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Transitional justice, mass atrocity trials and history in Africa

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5. Cross-examining the past. Sierra Leone: ‘Taylor-made’ terror

A rebel conflict for the sake of power
When two elephants dem a fight
The grass dem a suffer
Which is the position of the civilians?
Lord I cry
Dem a big fool us
Have no mercy for the vulnerable
Have no mercy for the women
Have no mercy for the youths
Have no mercy for the children
Oh, we a go suffer

– Sierra Leone Refugee All Stars¹⁸⁶⁴

5.1 Introduction

Whereas in Rwanda the contested narratives about the genocide prevail and are increasingly stringent, the history of the civil war in Sierra Leone has evidently scarred Sierra Leonean society but the politics of memory has not taken such a virulent turn. First of all, the atrocities, by all sides to the conflict, are widely known in Sierra Leone, its occurrence was bluntly overt. In Rwanda, basic facts continue to be disputed and many alleged atrocities by the RPF were carried out covert. Secondly, the pre-war history of Sierra Leone was not tainted by ethnic politics and cyclic struggles for power along ethnic lines, alike the Hutu-Tutsi dichotomy. The discourse that animated the violence in Sierra Leone was strikingly different; it was not deeply ideological and was not framed in a discourse of historical enemies.¹⁸⁶⁵ Thus, thirdly, the nature of the atrocities was not genocidal and there were no specific social categories targeted for extermination and played out against each other as was the case in Rwanda. Accordingly, after the war in Sierra Leone, there was no particular group that came out of the war victorious to the extent that the RPF did. Animosity on the basis of ethnicity, for example, does exist, but hardly up to the levels as in Rwanda. Fourth, the dealing with the past through transitional justice was not tarnished by absolute victor’s justice and the shifting of responsibility on one collective, as was the case in Rwanda with Hutu population. Rather, all parties partook in either the truth and reconciliation process, were pursued by the Special Court for Sierra Leone or were involved in the Fambul Tok community reconciliation sessions. Also, the perceived masterminds behind the carnage in Sierra Leone were abstract entities, such as ‘rebels’ rather than prominent politicians and military. Moreover, whereas the RPF complexly constructed the abstract idea that genocide was the historical endgame of Belgian colonial policy in the 1930s, in Sierra Leone the real

¹⁸⁶⁴ Lyrics from song text: Sierra Leone Refugee All Stars, ‘Weapon Conflict’, *Living Like a Refugee* (ANTI-, 2006). The phrase “Ndovu wawili wakipigana, ziumiazo na nyasi” [When two elephants fight, it is the grass that suffers] is a Swahili proverb, largely used throughout Sub-Saharan Africa. In the form cited above it appears in Krio, the language spoken in Sierra Leone. Ali A Mazrui, ‘Islam and Acculturation in East Africa’s Experience’, in: Ali A Mazrui, Patrick M. Dikirr, Robert Ostergard Jr., Michael Toler & Paul Macharia (eds.), *Africa’s Islamic Experience. History, Culture and Politics* (New Delhi: Springers, 2009), pp. 189-207: 200.

¹⁸⁶⁵ Mnessha Gellman, ‘Teaching Silence in the schoolroom: whither national history in Sierra Leone and El Salvador’, *Third World Quarterly*, Vol. 36, No. 1 (2015), pp. 147-161.

culprits and instigators of mass atrocity were concrete living human beings who operated from the outside and remained outside during the war. Crucially, it is generally held and largely accepted that Charles Taylor, the former President of neighbouring Liberia, was a key protagonist of violence in Sierra Leone. As such, there is no disagreement among Sierra Leoneans who was the most responsible. Arguably, because he was a non-Sierra Leonean, Sierra Leoneans hardly have any reason to contest the external reasons and origins of the war. Fourth, there was no radical ideological regime change as in Rwanda and those in power had no urge, like the authoritarian RPF, to rewrite history and create a new founding narrative that was coerced on society as a whole. A particular version of history in Sierra Leone, although painful, did not become the foundational ideology of the state and a rather pluralistic public space to hold one's own opinion and version about past atrocities has remained. Moreover, Sierra Leone rather aspired a future-making project which focused on a common destiny rather than an articulation of a common past.¹⁸⁶⁶ Finally, Sierra Leone hardly had time to come to terms with the violence as extreme poverty and new crises shifted the focus on the immediate present and future hardships, not so much on the past.

The next case study, thus, differs fundamentally from Rwanda in terms of the deeply ingrained contestation of narratives about the violent past. The specific dynamics of the insurgency and subsequent four-year two-faced categorical and ethnically tainted war in Rwanda and the rather multi-factional, eleven-year, rebel war in Sierra Leone essentially explicate those variations. Subsequently, the post-conflict response was also different.¹⁸⁶⁷ Sierra Leone, for instance, embarked on a truth commission to unravel the causes of the war and give a podium to victims and perpetrators at the same time. Also, because Sierra Leone had already agreed to amnesty low-level perpetrators and child soldiers, it hardly pursued criminal justice in its national courts. Instead, it embarked, conjointly with the United Nations, on a hybrid prosecution and judgement of some of those who were believed to bear to biggest responsibility for atrocity crimes from all sides of the conflict in front of a court that was based in the capital. Another key difference is that, unlike in Rwanda, the process of transitional justice has had a much bigger role on the historiography of the war. Absent the government's active meddling in (re-) writing history and the magnitude of critical historical scholarship on the genocide in Rwanda,¹⁸⁶⁸ basic knowledge on and explanations of key events, issues and agency in Sierra Leone were, and remain to be, particularly established, enticed and narrated through the truth commission and the Special Court for Sierra Leone (SCSL). Other sources have so far remained relatively scarce. There are however, some crucial similarities, in the way transitional justice was done. First, like in Rwanda, the epistemological base for truth-finding was almost entirely witness testimony, enticed through a legalistic lens. Secondly, there was hardly any forensic

¹⁸⁶⁶ In Sierra Leone the idea that war violence is common knowledge and therefore does not need to be publicly discussed has contributed to the pervasive and institutionalised culture of silence. See: Gellman, 'Teaching Silence in the schoolroom', p. 149. A similar argument is made in: Johanna Zetterstrom-Sharp, 'Heritage as future-making: aspiration and common destiny in Sierra Leone', *International Journal of Heritage Studies*, Vol. 21, no 6 (2015), pp. 609-627.

¹⁸⁶⁷ Only recently, after the time of writing, came out a monograph on the legacy of the transitional justice institutions and endeavours in Sierra Leone. Kirsten Ainley, Rebekka Friedman & Chris Mahony (eds.), *Evaluating Transitional Justice. Accountability and Peacebuilding in Post-Conflict Sierra Leone* (London: Palgrave Macmillan, 2016).

¹⁸⁶⁸ After the Holocaust, Rwanda is arguably the most researched case of genocide in academia.

corroboration possible for those testimonies. Third, the rationale of transitional justice agents was ambitious. Not only, did the truth commission try to unravel and write the first comprehensive and authoritative long history of Sierra Leone, it also set out to, amongst many other things, spark reconciliation, contribute to national healing and forge a vision for the future. At the Special Court it was not different. Prosecutors promised Sierra Leoneans to enlighten them with the truth about what had happened in dark Sierra Leone, while former UNICTR investigators were scrambling for evidence in the Sierra Leonean forests the same way they had done in the Rwandan hills. Also coming from the UNICTR was Stephen Rapp, who had led the media case against Ferdinand Nahimana. His task was to prosecute the SCSL's main case against Charles Taylor. However, as we will see below, the historical charges levelled against Taylor as a conspirator of mass atrocity and godfather of terror, would not hold up in court, beyond any reasonable doubt. In the coming chapter, we will analyse what the reasons were for the promises that could not be met. Before I do so, I will outline the contextual contours of the civil war in Sierra Leone.

5.2 From philanthropic to failed state

Sierra Leone will taste the bitterness of war.

- Charles Taylor¹⁸⁶⁹

Modern-day Sierra Leone¹⁸⁷⁰ is generally known for two things: shiny diamonds¹⁸⁷¹ and mind-boggling calamities. With its strappingly young, urbanised, but unemployed population,¹⁸⁷² the west-African country endemically ranks amongst the poorest countries around the globe.¹⁸⁷³ On top of that, an epidemic of the Ebola virus disease (EVD) in 2014 did not only kill over 3400 persons but also pushed the country further into economic and social quarantine and underdevelopment.¹⁸⁷⁴ In the foregoing decade it had barely climbed out of a destructive civil war that killed between 10.000 and 70.000 people,¹⁸⁷⁵ a man made crisis. From the early 1990s onwards, Sierra Leone made headlines

¹⁸⁶⁹ It is generally asserted that Charles Taylor on a radio interview on the BBC, allegedly on 4 November 1990, made this remark. It is a recurring attribution to Taylor, although the original recording cannot be retrieved. During the trial against Charles Taylor, a dozen witnesses testified to having heard it. Foday Lansana, for instance, testified that "At exactly 5.06 while listening to the BBC Mr Charles Taylor was being interviewed by Mr Robin White. I heard him say to the world that if Sierra Leone or ECOMOG does not stop using Sierra Leone or the Alpha jet from destroying his people in Liberia Sierra Leone will also feel the bitterness of war (Taylor Trial Transcript, 20 February 2008, pp. 4333-4334). Historian Stephen Ellis testified "There was a broadcast which, if memory serves me well, was on 4 November 1990, a radio broadcast where Mr Taylor threatened Sierra Leoneans that they would, as he put, taste the bitterness of war and that phrase, I must say, is recalled to this day by many Sierra Leoneans, I've often heard people say that to me and it's referred to explicitly in the TRC report"(Taylor Trial Transcript, 16 January 2008, p. 1463). Also see for an elaborate discussion on witness testimony: Taylor Trial Judgement, §2335-2336.

¹⁸⁷⁰ Sierra Leone thanks its name to the earliest Portuguese explorer Pedro da Sintra, who anchored off the mountainous Sierra Leone peninsula in 1462 and named it, *Serra Lyoa* (lion uplands) because, as the story goes, the sound of the waves crashing on the rocks reminded him of the roaring of lions or because, according to another version, the peninsula's hills had the shape of a lion. Shaw, *Memories of the slave trade*, p. 27.

¹⁸⁷¹ SCSL, *Exhibit p-19: Diamonds, the RUF and the Liberian Connection. A Report for the Office of the Prosecutor The Special Court for Sierra Leone, Ian Smillie, April 21, 2007* (03-01-T; 21 April 2007).

¹⁸⁷² Almost 60 % of the strongly urbanised and unemployed population is younger than 25 years old, with a median age of 19, while life expectancy at birth is 58. See for up to date facts and figures: Central Intelligence Agency (CIA), 'Sierra Leone', *The World Fact Book* (www-text: <https://www.cia.gov/library/publications/the-world-factbook/geos/sl.html>), visited: 13 April 2015).

¹⁸⁷³ Sierra Leone ranks 183 on the world's Human Development Index: United Nations Development Programme (UNDP), *Human Development Report 2014. Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience* (New York: UNDP, 2014), p. 159. See for an historic comparative overview: United Nations Development Program (UNDP), 'Sierra Leone', *Human Development Reports* (www-text: <http://hdr.undp.org/en/countries/profiles/SLE>), visited: 29 May 2015).

¹⁸⁷⁴ See: World Health Organization (WHO), *Ebola Data and Statistics: Data Published on 10 April 2015*.

