

THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION: REVIEWING THE FIRST YEAR¹

January 2004

In October 2003, close to the end of the one-year mandate of the Sierra Leone Truth and Reconciliation Commission (TRC), President Ahmad Tejan Kabbah granted the Commission a six-month extension, allowing it to continue work through the first few months of 2004. The Commission's first year was challenging: it effectively lost its full preparatory period and the first two or three months of its mandate to administrative difficulties, and has been rushing to satisfy its broad mandate in the limited time that remained. Despite these difficulties, the TRC has undertaken remarkable work in some areas. This paper provides an initial summary of its work and points to some of the key difficulties it has encountered.²

I. BACKGROUND

The nine-year civil war in Sierra Leone was marked by extreme violence and brutality on both sides. The Sierra Leone Army and the government-aligned Civil Defense Force, with the backing of some West African regional forces, fought the anarchic Revolutionary United Front (RUF), which was best known for its practice of amputating limbs of innocent civilians, perpetrating widespread sexual violence and sexual slavery, and kidnapping youth to compel them to join its fighting force. While the RUF's brutality is well known and horrific, all parties committed atrocities. After several unsuccessful peace negotiations and accords and nearly losing control of the capital to the rebels in early 1999, the war finally and slowly came to a close around the signing of a peace accord in Lomé, Togo, in July 1999. Hostilities briefly re-erupted in 2000, however, and peace was only finally and formally declared in January 2002.

The Lomé accord included a provision for the establishment of a truth commission, but the language included few details on its specific mandate, operations, powers, or the process of selecting commissioners.³ The United Nations High Commissioner for Human Rights, Mary Robinson, expressed interest in the success of the Commission and offered the services of her offices in helping to develop the terms of reference in greater detail.⁴ A consultative process of

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² ICTJ briefing papers are based on the close involvement that the Center has in the country under study, with the aim of making basic information and analysis available to a national and international interested readership. The ICTJ provides direct technical assistance to national accountability institutions—including the Truth and Reconciliation Commission and the Special Court for Sierra Leone—and strictly respects all confidentiality in its briefing papers. For further information about the ICTJ's work in Sierra Leone and other countries, see www.ictj.org.

³ The Lomé Peace Accord can be found at <http://www.sierra-leone.org/lomeaccord.html>. See Article 26, "Human Rights Violations," for the agreement on the establishment of a Truth and Reconciliation Commission.

⁴ The author of this paper served as a consultant to the UN High Commissioner for Human Rights in 1999 and 2000, assisting in the consultation and drafting process for the TRC.

several months allowed drafts to be widely circulated and commented on, resulting in a number of novel elements in the Commission's mandate that reflected the realities and special opportunities of Sierra Leone. Sierra Leonean civil society played a central and very positive role in helping to craft the terms, including through national consultative conferences. Final legislation to create the TRC was passed and signed into law in February 2000.⁵

The TRC Act calls on the Commission to undertake research, receive statements from victims and witnesses, and hold public sessions toward the aim of establishing "an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered."⁶

Continuing violence or threats of violence, which nearly derailed the formal peace agreement, delayed the TRC's start for more than two years. Conferences and workshops throughout this period showed strong civil society interest in the Commission, however, and provided time to consider elements pertaining to staff structure and budget, operational policies regarding child perpetrators and victims, and issues relating to women and girls victimized by the conflict.⁷ A local NGO, Campaign for Good Governance, undertook a "mapping" of the conflict based on more than 1000 statements gathered from victims and witnesses throughout the country, the first attempt since the start of the war to gather statements on such a wide scale. Two other organizations, the National Forum for Human Rights and Manifesto 99, undertook separate studies on the role of traditional authorities and practices in Sierra Leone, and how the TRC might creatively engage them. All of these reports were submitted to the Commission upon its startup.

The TRC Act also outlined specific steps for the selection of commissioners, including public nominations, a representative selection panel, and a coordinating role by the UN Special Representative of the Secretary-General in Freetown. Four members of the commission are Sierra Leonean, while three are internationals who were put forward by the UN High Commissioner for Human Rights. Sierra Leonean Bishop Joseph Humper chairs the Commission. Other members include Deputy Chair Laura Marcus-Jones, a former judge of the Sierra Leone High Court; Professor John Kamara, a college principal and veterinary surgeon; and Sylvanus Torto, a professor of public administration. The international members are Satang Jow, a former Minister of Education in the Gambia; William Schabas, a Canadian human rights lawyer and current head of the Irish Centre for Human Rights; and Yasmin Sooka, a South African human rights lawyer who also served on the Truth and Reconciliation Commission in South Africa. Some Sierra Leonean observers worried initially that the Sierra Leonean members may be too aligned, as a group, with the current governing party, but the internationalization of the Commission has helped to offset this concern.

