Agreement 2002 (Ratification) Act 2002 (Special Court Act) to ratify the Agreement into Sierra Leone law. The Special Court for Sierra Leone was fashioned on the premise of UN reservations and limitation of the amnesty to which all parties had agreed (Berewa, 2001; United Nations Security Council Resolution 1315, 2000).

Thus, restorative and retributive justice was adopted side by side for transitional justice in Sierra Leone. The TRC was mandated:

> To create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the 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. (Truth and Reconciliation Commission Act, 2000 (TRC Act), Section 6)

The Special Court was mandated to prosecute and punish those who "bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996" (Statute for the Special Court, 2002, Article 1).

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[4] Letter of President Tejan Kabbah addressed to the UN Secretary General requesting for the assistance of the UN to prosecute the RUF. Dated, June 12, 2000.

The government of Sierra Leone and the United Nations collaborated to set up these two institutions. At the level of the UN, they were overseen by separate Sections. The Office of the High Commissioner for Human Rights (OHCHR), Geneva, was in charge of the TRC. The UN Office of Legal Affairs (OLA), New York, had oversight of the Special Court. Both institutions were duly established and operated concurrently. But no cooperational arrangement or modalities, either by their normative framework or policy, was put in place between the two institutions to regulate their relationship and coexistence. The TRC completed its work and submitted its final report in 2004. The Special Court is currently in operation carrying out its functions. This study focused on the contexts of the period when both institutions were established and existed concurrently to address abuses and impunity in Sierra Leone that is 1999-2003.

Statement of the Problem

In recent times, the practice of dual transitional justice whereby both restorative and retributive mechanisms are engaged and operated concurrently has emerged. In East Timor, Sierra Leone and Peru truth commissions and trials were employed and operated concurrently (Evenson, 2004; Report of the Secretary-General on rule of law and transitional justice, 2004). Hitherto, transitional justice approaches to dealing with past abuses have been unitary in nature with either restorative or retributive mechanisms being engaged, and several studies have been conducted in that regard (Call, 2004; Gibson, 2004; Grandin, 2005; Hayner, 2002; Posner & Vermeule, 2004, Tepperman, 2002; Tutu, 1999). But the use of both restorative and retributive measures to deal with past human

rights abuses is now being encouraged (Doyle, 2004; International Center for Transitional Justice (ICTJ), 2004/2005; Rae, 2005). Even though restorative mechanisms and trials may complement each other as tools for transitional justice, this new approach of engaging restorative and trial mechanisms concurrently to addressing past human rights presents challenges for the practice of traditional justice (Evenson, 2004). The mandates of the two institutions may be undermined by their concurrent existence where they are not properly coordinated concerning information and resource sharing, evidence handling, and sequencing of the mechanisms (Evenson, 2004). This notwithstanding, little or no detailed and in-depth study has been conducted on dual transitional justice yet in order to explain the dynamics involved in such an approach —when to use it, the best way to structure and coordinate the two different mechanisms for harmonious coexistence as well as its effectiveness as a tool for postconflict peace-building and reconciliation. A need exists in the literature in this regard. This case study sought to explore and describe how the TRC and Special Court were utilized concurrently in Sierra Leone's peace-building process to offer an in-depth perspective on the subject. The study was expected to generate knowledge that would contribute to the understanding of the phenomenon and dynamics that impinge on it. The knowledge that was intended to emerge would also serve as a conceptual model for future studies. Lessons learned from the experiences of Sierra Leone would be important to determine when dual transitional justice is desirable, and also for the effective packaging and coordination of dual transitional justice in the future.

Research Questions

The following questions guided the research:

1. How did Sierra Leone coordinate restorative and punitive transitional justice mechanisms of the TRC and Special Court respectively in its peace-building process?
2. What was the nature of the working relationship between the TRC and Special Court as coexisting transitional justice tools?
3. What is the nature of the experiences derived from Sierra Leone's dual approach to transitional justice?
4. When is it appropriate to use dual transitional justice mechanisms?

Purpose Statement

The purpose of this study is to provide a deeper understanding of the dual transitional justice processes by examining the implementation of the Truth and Reconciliation Commission and Special Court in Sierra Leone. The objectives of the study is to examine the underlying contexts which accounted for the dual transitional justice in postconflict Sierra Leone, examine how the two institutions were packaged as coexisting accountability mechanisms, examine and analyze their working relationship during the period of their concurrent existence, determine whether they coexisted harmoniously to effectively carry out their functions, and identify theoretical constructs that can be derived from Sierra Leone's experiences as well as constructs that can help to

explain these experiences. Harmonious coexistence of dual transitional justice mechanisms in the context of this study is when the relationship between restorative and trial mechanisms are coordinated in a manner that each one can carry out its functions so as to facilitate the goals of postconflict transitional justice.

Rationale of the Study

The idea of establishing the Special Court to coexist with the TRC brought about concerns regarding the relationship that should exist between them. This was raised partly because the TRC, which was the brainchild of the Lome Peace Agreement, was established on the basis of amnesty. Hence the establishment of the Special Court was considered as a shift from the nature of accountability envisaged under the Lome Agreement (Schabas, 2002). Also, these doubts were based on the assumption that the presence of the Special Court could adversely affect the functioning of the TRC. This is because perpetrators might refrain from cooperating with the TRC for fear of being prosecuted on self-incriminating evidence given before the TRC. Thus, the TRC's mandate to promote reconciliation by creating a climate, which forms the basis for interchange between victims and perpetrators, would be seriously jeopardized (Wierda et al. 2002).There was also the fear that the creation of the Special Court could likely cause the eruption of violence, as the arrest of key leadership would generate chaos in the ranks since the perpetrators had not been effectively reintegrated into the society; hence, the Special Court was perceived as a recipe for chaos (Schabbas, 2002).

Conversely, the idea of the Special Court was welcomed, as the TRC was perceived inadequate to address impunity. Amnesty International (2001), for example, expressed concern over the sole contribution of the TRC to address impunity and described that contribution as weak. Amnesty International therefore cautioned:

> That while the TRC may be able to make an important contribution to establishing the truth about human rights abuses, and understanding the nature of the conflict in Sierra Leone, it should not be a substitute for prosecuting those responsible for serious crimes under international law. (p. 1)

Another issue raised by the supporters of the two processes indicated their preference for a respective sequencing of the mechanisms—one should follow the other rather than have a concurrent operation (Wierda et al., 2002). Thus, from the outset, the issue was not whether or not the two institutions were compatible.

When it became apparent that the Special Court was imminent, NGOs and other civil society organizations, through consultative workshops, came up with proposals concerning the nature of the relationship that should exist between the two institutions. Before the Secretary-General came out with a draft statute for the establishment of the Special Court, the United States Institute of Peace, the International Human Rights Law Group and two other experts, held a round table meeting on October 2, 2000. The meeting discussed how the TRC and the Special Court should relate to each other. At the end of the meeting, the expert group emphasized that, “cooperation…that honors the role each institution will play and rejects the subordination of either…can

facilitate the work of both institutions and yield a synergistic effect" (p. 2).[5] They recommended that the Security Council should mandate the nature of cooperation that should exist between the two institutions in the normative framework of the Special Court. They identified possible areas of cooperation that remained to be explored and stressed on the need for a process to address these issues before the two institutions began their work.

In an effort to clarify these issues, the UN Secretary-General's report on October 4, 2000, which first set out the draft statute of the Special Court and the reasons behind it, stated that a "relationship and cooperation arrangement would be required between the prosecutor and the National Truth and Reconciliation Commission, including the use of the Commission as an alternative to prosecution and the prosecution of juveniles in particular" (p.2). Furthermore, in a subsequent report, the Secretary-General stated that the United Nations Mission in Sierra Leone (UNAMSIL) and OHCHR would be preparing modalities to guide the relationship between the TRC and the Special Court (Eleventh report of the Secretary-General on UNAMSIL, 2001). The government of Sierra Leone and UMANSIL organized workshops on the relationship between the TRC and the Special Court. As part of its preparatory activities for the establishment of the TRC, OHCHR and OLA convened an expert meeting in New York City in December 2001. The meeting discussed issues relating to the relationship between the TRC and the Special Court and came up with the following guidelines:

[5] Report of the Roundtable Discussions on the Special Court for Sierra Leone and the Truth and Reconciliation Commission: A roundtable meeting organized by the United States Institute of Peace, October 24, 2000, p2

> The expert meeting on the relationship between the TRC and the Special Court was organized by OHCHR and the Office for Legal Affairs (OLA) of the United Nations in New York on 20 and 21 December 2001. The participants discussed the important issue of an amicable relationship between the two institutions that would reflect their roles, and the difficult issue of whether information could and should be shared between them. The pros and cons of a wide range of possibilities regarding cooperation between the Commission and the Court were examined. Based on those discussions, the participants agreed on a number of basic principles that should guide the TRC and the Special Court in determining modalities of cooperation. These principles include the following:
>
> > (i)The TRC and the Special Court were established at different times, under different legal bases and with different mandates. Yet they perform complementary roles in ensuring accountability, deterrence, a story-telling mechanism for victims and perpetrators, national reconciliation, reparation and restorative justice for the people of Sierra Leone.
> >
> > (ii) While the Special Court has primacy over the national courts of Sierra Leone, the TRC does not fall within this mould. In any event, the relationship between the two bodies should not be discussed on the basis of primacy or lack of it. The ultimate operational goal of the TRC and the Court should be guided by the request of the Security Council and the Secretary-General to "operate in a complementary and mutually supportive manner fully respectful of their distinct but related functions" (S/2001/40, paragraph 9; see also S/2000/1234).
> > (iii) The modalities of cooperation should be institutionalized in an agreement between the TRC and the Special Court and, where appropriate, also in their respective rules of procedure. They should respect fully the independence of the two institutions and their respective mandates.
> > The expert group also agreed on a communiqué, which formed the background for additional discussions in Freetown on 15 January 2002 between OHCHR, OLA, UNAMSIL and other concerned parties. (as quoted in Schabas, 2002, pp.14-15)

In a consultative meeting by civil society organizations on the TRC and Special Court, held on January 9, 2002, Civil Society proposed that "both institutions be

independent, but complimentary to each other on agreed guidelines. And therefore recommended that neither institution should have primacy over the other" (p. 1)[6].

To sum up, the outcome of consultations and deliberations by the actors and experts stressed that the relationship between the two institutions should be informed by the principles of complementarity, independence, and cooperation. They advocated that the nature of cooperation should be determined in the founding document of the Special Court and by an agreement between the TRC and Special Court. Possible areas of cooperation identified for consideration included sharing of services, resources and expertise and joint public education. Information sharing was identified as a possible area of conflict where not handled properly (Report of the Planning Mission on the establishment of the Special Court for Sierra Leone, 2000). These proposals notwithstanding, the two institutions were set up and operated concurrently with no formal arrangement in place to regulate their relationship. It is important to find out what happened during their concurrent existence, and also to examine the effectiveness of dual accountability approaches in peace-building and reconciliation in post war-torn Sierra Leone.

Significance of the Study

The idea of establishing both restorative and retributive transitional justice mechanisms in postconflict contexts and to operate them concurrently within the same geographical jurisdiction as was done in Sierra Leone is emerging in the practice of

[6] Report of Civil Society consultation on the Special Court and the Truth and Reconciliation Commission: Position Paper , Wednesday January 9, 2002 at the Christian Health Association of Sierra Leone Conference Hall, Freetown.

transitional justice (Evenson, 2004). Hitherto transitional justice endeavors were either a restorative or retributive. Also, with the setting up of the International Criminal Court (ICC), which has jurisdiction to prosecute war crimes wherever they may occur in states that are parties to the ICC, the situation whereby restorative and punitive mechanisms are carried out concurrently in respect of the same abuses appears inevitable in the future. This is because where the two accountability mechanisms are not employed within the same geographical location; it is possible that a restorative process may be going on in a particular geographical jurisdiction for alleged human rights abuses, whereas trials involving the same abuses may be undertaken by the ICC. This may be done concurrently or sequentially with the restorative process preceding the punitive process or vice-versa. Whichever way it takes, it is imperative that these processes are packaged and managed in such a manner as to serve the ends of peace, justice and reconciliation. Furthermore, there is the need to settle some of these issues emerging out of dual transitional justice at the threshold of the international arena. This study which is based on the Sierra Leonean situation where trials were carried out with restorative processes concurrently is significant in showing the way forward. It sought to understand the practice of dual transitional justice by determining when it is appropriate to use it; whether concurrent employment of both trials and restorative mechanisms serve the ends of transitional justice in postconflict peace-building; and whether restorative and retributive mechanisms should operate sequentially or concurrently. And, if concurrently, whether there should be a cooperational arrangement between them and what should constitute such an arrangement. Also, this study sought to generate knowledge to contribute to the

understanding of the phenomenon and dynamics that impinged on concurrent operation of restorative and punitive justice as tools for transitional justice. Lessons learnt from the experiences of Sierra Leone will be important for the design, management and packaging of restorative and retributive mechanisms for postconflict peace-building in the future. It therefore has social change implications for governments, policy makers, the United Nations, and the International Criminal Court whose intervention in a country may run parallel to restorative mechanisms. Moreover, lessons learnt are also important to show the way for countries in transition or emerging out of oppressive or conflict situations that might want to consider the Sierra Leonean model.

Conceptual Framework

The conceptual framework that grounds this research is the concept of transitional justice as it relates to postconflict peace-building. Call (2004) referred to transitional justice as "how societies transitioning from repressive rule or armed conflict deal with the past, how they overcome social divisions or seek reconciliation, and how they create justice systems so as to prevent future human rights atrocities"(p.101). The United Nations defined transitional justice to "comprise the full range of processes and mechanisms associated with a society's attempts to come to terms with the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" (Report of the Secretary-General on the rule of law and transitional justice, 2004, p.4). These processes form part of the broad measures undertaken for peace-building in a postconflict situation.

Peace-building as a concept was popularized by Boutros-Ghali, the former UN Secretary-General, in his *Peace Agenda* of 1992. According to him peace-making—measures to get those involved in hostilities to end it peacefully; and peace-keeping—monitoring cessation of hostilities to prevent reoccurrence, aim at ending hostilities. But after the end of hostilities, it is important to embark on peace-building and put measures in place to consolidate the peace. These may include:

> Disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation. (Boutros-Ghali, 1992, p.6)

These efforts are to yield the most valued dividend of peace, justice and reconciliation sought for by postconflict societies (Rae, 2005). Transitional justice is thus a mechanism to facilitate peace-building. Transitional justice occurs within the contexts of postconflict situations, aftermaths of oppressive political regimes, or complex political emergencies (CPEs). These contexts are often marked by massive and the worst kind of human rights violations (Zehr, 1998). They also signify a regime change, which creates a political divide between the old and new, with supporters and collaborators for each faction (Posner & Vermeule, 2004). With the dawn of a new era, victims demand accountability for what they suffered. As a result, it becomes imperative to address the past by restoring the dignity of victims and holding perpetrators accountable for their actions, in order to break the cycle of impunity for sustainable peace. Also, offenders have disempowered victims hence the need to re-empower them by an experience of justice no matter how ambiguous it might be (Zehr, 1998). Furthermore, since it is deemed that the abuses are

not limited only to the individual victims but the entire society, policies for past human rights abuses often have an essential component to reveal the truth of events in the interest of the public. Thus the individual victim as well as society is considered entitled as of right to the truth. These measures, as it were, are expected to bring about peace, unity and national reconciliation and strengthen democracy. The view is strongly expressed that if the past abuses are not dealt with, the new democratic order cannot consolidate (Verwoed, 1999). The ends of transitional justice are to reveal the truth about past events, bring about justice and ensure reconciliation in the overriding interest of peace and stability.

As indicated, a major goal of transitional justice is to reveal the truth about past events. Truth in the context of transitional justice refers to the public acknowledgement of facts and or information of past events as ascertained through the processes of truth commissions. In this regard, the South African Truth and Reconciliation Commission came up with four categories of truth. These are factual and forensic truth, personal or narrative truth, social or dialogue truth, and healing or restorative truth. The factual truth refers to information that has been obtained by a truth commission through a scientific process in an impartial and objective manner where evidence is collaborated. Personal truth refers to the information received by the TRC through the process of storytelling where victims, perpetrators, and other interested persons and groups narrate their personal account as to the events of the past being considered. By social or dialogue truth, reference is being made to the truth that has been ascertained through a debate, interaction and discussion which established the truth of the motives and perspectives of

the relevant actors engaged in the issues being considered. Healing or restorative truth refers to facts and their meaning within the context of human relations and information leading to reparation and prevention of the recurrence of the abusive past (Report of the South African Truth and Reconciliation Commission, 2003). In this study all these facets of truth are envisaged within the contexts of Sierra Leone's transitional justice.

Another goal for transitional justice in postconflict societies as indicated is for the attainment of justice. Throughout history, philosophers have attempted to define the term justice. But as a concept, justice does not lend itself to a definition easily (Rae, 2005). According to Rae (2005) justice has been conceptualized as "revenge, fairness, equity, harmony, legal accountability, customary obligations, or many other possibilities" (p.2). However, justice is hardly conceptualized by virtue of the cultural contexts and experiences of a given community (Rae, 2005). Rae stressed on the need to contextualize justice by reference to the sociocultural dynamics of a given society. In his discussion of the rule of law and transitional justice in conflict and postconflict societies, the former UN Secretary-General Kofi Annan defined justice as "an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs" (Report of the Secretary-General on the rule of law and transitional justice, 2004, p.4). The former UN Secretary-General maintained that these ideals are inherent in cultures and traditions of respective societies. Hence justice administration, normally designed through formal mechanisms, should include local dispute resolution mechanisms as well. In this dissertation, the formal definition of justice by the UN is

utilized in line with the local perceptions and sense of justice based on experiences of Sierra Leoneans.

A postconflict transitional justice must also lead to reconciliation. Pankhurst (1999) maintained that reconciliation is about relationship but assumes further meanings and additional tools when applied in political contexts. Within the context of a postwar era, reconciliation connotes “developing a mutual conciliatory accommodation between antagonistic persons or groups” (Kriesberg, as cited in Hayner, 2002 p.155). The need to reconcile may arise in postconflict contexts by the need to repair and restore damaged relationships for continued existence. Hayner (2002) referred to this process as “a society reconciling with its past and groups and individuals reconciling with each other” (pp.133 – 134). The issues that confront concerned countries and peace builders may be how to normalize governing institutions and put the past behind, how to heal the wounds between conflicting parties, and how to support victims and hold perpetrators accountable in a way that allows both to integrate into their communities. Thus, three levels of reconciliation arise, namely individual reconciliation, group reconciliation, and national reconciliation (Stove, 2003). Hamber and Kelly (2004) offered five elements for post-war reconciliation, namely the process of developing a shared vision of an interdependent and fair society, which implies the development of a common vision of a shared future that would allow for everyone’s participation within the society. Secondly, reconciliation involves acknowledging and dealing with the past in terms of losses, truth, and suffering, and finding means of justice in the mode of healing, providing restitution or reparation, and restoration. Thirdly, it involves building positive relationships between the opposing

parties in the conflicts for the purpose of restoring trust, removing prejudices and intolerance, all towards accepting each other. Fourthly, reconciliation involves significant and cultural attitudinal change. Fifthly, it involves the process of discarding suspicion, fear, mistrust, and a violent mood to the extent of facilitating easy interaction for none to hear and be heard. Reconciliation should be seen as requiring more than forgiveness and truth telling. Reconciliation is about a nation building, which involves a political task. As such, the efforts of a truth commission, however broad its mandate may be, will not be able to achieve it. Hayner (2002) explained reconciliation as; dealing with past events in the public sphere in such a manner that people could talk about it easily or with civility, establishing relationships on the present rather than past experiences and reconciling versions of the past accounts.

Tools that are employed for transitional justice may be restorative, retributive, or both. Restorative justice refers to transitional justice endeavors, which aims at restoring the dignity of victims by validating their sufferings, addressing their needs for the purposes of reparation. It also offers perpetrators the opportunity to make confessions for their actions, and ask for forgiveness. By holding perpetrators accountable for the truth and other forms of accountability, it is hoped that there will be reconciliation of masses of victims with perpetrators which will ward off any future retaliatory action that the abuses may give rise to. Thus it is a process designed to benefit both the victim and perpetrator all in the overriding interest of national reconciliation. Truth commissions are engaged as a means to officially proclaim, expose and sanction the truth in such a way that the commission’s findings can become a historical record of a nation. By so doing it also

establishes an authoritative impartial version of the events that might have led to the abuses. These measures are expected to reveal the truth and bring about reconciliation.

Retributive justice deals with the employment of trials with the sole aim of punishing perpetrators for abuses committed. According to Bradley (2003) the concept of retributive justice that characterizes the conventional criminal justice system, whether national or international aims at punishing the offender. He stated that the basis and rationale for punitive justice "includes elements of deterrence, incapacitation, and rehabilitation, but it also ensures that the guilty will be punished, the innocent protected and societal balance restored after being disrupted by crime" (p.7). In recent times, varied courts have been set up on a transitional basis to try and punish perpetrators. Examples of such courts are the Special Court for Sierra Leone set up by an arrangement between the UN and the Government of Sierra Leone, the International Criminal Tribunal of Rwanda (ICTR), and the former Yugoslavia (ICTY) (Evenson, 2004). Retributive justice is desirable in situations where breaches of international law have occurred. In some cases it operates where it is legally mandatory on behalf of the state to punish offenders. Thus crimes against humanity, breaches of international humanitarian law and human rights demand punishment (Bell, 2000).

In recent times, the employment of both retributive and restorative mechanisms for transitional justice in the same geographical jurisdiction has emerged. Thus in Sierra Leone, Peru, and East Timor truth commissions and trials were operated concurrently (Evenson, 2004). This is a new phenomenon that presents challenges as it were for the practice of transitional justice. Evenson identified the issue of coordination

between the two mechanisms with regard to information and resource sharing as well as witness and evidence handling, and sequencing as among critical challenges that can threaten the mandates' respective institutions where not handled properly. A detailed and in-depth study - examination and analysis of the phenomenon that will allow other researchers to test the outcome is required for understanding of the phenomenon.

Definition of Terms

Accountability: For the purposes of this study accountability refers to holding persons responsible for their actions and omissions that are considered to be a breach of human rights and international humanitarian law generally and specifically as envisaged by the Truth and Reconciliation Commission Act, 2000, Statute of the Special Court for Sierra Leone, 2002 and the Special Court Agreement, 2002 (Ratification) Act. The mechanism for accountability may be a truth commission or a criminal trial.

Criminal tribunals: This refers to courts or trial mechanisms whether, national, international or a mixture of both (hybrid) that has been set up on an interim basis to prosecute perpetrators of past abuses of human rights and or international humanitarian law. Criminal tribunal includes international tribunals, hybrid tribunals and local tribunals**.**

Dual transitional justice: In the context of this study dual transitional justice refers to a situation where both restorative and retributive mechanisms are engaged and

operated concurrently to facilitate transitional justice in the same geographical jurisdiction.

Unitary transitional justice: In this study unitary transitional justice refers to a situation where either a restorative or punitive measure is utilized to facilitate the goals of transitional justice.

Mixed transitional justice: In this study mixed transitional justice refers to a situation where a single transitional justice mechanism is established to provide both restorative and retributive justice in the same geographical jurisdiction.

Hybrid transitional justice: In this study hybrid transitional justice refers to a transitional justice mechanism that is made up of both international and national components.

International community: In this study international community refers to the definition adopted by Hayner (2002) to include the "United Nations, bilateral partners, and international nongovernmental organizations" (200).

Human rights: By human rights, reference is being made to a broad spectrum of rights that may belong to individuals, groups (such as ethnic and religious minorities) and "peoples". Human rights are entitlements, which every human being possesses by virtue of his or her humanity. Human rights law guarantees human rights and they are expressed in treaties, bodies of principles, and customary international law. In modern international jurisprudence, the UN Bill of Human Rights forms the basis of legal and ethical protection of human rights. It consists of the "Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and two Optional Protocols

annexed thereto and the International Covenant on Economic, Social and Cultural Rights"(Smith, 2003, p.38). The United Nations has referred to the International Bill of Human Rights as the "ethical and legal basis for all the human rights work of the United Nations…the foundation upon which the international system for the protection and promotion of human rights has been developed" (as quoted in Smith, 2003, p.38).
It should be noted that, since the adoption of the Universal Declaration of Human Rights on December 10, 1948, the term human rights has been given a broad scope to include economic, social and cultural rights as well as civil and political rights. For example, the preamble to the African Charter on Human and Peoples' Rights (1981) recognized the rights of development and the importance of economic, social and cultural rights that should not be dissociated from civil and political rights. Accordingly the study recognized collective rights of groups and communities.

Again, the meaning of human rights is not being confined to the rights set out in the constitution of Sierra Leone, and in those international treaties to which Sierra Leone is a party. In this work, a broad view of human rights is being adopted; using as its touchstones the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.Human rights therefore include economic, social and cultural rights as well as civil and political rights, and elements such as the right to development and the right to peace.

International humanitarian law: In this study, international humanitarian law refers to laws that are designed to regulate the conduct of hostilities to alleviate human suffering during and immediately after hostilities (Smith, 2003). It is that component of

international law that seeks to protect persons not engaged in or no longer participating in hostilities. International humanitarian law is rooted in "the laws of war" later referred to as the "international law of armed conflict" and subsequently emerged as the Geneva Conventions and its optional protocols II and I. Others are the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and Rome Statute of the International Criminal Court. These laws along with the traditional international human rights statutes/instruments make the bigger picture of international humanitarian law (Bell, 2000.).

According to international humanitarian law, warring factions are to be guided in their conduct of hostilities by three main principles namely: "necessity, humanity and chivalry" (Kittichaisaree, 2001, p129). Kittichaisaree (2001) posited that the requirement of necessity ensures that only conduct or actions that are necessary for the attainment of military target is permitted during hostilities. By the requirement of humanity, the laws govern the level or degree of violence necessary as opposed to unlimited use of force. The legal requirement of "chivalry" demands that opposing parties carry out hostilities in fairness between them and thus outlaws "dishonorable means and methods of combat" (p.129). Most of these international instruments have been ratified or signed by Sierra Leone but have not been incorporated into local legislation by an Act of Parliament. But much of international humanitarian law, as found primarily in the Geneva Conventions and their 1977 protocols, constitute customary law. According to Bell (2000):

> Much of both the Geneva Conventions and Protocol I can be asserted to constitute customary law, and therefore to be applicable not just to those who were High Contracting Parties at the time of the violations, but also to states which have not

> ratified conventions or protocol. The duty to punish therefore applies to states' post-transition, as regards the human rights violations of a past regime. (p. 262)

Since Sierra Leone is part of the comity of nations, these conventions are applicable in Sierra Leone. In principle, international humanitarian law applies during armed conflict, as opposed to human rights law, which applies during peacetime as well as wartime (Bell, 2000). The armed conflict in Sierra Leone was an internationalized internal armed conflict (TRC Report, 2004). The TRC and the Special Court were both mandated to address issues of international humanitarian law. In the case of the TRC, its attention was directed to "violations and abuses", whereas the Special Court's jurisdiction was limited to "serious violations" of international humanitarian law (TRC Act, 2000; Statute of the Special Court for Sierra Leone, 2002; the Special Court Agreement, 2002 (Ratification) Act, 2002).

Perpetrators: These are persons who have committed acts or omissions in breach of human rights and international humanitarian law for which the TRC and the Special Court were mandated to bring to accountability.

Victims: These are persons who have been subjected to abuses of human rights and international humanitarian law as envisaged in the Truth and Reconciliation Commission Act, 2000, Statute of the Special Court for Sierra Leone, 2002, and the Special Court Agreement, 2002 (Ratification) Act, 2002.

Peace-building: In the contexts of this study, peace-building refers to varied forms of interventions - mechanisms, process, approaches, stages, and structures that are

put in place after a violent conflict towards the attainment of sustainable peace, good governance, effective dispute resolution mechanisms and fostering relationships for peaceful coexistence (Morris, 2000). According to the International Center for Transitional Justice (ICTJ) (2004/2005), peace-building "can…include efforts to establish effective governance institutions, strengthen the rule of law, encourage sustainable development, and build trust between citizens and the state, as well as among citizens themselves" (p.5). ICTJ posited that even though not much has been done to indicate the nexus between peace-building and transitional justice, "these otherwise distinct areas share overlapping objectives of preventing future violations, strengthening the rule of law, and addressing consequences of past abuses" (p.5). This study considers transitional justice as one of the tools for postconflict peace-building.

Assumptions and Limitations

The study was based on four basic assumptions. Firstly, the study assumed that transitional justice mechanisms of the TRC and Special Court are necessary for postconflict peace-building and reconciliation where the contexts characterize past massive human rights and humanitarian law abuses. Secondly, it was assumed that the 10-year civil war in Sierra Leone was characterized by massive human rights and humanitarian law abuses; hence transitional justice was desirable for peace-building in postconflict Sierra Leone. Thirdly, it was assumed that the TRC and Special Court were necessary to facilitate the peace and stability of Sierra Leone. Fourthly, it was assumed

that participants were knowledgeable and or possessed experience about the TRC and Special Court, and they also answered interview questions honestly and truthfully.

In terms of limitations, the proposed study utilized a qualitative case study with the researcher as the main instrument for data collection, analyses and interpretation. The researcher's subjectivity and bias were recognized in the process of data collection, analysis and interpretation (Creswell, 1998; Goulding, 2002; Nachmias & Nachmias, 1987). To minimize the possibility of the researcher being subjective and biased as noted, the researcher maintained a "heightened self-awareness" about the propensity for subjectivity and exercised neutrality throughout the process. Moreover, the researcher used the processes of rich thick description, "member checking" peer review and the use of multiple sources of data to confirm research findings (Creswell, 1998; Goulding, 2002).

Also, purposive sampling was utilized to select informants for interview (Creswell, 1998). The success of purposive sampling depends on the availability of participants who are knowledgeable about the phenomenon being studied, and researcher's knowledge of the population and ability to make decisions in that regard (Singleton & Straits, 2005; Trochim, 2001). In terms of knowledge of the population, it should be pointed out that prior to the study, the researcher worked with the TRC; she was therefore conversant with the population and was able to make relevant decisions to recruit knowledgeable participants for the study. In terms of availability of informants it is recognized that the UN category was not readily available for interview. It was found that most of them who were on the ground during the time the TRC and Special Court

coexisted had completed their work and left for missions in other countries. Only two were available to grant interviews and another one serving with the UN mission in Liberia granted a telephone interview. It was therefore not possible to get the number of informants originally intended from this category. This notwithstanding, it could be said that those three interviewed were representative of the experiences being sampled and their views may not differ much from their other colleagues.

Summary

Emerging democracies transitioning from war to peace or emerging out of oppressive political regimes have sought to redress past human rights abuses by the employment of transitional justice, which finds expression in the concept of truth, justice and reconciliation. After the end of a 10-year civil conflict in Sierra Leone, the TRC and Special Court were established as peace-building tools to administer restorative and retributive justice respectively. These two mechanisms were set up and operated concurrently.

This study explores the experiences of the TRC and Special Court targeting issues of coordination, working relationships between the two institutions, the impact of the two institutions on peace-building in Sierra Leone, the nature of experiences derived from their concurrent existence as well as a conceptual model that can be derived from these experiences.

Chapter 2 reviews the literature on transitional justice. It examines the rubrics of transitional justice as an accountability mechanism for national reconciliation, and

provides an overview of conceptual bases of transitional justice. Chapter 2 will again describe and explain the tools used for transitional justice, and determine the socioeconomic and political dynamics that account for the employment of a particular transitional justice tool. Further, challenges and dilemmas associated with the choice of transitional justice will be examined. The literature will reveal that the practice of transitional justice has been unitary with either a restorative or retributive mechanism being employed to facilitate the goals of transitional justice in a given political context. The literature will further reveal that the practice of dual transitional justice has emerged but little or no study has been done to show how restorative and retributive justice can be adopted concurrently to facilitate the goals of transitional justice. Chapter 3 will discuss and examine the theoretical methods of inquiry, which grounded the research. It identifies qualitative case study as the most appropriate methodology for this study and purposive sampling with interviews, available data and researcher's field notes as methods for data observation. It also provides for data analysis procedures, utilized for the research.

CHAPTER 2:

REVIEW OF THE LITERATURE

Introduction

The goal of this literature review is to examine, analyze and synthesize the literature on transitional justice. The chapter will offer a comprehensive literature review on the theoretical and conceptual bases of transitional justice. It will also provide analysis on the tools used for transitional justice, and determine the socioeconomic and political dynamics that account for the employment of a particular transitional justice tool. Assumptions that underpin the practice of transitional justice and current issues confronting practitioners and researchers in the field are examined and analyzed. It also offers a review of the conceptual framework and methods. Finally, gaps in the literature are identified for further research.

The chapter is organized on aspects of transitional justice as follows: definitions and conceptualization of transitional justice, examination and analysis of the tools for transitional justice, dilemma of policy choices for transitional justice, criticisms against transitional justice, a review of conceptual framework and methodology of past studies, and evaluation and conclusions.

In developing the conceptual framework for this study, literature relevant to transitional justice was utilized. Libraries of local universities, EBSCO (Academic Search Premier and Business Search Premier), ProQuest Dissertations and Theses-Full Text databases, and the Google search engine were used to research the relevant literature on the subject. A subject-based approach was utilized for the search. Search terms included

transitional justice, restorative justice, retributive justice, truth commissions, international criminal justice, international criminal courts, peace-building, and reconciliation.

Defining and Conceptualizing Transitional Justice

Many states emerging out of political emergencies or conflicts characterized by extreme violence and abuses of human rights have embarked on a process of democratization (Humphrey, 2003). There have been three waves of democratization processes according to Huntington's (as cited in Stacey, 2005) widely accepted accounts. First, there was the long wave of democratization processes that took place between 1828 and 1926 involving the revolutions in America and France. The second wave was a short one, which took place from 1943-1962 after the Second World War, when the powers that lost the war together with the countries and colonies they had overrun were democratized. The third wave witnessed 30 countries in Asia, Europe, and Latin America becoming democratized beginning in 1974.

Transitional democracies in times past have sought for ways to deal with abuses committed by past authoritarian regimes. Kritz (1995) pointed out that in the 17th century, the new French Parliament that was instituted after the authoritarian regime of King Louis XVI debated on how Louis XVI should be punished for the role he played in the commission of crimes against humanity. The contexts of transitional democracies signify a situation where the outgoing regime may have been involved in the commission of abuses and therefore would wish that the past be forgotten. However, the public would demand for the exposure of the abuses and the punishment thereof in order to end

impunity. The leadership of such transitional democracies is faced with the problem of how to manage the consequences of the violent past (Skaar, 1999). The emerging dilemma has been whether to remember the past abuses and demand accountability for them or to pretend that nothing happened— amnesia (Skaar,). Transitional justice has emerged as a tool by which transitional democracies answer to the demands for accountability for past abuses. But the study of transitional justice did not occur early; because in the contexts of transitions, issues of transitional justice arise after some form of political equilibrium or democratic consolidation is attained. This falls outside the mainstream business of transitional studies (Stacey, 2005). As a result, the study of transitional justice did not attract the attention of transitologists. According to Stacey, research in this area has emerged in the last 15 years, and it has taken scholars with specific interest in the subject to enhance the scholarly profile of transitional justice.

Stacey (2005) pointed out that the term transitional justice is of a recent usage and was coined by Kritz in the mid 1990s, but cautioned that transitional justice issues or transitional justice-like issues had been considered by scholars earlier on. Stacey posited that when Kirchheimer spoke in 1961 of "successor justice," for example, Kirchheimer envisioned the term transitional justice.

Call (2004) defined transitional justice as "how societies transitioning from repressive rule or armed conflict deal with the past, how they overcome social divisions or seek 'reconciliation', and how they create justice systems so as to prevent future human rights atrocities" (p. 101). According to Humphrey (2003), transitional justice is a transitional accountability mechanism designed as part of transitional arrangements to

deal with issues of past abuses, which had occurred in the turbulent past of a nation. Posner and Vermeule (2004) defined transitional justice as being:

> Something different from the successful accomplishment of political or economic transition: it means a political and economic transition that is consistent with liberal and democratic commitments. Such a regime change should respect rights and involve minimum of violence and instability. People should either retain their property rights or be compensated for their losses. Officials and supporters of the old regime should not be punished for legal acts. They should not be mistreated, humiliated, or denied trials. Instead of being treated as scapegoats, they should be invited to participate as equal citizens in the new regime. Supporters of the new regime should not profit from the transition or manipulate it for their personal ends. (p.768)

The term transitional justice therefore refers to mechanisms designed as accountability measures to address past abuses in postconflict situations, or aftermaths of oppressive political regimes.

Transitional justice occurs within postconflict contexts, aftermaths of oppressive political regimes, or complex political emergencies (CPEs). The contexts signify a regime change, thereby creating a political division between the old and new, with supporters and collaborators for each faction (Posner & Vermeule, 2004). Furthermore, the contexts often occasion massive and the worst kind of human rights abuses whereby victims tend to lose confidence in themselves, the nation and their communities as a whole (Zehr, 1998). With the dawn of a new era, victims demand accountability for what they suffered. It has been said that there shall be no peace without justice (Mendeloff, 2004). To create sustainable peace, it becomes important to break the cycle of impunity by restoring the dignity of victims and holding perpetrators accountable for their actions

(Berewa, 2001). Victims are disempowered by perpetrators, hence the need to re-empower victims through an experience of justice no matter how ambiguous it might be (Zehr). Furthermore, since it is deemed that the abuses are not limited only to the individual victims but the entire society, policies for past human rights abuses often have essential components to reveal the truth of events in the interest of the public. Thus, the individual victim as well as society is considered entitled to a right to the truth (*Soria v. Chile, 1999*). These measures are expected to bring about unity and national reconciliation and strengthen democracy. According to Verwoed (1999), in order for a new democratic order to consolidate, past abuses must be dealt with. Because the abuses may have occurred on a large scale for which the existing mechanisms are not usually designed to be able to address, it becomes imperative to put in place a short-term accountability mechanism to administer justice in this regard; hence, the practice of transitional justice (Hayner, 2002).

Transitional justice thus finds expression in the notion of justice, truth, accountability, reparation, and reconciliation (Zehr, 1998). The tools employed include trials, restorative mechanisms to reveal the truth of the abuses, reparation or compensation, and purges or lustrations (Posner & Vermeule, 2004). At the basic threshold, transitional justice must clearly establish an authoritative record of the abuses, address the needs of victims by acknowledging their suffering and providing for compensation, preventing a recurrence of abuses by finding out the causes, and providing institutional and other reform against a recurrence (Evenson, 2004). Thus, the success of

democratic transitions is largely dependent on how successfully it deals with past abuses (Verwoed, 1999).

According to Posner and Vermeule (2004), transitional justice is expressed as both a backward and forward-looking tool. As a backward-looking tool, it encapsulates "punishing wrongdoers, compensating victims for their losses, forcing individuals to disgorge property that was wrongfully acquired, and revealing the truth about past events" (p.766). In its forward-looking mode, transitional justice creates opportunities:

> For the public to recapture lost traditions and institutions; depriving former officials of political and economic influence that they could use to frustrate reform: signaling a commitment to property rights, the market, and democratic institutions; and establishing constitutional precedents that may deter future leaders from repeating the abuses of the old regime. (p.766)

Transitional justice thus has a retroactive effect, but it cannot be discarded outright as being inherently illiberal. This is because retroactivity in the context of transitional justice is inherently progressive (Posner & Vermeule).

From the foregoing, transitional justice has been discussed as a concept, as a tool and as a process. It is conceptualized in terms of justice, truth, accountability and reconciliation. It is a tool for revealing truth and securing accountability for past abuses, and for managing the consequences of a violent past. It is a means for breaking a cycle of impunity, restoring the dignity of victims and perpetrators as well as a process for democratization, all within the overriding goal of peace and stability. In this study, transitional justice encompasses all these nuances accorded it within the literature.

The Basis of Transitional Justice

The basis of transitional justice is derived from certain legal and political normative imperatives, i.e. the obligation of states under international treaties to deal with impunity by punishing offender; societal or victim's right to know the truth and also be compensated for the abuses suffered; the need to reconcile and forge ahead with development; and the need to establish and consolidate a new era by purging the old era (Evenson, 2004).

The legal notion of addressing and punishing past abuses may arise from three international legal frameworks - international humanitarian law which finds expression in the Geneva Conventions of 1949 and their 1977 protocols; international human rights law, both treaty and customary based; and crimes against humanity jurisprudence (Bell, 2000). Humanitarian laws provide for the prosecution of "grave breaches", which occur in international conflicts. According to Article 50 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field (Geneva Convention I, 1949), "grave breaches" include:

> Any of the following, acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. (Geneva Conventions, Article 50)

The Geneva Conventions require a state party to hold perpetrators accountable and to deal with abuses within its territory or hand over perpetrators to any of the contracting parties for the abuses. To this end, contracting parties are to

enact appropriate legislations to provide penal sanctions under domestic law (Kittichaisaree, 2001).

With regards to internal conflicts, individual accountability and a nation's obligation to punish perpetrators are clearly established by Article 3 and Protocol II of the Geneva Conventions. Further, the Statutes of the Ad Hoc International Criminal Tribunals in Rwanda (ICTR, 1995) former Yugoslavia (ICTY, 1993), the Special Court of Sierra Leone (2002), as well as the Rome Statute of the International Criminal Court (ICC, 1998) uphold individual accountability for perpetration of certain abuses during internal armed conflicts. Moreover, the decision of the Appeal Chamber of ICTY in *Prosecutor v. Tardic* (1995; as cited in Kittichaisaree, 2001) established individual accountability for certain crimes (i.e., crime against humanity). The Statute of the International Tribunal for Rwanda (1993) for example provides that the Tribunal "shall have power to prosecute persons committing or ordering to be committed serious violations" (Article 4).

It should be observed that a nation's obligation to punish past abuses might also arise by virtue of customary international law, which has universal application (Bell, 2000). Bell maintained that much of the provisions of the Geneva Conventions have assumed the status of customary international law. Hence they are applicable to states, which are not parties to the Conventions.

International human rights law increasingly demands that state parties punish certain human rights abuses. For example, the Genocide Conventions demand for the protection, prevention and punishment for genocide. The Convention on Torture demands

that all forms of torture should be criminalized. Further, some human rights treaties such as the Convention on the Prevention and Punishment of the Crimes of Genocide (1948, Articles 1 and 5), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, Article 4) demand that genocide and torture should be investigated and the perpetrators punished accordingly. Others like the International Convention on Civil and Political Rights (ICCPR) (1966) though do not provide for punishment in themselves, yet failure to institute accountability measures for their enforcement will amount to failure to protect the rights involved (Bell, 2000).

The concept of "post-transition" obligation to deal with past abuses also finds expression in the crimes against humanity jurisprudence, which emerged through the Nuremberg trials. The Nuremberg Charter (1945) defined crimes against humanity as:

> Murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population before and during the war, or persecutions on political, racial or religious grounds in execution or in connection with any crime within the jurisdiction of the Tribunals, whether or not in violation of the domestic law of the country where perpetrated. (Article 6 (3)

The concept of crimes against humanity and individual's accountability in that regard has found expression in the Statutes of ad hoc international tribunals (ICTR, 1995; ICTY, 1993). It should be noted that the Rome Statute of the International Criminal Court has widened the scope and provided for extensive definition of the concept (Article 7).

It should be observed that international human rights laws permit nations to exercise discretion concerning the treatment of human rights within their jurisdiction. However, the horrendous atrocities perpetrated in the former Yugoslavia and Rwanda shocked the conscience of humankind so much that the international community insisted

on demanding accountability for the perpetration of impunity. It has now become accepted by and large among the international community, that the way and manner in which a government treats its people is no longer an internal affair. It is in this light that modern international jurisprudence favors individual accountability for international crimes. Thus a nation's obligation to punish past abuses may also arise by virtue of customary international law, which has universal application (Bell, 2000). Hence amnesties granted for such violations are considered illegal (Hayner, 2002).

Commenting on this position and taking the argument further as regards the superiority of international law to national amnesty granted in Sierra Leone, the Human Rights Section of the United Nations Mission in Sierra Leone (UNAMSIL) observed:

> Lome Peace Accord was indeed a blueprint for peace in Sierra Leone. If for nothing else, the TRC has insured Sierra Leone's past would not be swept under the rug, without thorough examination and documentation. Yet, the warring parties had arguably overstepped their legal boundaries by including within the amnesty provisions, crimes against humanity, war crimes, torture, rape and other serious violations of international law. Moreover, while there is no denying of the fact that Sierra Leoneans had suffered immeasurably during the war, it is also true that the entire human community was also shocked by the events that transpired and was aware that the bloodshed of such enormity could no more be considered Sierra Leone's own affair, an element of its autonomy, a matter of its own jurisdiction. It was our collective responsibility and we had to see it ended[7]. (pp. 11-12)

The basis of transitional justice may also be derived by virtue of societal or victim's right to know the truth. In a number of cases, the Inter-American

[7] Written Submission by the Human Rights Section of the United Nations Mission in Sierra Leone to the Truth and Reconciliation Commission in Sierra Leone., dated July 30th 2003.

Commission on Human Rights (IACHR) has held that victims have the right to know about what happened (*Ellacuría & others v. El Salvador*, 1999; *Soria v. Chile, 1999).* Furthermore, the need to compensate victims on the basis of restitution in material and or symbolic form has been a driving force as well (Crocker, 2000).

Transitional justice may also arise because there is the need to establish and consolidate a new era by purging the old era (Evenson, 2004). In this regard, Stacey (2005) has sought to explain the normative basis of transitional justice by resorting to the canon political theories of Machiavelli, Rawls, Kant and Locke, which required that the old regime must be purged, and perpetrators punished in order to establish and consolidate the new regime. Stacey maintained that the issues that arise with regard to the terms and conditions by which victims can live with their abusers in the new era could be answered by reference to "the conceptual resources of the history of political thought"(p.20).

In this part, the term transitional justice has been defined and conceptualized both as a tool and a process by which new democracies answer to the demand of abuses of the violent past. The basis of transitional justice has been discussed in terms of a state's obligation to deal with impunity by punishing offenders under international treaties; in terms of societal or victim's right to know the truth and also be compensated for the abuses suffered; in terms of the need to reconcile social divisions orchestrated by a violent past for peaceful coexistence and development, and in terms of the need to establish and consolidate a new era by purging the old era. Transitional justice is

administered through mechanisms, which are either restorative and or retributive. In some cases the policy choice has been amnesia—doing nothing.

Tools for Transitional Justice

There is no one approach to transitional justice. Several tools are used to bring about accountability for past abuses. These include, criminal trials or prosecutions, restorative mechanisms such as truth commissions, or commissions of inquiry as the case may be, reparations, lustrations and or purges. This Section examines and analysis these tools in detail.

Criminal Trials and Prosecutions

Criminal trials or prosecutions serve as one of the tools by which past abuses are dealt with. According to Bradley (2003), the concept of retributive justice, which characterizes the conventional criminal justice system, whether national or international, aims at punishing the offender. He observed, “Retribution certainly includes elements of deterrence, incapacitation, and rehabilitation, but it also ensures that the guilty will be punished, the innocent protected and societal balance restored after being disrupted by crime” (p.7). Historically, the idea of retributive justice through prosecution has existed for a very long time and been considered as the most appropriate tool for addressing past human rights abuses (Dadzie, 2004). In the context of transitional justice, varying forms of criminal tribunals or war tribunals have been established to prosecute and punish perpetrators of past abuses. These include international criminal tribunals, hybrid

tribunals, and domestic mechanisms. There have been international tribunals such as the International Criminal Tribunal of Rwanda (ICTR), and the former Yugoslavia (ICTY). Criminal tribunals have also taken a hybrid form such as the Special Court of Sierra Leone, which was set up by an arrangement between the UN and the Government of Sierra Leone. There are also hybrid courts in Timor-Lest and Kosovo. Again, a national tribunal in the case of Iraq has emerged (Evenson, 2004; Lipscomb, 2005; Vinjamuri & Snyder, 2004).

Functions of Criminal Prosecutions

One of the reasons advanced by affiliates of international criminal prosecutions and supporters of prosecution generally is that, prosecution prevents a recurrence of future abuses. This is achieved by serving as a deterrent, incapacitating potential abusers, providing moral education and ensuring entrenchment of the rule of law for new democracies. Another reason is that prosecution prevents vengeance, which could lead to vigilantism. Conversely, failure to punish the offender legitimizes the abuse and opens a doorway to future abuses (Harvard Law Review, 2001; Kritz, 1995: Vinjamuri & Snyder, 2004). Bass (2000) for example observed that "uncontrolled vengeance" as opposed to "a painless kind of forgetting" (p.304) is an alternative to trials. Other goals of prosecutions are stated as balancing the social moral fiber offset by the commission of the abuses, fostering national reconciliation, preserving a historical record of the abuses that took place as a catalyst for inducing future prosecutions (Harvard Law Review, 2001; Vinjamuri & Snyder, 2004).

Criticisms against Prosecutions

Cobban (2006) vehemently disagreed on the stated goals of prosecutions on the basis that little or no evidence exists to show that these goals have been attained. She maintained that the assertion that prosecutions help to build peace always and also advance the cause of human rights have not been proved. Cobban argued that there is no proof that victims of war do always ask for prosecutions. There is no proof that prosecutions of war crimes deter future recurrence; and amnesty encourages impunity. Cobban observed:

> Criminal tribunals in places such as Rwanda and former Yugoslavia were supposed to bring justice to oppressed peoples. Instead, they have squandered billions of dollars, failed to advance human rights, and ignored the wishes of the victims they claim to represent. It is time to abandon the false hope of international justice". (p.22)

Other criticisms against retributive justice are that it is expensive, time-consuming, and does not address the needs of victims. Moreover, evidence required is very difficult to obtain, hence even when trials commence, they may not be successfully prosecuted (Hayner, 2002). Another criticism is that prosecution is counterproductive to national reconciliation (Pankhurst, 1999). These criticisms notwithstanding, it is being observed that trials are desirable in situations where breaches of international law had occurred. In some cases, trials operated where it was legally mandatory on behalf of the state to punish offenders. Thus, crimes against humanity, breaches of humanitarian law and international human rights demand punishment (Bell, 2000).

Restorative Justice

In contrast to trials, the concept of restorative justice aims at restoring both the wounded and the offender as opposed to punishing the offender. Newell captured the essence of restorative justice as:

> Not about going soft on offenders - it is actually a lot harder for offenders to confront what they have done, to understand the full implications of their behavior, than to be dealt with in the conventional way. Conventionally, the criminal justice system separates the offender - often literally from the victim and community. While this is sometimes important, if separation is all that happens, offenders can quickly distance themselves from the harm they have caused, forget it, deny it, or create elaborate justifications for why they did it, which absolves them of all responsibility. Meanwhile, the victim, denied a voice in the formal process of prosecution, is left with the experience of harm, which can be deeply scaring. (as cited in Keeva & Newell, 2004, p.74)

Restorative justice targets both the victim and perpetrator by creating a forum to address the concerns of each of them. Further, it centers on victim-offender reconciliation (Zehr, 1998). Within the context of transitional justice, restorative justice is employed to restore the dignity of victims by validating their sufferings, addressing their needs, with reparation or compensations offered in some cases. In this case, victims experience justice that answers their needs in the manner that the traditional justice system fails to provide (Zehr). For example, they are offered the opportunity to tell their stories, vent their frustrations and demand answers and sometimes explanation from their abusers. Such a platform provides them with public assurances that what they suffered was wrong, and measures are being taken to

prevent a recurrence. These measures are expected to bring about healing (Berewa, 2001).

Restorative justice also offers perpetrators the opportunity to make confessions, explain their actions, and ask for forgiveness. It satisfies victims' need to experience justice no matter how ambiguous it might be. By holding perpetrators accountable for the truth and other forms of accountability, it is hoped that such an approach will bring about reconciliation of masses of victims with perpetrators and ward off any future retaliatory actions that the abuses may give rise to. It is, therefore, a process designed to benefit both the victim and perpetrator all in the overriding interest of national reconciliation (Berewa, 2001).

The employment of restorative justice is determined by the socioeconomic, political and cultural dynamics of a particular transition (van Zyle, 1999). Where prosecutions have not been practicable or legally ousted, truth commissions have been the convenient alternative (Evenson, 2004). In some cases combinations of different approaches have been adopted alongside restorative mechanisms to play complementary roles. In other cases, only truth commissions have been employed to offer restorative justice (Berewa, 2001). In transitional justice, Ellis and Hutton (2002) have maintained that restorative mechanisms have sometimes been solely pursued in the form of restitution and reparation without any form of justice or accountability. They argued that restitution and reparation should become an integral part of the concept of an acknowledgment and accountability package and should not stand on their own. This is

because the acknowledgement of perpetrators for crimes committed is important if reconciliation is to take place.

Truth Commissions

In recent times, truth commissions have been largely utilized to provide restorative endeavors in transitional democracies. For example, South Africa established the South African Truth and Reconciliation Commission after apartheid "to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past" (Section 3(a) of Promotion National Unity and Reconciliation Act, 1995). In terms of justice, the commission pursued truth, and reconciliation (Tutu, 1999). Other countries that employed this approach to deal with past abuses include Chile, Ghana, Nigeria, (Hayner, 2002). The phrase "truth commission" is a generic term of recent adoption given to bodies that carry out certain kinds of official inquiry, namely official truth-seeking in respect of past abuses. They have been called by different names in different jurisdictions. In East Timor it was called the Commission for the Reception, Truth and Reconciliation (Rawski, 2002). In Argentina it was referred to as a Commission of the Disappearance of Persons. In Guatemala, it was known as a Clarification Commission; and in some cases it has been referred to as commission of inquiry. Thus several bodies, which did not retain the tile of truth commission yet carried such inquiries, have been subsumed under this formal title (Hayner, 1996).

It should be pointed out that truth commissions emerged largely in Latin America following the fall of military dictatorships and oppressive regimes in that region during the 1980s (Grandin, 2005). Consequently, several truth commissions were established in an attempt to provide a process of transition from complex autocratic political systems to democratic governance (Humphrey, 2003; Shifter & Vinay, 2004). According to the South African Truth and Reconciliation Commission, their value lies in "their ability to construct a "historic bridge" between "a deeply divided past of untold suffering" and "a future founded on the recognition of human rights" (as quoted in Grandin, 2005, p.46). In most cases, truth commissions are formed to address past events that inflicted trauma, pain, destructions and general infringement of human rights. The attempt for its formation always centre on the process of addressing the injustices to people, unveiling the truth about past atrocities and looking for a means of restoring union (Humphrey, 2003). Truth commissions are generally understood to be bodies that are designed to investigate past events of a nation that characterized abuses (Brahm, 2003). Tepperman (2002) defined truth commissions as "tools that traumatized countries use to set the historical record straight" (p. 10). According to Call (2004) they are "instruments of social peace and harmony, and are at best complements to retributive justice" (p.104). Hayner (2002) provided four defining characteristics of truth commissions thus:

> (1)Truth Commissions focus on the past; (2) they investigate a pattern of abuses over a period of time, rather than a specific event; (3) a Truth Commission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report;(4) these Commissions are officially sanctioned, authorized, or empowered by the state. (p.14)

Another defining characteristic of truth commissions is the absence of trials in their processes. They do not determine criminal responsibility, neither do they punish nor enforce their recommendations (Hayner, 1996; Mattarollo, 2001). Moreover, they are not like national human rights institutions set up to deal with persistent human rights issues, but are created on ad hoc basis in response to a political transition (Hayner, 1996). Also, truth commissions are usually created in response to amnesty where prosecutions may not be possible as was the case in South Africa (Gibson, 2002; Humphrey, 2003). They sometimes complement trials and concurrently exist and operate alongside with trial process as was in Sierra Leone (Evenson, 2004). Truth commissions also present past violence as parables rather than "political ethos" (Grandin, 2005,). In Latin America, they "portrayed terror not as an extension of a reactive campaign against social-democratic nationalists' projects, nor as an essential element in the consolidation of a new neoliberal order, but as a breakdown of social order" (Grandin, 2005, p.48) which had occurred intermittently since independence. Against this background, Grandin maintained that truth commissions constitute a channel for the creation of modern-day nationalism.

Functions of Truth Commissions

The fundamental goals of truth commissions have been "to discover, clarify, and formally acknowledge past abuses; to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past "

(Hayner, 2002, p.24). Other goals are to find the truth about past events and create an official historical record; establish national reconciliation; secure justice for victims; deter future abuses and violations; and a fact-finding step towards prosecution (Scharf, 1997).

Again, the inquiry into the past serves as a means to distance the new government's policies from the old one (Posner & Vermeule, 2004). Further, Truth Commissions safeguard evidence of the abuses that had taken place in such a manner as to secure them. The El Salvador truth commission pursued this function critically and recommended for the establishment of a truth foundation with the responsibility to protect the archives in question (Mattarollo, 2001). The underlying factor of this process is to come up with the truth about the past. Truth in this sense "evokes images of collective memory…focuses directly on memories of past events that are shared to a greater or lesser extent by the individuals who constitute a representative sample of a larger population" (Schuman, as quoted in Gibson 2004, p.204). Thus, the creation of a collective memory in the past makes it impossible for past activities to be denied. As Ignatieff (1996) has noted, "all that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse" (p.113). Furthermore, it is believed that the process of truth telling facilitates national reconciliation and justice is served by pronouncing moral condemnation on perpetrators (Scharf, 1997). It is also believed that such processes are necessary for the construction of a firm democracy (Shifter & Jawahar, 2004).

The functions of truth commissions can be summed up thus: to establish a record of past abuses, restore the dignity of victims, address impunity, break the cycle of violence, address the conditions which gave rise to the abuses, make recommendations for reparations and recommend measures to prevent the occurrence of same**,** (Scharf, 1997). These are pursued within the overall interest of national reconciliation. When Truth Commissions are thus engaged, they officially proclaim, expose and sanction the truth in a manner that the findings can form part a nation's history. By so doing the commissions also establish authoritative impartial versions of the events that might have led to the abuses, making it difficult to officially deny the occurrences of those abuses (van Zyl, (1999).

Why Truth Commissions

Even though international law does not favor non-prosecution of gross human rights violations, truth commissions have become fashionable in recent times due to the inability of the conventional criminal justice system to successfully handle huge abuses of human rights; hence the need for alternative approaches in this regard (Pankhurst, 1999). According to van Zyl (1999), new democracies emerging out of conflicts or oppressive regimes are not able to prosecute the abuses which might have occurred during their past due to dysfunctional criminal justice systems, lack of evidence to prosecute due to the sophisticated nature of crimes committed which makes concealment of evidence possible, the cost involved in prosecution, and time constraint (van Zyl), the need to document abuses, and the events that precipitated them. In situations where

abuses have taken place on a large scale, prosecutions have not been successfully carried out to consume the entire process (Hayner, 2002). The idea of a truth commission is borne out of the fact that, generally, new transitional governments, whilst young and weak, face the challenge to restore peace for the purpose of social cohesion and development in society (van Zly). Transitional governments therefore must find a way for former combatants or oppressors to live together within society whereas at the same time, they must address past abuses as a mark of their democratic ethos. Within such complexities, governments face the dilemmas of doing nothing (amnesia) or doing something (trials). Truth commissions, therefore, become a better alternative—"a third way" between trials and amnesia - doing nothing (van Zyl).

Truth commissions therefore fill in the limitations inherent in trials. This is because the purposes served by truth commissions in transitional democracies cannot all be met within the context of trials and other judicial inquiries (Call, 2007); for trials concentrate on individual perpetrators, leaving out the victims and socioeconomic, cultural and political underpinnings, which gave rise to the abuses in the first place (Tepperman, 2002). Even in situations where attempts are made to effect trials, results of convictions have been very limited. As a matter of fact, the Nuremberg trials of Nazi Germany witnessed 85,885 prosecutions but secured only 7,000 convictions. Thus truth processes take care of the shortcomings of trials, but they are not substitutes for trials. They however serve a need necessary in democratic transitions. Moreover, the post-transition contexts within which truth commissions emerge usually signify weak transitional governments with the outgoing regime still strong on the ground and

sometimes with negotiated amnesties (Verwoed, 1999). It thus becomes impossible to embark on trials. Yet, critics of truth commissions normally ignore discussions of such contexts in their analysis (Tepperman, 2002). Further, truth commissions find support from the human rights community as they provide avenues to institute and enforce international human rights norms within a domestic jurisdiction.

Giving the importance of restorative roles played by truth commissions in transitional justice, Scharf (1999) recommended that a permanent international truth commission should be established after the kind of the International Criminal Court. Supporters of the restorative mechanism have argued that strategies to address human rights abuses must not be narrowly focused on prosecution. A more expansive approach should be considered for addressing the rights and needs of victims of the conflict or oppression (van Zyl 1999). Truth commissions are said to provide certain values which are desirable for peace-building but are not provided by conventional criminal systems (Evenson, 2004).

Criticisms of Truth Commissions

The main criticisms against restorative justice is that it is a weak accountability mechanism, and unsuitable in certain contexts. Moreover, international law demands that certain crimes should be prosecuted and the offenders punished. Hence, accountability by a truth commission may not fulfill a country's international obligation to deal with impunity by retribution within its shores (Scharf, 1999).

Ironically, critics from the human rights community have attacked the basis for truth commissions. They have argued that there is no need to revisit the past as it will reopen old wounds; truth commissions deal with the devil and compromise justice; the bargain of choosing truth commissions over trials is unnecessary as trials are now easy to achieve; and that a version of the past constituting the notion of truth leading to reconciliation is untenable (Tepperman, 2002). Shifter and Jawahar (2004) for example argued that the contexts, which churned out truth commissions, are no longer tenable. Thus, within those historical contexts, it was inconceivable to try a former head of state and trials were also not practicable. However, recent developments within the international arena vehemently oppose impunity, and for that matter amnesties inherent in truth processes. Again, the upsurge in Information Technology has made information accessible and trials practicable (Shifter & Jawahar).

Truth commissions are criticized for being associated with amnesties. Critics have argued that problems occur where truth commissions are substituted for prosecutions. Thus, amnesties, which characterize truth processes, may amount to blatant violations of international conventions such as the Geneva Conventions, and the Torture Conventions, which require state parties to undertake punishment for breaches (Scharf, 1997). The Geneva conventions, for example, require countries which are signatory to the Conventions to search and punish perpetrators for breaches or to hand them over to other state parties for that purpose (Bell, 2000). Hayner

(2002) pointed out that truth commissions are not substitutes for trials. Rather, they perform functions desirable in society.

Truth commissions have further been criticized as an institution that subverts justice/trials. This is because funds, which should have been available for trials, are rather committed to the truth process (Tepperman, 2002). Mendeloff (2004) argued that claims that truth commissions contribute to peace-building in postconflict contexts are largely unfounded and basically against logic. These claims are social healing and reconciliation, justice, creating official historical record, educating about the past, ensuring institutional reforms, stabilizing democracy, and deterrence against future abuses. He asserted that truth processes are imperfect and remain imperfect with no guarantee that they will be perfect in the future. He evaluated these claims against the backdrop of peace-building and concluded that they are based on untested hypotheses and factual assumptions.

In response to these criticisms, advocates of truth processes seemed to reply that these critics fail to address the contexts within which truth commissions emerged (Posner, 2004). Verwoed (1999) for example maintained that the transitional context is politically complex, not making trials practicable. In his defense of the South African policy option for truth over trials, he explained that the context of the transition was fragile; hence a compromise in the form of amnesty was needed. As a result South Africa chose to pursue truth and reconciliation as apposed to prosecutions. Verwoed reiterated the words of Kadar Asmal, a chief proponent of the South African Truth Commission:

> I therefore say to those who wear legalistic blinkers, who argue that immunity would be an affront to justice, that they simply do not understand the nature of the negotiated revolution that we've lived through…we must deliberately sacrifice the formal trappings of justice, the courts, the trials, for an even higher good: Truth. We sacrifice justice, because the pains of justice might traumatize our country or affect the transition. We sacrifice justice for truth so as to consolidate democracy; to close the chapter of the past and to avoid confrontation. (as quoted in Verwoed, 1999, p.121)

Engaging both Restorative and Punitive Approaches

There have been cases where policy choices of transitional justice have included both the restorative and retributive justice mechanisms (Berewa, 2001). Sierra Leone, East Timor and Peru employed the two divergent models and this fits into acceptable transitional justice models at the legal and jurisprudential level (Evenson, 2004).

In Sierra Leone an amnesty was granted for human rights abuses which had occurred during the internal civil conflict between the Revolutionary United Front (RUF) and the government of Sierra Leone (Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 1999). After almost a decade of atrocities, bloodshed, rape, pillage and plunder, no one emerged a winner. Both sides to the conflict became war weary and negotiated a peaceful settlement of the conflict (Rashid, 2000). The government of Sierra Leone agreed to grant an amnesty in respect of the abuses which had occurred. Consequently, a truth and reconciliation process was agreed upon by the parties to provide restorative justice. In his written testimony before the TRC the former President of Sierra Leone, H.E. Alhaji Ahmad Tejan Kabbah, reiterated the aforementioned factors that led to the granting of the

amnesty by his government and the decision to set up the TRC to administer restorative justice rather than punitive justice. In his words, the President said:

> I was anxious to fulfill my election promise to end the war and to restore peace to this country. This was a near obsession for me not just because it was a political undertaking, which I had made, but also because I was conscious that the country needed peace and the population was war weary and was yearning for peace. I knew that the loyalty of the military or of what remained of it could not be guaranteed to prosecute the war against the rebels successfully; I was determined to bring an end to the long fratricidal war in order to prevent the further killings of Sierra Leoneans on either side. The only option I saw available to me was to embark on negotiations with the rebels. (p.8)

Subsequent developments however brought about a shift in the accountability policy. In breach of the cease-fire agreement, the RUF leadership attacked and kidnapped UN peacekeepers. This led to demonstrations and subsequent attack by the RUF on demonstrators, which resulted in casualties. Foday Sankoh, the RUF leader, fled but was arrested and put into custody. These events caused the government of Sierra Leone to write to the UN Security Council to set up a court to try the RUF for the commission of abuses. An agreement between the UN and the government of Sierra Leone led to the setting up of the Special Court for Sierra Leone (Berewa, 2001).

The issue to consider is whether restorative and punitive mechanisms are mutually exclusive. Doyle (2004) opined that restorative and retributive accountability mechanisms are mutually reinforcing as tools for repairing abuses of the past. Doyle decried Chile's approach, which utilized restorative efforts exclusively claiming that transitional justice was ineffective in Chile in the absence of a retributive component. In the view of Crocker "although punishment and

reconciliation do 'pull in different' directions and sometimes clash, when adequately conceived, they are both urgent goals that often can be combined in morally appropriate ways" (as quoted in Doyle, 2004), p.31). ICTJ (2004/2005) reported that their survey results in five war-torn countries particularly that of Uganda showed that, mostly victims "want both peace and justice and do not see these as incompatible goals" (p.5).

The Inter-American Commission on Human Rights (IACHR) has reiterated its position with regard to transitional justice, namely that it consists of the right to the truth, which finds expression in the public acknowledgement and validation of violations as well as their prosecution and punishment (*Ellacuría & others v. El Salvador*, 1999; *Espinoza v. Chile*, 1999). Furthermore, the IACHR held that a state's right to know the truth does not serve as a bar to the right to judicial redress. In the view of IACHR, truth and reconciliation commissions are not created with the hope that trials will be completely eliminated, but rather to ascertain the truth so as to ultimately achieve justice (*Espinoza v. Chile, 1999)*. It is believed that knowing the truth about events that happened "ends the uncertainty about the circumstances surrounding the ultimate fate of the victim. Second, it constitutes official acknowledgement of the wrong done. As a social or collective right, revealing the truth is a form of prevention of future human rights violations" (*Ellacuría & others v. El Salvador*, 1999, para.224). Thus, truth commissions may not exact punitive justice but the revelation of the truth leads to the addressing of impunity.

In determining the validity of a national amnesty law with regard to the state's obligation to address impunity, the IACHR has ruled in a number of cases that an amnesty law which bars a victim from pursuing judicial redress with regard to violations suffered amounts to a breach of the state's obligation to protect those rights (*Ellacuría & others v. El Salvador*, 1999; *Espinoza v. Chile*, 1999). In the case of *Espinoza v. Chile* (1999), the de facto government of Chile decreed an amnesty law in 1978 in connection with the political repression, which took place in that country from 1973 to 1978. Soria was kidnapped and killed. In July 1976, Soria's body was found in a canal in Santiago. The family of Soria instituted an action in the Supreme Court of Chile for the death of Soria. The Chilean Supreme Court found that state agents kidnapped, tortured, and executed Soria. Yet, the Chilean Supreme Court held that the amnesty law was valid and closed the case. It should be pointed out that earlier on the family had rejected the reparation award by the national reconciliation process in connection with the death of Soria. The family had also refused significant additional financial and moral reparations offered them by the Chilean government. In a subsequent action before the IACHR, the IACHR held that the position of the Chilean Court amounted to a breach of Chile's legal obligation and responsibility to protect human rights under the American Convention. This is because it foreclosed the possibility of Soria's arbitrary death being ever prosecuted. The IACHR reiterated that the overall input of the treaty obligation meant that national reconciliation endeavors should not constitute a bar to judicial remedy for victims. This is because the right to remedy includes judicial remedy and not limited to compensation and official acknowledgement of responsibility for violations. And in any

case, since the crimes under consideration fell within the realm of universal jurisdiction, perpetrators would be prosecuted in any event even if outside Chile.

In the same way, Hayner (2002) maintained that truth and justice have deferent roles. Truth commissions are to report fully on the abuses and violations whilst the courts should prosecute individuals and punish perpetrators. Hence, under no circumstances should criminal prosecutions be exchanged for truth mechanisms. The ICTJ (2004/2005) has encouraged the use of truth commissions alongside trial endeavors. Amnesty International stressed the need for accountability by revealing the truth, restoring the dignity of victims, as well as punishing offenders (as cited in Hayner, 2002).

From the foregoing, it is clear that the idea or the practice of combining restorative and retributive approaches to transitional justice as discussed fits into acceptable transitional justice models at the legal jurisprudential level. In order words, the use of one mechanism does not seem to bar the other or rather should not foreclose the use of the other. However, this emerging phenomenon where restorative and punitive measures are employed together raises a number of practical issues –what contexts justify the adoption of a dual accountability mechanism? Are the two institutions compatible? How should the two mechanisms be operated (sequentially or concurrently)? What should be the working relationship between them? How should the two mechanisms be packed and coordinated? Does the dual approach serve the ends of transitional justice? Doyle (2004) for example suggested that when utilizing the two institutions together, there should be only few prosecutions and only those who masterminded the commission of the abuses should be punished. Moreover, retributive justice should not be considered

as vengeance. The IACHR in *Espinoza v. Chile* (1999) has indicated that the work of truth commissions should ascertain the truth, which should ultimately achieve justice. Does this mean that evidence obtained by a truth process should be used for trials? These issues are yet to be settled. A detailed study becomes imperative in this regard and this is what the proposed study seeks to contribute to.

Table 1

Development Trends in Restorative and Retributive Justice

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

Note. From Apori-Nkansah, L. (2005). *Linguistics and Symbolism Patterns of the Truth and Reconciliation Commission for Sierra Leone*. Unpublished Manuscript.

Choosing to Leave the Past Alone – Amnesia

Even though transitional justice became popular in the1980s (Humphrey, 2003), not all countries in democratic transitions with past human rights abuses have employed any of the mechanisms discussed as part of their transitional framework. Some have chosen to do nothing by way of amnesia—a pretence that nothing ever happened. Garrett (as cited in Doyle 2004) considers amnesia as a transitional justice model [a policy choice]. A country like Mozambique chose not to unravel the past in terms of putting in place a trial or truth mechanism to look into the incidence of past abuses (Graybill, 2004). Mozambique chose the path of amnesia after the end of 16 years of war, which ended through negotiations. Mozambique was engaged in a liberation war with Portugal from 1964 to 1974, and after independence, a protracted civil war between 1975 and 1992 (Graybill, 2004). The context of these conflicts witnessed widespread abuses with about a million civilians killed and thousands tortured. Despite these abuses a general amnesty was granted with no accountability by way of truth, justice or punishment (Graybill, 2004). The basic rationale for the choice of forgetfulness was that the people of Mozambique would be in a better position to reconcile if they did not recount or give attention to their past. Other reasons given were that the atrocities were too numerous to recount, a lack of political will for accountability as those in power had participated in the perpetration of the abuses and acknowledgment of the existence of other means of healing (Hayner, 2002). So far, there has not been any eruption of hostilities in Mozambique, and this is partly attributed to the fact that traditional healing rituals were

performed, which allowed forgiveness and acceptance of the perpetrators back into their communities.

Similarly, in Cambodia, it is estimated that about 1 million people, one fifth of the Cambodian population, were killed under the Khmer Rouge administration in the late 1970s. Following the overthrow of that government in the late 1980s, no interest was shown to dig into the past. The basic reason was that some officials of the government in power could be implicated. In recent times, the international community took an interest in recording the abuses of Khmer's administration in Cambodia. The U.S. Congress passed a Cambodian Genocide Act of 1994 to investigate and research the atrocities that occurred in that country. In 1999, the Cambodian Prime Minister suggested the possibility of a truth commission. Through international efforts to ensure accountability for the atrocities of the Khmer Rouge regime, agreement was reached between the United Nations and the Cambodia government to set up a Hybrid Tribunal in 2004 (Rae, 2005).

Hayner, (2002) observed that the absence of a formal accountability mechanism did not erupt into violence in Cambodia. However, the facts of the atrocities of the Khmer Rouge administration could be exaggerated in the absence of official records. More so, due to the absence of official records, the youth in Cambodia considered the stories of the country's sordid past as exaggerations and mere jokes. And as time slipped by, the evidence got eroded (Hayner, 2002).

Given the experiences in these countries, it is not clear if the absence of a formal transitional justice mechanism adversely affected their peace process, particularly in

Mozambique. This may be due to the existence of local/traditional healing mechanisms, which allowed for forgiveness and acceptance. As regards Cambodia, Hayner (2002) warned that history was being distorted with abuses being paraded as fantasies. If efforts were not taken to halt these trends, the past could be forgotten or treated with triviality. But as the saying goes, those who forget their past are doomed to repeat it (Tutu, 1999). Herein lays the importance of transitional justice. There is disagreement, though, as to whether documenting past abuses would promote reconciliation or spark off violence (Hayner, 1996). Evidence however exists to indicate that unraveling past abuses has not sparked off violence but has rather contributed to peace and stability (Gibson, 2004). This not withstanding, research is needed to assess the effectiveness or otherwise of the choice of amnesia.

In this Section, the tools for transitional justice have been examined in great detail. Major policy choices for transitional societies emerged as restorative mechanisms, retributive mechanisms, dual mechanisms and the choice of amnesia in some cases. The strengths and weaknesses associated with these mechanisms have been identified and examined. Determining the choice of accountability mechanism poses a dilemma for policymakers concerned. The cultural, historical, socioeconomic and political contexts of a particular transition determine the policy choice for an accountability framework. The next Section discusses these dilemmas in detail.

Transitional Contexts and Dilemmas of Accountability Choices

Formulating a transitional policy framework to address past human rights abuses often raises certain dilemmas for the nations concerned. Nations emerging out of a tumultuous past where abuses have occurred face the dilemma as to whether or not to listen to the public demand for justice and accountability and, if yes, the form accountability should take. It should be observed that these issues are not determined in a vacuum, but within the dictates of the socioeconomic, political, and cultural contexts of a particular transition (van Zyl, 1999).

Transitional justice, and for that matter the quest for accountability for past abuses, takes place within the context of a regime change (Posner & Vermeule, 2004). The dynamics of transitions and accountability choices are created by the context of a regime change (Stacey, 2005). Posner and Vermeule (2004) categorized transitions into four moulds. These are transitions led by elites of the former regime; those led by the opposition against the elites; transitions that are bargained between the elite and the opposition, and those imposed by foreign or external forces. They maintained that within the context of elitist-led regime change, accountability for past abuses is “limited”. Where transition is bargained, transitional justice is “moderate”. Where the opposition or foreign forces lead a change, transitional justice is strong.

Stacey (2005) categorized transitional justice choices into easy cases and hard cases. The easy cases refer to transitional contexts where the former regime is defeated and ripped of all the conditions that allowed them to commit offences. The hard cases connote situations where the old regime maintained part or all of such conditions. Stacey

cited the post-Pinochet dictatorship in Chile as a typical hard case of transitional justice. General Pinochet handed over power to an elected government but remained the commander-in chief of the armed forces in the new regime. He warned, “No one is going to touch my people. The day they do, the state of law will come to an end” (as quoted in Stacey, 2005, p. 13). In effect, it became difficult to bring about accountability for the abuses that had occurred under Pinochet’s administration.

Skaar (1999) maintained that how emerging democracies choose to deal with past abuses is determined by the balance of power between the incumbent and the outgoing regime. Thus, in situations where the new order is stronger and has defeated the old order, prosecutions have been resorted to. But where the old regime was strong, restorative endeavors were feasible (Tepperman, 2002). As a matter of fact, after the Second World War, the Allies were able to set up the Nuremberg War Crimes Tribunals for the prosecution of Nazi war criminals because Germany had been defeated (van Zyle, 1999). However, in postapartheid South Africa, the African National Congress (ANC) government could not prosecute human rights abuses that had been committed during the apartheid era. This was because the agreement that ushered in the democratic government from apartheid was a negotiated settlement between the ANC and the apartheid government (Tepperman, 2002). The ANC nationalist movement had both internal and external support, yet it could not defeat the apartheid regime through its military campaigns. Similarly, the apartheid government realized it could not continue to ignore the quest for democratic government. As a result, there was the need to accommodate each other. Conditional amnesty was therefore granted as a middle way to accommodate

the old and the new regimes (van Zyl, 1999). Where the old regime yielded power leniently, the new regime dealt leniently with it and vice-versa.

Other factors for the choice of accountability mechanism have to do with financial resources, the timing of a particular transition as well as international dynamics. For example, the interest of the international community to ensure accountability for abuses which occurred during the civil wars in Rwanda, former Yugoslavia, and Sierra Leone led to the establishment of International Transitional Justice mechanisms in those countries (Hayner, 2002). Basically, policy responses by transitional governments to the demand for justice by victims could be any of these options "to do nothing; to prosecute; or to offer restorative endeavors in the form of truth commissions and other forms of reparations" (Tutu, 1999; Tepperman, 2002).

This section has examined in detail the difficulty associated with the policy choice for transitional justice in a given context. In cases of *hard transitions*, restorative measures have been utilized as well as amnesia as the case may be. Retributive approaches have been possible in cases of easy transition where the outgoing regime has been defeated by the new regime. Irrespective of the mechanism in question, transitional justice has been fiercely criticized. The next part offers analysis on these criticisms.