¹⁸⁷⁵ There is no hard data on the number of people killed during the war. Conservative statistical material collected by the TRC and thereafter, point to a range between 10.000 and 30.000 non-combatant deaths as the result of intentional violence between 1991 and 2000, while other sources talk about numbers going up to 75.000. See: Tamy Guberek et al. *Truth and Myth in Sierra Leone. An Empirical Analysis of the Conflict, 1991-2000* (Benetech Human Rights Data Analysis Group & the American Bar Association, 28 Mark 2006), pp. 3-4.

with unsettling images, in which intoxicated child soldiers, blood diamonds and people with hacked off arms and legs featured as the figurants of what observers dubbed the “coming anarchy.”¹⁸⁷⁶ Death, despair and lawlessness are branded on Sierra Leone’s retina and dominate the outside worlds’ perception of its contemporary past.¹⁸⁷⁷ Yet, details on the country’s early history remain typically unknown. What is clear from the scarce sources is that migration waves coloured the early contours of what grew into a multi-ethnic state representing a mosaic of over 17 ethnic groups.¹⁸⁷⁸ Linguistic analysis suggests that the Limba were the first known to enter the territory, followed by Mande-speaking groups, including the Mende.¹⁸⁷⁹ In the time to follow, Guinean and Senegalese Mandinka traders brought along Islamic tradition and induced the northern Temne area.¹⁸⁸⁰ Some early Portuguese settlers (*lançados*) had settled on the mainland and wedded local women, establishing a group of so-called Luso-Africans blending African and Catholic traditions and speaking the precursor of the present day dominant language, Krio.¹⁸⁸¹ The pre-colonial political configuration was composed of centralised political entities headed by kings. Paramount chiefs, who are still highly influential, regulated the localities.¹⁸⁸² From early on, the West African coasts, including Sierra Leone, were gradually incorporated into the Atlantic triangle of the slave trade,¹⁸⁸³ yet it was the British abolitionist movement who spurred the original colonisation of the country.¹⁸⁸⁴

Abolitionists and philanthropists had idealised the land to develop a self-governing home for freed slaves, mostly from London and the colonies in the Caribbean.¹⁸⁸⁵ Ex-slaves from Nova Scotia and Jamaica were among the first to settle in ‘Freetown’ between 1792 and 1800.¹⁸⁸⁶ Blending Western and African influences, these ‘creoles’ and their offspring cultivated a ‘Krio’ culture and soon they valorised itself as an elite class and gradually morphed into a distinctive ethnic group.¹⁸⁸⁷ After 1808, the British declared Freetown, its peninsula and its direct environs a Crown Colony in which around 74.000 ‘Liberated Africans’ settled down.¹⁸⁸⁸ Sierra Leone, and particularly Freetown, then soon became a magnet for Africans from the region, looking for labour, trade opportunities or an escape from their own enslaving leaders or ‘owners’.¹⁸⁸⁹ For most of the nineteenth century, the vast majority of the present-day hinterlands remained in the hands of its indigenous peoples, essentially Mendes in the South and Temnes in the north.¹⁸⁹⁰ At the dawn of the twentieth century, in 1896, the

¹⁸⁷⁶ Robert D. Kaplan, ‘The Coming of Anarchy. How Scarcity, Crime, Overpopulation, Tribalism and Disease are Rapidly Destroying the Social Fabric of Our Planet’, *The Atlantic* (1 February 1994), pp. 44-75.

¹⁸⁷⁷ Gerard Anders, ‘Testifying about ‘Uncivilized Events’: Problematic Representations of Africa in the Trial Against Charles Taylor’, *Leiden Journal of International Law*, Vol. 24 (2011), pp. 937-959: 937-938.

¹⁸⁷⁸ John L. Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy* (London 2001), p. 22. The largest groups are the northern and centrally located Temne (35%) and the southern and eastern Mende (31%). Both groups have their distinct languages but Krio is most widely understood while the official English is limited to a literate minority. About 90% of the Sierra Leoneans practice Islam (60) and indigenous beliefs (30), Christians are in minority.

¹⁸⁷⁹ Krijn Peters, *War and the Crisis of Youth in Sierra Leone* (Cambridge: Cambridge University Press, 2011), p. 35.

¹⁸⁸⁰ Christopher Fyfe, *A History of Sierra Leone* (Oxford: Oxford University Press, 1993), p. 6.

¹⁸⁸¹ Hirsch, *Sierra Leone*, p. 23.

¹⁸⁸² *Ibidem*, p. 22.

¹⁸⁸³ Fyfe, *History of Sierra Leone* (Aldershot 1993), p. 1.

¹⁸⁸⁴ Shaw, *Memories of the slave trade*, pp.27-29.

¹⁸⁸⁵ Gberie, *A dirty war*, p. 17-18.

¹⁸⁸⁶ *Ibidem*, p.18.

¹⁸⁸⁷ David Northrup, ‘Becoming African: Identity Formation among Liberated Slaves in Nineteenth-Century Sierra Leone’, *Slavery and Abolition. A Journal of Slave and Post-Slave Studies*, No. 1 (April 2006), pp. 1-21.

¹⁸⁸⁸ Gberie, *A dirty war*, pp. 18-19.

¹⁸⁸⁹ Microsoft Encarta Africana Third Edition, *Sierra Leone* (CD-ROM; 1998-2000 Microsoft Corporation).

¹⁸⁹⁰ Gberie, *A dirty war*, 19.

British declared a protectorate over the immediate environs of the Colony, managing a dual system of direct rule in Freetown and indirect rule in the rest of the territory.¹⁸⁹¹ British control and their imposition of a 'hut tax' led to the short-lived violent 'Hut Tax War' in the north and 'Mende Rising' in the south in 1898.¹⁸⁹²

With the British showing little economic and political interest in Sierra Leone, most of the first half of the twentieth century remained peaceful, while the country flourished intellectually. Established as Anglican missionary school, the only western-styled university, Fourah Bay College (1872) developed into a lodestone for English speaking Africans in the region.¹⁸⁹³ Economically however, Sierra Leone remained impoverished and barely self-sustainable. Until diamonds were discovered in 1931, which in turn led to a British mining monopoly, local illegal trade and large-scale corruption.¹⁸⁹⁴ From the 1950s, forecasts on self-determination opened up a process of democratisation and alienated Sierra Leoneans into opposing factions from the Colony and the Protectorate, each fiercely dedicated to guard the interests of its regional, class or ethnic base.¹⁸⁹⁵ Two political parties rose to prominence: the Sierra Leone People's Party (SLPP) headed by a Mende, Sir Milton A. S. Margai¹⁸⁹⁶ and the All People's Congress (APC), led by Siaka Stevens.¹⁸⁹⁷ A continuing struggle for political control, from this time onwards, would progress into a protracted challenge between these political rivals; the APC - appealing to the proletarian masses and the influential tribes of the North - and the SLPP - drawing on the support of the middle class, traditional elite and the ruling houses of the South and East. From the wake of independence in 1961, the Colony-Protectorate dichotomy was ultimately replaced by identity politics and became a basis for prejudice, hostility and conflict in post-colonial Sierra Leone.¹⁸⁹⁸

Ultimately, the SLPP formed the first postcolonial government, headed by Sir Milton Margai, who was quick to arrest prominent APC members and soon declared the first state of emergency in independent Sierra Leone.¹⁸⁹⁹ After Milton Margai died in office in 1964 and was succeeded by his brother, Albert, political dissidents were violently vetted and Mende appointed in high positions, mostly banishing Krio.¹⁹⁰⁰ Only three years later, Sierra Leone experienced its first military coup, toppling Albert Margai and eventually putting in power the APC's Prime Minister Siaka Stevens in 1968.¹⁹⁰¹ Under his authoritative rule, state institutions soon corrupted, parliament was silenced, judges were being bribed and army morale heavily undermined. Protesters were either executed or

¹⁸⁹¹ J. D. Hargreaves, 'The Establishment of the Sierra Leone Protectorate and the Insurrection of 1898' *Cambridge Historical Journal*, Vol. 12, No. 1 (1956), pp. 56-80.

¹⁸⁹² David Keen, *Conflict and Collusion in Sierra Leone* (New York 2005), pp. 9-10.

¹⁸⁹³ The British primarily annexed Sierra Leone in 'interest of the people'. Gberie, *A dirty war*, p. 19.

¹⁸⁹⁴ Keen, *Conflict and Collusion*, pp. 12-13.

¹⁸⁹⁵ TRCSL, *Witness to Truth*, Vol. III A, pp. 15-16.

¹⁸⁹⁶ Who in 1951 won the first elections by defeating the colonial National Council of Sierra Leone (NCSL). TRCSL, *Witness to truth*. Vol III A, p. 17.

¹⁸⁹⁷ TRCSL, *Witness to Truth*, Vol. III A, p. 17.

¹⁸⁹⁸ *Ibidem*, pp. 18-19.

¹⁸⁹⁹ *Ibidem*, p. 24.

¹⁹⁰⁰ Gberie, *A dirty war*, p. 26.

¹⁹⁰¹ TRCSL, *Witness to truth*, Vol III A, p. 27.

forced to flee.¹⁹⁰² From 1973, Sierra Leone transformed into a *de facto* one-party state based on a patrimonial system in which Stevens distributed patronage to loyal clients to ensure political support.¹⁹⁰³ After a ‘referendum’ in 1978, Stevens officially declared the country a one-party state, which lasted for seven years. Aged 80, he retired from office at the end of his third term. Major General Joseph Momoh won the subsequent presidential elections as the sole candidate in 1985.¹⁹⁰⁴ His rule of an already corrupt and bankrupt state was marked only by further decline. Bowing to international demands and reacting to national pressure, Momoh moved to reinstate multiparty democracy. In 1991, voters approved a new, more liberal constitution in 1991, and elections were scheduled for later that year.¹⁹⁰⁵

Anatomy of Sierra Leone’s Inferno (1991-2002)

RUF is fighting to save Sierra Leone

RUF is fighting to save our people

RUF is fighting to save our country

RUF is fighting to save Sierra Leone

Chorus: Go and tell the President, Sierra Leone is my home
Go and tell my parents, they may see me no more
When fighting in the battlefield I’m fighting forever
Every Sierra Leonean is fighting for his land

- RUF/SL¹⁹⁰⁶

Behind the façade of Momoh’s democratic turn, Sierra Leone descended into a macabre theatre of atrocity war, terrorising its civilians for over a decade.¹⁹⁰⁷ A bold mixture of disgruntlement over frail governance, suppression of opposition, generational differences and economic volatility had been predominantly articulated by young students, who organised themselves into ‘radical’ groups. But their initial rallies, strikes and demands for political change had miscarried in the years 1977-1982.¹⁹⁰⁸ Up to when political scenery in the 1980’s changed. Mixing his Pan-African Policy¹⁹⁰⁹ and stout disdain for Momoh’s rule, Libyan leader Muammar Gaddafi started to funnel assets to radical university

¹⁹⁰² Hirsch, *Sierra Leone*, p. 29.

¹⁹⁰³ Adebajo, *Building Peace in West Africa*, pp. 80-81.

¹⁹⁰⁴ Richards, *Fighting for the rain forest*, p. 41.

¹⁹⁰⁵ Gberie, *A dirty war*, pp. 36-38.

¹⁹⁰⁶ RUF/SL Anthem. The anthem continues as follows: “Where are our diamonds, Mr. President? Where is our gold, NPRC? RUF is hungry to know where they are RUF is fighting to save Sierra Leone. Chorus [...] Our people are suffering without means of survival All our minerals have gone to foreign lands RUF is hungry to know where they are RUF is fighting to save Sierra Leone. Chorus [...] Sierra Leone is ready to utilise her own. All our minerals will be accounted for The people will enjoy in their land. RUF is the saviour we need right now. Chorus [...]. RUF is fighting to save Sierra Leone. RUF is fighting to save our people. RUF is fighting to save our country” Revolutionary United Front for Sierra Leone (RUF/SL), *Footpaths to Democracy* (1995).

¹⁹⁰⁷ Due to its limited scope, this thesis does not engage in the discussion on the root causes of the conflict. See for three explanations about the causes of the conflict: Krijn Peters, *Footpaths to reintegration. Armed Conflict, Youth and the Rural Crisis in Sierra Leone* (Wageningen 2006), pp. 4-7. There is a strong division between the ‘new barbarian and apocalyptic view’ - propagating that the war was caused by social breakdown as a result of environmental collapse of an overpopulated continent – and the ‘greed, not grievance’ view, insisting that the Sierra Leonean crisis was the product of a battle for (diamond) resources. The third explanation concentrates on the so-called ‘failed state’ and the rebellion of the marginalised youths. In this view the corrupted state particularly marginalised the youths socio-economically, paving the way for rebellion. The most elaborative studies on the causes of the conflict are: Robert D. Kaplan, ‘The Coming Anarchy. How scarcity, crime, overpopulation, tribalism, and disease are rapidly destroying the social fabric of our planet’, *Atlantic Monthly* (February 1994), pp. 44-76.; William Reno, *Corruption and State Politics in Sierra Leone* (Cambridge 1995); Paul Richards, *Fighting for the Rainforest. War, Youth & Resources in Sierra Leone* (Oxford 1996); Ibrahim Abdullah (ed.), *Between Democracy and Terror. The Sierra Leone civil war* (Dakar 2004); Lansana Gberie, *A dirty war in West-Africa. The RUF and the destruction of Sierra Leone* (London 2005).

¹⁹⁰⁸ See for further detail: Ismail Rashid, ‘Student Radicals, Lumpen Youth, and the Origins of Revolutionary Groups in Sierra Leone, 1977-1996’, in: Ibrahim Abdullah (ed.), *Between Democracy and Terror. The Sierra Leone Civil War* (Dakar 2004), pp. 66-89.