⁵ The Truth and Reconciliation Act 2000 can be found at <http://www.sierra-leone.org/trcact2000.html>. This website also has numerous other background and current news materials on the TRC, as well as other subjects related to Sierra Leone.

⁶ TRC Act 2000, Article 6(1).

⁷ A meeting hosted by UNICEF in June 2001, for example, resulted in an extensive report outlining proposed policies on children's engagement with the TRC and the Special Court. See UNICEF, "Children and the Truth and Reconciliation Commission for Sierra Leone."

II. THE ROLE OF THE UNITED NATIONS AND THE INTERNATIONAL COMMUNITY

Sierra Leonean legislation created the TRC to be fully independent, but the Commission itself chose to be housed, for legal and administrative purposes, as a project of the UN Office of the High Commissioner for Human Rights (OHCHR) in Geneva. The OHCHR has undertaken fundraising and provided administrative support to the Commission, and has turned to the office of the UN Development Programme (UNDP) in Freetown as its local administrative partner. Budgetary and fundraising matters pertaining to the TRC have been decided only in consultation with the Geneva-based OHCHR. This has led to delays and disagreements on how best to set the Commission's priorities and has influenced the degree of independence the Commission has had in its operations. On the other hand, the TRC has generally benefited from the administrative and procurement support that the UNDP office provides, as well as the close financial oversight.

By mid-2003, the Commission's core staff was approximately 40, most of them Sierra Leoneans, although many of the heads of department were international. The staff size was reduced in the following phases of report writing and analysis. The TRC's operating budget was US\$4.5 million for one year, significantly trimmed down from an initial programmatic plan that projected a need for close to \$10 million. It is estimated that the extension period will raise the Commission's budget to \$5 million. Resource constraints have limited the TRC's reach and forced it to cut back on the number of victim statements that it could receive, as well as the amount of time spent on public hearings. Even with these shortened periods for hearings and statement taking, the Commission dearly needed an extension, as allowed by its governing Act, in order to complete its work. While granted the full extension through March 2004, however, it has stated that it hopes to complete the report and finish its work before the full six months are expended.

Funding for the Commission has primarily come from international sources, including \$500,000 to more than \$1 million from the United States, the United Kingdom, and the European Union, as well as significant support from Denmark, Norway, and Sweden. In addition, Germany and the United States have each pledged \$200,000 to \$400,000 for a successor institution. The Sierra Leone government also provided some initial support, which covered the costs of the Commission's first office space.

III. TESTIMONY FROM VICTIMS AND PERPETRATORS

Unlike other commissions, the TRC has generally approached its work in phases, each one focused on a primary task. It planned for four months of statement taking, four months of public hearings, and four months of report writing. Research and investigations did not begin until April 2003.

The Commission deployed statement-taking teams throughout the country for four months as planned, keeping only a small number of statement-takers on staff thereafter. By August 2003, the Commission had taken more than 8000 statements from victims, witnesses, and perpetrators. Hinting at the remarkable findings that were likely to follow, in January 2003 it released an early analysis of the first 1300 statements, which included reports of 200 cases of rape or sexual violence and more than 1000 killings. Approximately 10 percent of the reported cases involved child perpetrators. The statements identified 3000 victims who had suffered approximately 4000 violations, including abductions, amputations, killing, torture, rape and other sexual abuse, and looting.⁸

⁸ *Sierra Leone News*, Jan. 14, 2003, available at <http://www.sierra-leone.org/slnews.html>.

The first public hearings began in April, opened by President Kabbah and well attended by the diplomatic corps and international press. Hearings were held throughout the country, taking the stories of those who suffered or participated in the war, and the hearings outside of Freetown in particular were very well attended. The hearings were aired live on radio, and a half-hour summary was presented on television each night. Public attendance was considerably less in Freetown, but many tracked the Commission's developments through the media.