Criticisms against Transitional Justice

Apart from the dilemmas associated with policy choice of the mechanism, transitional justice raises further consequential challenges irrespective of the tool being

engaged. In this regard, it has been argued that it is counter-productive to democracy and economic development (Posner & Vermeule, 2004).

A major criticism against transitional justice is that it is inherently retroactive and therefore illiberal. By the notion of retroactivity, transitional justice employs both legal and political norms, which may not have prevailed in the previous regime to deal with abuses of the past within a different dispensation. In some cases, the actions of the past abuses may have been made illegal by the state after the transition. Dealing retrospectively with such abuses may therefore appear counter to the precepts of the rule of law, which eschews retroactive law. Thus, a person should not be punished but for written offences which were in place at the commission of the said offences (Wade & Bradley, 1996). The problem is that within the context of past abuses, the post transitional era needs to signify its commitment to dealing with accountability. The dilemma is whether to punish such abuses to signify the new era's commitment in dealing with impunity or to allow wrongdoers to roam freely around in the name of the rule of law (Posner & Vermeule, 2004). Invariably, nations in such dilemmas have chosen to deal with the abuses.

Transitional justice is again criticized for depleting human resources and creating staffing problems for the new regime. When purges take place and personnel of the old regime are removed from office, transitional justice is said to create staffing problems for the new regime. The dilemma is that under the new era, victims may not want to continue to be governed by personnel who supervised and presided over the abuses of the old era, yet the new era may not have the requisite human resources as

they may have been denied education and development: the conditions which caused them to rise against the old regime. Thus it depletes human resources and creates staffing problems for the new era (Posner & Vermeule, 2004).

Transitional justice may also generate problems with unsettling property rights. Assets may have been confiscated under the old regime. The original owners or their descendants may lay claim for the return of the properties or be paid compensation instead. Such situations pose problem for the new era because any attempt to return properties to the original owners will create an atmosphere of uncertainty about property rights - a state which, is inimical to wealth generation. Also, undertaking the burden to compensate might deplete the economy. It is therefore imperative to create an atmosphere whereby wealth can be created; otherwise, if poverty were to ensue in the process, the blame would be placed on the new democratic regime (Posner & Vermeule, 2004).

Moreover, there is the problem of court congestions where existing mechanisms are utilized to execute transitional justice. The argument has been that the employment of retroactive laws will open the floodgates to litigation with regard to civil and criminal proceedings. The creation of excessive caseloads on the legal system might offset the democratization process. In this case the courts get tied with retroactive justice with no opportunity to develop the new regime (Posner & Vermeule, 2004).

Another problem deals with the dilemmas associated with the destruction of reputation. A divide between the past and the present reveals an enormous amount of corruption of the past. This is because it has been shown that people contribute to their own enslavement, hence there is the risk to destroy the reputation of those who need to

move society forward. Thus, when a government embarks on purging, it leads to undesirable consequences, namely the temptation of engaging in the continuing act of witch-hunting; the generation of inaccurate reports since police records are never complete; the exploitation by individuals for personal gains; uncertainty of former informants and suspicion that the victims will find out about them; and the issue of retroactive judgment which characterized lustrations. Thus, a judicial or administrative decision about a person's moral conducts which brands him for purging is derived from retroactive norms (Posner & Vermeule, 2004).

Another problem raised by critics is that transitional justice creates inequities. In situations when compensations are being pursued, appropriate measures might not be available to determine those who should qualify for the benefits. As a result, those who should benefit may end up being excluded for lack of appropriate measurement. Thus many restitution programs in the past have resulted in anomalies (Posner & Vermeule, 2004).

Further, the level of judgment executed by transitional justice is considered unrealistic. Critics point out that some public officials who may have served during the authoritarian regimes may not have instigated the commission of offences but may have acted upon instructions. Again, others may have genuinely chosen to be around to mitigate the effects of the harsh policies of the old regime as and when they could. Others genuinely believed in the ideology of the old regime and thus acted in good faith. Hence, treating these categories as perpetrators is tantamount to lack of justice. Furthermore, considering the numbers involved, it will serve no purpose to

apportion blame. Posner & Vermeule (2004) have argued that “the past is another country and people’s behavior under authoritative regime cannot be evaluated objectively by those living in a liberal state” (p.812).

Another problem associated with transitional justice concerns the flaws with the tools and processes used. Truth commissions, for example, are criticized for recording partial truth; suffering from insufficient funding; and not being able to generate public interest about their process (Call, 2004). Mendeloff (2004) argued that claims that truth commissions contribute to peace-building in postconflict contexts are based on untested hypothetical assumptions and are largely unfounded. Mendeloff further asserted that truth processes are imperfect and remain imperfect with no guarantee that they will become perfect in the future. International criminal tribunals are also criticized as suffering from local bias, and attaining minimum convictions. Hybrid courts are said to be plagued with poor management of cases. Call (2004) recommended that proponents of transitional justice should accept these deficiencies and work around them.

Discussions so far point out that, transitional justice deals with retroactive issues. Critics have argued that it is counter-productive as it interferes with democratic precepts and economic development. They maintained that new regimes should rather embark on forward-looking measures that would contribute to state building, economic growth, and political cohesion rather than engaging in backward-looking measures. Posner and Vermeule (2004) however agued that even though transitional justice presents challenges of retroactivity, inherent in retroactivity itself are elements of progressivism or forward-looking measures designed to strengthen democracy. The conceptual framework, which

will underpin this research and the methodology utilized, will be examined in the next Part.

Review of Conceptual Framework and Methods

This Section examines and analysis the literature on the conceptual framework which underpinned the study by highlitng the potential areas the study sought to focus on. Also, it provides the theoretical and philosophical framework that anchored the methods used for the execution of the research, as well as analyzing the the assumptions that frame the methods.

Conceptual Framework

The study was grounded broadly in the conceptual framework of transitional justice in the context of postconflict peace-building. In this research dual transitional justice means using restorative and retributive mechanisms at the same time to facilitate transitional justice in the same geographical jurisdiction. Evenson (2004) postulated that the concurrent existence of such two mechanisms might undermine their mandates in the absence of proper sequencing and coordination of the institutions involved with regard to information and resource sharing, and handling of evidence and witnesses. However, a detailed conceptual framework on a dual transitional justice model does not exist in the literature to focus and interpret Sierra Leone's experiences in that regard. Potential areas the research sought to explore include perceptions as to when to adopt dual transitional justice, how the two mechanisms should be coordinated and packaged for harmonious

coexistence? What should be the nature of the working relationship between the two institutions? How is dual transitional justice effective as a tool for postconflict peace-building? What political and philosophical constructs can be derived from the Sierra Leone experiences? What existing constructs can help to interpret the experiences and lessons derived from this case?

In seeking these perceptions, researcher was guided by the broad "overlapping objectives" of transitional justice and peace-building which ICTJ (2004/2005) stated as "preventing future violations, strengthening the rule of law, and addressing consequences of past abuses" (p.5). However, these broad goals did not fully inform the specific discussion and assertions about transitional justice in Sierra Leone. This is because transitional justice is a tool for peace-building and can contribute to the goals of peace-building. But it cannot solely account for the desired goals of postconflict peace-building, i.e. "peace, justice and reconciliation" (Rae, 2005, p.1), and in this case the peace and stability of Sierra Leone. Discussion of dual transitional justice in the specific contexts of Sierra Leone's peace-building process was informed by the goals of transitional justice as have found expression in the normative framework of the TRC and the Special Court. The TRC Act, 2000 mandated the TRC:

> 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. (Section 6 of the TRC Act, 2000)

The Special Court was also mandated to prosecute those who bore the greatest responsibility in breaching international humanitarian law and also for offences committed under the laws of Sierra Leone since November 30, 1996, as well as peacekeepers who committed offences (Special Court Agreement (Ratification) Act, 2002; Statute of the Special Court for Sierra Leone, 2002). The successful utilization should uncover truth about past events, bring about justice and ensure reconciliation in the overriding interest of peace and stability.

The two institutions are deemed to have existed harmoniously where their working relationship was regulated and coordinated in a manner that they did not have any tensions between them with regard to the handling of witnesses, evidence, information, resources, the public had a clear perception as to their respective functions, and the existence of one did not adversely affect the effective functioning of the other, to the extent that each was able to contribute to the ends of transitional justice in postconflict Sierra Leone. And in this regard, the attainment of truth, justice, and reconciliation.

Review of Methods

This study is a case study grounded in the qualitative tradition. There are several research methods or designs to consider for a given study. By research methods, reference is being made to the theoretical and philosophical framework that grounds a given study as well as the procedures and processes employed for the study (Creswell,

1998). Research methods differ by virtue of the philosophical and theoretical assumptions that underpin them. These assumptions are *ontological* - what constitutes reality or the nature of reality; *epistemological* - relationship of researcher with what is being studied*; Axiological* - values that drive the research*; Rhetorical* - the language of the research; and *methodological*- processes and procedures that are followed to bring about the findings.

Qualitative and quantitative studies are distinct from each other on the basis of these assumptions. Within the qualitative tradition, the ontological assumption emphasizes the subjective and diverse nature of reality. It requires researcher to report participants' views and diversity of opinions. The e*pistemological* assumption presupposes a close proximity between researcher and the data being studied. A qualitative researcher needs to spend time in the field to understand the phenomenon in order to report on it. By *Axiological* assumption, a qualitative researcher brings personal values and interpretation to bear on the narrative. Rhetorically, the research must be encoded in the language of qualitative paradigm. Methodologically, researcher should consider the contexts and work with the details before generalizing— *inductive* approach. The qualitative tradition is *humanistic* or interpretative in nature. The quantitative research, on the other hand, is based on the positivists' traditions which consider reality on the basis of what is observable. It uses mechanistic processes to test existing theories (Goulding, 2002).

There is an ongoing debate as to the superiority of the quantitative paradigm to the qualitative tradition and vice versa by their respective supporters. According to Goulding, supporters of the quantitative paradigm "perceive qualitative research to be

exploratory, filled with conjecture, ‘unscientific, value laden and a distortion of the canons of ‘good’ science” (p.11). Supporters of qualitative research also maintained that “positivists in the social sciences are pseudo-scientific, inflexible, myopic, mechanistic, outdated and limited to the realm of testing existing theories at the expense of new theory development” (pp. 11-12). Goulding attributed the quantitative and qualitative divide largely to the misconception of their respective origins, the metaphor that frames them, and the *ontological* differences of the two. Goulding maintained that each of these paradigms has its strengths and weaknesses. This notwithstanding, each paradigm has a specific role in knowledge generation by themselves or in a combination with the other. Trochim (2001) observed that even though he had personally been engaged in the debate and observed others do so, he was convinced that “the debate is much ado about nothing” (p.154). Trochim maintained that differences do exist at the levels of assumptions, and that accounts for the debate. However, the differences disappear at the level of data because qualitative data can be converted into numbers and quantitative data into words. Trochim further observed that each of the paradigms has traditions that go with the disciplines associated with it and they have been used to undertake diverse forms of research. The choice of a tradition of inquiry therefore should be determined by the nature of the topic being studied and the questions that drive the research (Creswell, 1998).

The qualitative framework was utilized to ground the research. The qualitative tradition is recommended for research which is exploratory because there are no theories and variables to test the phenomenon; the phenomenon is new or unique and it is

important to study it in detail to provide understanding (Creswell, 1998; Goulding, 2002). This is because the purpose of qualitative research is to describe, clarify and explain human phenomenon (Polkinghorne, 2005). This dissertation deals with dual transitional justice, an emerging phenomenon in the practice of transitional justice. Theories on dual transitional justice are non-existent by which variables could be derived to test Sierra Leone's experiences. A need exists for a detailed study that will contribute to the understanding of the phenomenon, hence the choice of the qualitative methodology. Rae (2005) adopted the qualitative paradigm for a study on building of "peace, justice, and reconciliation in postconflict Cambodia and East Timor" because of the relatively small cases on transitional justice and peace-building.

Also, within the qualitative paradigms, different traditions exist and the purpose of research drives the choice of a tradition. The qualitative tradition of case study was employed for this study. Trochim (2001) defined a case study as "an intensive study of a specific individual or specific context" (p.161). Creswell (1998) defined it as "an exploration of a bounded system or a case (or multiple cases) over time through detailed, in-depth data collection involving multiple sources of information rich in context" (p.61). Case study is recommended for a research where a detailed and in-depth study is required for a given system or context (Tellix, 1997). In this study, the contexts of dual transitional justice of the TRC and Special Court as well as the dynamics associated with these processes formed the basis of the study.

According to Tellix, renowned case study methodologists like Stake, Yin and others have developed detailed and reliable scientific methodology for case study

research. It utilizes several forms of data thereby enhancing the validity of the findings. Yin (in Creswell, 1998) identified six major sources of data as “documents, archival records, interviews, direct observation, participant observation, and physical artifacts” (p.123). A case study research does not have to utilize all these sources. Those sources, which are suitable for a given study, must be used bearing in mind that diversity of information is the hallmark of a case study (Tellix, 1997).

In this study, researcher utilized interviews, documents, archival records and observational field notes to establish required evidence. The methodology used for this study is similar to what Rae (2005) adopted for his dissertation on building “peace, justice, and reconciliation in post-conflict Cambodia and East Timor”. Rae undertook a case study of how postconflict Cambodia and East Timor utilized transitional justice in their peace-building process for peace, justice and reconciliation. He utilized the historical approach, interviews, observations, and archival sources for data collection. Rae chose this methodology because of the relatively small cases on transitional justice and peace-building. Rae also believed that the qualitative approach would provide a deep understanding of the issues being explored.

Discussions Analysis and Conclusion

A critical examination of the literature under review showed that the literature on the subject provided a comprehensive overview as regards issues involved in transitional justice. In this regard, it showed that transitional justice takes place within the context of

a regime change. Critical to democratic stabilization is the need to deal with past abuses. Thus, emerging democracies face dilemmas with regard to policy choice for accountability for past human rights abuses. Transitional justice presents challenges such as retroactivity which critics have defined as drawbacks and counter-productive to democratic values. Again, varied tools for transitional justice are employed depending on the dynamics of a particular transition. These comprise prosecutions, both international and domestic; truth commissions and other domestic initiatives like reparations and purges. Each transition is different; the choice of accountability mechanisms is dependent on the socioeconomic and political dynamics of a particular transition. Thus, any attempt to redress human rights abuses, which have taken place on a large scale, may require divergent approaches and tools that are appropriate for the nation concerned. There has emerged the phenomenon of dual accountability mechanisms as a divergent tool for dealing with past abuses. This emerging phenomenon of divergent tools is yet to be investigated as to their effectiveness and how best to package them for the ends of transitional justice. Absent in the literature is an analysis of dual transitional justice—when to use it, how to use it and its effectiveness in postconflict peace-building. This is what this research was set out to do by a case study analysis of the Sierra Leone dual accountability mechanisms. The research was grounded in the qualitative paradigm because there are no theories on dual transitional justice out of which variables can be derived to test Sierra Leone's experiences. Hence, understanding of the phenomenon must be sought from those who know about it and experienced it—interviewing

informants (Creswell, 1998; Goulding, 2002; Hall & Rist, 1999; McReynolds, 2001; Polkinghorne, 2005).

The literature grounds transitional justice mostly in narrative and also as a purely descriptive process, with very little normative and philosophical underpinning for it as a concept. The logic, evidence, and facts presented by the articles seem to indicate that transitional justice has contributed to democratization processes elsewhere, but these claims are yet to be tested. The strength of the literature however is in the fact that it provides an overview and ramifications of the issues involved in transitional justice. It thus serves as a compass, showing direction for future research and policy framework on transitional justice.

Chapter 3 offers a detailed discussion on the research design used for the study. This include the theoretical tradition of inquiry, research sample and population, method of data collection and procedures, data management procedures, method of data analysis, issues of quality and ethical considerations, researcher's role, dealing with researcher's subjectivity and participants', and participants' protection.

CHAPTER 3:

RESEARCH METHOD

Introduction

Chapter 3 describes the research design— theoretical tradition of inquiry, research sample and population, method of data collection and procedures, data management procedures, method of data analysis and issues of ethical considerations. The questions that guided the study are restated as follows:

1. How did Sierra Leone coordinate restorative and punitive transitional justice mechanisms of the TRC and Special Court respectively in its peace-building process?
2. What was the nature of the working relationship between the TRC and Special Court as coexisting transitional justice tools?
3. What is the nature of the experiences derived from Sierra Leone's dual approach to transitional justice?
4. When is it appropriate to use dual transitional justice mechanisms?

Research should lead to the understanding of the context of dual transitional justice as a peace-building tool, and how truth commissions and trial mechanisms can be packaged to coexist harmoniously. Harmonious coexistence of dual transitional justice mechanisms in the contexts of this study refers to a situation where a restorative mechanism of a truth commission and retributive trial mechanism are coordinated to operate concurrently within the same geographical jurisdiction in a manner that the two institutions do not have any tensions between them (with regard to the handling of

witnesses, evidence, information, resources, staff). Also, the public has a clear perception as to their respective functions, and the existence of one does not adversely affect the effective functioning of the other to the extent that each is able to carry out its mandate to contribute to the ends of transitional justice.

Design of Study

This Section describes the research design used for the study. To this end, it addresses the theoretical method of inquiry that grounds the study, the sample and population, methods of data collection, data analysis, the structure of the narrative report, issues of ethics and quality, the role of the researcher and dealing with the researcher's bias, as well as participants' protection.

Theoretical Method of Inquiry

The research is a qualitative exploratory case study of the contexts of concurrent dual transitional justice mechanisms of the Truth and Reconciliation Commission and the Special Court for Sierra Leone. Creswell (1998) defined qualitative research as:

> An inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The researcher builds a complex, holistic picture, analyses words, reports detailed views of informants, and conducts the study in a natural setting. (p.15)

The qualitative tradition of inquiry is recommended for a study where the research topic calls for exploration because theories do not exist to explain it, variables are not easily identifiable, a need exists to present a detailed account of the topic, and researcher needs to learn in order to provide a narration and the viewpoint of participants (Creswell, 1998;

Singleton & Straight, 2005, Strauss and Corbin, 1990; Trochim, 2001). The qualitative method of inquiry was employed for the study because dual transitional justice is an emerging phenomenon with no available theories and variables to explain it. A study undertaken in such circumstances can be by exploratory means (Strauss & Corbin 1990). The exploratory methodology of inquiry was to enable researcher to find out what happened between the TRC and the Special Court during their concurrent existence. So that, a determination can be made as to whether the TRC and Special Court coexisted harmoniously, namely whether each of them was able to effectively carry out its functions to contribute to the peace and stability of Sierra Leone. This is distinguished from an explanatory method of inquiry that seeks to establish a causal effect relationship between variables to explain the occurrence of a phenomenon (Salkind, 2000).

Justification of Case Study over Other Qualitative Traditions

In the design phase of the research study, several qualitative paradigms or traditions were examined to determine the appropriate methods. These qualitative traditions included ethnography, grounded theory, phenomenology and biography. The quantitative survey questionnaire method was also considered. The selection of an appropriate design was predicated on the purpose of the study and the types of data that must be collected.

Ethnographic research involves studying a group or groups in terms of their cultural behavior in order to describe and interpret them. This study is not about the behavior of any particular group. Observation as a major data collection process used for

ethnographic studies would be limited for this study because other sources of data would be required (Creswell, 1998). Further, the study is not meant to understand the culture of any group of persons.

Grounded theory research seeks to generate a theory from a study. The essence of a grounded theory is to utilize data generated from the study to build theory—the emergent theory constitutes findings (Creswell, 1998). The aim of this study is not to generate a theory but to have a vivid detailed account of the phenomenon being studied and make determination or assertions whether the TRC and Special Court were packaged in a way that allowed each of them to perform its functions effectively to meet the ends of transitional justice.

Phenomenology concentrates on real life activities, experiences or situations in order to explain or describe a phenomenon (Creswell, 1998). In phenomenological study, participants are carefully chosen to ensure that they experienced the phenomenon being studied. From the responses obtained, a general meaning is generated. The study under consideration will be woefully limited in terms of content and context if it were to be grounded in phenomenological enquiry to utilize only the experiences of those who participated in either the TRC or the Courts process. Such an approach would leave out other important data such as the laws establishing the TRC and the Special Court as well as other records and archival sources required for detailed accounts and a vivid picture of the phenomenon. Biographical research, which studies the life of a person, is obviously unsuitable for this study in terms of purpose and scope. It would be difficult to determine

whose life should be studied, and studying one's life will not provide the necessary data for the account this study seeks to establish.

Survey questionnaire was considered as a possible method for data collection for this study but was found unsuitable. In comparison with interviews, survey questionnaire has the advantages of being devoid of researcher's bias and also for being cost effective (Singleton &Straits, 205). Questionnaire was not employed because the use of questionnaire would require the use of variables derived from pre-existing theory to test the hypothesis. But a theory of dual transitional justice does not exist to make a hypothesis testing possible. Utilizing questionnaire would also not yield the detailed information needed to provide understanding for the concurrent use of retributive and restorative mechanisms for postconflict transitional justice. Dual transitional justice is new and there was the need to explore in order to present a detailed account of the topic. Researcher needs to learn from participants' experiences in order to present their viewpoints. Also, with the use of questionnaire, information would have to be accepted on the face of it, as there would be no opportunity to probe for clarification (Nachmias & Nachmias, 1987).

The qualitative tradition of case study was utilized as the most suitable method of inquiry for this research. Creswell (1998) defined case study as "an exploration of a bounded system or a case (or multiple cases) over time through detailed, in-depth data collection involving multiple sources of information rich in context" (p.61). Case study is preferred to ethnography, grounded theory, phenomenology and biography (other qualitative traditions of inquiry) in terms of the purpose of the study and the type of data

required for it. Case study allows for an in-depth study of a phenomenon from a wider sphere howbeit bounded by time, events, activities and, or individuals. It is rich in context and draws data from several sources (Creswell, 1998). It is a tradition most suited for the studying of a given context (Trochim, 2001), because it provides multiple sources of data to build a comprehensive picture of what is being studied (Jacelon & O'Dell, 2005). This made case study attractive for this study because the study required expansive sources of data in order to obtain the contexts and dynamics of the concurrent existence of the TRC and Special Court in Sierra Leone. Again, case study is most appropriate as a methodology where the questions that drive the research are mostly the 'how' and the 'what' as it is in this study (Tellis, 1997).

Sample and Population

This Section describes the sample, including the sample size and categories involved, sampling procedures and strategies utilized for selecting the participants, and procedures used generally for gaining acess to the participants in the study.

Sampling Procedures

The target research population consisted of residents of Sierra Leone from 1999-2003. In the qualitative research tradition, sampling refers to the selection of participants and documents that are relevant for a given study (Polkinghorne, 2005,). It is important to select participants and documents on the basis of their ability to contribute to the understanding of the phenomenon being studied. This is because qualitative studies focus

on “describing, understanding, and clarifying a human experience” (Polkinghorne, 2005, p.139). “The basis of this decision is the judgment of those whose experience most fully and authentically manifests or makes accessible what researcher is interested in”(Wertz, 2005, p.171). The selection therefore should consist of “series of intense, full, and saturated description of the experience under investigation” (Polkinghorne, 2005, p.139). Representativeness is not the selection criteria of importance but that of experience. Experience constitutes the unit of analysis and not individuals or groups (Polkinghorne, 2005). The outcome of a qualitative case study must contribute to the understanding of the phenomenon being studied and not how different segments in the population experienced it. Therefore, “purposeful selection of participants represents a key decision point in qualitative study” (Creswell, 1998, p.118). This is distinguished from quantitative study which aims to make claims about sample and generalize it to the whole population. Therefore, sampling must be representative of the population and also be randomly made (Polkinghorne, 2005) as opposed to experience. Creswell (1998) recommended purposive sampling whereby researcher selects participants who can contribute to the understanding of the phenomenon for qualitative study.

In this study, the researcher utilized purposive sampling to select participants who are key informants. Key informants are those who can provide useful information and insight into the issues being studied and can also identify others with useful information on what is being studied for possible contact (Goulding, 2002). Within the context of this study, key informants interviewed were Sierra Leonean public officials, UN officials, officials of the TRC and Special Court, and Civil Society Actors. This

population was targeted because they were perceived to be either knowledgeable or possessed experience about the TRC and the Special Court as well as the dynamics of their concurrent existence.

The national officials and international technical experts were targeted because they designed the policy for the TRC and Special Court. Their perspectives were important to the discussion of the TRC and Special Court. The officials of the TRC and Special Court were included because they implemented the transitional justice policy framework in Sierra Leone's peace process and could provide information on the experiences of the concurrent existence of the two institutions. Civil Society Actors were considered as critical stakeholders on the ground. It was important to gain insights into their views as to the practical occurrences when the TRC and Special Court unfolded. These categories of participants were engaged to provide diverse forms of experiences to build a holistic picture of the case under consideration.

The researcher created a list of key informants as possible participants for the interview. Conflict Management and Development Associates (CMDA), a nongovernmental organization working in Sierra Leone to promote human rights and good governance, were the researcher's community partners for the study. CMDA identified potential participants both within and outside their organization for the researcher to consider for interviewing. In addition, the *snowballing strategy* was used—asking people for possible names of those who know something about the phenomenon (Polkinghorne, 2005). The list constituted a pool out of which participants were recruited for interview.

Once a pool of key informants was in place, the researcher purposely selected participants for interview. There are several strategies for purposeful selection of participants and documents. These include; 'maximum variation –diverse forms of experiences; homogenous sampling—same kind of experiences; extreme and deviant cases—experience which is typical of the phenomenon or deviant from it. Others are critical sampling—experiences which are significant to the phenomenon; criterion sampling—based on predetermined criteria considered relevant; theory based sampling—experiences that contribute to theory development; and confirmatory sampling—experiences that confirm or disprove earlier findings (Creswell, 1998). In addition, there is the informants' strategy which is used to get participants who can identify others with relevant information.

According to Creswell (1998) any of the aforementioned selection strategies could be utilized in a case study. In this study, the researcher used the criterion, maximum variation, informants, theory-based and confirmatory sampling strategies to recruit participants. The rationale for the maximum variation strategy was to obtain diverse descriptions of participants' experiences with dual transitional justice for a detailed account and description of the phenomenon. This was very critical to this study since diversity in perspectives is the hallmark of a case study (Creswell, 1998). By the criterion sampling, participants should have been residents in Sierra Leone during any time between1999 to 2003, the period the two institutions were established and operated concurrently. The idea was to ensure that participants in this category were in Sierra Leone and witnessed or participated in the processes of the TRC and or the Special Court

in one way or the other to give vivid or detailed accounts of the phenomenon as opposed to hearsay. With the informants' strategy, the researcher asked participants during the interview to identify others who were knowledgeable about the phenomenon or who they considered having relevant information to be interviewed. This strategy was utilized to obtain expert knowledge on specific issues that came up in the course of the study to enrich the data**.** Utilizing the theory-based sampling, experts in transitional justice were selected to provide expert knowledge from their experiences for the development of a conceptual model on dual transitional justice. The confirmatory sampling strategy enabled the researcher to interview others to confirm or disconfirm initial findings. It is one of the processes by which qualitative study is collaborated and validated (Creswell, 1998).

Sample Size

A sample size of 40 participants was proposed to guide this study. But after 31 interviews, data were saturated. It should be pointed out that in a qualitative study, the sample size is determined by the nature of the research questions being investigated and the "potential yield of findings" (Wertz, 2005, p.171). The number of participants and actual sample size cannot be determined at the onset of the study. Wertz (2005) suggested that participants should be recruited for information until the goal of the study is attained. In this case the information reaches "saturation" point rendering additional findings redundant. Creswell (1998) did not provide for any specific number of participants required for a case study as he did for other qualitative traditions. He however (1998) recommended a large sample size where the outcome of a study is expected to be a

theory, or model. Even though the main goal of this study was not to develop a theory or model, a conceptual model of dual transitional justice was expected to be derived from it as indicated earlier on. In view of this, the researcher was guided by Creswell's recommendation to have a large sample size of 40. Moreover, a sample size of 40 was expected to make room for the views of diverse categories of participants represented in the study as well as for confirmatory sampling. After 31 interviews data were saturated and the researcher was not learning anything new so data collection was discontinued (Goulding, 2002). For a case study Creswell (2002) recommended a sample size in terms of diversity of data sources rather than the number of participants. He emphasized the need for the "widest array of data collection as the researcher attempts to build an in-depth picture of the case" (p.123). Diversity in this sense refers to multiple data sources. Researcher considered it necessary to recruit different categories of participants. Table 2 and Figure 1 show the total number of participants interviewed with a breakdown in numbers of each category. In all, there were 31 participants consisting of Sierra Leonean public officials, UN Officials, officers of the TRC and Special Court, and Civil society actors. Among those interviewed were international technical experts. The largest group was the public officers' category followed by Civil Society because they were available on the ground and could be accessed without much difficulty. The UN officials were in the least because in January 2007 when researcher went to the field most of the UN officials who were on the ground during the time the TRC and Special Court existed together had completed their work and left for missions in other countries. Only 2 were found to grant an interview. Later, one more UN official serving with the UN mission in

Liberia was contacted and agreed to a telephone interview. In addition, data sample included a wide array of documents, archival materials, and extensive observational field notes taken by the researcher in the course of the study (Creswell, 1998; Hall & Rist).

Table 2

Key Informants

Participants	Total Number	Nationals	Internationals
Sierra Leonean public officials	9	9	0
UN officials	3	0	3
TRC officials	5	4	1
Special Court officials	6	2	4
Civil Society Actors	8	8	0

Note. Key participant for the study; the number and category.

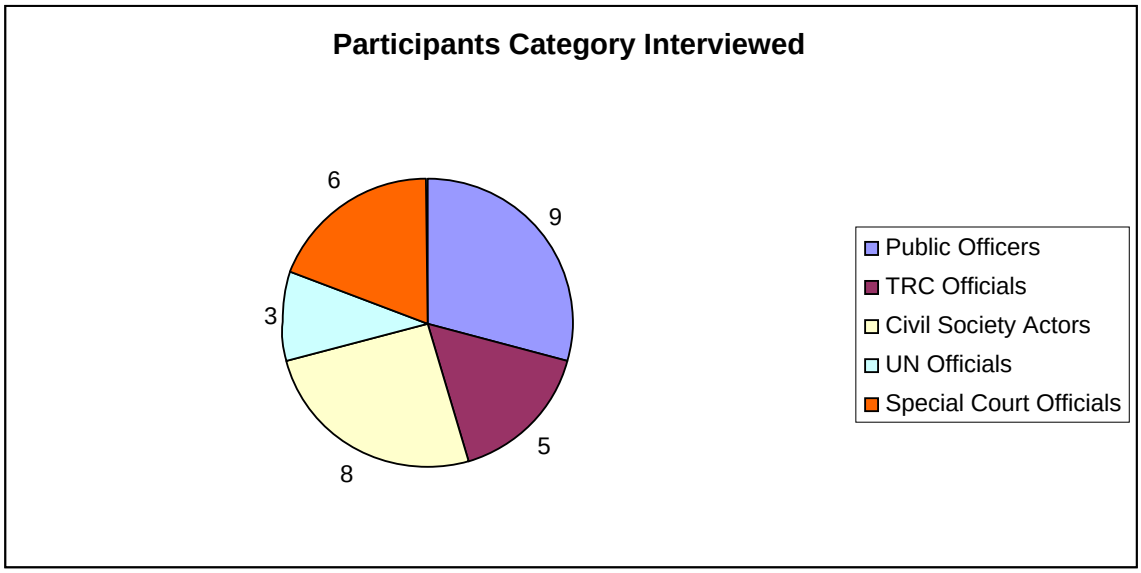

Figure 1. Visual presentation of key informants in the study.

Gaining Access to Participants

Developing rapport and gaining access to participants was very crucial in the research process. In order to create rapport with prospective participants, the researcher built trust, and let participants' realized the importance of the study, and how gratifying the interview process might be for them (Nachmias & Nachmias, 1987). In building trust,the researcher personally communicated with prospective participants through telephone calls, personal contacts, and letters as the case may be. In these communications, the researcher presented herself as a learner and colleague in transitional justice to build rapport. The researcher explained the purpose of the study to participants and why they were selected for the study. Participants were assured of absolute anonymity and confidentiality throughout the study and thereafter. In terms of benefits, the researcher explained to participants that since they were knowledgeable and or possessed experience about the TRC and Special Court, the study offered them the opportunity to publish their opinions and views on dual transitional justice. Also, it was pointed out to them that their experiences would contribute to the understanding and effective management of dual transitional justice in the future. Any foreseeable risk in participation was brought to their attention. In this case, participants were informed about the likelihood of the interview bringing back the memories of the conflict. Participants were given the assurance that they could withdraw from the study at any time with no consequences and could stop the interview at will. Through these approaches the researcher gained direct personal contact and secured the commitment of participants.

Their consent was obtained before the interviews were conducted (Creswell, 1998; Patton & Sawick, 1993). These measures were expected to build trust between the researcher and participants to provide access to required data.

Data Collection

Three data sets were utilized for this study namely interviews, documentary sources and the researcher's observational field notes.These data sets and procedures for data collection are discussed in detailed under this Section. Figure 2 shows the multiple sources of data used for the study.

Interviews

Survey interview is one of the main sources of data collection in a qualitative study (Creswell, 1998; Hall & Rist, 1999; McReynolds, Koch, & Rumrill, Jr, 2001; Polkinghorne, 2005). Creswell (1998) recommended the extensive interview for a case study. Interviews were used to solicit information from informants on the concurrent existence of the TRC and Special Court. Cross-sectional interviews from respondents within a short interval in a bounded period, i.e. from December 2006-February 2007, were carried out.

Interview techniques could be individual or one-on-one, telephone, or focus group interviews. This study utilized the individual in-depth interview. This refers to "interviews that are conducted face to face with the respondent during which the subject

matter of the interview is explored in detail" (Aaker et al. as quoted in Hall &Rist, 1999, p.298). This *intensive interviewing* allowed researcher to solicit in-depth and detailed information on the phenomenon being studied, control the interview process for questions to be answered in an appropriate sequence or manner. Further, it allowed for flexibility in the process to probe for details, clarify ambiguities and issues for appropriate responses, and collect supplementary data (Singleton & Straits, 2005). It should be noted that transitional justice and the phenomenon of a dual accountability mechanism is new, and research on it required accurate information to make the results useful. It also prevented the incident of groupthink which characterizes group interviews. It allowed the researcher to probe to clarify ambiguities and observe body language to contextualize the data in the analysis stage which will not be possible in the telephone interview (Hall & Rist, 1999). Giving the diverse sources of target participants, the group interview was considered inappropriate. This is because the target participants were not similar and the cooperation required for the group interview was not likely to occur among them (Creswell, 1998; Hall & Rist, 1999).

A disadvantage of the individual interview is that it is costly and time-consuming; and a researcher will not get detailed information where a participant is hesitant (Creswell, 1998; Hall & Rist, 1999). However, the richness of detailed information accrued from the individual interview far outweighs whatever disadvantages may be associated with it. There was one case of a telephone interview though. This was in respect of a UN official in Liberia. Also, it became necessary to do a follow-up interview to clarify some issues that emerged in the analysis. During that time, the

researcher had left Sierra Leone for Ghana, her place of domicile. Approval was obtained from the Institutional Review Board to conduct the follow-up via telephone.

Interviews were semi-structured with already prepared questions to focus on the research objectives and serve as a guide (Goulding, 2002; Singleton & Straits, 2005). The researcher prepared an interview protocol with open-ended questions for all categories of participants' interview (Interview Protocol attached as Appendix E). In the course of the interview, questions were adapted where necessary and depending on the particular participant category being interviewed. The open-ended questions allowed the researcher to reformulate the questions based on participants' responses and the category in a manner that made it possible to solicit detailed experiences of participants (McReynolds, Koch, & Rumrill, Jr. 2001). Thus the nature of questions was participants-driven and not the other way round. The interview protocol had space for the researcher to record responses to questions. Interviews were recorded with a tape recorder to keep the information for safekeeping and later retrieval. In one case, however, a participant said he was not comfortable with the recording. The researcher went on with the interview, listened attentively and took down notes scrupulously. Immediately after the interview, researcher prepared an extensive *account* of it. Stake (1995) referred to this as "facsimile and interpretative commentary".

Documents

With available data, the researcher made use of primary and secondary sources covering the political, socioeconomic dynamics of the concurrent existence between the TRC and Special Court during 1999-2003. Available data was utilized because the phenomenon being studied was a past event. In such a situation, Singleton and Straits (2005) recommended the use of available data as probably the most credible source of information, as the memory of those who experienced the phenomenon may have been weakened with the passage of time. Also, given the nature of the study, available data in the form of legal instruments and relevant reports were required to determine the legal basis for the TRC and Special Court, and determine the relationship between them by clarifying their mandates and objectives.

Singleton and Straits (2005) identified five main sources of available data as public documents, mass media, personal or private documents, non-verbal and archival sources. Available data gathered for this study included the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front, 1999, the Statute of the TRC, the TRC Report, Transcripts of Hearings Proceedings of the TRC, statements and submissions made to the TRC by institutions and various actors in the peace-building process, statements and press releases by the TRC, the statute of the Special Court, 2002; Agreement between the United Nations and Government of Sierra Leone for the establishment of the Special Court, Special Court Agreement (Ratification) Act, 2002; Relevant decisions of the Special Court, reports of civil society organizations on the two institutions, and statements and press releases by Sierra Leone authorities on the two

institutions. These documents were collated, analyzed and reviewed to ascertain the rationale for the employment of the dual approach to transitional justice, the areas of tensions and challenges experienced by the two institutions, and the impact of dual transitional justice on the Sierra Leone peace process. .

Observational Field Notes

In addition to the interviews and documentary sources, the researcher kept a journal to record daily summaries of field observations during the period of the study. These notes formed part of the analysis and findings. Creswell (1998), McReynolds et al. (2001) and Merriam (1998) identified observational field notes as credible source of data. According to Merriam field notes "are analogous to the interview transcript" (p.104). Throughout the study the researcher observed the physical surroundings of the Special Court and the former offices of the TRC as well as the proximity between the offices of the two institutions and noted down the observations made. Also, the demeanor of participants were noted during interviews and written down in a scanty form. After the interviews, the researcher wrote out the notes fully as recommended by Merriam.

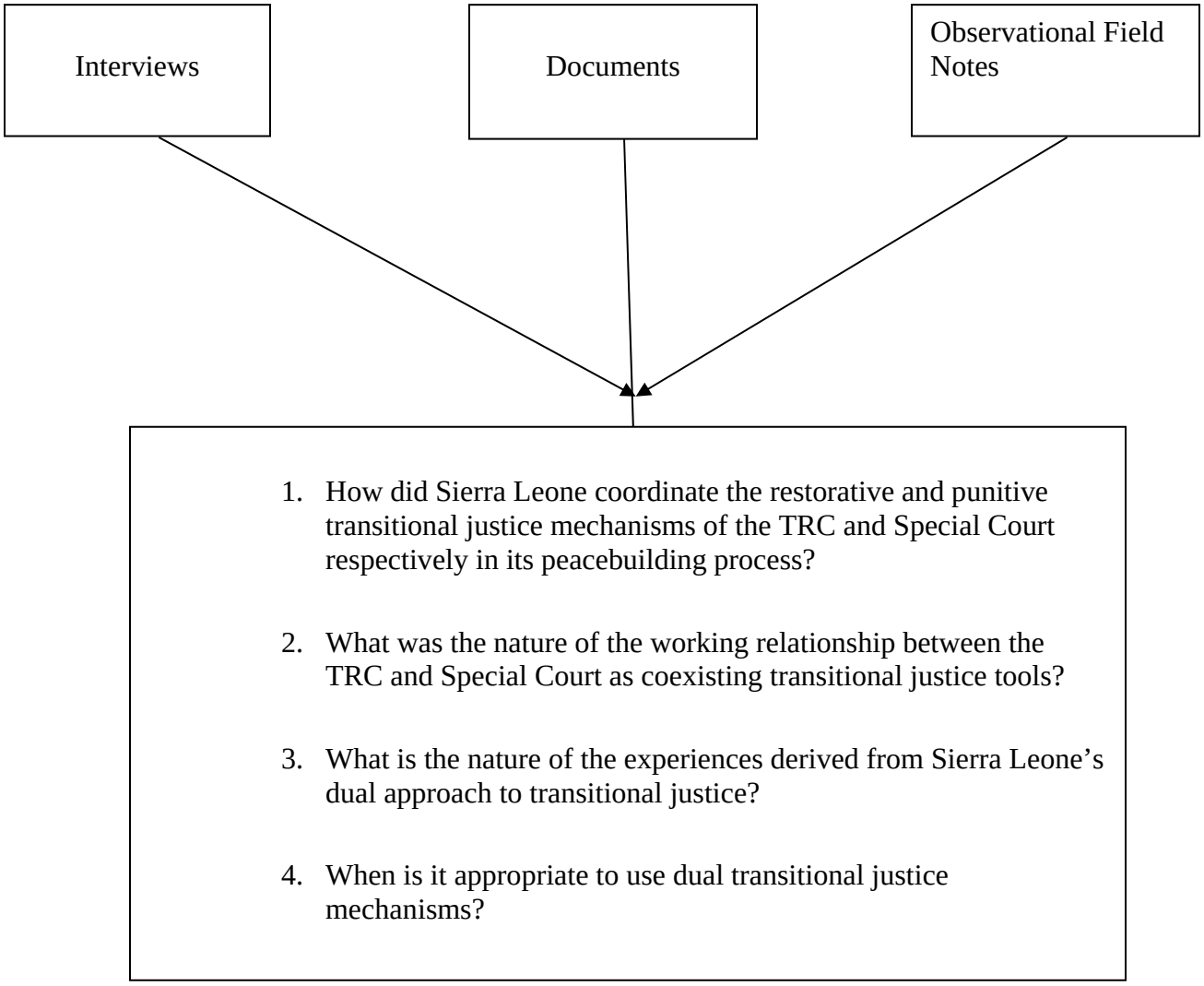

Figure 2. Multiple sources of data used for answering research questions.

Method of Data Analysis

This Section discusses the methods used by the researcher to analyse the data. These include data management, analysis and representation discussed below

Data Management, Analysis, and Representation

Within the qualitative research paradigm, data analysis technically commences with the start of data collection (Goulding, 2002). The researcher utilized data analysis procedures recommended by Creswell (1998) and Stake (1995) for case study. These step-by-step procedures are data management; reading and memoing; description, classification and interpretation; and representation.

In the first stage, the researcher managed the data. Due to the volumes of data gathered, the researcher developed a list of all data collected. Data were then organized into files according to subjects and then placed in folders. The researcher developed systematic codes by the use of letters and numbers to represent the subjects as locators for easy retrieval and analysis (Creswell, 1998).

In the second stage the researcher read the entire material, namely transcripts from interviews, documents, and field notes several times until she became immersed in it to make sense of the entire data. Creswell referred to this second step as “reading and memoing” (143). In the course of reading, the researcher made reflective notes at the margin of the records and documented initial findings in the form of a memo. These are “short phrases, ideas, or key concepts that occur to the reader” (Creswell, 1998, p.144). Initial codes were developed and preliminary findings sent to selected participants for their comments. In developing the codes the researcher used the *constant comparative* approach. By this approach the researcher read all the data over and over again for new insights until it was saturated—no additional meaning or insight emerged. The researcher developed initial codes. These were ideas derived from the data in abstraction through the

iterative process. The initial codes were further regrouped with similar ideas combined to form categories. The categories and codes were “compared and contrasted” to develop new insights to form additional codes. This was done until the data was saturated. Categories were applied to the research questions to provide understanding of dual transitional justice.

The third stage deals with data analysis in earnest. It involves description, classification, and interpretation of the data (Creswell, 1998). According to Creswell the qualitative researcher at this stage follows a systematic procedure to describe what is seen in the data, develops categories and themes, interprets the emerging themes and constructs, and makes assertions and conclusions from the data based on “hunches, insights, intuition, an interpretation within social sciences constructs or ideas or a combination of personal views as *contrasted* with a social science construct or idea” (p.145). Procedures used to describe, classify and interpret data differ in respective qualitative paradigms, although the procedures for data analysis outlined for stages one and two are common to all qualitative traditions (Creswell, 1998). For a qualitative case study, Creswell (1998) agreed with Stake (1995) that data analysis should be grounded in “detailed description”; “categorical aggregation”—findings from multiple sources; “direct interpretation”—findings from single instances; “correspondence and patterns”—matching categories to establish patterns or a trend; and development of “naturalistic generalization”— assertions and conclusions based on the researcher’s encounter with the data.

In this study, the researcher utilized the process of “detailed description” and presented the “facts” of the case and its contexts as shown by the data. Through the process of “categorical aggregation”, the researcher identified ideas from different sources and classified them into categories and themes as meanings from the data (diverse forms of evidence). Further, the researcher employed the mechanism of direct interpretation to identify evidence from a single instance as “meaning”. This was done through a single instance of what a participant said, or an idea which appeared in a documents once, or an observation made by the researcher in a single instance. Categories were also matched to show patterns. Utilizing data as coded, instances were aggregated into categories and categories were matched to establish patterns. The researcher interpreted the data, made assertions and conclusions based on “insights” to contribute to the understanding of dual transitional justice and also for the application of the lessons derived from it (Creswell, 1998).

The fourth stage in the data analysis involve packaging and presenting what is found in the data in a form of a matrix or figure to make the analysis open. In this study, the Anfara, Brown, and Mangione (in Buehler, 2006, p.67) Iterative Code Mapping figure (which appears in Chapter 4) has been used to show how the initial codes were built into categories and applied to research questions to form emerging themes. Also, Constas (1995) “documentational table for the development of categories” (p.262) has been used to present how categories were developed and made the analysis an open process. Constas argued that a major shortfall or criticism of the qualitative process is the subjectivity and the private nature of data analysis. In order to ensure trustworthiness of

qualitative findings it becomes imperative to make the process of analysis a “public event”. To achieve this Constas proposed a two-dimensional model to document category development. This consists of a table with a “component of categorization” and “temporal designation”. The first dimension reports on actions taken to develop a category i.e., the source of “authority for creating a category”, the basis for justifying a category and identification of the source of the name utilized for it. The second dimension reports on the various stages of the research process when a category was developed namely a priori—before data collection; a posteriori—after data collection, iterative –any point during data collection. Presenting a matrix of category development has brought the process into public domain and enhances the credibility of findings. These processes provided a detailed account of how the findings on contexts and dynamics of the dual transitional in Sierra Leone were arrived at.

The Structure of the Narrative Report

The findings in this study were presented through the realist tradition *as* recommended by Creswell, (1998) for a case study narrative. By the realist approach, researcher provided a detailed description with quotes from informants as well as an interpretation within the framework of transitional justice and the researcher’s intellectual insights. The researcher wrote with multiple audiences in mind in order to be heard and understood. Words, rhetoric, visuals and diagrams were employed for the narration in such a way as to generate readers’ interest and sustain the significance of the work.

In terms of structure, Merriam indicated that there is “no standard format for reporting a case study research” (as quoted in Creswell, 1998, p.186). But she suggested that the proper balance between background information versus analysis, interpretation and discussion should be 60%/40% or 70%/30% in favor of background information. Creswell took note of the structure recommended by Merriam but insisted that the “overall intent of case study shapes the narrative structure” (189); and basically matters involving the structure should be left “to writers to decide” (p.188). For their case study narrative structure, Asmussen & Creswell (in Creswell, 1998) balance it as 33% for background, 33% for themes and 33% for interpretation, discussions and conclusions. In effect, given the object of their research, Creswell and Asmussen balanced their case study narrative structure in favor of a large amount of analysis, interpretation and conclusions. Concerning the narrative structure for this study, the researcher was guided by the objective of the study: to provide a deeper understanding of the process of utilizing restorative and retributive accountability mechanisms concurrently for postconflict peace-building. The strength of the research is in its in-depth and detailed analysis of the phenomenon to fill the gap in the existing literature. As a result, the structure of the narrative was balanced as 35%/65% in favor of analysis, interpretation and discussion as against the background information.

Issues of Quality and Ethics

There is no single acceptable way of validating qualitative findings. But that does not mean a qualitative study cannot be authenticated (Fielding, 2004). According to Creswell (1998) establishing quality standards in a qualitative study differs from standard procedures in quantitative research in terms of definition and procedures. Creswell pointed out that some researchers in the qualitative tradition have sought to establish "*qualitative equivalents that parallel* traditional quantitative approaches to validity" (p.197) in order to facilitate the acceptance of qualitative research. Ely et al. (as cited in Creswell, 1998) insisted that the language of quantitative research grounded in the positivist tradition does not fit in qualitative research. McReynolds et al. (2001) maintained that "reliability" and "validity" within the context of the qualitative tradition do not have the same meaning as they do in quantitative research. They pointed out that terms like "credibility", "trustworthiness" and "authenticity" are used instead of reliability and validity. Creswell (1998) used verification for validity in order to ground qualitative research as a distinct methodological approach for research. Richardson (as cited in Leisner, 2005) pointed out that in qualitative study, "validity is not the triangle—a rigid, fixed, two-dimensional object" (p.60), but a process resembling "crystallization" (p.60). Guba & Lincoln (as cited in Trochim, 2001) advocated that qualitative findings should be validated through the processes of credibility, transferability, dependability, and confirmability.

The requirement of credibility insists that a qualitative researcher should establish that the findings arrived at are in consonance with participants' perspectives and beliefs. Since the essence of a qualitative study is to describe the phenomenon of study

from the point of view of those who experienced it, transferability requires researcher to provide detailed characteristics of what was studied. This will allow for external assessment to be made as to whether the findings could be transferred elsewhere. The researcher does not make that decision but has to provide information to make such assessment possible. Dependability raises the duty on the part of the researcher to indicate and report on the changing contexts of the study and how the changes affect the findings. And finally, the process of confirmability requires the researcher to document procedures adopted to collaborate and confirm the findings (Trochim, 2001).

Acceptable measures recommended by authors for fulfilling the aforesaid include using field notes and memos, the use of multiple researchers, use of multiple sources of data, peer review or debriefing, prolonged engagement and persistent observation in the field, working with discrepant data, clarifying researcher's bias, member checking, providing rich thick description, and external audit (Creswell 1998; McReynolds et al. 2001). Creswell (1998) recommended that any two of these strategies should at least be used to assess the quality of qualitative findings.

For a case study, Stake (in Creswell, 1998) advocated for detailed verification or quality check. Creswell insisted on the need to "searching for convergence of information" (Creswell, 1998, p.213). In this study, the researcher used multiple sources of data, rich thick description, member checking and peer review to verify the findings (Creswell, 1998). Through multiple sources of data, the researcher secured confirmation of findings by collaborating assertions and interpretations that emerged from different categories of participants. Figure 3 shows multiple participants used to verify findings.

Preliminary findings were shared with selected participants for their feedback to ensure that they conformed to participants' experiences. The researcher provided a detailed description of the phenomenon being studied so that it could be assessed for possible generalization elsewhere. The findings were also subjected to a peer review by a professional in the field for comments and feedback. An academic who is a political figure reviewed the report and his comments and feedback were included. These measures ensured quality standard of the study (Creswell, 1998; Hall & Rist, 1999; McReynolds et al., 2001).

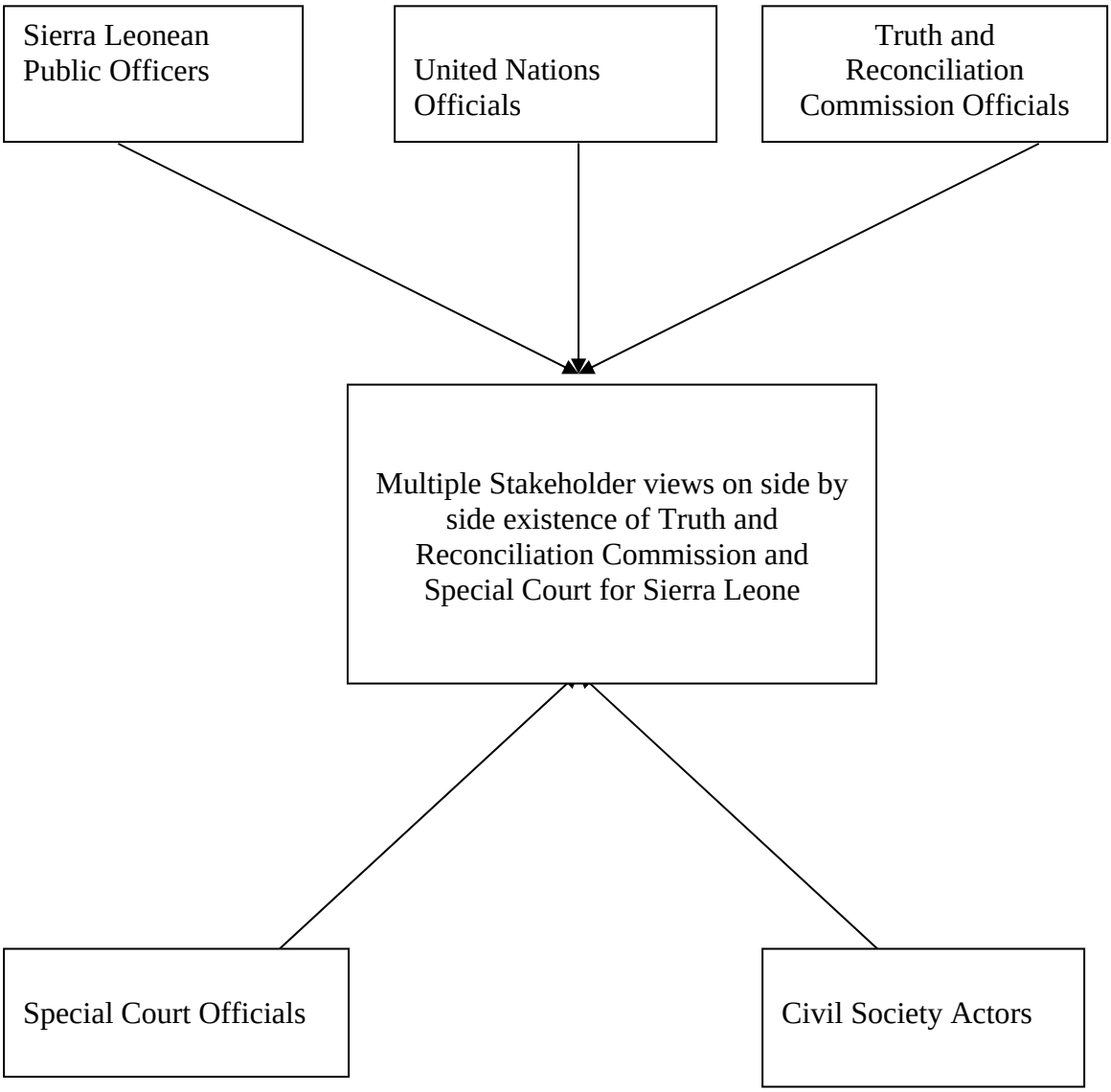

Figure 3.Showing multiple participants used for verification of findings.

The Researcher's Role

The researcher carried out the entire research from the stages of data collection, data analysis, and report writing. The researcher traveled to Freetown, the capital city of Sierra Leone, for the interviews and also collected relevant documents. The researcher personally recruited participants and sought the necessary consent and permission to conduct interviews and collect documents. The researcher used emails, telephone and letters to contact participants as the case may be. In some cases researcher had to make personal contact to introduce the topic. The researcher personally conducted, audio taped, and transcribed interviews proceedings. In the course of interviews the researcher wrote down memos/notes which were later used to aid in the analysis, and also prepared the narrative report. The researcher was the instrument of data collection as characterized by a qualitative case study of this nature (Creswell, 1998; Goulding, 2002).

A qualitative researcher should be skilful with great deal of practice in interviewing in order to obtain relevant data required for a study (Goulding, 2002; Polkinghorne, 2005). The researcher was able to undertake the tasks assigned under this study based on her experiences. As a matter of fact, the researcher worked as the head of the research unit for the TRC in 2003. In her capacity as head of research for the TRC, researcher led a team of the TRC staff to conduct hearings and carry out interviews in respective Sierra Leonean communities. The researcher also served as leader of evidence and led witnesses to give evidence during the TRC proceedings. The researcher was very conversant with Sierra Leone and possessed the skills and competence to select key informants/informants for this study. In 2005, the researcher worked as International

Expert/Consultant to the Liberian National Transitional Legislative Assembly Committee on the Truth and Reconciliation Bill (NTLA). As a consultant to the NTLA Committee, researcher offered advice to the Committee on amendments of the Bill, drafted necessary revision of the Bill, made critical presentations on the Bill, and undertook an awareness-building campaign through radio, television, and newspapers on the Bill. The researcher also worked with the Commission on Human Rights and Administrative Justice of Ghana for 7 years. As a human rights adjudicator, the researcher interviewed victims and alleged perpetrators of human rights abuses routinely as part of her work. The researcher was conversant with the field of human rights both in peacetimes and postconflict times. She had gained experience in handling interviews in difficult circumstances. Against this background, the researcher was able to undertake the tasks dictated by the imperatives of this study in Sierra Leone.

In carrying out this study, the researcher obtained approval # 12-01-06-0173436l from the Institutional Review Board on December 1, 2006 to conduct the study. The researcher collected data from December 2006 to March 2007. Data analysis commenced immediately after data collection started and continued until the report became ready.

Dealing with the Researcher's Bias

The role of the researcher as the main instrument for data collection and her background put her in close contact with the data. The likelihood of a qualitative researcher being tainted with bias in that context was recognized (Goulding, 2002). In this study several measures were observed by the researcher to deal with the possibility of

subjectivity. Specifically, the researcher maintained a high degree of consciousness about the possibility of bias and exercised objectivity throughout the process. The researcher reported any discrepant incident in the course of the study. As noted earlier, research findings were subjected to member checking and peer review to enhance the credibility of the research findings (Goulding, 2002). An academic who is also a political figure was made to review the interview transcripts, findings and recommendations and his feedback were incorporated in the report. Preliminary findings were shared with selected participants, and their comments were incorporated into the report. Again, using multiple sources of data to collaborate findings enhanced the credibility of research outcomes. Finally, the researcher documented the process of category development (Constas, 1995: Anfara, Brown, & Mangione, 2002) and made the process of data analysis open to enhance the trustworthiness of findings. These measures hopefully minimized or eliminated the incidence of researcher's subjectivity.

Participants' Protection

Participants' protection was critical to the success of the study. To ensure participants' protection, they were recruited upon a voluntary consent. The purpose of the study and how the interview would be used was explained to them. Participants were given assurance that they could back out of the study at any time and at will. In view of the fact that the TRC and Special Court were established as a consequence of a 10-year brutal civil war, raising issues about them was likely to bring about the memories of the conflict to participants. The researcher made this known to participants before seeking

their consent to participate. Before the interview commenced, participants were informed that they could stop the interview at any time without any consequences if they considered it necessary to do so. The researcher recognized the sensitive nature of the interview and exhibited sensitivity in questioning to guard against a situation of the interview becoming emotionally charged. Further, participants were assured of anonymity and confidentiality throughout and after the study. The identity of participants were hidden and detached from information by the use codes. The information they provided were kept confidential under a lock. Participants' privacy was respected and they were allowed to indicate where and when they would have the interview. These were some of the measures recommended for securing the protection of participants (Creswell, 1998; Goulding, 2002; Nachmias & Nachmias, 1987).

Summary

Chapter 3 examined the theoretical method of inquiry and design for the study. This study sought to examine the concurrent operation of the TRC and the Special Court which were established to provide transitional justice in postconflict Sierra Leone. The idea of concurrent employment of restorative and retributive mechanisms has emerged in the practice of transitional justice. However, little or no detailed in-depth study exists to explain the dynamics involved in such an approach. This proposed case study as designed explores and describes how the TRC and Special Court were utilized concurrently in Sierra Leone's peace-building process.

The case study approach was utilized as the most suitable method because it offered an in-depth contextual perspective on the subject. Individual, face-to-face interviews, available documents, and field notes were methods of data observation employed for the study. Interviews were semi-structured with open-ended questions. The number of participants was 31. They were purposefully selected through the criterion, maximum variation, informants, theory-based, and confirmatory sampling strategies (Creswell, 1998). Data were coded and analyzed through detailed “description”, “categorical aggregation”, “direct interpretation”, establishment of “patterns”, and development of “naturalistic generalizations”. The findings were validated through the use of multiple sources of data, rich thick description, member checking and peer review. The narrative report followed the *realist* approach. Participants were assured of anonymity and confidentiality concerning information they offered in the study and their privacy respected. This methodology yielded information that contributed to the understanding of dual transitional justice. Chapter 4 consists of data analysis and findings that yielded from the data in answer to the research questions.

CHAPTER 4:

DATA ANALYSIS AND FINDINGS

> An egg is fragile, but if you try to crush it in your hand you will never succeed. If you drop it on the ground, however, you have a mess. The role of the Special Court, the TRC, the UN and all agencies and the NGOs and all the people of Sierra Leone is to make sure that that egg does not fall (Peter C Andersen, Special Court for Sierra Leone, January 2007).

Introduction

Chapter 4 presents the findings to this study. The purpose of the study is to provide a deeper understanding of the process of utilizing restorative and retributive accountability mechanisms for postconflict peace-building by examining the implementation of the TRC and Special Court in Sierra Leone. The following questions guided the study:

1 How did Sierra Leone coordinate restorative and punitive transitional justice mechanisms of the TRC and Special Court respectively in its peace-building process?

2 What was the nature of the working relationship between the TRC and Special Court as coexisting transitional justice tools?

3 What is the nature of the experiences derived from Sierra Leone's dual approach to transitional justice?

4 When is it appropriate to use dual transitional justice mechanisms?

In terms of organization, the chapter briefly presents how data was "generated, gathered and recorded" as well as the process by which the meanings emerged and followed through in the study. Finally, the findings to the research questions are presented.

Context of the Study

The case study approach was utilized as the most suitable method to provide in-depth contextual perspectives on the subject. The findings in this chapter consist of analysis of three sets of data; documents, field notes and interviews. In January 2007, researcher traveled to Freetown, the capital city of Sierra Leone, a West African country, to execute the study. Participants were recruited from Freetown. It was not necessary to go outside Freetown because the unit of analysis was experience and not individuals or groups. As a result, representativeness was not the selection criterion of importance but that of experience (Polkinghorne, 2005). Interviews were conducted with 31 key informants. The sample size initially proposed was 40 but after 31 interviews, data were saturated and the researcher was not learning any new thing. Participants interviewed were made up of Sierra Leonean public officials, UN officials, TRC and Special Court officials, and Civil Society Actors. A detailed description including positions of key informants cannot be given because it will lead to their identification. The Sierra Leonean Public officials were 9 nationals. They were made up of a serving government minister, a former government minister and officers from various government agencies. The UN officials were 3 internationals. All 3 served with the United Nations Mission in Sierra Leone (UNAMSIL), and, at the time of the interview, 2 were serving with the United Nations Integrated Office for Sierra Leone (UNIOSIL), the UN organ that took over from

UNAMSIL after UNAMSIL folded up. The other UN participant was working with a UN mission in another country at the time of the interview. By their respective schedules, they were all involved with either the TRC and or the Special Court. The TRC officials interviewed were 5 in number: 4 Sierra Leoneans and 1 international staff. They were all former staff of the TRC, since the TRC completed and submitted its report in 2004. The officials of the Special Court were 6 in number: 4 internationals and 2 nationals. They were all serving officials of the Special Court at the time of the interview. They were drawn from different sections of the Court. Civil Society Actors were 8 in number; they were all Sierra Leoneans with 7 working with local civil society organizations, and 1 with an international NGO. They consisted of 2 directors of local NGOs; a director of an international NGO, a newspaper editor, an executive director of a media house, a Catholic minister and 3 activists working with nongovernmental organizations.

Upon arrival in Freetown, the researcher contacted the Executive Director of Conflict Management and Development Associates (CMDA), a nongovernmental organization working in Sierra Leone to promote human rights and good governance. CMDA had agreed to serve as community partners for the study to identify potential participants both within and outside their organization for the researcher to consider for interview. CMDA provided the researcher with a list of names of potential informants to consider for the interview. The *snowballing strategy*—asking people for possible names of those who know something about the phenomenon was also used to identify participants (Polkinghorne, 2005). The researcher called on old acquaintances to introduce the research and asked for names of possible informants. Based on these contacts, an informants' list was created and participants were purposefully selected

through the criterion, maximum variation, informants, theory-based, and confirmatory sampling strategies (Creswell, 1998).

The names of participants were coded in letters and numbers to prevent identification. Public officers were coded as PO and the first on the list as PO1 and so on. TRC officers were coded as TC, i.e. TC 1; Civil Society actors as CA, i.e. CA1; UN officials as UF, i.e. UF1, and Special Court officers as SO, i.e. SO1.

After the selection process, the researcher contacted informants to introduce the study and sought for the necessary consent for the interviews. This was done by telephone where telephone numbers had been made available by those who identified them. Where telephone numbers were not available because people who identified them did not have them, the researcher made personal contact with them in their offices. It should be pointed out that when people identified someone as a potential informant they knew his contacts such as telephone, office or house location or had information on how to find them. Such information was very useful to researcher in gaining access to informants. For example, the first Civil Society Activist interviewed on the list given by the CMDA provided 15 names with telephone contacts. There was a Special Court official included on the list. This list was followed through to interview the Court official on the Court premises. He mentioned other court officials who could be approached. The researcher approached them in their offices and introduced the study with a request for approval for interviews. Another Court official interviewed also mentioned a former Government Minister and provided his telephone number and said the researcher could use him as a reference to the former Minister, which was done. After speaking with the former Government Minister, he suggested the researcher speak with a particular serving

Government Minister and gave his contact and said the researcher should use him as a reference. Those actors working on issues about human rights, good governance and transitional justice were networked so it was possible to access them through their colleagues.

The difficult part was how to locate the addresses of informants whose telephone numbers were not given by those who identified them. In that case, the researcher contacted their offices or home addresses as the case may be. In all, TRC officials were the most difficult to locate. This is because the TRC had already completed its work and folded up at the time of the study. In their case, the researcher asked for their current places of work from old acquaintances and other informants in order to locate them in their offices. Once approval had been secured, the date, time and place for the interviews were set mostly at the convenience of the participants. The researcher used the first few days in Freetown to make contacts for approvals and appointments. With appointments in place, the researcher gently reminded participants about it until the interview was done. Participants were very busy people and those gentle reminders helped to keep the appointment in focus and also to check for the status of the appointment. This was also important to ensure that appointments which could not be honored as scheduled by participants were rescheduled. Building trust with contacts was very critical to secure the necessary cooperation. Informants were interested to know who researcher was and the purpose for the study. In general, participants considered the study very necessary and were very cooperative to share their experiences. In one case a Court official approached declined to grant an interview on the basis that he might not be objective. He rather made

available to the researcher some annual reports of the Court and decisions of the Court that were relevant to the study.

During the interviews, the researcher had the opportunity to observe participants' demeanor. Civil Society Actors came out very strongly in their views on the TRC and Special Court and were quite passionate about what they expressed. The TRC officials were also very passionate and exhibited great emotion in their discussions of the issues. The Special Court officials, with the exception of one, were very calm and did not appear emotional about issues on the TRC and the Court. The UN officials were frank in their views, but all the same were diplomatic in expressing them. The public officials who were at the top of the list - the Minister, former Minister, and the 2 heads of divisions, were very composed and expressed their views confidently without emotion or passion. Those public officers who were not part of management were quite emotional and some expressed fear about what they were saying (Researcher's Field Notes, 2006-2007).

Interviews were semi-structured with open-ended questions. Already prepared questions guided the interviews which were adapted depending on the responses and the category of participants being interviewed. All the interviews were tape-recorded and transcribed except one where the participant indicated that he preferred that the researcher should take down notes because he was not comfortable about being recorded. In this situation, the researcher took down copious notes and typed it out immediately after the interview. The researcher kept a reflective journal throughout the study to keep track of meanings as they emerged.

Documents used for the study were statutes of the TRC and Special Court, reports and transcripts of proceedings of the two institutions, United Nations reports on

Sierra Leone, relevant peace agreements, and reports of civil society organizations. Field notes were written by the researcher based on observations made throughout the study.

Data were analyzed through detailed “description”, “categorical aggregation”, “direct interpretation”, establishment of “correspondence and patterns”, and development of “naturalistic generalization” (Stake, 1995). By detailed description, the researcher provided detailed description of the data and the meanings that emerged. Through the process of categorical aggregation instances or impressions and ideas were put together to form a meaning. In doing this, the researcher coded the records and similar ideas and impressions were put together in a single class to form a meaning. The process of “direct interpretation” allowed the researcher to identify meaning as a finding from a single instance of what a participant said, or an idea which appeared in the documents once, or an observation made by the researcher in a single instance. For “correspondence and patterns”, the researcher coded the transcripts and aggregated how often an idea appeared in a particular manner to show patterns. These were presented in tables. By the process of “naturalistic generalisations**”,** the researcher made assertions and conclusions based on *insights* derived from the data. The analysis and findings do not therefore consist of only facts because the researcher interpreted the data to make the case understandable. According to Stake (1995) this is a key function of a case study researcher. In doing so however, the researcher provided detailed facts to allow readers make their own assertions, interpretations or conclusions. It should be noted that the findings were based on analysis derived from these five approaches to qualitative interpretation. However, not all the approaches were applied to a finding. Conversely, in some cases one approach was applied to a finding.

The findings of the research were validated through the use of multiple sources of data, rich thick description, member checking and peer review. The narrative report followed the *realist* approach. Participants were assured of anonymity and confidentiality concerning information offered in the study and their privacy was respected as well.

Two significant events took place which might have changed the context of the study. Firstly, at the time of the interviews, Sam Hinga Norman, had been indicted, detained, and was being tried by the Special Court. Before his arrest Norman was the Internal Affairs Minister for Sierra Leone. He was also the former Deputy Defense Minister and Coordinator of the CDF during the conflict. In the course of the study Hinga Norman died in the custody of the Court on February 22, 2007. At the time of Norman's death all the interviews in Freetown had been conducted. Secondly, at the time of the interviews, the Special Court had not issued any verdict with respect to the trials of the accused persons. In the course of the study, the Court issued its first sets of verdicts on June 20, 2007. The changing context may probably affect some of the views expressed by the participants.

Coding

The interview transcripts, documents, and field notes were analyzed through detailed "description", "categorical aggregation", "direct interpretation", establishment of "patterns", and development of "naturalistic generalization". The *constant comparative* approach was used to code the emerging ideas. The Anfara, Brown, and Mangione (in Buehler, 2006, p67) iterative code mapping presented in Figure 3, depicts how emerging ideas were coded. As shown in Figure 3, the first iterative level depicts the initial codes built from the data and made them open. The second iterative level shows how the initial

codes were grouped into categories. The third iterative level indicates how the categories were applied to research questions to create an understanding of the phenomenon of dual transitional justice in postconflict Sierra Leone. Also, Constas (1995) "documentational table for the development of categories" (p.262) has been utilized to show how and when categories were developed in the research process. As shown in Table 3, the first dimension reports on actions taken by researcher to develop a category, i.e. the source of "authority for creating a category", the basis for justifying a category and identification of the source of the name utilized for it. The second dimension reports on the various stages of the research process when a category was developed namely a *priori* - before data collection; a posteriori -after data collection; iterative - any point in time during data collection.

Third Iteration : Application to Data Set
1. How did Sierra Leone coordinate restorative and punitive transitional justice mechanisms of the TRC and Special Court respectively in its peace building process? Themes: 1a, 1b, 1c, 1d
2. What was the nature of the working relationship between the TRC and Special Court as coexisting transitional justice tools? Themes: 2a, 2b
3. What is the nature of the experiences derived from Sierra Leone's dual approach to transitional justice? Themes: 3a, 3b, 3c, 3d, 3e
4. When is it appropriate to use dual transitional justice mechanisms? Themes: 4a, 4b, 4c, 4d, 4e, 4f

Second Iteration; Pattern Variables—Components			
1a Separate and independent 1b Different ideological underpinnings 1c Uncoordinated	2a Cooperating and uneasiness relationship 2b Linkages in working relationship	3a Suitability 3b Timing: side by side or sequencing 3c Priority of implementation 3d Challenges 3e Impact on TRC and	4a Fitness of mechanisms with transitional goals 4b Transitional contexts 4d International dynamics

objectives 1d Effects of uncoordination		Special Court 3f Benefits	4e Conceptual and Management issues
Initial Iteration; Initial Codes/Surface Content Analysis			
1a Created at different times 1a Different political dispensations 1a Different social objectives 1a Legal independence 1a Adhoc 1bTRC based on amnesty 1b Special Court on revocation of amnesty 1b Incompatibility 1c Overlapping mandates 1c Controversy on legal relationship—primacy or parity 1c Uncoordinated operational processes 1d Lack of public appreciation 1d Lack of public support 1d Tension	2a Supportiveness and Cooperation 2a Separate and independent 2a Good but broke down 2a Uneasy in relationship 2b Information sharing 2b Joint public education 2b Use of same staff and personnel 2b Use of same witnesses—conflict over indictees 2b Dispute resolution	3a TRC and Special Court as policy choice 3a Only TRC or TRC in combination with traditional mechanisms as policy choice 3b Preference for concurrent running 3b Preference for sequencing 3c. TRC as first choice for implementation 3c Special Court as first choice for implementation 3d Public confusion and dilemma 3d Divided support among the public for both institutions 3d Division at the Civil Society Front 3d Division at the UN front 3e Marginalized TRC 3e Enhanced Special Court 3e Lots and lots escaped justice 3e Waste of time and resources/problems 3f Benefits of TRC 3f Benefits of Special Court	4a Clear stated objectives 4a Objectives matching mechanisms 4b Political climate 4b Magnitude of atrocities 4b Emotional status of the people 4b State of pre existing national mechanisms 4b International influence and local conditions 4c Conceptualized together at the onset 4c Clarified legal relationship 4c Rights of indictees and witnesses 4c Dispute resolution mechanism 4c Information sharing
Data: Interviews	Documents	Observation	

Figure 4. Code mapping of emerging ideas and categories development from interviews, documents and researcher's field notes on dual transitional justice in postconflict of Sierra Leone. From Anfara, V. A., Brown, K. M., & Mangione, T. L. (2002). Qualitative analysis on stage: Making research process more public. *Educational Researcher, 31*(7), 28-38. Copyright 1992 by Sage Publishers. Adapted with permission.

Table 3

Component of Categorization and Temporal Designation of Categories

Component of Categorization	Temporal Designation		
	A priori	A posteriori	Iterative
Origination			
Where does the authority for creating the categories reside?			
Participants			SI, CU, LR, EU, TS, IC, BT, OJ, IL, PM, PM,
Programs			
Investigative			SJ, CD, CT
Literature			DI
			UO
Verification			
On what grounds can one justify a given category?			
Rational			
Referential			EU, UO
External			
Empirical			SI, DI, CU, CT, PN, IL, LR,SJ,TS, IC,CD,BT,OJ PM
Technical			
Participative			
Nomination			
What is the source of the name used to describe the category?			
Participants			CU,LR,TS,CD, IC, OJ,IL
Programs			
Investigative			DI, EU,TS, BT,CT,PN, PM
Literature		UO, SI	

Table 3 (continued)

Category Label Key			
1a Separate and independent (SI) 1b Different ideological underpinnings (DI) 1c Uncoordinated objectives (UO) 1d Effects of uncoordination (EU)	2a Cooperating and uneasiness relationship(CU) 2b Linkages in working relationship(LR)	3a Suitability (SJ) 3b Timing (TS) 3d Challenges (CD 3c Impact (IC) 3e Benefits (BT)	4a Goal(s) marched with policy(OJ) 4b Transitional contexts (CT) 4c The state of pre-existing mechanisms (PN) 4d International influence (IL) 4e Packaging mechanisms (PM)

Note. From Constas, A.M. (1992). Qualitative analysis as public event: The documentation of category development procedures, *American Educational Research Journal*, 29(2), pp253-266. Copyright 1992 by Sage Publishers. Adapted with permission.

Question 1

How did Sierra Leone coordinate restorative and retributive transitional justice mechanisms of the TRC and Special Court respectively in its peace-building process?

Introduction

This question sought to find out how the TRC and Special Court, which were different transitional justice mechanisms, were organized to provide restorative and retributive justice for peace-building in postconflict Sierra Leone. Analysis of transcripts from interviews and documents revealed that the TRC and Special Court were not

coordinated and organized as two parts of the same coin. The themes which emerged were that the two institutions were fashioned as separate and independent; churned out of different ideological basis; and were uncoordinated.

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Separate and Independent

The TRC and Special Court were set up at different times, in different political and social dispensations. UF1 and PO4 pointed out that the TRC was conceived as part of the Lome Peace Agreement of July 1999 when the parties to the conflict desired for peace and negotiated to end the conflict. The political will according to PO4 at that time was to reconcile the nation. The Parliament of Sierra Leone passed the Truth and Reconciliation Act in February 2000 for the establishment of the TRC. However, following certain post-Lome events, in June, 2000, the government of Sierra Leone requested for assistance from the UN to prosecute the RUF (Berewa, 2001). In August 14, 2000, the UN Security Council passed Resolution No. 1315(2000) for the establishment of the Special Court. UF3 indicated that there was a paradigm shift in accountability policy but the government allowed the TRC to proceed as conceived and did not have the political will to stop its establishment. TC3, CA5, CA1, and SO2 indicated that the establishment of the TRC was delayed and so the establishment and operationalisation of the Special Court coincided with that of the TRC. The implementation of the two mechanisms intersected at a given period, thus creating a side-by-side existence (Evenson, 2004). TC3 observed that “dual transitional justice in Sierra Leone was by accident”. TC4 indicated that their concurrent existence was coincidental and not by design or plan. He was quick to point out:

> The two bodies were never conceived together as part of any grandmaster plan, and that is one important misconception to correct….The TRC predates the Special Court in its conception…and in its mandatory establishment…so the question should actually be asked as to why Sierra Leone would engage the Special Court as well as the pre-existing TRC…It is absolutely vital that you don't portray this as a dual accountability mechanism. As I said, it was never part of the two-pronged approach. International literature often misconstrues that.

Table 4 below shows the timings in the conceptualizations of the TRC and Special Court and timelines in their operational activities. As seen from the table 4 below, they were set up at different times but their implementation intersected. And "the two bodies were not created out of some concerted and coherent plan" (TRC Report, 2004, p.428). The TRC report further said "the practical problems that afflicted the "dual accountability" model stemmed from the creation of the two institutions separately from each other. These problems were compounded by the subsequent failure of the two institutions to harmonize their objectives" (TRC Report, 2004, p.428).