¹⁹⁰⁹ G. Pascal Zachary, ‘As Qaddafi Died, So Did His Craziest Dream and Mistake: Pan-Africanism’, *The Atlantic*, 24 October 2011.

students to undermine the government. Trifling demonstrations were organised but ruffled with violence, sparking further radicalisation amongst some of the students. By 1987, a small group of ‘would-be-revolutionaries’ – students, urban youth, and secondary school students – found itself in Libya for military and ideological training at the *Mathabh al-Thauriya al-Alamiya World Revolutionary Headquarters (WRC)*, the breeding ground for a complete generation of African revolutionaries.¹⁹¹⁰ As the original ‘revolutionary’ programme stranded, most of the recruits returned home, disillusioned. Some hardliners, however, ensued and embraced a militant agenda. The group was spearheaded by Foday Saybanah Sankoh who advocated for support in the region, particularly amongst Liberians with whom he had trained in Libya in 1987-1988 and reportedly conceived a plan to organise and lead an armed insurgency into Sierra Leone.¹⁹¹¹

Sankoh, a professional photographer and a former corporal in the Sierra Leonean army before he was imprisoned for plotting a coup in 1971¹⁹¹² - purportedly with the support of Liberian rebel leader Charles Taylor - succeeded to assemble and train a force of 385 commando’s in Liberia, who became the forerunners (“Vanguards”) of the Revolutionary United Front of Sierra Leone (RUF/SL; RUF hereafter).¹⁹¹³ Taylor, in addition, provided almost 2,000 of his National Patriotic Front of Liberia (NPFL) men as Special Forces to the RUF. On 23 March 1991, about one hundred RUF-guerrillas¹⁹¹⁴ attacked the diamond-rich east-Sierra Leonean town of Bomaru, in east Sierra Leone nearing the Liberian border, igniting an eleven-year multidimensional conflict.¹⁹¹⁵ Sankoh’s revolutionary guerrilla army and his vanguard irregular forces officially claimed to dispose Sierra Leone’s corrupt leadership, to liberate the abandoned peasantry and the young poor, and ultimately institute legitimate democracy.¹⁹¹⁶ Its philosophy entailed “the use of weapons to seek total redemption”; “to organise themselves and form a sort of People’s Army”; “to procure arms for a broad-based struggle so that the rotten and selfish government is toppled.”¹⁹¹⁷ Somehow resembling a

¹⁹¹⁰ Gberie, *A dirty war*, 50. Gberie also notes the earlier influence of Gaddafi in Sierra Leone. As the APC boycotted an *Organisation of African Unity (OAU)* summit in Tripoli in 1982, Gaddafi spared no opportunity to “undermine and embarrass” the Sierra Leonean government. He channelled funds and support to radical students at Fourah Bay College to challenge the government in order to gain some control in the region. Historian Stephen Ellis called the Libyan camps “the Harvard and Yale of a whole generation of African revolutionaries”: Stephen Ellis, *The Mask of Anarchy. The Destruction of Liberia and the Religious Dimension of an African Civil War* (London: Hurst & Company, 1999), pp. 71-72.

¹⁹¹¹ See for more detail on the influence of Charles Taylor in the war. Gberie, *A dirty war*, 52-69; SCSL, *Exhibit P-031: Report for the Special Court for Sierra Leone, Charles Taylor and the War in Sierra Leone*, Stephen Ellis (SCSL-2003-01-T; 5 December 2006). SCSL, *Taylor Transcript* (16 January 2008); SCSL, *Taylor Transcript* (17 January 2008).

¹⁹¹² SCSL, *The Prosecutor Against Foday Saybana Sankoh also known as POPAY also known as PAPA also known as PA: Indictment* (SCSL-03-I), §1-2.

¹⁹¹³ Originally, the RUF was composed of former students of middle class origin, alienated and impoverished youth, former military and Liberian fighters. Some, including Sankoh, were trained in Libya, alongside other West African revolutionary leaders such as Charles Taylor (Liberia) and Blaise Compaoré (Burkina Faso). See: SCSL, Appeals Chamber, *Sesay, Kallon & Gbao Judgement*, pp. 3-4.

¹⁹¹⁴ The vanguard of the RUF was made up by Sierra Leoneans (those who received training in Libya and those recruited in Liberia), Liberian fighters, and some Burkinabe mercenaries. Krijn Peters, *Footpaths to reintegration*, 46. Also see: Charles Charnor Jalloh, ‘Introduction. Assessing the Legacy of the Special Court for Sierra Leone’, in: Charles Charnor Jalloh (ed.), *The Sierra Leone Special Court and Its Legacy. The Impact for Africa and International Criminal Law* (New York: Cambridge University Press, 2014), pp. 1-19: 6.

¹⁹¹⁵ TRCSL, *Secondary school version Report*, p. 36.

¹⁹¹⁶ The RUF manifesto reads as follows: “We can no longer leave the destiny of our country in the hands of a generation of crooked politicians and military adventurers who, every day since independence, have proved beyond all reasonable doubt that they are inefficient, irresponsible and corrupt. Posterity will never forgive us if we sit passively by while a few desperate men and women, who are nothing but an organised bunch of criminals, continue to despoil rape and loot the people’s wealth. It is our right and duty to challenge and change the present political system in the name of salvation and liberation. We must build a political system over which we, the oppressed people of Sierra Leone, must have absolute control. It must be reflective of our needs and aspirations; a political system that will give maximum priority to popular participation and control. This task is the historical responsibility of every patriot. We must be prepared to struggle until the decadent, backward and oppressive regime is thrown into the dustbin of history. We call for a national democratic revolution - involving the total mobilization of all progressive forces. The secret behind the survival of the existing system is our lack of organisation. What we need then is organised challenge and resistance. The strategy and tactics of this resistance will be determined by the reaction of the enemy forces - force will be met with force, reasoning with reasoning and dialogue with dialogue”. RUF/SL, *Basic Document of the Revolutionary United Front of Sierra Leone (RUF/SL: The Second Liberation of Africa* (n.p. 1989).

¹⁹¹⁷ SCSL, *Sesay, Kallon & Gbao Judgement*, p. 215.

conventional army, including a rank system and command structure,¹⁹¹⁸ their ‘uprising’, however, never really manifested a coherent ideology or even a practical political agenda to tackle Sierra Leone’s problems.¹⁹¹⁹ Rather, the reckless RUF morphed into a chaotic band of mercenary bandits and abducted children ruled by warlords whose main objective ultimately appeared to be pillaging the countries’ precious resources as a means of survival. Even when democratic elections were held in 1996, the group chose to boycott the ballot box and instead conserved violence against the people it claimed to be fighting for,¹⁹²⁰ in contradiction of the spirit of its Codes of Conduct.¹⁹²¹

Insurgency and guerrilla

The Sierra Leonean inferno unfolded at snail's pace, climaxing into heightened violence in the second half of the 1990s. At first war was fought on two fronts,¹⁹²² characterised by voluntary and forced recruitment of civilians – especially youths and children escaping national and local marginalisation - within the scope of NPFL and RUF ranks. At the outbreak of war, the conventional state security apparatus was severely weakened; the Sierra Leonean Army (SLA) was virtually non-existent. Whereas the military was marginalised throughout the 1970’s and 1980’s, the army did not have manageable vehicles, communication facilities were absent and most of the soldiers were not fit for combat and resided in Freetown. In fact, the country lacked an operational army when the RUF entered the country.¹⁹²³ This being the case, the RUF managed to control a large part of eastern Sierra Leone by July 1991, soon financing its war by selling diamonds in Guinea and Liberia.¹⁹²⁴ Momoh failed to gain control over the situation and as a result of non-payment of soldiers a coup was staged and a military junta - the National Provisional Ruling Council (NPRC) - formed in Freetown. In April 1992, Captain Valentine Strasser became the new Head of State and expanded the army – by releasing prisoners and recruiting jobless youngsters - who managed to push the RUF towards the Gola Forest on the Liberian/Sierra Leonean border. By the end of 1993, Strasser declared a cease-fire, giving way for the RUF to regroup.¹⁹²⁵ Barely a month later, had the RUF returned to war, but this time with more sinister tactics. As some of the irregulars in the army, who were not receiving salaries, resorted to banditry or even joined the rebels, the situation escalated into widespread chaos. The RUF launched a guerrilla – or ‘bush’ - ¹⁹²⁶ strategy, becoming less visible, less predictable, less consistent and less distinguishable and expanded its activities into every district of Sierra Leone.¹⁹²⁷ During the guerrilla fighting or “Bush war”, the RUF - many times backed by disloyal soldiers - started raiding and

¹⁹¹⁸ SCSL, *Sesay, Kallon & Gbao Judgement*, p. 214.

¹⁹¹⁹ Gberie, *A dirty war*, pp. 6-16.

¹⁹²⁰ SCSL, *Sesay, Kallon & Gbao Judgement*, p. 215.

¹⁹²¹ The RUF Ideology included Eight Codes of Conduct, providing: “(1) to speak politely to the masses; (2) to pay fairly for all you buy; (3) to return everything that you borrow; (4) to pay for everything that you demand or damage; (5) do not damage crops; (6) do not take liberty of women; (7) do not ill-treat captives; and (8) do not hate or swear people.” Cited in: SCSL, *Sesay, Kallon & Gbao Judgement*, p. 232.

¹⁹²² The RUF’s fighting force consisted of two battalions: the first (“Libya”) attacked Sierra Leone on the southern front and the second (“Burkina”) attacked the eastern front. See: SCSL, *Sesay, Kallon & Gbao Judgement*, p. 237.

¹⁹²³ Gberie, *A dirty war*, 36-40.

¹⁹²⁴ Adebajo, *Building Peace*, 83-84.

¹⁹²⁵ Peters, *Footpaths*, 48.

¹⁹²⁶ The rebels retreated to the bush where they set up their camps. From out of the bush they raided and plundered villages and often brutalised civilians.

¹⁹²⁷ TRCSL, *Secondary school version Report*, p. 40.

ambushing villages in search for food, medicines and new conscripts, indiscriminately burning parishes, killing citizens and taking hostages. These new tactics of terror created an atmosphere of general insecurity and destructive anarchy as groups of civilians and even soldiers started copying the rebels' way, carrying out their own attacks in search for plunder.¹⁹²⁸

In this dissolute violent scenery, new groups came into play or likewise became more prominent. First, many of the irregular government troops became known as 'sobels'; those who were soldiers by day but 'rebels' at night.¹⁹²⁹ This new phenomenon referred to either SLA members who joined the RUF still using their SLA uniforms, so people thought they were fighting for the government, or SLA members who, although they did not join the RUF as such, were acting as if they were 'rebels', adopting the same behaviour.¹⁹³⁰ It was against this background that an age-old system of civil defence was resurrected and grew of importance: the hunting societies of the *Tamaboros* and the *Kamajoisia* or better known as Kamajors.¹⁹³¹ Kamajors were already used at the beginning of the war by the army to scout the terrain but the NPRC began to encourage the strengthening of these community defence groups as an alternative security mechanism to replace the distrusted Army.¹⁹³² In 1992 the more formalised Kamajor society was formed by former history lecturer Dr. Alpha Lavalie, head of the Eastern Region Defence Committee (Eredcom) and throughout the country local Kamajor militia started operating as civil defence forces fighting the RUF, 'sobels', and on a number of occasions, the army. Later the Kamajor militia and other groups were combined under the Civil Defence Forces (CDF).¹⁹³³

From November 1994 the RUF expanded its guerrilla movement deeper into Sierra Leone, establishing various camps and bases in the territory.¹⁹³⁴ Its tactics remained the same: violence against the civilian population continued unabated. Widespread burning and looting of civilian residences, killings and sexual violence by drugged RUF forces during multiple raids became a daily reality. Beating, molestation and abduction of both men and women – mostly children - for use as porters to carry stolen property or for conscription into the fighting forces' 'small boys' and 'small girls' units continued as well.¹⁹³⁵ The RUF assaults, furthermore, resulted in the widespread destruction of public infrastructure such as government offices, hospitals, schools and police barracks. By January 1995, the RUF reached the outskirts of Freetown and Strasser in February reacted by contracting mercenaries to combat the RUF. The junta first contracted the British-based *Ghurka*

¹⁹²⁸ Gberie, *A dirty war*, pp. 80-81.

¹⁹²⁹ TRCSL, *Secondary school version Report*, p. 47.

¹⁹³⁰ Smith, *Conflict Mapping in Sierra Leone*, p. 344.

¹⁹³¹ The term Kamajor was originally used to refer to a Mende hunter with specialised knowledge of the forest and was an expert in Bush medicines. Kamajors were also responsible for protecting the community from natural and supernatural threats. In the traditional form the Kamajor system was a process of initiation, including training men to fight and to be unafraid of the battlefield in order to prepare youngsters for traditional warfare and defence of people and property. See: SCSL, *Prosecutor against Moinina Fofana and Allieu Kondewa: Judgment* (SCSL-04-14-7; 2 August 2007), §60-61. Also see the anthropological study: Danny Hoffman, *The War Machines. Young Men and Violence in Sierra Leone and Liberia* (Duke: Duke University Press, 2011), pp. 55-126.