Thematic hearings addressed women, youth, management of mineral resources, corruption, the role of international actors in the conflict, and the role of the media, among other topics. The TRC followed the example of South Africa in closing hearings that were specifically designed to listen to the experiences of women, particularly in relation to sexual abuse. (However, not all rape survivors chose a closed hearing—at least one insisted on telling her vivid story in an open session.) These women's hearings were conducted by female commissioners, with only female staff present. The video record—following the Commission's practice of recording all hearings—hid the identity of those giving testimony. Given the great number of women who were sexually abused in the course of the war, these hearings were crucial to the Commissioners understanding the nature of these violations.

Because closed hearings and confidentiality essentially represented the only form of available witness protection, those who requested appearance in closed session were generally granted it if they were able to demonstrate their reasons, including any security concerns. When perpetrators were named during public hearings, the Commission attempted to find those persons to allow a facilitated exchange between victim and perpetrator, if the victim wished. Children testified only in closed session. However, because of time limitations, only a small number (approximately 350) of the persons who provided statements were given the chance to testify in a public hearing.

A study was released early in the TRC's work and showed that ex-combatants from all sides generally support the TRC's work; in fact, the more they understood the Commission, the more supportive most became. This study, undertaken by the Sierra Leonean organization the Post-conflict Reintegration Initiative for Development and Empowerment (PRIDE), in conjunction with the ICTJ, assisted the outreach activities of both the TRC and the Special Court.⁹

Indeed, an unprecedented number of perpetrators have come forward to the TRC: more than 13 percent of the 8000 individual statements are directly from perpetrators, and approximately a third of those who appeared in hearings admitted to their own wrongs, often in great detail. Many ex-combatants hesitated to appear in front of the TRC during its initial hearings, but after seeing that there was no reaction from the Special Court for those that did testify, many clamored for the opportunity to speak. There were strong calls for the Commission to stay longer in the local provinces outside of Freetown, or to return later, to allow additional community-based sessions that included perpetrators' accounts, but the TRC decided that resource and time constraints did not allow for an extension of the hearings schedule. In recent months, the Commission has begun a reconciliation program, working in conjunction with the Inter-Religious Council, a Sierra Leonean NGO. This project, which reaches out to communities to provide further support to victims, will be continued by the Inter-Religious Council for a number of months after the Commission closes its doors.

⁹ See "Ex-Combatant Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone," available at www.ictj.org/africa/sierra.asp.

In the hearings outside of Freetown, the Commission turned to local traditional leaders, especially paramount chiefs, to attend and take part in their proceedings. At the end of each week, the TRC held a reconciliation ceremony where victims and perpetrators would sometimes come together, or where those who admitted to crimes were washed of their evils through a special cleansing ceremony and reaccepted into the community. These were powerful events, although unfortunately limited in number.

The final closing hearing, in early August 2003, featured President Kabbah appearing before the Commission to provide more than two hours of testimony. The event worried some observers, as the President declined an invitation to apologize on behalf of the State for the many abuses suffered in Sierra Leone, and the Chair of the Commission joined him in insisting that no such apology was needed. At a later ceremony, the Chair publicly thanked some factions for defending the nation during the war. Although that opportunity for acknowledgement of past wrongs was lost, observers hoped that this did not suggest the Commission might reach one-sided conclusions, failing to recognize that serious violations did take place on all sides of the war. This fact was clear from the hearings that had taken place to date.

IV. RELATIONSHIP WITH THE SPECIAL COURT

In response to the new violence in 2000, just months after the TRC legislation was signed into law, a proposal for a hybrid tribunal—with both international and national judges, prosecutors, and staff—was put forward to prosecute those “bearing the greatest responsibility” for past human rights violations. The Court, established in 2002 through an agreement between the UN and the Sierra Leone government, covers crimes back to 1996, thus overlapping the temporal jurisdiction of the TRC by close to three years.

There is no explicit provision in the TRC or Special Court legislation that addresses exactly what relationship should exist between the two institutions, and this question emerged early in preparations for the Commission. In particular, there were questions raised as to whether information the Commission collected would be shared with the Special Court, or whether the TRC’s power to grant confidentiality to sources could protect it from requests or subpoenas from the Special Court. This was considered important because perpetrators who were inclined to speak to the Commission might request confidentiality. Thus, there was concern that weakening the Commission’s power to guard confidentiality could significantly limit the TRC’s work. The questions on interrelationship are quite complex, and the UN and NGOs held a number of meetings to discuss policy options.¹⁰ As the Commission began its work, however, the Chief Prosecutor of the Special Court was clear that he had no plans to seek or use information collected by the TRC; this considerably lessened deponents’ worries during the statement-taking and hearings phase of the Commission’s work.