Table 4

Timelines in the Establishment and Implementation of the TRC and Special Court

July 7, 1999: The Lome Peace Agreement provided for the establishment of the TRC February 10, 2000: The Truth and Reconciliation Act was passed by the Sierra Leonean Parliament	June 12, 2000: Government of Sierra Leone wrote to the UN Secretary General to request for assistance to try the RUF August 14, 2000:Security Council passed Resolution No. 1315(2000) for the establishment of the Special Court January 16, 2002: United Nations and Government of Sierra Leone entered into an Agreement to establish the Special Court March 2002: Parliament of Sierra Leone endorsed the Agreement by the enactment of the Special Court Ratification Act, 2002

Table 4 (continued)

March 25, 2002: Interim Secretariat of the TRC was established	July 1, 2002: Special Court officially commenced operations
July 5, 2002: TRC was inaugurated and Commissioners were sworn into office	December 2, 2002: Judges of the Special Court were sworn into office
October 2002: TRC became operational December 4, 2002: TRC commenced Statement taking	March 7, 2003: Special Court issued indictments March 10 , 2003: Special Court commenced arrests of indictees
April 14, 2003: TRC commenced hearings	June 3, 2004 Special Court commenced trials
December 2003: TRC technically folded up and disposed of its staff but brought in consultants to finalize its report March 2004: TRC Offices were physically closed	Special Court outlived the TRC to carry out its functions
October 2004:TRC report was officially released to the Government and people of Sierra Leone	

Note. Compiled from the Report of the TRC 2004, the First Annual Report of the Special Court for the period of 2 December 2002-1 December 2003, and Transcripts of Special Court trials.

Contradictory Basis

Amnesty emerged as a critical issue in the discussion on coordination between the TRC and the Special Court. The TRC in its report pointed out that the TRC and Special Court "arose from two different initiatives that were themselves contradictory. The TRC grew out of the amnesty in the Lome Peace Agreement, whilst the Special

Court emerged subsequently out of the decision to withdraw the amnesty" (TRC Report, p.428). CA7 said the grant and revocation of the amnesty made the TRC and Special Court appear contradictory to the people of Sierra Leone who kept on asking that "if the TRC is looking at the amnesty why the Court? And if the Court is abrogating the amnesty why the TRC?"

Amnesty is one of the issues that emerged during the negotiations between the government and the UN for the establishment of the Special Court namely, whether the amnesty within the Lome Peace Agreement was a bar or foreclosure to a subsequent judicial process aimed at addressing the violations with respect to which the amnesty was granted. This was an important consideration for determining the temporal jurisdiction of the Court (Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, 2000). The UN position was that, although it recognized amnesty as an accepted legal concept, and a gesture of peace and reconciliation at the end of a civil war or an internal armed conflict, it has persistently maintained that amnesty cannot be granted in respect of international crimes such as genocide, crimes against humanity or other serious violations of international humanitarian law. Hence, whilst signing the Lome Peace Agreement, the Secretary-General instructed his special representative for Sierra Leone to enter a reservation to the effect that the amnesty provided for by article IX of the Lome Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law (Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, 2000). The government of Sierra Leone agreed with the UN position. The reasons the government adduced for abrogating its obligation concerning the amnesty under

Lome were that the RUF had reneged on the agreement, thus inducing the government to reassess its position on the amnesty clause (Berewa, 2001). In his report to the Security Council on the agreement reached with the government of Sierra Leone, the Secretary-General reported that amnesty could not be granted in respect of international crimes such as genocide, crimes against humanity or other serious violations of international humanitarian law. The government of Sierra Leone agreed for the insertion in the Statute an amnesty clause to read as follows: "An amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in articles 2 to 4 of the present statute shall not be a bar to prosecution" (Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, 2000 p.5). The Secretary-General reported that since the legal effect of the amnesty granted in Lome had been denied to the extent of its legality under international law, the obstacle with regard to the determination of the temporal jurisdiction of the Special Court to begin in a period within the pre-Lome Agreement has been removed.

TC1, a TRC Commissioner, was not in favor of the amnesty withdrawal He argued that on the basis of morality it was wrong for the government to unilaterally revoke the amnesty which was an integral part of the negotiated agreement to end the conflict. He argued that the removal of the amnesty which ushered in the Special Court was in breach of a moral trust and improper. TC1 commented on the withdrawal of amnesty thus:

> Not that I am saying people should not be accountable for their actions, but the fact that we led these people to believe that, if they co-operated with us, we were not going to prosecute them. It is a betrayal of that trust. There is a moral issue here both at the national and international level. When we have agreement particularly on critical issues like ending a conflict it should be sacred. And to me, I think that kind of a thing should be sacred. ..The fact is we cajoled these people

> to accept a kind of situation by promising them and then, when we got them; when they accepted it and we felt comfortable; we turned and pounced on them. That is a moral issue which I find difficult to compromise and accept and say "Oh yes, the International Community say we must not encourage impunity and that kind of a thing".

TC1 also disclosed that when they went to the field as TRC Commissioners, they found that the people of Sierra Leone had by and large accepted the amnesty. And in Kambia district were told that the TRC was not necessary because they had accepted the government's plea to forgive. UF2 agreed with TC1 that the people of Sierra Leone accepted the amnesty and considered the revocation of the amnesty a betrayal when he said:

> I think that they were more disposed to accepting the amnesty, because in any case, they decided that we must have some peace. I happened to have worked in the provinces; in many places – the generality of the people accepted the reconciliation and the fact that there was an amnesty. However, those who brought the Special Court felt that impunity would have to be addressed. I don't believe it is very much accepted by the people. Well, the Special Court people themselves would tell you that. I assisted some of them to do their outreach programs in the provinces when I was there. I think that we had to force hard for them to be heard …Because some people do not even believe that those that have been held, particularly the CDF are those who bear the greatest responsibility for the atrocities that had happened. Therefore they see it as a betrayal really for the amnesty that was granted.

The TRC observed in its report: "The withdrawal of amnesty following the breaking of the Lome Peace Accord, which resulted in the prosecution of individuals who had nothing to do with the breach and who were protected by the amnesty, was unwise and legally unsound" (TRC Report, p.192).This was because amnesty played a critical role in getting the combatants into negotiating peace that paved the way for peace-building. In a wider context amnesty may still have a role to play in ending human suffering in situations of protracted conflicts and should not be excluded from such cases.

There were those who supported the revocation of the amnesty. CA7, a Civil Society Activist, was of the view that due to the protracted nature of the war, people had lost confidence in everything, whether national or international; hence they gave in to the amnesty so there would be peace. However, people were not happy about the amnesty when it was announced, but they accepted it because they had no choice. CA7 argued that if people claimed to have been deceived, meaning they did not want prosecutions, then it meant that they wanted some other form of prosecution other than the Special Court but not the lack of it. SO4 supported the abrogation of the amnesty. He argued that "amnesty was not legally binding in international law. Even if it was binding, it was avoided in principle by the conduct of the rebels in Sierra Leone situation". SO4 maintained that on the basis of international law, certain crimes cannot be amnestied and where that is done at the national level such amnesties have no effect under international law. UF3 said that the UN entered reservation to the amnesty when it was granted in Lome, but assuming that there were no such reservations, by international law, war crimes were beyond pardon. No matter how long it took someone could bring it to the attention of the international community that these crimes could be prosecuted. He remarked: "But I don't think it was arbitrary though. Those crimes being prosecuted by the Special Court are not against national laws; they are breaches of international law".

The impact of the revocation of the amnesty came up. TC1 and TC2**,** TRC officials, said that the withdrawal of the amnesty per se did not affect the credibility of the TRC and transitional justice but it did affect the credibility of the government. PO4 indicated that the withdrawal of the amnesty created some rancor among the CDF for the indictment of their Coordinator but with no major impact on the peace process itself. SO1

said the withdrawal of the amnesty affected how people of Sierra Leone perceived and or cooperated with the Court. He disclosed that public attendance at the Court was very low because they were afraid that if they showed up there, they might be thrown into jail. He pointed out that even though the Court was meant to prosecute those who bear the greatest responsibility, those not included in this category were all afraid of the Court because of the withdrawal of the amnesty.

CA7 supported the revocation of the amnesty but indicated that it created confusion among the public about the two mechanisms since one was responding to it and the other revoking it. He said:

> I have seen many, especially those affected, who think having the TRC and the Special Court together is such a mess. They say it is a mess because they think that if the TRC is looking at the blanket amnesty that was given in Lomé, then why the Special Court; and if the Special Court is in existence also, then why the TRC? The TRC is saying that this set of people have been forgiven by their communities. Therefore if they have been forgiven why try them again at the Special Court?

From the aforementioned, it is clear that the TRC and Special Court emerged from different ideological underpinnings which appeared contradictory conceptually. They were not coordinated as coherent parts of transitional justice tool for Sierra Leone**.**

Uncoordinated and Unharmonized Legal Instruments

The TRC and the Special Court had distinct purposes with linkages in mandates. But they were not coordinated for a harmonious coexistence; their mandates overlapped, their legal relationship was not clarified in their founding documents; and there were inconsistencies in their laws.

Overlapping Mandates

The mandates of the two institutions overlapped with regard to their subject-matter, temporal, personal and territorial jurisdictions. The mandate of the TRC was:

> 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, Section 6, Sub-section 1)

The mandate of the Special Court was to:

> Prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leone law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone. (Article 1 of the Statute of Special Court)

The Special Court also had power to prosecute peacekeepers upon authorization of the Security Council.

As far as the personal jurisdiction of those that made up the TRC and Special Court constituency were concerned, the two bodies overlapped. According to the TRC Act, those who fell within the ambit of the TRC were victims, perpetrators, children, child perpetrators and victims of sexual violations—individuals. Further, the TRC was mandated to determine the causes of violations and the extent of involvement by individuals, groups and governments (Sections 6, 6(2) (a), 7(1) (a), 7(4) of the TRC Act, 2000). Thus the personal jurisdiction of the TRC consisted of individuals, groups, children and governments. On its part, the personal jurisdiction of the Special Court

consisted of “persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leone law” (Article 1 of Special Court Statute). The Special Court also had jurisdiction over peacekeepers under certain circumstances. Unlike the TRC the personal jurisdiction of the Special Court was limited only to individuals and did not include groups and governments. Only the TRC could cover groups and governments.

As far as personal jurisdiction was concerned, the mandates of the two institutions overlapped with regard to individuals and both could therefore access the same persons in carrying out their mandates. That was a potential source of conflict between them. The UN Expert Group (2001) advised that the Prosecutor should publicly indicate how he intended defining “those who bear the greatest responsibility”. And once that was done, those who fell within it should come under the exclusive jurisdiction of the Special Court and the TRC must not have access to them. But Tejan-Cole (2003) argued that nothing in their founding documents prevented the TRC from having jurisdiction over the indictees of the Court. To that extent the TRC by law was not prevented from doing so.

Temporal jurisdiction—the period or the time their mandate was to cover also overlapped. The TRC had jurisdiction to cover violations and abuses that had occurred from the inception of the conflict in 1991 to the signing of the Lome Peace Agreement in July 1999. The TRC was further enjoined to determine the “causes and antecedents” of the conflict (Section 6 of the TRC Act). In view of that, the temporal jurisdiction also covered violations and abuses prior to the commencement of the war. The temporal jurisdiction of the Special Court covered:

> Serious violations of international humanitarian law and Sierra Leone law committed in the territory of Sierra Leone since 30 November, 1996, including

> those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone. (Article 1 of Special Court Statute)

The lifespan of the Special Court was "open-ended" to be "determined by a subsequent agreement between the parties upon the completion of its judicial activities, an indication of the capacity acquired by the local courts to assume the prosecution of remaining cases, or the unavailability of resources" (Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, 2000 p.6). The temporal jurisdiction of the two institutions overlapped from November 30, 1996, to July 7, 1999. Thus, the two institutions could cover events that took place within the stated period. In *Prosecutor v. Norman* (2003, Appeal Chamber), the Special Court observed, "but there is an overlapping period until July 1999 which will be the subject of scrutiny both by the TRC, and in different context of a criminal trial, by the Special Court" (p.7).

Also, the subject-matter jurisdiction— the issues the two institutions were empowered to examine or prosecute as the case maybe overlapped. From their respective mandates, the TRC was enjoined to look into violations and abuses of human rights and international humanitarian law, record such abuses, create historical record and investigate to identify the causes and the extent of the abuses(Section 6(1) &(2). The Special Court was to prosecute "for serious violations of international humanitarian law and Sierra Leone law" (Article 1(1) of the Special Court Statute). The subject-matter of the two institutions overlapped with regard to international humanitarian law. Again, there was an overlap with regard to Sierra Leone human rights law.

Both institutions overlapped concerning their territorial jurisdiction— the geographical boundaries over which the Special Court and TRC had power to investigate

issues or prosecute as the case may be. The TRC Act provided that the TRC had to examine the "violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone (6(1). By Section 6(2) (a) of the TRC Act, the TRC was mandated to look into "the role of both internal and external factors in the conflict" and find out if the conflict was the result of deliberate planning, policy or authorization by any government. The implication was that the TRC could investigate issues abroad as well to determine external involvement in the conflict. The Special Court was to prosecute violations "committed in the territory of Sierra Leone" (Article 1(1) of the Special Court Statute). Moreover, the Special Court was empowered to prosecute those who "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime"(Article 6(1) of the Special Court Statute). It was suggested that commission of these secondary or inchoate offences could have taken place outside the shores of Sierra Leone. Hence the Court could carry out investigations outside the shores of Sierra Leone. However, this might require the permission of a government in the territory involved before the Court could conduct investigations abroad (Schabas, 2002). From their territorial jurisdiction the two intersected as they dealt with matters that took place in Sierra Leone. Also, their relationship could intersect with a foreign government at the same time concerning same issues.

From the aforementioned, it is clear that at the conceptual level the two institutions intersected as far as their personal, subject-matter, and temporal jurisdictions were concerned. Both institutions had to deal with the same persons and cover the same issues which fell within their temporal jurisdiction during the time of their coexistence.

The effect of the overlap in mandate at the conceptual level was captured by the TRC in its report thus: “many people in Sierra Leone were not able to distinguish between the roles of the two bodies; they both dealt with impunity; they addressed accountability for atrocities committed during the war; and… focused on violations of international humanitarian law” (TRC Report, p.377).

Table 5

Legal Basis and Overlaps in the Mandates of the TRC and Special Court

	TRC	Special Court
Legal Basis	Lome Peace Agreement between the Government of Sierra Leone and RUF, July 1999	Special Court Agreement between the UN and Government of Sierra Leone with Statute attached, 2002; The Special Court Ratification Act , 2002
Composition	Composed of seven member Commission	Composed of three organs; Chambers, Prosecution and Registry
Temporal jurisdiction	From the commencement of the conflict in 1991 to the signing of the Lome Peace Agreement July 1999	From November 30,1996 with an “open-ended” lifespan
Personal jurisdiction	Individuals, Group and Governments	Only individuals "who bear the greatest responsibility for the commission of crimes”
Subject-matter jurisdiction	Human rights and international humanitarian law	International Humanitarian Law and Sierra Leonean Law

Note. This table shows the legal basis, composition and overlaps in personal, temporal, and subject-matter jurisdictions of the TRC and Special Court. Compiled from the Truth and Reconciliation Commission Act, 2000, the Special Court Statute, and the Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN Doc.S/2000/915, October 4, 2000.

Controversy over Legal Relationship: Primacy or Parity

The founding documents of the TRC and Special Court did not address the relationship that should exist between them. Controversy arose between the TRC, Special Court, and among the respective stakeholders as to whether or not the legal relationship between the two institutions had been clarified by their founding documents and if so the nature of the relationship. Because the founding documents of the two institutions did not make explicit reference to their relationship, lack of clarity or understanding as to their relationship impacted on the effective functioning of the two institutions, particularly on the TRC.

The TRC Act was passed in February 2000 at a time that the idea of the Special Court was not contemplated; hence it did not address its relationship with the Special Court. When it became clear that the Court was imminent, the nature of the relationship between the two bodies became an issue of intense debate among stakeholders, civil society groups, international NGOs, and academia etc. There were meetings and fora organized at the national and international levels where experts and stakeholders discussed the relationship between the TRC and Special Court. It was recommended that the relationship between the two should be addressed in the founding documents of the Special Court (Schabas, 2001).

The idea of the Special Court was conceived in 2000 when the government of Sierra Leone requested assistance from the UN to set up a court. The Court was established by an agreement between the government of Sierra Leone and the United Nations in January 2002 (Special Court Agreement, 2000). The Agreement had a Statute attached which set out its legal framework for the Court. But the Agreement and the

Statute did not make any reference to the pre-existing TRC except in relation to juvenile offenders where it stated:

> In the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation program is not placed at risk and that, where appropriate, resort shall be had to alternative truth and reconciliation mechanisms, to the extent of their availability. (Article 15(5) of the Special Court Statute)

It was argued by some participants that in the absence of express provisions in the founding documents of the Special Court as to its relationship with the TRC, the relationship between the two institutions was not clarified nor determined and this led to a lot of problems. TC4 a former TRC official observed:

> The reality was that the TRC mandate and structure was done in the absence of the international criminal tribunal. When the Special Court came along, I would have thought it was incumbent upon the drafters of that legislation to take account of the pre-existing TRC. Instead, they completely neglected to make mention of it in their statute, and that is the root cause of much of the tension that existed between them.

However, the government of Sierra Leone in its briefing paper to the Special Court planning mission on the relationship between the TRC and the Court took a different position (Report by the Office of the Attorney General and Ministry of Justice, 2002). In its policy directives on the relationship between the two bodies, the government pointed out that the relationship that should exist between the two institutions had been clearly clarified in Article 17 of the Special Court Agreement. The said Article 17 of the Agreement stated:

> 1. The Government shall cooperate with all organs of the Special Court at all stages of the proceedings. It shall, in particular, facilitate access to the Prosecutor to sites, persons and relevant documents required for the investigation;
> 2. The Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to;
>
> (a) Identification and location of persons;

(b) Service of documents;
(c) Arrest or detention of persons;
(d) Transfer of an indictee to the Court

The government briefing paper explained that by virtue of the above-mentioned provision, Sierra Leone's obligation to cooperate with the Special Court required that all Sierra Leonean institutions and persons natural or otherwise must cooperate and comply with the orders of the Court. Accordingly, the TRC being a national institution had an obligation to comply with the orders of the Special Court which has its basis in international treaty. Government maintained that even though the TRC had an international component, it was strictly a national institution because it derived its basis from an Act passed by the Parliament of Sierra Leone. Government position was that the relationship between the two institutions was clarified and "it would be disingenuous to claim that the relationship between the Special Court on one hand and any Sierra Leonean institution, including the Truth and Reconciliation Commission, on the other hand is not clear" (Report by the Office of the Attorney General and Ministry of Justice, 2002, p.4)**.** In the opinion of Government, if anything at all, what would be needed was "a policy on how to adopt operational guidelines that limit the necessity for the Court to exercise its coercive powers and instead allows it to operate with maximum cooperation from national institutions" (Report by the Office of the Attorney General and Ministry of Justice, 2002, p. 4). The government pointed out that the obligation of national institutions and for that matter the TRC to cooperate with the Court did not arise on the basis of the primacy of the Court to those institutions, but from Sierra Leone's international obligation to cooperate with the Court. The government pointed out that the issue of the primacy of the Special Court arises only in relation to the national court of

Sierra Leone on issues of concurrent jurisdiction. Further, Government made it clear that if any law was inconsistent with the Special Court Agreement, such a law would be amended to the extent of that inconsistency in order to make room for the Special Court (Report by Office of the Attorney General and Ministry of Justice, 2002).

Given the relationship thus described, what the government considered critical between the two was the disclosure of information TRC received in confidence to the Court. Government advocated that guidelines on information sharing should be developed by the two institutions in consultation with stakeholders but not in "advance" by those who would not be involved in it. Government further identified areas of cooperation between the two institutions as referral systems, and sharing of resources.

In March, 2002, the Parliament of Sierra Leone passed the Special Court Ratification Act, 2002 (the Special Court Act) to ratify the Special Court Agreement for domestic application. This Act further reiterated the government's position on the relationship between the TRC and Special Court. It stated, "Notwithstanding any other law, every natural person, corporation, or other body created by or under Sierra Leone law shall comply with any direction specified in an order of the Special Court"(Section 21 (2) of the Special Court Act). While this law was in a Bill state, Campaign for Good Governance (CGG), a local NGO, wrote to the Attorney General to ask the Attorney General to consider amending the Bill to reflect consensus built by Civil Society on parity between the TRC and Special Court. CGG noted, "it would seem from this Bill that the consensus forged with regard to parity between the two institutions has not been

officially recognized by any of the key decision-makers" (p.1)[8]. CGG urged the government to amend the Bill to ensure that it did not "grant the Special Court primacy over the Truth and Reconciliation Commission, particularly with regard to demanding confidential information. Such a move would decimate any impression of TRC independence and demote it to a mere research arm of the Special Court" (p.1). The Bill was therefore in contravention of consensus built from Civil Society consultations. CA5 disclosed that Civil Society deliberated on the issue of parity between the TRC and came to the conclusion that it would be best to let the two institutions be at par and not give primacy of one over the other.

Again, Section 21 (2) deepened the controversy on the nature of the relationship between the two institutions. It was subjected to diverse interpretations from NGO circles, commentators and observers. Just like the government briefing paper, the discussion erupted around the Special Court Act which centered on information sharing. The TRC Act had contemplated situations of confidentiality in several aspects of its work, and made provision for the TRC to take information in confidence and to protect such information during and after its subsistence. For example, the TRC could exercise its discretion to allow people to provide it with information in confidence, and it "shall not be compelled to disclose any information given to it in confidence" (Section 7(3) of the TRC). It could also conduct interviews in private as envisaged by section 8(1) (c) of the Act. Again Section 19(2) provided that:

> Before it is dissolved, the members of the Commission shall among the final administrative activities of the Commission- a) organize its archives and records, as appropriate for possible future reference, giving special consideration to- i what

[8] Letter from Abdul Tejan-Cole, Acting Coordinator, The Campaign for Good Governance , to Solomon E. Berewa, Attorney General and Minister of Justice of Sierra Leone, dated March 15, 2002) Retrieved May 23, 2007, from http://www.slcgg.org/letterag.htm

> materials or information might be made available to the public of Sierra Leone, either immediately or when conditions and resources allow; and ii what measures may be necessary to protect confidential information: and b) organize the disposal of the remaining property of the Commission.

The issue was whether the aforementioned confidentiality provisions in the TRC Act and others were trampled upon by the Special Court Act. Could the Court request from the TRC information received in confidence and must the TRC comply with such a request? And how should the Court treat such information or any other TRC information?

On the issue of whether the confidential status of the TRC had been trampled upon, responses were mixed. Some NGOs and commentators were of the view that the provisions of Section 21 of the Special Court Act made the Special Court supreme to the TRC and following from this, the TRC must comply with orders issued by the Special Court. As a result the Special Court could request information from the TRC even if such information was disclosed to the TRC in confidence. Human Rights Watch (2002) for example stated:

> Because the TRC is a body created under Sierra Leone law, the implementing law creates a duty for the TRC to comply with orders of the Special Court; because there are no exceptions stated in the implementing law, the implications are that the TRC would have to comply with all orders of the Special Court. **(**p.1-2)

Human Rights Watch added that because the Special Court Act was later in time, it was presumed to trample on the confidentiality provisions of the TRC Act. Hence, TRC would be obligated to comply with the orders of the Special Court for confidential information. Human Rights Watch however recommended that a policy framework should be developed to create a balance "between the TRC's need to treat information as confidential and the Special Court's occasional need to trump such confidentiality" (p.3). Human rights watch proposed further, that the Special Court should also share

information with the TRC to the extent that divulging of such information would not jeopardize ongoing investigations. Even though the Court did not owe the TRC an obligation to share information, their mandates overlapped so they could cooperate to cut down cost as resources were limited. Human Rights Watch proposed a comprehensive procedure for such exchanges. Similarly, Wierda, Hayner and van Zyl (2002) observed:

> The Clause in Section 21(2) that read "Notwithstanding any other Law" indicates that the Special Court's power to order disclosure of information superseded the confidentiality clause in the TRC Act. The relationship between the Special Court and the Commission was therefore dictated by the broad powers of the Special Court. (p.5)

Wierda, et al. concluded that the Special Court was a supreme body to the TRC but noted that if the Special Court did not refrain from exercising its powers in a way that might cause the TRC to appear as its investigative arm, the TRC would not be able to carry out its functions effectively. Wierda, et al. advocated that policy rather than law should guide the issue under consideration. Wierda, et al. proposed that conditional information sharing between the two institutions as unrestricted information sharing would be detrimental to the TRC and no information sharing detrimental to the Special Court. According to them, the TRC should share confidential information with the Court "if it is essential to the fair determination of the case before it" and if the information "cannot reasonably be obtained from another source" (p.12). Further, if any conflict were to arise out of information sharing it should be resolved in the Chambers of the Special Court and not outside of it. They developed elaborate procedures for such information sharing with recommended measures for witness protection. Again, Wierda, et al. proposed that the Special Court should make use of the TRC report and get TRC Commissioners to testify before it after the TRC had completed its work. However, the TRC should not obtain

information from indictees of the Special Court as this would adversely affect the Court's proceedings. They concluded that the Special Court had primacy over the TRC and the relationship between the two was dictated by the broad powers of the Special Court (Wierda et al.).

Schabas (2002), one of the TRC Commissioners, opined that the import of the aforementioned views as expressed subordinated the TRC to the Special Court, hence the Court could request or even subpoena the TRC for any information and it was incumbent on the TRC to comply with the order. Schabas said that was a mistake and suggested that the provision under consideration should not be given a literal interpretation or meaning because such interpretation would lead to "patent absurdity" and defeat the very purpose for which the TRC and the Special Court were created. He therefore disagreed with the view that the TRC was subordinate to the Court and that the Court could trample on the confidential provision of the TRC. Schabas maintained that by the "golden rule of statutory construction", courts are enjoined not to follow a construction or interpretation that leads to an absurd or illegal result. With the case under consideration to insist that Section 21 of the Special Court Act trampled on the confidentiality status of the TRC as contemplated by the TRC Act 2000 was absurd. This is because such interpretation would have a chilling effect on the TRC and greatly compromise its mandate. Schabas advocated for a "purposive" interpretation of the provision— an interpretation within the overall purposes and intent for which the TRC and Special Court were created. He maintained that both institutions were expected to be independent and impartial in the discharge of their duties, and the establishment of the Special Court was not meant in anyway to compromise the "efficacy" of the TRC. The Legislature never intended this

and in the absence of an express provision to the effect that the confidential provisions were repealed, the confidentiality provision in the TRC Act had full force and no order of the Special Court could erase it. He advocated that the TRC should hold on to the confidential aspect of its provisions.

Concerning the need for the TRC to disclose confidential information to avoid a miscarriage of justice—acquittal of the guilty and conviction of the innocent, Schabas responded that legal systems recognize and protect privileged information so it may not always be the case to have such information disclosed. However, should such a situation arise, then the TRC should work it out "without compromising its commitment to confidentiality and its integrity" (p.32). But giving the resources available to the Prosecutor, Schabas thought the Prosecutor may not have the need for TRC evidence. Rather what should be a real concern for the Prosecutor was a situation where the Defense would apply for TRC information to challenge the credibility of the Prosecutor's evidence. In such a case Schabas advocated that the Court should consider letting only the judges examine information and also treat it as privileged information "comparable to information given in confidence to a lawyer, a doctor or a priest" (p22).

The Court took the position that it had primacy over the TRC by virtue of Article 8 of the Special Court Statute. In *Prosecutor v. Norman* (2003, Appeal Chamber), the Court stated, "The Special Court was given, by Article 8 of its Statute, a primacy over the national courts of Sierra Leone (and by implication, over national bodies like the TRC)" (p.3). SO3 confirmed that "theoretically and legally" the Special Court was given primacy over the TRC but the TRC attempted to usurp it. CA5 said that the relationship between the two institutions was clear. The Special Court by law had primacy over the

TRC and the relationship between them was dictated by the broad powers of the Court. CA5 disclosed that the Court always in its sensitization program said that it had power over the TRC to secure information from it but they would not do so because they wanted the TRC to succeed.

On its part, the TRC took the position that the confidential aspects of their processes as envisaged by the TRC Act were not and could not be trampled upon by the Special Court Act (Schabas, 2002). This was confirmed in interviews by TC3 and TC1; TRC Commissioners. TC3 insisted that the TRC had parity with the Special Court, but the Court wanted to take away their confidential status so they resisted it. TC1 said they took the position to assure the public of their independence and ability to obtain information on confidential basis whenever necessary. In its press briefing of August 7, 2002, the TRC assured the public that it had the capacity to receive information in confidence and "they should feel reasonably assured that the Commission has taken reasonable measures to ensure the security of any information or document that might be presented to it"(p1)[9]. The TRC took steps to safeguard the confidential aspect of its process to ensure that its Commissioners and all members of staff subscribed to an oath of confidentiality during and after their tenureship with the Commission. Penfold (2002) confirmed that there was confusion as to whether information given to the TRC would be passed on to the Special Court; because the TRC Chairman said, "Definitely not," whereas the Special Court officials said, "Only if necessary".

[9] Truth and Reconciliation Commission Press Briefing, August 7, 2002, Retrieved March 7, 2007. from http://www.sierra-leone.org/trcbriefing080702.html

Another issue that Section 21(2) of the Special Court Ratification Act made critical to their relationship was how TRC information received in confidence or otherwise would be handled by the Special Court in the event of the Special Court obtaining such information. This was considered critical because the TRC Act did not make any provision to safeguard the interests of witnesses who would appear before it to give self-incriminating evidence, as was done by the normative framework of the South African Truth and Reconciliation Commission and Ghana National Reconciliation Commission[10]. In the South African and Ghanaian situations, witnesses were provided protection against prosecution for self-incriminating evidence adduced before the Commissions. The Sierra Leone TRC did not provide witnesses with such protection. The obvious reason probably being that, the TRC Act did not anticipate prosecution due to the amnesty provision in the Lome Peace Agreement.

The government briefing paper categorically said that TRC information was not evidence before the Special Court. The Special Court was enjoined by their Statute to use the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (ICTY Rules) as may be modified by the Judges. The methodology used for obtaining TRC information would not qualify it to be used as evidence before the Court as it may not have passed through cross-examination. However, TRC confidential information could be used as investigative material by investigators of the Court as and when the Prosecutor of the Special Court deemed it fit to do so. And again, the Judges of the Court could receive TRC information in camera for review (Report of the Office of the Attorney General and Ministry of Justice, 2002).

[10] The Promotion of National Unity and Reconciliation Act of South Africa , 1995 (Act No. 35) and National Reconciliation Commission Act of Ghana, 2002 (Act No 611)

Schabas (2002) was of the view that the solution to this matter was with the Judges of the Special Court. According to him by the Statute of the Special Court, an accused before the Court had the right to refuse to testify against himself or to confess. Likewise, witnesses were also protected against self-incriminating evidence. Schabas advocated that the Court should apply those principles to evidence given to the TRC. Also, since the judges of the Special Court were empowered to amend the ICTY Rules the Court should take the opportunity to clarify matters by amending the Rule to specify that "self-incriminating evidence given to the TRC could not be used in prosecution before the Court" (p.20). Alternatively, Schabas recommended that the government of Sierra Leone and the UN could amend the Special Court Agreement and Statute to reflect that, "Evidence given by an accused person before the Truth and Reconciliation Commission may not be used in a prosecution before this Court…" (p. 21). According to Evenson (2004), defining relationship on the basis of hierarchy as was done did not resolve fully "productive coordination between the two institutions and may even generate conflict" (p.745).

Given the ambiguity and controversy over the proper import of the section under consideration and how they could relate with each other, particularly on information, the public became concerned. CA7 disclosed that the people of Sierra Leone wanted to be sure about how their involvement with one would affect them as far as the other was concerned. Because the public could not know or predict in certainty how information offered to the TRC would eventually be handled by the Court, perpetrators and in some cases victims who would have otherwise cooperated with the TRC expressed concern about it. It should be pointed out that even before the legislation establishing the Special

Court came out some of the perpetrators identified this concern. As a matter of fact, the Secretary-General's report of September, 2001, on the UN Mission in Sierra Leone indicated that the Revolutionary United Front (RUF) "was receptive to the TRC, but that it expressed concern over the independence of the Commission [TRC] and the relationship between it and the Special Court" (Eleventh Report of the Secretary-General on the UN Mission in Sierra Leone, 2001, p.7). The Post-Conflict Reintegration Initiative for Development and Empowerment (PRIDE)[11] a local NGO that worked closely with ex-combatants, in a letter to the International Centre for Transitional Justice (ICTJ), expressed the concern that the ex-combatants had shown interest to participate in the TRC process on the basis that the TRC could provide a platform for reintegration with their families. But they had changed their initial position to participate in the TRC because it appeared the TRC would serve as an "investigative arm" of the Court. Many were willing to participate but would do so with the assurance that appearance before the TRC would not render them "defendants or witnesses" against their "commanders" at the Court.

In partnership with the ICTJ, PRIDE conducted a 2-month follow up survey to assess ex-combatants' views and awareness of the TRC and the Special Court, on the possible relationship between these two accountability institutions with regard to information sharing and how this would impact on their decision to give testimony to the TRC. PRIDE reported among other things that the ex-combatants raised concerns about information sharing with the Special Court and witness protection as an impediment to their willingness to participate fully. Again PRIDE found that the ex-combatants were

[11] Letter from PRIDE to International Centre for Transitional Justice, 2 Feb. 2002.

apprehensive that what they give as testimony to the TRC might be used as evidence by the Special Court to prosecute them. Also, most of the ex-combatants who participated in the survey indicated that the TRC should limit information shared with the Special Court, and only under specific conditions should information be disclosed. Further, PRIDE found that ex-combatants preferred that information should not be shared, though some were, nevertheless, willing to testify whether information was shared freely or restrictively.[12]

According to Tejan-Cole (2003), due to the lack of clarity of the relationship between the two institutions, the average Sierra Leonean was confused about their respective roles in Sierra Leone. Tejan-Cole said it was important to clarify the relationship and deal with the perception on the ground, otherwise if they were seen to be in conflict, both were going to lose public confidence. In a research undertaken by the Truth and Reconciliation (WG) formerly TRC Working Group and Network Movement for Justice and Development (NMJG) (2007) to asses the impact of the TRC among others, they observed that the "efforts to conceptualize and operationalize a coherent and clear relationship between the TRC and Special Court were unsuccessful... People were confused by the relationship between the two institutions,… fearing indictment by the Special Court should they cooperate with the TRC" (P.5). The ICTJ (2006) reported that "despite the Prosecutor's assurances, the coexistence of the two institutions may have prevented cooperation with the TRC because of public confusion about the distinction between the two because people may not have trusted, or chosen not to rely on such

[12] Report on a study by PRIDE in partnership with the International Centre for Transitional Justice on Ex-Combatants' Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone, 2002.

assurances" (p.41). According to the ICTJ the debate on the relationship between the TRC and Special Court concerning "parity" sparked division among Local NGOs which was mirrored through international NGOs. Howbeit it subsided when the two institutions became operationalized and concentrated on their work. Thereafter, the position of NGOs became more realistic in their views.

In conclusion, the inconsistencies and lack of clarity in the founding documents of the TRC and Special Court as to the nature of the relationship between them generated a lot of speculations and uncertainties. In particular, it was not clear as to whether the confidential aspect of the TRC Act was intact in the face of the Special Court Act which endowed the Court with absolute powers to secure compliance with their requests or orders for information from national institutions. Also, in the event of TRC information getting to the Court, it was not clear how such information, whether self-incriminating or otherwise, would be handled by the Court. Due to these ambiguities, no clear and definite information could be conveyed to the people of Sierra Leone. The public was confused because they were not sure about how information given to the TRC would be treated by the Special Court. This threatened the mandate of the TRC to create an impartial historical record.

Uncoordinated Operational Processes and Associated Tension

The Secretary-General and other stakeholders recommended that the TRC and Special Court should adopt operational guidelines to regulate their relationship, given the overlaps in their mandates (Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, 2002; Wierda, Hayner and Zyl, 2002). The TRC (2004)

reported that when the two institutions were operationalised they did not coordinate their operations. Each institution pursued its mandate without so much giving attention to how it would affect the other**.** UF3 disclosed that there was no visible national or international body responsible for coordinating the TRC and the Court. UF3 thought that in the context of Sierra Leone, any effort to coordinate the two institutions would have sent a wrong signal; it would have heightened the fear of the people. But because their mandates overlapped as well as their operations for a significant period of time coupled with an undefined relationship, "the same events, witnesses, victims, perpetrators, and evidence were relevant to them" (Evenson, 2004, p.744). The resulting effect concerning these uncoordinated processes was that the public became confused about the distinctive roles of the two institutions in the peace-building process. This greatly affected the level of public cooperation particularly with the TRC. The TRC stated in its report:

> These problems were compounded by the subsequent failure of the two institutions to harmonize their objectives. Ultimately, where there is no harmonization of objectives, a criminal justice body will have largely punitive and retributive aims, whereas a truth and reconciliation body will have largely restorative and healing objectives. Where the two bodies operate simultaneously in an ad hoc fashion, conflict between such objectives is likely. Confusion in the minds of the public is inevitable. (Truth and Reconciliation Commission Report, 2004, p. 428)

PO6, a Government Minister, indicated that while the TRC was inviting people for reconciliation, the Court was indicting and arresting people at the same time. TC1 and TC3 pointed out that in the absence of any coordinated arrangement between the two, they ran into a head-on collision and their relationship became sour when the TRC requested for access to indictees in the custody of the Court. SO6 disagreed with the position taken by the TRC and others on the "harmonization of objectives" She said that,

the objectives of the two institutions were similar and not different; to hold people accountable and help the country move from war to peace. So the issue of having to harmonize objectives did not arise. In her view, what differed was the nature and characteristics of the two institutions and their operational methodologies. So when they were set up together and the TRC wanted access to the Court's indictees they could not agree on procedures to do that. This was because their procedures differed and they could not reconcile the two approaches. This created tension which, according to SO6**,** was "inherent tension because of the way the TRC operates and the way the criminal justice system operates". Thus anything leading to harmonization probably would be to sequence the two mechanisms. Once they were put together, as it was in the case of Sierra Leone, these tensions were inevitable**.** SO6 felt that this situation was mishandled so this deepened public confusion and affected the credibility of both institutions.

Summary of findings for Question 1

To sum up, the TRC and Special Court were conceived at different times and created separately and independently from each other. They were not conceived as a two-pronged accountability mechanism. The concurrent existence of the two institutions at a given period in the Sierra Leone peace process was coincidental or a factor of accident. There was no master plan to coordinate the two mechanisms. The TRC which was the brainchild of the Lome Peace Agreement was a response to the need for a political compromise to end the conflict.

When it became apparent that the two institutions would exist side by side, their relationship became a matter of concern. This notwithstanding, the founding documents

of the Special Court left the relationship unclarified. The TRC Act had not addressed its relationship with the Court because it was enacted at time when the Court was not anticipated. The lack of clarity as to their relationship coupled with overlaps in their mandates generated controversy between the two institutions and among experts, International and local NGOs, and Stakeholders. At the conceptual level there was no clear message conveyed to the people of Sierra Leone so the people became confused. This had a negative impact on the TRC. Before the two institutions became operationalised, perpetrators who were willing to cooperate with the TRC had changed their minds. At the operational level, both institutions did fail to address their relationship in a concrete manner. The TRC and Special Court were not coordinated as different parts of a transitional justice tool to facilitate peace-building in postconflict Sierra Leone.

The next section deals with findings for Question 2. It explores the working relationship between them as they existed side by side to administer transitional justice in postconflict Sierra Leone.

Question 2

What was the nature of the working relationship between the TRC and Special Court as coexisting transitional justice tools?

Introduction

This question was to find out about the practical occurrences between the TRC and Special Court when the two existed side by side to administer restorative and punitive justice respectively. Analysis of interviews, documents and researcher's field notes revealed that the nature of their working relationship was cooperating and uneasy at

the same time. Further, areas of linkages bearing on their working relationship were identified as information sharing, use of the same personnel and experts, use of the same witnesses, and joint public education.

Cooperating and Uneasiness in Relationship

Participants were asked to describe the working relationship between the TRC and Special Court at the time they existed side by side, adjectives used by participants to describe the working relationship between the TRC and Special were: “checkered”, “uneasy”, “difficult”, “cordial”, “quite problematic”, “relationship was 90% problematic”, “separate”, “good but broke down”, “cordial and independent”, “okay at the beginning but grew sour later on”, “not amicable”, “cordial and suspicious”, “problematic”, “faltered”, “superficially cordial but in reality dysfunctional”, “challenging”, “soured”, “had potential pitfalls”, “parallel relationship”, “not cordial”, “not openly antagonistic”, “troubled”, “faltered or soured at intersection”, ”tensed”, “not a bad one”, “complimentary of each other”, “not conspicuously antagonistic to each other but very minimal cooperation”, and “subject matter of contention”.

Below are Table 6 and Figure 5 showing participants’ responses to the nature of the working relationship between the TRC and Special Court when they coexisted.

Table 6

Summary of Categorical Data on Participants' Responses on the Working Relationship between the TRC and Special Court

Repetition of Categorical data on the working relationship between TRC and the Special Court				
Participants	**Issues or topics**			
	Uneasy and conflicting working relationship	**Good at the beginning but broke down subsequently**	**Separate and independent relationship**	**Good, cordial and complementary**
Public Officers	4	0	0	5
TRC Officials	4	1	0	0
Civil Society Actors	5	1	0	1
UN Officials	3	0	0	0
Special Court Officials	2	0	3	1
Total	18	2	3	7

Note. This shows the categorization of participants' responses on the nature of the working relationship between the TRC and Special Court. Compiled from Researcher's Survey, 2007.

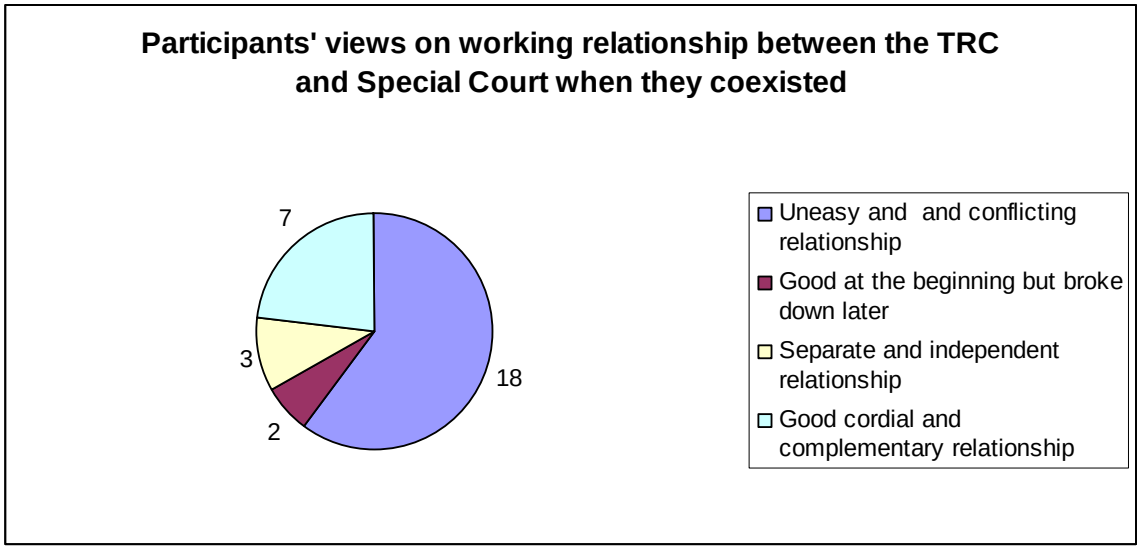

Figure 5. Categorical data showing participants' views about how the TRC and Special Court related with each other when they coexisted.

Responses were categorized into four. As shown on Table 6 above, 30 participants talked about the relationship between the TRC and Special Court. Out of this, 18 maintained that it was an uneasy and conflicting relationship; 2 believed that the relationship was cooperating at the beginning but broke down; 3 considered the relationship as a separate and independent working relationship; and 7 were of the view that it was good, cordial and complementary.

An Uneasy and Difficult Relationship

Participants pointed out that the uneasiness in the relationship had something to do with the uncooperativeness of the leadership of the two institutions. CA7 believed that the tension was at the level of the representatives of the two institutions. SO3**,** a Court official argued that the TRC leadership never reciprocated the support the Court gave to the TRC. According to him:

> The Special Court always supported the TRC, but TRC leadership would never reciprocate. Robinson used to say that there were speculations of envy that the TRC wasn't getting the same level of funding that the Special Court was getting. That may or may not be true, but the statute that set up the Court gave the Special Court primacy over everything. Theoretically and legally, the Special Court could have demanded the records of the TRC to use for prosecution. Before the Special Court was even set up, the TRC started making statements saying they would never cooperate with the Special Court and they would never turn over the records, and the first Prosecutor of the Court made the announcement that he would not use anything from the TRC to make indictments, so that the TRC could operate properly… There was very little collaboration.

Further, SO3 said that the TRC attacked and misrepresented facts about its dealings with the Court, and used civil society organizations and the media to attack the Court. SO3 indicated that the TRC was opposed to the Court and put up press releases to attack it.

TC4, a TRC official, was of the view that the relationship between the two was "superficially cordial and dysfunctional in reality". He attributed the difficult relationship to the dysfunctional attitude of the officers of the Special Court; their hatred for the TRC; and their misconception about the role of the TRC in the Sierra Leone peace process, evidenced by how they handled the TRC request to interview Hinga Norman and others; detainees of the Court. Also, TC4 said there was browbeating on the part of the TRC officials. He said:

> You had on the part of the Special Court, people who construed their own laws in a very arrogant and self-righteous fashion and they looked down upon the TRC. This was not just a personally held viewpoint, this was something that the principals of the Special Court repeated time and time again in their documentation…I think the Special Court greatly underestimated the TRC, condescended upon it largely due to attitudinal problems, a hate and a dysfunctional manner towards the TRC. And that resulted in many persons in the TRC feeling somehow marginalized. There were grave problems; there were personal feuds between members of the two institutions, there was bad faith on the part of most of the principals in the Court, including the Registrar, the Prosecutor, the President of the Trials Chamber and the President of the Appeals Chamber. There was extensive browbeating by the TRC Commissioners; they had meetings in which they discussed the Special Court, there were all kinds of tensions.

CA4 said that there was always tension between them as each tried to defend or guard its independence, and the tension trickled down to the public. Some participants were of the view that the Special Court did not cooperate with the TRC because it did not allow the TRC access over indictees in its custody in the manner wished by the TRC. CA3 was in support of the view that the relationship was not amicable because there was no cooperation from the Court with the TRC. When the TRC requested for access to the indictees, the Court denied the TRC as wished. PO2 said relationship was chequered because they had a problem over Norman and could not handle the issue properly. He explained that Norman, an indictee of the Court who had been detained and awaiting

trial, wanted to be permitted to appear before the TRC to give a public testimony. The Court and TRC disagreed about how this could be done thereby creating a lot of tensions. CA8 thought there was rancour between the TRC and the Special Court caused by the Norman issue. PO4 said there were tensions between them because of the issue of Hinga Norman and also due to the fact that each was doing something different from the other. UF2 said they had conflict over indictees**.** UF3 indicated that they were not openly antagonistic but the relationship was not cordial and cooperation was very minimal. The Court did not cooperate with the TRC request to let its detainees/indictees participate in the TRC hearings. UF3 further said that disparity in resources alone probably created envy because the TRC was dealing with the entire population but was not getting enough resources, whereas the Court was dealing with only a few people with a lot of resources.

CA5 felt that the relationship was a subject matter of contention and not harmonious because the Special Court had primacy over the TRC and dictated the nature of the relationship and could cooperate or refuse to cooperate to the disadvantage of the TRC. PO8 said relationship was problematic because the Special Court saw itself as superior to the TRC and looked down upon the TRC. SO1 felt it was problematic because their relationship was undefined and when the TRC requested for access to detainees, there was no framework in place to handle it and the Court dictated how it should be done to the discontentment of the TRC. In the view of TC5, the relationship was very difficult because the TRC had to assert and detach itself from the Court, otherwise it would not get the required evidence. This was because Sierra Leoneans did not understand the differences between the two organisations and they were afraid that information given to the TRC would be passed on to the Special Court. PO1 said there

were tensions as TRC felt the need to assert itself and kept on saying they would not provide any information to the Court. According to TC3**,** even though they tried to cooperate, the relationship was suspicious and challenging. TC2 said the relationship was a difficult one because they did not complement each other. UF1 supported the view that the relationship was problematic as they could not complement each other.

Cooperation at the Beginning but it Broke Down

Some participants said the two institutions were supportive of each other at the initial stages of their coexistence but the relationship broke down later. TC1**,** a TRC Commissioner, said that there were visible signs of social rapport among the leadership of the two institutions at the beginning of their operations. TRC officials were invited over by the first Prosecutor to have meals together. They occasionally stood on the same platform to address the public. Moreover, at the beginning of their operations, the leadership of both institutions met and agreed to cooperate with each other, namely that each institution should maintain their independence and each should not interfere with each other's functions. They did not, however, operationalize what they meant by being independent and not interfering in each other's functions, neither did they reduce this into writing. Their relationship broke down when the TRC attempted to get indictees of the Special Court to participate in the TRC process. CA1 said, at the initial stages, there was no tension and the relationship was congenial. He indicated that even though the Special Court had a right to obtain from the TRC any information it needed, yet the first Prosecutor of the Court, David Crane, made statements to perpetrator groups that they (the Court) were not going to ask the TRC for information and agreed with the leadership

of the TRC to that effect. But the relationship grew sour when the TRC requested the Special Court to let some of the Court indictees participate in the TRC process, because the two institutions could not agree on procedures to bring that about.

Separate and Independent Working Relationship

SO5 and SO4 both, Special Court officials, pointed out that even though the two institutions supported each other, the relationship between them was very minimal because they were separate and independent; they had different mandates, different rules of procedures, different types of evidence required by each and different processes; one to persuade and reconcile, the other was coercive. They had little to do with each other.

SO2 said that though they cooperated, both institutions guarded their independence fiercely; the TRC could not tell the Court what it should do and vice versa. According to SO5, a Special Court official, the two institutions did not collaborate with each other. People were afraid of the TRC because of the Special Court; if the TRC had moved close to the Court, people would have avoided the TRC, so the TRC stayed away from the Court. SO5 stated, “If there was a close relationship, people would not go to the TRC to testify”. TC1 and TC5 confirmed that the TRC needed information from the perpetrators, so it detached itself from the Court as it had a short time to achieve its mandate. And if it had been seen too close to the Court it would have been “destroyed”.

A Good, Cordial and Complementary Relationship

Other participants believed that there was cooperation between the two institutions and they complemented each other. SO6 indicated that sensing public

apprehension about their relationship, the leadership of the two institutions cooperated to allay the fears of the public. Bishop Humper, the Chairman of the TRC, and David Crane, the first Prosecutor of the Special Court made a joint public appearance to address the press to clarify their relationship. The Prosecutor said he would not request information from the TRC and would not indict people based on testimonies given to the TRC. His indictments would be based on the investigations carried out by his office**.** SO6 maintained that the Prosecutor's statement went a long way to get people to cooperate with the TRC but whether the TRC had a full cooperation from the public was another thing. Moreover, staff of both institutions were seen socializing after working hours—a visible sign of cooperation. PO6 believed the two institutions worked fairly well together and benefited from each other's existence by looking at what the other was doing informally for guidance**.** PO3 said, though he did not know about any internal dynamics, from what he saw as an outsider, they had a cordial relationship. PO9 said it was normal and cordial because they respected each other as complementary transitional justice mechanisms. CA2 believed that they worked harmoniously with each other because each concentrated on their functions and executed them. PO5 said they had a good working relationship because they were able to agree that the Court would not use information given to the TRC. The relationship was cordial and they supported each other. PO7 said there was no rivalry between them except that the TRC had a lot more support than the Special Court.

Linkages in Working Relationship

Areas identified as critical linkages to their working relationship during the time they coexisted were: information sharing, use of same witnesses, joint public education,

and using of same staff/experts. Figure 6 shown below depicts a categorical summary of participants' views as to the linkages between the TRC and the Special Court.

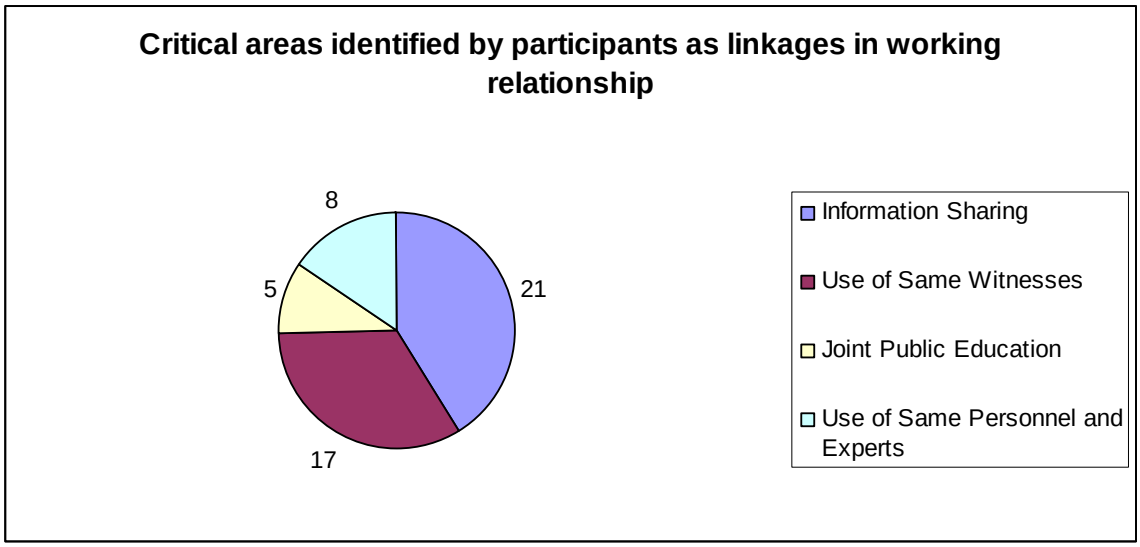

Figure 6. Categorical data on the critical linkages between the TRC and Special Court

Information Sharing

Information was identified as one of the critical linkages that defined the relationship between the TRC and the Special Court. TC3, TC1 and TC5**,** TRC Commissioners, a researcher and investigator/transcriber respectively said that at the formal level there was no information exchange between the two institutions when they coexisted. According to TC1, even though the government and some stakeholders had said the Special Court could subpoena the TRC for information, the TRC took the position not to give out information to the Court under any circumstances. And the Court did not ask them to disclose any information they had received either in confidence or

otherwise. And if the Court had done that the TRC would have resisted them. Again, the TRC made public statements to that effect in order to gain public confidence in their process for their cooperation.

Special Court officials namely SO4, SO3, SO2 and SO6 confirmed that the two bodies did not share information. According to SO4 the Court carried out its own investigations and did not need information from the TRC. SO2 disclosed that the Special Court did not request information from the TRC and had a policy not to make use of any information given to the TRC as evidence. The Special Court Prosecutor made public statements that the Court would not request information from the TRC. It was disclosed by UF1 that after the TRC concluded its work, officials of the Special Court informally made efforts to have access to the TRC files from UNIOSIL where they were being kept. But UNIOSIL did not allow the Court access to the TRC files, because there was a firm policy by all concerned that TRC information will not be made available for prosecutorial purposes. UF1 stated:

> I have had cases where people from the Special Court called me (UNIOSIL Office) wanting to look at the TRC files.I called for sanity and refused. We have the policy of not using the evidence given by the TRC to aid the prosecutorial processes. If we do that we will undermine the integrity and the confidence of the TRC testimonies…even after the TRC processes. Those documents have been sealed and archived.

It was disclosed that even though the Special Court and the TRC may not have shared information at the official level, they did share information informally. PO2 explained that to the extent that the TRC held public hearings where people testified on radio broadcasts, a lot of information was let out into the public domain. TC1, TC3 and TC5 said it was possible for the Court to have picked up anything being said at the TRC since the TRC processes were largely public. Moreover, after the TRC completed its

work, the information in its report was made available to the public. It was possible the Special Court could have picked from or did actually pick from it to aid their investigations. PO5 believed that the information given to the TRC was picked up and used by the Court. CA7 thought that certain things said at the TRC were said at the Court also. The two institutions deceived the public that the Court would not make use of information given to the TRC. PO7 insisted that the Special Court followed the TRC proceedings as a guide to their investigations. He observed:

> As I saw it, the Special Court followed from the TRC, because most of the evidence the prosecution used in the Special Court was brought from the TRC. Because if someone went to the TRC to confess that they killed 50 people at a set location, the Special Court sent people to that location to see if what I said was true. So somehow they used to TRC to get some of this information for the Special Court. There was a link somehow.

UF2 believed that where someone went to the TRC to admit certain things, certainly the Court used it for its investigation, which was not fair. TC4 believed that the Special Court informally made use of information given to the TRC and considered it as unethical to do so because of the earlier agreement with the TRC. In this regard TC4 observed:

> Unfortunately, that principal position was not respected by some other parties, including some members of the TRC who selfishly cooked their own financial remuneration ahead of the success of the two institutions. On the part of the Special Court, the Prosecutor and the members of the investigations team acted in bad faith, breaching ethics and essentially undermining any principle of non-cooperation that should have existed on those questions. If you ask anybody in civil society, the key concerns that they had about the coexistence of these institutions was information sharing. The TRC was actually on solid ground when it said there should be no information sharing, and unfortunately whatever agreement they thought they had was unilaterally breached by the Special Court, and I think that is one of the greatest abuses in the existence of the Court.

Some participants shared their thoughts on whether the two institutions should have shared information but they were divided on it. Table 7, Columns 2 and 3, show participants' views expressed on the matter. Out of the 21 participants who identified

information sharing as a critical linkage to the working relationship of the two institutions, 15 of them were not in favor of information sharing either from the TRC to the Court or from the Special Court to the TRC, and supported the watertight approach taken by the TRC and Special Court not to share information when they coexisted. But 4 participants thought that there should have been information sharing between them (2 for a two- way street approach and 2 for a one-way approach; that is information from only the Court to the TRC). The remaining 2 were neutral about it.

Support of Information Sharing

PO6, a Government Minister, was in favor of two-way street information sharing between the TRC and Special Court. To him, informal information sharing if it occurred at all was a healthy and very positive part of the concurrent existence—they benefited from each other. PO4, a former government minister, believed that it should have been possible for the Special Court to share information received through its investigations with the TRC without a problem, except those received from prosecution witnesses. But TRC information must not be shared with the Court because it would have an adverse impact on it. PO8 also felt that given the resources the Court had, they could have given information to the TRC and it would not have had any adverse effect on the Court. CA5 a civil society activist indicated that after reviewing the TRC report, he had formed the opinion that there should have been modalities to allow the two institutions to share information particularly from the TRC to the Court to aid the Court's investigations, even though it might have sent a wrong signal to the public. He advocated that the Court

should consult the TRC Report for guidance because there was a lot of information which the Court should not ignore.

Dislike for Information Sharing

Several reasons were given by those who thought the two institutions must not share information. The issue of trust was raised as a critical factor. UF2, an official of UNIOSIL, offered his experiences in the field in that regard. He disclosed that in their sensitization program about the two mechanisms, the public expressed concerns as to whether the TRC was not gathering evidence to betray them at the Special Court. But they explained to them that the two institutions were different and collected information for different purposes. PO1 maintained that professionally, it would not have been good for the TRC to share information with the Special Court during the period they coexisted and also after TRC completed its work. Because it was with full confidence and trust that people agreed to testify to the TRC, it would not have been right for the TRC to pass on such information to the Court under any circumstances. Also, if the public felt that the information would be used for other purposes other than for what they were being given, they would not give out correct information. CA7 said that the people of Sierra Leone were very concerned about how the information they gave to these two institutions would be handled, particularly information given to the TRC. Thus information sharing would have led to public confusion and mistrust. In the view of TC2 if they had shared information they both would have lost public confidence and dented their credibility. PO3 and TC5 were vehemently opposed to the idea of information sharing between the TRC and the Special Court on any grounds whatsoever. CA1 believed that it was not

professionally right for them to share information; they collected information for some specific purposes and they should not exchange them for other purposes. UF3 said that the two should not exchange information, and the Court should not make use of the TRC report.

UF1 felt that the TRC and the Special Court had different mandates and required different evidence. Information collected for reconciliatory purposes would not fit for prosecutorial purposes. SO5 felt that they were different kinds of institutions—the Court was coercive and TRC persuasive, so information sharing would not be appropriate. And more so it would have adversely affected the TRC. TC4 indicated that for purposes of justice and fairness, the two must not share information. There could be a miscarriage of justice if the same information was used for reconciliation and prosecution purposes. UF2 eschewed information sharing on the basis that it would be unfair to the witnesses and ethically wrong. He observed:

> You cannot go and tell the people that "I want to reconcile, come and tell me the truth" and then send the information for prosecution. In my view, it shouldn't happen. In the same way, why should you take evidence from an accused person and go and share it with the public because the TRC virtually belongs to the public.

Some disapproved of information sharing due to the possible impact it could have on the two institutions; it was thought that in the case of the TRC, information sharing had the potential to affect it adversely. SO2 said it was not proper for them to share information because it was important for them to guard their independence. And a major drawback of the TRC was the perception people had that it was an investigative arm of the Court. Also, they were both looking for different types of evidence, and TRC evidence would not be appropriate for the prosecutorial purposes of the Special Court.

Lack of support for information sharing was also discussed in terms of the impact it would have had on the two institutions. TC4 eschewed information sharing because people would not have cooperated with the TRC at all if they had done so. He observed:

> It was vital for the success of the process that the TRC did not cooperate with the Special Court in any information or evidence sharing. There should have been an impenetrable firewall in order to protect all information given to the TRC from involvement in criminal prosecution. That is absolutely critical in terms of making sure that the TRC process functioned. Look at the way the Statute set up the Court…..We were dealing with people who went through incredible trauma and suffering and who were victims of some of the worst human rights ever experienced in human history. Or, on the other hand, it could have been the perpetrators of such violations, many of whom were kids when they perpetrated those violations. The perpetrators could hardly comprehend what they had done, and the victims could hardly speak about what happened to them. On both sides you needed an environment which was protective of those people, an environment which offered them a forum in which they could speak without fear of consequence or prejudice. If anyone who could take part in that process thought for a moment that the information was going to be passed on to the Special Court, they could not participate with an open mind or an open heart, therefore it was absolutely vital that they did not share information.

Information sharing was not supported by CA1, CA7, TC3, UF1, SO1 and UF3 on the basis that a perception of information sharing existed and this had an adverse impact on the TRC. UF1 said that there was a perception that if a perpetrator went to the TRC, the information would be used against him at the Court. According to SO1, “People believed there was a tunnel connecting the two institutions .The fact that people had this perception alone affected the work of the TRC”. CA1 indicated that it was believed that there was an underground tunnel linking the two Institutions. Once you gave information to the TRC, it was channeled through the tunnel to the Special Court. This was due to the fact that the two institutions were cited close to each other— about a kilometer from each other and the fact that they existed side by side. TC3 said that the TRC was considered a “conduit” through which information leaked to the Court”. In the words of CA7, the TRC

was considered as a “witch-hunt” agency for the Court. It was difficult to understand or appreciate that these two institutions would not share information given their close proximity to each other, thus creating confusion in the minds of the common person. UF3 said that there were speculations of “an underground traffic between the SC and TRC where the TRC gave information to the Special Court”. This in itself inhibited so many stories from getting to the TRC and was compounded by the fact that they were in close proximity - a kilometer away from each other.

In conclusion, information sharing constituted an issue right at the design stage throughout the time the two coexisted and even after the TRC was folded up. It was established that the two institutions did not share information at the official level; neither requested information from each other nor passed on information it had received to the other during the time they coexisted. Informal efforts by the Special Court for access to TRC files were denied by UNIOSIL, the current custodian of TRC archives. Information given and received on a confidential basis had been kept intact. This notwithstanding, a perception existed among the public that the two institutions shared information or might have shared information informally, and this had an adverse impact on the TRC’s ability to source for needed information. The majority of participants were of the view that the watertight approach taken by the parties and all stakeholders involved not to exchange information was good, since information sharing would have had a negative impact on the two institutions, particularly on the TRC. Few participants supported information sharing.

Use of Same Witnesses—Conflict over Indictees

The issue of witnesses was identified as critical to the relationship between the TRC and Special Court. UF1 identified use of the same witnesses as a critical linkage in terms of people the Special Court may have indicted and detained who the TRC wanted to testify at its hearings, or vice versa- another class of people who may have already appeared before the TRC and who the Special Court had interest in. The TRC and Special Court officers –TC3 and SO6 disclosed that the two institutions did not collaborate in the area of witnesses in the sense that each went about its own investigations separately to identify their own witnesses, and did not pass on their witness list to the other.

However, the TRC and the Special Court had a head-on collision over whether the indictees in the custody of the Special Court should provide evidence to the TRC and the procedure for providing such evidence. Every participant in the study spoke about this issue and expressed their thoughts on the TRC and Special Court in diverse ways. However, only a few discussed it in relation to using the same witnesses.

Between May and June 2003 the TRC requested from the Special Court for access to some of the indictees who had surfaced in the TRC investigations as role players in the conflict for their side of the story. These indictees had been arrested and detained by the court awaiting trials (TRC Report, 2004). The Court informed the TRC that the indictees/detainees had indicated that they did not wish to participate in the TRC proceedings pending their trial. However, in August, 2003 one of the dindictees; Hinga Norman formerly a Coordinator of the CDF and Deputy Minister of Defense, and also an Intenal Affairs Minister at the time of his indictment and arrest applied to the TRC for a hearing. He indicated that he could not anticipate the time for his trial by the Court and

the TRC would soon be folded up. He therefore wished to testify before the TRC so that his people—Sierra Leoneans would hear him and also be recorded for posterity. Norman pointed out that the President under whom he served as Deputy Minister of Defense and National Coordinator of the CDF had appeared to give his testimony to the TRC so he wanted to do likewise (TRC Report, 2004). Subsequently, two other indictees/deainees; Augustus Bao and Issa Hassan Sesay of the RUP wrote to the TRC expressing their wish to appear and testify before the TRC. The TRC approached the Court again to ask for access to these indictees/detainees who had willingly expressed their desire to testify before it (TRC Report, 2004).

The Special Court asked the TRC to make a formal application in accordance with a procedure which the Registrar had laid down by a Practice Direction. According to the procedure, the TRC was required to include in its application, the questions it purported to ask the indictees. The interview was to be recorded and transcripts made available to the prosecution for potential use at the trial. Another condition was that a legal officer would supervise the interview with authority to stop a line of questioning or the interview altogether where deemed appropriate (TRC Report 2004).

The TRC raised an objection to the Practice Direction itself and also the conditions attached to it and demanded for amendments. The TRC argued that disclosure of questions to the Court and purported supervision of its interview by the Court was in contravention to the confidential aspect of its proceedings enshrined in the TRC Act. Further, the right of the accused against self-incriminating evidence enshrined in the Court's own Statute would be jeopardized if the transcripts were made available to the prosecution. In any case, the prosecution had the duty to prove its case in criminal

proceedings. Making the transcript available to the prosecution would be in violation of that rule. Further, the Practice Direction had the effect of scaring off those indictees who may have wished to testify before the TRC and refused to engage indictees under those conditions (TRC Report 2004).

In October, the Special Court issued an amended version of the Practice Direction. By the amended Practice Direction, instead of indictees' answers being transcribed and made available to the prosecution, the record of questioning was to be filed at the Court Management Section and made available to the prosecution or any other party upon order by the requesting judge. The TRC applied for access to Hinga Norman in accordance with the Practice Direction howbeit under protest and indicated to the Court that it would not resort to the Practice Direction if a witness required testifying in confidence (TRC Report, 2004).

The prosecution objected to the TRC request on three main grounds i.e. "the interest of justice; the integrity of the proceedings, and other concerns relating to possible civil unrest" (TRC Report 2004, p394). On the interests of justice, the prosecution argued that the proceedings contemplated by the TRC would be considered *sub judice***.** On the basis of public policy "it would not appear to be in the interest of justice to have an accused plead his case in public when he will be entitled to a fair and public trial in due course" (*Prosecutor v. Norman, 2003,* Trial Chamber, *p.4*).To do so would weaken the administration of justice as instituted by the Statute of the Court. On the issue of integrity of the proceedings, the prosecution pointed out that public appearance of Norman before the TRC would scare off potential witnesses of the Court and prevent them from testifying against him. He could use the platform to "intimidate" witnesses and also

arouse public sentiments thereby posing *security threat* to the Special Court. On the issue of national security, it was argued that Norman's appearance would "put in peril the fragile security equilibrium which existed in Sierra Leone" (*Prosecutor v. Norman, 2003,* Trial Chamber *p, 4*). The prosecution submitted that if Norman testified regarding any matter under investigation by the Court, the prosecution would use it at the trial (TRC Report 2004; *Prosecuto*r v. *Norman, 2003,* Trial Chamber*)*.

The TRC argued against the prosecution's objections. On the issue of the TRC hearing being *sub judice,* the TRC replied that the *sub judice* rule was intended to prevent the publication of matters that would have a direct effect on the outcome of a trial. But the prosecution had not given any *factual ground* in proof of the real likelihood of the rule being violated. In any case that assertion was rather a moot one in view of the fact that the TRC had agreed with the defense counsel not to question Norman on the specific elements of charges proffered against him by the Special Court.

On the issue of public interests, the TRC maintained that aside trials, the Court should safeguard freedom of expression as being sought by the indictee and give Norman the opportunity to testify. The TRC further submitted that "it was likely that Hinga Norman would feature in the TRC report on account of testimony received, and fairness demanded that he be given the opportunity to provide his version of the conflict, and to do so publicly"(TRC Report, 2004 p.396) as characterized TRC proceedings. The effect of denying Norman of his rights outweighed the "speculative concerns" of the prosecution. The TRC further argued that it had already conducted a hearing involving accused persons before the criminal court of Sierra Leone successfully without any objection. The allegation that Norman testifying in public would weaken the institution of

justice as guaranteed by the Statute of the Special Court was unfounded. With regard to the integrity of the Court's proceedings, the TRC argued that Norman had had reasonable external contact –mobile phone and visitors; yet no evidence had been adduced to indicate that he had misused that opportunity to threaten witnesses' protection.On the issue of national security being endangered, the TRC called on the judge to dismiss the allegation as unfounded because the TRC had carried out hearings with high ranking leadership of respective warring factions with no consequence of security risk whatsoever. The TRC concluded:

> Indeed Sierra Leone has the potential to offer the world a unique framework in the difficult process of moving from conflict to peace. We have two complementary institutions, namely the Special Court and the TRC that are central to this process. Indeed the President of the Court and the Prosecutor of the Special Court are on record as stating that the two institutions will work together to uncover the truth and provide the most comprehensive benefits to a post-conflict state. The outcome of this proceeding will in large measure determine whether two such institutions can in fact be complementary. (TRC Report, 2004, p.398)

In the judgment the Trial Chamber delivered by Judge Bankole Thompson, the Court dismissed the application and did not grant the TRC access to hold a public hearing with Chief Hinga Norman. The overriding consideration for denying the application as stated by the Court was its *compelling need* to protect "the procedural and substantive due process rights of the accused, as long as he remains in the custody (actual or constructive) of the Special Court" *(Prosecutor v. Norman*, 2003, Trial Chamber, p.6).

Other grounds were that first, the TRC's request to conduct a public hearing with Hinga Norman was based on the notion that he played a central role in the conflict. This presupposes presumption of guilt contrary to the right of the accused to be presumed innocent until proven guilty protected by Article 17(3) of the Special Court's Statute.

Second, the request by the TRC was in pursuance to the TRC Act particularly section 7 which empowered the TRC to hold "sections some of which may be public to hear from victims and perpetrators of any abuses or violations in interested parties" (p.6). The records before the Court showed that the accused was "being invited to testify as a *perpetrator of abuses and violations*" (p.6). In the view of the Court, the term perpetrator under the TRC Act had a restricted connotation and used within the restorative reconciliatory interest as contemplated by restorative justice mechanisms. Its application was therefore limited "to only persons who committed abuses and violations during the conflict and were willing to confess their guilt" (p.7). Since the accused had pleaded not guilty on each of the charges against him before the Court, he could not be considered a perpetrator and was therefore not within the ambit of the TRC proceedings. And that an indictment of the Court automatically removed the indictee from the ambit of the TRC operations.

Third, there were two societal interests at play, namely the interest of fair public trial of an accused person in criminal proceedings to the end that "in the ultimate analysis, the guilt may be punished and the innocent vindicated without moral blemish" (p.7) and the TRC's institutional role to create an impartial historical record of the conflict, "an equally valid and societal interest." (p.7). Deciding on this issue, the Court observed that it had become a trend in judicial practice that whenever a societal interest conflicts with an accused person's right to a fair and public trial, the conflict was resolved in the interest of the accused. Based on this, the Court held that the right of the accused to a fair public trial prevailed over the societal interest under consideration, namely the creation of an impartial historical record by the TRC. And to "yield to the institutional

interest of the TRC would…certainly jeopardize the accused's right to a fair public trial and would constitute an unprincipled departure from a well-established and widely acknowledged judicial practice" (p.7).

The Court finally ruled that the indictees of the Special Court were entitled to *super due process rights* namely: presumption of innocence; the privilege against self-incrimination and the right to remain silent - rights guaranteed under International Covenant on Civil and Political Rights, 1966. It was therefore the duty of international judges to protect the interest of the international community and provide persons charged with international crimes with *super due process rights*. Since the TRC's application presupposed a presumption of guilt on the part of the accused, it contravened the super due process rights of the accused. Based on the aforementioned considerations the Court decided not to allow the TRC's request to hold a public hearing session with Chief Hinga Norman (*Prosecutor v. Norman*, 2003, Trial Chamber).

The TRC and Chief Samuel Hinga Norman appealed jointly to the Appeal Chamber of the Special Court against the decision of Justice Bankole Thompson. In the appeal, the TRC argued that both institutions were created to perform important yet differing roles within the peace-building of postconflict Sierra Leone, and the functions of each institution cannot be played by the other. The request for access should not be seen as one institution giving way to the other, but should be considered as the best way to arrive at a solution which would allow each institution to carry out its mandate successfully. Against this background the TRC argued that the trial judge had:

a. Misrepresented the institutional character of the TRC, particularly in his tendency to assign to the Commission the character of a court of law;
b. Failed to undertake any form of proportional assessment of the various rights and interests at stake in this matter; and

c. Erred in his characterization of the Special Court as a guardian of so-called "super due process rights". (TRC Report, 2004, p403)

In the decision of the Appeal Chamber of the Special Court delivered by Justice Robertson, the President of the Court (*Prosecutor v. Norman, 2003,* Appeal Chamber), the Appeal Chamber ruled that, Chief Sam Hinga Norman was entitled to testify before the TRC on the basis that he had been expertly warned and advised on the damages in doing so. The Court however decided that Chief Norman's testimony should be given in a "manner that reduces to an acceptable level any danger that will influence witnesses or affect the integrity of the court proceedings or unreasonably affect co-defendants and other indictees" (p.24). In this respect Norman could do so by preparing evidence on oath in writing for the TRC. And the TRC could also ask any further question(s) that may arise in writing to him. The Court further ruled that the TRC shall not have any public hearings with Norman as requested prior to the conclusion of the trial. Another application made by the TRC to the Special Court for access to Augustus Bao another indictee in the custody of the Court yielded a similar outcome like that of Norman[13]. The TRC asked Norman and other detainees who had wished to appear before it to provide written testimony on their version of the conflict to the TRC but the indictees declined to do so preferring a public hearing (TRC Report, 2004).

[13] Decision of the Trial Chamber of the Special Court of Sierra Leone on the request by the Truth and Reconciliation Commission of Sierra Leone to conduct a public hearing with Augustine Gbao, delivered by Judge Bankole Thompson on November 3, 2003: Prosecutor v Gbao (Case No SCSL-2003-09-PT-063); Decision of the Appeal Chamber of the Special Court for Sierra Leone on appeal by the Truth and Reconciliation Commission and Accused against the decision Judge Bankole Thompson delivered on November 3, 2003 to deny the TRC's request to hold a public hearing with Augustus Gbao, delivered by Justice Renate Winter, on May 7, 2004: *Prosecutor v* Augustus Gbao (Case No. SCSL-04-15-PT-109)

Access by TRC to Special Court Detainees

The views of participants who spoke on this matter were expressed as to whether Norman and other indictees should have been allowed to testify before the TRC as wished. And similarly whether the Court should have access to the TRC witnesses? Table 7, Columns 4 and 5 below depict participants' views on the TRC securing evidence from the indictees of the Court. As shown, 6 participants were of the view that the Court should have allowed their detainees to testify before the TRC as wished and 7 were against the idea. In terms of the Court having access to TRC witnesses, Columns 6 and 7 of Table 7 indicate that one participant was in favor of it and 3 were against it.

Support for TRC Accessing Indictees

TC1, TC2, TC3, TC4 and PO1 argued that the indictees should have been allowed to testify before the TRC just like any other persons. Because the TRC was set up to create an impartial historical record of the conflict, the indictees' version was needed to complete it. They insisted that in the absence of the indictees' version they were not sure that the truth established in their report was the full truth. TC2 for example retorted, "Well, the TRC could not get information from those key suspects who were already in the hands of the Special Court so the full story of the nature and the history of the conflicts were not complete because the key players were already in the custody of the Special Court". Asked why they did not accept to interview indictees on the conditions given by the Special Court, TC1 a TRC Commissioner responded that a written statement would have left out a number of questions unanswered. TCI observed:

> Well yes, if you have a written statement, it will leave a number of questions unanswered. People that came to the TRC had already given written statements

> and so the TRC was guided in interviewing them. The written statement would only be a guide so this is why we wanted the people to come before us.