¹⁹³² SCSL, *Fofana & Kodewa Judgment*, pp. 62-64.

¹⁹³³ Gberie, *A dirty war*, pp. 82-86.

¹⁹³⁴ By 1996, the RUF had expanded its territory to include Kailahun Town, Buedu, Giema, Pendembu, Daru and Segbwema in Kailahun District and the diamond mining area of Tongo Field in Kenema District. See: SCSL, *Sesay, Kallon & Gbao Judgment*, pp. 238-239.

¹⁹³⁵ Smith, *Conflict mapping*, p. 25.

*Security Guards (GSG)*¹⁹³⁶ who went into combat but soon failed because their commander Robert Mckenzie was murdered in an ambush.¹⁹³⁷ Replacing the *GSG* in May, the government contracted another private military company *Executive Outcomes (EO)*, a private South African mercenary company who before assisted the Angolan army in combating UNITA.¹⁹³⁸

'Operation stop elections' and the military junta's

Executive Outcomes started training activities and formed a Special Task Force (STF) using a large number of demobilised Liberian militia from ULIMO (United Front of Liberia for Democracy), Nigerians, Guineans, and Kamajors. The STF attacked the RUF, chasing them out of the Western Area. Following this, civilians and SLA forces in the Western Area attacked and killed persons suspected to be 'rebel collaborators'.¹⁹³⁹ The situation in Sierra Leone came to relative ease after the EO intervention and the junta planned democratic elections in order to return to normalcy. By January 1996 Strasser was overthrown within his own party and replaced by Brigadier Julius Maada Bio, who initiated dialogue between the NPRC and RUF. Bio promised Foday Sankoh to postpone elections so that peace could be negotiated and the RUF could participate. Instead of caving in the RUF launched 'Operation Stop Elections' against civilians "as a deliberate ploy to undermine the expression of democratic will by the people of Sierra Leone who participated."¹⁹⁴⁰ Its boycott entailed a sinister campaign of chopping off hands and arms as a symbol of preventing people from voting, which at the time was done by fingerprinting with the thumb.¹⁹⁴¹ Nobody was spared, including those who were not even allowed to vote: men, women, children, and elderly were all assaulted.¹⁹⁴² Despite these atrocities, the elections continued and SLPP leader Ahmed Tejan Kabbah came out a winner, grossing 608,419 votes in the run-off.¹⁹⁴³ Soon after, peace negotiations commenced between the new government and RUF resulting in the signing of an agreement in Abidjan, Côte d'Ivoire.¹⁹⁴⁴ Both parties, even when the ink was still to dry, did not adhere to the agreement. Tensions and distrust resulted in neither of them demobilising or disarming their troops. Moreover, Sankoh was arrested in March 1997 in Nigeria on charges of weapon smuggling and was detained there for almost two years.¹⁹⁴⁵ It was against this background that Sierra Leone's situation was on the edge of tumbling into a new round mayhem as a new coup was staged in May 1997.

¹⁹³⁶ Alex Vines, 'Ghurkhas and the private security business in Africa', in: Jakkie Cilliers and Peggy Mason (eds.), *Peace, Profit or Plunder? The Privatisation of Security in War-Torn African Societies* (Institute for Security Studies: Pretoria, January 1999), pp. 123 – 140: 129-132.

¹⁹³⁷ Gberie, *A dirty war*, 91-92.

¹⁹³⁸ Khareen Pech, 'Executive Outcomes – A corporate conquest', in: Jakkie Cilliers and Peggy Mason (eds.), *Peace, Profit or Plunder? The Privatisation of Security in War-Torn African Societies* (Institute for Security Studies: Pretoria, January 1999).

¹⁹³⁹ Smith, *Conflict mapping*, 27.

¹⁹⁴⁰ TRCSL, *Witness to Truth*, Vol. II, §139.

¹⁹⁴¹ *Ibidem*, §150.

¹⁹⁴² TRCSL, *Witness to Truth: Appendix IV- Part one: Amputations in the Sierra Leone Conflict*, §85.

¹⁹⁴³ African Elections Database, 'Elections in Sierra Leone' (www-text: <http://africanelections.tripod.com/sl.html>, visited: 29 May 2015).

¹⁹⁴⁴ *Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL)*, Abidjan 30 November 1996.

¹⁹⁴⁵ Hirsch, *Sierra Leone*, 54-56.

In January, Kabbah had expelled the EO mercenaries from Sierra Leone and subsequently replaced them by some 900 Nigerian troops¹⁹⁴⁶ who were tasked to provide personal bodyguards but were not able to prevent a new coup.¹⁹⁴⁷ On 25 May, a group of young officers from the SLA overthrew Kabbah and installed themselves as the *Armed Forces Revolutionary Council* (AFRC), chaired by Major Johnny Paul Koroma.¹⁹⁴⁸ Kabbah fled to Guinea where he established the War Council in Exile, while the AFRC was soon composed of members of the SLA and the RUF, which were invited to join the military junta.¹⁹⁴⁹ In the following months, the junta controlled Freetown and other major cities throughout the country. Internal resistance was organised by the *Civil Defence Forces* (CDF), comprised of the institutionalised Kamajor militia. Internationally, the AFRC was not recognised, neither by the *Economic Community of West-African States* (ECOWAS) nor the UN. Both sanctioned the junta and soon new negotiations were initiated. In the meantime ECOWAS' Monitoring Group, ECOMOG, was deployed to form a blockade of Freetown.¹⁹⁵⁰

On 23 October, after negotiations between the *putschists* and ECOWAS, an agreement calling for the re-installment of Kabbah by 22 April 1998 was brokered in Conakry, Guinea.¹⁹⁵¹ The Conakry Agreement further called for the immediate cessations of the violence, the demobilisation of all combatants by ECOMOG, the bringing in of humanitarian assistance, the return of refugees, the granting of immunities to AFRC members and the release of Sankoh.¹⁹⁵² Soon after, however, the junta diluted the execution of the agreement. Instead, the AFRC/RUF started to regroup and re-arm, resulting in serious fighting with ECOMOG. By mid-February 1998, Freetown was taken by ECOMOG with the assistance of 200 mercenaries from yet another private military company, Sandline International.¹⁹⁵³ The AFRC/RUF forces fled Freetown leaving a trail of demolition, indiscriminately killing civilians and plundering on a massive scale.¹⁹⁵⁴ In their mass retreat from power, the ousted AFRC dissidents flocked into the northern districts and instituted a campaign of human rights abuses on the populace, including intentional amputations.¹⁹⁵⁵

Kabbah returned to Sierra Leone on 10 March 1998 and his government reoccupied authority. His government and ECOMOG, however, were not able sustain the revolutionary forces, as AFRC soldiers and RUF units managed to recuperate and even swell. By the end of the year they were already knocking on the doors of Freetown, again.¹⁹⁵⁶ The macabre-titled 'Operation No Living Thing' – designed by RUF Battle Field Commander Sam Bockarie to “kill everybody in the country

¹⁹⁴⁶ 'More Nigerian Troops Land in Sierra Leone', *The New York Times*, 29 May 1997.

¹⁹⁴⁷ Hirsch, *Sierra Leone*, 87.

¹⁹⁴⁸ Clarence Roy-Macaulay, 'Nigerians come to help Sierra Leoneans, coup leaders scrap constitution', *The Associated Press*, 28 May 1997.

¹⁹⁴⁹ Abubakar Kargbo, 'The long road to peace: 1991-1997', in: Anatole Ayissi & Robin-Edward Poulton (eds.), *Bound to Cooperate: Conflict, Peace, and People in Sierra Leone* (United Nations Institute for Disarmament Research; 2000), pp. 40-48; 40.

¹⁹⁵⁰ Adebajo, *Building Peace*, 87-88.

¹⁹⁵¹ *Ecowas six-month peace plan for Sierra Leone, 23 October 1997 - 22 April 1998* (Conakry, 23 October 1997); Gberie, *A dirty war*, 114.

¹⁹⁵² *Ecowas six-month peace plan for Sierra Leone*.

¹⁹⁵³ Abdel-Fatau Musah, 'A Country Under Siege: State Decay and Corporate Military Intervention in Sierra Leone' in: Abdel-Fatau Musah & J. 'Kayode Fatemi (eds.), *Mercenaries. An African Security Dilemma* (London: Pluto Press, 2000), pp. 76-116: 98-99.

¹⁹⁵⁴ Hirsch, *Sierra Leone*, 65.

¹⁹⁵⁵ TRCSL, *Secondary school version Report*, 50; TRCSL, *Witness to Truth: Appendix 5: Amputations in the Sierra Leone Conflict*.

¹⁹⁵⁶ Peters, *Footpaths*, 54.

to the last chicken”¹⁹⁵⁷ - in January 1999 saw the most severe horrors of the war unfold as rebels attacked the capital. A nearly two-week reign of nihilistic random terror struck Freetown. Human Rights Watch (HRW) reported that “civilians were gunned down within their houses, rounded up and massacred on the streets, thrown from the upper floors of buildings, used as human shields, and burnt alive in cars and houses. They had their limbs hacked off with machetes, eyes gouged out with knives, hands smashed with hammers, and bodies burnt with boiling water. Women and girls were systematically sexually abused, and children and young people abducted by the hundreds.”¹⁹⁵⁸

The ‘battle for Freetown’, eventually leaving an estimated 6,000 civilians killed and nearly 100,000 driven from their homes, was in the end halted by ECOMOG. In retaliation, the peacekeeping contingents retaliated with ‘Operation Death Before Dishonour’, systematically beating and publicly executing ‘rebel suspects’ and ‘sympathisers’.¹⁹⁵⁹ As the freshly elected Nigerian president Olusegun Obasanjo in May called for the retreat of Nigerian troops (ECOMOG predominantly consisted of Nigerian soldiers) from Sierra Leone, it now became evident to the Kabbah administration that chances of winning the war were diminishing. RUF atrocities were reported some 30 miles northeast of Freetown¹⁹⁶⁰ and in this weakened state the government signed a cease-fire agreement on 18 May 1999.¹⁹⁶¹ They retreated to the Togolese capital Lomé to negotiate a peace agreement with the RUF. The resulting comprehensive ‘Lomé Peace Agreement’ included, among other things, a permanent cease-fire; provisions for demobilisation, disarmament, and reintegration of all combatants; the transformation of the RUF into a political party; the installation of a UN observer mission; the establishment of a truth and reconciliation commission; and new elections.¹⁹⁶² Moreover, in order to consolidate peace and ensure the RUF’s cooperation a highly controversial blanket amnesty was granted to Sankoh –first condemned to be hanged for treason but later released - and to all combatants and officials.¹⁹⁶³ A ‘necessary evil’ in the eyes of many observers,¹⁹⁶⁴ the amnesty provision was considered an effective tool to finally end the war. But next to pardoning Sankoh, the Agreement, above-all, made the RUF leader the chairman of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD). Charged “with the responsibility of securing and monitoring the legitimate exploitation of Sierra Leone’s gold and diamonds, and other resources that are determined to be of strategic importance for national security and welfare as well as cater for post-war rehabilitation and reconstruction”, Sankoh was given

¹⁹⁵⁷ Gberie, *A dirty war*, 120-121.

¹⁹⁵⁸ HRW, *Getting Away With Murder, Mutilation, Rape. New Testimony From Sierra Leone*. Vol.11 No 3(A) (July 1999).

¹⁹⁵⁹ Adebajo, *Building Peace*, 95; HRW, *Getting Away With Murder*, np.

¹⁹⁶⁰ HRW, ‘Rebel Atrocities Against Civilians in Sierra Leone. Multiple Eyewitnesses Confirm Reports’, 18 May 1999.

¹⁹⁶¹ *Agreement on Ceasefire in Sierra Leone*, Freetown, 18 May 1999.

¹⁹⁶² *Peace Agreement between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone*. Cynically, the Agreement was signed under the supervision of, inter alia, Charles Taylor.

¹⁹⁶³ “In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon. After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality”. *Lomé Peace Agreement*, art.: IX.