The interrelationship issue emerged more directly in mid- to late 2003, when the Commission requested access to four persons who were held in Special Court detention. The TRC had been planning to speak with them early in 2003, to allow them to respond to allegations against them, but lost the opportunity when they were arrested sooner than expected. If the Commission chooses to name names of perpetrators in its final report, it would be important for all named individuals to have the chance to respond to allegations, as is now the general practice of truth

¹⁰ For further information, see “Exploring the Relationship Between the Special Court and the Truth and Reconciliation Commission of Sierra Leone,” available at www.ictj.org/africa/sierra.asp. See also “Human Rights Watch Policy Paper on the Interrelationship Between the Sierra Leone Special Court and the Truth and Reconciliation Commission,” available at www.hrw.org.

commissions around the world. In requesting permission to interview the detainees, the Commission also noted that the perspectives and general input from these persons would be critical to fully understanding the conflict, and thus important to completing the TRC's mandate. However, the Court decided that any meetings with the detainees by representatives of the Commission would have to be tape recorded and monitored by a Court representative, a condition that the Commission considered unacceptable. A further request to hold a public hearing with those detainees who wished to appear was also turned down in two separate opinions from the Court. The exchange between the Court and Commission over this matter was, by all appearances, quite rancorous, an unfortunate development after what had been a fairly positive and supportive relationship.¹¹

V. SPECIAL PROVISIONS OF THE TRC

The many Sierra Leoneans who were closely involved in the planning for the TRC helped to include language that responded to the realities of the conflict in the country. The Act calls on the Commission to give special attention to child victims and perpetrators of the conflict, as well as women and girls that suffered violence. It also refers to the possible use of paramount chiefs or other traditional or religious leaders in undertaking its work.

The Act also sets out specific follow-up procedures that are stronger than those of previous truth commissions, and it commits the government to fulfilling the TRC's recommendations:

The Government shall faithfully and timeously implement the recommendations of the report that are directed to state bodies and encourage or facilitate the implementation of any recommendations that may be directed to others.¹²

The President will appoint a follow-up committee (including both national and international members), which will submit quarterly public reports on the status of implementation of the recommendations. The government is also required to submit quarterly reports on its own actions to fulfill the recommendations, and these reports will be made public.¹³

VI. CONCLUSION

After a difficult beginning, with months lost to administrative challenges and staffing difficulties, the TRC turned the corner by mid-2003 and began to play a critical and prominent role in the country. It generally has the support of civil society organizations and political personalities, with the government cooperating with requests but allowing it to work without interference. Several NGOs have asked the Commission to extend its reach further through additional hearings. It is said that the research and investigative arms of the Commission, whose work is confidential until the final report is released, have turned up original and previously unknown documentation that give important insights into the very roots of the war, as well as the extent of international involvement. Focused research and targeted interviewing of key political and other figures are still ongoing.

¹¹ See "Practice Direction on the procedure following a request by a State, the Truth and Reconciliation Commission, or other legitimate authority to take a statement from a person in the custody of the Special Court for Sierra Leone" (adopted 9 September 2003, amended 4 October 2003), available at www.sc-sl.org. See also Special Court decisions of October 29 and November 28, 2003, also found at www.sc-sl.org, under records for Hinga Norman case. In addition, both institutions issued press releases on this question.

¹² TRC Act 2000, Art. 17.

¹³ TRC Act 2000, Art 18.

Just as important, the simultaneous operation of the TRC and the Special Court has made it even more evident that the Commission holds a critically important role in the mix of accountability and reconciliation measures that hopefully will move the country forward. No matter how well the Special Court does and how successful its prosecutorial efforts are—and it submitted a dozen high-level indictments in its first year—it is now clear that the Court likely will prosecute no more than two dozen perpetrators, and perhaps no more than 15 or 20. Furthermore, as is the nature of most court proceedings, only a small number of victims will play any role in the Special Court's cases, as compared to those that have appeared before the TRC.

The TRC is tasked with addressing the hard lessons that must be learned about the causes of the war, as well as the systemic and institutional weaknesses that still exist. Getting to the core of the problem in Sierra Leone, and identifying those critical reforms that might improve the country and prevent further conflict, will be key. While the Commission may identify individual perpetrators, and will certainly address the facts around specific past events and violations, the most important contribution may well be in setting out such recommended reforms. It will then be important for both national and international authorities to follow up these conclusions with clear actions that will make further violence less likely in the future.