SO1 believed that the indictees testifying before the TRC would not have derailed the objectives of the Court. In his view, the Court had broad objectives to end impunity and to show that justice can be done and the rule of law upheld. These would not be taken away if indictees of the Court were to testify at the TRC process. Civil Society in Sierra Leone also supported the idea of the indictees participating in the TRC process. In an NGO forum on the relationship between the TRC and the Special Court held in January 2002 (long before the conflict broke out between the TRC and Special Court over indictees), one of the conclusions arrived at by the participants in the forum was that the indictment of an individual before the Special Court should not be a barrier to the person's participation in the TRC process.[14] The ICTJ (as cited in *Prosecutor v. Norman*, 2003, Appeal Chamber; TRC Report, 2004) also supported the idea of the indictees being allowed to participate in the TRC process during the saga and changed its initial position that once a person was indicted by the Court, that person should be within the exclusive jurisdiction of the Court and not participate in the TRC process**.**

Dislike for the TRC Accessing Indictees

Other participants, SO6, SO3, and SO2 did not believe that the indictees should have been made to testify before the TRC. SO6 explained that a criminal court should not let its indictees awaiting trial appear before a TRC hearing that would be carried on live on radio and telecast etc, before their trials begin. This could adversely affect the judicial

[14] Report of NGOs Meeting on the Relationship Between the Truth and Reconciliation Commission and Special Court, Hosted by the National Forum for Human Rights ,International Human Rights Law Group and International Center for Transitional Justice,15th January, 2002. Participants involved

proceedings, compromise their evidence and injure themselves as accused persons, implicate others (accused or otherwise) and give rise to all sorts of legal complexities. She supported the Court's position that the affected indictees should provide written testimony to the TRC. SO3 said that the manner in which the TRC wanted to engage the indictees in its process would have "interfered with the trials". They could however do a written presentation. UF1 believed that the TRC's argument that it could not get the full truth without the participation of the indictees was not convincing, because the TRC did not need information from the indictees and for that matter perpetrator evidence in order to establish the truth of events that took place in Sierra Leone. There were other ways to find the truth. He argued that the victims saw what happened and their evidence would suffice in that regard. UF2 believed in a watertight approach. He explained that indictees should not be made to appear before the TRC because if they did what they said there could be used by the prosecution against them and that would not be fair. According to PO2, the indictees would have used the TRC forum as a political platform to plead their case. He maintained that, after all, it was not practicable for the TRC to speak with every Sierra Leonean, and it did not need to speak with every Sierra Leonean to establish the truth. There were several avenues to establish truth. CA1 felt that there were several ways to find the truth without having to "showcase" the high profile indictees and risking the security of the country. TRC could have obtained a written statement if they were desirous of securing the evidence of the detainees. TC1 believed that the Court was afraid that the indictees would have destroyed their evidence. He pointed out that the Court had said that they would not use any information that had been given to the TRC,

so if the indictees had gone to confess before the TRC, what they said probably could not be used against them.

Access by the Special Court to TRC Witnesses

Concerning the second category of people, namely those people who appeared before the TRC who the Special Court had interest in**,** PO2, PO1, TC2, and UF2 disclosed that some witnesses of the TRC became witnesses for the Court. Howbeit they were divided in their opinions on it. As shown on Table 7, Columns 6 and 7, out of the 4 participants who spoke about it, one supported it and 3 were not in favor of it. PO2 was of the view that it was okay for them to use the same witnesses because the Special Court was composed of competent judges to decide on the admissibility of particular evidence, hence it would not lead to a miscarriage of justice. TC4, TC2 and UF2 said it was not proper for the two institutions to use the same witnesses. They were of the opinion that witnesses needed protection and it was not good to expose them; there should have been a watertight relationship concerning that. TC4, a TRC former researcher, condemned it on the basis of miscarriage of justice and said:

> If you compare some of the statements they [witnesses] made before the Special Court and statements they had made before the TRC, you will find that they have subtly changed. You will find that suddenly they are able to name the faction and even the commander who committed some of these crimes, when before the TRC people generally had no idea as to who did what. It's a little more than strange, how their testimonies subsequently came to fit within the prosecutorial framework of the Special Court. Again, that demonstrates what was described by one defense lawyer in the Special Court as, "conviction at all costs".

Joint Public Education

SO1, SO2, TC1, TC2 and PO2 talked about joint public education as a possible linkage between TRC and Special Court. They said that the two institutions did not mount a joint public education campaign as a matter of policy. Each pursued its own educational/sensitization programs independent of each other. TC1**,** in addition, pointed out that occasionally, the leadership of the two institutions spoke on the same platform. Also, SO2 disclosed that in the course of their respective sensitization programs they educated the public about the existence of the other transitional justice institution in order to differentiate between the two. Table 7, Columns 8 and 9 depict participants' views on joint public education. Those who spoke about joint public education were 5, and were divided on the matter; 1 was in support of the idea and 4 were against it.

SO2 was the only one in favor of joint public education. His reason was that the two institutions had similar goals so they could have shared resources in that regard. Several reasons were given by those who were not in favor of it. TC2 maintained the view that it was good the two institutions did not mount a joint public education program, because any form of collaboration or appearance of it would have affected the credibility of the institutions and impacted negatively on them.TC2 further said that due to their close physical proximity, a joint public education would have led to public misunderstanding of their respective roles. They would have concluded that they were collaborating on information sharing. PO2 explained that the objectives of both institutions were similar but "looking at the educational background of our people and the mass literacy rate…there would have been a mix-up by our people" if the two institutions had embarked on joint public education. TC1 said joint public education would confuse

the populace. SO1 thought that kind of approach could compromise the objectives of the two institutions because each needed a particular message for the public.

Use of Same Staff and Experts

The use of the same staff and expertise was identified as one of the areas that impinged on the working relationship of these two institutions. This was discussed in terms of a person leaving one institution to work for the other at any point in time when they coexisted and how that impacted on their performance. The use of the same experts and consultants also emerged. SO1, SO2, SO3, CA7, PO2, TC1, TC2 and UF1 said that during the time the TRC and Special Court coexisted, an employee of the TRC took an appointment with the Court after leaving the TRC. Also, after the TRC folded up some of their staff took up appointment with the Court. Those who spoke on the matter were divided on the issue; some of them were in support and others were against the use of the same staff and experts/consultants. Table 7, Columns 10 and 11 sum up participants' views concerning the use of the same personnel and experts by the two institutions. As shown on Table 7, 4 were in favor of using the same experts and personnel and 4 were against it.

Those who supported the two institutions using the same staff argued that working for one institution should not be a bar to working for the other during the existence of both or where one had folded up**.** CA7 was of the view that, by right, a person could not be prevented from working for one institution after leaving the other. Moreover, they would bring their rich experiences from one institution to bear on the other. SO2 gave a number of instances where employees of the TRC came over to work

with the Court smoothly after the TRC folded up. He said they brought a lot of positive experiences, and since both institutions had similar goals it was okay to share in this manner. SO1 was in support of such a move but cautioned that such a practice might not be appropriate in all circumstances. He said it was important to carefully examine how this could work to achieve the objectives of those two institutions. While the two institutions coexisted, it would be a problem if the same staff moved in and out of them. After one organization had completed its work it should be possible to take on the staff of the other. But even that should depend on the position one held and the nature of work one was doing in the original organization one worked in. SO1 said that if someone was an investigator for one institution it may not be prudent for such a person to subsequently take up appointment with the other as an investigator to work on the same subject matter he did for the other, given the fact that their mandates overlapped. SO1 indicated that a TRC investigator who worked with the Court when the two coexisted had problems because the public were not willing to work with him. CA1 was of the view that a former employee of the TRC could work for the Court depending on the position he occupied in the TRC and what he was being engaged to do in the Court. Where a former TRC staff in the course of his employment with the TRC took a position on an issue against a section of the Court, e.g. the prosecution, then he could not work in the registry since the registry was a neutral body serving all the departments. However, he could be employed to work in the defense section.

Others felt that the two institutions should not use the same staff under any circumstances. UF2 said that technically such a practice constitutes indirect information sharing—information one assumed from one organization could be brought to bear on the

work of the other. This would create mistrust and confusion among the public. PO2 thought that using joint experts and or the same personnel by the two institutions would send a wrong signal because of the illiteracy rate of the public, and they would consider them as not impartial organizations. CA7 said they should not use the same staff because this would affect their legitimacy and credibility in the eyes of the public, and the public would not trust that the two would not share information in such situations. Again, an expert should not be trusted to work for both organizations as a conflict of interest could arise. TC1 in particular felt that sharing of joint expertise would be detrimental to the TRC. This is because seeing the same people dealing with both the TRC and Special Court would have prevented the public from cooperating with the TRC. TC1 observed:

> If there should be an expert who moves within the two…it would not [work]. It would have destroyed the TRC. Because, you see, the people were afraid; they were not afraid of the TRC, they were only afraid of the TRC because of the Special Court. So if we had moved too close to the Special Court, people would not have come to us to testify. Oh no, no they would be scared.

Specifically, the TRC in its report complained about an incident that occurred when an investigator of the TRC later went to work for the Special Court as an investigator. In this incident the investigator was in the company of a TRC research team for a follow-up interview with a witness in Magburaka Township, Tonkolili district of Sierra Leone. The investigator was introduced to the witness in question as an investigator of the TRC. After the change over to the Court, he led the Court's investigative team to this same witness he had earlier seen in that community. Since the community had known him as a TRC investigator they became deeply suspicious about collaboration between the TRC and the Court. The Director of Peace, Reconciliation and Development who witnessed the incident remarked about the "predicament of the witness":

> After making the statement with the TRC, then later the Special Court seems to have got some clip of that information. So to me it is confusing; maybe it's just a trick between the TRC and the Special Court. Even the idea of not sharing information between the TRC and Special Court - it is today a big doubt. (as quoted in TRC Report, 2004, p.378)

UF1**,** a UN official, who worked in close contact in the provinces with some of the officers of the Court, said they should not share the same staff. He disclosed that a former employee of the TRC who worked for the Court had problems because some of the staff of the Court and members of the public were not prepared to interact with him—he was not considered genuine and this caused a lot of problems.

In conclusion, it was established that at one point some people who had worked for the TRC when they coexisted also worked for the Court after the TRC had completed its work. This had a chilling effect on the TRC. Again, it came out that those TRC staff who went to work with the Court somehow did not enjoy the full cooperation of some staff of the Court and the public at large. Some participants felt that the TRC and Special Court should not have the same staff working for them. Others felt that they should not do so during their concurrent existence; but after one had completed its function, the other could benefit from the expertise of their staff. However, it should depend on the schedule of the employee in the initial organization and what he was being employed to do in the other.

Table 7

Categorical Data on Linkages between the TRC and Special Court

Participants	**Information sharing**		**Use of Same Witnesses**				**Joint Public Education**		**Use of Same Personnel and Experts**		**Total**
			Access by TRC to Special Court's Detainees		**Access by Special Court to TRC Witnesses**						
	In favor	Against	In favor	Against	In favor	Against	In favor	Against	In favor	Against	
Public Officers	3	2	1	1	1	0	0	1	0	1	10
TRC Officials	0	5	4	0	0	2	0	2	0	2	15
Civil Society Actors	1	2	0	1	0	0	0	0	2	0	6
UN Officials	0	3	0	2	0	1	0	0	0	1	7
Special Court Officials	0	3	1	3	0	0	1	1	2	0	11
Total	4	15	6	7	1	3	1	4	4	4	49

Note. Summary of participants' responses showing critical areas of linkages between TRC and Special Court.

Summary of Findings for Question 2

Participants generally were of the view that the working relationship between the Special Court and the TRC was both collaborative and conflicting. It was established that at the initial stages, the leadership of the two institutions exhibited cooperation and support for each other. At the same time, interaction between them was very minimal; they were separate and independent and did not collaborate with each other. Any closeness would have been detrimental to the TRC. Areas identified as crucial linkages to their working relationship were information sharing, using the same witnesses, having joint public education, and using the same staff and experts.

Concerning information, it was established that the two institutions did not share information at the official level. This notwithstanding, a perception existed among the public that the two organizations shared information or might have shared information informally. This perception had an adverse impact on the two institutions. Majority of participants were of the view that the watertight approach to information sharing taken by the two institution and stakeholders was good because information sharing would be detrimental to the TRC. Others condemned it as constituting a breach of ethics since the two had agreed not to share information.

On the issue of using the same staff and expertise, it was established that the Special Court at one point employed someone who had worked for the TRC and several others after the TRC folded up. The employment of the TRC investigator by the Court during their concurrent existence had an adverse impact on the TRC. Concerning how this impacted on the Court, it came out that those TRC staff who later took on

employment with the Court did not enjoy cooperation from some staff of the Court and the public at large. Most participants felt that they should not have employed someone who had worked for the other. A few were of the view that the fact that someone had worked for one organization should not prevent him from working for the other. However, it should depend on the schedule of the employee in the initial organization and what he was being employed to do in the other.

Concerning joint public education, it was found that the two occasionally made joint public appearances during the initial stages of their operations. But they did not collaborate on joint public education as a matter of policy. Most participants were of the view that it was good that they did not carry out joint public education since it could have dented their credibility. Nonetheless, a few thought that they could have shared resources in the form of joint public education since the two had similar goals.

Using the same witnesses was found to be the most challenging aspect of their working relationship. The two institutions disagreed on the procedure by which the TRC could obtain the testimony of indictees in the custody of the Court. As a result the TRC and the indictees concerned rejected the procedure prescribed by the Court for indictees to give their testimony to the TRC. Minority of participants were of the view that the TRC should have been allowed access to the indictees of the Special Court and in the manner as wished. They felt that the TRC report was inconclusive because it did not portray the whole truth in the absence of the indictees' side of the story. Majority held a contrary view, namely that allowing the indictees of the Court to testify before the TRC whilst facing trial would have been detrimental to the Court process. And in any case there were other ways to establishing the truth by the TRC other than insisting on

indictees' version of things. Participants felt that the impasse between the two institutions on the indictees was grossly mishandled. In terms of gaining witnesses for required information/evidence it was felt that the concurrent existence greatly hindered the TRC in that respect whereas the Court appeared to have gained from the public hearings of the TRC to identify its own witnesses.

The next section presents findings for Question 3. It explores experiences derived from the Sierra Leonean approach to transitional justice.

Question 3

What is the nature of the experiences derived from Sierra Leone's approach to dual transitional justice?

Introduction

This question was intended to explore lessons derived from Sierra Leone's dual transitional justice model. An analysis of available data and transcripts from interviews as well as researcher's field notes was undertaken. The themes that emerged, as far as utilizing restorative and retributive mechanisms were concerned were: the desirability of dual transitional justice as a policy option, timing- sequencing or concurrent running, priority of implementation when sequencing the two mechanisms, public confusion and dilemma, division and tension among the populace, local and international NGOs and the UN, impact of the side-by-side existence on both institutions, and benefits of dual transitional justice

Suitability of Transitional Justice as a Policy Choice

Participants were asked about their thoughts on dual transitional justice in Sierra Leone. The general view was that the use of the two institutions was not mutually exclusive and the use of one should not serve as a bar to the other. This notwithstanding, in the case of Sierra Leone, opinions were divided on its suitability as a policy choice. Table 8 depicts participants' responses on utilising restorative and retributive approaches for transitional justice. All the 31 participants talked about the suitability of the TRC and Special Court, but they were not all in agreement. Out of the 31 participants 18 of them were of the view that having the TRC and Special Court as occurred in Sierra Leone was good. And 13 felt that as a policy option they preferred only the TRC or the TCR in combination with traditional mechanisms as an accountability option.

The TRC and Special Court as a Preferred Policy Option

SO2, SO4 and TC3 said both institutions were good for Sierra Leone's peace process given the level of atrocities that had taken place. It was good to have the TRC to conduct an analysis of the war and how to prevent it in the future. The Court was needed to put a stop to the continued violence due to the breakdown of the peace accord**.** CA4 said the two were needed because one was looking at reconciliation, the other to provide justice for the commission of heinous international crimes justice. These were necessary for the attainment of peace in Sierra Leone. SO5 believed that there was the need to listen to victims by the TRC process and rebuke the carnage that took place through prosecutions. CA1, CA5, CA8 Civil Society Activists supported the two mechanisms

because civil society pressured for a body that would provide truth, justice and reconciliation given the level of atrocities that had occurred. CA7 was of the view that forgiveness and reconciliation alone through the TRC mechanism was inadequate to deal with the aftermath of the conflict. He was convinced that some form of prosecutions was desirable or else victims would have continued to ask questions or even doubted the authenticity of the TRC process. According to SO1 having only the TRC was not enough because others wanted justice and pressed for it. He contended that having the two institutions satisfied the needs of different segments of the people of Sierra Leone. PO1 and PO4 said that both organizations were needed because after the amnesty bestowed by the Lome Peace Agreement, violence went on unabated. The Special Court was, therefore, needed to address any acts of impunity given the fact that incessant peace accords and previous amnesties had not yielded the peace in Sierra Leone. According to him, the TRC as the sole accountability institution was weak and incapable of granting justice so having the two mechanisms was good. PO9 said that initially he thought there should only be the TRC, but given the violence that occurred after the Lome Agreement, he became convinced that a trial mechanism was needed in addition to forgiveness and reconciliation. Also, the two satisfied cultural and international concerns. TC2, a former TRC researcher, was convinced that given the level of atrocities, some form of prosecution was needed in order to quash impunity. If there had not been the Special Court, the TRC Act would have been amended to make room for prosecutions at the national court because violence did not cease with the Lome Peace Agreement. But when the idea of the Special Court came up, impunity was abated; everyone withdrew into their shells. SO3 said that the existing mechanism could not deal with the aftermath of the

conflict so the Court had to come in as well. SO6 said the two institutions were good for Sierra Leone because different kinds of accountability options were needed for different categories of people. PO2 indicated that engaging both accountability mechanisms showed that the government of Sierra Leone and the international community were serious about addressing impunity and the causes of the war. He pointed out that the Sierra Leone war had subregional and international dimensions. A clear message on impunity was strongly sent by the Special Court when Charles Taylor, the former Liberian President, was indicted and brought to Sierra Leone. According to UF1, the TRC was dealing with the social aspect of the conflict, and the Special Court was needed to "address issues of war crimes and crimes against humanity". It was important to "send a strong message that it is not only the government of Sierra Leone but the international community will also support the government to set up the mechanism to prosecute people" and if anyone engaged in impunity he would be held accountable. PO6, a government minister, indicated that the TRC expressed the fact that Sierra Leoneans were prepared to forgive and live together. The Special Court had sent a strong message that no one was above the law. He said:

> When Charles Taylor was brought here, it sent home the message loud and clear that impunity will not be tolerated. Charles Taylor seemed such an invincible person, such a powerful figure, but he was not above the law. That is the message that came out; nobody is above the law. If you take a look at Charles Taylor, his aura, the invincibility that used to surround this man; and later for him to be brought to Freetown in handcuffs!... That tells us that you can have war, but you have to operate the theatre of war within international guidelines. There are things that you simply cannot do. Therefore you cannot do certain things. So that is the message that is loud and clear. It also says something about us as a country that people have suffered quite a bit, but our people are ready to forgive, reconcile and move ahead. This is what had made it possible for us to have this re-integration taking place.

TRC as the Sole Preferred Accountability Option

Some participants did not think that in the case of Sierra Leone it was expedient to have both mechanisms. UF2 pointed out that the conflict was largely caused by the government's ineptitude as opposed to tribal and or other causes. What Sierra Leone required was for the TRC to identify the causes and recommend measures for transformation to avoid future recurrence. Moreover, Sierra Leone and its people were more disposed to having the TRC. In the view of TC4, a society that had "hemorrhaged" in the way that Sierra Leone had, needed a much more participatory process like the TRC in which people could take part without fear of consequence and prejudice. Moreover, the war was caused by poor governance but the problems were still not addressed. They should have used all the resources available through the TRC mechanism to address the consequences of the war as opposed to the Court. UF3 indicated that once both institutions were employed, international support went to the Special Court which was the preferred child; an expression of the international community rather than Sierra Leone. He said, "Once you have both, international support will go to the Court which, is the preferred child, because it is an expression for the whole international community and not the nation involved"**.** TC1 and PO3 said that only the TRC was appropriate for accountability in Sierra Leone because it was borne out of a broad consensus. The parties to the Lome Peace Agreement had agreed on blanket amnesty with only the TRC as the sole accountability mechanism so they should have stayed by it. And the people of Sierra Leone had indeed accepted the amnesty and wanted reconciliation**.** CA3 said that Civil Society wanted prosecutions but not the kind the Special Court offered. They wanted

prosecution by the national courts or the International Criminal Court at The Hague. The Court was too foreign and did not fit into their local setting. He argued that the people who fought the war were known all over but there had not been any reported cases of reprisal attacks on them, so accountability through an international court in Sierra Leone was not necessary. PO7 believed that for purposes of peace and stability the TRC should have been the sole accountability mechanism. He argued that the presence of the Special Court created more tension than peace in Sierra Leone. He said, "If we want to achieve historic peace and reconciliation, we don't need to prosecute anybody. It should have just ended at the TRC, because by the time you begin to prosecute people, you are still wounding people and causing problem". PO1 argued that to have both the TRC and Special Court was contradictory to the culture of Sierra Leone. Culturally when people had problems they settled it; and it was when settlement failed that they considered going to the court. Moreover, the peace process would have gone on without the Court. PO5 indicated that the culture of Sierra Leone was not against prosecutions per se, but culturally people preferred dialoguing and settlement as a means to settling disputes**.** If prosecutions were needed, the national court should have been capacitated for that purpose, or the perpetrators should have been taken to The Hague**.** After all, Charles Taylor was taken out to be tried at The Hague. TC5 believed that only the TRC was good for the country because of the tension the Court created on the peace process. PO8 preferred only the TRC because the people of Sierra Leone wanted that; they had gone trough a protracted war and did not want any tensions; and the presence of the Court engendered too much tension. If prosecutions were needed they should have utilised the International Criminal Court. CA2 felt that Sierra Leoneans wanted only the TRC

because the money spent on the Court could have been used for rehabilitation purposes. CA6 said only the TRC was good. He explained that initially he supported the Court but did not see the benefit as it unfolded; he was of the opinion that the money should have been used to rebuild the devastated country.

Timing: Sequencing or Side by Side

Timing, as to when to implement the two mechanisms, concurrently or one after the other, was identified as a critical factor to utilising the TRC and Special Court for postconflict peace-building. Table 8 Columns 4 and 5 below show participants views on timing for implementing TRC and Special Court. As shown on Table 8, 27 participants spoke about timing, 5 thought that the concurrent running of the two institutions as occurred in Sierra Leone was good and 22 others considered it a mistake.

Preference for Concurrent Running

Those participants who held the view that the concurrent running of the two institutions as occurred in Sierra Leone was good gave several reasons for their position. PO2 explained that given the aftermath of the conflict, running them together was an indication that the government and the international community were determined to build peace in Sierra Leone by offering assurance to victims and a strong message against impunity. CA4 said the two institutions had similar goals i.e., the peace and stability of Sierra Leone howbeit through different approaches. In the context of Sierra Leone, these two tools were needed to facilitate peace-building at the time they were running; one could not wait for the other. He said, until people appreciated the context and the fact that

the two approaches were critical to give assurance to victims and halt impunity, there would always be the temptation to suggest sequencing. PO6, a Government Minister, said that it was much more effective for the two institutions to be implemented side by side, because they learnt and benefited from each other; as they went along, they gained information from each other informally. Such a benefit would not have accrued if the two had been sequenced.

SO6 explained that in the context of Sierra Leone, international support was in favor of funding the two institutions at the time that they were established. And if Sierra Leone had not capitalized on it, international attention would have been shifted and funding may not have been available later. The opportunity to address past abuses would have been missed. Also, having them together gave categories of victims' accountability options to choose from. SO3 said whichever way one looked at it, running the two institutions as occurred was the most appropriate approach. He said he was not sure that either of them could have waited for the other to complete its work and international interest would have been lost. He added that in Sierra Leone, the concurrent running had worked to an extent but it might not work in every situation.

Preference for Sequencing

UF2, a UN official, said: "I think that if ever we would have to relive these situations anywhere, I don't think that we would have the two systems coming together at the same time". If they were sequenced, the people would be in a position to appreciate the different justice mechanisms involved in their operation. TC3 advocated that if the two mechanisms were sequenced, the public would be able to appreciate their distinct

nature and offer their cooperation. UF3 eschewed concurrent running of the TRC and Court. He indicated that the presence of the Court inhibited the society from exercising their freedom and did not make room for effective postconflict reconciliation and/or peace-building. In the view of CA6, once you put such two organizations together one of them would gain credence over the other, and that was what happened in Sierra Leone. The Special Court had an edge over the TRC to the detriment of the TRC. UF1 observed**:**

> If you combine a TRC mechanism with the criminal process, one of them is going to suffer. Most people may choose not to come and testify and transitional justice will suffer… I am not in support of a Special Court being established simultaneously with the TRC because I think it is counter-productive. It would have a chilling impact on the willingness of people to come forward. Whether you give assurance or not, they will always say it is a trap.

According to CA5, a civil society activist, the concurrent running of the two "was the greatest mistake made in Sierra Leone". He said it created confusion among the public as well as in civil society. SO1 was against concurrent running because it generated tension and had an adverse impact on the TRC. SO2**,** a Court official, observed that the two mechanisms were desirable in a postconflict situation but they should not have run together because the public could not appreciate their distinct differences and were therefore confused about it. PO3 said that the concurrent running had an effect on the "revelation of the truth because people were afraid to participate in the TRC process for the fear that what is said at the TRC would be used against them by the Special Court." In the view of PO1, if they had not run concurrently, there would have been better results. The TRC should have completed its work for the Special Court to have made use of its outcomes and recommendations. The mere presence of the Special Court threatened the TRC. TC1, TC4, CA1, and CA3, all felt that concurrent running had a chilling effect on the TRC in terms of not getting people to participate in their process

because when the TRC was about to conduct its hearings, the Court was issuing indictments and arresting indictees. In the view of TC2, many people escaped justice as a result of concurrent existence of the two institutions. TC1 thought the South African model would have prevented a lot of the pitfalls the two experienced in Sierra Leone. In that case, the Special Court should have been made to predicate on the TRC. PO9 thought that the concurrent running was not good because Sierra Leone was a small country and so having the two mechanisms side by side and in close proximity would greatly impact on the dynamics of each other, thus creating a lot of tension. If it had been a bigger country like Nigeria, you could site them far away from each other**.** Moreover, PO9 felt sequencing would have made for good coordination because the TRC would have completed its work and collected information for subsequent use by the Court. PO8 preferred sequencing because of the tension which the side by side existence generated. She said the people of Sierra Leone had experienced a lot of tension and needed to have some calm. CA8 shared the same view that there was the need to calm down emotions so the two should have been sequenced. PO4, a former Government Minister**,** pointed out that it would have been difficult to have the peace process take place if the two mechanisms were set up and run at the same time. In his view it was possible to have the peace process on course with the two mechanisms in Sierra Leone because reconciliation efforts were long underway before the TRC started and, subsequently, the Special Court. PO4 maintained that technically the TRC and Special Court were not in strict terms conceived and set up at the same time but coincidentally operated around the same time. Otherwise, the peace process could not have taken off as it did and there would have been a lot of problems, because people would not agree to build peace if they knew they would

be tried. According to CA7, the people of Sierra Leone could not understand why there should be the two mechanisms at all. They questioned why the TRC was forgiving and the Special Court was punishing. He concluded they were contradictory and should not have run together.

The Working Group on Truth and Reconciliation Commission (WG) and the Network Movement for Justice and Development (NMJD) (2007) conducted a study on "the performance and impact of the truth and reconciliation Commission." The survey, among other things, inquired from participants concerning their views on the concurrent running of the two institutions. WG and NMJD reported that the "majority of Sierra Leoneans interviewed argued that it had been a mistake and that the credibility of both institutions had been negatively affected by doing so" (p.5). Other finding was that the two mechanisms clashed or run into conflict over Norman, hence in future the option of sequencing should be considered.

Priority of Implementation

Further, on the issue of sequencing, participants were divided as to which should run first. While some felt the TRC should run before the Special Court, others felt that the Special Court should come before the TRC. Table 8 Columns 6 and 7 depict participants' views on the priority of implementing the TRC and Special Court in situations of sequencing. Out of the 18 people who spoke on the matter, 13 felt that in cases where they were being sequenced, the TRC should be implemented first. And 5 felt that the Special Court should be implemented first.

TRC as First Choice for Implementation

TC1 and CA8 favored the TRC running first before the Special Court. They explained that after a violent protracted conflict such as occurred in Sierra Leone, the population had become traumatized and it was important to allay their fears and calm down their emotions before healing could take place. It was important to have a TRC to work out the process of healing and reconciliation. But introducing a court immediately with indictments and arrests could stir up emotions. If signs of impunity persisted with the TRC then prosecutions could be embarked upon. CA5, a civil society activist, thought that in the case of Sierra Leone if the TRC had been established within 90 days as required by the Lome Peace Accord, hostilities would not have probably erupted as it did. CA5 explained that immediately after the warring factions' brokered peace to end the conflict, civil society organizations formed a TRC Working Group and went round the country to sensitise the public about it. According to CA5, the RUF was sceptical about the TRC so the Working Group explained to them that the TRC would provide them with a platform to enable them tell their story of the conflict and also facilitate their reintegration back into their communities. At that point the RUF became receptive of the TRC. Howbeit, the setting up of the TRC was delayed and in the process hostilities ensued. CA5 strongly believed that if the TRC had been established on schedule as planned, it might probably have averted the renewal of hostilities and transitional justice would have been a different story in Sierra Leone. PO4 believed that it would not be helpful for postconflict peace-building to institute trials immediately after the conflict. There should be the TRC to first work at reconciliation and settle the people. The idea of prosecutions should be welcomed at a later date, particularly where impunity is going on

unabated and the postconflict context is characterised with abuses. PO8 also shared in this view, that the TRC should be established first and the Court at a later date when it became necessary to do so. PO1 believed that sequencing with the TRC first would be in consonance with the culture of Sierra Leone, because people preferred to settle matters and only resorted to the Court where settlement failed. TRC should be first and when that failed prosecutions should be considered. UF1 felt that in a postconflict Sierra Leone, the first thing to tackle was the social aspect of the conflict by addressing the needs of victims to whom prosecution would not mean much. It was also crucial to confront the past at all levels of society and chart a path for the future to prevent a recurrence of the traumatic past. SO2 remarked:

> The first thing any postconflict society should do is for the people's feeling to be made calm and their fears allayed. And when that has happened, there will be a feeling that, we must do something much stronger so that it would not happen again. At this point then, they can think of a tribunal especially if there are signs that these things are persistent or whatever happened had not fully been addressed and perpetrators were still around. We should not have a tribunal before the TRC. The TRC should always come first.

CA3, a Civil Society Activist opined:

> It could have been the TRC going on for a year or two before the Special Court comes. Then maybe we could have had the effect or something close to the South Africa; we could have told them that you have an opportunity to come forward without any persuasion and say something; we guarantee you that if you say something it is not going to be used in the Special Court. But we also guarantee you that if you don't come forward and talk, don't blame anybody if the Special Court catches you. Maybe we could have been able to convince them to come. But both of them operating at the same time, there was a problem.

TC3 commented that the TRC should come first and at the end, in the report-writing phase, then the Special Court could come in. At that time the people would have been at ease and receptive to the Court. TC2 said that for purposes of harmonious coordination, the TRC should have been implemented first and the Court predicated on it.

In this case where a perpetrator makes confessions before the TRC he is reconciled with the community. But where he refuses to appear before the TRC or appears but does not speak the truth he is prosecuted by the Court. In the opinion of CA6**,** prosecution closes the door to reconciliation so he preferred the TRC being implemented first. He said, "But the sooner you prosecute, how are you going to bring somebody now and say, 'Come and recount your story and let us reconcile'?**"** UF3 was of the view that the TRC should come immediately and must be made stronger. The Court could wait, because the presence of the Court inhibited the freedom of the population.

The Special Court as Priority Choice for Implementation

SO1 indicated that he had not given much attention to this issue and could not be conclusive as to which of the two institutions should be implemented first in situations of sequencing. But said if the two were to be sequenced the Court should be implemented first before the TRC. He explained that after the trials the door would have been opened for reconciliation. People would then freely participate in the TRC process without any apprehension. SO1 pointed out that one of the biggest problems the TRC faced was that people were afraid of the Court. Bringing the TRC before the Special Court would also have sent some mixed signals because it would have been perceived as an investigative arm of the Court; a forerunner to the Court. SO1 concluded that there should not be any hard and fast rule as to which should run first, but that the decision should be informed by the nature of the society concerned and the context of a given transition. According to CA7, if the TRC was implemented first, people would not have cooperated with it if they thought that the TRC was going to open up doors for them to be prosecuted. CA7

retorted, “How can you talk about a healing process when it is also a way of finding information to prosecute some during this healing process? It is difficult to compromise that”. According to SO3, a Court official, if the TRC had been established without the Court being around to assure the public that information given to the TRC would not be used against them, people might not have cooperated with it the way they did. UF2 said that if the two must be used then there should be trials before reconciliation. It would be a betrayal to persuade people to undergo a reconciliation process and use the outcome for prosecutions. Again, if you run the TRC first the people would not trust and participate freely in it as long as they knew that trials were pending. When trials are completed, the society would be free to reconcile. CA1 supported the Court running first because if it did not take off immediately, evidence might be destroyed and information would be lost, but as for *talking* it could always be done. CA7 pointed out that after the final verdict of the Court, the results of the work of the Special Court could have been made part of the work of the TRC. He said:

> These are two opposite ends of the coin, and therefore they should not be operating together, otherwise you contravene yourself. I think the Special Court comes first to try those who had the greatest responsibility. After the final verdict of the Special Court, the TRC could now come in to close those gaps left. The result of the work of the Special Court could have been part of the work of the TRC. The TRC would say that after the work of the Court these were those found to be bearing the greatest responsibilities for what happened. It could have been a follow-up of the Special Court to bridge the gap between them. But bringing the two together was like a mix up at some point. Bringing the TRC before the Special Court would also have sent some mixed signals.

The Special Court appeared in favor of the Court running first. In its decision in *Prosecutor v. Norman* (2003, Appeal Chamber), the Appeal Chamber of the Court suggested that if possible the TRC should not issue its final report but should wait for the Court to give its final verdict so it could make use of the Court’s results for its report.

PO1 seemed to be in agreement with this view. He said that the TRC should not have published its report until the final verdict of the Court, because if the Court's verdict on the indictees contravened the report it would be discredited.

The TRC Report (2004) indicated that the contemporaneous existence did not help both institutions, but pointed out that there might be compelling reasons where the two would have to exist contemporaneously. In such a situation the policy choice should depend on the society concerned. A society might want to talk about what happened first and then be prepared for the Court. Others would want to see justice first before talking about what happened.

In conclusion, timing was considered an important factor in utilising restorative and retributive mechanisms for postconflict transitional justice. There was no agreement as to whether concurrent running or sequencing was appropriate. In the case of Sierra Leone, the majority felt that the two should have been sequenced, while a minority supported the concurrent running as happened in the country. In the event of sequencing, participants were further divided as to which of the two institutions should run first. Whereas the majority felt that the TRC should run first, others in the minority thought the Court should run before the TRC. Others were also of the view that issues about sequencing should be resolved based on the nature of the society concerned and the context of a particular transition.

Table 8

Categorical Data on the Policy Choice and Implementation of the TRC and Special Court

Participants	**Preference for utilizing both TRC and Special Court as against using only the TRC**	**Preference for utilizing TRC only or in combination with traditional mechanisms without prosecutions**	**Preference for concurrent running of TRC and Special Court**	**Preference for sequencing implementation of TRC and Special Court**	**Preference for TRC running first**	**Preference for Special Court running first**	**Total**
Public Officers	4	5	2	5	3	0	19
TRC Officials	2	3	0	5	3	0	13
Civil Society Actors	5	3	1	7	4	2	22
UN Officials	1	2	0	3	2	1	9
Special Court	6	0	2	2	1	2	13
Total	18	13	5	22	13	5	76

Note. Participants views on dual transitional justice in postconflict Sierra Leone. Compiled from Researcher's Survey, 2007.

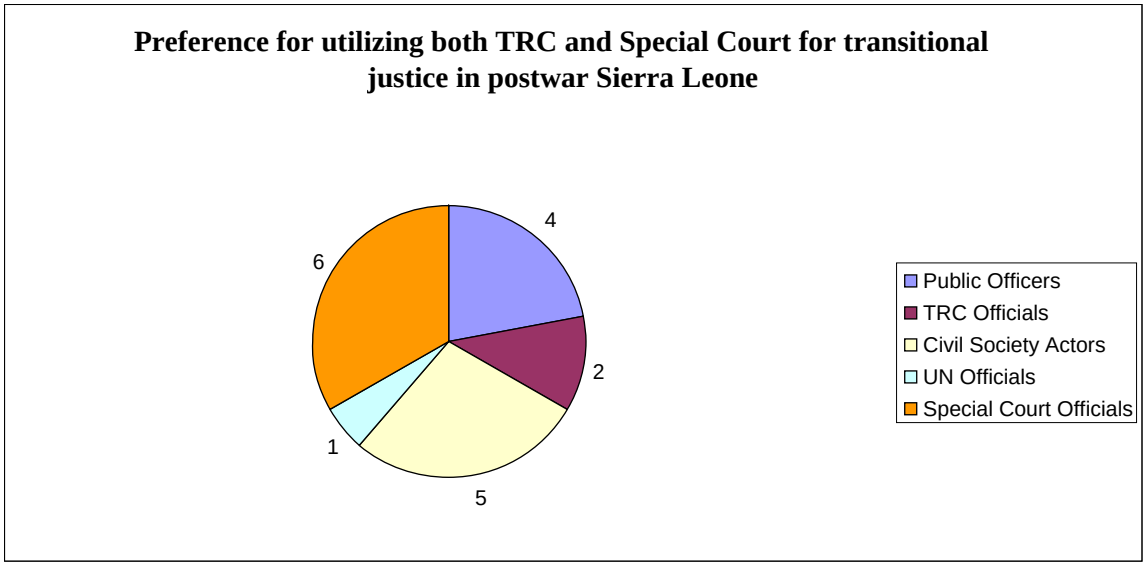

Figure 7. Visualizing categorical data on participants' preference for TRC and Special Court as policy choice for transitional justice.

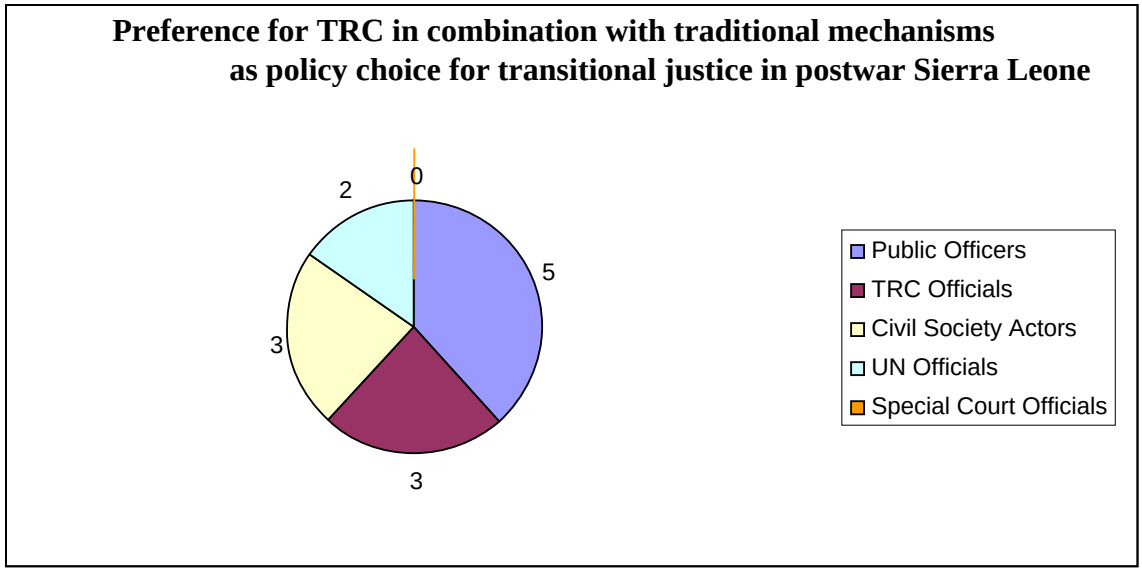

Figure 8. Visualizing categorical data on participants' preference for only TRC and or in combination with traditional mechanisms as policy choice for transitional justice.

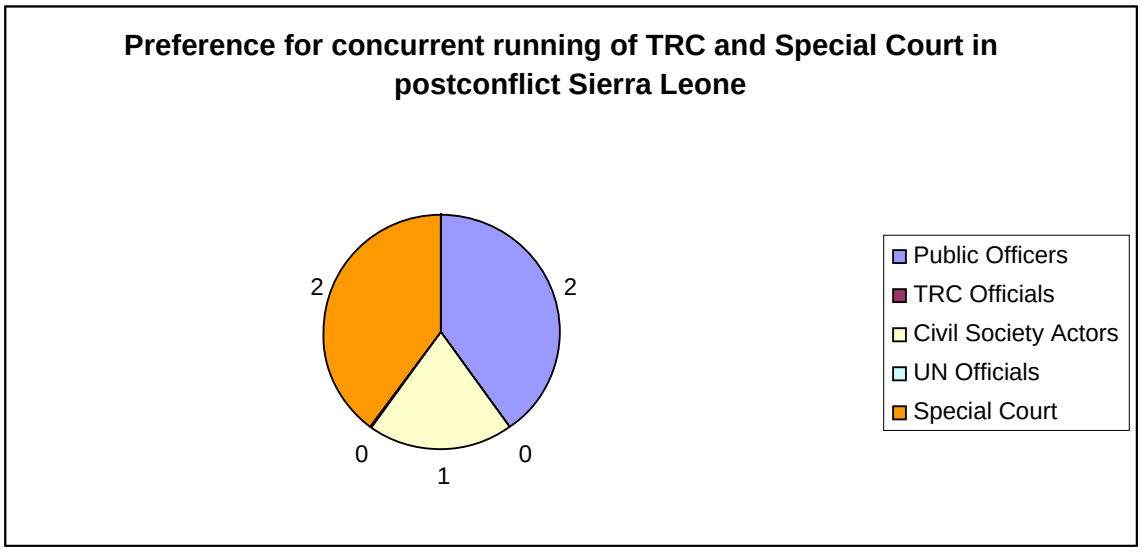

Figure 9. Visualizing categorical data on participants' preference for concurrent running of TRC and Special Court.

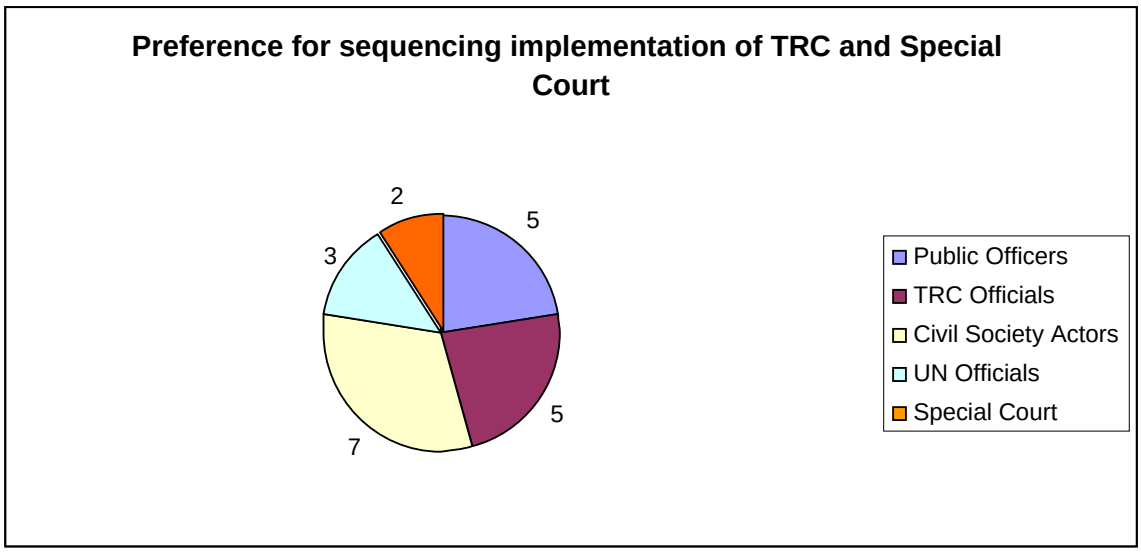

Figure 10. Visualizing categorical data on participants' preference for sequencing implementation of TRC and Special Court.

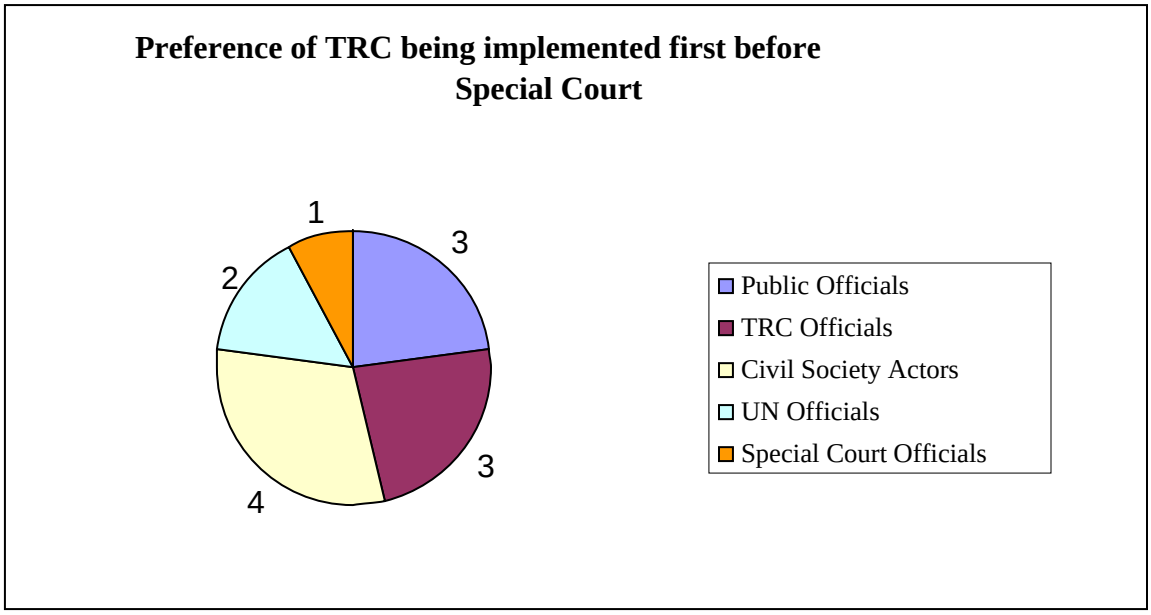

Figure 11. Visualizing categorical data on participants' preference for TRC as priority choice for implementation.

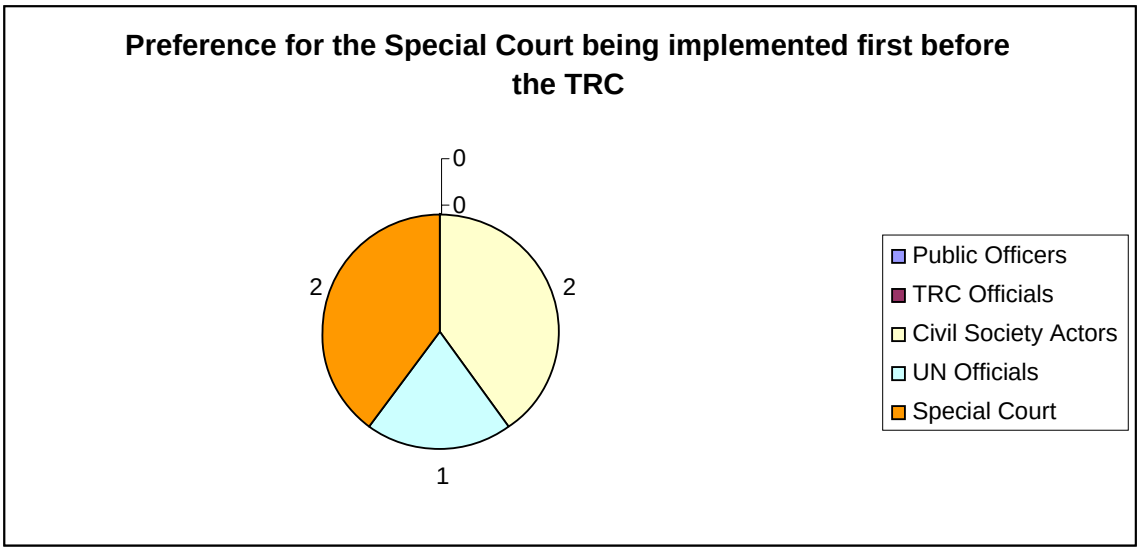

Figure 12. Visualizing categorical data on participants' preference for Special Court as priority choice for implementation.

Public Confusion and Dilemma

Public confusion has emerged as a challenge to the concurrent existence of the TRC and Special Court during the time they coexisted to date. S06 indicated that the public did not understand the distinct nature of the Special Court and the TRC, in terms of their mandates, mode of operation, their respective roles and the relationship between them so they were confused about the processes. Also, there were inherent tensions about the two mechanisms because of how the two operated. These tensions further deepened public misunderstanding and confusion. TC3 disclosed that some people mistook the TRC for the Special Court and believed that the TRC would try perpetrators and pass sentence on them. The existence of this perception was corroborated by the TRC (2004) in its report. Also, the Working Group on Truth and Reconciliation Commission (WG) and Network Movement for Justice (NMJD) (2007) disclosed in their report that: "every Sierra Leonean we interviewed referred to the way in which ordinary people were confused by the relationship between the two institutions until very late in the TRC process,"(2007, p.5). Participants who spoke about the issue gave several reasons for the confusion and lack of understanding among the populace. TC3, a TRC Commissioner, believed that the confusion was due to improper packaging of the two mechanisms. In particular he indicated that there was not much education to sensitize the public and prepare their minds concerning the two justice accountability mechanisms. According to TC3 "all they heard was that the TRC had been established and an invitation extended to them to come to the TRC, only to hear about the Special Court later". SO2 agreed with TC3 that there was not much sensitization at all about the processes particularly with the

introduction of the Court. CA7, a Civil Society Activist pointed out that the granting of amnesty and its withdrawal created a lot of misunderstanding among the public as the two institutions appeared to contradict each other. CA5 disclosed that after the Lome negotiations, Civil Society carried out a sensitization program to explain to the communities what the TRC stood for and the fact that there were not going to be trials. At this stage the TRC was the only accountability choice so the public understood it. When the idea of the Special Court came on board Civil Society Actors, the same people who had earlier gone to inform the people that there would be only the TRC went to the same communities again to inform them about the change of policy, namely that there was going to be a Court in addition to the TRC. According to CA5**,** the people became very confused and asked: "Why two courts? Why two courts?".

SO1 disclosed that at the implementation stage, because their mandates overlapped, both institutions were going to the same people, calling out for reconciliation and chasing them for trials and punishment at the same time. To the ordinary Sierra Leonean this situation was difficult to comprehend. Moreover, the concept of those who bear the greatest responsibility for the events in Sierra Leone was complex for the population to appreciate. CA1 revealed that even people who were educated could not grasp the concept easily and did not understand the mandate of the two institutions. Even though the two institutions did their very best to educate the people, it was not easy to change their perceptions.

Illiteracy was also identified as one of the major factors leading to the lack of public appreciation of the two mechanisms. PO2 and CA4 disclosed that nearly 70% of

the Sierra Leonean population could not read and write; so discerning the differences between the two institutions and what they really meant was difficult no matter the explanation. The effect was that the public was confused as to which one to cooperate with and also apprehensive about the consequences of such cooperation.

CA8 pointed out that in the implementation of the two institutions, efforts were not made to integrate Sierra Leoneans in the processes; the people were left out. CA1**,** a former Special Court official, remarked that they focused on their work without giving attention to how the processes would affect those who would live with it. The TRC concentrated on its research like a research institution, and the Special Court focused on prosecuting.

In conclusion the public was confused throughout the time the two institutions existed side by side, even up to now. Factors accounting for the confusion were the uncoordinated approach in conceptualizing and operationalising the two institutions. This resulted in overlapping mandates, thus sending a mixed message to the public. Other factors were a high illiteracy rate, the complexity of the organizations themselves and failure of the two institutions to integrate the people in the processes.

Division and Tension among Sierra Leoneans

There were divisions and tensions among the people of Sierra Leone and they became divided in terms of their support for the two institutions.

Popular Local Support for the TRC

PO9 indicated that there was more popular local support for the TRC than the Special Court because the TRC was an expression of African culture and signified forgiveness**.** PO1 thought the TRC was in consonance with Sierra Leonean culture and people understood it better, hence the support. He explained that a Sierra Leonean did not like taking people to court because of the adversarial nature of the court system. PO5 said the culture of Sierra Leone was not against prosecution per se but people preferred dialoguing and settlement as a way to resolving disputes. The TRC was similar to the traditional mechanisms and therefore more appealing to the people than the Court. PO7 also thought that the TRC was in consonance with the culture of Sierra Leone so people understood and appreciated it better than the Court. CA6 said he trusted the TRC because it blended African culture which he trusted over international mechanisms because of international hypocrisies. TC4, PO8 and SO2 were of the view that the TRC had support because it originated from Sierra Leoneans and came out of a broad consensus from the Lome negotiations - all the parties to the conflict. It was homegrown and more appropriate for Sierra Leone.

Others believed that the TRC enjoyed support because people felt it had more value for Sierra Leone. In the view of CA8, the TRC was considered the main institution which could facilitate dialogue and reconciliation in communities. It created a platform for exchange between perpetrators and victims where people confessed and asked for forgiveness with a promise not to do it again. CA8 further indicated that some expressed doubts about the effectiveness of the reconciliatory endeavors of the TRC, but he felt the

TRC should have been given all the resources needed to execute its mandate as conceived. UF2 maintained that the TRC had more value for Sierra Leone than the Court. He argued that the war was about government ineptitude as opposed to tribal and or other causes. As a result, what was needed was the TRC to look into the causes of the conflict and make recommendations for necessary reforms. He said that the Court claimed to be setting up examples for good practices but he did not see their engagement with the national courts. UF 2 observed "the judicial reform that is going on in this country now, there is no participation of the Special Court in it." CA5 remarked "we were very sure that the TRC had more to offer the people of Sierra Leone. I remember the phrase used by someone; the TRC is for every Sierra Leonean; the Court was for just a handful". TC4 said of the TRC:

> It offered the potential for wholesale reform of a society that was not only destroyed by war; it had decades of bad governments before the war. The TRC approached its task as a means of diagnosing the ills of that society and then addressing the root causes of the conflict. One of the key findings of the TRC was that the factors which brought about the war have still not been addressed, and if they remain unaddressed, they will be potential causes of future war. That is a message which to me is alarming. We should be devoting all our energies to looking at those factors and making sure that we don't allow them to cause future conflicts. So if…the TRC had been allowed to operate on its own…based on the Lomé Peace Agreement that would have been a vast and preferable alternative to what we have seen.

In the view of UF1**,** the TRC had more value than the Court because it addressed the needs of victims which were of cardinal importance than retribution. UF3**,** a UN Official, also felt that as far as Sierra Leone was concerned, the TRC had more universal value than the Court. He explained that the TRC did not focus on individuals but the entire society and the larger trends and came up with recommendations that would transform

the entire society for a better future. Penfold (2002) a former British Ambassador to Sierra Leone confirmed that the TRC had slightly more support than the Court particularly in the southern part of Sierra Leone. He said there was the concern that the Court might extend its tentacles to the CDF. The Northern part welcomed the punitive mechanism.

According to TC1, though the TRC had local support**,** not everyone wanted it because some needed justice as well. He also pointed out that the importance of the TRC had been watered down because its recommendations had not been implemented and victims felt the perpetrators had been compensated. CA6 shared the same sentiments with TC2 that until the TRC report is implemented, the whole exercise would have proved futile. Shaw (2004), an American anthropologist who has been engaged in ethnographic research in Sierra Lone since 1977, refuted the claim that the TRC in Sierra Leone was in consonance with Sierra Leonean culture. Shaw maintained that conceptually, the art of remembering and telling publicly about past abuses and suffering which characterized the TRC process was at variance with the culture of Sierra Leone. She claimed that among communities in Sierra Leone, they preferred forgetting as a way of dealing with past hurts. Shaw pointed out that although some Sierra Leoneans were able to "synthesize" the idea of forgetting by the TRC process, many were unable to do that. And some whole communities decided not to give any statement to the TRC and if they participated at all would not do so totally. Shaw concluded that the TRC disrupted traditional reintegration mechanisms in communities. UF3 supported the TRC but indicated that the TRC was of

Western origin but was more appropriate to Sierra Leone than the Court. Howbeit it should have been adapted to suit local conditions.

Lack of Local Support for the Special Court

It was disclosed that the Court did not have popular local support due to various reasons which have been discussed in the following:

A big dilemma; "Who was Good and who was Bad"

TC1 said that there were public sentiments against the Special Court for having indicted their heroes. CA3 explained that the concept of those who "bear the greatest responsibility" as conceived by the Special Court was at variance with the local meanings of "who was good and who was bad". CA3 pointed out that as far as the war was concerned, a person was good if he fought on the side of government, and he was bad if he fought on the side of the rebels. Locally, the Civil Defense Forces (CDF), a civil militia group, fought the rebels to defend their communities and helped the ECOMOG forces to flush out the rebels when they invaded Freetown, the capital city. The CDF were considered good and heroes by their respective communities. The Court indicted some of the CDF, and the people of Sierra Leone largely found it incomprehensible that the CDF should be indicted at all by the Court, because they defended their nation; and they were good. The RUF was bad and they should have been tried and punished. TC5 felt that Hinga Norman, the coordinator of the CDF should not have been indicted given his role in the conflict; he was a hero so he should not be tried. PO4, a former

Government Minister, confirmed that a segment of Sierra Leoneans were dissatisfied with the trial of the CDF coordinator.

TC2, PO7 and PO3 argued that the CDF were mainly local farmers and traditional hunters who surfaced as volunteers to defend their communities. They did not know about the Geneva Conventions. They fought in the *traditional way* to deter the enemy from their communities, by way of "intimidation, mutilations, burning or killing in the most gruesome ways". By indicting them the message being sent was that one must not resist one's abusers; resistance to an abuse cannot go unpunished. According to TC2, "the lesson to the CDF and the general populace who resisted the army and the RUF rebellion in Sierra Leone is that when people attack you, you must surrender and be killed for justice to take its course later on". This was a mixed message sent by the presence of the Court to the people of Sierra Leone. PO2 supported the indictment of the CDF because people came to give evidence against them for having committed offences. PO7 explained that those people who came up to testify against the CDF did so on personal grounds "to settle personal scores". He said he was aware of people who possessed vital evidence about the CDF but did not testify against the CDF because they did not believe that the CDF should be subjected to criminal accountability.

Further, TC4, CA5, PO3 expressed the view that the Court was discriminatory in its indictments**.** They cited the indictment and arrest of Hinga Norman, a Deputy Minister of Defense during the conflict, the coordinator of the *Kamajors* (CDF) who later became Minister for Internal Affairs as the paradigm case of discrimination. PO3 argued that Norman was getting his mandate from the Minister of Defense and the President, so

he should not have been singled out for the actions of the CDF while the President and others were left out. CA5 said, “Look at the TRC report; the role of the CDF is clear, so some of us doubt the independence of the Court because they did not indict President Kabbah”. TC2 complained that the Sierra Leone army committed a lot of atrocities, a fact the President of Sierra Leone acknowledged before the TRC, yet they were not indicted but reintegrated into the army. Also, PO7 argued that the army was educated about the laws of war so they should have been made accountable as well. It was pointed out if the amnesty to the respective combatants groups was revoked it included that of the army. If an example was being set on impunity, the army should have been targeted as well.

Also, by the concept of those who bear the greatest responsibility, the Court indicted the leadership of the respective combatant groups as opposed to those who actually committed the offences. CA1 indicated that the Court articulated its mandate too narrowly to indict only 13 people. Thus a lot of perpetrators were left out. The end result was that those who actually carried out the atrocities were going about scot-free. According to UF3, “the conceptualization of those who bear the greatest responsibility may be those who may not have murdered but excluding those who may have killed”. SO1 said, to the average Sierra Leonean, this did not make sense at all. PO2 said that the Court was needed but the problem was that it did not target those who really committed offences but their leadership. So these perpetrators had gone through the Disarmament, Demobilization, and Reintegration Program (DDR) and reintegrated into their communities. The people of Sierra Leone thought that these perpetrators had been compensated for their barbarism. CA7 said prosecuting the leadership like Foday Sankoh

and leaving out the commanders who meted out the abuses did not mean much to them. Incidentally, those who "chopped off their arms, raped or killed their loved ones may be living the house next to them". The people of Sierra Leone had concluded that the Court was out "to chop their money". SO3, a Special Court official confirmed this sentiment when he said:

> The problem is that those Sierra Leoneans would want to see indicted are freely roaming about. The Special Court had negotiations on whether they should go for those who bear the greatest responsibility, just those top commanders or those who were most responsible, which would be a lot of the mid-level commanders. Actually, many of those people [middle level commanders] are the ones that Sierra Leoneans would like to see brought to justice. As the former Prosecutor said "to many people, the person who bears the greatest responsibility is the man who killed his son and raped his wife". This person may incidentally be living down the street from him right now, but that is not what the law says and that is not what our mandate is.

SO5, a Court official also confirmed:

> When our Outreach Unit goes to the countryside, people ask questions like, "How come we can see the people who committed the atrocities walking around in our villages every day?" You want to solve one problem but you see another set of problems. However, this being an international court, if we were to try everybody for a war that went on for 10 years, it means we will never be able to finish. In 10 years so many people were killed, and to try all the people who fought in these armed groups will be impossible.

Another factor identified by PO6 to explain why the Court did not enjoy local support was that, the key ones among those indicted for bearing the greatest responsibility; those people Sierra Leoneans would have loved to see in the courtroom either died whilst in the custody of the Court or were at large. PO3 indicated that the Court did not mean much to him because Foday Sankoh, the leader of the RUF who invented the war, died in prison. General *Mosquito* (Sam Bockarie), one of the RUF leaders also died and his body was brought to Sierra Leone. Johnny Paul Koroma, the

leader of AFRC who fought on the side of the rebels was allegedly dead somewhere; but his body was never brought to Sierra Leone. The only success story was Charles Taylor; even then he had been taken to The Hague for trial. CA7 disclosed that people were not pleased with the Court because they said that in the final analysis if those indicted were convicted, they would not face the death penalty but life imprisonment and would be cared for; whereas if they had been taken to the national court, conviction would have attracted the death penalty. Penfold (2002) a former British High Commissioner for Sierra Leone said the differences in sentencing between the Special Court and the national court posed a dilemma because those convicted of murder in the national court could be found guilty and executed, but those who would be convicted by the Special Court would not face the death penalty but imprisonment.

PO6 said due to limited resources there could only be limited justice**.** SO3**,** a Court official, explained that the mandate of the Court was very restrictive because of cost reasons. The UN was nervous about cost and had to restrict the mandate. Moreover, the UN could not subscribe to victors justice by trying only the RUF. The idea was that a hybrid court which was created by an agreement as a treaty organization would control the expenses in part, because it was outside of the UN budgetary process and all the restrictions of budget and personnel and so on. SO5 further pointed out that the Court was a transitional mechanism and it could not go on forever or else it would cease to be transitional. People needed to pick up the pieces and get on with their lives, so you indict a few to make a point and move on.

Incompatibility of International Court within the Local Contexts

The Special Court as an international body did not fit into the cultural and social setting of Sierra Leone. Moreover, in its operationalization, the Court did not integrate and was too foreign for local consumption.

Incompatibility with Sierra Leonean Culture

PO1 believed that the Court was not compatible with African culture and, therefore, Sierra Leone culture. He argued that if reconciliation was the goal of transitional justice in postconflict Sierra Leone, in the African sense it connotes forgiveness as opposed to prosecutions and punishment. In the view of PO5, retributive justice was not the way out for Sierra Leone. According to UF1, the Court was incompatible with Sierra Leone culture because of how issues were resolved at the traditional setting. Traditionally, when something happened the people would go under the *palaver huts* to sit down and resolve it. The parties would be reconciled and the community remained intact. But when a matter went to the court both the victim and assailant lost control over the process because the matter would be determined by a third party without any interaction with them. The adversarial nature of the court system made neighbors in court enemies. Penfold (2002) confirmed that Sierra Leoneans were very forgiving and wanted reconciliation and so were not enthusiastic about the Special Court. TC3 was of the view that the presence of the Special Court dampened the spirit of the senior traditional rulers and rendered traditional justice mechanisms in place ineffective. TC3 explained that traditionally, extended family ties were strong in Sierra Leone. Thus,

people and communities interlinked so what affected a person in a community affected the entire community. For example, the arrest of Hinga Norman affected his entire community. This took on more dynamics and changed the orientation of people altogether about the Special Court. UF3 insisted that the Special Court was not good in the African contexts. SO3, an international technical expert with the Court, held a contrary view. He did not think that the Special Court was out of context with Sierra Leone culture. He said he did not believe in the cultural bar being raised against the Court in support of the TRC. He argued that the TRC idea originated from Southern America and the mediatory aspect could be adapted to local conditions but there was nothing African about it. He knew that the people of Sierra Leone were forgiving but it was partly because they had no alternative—no recourse to justice. So the only choice was to forgive and get on with one's life, but not to forget the past. SO3 argued that what happened during the war in some cases was among families who used the war to settle personal scores because they had not had avenues to justice. Not all the carnage was perpetrated by the combatant groups. In his view, crimes committed in Africa should be addressed in the same way it would be addressed if they had been perpetrated in Europe or elsewhere.

Too Foreign in its Operationalization

It was disclosed by some participants that the Court was like a square peg pushed into a round hole and did not fit in Sierra Leone. CA6 said that the Special Court was too grandiose and expensive for Sierra Leoneans to appreciate. He explained that the country was too small with a high level of illiteracy rate; therefore majority could not

comprehend nor appreciate it easily. CA8 said the Statute of the Court contravened the constitution of Sierra Leone. The constitution of Sierra Leone made the Supreme Court the highest court of the land, yet the Statute, gave the Special Court primacy over the Supreme Court of Sierra Leone. This has infuriated some people who thought the sovereignty of Sierra Leone had been treated with impunity by the Statute. PO4 a former Minister was of a contrary view and felt Special Court was a good model. He observed:

> I think that the way it turned out is the best possible in the sense that it is based in Sierra Leone, it applies Sierra Leonean law in conjunction with international law and it is being run by international community using some Sierra Leoneans and so on. It gives some home ground feel, but at the same time has the authority of an international tribunal. I think that it's been a good model.

Some participants also raised the issue of the Special Court not being accessible. CA5 explained that the physical premises of the Court were not accessible because as an entry requirement one was required to show and deposit an ID at the point of entry; a condition most Sierra Leoneans could not meet. Again, at the point of entry one needed to identify an official within for permission before one would be allowed access. This presupposed access by appointment. CA5 lamented:

> The message is that the Court is for the people of Sierra Leone. When you go there, how many Sierra Leoneans were there at the Court? How many of them have access to the Court? How many of them own ID card which is the basic requirement to enter the Special Court? How many Sierra Leoneans have a passport?

PO5 decried that unlike the national court where one could go freely; it was not possible to enter the premises of the Court freely. CA4 said that there were barriers to the Court and the local courts should have been capacitated to administer justice. Researcher's observations as recorded by field notes confirmed this:

> I had appointment to meet with a Court official for an interview. I got to the reception of the Court about 15 minutes early. I was asked about the person I came to look for. The reception rang him but he was not in so I was asked to wait for a while. Some minutes later he came to the gate to ask if I had come around. When he found me, he confirmed my appointment with him at the reception. I was asked to show and deposit an ID card which I did and was given a visitor's pass to enter the section of the Court covered by the pass. When I finished with him and wanted to see another person at a different section not covered by the pass, he escorted me to the reception for clearance before I could obtain a different pass for the other section. I spent three days at the Court premises to conduct interviews and I had to go through the same entry procedures. Inside the Court I met personnel who were very warm, receptive and cooperating. They readily offered me the necessary assistance and documents relevant to my study and brought to my attention other relevant information on the issues. I was very impressed with the level of cooperation. However throughout my visits I kept on asking myself how a typical Sierra Leonean would be able to venture the premises of the Court ordinarily if he had to make prior appointment and with whom? Where will he find a passport or identification to deposit at the reception? It appears the Court was not physically accessible. (Researcher's Field Notes, 16 January, 2007)

CA3 pointed out that if you had to watch the trial, you had to go through the same procedure but you did not require prior appointment to do that.

CA3 indicated that in terms of staff composition the Court largely consisted of internationals at the senior management level with a disproportionate number of local staff at the management level. Participants concluded that the Court was foreign to Sierra Leoneans. According to CA8**,** the Court represented an international agenda— a political institution meant to win the favor of the international community. It failed to communicate well with Sierra Leoneans, as it did not integrate well to leave a legacy. CA3 said of the Court:

> It ended on being translated into an issue of imported justice. Because it was clear that this Court was not going to be controlled by us in the country, I mean physically. The judges were mostly white men… In fact, when one of the AFRC guys called Brigadier 55 was taken to the Court, he said, "How can I recognize this Court? If I have done anything wrong in my country I should be taken to the

> national court? but what sort of a court is this with white men coming afar to judge me?". He was just saying what was on the minds of a lot of people. … When you talk about it [Court], it is like this whole thing is someone else's idea. We are not players. We don't control it. We don't know how it is going. It is like someone else's idea. And up to today that is how a lot of people look at it. It is an imported brand of justice. Of course like I said, it is a totally different world. It is like this place is not in Sierra Leone; anywhere; but somewhere else. Of course even at night they have 24 hour electricity and the rest of the country is in darkness. It is like a whole city of its own.

According to CA4**,** there was apathy towards the Court and some people were not really interested in it because it was seen as a UN business with the UN imposing its standard upon Sierra Leone. They argued that if prosecutions were needed, then the national courts should have been capacitated for that purpose or the perpetrators should have been taken to The Hague for trial. After all, Charles Taylor had been taken there for that purpose. TC3 said that even though some people liked the Court at the initial stages, they became disillusioned because of how it was played out; when it came to their doorsteps they became disillusioned with it.

Lack of Consensus around the Court

Another reason cited for the dislike of the Special Court was that it did not churn out of a broad local consensus. SO2 disclosed that at the initial stages when the outreach section of the Court went out to sensitize the people about the Court they used to 'hoot' at them. And in "any forum you will find people saying more good things about the TRC than the Court". SO2 explained that the president requested for it based on his constitutional authority as president "without the people's popular mandate." He believed that the idea of the Special Court should have been thrown to the public domain

to generate a consensus around it before the request was made. Also, TC3 pointed out that not much sensitization was done before the Court was established, so it had not been largely accepted locally. SO1 said that even though the outreach section of the Special Court had done an incredible job to sensitize the people of Sierra Leone about it, not much interest had been generated locally. SO2 disclosed that it was very difficult because they were in the completion phase of the Special Court and people still did not understand what the Special Court was about. He observed "the trials are public but because people don't understand they are not interested; they don't come here. So what we do is we video [record] the trials and go out to the provinces to show to them". According to SO2**,** in spite of the education undertaken by the Court, not much was attained because **"**there is something there you cannot change about people's perception".

Economic Considerations

One other reason why the Court did not enjoy local support was because a majority of Sierra Leoneans thought that prosecutions were not a priority compared with other pressing needs. PO5 felt that too much money was being spent on the Court to the detriment of other important postconflict rehabilitation issues. He argued that the trial and conviction of 13 people would not be of much benefit to Sierra Leone. Instead they should have settled with the TRC and the huge amounts spent on the Court used to rebuild and rehabilitate the nation. According to UF1, a UN Official, retribution was just one aspect of dealing with the aftermath of a conflict. Within the context of Sierra Leone, dealing with the social aspect of the conflict— rehabilitating and rebuilding the

devastation was of a greater importance than anything. Those who were raped, amputated and maimed had needs that needed immediate attention. To those people, criminal justice did not make any sense. He asked, “How else would you assist the people of Sierra Leone if you do not address the needs of victims?” According to CA4, people thought that the Court was not necessary because, given the state of the economy; the money spent on the Special Court could have been used in rebuilding people’s houses that were destroyed during the conflict. They did not appreciate the fact that millions of dollars had to be used to try 13 people whilst the rest of the country wallowed in poverty. They argued that in the final analysis, the indictees would die in custody as had already happened to some. Or where they went through the trials and were found guilty they would be given life sentences as opposed to the death penalty. Also, they were skeptical about the Court because they thought the Special Court was an avenue for enriching the personal coffers of the staff at the expense of Sierra Leone because of the salary and lifestyles of personnel of the Court.

According to UF3**,** the Special Court in Sierra Leone cost between 25-30 million dollars a year. It was therefore incomprehensible to convince any Sierra Leonean that having any of the indictees behind bars was a good attainment compared to the atrocities that were committed. UF3 concluded, “The Court has its value. However, in my opinion, the value of the Court is not for the public but the international community”. CA6 also said:

> Think of the amount of money being used for the Court. It is being used in the name of Sierra Leone, but it is not having any impact on Sierra Leone. Talking about developing our justice system you don’t see the effect. As a result, people

> say “they have just come to *eat* our money”. Our homes are destroyed; nobody is building, except the NGOs. So, that is the problem.

Penfold (2002) British former ambassador to Sierra Leone confirmed that Sierra Leoneans wondered why so much resource should be expended for trials in the world’s poorest country.

In conclusion, it was found that in comparison it came out that the Court did not enjoy much local support because the local meaning of those considered “bad guys” and “good guys” was at variance with the conceptualization of those who bore the greatest responsibility as conceived by the Court. Again, it was felt that the Court did not fit into the local context because it was at variance with Sierra Leone culture and local conditions. Other factors were the absence of local consensus surrounding the Court, inadequate sensitization, the way it had been operationalzed as well as other economic considerations.

Division at the Civil Society Front

CA5, a Civil Society Activist, disclosed that division arose among Civil Society over the TRC and the Special Court concerning the sequencing of the two institutions. He explained that after the Lome negotiations, civil society groups formed the TRC Working Group to sensitize the public about the TRC. When the idea of the Court came up, Civil Society went round again to sensitize the people about the Court. They found the people were confused because they had been told initially that there would be no prosecution only to be told later about the Court. It became clear that it would be better to sequence the two institutions to avoid the ensuing confusion. But there

was no consensus among civil society groups on the issue of sequencing. While some felt that the two institutions should be sequenced - operate one after the other, others felt that the two bodies should go on side by side in the manner being unfolded. This brought about a sharp contention among them, so the group split into two and those in support of sequencing continued with the TRC Working Group, and those in support of the concurrent running established the Special Court Working Group. This created tension and a negative impact on the whole process. CA5 disclosed that the contention continued and subsided towards the end of the TRC process. Thus, after the TRC finished its work efforts were made by a personnel of the Court to reconcile them to work together.

It also emerged that the contention among civil society organizations spread down to international NGO's. ICTJ (2006) reported:

> The ideological debate regarding the primacy of the Court (in political rather than legal, sense) also played out strongly among local NGOs, which tended to group into TRC supporters and Special Court supporters. To some extent, this rift was mirrored among international NGOs, which also tended to be labeled as Special Court or TRC supporters. Debate of substantive issues sparked much rivalry among the two groups, as each was, in a sense, protecting its "livelihood". Many of these conflicts erupted in the context of the discussion on information sharing, but dissipated once the two institutions became operative, and this gave rise to a more nuanced position at many NGOs. (p.41)

Division at the UN Front

CA5 and CA8 disclosed that the UN front was divided about transitional justice in Sierra Leone. First, there was division between the Office of the High Commissioner for Human Rights (OHCHR), Geneva, which had oversight of the TRC, and the UN Office of Legal Affairs (OLA), New York, which had oversight of the Special Court on the

primacy. Caulker disclosed that whereas OLA claimed primacy for the Court, Geneva claimed parity for the TRC. CA5 explained:

> There was a fight for supremacy, because I remember that their visits to Sierra Leone always coincided. Yes, they were fighting over that, and that justified the work fight. It became clear to Civil Society that something was wrong with the two institutions. When they come to the country, they didn't work as a team. They were always seen as distinct and they did not have joint meetings except on the issue of primacy, when they asked for Civil Society input.

CA5 further disclosed that when the government established a working group for the Court, the Geneva representatives in town also approached the government to set up a working group for the TRC. The government declined to do that because at that time there was a working group already put in place by Civil Society for the TRC. The rancour between Geneva and New York had an adverse effect on transitional justice in Sierra Leone—pitching the two mechanisms against each other. CA5 remarked, the "UN is not unified when it comes to Sierra Leone's transitional justice. OLA and OHCHR were fighting for control over Sierra Leone." CA8 said: "There was a lot of institutional wrangling between the UN, New York and Geneva…This created a lot of problems". UF2, a UN Official, offered an insight into the wrangling between OLA and OHCHR when he said:

> If it [the Court] is a transitional justice situation, it is the office of the High Commissioner for Human Rights that should handle it. Therefore there should have been a common authority to deal with both. If the Office of Legal Affairs was handling Special Court and the Office of the High Commissioner handling the TRC, then that shows the difficult nature of the conflict.

Secondly, it was disclosed that the leadership of the UN Mission in Sierra Leone (UNAMSIL) then, was not in support of having the Court in addition to the pre-existing TRC. According to SO3, a Special Court official, the then leadership of UNAMSIL felt

that the presence of the Court would generate violence and sabotage all their efforts at peace-building. The UNAMSIL leadership even insinuated to perpetrators that there would be no Special Court. SO3 remarked:

> In 2001 when I came here, I talked to people at UNAMSIL, and I really didn't believe the Special Court was ever going to happen. I did meet somebody who was involved in the mission, but the SRSG vehemently opposed the Court… He did everything he could to prevent us. A report which came just last week said we lost many months of time even to the pettiness that the Special Court people were not allowed to make use of UNAMSIL premises. Until he left that was the situation. When the new SRSG came, he said Kofi Annan supported the Special Court therefore he also supported the Special Court, and he wanted to know what he could do to help us.

ICTJ (2004) corroborated the above by disclosing that "for various reasons, cooperation from the UN Assistance Mission in Sierra Leone (UMANSIL) proved to be minimal politically and complex financially, although support from UNAMSIL military personnel was easier to obtain".

It was further disclosed by CA5 and SO1 that OHCHR did not live up to its task and the TRC had difficulties. This was confirmed by the Truth and Reconciliation Working Group (WG) and the Network Movement for Justice (NMJD) (2007) in their report:

> When the Office of the High Commissioner for Human Rights (OHCHR) agreed in 1999 to play the leading role in organizing and overseeing the implementation of the TRC process, the decision was widely welcomed…However, based on the interviews we have conducted for this report, Sierra Leonean and international stakeholders were generally very disappointed by the performance of the OHCHR. There was a remarkable consensus on this issue amongst interviewees who disagreed on many other issues…The OHCHR was widely seen as having fatally combined an unhealthy obsession with micro-management with an inadequate capacity to undertake a professional oversight role. It was allegedly weak at raising funds and then very slow to release them. It was also claimed by some interviewees that OHCHR exercised excessively close control over staffing appointments to the TRC Secretariats during both the preparatory and operational

> phases. TRC Commissioners had little say over appointments. Numerous interviewees stated that OHCHR proved highly reluctant to work openly and transparently with Sierra Leonean Civil Society Organizations. Indeed, at times it seemed to be pursuing strategies of 'divide and rule' amongst those organizations. (p.3)

Again, WG and NMJD found that Geneva took the TRC as its program but did not give it the attention it required. In short, it was an experiment which did not work out well.