¹⁹⁶⁴ See discussion: Mark Freeman, *Necessary Evils. Amnesties and the Search for Justice* (New York: Cambridge University Press, 2009), pp. 1-9.

effective control over Sierra Leone's diamonds mines. As a cherry on top, the former rebel leader was made Vice-President and thereby exclusively accountable to the president.¹⁹⁶⁵

Lomé's accord, which was a dreadful and scandalising agreement according to influential spectators,¹⁹⁶⁶ did not put an end to hostilities as promised. The country remained divided between ECOMOG as well as RUF controlled areas. Also, the designed disarmament process stagnated as many RUF elements refused to hand over their weapons, even with a freshly stationed UN Mission in Sierra Leone (UNAMSIL) peacekeeping force¹⁹⁶⁷ that replaced ECOMOG and was tasked to assist the Sierra Leone government in the implementation of the disarmament, demobilisation and reintegration (the so-called DDR programme) plans.¹⁹⁶⁸ UNAMSIL was not able to stabilise the situation as it came under constant attack by rebel forces, culminating in the abduction of over 400 newly arrived Zambian, Kenyan and Indian troops in the northeast in May 2000, at the hands of RUF militia.¹⁹⁶⁹ As a result public perception turned dramatically against the RUF, in particular against Foday Sankoh as there was a growing belief among the public that he was responsible for the abduction and molestation of peacekeepers.

5.3 'War don Don'

In the night between 7 May and 8 May 2000, a civil society demonstration was organised to demand the release of the peacekeepers. The protest escalated when an estimated 30000 people approached Sankoh's residence, where a riot unfolded leading to the death of scores of civilians. Sankoh disappeared and was found nine days later near his residence and was apprehended and turned over to the government.¹⁹⁷⁰ The UN Security Council soon after increased its peacekeeping forces to 13,000¹⁹⁷¹ troops and in addition embargoed the trade in rough diamonds from Sierra Leone.¹⁹⁷² Diplomacy for an accountability mechanism had also started in May¹⁹⁷³ and some months later the Council likewise decided that, in order to combat the lasting impunity in Sierra Leone a criminal tribunal should be established.¹⁹⁷⁴ Meanwhile, Sankoh, through the intervention of ECOWAS, was replaced by RUF commander Hassan Issa Sesay,¹⁹⁷⁵ paving the way for renewed peace-talks in Abuja, Nigeria, that resulted in a new cease-fire in November 2000. The DDR program was reinstated and in March 2001 UNAMSIL was increased to 17,500 troops, becoming the largest peacekeeping force in

¹⁹⁶⁵ *Peace Agreement between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, arts.: V & VII.

¹⁹⁶⁶ Gberie, *A dirty war*, 158.

¹⁹⁶⁷ UNAMSIL was established on October 22. UNSC, *Resolution 1270* (22 October 1999) (S/RES/1270).

¹⁹⁶⁸ Hirsch, *Sierra Leone*, 86-87.

¹⁹⁶⁹ UNSC, *Fourth Report of the Secretary-General on the United Nations Mission in Sierra Leone* (S/2000/455; 19 May 2000), pp. 8-11.

¹⁹⁷⁰ Alexandra Zavis, 'Shot and humiliated, feared rebel leader captured near his home', *The Associated Press*, 17 May 2000; Norimitsu Onishi, 'In a Looted Sierra Leone House, The Riddle of a Rebel Chieftain', *The New York Times*, 9 May 2000; UNSC, *Fourth Report of the Secretary-General on the United Nations Mission in Sierra Leone* (S/2000/455; 19 May 2000), pp. 11.

¹⁹⁷¹ UNSC, *Resolution 1299* (19 May 2000) (S/RES/1299).

¹⁹⁷² UNSC, *Resolution 1306* (5 July 2000) (S/RES/1306).

¹⁹⁷³ Scheffer, *All the Missing Souls*, p. 321.

¹⁹⁷⁴ UNSC, *Resolution 1315* (14 August 2000) (S/RES/1315).

¹⁹⁷⁵ SCSL, *Sesay, Kallon & Gbao Judgement*, §916-918. Also see: SCSL, *Prosecutor Against Issa Hassan Sesay, Morris Kallon & Augustine Gbao: Transcript* (SCSL-04-15-T; 29 May 2007), pp. 55-62, 68-69; SCSL, *Sesay, Kallon & Gbao Transcript* (10 March 2008), pp. 99 & 104.

the world.¹⁹⁷⁶ This together with international sanctions against Liberia and Sierra Leoneans becoming tired of the war, finally made the RUF cooperate with the DDR program. From March 2001 the programme was well underway, and by January 2002 72,490 combatants had been disarmed and a total of 42,000 weapons and 1.2 million rounds of ammunition collected.¹⁹⁷⁷ In the meantime the RUF released hundreds of kidnapped children and other abductees and the government with the help of UNAMSIL was able to re-establish control in former RUF controlled areas.

Parallel to the DDR-program, it became evident that in order to halt demobilised groups destabilising the country, it was necessary to link the programme to long-term reintegration of ex-combatants. Therefore, the government decided to provide all registered former fighters with reintegration packages containing basic needs. The government, in addition, established a reintegration programme basically consisting of five options: re-enlistment in the Sierra Leone Army, going back to or continue education, following skills training, opting for an agricultural package, or enlisting for participation in public works.¹⁹⁷⁸ Despite its shortcomings, the DDR was concluded early 2002 and the President declared that the “War don Don” (Krio for the war is over) and held a symbolic ‘Arms Burning Ceremony’ on 18 January 2002.¹⁹⁷⁹ Two months later, Sankoh, alongside 29 other RUF members and more than 30 AFRC/ex-SLA members, known as the West Side Boys, were brought before Sierra Leonean court and charged with murder and robbery.¹⁹⁸⁰ The war thus had officially come to an end with cease-fire, but left the country shattered in ruins. Thousands died in the course of conflict, children were orphaned or victimised as slaving soldiers, thousands were left with their limbs amputated, women and girls were mentally and physically scarred by sexual abuses, civilians were traumatised by constant insecurity and attacks, and ex-fighters were left lost by their ‘leaders’. In all, the war left a long record of human rights abuses, war crimes and crimes against humanity.¹⁹⁸¹ Moreover, the country was weaker and more impoverished than before the war. It was against this background of years of state corruption, grievances, youth unemployment, and the apocalyptic war that measures were sought to overcome the heavy burdens of the past as well as daily reality.

Witnessing truth in Sierra Leone

The inspiration is let's sprint; if we can't sprint, let's run; if we can't run, let's walk; if we also can't walk, then let's crawl; but in any way possible, let's keep on moving.

¹⁹⁷⁶ UNSC, *Resolution 1346* (30 March 2001) (S/RES/1346).

¹⁹⁷⁷ Gberie, *A dirty war*, pp. 171.

¹⁹⁷⁸ Peters, *Footpaths*, pp. 120-121.

¹⁹⁷⁹ Sylvia Ojukutu-Macauley & Ismael Rashid (eds.), *Paradoxes of History and Memory in Post-Colonial Sierra Leone* (Plymouth: Lexington Books, 2013), p. 122.

¹⁹⁸⁰ Unclear is what the charges entailed exactly and how they related to the amnesty provisions. The Sierra Leone Attorney General announced that these charges would no prejudice any possible case they may arise at the Special Court. See: James Astill, ‘Sierra Leone Rebel Leader in Court’, *The Guardian*, 5 March 2002; UNSC, *Thirteenth Report of the Secretary-General on the United Nations Mission in Sierra Leone* (S/2002/267; 14 March 2002), p. 1.

¹⁹⁸¹ See for a comprehensive study: L. Alison Smith, Catherine Gambette & Thomas Longly, *Conflict Mapping in Sierra Leone: violations of International Humanitarian Law from 1991 to 2002* (No Peace Without Justice; Freetown 2004).

Mayhem in Sierra Leonean left an atrophied, alienated and disfigured state, which in itself had already collapsed and ‘failed’ since its independence.¹⁹⁸³ Yet, the *grand finale* of hostilities heralded only the inauguration of the confrontations of societal rebuilding. No doubt, it was to be intricate since mass atrocities had been widespread.¹⁹⁸⁴ First and foremost: brutalities were virtually perpetrated universally; by members of the RUF/AFRC, Liberian fighters, government forces, CDF soldiers (Kamajor), mercenaries and ECOMOG peacekeepers.¹⁹⁸⁵ In addition, the liminal spaces between perpetrators, victims and bystanders were blurry.¹⁹⁸⁶ Some of the victims had turned into perpetrators; many children had been kidnapped from their homes, robbed of their childhoods and forced to live a rebel life, filled with hostilities. Crucial as well was the fact that the civil war did not put an end to the era of post-independence corruption, political mal-governance and fiscal deficiency.¹⁹⁸⁷ For Sierra Leone, (re) building the country and preventing future abuses necessarily required rigorous ventures in recuperating the daily economic and social conditions. Cynically, it was particularly the international humanitarian industry that swayed through the country, only to leave again for another crisis elsewhere.¹⁹⁸⁸ The ‘crisis caravan’ pushed for truth, reconciliation and accountability, particularly lobbied for by international stakeholders, foreign governments and the United Nations. A combined operationalisation of a Truth and Reconciliation Commission (hereafter TRC or Commission) and a Special Court (hereafter SCSL or the Court)¹⁹⁸⁹ were instituted as a vehicle on this route, as part of an overall transitional strategy.¹⁹⁹⁰

As seen above, with a peace settlement in mind, some transitional justice elements had already been conceived and blueprinted in Lomé, notably the broad amnesty and the TRC.¹⁹⁹¹ Amnesties were handed out widely,¹⁹⁹² yet an official organism for public truth-telling, styled like its immediate and widely praised predecessor in South Africa, was designed to address impunity, break

¹⁹⁸² TRCSL, *Witness to Truth*, Vol. IIB, p. 520.

¹⁹⁸³ See on failed states: Robert I Rotberg, ‘The Failure and Collapse of Nation-States. Breakdown, Prevention, and Repair’, in: Robert I Rotberg (ed.), *When States Fail* (Princeton: Princeton University Press, 2003), pp. 1-49.

¹⁹⁸⁴ UNSC, *Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone* (S/1999/836; 30 July 1999); United Nations Economic & Social Council (UNESCO), *Report of the High Commissioner for Human Rights pursuant to Commission on Human Rights resolution 2001/20 Situation of human rights in Sierra Leone* (E/CN.4/2002/37; 18 February 2002).

¹⁹⁸⁵ TRC, ‘National Vision for Sierra Leone Written Submissions’ (www-text: <http://www.sierraleonetr.com/index.php/nvsl-written-submissions/41-selections-nvsl>, visited: 16 September 2016).

¹⁹⁸⁶ As in other situations, the question of ‘complex perpetrators’ has become topic of emerging scholarship. Most notably in this scholarship, the case of Dominic Ongwen, a former child soldier-turned commander of Uganda’s Lord’s Resistance Army (LRA), is referenced as a case study. See, for instance: Mark Drumbl, ‘Shifting Narratives: Ongwen and Lubanga on the Effects of Child Soldiering’, *Justice in Conflict* (Blog-text: <https://justiceinconflict.org/2016/04/20/shifting-narratives-ongwen-and-lubanga-on-the-effects-of-child-soldiering/>), last accessed on 16 September 2016.

¹⁹⁸⁷ Paul Collier, ‘The Economic Legacy of Civil War. Firm-Level Evidence from Sierra Leone’, *Journal of Conflict Resolution*, Vol. 5, No. 1 (February 2013), pp. 65-88.

¹⁹⁸⁸ Linda Polman, *War Games: The Story of Aid and War in Modern Times* (London: Penguin Group, 2010).

¹⁹⁸⁹ On the difficulties caused by this coexistence, see: William A. Schabas, ‘The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone’, *Human Rights Quarterly*, 2003, pp. 1035-1066.

¹⁹⁹⁰ Amnesty, prosecutions, truth finding, reconciliation, reparations and re-integration were used in Sierra Leone to transcend to peace. Schotsmans, ‘Blow your mind and cool your heart’, pp. 263-287.

¹⁹⁹¹ *Peace Agreement between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, art. XXVI.

¹⁹⁹² Crucially, Francis Okello, the then Special Representative of the UN Secretary-General, present at the signing of the Agreement, appended a handwritten reservation to the effect that the general pardon should not pertain international crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law. “The United Nations holds the understanding that the amnesty provisions of the Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law.” The statement does not appear in the text of the Agreement published by the United Nations. William Schabas, who served on the Truth and Reconciliation Commission, writes that the TRC was shown an official copy of the Lomé Accord to which the statement was appended in handwriting. See: William A. Schabas, ‘Amnesty, The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone’, *Davis Journal of International Law and Policy*, Vol. 11, (2004), pp. 145-169; 148-149 [note 11]; UNSC, *Seventh Report of the Secretary General on the UN Observer Mission in Sierra Leone* (S/1999/836; 30 July 1999), §7.

the cycle of violence, serve as a catharsis for victims and perpetrators and to establish an impartial historical narrative of the conflict.¹⁹⁹³ On board of the commission was even one of South Africa's commissioners, Yasmin Sooka. It started its mission in July 2002 and delivered its voluminous report *Witness to Truth* in October 2004.¹⁹⁹⁴ Meanwhile, the Lomé accord, however, could not guarantee the pledged peace and in the wake of continued human rights abuses and volatility, the Sierra Leonean administration requested the UN to erect a tribunal to bring the RUF leadership to justice. It was established in 2002 in the capital Freetown, to bring those most responsible to justice.¹⁹⁹⁵ The Special Court proceeded independently from the TRC and its most notorious trial was that versus former Liberian president Charles Ghankay Taylor for his alleged involvement in the war.¹⁹⁹⁶ The Special Court heard 315 prosecution witnesses and 240 defence witnesses¹⁹⁹⁷ and delivered judgements in four different cases, sentencing nine convicts, including Charles Taylor, to long-term imprisonment.¹⁹⁹⁸ At the TRC, researchers, investigators and commissioners collected 7,706 statements,¹⁹⁹⁹ heard over 450 witnesses in public hearings, published a voluminous report and made a score of recommendations for further transition.²⁰⁰⁰ Puzzled together, all the testimonies and produced source materials arguably provide an itinerary through Sierra Leone's war.