In contrast, CA5 was of the view that OLA showed enough interest in the Court and effectively carried out its business very well with the Court. He said:

> OLA was able to move the countries' attention to focus on the Court, looking at the development that took place within the couple of months that followed the agreement…Look at the leadership of OLA at that time; they were involved, whilst from Geneva it was just a desk officer covering several countries, including Sierra Leone. So it was an issue of interest…the desired attention was not given. When OLA sent a delegation to Freetown, it was the head who came to Sierra Leone. In contrast Geneva had a consultant. I think it has to do with the interest invested, and with Geneva it was more like an experiment. OLA took it seriously, and they gave it all the attention it deserved.

Also, CA5 disclosed that OLA engaged directly with the government; the President and ministers so it had the "highest interaction", whereas Geneva came through UMANSIL to government. This was because UMANSIL had a mandate to look at the Lome Peace Agreement of which the TRC formed a part. The Court was not part of the Lome Agreement so UNAMSIL involvement with the Court was very minimal. SO1 suggested that, probably one UN Agency should have overseen the two bodies for effectiveness. UF2 also thought that if they were transitional justice mechanisms then one UN body should have overseen it. But UF1 disagreed and believed such an approach would not have worked out well because the process of the TRC and its objectives were completely different from the prosecutorial purposes of the Court. In view of this, they were placed

far away from each other. For the UN supported them and wanted them both to work successfully.

Impact of Concurrent Existence on TRC and Special Court

One of the issues that emerged from the discussions on the TRC and Special Court was the impact the concurrent existence had on the two institutions. Table 9 below depicts participants' views as expressed. The issue of impact emerged significantly concerning the TRC. Out of the 25 participants who spoke about the impact the concurrent existence had on the TRC, 23 felt that it had a negative impact on it and 2 felt that the TRC benefited positively. Out of the 10 participants who spoke about the impact the concurrent existence had on the Court, 5 were of the view that the Court benefited whereas 5 thought the Court was adversely affected. Reasons given by participants for their respective views are discussed in detail under the next Section.

Table 9

Summary of Categorical Data on the Impact of Concurrent Existence on TRC and Special Court

Participants	**Impact on TRC**		**Impact on Special Court**		**Total**
	Positive	**Negative**	**positive**	**negative**	
Public Officers	0	6	3	1	10
TRC Officials	0	5	1	2	8
Civil Society Actors	0	5	1	0	6
UN Officials	0	4	0	0	4
Special Court	2	3	0	2	7
Total	2	23	5	5	35

Note. Participants' views on the impact of concurrent running of TRC and Special Court. From Researcher's survey, 2007.

Figure 13. Visualization of participants' views on the positive impact of concurrent existence on the TRC.

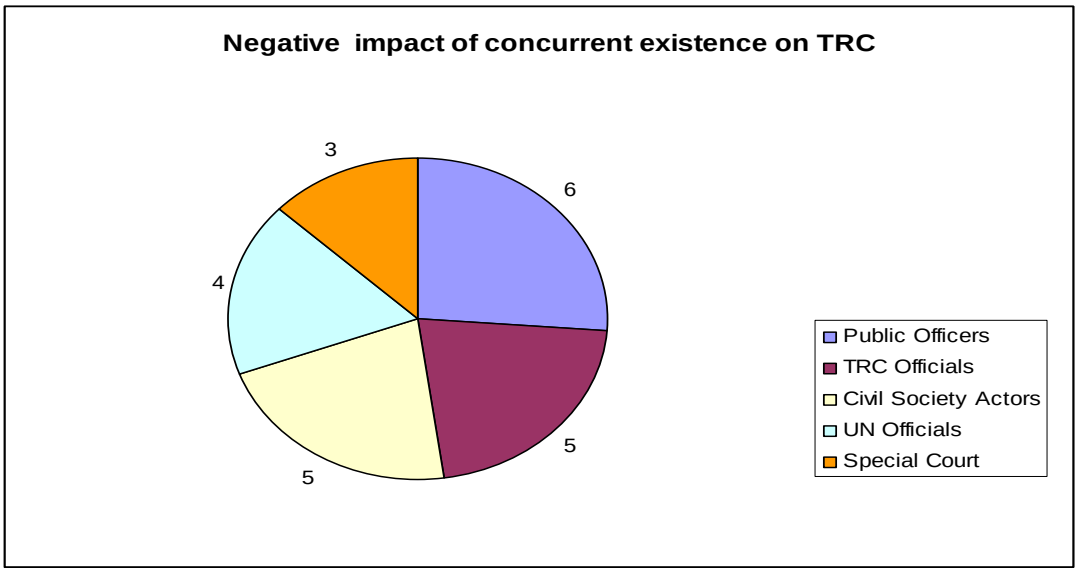

Figure 14. Visualization of participants' views on negative impact of the concurrent existence on the TRC.

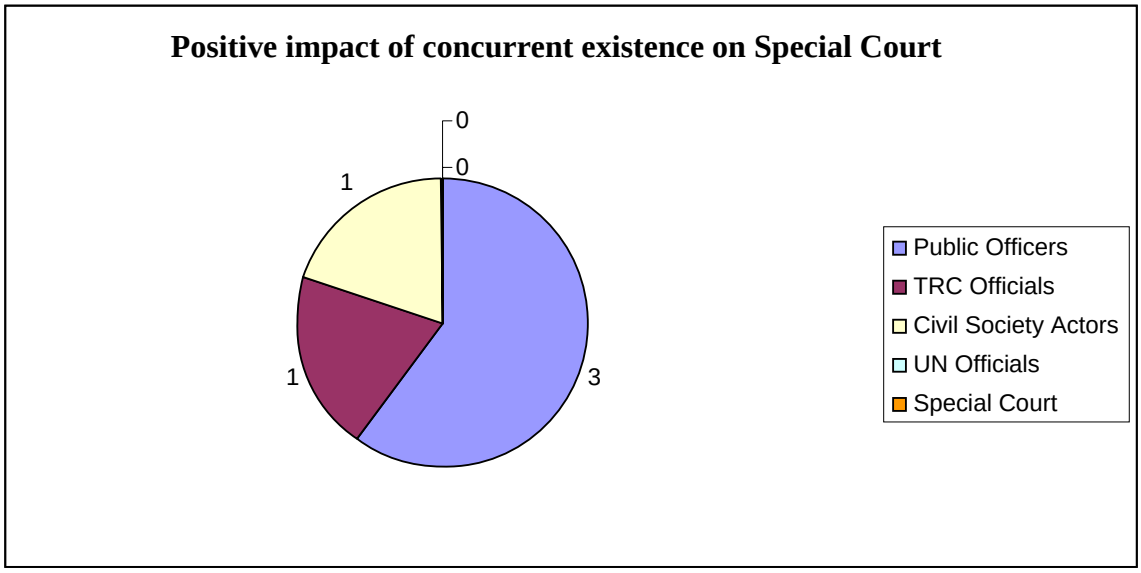

Figure 15. Visualization of participants' views on positive impact of the concurrent existence on the Special Court.

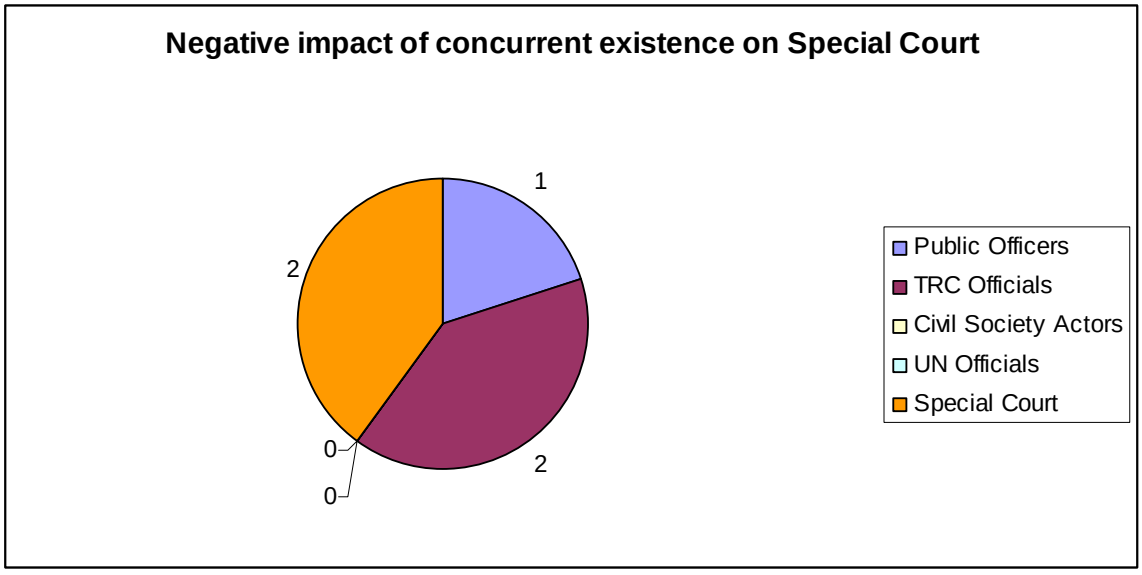

Figure 16. Visualization of participants' views on negative impact of the concurrent existence on the Special Court.

Impact on the TRC: Marginalized TRC

The TRC was marginalized by virtue of its concurrent existence with the Special Court and the mandate as conceived could not be fully carried out. The TRC had funding difficulty. Also it did not attain full truth and effective reconciliation.

Lack of Funding and Other Resources

It was found that the two institutions were both established through collaboration between the UN and Government of Sierra Leone. Howbeit donor resources were distributed between the two bodies with the greater proportion going to the Special Court. CA6 and PO5 were of the view that the moment the idea of the Court came up, the attention of the government and the international community shifted from the TRC to the Court. CA5 said that "the government of Sierra Leone lost interest in the TRC at some point. The focus was more on the Special Court in terms of cooperation for the preparatory work leading to the setting up of the Special Court". The Court had fuller backing of the government than the TRC had. SO1 observed that in comparison with the Court, the TRC had very little resources to work with and that was unfair. TC4 said that in some cases, money earmarked for the TRC by donors was diverted to the Court. TC4 observed:

> There is a disparity of approximately 50 times the money gone to the Court, as was given to the TRC. The Special Court will end up costing in the region of $250,000,000.00 which, they would say is not money which could be optioned in any other quarters in Sierra Leone, but I can tell you from first hand discussions with the very donors who signed up on that money that it was optioned against the TRC. The TRC directly suffered in terms of funding, from the existence of another transitional justice mechanism in the country. I believe there should have been more money allocated towards the TRC. There should have been more time

> accorded to the TRC to do its work, in a much more concerted effort on the part of the government and all other actors in society to make sure that the mandate as it was conceived was fulfilled.

CA1, a Civil Society Activists and former employee of the Special Court remarked**:**

> The international community was less enthusiastic about funding the TRC despite the fact that the process started as early as 2000. As a matter of fact, it almost started operation around the same time the Special Court started. So that is an indication that the international community was more enthusiastic on funding prosecutions than of establishing a TRC. And this happened amidst the fact that the Special Court had an original budget of 53 or 56 million dollars (US$53m or USD$56m) for three years; now it is over 200 million dollars; (US$200m) they have spent that already; while TRC had five million dollars (US$5m) or so for its own operations.

TC1 and UF3 explained that in comparison to the Special Court, the TRC did not receive adequate funding because the international community was prejudiced against it. They regarded the TRC as a tool for breeding impunity and the Court as an appropriate instrument to redress impunity. SO1 thought that the international community was biased towards the TRC out of ignorance and lack of understanding of the roles of TRCs. He pointed out that the TRC in Liberia had been folded up temporarily for lack of funds. SO1 further attributed TRC's difficulty to Geneva and UNDP's role of overseeing the [TRC]. He said "it was a nightmare. I don't think they did very much." UF1 disagreed with SO1 that Geneva did not do well with fundraising. UF1 argued that the "world is driven by powers. The failure to mobilize resources had nothing to do with responsibility." He pointed out that international response to the assistance of countries coming out of the war depended on a number of factors such as the importance of that conflict to them. According to him, Britain got international support for Sierra Leone because of its former colonial ties with Sierra Leone. Once Britain took the initiative,

America followed as well as other countries. UF1 indicated that America supported the Special Court to show her preference for an ad hoc tribunal as opposed to the ICC which America did not approve of. Another reason was to get Charles Taylor and his likes through the mechanism of the Court. He said the Special Court for Sierra Leone was "a tool that satisfied many interests". CA5 believed that the concurrent existence of the two mechanisms affected Geneva's fundraising efforts because donors' attention and interests moved to the Court.

SO3 agreed that the TRC had funding problems but said that the funding problems encountered by the TRC were because they incurred the displeasure of the donor community in the initial stages because of how monies were used. Also, their inability to source for funding was a factor as well. The TRC in its report admitted that its bumpy start cost her credibility with donors. It stated:

> Internal difficulties saw the Commission effectively losing the first six months of its existence. These early difficulties led to a crisis of credibility that in turn exacerbated the Commission's funding crises. The Commission acknowledges the fact that a measure of internal mismanagement contributed to the many problems experienced by the Commission not only during the start-up phase but also throughout the life of the Commission. (TRC Report, 2004 Volume 1, p. 9)

PO6 disclosed that there were things the TRC wanted to accomplish but could not because of funding issues. TC3 narrated his ordeal from the international community because they did not want to spend any more money on the TRC and rushed them out of office. He said:

> On the final day, the 31st of March, 2004 - that was the termination date according to the UN - they sent people to come and clear the office. It was that very day that I received the final report from the management. It was on my desk and it was on that final day they wanted that desk. I had to literally put the report on the

> ground for the table to be cleared away from my office. They carried it away only to be kept in a store.

In effect it was felt that the TRC did not have adequate funding to undertake its functions effectively.

Half-Truth

TC5, PO1, TC3, and SO2 explained that perpetrators, mostly commandants and foot soldiers who actually carried out atrocities, failed to appear before the TRC to give their side of the story, and those who appeared did not speak the full truth. This was because perpetrators were afraid of the consequences to themselves and their leaders who had been indicted, arrested and detained by the Special Court if they appeared before the TRC and confessed their involvement in the conflict. TC1, TC3, and PO4 indicated that the TRC could not get the version of the detainees of the Special Court because the TRC and the detainees refused to accept the procedure prescribed by the Court to receive the testimony. If the two institutions had not been engaged, there would not have been any restrictions on the TRC under the circumstances. In fact, TC3 disclosed that one of the detainees had agreed for an interview with the TRC but was arrested a day to the time the interview was scheduled to take place. TC4 remarked:

> In terms of witnesses, there were obvious and less obvious ways in which the Commission [TRC] was disadvantaged. The obvious one was where the Special Court put up barriers and eventually denied access to detainees in its custody. The less obvious ones were the psychological effects that the Court had on hundreds of persons who would otherwise have willingly taken part in the TRC. I am not saying that these were insurmountable barriers because in many cases the principal researchers and investigators in the TRC spent hours of their time convincing persons of their personal independence and integrity to be able to pursue those interviews but that

> time could otherwise have been spent much more wisely. So, even in the sense that the time was wasted or forsaken meant that the operations of the TRC were hampered. Because of the approach of the Special Court, many institutions were chilled into non-cooperation with both institutions. Information disappeared and witnesses also disappeared. Some of them were subsumed into the witness protection program of the Special Court. None of that would have happened if the TRC had been allowed to go about its work in all due peace and quiet.

Also, a perception existed that the TRC would share information with the Court or the Court would demand information from the TRC for which the TRC must comply. CA7 said the TRC was perceived as a witch-hunting body for the Court or a conduit through which information was channeled to the Special Court. The effect was that the TRC had mostly victims' stories—the familiar stories and not the unknown stories. Perpetrators were not accountable for any form of injustices, and, as PO3 pointed out, the revelation of truth suffered. In this sense, CA3 said that the TRC had mostly victims' stories which were already familiar to the people of Sierra Leone. Everyone knew how people suffered so what they wanted to know were the perpetrators' version of why they did what they did. And that could probably have led them to understand the conflict, but that was missing as the TRC had become victim-based.

TC3 explained that victims in some cases shunned the TRC process because they were afraid that if they testified before the TRC they could end up as witnesses for the Court or incur reprisals from combatants who were all over in their communities. Victims saw their assailants moving about freely. These perpetrators were not indicted by the Special Court as they did not fall within the ambit of those "who bear the greatest responsibility for the offences that took place". TC3 further said that because of the concurrent existence, people did not understand the differences between the two

mechanisms and thought that testifying at the TRC was the same as testifying in court and so did not come forward. The uncoordinated operational approach by the two institutions was identified by TC5 as a major factor to the problems that bedeviled the TRC. TC5 said that at the time that the TRC was about to commence its public hearings, the Court had come out with its indictments and started arresting the indictees. In fact, TC3 and other TRC Officials disclosed that they were not sure that the truth revealed in their report was the full truth.

SO3 was of the view that though the concurrent existence affected the TRC, there were other factors also accounting for the problems that bedeviled the TRC. He maintained that perpetrators could not speak the truth partly because they were going to be integrated into their communities so they did not generally admit their misdeeds to worsen their situation. SO3 further argued that the people did not go to the TRC, and those who did mostly failed to speak the truth. Because unlike the South African model which had a carrot and a stick namely the power to grant amnesty in exchange for truth and power to recommend prosecutions upon non-cooperation, the TRC in Sierra Leone did not have any such powers. As such there was no incentive to attract perpetrators to cooperate with it or speak the truth. CA7, a Civil Society Activist, lamented that the TRC defined its mandate as a victim-based organization and hence, concentrated on victims. UF1 pointed out that the TRC lacked power to grant pardon because the Lome Peace Agreement had already granted pardon to perpetrators. At the time the TRC Act was enacted, the Special Court and its attendant prosecutions were not envisaged. The problem was that when the Special Court was conceived, nothing was done about the

TRC Act; it was made to proceed in its original state. The TRC could not have the desired effect as contemplated in Lome.

Half Reconciliation

UF1 disclosed that perpetrators were largely absent from the TRC hearings, and so the TRC mandate to promote reconciliation by creating a forum of exchange between the victims and perpetrators could not be carried out effectively. Even where the perpetrators participated in the TRC proceedings it was not with an open mind because of the perception that the two would share information. Also, victims were tongue-tied and did not speak the truth. TC4 said:

> You know that we were dealing with people who went through incredible trauma and suffering and who were victims of some of the worst human rights abuses ever experienced in human history. Or, on the other hand, it could have been the perpetrators of such violations, many of whom were kids when they perpetrated those violations. The perpetrators could hardly comprehend what they had done, and the victims could hardly speak about what happened to them. On both sides you needed an environment which was protective of those people, an environment which offered them a forum in which they could speak without fear of consequence or prejudice. If anyone who could take part in that process thought for a moment that the information was going to be passed on to the Special Court, they could not participate with an open mind.

TC1, PO6 and CA8 disclosed that due to lack of funding, the TRC could not engage in reconciliation endeavors as wished. It could not facilitate reintegration that much to the contentment of Sierra Leoneans. TC3 indicated that as at the time the TRC process had become accepted and people were ready to come on board, the TRC had to fold up because stakeholders and donors were not prepared to expend more resources on the TRC. According to TC1, lack of funding affected the reconciliation endeavors of the

TRC. He disclosed that the TRC found a number of perpetrators; southerners settled in the northern part of the country who were yearning to go back home. The TRC was able to reconcile some of them but could not do much for lack of time and funds. TC1 was sure some were still permanently displaced. CA8 confirmed that issues of social reintegration were still lagging in the respective communities. Those in civil society recognized the need for extension for the TRC in that regard, but the international community was not prepared to spend on the TRC.

These difficulties notwithstanding, SO6 and SO3 felt that the TRC had cooperation from the public because the first Prosecutor assured the public that the Court would not make use of any information given to the TRC and therefore encouraged the public to cooperate with the TRC. SO6 said whether or not that was enough was a different thing but that there was cooperation and the TRC produced its report. Moreover, on its part, the TRC said that indeed the assurances given by the Prosecutor and other officials of the Court offered the TRC "some sense of security" (TRC Report, 2004, p.377). Howbeit the TRC still encountered difficulties in accessing witnesses and information. CA1 indicated that the TRC was advantaged because the Special Court mandate was limited to only the political leadership of the various factions. This left a wide field for the TRC to attract the perpetrators. This notwithstanding, TC3 maintained that the foot soldiers did not cooperate with the TRC because of the simultaneous coexistence of the two mechanisms.

Enhanced Special Court?

When asked whether the Special Court was in any way affected by its concurrent existence with the TRC, PO5, PO6, PO1, PO8 and TC4, thought that the Special Court was not in any way affected negatively during the time it coexisted with the TRC. One reason being that it had the legal capacity to get anything it needed for its operations. The Statute of the Court as well as its implementing legislation gave it primacy over the TRC so the relationship between the two was dictated by the powers of the Court. In response to this question, UF1 for example retorted:

> I don't think the presence of the TRC affected the Special Court. The question of cause and effect is more the Special Court having an impact on the TRC. If there were any limitations on the work of the Special Court, I would say it is a self-imposed limitation. This is because the mandate of the Special Court says very clearly that it is to prosecute those who bear the greatest responsibility, and this is where the problem comes in. To prosecute those who bear the greatest responsibility requires an interpretation by the Prosecutor. The interpretation of that phrase -those who bear the greatest responsibility was narrowly construed in this country. It was narrowly construed to the extent that we now have only about 13 people who were indicted. Most of the people in this country don't believe that those 13 people are the people who were responsible for all the atrocities that were committed. There are people out there; they saw who did the killings, and who gave the commands, that were never prosecuted simply because the Prosecutor gave a narrow interpretation to the term those who bear the greatest responsibility. That in a way had a negative perception on the impact of the institution itself.

CA1 was of the view that the Special Court had problems because the public did not understand it at the beginning but not because it coexisted with the TRC.

CA1, further said that the presence of the TRC itself could not in anyway hinder the Special Court howbeit statements of the TRC leadership could.

SO6 said the Court was not affected by the concurrent existence per se except that the disagreement on the procedure for receiving information created confusion in the

minds of the public. They could not appreciate why the Court could not let the TRC deal with the detainees in the manner as wished by the detainees themselves. This created an additional burden on the Court to educate the public about how the TRC worked and how the Court worked. SO3 said the saga over Norman adversely affected the Court because the TRC used the media to attack the Court and in some cases misrepresented facts. Again, just like the TRC, the uncoordinated operational approach by the 2 institutions affected the Special Court; because as the TRC was asking people to come for forgiveness and reconciliation, the Special Court was pursuing them for prosecution. The resultant confusion in the minds of the public affected how they cooperated with the Court.

TC2**,** a former TRC Official, was of the view that a major setback of the Court for its contemporaneous existence was its not making use of the abundance of evidence generated by the TRC because the Court had agreed with the TRC not to do so. As a result, their target was narrowed extensively. It was disclosed by the United Nations Integrated Office for Sierra Leone (UNIOSIL), the current custodian of the TRC archives that after the TRC had completed its work, the Court informally sought to have access to the TRC files but UNIOSIL disallowed it. The Court probably may have reasonably suspected the TRC to have been in possession of information vitally needed for the Court's operations. Before the two institutions became operationalized, it was anticipated that if the TRC did not share information with the Special Court particularly confidential information, the Court would be adversely affected **(**Wierda et al, 2002**).** The Court

officials spoken with indicated that they did not need any information from the TRC and the Prosecutor carried out an independent investigation.

TC1 was of the view that the Court was affected by the exchanges that ensued between the TRC and the Court over Hinga Norman's case. He indicated that what the Special Court feared was that the evidence they had against the detainees would be destroyed if the detainees had gone to testify before the TRC. Because the detainees probably might have gone there to disclose everything; and they could have asked for forgiveness. This was critical since Crane, the first Prosecutor, had said that any information that had come to the TRC would not be used by the Court. Such challenges occurred by virtue of the concurrent existence of the two institutions.

PO5 and PO6 believed that, for the Special Court, the concurrent existence had a positive impact. They pointed out that the Court had the privilege of hearing all that was said in the TRC public hearings to aid in its investigation, because it was able to gain a lot of information from the TRC about what happened in Sierra Leone. TC4 believed the Court followed up with the TRC to identify its witnesses.

Both Institutions Lost Out: Lots and Lots Escaped Justice

TC4 said dual transitional justice was costly and time consuming for both institutions. SO3 said that the exchanges between the two institutions over Norman were not helpful to them. SO6 said the Special Court had to expend a lot of time and resources to sensitize the populace that they were different from each other. TC4 felt that both lost

out on information, because the approach of the Court caused other institutions in the country reluctant to make information available. UF2 felt they both lost out on witnesses.

TC2 said both institutions were not able to provide *full* justice because the Court's target was too narrow and let out a great number of perpetrators. At the same time, those perpetrators, particularly the army, did not appear before the TRC. UF1 pointed out that the practical part of the side-by-side existence of the two mechanisms was that a lot of people escaped justice. He explained that those who bore the greatest responsibility and were indicted by the Court were 13. They were the leadership of the respective factions and groups. This left out the middle level commanders and foot soldiers who were on the ground and who may have actually committed atrocities. Meanwhile, because of the fear of the Special Court, most of this category did not participate in the TRC process, and so a lot of people escaped accountability. If they had done that, it could have led to reconciliation. This had a negative impact on the peace process. UF2 submitted that a lot of people were lost to both the Special Court and TRC as the two struggled over witnesses. Again, the public was divided as people chose which institution to cooperate with to the detriment of the other. ICTJ (2006) confirmed that lots escaped justice when it stated:

> Some have argued that the combination of a TRC and a Special Court is "ideal," because the Court can try the architects of the conflict, whereas the TRC provides a forum for the remainder of perpetrators and for victims. However, this is also an oversimplification and does not accurately reflect the experiences in Sierra Leone…The reality is that the vast amount of perpetrators will not appear before either institution or any other court…But the Sierra Leone experience can be used to inform future efforts. (p.43)

Benefits of the Dual Transitional Justice Model

In terms of experiences derived from the Sierra Leonean approach to transitional justice, SO3 and CA7 indicated that despite the hiccups and the problems encountered by this transitional justice approach, certain benefits were derived from the two institutions towards facilitating peace and stability in Sierra Leone. The TRC in its report stated that:

> The TRC and Special Court will undoubtedly make significant contributions towards peace and justice in Sierra Leone. Their contributions could have been immeasurably stronger had the two institutions shared something of a common vision of the basic goals of postconflict transitional justice. (TRC Report, p 428)

ICTJ (2006) has indicated that "conclusions on successes and failures tend to vary widely. In essence, it is not possible to classify this complex dynamic as a success or failure… " (p.40). According to SO3, history would be the best judge and provided a yardstick for measuring whether or not it worked in Sierra Leone. SO3 said:

> In terms of the yardstick, I think history will be the judge of that, and it will be based not on the process but on the product. Did it work? It might not work in every situation; I think it is going to work in Sierra Leone to an extent. I think that Sierra Leoneans are going to judge both the TRC and the Special Court in the same way…They will not judge by asking the question of the Special Court, "What landmark legal decisions did you make that is going to control the destiny of international law for the next decade?" They are going to ask what the Court did to help address impunity and to help restore the rule of law to help the reconciliation process. To the extent that after this exercise is all finished, we can say, "Yes, we did those things", I think that is the extent that Sierra Leoneans will say or we can say we succeeded. The reverse of that is to the extent that we didn't do those things that are the extent to which we will not have succeeded.

PO6, a Government Minister, thought that success should be determined in terms of moving the country forward for development, and sustainable peace to benefit everyone

and to avoid the recurrence of war. SO5 thought of success to the extent that it offered people a sense of societal care; that the abuses had been rebuked and renounced.

To CA7, dual accountability as a novella benefited Sierra Leone to an extent. He believed that without the TRC and Special Court, the future peace of Sierra Leone would be uncertain. He said "without the Court and the TRC, I would have looked at a tensed society, I would have looked at a society that is set on revenge, and I would have looked at a society that would have gone into war once again." SO2 said that the benefits were immense; the TRC addressed the causes of the war so that it would not happen again; the Special Court on its part meted out punishment as deterrence against the recurrence of abuses. SO6 said the public benefited because they had accountability options to choose from. Some did not like the TRC and opted to cooperate with the Special Court and vice versa.

As far as the TRC was concerned, UF1, UF2, UF3, CA5, TC4, CA6 and CA8 felt that the TRC produced a comprehensive report that covered the conflict with recommendations aimed at reforming and transforming the Sierra Leonean society. Thus, if implemented fully, it would go a long way to make a positive impact on Sierra Leone. CA5 described the TRC report as "the best thing that ever happened to Sierra Leone. CA7 said the benefits of the TRC were derived from its report and reconciliation endeavors undertaken by the Commissioners. He indicated that the TRC report had became a reference point in Sierra Leone; institutions both governmental and non-governmental look to it in their work. UF1 said:

> One cannot ignore the fact that the TRC did document to a great extent the causes of the conflict within this country, and if any good has come out of the TRC, that

> is one tangible thing. If you read the report, you will appreciate the extent to which they went to establish the root causes of the conflict. That would now serve as a way of addressing the institutional arrangement in terms of laws, etc. to prevent a repetition of the things that led to the conflict. In terms of reconciliation, they were all around this country. People came to testify, but only a few perpetrators testified so it did not have that connection to do that. Of course, the mere presence of the Commissioners themselves in the districts was also a way of building confidence in the people.

As regards the benefit of the Special Court, PO6, CA1, SO6, UF1 and PO2 said that it sent a strong message that impunity would not be tolerated particularly with the indictment and arrest of Charles Taylor, the former President of Liberia, and Hinga Norman, the Internal Affairs Minister of Sierra Leone. PO2 believed that the culture of impunity was smashed in the sub-region.CA7 said it had served as lessons to the people of Sierra Leone and the African continent and the international community as a whole that "you cannot just start a war with the belief that at the end of the day you will go for peace talks, and one of the things that you want to ask for is blanket amnesty when you may have committed a lot of atrocities." UF1 indicated that the Special Court did have an impact on the question of impunity in Sierra Leone. Even though the number of people prosecuted was limited, it did send a strong message not only to Sierra Leoneans but also to the entire international community.

Summary of Findings on Question 3

What emerged as critical experiences from the Sierra Leonean model were the suitability of the TRC and Special Court as accountability mechanisms, the issue of timing, sequencing or concurrent existence; public confusion and dilemma, division and

tension among the populace; NGOs, both local and international, and divisions at the UN level, and other identified challenges.

On the findings on suitability, the general view was that the use of the two institutions was not mutually exclusive and the use of one did not or should not serve as a bar to the use of the other. This notwithstanding, in the case of Sierra Leone, participants were divided as to its desirability as a policy choice**.** Some participants felt that the war was devastating and incessant accords did not yield peace. It was important to embark on measures by the TRC to heal and prevent a future recurrence as well as the Special Court to send a clear message against impunity. Others felt it should have been only the TRC because it was not expedient to have the Court. The peace process could have gone on without it and the people were more disposed towards the TRC and found it acceptable.

Participants were divided on the findings on timing. The majority was of the view that the concurrent running of the two institutions as occurred in Sierra Leone was a mistake and that the two should have been sequenced - one after the other. They explained that it created confusion in the minds of the public and they could not appreciate the distinct functions of each of them. One of the institutions suffered - the TRC suffered because of the side by side existence, and the peace process was adversely affected. Those in favor of concurrent running explained that the two institutions learnt and benefited from each other as they went along, and the will of the international community to fund the institutions would have been lost at that time if things had not proceeded the way they did. On the issue of sequencing, participants were further divided

as to which should run first. Some felt the TRC should have run first, and others felt the Special Court should have run first.

On the findings on public confusion and dilemma, it came out that members of the public were confused about the TRC and Special Court during the time the two coexisted and even till now. Factors identified for the confusion included how they were packaged and presented to the public through the design and implementation stages, the granting and withdrawal of the amnesty which made them contradictory to each other; overlapping in mandates that caused both institutions to call for reconciliation and trials and punishment at the same time, and also lack of a uniform message to the public. Other factors were that the concept of those who bear the greatest responsibility was complex for the population to grasp due to a high level of illiteracy as well as the failure of the two institutions themselves to give attention to the people.

It came out that the TRC and Special Court and their side by side existence engendered division and tension among the people of Sierra Leone, civil society groups/NGOs both at the national and international levels and relevant stakeholders. The TRC was considered more popular among Sierra Leoneans because it appeared compatible with their culture; it had more universal value for Sierra Leone and was churned out of a broad consensus, In contrast, the Court was not too popular locally because its conceptualization of those who bore the greatest meaning and for that matter those who were bad was at variance with the local meaning of those who were bad. Again, the Court appeared incompatible to the culture of Sierra Leone, too grandiose and foreign in its operationalization to the ordinary Sierra Leonean and was not churned out

of a local consensus. It was felt that money used could have been expended in rehabilitating victims and the properties destroyed instead of expending that much to try only 13 people. Others explained that people did not like the Court because of ignorance leading to misconceptions about it.

It was also found that the concurrent running of the two mechanisms brought sharp division to the civil society front on the basis of sequencing. This trickled down to international NGOs as well. At the UN front there was rivalry between the two UN bodies, namely OLA and OHCHR that exercised oversight over the Special Court and Sierra Leone respectively. Also it came out that the UN Mission in Sierra Leone initially did not support the Special Court.

Again, the concurrent running of the two institutions marginalized the TRC as it suffered from lack of funding and other resources as well as cooperation from the public, particularly the perpetrator category. The end result was that it could not effect an effective reconciliation. Moreover, due to the fear of the Court, people refrained from dealing with the TRC. As a result, truth suffered and reconciliation also suffered. It was felt that the Court appeared to have suffered in terms of not securing evidence and the witnesses required for its work because a lot of information that accrued to the TRC was not made available to it. Generally, however, the Court was said to have benefited from the side-by-side existence.

Again, lots and lots of people escaped justice because they were afraid of the Court, and so did not appear before the TRC and were also not indicted by the Court. Dual transitional justice was found too costly and time-consuming for both institutions

since they expended a lot of time and resources to sensitize the populace that they were different from each other. In the process they undermined each other's efforts**.**

Despite the hiccups and the problems encountered by this transitional justice approach, certain benefits were derived from it towards facilitating peace and stability in Sierra Leone. The next section presents findings for question 4. It deals with the circumstances under which dual transitional justice should be used and how it should be packaged to facilitate peace in postconflict situations.

Question 4

When is it appropriate to use dual transitional justice mechanisms?

Introduction

The objective of this question was to find out about the circumstances under which restorative and retributive mechanisms should be employed and how they should be conceptualized for implementation. Even though the main goal of this study was not to develop a theory or model, a conceptual model of dual transitional justice was expected to be derived from it as indicated earlier on. Analysis of transcripts from interviews revealed that the two mechanisms should be employed when they are both needed in order to facilitate peace and stability in postconflict situations. In order to determine their desirability, the contexts of a particular transition should be analyzed against the backdrop of the political dynamics, the nature and magnitude of atrocities committed during the conflict, prevailing socioeconomic and cultural conditions of the transition, timing in respect to the peace equilibrium, and the state of the already existing

accountability mechanisms. International influence was identified as a crucial factor. Other issues critical to their conceptualization were identified as well.

Fitness of Mechanisms with Policy Objectives

UF2 said that in postconflict contexts, transitional justice should have its focus on the establishment of stability and restore a country to sustainable peace. In the view of Penfold (2002), it did not connote only justice but far reaching political and security implications. SO3 indicated that the critical thing to consider is whether the employment of the two would facilitate peace-building or otherwise given the context involved. He advocated that the two mechanisms should be engaged to the extent that they could contribute to building peace and stability.

In the case of Sierra Leone, the goal of transitional justice was stated as contributing to the peace and security of transitional Sierra Leone**.** The objectives of the TRC were to reveal the truth; to facilitate healing and reconciliation. Berewa (2001), former Vice President of Sierra Leone stated the objectives of the TRC thus:

> The main concern was for the truth to come out. The view that truth is as good as justice also implies that knowledge of the truth is the most important part of a process of healing and uniting the country. Through this Commission the atrocities committed shall be exposed and the suffering of victims acknowledged and, in deserving cases, reparations are to be made to the victims. (p57)

The main objective of the Court as stated by Berewa was entirely punitive. This means that in Sierra Leone the objectives pursued for the attainment of peace and security were revelation of the truth about the conflict for healing and for reconciliation, and also punishing perpetrators for justice.

Opinions of participants were divided about the aforementioned stated objectives. Participants thought that the TRC was required for peace-building in Sierra Leone and such a mechanism would be required in any postconflict contexts. However, there was no consensus as to whether the Special Court was desirable. UF3 maintained that the TRC should have been the sole accountability mechanism if the goal of transitional justice was to attain peace because the presence of the Special Court hindered reconciliation. PO7 argued that the presence of the Special Court created more tension than peace. He observed:

> In the first place we needed to establish what we want to achieve at the end of the day. If we want to achieve historic peace and reconciliation, we don't need to prosecute anybody. It would have just ended at the TRC, because by the time you begin to prosecute people, you are still wounding people and causing problems.

UF2, a UN Official, also emphasized that if it was important to establish peace in Sierra Leone, then prosecution, as it were, was not an immediate concern. He remarked:

> In my personal view, I think that we should have decided to go the truth and reconciliation process and let people forget about the conflict. Because you see, in any case, in the case of Sierra Leone the conflict was not based on religion, it was not based on tribe; it was based on ineptitude of government. The people were really averse to government's actions. Well, if that is the case and it degenerated into other things because other interest groups came in. Liberia for example came in because they wanted to exploit the diamonds. So many external forces came in and also internally, people were trying to take advantage. Now people have settled to resolving their conflict amicably and wanting to forgive, why shouldn't it be allowed? I think that was a better option.

TC4, PO7, UF1, TC3 and UF3 thought that the government used the Special Court as a tool for getting rid of its political opponents as opposed to securing sustainable peace. PO7 observed, "It is like the government wanted to get rid of a few people or to satisfy

the international community". TC4 thought of the Special Court as a tool for vengeance against those Kabbah considered as threats to his government. He remarked:

> I think that whichever nation you are talking about should be closely interrogated as to what objectives it would pursue by creating these institutions. I think everyone agrees that a restorative mechanism is necessary in the wake of conflict. You cannot just have a handful of prosecutions and leave it at that. On the retributive side, the government has the power to create a tribunal in the same direction as the Special Court. Are we going to call for one and then collaborate with the international community to establish it? Then we must be extremely careful as to what objectives that government is pursuing by doing so, because a lot of things can be dressed up as justice. Finally, the greatest hypocrisy is injustice or abuse of human rights or pursuit of political ends under the disguise of justice. Unfortunately, many of those traits have been embodied in the initiative of the Special Court.

Some participants had a contrary opinion because they felt that there would have been no peace in the absence of prosecutions. They argued that the TRC, combined with some form of prosecution as occurred in Sierra Leone, was the best option. In this regard it was felt that the TRC alone or in combination with local mechanism would have been inadequate. Civil Society Actors, for example, were convinced that some form of prosecution was desirable. However, participants who favored prosecutions differed concerning the nature of prosecutions to be utilized. While some advocated for national prosecutions, others thought of international prosecutions outside Sierra Leone before the International Criminal Court at The Hague as a preferred option. Moreover, others considered the Hybrid Court, i.e. the Special Court, as the most appropriate. CA7 argued that peace was not just a cessation of hostilities but also justice. He observed, "What is peace to somebody whose daughter has been raped and has had her hands amputated? You cannot just say everybody has been forgiven; peace means giving justice. I don't

think there is much of a problem". If justice is not administered people [victims] would continue to ask questions about the "scars of the abuses suffered".

TC2, a TRC official, believed that in Sierra Leone both the TRC and Special Court were needed. He argued that impunity became the order of the day after the negotiated peaceful settlement of the conflict. But the moment the idea of the Special Court came up, "everyone went into their shells" and hostilities ceased. This notwithstanding, TC2 felt the two mechanisms were inadequate. He advocated that in addition, there should have been lustrations and purges to remove "bad nuts" from public office. In particular, the army should have been purged rather than being reintegrated as was done.

The Contexts of the Transition

It came up that whether or not the use of dual transitional justice in postconflict situations would lead to sustainable peace is dependent on a given transitional contexts, i.e. the political contexts or dynamics, the magnitude of atrocities committed, the socioeconomic and cultural dynamics, the state of existing national mechanisms and the international influence. In this regard CA**7** observed:

> I tell you, it is difficult to tell when to use dual transitional justice. This has to be charged by the amount of violations and perpetration occasioned by the conflict. It has to be charged by the emotional status of the people and the capacity of the government to organize such a system. It also has to be charged around the question of whether total peace was here or it was just a fragile peace. I think to some extent it is quite difficult. This has to be judged from the prevailing circumstances.

Political Dynamics

Political contexts emerged as a critical consideration for dual transitional justice as a policy option. According to TC1, whether or not to utilize retributive and restorative mechanisms for postconflict transitional justice should depend on how the conflict was ended. He indicated that where a conflict was ended by negotiated settlement because none of the warring factions emerged as a winner, the TRC was feasible. But in cases of a decisive victory with a victor, retributive or victors' justice might surface. He believed the war in Sierra Leone ended by negotiation so the Court was not justified as it abrogated key elements of the peace agreement. Its presence immediately changed the dynamics of the peace process. CA1 and UF1 pointed out that in the case of Sierra Leone, it was possible to have the two mechanisms because of the prevailing political conditions. The TRC emerged through a political compromise because the war had gone on for almost a decade with none emerging as a winner, so the government and RUF made concessions to negotiate a peaceful settlement to end it. CA1 indicated that both the government and RUF did not fully adhere to the tenets of the Lome agreement. According to Rahall [2002] there were skirmishes by both sides as each tried to outdo the other. Rahall pointed out that the government reneged on the peace agreement and failed to give certain diplomatic and public office positions in state corporations to the RUF as required by the Lome Peace Agreement. This was done with the excuse of lack of funds and plans to privatise the state corporations; yet the government was able to make two new diplomatic appointments around that time. Rahall argued that such behaviour on the part of government created conditions that contributed to the breaches of the LPA by the

RUF. PO7**,** a former Army Officer, indicated that members of the RUF complained about it. Sankoh[15] the Revolutionary United Front Party (RUFP) (the RUF had then been converted into a political party) leader, complained, among other things, about the wilful breaches of the Lome Agreement by Kabbah's government while the moral guarantors looked on in silence. Sankoh, accused the UN of discriminating against the RUF in the distribution of humanitarian assistance. He decried the unconcerned attitude of the subregional leaders to the breaches and called for diplomatic intervention from the international community for the successful implementation of the Lome Peace Accord.

CA1, PO4 and CA5 indicated that after Lome the RUF engaged in acts of violence; capturing UN Peacekeepers among other things. This was also confirmed by the TRC (2004). In response there was a pro-government demonstration organized by Parliamentarians and Civil Society to protest against the RUF on May 8 2000. Among the demonstrators were ministers of state, members of parliament, leaders of civil society organizations, pro-government combatants, the Sierra Leone Army (SLA), the *Kamajors* (CDF) and the West Side Boys. The demonstrators marched to Foday Sankoh's house to register their protest. Armed exchanges ensued between the pro-government combatants and the RUF. In the process, more than 20 demonstrators died with others dying later. Following the May 8, 2000, incident, Sankoh fled for fear of reprisals but was arrested and detained (TRC Report 2004). In addition, the government embarked on arresting and

[15] Letter by RUF leader Foday Sankoh to subregional heads, moral guarantors of the Lome Peace Agreement and contributors of UNAMSIL, alleging violations of the Lome Agreement by the government dated February 24, 2000. Retrieved April 1, 2007 from http://www.sierra-leone.org/rufp022400.html

detaining RUF functionaries. CA5 believed that Sankoh's act of fleeing of Sankoh and his recapture, arrest and detention amounted to the defeat of Sankoh and for that matter the RUF. Rahall (2002) was of the same view when he observed:

> It was this singular action of show of defeat that brought the disadvantage on the side of the RUF and concomitantly gave the government the upper hand. Government exploited the advantage quickly by arresting the rest of the RUF representatives in government while offering a reward for Sankoh who was then declared wanted. He was finally arrested. (p5)

The RUF response to the May 8, 2000, incident was to advance to Freetown presumably to attack. They were met by pro-government combatants in a fight and the RUF was defeated at Masiaka. According to the TRC the defeat of the RUF was decisive for the first time since the war began in Sierra Leone. The government emerged the victor (TRC Report, 2004).

PO4 said with the crash of the RUF, the way was paved for the government to pursue justice. UF3 said that the government signed the Lome Peace Accord at its weakest point and agreed to have a TRC, but asked for the Court at the beginning of its highest point. This was to be used as vengeance against the RUF when its arm was strengthened by the international community following the May 8, 2000, incident in which Foday Sankoh was arrested. They allowed the TRC to go on all the same as it formed part of the Lome Peace Agreement. UF3 remarked;

> These were the dynamics that made it necessary for the coexistence of the TRC and Special Court… The Special Court was an after thought that was generated by the government in confidence that none of them was going to be prosecuted. I remember meeting Chief Hinga Norman before he was arrested and he was absolutely happy about the great help the international community had given Sierra Leone for establishing the Special Court. Little did he know that he was going to be made a sacrificial lamb.
> .

This was confirmed in the letter the President wrote to the UN Secretary-General to request for assistance to try the RUF [16](Kabbah, 2000 p.2). According to PO6 serving Government Minister, the motivation of government for calling for the Special Court was to get an impartial forum devoid of perceived political influence to try the RUF. He observed:

> They [RUF] were quite suspicious, but we wanted to make it less political. If you use the courts here [national courts], there is the possibility that people might think that Government is influencing it, even though there was a separation of powers. To avoid that, you set up an international court or, a hybrid, and then all of these issues would not be part of it at all. Then you deal with the real issues – who were the people who bore the greatest responsibility? You address those issues as opposed to worrying about answering all these questions about politics and influence of the judicature.

SO3 pointed out that Special Court was set up not only to prosecute the RUF but all the factions in the conflict to the extent that they were deemed to bear "the greatest responsibility" for the abuses that took place in Sierra Leone because the UN would not concede to victors' justice.

As part of the political factors to be considered for utilizing the TRC and Special Court, CA5 pointed out that the two should be used when the government in power was not a party to the conflict. In the case of Sierra Leone, it was felt that the government was manipulative of the two processes. CA5 said:

> When you have a government that is a party to the conflict, these institutions should not be implemented because when they are in control, they dictate. Like the Special Court, they try to say they are independent; they are neutral… but some of us doubt the independence of that Court.

[16] Letter addressed to the UN Secretary-General by Alhaji Ahmad Tejan Kabbah on 12th June, 2000, p.2

CA5 also indicated that the President was unwilling to send a message of reconciliation to the people of Sierra Leone when he appeared before the TRC. UF3 was of the view that the government manipulated the Court concerning those who were indicted for bearing the "greatest responsibility" He said;

> So they [Government] gave away 13 to the Special Court. They [Government] kept the largest number in jail… In 2004 when I was leaving the government had about 117 people in jail who could be sentenced to death for war related offences. Just like those considered to bear the greatest responsibility, those being held in the national prisons had killed and maimed just like those before the Court. However, they were not considered politically high enough to bear the greatest responsibility. The conceptualization of those who bear the greatest responsibility may be those who may not have murdered but those who may have killed were left out. A lot have died, it will continue like that. They will not be released…

TC2 believed that those indicted for "bearing the greatest responsibility" had political underpinnings. He explained that the Sierra Leone Army committed a lot of atrocities but the Army mostly did not participate in the TRC process and were also not indicted by the Special Court. They were pacified because the government was afraid of them. TC4 believed that the government manipulated the Court. He said:

> The reality is that the government of Sierra Leone engaged the Special Court, and it was largely for its own political reasons… The Court has indicted 3 RUF, 3 AFRC and 3 CDF people, as an almost token gesture towards impartiality, but in reality, some of the most conspicuous figures in the conflict and those who probably do bear the greatest responsibility, particularly in the realms of government, have been conveniently overlooked. These include both the President and the Vice President of this country, and for them it is actually extremely convenient to have gotten rid of Sam Hinga Norman through this process. So, even those who fought on the side of government and are prosecuted are in fact not members of the elite who signed up to this…. That is the reason Sierra Leone used the Special Court.

TC3 and PO7 disclosed that a lot of people thought the Special Court was a machination of President Alhaji Tejan Kabbah to get rid of certain opponents in the country.

The Magnitude of Atrocities

The magnitude of atrocities committed emerged as a determining factor in fashioning a dual transitional justice policy in postconflict situations. UF2 believed that if the level of atrocities was so much that people demanded or cried for both mechanisms, then they should be used. He said, “The two mechanisms should be used where the atrocities are so heinous, there might be a cry for people to be held accountable for their deeds while at the same time we think about reconciling the nation”. PO4 indicated that in postconflict situation characterized by massive human rights violations such as occurred in Sierra Leone, people wanted to understand why perpetrators did what they did. Again, there was the need to create a forum to integrate perpetrators and reconcile the nation; hence a TRC was needed for that purpose. The Court was needed to also hold people accountable. In the view of PO4 the TRC as well as prosecutions should be considered where there is no possibility of an abatement of hostilities and perpetrators have not shown remorse. He said in Sierra Leone one of the factors which brought about dual transitional justice was the continued perpetration of violence after the Lome negotiations. The subsequent adoption of the Special Court in addition to the pre-existing TRC was in response to continued and/or renewed violence and insincerity on the part of the RUF to the peace process. CA3 explained that Lome had concentrated on providing incentives to the combatants to give up their arms in exchange for amnesty, among other things. It was felt that the Abidjan Peace Accord, an earlier agreement between the government and RUF was not successful because it did not provide incentives for the

RUF. But the RUF took the amnesty in Lome for granted and continued with hostilities. Civil Society and the people of Sierra Leone were enraged and put pressure on the government to take steps to hold them to account. TC2 indicated that the RUF unleashed belligerent attacks on civilians, captured UN Peacekeepers and attacked the Nigerian Embassy. In his view "the emergence of the Special Court was the product of the refusal of the rebels to reconcile with the process and give peace a chance in the country." CA5 was of the view that the RUF was not sincere with the Lome Agreement and the post-Lome orchestrated acts of impunity by the RUF proved this. Rahall (2000) confirmed the above when he observed:

> Elements of the AFRC, and RUF, continued to kill, loot, and rape even after July 1999. Worse, these atrocities even after LPA [Lome Peace Agreement] received no redress from the government or by the moral guarantors of the document. These unpunished atrocities had a cumulative effect, which reached its climax in the May crisis and the consequent collapse of the Lome framework. (p.1)

The post-Lome context was characterized by impunity. CA5 and CA3 believed that the RUF was going to restart the war. Hence, following the May 8, 2000, incident, pressure was put on Kabbah to take action against the rebels. The President of Sierra Leone also alluded to this in his testimony when he appeared before the TRC. PO7, a former military officer, felt that in an environment of distrust created by a protracted conflict as occurred in Sierra Leone, one should not expect the RUF to be able to end hostilities abruptly. TC3 pointed out that "those skirmishes would not have ceased automatically! It may have been subsiding but that wouldn't have ceased outright. It would have subsided by bits". Hence those pockets of violence were not a justification for the Court.

The State of Existing Mechanisms

In order to determine when the two should be used, participants were asked if there could have been any alternative to using a hybrid international court and the TRC. The existing national mechanism emerged as a possible alternative to the TRC and Special Court. Those who spoke about this matter said that the existing national courts and traditional reconciliatory mechanisms were broken down. This notwithstanding, some felt they could have been resuscitated for use, whereas others were of the view that they could not have been used to deal with the baggage of the abuses that took place.

National Courts Broken Down but Usable

As pointed out, few participants were of the view that there was no need for any Special Court in Sierra Leone since the national court could have been utilized. PO5 argued that even though the national court had broken down, it was possible to resuscitate it and the international community should have come in to train the judges and provided the necessary resources to try the perpetrators in their own court as was done in Iraq. He contended that the national courts should have been strengthened and capacitated to leave a legacy of rule of law. CA6 opined that the national court should have been equipped for the trials, because, “When the people [perpetrators] see justice at the national level they themselves will have confidence that they are being tried in their own country, and being tried for crimes committed against their people”. UF3 pointed out that some trials were still ongoing in the national courts in respect of offences related to the conflict so it was possible to use the national courts if only the government had the political will to do so.

PO9 an official in the Attorney General's Office confirmed that some conflict-related crimes were being prosecuted in the national courts. He said Sierra Leone took a "tripartite" approach to transitional justice in that there were the TRC, Special Court and national prosecutions for war-related offences. According to CA7, some people, especially victims, were of the view that the national court should have been used as it endorsed the death penalty because the war was so devastating and the death penalty had to apply. But at the end of the day those being tried by the Special Court would die in custody or be sentenced to life imprisonment upon conviction.

National Court not Usable

Those in favor of transitional justice mechanisms maintained that if prosecutions were needed then using the Special Court, a transitional justice mechanism was better than the national courts. TC1 explained that immediately after independence in 1961 and particularly following the events from 1967, the administrative system in the country including the judiciary deteriorated. There was a breakdown of law and order; also there was no avenue to organize civil resistance, and that was why people had to go to the bush and fight. Law and order institutions had been compromised and lack of justice was one of the reasons why people resorted to the bush to fight. According to UF2, the judiciary lacked credibility and the confidence of the people; it was plagued by corruption, unfair trials, delayed justice, overwhelming political influence, and poor performance. Again, UF2 indicated that legal system itself was underdeveloped and international humanitarian law had not been incorporated into Sierra Leonean law. PO9 said that most of the

offences being tried by the Court, i.e. abuses of international humanitarian law, were not in the statute books of Sierra Leone. The greatest offence was treason; in that case the national courts could not have been used. CA6 agreed that the atrocities committed were mostly not covered as crimes under Sierra Leone law. There was lack of confidence in the judiciary, so even if justice was in fact done, the outcome would still be doubted. SO6 argued that given the kind of atrocities that occurred, the existing mechanisms were not capable of addressing justice to move the nation forward. There was the need to bring in people with an objective mind to help the nation. TC3 said the postconflict context could not make national courts usable. Thus, the courts did not have the capacity to deal with the abuses that took place. The protracted conflict exacerbated the situation, so after the conflict the national courts were not in the position to administer justice. PO4, a former Government Minister, observed:

> The local [national] court system has been totally corrupted. Even today, we are still struggling to get it to be credible. It has no credibility…so there is no way we could have prosecuted through the local courts and have the process accepted as free and fair. I don't think that was an alternative… I think that the way it turned out is the best possible in the sense that it is based in Sierra Leone, it applies Sierra Leonean law in conjunction with international law and it is being run by the international community using some Sierra Leoneans and so on. It gives some home ground feel, but at the same time has the authority of an international tribunal. I think that it's been a good model.

PO8 said that if they needed to prosecute, the national court did not have the capacity to do it, and no one would have been confident and happy with the outcome if the national court had been used. The people would not have thought that they had been fair. If they needed prosecution they should have sent the people to The Hague. CA5 pointed out that throughout the peace process, Civil Society thought of prosecutions by

the national court. But following the events of post-Lome they realized the national court would not be suitable; a fair and impartial mechanism removed from the ambit of politics was needed to administer justice. They thought more of some form of international mechanism such as the ICC or the Arusha model. CA3 indicated that after the May 8, 2000, incident, Civil Society called on Government to take action to end impunity. They considered the national court and the ICC. The problem with the national court was that it had the death penalty on the statute books and the UN would not be involved in that. Also the laws did not have specific crimes to try abuses that took place. The hybrid approach became acceptable under the circumstances. PO4 said it was necessary to have a fair and impartial mechanism to try the RUF, and the national court could not have been trusted to do that. PO6, a Government Minister, explained why the government opted for a hybrid court thus:

> They were quite suspicious, but we wanted to make it less political. If you use the courts here, there is the possibility that people might think that government is influencing it, even though there was a separation of powers. But to avoid that, you set up an international court - the Special Court - a hybrid, and then all of these issues would not be part of it at all. Then you deal with the real issues – who were the people who bore the greatest responsibility. You address those issues as opposed to worrying about answering all these questions about politics and influence of the judiciary.

PO3 indicated that everyone was tainted in one way or the other during the conflict because everyone including judges took sides; hence a body with foreign leadership such as that of the Special Court was preferable. SO3 pointed out that some of what happened was retribution among families, and therefore the national court was inappropriate. CA2 said there was no way they could have settled the matter amicably with the warring factions, looking at the level of atrocities perpetrated and the dimensions of the war;

because most people thought that, apart from the RUF's involvement, the war partially took on tribal dimensions. Under the circumstances, it was right for the international community, a neutral body, to come in. TC2 pointed out that if they wanted to use the national court, then it had to be strengthened through constitutional amendments to establish a judicial commission, personnel, and an administrative set up. This would have taken a long time to rebuild. In the process, victims would have been agitated. UF1 said he did not think the national court was usable to try the cases being handled by the Special Court. This is because the government did not have the resources and political will to do that. In the interest of peace the international mechanism was employed to prosecute just a few people. Moreover, the national court did not have the capacity to be able to handle the aftermath of the conflict. SO6 argued that the nature of the atrocities was such that Sierra Leone did not have a mechanism to try them. The national court was not equipped to try international humanitarian law. Even in some cases the law enforcement officers were victims themselves and everyone was a victim. People with fresh minds were needed to help out so that the national mechanism could take over subsequently.

Traditional Mechanisms were Usable

CA8 had a contrary view as he believed that not everyone soiled themselves, and so there were remnants that could have been channels for healing and reconciliation at the traditional level. TC6 was of the view that a chieftaincy institution was never vacant; there was always a regent, therefore someone could have been crafted to fill the

gap. TC1 pointed out that the Office of the High Commissioner for Human Rights (OHCHR) commissioned a study that investigated various traditional methods of reconciliation by different tribes or regions, but the international community rejected it because it found it unsatisfactory. Traditional mechanisms for healing could have been used but were considered unsuitable by the international community. TC1 disclosed that when the TRC went to the provinces in Port Lokko and Kambia in particular, the people said that they had accepted the amnesty and government plea to forgive offenders, so the TRC was not necessary under the circumstances. He believed traditional mechanisms could have been used in addition to the TRC.

Others spoke of a complementary approach. SO1 and UF1 were of the view that transitional justice mechanisms should be complemented with existing local mechanisms - for a legacy. But international mechanisms cannot and should not replace national mechanisms. According to PO4 even though traditional mechanisms had broken down, something could have been crafted for reconciliation and to resolving local conflicts but it should be used in addition to the TRC which would do the analysis of the conflict, what caused it and how to prevent a future recurrence. CA5 was of the same view that the focus should have been community led processes that would feed into a central mechanism. The focus should not be on the TRC per se. And findings from the communities would be sent to the TRC to form part of its report. He said that Civil Society had actually created community-based structures for that purpose to feed into the TRC process. CA5 disclosed that pending the establishment of the TRC, Civil Society sent a delegation abroad to study other truth processes. They sent teams to Guatemala,

Chile and Zimbabwe. From the feedback received, they realized that the truth commission was not an answer for Sierra Leone. But a mechanism at the community level which would involve everyone and accepted nationwide would be required to feed into the official truth commission, and also to facilitate community-based reconciliation on a long-term basis. Civil Society set up committees in each of the chiefdoms, all 149 of them, nationwide and the Western Area with representation from women and the youth, religious leaders and community elders. Because Sierra Leoneans differed culturally at the community level, there was no prescriptive model for reconciliation. Each community was to fashion out a model based on the prevailing tradition in that community. The committees were expected to sit under trees to discuss issues and reconcile by traditional processes. However these structures were not used.

Traditional Mechanisms Unusable

Regarding the use of possible traditional mechanisms as alternative to the TRC, SO2 and CA3 were of the view that existing traditional mechanisms could not have been utilised to deal with the aftermath of the conflict because *gacaca*, the Rwandan traditional equivalent of the TRC, did not exist in Sierra Leone's traditional system. TC3, PO9, UF2 said that there was a complete breakdown of the traditional system during the conflict: chiefs were killed, designated places of worship were desecrated by the rebels, the chiefs fled their traditional areas to reside in Freetown and those who decided not to stay in the capital and went back to their localities were killed. UF2 thought that there was a complete breakdown of existing mechanism and the situation was still not better. SO2

added that traditional institutions had been compromised; the actors had aligned themselves with different factions; and chiefs and elders who settled cases would not have been expected to offer objective and impartial justice. He explained that traditional authorities had representation in the CDF that committed a lot of atrocities.

Further, PO9 indicated that traditional mechanisms were not effective channels to address the aftermath of the conflict. UF1 pointed out that traditional mechanisms were anchored by rules that violated human rights and the constitution of Sierra Leone in some cases. They also did not meet certain basic minimum standards; were discriminatory, largely male-dominated and largely unwritten and unpredictable. Such mechanisms were unsuitable as avenues to bring peace when the processes involved were themselves not very fair. TC3 said that traditional systems required a peaceful and congenial atmosphere to operate. Such a condition was non-existent after the conflict. UF3 pointed out that traditional mechanism could not be used in their current state. There was no uniformity among respective cultures of Sierra Leone as to dispute resolution mechanisms and healing processes which cut across all cultures of Sierra Leone in the manner offered by the TRC platform. A national body like the TRC was considered most appropriate to deal with the aftermath of the conflict to bring about truth, healing and reconciliation. PO3 supported the TRC which provided a national level approach to reconciliation because everyone was tainted. They took sides during the conflict so local level mechanism could not produce an impartial process. PO6 also remarked:

> I think the national level was the best that we were able to do. Let me tell you, the animosity at the local level was so high because the crimes some of these people committed were so grievous. I am not so sure of the level of forgiveness and reconciliation that would have taken place through

> traditional mechanisms. The TRC coming from the national level, from the top did certain things for us. It gave it the level of importance that was supposed to have been given to it. To that extent, people were brought in to take part and it made it easier for the people at the lower end to buy into it. It worked much better, because people understood that they could not keep on harboring these views.

According to CA4:

> The war was going to be tainted with tribalism - it was when the Rebels came to Freetown that people realized that Rebels were made up of different tribes of Sierra Leone. There could not be one regional solution to the problem. Local solutions may be perceived as actual bias, prejudiced or unfair.

S06 felt that the traditional mechanisms did not have the facility to conduct an analysis of the war due to the nature of crimes that were committed. The TRC mechanism was preferred.

Sociocultural and Economic Considerations

According to SO1, the decision to use both a truth commission and a prosecution mechanism and to run them concurrently or otherwise should be informed by the prevailing social conditions—the emotional state of the people involved. In this regard, CA7 also pointed out that the two mechanisms should be considered as a policy option by reference to the emotional status of the populace. According to TC1, peace was all that the people of Sierra Leone clamored for and the cessation of hostilities was of utmost importance to them. They therefore did not want anything that might create violence, and were okay with the amnesty. PO8 pointed out that Sierra Leoneans had gone through a protracted conflict and were afraid that the presence of the Court might create violence so most of them did not want to hear about the Court. The presence of the Court engendered

too much tension in Sierra Leone. UF3 and TC4 were of the view that the Court inhibited the society; therefore the two should never be used again. The concurrent operation also engendered too much tension among the people.

PO7 and TC5 felt that the tradition and culture of the people who were going to experience the processes and live with the effects of the mechanisms should be taken into consideration when fashioning out transitional justice mechanisms. It was felt by CA5, UF3 and PO8 that both the TRC and the Court were not fashioned to fit in the culture of Sierra Leone.

Timing in terms of when to set up the mechanisms came up. According to SO6, they should be set up immediately after the conflict when things are fresh on the minds of people so that their effect could be felt. CA8 pointed out that in the case of Sierra Leone, hostilities had calmed down at the time the two institutions became operationalized. Those two mechanisms had nothing to do with the cessation of hostilities. The UN Mission was on the ground and other peace-building mechanisms were underway. TC3 indicated that the TRC could no be set up whilst violence persisted. TC3, CA5 and CA8 indicated that hostilities had ceased at the time of the establishment of the Special Court. PO4 observed:

> Well, really I think Sierra Leone was unique in a sense: At the time TRC started functioning the reconciliation process had gone on some way. And also the RUF in particular had almost been destroyed. Like, for example, what is happening now in the Uganda with the LRA, you are announcing that they are going to indict the leaders of the rebels, how are they going to be willing to stop? Whilst in Sierra Leone already we've gone some way down the line before the Special Court actually started operating. I think that it would be a disadvantage for them to take off exactly at the same time.

The issue of International Influence and Local Conditions

It was emphasized that the choice of accountability should not be dictated by the demands of the international community but the dictates of local conditions. In the case of Sierra Leone, there was evidence that global influence and politics played a major role in fashioning transitional justice policy, in terms of policy choice, conceptualization, design and implementation. TC4 believed this accounted for some of the mishaps that bedeviled the two institutions. He pointed out that those international organizations like No Peace Without Justice, to a large extent, influenced the design of the Special Court disregarding the TRC and other local concerns. PO5 asserted that the Special Court for instance was a response to "pressure from the UN and big international NGOs". TC1 pointed out that the international community did not like the amnesty offered by the Lome Peace Accord. As a moral Guarantor to the Lome Peace Agreement, the UN entered a reservation to that effect. TC2 was of the view that the international community thought that there was a lot of impunity in Sierra Leone, and that if it did not stop the rebels, they would destabilize the country. TC2 further explained that when the rebels captured the UN troops, the UN was enraged by it and considered it as an attack. The UN had to send a strong message that they would not sacrifice peace and stability on the altar of impunity. This view was confirmed by Vincent, the first Registrar of the Special Court. In his statement before the TRC on July 21, 2003, he said:

> It should be recalled that by the time the negotiating process was set, the scale and nature of the crimes committed in Sierra Leone…had attracted the attention and generated the condemnation of international public opinion and created a diffuse support for an intervention of the international community to prevent impunity for those involved in the conflict. In addition, as the United Nations had directly suffered from the conflict following the kidnapping and killing of some of its

> peacekeeping forces, the organization was particularly receptive to support efforts to bring to justice those responsible for such crimes. (p.1-2)

According to the ICTJ (2004, 2006), the UN had invested a lot of resources in Sierra Leone by establishing a peacekeeping mission of about seventeen thousand troops (the largest UN peacekeeping mission then). And the concern was that until certain individuals had been prosecuted, there would not be peace and stability in Sierra Leone. Although some policy-makers felt prosecution would cause violence. TC1 believed that the Special Court was an agenda of the international community. However, by the dictates of international diplomacy the government of Sierra Leone had to assume ownership and had to write to the UN to request and take responsibility for it. CA2 maintained that even though Civil Society clamored for prosecutions, but for the pressure from the international community on Kabbah the president of Sierra Leone, there would have been no Special Court. This was corroborated by Kabbah. In his testimony before the TRC on August 5, 2003, he confirmed that following the May, 2000, incident, his government realized the justification of the insistence of the international community to have some form of prosecution to deal with impunity. It was at that point that they requested the support of the international community to set up the Special Court.

Other reasons cited for the international community's involvement was that Sierra Leone was used as a guinea pig for trial of dual transitional justice. PO8 commented:

> I would say that Sierra Leone was used as a test case. In a way, they [international community] took the agenda of the international community to test to see if it could work. I believe that since the international community had to put a lot of money into the UN for the work, they took the opportunity to test to see how the two mechanisms would be able to work side by side.

TC3 stated, “this was their guinea pig; Sierra Leone became a guinea pig to experiment on”. Another idea was that America played a major role in supporting the establishment of the Court because of its foreign policy. America’s policy was in support of ad hoc international tribunals such as the Special Court as opposed to the International Criminal Court (ICC)—a permanent international criminal structure. TC3 observed America wanted it, because America had not subscribed to the ICC, and they wanted another justice mechanism system to be established to show that ICC was not necessary and that should not be the approach to take. UF1, a UN Official, remarked:

> First of all, people should understand how the Special Court came in because it came at a time when there was this movement to have the ICC ratified, and you know that America was opposed to the ICC. America’s support to the Special Courts was a political way of supporting [showing] their dislike of the ICC.

UF2, also a UN Official, remarked, “this whole concept of Special Court in this country has it own problems because…if we want to be fair to ourselves, this is the machination of United States wanting to say that there can be an alternative to the International Criminal Court”. This idea was corroborated by Peter Penfold (2002), who said that America supported to establish the Special Court for Sierra Leone because it was not in favor of the ICC. Also the ICTJ (2006), a US based international NGO, observed:

> Another issue was the Rome Statute for the International Criminal Court (ICC).The United States had adopted a policy of opposition to the ICC, and a number of international justice advocates worried that American support for the Special Court must be motivated by a desire to demonstrate an alternative mechanism. On the other hand, most support for the Court came from a small, bipartisan group of members of the US Congress, many of whom also support the ICC. (P.12)

PO4, a former government minister, did not agree with the view that the Special Court was an international agenda, or America’s way of showing its dislike for the ICC, but

insisted that the idea emanated from the government of Sierra Leone, and the international community merely influenced the design and the structure.

In Sierra Leone international politics as seen played a major role in fashioning out transitional justice. This seemed to be corroborated by Berewa (2001), the Vice President of Sierra Leone, who justified the Special Court on the basis of Sierra Leone's international obligation to deal with impunity on her shores. PO6, a Government Minister, confirmed that what was happening elsewhere influenced the policy framework for transitional justice in Sierra Leone. PO5 and CA8 said that in Sierra Leone transitional justice seemed to have followed very closely the dictates of the international community without much attention being given to the local contexts within which they had to operate. They recommended that in future attention should be paid to the local conditions in which these institutions operated. SO1 and UF1 felt that international mechanisms should never replace national or domestic institutions but could complement them. Penfold (2002) wondered whether the Special Court was not another example of the international community dictating to Sierra Leone about what was good for that country.

Other Conceptual Issues

Based on the Sierra Leonean experience, participants were of the view that the two should be used concurrently only in circumstances where carefully set out conditions were met, and those include the following:(1) They should be conceptualized together at the onset and be conceived at the same time whether they operated concurrently or

sequentially. (2) Their relationship must be regulated—both institutions in their founding mandate to take account of each other. (3) There should be an independent mechanism to arbitrate or adjudicate between the two in situations of conflict. (4) There should be carefully delineated parameters as to who falls under the ambit of one and who falls under the ambit of the other. (5) There should never be a restriction on the human rights of a person subjected to one process as against the other process. (6) There should be adequate funding for both of them. (7) They must not share information. (8) The need for political will and support for both institutions. (9) Where there is international involvement support of the international community for both institutions must be equitable. In short, it is only appropriate to pursue such a coexistence if the conditions are all clearly agreed upon and understood by both parties in advance and also subject to the scrutiny of a rigorous independent mechanism.

Summary of findings for Question 4

In determining when and how to use dual transitional justice, it came out that the two mechanisms should be employed only if they could facilitate peace and stability. In the case of Sierra Leone participants were divided as to whether both the TRC and Special Court were needed to facilitate peace and stability. Some felt that the war was devastating and incessant peace accords had not yielded peace. It was important for the TRC to embark on measures to heal and prevent a future recurrence and also for the Special Court to send a clear message against impunity. Others felt that it should have been only the TRC because it was not expedient to have the Court .They argued that the

presence of the Court generated too much tension; the peace process could have gone on without it, and the people were more disposed towards the TRC and found it acceptable. These divided opinions notwithstanding, it came up that the decision as to whether the two entities would be needed to facilitate the peace should depend on the contexts of a transition. In this case the political climate should be conducive, the magnitude of atrocities committed and the public's reaction to it, the socioeconomic and cultural dynamics, the state of existing mechanisms and the issue of international involvement.

Other issues which emerged as critical for the design of a dual transitional model were the need to conceptualize the two mechanisms at the same time, the need to clarify their relationship, and having an independent mechanism to arbitrate or adjudicate between the two in situations of conflict. Again, mandates and jurisdictions should be spelt out. Also the rights of witnesses and detainees should be protected and adequate support - international and national - should be given to both of them.

Summary

Chapter 4 gave a brief description of how the research was executed and the presentation of findings that yielded from the analysis. Question 1 explored how postconflict Sierra Leone coordinated transitional justice mechanisms of the TRC and Special Court in her peace process. Transcripts from interviews and documents were analyzed in response to this question. It was found that the TRC and Special Court were not coordinated and organized as two parts of a transitional justice tool. They were fashioned as separate, independent and uncoordinated bodies. They emerged at different

times, anchored in different ideological underpinnings which were contradictory, and their objectives were not harmonized. Their mandates overlapped and their legal relationship was not clarified. Moreover, at the implementation stage, their operational processes were not coordinated. Given their contradictory basis, the public was confused about them because they did not understand why one was in effect enforcing the amnesty and the other should be enforcing its revocation. Again, it was found that because their relationship was undefined, it was very difficult for the public to appreciate their distinct role in the peace process. And people were not sure how their cooperation with one institution would affect them as far as the other institution was concerned. The implication was that the public did not cooperate much with the two mechanisms, particularly the TRC because of the fear of the Special Court. Due to their overlaps in mandates, as the TRC was inviting people for reconciliation, the Court was also chasing them for trials. This generated a fair amount of tension between the institutions themselves as well as the public.

Question 2 was to find out about the practical occurrences between the TRC and Special Court when they existed side by side to administer restorative and punitive justice. Analysis of interviews, documents and researcher's field notes revealed that the nature of the working relationship was cooperating and uneasy at the same time. Further, areas of linkages bearing on their working relationship were identified as information sharing, use of the same personnel and experts, use of the same witnesses, and joint public education. There was no consensus among participants on sharing of information, use of the same personnel, witnesses and joint public education.

Question 3 explored lessons derived from Sierra Leone's dual transitional justice model. Analysis of available data and transcripts from interviews as well as researcher's field notes was undertaken. There was no consensus as to whether dual transitional justice as a policy option was desirable for peac-building in Sierra Leone. Whereas some thought it was a good policy choice, others preferred only the TRC to have been used. Timing emerged as a critical factor in cases of dual transitional justice, namely whether to sequence or have them run concurrently. There was no consensus among participants on this issue because some felt it was okay to have them run concurrently, but others felt they should have been sequenced. Again, in cases of sequencing, the issue emerged as to which of the two mechanisms be implemented first as a matter of priority. Opinions were divided on this as well. It was found that there were challenges to dual transitional justice in Sierra Leoen, namely the public was confused about the two mechanisms; there was division and tension among the populace, local and international NGOs and the UN. In terms of impact of the side-by-side existence on both institutions, it came out that the TRC was marginalized as the Court was somewhat enhanced. Finally it was found that in spite of the challenges, certain benefits accrued from the side-by-side operation of the two institutions.

The objective of question 4 was to find out the circumstances under which restorative and retributive mechanisms should be employed and how they should be conceptualized for implementation. Analysis of transcripts from interviews revealed that the two mechanisms should be employed when both were needed in order to facilitate peace and stability in postconflict situations. In order to determine their desirability, the

context of a particular transition should be analyzed against the backdrop of the political dynamics, the nature and magnitude of atrocities committed during the conflict, prevailing socioeconomic and cultural conditions of the transition, timing in respect to the peace equilibrium, and the state of the already existing accountability mechanisms. International influence was identified as a crucial factor. Other issues critical to their conceptualization were identified as well.

Based on the analysis and findings derived from the Sierra Leone experience, th emerging themes for discussions are whether a criminal court and a restorative mechanism like a truth commission are compatible? How could they be coordinated for a harmonious existence? What were the critical linkages in their working relationship? How should they be adapted to fit in local conditions, particularly where the mechanisms were by nature international or hybrid or had an international component? Again, it was important to consider local and international dynamics that impinged on the mechanisms. Chapter 5 discusses the emerging themes in line with the literature on transitional justice. Again, specific recommendations are made in line with the import of the study for social change and issues for further research are identified.

CHAPTER FIVE:

DISCUSSION, IMPLICATIONS AND RECOMMENDATIONS

Introduction

The purpose of this study was to provide a deeper understanding of the process of using restorative and retributive mechanisms concurrently to facilitate peace-building in a postconflict situation. To this end, the study examined in detail how the Truth and Reconciliation Commission (TRC) and the Special Court for Sierra Leone were engaged side-by-side to offer transitional justice in postconflict Sierra Leone and the dynamics of such an approach. The following research questions guided the study:

1 How did Sierra Leone coordinate restorative and punitive transitional justice mechanisms of the TRC and Special Court respectively in its peace-building process?

2 What was the nature of the working relationship between the TRC and Special Court as coexisting transitional justice tools?

3 What is the nature of the experiences derived from Sierra Leone's dual approach to transitional justice?

4 When is it appropriate to use dual transitional justice mechanisms?

Overview of the Context of Study

The qualitative case study methodology was employed as the most appropriate method to ground the research because of the purpose of the study and the type of data

required for it. This methodology was used because it provided multiple sources of data to build a comprehensive picture of what happened when the two mechanisms coexisted to provide transitional justice (Jacelon & O'Dell, 2005). Such detailed information/ analysis required to provide an understanding of the concurrent use of retributive and restorative mechanisms for postconflict transitional justice would not have been possible if a quantitative survey had been used. Three data sets were used for the study, namely interviews, available documents and researcher's field notes. Participants were 31 informants comprising public officers, TRC officials and Special Court officials, civil society actors and UN officials. They were specially selected for their diverse experiences in matters concerning the TRC and Special Court. Researcher engaged each participant in an interview which lasted for one hour or less to discuss their experiences regarding the TRC and Special Court. Documents used for the study were statutes of the TRC and Special Court, reports and transcripts of proceedings of the two institutions, UN reports on Sierra Leone, relevant peace agreements, reports of civil society organizations, media documents and other secondary documents. Researcher's observational field notes were included in the analysis. The analysis was done by detailed "description", "categorical aggregation", "direct interpretation", establishment of "correspondence and patterns", and development of "naturalistic generalization". Findings were validated through the use of multiple sources of data, member checking, rich thick description, and peer review.

This chapter consists of three sections. The first section discusses the findings of the study. The second section reviews its implications for social change with specific

recommendations for stakeholders, and the final section makes recommendations for future research. It should be pointed out that this research was grounded in the conceptual framework of transitional justice. It was not set out to test any particular theory(s). Transitional justice constituted the lens through which researcher viewed and examined the dynamics about the TRC and Special Court. Due to the nature of research questions i.e. open-ended, answers were not that specific. The findings from this case study basically are *lessons learned* from Sierra Leonean experiences. It will contribute and add to the knowledge base on dual transitional justice. This type of knowledge is what Aristotle (350 BC, as cited in Buehler, 2006).) referred to as *phronesis*, meaning "practical wisdom". This is knowledge based on the experiences of a particular situation. According to Aristotle, having knowledge as to how to do something is not enough on its own. It is important to know how it is done in a real world in a given context. And knowledge derived from real world experiences of a particular situation can serve as a guide. By reference to Aristotle, what has been gleaned from Sierra Leone's experience with dual transitional justice is particular to that context. Yet it shows the practical dynamics of engaging dual transitional justice. If a nation wishes to engage both restorative and retributive mechanisms for postconflict transitional justice, here are the lessons learned from Sierra Leone about dual transitional justice - *practical wisdom* to inform the decision, design and implementation.

Discussions on Findings for Question 1

Research Question 1 asked: How did Sierra Leone coordinate the restorative and punitive transitional justice mechanisms of the TRC and Special Court respectively in its peace-building process? It was revealed that dual transitional justice in Sierra Leone was unplanned and uncoordinated and contradictory to each other.

Unplanned, uncoordinated and Attendant Contradictions

Answers to Question 1 revealed that Sierra Leone's approach to dual transitional justice was ad hoc—unplanned. The TRC and Special Court were conceived and established at different times as separate and independent mechanisms. Their operations coincided at a given period creating a side by side existence. The concurrent existence was coincidental or a factor of accident. The two institutions were derived from different ideological underpinnings which were in themselves considered contradictory: the TRC was a response to the grant of amnesty by the Lome Peace Agreement, and the Special Court, a revocation of that amnesty. There was a divided opinion about the amnesty. Supporters of the amnesty argued that it was accepted by Sierra Leoneans, its revocation was a breach of moral trust and therefore improper. Those against the amnesty argued that it was not binding in international law and the conduct of the RUF revoked it. This notwithstanding, it was found that revocation of the amnesty created rancour among the CDF and confusion among the populace, as one institution was affirming it the other was denouncing it and thus affected how people perceived and cooperated with the Court.

Question 1 further established that the laws setting up the two institutions were not harmonised. Their mandates overlapped and both institutions could deal with the same persons, and cover the same issues which fell within their temporal jurisdictions during the time of their coexistence. As a result, many Sierra Leonean could not tell the difference between them. Their legal relationship was not clarified. This generated controversy between them, local and international NGOs, experts and stakeholders as to the nature of their relationship namely parity or primacy. There were inconsistencies in their laws as well. Due to these ambiguities, no clear and definite information could be conveyed to the people of Sierra Leone as to how the two institutions would relate to each other. The public was confused because they were not sure about how information given to the TRC would be treated by the Special Court. As a result, before they became operationalized, perpetrators who had earlier on indicated their interest to cooperate with the TRC changed their position. Also, during their implementation, the two institutions themselves did not put in place any guidelines to guide their operations. Each institution pursued its mandate without paying attention so much to how it would affect the other. As a result, the public became confused about the distinct roles of the two institutions in the peace-building process. This greatly affected the level of public cooperation, particularly with the TRC.

First, the findings to Question 1 raised the issue of coordination in terms of normative framework, philosophical bases, and operational activities. The findings showed that the ad hoc and uncoordinated approach to dual transitional justice in Sierra Leone threatened the mandates of the two institutions. The idea that ad hoc approach

might undermine the respective mandates supports Evenson's (2004) observation that engaging a truth commission with a retributive mechanism could be counterproductive if not coordinated properly. And that was the case in Sierra Leone. Evenson discussed coordination in terms of predicating each on the other and cited the experiences in East Timor as a success story where a reconciliation mechanism was anchored within the broad framework of a retributive process to show that they could be coordinated to coexist harmoniously. In 1999 when East Timor gained her independence from Indonesia, the UN Security Council put in place the UN Transitional Administration in East Timor (UNTAET) to govern and administer that country. UNTAET, set up a Serious Crimes Unit within the District Court of Dili, a retributive mechanism and the Commission for Reception Truth and Reconciliation (CRTR), a restorative mechanism, to deal with abuses that had occurred in a political insurgency in that country. Where the CRTR received a statement from perpetrators they were reviewed to determine whether the perpetrators qualified for community reconciliation. Where the perpetrators qualified they were submitted to the CRTR process. However, where the statement depicted a serious offence it was referred to the Office of the Prosecutor of the Serous Crimes Unit and the CRTR discontinued its proceedings in the matter. If the Prosecutor did not act on the referral, the CRTR resumed its proceedings on it. In the case of Sierra Leone, each institution was independent of the other and carried out its functions without due regard to how it affected the other.

Doyle (2004) also identified coordination as critical to effectively using dual transitional justice. She discarded the idea that retributive and restorative mechanisms

were incompatible. She maintained that they provided values that were not incompatible and that could be coordinated to compliment each other to provide, social *repair, justice* and *reconciliation*. She identified coordination in terms of delineating the jurisdiction of each of the institutions to avoid overlapping. Doyle proposed that when using restorative and retributive mechanisms, prosecution should be limited to only a few such as "the intellectual authors of crimes" and the rest be left for the restorative process (p126). Doyle cited Argentina where few prosecutions took place in conjunction with restorative measures as a successful case of implementation of the restorative and retributive paradigms. According to her, it served as a strong message against impunity for the other perpetrator groups, provided victims with a sense of justice, and sent a signal to the population of a government committed to democracy and the rule of law. Even though Special Court indicted 13 people, 3 died and one was at large, leaving 9 (2 had died as at the time of the interviews, and 1 died after the interviews). It might be supposed that the rest were left with the TRC so there should not have been any problem by reference to Doyle's suggestion. This was not the case in Sierra Leone because the laws setting up the two institutions did not delineate their respective, jurisdictions concerning exclusive personal, temporal and subject matter jurisdictions. Thus both had an interest in the same people and same issues as the case may be. As one was calling people for reconciliation, the other was chasing them for prosecution. This brought about a head-on collision between them especially when the TRC sought access to the detainees of the Special Court leading to a breakdown in their relationship. The public became confused and could not appreciate their respective roles. The research also brought out other areas such

as inconsistencies in their laws. For example whilst the TRC claimed parity, the Court claimed primacy. This gave rise to unwarranted controversies and tensions in areas that needed to be coordinated for a harmonious coexistence. It was important to indicate clearly and expressly the nature of legal relationship between them - whether they were at par or whether one had primacy over the other.

Second, the findings raised the issue of the compatibility of the restorative and retributive mechanisms by reference to their underpinning values. This was discussed in terms of the amnesty. The grant of amnesty and revocation of same, which formed the basis of the two mechanisms, made them contradictory. This appeared to be the case because the TRC had emerged from a particular transitional context with amnesty as an integral part. The moment the idea of the Court came to the fore, there was a paradigm shift in the transitional contexts and a new situation came into play. Yet the TRC was made to proceed on the old paradigm; conditions which no longer existed, whilst the Court proceeded on the basis of the new contextual paradigm. The TRC evoked the old situation whereas the Court evoked the new paradigm. This generated tensions and confusion as the public could not understand why one was enforcing the amnesty and the other was revoking it. Furthermore, the issue of contradictions emerged as the two institutions evoked values of truth and justice that were considered incompatible. Again, there was the fear that the two mechanisms would generate contradictory effect that would perpetually haunt Sierra Leoneans if the Court's verdict were to be at variance with individual responsibility as determined by the TRC. It should be pointed out that in a typical legal system, a restorative mechanism, which is quasi-judicial in nature like the

TRC, exists alongside courts with criminal jurisdiction. If so why should it be thought that a truth mechanism like the TRC and a criminal mechanism like the Special Court were not coterminous and should not have been engaged for transitional justice in post-conflict Sierra Leone? The difference, however, is that in a typical legal system what constitutes a crime is clearly spelt out in a criminal code and does not constitute a subject matter for forgiveness or reconciliation. Even if the subject matter of a crime undergoes a settlement through a restorative mechanism of any kind, it does not constitute a foreclosure to subsequent criminal proceedings that may arise in respect of the same subject matter. Therefore, there is no overlap in terms of personal and subject matter jurisdiction between restorative and retributive processes, and such confusion as occurred in Sierra Leone will normally not occur in a relationship that is clearly defined.

In conclusion, findings to Question 1 suggest that a decision to utilise the two mechanisms must not be taken haphazardly. A lot of attention must be given to it and it must be planned well. Those involved; government, the international community, negotiators as well as other stakeholders should face the realities presented in a given situation and deal with accountability policies thoroughly. It is important for policymakers to understand how a truth process works and how a transitional criminal mechanism works and design a policy to overcome any envisaged contradictions in their coordination. The next section discusses findings derived from the practical dynamics of their working relationship.

Discussions on Findings for Question 2

Question 2 asked**:** What was the nature of the working relationship between the TRC and Special Court as coexisting transitional justice tools? Responses from participants identified the nature of the working relationship as cooperative, uneasy and conflicting and also identified linkages in working relationships in the areas of information and witness sharing, and having joint expertise and public education.

Cooperative, Uneasy and Conflicting Working Relationship

This study found that the working relationship between the TRC and Special was cooperative and at the same time conflicting. It was felt that they were separate and independent and had little to do with each other. It came out that the two institutions initially cooperated and were publicly seen as mutually supportive of each other; they were normal and cordial. This seeming cordiality notwithstanding, some participants indicated that they were uneasy about each other and their relationship was difficult throughout. This was because their relationship was not clearly defined. As the Special Court claimed primacy over the TRC, the TRC claimed parity with the Court. As the Court dictated the relationship, the TRC asserted its independence. Each guarded its independence fiercely. When they clashed over detainees due to the overlap in mandates, they could not handle it amicably. There was also no framework in place to deal with their differences, and the situation escalated into an open conflict thereby undermining both institutions. Despite these anomalies in coordination, it was found that the failure of

the leadership of both institutions to cooperate with each other exacerbated the situation; there was evidence of rivalry and personal feuds between the leadership as each accused the other of non-cooperation. It was felt that disparity in resources alone could have created such envy and rivalry.

The nature of the working relationship between the TRC and Special Court as cooperative, uneasy, and conflicting brought into sharp focus the human side of the enterprise of concurrent running. What this means is that attention must be given to those appointed into positions of leadership of truth commissions and courts where they are to coexist or run sequentially. It does not matter what coordination arrangement is put in place. Given the nature of truth and criminal proceedings, the likelihood of the two intersecting in their concurrent existence is inevitable. Where the leaderships of such two mechanisms frame their mandates as complementary, coexisting mechanisms working towards the same goal howbeit different routes, a point of convergence would be met and the leadership would cooperate to ensure a harmonious coexistence. A rivalry approach would undermine both mechanisms. These findings corroborate Evenson's (2004) observation that open conflict between the leadership of the two institutions could undermine both of them in the absence of an effective coordination.

Linkages and Cleavages in Relationship

In terms of the nature of the working relationship, it also came out that the two institutions could be linked and were in some cases linked with each other in certain areas

of their operation that impinged on their respective functioning. Areas identified as possible linkages crucial to the working relationship were information sharing, using the same witnesses, having joint public education, and using the same staff and experts.

Information Sharing

Information was identified as a critical source of linkage. It was established that the two institutions did not share information at the official level. They took the watertight approach not to share information, and did not officially share information. The Prosecutor decided to pursue his own investigations, and the TRC took the decision not to share information with the Court. In spite of this, it was found that a perception existed among the public that the two institutions shared information or might have shared information informally. Also, it appeared the Special Court used information that accrued at the TRC public hearings. This perception impacted on the two institutions, particularly the TRC, thus threatening its mandate to hold a forum of exchange between victims and perpetrators. Three scenarios emerged from participants' perspectives about information sharing. These are (1) no information sharing between the two; *firewall*, (2) a two-street approach to information sharing, from the TRC to the Special Court and vice versa, and (3) a one-street approach to information sharing, from the Court to the TRC.

In terms of whether the two should have shared information or not the majority of participants (15 out of the 21 who identified information as a critical linkage in the working relationship) said it was good that they did not share information because it

would have collapsed the TRC as perpetrators would not have collaborated with it at all. Though, perception of information sharing did some damage in that regard. The effect of non-information sharing was good for the TRC. This view supported Evenson's (2004) observation that as far as information was concerned, the *firewall* approach was appropriate within the context of Sierra Leone. Evenson identified reconciliation and reintegration as strategic goals of transitional justice and for that matter the TRC, and argued that information sharing would have threatened the mandate of the TRC as perpetrators would have been afraid to cooperate with it. She maintained that given its resources, the Special Court would not have required information from the TRC, because Sierra Leone was a small country so perpetrators could not hide and could easily be identified. Thus, not sharing information was good for the strategic context of transitional justice in Sierra Leone. It should be pointed out that at the onset, it was assumed that the Court would need information from the TRC and it would be detrimental to the Court not to do so. But contrary to these assumptions, the general view was that the Court did not need information from the TRC, and the Court officials also said they did not need information from the TRC. The finding that information sharing would be detrimental to the TRC supported the views expressed by several authors (Human Rights Watch, 2002**;** Report by the Office of the Attorney General and Ministry of Justice, 2002; Wierda, et al, 2002). This not withstanding, these authors proposed conditions for information sharing to ameliorate the envisaged damage to the TRC.

A minority was in favor of information sharing from one to the other. They pointed out that the two institutions could have learned and benefited from each other to

enhance results. In terms of information passing from the TRC to the Court, they argued that a lot of information accrued to the TRC but because the Court failed to make use of it, its mandate was narrowed to indict only 13 people, probably for lack of sufficient information to indict more people. Again, considering the TRC Report, the Court should have benefited from the information the TRC received, and arrangement should have been made to that effect. As already been pointed out, Special Court officials interviewed indicated that the Court carried out its own investigations and did not need any information from the TRC. Howbeit UNIOSIL, custodian of the TRC archives (at the time of the interview) disclosed that Special Court Officials made informal efforts to have access to the TRC files but UNIOSIL did not allow that to happen. Does this mean that the Special Court probably needed access to the confidential records of the TRC to aid in its own investigations? A situation anticipated by some commentators and observers before the two institutions were operationalised (Human Rights Watch, 2002; Wierda, et al, 2002). The Report of the Experts Meeting (2000) which took place before the Special Court was established indicated that because the TRC had a wide mandate in comparison with the Court, the TRC would gather a wide range of evidence which should be available to the Court to lessen the investigative burden of the Prosecutor. Wierda et al (2002) proposed conditional information sharing between the in institutions, as unrestricted information sharing would be detrimental to the TRC and no information sharing detrimental to the Court. According to them, the TRC should share confidential information with the Court "…if it is essential to the fair determination of the case before it", and if the information "cannot reasonably be obtained from another source" (p.12).

Again, Wierda et al proposed that the Special Court should make use of the TRC report and get TRC Commissioners to testify before it after the TRC had completed its work. Further, if any conflict were to arise concerning information sharing it should be resolved in the Chambers of the Special Court and not outside of it. The government of Sierra Leone considered information as critical between the two and was in favor of disclosure of information that the TRC received in confidence to the Court (Report by the Office of the Attorney General and Ministry of Justice, 2002). Human Rights Watch (2002) identified information sharing as a critical linkage between the TRC and Special Court. They thought the two should not duplicate each other's efforts and that the Special Court could obtain information from the TRC and vice versa and, therefore, advocated a cooperative arrangement to that effect so as not to cause damage to the TRC because of the overwhelming powers of the Court. The study seems to confirm the concerns expressed by the afore-mentioned authors about the need for the Court to obtain information from the TRC. This is based on the fact that some Court officials sought informal access to the TRC files.

In terms of information passing from the Special Court to the TRC, it was argued that the Court had resources and could share information that came to its domain with the TRC except those that would jeopardize the prosecution. Again, it was felt that doing so would not be detrimental to the Court. This was in consonance with the proposal by Human Rights Watch (2002) that the Special Court should also share information with the TRC to the extent that divulging such information would not jeopardize ongoing investigations. Even though the Court did not owe the TRC any obligation to share

information, their mandates overlapped so they could cooperate to cut down on cost as resources were limited. This idea which emerged indicated that the TRC could access information from the Special Court, a situation which was not anticipated by majority of commentators, observers and stakeholders prior to the implementation of the two institutions. The assumption was that the Special Court would require information from the TRC.

In conclusion, the experiences in Sierra Leone confirmed the idea that information sharing was detrimental to the TRC. Even though there was no information sharing, the existence of this perception had an adverse effect on it. The idea that the Special Court would need information from the TRC or it would be hindered did not appear to be the case. As it turned out, the Prosecutor said that his office would not secure information from the TRC. This undertaking was obviously made to ensure a harmonious coexistence between the two mechanisms. Right at the beginning of their operation, the mandate of the TRC was under threat. Sensing this, the Prosecutor took that position to ensure confidence in the TRC process - a fact the TRC acknowledged in it report (Report of the TRC, 2004). It is not clear how the position taken by the Prosecutor affected the Special Court. A further research may be needed to probe further into it; because if they made informal approaches to UNIOSIL as disclosed, it probably was an indication that not having had access or not having made use of all the information accruing to the TRC affected the outcome of their processes. In fact some participants believed it did. This is a situation the Court may not have probably encountered but for the existence of another transitional justice mechanism. Again, contrary to the

predominant view that the Court should not share information with the TRC, some felt the Court could have shared information it gathered with the TRC except where doing so would be detrimental to the prosecutorial purposes of the Court.

Use of Personnel and Expertise

On the issue of using the same staff and expertise, it was established that when a TRC investigator left to work for the Court during the time of their concurrent existence, it had an adverse impact on the TRC as people thought that it was an investigative arm of the Court. Also, it emerged that those TRC staff who later on took up employment with the Court after the TRC ceased to operate did not in some cases enjoy cooperation from some staff of the Court and the public at large. Opinions were divided as to whether or not the two could share the services of the same personnel/experts/consultants. Those in support were of the view that legally, it might not be possible to stop a person from working with both institutions, one after the other. These divisive opinions notwithstanding, what this indicates is that in situations of dual transitional justice there is the possibility of the two using the same personnel which could then result in adverse consequences. It is up to each institution to weigh the benefits that the person brings and the potential damage this might cause upon such hiring. The main reason cited by those who support using the same staff was the experience such personnel could bring from their mother organization. Even then, others felt this would constitute information sharing in that respect. Using the same experts or consultants could also lead to conflict of

interests. The literature did not seem to pay attention to this as a critical linkage and a possible source of confusion. Therefore, attention must be given to the possibility of such an eventuality and a decision taken on it ahead of time.

Joint Public Education

Concerning joint public education, it was found that the two institutions occasionally made joint public appearances during the initial stages of their operations but did not collaborate on joint public education as a matter of policy. Opinions of participants were divided on this issue. The majority were against it because if the people in Sierra Leone saw the two institutions working closely together they would have concluded that they were collaborating on information sharing and in other areas and would not trust them. The only participant who supported joint public education cautioned that when they mounted common platform they should have distinct approaches. The predominant view seemed contradictory to the position taken the by Wierda et al (2002) that collaboration in joint educational campaigns could be good for the two institutions, likewise the sharing of public information; and also the government position that they could have joint public education because it was important for them to be consistent in the message they gave out else both would lose public confidence (Report by the Office of the Attorney General and Ministry of Justice, 2002). The overriding lesson gleaned from participants was that such collaboration would have been detrimental to the credibility of the two mechanisms with a severe impact on the TRC.

Same Witnesses

Using the same witnesses was found to be the most challenging aspect of their working relationship when the two coexisted. This emerged in terms of the TRC wanting to access those indicted and detained by the Special Court and the Special Court also using as witnesses those who had testified before the TRC. The Trial Chamber of the Special Court refused the TRC's initial application to grant access to some of its detainees. Upon appeal, the Appeal Chamber of the Court approved the application but on conditions which the detainees rejected. The argument of the Court among others was that it would be weakened if an accused was permitted to publicly showcase their case in public pending their trial. The TRC insisted on public hearings that would be carried live as was characteristic of their hearings, and the detainees also wanted the public hearings. The TRC officials said that in the absence of the detainees' version they were not sure that their report contained the full truth.

Majority of participants were not in favor of the TRC conducting public hearings with detainees or even interviewing them at all in private. This idea supports the position taken by Wierda et al (2002) and ICTJ authors that the TRC should not obtain information from detainees of the Special Court as this would adversely affect the Court's proceedings; although the ICTJ later changed its position and felt that the TRC should have access to the detainees of the Court (*Prosecutor v. Norman, 2003,* Appeal Chamber). Similarly, it was in line with the UN Expert Group (2001) advice that the

TRC must not have access to those the Prosecutor had identified for the Court. Also, on the issue of the Court using witnesses who had testified before the TRC, the majority felt that the Court should not make use of TRC witnesses. Generally, in terms of using the same witnesses the overriding position of participants was not in favor of the two sharing witnesses. The reason was that witnesses needed to be protected, and using the same witnesses for reconciliation and prosecutorial purposes would lead to a miscarriage of justice. The minority position was that they should access each others witnesses. The TRC should have access to detainees of the Court when the detainees had expressed the desire to do so because it was their human rights; and the Court could make use of witnesses that had appeared before the TRC. This is in consonance with the position taken by the civil society organizations in Sierra Leone[17] namely, that when a person was indicted by the Court that should not prevent him from participating in the TRC process. It was further found that the presence of the Court had an adverse impact on the TRC and greatly hindered it from gaining the required witnesses including those in the custody of the Special Court. Howbeit the Court might have gained from the public hearings of the TRC to identify witnesses.

From the foregoing, it appears the impasse which ensued was largely due to the fact that the indictees had already been arrested and detained. In a situation where they had been indicted but not arrested and detained or been arrested and granted a bail by the Court what could happen? Could the TRC have been able to obtain public hearings from

[17] Report on the NGOs meeting on the relationship between the Truth and Reconciliation and Special Court, held on Tuesday January 15, 2002 at the Christian Health Association of Sierra Leone Conference Hall, Freetown. Hosted by the National Forum for Human Rights, International Human Rights Law Group and International Centre for Transitional Justice.

them based on their consent without any recourse to the Court? Could the Court order the TRC not to hear their indictees at all or not to hear them in public? And would the TRC be obliged to comply with the Court's order? Alternatively, could the Court order the indictees not to submit to the TRC process?

In conclusion, answers to Question 2 confirmed that when restorative and retributive mechanisms coexist they could be intersected in their working relationship with grave consequences to their receptive mandates. This study identified information sharing, joint public education, using the same witnesses, and personnel as possible areas of linkages and their possible impact on the institutions themselves and the public at large. This shows it was important that at the outset of their coexistence, the two institutions' should have clearly identified areas of linkages and cleavages depending on their mandates, and a memorandum of understanding adopted to guide their relationship. The next section discusses other lessons learnt from the Sierra Leonean approach to transitional justice.

Discussion on Findings for Question 3

Question 3 asked: What is the nature of the experiences derived from Sierra Leone's approach to dual transitional justice? Ideas that emerged as core experiences derived from dual transitional justice mechanism were its suitability as a policy option, timing for its implementation: sequencing or concurrent running, public confusion and dilemma, divisions and tensions among the populace, local and international NGOs and

the UN, impact of side by side existence on both institutions and benefits of the dual transitional justice system.

Suitability

All the 31 participants raised the issue of suitability. They were also in agreement that restorative and retributive mechanisms were not mutually exclusive—the use of one should not bar the use of the other. However, in the case of Sierra Leone, they were divided on its suitability as a policy choice. Some felt that having the TRC and Special Court as occurred in Sierra Leone was good. Others felt the TRC and the Special Court were inadequate and there should have been purges and lustrations in addition, whereas others felt that only the TRC was appropriate.

Those who spoke in favor of having the two mechanisms pointed out that they needed to address the needs of victims and reconcile the nation through the TRC mechanism; however, the TRC as a sole accountability mechanism was weak and incapable of dealing with the aftermath of the conflict. The atrocities committed were too gregarious and incessant peace accords did not bring about peace so a prosecution mechanism was needed to put a stop to impunity both in Sierra Leone and in the subregion because the war had international dimensions. Again, the two mechanisms satisfied both national and international concerns and strengthened governance—a sign of commitment of the government and international community to the rule of law and people of Sierra Leone. This perspective supports Doyle's (2004) preference for utilizing both the restorative and retributive approaches for transitional justice on the basis that the use of the two mechanisms would deal effectively with past abuses rather than using one

of them as advocated by other writers. She cited the weakness of transitional justice in Chile after Pinochet's dictatorship which mainly comprised a restorative mechanism. In contrast, she felt that transitional justice in post-military Argentina was a success because both restorative and retributive mechanisms were administered for greater justice.

Those who felt there should have been lustrations and purges in addition to the TRC and Special Court maintained that both the TRC and Special Court were inadequate as justice mechanisms to address the consequences of the conflict. In addition there should have been purges and lustrations to get "bad nuts" out of public office, particularly the army should have been purged because of their insurgency against the nation but rather they had been assimilated. The idea that purges and lustrations provide justice is recognized by Hayner (2002) in whose view different tools may be required for transitional justice and these include lustrations and purges.

Those who felt only the TRC was needed maintained that the TRC had broad consensus, was in consonance with the culture of Sierra Leone, the people accepted the amnesty and wanted to forgive and forget their past. Again, it was argued that the war was due to the ineptitude of government as opposed to tribal and or other causes, and that the limited resources should have been used through the TRC process to deal with the social consequences of the conflict and reconcile the nation, and also address the needs of victims and transform institutions. It was pointed out that the people of Sierra Leone were tired of war and wanted to put the past behind them, the presence of the Court created too much tension and fear in the populace and hindered effective reconciliation. If prosecutions were required they should have used the international criminal mechanisms

outside of Sierra Leone. It was also believed that the government used it as a tool for vengeance against the RUF and also to get rid of their political opponents, because indictments of the Court were politically motivated. The idea that only a restorative mechanism could be used for a postconflict transitional justice is recognized by some writers (Gibson, 2002; Tepperman, 2002; Tutu, 1999; van Zyl, 1999). But they discussed it in terms of a policy option by virtue of political exigencies, where the political context did not favor prosecutions. What has emerged from this study is that the nature and causes of the conflict as well as the emotional status of the populace after the aftermath may require the employment of only the TRC as the appropriate channel to address the ills of a conflict. It is important to go beyond the political contexts in this regard in the analysis of its suitability.

The three policy option models that emerged out of the discussion of the Sierra Leone situation are among the models recognized by Hayner (2002) to deal with past abuses. This indicates that there is no single best approach to addressing abuses of the past. In the pursuit to facilitate peace and stability in the wake of a violent conflict, several options become available for consideration and policymakers must consider each option critically before making a choice. It may not always be prudent to utilize the two.

Implementation; Timing

Timing, in terms of when to implement the mechanisms, whether concurrently or sequentially, was considered critical to successful implementation when utilizing the restorative and retributive approaches for transitional justice. Some participants felt that

the timing in terms of concurrent implementation was good, because the aftermath of the conflict required assurance to victims through the TRC and also to dealing with impunity through the Court. Again, at the time the two mechanisms came on board, the conflict was very fresh in the minds of people so the two institutions made sense as it were. Giving the contexts of the transition, both mechanisms were needed to run the way they did. Also, international will to fund those two institutions at that time might have been lost if one had waited for the other to complete its work. By coexisting side by side, they learnt from each other as they went along and also strengthened their effectiveness. The idea of concurrent running supported the assertion by Doyle (2004) who recommended the approach that truth and retributive process could be used and actually run together for greater justice.

The predominant view was in favor of sequencing the two mechanisms if the two were to be used. Reasons found were that when the TRC and Special Court run side by side they contradicted each other. The populace could understand them better and offer their cooperation if they were run sequentially. When they run together one would suffer; the TRC would suffer. Also running them together generated a lot of tension with adverse impact on the peace process; truth and justice suffered as people escaped from both mechanisms. Sierra Leone was a small country so the impact was too heavy. They generated tension between the two institutions themselves as well as the general populace.

The idea to sequence the two mechanisms supported concerns raised by the leadership of the International Criminal Tribunal for former Yugoslavia (ICTY) when a

truth commission was proposed to run during the subsistence of the tribunal as documented by Hayner (2002). The ICTY was established to handle atrocities that had occurred in the former Yugoslavia. Whilst the tribunal was ongoing, a proposal was made to establish a truth commission to document the abuses that took place to complement the work of the Court. The motivation for the quest was that different versions of the history of the atrocities were being taught by different segments of Bosnian society. It was important to create an impartial historical record of the abuses to correct the contradictions. The leadership of the ICTY raised an objection on the basis that the proposed truth commission if established would weaken the Court, because it would run parallel with it and there would be an overlap in mandate. When this happened, individuals might cooperate with the commission and abandon their obligations to the Court. The public would not be able to distinguish between the two mechanisms. As a result they might make unreasonable demands on the Court for more prosecutions. The likelihood of both mechanisms arriving at different findings and contradicting each other was high because of the standard of evidence used by truth commissions. The commissions might contaminate evidence and render them unusable by the tribunal. Thus, if the major motivation was to establish the truth the tribunal in its proceeding had given such a history. Its decisions included a long history of abuses. In Sierra Leone situation it appeared the predominant view was to sequence giving the population in question and their ability to appreciate the role of the distinct mechanisms in the peace building process.

From the aforementioned, timing - whether to sequence or run together - should be taken with a lot of factors in consideration. Differing views on sequencing and or concurrent operation which have emerged from this study are an indication that there is no clear-cut approach with regard to proper timing for implementing the two mechanisms, and also in situations of sequencing as to which of the two should be implemented as a matter of priority. This means that attention must be paid to issues about timing by reference to the particular transitional situation. This brings to the fore that timing is a critical factor that should not be ignored in policy consideration, because where both mechanisms are being engaged it may not be appropriate in all situations to run them side by side.

Priority in Implementation

Another idea which emerged was that in the event that the TRC and the Court were sequenced, which should run first? Opinions were divided. Some felt that the TRC should run first, whereas others thought that the Special Court should run first. Those in favor of the TRC running first explained that the immediate need after a protracted conflict was to heal the trauma of the conflict, calm down emotions, and ease the minds of the populace through the TRC process. This was an all-inclusive process that could avert any outbreak of hostilities. It was important to address the needs of victims to whom prosecutions might not mean much. Prosecutions would immediately close the door to reconciliation and inhibit the society from healing—a process of recovering from

the hurt and redeeming or restoring what was lost. It would make for a better coordination since the report of the TRC could subsequently be used to aid in prosecutorial investigations. Sequencing with the TRC running first was in consonance with the culture of Sierra Leone where settlement was the preferred choice for settling disputes, with the Court coming in after settlement had failed.

Those who preferred the Court running first explained that if the Court did not run immediately, evidence would be lost. It was in the interest of fairness to prosecute before trial; to do otherwise would amount to a betrayal. Moreover, it would make for good coordination to implement the Court first because the Court's outcome could form the basis of the TRC work and those not prosecuted would feel freer to participate in the TRC. But if the TRC is implemented first, people might take it for an investigative arm of the Court and, therefore, hinder their cooperating with it. Again, it was argued that if the Court had not been around to assure the public that cooperation with the TRC would not affect people, they might not have cooperated at all. If the Court's verdict contradicted the TRC findings, the credibility of the TRC would be tainted so the Special Court should have run first. Responses were mixed as to which should run first in cases of sequencing. In situations of sequencing particular attention should be paid to the priority concerns of the people, and the transitional context generally, to determine which of the mechanisms should be implemented as a matter of priority. The foresaid indicates that given a particular transitional context, the priority interest might be to implement the TRC first, or the Special Court. The Sierra Leonean experience as found could be a guide in the analysis.

Public Confusion and Dilemma

It came out that people were confused throughout the time the two institutions coexisted and thereafter about their distinct roles. Reasons were that the people were predominantly illiterates and could not understand the two mechanisms when they operated together. The mechanisms were not packaged properly, because the people were told there would only be the TRC, only to be told again later of the Court as well. Not much education or sensitization was done on the matter and the grant and withdrawal of amnesty made them appear contradictory to each other. Due to the overlap in mandates they both chased after the same people on the same issues. The failure of the two institutions to engage the undivided attention of Sierra Leoneans was identified as a major factor why the people could not appreciate the two mechanisms. Again, the concurrent running of the TRC and Special Court was not in consonance with the culture of Sierra Leone which prefers settlement of matters and resort to the court where settlement fails.

These findings indicate that in conceptualizing, designing, and managing dual transitional justice, critical attention must be paid to the populace and things must be adapted to fit into their peculiarities. It also raises issue about sensitization and public education and packaging in a manner that would let the people understand what is happening. During the implementation phase, the institutions themselves need to make conscious efforts to engage the populace in the processes, because without public appreciation they are not likely to receive the needed cooperation.

Divided Support among the Populace

The populace was divided in their support of the TRC and Special Court. Supporters of the TRC argued that it had more universal value, developed out of broad consensus, was in consonance with Sierra Leonean culture, was well understood, created a platform to unify the country; addressed the needs of victims, was inclusive of everyone, provided avenues to address the causes of the war with recommendations to transform and secure a better future. Others thought justice by prosecution was needed; the TRC was not borne out of Sierra Leonean culture and was not in consonance with the culture as claimed. Sierra Leoneans by culture deals with past abuses by not remembering.

The Court did not enjoy local support because it was felt that the money used for the Court could have been used to rehabilitate the country. To some, addressing the social needs was considered a priority to justice by the Court. There was also the complaint about the flashy lifestyles of the Court personnel causing people to think that the Court was an avenue to enrich the personnel. It did not start from a broad consensus, and resources could have been used for other purposes. Another concern was that the Court had electricity while the rest of the country was wallowing in abject poverty. Again, the notion of justice as administered was somehow not in consonance with the local concept of justice concerning who were the criminals. Those indicted were the leadership of the respective factions who may not have actually carried out the atrocities. Some of those indicted were considered heroes who fought on behalf of their country against the rebels while those considered criminals went about their business freely.

Other reasons were that it was incompatible with local conditions; it was too foreign in its operationalization and foreign to local conditions, Moreover, the extended family system of the Sierra Leonean communities impacted on the Court. Thus when a person was indicted the effect trickled down to a lot of people.

First, the findings on divided public support raises the issue of the suitability of international or semi-international (hybrid) packages in local or domestic settings or conditions and the attendant expectations. This emerged in terms of the values associated with the respective mechanisms, its fitness in their local settings by virtue of Sierra Leonean culture and lifestyle of those who worked there. By reference to these, the TRC seemed more acceptable because the people were comfortable with it, as it appeared to suit their local settings; and they considered it able to provide a greater value (reconciliation) than the Court. Even though it was argued that the idea of the truth mechanism did not originate from Sierra Leone, it had popular local support in comparison with the Court. The idea that TRC was in consonance with Sierra Leonean culture is in consonance with Zehr (1998) observation that “restorative approach is more in keeping with the needs of victims and offenders and with most cultural traditions (p.71). The thought that the TRC was of universal value within the context of Sierra Leone was in consonance with Evenson’s assertion that in Sierra Leone reconciliation by the TRC was more of a priority than a punitive mechanism. The Court on the other hand did not enjoy popular local support because it did not fit into local conditions and was not considered of utmost importance. These findings are in consonance with Doyle’s (2004)

observation that international packages for addressing past abuses may not always be compatible with local conditions and therefore ineffective. She observed:

> It is of most importance that the community, government and/or international human rights body do what is best for victims' and society's recovery rather than apply temporary 'band-aid' solutions that do not truly tackle the issues. As such it is essential for domestic interest and values, on the one hand, and international human rights efforts, pushing for the universalization and the standardization of human rights norms and practices, on the one hand, to balance their efforts and goals. Because domestic interests and international norms are sometimes incompatible, or push in different directions, greater collaboration and discussion between these two groups could certainly be useful to find a common ground, in which the rights of the population are respected. (pp.127-128)

Doyle (2004) advocated that efforts to institutionalize universal human rights standards for repairing societies emerging from a repressive past take into consideration "populations cultural, historical, political, economic, and religious specificities" (p132).

Harper (2005) made similar observations concerning UN initiative in East Timor. One of the initiatives of the UN Transitional Administration in East Timor (UNTAET) put in place by the UN to govern and administer that country, was to establish a Serious Crimes Unit within the District Court of East Timor. The Serious Crimes Project made up of Special Panels for Serious Crimes was purely international consisting of international judges and prosecutors. It had jurisdiction to prosecute the atrocities that had occurred during the political upheaval in East Timor. Harper carried out a survey to assess the Serous Crimes Project. She found out, among other things, that culturally the appreciation of East Timorese about difficulties faced by the Court for not getting relevant evidence to prosecute was interpreted to mean a flaw in the legal system put in place by UNTAET. By the local sense of justice a perpetrator was someone that

everyone knew had committed crime and such a person should be prosecuted. Thus, where it was agreed by *everyone* that someone had committed a certain crime, that crime was imputed to that person and he should be prosecuted and found guilty. They could not understand why the Court needed some particular form of evidence. As far as they were concerned, "group consensus mutated into truth and fact" (p.165). And where the Special Panels did not find the person guilty because of lack of evidence, it was attributed to a flaw in the legal system. This was because everyone knew and agreed that those people were guilty so they should have been found guilty by the Court. Also, they had a preconceived notion of categories of offenders and how each category should be treated. When the Court's outcome fell short of their expectations, they interpreted this to mean that the system put in place was defective. These were similar to the Sierra Leonean experience. Harper observed:

> Justice for the East Timorese was not delivered through a trial conducted in accordance with fixed and objectively applied rules. Instead, justice was obtained when a person that everyone knew was guilty was convicted and sent to jail. Anything less than this was unsatisfactory. (p.165)

Harper concluded that it was not the fault of UNTAET that the indigenous East Timorese held the ideology they had about justice. And UNTAET could not change their culture. She felt public education could probably mitigate the effect but doubted if that alone would have been effective. In the case of Sierra Leone a Court official in an interview said that the Outreach Unit of the Court had done a lot of public education but the public did not appear to have any appreciation for it. It was also observed by another Court official that there was something about the people's perception that could not be changed no matter what. What this means is that these mechanisms must not be fashioned without

due regard to the social and cultural contexts of where they would be operated. The people, their culture and their communities should form an integral part of the analysis. International packages should be tailored to suit local conditions and a research needs to be undertaken in those areas for future guidance.

Second, the issue of economic considerations emerged. It appears that the socioeconomic status of the people in the country largely affected their appreciation for a particular accountability mechanism. Thus, where people emerging out of a devastating conflict could barely meet their basic needs, expending huge sums of money for justice may not be appreciated or might be viewed as a waste. The populace did not appreciate why huge sums of money should be spent to try only a few people whilst other pressing needs were left unattended to. This is an indication that transitional justice in postconflict situations should not be pursued in isolation but be anchored within the broad framework of peace-building. It should be coordinated alongside pressing needs and be brought to the fore when it is considered appropriate; otherwise it will not be appreciated.

Division at Civil Society and International Community Fronts

It was found that civil society organizations, both national and international was divided and remained divided in terms of their support for the respective mechanisms. The main reason for the division stemmed from disagreement on whether the TRC and Special Court should be sequenced or run concurrently, and whether there should be exchanges of information between them. Those in support of sequencing were behind the

TRC. Those in support of concurrent running were behind the Special Court. The impact was uncoordinated messages that confused the populace and creation tension. It was also found that the UN did not have a common front in dealing with the TRC and Special Court. It came out that there was rivalry between the Office of Legal Affairs (OLA), New York and OHCHR, the two UN agencies that had oversight of the two institutions. Whereas OLA claimed primacy, OHCHR claimed parity. Again, the UN Mission in Sierra Leone (UNAMSIL) then was not in support of having the Special Court in addition to the pre-existing TRC. Furthermore, OLA was able to focus the attention of the international community on the Special Court, whereas OHCHR did not show enough commitment to the TRC, leading to the marginalization of the TRC. What has emerged from this study is that uncoordinated support and rivalry between OHCHR and OLA pitched the TRC and Special Court against each other.

From the aforementioned, it is clear that civil society organizations and the UN played supportive roles to transitional justice mechanisms in postconflict contexts. These are recognized by Hayner (2002) as external supporters for transitional justice mechanisms. However, this study has revealed that in the context of dual transitional justice, the UN and Civil Society are likely to create division between the two institutions and pitch them against each other where and when their support is uncoordinated.

Impact of Concurrent Existence

In terms of impact, first it was found that the concurrent existence of both mechanisms impacted on the two institutions negatively and positively. In the case of the TRC, it came out that it suffered from lack of funding and other resources to be able to effectively execute its mandate. The international and donor community put their support behind the Court which was their preferred accountability mechanism as a result, *truth* and *reconciliation* suffered. Also, people refrained from dealing with the TRC, and, when they did, failed to speak the truth for fear of the Court. The TRC did not have the version of the Court's detainees about the conflict. Because perpetrators were mostly absent in the TRC hearings, the TRC could not create the forum of exchange between perpetrators and victims for purposes of reconciliation. On the positive side it was felt that the presence of the Court helped the TRC; the Court gave the assurance that evidence given at the TRC would not be used by the Court. This engendered confidence and hope in the TRC process. On its part, the Court appeared to have suffered in terms of not securing enough evidence and the necessary witnesses required for its work because a lot of information accrued to the TRC that was not made available to it, or which the Court did not make use of. Generally, however, the Court was said to have benefited from the side by side existence of the institutions by gleaning information from the TRC public hearings. It also came out that other factors may have contributed to the problems the TRC had. But on the whole participants were of the view that the TRC in comparison with the Court was marginalized whereas the Court was somewhat enhanced.

What has emerged from these findings is the likelihood of the marginalization of the TRC or restorative processes in situations of dual transitional justice. Moreso, when they are set up as separate and independent bodies, the international community and the government may lend their support to the Court to the detriment of the TRC. This is because by the prevailing international norms, breaches of international humanitarian law must be prosecuted and punished. The TRC which offers or evokes forgiveness is seen as an avenue for entrenching impunity and does not appeal to the international/donor community. This confirms the assertions made by Shifter and Jawahar (2004) that recent development within the international arena vehemently oppose impunity, and for that matter amnesties inherent in truth processes. According to Scharf (1997) the restorative mechanism is considered a weak accountability mechanism and does not fulfill a country's international obligation to deal with impunity by retribution within its shores. Truth commissions are seen to be dealing with the *devil*, compromise justice and subvert trials (Tepperman, 2002) in blatant violations of international law (Scharf, 1997). As a result when put together with trials the international community will support trials to the detriment of the TRC.

Second, it was found that as far as transitional justice was concerned lots and lots of people escaped justice in Sierra Leone. They were afraid of the Court and so did not appear before the TRC and were also not indicted by the Court. This seemed to contradict the idea that using the two mechanisms would lead to greater justice and that all categories of offenders would be covered. As pointed out earlier, Doyle recommended that when using restorative and retributive mechanisms, prosecution

should be limited to only a few and the rest left for restorative justice. In the case of Sierra Leone, the Court indicted 13 people; it was therefore supposed that the perpetrators who were not indicted would submit to the TRC process, but as found there was no greater justice. The problem might be attributed to lack of coordination. Probably if their relationship had been clarified in terms of their mandates as to those who fell under the ambit of the Court and those under the TRC, and also if their legal relationship had been streamlined, those perpetrators who were not indicted by the Special Court would have appeared before the TRC. They would not be afraid that an appearance before the TRC could implicate them before the Court. The point was made all the same that whether or not the assurance was provided, people were not going to appear before the TRC because of the presence of the Special Court. It also came out that perpetrators might still not have come out in the absence of the Court, because unlike the South African TRC which had power to grant amnesty, the TRC of Sierra Leone had no such incentive as the Lome Peace Agreement had granted blanket amnesty to all upfront. Again, since the perpetrators were being reintegrated into their communities they were better off keeping mute than opening up with confessions as that would have made reintegration difficult.

From the aforementioned, it is clear that the idea of utilizing both mechanisms would not guarantee full justice and accountability of all categories of perpetrators. Policymakers should find a way to let one mechanism predicate on the other. Throughout the study, the South African model came to the fore as a good example. That is, confession at the TRC entitled one to a grant of amnesty. Without the power of the TRC

to grant the amnesty, perpetrators were not likely submit to it. Though this appeared very attractive it could not have been possible in the case of Sierra Leone; the TRC could not have been given the power to grant amnesty because if the amnesty had not been given upfront in Lome it would not have been possible to broker the peace and set the peace process in motion. As it were, what immerged from the Sierra Leonean situation was that merely mandating the prosecutorial mechanism to try a few would not guarantee that the rest would submit to the restorative process. Giving the particular transitional context, efforts should have been made to predicate one on the other. There may not be any best approach. The best approach is what suits a given contexts, so approaches to effective coordination must be on case by case basis.

Third, it was found that dual transitional justice was too costly and time-consuming for both institutions. Both mechanisms required a lot more resources to sensitize the populace that they were different from each other than if each had existed by itself without the other. Also, in the process they undermined each other's effort and created so much tension in the peace process**.** The issue of resources emerged as critical to the effective implementation of both mechanisms. Fourth, it was found that despite the hiccups and the problems encountered by this transitional justice approach, certain benefits were derived from it towards facilitating peace and stability in Sierra Leone: the TRC produced a comprehensive report that addressed the needs of victims with recommendations for transforming Sierra Leone to prevent the recurrence of a conflict. Also, the Court sent a strong message against impunity to perpetrators both within and outside the subregion.

In conclusion, the discussions on findings to question 3 has revealed and or affirmed that it may not be always expedient to use both a restorative and retributive justice in postconflict situations. Likewise where necessary, they may not always be run together. Moreover, in situations of sequencing, it may be critical to prioritize implementation by reference to the needs of the society involved. Answers to question 3 also indicated that peculiarities of the people need to be taken into consideration when fashioning out dual transitional justice, otherwise the populace may be confused. Again, international or semi-international packages may not always fit into local settings and may also not be appreciated by the local populace. Again, Civil Society and the UN may play a supportive role but where not coordinated properly can divide their support and pitch the two institutions against each other. In terms of impact, the TRC was marginalized in situations of concurrent existence as the international community and donors put their support and weight behind the retributive mechanism. People were afraid of the Court because it coexisted with the TRC, and truth and reconciliation suffered. Justice also suffered as perpetrators avoided both mechanisms. Based on the lessons learned, the next section discusses findings in answer to when and how to use dual transitional justice.

Discussion on Findings for Question 4

Question 4 asked: When is it appropriate to use dual transitional justice mechanisms? The study found that it is appropriate to use it where it will facilitate peace

and stability by reference to the political, legal, socioeconomic, cultural and international dynamics of a particular transitional context.

Fitness with a Broad Strategic Goal of Transition

It was found that engaging both the TRC and Special Court as a policy choice for transitional justice in a postconflict situation should be done in pursuance of the strategic goal of peace and stability. Thus, the two mechanisms should be used to the extent that they would yield the dividend goal of peace and stability. This idea supports the assertion made by Vinjamuri (2001) that the decision to hold war criminals accountable and how to hold them accountable is linked to “broader strategic goals” of transitional policy. He maintained that in the view of policymakers, the values of “order and peace” are not coterminous. Therefore, where pursuit of justice will lead to instability they are not likely to support the setting up of an international tribunal to carry out prosecutions. Even though the strategic goal of transitional justice was stated as peace and stability in the case of Sierra Leone, this study also found out that there were doubts as to the strategic goal of policymakers in clamouring for the Special Court. It was believed that vengeance and politics were motivating factors as well. This is an indication that the analysis as to the goal of transitional justice should go beyond what appears to be the obvious goal of peace and stability because “certain things can be dressed up in the name of justice”. This is in consonance with the observation made by Rae (2005) that

issues about “peacebuilding and transitional justice are political exercises and must be investigated in terms of the full range of competing interests” (p5).

The study found that there was no one route to obtaining the strategic goal of peace by transitional justice. In the case of Sierra Leone, opinions were divided as to whether the TRC and Special Court were needed to facilitate peace and stability. Three policy options emerged as accountability models in that regard. These were; (1) TRC as the sole accountability mechanism, (2) TRC with prosecutions which could be hybrid, international or national and (3) TRC combined with prosecutions, lustrations and purges. Prosecutions as a sole means of accountability to facilitate peace never emerged as a policy option for Sierra Leone. The study showed that critical attention must be given to the transitional contexts in order to determine the suitability of a particular model. Evenson (2004) referred to this as the specific context goal of transitional justice. This supports Vinjamuri’s (2001) and Doyle’s (2004) assertion that the context of a particular transition should guide how past abuses are dealt with. In the case of Sierra Leone, the factors which were identified as critical for analyzing the transitional contexts were political; power dynamics between the opposing forces, the magnitude of atrocities committed, socioeconomic and cultural dynamics, the state of existing national mechanisms and the international influence. These were in consonance with Doyle’s recommendation that the factors of analysis as to the choice of transitional justice mechanism should include political dynamics, the factor of international involvement, availability of resources, the nature and magnitude of atrocities committed, and cultural and religious dynamics of the society concerned.

Transitional Context

Political Dynamics

Politics emerged as one of the transitional dynamics that impinged on the policy choice of the transitional justice mechanisms of the TRC and Special Court as well as their conceptualization in Sierra Leone. The RUF and the government negotiated to end the conflict when none could win it and agreed to have the TRC for accountability as compromises were made. But the moment the government subdued the RUF, it pushed for prosecutions which culminated in the establishment of the Special Court. This finding supports the observation by several authors (Doyle, 2004; Gibson, 2002; Graybill, 2004; Tutu, 1999; Vinjamuri, 2001; Skaar, 1999; van Zyl, 1999; Tepperman, 2002; Rae, 2005; Verwoed, 1999) that politically, how a conflict or repressive regime ends is a critical factor in influencing the choice of accountability mechanism, and how emerging democracies choose to deal with past abuses is determined by the balance of power between the incumbent and the outgoing regimes. Gibson (2002) maintained that where a clear winner does not emerge, amnesty is given to combatants in exchange for truth. van Zyl (1999) posited that in situations where the new order is stronger and has defeated the old order, prosecutions have been resorted to. After the Second World War, the Allied were able to set up the Nuremberg trials for the Nazi war criminals because Germany had been defeated. Conversely in Chile, the newly established government after the Pinochet authoritarian regime could not adopt a policy to prosecute perpetrators of human rights

abuses because Pinochet, the authoritarian leader, remained the head of the military after the demise of his rule. Tepperman (2002) pointed out that in postapartheid South Africa, the human rights abuses, which had been committed during the apartheid era, could not be prosecuted by the African National Congress (ANC) Government outright. This is because the agreement/arrangement, which ushered in the democratic government from apartheid, was a negotiated settlement between the ANC and the apartheid government. According to van Zyl (1999), the ANC nationalist movement had both internal and external support yet it could not defeat the apartheid regime through its military campaigns. Similarly, the apartheid government realized it could not continue to ignore the quest for democratic government. As a result, there was the need to accommodate each other. Conditional amnesty was therefore granted as a middle way to accommodate the old and the new regimes and a truth commission emerged. In the case of Sierra Leone it would have been impossible for the peace process to go on if there had been an insistence at the onset on justice. The idea of justice came to the fore after the government emerged a victor.

The scenario between the International Criminal Court (ICC) and the government of Uganda explains the above better. A conflict broke out between the government of Uganda and the Lord's Resistance Army (LRA), a rebel insurgency group in Northern Uganda. For over 20 years the Ugandan government could not quell the insurgency in which massive human rights abuses occurred with untold suffering to the civilian population of Northern Uganda (Apuuli, 2005). In December, 2003 whilst the conflict was ongoing, the Ugandan government invited the ICC to carry out an investigation and

prosecute those responsible for the atrocities being committed (Wallis, 2006). The ICC carried out the investigation which resulted in the indictment of five LRA Commanders in 2005. They were to be arrested and prosecuted by the ICC (Lomo, 2006). Whilst the warrants of arrest subsisted, the government entered into negotiation with the LRA in July 2006 to settle the conflict (Bloomfield, 2006). The Ugandan Government decided to grant the LRA amnesty and get the ICC to drop the indictments against the LRA leadership if the negotiations got through. The ICC and its supporters became furious with the Ugandan Government about these developments and the Prosecutor said his office would not drop the indictments (Osike, 2007). The Government of Uganda blamed the ICC and UN for failing to capture the LRA warlords (Bloomfied, 2006). In consequence, *Mato Oput* - a traditional justice system - is being considered as an avenue to handle the abuses that took place. The findings converge with the literature that political exigencies cannot be ignored in the pursuit of ensuring accountability for past crimes.

Sociocultural Dynamics

It was found that the views of those affected by the conflict must be sought on matters involving accountability approaches. It came out that if the atrocities were on a large scale and people cried for justice in terms of both mechanisms then they should be used. Where the people wanted the TRC because they wanted to understand what happened, why people did what they did, and the need and desire existed to reintegrate

those who strayed back into the community the TRC should be used. Again, prosecution should be used where the people demanded it because of the atrocities committed and the failure of negotiated settlement to bring about peace as occurred in Sierra Leone. Although some argued that pockets of violence should be expected after formal cessation of a violent conflict, and should not serve as the basis for trials. The idea emerged that if the people themselves did not want any form of accountability and wanted to forget about their past suffering, their view should be respected. The point being made by the study is that irrespective of the transitional contexts the wish of the populace about accountability should form part of the analysis for policy considerations. This is in consonance with Doyle's (2004) observation that the two mechanisms should be engaged where the people want it because in that case it will be effective if the populace expresses that desire. Also, seeking the views of the populace supports the position taken by the United Nations Office of the High Commissioner for Human Rights (OHCHR) (2007) that the views of those affected by the conflict must be included in the decision to address the abuses in terms of the nature of mechanisms that will best serve their needs. The OHCHR conducted a survey on the views of Northern Ugandans on matters of accountability for abuses suffered in the conflict that had raged on between the government of Uganda and LRA for over 20 years. It was found among other things that the people's priority regarding transitional justice for the abuses they had suffered were *truth and compensation.* Based on this, the OHCHR advocated that the concerns of those affected by the conflict should form part of the ongoing negotiations between the Ugandan government and LRA as regards issues about transitional justice. OHCHR pointed out

that the argument so far about how the issues in the Northern Uganda situation had been drowned in “artificial dichotomies, including peace versus justice, local versus international responses to atrocities, and the population’s desire for forgiveness and reconciliation versus punishment” (p.i).This is in consonance with the finding that the people affected know what they need and must be consulted for their views on issues of justice in post-conflict situations.

Suitability of Already Existing Mechanisms

Suitability of existing mechanisms emerged as a major factor in deciding on accountability mechanisms. In the case of Sierra Leone it came out that the existing mechanisms had been broken down by the protracted war. In some cases the mechanisms had broken down long before the outbreak of the conflict and were a major cause of the conflict. This notwithstanding, responses were mixed as some participants felt that they could have been resuscitated for use and others felt that they could not have been used under the circumstances.

Those who felt the national courts were not suitable argued that they had lost credibility and people did not have confidence in them. As such, Sierra Leoneans would not have accepted the outcome from the national courts, no matter what, if they had been used for the trials. This was because the courts were plagued with political bias, corruption, unfairness, delays in the administration of justice, and poor performance. Again, it was believed that everyone was victimized during the conflict, the judges

inclusive, so they could not be expected to be fair in the administration of justice. There was a perception that the war had tribal underpinnings so people would not have accepted anything coming out of the national courts as justice, even if justice was in fact done. Furthermore, the national courts did not have the capacity in terms of personnel and other resources to be able to try the nature of crimes committed during the conflict. The legal system was not developed and international humanitarian law was largely not part of the laws of Sierra Leone. It would have taken a long time to build the legal system to make the national courts usable. In the process, victims could not have been able to wait. In view of these it was appropriate to use the Special Court. This idea is in consonance with Moghalu's (2004) observation that existing judicial structures of postconflict societies are incapable of dispensing justice. This is because the breakdown of the judiciary and lack of the rule of law contributed to the conflict situation. As a result ICTR, the ICTY and the Special Court for Sierra Leone were justified on such basis. Also it supports Ratner and Abrams' (2001) observation that the legal system of a country that had undergone long periods of trauma such as Cambodia are unusable for justice because "it is a disorganized, ineffective, and unfair system…failing to mete out criminal justice" (p312). Given the circumstances, Ratner and Abrams preferred an international tribunal for Cambodia on the basis that the domestic structure was underdeveloped, and domestic prosecutions would be politically manipulated and biased.

Those who considered the national courts as usable argued that even though the national courts were devastated, it was possible to put the courts in a usable state for trials. In this case the judges would have been trained, and the necessary resources

provided by the international community to dispense justice. By this approach, justice would have been real for both the victims and perpetrators. Perpetrators would have accepted that they were being tried by their own people for the offences committed against them. Where the need arose some international judges could be included. The resources for the Special Court would have been channeled to build the national courts. In the process, the judiciary would have been strengthened; a legacy of a strong judicial presence for Sierra Leone. This option is in consonance with the approach undertaken by Iraq to deal with atrocities that had occurred between 1968 and 2003. In the case of Iraq, a Special national tribunal was established within national courts to administer justice (Statute of the Iraqi Special Tribunal, 2003).

As regards local reconciliatory mechanisms, responses appeared to be mixed. Those who were not in favor of using traditional mechanisms pointed out that chieftaincy institution, the repository of traditional mechanisms, had broken down; lots of chiefs were killed, others had to flee from their communities to the city, traditional places were desecrated. Other reasons were that chiefs were compromised as they aligned with respective factions; traditional rules were discriminatory and largely unwritten and did not meet the minimum human rights standards. There was no uniformity among respective communities of Sierra Leone concerning dispute resolution approaches to form a common platform to handle the massive abuses that took place. Again, traditional mechanisms did not have the facility to conduct the analysis of the conflict so it could not have been used on their own. The TRC which was a national platform was most

appropriate. The traditional mechanisms if anything at all should complement the formal TRC process.

Others felt that traditional mechanisms could have been used as the main reconciliatory mechanisms because the TRC could not permeate the depth of the communities to work out reconciliation the way that traditional methods would have done. Even though the traditional structures were largely depleted by the conflict, something could have been crafted. They maintained that chieftaincy institutions were never vacant; there was always a regent to undertake necessary responsibility in the absence of actual occupiers. Also, it could have been revived and or something could have been crafted in place to overcome the barrier of non-uniformity and seemingly lack of objectivity. It was further argued that not everyone was tainted, so it was possible to administer reconciliation at the traditional level. The traditional approach was not acceptable to the international community, and so it was rejected.

The idea that African dispute resolution mechanisms should have been used to address past abuses is supported by scenarios built by Graybill (2004) where African notions of justice and reconciliation approaches had been used as an answer to violence of the past. According to Graybill, after the massacre in Rwanda, the UN set up the International Criminal Tribunal for Rwanda (ICTR). Rwandans became disillusioned with the ICTR, and so decided to resurrect a traditional dispute mechanism of the pre-colonial days – *gacaca* that had gone into oblivion with the emergence of the western judicial system. This was done through a legislation which incorporated confessions, pardon, apology and compensation. Through this approach, Rwanda has been able to

make far more progress in dealing with their past than did the ICTR. Graybill believed this was a better option because it affirmed reintegration rather than revenge and retaliation but cautioned it was too soon to judge its effectiveness. He again cited the situation in Mozambique where they opted for amnesia and resorted to traditional healing purification for victims and perpetrators respectively to reintegrate the perpetrator and heal him of war. Graybill indicated these seemed to have worked for Mozambique because it has not experienced any major violence. Yet it remained to be seen with time the effectiveness of this approach. Graybill also indicated that the South African choice of the TRC was borne out of the traditional concept of *ubuntu*. According to Graybill, *ubuntu* is derived from the Xhosa expression "*Umuntu ngumuntu ngabanye Bantu*" (people are people through other people). This "connotes humanness, caring and community" (p1118). Thus a person's wellbeing is intertwined with that of the community and one exists because the community exists. South Africa by reference to the conceptual resource of *ubuntu* framed accountability as forgiveness over justice in order to forgive and bring back a member of the community who has erred so the community could be intact. It should be noted that there is not much in the literature about the efficacy of the traditional mechanisms. Detailed and in-depth study would be required in that direction. What this study has done is bring into focus the possibility of utilizing African traditional mechanisms and the need to include them in the analysis in the consideration for policy options. The findings on the existing mechanisms indicate that analysis on a policy choice for transitional justice should include the suitability or

otherwise of existing mechanisms as against establishing transitional justice mechanisms or merging the transitional mechanisms with existing ones.

From the foregoing it is clear that the decision as to whether or not to engage restorative and retributive mechanisms cannot be taken out of a vacuum. The findings support the existing literature that there is the need to determine whether political exigencies will permit it; whether the people want it; and whether existing accountability mechanisms cannot be used instead of creating new mechanisms; or whether the transitional justice mechanism should be mixed with the existing ones. In all situations the strategic goal of peace should be the defining factor.

International Dynamics

Question 4 also found that international influence/politics played a major role in the policy choice, design and implementation of the TRC and Special Court in Sierra Leone. As seen, the President requested for assistance from the UN to set up the Court. But it also came out that the President's request was prompted by pressure from the UN and international NGOs. But the UN's involvement with the TRC was initiated by the UN itself. This is in line with Hayner's (2000) observation that international influence affects the choice of accountability mechanism to address past human rights abuses. And how they get involved may be a response to internal requests from the states themselves or pressure from outside bodies which Vinjamuri (2001) referred to as transnational network organizations. In the view of Vinjamuri, countries will normally not intervene to

ensure accountability for abuses committed in conflict situations where they have not been directly involved. They do so as a response to pressure from transnational advocacy network organizations to live up to the ideals of justice and the rule of law. In Sierra Leone, several reasons came up to explain why the international community got involved, namely preference of the international community for retribution as a way to address past abuses, the scale or magnitude of the atrocities committed, the unabated violence after the negotiated peace in which the UN suffered a direct attack from the RUF; the capture of UN peacekeepers and the need to deal with impunity, an opportunity for the international community to experiment how the two mechanisms would work together and America's influence or support for ad hoc tribunals as opposed to a permanent International Criminal Court (ICC).

The idea that the international community will be motivated to assist in dealing with impunity is in consonance with Hayner's (2002) observation that the interests of the international community to ensure accountability for abuses which occurred during the civil wars in Rwanda, the former Yugoslavia, and Sierra Leone led to the establishment of International Transitional Justice mechanisms, i.e. the International Criminal Court for Rwanda, and the former Yugoslavia. Also, it confirmed Vinjamuri's (2001) assertion that ordinarily, countries will not intervene to ensure accountability for abuses committed for a conflict that they were not directly involved in. But they will do so to deal with impunity if the war was intense and gregarious atrocities had been committed. These were true in the case of Sierra Leone where reasons other than ensuring accountability to strengthen the rule of law surfaced as well. As it turned out, the UN suffered a casualty in

the RUF brutalities; the driving force of US international policy on how to deal with war criminals, the opportunity to experiment on how the two mechanisms would work and the interest of transnational organizations were all at play. These other reasons are not directly linked to the interests of Sierra Leone per se; an indication that the international agenda may greatly influence the policy choice, design and implementation of transitional justice.

It also came out that the dynamics of the internal politics of Sierra Leone influenced the nature of accountability mechanisms the international community assisted to set up. When the government had a decisive victory, the UN assisted to set up the Special Court. Before then the UN agreed with the government and civil society organisations that the TRC would be the accountability mechanism. This is in line with Vinjamuri's (2001) observation that the nature of international response is dictated by the political dynamics of the troubled nation. Thus, where establishing a prosecutorial mechanism will destabilize the country they are not likely to support that. According to Vinjamuri, critical to the determination of whether or not a certain intervention will create a security risk is how the war ended—the structure of power between the opposing forces at the end of the conflict. Because the structure of power: (1) determines whether the pursuit of justice will pose a threat to stability; (2) disparity in power is likely to allow the one with greater power to impose a victor's justice, and (3) it shapes the effectiveness of the tribunal because there will be cooperation by the state to hand over potential war criminals. In situations where there has been a decisive military victory, prosecutions will not likely create instability because those likely to do that may be those to be prosecuted.

It is possible to have access to war criminals because their hideouts will be diminished, there is the capacity to define the laws for trials and be in position to access evidence Vinjamuri (2001) observed that “in general, support for war crime trials is more likely to be forthcoming where perpetrators of serious war crimes suffer a military defeat and are removed from power” (p.6). Where there is a negotiated settlement and the opposing forces have power as well, prosecutions through the tribunal are minimal. Because it might create instability, the evidence needed for prosecutions may not be obtained. As seen with Sierra Leone, Sankoh and the key actors were arrested and put behind bars before the idea of prosecution was pursued.

Conceptual Issues

Question 4 further identified how to utilize the two mechanisms. It was found that there was the need to conceive or conceptualize them at the same time as to whether they would operate concurrently or sequentially. There was the need to define and clarify the relationship in the founding documents of both institutions to avoid overlapping mandate; that is carefully delineated parameters as to persons who fall under the respective ambit of the TRC and the Court. The rights of detainees, witnesses’ protection, and an independent mechanism to arbitrate or adjudicate between the two in situations of conflict should be expressly provided for by the laws setting them up. These areas identified are critical to the success of dual transitional justice. Therefore through the design stage, it may be necessary to have them mandated in the laws setting up both institutions.

Conclusion

This study confirmed and or revealed that ad hoc or non-coordinated approach to engaging restorative and retributive mechanisms for transitional justice could be counterproductive where they are set up separate and independent from each other. Successful utilization of dual transitional justice depends on careful coordination both at the conceptual, design and implementation stages as well as the end product or the aftermath of the two processes. This will enable them to coexist harmoniously as two parts of the same transitional justice tool.

Also, the study confirmed that during implementation, critical areas of linkages and cleavages should be identified and coordinated for a harmonious working relationship. Identified areas were information sharing, using the same witnesses, using the same personnel/experts, and engaging in joint public education. Again, it came out that given the potential overlap in the mandates of truth commissions and courts, it is important to coordinate the timelines of their respective processes to avoid a situation of excessive overlaps in activities. These findings indicate the necessity to identify areas of linkages and cleavages at the onset of their operations.

Again, it was found that in the absence of cooperation between the leadership of both institutions, their working relationship can impinge on their respective functioning to the detriment of each other. As a result, those to be appointed to lead and manage these mechanisms should be people with a sense of team spirit and amenable to consultations and dialoguing on issues that might arise out of their coexistence. Outside

resources would be immense if coordinated to avoid the incidence of the two mechanisms competing for donor attention as occurred in Sierra Leone. The need for the UN to coordinate its assistance for the two mechanisms and the need to have a common front was greatly emphasized. Equally important was the need for Civil Society to also coordinate their involvement and presentation of the package to the public.

The study confirmed that the policy choice of using the TRC and Special Court should have peace as its goal but that may not be the case in all situations, because anything could be dressed up as justice. Again, timing in terms of implementation of the mechanisms, i.e. concurrently or sequentially as well as timing in relation to the cessation of the conflict, immediately after the war ceased, or after a while, was found critical. Dual transitional justice could marginalize a truth commission to the detriment of truth and reconciliation. The populace may divide their support for the respective mechanisms based on their perceived importance or their socioeconomic and cultural conditions.

Furthermore, it became clear that the international community including the UN and transnational human rights NGOs influenced the policy choice of the TRC and Special Court, the concurrent running of same as well as the packaging of the two mechanisms. It also confirmed that international packages or prescriptions for healing and justice may not always be appropriate for the cultural settings of Africa, and there is the need to adapt to local conditions. Moreover, it was revealed that reasons for which donors and the international community intervene to assist in ensuring accountability may in some cases not be directly linked to the interests of the trauma nations per se.

Also, external support from NGOs and the international community could be informed by other considerations.

Finally, areas the study confirmed and or found essential for coordination are timing for conceptualization; the need to conceive or conceptualize them at the same time, and whether they will operate concurrently or sequentially, the need to define and clarify their relationship in the founding documents of both institutions to avoid overlapping mandates; carefully delineated parameters as to persons who fall under the respective ambits of either the TRC or the Court, the rights of detainees, witnesses' protection, and an independent mechanism to arbitrate or adjudicate between the two in situations of conflict.

Implications for Social Change

Special Court for Sierra Leone

The Special Court needs to be physically accessible and Sierra Leonean friendly. It came out that the Court is open to the public but they do not attend the hearings. A major hindrance is the entry requirement and the intimidating appearance of the physical presence. The vast majority of Sierra Leoneans will not be able to provide an ID card, which is a prerequisite for entry. There needs to be a way out of this to let the people of Sierra Leone qualify to enter the premises in the same way that they can freely enter their national courts. Sierra Leoneans should be visibly seen as having a hand in their own affairs, and therefore the Court. To this end, efforts should be made to include qualified Sierra Leoneans in top management positions of the Court to give a sense of

local involvement or shared ownership. This will build the needed confidence that the Court is a hybrid system and thus minimize the impression of Sierra Leoneans being treated as a pawn in the hands of the international community. There is the need to give the staff of the Court orientation and encouragement about appearance of moderate lifestyles.. A flashy appearance gives mixed messages to the ordinary person of Sierra Leone to the detriment of the Court, as the phrase kept on repeating itself: “They are here to eat our money…the money being spent by the Court is in the name of Sierra Leone”.

Government of Sierra Leone

The findings from this study provide a useful insight into the future of Sierra Leone. The effects of both the TRC and Special Court will linger in Sierra Leone for a long time after the two mechanisms have ceased to operate. The government of Sierra Leone should try to pay equal attention to matters arising out of both mechanisms. In view of the importance Sierra Leoneans attach to the TRC report, the government should pay attention to the TRC recommendations and take the necessary steps to implement the recommendations; otherwise the exercise would have been in vain. The government was perceived to be biased in favor of the Special Court and the government support for the Special Court was translated to mean lack of care for victims. Since victims identified the TRC as an avenue for addressing their needs, every effort must be made to implement the report. The government of Sierra Leone must be concerned about how Sierra Leoneans feel about the Court and should take the necessary steps to have things normalized such as making it accessible to the people of Sierra Leone.

International Criminal Court of Justice

The experiences in Sierra Leone have implications for the International Criminal Court of Justice (ICC). The ICC though not a transitional justice mechanism may find itself coexisting with a truth commission of a country. It is possible that a restorative process may be going on in a particular country for alleged human rights abuses, whereas trials involving the same abuses may be undertaken by the ICC. This is more critical where amnesty may be in place or where the truth process has the power to grant an amnesty. When this occurs, there might be a contradiction between the ICC and such a truth commission. Again, an overlap in mandate could occur regarding subject matter, personal, temporal and geographical jurisdiction. Issues which emerged from the Sierra Leone situation will equally be applicable in such circumstances to ensure a harmonious coexistence of the ICC and such truth commissions. Coordinating between the ICC and such truth commissions becomes critical for the success of their respective mandates. Issues of sequencing or concurrent running becomes critical; whether the ICC and such truth commissions should operate concurrently or whether the ICC should complete trials before the truth commission operates or vice versa. There is also the possibility of using the same sources of evidence, witnesses and information, coordinating its relationship with such truth commissions, and packaging them for a local populace will also be critical in such circumstance Also, equally important are the transitional contexts of the concerned country: power dynamics, peace equilibrium, socio-economic and cultural dynamics are likely to impinge on the ICC. In short, the ICC

Statute cannot operate in isolation from the internal dynamics of the countries involved as the experience of Uganda bears testimony to. The ICC should enter into consultations with concerned governments and develop protocols as a guide in such situations. To this end it is being recommended that the ICC should choose the path of consultations with the government of Uganda concerning how the ICC could be involved in dealing with impunity in Northern Uganda in the face of the looming amnesty for the LRA warlords who have been indicted by the ICC.

The International Community

The international community played a major role to bring about these two accountability mechanisms to facilitate peace-building in terms of their adoption as policy choice, design, and implementation. As the experiences of Sierra Leone attests, the adoption of the TRC and Special Court and packaging of same was done without due consideration to the local conditions and the extent to which the people themselves felt about it, and their priority concerns regarding justice and accountability. The international community and donors must be sensitized to the needs of those in postconflict countries they purport to assist. Again, the interest of the trauma state should be the overriding factor. In future it is important that assistance is not "band-aided" without the local touch. In the case of Sierra Leone, donors' assistance in some cases was tied to the wider international politics rather than the needs or concerns of the people of Sierra Leone. Also, the concurrent existence at that time was largely driven by the reality that donors support would not have waited for one institution to complete its mandate

before the other. There should be a lot of grassroots consultations to know how the people themselves feel about the issues of justice, truth and reconciliation. If their needs should drive policy options as to mechanisms and how they must be used, the desired effect will be maximized.

The prevailing international position in dealing with war crimes and other heinous breaches of human rights is to prosecute the perpetrators as opposed to granting amnesty and forgiveness. Therefore the international community is not in favor of truth commissions and their attendant amnesties. This position had an adverse impact on transitional justice in Sierra Leone, because the donor community was reluctant to fund the TRC contributing to the delay in setting it up and not having enough resources for its work. When the Special Court came up, some of the funds earmarked for the TRC by donors were passed on to the Special Court. This pitched the two institutions against each other. The stand of the international community needs to be reconsidered within the realities of a given transitional contexts. Amnesty must never be used as a cover up to shield violators of international humanitarian law and human rights law applicable in armed conflicts. Amnesty may not become the incentive to use in negotiations at all times and the quest for accountability by the international community must not be undermined. However, there may be situations where states are genuinely unable to protect their citizens against the slaughter, rape, amputations and plunder of innocent people such as went on in Sierra Leone, and when the international community fails to act early enough to salvage the situation. In such situations what should a nation do? Should it hold on to its international obligation at the expense of its obligation to protect

its citizens? Sierra Leone, for example, was faced with something much worse than a political transition as the state itself seemed to be getting weaker by the day. Where a nation decides on a truth commission as an accountability option, given its political complexities, the international community should support that nation in its accountability efforts. Likewise, where it becomes possible to have both approaches, the international community should not pitch the two institutions against each other by being biased in favor of retribution against the restorative measure as occurred in Sierra Leone.

In future, the UN needs to look at transitional justice in its entirety as a package and coordinate it as such. Internal politics and rivalry between OLA and OHCHR did not help in the Sierra Leonean situation as the two institutions were pitched against each other. The UN needs to have a common front in matters of transitional justice and coordinate its intervention in a manner that gives confidence to both processes. A major area to coordinate could be in fundraising. And then funds accrued must be allocated and appropriated equitably for both mechanisms.

This calls for the adoption of clear policy guidelines on transitional justice by the UN as a guide for its future endeavors. The guidelines should address the nature of UN involvement in transitional justice, the respective UN agency or agencies that should have responsibility for transitional justice. In preparing the guidelines, the UN must undertake a comprehensive stocktaking of its involvement in transitional justice in Sierra Leone and identify what worked, what did not work and what could have been done differently to achieve better results. The outcome of the studies should form a discussion and deliberation between Geneva, OLA, UNIOSIL, UNDP (Sierra Leone) and relevant

stakeholders. This would help in the future where UN intervention in transitional justice is called into question.

Governments, Policymakers and Designers

Governments, policymakers and architects of transitional justice who may want to adopt the Sierra Leonean approach in future should not take for granted that restorative and retributive mechanisms could be used as a matter of course for postconflict transitional justice. As the experiences of Sierra Leone indicated, the two should be adopted to the extent that they would be needed to facilitate peace and stability. Attention must be paid to the political, socioeconomic and cultural dynamics of the transitional context. Policymakers should employ the two mechanisms in good faith believing that the two would be needed. It is very necessary for governments to provide equitable support for both mechanisms; otherwise, favoritism sends a wrong signal and also undermines their legitimacy.

Designers need to pay attention to the timings or the implementation of the mechanisms. There is the need to conceptualise them together and let one predicate on the other to avoid the pitfalls of non-coordination. Their legal relationship should be defined and regulated in their founding documents with the jurisdictions of both institutions clearly determined in terms of personal, subject-matter and temporal jurisdiction to avoid overlapping. The rights of the accused or detainees, likewise the rights and protection of witnesses of both institutions must be regulated in advance to clearly determine whether detainees should take part in the reconciliation process whilst

awaiting trial. Areas of linkages and cleavages need to be spelt out and regulated. Moreover, attention must be given to the physical locations of the two processes given the sociocultural contexts of the country involved. Leaders and managers of future dual transitional justice mechanisms must be aware of potential rivalry that could exist between them and cooperate to coordinate their processes for a harmonious existence.

Recommendations for Further Research

International Mechanisms in Local Settings of Africa

Throughout the study it came out that the conceptualization; packaging and implementation of the TRC and Special Court did not factor in local conditions. As a result, the two mechanisms especially the Special Court were in some cases at variance with local conditions, perceptions and expectations. The people, their culture, their communities, and the geographical location of the TRC and Special Court impacted on the outcome of the two mechanisms. This affected people's appreciation of their roles in the peace process and how they related with the two institutions. As it turned out in the case of the TRC, the officials disclosed that the people said they had accepted the amnesty and wanted to be left alone. In the case of the Court it was considered too foreign and incompartible with local conditions. As observed, there are, definitely, differences in international norms and standardizations vis a vis local norms and cultures on issues about justice, truth and reconciliation. Is the international community going to set up or fund international mechanisms and situate them in the geographical settings of a people who may not consider the process relevant in their contexts or unable to

understand it due to cultural particularity and therefore are apathetic and complacent towards it? Will the international community be doing their own thing? Or will the international community provide support to enhance existing local mechanisms to be able to provide justice in such contexts? Will victims be able to wait as it were for local mechanisms to be enhanced? Or can Sierra Leone or any other country for that matter ignore international concerns and administer localized justice? Is there a way to merge them— a point of convergence? A detailed research, preferably an ethnographic study, may be required to understand who the Sierra Leonean is, vis-a-vis his or her concept of justice. This could lead to the understanding of local conceptualization of justice. Results would help fashion out an international justice mechanism that integrates local concerns into the contexts of Africa.

Suitability of Traditional Mechanism

Throughout the study, the point was being made that the traditional mechanisms could have been utilized and or complemented with other transitional justice mechanisms. It was indicated that even though the traditional mechanisms had broken down at the end of the conflict, something could have been crafted in its place. The point was equally made that traditional mechanisms could not constitute avenues for addressing massive human rights abuses because they fell short of certain standards and could not, therefore, be used in their *raw* state. The issue that emerges is, can traditional mechanisms themselves be avenues to bring about accountability, justice and reconciliation in the wake of massive human rights abuses such as took place in Sierra

Leone? It is important for an in-depth study to be carried out about traditional mechanisms in respect of communities in Sierra Leone to determine their suitability as accountability options or complementary avenues, and how they can be adapted for that purpose.

How far should Transitional Justice Mechanisms Integrate for a Legacy?