As we shall observe, the Sierra Leonean transitional process was unique for its time²⁰⁰¹ because it has been essentially twofold; there was a TRC to unravel the causes of the war and provide a public platform for victims while the 'big fish' were being tried before the Special Court.²⁰⁰² Although the parallel quest for truth and justice seemed to pave the way towards a new paradigm for approaching transitional justice, in which a TRC can also function as a quasi-pre-trial chamber, the relationship proved to be not necessarily successful.²⁰⁰³ From the elitist cosmopolitan perspective, the differences between the institutions may be apparent, but for civilians, distinctions are less

¹⁹⁹³ 'Truth and Reconciliation Act 2000', *Supplement to the Sierra Leone Gazette*, Vol. CXXXI, No. 9 (Freetown 10 February 2000).

¹⁹⁹⁴ The official website of the Commission: <http://www.trcsierraleone.org/drwebsite/publish/index.shtml> ceased to exist somewhere in 2009. On 30 August 2012, the Open Society Initiative for West Africa, the Human Rights Commission of Sierra Leone and the International Center for Transitional Justice launched a reconstructed website. It hosts the report, audio and video of the TRC process, pictures and an interactive Recommendations Matrix. All the material can be consulted at: <http://www.sierraleoneonetr.org/>, last visit on 15 March 2015.

¹⁹⁹⁵ *Agreement between the United Nations and the government of Sierra Leone on the establishment of a Special Court for Sierra Leone & Statute of the Special Court for Sierra Leone & Statute of the Special Court for Sierra Leone*, art. 1.

¹⁹⁹⁶ SCSL, *Prosecutor versus Charles Ghankay Taylor: Amended indictment* (SCSL-2003-01-I; 16 March 2006). Since May 2010, the trial was held in Leidschendam, the Netherlands, using the facilities of the Special Tribunal for Lebanon (STL). Before moving to the STL, proceedings took place at one of the trial chambers of the ICC in The Hague. The trial is held in the Netherlands because of security reasons. It was feared that when the proceedings were held in Freetown, among other things, that it would threaten the security situation within the region. See: SCSL Press and Public Affairs Office, *Press Release. Special Court President Requests Charles Taylor to be tried in The Hague* (Freetown 30 March 2006) & STL, Press Office, *Courtroom for Special Tribunal for Lebanon to host Taylor Trial* (Leidschendam 17 May 2010).

¹⁹⁹⁷ AFRC: 146; CDF: 119; RUF: 175; Charles Taylor: 115. See: SCSL, *Eleventh and Final Report of the President of the Special Court for Sierra Leone* (December 2013), pp. 12, 13, 15, 16.

¹⁹⁹⁸ SCSL, *Eleventh and Final Report*.

¹⁹⁹⁹ The TRC collected statements of Sierra Leoneans, living in Sierra Leone and also as refugees in Gambia, Guinea and Nigeria. The statements they gave offer detailed insight into the experience of particular victims or perpetrators, and every statement therefore deserves careful study. TRCSL, *Witness to Truth: Appendix 1: Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone*, p. 7.

²⁰⁰⁰ Tim Kelsall, 'Truth, Lies, and Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly*, No. 27 (2005), 364. Alpha Sesay claims a total of 500: Alpha Sesay, 'To Compete or to Complement? Assessing the Relationship between the Sierra Leone Special Court and the Truth and Reconciliation Commission', in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 481-501: 483. Interestingly the Commission's report does not provide any number on the people who had testified in the public hearings.

²⁰⁰¹ In regards to East Timor, both trials (Dili Chambers) and truth-finding (Commission of Truth and Friendship) were organised, yet not simultaneously but subsequently in respectively 2000 and 2004. See for details: UNSC, *Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999* (S/2005/458; 15 July 2005)

²⁰⁰² Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions. Lessons from Sierra Leone* (United States Institute for Peace; February 2005).

²⁰⁰³ The TRC concluded that "notwithstanding the efforts of the Commission and the undertakings of the Prosecutor to distance themselves, a perception developed throughout the country that information provided to the Commission would make its way to the Special Court. A rumour even started circulating that there was an underground tunnel that ran between the two institutions. It did not help in elucidating public perception that both bodies were situated on Jomo Kenyatta Road in Freetown, in close proximity to one another. It is not surprising that 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 they focussed on violations of international humanitarian law." TRCSL, *Witness to Truth*, Vol III B, p. 377.

obvious.²⁰⁰⁴ As a result, especially perpetrators were hesitant to publicly tell their stories as they feared that the court would still prosecute them.²⁰⁰⁵ Conceivably, in lieu of the Sierra Leone's TRC and SCSL, it is also imperative to view the Sierra Leonean experience in perspective to its neighbouring country Liberia, which has also experienced a long period of 'kleptocratic',²⁰⁰⁶ dictatorship and excessive violence and which was strongly involved in the Sierra Leonean war.²⁰⁰⁷ Not only is the former President of that country, Charles Taylor, believed to be a key player in the region, Liberia also went through a transitional period in which, after the dismantling of the Taylor-regime, a recurrence to peace, democratic elections and institutional reforms have taken place. Furthermore, Liberia has had its very own TRC and it is of utmost interest to see its developments and process in the light of the Sierra Leonean experience.²⁰⁰⁸ With that in mind, the following sections will explore Sierra Leonean transitional experience, starting with the TRC.

5.4 The Truth and Reconciliation Commission for Sierra Leone

The Commission will investigate and report on the causes, nature and extent of the violations and abuses of human rights and international humanitarian law during the conflict. Of course, it will create an impartial historical record of the atrocities perpetrated against innocent civilians during a ten-year period of the war.

- Ahmad Tejan Kabbah, President²⁰⁰⁹

We thank you for coming to participate in this hearing. I want to remind you that this is not a court. It is only a Truth and Reconciliation Commission. Please relax to tell us your experience.

- John Kamara, Commissioner²⁰¹⁰

Discussions on a truth commission already took place from 1999, at sessions of the Sierra Leone Human Rights Committee (SLHRC) in Conakry, Guinea, anticipating the peace negotiations.²⁰¹¹ Mary Robinson, the UN's High Commissioner for Human Rights (OHCHR) at the time, embraced the idea, endorsed the Human Rights Manifesto²⁰¹² and indicated that the UN would facilitate technical assistance necessary for its establishment.²⁰¹³ Subsequently, in Lomé, the TRC was negotiated "to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of

²⁰⁰⁴ Many witnesses brought this up during the public hearings of the TRC. See for example, the testimony of Master Bowanag. "Master Bowanag: People are saying that the TRC and the Special Court are the same, and if you testify at the TRC, you might end up being arrested. Comm. Bishop Humper: There are thousands of your kinds out there, but people like you will get the others to know that they can come here and tell their stories and they will not be arrested." TRC, *Witness to Truth: Annex 3. Transcripts of TRC Public Hearings* (Bo, 1 May 2003), pp. 118-122.

²⁰⁰⁵ See for tensions in the dual or sequential use of TRC's and judicial prosecutions in the cases of Sierra Leone, Peru, Guatemala, El Salvador and Ghana: William Schabas & Shane Darcy (eds.), *Truth Commissions and Courts. The Tension Between Criminal Justice and the Search for Truth* (Dordrecht: Kluwer Academic Publishers, 2004).

²⁰⁰⁶ This term in relation to the state in Africa was first coined in J. F. Bayart, S. Ellis, and B. Hibou. 1999. 'From Kleptocracy to the Felonious State', In: Idem (eds.), *The Criminalization of the State in Africa* (Oxford 1999), pp. 1-31.

²⁰⁰⁷ Republic of Liberia, Truth and Reconciliation Commission (TRCL), *Consolidated Final Report* (Accra: Twidan Grafix & TRC, June 2009).

²⁰⁰⁸ Gabriel Twose & Cailin O. Mahoney, 'The Trouble with Truth-telling: Preliminary Reflections on Truth and Justice in Post-war Liberia', *Peace and Conflict Studies*, Vol. 22, No. 2 (October 2015), pp. 85-112.

²⁰⁰⁹ *Statement by President H. E. Alhaji Dr. Ahmad Tejan Kabbah on the occasion of the inauguration of the Truth and Reconciliation Commission*; Freetown 5 July 2002.

²⁰¹⁰ TRC, *Witness to Truth: Annex 3. Transcripts of TRC Public Hearings* (Kailahun, 13 May 2003), p. 215.

²⁰¹¹ Richard Bennett, 'The Evolution of the Sierra Leone Truth and Reconciliation Commission', in: *Truth and Reconciliation in Sierra Leone* (UNAMSIL 2001), n.p.

²⁰¹² 'UN commissioner signs human rights manifesto for Sierra Leone', *Agence France-Presse*, 24 June 1999.

²⁰¹³ Bennett, 'The Evolution of the Sierra Leone Truth and Reconciliation Commission', n.p.

human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation”.²⁰¹⁴ It was also to “recommend measures to be taken for the rehabilitation of victims of human rights violations”, violations from the beginning of the Sierra Leone conflict in 1991.²⁰¹⁵ Sierra Leonean civil society and human rights organisations set up a TRC Working Group,²⁰¹⁶ but the definitive statute was drafted by the OHCHR²⁰¹⁷ and passed into legislation on 22 February 2000.²⁰¹⁸ Operative from that moment, the Truth and Reconciliation Act mandated the commission by means of conducting research, taking individual statements and holding public hearings “to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement; 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”.²⁰¹⁹

Overall, the focus of the commission was that of a proto-historian, to bring to light the truth about what had happened. Truth and truth telling, the commission argued, lay at the heart of this, provided that the truth must be known, complete and officially proclaimed and publicly exposed²⁰²⁰ while misrepresentations could be discredited or demystified.²⁰²¹ Besides looking at the past, the TRC was also instructed to make recommendations for the future, including, *inter alia*, responding to victim’s needs.²⁰²² In view of promoting healing and reconciliation, the TRC stated that truth was the ultimate route towards fundamental change, given that a common understanding of the past allows both victims and perpetrators²⁰²³ to find space to live together in a spirit of tolerance and respect.²⁰²⁴ Further, the commission stipulated that “society cannot simply block out a chapter of its history; it cannot deny the facts of its past, however differently these may be interpreted. Inevitably, the void would be filled with lies or with conflicting, confusing versions of the past. A nation’s unity depends on a shared identity, which in turn depends largely on a shared memory. For the commissioners, the truth would also bring a measure of healthy social catharsis and thereby reconciliation.”²⁰²⁵

²⁰¹⁴ *Lomé Agreement*, art. XXVI.

²⁰¹⁵ *Idem*.

²⁰¹⁶ TRCSL, *Witness to Truth*, Vol. I, p. 26.

²⁰¹⁷ This represented OHCHR’s “first substantial undertaking in support of a transitional justice mechanism anywhere in the world. See: Beth K. Dougherty, ‘Searching for answers: Sierra Leone’s Truth and Reconciliation Commission’, *African Studies Quarterly*, Vol. 8, No. 1 (2004), pp. 39-56; 42.

²⁰¹⁸ Bennett, ‘The evolution of the TRC’.

²⁰¹⁹ Concretely, the commission was tasked “to the fullest degree possible, including their antecedents, the context in which the violations and abuses occurred, the question of, whether those violations and abuses were the result of deliberate planning, policy or authorisation by any government, group or individual, and the role of both internal and external factors in the conflict; to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict; and to do all such things as may contribute to the fulfilment of the object of the Commission”. *The Truth and Reconciliation Commission Act 2000*, Freetown, February 2000, art. 6 (1).

²⁰²⁰ Like in South Africa, the Sierra Leonean TRC operationalised four different types of truth: factual or forensic truth; personal and narrative truth; social truth; healing and restorative truth. TRCSL, *Witness to Truth*, Vol. I, pp. 80-83.