Transitional justice mechanisms such as the TRC and Special Court were set up with specific goals to be attained within a given transition. These are transitional structures as opposed to permanent structures and do not also have unlimited resources as the experiences in Sierra Leone and elsewhere bear testimony to. It is very necessary for these mechanisms to concentrate on their core functions and fulfill their mandates within their given timelines. At the same time, it came out that they were required to leave a legacy of good practice, including interacting with analogous existing mechanisms to let their essence and fragrance be robbed on them. Balancing their core functions with the pursuit of good legacy endeavors can be challenging and conflicting. It thus becomes necessary to undertake a study to determine what should be done by way of legacy. A single case study on how the TRC and the Court interacted or were expected to interact with analogous institutions will be useful in this regard. The envisaged study may identify the areas and the nature of involvement required without losing sight of their core functions.

Coordination and Information Sharing

As it turned out, the Prosecutor said that his office would not secure information from the TRC. This undertaking was obviously made to ensure a harmonious coexistence of both mechanisms. At the beginning of their coexistence, the TRC mandate was threatened by the presence of the Special Court. Sensing this, the Prosecutor took that position to ensure confidence in the TRC process, a fact the TRC acknowledged (TRC, Report, 2004). The TRC gathered a lot of information which the Court did not have access to. Some findings to Question 2 indicated that this might have been probably, detrimental to its investigations. Because, if they made informal approaches to UNIOSIL, it probably was an indication that not having access or the failure to make use of information given to the TRC affected the outcome of their processes. In fact, some participants believed it did. It is not clear how the position taken by the Prosecutor affected the Special Court. A research may be needed to probe further as to the effect of such a decision on the effectiveness of the Court. This can help in future analysis on how to mandate on information in situations where restorative and retributive mechanisms have to run concurrently.

Managing the end Product of Truth and Retributive Processes

It came out from the findings to Question 3 that the effects of the two institutions would linger on for a very long time. Managing the aftermath became an issue of concern. In the case of the TRC, it came out that not much has been done in terms of the implementation of its recommendations. It was revealed that the relevancy of

the product and report lies in the implementation of the recommendations. It is important to find out if there are any constraints and challenges facing policymakers on the implementation and the impact of non-implementation of recommendations on victims and all concerned actors. The research may focus on what has been done, what is being done, what is left to be done by way of implementation. This can be a guide to future truth commissions to direct their attention to recommendations that can be translated into deliverable policies. With regard to the Special Court, it emerged that in situations where conviction takes place (as three convictions had been handed down by the Special Court) the management of prisoners will be an issue. Will the international community continue to fund the prisons or will the prisons revert to the national government. What standard will apply to prison conditions? Having been convicted by international standards will the prisoners serve the sentence according to domestic standards? Will the international community continue to fund the prisons in perpetuity? A study is important to provide a guide to the international community and government of Sierra Leone.

Personal Reflections

The proposed study was based on certain basic assumptions. Firstly, the study assumed that transitional justice mechanisms of the TRC and Special Court were necessary for postconflict peace-building and reconciliation where the contexts of the transition were characterized by massive human rights and humanitarian law abuses. Impliedly, the TRC would perform the traditional role of truth recovery and healing and address the needs of victims, and the Special Court justice for attainment of reconciliation

and prevention of future reoccurrence of a conflict. Secondly, the researcher was of the assumption that the 10-year civil war in Sierra Leone was characterized by massive human rights and humanitarian law abuses; hence transitional justice was desirable for peace-building in postconflict Sierra Leone. Thirdly, the study assumed that the TRC and Special Court were necessary to facilitate the peace and stability of Sierra Leone.

The research outcome confirmed some of the researcher's assumptions as well as revealing the simplistic nature of the assumptions about engaging retributive and restorative mechanisms for postconflict peace building. It became clear that though human rights may occur on a large scale that does not constitute the main reason to bring about truth and trial processes. Other forces or tides in the transitional process are determining factors as well that is; political, socioeconomic, cultural, and international dynamics. The essence of having the two institutions was to ensure greater justice for the facilitation of peace. However, it came out that using the two institutions may not always be suitable to build peace. Maybe only one of it was desirable or both in addition to other measures such as lustrations and purges. As it turned out, the whole rubrics of accountability were linked to a wider spectrum of actors whose forces impinged on the outcome. And using the two mechanisms could be a complex venture leading to complex outcomes. Also, it became clear that the people who would live with the result must desire them. So the assumption that both mechanisms would be needed as a matter of course to facilitate peace in the wake of the mass atrocities did not hold.

Summary

This exploratory case study on the experiences of the dual mechanisms of accountability in Sierra Leone which came by as a result of coincidence left more questions than answers regarding utilizing restorative and retributive mechanisms side-by- side in the same geographical boundary. It showed the difficulty involved in engaging the two mechanisms for peace-building in postconflict situations. It also confirmed existing literature which indicated that the use of the two mechanisms should be a strategic policy option to the extent that it would yield to peace and stability. This notwithstanding, the study offered useful insights for the future of Sierra Leone itself, the international community as a body as well as individual countries who might want to employ this approach. A nation in crisis needs first to decide on exactly what is best for the interest of that nation. It is imperative however to state that there is not one prescribed method of achieving the ends of accountability. In other words, due to socioeconomic, political, cultural and historical differences, it is useful for countries to identify the best route to take to reach the goals of accountability. While admitting that there are differences in countries' set up, cultural relativity must not under any circumstances be used as a smokescreen to avoid accountability for human rights abuses. The point being made is that policy considerations should be such that serve the overall interest of the nation concerned. In this regard, it is important to reconcile the need for accountability with the tensions that some forms of accountability may create.

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APPENDIX A:

LIST OF ACROYNYMS USED IN THE STUDY

AFRC	Armed Forces Revolutionary Council
ANC	African National Congress
CDF	Civil Defense Forces
CGG	Campaign for Good Governance
CPEs	Complex political emergencies
CRTR	Commission for Reception Truth and Reconciliation
DDR	Disarmament, Demobilization, and Reintegration Program
ECOMOG	Economic Community of West African States Cease-Fire Monitoring Group
ECOWAS	Economic Community of West African States
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
LPA	Lome Peace Agreement
LRA	Lord's Resistance Army
NMJD	Network Movement for Justice and Development
NTLA	National Transitional Legislative Assembly
OHCHR	Office of the United Nations High Commissioner for Human Rights

OLA	Office of Legal Affairs
PRIDE	Post-Conflict Reintegration Initiative for Development and Empowerment
RUF	Revolutionary United Forces
RUFP	Revolutionary United Front Party
SRSG	Special Representative of the Secretary-General
UNAMSIL	United Nations Mission in Sierra Leone
UNDP	United Nations Development Program
UNIOSIL	United Nations Integrated Office for Sierra Leone
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNTAET	United Nations Transitional Administration in East Timor
WG	Working Group on Truth and Reconciliation

APPENDIX B:

PRELIMINARY AND EMERGING CODES

CODE	MEANING
Separate	TRC and Special Court being conceived and established at different times and in different political dispensations
Independent	TRC and Special Court being autonomous from each other by law and or policy
Unplanned	Accidental concurrent existence of the TRC and Special Court
Incompatibility	A state of the TRC and Special Court not being in tune with each other by virtue of their values, principles and mode of operations
Uncoordinated	TRC and Special Court not organized as two parts of the same tool by reference to their objectives and operational activities
Ideological underpinnings	Values embedded in restorative and retributive justice
Non harmonization	Absence of measures—legal and or administrative for peaceful co-existence of the TRC and Special Court
Cooperating	Mutual efforts made by the TRC and Special Court to enhance peaceful harmonious coexistence
Uneasiness	A state of anxiety that the TRC and Special Court experienced by virtue of being separate and independent as well as being coexisting

	transitional justice mechanisms
Linkage	Association that could exist between the two institutions through information, witnesses, staff and educational campaign
Suitability	The fitness of dual transitional justice by reference to the political, socioeconomic and cultural dynamics of the transition
Timing	Timelines in the implementation of TRC and Special Court i.e. concurrent or sequential
Priority	Preference between the TRC and Special Court in terms of which should be implement first in a situation of sequencing
Challenges	Difficulties associated with dual transitional justice
Impact	The effect both mechanism had on each other and on the wider populace by virtue of their concurrent existence and thereafter
Benefits	The contribution the two mechanism made towards peace and stability in Sierra Leone
Packaging	The arrangement and structure of both mechanism in their laws, the timing for their implementation and operational activities and how they were presented to the people of Sierra Leone
Transitional Contexts	The political, socioeconomic, and cultural dynamics that impinged on the TRC and Special Court
International Influence	External factors that accounted for the adoption of the TRC and Special Court as policy choice and well as their conception, design

	and implementation
Public confusion	Public inability to differentiate between the respective roles of both mechanism as well as the effect of their cooperation with them
Inherent tension	Difficulties associated with differences in operations of the TRC and Special Court
Pitfalls	Disadvantages the two mechanisms had which was not foreseeable at the design stage
Management issues	Issues involving the organization of the TRC and Special Court
Political justice	Offer of amnesty by the government and adoption of the TRC for restorative justice as a compromise for peace with the RUF
Insincerity	Acts and omissions on the part of the RUF and the government of Sierra Leone in violation of the Lome Peace Accord
Overlapping mandate	The TRC and Special Court having same subject-matter, personal and temporal jurisdiction
Controversy	Arguments about the nature of relationship between the TRC and Special Court as to whether they had parity or primacy in relation to each other
Tensions	Anxiety generated among the local populace by the presence of TRC and Special Court
Dispute resolution	Settlement of disagreement between the TRC and Special Court

Division	The split in civil society organizations, relevant UN agencies and the general populace about the TRC and Special Court and how that impacted on the functioning of the two mechanisms
Marginalization	The state of powerlessness experienced by either the TRC or the Special Court by the presence of the another transitional justice body
Enhancement	Advantages which either the TRC or the Special Court enjoyed by virtue of having to co-exist with another transitional justice body
Escaping justice	The situation whereby perpetrators were not indicted by the Special Court and did not also submit to the TRC process
Waste	Additional burden in terms of time and resources incurred by either the TRC or the Special Court by their coexistence
Clarity Legal relationship	Clearly defined legal relationship between the TRC and Special by their parent legislations
Sincere objectives	Clearly delineated goals of transitional justice
Political climate	Forces and or factors that influenced decisions on matters of transitional justice in Sierra Leone
Emotional status	A sense or feeling of security or otherwise by the populace as to the possibility of eruption of violence by an introduction of transitional justice mechanisms
Cultural context	The sense of justice by the people of Sierra Leone by reference to

	their culture
Economic dynamics	The sense of financial sponsoring
Pre existing mechanisms	The national Courts and traditional reconciliation mechanisms that existed in Sierra Leone before the conflict

APPENDIX C:

RECRUITMENT LETTER

To Whom It May Concern:

Thank you for your interest in being a participant in my Dissertation research investigating the concurrent existence of the Truth and Reconciliation Commission and the Special Court; the two accountability mechanisms which were set up in post conflict Sierra Leone to address human rights and international humanitarian law abuses that had occurred during the ten years of civil conflict. It is hoped that this research will contribute to the understanding of the phenomenon of addressing past abuses by divergent approaches.

With your permission, the interviews will be audio taped. All information from the interview process will be confidential, and your identity will be protected at all times. Participation is strictly on voluntary basis, and you may withdraw participation at any time.
For this study I am seeking the following participant who:

- Was a resident in Sierra Leone between 1999 and 2003
- Was/or is a Sierra Leonean publicofficial
- Was a Truth and Reconciliation C ommission official
- Was/is a Special Court official,
- Is knowledgeable about the TRC and the Special Court.
- Was an international official involved in the setting up of the TRC and or the Special Court
- Was/or is a Civil Society Actor involved with either the TRC and or the Special Court
- Participated in either the TRC process or the Special Court process or both

If you meet the above criteria and would like to participate in this study, please return the response slip at the bottom of this page in the addressed, stamped envelope, or contact me by phone (233-21-401681) or email (laporink@waldenu.edu). After I receive your reply, I will contact you to arrange a date and time for our interview. If you don't wish to participate, no one will contact you, and your anonymity will remain protected.

Thank you for considering participation in this study.

Sincerely

Signed

Lydia Apori-Nkansah

RESPONSE SLIP

…Yes. I am interested in being a participant in your study. Please contact me to arrange an interview or to give further details.

Name:…….....

Phone number or email address…….

APPENDIX D:

CONSENT FORM

Transitional Justice in Post Conflict Contexts: The Case of Sierra Leone's Dual Accountability Mechanisms

You are invited to participate in a research study of 'Transitional Justice in Post Conflict Contexts: The Case of Sierra Leone's Dual Accountability Mechanisms'. You were selected as a possible participant due to your knowledge and experience related to the topic being studied. Please read this form and ask any questions you may have before acting on this invitation to be in the study.

This study is being conducted by Lydia Apori-Nkansah, a doctoral candidate at Walden University.

Background Information:

The purpose of this study is to get a better understanding of the complementary role of the Truth and Reconciliation Commission and Special Court in peace-building and stability in Sierra Leone. The Truth and Reconciliation Commission and the Special Court, were set up to address human rights and international humanitarian law abuses that had occurred during the ten years of civil conflict in Sierra Leone. This study seeks to understand the practice of utilizing restorative and retributive approaches for postconflict peace-building by examining the two accountability mechanisms of the TRC and Special Court.

Procedures:

If you agree to be in this study, you will be asked to answer questions presented by the researcher (approximately one hour). The interview will be audio taped and consent form must be signed by you in order for the interview to be conducted. The interview will last for about one hour.

Voluntary Nature of the Study:

Your participation in this study is strictly voluntary. Your decision whether or not to participate will not affect your current or future relations with any institution, agency or anyone. If you initially decide to participate, you are still free to withdraw at any time later without affecting those relationships.

Risks and Benefits of Being in the Study:

In view of the fact that the TRC and Special Court were created as a consequence of a ten-year brutal civil war, participating in this study may bring about the memories of the conflict to you. You could withdraw your participation at any time without any consequences where you deem it fit to do so. Researcher will exhibit sensitivity in questioning to guard against a situation of the interview becoming emotionally charged.

Further, Pseudo names will be used to hide your identity and detach you from the information you will provide. Your privacy will be respected and you will be allowed to indicate where and when you choose to have the interview.

In the event you experience stress or anxiety during your participation in the study you may terminate your participation at any time. You may refuse to answer any questions you consider invasive or stressful.

In terms of benefits, if you choose to participate in this study, you will have an opportunity to express your views on dual transitional justice and have them validated and published.

Compensation:
There will be no compensation provided for your participation in this study.

Confidentiality:
The records of this study will be kept private. In any report of this study that might be published, the researcher will not include any information that will make it possible to identify you. Research records will be kept in a locked file, and only the researcher will have access to the records.

Contacts and Questions:
The researcher conducting this study is Lydia Apori-Nkansah. The researcher's faculty advisor is Dr Gloria Billingsley. You may ask any questions you have now. If you have questions later, you may contact Lydia Apori-Nkansah at 233-21-401681 or email laporink@waldenu.edu. The Research Participant Advocate at Walden University is Leilani Endicott, you may contact her at 1-800-925-3368, extension 1210, if you have questions about your participation in this study.

You may keep a copy of this consent form

You will receive a copy of this form from the researcher.

Statement of Consent:

☐ I have read the above information. I have asked questions and received answers. I consent to participate in the study.

Printed Name of Participant _____

Participant Signature _____

Signature of Investigator _____

APPENDIX E:

Interview Protocol

Transitional Justice in Post Conflict Contexts: The Case of Sierra Leone's Dual Accountability Mechanisms

Time of Interview:

Date:

Place:

Interviewer:

Interviewee:

Position of Interviewee:

Brief description of Study:

Questions

1. Describe your understanding of the TRC and the Special Court
2. Why do you think Sierra Leone engaged the TRC as well as the Special Court in her peace building process?
3. What are your thoughts on the use of dual accountability mechanisms as a response to dealing with past human rights abuses and breaking the cycle of impunity in Sierra Leone?
4. What other alternatives to the dual accountability mechanisms could have been utilized?
5. What was the nature of the working relationship between the TRC and Special Court?
6. What is your observation about the TRC co-operating or not cooperating with the Special Court in information, witness and evidence sharing?
7. What is your observation about the Special Court cooperating or not cooperating with the TRC in information and witness sharing?
8. Do you think the TRC encountered problems in sourcing for information, witnesses, funding, and evidence due to the existence of the Special Court? Give reasons for your answer
9. Do you think the Special Court experienced problems in accessing for information, witnesses, evidence, funding due to the existence of the TRC? If so what were the nature of the problem.

10. To your knowledge did the TRC and the Special Court experience any form(s) of tension between them by virtue of their concurrent existence? If so what was the nature of the problem.
11. What do you think about how the TRC and Special Court were set up? (Should the TRC and Special Court have existed at the same time or one after the other? Give reasons for your answer).
12. When is it appropriate to use dual transitional justice mechanisms?

APPENDIX F:

LETTER OF COOPERATION

Conflict Management and Development Associates
Sierra Leone

Lydia Apori-Nkansah(Mrs),
Ghana Institute of Management and
Public Administration (GIMPA)
P O Box AH 50
Achimota-Accra,
Ghana, West Africa.

19th October 2006

Dear Mrs. Lydia Apori-Nkansah,

ACCEPTANCE TO SERVE AS COMMUNITY PARTNERS

We have received your letter requesting us to serve as Community Partners in respect of your proposed study on " Transitional Justice in Post Conflict Contexts: The Case of Sierra Leone's Dual Accountability Mechanisms"

Based on our review of your research proposal, we give permission for you to conduct the study within our organization; Conflict Management and Development Associates. As part of this study, we authorize you to invite members of our organization, whose names and contact information we will provide, to participate in the study as interview subjects. Their participation will be voluntary and at their own discretion.

In our capacity as Community Partners we will also identify other potential officials and actors in the field of your proposed study for your consideration for interview.

We reserve the right to withdraw from the study at any time if our circumstances change.

We understand that the data collected will remain entirely confidential and may not be provided to anyone outside of the research team without permission from the Walden University IRB.

We hope your study will contribute to the understanding of the practice of dual transitional justice in post-conflict contexts.

Sincerely,

Mr Momoh Taziff Koroma
Associate Director

CMDA, 58 Campbell Street, Freetown, Sierra Leone
Tel: +232-76-774404, -769634, -823955
Email: cmdasl@yahoo.com

APPENDIX G:

COPYRIGHT PERMISSION

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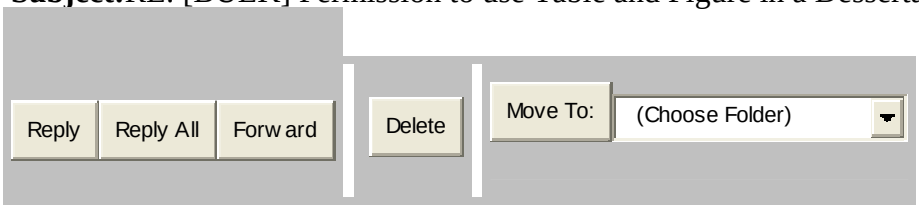
Date:2007/11/20 Tue AM 09:03:18 CST
To:<laporink@waldenu.edu>
Subject:RE: [BULK] Permission to use Table and Figure in a Dessertation



Dear Ms. Apori-Nkansah,
Thank you for your request. Please consider this written permission to use/adapt the material detailed below for use in your dissertation. Proper attribution to the original source should be included. This permission does not include any 3rd party material found within our work. Please contact us for any future usage or publication of your dissertation.

Best,
Adele

-----Original Message-----
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Sent: Tuesday, November 20, 2007 6:08 AM
To: permissions
Subject: [BULK] Permission to use Table and Figure in a Dessertation
Importance: Low

Dear Sir/ Madam,

I would be grateful if you would grant permission for me to adapt and include the following in my PHD dissertation;

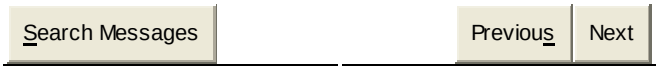
1. Figure: Code Mapping: Three Iteration of Analysis which appeared in Anfara, V.A.,Brown, K.M., & Mangione, T.L.(2002). Qualitative analysis on stage; Making research process more public. Educational Reseracher, 31(7), 28-38.

2. Table: Documentational table for the development of categories which appeared in Constas, A.M. (1992). Qualitative analysis as public event: The documentation of category development procedures, American Educational Research Journal, 29(2), pp253-266.

I am Lydia Apori-Nkansah a PhD student at Walden University.

Thank you for your anticipated cooperation

Lydia Apori-Nkansah



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 Help

APPENDIX H:

FIELD NOTES FORMAT

Pre-interview

Before the interview commenced, a search was conducted by the Google Search engine and information about Sierra Leone, its Government, people and culture was recorded. Websites of the Special Court, TRC, UNIOSIL, and Civil Society Organization were visited and information about them was recorded. Efforts made to contact potential participants and difficulties or otherwise encountered were all recorded.

Site visits

Researcher recorded observations about premises of the Special Court in terms of security measures, entry requirements and procedures, impressions about the personnel, and the general atmosphere about the premises. Also, proximity between the office of the Special Court and the TRC was noted and recorded

Post interview

After each interview, Researcher recorded impressions about participants' demeanour, emotion, body language, and receptiveness.

Personal reflections

Recorded insights derived from interviews in terms of the emerging meaning and how they contrasted with Researcher's preconceived ideas or earlier interviews. This helped to adapt questions to probe into emerging meanings.

APPENDIX H:

EXCERPTS FROM INTERVIEW TRANSCRIPTS

PO1:
If we say we should reconcile, people believe that reconciliation is saying "let us forget about what happened". Because in one of our local languages they say, "you will not say the war should come to an end and you start to tell people that your mother was killed in that corner". So if you say let us reconcile, reconciliation to people means "forget about it". If somebody has taken your food, let him eat it. If you are deprived of your food, accept it. Reconciliation as far as they are concerned means no body should be punished. Culturally, the Special Court and TRC together don't seem to be workable.
……
Traditionally, people don't believe in taking people to the Court. Now when you take somebody to the Court he is considered your enemy, so that one was a big problem. So I think, if the TRC had come to finish their work before the Special Court came, it would have been better. Bringing them together was a problem. The existence of both of them was necessary as I see it; knowing what happened. But if you want to get the truth, and you bring both of them together you have a problem and that is where there was a problem. I think personally it could have worked well if they had not run concurrently. Perhaps the TRC should have come and done their bit. When the Special Court then came, they could use that information and witnesses. Then the TRC recommendations, I am think should have waited until they heard from the Special Court. Just setting up the Special Court alone was a threat to the TRC.

PO2:
If you look at the background of the war, several attempts were made to bring peace: e.g. you have the Abidjan Peace Accord, and the Conakry Peace Plan. Everybody had hope in that peace accord [Abidjan Peace Accord], but to the surprise of every Sierra Leonean, the rebels went to the bush and did atrocious things more than what they did before the Abidjan Peace Accord was signed. So at the end of the day eh, it was deemed necessary that there were certain causes of the war that needed first to be identified so as to avoid it [future reoccurrence]. As for the Special Court as I said earlier, it was meant to address impunities of all sorts not only for Sierra Leone. But it served as a deterrent to those who would be warlords in the subregion. Because when you look at the background of the Sierra Leonean war, it has sponsorship from abroad, so it was meant eh to serve as deterrent not only for Sierra Leoneans but for the entire region and if you look at the effort of trying to stop the war, it was the effort of the sole regional force. It was through ECOWAS that attempts were made to stop the war, so in my own opinion the Special Court was relevant.

……
.
In fact, running them simultaneously, the government of Sierra Leone reminded the people that the government was serious in what it was doing. Concerted effort with the international community showed that they were serious about impunity and that they were serious about tackling the causes of the civil war. For example, the TRC identified corruption as one of the causes of the civil war; but in fact, impunity as I use it was not only at the conduct of the war, but impunity was even in the conduct of government affairs. People played and plundered the national kitty and turned the national kitty into their own personal [asset]…. At the end of the day, it was very appropriate for these two outfits to run concurrently, Right! So as to tell the people that the issues that caused the war were being addressed. At the same time, those who used the war as a way of perpetrating barbarism were to be punished.

……
Let us not forget that the illiteracy rate in Sierra Leone is so high that our people can't understand the two outfits; Perceptions about the TRC and the Special Court varied for individuals. For example a lot of people think that the Special Court was a machination of President Alhaji Tejan Kabba, to get rid of certain political opponents especially the Kamajor group in the country because Hinga Norman was heading the Kamajor group. Secondly, for a lot of people, they think that Sam Hinga Norman should not have been tried by the Special Court, because he was in the government and had the approval of the President for his actions, so he alone should not have been arrested and tried by the Special Court. Whatever the situation may be, for some of us, the Special Court was very necessary, but at the end of the day, they only ended up addressing the leaders. However, there were other lynch-pins who could have been tried, who actually perpetrated the atrocities in the war but they are still at large. In fact, they have come under the DDR Program, demobilized and integrated into the society. In fact, it is the opinion of our people that by bringing them under the DDR program, retraining them and re-integrating them into the society, those people [perpetrators] were paid for their barbarism.

……
I think the structure [of TRC and Special Court] was ok. Watch especially what the Special Court was set up to do-- to address impunity. It was very necessary to set it above the other institution, above the TRC

……
I believe dialogue anywhere in the world can solve a lot of problems. In situations of tension they [TRC and Special Court] should not result to another court because that will lead to the wasting of resources, time and everything. I think eh, the staffing of those institutions should be such that the heads should be able to see eye to eye on a lot of issues even where there is a difference in opinion. They should be able to come out, sit down and sort themselves out. The differences can only become open and large depending on the kind of leadership that the

institutions will have. If the leaders of the 2 institutions are experienced, well educated and so forth, they can sort out those issues without the public knowing about it. I think leadership of both of them should have legal background. I did not approve of the leadership of the TRC: he did not know some of the legal intricacies of this kind of thing. Integrity wise, ok, but when it comes to the intricacies of legal matters, there were short comings in that area. Strictly speaking, especially in conflict area and so forth, where the judicial system has completely broken down and so forth, you must have legal minded people, highly respected in the world to hold those positions. In fact, there should be an open international tender for those positions. You call [bring] in people with the right expertise no matter what their background, their nationality, bring them in.

……

Some of the witnesses who appeared in the TRC also appeared in the Special Court even though they made their identities hidden you could still tell. Most of them were given numbers instead of names and so forth whilst they were giving evidence at the Special Court.

……

Joint public education by TRC and Special Court would have been a mixed-up. As I told you, looking at the educational background of our people and the mass illiteracy rate, the objectives and aims of both organizations would have been mixed-up by our people if they had done joint sensitization. Using joint expertise would have made them appear as impartial institutions. It was unethical; you could not have a staff of TRC working for the Special Court

PO3:

The Special Court means nothing to me. Taylor is the only success of the Court but he was taken out to The Hague for trial. Well, to me actually, I don't see much benefit from the Special Court, because those we wanted prosecuted are now on the streets. Actually, I would have loved to hear Foday Sankoh, the leader of the war, in the Court to reveal what he knows about the war. He was the ringleader of the war and I believe he has much to say about the war, and what actually caused him to wage the war. Now, he is not there, so, who are we going to get to actually tell us the truth of what happened, and how it started? So that is my own view.

……

Actually, initially after they set up of the TRC, this Special Court came also. So, there was a sort of conflicting agenda. Some people *shied* away from the TRC. They were of the view that if they go and say what they know or they confess, maybe that would be used in the Special Court. So some people actually *shied* away from the TRC – not going to the TRC to confess, thinking that they will use that to arrest people for the Special Court. To me actually I prefer the TRC, since they gave this amnesty, there was no need for the Court.

……

Well, actually, I think the TRC went a long way in healing the wounds of victims of all sorts, because at one point in time, when someone revealed what they had done and apologized, I think we all agreed that we should forgive and forget about the perpetrators. When somebody hurts you and he confesses that he hurt you but he expresses the desire for you to forgive him and forget about it, I think we would all yield to that. That was one of the benefits we got from the TRC.

PO4:
There was not going to be a prosecution, but because of the way those who have been granted the amnesty continued to behave, it became clear that there needed to be a mechanism that could dispense justice and not just to bring about reconciliation. In a situation where serious atrocities have been committed, there is the need to look at the possibility of prosecuting them, particularly if the perpetrators have not shown signs of remorse or willingness to make amends. You have to repent and ask for forgiveness before you can be forgiven. To simply say, well, let's forgive them - forgive perpetrators seeking forgiveness and showing no remorse. We did that and it did not solve any problem. In a situation where serious atrocities have been committed, there is the need to look at the possibility of prosecuting them, particularly if the perpetrators have not shown signs of remorse or willingness to make amends. You have to repent and ask for forgiveness before you can be forgiven. I think that in a situation where very serious atrocities have been committed and the perpetrators have not shown signs of remorse or make amends, then it is better for the kind of mechanism (Special Court) to be put in place…If everybody has decided let us stop this now; let's try to make amends, that is no more fighting, no more atrocities and sincerely everybody had gone down that way, I don't think there will be any need for Special Court.

……
On paper TRC and Special Court were not created at the same time, I think the TRC was the creation of the Lome Peace Agreement, while the Special Court came after. Although in terms of the implementation it was around the same time, because the Lome Agreement was not fully implemented until 2000 and it was the time the, RUF started misbehaving, then the Special Court came. So, they did not actually come out at the same time, but in terms of operation they intersected. In fact the TRC had gone a long way before the Special Court actually started operating. I think it would be difficult for both to be established at the same time and started operating at the same time; it would be difficult for the peace process to take place under that kind of scenario. In the sense that it would be difficult for anybody who knows that he is going to be charged and tried to now say okay, I am going to hand over my weapon, I am going to stop fighting, etc. The average human being will not do that. It will not make sense to anybody to say, okay we are going to have peace, I am going to stop fighting, I am going to hand over my weapons and then they are going to charge me and try me and lock me up. I don't think that will really work. That is going to be a difficult scenario. So, I think

that the peace process should be allowed to go on. Trials can happen later. For example, even with the 2nd World War up till recently people are still being tried. It is not something that can disappear. Although in a sense perhaps the victims may complain…. I don't think that it would be effective if both are implemented exactly at the same time. Like I said in the Sierra Leone case, it was not exactly at the same time. It just happened that there were both operating at some point together but the TRC was winding up while the Special Court was starting. Well, really I think Sierra Leone was unique in a sense: At the time TRC started functioning the reconciliation process had gone on some way. And also the RUF in particular had almost been destroyed. Like, for example, what is happening now in the Uganda with the LRA, you are announcing that they are going to indict the leaders of the rebels, how are they going to be willing to stop? Whilst in Sierra Leone already we've gone some way down the line before the Special Court actually started operating. I think that it would be a disadvantage for them to take off exactly at the same time.

I think that it will be problematic if the TRC will be going to share evidence with Special Court, a lot of people would not have been willing to give evidence to the TRC. I think that a lot of people willingly gave evidence to the TRC because they knew that it would not be used against them in the trial. So, I think that it will be necessary to separate the two. If the Special Court wants to get evidence, it should collect their evidence. The Truth and Reconciliation Commission is set up to fulfill a different objective. Initially the TRC has to do with campaign to inform people that their evidence will not be used against them. So, if they are collaborative in that sense [not sharing information] I don't think it will create problems.Well, with the Special Court, except those who were going to give evidence as witnesses for prosecution of somebody, I don't think that it will create any problem for Special Court to pass on information to the TRC.

……

Special Court is not an imposition [by the international community] because it was the Sierra Leonean government that requested for it. Initial request came from the President, particularly because of Foday Sankoh and the need to find a mechanism to try him in a way that would be deemed to have been free and fair. That was how the idea of the Special Court came about. Obviously the final structure, mechanism and regulations, etc had to be negotiated and to a large extent, they were influenced by the international community. But I don't think it is fair to say it is an imposition by the international community at all…. Even though that may be the case, I think that there is need for that kind of prosecution. Let me back track a bit. In the case of Sierra Leone, if the RUF had not misbehaved after the signing of the agreement, there would not have been the Special Court. If anything, maybe some international team may have been set up; that would not have been advocated for by Sierra Leoneans. The Special Court was advocated for by Sierra Leoneans because of what those given the amnesty did. But obviously they could not have just prosecuted only RUF people so it had

to be broadened. This is where the Civil Defense Forces also were prosecuted because they also committed atrocities. I don't think that it had any negative impact on the peace building process… I think that the way it turned out is the best possible in the sense that it is based in Sierra Leone, it applies Sierra Leonean law in conjunction with international law and it is being run by international community using some Sierra Leoneans and so on. It gave some home grown feel, but at the same time had the authority of an international tribunal. I think that it's been a good model.

……

I know that particularly with regard to the Civil Defence Forces, there has been a lot of rancor over the fact that the coordinator himself-- Hinga Norman and another had been charged and have been tried, because a lot of people feel that what they did was for the betterment of the country and they were on the right side. That in a way has created some rancor. I am not sure it has had any major impact on the peace building process. For indeed certainly some people were dissatisfied, but obviously in any situation where some people have been prosecuted, some people will certainly be dissatisfied. Even though that may be the case, I think that there is need for that kind of prosecution

Well, in terms of reconciliation perhaps more traditional mechanisms could have been used to enhance the reconciliation process….Well, I think in addition to the TRC because the TRC was able do an analysis of the problem; what caused the problem, why it happened, the way it happened and what should be done to avoid it in future. The traditional mechanism may have resolved issues at local level, which maybe the TRC did not fully achieve so we could have had other mechanisms… I don't think they [traditional reconciliation mechanisms] were intact but something could have been crafted. No, I don't think the local [national] Court could have been an alternative to the Special Court

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I think that in any postconflict situation, there is need for something like the TRC because a lot of the time, things happened and many people don't understand why they happened. Secondly, take Sierra Leone for example; a lot of the combatants were people who were kidnapped and forced to become combatants. They did not go into it of their own volition. Obviously while they were there, they committed a lot of atrocities. For a lot of them if it is time to go back to where they come from it will be difficult because they know the kind of things they have done. For the healing process to take place there is need for all of these to come up into the open for people to speak and to seek forgiveness from their families, from communities, from those they hurt and then the healing process can take place. If somebody has been hurt and the person who had hurt that person did not show signs of remorse and seek for forgiveness, it is difficult for the person who had been hurt to forgive. I usually say to people that fortunately I did not suffer in a major way directly as a result of the war. None of my very close relatives were

killed, my children were not abducted and none of the female members of my family have suffered anything like that. I asked myself at times if my daughter, for example, had been disgraced in front of my eyes, I am not sure how I would have been able to handle that even if the person would come and say I am sorry. I understand that it was a very difficult process. For healing to take place, there has to be a conviction that okay this person is sorry. Maybe the person was being forced to do that kind of thing so it was not really his fault. Okay, although it is painful but I am willing to forgive. So, I think that the TRC – that kind of process is essential for real healing to take place after conflict like the kind of conflict that happened in Sierra Leone.

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PO5**:**

Sierra Leoneans actually advocated for the setting up of the TRC, not the government. We used to have phone-in programs on the radio and television about the way forward for Sierra Leone to bring this war to an end. Most people said we should come up with something and sit down with such people, even if they have killed both your parents, and forgive each other. Forgiveness does not mean that you have to forget it.

……..

The Special Court came in predominantly from the United Nations, even though some Sierra Leoneans advocated for it. The United Nations applied pressure through the government. In the first place our President wrote to the Secretary-General for the implementation of the Special Court, because there was some pressure from the parliamentarians and government workers of Sierra Leone. Prior to this, the TRC was already in existence. Most people thought that the TRC was primarily for Sierra Leoneans by Sierra Leoneans, and then we got this other international justice sector. This Court tried people who had committed atrocities against humanity not only in Sierra Leone, but also those who perpetrated the war from outside this country. That is what the United Nations and other big NGOs did here.

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Well, we have our own law court in Sierra Leone. These people could have been taken to our law courts and tried if prosecution was needed……. Our law courts are very accessible. You can go there without an ID card and no one will say anything to you. At the Special Court there are so many problems and … if you didn't have a contact, you would not be been able to get in. Where would you have that contact? Those are some of the barriers. The law court [national court] should have been well equipped to try these people. These are Sierra Leoneans, and those people like Charles Taylor should have been taken to The Hague.

……

No the courts [national courts] were not intact, but there could have been intervention from the international community. The law courts were abandoned, not totally, as you can see the buildings are so beautiful, but not all that glitters is gold… The international community could have come in to sponsor the law court

or run some seminars for our lawyers, maybe taking them outside to give them some background about international justice. We have The Hague; Charles Taylor has been taken from here to The Hague. This is a clear message that the Special Court was not needed. Because if someone who has been arrested by the Special Court in Sierra Leone is now being taken to The Hague, then there was no need for the Special Court. We should have allowed The Hague to try those people. Those in Sierra Leone [Sierra Leoneans] who have been taken to the Special Court should have been taken to our law courts to go and answer to crimes against humanity; everything happened in Sierra Leone. Think of it even Charles Taylor should even have been tried for the people of Sierra Leone to see because Charles Taylor made a comment when we were young, that Sierra Leone will taste the bitterness of war; and we tasted it. The people of Sierra Leone should have been allowed to go and see the trial of this man [Charles Taylor].

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The TRC did affect the Special Court both positively and negatively. It was a positive thing that the Special Court was in Sierra Leone, because it was able to gain a lot of information from the TRC about what happened in Sierra Leone. One could recall that 90% of the people accepted the TRC because there was no threat of prison, like what Hinga Norman is facing now. If you ask any friend of Hinga Norman he may tell you that he did not support the Special Court just because he is associated with Hinga Norman but he may support the TRC.

……

The Special Court has definitely contributed. Coming back to the Special Court and the TRC, for me personally the TRC would have been appropriate, but the coming of the Special Court does not mean that it created a negative social impact. It has helped. Sierra Leonans were employed and lot of them went out for training.

PO6**:**

I think working side-by-side is the best way to do it. We learn from each other as we go along. We get information informally from each other along the way. Nobody stopped anybody from going to sit in the hearings of the Truth and Reconciliation Commission for the Special Court. So you could have gone there with your tape recorder and taped the testimony of somebody before even the final report came out and use it to your benefit. But if the Special Court is going to do it first, they will not even share anything at all with TRC. So, side-by-side is better. I don't know of any other way. If I were a member of the Special Court I would have paid a lot of attention to what the Truth and Reconciliation Commission was doing, and I'm sure they did, because there you might hear things that might lead you in that type of situation… I remember when I testified at the Truth and Reconciliation Commission here, I was testifying on the issue of information sharing. I am sure somewhere along the line, what all of us said, may or may not have been used, but I think they may have been used to some extent in terms of what actually took place or is taking place at the Special Court. Now, if

they do not exist side-by-side, that information is lost. The people who appeared there [TRC] had committed crimes also, or were party to people who committed crime, but they were not serious enough to be termed as people who bore the greatest responsibility. In that view they could coexist. I am sure some of the testimonies given at the TRC were also used by the Court.

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They [RUF] were quite suspicious, but we wanted to make it less political. If you use the courts here [national courts], there is the possibility that people might think that Government is influencing it, even though there was a separation of powers. To avoid that, you set up an international court or, a hybrid, and then all of these issues would not be part of it at all. Then you deal with the real issues – who were the people who bore the greatest responsibility? You address those issues as opposed to worrying about answering all these questions about politics and influence of the judiciary.

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When Charles Taylor was brought here, it set home the message loud and clear that impunity will not be tolerated. Charles Taylor seemed such an invincible person, such a powerful figure, but he was not above the law. That is the message that came out; nobody is above the law. If you take a look at Charles Taylor, his aura, the invincibility that used to surround this man; and later for him to be was brought to Freetown in handcuffs! They kept him behind bars and then he was moved out to The Hague. That tells us that you can have war, but you have to operate the theatre of war within international guidelines. There are things that you simply cannot do. So that is the message; that is loud and clear. It also says something about us as a country. That people have suffered quite a bit, but our people are ready to forgive, reconcile and move ahead. This is what has made it possible for us to have this re-integration taking place.

PO7.

Looking at the TRC from the traditional point of view, it is almost the same. Traditionally if you have done something wrong or you have committed an offence in a community, for people to accept you and forgive you for what you have done, you have to openly accept that you committed the crime, but you would assure people that you will not go back to it. By so doing the people would accept it and they would forgive you. That is the traditional way people reconcile with each other.

At the close of the war, actually the people were not happy with the military and even up to date, they are not happy because they thought the TRC did not delve much into the military. A lot of people who did so many things did not appear before the TRC to confess and ask for forgiveness, and we are still seeing some of these people in the military – in the senior ranks – so there are still some doubts. If I know I saw you committing an offence against me personally and you have not confessed, I will accept you for acceptance sake but deep down in my heart I

will always have ill-feelings about you. In fact that is the problem of the people with the military to date. Orally, they would say there is no problem but inwardly there is a problem with the military.

With the Special Court; people perceived it differently. For one, people saw the Special Court as government machinated. The legal people also saw the Special Court as a place where people should go to pay for their deeds through international conventions. My personal opinion about the Special Court is that it is actually not in place for Sierra Leone. I preferred only the TRC, and it should have ended there, or if the Special Court existed it should have tried only the RUF because they initiated all the problems in this country. All the other factions like the military and *Kamajors;* they were there to resolve the matter. Someone may hit me but in a bid to retaliate I would give harder punch than what they gave me. So if you say that in the defense of myself and my people, you are going to punish me because I have given a harder punch well, it is erroneous I would say. If the RUF alone had been brought to the Special Court, I would have appreciated it; I would have loved it that way. With the military, somehow I would say, yes, because they know more about war, they have learnt more about these military conventions during their training. Therefore, in the execution of their duties they should have implemented all those things. If they went contrary to that they should be brought to book. But the CDF, these are traditional people; they don't know anything about war crimes; they know nothing about the Geneva Conventions. What they just know is that once you locate the enemy, the way and manner they destroy that enemy is left to them. Even if it means cutting off his head, or whatever crude method you use, as long as you have destroyed the enemy that is it. You know, people actually accepted them and supported them. So I am not happy with bringing these people; the CDF to the Special Court.

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Yes, because as I said, bringing this Special Court is something that is government machinated. If the government had specified that they only wanted the TRC, it would have stopped there. This international community wants to do everything, but it is left with the government to say no. They wouldn't have forced their way in, but because they accepted the Special Court, it came. We went to the UN and requested the Special Court

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I am just assuming, but hostilities did not cease after the Accord. There were many breaches for one reason or the other. It happens everywhere there is conflict, but when it is time for it to end, it will definitely end. It is probably because most of the provisions [of the Lome Peace Accord] were not spelt out clearly, so you wouldn't expect the war to stop after just signing a document. The government would always sign, but were they committed to it? Maybe that is why the war prolonged. I have met some of these RUF guys and they said that the government signed and committed itself to do some things, which they did not

do. So for someone who has taken up arms for a long time and is used to living by the gun, it is quite difficult for him to disarm just like that. It needs a lot of commitment. Even now, just a few months back, I had a discussion with one of the RUF guys, and some of them are still not happy that the government did not keep its promises to them; with all the accords, conventions etc., nothing was done. Sani Abacha made a lot of promises to train them, give them scholarships, and even give them funding. They were not given these things and they are still bitter. If the war was still on, they wouldn't just say the war should end. If you append your signature to something, you make sure you keep to it to the last letter. That was responsible for the prolonging of the war, so the coming of the Special Court doesn't mean that it was because the war didn't stop. It is like the government wanted to get rid of a few people, or to satisfy the international community.

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I think the TRC was more important. It revealed so many things. People appreciated the TRC more than the Special Court. People were even committed voluntarily to go to the TRC and confess their deeds. With the Special Court, people had a lot of views about things that had happened and things that they witnessed, but they deliberately refused to go to the Special Court because they were not happy. Most of the people, who went to the Special Court to testify, especially against the CDF, went on personal grounds. Either their houses had been burnt or their relative had been killed. I know a lot of people who were privy to very important information who did not go to the Special Court for the sake of true peace.

……

In the first place we needed to establish what we want to achieve at the end of the day. If we want to achieve historic peace and reconciliation, we don't need to prosecute anybody. It would have just ended at the commission [TRC], because by the time you begin to prosecute people, you are still wounding people and causing problems. If for example, my father is prosecuted and sent to jail, reconciliation does not come in. Somehow, I would be aggrieved.

No without the Special Court I think violence would have ceased. Like I said, all these treaty provisions did not hold; amnesty is just one of. There were other things that they signed. Did they keep to it? No there is amnesty, but what would happen if I come out of the war? What would be my security? They did not see their security after everything, so that was why it continued. There was a problem, government was somehow responsible, and so was the RUF, so they should have come to a meeting point—the government and RUF.

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As I saw it, the Special Court followed from the TRC, because most of the evidence the prosecution used in the Special Court was brought from the TRC. If someone went to the TRC to confess that they killed 50 people at a set location,

the Special Court sent people to that location to see if what they said was true. So somehow they used the TRC to get some of this information for the Special Court. There was a link somehow.

……

There was nothing like rivalry actually [between the TRC and Special Court), only that people appreciated the TRC more than the Special Court. The TRC and the Special Court did experience some tension between them though. The Special Court was more tensed because the Special Court actually surprised people; especially some of those who were tried. Like I said, it is not only the CDF, but even with the RUF; trying Issay Sessay. Of course, at the end of it he was the head of the RUF but he contributed greatly in bringing peace and disarming the boys. With all that he did, he was brought to the Court to be tried, and it was as if they didn't appreciate his efforts. Somehow, he was trying to bring peace and reconciliation, so we should have found another means to reconcile with people. Although he made a few mistakes, at the end of it he made enormous efforts to bring peace. Everybody can make mistakes, but what happened? He showed signs of remorse and contributed his bit, but he was tried. The Special Court actually created more tension than the TRC. With the TRC, people were willing to go and talk; they even laughed over it, "So you did that" and forgave the culprits, so it was much more appreciated than the Special Court.

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Yes, because amnesty stands for forgiveness, and that was fine. To withdraw it again is like trying to injure people all over again. Using the two should depend on the traditional structure of the country. The Special Court would probably be very useful in the West; their traditional culture probably calls for that. For an African setting like Sierra Leone, even if I have killed somebody…I could be forgiven under the circumstances.

PO8

I would say that Sierra Leone was used as a test case. In a way, they [international community] took the agenda of the international community to test to see if it could work. I believe that since the international community had to put a lot of money into the UN for the work, they took the opportunity to test to see how the two mechanisms would be able to work side by side.

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I don't think if we wanted to prosecute anybody we could have used the national courts. Rather they could have been sent to the International Criminal Court. The national Courts did not have the capacity to try them. At that time I don't think anybody would have been happy – I do not think that anybody would have been confident with the outcome of the national courts and will think it had not been fair. The traditional mechanisms also didn't have the capacity to do the kind of work the TRC did. Again, I think the mixture of the TRC and traditional mechanism would probably have worked…..TRC was tasked to invite people to take the history of what happened and talk to them in that sense. I think going to

the local institution, they wouldn't have been able to get that much of the history as recorded by the TRC. A combination would have worked.

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I think the Special Court was seen as a superior to the TRC. I think the TRC was always looked upon as the more inferior of the two during the time. I don't think the Special Court was affected by the presence of the TRC because this body was seen to be carrying on with the work regardless of what else was happening around them. I don't think the Special Court had too much to loose because of the TRC.

PO9

It is a three-way mechanism we have here. We have the judiciary which is nationally based. We also have the Special Court which applies both national and international law. Some of the AFRC boys were tried in our national courts, but with the Special Court, there was a cut-off point after the Lomé Peace Accord. After that point any other crime that had been committed which had sufficient evidence gathered, could be taken to the national court. Apart from that, even up to this moment, there may be a case in the national court for treason. In other words, all these mechanisms were working side-by-side. The national courts were there; they never shut their doors, the TRC was there as a Commission, and the Special Court was there as an international court. We had a tripartite approach.

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Relationship was normal and cordial. One was looking at the other as having a duty to perform in another area. It is like dealing with the director of public prosecution, he is dealing with criminals, and I am dealing with civil society. I don't think I would try and slight him for that. After all, somebody may commit an offence and be liable to seek prosecution.

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My personal view initially was that the TRC could have done much more than what the Special Court was doing, but when I consider it at a professional level, impunity would be the next thing. If someone is ordered to set more than 50 villages alight, and he is allowed to come and stand here and just declare that he is sorry for what he did, saying he was under the influence of so and so, then someone else after future elections can also take to the bush and start destroying things. Later on, they will come and stand here and say they are sorry. So that would continue, and apart from the Sierra Leonean situation, we are now seeing in the international arena that human right is now a *golden stool*. Everybody wants to have it at their doorstep. If you want impunity and human rights abuses to continue, then you cannot be part of the new system. You cannot fit into the new international justice system. I do believe that we were among the very first countries which signed the Rome Statute to set up the ICC. What the International Criminal Court is doing now is what Sierra Leone started – the Special Court. From our small geographical boundary, we have seen the

President of Liberia come into the custody of the Special Court. Those are good examples not only for the ordinary man but for leaders as well, that when you are in power, you are in power to protect the rights of human beings, not to destroy them or to abuse them.

……

Timing was essential, for the TRC and the Special Court. We were still struggling to develop both on the international arena as well as locally, to the extent that they were thinking about the TRC even when disarmament was still on. It is like telling a dog not to fight. Telling people to drop their weapons will not work. To some of us, common sense told us that the timing was not good. Look at the Second World War there was timing in the elements. If it was a bigger society than in Sierra Leone, like Nigeria, it would have been fine. Had it been only our national court, we would not have got Charles Taylor here……

TC1

In Abidjan and in Conakry, they had given total amnesty to the RUF and in 1999, following the invasion of Freetown; they had also gone to Lome to carve out an agreement which followed the pattern of the Abidjan and Conakry accord to give a total amnesty to the RUF. But the Civil Society in Sierra Leone felt that these criminals should not be allowed to go without punishment and therefore the government should not allow them to have amnesty. However, without that amnesty, it would have been impossible to get the RUF to put down their arms and bring about peace and reconciliation. So a compromise was reached and so the TRC was included in the Lome Peace Agreement. And let me say this, I want to emphasize a point that the Lome Peace Agreement has only one transitional justice institution and that is the TRC. There is no mention of the Special Court in the Lome Peace Agreement. That was an after thought. Yes, so from what I have said, the Special Court was an idea from the UN and people are now justifying it on the basis of the event of 2000 when those people marched on to Foday Sankoh's place when the shoot out ocurred. And perhaps other events which they felt justified the Special Court and the bringing of the RUF and other people supporting the RUF to account for their actions…Yes, I mean as you know any institution that has to be established in the country has to be a national institution. So in the end, you know how diplomacy works government was the one that applied to the UN for the establishment of the Special Court, so the responsibility of the Special Court was on government.

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Where I have had opportunity to express this opinion, I have always said this that in the case of South Africa, their agreement had more or less pre-empted the establishment of an investigation but not in the form in which it has been established in Sierra Leone. They [South Africa] felt that those people who had perpetrated crimes in that country should be prosecuted but at the same time this was paramount for reconciliation. So they included in their own agreement that if

people who have committed crimes would come out and tell the truth about what they did and ask for forgiveness then they would not be prosecuted. This condition was not part of our agreement. We just gave a blanket amnesty and therefore, when the Special Court came, it came as a surprise to many people except that as I have just mentioned earlier, the government had to take ownership of the Special Court and had to apply; these are understandable procedures. But the people of Sierra Leone and a number of people in the Civil Society were happy because as I said originally they did not like the amnesty. Also when we went to the field as a Commission, we found acceptance of the government decision to offer amnesty. Whether they accepted the blanket amnesty or a kind of conditional amnesty is perhaps something which was not pursued and nobody can say whether if people were asked they would have preferred a conditional amnesty rather than a total blanket amnesty. But I personally, when I went to the Kambia District, I was told that even the TRC was no longer necessary because they had accepted the government's plea to let accept agreement [Lome Peace Agreement] so that there will be peace, and there was peace –then they were happy. They could go after their farms and move about the countryside without fear of any attack from any rebel; so to them, that was the end of the matter. It was only after explaining to them, that yes, that was the intention of government and we were not very happy about the situation in the country then. But they themselves, I am sure, would like to know what happened and who and who were responsible for whatever happened. And so a mechanism can be put in place for these people to come and own up their responsibilities and to have reconciliation between them.

……

This is in my own view, and is my own opinion about this Special Court. I say, it everywhere, that I do not justify the Special Court in Sierra Leone. I do not at all. Not that I am saying people should not be accountable for their actions, but the fact that we led these people to believe that, if they co-operate with us, we are not going to prosecute them. It is a betrayal of that trust. And to me, I think that kind of a thing should be sacred……

……

Yes, so you see this question of committing atrocities and people accounting for it, they seem to be applied only on weaker nations,--international politics so to me, I don't think it is correct. You may be wrong, you may be right. The fact is we cajoled these people to accept a kind of situation by promising them and then when we get them, when they accepted and we felt comfortable; we turned and pounced on them. That is a moral issue which I find difficult to compromise and accept and say oh yes, the international community said we must not encourage impunity and so that kind of thing. I myself, did not like what Foday Sankoh and other rebels did, I like people who really commit atrocities to be punished but if to get the greater national peace and security you have to sacrifice certain things so be it.

…….

The international community was prejudice; I mean was more incline to support the Special Court and am still inclined to support the Special Court. When we started the TRC, the UNHCR' had made an earlier estimation of about 10m dollars ((US$10m) having looked at what was happening in other areas and so on. When we came, they said we should trim it down and we did, we reduce it to about 6m dollars (US$6m). Yes, they went on and they cut it down to about 4m dollars (US$4m). So we ended up spending that; only a third of what was originally budgeted. They themselves were surprised that we were able to achieve what we were able to achieve. The International community did not like the TRC much because they think it supports impunity. Well I think it is just the issue that as we were saying and anyone who supports that idea seem to be supporting or favoring impunity in the conflict and they don't want to encourage impunity in any country. So there are people who think that the TRC should not form part of transitional justice. Yes, there are people who think that every situation, like that should be sent to the Court.

……

Oh if we had adequate support, especially if we had just double the amount we received not even the 10 million, but we had 7 or 8 million, we would have done much more than we did. And we would have been able to even do more reconciliation. You know, we initiated reconciliation institutions in the country we could have done more to be able to reconcile the different factions. For instance those people who had moved from the South, we found a number of them in Kambia District and Port Loko District. They were Southerners who were afraid to go back we were able to arrange and reconciled some of them with their people. But as I know even now as I am talking there are a few who have settled down permanently in the North and cannot go back to the South.

……

Other alternatives could have been to utilize the local or traditional approach to any conflict but as you know, UNHCR commissioned a study that investigated various traditional methods of reconciliation of different tribes. However, this approach is not satisfactory to the international community and that is why they brought in this Special Court so that, retributive justice can be applied. As far as we are concerned the majority of the people, felt the pains of what took place but to them eh, the cessation of hostilities and reconciliation were more important than retributive justice of punishing people for what they have done.

……

Well, the relationship between TRC and Special Court was very good, very amicable to start with, because I also in my personal experience was on the same platform with the Special Court officials to address the people. I don't think there was any problem between the TRC and the Special Court until the TRC asked for the indictees of the Special Court to appear before it. As you know even our chairman, and David Crane [first Prosecutor of Special Court] I mean were on the same platform and made statement to the effect that they would [cooperate] and that David Crane said that they would not admit any information given to the

TRC as evidence in the Special Court. So it was a very cordial relationship. He [Crane] invited us several times in his place, we sat down, had meals and discussions togetherIt was only when Hinga Norman and others said they wanted to testify before the TRC and we made application for them that we had a breakdown in the relationship. On a few occasions, we had, to address the public on the same platform with members of the Special Court. They had enough money, when we went out they would entertain the people, they would give them refreshment and do all that, they had to do that to encourage them to come and most of the time I took advantage of that, because we haven't got money to do it.

……

We were concerned as a TRC about the confidence that the people out there would have in us to come to us because the public, especially the rebels and people associated with them were scared when the announcement was made about the Special Court. They were afraid. Anybody who gave evidence before the TRC initially, thought that giving evidence before the TRC initially, would open somebody up to prosecution before the Special Court. We had to explain and we told them that we were not going to give any information that we collect in confidence to anybody. In fact, we discussed the idea where people said that maybe the Sierra Leone government or the Special Court would give precedence to the Special Court and that the Special Court can subpoena the TRC to provide evidence. We took the decision that we would not provide that evidence because when we go out we tell the people that the information given to us is in confidence will be protected; and we were not prepared to betray that confidence.

……

Oh, I mean after publishing the report, well what is published is open and anybody can use it but you know, the report itself protect certain people. Everything put in that report is for the public.

TC2:

The context necessitated the creation of the two mechanisms. One, the international community, those countries who provided the troops were not in a position to see their soldiers being attacked and the RUF was getting emboldened everyday. They had to send a strong message that they cannot sacrifice peace and stability on the altar of impunity. So if two or three of you are brought to justice, others will keep calm and give peace a chance. That was why it became necessary to have the Special Court. Maybe, who knows, if RUF had given peace a chance, the Special Court would never have been set up.

……

The peace process would have gone on without the Special Court but they would have had to amend the TRC Act to give Sierra Leoneans the joy of getting some amount of justice, because some people wanted justice.

……

You know, immediately when the idea of the Special Court came in they *shied* away from the TRC; people's interest, in the TRC was abandoned. As a result the

goal of TRC was not achieved. ….Well, the TRC could not get information from those key suspects who were already in the hands of the Special Court….. So the full story of the nature and the history of the conflict was not complete because the key players were already in the custody of the Special Court.

……

The Special Court was adversely affected. Well, the TRC came across so many things during their interrogations which the Special Court did not take into consideration. Because the Special Court could not have such evidence their target was narrowed. They had to go outside the TRC to take such evidence which they did not get. The TRC produce all the evidence they heard over the radio, they had public hearings and went all over the country, they knew who and who did this or that but the Special Court said no to all these things[information].

……

I don't support them [TRC and Special Court] utilizing same witnesses. You will put the witnessed in danger if you allow the same witnesses before the TRC to appear before the Special Court. ….Well, they should not share the same experts. Though sharing the same experts will improve their work, it will reduce their legitimacy in the eyes of the public; they would doubt the credibility of the two institutions and not trust that they are not sharing information as alleged. They must not use the same consultant; who knows what is in the *bag* of the expert.

……

Joint public education programs by them would be better. If today you are going to talk about the Special Court and tomorrow you are going to talk about the TRC that is okay. But you don't put them on the same table and say, oh, they are co-operating, people would misunderstand that.

……

The only drawback is that in future justice should be enduring. It should be linked with the peace process within the country. If you consider it just as momentary, that is no administration of justice. The constitutional army was left to go; they were not punished. They were left to go and some of the people were put back into the army. If there is any problem in future and the army betrays the nation nobody would fight for us. Note that the CDF did not know the Geneva Conventions on war. If you don't know the convention on conflicts and there are enemies down there, what would you do? You would just fight in the traditional way. You kill me, I kill you. I prevent you from killing in my area by ensuring that an example is set by mutilation, burning or I kill you in a most gruesome way so that you don't come to this traditional area again; you go far away as a result of intimidation. The CDF did not know about war crimes; they were just volunteers. They were illiterates mostly, who were defending their interests in their areas against those who had infiltrated. They took that action because their people were being killed. But what lessons have been learnt for the general populace? If you want a lesson to be learnt that crime cannot go unpunished then you are already teaching a lesson that resistance cannot go unpunished. If you resist somebody committing a crime against you, you cannot go unpunished. That

is the lesson you are teaching to the CDF and the general populace who resisted the army rebellion and the RUF rebellion. You are telling them that resistance against tyranny or something that really harms you does not pay. So what do you do? You surrender and are killed and then much later justice is done. That is one big flaw in the arrangement. The targeting should have been more comprehensive and, maybe, bring in some of the elements of the army so that the army would be taught a lesson. They have appeased the army all throughout so that was a problem.

……

Yes, every conflict would need both institutions. The TRC and the Special Court and they should start their operations sequentially. The Act [the law setting them up] should be made together; be conceived at the same time and predicate on each other. Well one should have been predicated on the other—failure to cooperate with the TRC will result in prosecution.

……

No, you can't run them concurrently. If you run them concurrently there would be some resistance…. Sequencing is better with the TRC first before the Court; they should not run simultaneously as we had it in Sierra Leone here. You see, since they were going to run them concurrently they should have ensured their independence. There was a lot of confusions in their minds of the people. ….

TC3:

My initial perception was that those key people who were heads of those rebels were the ones that were to be prosecuted. It appears to me that the government and those who were involved did not understand the dynamics and how the United Nations works. Once they consented to the establishment of this Special Court to deal with those who are presumed to have committed the greatest responsibility , thinking that it should be only 1 or 2 or 3, the United Nations went on to provide its instruments without due regard to the establishment of TRC, and this is critical

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It came to a point where the Special Court wanted to get the confidentiality aspect from TRC so that they could say they are superior. We told them they are not superior but we are at par. That is how I consider TRC and the Special Court. We are two justice mechanisms, each with its own terms of reference and independence, and both mechanisms are pursuing one goal; justice and peace

I don't condemn Special Court, but how it came about. Little did some people realize that it would grow to such proportions or that it would even come to their doorstep. However, when it came they had no control over it. America wanted it, because America had not subscribed to ICC, and they wanted another justice mechanism system to be established. This was their guinea pig; Sierra Leone

became a guinea pig to experiment on. To what extent it will go is a different matter.

……

As one who has struggled with the TRC, let me first establish that, I have no problem with having two justice mechanisms working in Sierra Leone, but the education was not there to prepare the mind of the people that two justice mechanisms would be working here. All we heard for our sensitization was that TRC was established and we should come to the TRC, only to hear about the Special Court later. This means that in our context it was improper for the two systems to work together concurrently.

……

The Special Court created fear in the perpetrators as well as the victims, because if they felt that if they; perpetrators came before the TRC and said everything that they did honestly and truthfully, that material would be used against them by the Special Court. As for victims it will appear to me that Special Court was good for some of them, but other victims did not quite understand what this was all about because they said those who were presumed to have committed the greatest irresponsibility were just a handful. Even those witnesses who did come to the TRC were a bit apprehensive and sometimes tongue-tied; couldn't speak out completely.They thought that witnessing at the TRC was the same as witnessing in court, meaning you gave evidence about yourself and incriminated yourself and that would be used against you, so many refrained from coming. It was only when we were nearing the end of the program that people realized the system the TRC was using, that indeed this was just a peace-loving body which was going to bring Sierra Leone together. That was when they started wishing they had more time. If they had extended our time for one more year, we would have had more than what we had in the first instance because people were not ready to come out then. So we didn't get all the truth we needed to get..

……

That is my position, and my thoughts would be that in future if these dual mechanisms were to operate, they would need to operate not concurrently, but either after TRC or at the end, in the report writing phase, then the Special Court could come in. The people would then not hesitate to recognize that this was another justice system. Their minds would have been alerted and been at ease, and we would have had more perpetrators coming out to speak the truth and nothing but the truth. Indeed some considered the TRC as a conduit. Worse still, we had this unfortunate business of them having their offices not so far from us so people said there was a tunnel connecting TRC and Special Court. Thus information given to TRC was passed on to the Special Court. From my own perspective it was a bit of a mistake. They did not allow the TRC to do its work in depth.

…….

Relationship between the two was both cordial and suspicious, because when David Crane who was the first Prosecutor came, we met to discuss our working

relationship and to set the parameters, otherwise there would be great apprehension among the people. We met on a couple of occasions and agreed that we had our own specific mandate so we will work within the confines of that mandate. The challenge came when we invited Hinga Norman to come. We wrangled for 3 months and the final analysis we came to a point where they expected us to give away our confidentiality. We said no, so that is where we stopped.

……

We did not share information with the Special Court. I do not have possession of who their witnesses were or are. What I know is that the Special Court denied us a key witness who was Hinga Norman. We opened the office on the 9th of March and we had intimated Hinga Norman that we would interview him on the 10th. That was the very day he was arrested, so we were denied a key witness in the truth telling process. That notwithstanding we carried out our work

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Funding was one of our biggest constraints. Our initial budget of $10 million was slashed down to $8 million and finally slashed down to $4.6 million. Even when we designed our program to work within this budget, it was further reduced saying that there was no money. We had to work around the clock to compress this one. These were some of our constraints.

TC4:

The most important point to make is that they [TRC and Special Court] were not set up as part of a dual accountability mechanism. There was no master plan. They were incongruous institutions which were never conceived to exist concurrently, and which by dint of poor funding, lack of foresight and bad faith on the part of several of the most important stakeholders in a relationship was probably mismanaged from start to finish. It is most vital to avoid this notion of dual accountability mechanisms as part of a single entity, because in fact one was crafted to address a particular social need, and the other one was transposed or superimposed on top, and I think that was one imposition too much.

……

The two bodies were never conceived together as part of any grandmaster plan, and that is one important misconception to correct. There was no master plan; there was no plan for their concurrent operation. I think that many of the problems that have arisen in subsequent years can be traced back to the absence of such a master plan or an agreement between the two institutions, or even a memorandum of understanding about how they would conduct themselves in parallel relations to one another. Obviously I have a deep understanding of both institutions having worked in this country for years and being familiar with all persons involved in both processes.

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The TRC predates the Special Court in its conception by 3 years or more, and in its mandatory establishment by 2 years. So the question should actually be asked

as to why Sierra Leone would engage the Special Court as well as the pre existing TRC. I think the simple answer is political expediency. When you talk of Sierra Leone, you cannot think of it as an abstract entity. The reality is that the government of Sierra Leone engaged the Special Court, and it was largely for its own political reasons. To talk about it as an exercise in justice I think, misses the point. It is an exercise in pursuit of both judicial and political objectives. The TRC, as I said before, was a broad based consensus. It was signed up to by the combatant groups. It was signed up to by the government, as well as other governments which attended the Lomé Peace Accord, by moral guarantors including the United Nations, and by people of Sierra Leone who had called for it for years. There was never, despite what the Special Court itself would say, anything like the same amount of support for the Special Court. Even the movement in civil society, which grew up under the heading "No peace without justice" was internationally driven, not borne out of local sentiment. So why was the second institution, the Special Court engaged? The government called for it for its own political purposes. These were, probably, the elimination of its political opponents, typically the RUFP, and also to satisfy the international community by showing that it wasn't weak broker in the formation of peace. As you know, in the government of Sierra Leone, often personal agendas, rivalries and dictator's policies were the order of the day. Therefore, if someone was to tell you that the Court's prosecution has been well balanced because they are also pro-government, then I would tell you to look more closely. The Court has indicted 3 RUF, 3 AFRC and 3 CDF people, as an almost token gesture towards impartiality, but in reality, some of the most conspicuous figures in the conflict and those who probably do bear the greatest responsibility, particularly in the realms of government, have been conveniently overlooked. These include both the President and the Vice President of this country, and for them it is actually extremely convenient to have gotten rid of Sam Hinga Norman through this process. So,even those who fought on the side of government and are prosecuted, are in fact not members of the elite who signed up to this. That is the reason Sierra Leone used the Special Court.

……

It is absolutely vital that you don't portray this as a dual accountability mechanism. As I said, it was never a the two-pronged approach. International literature often misconstrues that. The reality was that the mandate and structure of the TRC was done in the absence of the international criminal tribunal. When the Special Court came along, I would have thought it was incumbent upon the drafters of that legislation to take account of the pre-existing TRC. Instead, they completely neglected to make mention of it in their statutes, and that is the root of many of the tension that existed between them.

……

My thoughts on using dual accountability mechanisms are more generally quite positive. I believe in prosecutions of those who commit the most serious violations of international humanitarian law, and I believe in a society that has

hemorrhaged in the way that Sierra Leone has, they need a much more participatory process like the TRC in which people can take part without fear of consequence and prejudice. In Sierra Leone, the balance was never struck, many parties were in bad faith and in particular, on the part of the Special Court there was no attention paid or no account made for the existence of the other institution as an equal partner. As a result of that, the question in Sierra Leone was unfortunately never asked at the right time.

…….

The alternative would have been to fulfill the original mandate to the TRC in exactly the way it was conceived. If you look at the Act, I think it was the most robust mandate ever afforded to a TRC. It offered the potential for wholesale reform of a society that was not only destroyed by war; it had decades of bad governments before the war. The TRC approached its task as a means of diagnosing the ills of that society and then addressing the root causes of the conflict. One of the key findings of the TRC was that the factors which brought about the war have still not been addressed, and if they remain unaddressed, they will be potential causes of future war. That is a message which to me is alarming. We should be devoting all our energies to looking at those factors and making sure that we don't allow them to cause future conflicts. So if that had been the exercise undertaken by the TRC, and the TRC had been allowed to operate on its own, based on the Lomé Peace Agreement that would have been a vast and preferable alternative to what we have seen. This is particularly because the Special Court has ended up costing in the region of $250,000,000.00 which they would say is not money which could be optioned in any other quarters in Sierra Leone, but I can tell you from first hand discussions with the very donors who signed up on that money that it was optioned against the TRC. The TRC directly suffered in terms of funding, from the existence of another transitional justice mechanism in the country. I believe there should have been more money allocated towards the TRC. There should have been more time accorded to the TRC to do its work, in a much more concerted effort on the part of government and all other actors in society to make sure that the mandate as it was conceived was fulfilled.

……

I think that whichever nation you are talking about should be closely interrogated as to what objectives it would pursue by creating these institutions. I think everyone agrees that a restorative mechanism is necessary in the wake of conflict. You cannot just have a handful of prosecutions and leave it at that. On the retributive side, the government has the power to create a tribunal in the same direction as the Special Court. Are we going to call for one and then collaborate with the international community to establish it? Then we must be extremely careful as to what objectives that government is pursuing by doing so, because a lot of things can be dressed up as justice. Finally, the greatest hypocrisy is injustice or abuse of human rights or pursuit of political ends under the disguise of

justice. Unfortunately, many of those traits have been embodied in the initiative of the Special Court.

……

I would say the working relationship was superficially cordial, but in reality dysfunctional; you had on the part of the Special Court people who construed their own laws in a very arrogant and self righteous fashion and they looked down upon the TRC. This was not just a personally held viewpoint; this was something that the principals of the Special Court repeated time and time again in their documentation. Principally, the practice direction that the Special Court contrived to reflect its relationship with the TRC was on the interview with detainees. They talked about the TRC as having the character of a court. Of course that was a complete departure from all the statutory instruments which had created both institutions and maybe even the international agreements on which they were premised. Moreover, the human rights arguments which underpin the TRCs work were brushed aside by the Special Court as it asserted its one sole purpose as being to prosecute; as being to own those indictees and the processes by which they were prosecuted and not to open them up to any external interference and participation. I think the Special Court greatly underestimated the TRC, condescended upon the TRC, and the principals of the Special Court were largely due to attitudinal problems, and a hateful and dysfunctional manner towards the TRC, and that resulted in many persons in the TRC feeling somehow marginalized.

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I think it is vital. It is vital for the success of the process that the TRC did not cooperate with the Special Court in any information or evidence sharing. There should have been an impenetrable firewall in order to protect all information given to the TRC from involvement in criminal prosecution. That is absolutely critical in terms of making sure that the TRC process functioned. Look at the way the statute was set up. You know that we were dealing with people who went through incredible trauma and suffering and who were victims of some of the worst human rights ever experienced in human history. Or, on the other hand, it could have been the perpetrators of such violations, many of whom were kids when they perpetrated those violations. The perpetrators could hardly comprehend what they had done, and the victims could hardly speak about what happened to them. On both sides you needed an environment which was protective of those people, an environment which offered them a forum in which they could speak without fear of consequence or prejudice. If anyone who could take part in that process thought for a moment that the information was going to be passed on to the Special Court, they could not participate with an open mind or an open heart, therefore it was absolutely vital that they did not share information. Unfortunately, that principal position was not respected by some other parties, including some members of the TRC who selfishly cooked their own financial remuneration ahead of the success of the two institutions. On the part of the Special Court, the Prosecutor and the members of the investigations team acted in

bad faith, breaching ethics and essentially undermining any principle of non-cooperation that should have existed on those questions. If you ask anybody in civil society, the key concerns that they had about the coexistence of these institutions was information sharing. The TRC was actually on solid ground when it said there should be no information sharing, and unfortunately whatever agreement they thought they had with the Court was unilaterally breached by the Special Court, and I think that is one of the greatest abuses in the existence of the Court.

……..

On all fronts the TRC encountered greater problems than it would have if the Special Court had not existed. In terms of funding I have stated the case already, and the TRC ended up with a budget of around $4 million. The Special Court has already gone well beyond $200 million. There is a disparity of approximately 50 times the money gone to the Court, as was given to the TRC. In terms of witnesses, there were obvious and less obvious ways in which the Commission was disadvantaged. The obvious one is where the Special Court put up barriers and eventually denied access to detainees in its custody. The less obvious ones were the psychological effects that the Court had on hundreds of persons who would otherwise have willingly taken part in the TRC. I am not saying that these were insurmountable barriers because in many cases the principal researchers and investigators in the TRC spent hours of their time convincing persons of their personal independence and integrity to be able to pursue those interviews but that time could otherwise have been spent much more wisely. So, even in the sense that the time was wasted or forsaken meant that the operations of the TRC were hampered. In terms of sourcing information, because of the approach of the Special Court, many institutions were chilled into non-cooperation with both institutions. Information disappeared and witnesses also disappeared. Some of them were subsumed into the witness protection program of the Special Court. None of that would have happened if the TRC had been allowed to go about its work in all due peace and quiet.

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No, in fact on the contrary, the Special Court benefited enormously from the existence of the TRC because it subsequently went to TRC witnesses whom they would not otherwise have known about. They testified in public hearings and insidiously incorporated them into the Special Court trials. There was importation of victims – and I feel that was a further breach of what David Crane had originally undertaken. In December 2002, we know that people came forward and poured out their hearts before the TRC, not because they wanted anyone to be prosecuted but because they were desperate for reconciliation or reparation and for restorative justice. The Special Court subsequently poached them and asked them to tell their story in a courtroom, and after tinkering with the story put them under their witness protection program as a defense witnesses or prosecution witnesses. Had it not been for the TRC, the Special Court would not have found

all those witnesses, and I think that has been of tremendous benefit to the trials, but to the tremendous detriment of justice. If you compare some of the statements they made before the Special Court and statements they made before the TRC, you will find that they have subtly changed. You will find that suddenly they are able to name the faction and even the commander who committed some of these crimes, when as you know, before the TRC, people generally had no idea. It's a little more than strange, how their testimonies subsequently came to fit within the prosecutorial framework of the Special Court. Again, that demonstrates what was described by one defense lawyer in the Special Courts as 'conviction at all costs'.

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The two should be used only in circumstances where carefully set out conditions are met, and those include that both institutions in their founding mandates take account of one another and those include that there be an independent mechanism to arbitrate or adjudicate and distinguish between the two. It also includes carefully delineated parameters as to who falls under the ambit of one and who falls under the ambit of the other. There should never be a restriction on the human rights of a person subjected to one process as against the other process. So, for example, detainees held in an international court detention facility and who willingly express their desire to participate in a Truth and Reconciliation process cannot justifiably be denied that right to participate in a TRC. It is a human right; it is also enshrined in the statutes of the TRC. In short, it is only appropriate to pursue such a co-existence if the conditions are all clearly agreed upon and understood by both parties in advance, and are subject to the scrutiny of a rigorous independent mechanism. I think that whichever nation you are talking about should be closely interrogated as to what objectives it would pursue by creating these institutions. I think everyone agrees that a restorative mechanism is necessary in the wake of conflict. You cannot just have a handful of prosecutions and leave it at that. On the retributive side, the government has the power to create a tribunal in the same direction as the Special Court. Are we going to call for one and then collaborate with the international community to establish it? Then we must be extremely careful as to what objectives that government is pursuing doing so, because a lot of things can be dressed up as justice. Finally, the greatest hypocrisy is injustice or abuse of human rights or pursuit of political ends under the disguise of justice. Unfortunately, many of those traits have been embodied in the initiative of the Special Court.

TC5**;**

Well, we have to be considerate of the fact that we are Africans, and in Africa we have special attributes that we give to our heroes. Whatever they do they have to be treated with some amount of respect. Otherwise it will be very difficult. Given the situation that anything like this may crop up in the future, no one will be willing to stick his neck out for fear of becoming a scapegoat. In the Sierra Leonean scenario, I think I would have preferred the TRC and only the TRC.

……

The TRC had tremendous problems and they actually emanated from the issue of understanding clearly what the two institutions stood for or what we were doing. The perpetrators were never willing to talk to the TRC because by that time the TRC was coming out especially with its witness hearing, and hearing the perpetrators, the Special Court had issued its indictment and had started arresting the rebels. Foday Sankoh had been arrested. So the perpetrators were very reluctant when it came to talking to the TRC on the basis of the fact that the information they would give to the TRC could be used against them at the special court.

……

Professionally I would say relationship was difficult, in the sense that the people of Sierra Leone did not actually understand the difference between the two institutions. And if the TRC which, had such a short time to do its work did not actually detach itself from the Special Court; it would have been difficult to find perpetrators to give information. So, because the TRC wanted perpetrators to give information it needed to give confidence to the perpetrators that whatever they said would not be used against them at the Special Court. They had to present a picture, and that is how come the Special Court and the TRC were separate entities.

CA1

The presence of those two institutions engendered active participation from Civil Society Organizations and therefore, Civil Society debated a lot on the relationship between the TRC and the Special Court. Some of the issues that came up were whether there should be a firewall working relationship between the TRC and the Special Court; the TRC and the Special Court should never share any form of information or whether they should share information. You know, that was debated. But on the whole, this was largely the decision of the Chairman of the TRC, Bishop Humper and the Prosecutor of the Special Court. The Prosecutor, David Crane and Bishop Humper met on December 10, 2002 at Victoria Park here in Freetown and agreed that they will never share any information. This was what was agreed on. The international community and Sierra Leoneans were present when they agreed, so information sharing was a concern of civil society. Despite giving these assurances to the public there were speculations that the Special Court requested information from the TRC.

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There was also a concern because the TRC and the Special Court were located almost adjacent, so there was a belief that a hole is dug from the premises of the TRC to the Special Court, that if you give your information to the TRC it runs across the tunnel to the Court. This is indicative of the fact that Sierra Leoneans were concerned, you know about how their testimonies will be handled by the TRC.

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Another issue is that of witnesses..Things came to a head, when TRC requested an indictee that is already in the custody of the Special Court so that brought a big bone of contention. Prior to this request the Special Court did not have any policy on modalities for TRC to speak with indictees in their custody. But immediately that request was made, what happened was the Registrar or the Registry of the Special Court drafted a practice direction with regards to their indictees, being requested by the TRC to speak to them. It never happened. So what was decided at the end of the day was that, if the TRC wanted an indictee of the Special Court, they should request the information and the indictee to respond in writing. By then, I was working at the Special Court and I supported the Special Court. I still do because of the fact that if you are trying to obtain information from the Special Court, from an indictee it is not important to go about show casing you know the indictees, which could have security implication especially a high profile indictee like Hinga Norman. I just thought that if they [TRC] wanted any information, they should have just obtained it in writing..I don't support Special Court getting information from the TRC; if the Special Court wants information, they should obtain their own information based on their own investigation and not what the TRC had already gathered.