²⁰²¹ Its language, however, was at moments soothing and comforting, but mostly framed through a (quasi-) judicial framework that addressed issues of accountability. Although not a legal platform *per se*, the commission itself defined and operationalised its study field as *violations* and *abuses* committed during the conflict. The addition of *abuses* enlarged the commission’s inquiry as it encompassed human rights violations committed by individuals rather than the state. TRCSL, *Witness to Truth*, Vol I, pp. 31-33; 32.

²⁰²² TRCSL, *Witness to Truth*, Vol I, pp. 43-45.

²⁰²³ *Ibidem*, pp. 87-88.

²⁰²⁴ TRCSL, *Witness to Truth*, Vol I, p. 438.

²⁰²⁵ *Ibidem*, p. 48.

But besides its Universalist conceptualisation of the power of truth, the commission recognised the importance of ‘traditional’ [i.e. local/customary] values and methods of dealing with conflict,²⁰²⁶ including truth telling, rehabilitation and cleansing.²⁰²⁷ Bearing in mind the importance of local dynamics, the TRC involved traditional and religious leaders in all its activities, including public hearings, statement taking and reconciliation initiatives.²⁰²⁸ Lastly, the commission did not just look into the past but as well envision a future, a feature quite novel to truth commissions. In the Sierra Leoneans context, foresaw the commission, gazing backwards was not sufficient.²⁰²⁹ In a project called the ‘National Vision of Sierra Leone’, the commission attempted to provide Sierra Leoneans with a platform to reflect on the conflict and to describe the ideal future society they wish to live in, sharing their expectations and aspirations.²⁰³⁰ Over the course of two months, the TRC claims it received over 250 contributions representing the efforts of over 300 individuals - men and women of all ages, backgrounds, religions and regions, including adults and children; artists and laymen; amputees, ex-combatants and prisoners - including written and recorded essays, slogans, plays and poems; paintings, etchings and drawings; sculptures, wood carvings and installations. The TRC even received a sea-worthy boat called the "Future Boat", painted in the national colours of green, white and blue.²⁰³¹ All the contributions were exhibited at the National Museum in Freetown from 15 December 2003.²⁰³² By envisioning the future “Sierra Leoneans of all ages and backgrounds can claim their own citizenship space in the new Sierra Leone and make their contributions to the county's cultural and national heritage,” argued the Commissioners in their report.²⁰³³ They went even further to state that “by “memorialising” the harsh realities of the past, the National Vision serves as a form of symbolic reparation to Sierra Leoneans, to whom public forms of acknowledgement reinforce community bonds.²⁰³⁴

“Make peace sidon na Salone”

*“Come blow your mind, come clear your chest”*²⁰³⁵

As the overall situation in Sierra Leone remained insecure, the setting up of the TRC, from February 2000 onwards,²⁰³⁶ suffered several delays²⁰³⁷ but accelerated from March 2001.²⁰³⁸ Commissioners²⁰³⁹

²⁰²⁶ Ibidem, p. 439.

²⁰²⁷ Manifesto 99, *Perceptions and Notions of Truth and Reconciliation Vis a Vis Traditional Methods of Conflict Management* (Freetown, 2001).

²⁰²⁸ They were also consulted as to where monuments and memorials should be established. Community members also assisted in identifying the sites of mass graves and torture and amputation sites. TRCSL, *Witness to Truth: Appendix 4: Memorials, mass graves and other sites*, §15-20. Also see on this debate: Joe A.D. Alie, ‘Traditional Justice and Human Rights in post-war African countries’, in: Bennett et al., pp. 95-120: 109-115.

²⁰²⁹ “The future society had to be envisioned and described.” TRCSL, ‘National Vision for Sierra Leone’ (www-text: <http://www.sierraleonetrc.org/index.php/national-vision-for-sl>, visited: 26 May 2015).

²⁰³⁰ See: TRCSL, ‘National Vision for Sierra Leone: A call for Contributions by the TRC’, www-text: <http://www.sierraleonetrc.org/index.php/call-for-contributions>, visited: 26 May 2015.

²⁰³¹ TRCSL, *Witness to Truth*, Vol 3B, Ch. 8, p. 504.

²⁰³² See for some contributions: TRCSL, *Witness to Truth*, Vol. IIIB, pp. 499-520.

²⁰³³ Ibidem, p. 505.

²⁰³⁴ Ibidem, p. 511.

²⁰³⁵ TRC jingle, Sierra Leone. Cited in: Rosalind Shaw, ‘Memory Friction’, *Localizing the Truth and Reconciliation Commission in Sierra Leone*, *The International Journal of Transitional Justice*, Vol. 1, 2007.

²⁰³⁶ Bennett, ‘The evolution of the TRC’; Brandon Hamber, *Evaluation of Sierra Leone Working Group on the Truth and Reconciliation Commission* (8 January 2001); Article 19, *Moments of Truth in Sierra Leone. Contextualising the Truth and Reconciliation Commission* (London: Article 19, August 2000).

²⁰³⁷ *Final Communiqué Truth and Reconciliation Commission Workshop*, Freetown, November 2000.

²⁰³⁸ UNSC, *Resolution 1346* (S/RES/1346; 30 March 2001), art. 14.

- four Sierra Leoneans and three internationals were selected by the end of the year,²⁰⁴⁰ with Sierra Leonean Bishop Joseph Humper becoming chairman.²⁰⁴¹ Inaugurated on 5 July 2002 and advertised through a public awareness campaign,²⁰⁴² practical arrangements²⁰⁴³ were soon overshadowed by allegations that the TRC was driven by political favouritism, lacked transparency and would not be up for its tasks.²⁰⁴⁴ A credibility crisis soon followed and many international donors ceased funding.²⁰⁴⁵ As a result, not only the foreseen TRC's outreach programme was rigorously scaled down, the commission had to cut back on its investigations and public hearings throughout the country.²⁰⁴⁶ Despite its "bare bone budget,"²⁰⁴⁷ the commission started to carry out its instruction,²⁰⁴⁸ calling on Sierra Leoneans to communicate statements or submit information to the commission.²⁰⁴⁹ From July 2002 onwards, posters and leaflets announced "Truth hurts, but war hurts more" and radio and television skits and jingles, urged listeners to "come blow your mind; come clear your chest" and to "make peace sidon na Salone" ("sit down in Sierra Leone").²⁰⁵⁰ A message of truth telling was conveyed to Sierra Leoneans, through various channels. Alongside, the commission started its own investigations²⁰⁵¹ and research,²⁰⁵² hearing victims and perpetrators, taking individual statements²⁰⁵³

²⁰³⁹ The TRC Act provided that the members of the Commission shall be persons of integrity and credibility who would be impartial in the performance of their functions under the act and who would enjoy the confidence generally of the people of Sierra Leone; and persons with high standing or competence as lawyers, social scientists, religious leaders, psychologists and in other professions or disciplines relevant to the functions of the Commission. 'Truth and Reconciliation Act', art. 3 (2).

²⁰⁴⁰ In case of the national commissioners, the Selection Coordinator announced the vacancies in the media. Three members of an Advisory Board assisted the Selection Coordinator in short listing the names of nominated individuals. The Advisory Board consisted of representatives of the government, the Inter-Religious Council, and one international, who was a resident of Sierra Leone. The national commissioners were chosen from this list and interviewed by a Selection Panel consisting of representatives from the Government, National Forum for Human Rights, Revolutionary United Front, National Commission for Democracy and Human Rights, and the Inter-Religious Council. The names of candidates approved were then forwarded to the President for appointment. The Office of the United Nations High Commissioner for Human Rights coordinated the selection of the International Commissioners. Nominations were invited from all over the world. The Office of the High Commissioner interviewed many candidates and recommended three. Their names were sent to the Selection Panel for approval. See: Paul James Allen, Sheku. B. S. Lahai & Jamie O'Connell, *Sierra Leone's Truth & Reconciliation Commission and Special Court: A citizen's Handbook* (National Forum for Human Rights & ICTJ; March 2003), p. 10.

²⁰⁴¹ Other Sierra Leonean members comprised deputy chair Laura Marcus-Jones, a former arbitrator of the Sierra Leone High Court; Professor John Kamara, a college principal and veterinary surgeon, and Sylvanus Torto, a professor of public administration. The foreign commissioners were Satang Jow, a former Minister of Education in the Gambia; William Schabas, a Canadian human rights lawyer and 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. Priscilla Hayner, *The Sierra Leonean Truth and Reconciliation Commission: Reviewing the first year* (ICTJ; January 2004), p. 2.

²⁰⁴² Bennett, 'The evolution of the TRC'.

²⁰⁴³ The establishment of office premises; establishing a data base; establishing logistical needs such as communications and transport; establishing a financial management system; negotiating support and assistance by UNAMSIL and other bodies; identifying suitable regional offices; conducting a national public awareness campaign and; developing policy and preparing briefing materials issues such as the relationship with the Special Court, women's issues, children's issues, traditional methods of reconciliation and witness protection. See: *Witness to Truth*, Vol. 1, 56.

²⁰⁴⁴ ICG, 'Sierra Leone's Truth and Reconciliation Commission: A fresh Start?' *Africa Briefing* (20 December 2002), p. 5.

²⁰⁴⁵ ICG, 'Sierra Leone's Truth and Reconciliation Commission', pp. 6-8. The initial budget was set at \$ 9.9 million, was adjusted to \$ 6.5 million, and another time trimmed down to only \$4.5 million. Dougherty notes that in the main truth commissions are capitalised by their national governments, yet the Sierra Leonean administration was not at all capable to offer much support; it donated \$97,000 and a building for the Secretariat. See: Dougherty, 'Searching for answers', p. 43.

²⁰⁴⁶ Although attendance of the initial hearings in Freetown, audience numbers increased as the TRC became better known, especially in the districts where most of the atrocities took place. However, in the end, the commission could only spend one week for public hearings in each province. Hayner, *The Sierra Leone Truth Commission*, p. 4; Dougherty 'Searching for answers', 43; TRC, *Witness to Truth*, Vol. 1, p. 180.

²⁰⁴⁷ "When discussing the budget, the Commission observed "the planning of the budget of the Commission was on the optimistic expectation that the international community would provide the funding required for all activities. This proved to be an unrealistic expectation. The final budget was a bare bones budget. The Commission struggled to implement its activities because of inadequacy of funding and because of delays experienced in the releasing of funds. Nonetheless the Commission is satisfied that it was able to carry out important activities such as statement taking, public hearings, research and investigations which enabled it to deliver a credible final report to the people of Sierra Leone. This was accomplished largely due to the dedication and tireless efforts of the staff and Commissioners".

²⁰⁴⁸ The TRC itself identified five key functions; the creation of a historical record of violations and abuses of human rights and international humanitarian law; 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. TRCSL, *Witness to Truth*, Vol. I, pp. 31-33.

²⁰⁴⁹ 'Truth and Reconciliation Act', art. 5.

²⁰⁵⁰ Shaw, 'Rethinking truth commissions', p. 2.

²⁰⁵¹ Including the collection of 1, 316 statements, interviews with experts, selecting "window cases" and identifying mass graves. See: TRCSL, *Witness to Truth*, Vol. 1, §28-29 & 33-51.

²⁰⁵² Based on primary sources and secondary sources, with primacy of original sources. Ibidem, §31-32.

²⁰⁵³ The Commission started its statement-taking phase on 4 December 2002 at Bomaru, Kailahun District; the locality, which suffered the first insurgency attack in 1991. A special statement taking form was prepared in English with four major sections: victims, witnesses, perpetrators and people who wished to provide a statement on behalf of someone else. The statement form was also accessible on the Internet for Sierra Leoneans living abroad. See the Statement form, which is reprinted in the TRC Report. Ibidem, pp. 191-230.

and gathering additional information.²⁰⁵⁴ In the field, mass graves and other atrocity sites were identified, located and mapped.²⁰⁵⁵ Recording details about atrocities and personal narratives, statement takers collected 7,706 statements collected in 15 different languages,²⁰⁵⁶ but perpetrators had remained reluctant to cooperate out of fear of the SCSL.²⁰⁵⁷ Out of a broad variety of testimonies, the commission selected witnesses for its hearings,²⁰⁵⁸ but not all could be located and in the end a whole range of new witnesses came forward.²⁰⁵⁹

Finally, the hearings took place, all following a specific scheme in a designed setting. Outside Freetown, traditional or religious leaders usually opened the hearings with prayers or religious songs and took part in the proceedings.²⁰⁶⁰ The presiding commissioner then started with administering an oath, either on the Bible or the Koran, to every witness before giving testimony: “I, [...] do solemnly swear that the testimony I shall give before this commission, shall be the truth, the whole truth, and nothing but the truth.”²⁰⁶¹ After the testimony, the commissioners and present investigators [leaders of evidence] questioned the witness, whom in turn was subsequently invited to ask questions and to make suggestions for the commission’s recommendations. In the case witnesses mentioned the names of perpetrators, the commission tried to locate alleged perpetrators and invited them to make statements or to participate in a hearing and relay their own version of events. Victims were not asked directly by the commission to forgive their perpetrators. It was, however, when victims expressed willingness to meet their perpetrators – and the perpetrators agreed – possible to engage in private meetings organised by the commission. Closed hearing sessions were also held, particularly for victims of sexual violence who were assisted by counsellors to offer emotional support. In exceptional cases, women who were victims of sexual violence gave testimony in public. Further, when children were concerned, the commission conducted vulnerability and safety assessments and consulted with the children and their families. When testimonies of children were approved, they were prepared by a

²⁰⁵⁴ ‘Truth and Reconciliation Act’, art. 7. By doing so, the commission was given an inclusive set of instruments to secure the realisation of its purpose. First, they could seek support from traditional and religious leaders to facilitate public sessions and in resolving local conflicts in support of reconciliation. Second, the commission was given far-reaching powers to accumulate whichever information from any source; to visit any place without impediment; to interview any individual, group or members of organisations or institutions; to oblige anyone to attend hearings; to require statements to be given under oath; to appeal information from foreign authorities; to issue summonses and subpoenas; and to safeguard police assistance to enforce its powers. ‘Truth and Reconciliation Act’, art. 8.