……

Ah, in the initial stages, there were tensions whilst public statements were made; it was congenial. However, when things came to a head, especially after the rumors that the Special Court has requested for some witnesses and also after the fact that the TRC had requested for some indictee at the Special Court, you know the relationship grew sour as a result. The professional and personal relationship between the two institutions wasn't congenial any longer until the close of the TRC.

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TRC was fortunate because of the mandate of the Special Court, given that the Special Court's mandate was only to try those who bear the greatest responsibility and not the foot soldiers. The greatest responsibility only involves political leaders; the opinion leaders and the commanders or business people that fund them and not the ordinary soldiers. Therefore, most of the foot soldiers were confident that they will speak to the TRC and that they are not going to be indicted. However, because both institutions operated simultaneously most of the foot soldiers were scared of the TRC. They thought most of their information would be passed on to the Special Court because there had been misinformation that they are going to be tried. The ex-combatants did not understand in time the mandate of the Court - of those who bear the greatest responsibility. To some extent, people were reluctant to come even to the TRC. It made the work of the TRC very difficult. I don't know the extent the TRC affected the Special Court because of the reasons I have already given.

……

I mean, these are complex institutions, it is not easy. Even people that were educated, even lawyers and judges hardly understood what the Special Court was

all about; only few people could tell you that the Special Court was here to try people who bear the greatest responsibilities. They would start saying, the Special Court is here for the most responsible. Yes, people did not understand. It was very difficult for people to understand the mandate of the two institutions. I think institutions did their level best, they used the radio and they even did public education in schools, yet it was very difficult. There are reasons why it is so apart from the fact eh, that these are complex new and unique institutions to our jurisdictions. It is the fact that majority of Sierra Leoneans are uneducated; nearly 70% of people in Sierra Leone do not read or write; so discerning the differences between those institutions and what they really meant was difficult.

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The TRC and the Special Court are landmarks of transitional justice institutions based on the premises that they should leave the society better than the way it was before. They were established that they will engender societal transformation. I think those institutions should focus not on their research, public hearings in the case of the TRC or conviction of five or ten people in the case of the Special Court. But they should also focus on the people - what the people that are forever going live with the results feel about these institutions. Those institutions were established by virtue of an agreement or statute. They are legitimate but the most important legitimacy is for the people's acceptance. The TRC focused largely on research; it was more a research institution. They did statement taking, public hearings and the writing of report. These were the stages that they were divided into. They focused less on reconciliation. Whilst on the part of the Special Court, they focused more on convicting those people and forget that there was a chunk of Sierra Leoneans out were expecting better.

CA2

Well, I think the issue of impunity was basically an issue of international concern. Well, I think first of all, in other people's view, they think they should have used the TRC to settle the scores. I think the Special Court was set up against the background of international pressure, looking at the gravity of the offences or the human rights abuses that existed in the country, the international community thought that was the best way to address the issue of impunity. Because, after the Lome peace accord, hostilities broke up, U.N. forces were captured, there were demonstrations, and so as a result of that, civil society now pressurized government. This is what people are saying. This is partially true because even though people were clamoring for the Court or measures to be taken against those who fought in the war, it looks like if these international community had not put up that pressure or concluded that there should be a Special Court I do not think any Civil Society could have been in a position to force the government to set up a Special Court.

CA3**:**

Well there was no talk about the Special Court initially after January 1999 when they [rebels] had committed the worst atrocities. A Peace agreement was later signed between the government and the rebels. There were a lot of negotiations; we saw the government giving away about seven 7 ministerial positions to the rebels. This was like encouraging them to come in and participate, because the feeling was that they have been excluded from the political process, and that was why they were fighting. The government gave them ministerial positions in the hope that giving them that, they would now participate in governance, and that would be a mechanism to end the war. Within the Lome Agreement, it was agreed that there would be a process like I said, *clearing our chest*. There would have been only the TRC where they [perpetrators/rebels] would come forward and say what angered them so much to come out and fight the people of this country. And it was the hope that after clearing the air, then we will have reconciliation. Then the Special Court came after the Lome Agreement in 1999. In May of 2000, when the peace process has gone very far and the ECOMOG Forces were changing over now to the United Nations Peace Keeping force, at that very point, the rebels decided to go on the offensive again and restart the war. Even though they were in town, they were in government; some of them were ministers, when they adopted over 800 Peace Keepers. Progressively, they started their offensive to try to come to Freetown to restart the war. The people demonstrated at Foday Sankoh's residence and 23 civilians were shot dead in one day. He [Foday Sankoh] escaped and ran into the bush. About 10 days later, the police made an offer of a ten million Leones to anyone who couldl provide information leading to the arrest of Sankoh, and surprisingly he was caught the following morning. Essentially, there was public anger against the rebels. In fact, it was what precipitated into that May 8, demonstration by the people. Thousands marched on to his [Foday Sankoh's] residence; they were like calling for his head. So it came out that these people were not to be trusted, because they turned around and took up arms, and that prompted the president to write to the UN Secretary General to set up the court. Yes, there was public antagonism; he [President] was having the boot from us the press. From everywhere, everybody including the press was saying that, he had a secret plan [pact] with Foday Sankoh and that was why he has refused to act against him whilst our lives were in danger. Yes he [the President] had a lot of pressure. … Yes he had a lot of pressure. It was a popular thing and there was a lot of anger….In fact, the day that it was learnt the government had offered the rebels ministerial positions, Civil Society organized a dead-city-day for the first time in this country.

In terms of the TRC, we didn't have anything local like Rwanda. We talk about *gacaca*, that sort of thing. We didn't have any kind of mechanism. And I will tell you honestly even up to today, people then just felt the war is over let us forget it. Yes, I will tell you uniquely, we know those who were rebels and fought but there hasn't been any reprisal attack on them. There is no reprisal attack on any of those people.

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I had some problems with the TRC. With the South African model you had to come forward and testify; make a clean breast of what you did, otherwise you would be prosecuted. So it was like you were more or less forced to come forward and say something. If the TRC subpoenas you, you must come and say what you did and make a clean breast of it, otherwise, you are going to be prosecuted. They had the focus on the perpetrators and the victim. What our people did here was to make the TRC victims based. Up to today I do not agree with it. So their focus was like on the victims which I thought was not proper if you want to talk about reconciliation, because what we thought; the ideas should have been, was to get these rebels, the perpetrators mainly to come forward, give us a history of why they did what they did and then ask for forgiveness. That is what we expected. And then we would say ok. That is what we had expected. So like it was a shock to us to hear the Executive Secretary, and the Chairman of the Commission saying the TRC is victim-based. Why? Because everybody who stayed behind during this period has his / her story how he / she suffered. We heard these stories so much, we still hear these stories, and we even joke now about these stories. So these were stories that are no more interesting to anybody. Then it was not so much interesting again; you didn't have the crowds coming to listen to the TRC. Because everybody was saying, "Are you going there to listen to that again?" It was not unique anymore. Because it was victim-based, it stopped short of getting the required effect. If they had made provision of bringing the perpetrators, to entice them to get them like the South African situation, then perhaps, we could have seen something like the required effect. But because here it was victim based, you had a handful of the perpetrators coming inYou had the situation where one of the amputees came to the TRC and spoke about how his hand was cut off. And he even said, the man who cut off his hand is still a serving soldier and he sees him everyday. And what did the TRC do? After the guy came and spoke like that we wanted to see what was going to be the next step, and there was nothing.

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The Court had a serious effect on the working of the TRC. Firstly, because there was fear on the part of perpetrators, because they felt if they came out and said what they did, the Court would arrest them. Although the Prosecutor then had said publicly, that they were not going to take any evidence from the TRC but at that time no body believed them. It could have been the TRC going on for a year or two before the Special Court . Then may be we could have had the effect or something close to the South African situation.

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In terms of the Special Court, firstly it affected people's sense of judgment. because the question of impunity was that the Special Court should come and punish those who have done wrong. And when the war was going on the line was drawn- you were either good or bad. If you are fighting against the people, you are bad, if you are fighting on the side of the people, you are good. But when the

Special Court came they arrested the rebels –these were the bad guy; that was good. But by arresting Hinga Norman, they created confusion in people's mind about who was good and who was bad.

……

It [Special Court] ended on being translated into an issue of imported justice, because it was clear that this thing was not going to be controlled by us in the country, I mean physically. The judges were all white men. Majority of the senior staff were white men, foreigners. In fact, when one of the AFRC guys was taken to the Special Court, one of the guys called Brigadier 55. He said, "How can I recognize this Court? if I have done anything wrong in my country I should be taken to the local court. But what sort of a Court is this with white men coming afar to judge me". He was just saying what was on a lot of people minds because of this confusion about who was good or bad. When you talk about the whole thing is like someone else's idea; we are not players; we don't control it. We don't know how it is going. It is like someone else's idea. And up to today that is how I lot look at it (Special Court). It is an important brand of justice. Of course like I said, it is a totally different world. It is like this place is not in Sierra Leone; anywhere; but some where else. Of course even at night they have 24 hour electricity, and the rest of us in darkness. It is like a whole city of its own… If you have to go and watch trials you don't have to make an appointment but you will be interviewed and searched.

CA4

What we received here was from the patterns of civilization all over the world. So Sierra Leone revealed herself in conjunction with the moves and patterns of other civilized nations. Sierra Leone looked at other countries which had marks of violence and similar situations to Sierra Leone.

…….

To be very honest, the views of so many people on the streets are a bit naïve. Some people still think that the Special Court was not necessary. They are looking at the economy. Some ask why the money spent on the Special Court couldn't go into rebuilding people's houses that were burnt or why it isn't being used to rehabilitate or re-integrate the ex-combatants. They didn't understand why people had to be punished using millions and millions of dollars. When you are at that level, you think that these are views which cannot fall in the civilized world because justice must be given.

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People are skeptical about the Special Court--when they look at their lifestyle, what they eat, what they are told they are paid, somebody just said, "Why can't they try these issues in one year and get away from here? Why are these issues dragged on for a long time?" And so, people now just begin to say that they are just here to enrich themselves at the expense of Sierra Leonean, at the expense of

the war, or at the expense of the United Nations. So some people are rather not convinced of the justice of the situation because they can say definitely that in the end, either accused will "die", whilst they are still being tried or in some cases they are given life imprisonment or they are given some sort of sentence.

CA5

TRC is the product of the Lome Accord. And some of us who were advocating for the truth, justice and reconciliation condemned the blanket amnesty in Lome. We wanted a Truth Justice and Reconciliation Commission (TJRC) to give conditional amnesty like in South Africa, but not the South Africa model because I went there. You trade amnesty for truth—complete truth. Then you make recommendations for prosecutions. At that stage of 1999 up to 2000 we had in mind prosecution by national court.

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From Lome we quickly organized a civil society working group, and we rapidly spread out in the nation quickly. We started in Freetown then went to Bo, then to Kenema and on to the districts. During sensitization the people asked that blanket amnesty has been given so why the court and we explained to them that TRC was not a court. It was a nationwide sensitization on the need for people to accept the TRC. It was necessary because people were asking why they even needed the TRC We justified the TRC to them, telling them it would help with the healing process, because if the surface heals and there are still problems underneath, one day it will burst open. We told them to go through the bitter process, though it is painful, of telling the story for complete healing. When we were talking about the TRC, we clearly told them that it was not a court. But come May 2000, we started talking about the possibility of an international court. We had in mind the Arusha and other models. We [civil society] unanimously agreed that there was a need for a court, but it was the timing. Civil Society called for the Court. We clearly saw the need for the Court, but we realized that these two institutions should not run parallel, and then came the division. The same people who had said all these things about the TRC came around again to talk about the Special Court! Some became more interested in the Special Court. Each division was arguing for one against the other. At some point, the leadership of the TRC Working Group had to meet and decide that the members who want to talk about the Court should drop out of the Working Group, since they were sending wrong message. Because of the confusion, we had to split; if you are talking about the Court stay out of the group. This had a negative impact on the whole process even up to today. A group was set up to argue in favor of the Court, and another group was in existence for the TRC. This was the TRC Working Group, and the other was the Special Court Working group; two civil society structures. We eventually confused the people.

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The concurrent running was the greatest mistake made in Sierra Leone. We argued for sequencing. We said by all means sequence these institutions. As a human rights group we supported the TRC more because it is for everyone. The

issue of prosecution was also very much on our mind .But we said TRC first, Court second is the appropriate model; one after the other. The two should not be used concurrently. Then based on the recommendations of the TRC, the court is established with recommendation to prosecute those who bear the greatest responsibility. Then we looked at the national Court. We felt international Court will not work. It's too expensive. It presents certain inappropriate message in terms of the victims. For instance, you look at the cost involved; the message is that it is for the people of Sierra Leone. When you go there, how many Sierra Leonians were there at the Court? How many of them have access to the Court? How many of them own ID card which is the basic requirement to enter the premises of the Special Court. How many Sierra Leoneans have passport? So, certainly, having the TRC recommending for national prosecution is better.

……

From what we gathered by then, Geneva [OHCHR) had problems with fundraising, because once the issue of the Court came up, donors attention or interest was shifted to the Court. When Geneva was struggling to raise a few millions, the Court already had tens of millions pledged. I think it was more of donors' attention that was shifted, and Geneva really struggled to raise funds. The perception in the country was shifted. Office of Legal Affairs (OLA) was able to move the countries attention to focus on the Court, looking at the development that took place within the couple of months that followed the Agreement [Special Court Agreement]. Look at the leadership of OLA at that time; they were involved, whilst from Geneva it was just a desk officer covering several countries, including Sierra Leone. So it is the interest. It is the same person who comes to donors for Zimbabwe, Mozambique and Sierra Leone. The desired attention was not given. When OLA sent a delegation to Freetown it was Zaklan, the head, who came to Sierra Leone! Contrast this with Geneva, I think it has to do with the interest invested. And with Geneva it was more like an experiment. OLA took the Court seriously, and they gave it all the attention it deserved. Again while OLA engaged directly with the government; Ministers and President of Sierra Leone, Geneva came through UNAMSIL. So OLA had the highest interaction with Government. UNAMSIL had a mandate, and their mandate was to look at the Lomé Peace Agreement, and the Special Court was not part of the Lome Agreement. The Court came after the Lome Agreement; UNAMSIL's involvement in the Court is next to nothing.

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When the idea of Special Court started, there came the issue of primacy--which had primacy over the other. We had a series of argument and days of discussions. OLA came to Sierra Leone with a team, Geneva came to Sierra Leone with a team; Priscilla Hayner and others came. There were meetings in Bintumani and we came out with the conclusion that we should leave the issue of primacy out. Do not give anyone primacy obove the other. Leave it between the Commissioners and the Judges. If the issue comes up let them discuss do not give

primacy to one over the other. That was the agreement. But at the end of the day the Statute said Special Court had primacy. The Court knew they were the giant and it actually went round saying that they had primacy over the TRC. During their sensitization, they made mention on a couple of occasions when they were trying to justify that they would not use information from the TRC. They said, "Yes we had primacy over the TRC, but we will not use it. This affected the whole process; once you have primacy you dictate the pace if you want to cooperate you do, if you do not want to you get away with it and this seriously affected the TRC badly. We clearly came up with another recommendation that it should be left to the commissioners and the judges, because we looked at these two structures as serving in the same way. We were very strong that the TRC had more to offer people of Sierra Leone. I remember the phrase used by someone saying that "the TRC is for every Sierra Leonean and the Court for just a handful". Against that background we were very conscious that they should work out their modalities.

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When you read the TRC report it is incomplete, so on that note there should have been some modalities worked out to get the stories or cooperation from Special Court so that Norman and others could participate. These are the issues we were expecting them to work on, but the fear was that such collaboration would have sent a wrong signal. People will think if I go to the TRC everything will go to the Court. The argument advanced by the Prosecutor that it would affect their work seemed to be accepted by the leadership of the Court…. People felt disappointed, and some of us still feel the truth is incomplete because of the absence of the detainees' version.

There were serious tensions between them, Yes, the issue of Hinga Norman. That single action demonstrated tension of the highest degree. Besides, there were tensions which were not visible for this action or that action. Yes, I think the UN should have been involved. And again it comes down to the point, that the UN is not unified when it comes to Sierra Leone's transitional justice. There were two institutions fighting for control over Sierra Leone- Office of Legal Affairs and office of High Commissioner [OHCHR]. Geneva wanted to use Sierra Leone as its model. OLA wanted to use Sierra Leone as its model. Instead of them working together, there was tension.

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I will talk purely from a civil society point of view, not an academic one, because I am just trying to ignore all that literature. As an insider, some of us believe that if the TRC had commenced immediately after the TRC Act was passed, may be it would have prevented those hostilities. I remember clearly our first visit to the RUF after the Lomé Peace Accord. Initially they were lukewarm on the idea of the TRC,but when we started to tell them the advantages of a truth commission; it will give them the opportunity to come forward so people will hear their story, they started to warm up to it. We all know that the picture then was that they

behaved quite like animals-- inhumanely, so we went there and we talked to them and told them that we knew how they had been branded and knew that they did not even want to go back to their communities, but we encouraged them to come out and let everyone know their stories and let people hear what led them to do what they did. We told them that the TRC would give them the opportunity to clear the air, and let the people judge for themselves. At that point they became eager to follow the process through.

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The TRC could not be established within 90 days as indicated by the Lome Agreement. I think it was more of the fact that maybe the negotiating parties didn't take the process involved in passing the Act into consideration. We; Civil Society established the Truth and Reconciliation Commission Working Group within 7 days after the Lomé Peace Accord, and the reason was that we wanted to work on time. We were aware of the timing, and we did all our work within the time frame. We did our consultations; we came up with benchmarks like how we want to see the TRC, bearing in mind that our government when you talk about a commission, they just handpick the frames, members and supporters, so we wanted the truth commission to enjoy the confidence of Sierra Leoneans and we took steps to influence it.

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When the TRC started, Geneva had all the time at their disposal, and the Act was passed in February 2000. From February 2001 they were complacent. At some point, some of us blamed Geneva because they were too slow to act. The TRC Act was passed in February 2000 and Geneva did not do anything for a long while. I remember that our institution issued a press release calling for the Office of the High Commission to be relieved of their duties, since we thought they were not taking it seriously. After the Act in 2000, it took a couple of years, up to 2002 for the TRC to take off. The government of Sierra Leone lost interest in the TRC at some point. The focus was more on the Special Court in terms of cooperation for the preparation work leading to the setting up of Special Court. The Court had the full backing of the government than the TRC. .

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I can comfortably say the demonstration [May, 2000] was organized by government/pro government supporters against RUF because the government officials were involved in the name of civil society. Even the leaders were real party stalwarts, so they just used the name, and they were able to move the people on the issue on the floor; through what I would describe as propaganda. They used the media to tell the people that you want peace but this institution[the RUF] is against peace. I am almost afraid to use that word, because they had audience on the radio, etc. but it is similar. Government officials came in to try and justify it, but they did not tell the truth at that time. As a civil society person, I have to be very frank with where the government went wrong and where the RUF went wrong. When they signed the agreement, there were certain positions for the RUF. When it came to implementing the provision, the government started

dragging their feet. There were supposed to be ambassadorial positions and para-statals for the RUF, but they just focused on Sankoh and gave him all that he wanted. However, he just wanted more in accordance with Lome Agreement. I think that in the absence of that and with the prevailing atmosphere of impunity, they [RUF] thought that they would do things and go free. They decided to do the worst to send their message that they were not happy. They accused the UN of not telling the government the truth. They wanted a negotiation, but I think it was miscalculation on their part because they had civilian hostages and they went for a new target – the UN. I do not know why maybe because they wanted further negotiations.

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As for the TRC, our position was more of a community led process that will feed into a central mechanism: the focus should not be on the TRC per se. The focus should be on the community led process. Traditionally we differ from region to region, so the idea was to talk to them and then come with their own model. In some communities, it will be cleansing of victims. In others it will be cleansing of perpetrators. Others might say well, let's just talk, let us bring them together for reconciliation.

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Whilst we were waiting for the Commission to start properly, we sourced funds to send a delegation abroad to study other truth processes. We sent teams to Guatemala, Chile and Zimbabwe. From the feedback, we realized that truth commissions are not the answer; they are just official processes. We needed something that would be really accepted nationwide. Looking at the limitations of truth processes, we then decided to start the community groups. The idea was to have community truth processes that would feed into the official truth commission, realizing that people would not talk to outsiders about their stories. People will be ashamed to talk about what went on, but if we come together like the *gacaca* it would be easier. We came up with our own idea and it was criticized in Geneva and New York, by their consultants. We knew that it would be difficult for the truth commission to go into reconciliation, so these community structures were set up to facilitate community reconciliation on a long term basis. The people live there, so they don't need to raise money for transport. They just identify a big tree in the community and come together under the tree to discuss issues. They were to use the traditional ways of reconciling, so that was the idea for these reconciliation processes. They were set up to follow after the official truth commission. We set up committees in each of the chiefdom, all 149 of them, nationwide and the Western Area. We had women and youth, religious leaders and community elders in the community, who people could tell their stories to. .

CA6:

There has been a very big flaw in the arrangement that brought the TRC and Special Court. From the part of our government they have not given much

thought to the effectiveness of the TRC. They have relied upon the Special Court. That is how I view it; that is the situation. If we gone through the TRC mechanism process and ended worked on the recommendations, then we could bring in the Special Court if you found the TRC inadequate. I think one should have come after the other, not simultaneously because when they come simultaneously definitely one is going to take credence over the other. And that is what is happening.

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It should have been one after the other and it would have been very effective. By now if government has put in place mechanisms for all these structures which TRC recommended, people may feel that government is caring. There was this agitation that the government is not caring. Now the Special Court is being funded by the international community and people are saying "what! Look at this mass destruction, the money for the Court should have been used to reorganize the destruction and provide amenities"

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No, I am of the opinion that without the Special Court, the hostilities would have ceased. Why? Even the rebels themselves only needed people to educate them and that was what happened at the tail end of the war when they came to Freetown. A good number of them when they came to Freetown, they realized that everything was in a mess and they had been misguided. Yes, that is the January invasion. So, they saw that all was in a mess. So, a lot of them when they were contacted said they were misled while they were in the bush. They thought that coming into Freetown, they were going to be in power. That was where Foday Sankoh himself lost his credibility because they distrusted him.

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The mechanism that was put in place at international level to address such issues is good, for Sierra Leone is part of the international community. For me, as far as Africa is concerned, I believe in our African way of doing things than the international, because the international community has their own hypocrisies. Think of the amount of money being used for the Court. It is being used in the name of Sierra Leone, but it is not having any impact on Sierra Leone. Talking about developing our justice system you don't see the effect. As a result people say, "They have just come to *eat* our money". Our homes are destroyed; nobody is rebuilding, except the NGOs. So, that is the problem.

CA7:

Honestly, when I started this, I said the existence of the TRC and the Special Court was really baffling to me. I don't want to personalize the issues, though; I want to look at it from an objective point of view. When you talk to Sierra Leoneans, I have seen many, especially those affected, who think that having the TRC and the Special Court together is such a mess. They say it is a mess because they think that if the TRC is looking at the blanket amnesty that was given in Lomé, then why the Special Court; and if the Special Court is in existence also,

then why the TRC? The TRC is saying that this set of people have been forgiven by their communities, therefore, if they have been forgiven why try them again at the Special Court? So these are some of the things that have been happening.

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If you ask me from a human rights point of view, I would tell you that they shouldn't have run together because the TRC was more like condoning impunity. The TRC was saying that after all that has been destroyed and run down, let there be forgiveness whereas the special court is saying no to impunity. These are two opposite ends of the coin, and therefore they should not be operating together, otherwise you contravene yourself. I think the Special Court comes first to try those who had the greatest responsibility. After the final verdict of the Special Court, the TRC could now come in to close those gaps left. The result of the work of the Special Court could have been part of the work of the TRC. The TRC would say that after the work of the Court these were those found to as bearing the greatest responsibilities for what happened. It could have been a follow-up of the Special Court to bridge the gap between them. But bringing the two together was like a mix up at some point. Bringing the TRC before the Special Court would also have sent some mixed signals. Interestingly, there were people who never saw the late Foday Sankoh; the people they saw were the commanders who gave orders for their limbs to be severed. Seeing Foday Sankoh being tried may not have made sense to them.

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Again, from a human rights point of view, the existence of justice is not only seen as a cessation of hostilities. Peace means not only a conducive environment, it also means justice. What is peace to somebody whose daughter has been raped and has had her hands amputated? You cannot just say everybody has been forgiven; peace means giving justice, I don't think there is much of a problem When the announcement was made about the amnesty, there was a lot of shouting and crying, and people were protesting strongly. Again, at the time when the war was raging, people had lost confidence in everything, whether it was national or international; people eventually just gave in so that there would be peace. They worry that the perpetrators have been freed and they are not going to get any justice. Even though people wanted to say let us forgive and forget, the wounds were still prominently there.

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I think the institution is a trial that was conducted in Sierra Leone, and I think they have succeeded to some extent. I say succeeded to some extent because if you look at some offices, for example nongovernmental organizations and community based organizations, a lot of them in their work refer to the report of the TRC, which means there are certain good things in the TRC that people can bring home. So the NGOs go back to the TRC, and they think the TRC did some work. We believe that the TRC did a lot of work. We see the existence of the Special Court as a fundamental step moving towards the abolition of impunity. The Special Court also had a very welcome space in our society because it is

always very good to have people being held accountable for what they have done. This will sensitize us not only to Sierra Leoneans but also to Africans or maybe to the international community as a whole. You cannot just start a war with the belief that at the end of the day you will have to go for peace talks during which you will have to submit your points and one of the things that you want to ask for is blanket amnesty when you may have committed a lot of atrocities

CA8:
They were supposed to address the issues of reconciliation, reparation, and the issues of social re-integration. To me, this is what the TRC was not able to achieve. We are still grappling with a lot of social mutiny. There are many Sierra Leonean who left their towns and villages, and could not return because they are scared and worried about the tendency of reprisals among the people. They are still languishing in other parts of the country. The TRC was also supposed to look at the psychosocial issues around women, children and people who were seriously affected. That is still a very serious problem. We realize that there are many cases of psychosocial problems within the communities which the people are trying to cope with. Up to this moment, no institution has taken up the responsibility of looking at a broader context of psychological and psycho-trauma situations around people, as well as the socioeconomic problems affecting the people. This was all associated with the life-span of the TRC. It had a short life-span and even when we were at the point of finalizing reports, many Civil Society Actors and some of the commissioners realized that there was the need for an extension of maybe six months. But they were not ready to extend the time of the TRC.

UF1:
I do appreciate the view, and indeed many others within the UN system, that crimes against humanity or war crimes need to be punished and do not condone immunity or give general amnesty to people who commit those crimes. The question has always been over this search for peace and search for criminal responsibility at the same time. When do you do it? It is a question of timing. It is not so much a question of putting one under the law. There is also the view that there is no way we can turn a blind eye to these issues in the peace process. They need to be part of the peace process so that we will be able to send a clear message, that we cannot condone these acts. However, you know in Africa it is always been very difficult. It's not going to be very easy to go and sit around the table with a warlord who owns half of the country and say that you would like the conflict to end when as soon as he signs the agreement he will be charged, arrested and prosecuted. He would never sign the document. At that time they will go on fighting because at that point in time they are fighting for their lives. I think this is the predicament that many other African countries find themselves in. The international response has also been on the side of first dealing with the

political aspect of peace and then when there is political stability, you can look at some of these human rights and criminal aspects. So, in the case of Lomé, that is what they did. They focused on the TRC. The problem here is that the subsequent arrangement to bring in the Special Court did have an impact on the TRC as far as Sierra Leone is concerned. At that time there was this public perception that the whole TRC mechanism was a trap and that if you came in to testify for the TRC they would use your evidence and then send you to the Special Court for prosecution because the mandate of the TRC did not include the power to grant pardon or amnesty to people. In the South African situation for instance, when people appeared before the TRC and testified truthfully to what they had done, the commission had the power to give some amnesty. Those who refused to testify were prosecuted if any evidence arose concerning them. The whole idea was to bring the perpetrators and let them recount all they had done, apologize to the victims, then the victims would be settled and there would be atonement. The TRC commissioners did not have the power to do that, and as soon as the Special Court was established, the view among the perpetrators was that if they went there [TRC], whatever evidence they gave would be used against them at the Special Court. As a result of that, even though TRC in Sierra Leone had a very high number of people who participated in the process, very few perpetrators actually came forward to testify. If you talk to people on the streets or you even read the report, you will see that most of the people were victims. This means that the commission did not really bring the victims and the perpetrators together for that process to become an avenue of reconciliation and atonement. Having said that, one cannot ignore the fact that the TRC did document to a great extent the causes of the conflict within this country, and if any good has come out of the TRC, that is one tangible thing. If you read the report, you will appreciate the extent to which they went to establish the root causes of the conflict. That would now serve as a way of bringing institutional arrangement in terms of laws, etc. to prevent a repetition of the things that led to the conflict. In terms of reconciliation, they were all around this country. Of course, the mere presence of the commissioners themselves in the districts was also a way of building confidence in the people. The commission itself did not go all around to every corner of the country because of logistic problems. The report they sent was a very comprehensive report. It does talk about what happened. You don't need perpetrator evidence to establish what really happened in this country. The victims saw what happened to them, so the book is very thorough in terms of what went on; the atrocities, the violations, etc. What is missing is the evidence of the perpetrators who may have acted out of fear and under instruction, etc.

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I would always subscribe to the view that coming out of the conflict we have to establish a historical record of where we went wrong. We must stop and ask ourselves where we went wrong and what it is that we ought to have done that we didn't do; or what we did that we ought not to have done. That is a question that should not just be at the level of government, it should be at the level of

everybody. People have their own lives to be able to move forward. I would always go for the TRC. The question is, what should the mandate of the TRC be? How should we plan it in a way that these two institutions should run smoothly? I am not in support of a Special Court being established simultaneously with the TRC because I think it is counter-productive. It would have a chilling impact on the willingness of people to come forward. Whether you give assurance or not, they will always say it is a trap. Everybody knows that the prevailing international view is that war crimes and crimes against humanity are crimes that cannot be given amnesty. Look at what is happening with Pinochet and others. However, for the immediate needs of the country, let a TRC be put into place, let everyone testify, and then I would add elements of the South African model where you would put a time frame upon all of those who committed atrocities in the war to come and testify let's say between January-February. If you testified fully during the time frame as to what you have done and if what you did does not fall within the international crimes net, you would be given a pardon.

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The failure to mobilize resources for the TRC has nothing to do with responsibility. International response to assistance for countries coming out of the war takes many things into consideration. What is the importance of that conflict to us, for instance? Here in this country who actually got international support to Sierra Leone? It was the British and because of their colonial ties with Sierra Leone. As soon as the British got on board, the Americans got interested. The world is driven by powers. The war was going on in Liberia for many years before the war started here. America did not take the type of initiative that they took in Sierra Leone. Who did it take to intervene in the Liberian civil war? It was Nigeria, our neighbors and ECOMOG, our West African brothers! They did not have the resources as America does. Anybody linking lack of funding to OHCHR may have their own dislikes against the OHCHR because those comments made show a very narrow understanding of what happened. In the case of Sierra Leone, the OHCHR undertook to mobilize resources for the work of the commission, so they set up a basket fund, and many countries donated into the basket especially these Scandinavian countries. The British contributed, America contributed, and Canada, France, Norway, etc. Initially the work of the commission budgeted for about $9 million, which was too high. I do know many people felt that had it not been for the Special Court TRC would have had more funds. First of all people should understand how the Special Court came in because it came at a time when there was this movement to have the ICC ratified, and you know that America was opposed to the ICC. America's support to the Special Court was a political way of showing their dislike of the ICC. They also felt that with the Special Court we would be able to bring the likes of Charles Taylor to trial. A lot of people put money into the Special Court because they thought they could bring Charles Taylor there; it had nothing to do with Sierra

Leone. That Special Court is a political tool that satisfied so many other desires.

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I don't think the presence of the TRC affected the Special Court. The question of cause and effect is more the Special Court having an impact on the TRC. If there were any limitations of the work of the Special Court, I would say it is a self-imposed limitation in the sense that the mandate of the Special Court says very clearly that it is to prosecute those who bear the greatest responsibility, and this is where the problem comes in. To prosecute those who bear the greatest responsibility requires an interpretation by the prosecutor. The interpretation was narrowly construed in this country. It was narrowly construed to the extent that we now have only about 13 people who were indicted. Most of the people in this country don't believe that those 13 people are the people who were responsible for all the atrocities that were committed. There are people out there that they saw who did the killings, and who gave the commands, who were never prosecuted simply because the prosecutor gave a narrow interpretation to those who bear the greatest responsibility. That in a way had a negative perception on the impact of the institution itself. Let me state this clearly. The Special Court did have an impact on the question of impunity in this country. A tough message has been sent, that if you engage in these crimes, the international community will prosecute you. So it is not the number of people that were arrested or that faced trial, but it is the fact that the Court itself had been established that sends a strong message. The number of the people that were prosecuted can't be helped; that is their view. It doesn't mean that the Court failed. It is a strong message not only to Sierra Leone but also to the entire international community.

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When the TRC came, and the Special Court came, those perpetrators in the provinces who were not at the top and many bottom-line commanders who actually committed all the atrocities were called to the TRC, but they did not testify, and that is where the problem is. They were not grabbed because they did not bear the greatest responsibility. They were not commanders; they did not appear before the TRC for fear that the Special Court would grab them if they did, so they are out there. The people in the communities know them and they see them walking around free. They never went to TRC, they never went to Special Court; they are just going about their business. That is the down side of the process of these two institutions. Perhaps if the Special Court had not come in, all these people would have come to testify. The people would then have known them, they would have apologized and some of them would have received amnesty. But now they are just there, and the people just look at them. This has a negative impact on the process of reconciliation. I would therefore say that if one was to repeat all these processes together they should be able to deal with the TRC mechanism and perhaps put a provision there that if you came and testified thoroughly and apologized before the TRC, they would be able to grant you a pardon. Apart from those other crimes – the international war crimes which did not really affect them because it would affect those who gave the commands and

authority.

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Initially attempts were made by the UN to address the linkage between TRC and the Special Court. Concerns were raised 1) in terms of information sharing and 2) in terms of people who may appear before the TRC who the Special Court had an interest in or 3) another class of people who the Special Court may have charged who need to appear before the TRC to give their testimony. 4) And also the extent to which the TRC can support the Special Court? There were practical situations, for instance the case of Hinga Norman where the TRC wanted Hinga Norman to testify and Hinga Norman was willing to appear and testify……

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In terms of complementing one another, it was always problematic. Other people have also complained about the use of testimonies of the TRC by the Special Court. According to the mandate of the Court, all documents, data and information gathered by the TRC cannot be used for prosecutorial purposes. I have had cases where people from the Special Court called me (UNIOSIL Office) wanting to look at the TRC files. I said "I beg your pardon for what?" I have had to call for sanity and refused. We have the policy of not using the evidence given by the TRC to aid the prosecutorial processes. If we do that we will undermine the integrity and the confidence of the TRC testimonies, even after the TRC processes. Those documents have been sealed and archived.

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I think that in the long run they really need to develop protocols and a clear determination of the linkages between these national institutions and the ICC in areas of subject matter jurisdiction and areas of jurisdiction over the person. If one of them acquires jurisdiction, what will be the impact of that on the other party? and in cases of conflict whether international law supersedes municipal law? Is the Special Court greater than the Supreme Court of Sierra Leone? And does international law supersede the constitution of Sierra Leone? These are emerging issues. I'm sure that as time goes on we will be able to resolve them. They are very interesting

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When you come to avenues to address excesses of the war, criminal justice just happens to be one. There are several ways to address things that happened as a result of the war. There are people to whom criminal justice doesn't make sense. If you see a woman whose husband has been killed, her eldest child has been killed, she is illiterate and she doesn't have a means to live since her hands have been amputated, plus the need to take care of herself and her small child who has also had her limbs amputated. For such a person whether you catch John Brown who did the killings and prosecute him and send him to jail or not, it doesn't solve this problem. So you cannot focus on criminal justice alone. You have to focus on the social aspect of the war; the needs of the victims who are going to live with the scars for the next 15 to 40 years of their lives. Some children as young as 4 years had their limbs chopped off. Who is going to take care of them for the rest

of their lives? There are widows whose husbands were killed. They may have social or medical needs. What about women who were raped during the war? So when the conflict ends, these are the challenges. We want to bring the country back to the way it used to be, so you have to address these things, and the only way you will be able to identify who these people are is by the Truth and Reconciliation Commission mechanism.. For purposes of reconciliation, we have hundreds and hundreds of people around who are amputees and we need to raise money to take care of them. We need to take care of the children whose parents were killed during the war who have nobody to take care of them. Many of them are not going to school. We need to take care of those widows and other victims who are in need of reparation. We need money. By the time the Special Court has finished its work, the international community would have spent over $200 million on that Court to prosecute who? 13 people!.How else you would assist the people of Sierra Leone if you do not address the needs of victims.

UF2**:**
Definitely I think that people would have to be held accountable for whatever atrocities they put on their colleagues or compatriots through. However, at the same time looking at how expedient it is for that to be done and whether they would have to be handled together. In my view, to have them running concurrently *contains* a lot of problems. In the situation of Sierra Leone, it even happened that the TRC and the Special Court ran into a conflict as to whether or not a witness should appear before the TRC or not because he was in the custody of the Special Court. There was also the problem of people that were prepared to talk before the TRC, but were not prepared to allow themselves to be brought before the Court. And therefore I think quite a number of people were lost out in the process, both to the TRC and the Special Court because they were afraid to give an account of what happened to the TRC since they feared that the TRC would hand over their evidence to the Special Court. There were others who also felt that, well, if I should just go and tell the TRC the people will come and just ask for remorse, it is not what I desire and therefore I would not want to do it. I would rather want to go before the Special Court or the national court. So, I think that having the two together, was a problem because certainly they lost out a lot of people who would have given a vivid account of the conflict.

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You see, the point of the matter is that this whole concept of Special Court in this country has it own problems because certainly if we want to be fair to ourselves, this is the machination of United States wanting to say that there can be an alternative to the International Criminal Court. So, I don't know how the UN system grappled with it because the UN system had to grapple with it. Otherwise if it is a transitional justice situation, it is the office of the High Commissioner for Human Rights that should handle it. Therefore there should have been a common authority to deal with both institutions. If the Office of Legal Affairs was

handling Special Court and the office of the High Commissioner was handling the TRC, then that shows how difficult the conflict was.

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In my personal view, I think that we should have decided to go the truth and reconciliation process and let people forget about the conflict. Because you see, in any case, in the case of Sierra Leone the conflict was not based on religion, it was not based on tribe; it was based on inaptitude of government. The people were really averse to government's actions. Well, if that is the case and it degenerated into other things because other interest groups came in- Liberia came because they wanted to exploit the diamonds. So many external forces came in and also internally, people were trying to take advantage. Now people have settled to resolving their conflict amicably and wanting to forgive, why shouldn't it be allowed? I think that was a better option.

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In any case, if people felt so strongly about the fact that the spoils of war would have to be handled and therefore we have to ensure that people who unleashed all these atrocities would have to be punished, I think that in my view we would have to punish before we reconcile because if we really reconcile before punishment, its a betrayal. It is a betrayal in the sense that we would let the people believe that, okay we are just going to listen to you and assuage your problems then at the end of the day, you come out to say, okay out of this I am going to punish you. The people will not trust that it is not the TRC process that gives evidence for the prosecution. And even at the time that you do it together, the same feeling is there. And I think that if really people are so minded to punishing people, they should do that first and after that we can reconcile. In my view, it is only fair and legally and judicially right that you finish punishing people before you reconcile. You don't reconcile and I feel that everything is over and you come and punish me or whilst you are reconciling with me, you are punishing me. I don't think that it is right.

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The TRC outlined all that is wrong in the system and have come up with recommendations, dealing with the issues that had to be tackled. The Special Court has not come up with anything that shows that – well, maybe we are yet to finish. They claimed that they are setting an example for the national courts. I don't know what interaction that they have with the national courts for them to really learn from. Well, they may be having the best of practices in the Special Court, but it is not impacting on the courts in this country. In the judicial reform that is going on in this country now, there is no participation of the Special Court. So I don't know what influence they are having on it. I do not want to sound like I hate the Special Court.

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I happened to have worked in the provinces, in many places. The generality of the people accepted the reconciliation and the fact that there was an amnesty. However, those who brought the Special Court to being felt that impunity would

have to be addressed. I don't believe it is very much accepted by the people. Well, the Special Court people themselves would tell you that – I assisted some of them to do their outreach programs in the provinces when I was there. I think that we had to force hard for them to be heard because the definition given of what the crimes are, has its own problems. Some people do not even believe that those that have been held, particularly the CDF are those who bear the greatest responsibilities for the atrocities that had happened. And therefore they see it as a betrayal really for the amnesty that was granted. As we sit now, we do not know what will happen when judgments are given.

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Yes, certainly justice system has broken down and I don't think that it has even become any better now. I don't think that the Truth and the Reconciliation Commission and the Special Court had made any gains as far as restoring what the justice system should be even now. The fact of the matter is that yes, the justice system has gone down, people have loss confidence in the justice system and that is why they resorted to their own means of dealing with situations. Secondly, the justice system had gone down because of the political influence, because of governmental influence and I don't think that even with these two systems put in place that has changed. Because as we sit down here now, there are so many issues that are going on –like overwhelming political influence on the judiciary. There may be pockets of resistance from the judiciary. But in the main, very wrong things are being done.

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No, certainly they have problem. People who were engaged by the TRC to take statements and to educate people and at the same time after the TRC had folded up, got into the new shoes of the Special Court. Certainly they have problems. But with us in the UN, we did those things concurrently and therefore we tried to explain to them what the TRC is about and what the Special Court is about. And most of the time we tried to let them know that at least if ever we took statements from them, we were only having a record of the war and that we were not supposed to give them to the TRC or to the Special Court. At least we explained to them what the TRC is about and what the Special Court is about. Of course, they raised questions as to whether or not the TRC was not gathering evidence to betray the Special Court. We tried to explain to them that the two institutions were different as to whether or not in practice, it was different, is another matter.

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In terms of how to use both systems, when the atrocities are so heinous there might be the cry for people to be held accountable for their deeds and while at the same time we think about reconciling the nation. I would think that we must hold people accountable first and reconcile the nation, but in any case, where reconciliation holds sway, I think it is possible for people to forget about the past and reconcile because in building peace, it calls for sacrifices and I think that people should sometime accept that things had gone bad and that is it.

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One critical issue about their coexistence is taking evidence that is very important. We would want to know whether the TRC witnesses should also be exposed or not. It turned out to be that some of the witnesses of the TRC became witnesses of the Special Court. Yes. It is also a problem because that particular evidence that has been made public at TRC, then you go and give the same evidence in the Special Court, you cannot say you are protecting the witness because they know that this is the person who came to make the statement in the open at such a time.

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Well, I would think that there is the need for transitional justice, but I also think that transitional justice must have as its focus establishment of peace and restoring a country into peace building and development. I am an advocate of human rights but I don't think that the overbearing attitude of us towards addressing impunity without recourse to find out whether that will really establish peace is the best option. It is important for us to establish peace gradually and when we are really stabilized we can go back and address impunity. There is no statute of limitation for criminal offence.

UF3:

In a nutshell, the ruling party in Sierra Leone felt that they were the defenders of the nation so therefore no court would prosecute them. They felt prosecution would only be for the RUF so they expedited the process leading to prosecution. At the same time the government knew that one of the provisions of the Lome Peace Agreement was the establishment of a TRC. They could therefore not say that they would not allow the TRC so they allowed the TRC to take off. One thing with the Lome Peace Accord is that the government signed it at its weakest point. But the government asked for the Special Court at the beginning of its highest point. These were the dynamics that made it necessary for the coexistence of the TRC and Special Court. The intention of the government was to use it as vengeance against the RUF now that the international community had accepted to strengthen the arm of the government following the May 8, 2000 incident in which Foday Sankoh was arrested. The request for the Special Court came after the May 8 incidence. The Special Court was an after thought that was generated by the government in confidence that none of them was going to be prosecuted. I remember meeting Chief Hinga Norman. Before he was arrested and he was absolutely happy about the great help the international community had given Sierra Leone for establishing the Special Court. Little did he know that he was going to be made a sacrificial lamb.

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There was no coordination between the two institutions. When the TRC requested for Chief Hinga Norman to appear before it, the Special Court rejected the request for reasons best known to them and that was it. In fact there was no working group consisting of nationals or international to coordinate the two mechanisms. Everything was done on adhoc basis, if there had been any such group

conspicuously coordinating issues between the two, it would have heightened the fear of the people.

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In 2004 whilst I was leaving the government had about 117 people in jail who could be sentenced to death for war related offences. Just like those considered to bear the greatest responsibility, those being held in the national prisons had killed and maimed just like those before the Court. However, they were not considered politically high enough to bear the greatest responsibility. The conceptualization of those who bear the greatest responsibility may be those who may not have murdered but those who may have killed were left out. A lot have died, it will continue like that. They will not be released…

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With regard to the use of traditional mechanisms, I think African institutions cannot be used in their raw state. The West that has the funds should develop African institutions. African traditions cannot be used in their raw state. The TRC concept is a Western institution developed out of the Western culture.

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The Special Court in Sierra cost between $25-30 million a year. Will anybody convince any Sierra Leonean that having Issa Sessay behind bars is a good enough attainment compared to the atrocities that have been committed. We have the TRC which does not address the crimes committed by individuals as such; not interested in particular story. It is interested in trends; it is interested in the larger truths which the individual disappears from. What comes out is the sample suffering of the general people and the report is written. The government that is strong enough can develop policies from it that can change the future for posterity. Whereas the Special Court will apportion blame for individuals ie Foday Sankoh you are responsible for this, Chief Hinga Norman you are responsible for this, Charles Taylor this is how you destroyed the country. Yes the Court has its value. But in my opinion the value of the Court is not for the public, whereas the value of the TRC is universal. I think greater objectives can be achieved through the TRC if managed properly during its lifetime.

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The relationship between the SC and the TRC has been a subject matter of interest to me. It was speculated that there is an underground traffic between the SC and TRC whereby the TRC will give information to the Special Court through the underground tunnel so many people can be indicted. This in itself inhibited so many stories from getting to the TRC. They were in close proximity a kilometer away from each other. This prevented people from participating in the TRC process.

SO1**:**

I think a lot of people, I mean if you ask me, when I was here, I got the impression that a lot of people were more favorable towards the TRC. I think people have a better understanding of the TRC for some reason. I think that a lot

of people do not understand the mandate of the Special Court; the mandate to try those who bear the greatest responsibility. I think a lot of people at the lower level were afraid that they would be tried by the Court. I think that was a problem. But also, you have to look at the fact that while a lot of people are favorable towards the TRC, they also felt that there were some limitations. A lot of people wanted eh, justice to be done and I think that is why the Special Court was eventually created.

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I think having the two institutions is a good idea but you have to give a lot of thought to the timing of the creation of those institutions. I think having those institutions operating at the same time right next to each other, is very problematic. I do believe that the presence of the Special Court in some ways prohibited the work of the TRC. Because at the point that the TRC was getting testimony from victims and perpetrators and all of that, people were afraid to come forward and participated in the TRC process because they were afraid that they will be tried at the Special Court. I think that is the problem. I think both institutions are important. Now I am happy that both institutions are in Sierra Leone. They were created because they serve a very important purpose However, I think in the future, we may have to look at the timing of these institutions. Ah, perhaps one should be before the other, but I think that has to be operated carefully. In addition, to that I think it is also important to have more thoughts to how these institutions will work closely together. I don't think that was really done as it showed in Hinga Norman issue. The fact of the matter is that he was in detention in the Court; there were problems between the TRC and the Special Court as to whether or not he should testify [before] the TRC]. And those problems I thought may be difficult because having a testimony from an indictee like Hinga Norman would play very important role in the TRC process. But that was missing so we do have to look at that very carefully.

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I think each institution brings a lot of value. Ah you look at the TRC, it did offer a number of very credible and important recommendations; I think that if the government is serious about implementing those recommendations, it could be a lot of good for Sierra Leone. On the other hand, you have the Special Court, which I think has brought the problem of the culture of impunity is under control. I think that you know particularly when Charles Taylor came to the Court a lot of people in Sierra Leone realized that even people like Charles Taylor would be held accountable, and I think that is important. It is not for Sierra Leone; it is for the entire Region. It is of a more regional dimension and I think a lot of people need to understand that if you engage in those activities, you could be held accountable one day. I think going to the local mechanism is also important, there are local ways of dealing with justice and I think if we had strengthen those, they, would also be important. Thinking about the legacy of these institutions, you have to make sure that what they have done continue, and they would also be done by local mechanisms so they have to play very important role.

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I think that the relationship [between TRC and Special Court] was quite problematic. I think that more could have been done in the beginning to iron out how the two bodies would work together in terms of whether indictees were to be interviewed at the TRC or so forth. So I think that in the future, if they ever look at creating those two institutions together, they should consider how they will work together; the modalities should be laid down from the very beginning and not have the situation where you saw the TRC and the Special Court going back and forth on Norman's issue. I am not saying one was right and the other is wrong you know, I mean, I am being objective, it is very clear that, you know there were problems so perhaps from the beginning, we need to work out how these two institutions will work together. That will be very important.

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The first problem is the whole issue of information sharing,.The second most important issue as I mentioned before is the issue of whether those in detention can testify at the TRC and I think that is where it has to be spelt out clearly. I am not a lawyer, I don't know of any legal ways of looking at that. My personal view, not the opinion of the Court is I think Norman should have been given an opportunity. I think in the end, it was accepted but they said that he would have to provide a written statement. You know the whole situation, but perhaps it was already too late for the TRC really to incorporate that, I mean, if that had been decided earlier, it could have been a lot easier. So I think there is the need for some forms of guidelines and may be the Office of the Legal Affairs in New York or some body like that can oversee matters such as that …

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I mean, donors still do not have a clear understanding of the TRC as they do of the Court. I think that needs to change, that is an important issue. It is just that there needs to be more sensitization of the international community about the work of the TRC. That is why I made the recommendation that perhaps the office of the Legal Affairs can oversee both institutions. That will give the TRC more legitimacy in the donor community .Even if you look at the Liberian TRC they are struggling for funds. I heard they have ceased operation for a little while because of lack of funds.

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There was a perception that there was information sharing. People believed that there was a tunnel connecting the two institutions. The fact that people had this perception alone affected the work of the TRC. That is why you have to be careful about the timing of the creation of the two institutions. Also this is a practical issue to consider. Probably you should never put these two institutions physically next to each other. That also disturbs and causes a lot of confusion in the minds of the people.

Sharing same experts/staff will be problematic, even though people might look at it as not constituting information sharing if one work for both institutions. Even if

I remember correctly there was an issue where a TRC investigator came to work for the Special Court and that person had problems. When he was working for the Court, people he worked would say “I can’t talk to you. You were with the TRC and now with the Court”. That caused a lot of problems. So I think you have to be very careful when you say there is no information sharing. You need to take that strongly. And then say okay those who work with TRC work with TRC. Those who work with Court work with Special Court. It is a shame because there can be a lot of lessons /common ground but you do have to be careful about the objective of these two institutions and how you can achieve those objectives.

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I think that it would be problematic if the TRC was going to share evidence with the Special Court. A lot of people would not have been willing to give evidence at the TRC. I think that a lot of people willingly gave evidence to the TRC because they knew that the evidence would not be used against them in the trial. So, I think that it will be necessary to separate them. The Special Court if they want to get evidence should collect their own evidence. The TRC is set up to fulfill a different objective. Initially the TRC had to do campaign to inform people that their evidence will not be used against them. Yes, after the TRC had completed its work a staff of TRC could work for the Court. That is ok but I think it is problematic when staff in one institution goes to work in the other while they still both coexits. I think that is the issue. But even so, it depends on the role that person played, Example, I can still see a problem where as investigator who works with the TRC goes to work with the Court after the TRC. For people can still say you give the Court information, you know, I think it all depends on the role the person is playing; you still have to be very careful.

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I think in the beginning, a lot of people did not have a clear understanding of the work of the Court, that in fact itself caused problems for the Court. I don/t think that has anything to do with the TRC; but I think it is more problematic the other way round. I think the Court affect the work of the TRC more than the TRC affected the work of the Court so I wouldn’t say that.

……

That is horrible; just going back to the issue of amnesty. I think a lot of people question that Lome provided for amnesty and all of a sudden you have set up this court. It all goes back to people’s perception. People still think that they can be held accountable like the lower level perpetrators. So they question the amnesty provision in Lome. They do not realize that the Court was set up for those who bore the greatest responsibility. Yes people are afraid of the Court. They do not come here. They are afraid that when they come they will be thrown into prison or whatever. The trials are open to everyone and anyone to come and see, but attendance at the trials is very low. The objective way of looking at this; the court is not a very welcoming thing the way it is standing out here. People shy away from the court for fear of being held accountable. The Outreach Unit here has

done an incredible amount of work yet people don't come. I think to some extent there is something there you cannot change in peoples perception.

……

Between the TRC and Special Court which should run first? I have been thinking about that for a long time and I can't answer that. I don't know. It is very difficult to say. I still don't have a conclusive conclusion. If I have to answer now, I will say maybe the Court should come first. Because if people are tried and the Court finishes its work, then you have the TRC people will not be afraid to come forward. I do think that one of the biggest problems with the TRC is that people were afraid to come forward because of the perception. I want to make it clear that I have not made a final decision on that, but if I am pressed to give an answer that is it. The fact of the matter is that it depends on society. People might want to talk about what happened first and then be prepared for the Court.

SO2:

TRC had problem convincing a lot of people to testify. People thought that, that was a round-about way for the Special Court to get evidence because a lot of people thought that there was an under ground tunnel. Another thing is the location; the TRC shares the same street with the Special Court. It is like 50 yards away from the Special Court so a lot of people think that there is a tunnel that leads straight to the Special Court; so as soon as you give your testimony, they take that testimony right down to the Special Court.

……

Eh, to use both together or one after the other depends on the level of atrocities that were committed during the conflict. I think ours was too much and we needed both of them. For we had a peace agreement and they (rebels) went back against the peace process. That is why we needed the Special Court. But for Liberia, they had this peace and they had a transitional government to the elected one. So they needed TRC. No body went back on their word. We had peace but we went back on our word, the belligerents, so that is why we needed a Special Court so that if it happens again, you know that something drastic will happen to you.

……

My last word is that if they can avoid this, they should not run concurrently. They could be avoided because of some of these pitfalls. Especially because it brings confusion in the minds of the population as they were asking why we are doing the same thing. It could be avoided and they should avoid it. I mean it is necessary in any post conflict situation to have both, but the timing should be different and I think they should have TRC first before ever they could set up any tribunal…..The first thing any post conflict should do is for the people's feeling to be allayed through reconciliation. That is the first thing every postconflict country should do. And then, what has happened, there will be a feeling that, we must do something much stronger so that it would not happen again, then they can

think of a tribunal especially if there are signs that these things are persistent or what ever happens has not fully addressed or the perpetrators are still around. That was what happened in our case.

SO3:
The TRC, which at that time was set in the Lomé Peace accord of July 1999, suggested that it would be based on a South African model. The first Executive Secretary for the TRC acknowledged, it could not be based on the South African model. There were some reasons for that: the South African model had a carrot and a stick mechanism. It had the ability to pardon people and grant them amnesty, and had the possibility to punish those who refused to cooperate with them. The TRC in Sierra Leone had neither of these because the Lomé Accord granted amnesty, and of course the Special Court in its decision said that a national jurisdiction can't grant amnesty under international law, or there would be no inter national law. That meant that they had little way of compelling the category they called perpetrators to come. Although some did, there were those who said their testimony was not exactly straightforward, and you can see why. If a person has to be reintegrated into a community, there is probably no overriding reason to try to make things worse for him and make that transition more difficult by admitting the types of crimes and atrocities that he may have committed against that community. … It then became a truth commission closer to the South American truth commissions, the Argentinean and later on Peruvian Commissions which were largely witness and victim based.

……

Whether it [dual transitional justice] worked or did not work history will be the judge… and it will be based not on the process but on the product. Did it work? It might not work in every situation but I think it is going to work in Sierra Leone to an extent. I think that Sierra Leoneans are going to judge both the TRC and the Special Court in the same way. Outside the fact that Sierra Leoneans tended to think about what jobs and what money they bring in for themselves, they will not judge by asking of the Special Court, What landmark legal decisions did it make that is going to control the destiny of international law for the next decade?" They are going to ask for what the Court did to help address impunity and to help restore the rule of law to help the reconciliation process. I think that is the extent to which that Sierra Leoneans will say we succeeded. The reverse of that is to the extent that we didn't do those things. That is the extent to which we will not have succeeded.

……
……

In 2001 when I came here, I talked to people at UNAMSIL, and I really didn't believe the Special Court was ever going to happen. I did meet somebody who was involved in the mission [UN Mission in Sierra Leone], but the SRSG [Special Representative of the UN Secretary General] vehemently opposed the Court. He is a Nigerian, Adeniji. His spokespersons, one of whom was a Nigerian and other

American were very much against the idea of a Court; they thought that it would sabotage all their efforts at peacemaking. Adeniji did not support the Court. He did everything he could to prevent us. A report which came just last week said we lost many months of time even to the pettiness that the Special Court people being not allowed to use the UNAMSIL premises. Until he [Adeniji] left that was the situation, When the new SRSG came he said Kofi Annan supported the Special Court therefore he also supported the Special Court, and he wanted to know what he could do to help us.

……

Relationship [between TRC and Special Court] was uneasy. There were several things. First of all the nature of who made up the TRC had something to do with it. The TRC had some difficulties in the beginning which turned into blunders against them. I was told by someone at the US State Department- the desk officer for Sierra Leone at the time that they were not going to give out any more money. They felt that the TRC had not lived up to expectation, at that point it certainly had not. I heard similar noise from the British High Commission here after I joined the Court.

……

When you have the leadership, TRC, Humper and Robinson the Registrar of the Special Court, Robinson's complaint was that the Special Court always supported the TRC, but TRC would never reciprocate. Robinson used to say that there were speculations of envy that the TRC wasn't getting the same level of funding that the Special Court was getting. That may or may not be true, but the Statute that set up the Court gave the Special Court primacy over everything. Theoretically and legally, the Special Court could have demanded the records of the TRC to use for prosecution. Before the Special Court was even set up, the TRC started making statements saying they will never cooperate with the Special Court and they will never turn over the records to the Court. The first Prosecutor of the Court made the announcement that he would not use anything from the TRC to make indictments, so that the TRC could operate properly.

……

In Sierra Leone, grievances can be hidden for years and I saw it in the eve of the elections, I saw some of it in the war, and I saw the TRC, but I don't know what they did as much for actual reconciliation at the village level. I understand they did some, and maybe some of it was successful; I hope so, because…I might be a bit biased about the TRC by now. I don't know if it's called bias when it's based on actual events. But the fact is that these are my people upcountry, and I don't want to see any of them suffer again. I don't want to see what happened in Liberia for example happen in Sierra Leone. Everybody thought the war was over and then the war returned. I don't want to hear people say the peace is fragile in Sierra Leone. An egg is fragile, but if you try to crush it in your hand you will never succeed. If you drop it on the ground, however, you have a mess. The role of the Special Court and the TRC and the UN and all the agencies and the NGOs and all the people of Sierra Leone are to make sure that that egg does not fall.

……

It may be interesting academically to debate which should have come first, the chicken or the egg, the TRC or the Special Court, but I think the international will to fund one after the other would not have been there. The Court has taken longer than we thought. I don't think that the TRC would have been able to wait that long in order to do its work. If the TRC had run first and then the Special Court, I wonder if they wouldn't have had many more problems without us being here to assure them that we would not use their testimony as evidence against them or other people. So, there is no ideal solution to that. In an ideal world, every human being would be held to account for their actions, but we don't live in a world that has that much money or that much will. If we only had one Sierra Leone or one Liberia in a decade, then maybe we could afford it, but where we have one after the other, it becomes difficult. Now we have the DRC, Uganda, East Timor and Cambodia, Burma and parts of Eastern Europe etc. and the resources for justice are not there, so we do what we can. We wasted 50 years between Nuremburg and Tokyo and ICTR ICTY. What would have happened? How would the world have been different if we hadn't wasted that time? We cannot live in alternate realities, but we can live in the future by asking, how different the future will be if we don't do this? To say that reconciliation is all we need and don't need any Special Court or any judicial organ, I would say that justice is something we need. Without justice; you can't guarantee the long term future. Things like justice and good governance aren't things you can hold in your hand. People always want to see something that they can hold in their hands, but without these things you can see what has happened. I find it unfortunate to watch another of my favorite things, the idea that everything that happened in Sierra Leone was all about diamonds. It was not about diamonds, and when you look at the causes and address the cause, that is part of addressing the future, because we cannot go backwards and address the past if we don't learn from it. To that extent, I think that the TRC report would be useful for people who are caught in this kind of situation in the future. Maybe they'll learn to look more closely. Now Sierra Leone is again falling off the international community's radar screen, but maybe for the right reason, that things are better here, and everyone moves on to the next crisis, and leaves the rest of us to try to put the *genie* back into the bottle.

……

The question I asked was if these atrocities happened in Europe, would they have gone to the TRC or would they have said that people who commit this category of crimes in Europe, Asia, North America or Australia would be held to account? If this happened in Africa, then they have to say they are sorry, or in the case of Sierra Leone, maybe not because few perpetrators came. I feel uncomfortable with cheap justice that isn't justice and most critics of the Court said that TRC is more like African culture, whatever African culture might be, but they came from South America, and certainly there is the mediation aspect, and it can certainly be adapted to local conditions. Yes, in the end you have to forgive people because sometimes you have no alternative. Sierra Leoneans are known as the most

forgiving people in the world, and to an extent I believe Sierra Leoneans are very forgiving. I have had enough experience over 25 years to believe that is true, but I also believe there is another part of that, and that is that if you have no choice or no recourse to law, you have no choice but to get on with your life; you may have forgiven, but you never forget it. Some of what happened in this war was actually retribution between families or maybe even individuals for past grievances, and that did happen. It wasn't all just because of RUF or AFRC or CDF or whoever.

SO4**:**
Relationship between them was separate; there were different rules of procedures and different types of evidence required by each. Amnesty is not legally binding in international law. Even if it was binding it was avoided in principle by the conduct of the rebels.

SO5**:**
We had different mandates. Their mandate was completely different from ours, and we should take it from there. Ours is to bring people to account and to punish them if they were found to be guilty. TRC was not for that. It took into account the things people did, and sought forgiveness. Since we did not have the same mandate, a working relationship cannot exist in those circumstances.

……
The most important thing for the people of Sierra Leone is to pick up the pieces and go on with their lives. These mechanisms are just to show people that others do care, to show people that the society has rebuked what took place. Once you have rebuked it, you don't want to make it an issue. There must be an end to litigation. The most important thing is to pick up your life and start all over again. ….One is coercive and the other is persuasive.

……
There cannot be retribution throughout. We are also taking into account the issue that the country must reconcile and move on. You cannot go on for a long time with retributive justice on matters that is why they have said only those who bear the greatest responsibility. The Prosecutor is then restricted in what he does. He cannot just start charging all the people. He only got 13 people, who he thought bore the greatest responsibility. Out of these some died, one is at large, and 9 were taken here and the cases have started. The CDF, RFU and the AFRC and Taylor were brought on 29th March last year. Now we have ten accused persons. A balance will have to be struck between the two. You cannot have litigation forever. If we were to try everybody who was committing an offence, how many years is it going to take? Everybody has a constituency. If we are talking about reconciliation and developing the country, putting up institutions, you just want to make a point and forget it and carry on with your life.

SO6:

I think it is very tempting for people to say that it is possible to use existing mechanisms. But giving the kinds of crimes that were committed in this country, I think in my view we did not have mechanisms in place to address such crimes. It is the nature of the crime. Now we are talking, you can have complimentary peace-building mechanisms, but the primary mechanism to address such issues, in my view, could not have been handled by our traditional conflict mechanisms. And the reason why I am saying that is who the adjudicators in traditional conflict mechanisms? There are paramount chiefs. Most of them were victims of the war. So what kind of justice are you talking about? Will these people be capable of administering the kind of justice we are looking for or reconciliation; would they have been able to address the reconciliation challenges in the communities? I don't think so. This is the situation where you need people with fresh minds to help the country move from war to peace. If the whole country is saying that all of them were victims, how do we handle it? I think we need a combination of a variety of methods to address this kind of situation. We are not talking here about just skirmishes. We are talking about some of the worst atrocities the world had ever faced. Think of it this way; look at the Special Court, with the kind of international support it has, with the kind of message it has sent, regardless of your position in society, you are indicted, if you are believed to have committed a crime or to have perpetrated crime during the war. Which traditional justice mechanism could have sent that message? These are issues that we will debate for years and years to come. But it is my view, based on my experience that at least we need these kinds of institutions as a stabilizing justice mechanism and then after that you have the traditional justice mechanisms coming to compliment its efforts. I am yet to see the society that deals with such magnitude of atrocities in just that way.

……

At the same time some people said they must not exist at the same time. I take a different view. And the reason why they are saying that is, in the Sierra Leone experience, they started almost around the same time and people were afraid to give testimonies to the TRC because they thought by telling a story to the TRC, the TRC will just use it to get you indicted by the Special Court. That was what they thought, but then what happened, the Chief Prosecutor at that time, David Crane and the Commissioner of the TRC, Bishop Humper, they appeared jointly at the Victoria Park, held a big meeting with the press to clarify and to encourage people if you want to co-operate with the TRC, please go ahead. And the Prosecutor said he would indict people only based on the evidence that his office collects not based on their testimonies to the TRC. That went a long way to encourage people to cooperate with the TRC. Whether it had a hundred percent impacts or not, that is something else. But at least the effort was made to make that statement.

…….

People cooperated with the TRC as you can see although some would argue that perhaps more people would have cooperated with the TRC, but quite a good

number of people came forward to give their testimonies to the TRC. This means that the coexistence did not negatively impact the TRC as people thought, because if it had then the TRC would have been there without testimonies, but they collected thousands of testimonies. Some are saying one institution should precede the other. These were the arguments that we had once we started operating. I think Sierra Leone made the right decision in my view-the decision to have the two accountability mechanisms coexist. The reason being, that the different categories of victims have accountability options. If you want to go to the TRC, you go to the TRC, if you want to cooperate with the Special Court, you cooperate with the Special Court. I think that its brilliant. The mistake that was made was the tension in the modus operandi of the two institutions.

……

The tension was basically having the Special Court indictees testify to the TRC – give their testimonies to the TRC. So there was a disagreement on the procedure for this to happen. They could not reconcile that because the TRC had public hearing and they could use the media, radio, television, whereas for the Special Court, it is criminal investigation, you cannot let an indictee out before his trial starts.And also be interviewed by another party orally and through the media because there are chances that other people could be incriminated. Suppose one indictee telling his story and then he mentions another indictee. That indictee's defence lawyer could pick up the case on his behalf saying that his rights were violated. So, it could have led to all kinds of legal complexities. So, the disagreement wasn't that the indictees could not testify; they said they could do it through written testimonies so on and so forth. But the TRC wanted the indictees to testify by the radio live. So, the Court said in the interest of justice, they could not allow that because that may jeopardize the whole judicial process. This was the tension that was not envisaged. And these are inherent tensions because of the way the TRC operates and the way the criminal justice system operates. So, if another country's adapting this kind of model, they should study the situation carefully, and study how transitional criminal justice mechanism works, study how the TRC accountability mechanism works and see what challenges could be envisaged and then design policies to overcome those challenges. So, that was the dual accountability in Sierra Leone.

……

Well, the presence of the TRC did not affect the Court except that the Hinga Norman issue was a bit challenging for us because of the way the whole situation was handled. There was a bit of confusion. People said well, why the indictees shouldn't give their testimonies. So, there was confusion in understanding why the method of testimony was not accepted by the Special Court. I would not call it negative, but it created slight difficulties in terms of making the public understand. So, for the first time, it gave us additional work to do to make people understand how TRC works and how Special Court works. But apart from that I would say the relationship wasn't a bad one, in my view between the two institutions.

……

As far as I know to the best of my knowledge, there was no information sharing and I think the Prosecutor and the commissioner kept their word about not sharing information, to the best of my knowledge.

……

I don't think there is need for harmonizing the objectives because the objectives are similar, not different. It is the operations and methodology, the nature and characteristics of the institutions that are different, but the objective is similar to help the country move from war to peace, and to hold people accountable.

……

Our Sierra Leone experience shows that dual transitional justice is difficult and it depends on the society involved. Both institutions were set up right after the war. Some people would tell you, you need to wait. It all depends on the society. From my own experience, I think Sierra Leone got it right because when the war is fresh on people's minds, when you are trying to stabilize the country, that's the time you bring up these issues. I don't fully endorse waiting for some years then you remind the people of all these issues again. Of course, Cambodia is the extreme example about twenty something years. In fact, I attended a conference in Cambodia and one of the issues that we dealt with is what we are exactly talking about here. So, we diferred; some people said we have to wait, others said the time is now. So, all we can talk about is what works in our context. I believe in establishing both institutions right after the war, not even waiting for one year, was the right decision in hindsight.

APPENDIX J:

CURRICULUM VITAE

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Public Administration (GIMPA)
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Areas of Specialization/Interest:
Human rights law and enforcement; constitutional and administrative law; business law; transitional justice and postconflict peace-building; policy formulation and analysis; gender and children's issues; alternate dispute resolution; public leadership and management.

Current Career Position: Lecturer Ghana Institute of Management and Public Administration (GIMPA).

Education:
Current Program at Walden University: PhD in Public Policy and Administration

Previous Degrees:
1991 LL.M. Bendel State University, Nigeria,
1990 B.L, Ghana School of Law,
1989 BL, Nigerian Law School
1988 LL.B. Bendel State University, Nigeria

Professional Experience and Work History

1. 2001 to date: Lecturer at the Ghana Institute of Management and Public Administration. Work involves teaching constitutional and administrative law, international conflicts and conflict resolution, public sector legal and regulatory framework, business law, gender and women's human rights at the graduate and undergraduate levels: Supervision of thesis/project work, at graduate and undergraduate

levels: Execution of consultancies for the Institute: Program coordination and: Researching and mentoring.

2. May. 2005: International Expert/Consultant to the Liberian National Transitional Legislative Assembly Committee on the Truth and Reconciliation Bill (NTLA).
As a consultant to the NTLA Committee, Researcher offered advice to the Committee on amendments to the Truth and Reconciliation Commissions Bill (the Bill): Developed policy proposals for the consideration of the Committee on the Bill: Drafted necessary revision of the Bill: Made critical presentations on the Bill: and Undertook an awareness-building campaign through radio, television, and newspapers on the Bill.

3**.** March 2003 to December 2003: Head of Research Unit, Truth and Reconciliation Commission for Sierra Leone (United Nations Development Program (UNDP) Sierra Leone, Consultant). The TRC was set up by the government of Sierra Leone in collaboration of with the United Nation to address the baggage of human rights abuses which had occurred during a the 10-year civil war in Sierra Leone.

Work involved coordination and supervision of the Research Unit of the TRC. The Research Unit supported the Commission's function to prepare an impartial historical report of the violations of human rights and international humanitarian law that had occurred in Sierra Leone. To this end the Unit researched and investigated into the abuses of human rights and international humanitarian law that occurred in Sierra Leone during the 10-year civil conflict, worked on thematic themes, conducted research on the structures, national and international actors, events and dynamics of the conflict in Sierra Leone; analyzed data collected from statement taking; engaged in fact-finding covering the nature, causes and extent of violations and abuses of human rights and breaches of international humanitarian law; produced a draft final report covering all aspects of the Commission's mandate; presented briefings to Commissioners on aspects of their work and developed proposals to support aspects of the report writing. The Research Unit also carried out preparatory work for the Commission’s hearings which included selection of suitable Statements for Commissioners attention, and counseling witnesses appearing before the TRC. In addition to supervising and coordinating the activities of the Unit the researcher undertook part of the research, served as the leader of evidence for the hearings, and a team leader for the provincial hearings.

4. 2002-2003: Acting head of Administration, Ghana Institute of Management and Public Administration.
Work involved general administration of the Institute; Secretary to the Governing Council of the Institute: and human resource management.

5.1994-2001: Senior Legal Officer, Commission on Human Rights and Administrative Justice of Ghana (CHRAJ).
Work involved adjudication and resolution of human rights and administrative justice complaints through arbitration, mediation, negotiation and settlement: Writing decisions

of the Commission, Enforcing CHRAJ' decision in court: Coordination of workshops and seminars: Undertook human rights training for organizations and groups by seminars and workshops: Counselling victims of human rights violations and administrative infractions.

6. 1992 to 1994: Lecturer in Law, Ondo State University, Nigeria
Work involved teaching the law of contract and Nigerian Legal System and Course coordination

7. 1990; Private legal practice and a national service, Bentsi-Enchill & Letsa, a Firm of Legal Practitioners, Accra, Ghana. Work involved corporate international business, conveyancing, commercial and probate matters.

Positions of Responsibility and Leadership

1. Member, School Board, Ghana International Christian High School, 2002 to date.

2. Member, Governing Council, Ghana Institute of Languages, May 2002 to Date.

3. Head of Research Unit, Truth and Reconciliation Commission for Sierra Leone, March 2003 to December 2003

4. Acting Head of Administration and Finance, GIMPA, February 2002 to March 2003

5. Acting Regional Director, Greater Accra Region – Commission on Human Rights and Administrative Justice. - September 2000 – Feb. 2001

6. Member, Committee set up to resolve problems arising out of redundancy exercise undertaken by GIMPA October 2001

7. Member, Advisory Committee on War Affected Children set up by the Government of Ghana and Canadian High Commission in Ghana, in the year 2000.

8. Member; Advisory Committee of the National Commission on Children, to make proposals for Subsidiary Legislation pursuant to the Children's Act of 1998 (Act 560), 1999.

9. Focal Person in charge of CHRAJ's Women and Children's Desk 1999 – 2001.

10. Representative of the President of Ghana at the Head of State's End of Year Party for the Children of Eastern Region of Ghana, December 1996.

11. Head, Public Education Unit, Commission on Human Rights and Administrative Justice (CHRAJ), Ghana – 1994 to 1998.

12. Member, Seminar/Workshop Planning Committee of CHRAJ – 1994 to 2001

13. Chairman, Seminar Reporting Committee of CHRAJ – 1994 to 2001

14. Member, Committee for the preparation of the CHRAJ's Annual Report – 1994 to 2001

15. Chairman, Committee of Inquiry set up to look into students' crisis 1993: Ondo State University, Nigeria.

16. Protocol Prefect, Winneba Secondary School, Central Region of Ghana, 1984

17. Assistant Girls Prefect Begoro Secondary School, Eastern Region of Ghana1982

18. President Scripture Union, Begoro Secondary School, Eastern Region of Ghana 1982

Research

1. Transitional Justice in Postconflict contexts: The Case of Sierra Leone's Dual Accountability Mechanisms
   Ongoing Doctoral Dissertation, Walden University, USA

2. Business Law Module for Executive Masters in Business Administration (GIMPA Module 663) - 2002

3. Business Law Module for Post Graduate Diploma in Business Administration. GIMPA, 2002

4. Constitutional and Administrative Law Module for Post Graduate Certificate in Public Administration. GIMPA, 2002

5. Constitutional and Administrative Law Module for Executive Masters in Public Administration, (GIMPA Module 654) - 2001

6. "Coup d'etat and the Problems of Continuity and Persistence of Law": Bendel State University Law Journal 1991/1992 Vol. 1, Page 197.

7. Dispute Resolution and Consumer Protection in Nigeria, LL.M Thesis 1991.

8. "The Scope of the Felonious Tort Rule in Nigeria" 1986 Vol. 1 Journal of Bendel Law Students.

Membership of Associations and Affiliations

Member:	Ghana Bar Association 1990 to Date.
Member:	Nigerian Bar Association 1989 to Date.

Seminars, Workshops and Public Lectures Resourced: Partial list

A Panel discussant:	At stakeholders forum organized by The Institute of Social Studies, University of Ghana, Legon on the theme, "Children's Act: The state of Implementation", December, 2002.
Resource Person:	For a Workshop organized by the Ministry for Women and Children's Affairs for producers of children's programs on the theme; "Negative Practices, a Threat to a Child's future", Accra – August, 2002.
Resource Person:	For a sensitization forum on "Constitutional Rule" organized By the Ghana Armed Forces Staff College for Selected army Officers from the Sierra Leone, Accra - 2002.
Resource Person:	For a Workshop organized by the Ghana National Commission on Children for Law enforcement Agencies and stakeholders on the theme, "The Children's Act : The state of Implementation", Accra – 2001.
Resource Person;	For Workshops organized by the Ghana National Commission on Children for District Chief Executives (Political Heads of District) and District Assemblies on the Rights of the Child in the Greater Accra, Volta Region and Eastern Regions of Ghana, 2000 for a period of 15 days
Facilitator:	At a 3-day workshop on war affected children in West Africa. Organized by Governments of Canada and Ghana for foreign ministers and policy makers within the West African Subregion on "Proliferation of Small Arms", April, 2000, Accra.

Speaker: At a forum organized by the Ghana Institute of Languages on the theme "Making Democracy Work in Ghana", January,2002.

Speaker: At a National Youth Forum on the Theme "Democracy and the Rule of Law in Ghana" in Accra, 2002.

Honors and Awards

2006	Pi Alpha Alpha National Honor Society, United States of America
2000	Recipient of Commission on Human Rights best Workers award for the Protection and Enforcement Unit of the Commission
1988	Co-Winner of the Paul Ehizokhale oundation Award for the Best Student in Commercial law

Special Training

"International Training in Peace Building for African Civilians"
University of Ghana, Legon Centre for International Affairs (LECIA) August 30 – September 17 2004.

"Training-of Trainers Course"
University of Ghana: Legon Centre for International Affairs (LECIA) - September 20–24, 2004.

"Protection of Human Rights"
Institut International Administration Publique, France - 2001

"Conflict Handling"
Management Development and Productivity Institute (MDPI) Ghana – September 1999.

"Principles of Management"
Management Development and Productivity Institute (MDPI) Ghana – September 1999.

"Alternate Dispute Resolution" - 1996
Faculty of Law, University of Ghana Legon, Ghana

Referees:

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