²⁰⁵⁵ Investigators were sent to the districts with the following tasks: (a) to identify as many “mass graves” and “other sites” as possible in all districts; (b) to photograph the identified sites; (c) to identify the number of victims; (d) to reveal the identity of the victims; (e) to identify the types of violations committed at the site (human rights/international humanitarian law); (f) to identify the perpetrators; (g) to identify and locate the tools and instruments used in committing the violations; (h) to identify the persons and institutions responsible for the management of the sites; (j) to determine the current uses of the sites (if any); (j) to advise the local community on the protection, preservation and security of the site. The TRC database, containing information collected from the statements made to the TRC, was used as a starting point and guide for the exercise. In gathering the desired information, they relied largely on primary sources, i.e. people who were eyewitnesses to the killing and/or burial. It is the many interviews with these persons that led the investigators to the different sites. TRCSL, *Witness to Truth: Appendix 4: Memorials, mass graves and other sites*, §15-20. Also see the TRC’s interactive map: <http://www.sierraleonec.org/index.php/resources/interactive-map-mass-graves-and-other-sites>, visited: 26 May 2015.

²⁰⁵⁶ TRCSL, *Witness to Truth*, ‘Appendix I: Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone’, pp. 2-3. The Statistical Report furthermore identified 40,242 violations and counted 14,995 victims thereof. Furthermore, the commission has listed over 13,000 names of victims in over 200 pages in its report. TRCSL, *Witness to Truth*, Vol. II, pp. 273-503.

²⁰⁵⁷ A study was released early in September 2002 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. The majority of former fighters (64% of all positive responses) from across all factions expressed a willingness to give statements to the TRC. See: Post conflict Reintegration Initiative for Development and Empowerment (PRIDE) & ICTJ, *Ex-Combatant Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone* (12 September 2002), pp. 11-15.

²⁰⁵⁸ Criteria included: willingness of statement giver; ethnic, age, political and gender balance; balance of violations; exposure of violations in the presence of a leader; public acknowledgement of violations through first-hand testimony. TRCSL, *Witness to Truth*, Vol. I, p. 181.

²⁰⁵⁹ *Ibidem*, p. 182.

²⁰⁶⁰ Hayner, *The Sierra Leonean Truth Commission*, p. 5.

²⁰⁶¹ TRCSL, *Witness to Truth: Appendix 3, Part 1: Transcripts of Public Hearings Held in Freetown* (Accra, 2004); TRCSL, *Witness to Truth: Appendix 3, Part 2: Transcripts of Public Hearings Held in District Headquarter Towns* (Accra, 2004); TRCSL, *Witness to Truth: Appendix 3, Part 3: Thematic and Institutional Hearings* (Accra, 2004).

social worker that was also present at a child hearing, offering emotional or other support. After the hearing, the social worker conducted further visits to the child, to ensure no adverse consequences from his or her participation.

Hearing truth

Following a ceremonial opening by President Kabbah on 14 April 2003²⁰⁶² and Christian and Muslim prayers, the Commission started its public hearings²⁰⁶³ in Freetown with a testimony from Tamba Finnoh, a former farmer and businessman from Kono who testified about his both hands being cut off by rebels.²⁰⁶⁴ “I have come to explain about the past,” uttered the next witness, Rugiatu Kamara.²⁰⁶⁵ Shedding tears, she told the commission how her three brothers were decapitated. Three other victims, Alusine Turay, Hassan Turay and Kolley Sesay, narrated their horrific experiences as well on that first day, including how rebels had cut off their ears and had forced them to drink their own blood. On day two, professor William Schabas opened the hearings and after prayers and singing, a retired police officer, who had fled to London, told the TRC about the murder of his children at the hands of soldiers. He felt that for him, “to say the truth, as I am doing today. I know if we had made it very secretive, without the public knowing what happened, the son who is today in another world would continue to torment us; because it would have been a burden. When you have something to say and you don't say it, it is a load.”²⁰⁶⁶ Other witnesses followed, including a businessman, civilians, a civil servant, a grandmother, a retired captain and many others. Among them was Joe Fancy Yusuf Black Kamara, who like the others took an oath to tell the truth. Before that he told the commission he was testifying because “to blow and clear my chest for the unlawful death of my late father Chief Alhaji Abulagbu Black Kamara former Temne Tribal headman Western Area and to speak for those who cannot speak for themselves, for the rights of all who are destitute, to defend the rights of the poor and needy in our family.”²⁰⁶⁷ His story, like any other told before the commissioners was gruesome, often detailed. Yet, most witnesses were questioned by either the commissioners or TRC investigators, mostly on the whereabouts of alleged perpetrators. “Can you remember their names?” commissioner Yasmin Sooka asked a victim who was “chopped” by rebels. “I don’t have their proper names,” answered Kadiatu Fofanah, “they were called all sorts of nick names, Colonel Cut foot and the likes.”²⁰⁶⁸

From 29 April, the commission moved into the districts, where the audience numbers increased steadily since most of the atrocities took place in or near the headquarter towns. In each

²⁰⁶² Address by President His Excellency Alhaji Dr Ahmad Tejan Kabbah at the start of Public Hearings of the Truth and Reconciliation Commission, Freetown, 14 April 2003.

²⁰⁶³ The Opening Ceremony of the hearings in Freetown was aired live on SLBS radio and television. It was also broadcast live on Radio UNAMSIL. Other hearings in Freetown and the district headquarter towns were broadcast live on Radio UNAMSIL and SLBS radio. The Talking Drum Studios recorded hearings in Freetown and the districts. On selected nights of public hearings, SLBS broadcast a 45-minute television highlights programme featuring footage of the proceedings. TRCSL, *Witness to Truth*, Vol. I, §100.

²⁰⁶⁴ TRCSL, *Witness to Truth: Freetown Transcripts*, pp. 1-6.

²⁰⁶⁵ *Ibidem*, p. 6.

²⁰⁶⁶ *Ibidem*, pp. 20-21

²⁰⁶⁷ *Ibidem*, p. 49.

²⁰⁶⁸ TRCSL, *Witness to Truth: Freetown Transcripts*, p. 142.

district, one week was devoted to public hearings mostly held in school buildings or community centres often decorated with posters propagating: “Truth Today, A Peaceful Sierra Leone Tomorrow”; “It hurts to speak the truth, but it’s needed to bring peace”; “Save Sierra Leone from another War. Reconcile Now. TRC Can Help”; “Truth Hurts But War Hurts More”; “Bush no dâ fo tro wâ bad pikin” (A popular Krio proverb, implying that whatever a child might do, it cannot be banished [thrown in the bush], but must be forgiven).²⁰⁶⁹ One day was devoted to closed hearings designed for children or victims of sexual abuse to testify in a private setting. Perpetrators or ex-combatants who were reluctant to speak before the public for security or other reasons were also heard in closed session. Besides, the Commission held a series of thematic, institutional and event-specific public hearings in Freetown, featuring testimony from government ministers, political parties, UN agencies, NGOs, civil society institutions and other experts.²⁰⁷⁰ Hearings were also conducted on specific events such as, among others, the AFRC coup of 25 May 1997 and the attack on Freetown in January 1999.²⁰⁷¹

At the end of each week, the commission organised reconciliation ceremonies where victims and perpetrators were brought together, or where perpetrators who admitted their crimes were washed of their evils through a special cleansing ceremony and reaccepted into the community.²⁰⁷² Although hearings seldom attracted the hoped for audiences and the fact that the commission faced problems in mobilising enough people to narrate public statements,²⁰⁷³ still between 450 and 500 people testified before the commission in thousands of hours of testimony.²⁰⁷⁴ In the districts, particularly where the violence had struck the most, there was much more attendance than in the capital where people mainly followed the process through television and radio. Throughout the operational phase, hearings in Freetown and the district headquarter towns were broadcast live on Radio UNAMSIL and SLBS radio while Talking Drum Studios recorded hearings in Freetown and the districts. On selected nights of public hearings, SLBS broadcast a 45-minute television highlights programme featuring footage of the proceedings.²⁰⁷⁵ The final closing hearing, on 5 August 2003, featured President Kabbah appearing before the commission to provide more than two hours of testimony²⁰⁷⁶ that stirred much controversy as he declined an invitation to apologise on behalf of the government for the many abuses suffered in Sierra Leone.²⁰⁷⁷ The commission finally observed that many other high-level players who were invited to hearings did not appear. Therefore, subpoenas were issued for five serving ministers and leaders of government institutions, including the Attorney General, and the chairman and

²⁰⁶⁹ Kelsall, ‘Truth, Lies, and Ritual’, p. 365.

²⁰⁷⁰ The following issues were addressed during these hearings: governance; the role of civil society and immigrant communities; mineral resources; corruption; women and girls; children and youths; militias and armed groups; external groupings and international actors; the armed forces and police; civil service; judiciary and the rule of law; media; promoting reconciliation and national reintegration.

²⁰⁷¹ TRCSL, *Witness to Truth: Thematic and Institutional Hearings*, pp. 1- 505.

²⁰⁷² Idem.

²⁰⁷³ Berber Bevernage, *History, Memory, and State Sponsored Violence. Time and Justice* (New York & London: Routledge, 2012), pp. 80-81.

²⁰⁷⁴ Kelsall, ‘Truth, Lies, and Ritual’, p. 364. Alpha Sesay claims a total of 500: Alpha Sesay, ‘To Compete or to Complement? Assessing the Relationship between the Sierra Leone Special Court and the Truth and Reconciliation Commission’, in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 481-501: 483. Interestingly the Commission’s report does not provide any number on the people who had testified in the public hearings.

²⁰⁷⁵ TRCSL, *Witness to Truth: Thematic and Institutional Hearings*, pp. 249-273.

²⁰⁷⁶ *Statement of his Excellency the President Alhaji Dr. Ahmad Tejan Kabbah*, 5 August 2003. Printed in: TRCSL, *Witness to Truth. Appendix 2: submissions to the TRC*, pp. 1200-1223.

²⁰⁷⁷ Hayner, *The Sierra Leonean Truth Commission*, 5.

secretary of the ruling political party. All this happened despite the president's public admonition to all public officials at the commencement of hearings to cooperate with the commission, and in spite of the fact that the TRC Act made it mandatory for all public institutions to respond to the commission's summons. The former head of state, Captain Valentine Strasser who had ignored the commission's invitation on several occasions was also subpoenaed and compelled to testify.²⁰⁷⁸

Truth-telling in an oblivious culture

Baindu: I have a question. Why is it that after going through all these sufferings with all the pains in our heart, you still ask us to narrate it again?

Chairman Bishop Humper: What you are saying is the opening up of wounds. Some of you will not understand what we are doing now, but later you will. Nobody will tell you that you will ever forget about that. Many things have happened in this country. Until we know what has happened to people like you, we will continue to remain in misery in this country. It takes pain and agony and suffering when talking about it afresh. Do you have any other question?²⁰⁷⁹

Like most truth commissions, the ideas valorised on the memory practice of truth telling are framed as being universally applicable and perceived to be exportable to different cultural settings, like in Sierra Leone. Strongly borrowing from the truth commission tradition built in Latin America and South Africa, the SLTRC, as outlined above, discoursed that public recounting of memories of violence is helpful. But there are some key caveats. First and foremost, the type of violence matters. Under the South American juntas and Apartheid, violence and repression were somehow 'deniable'; they included disappearances, secret torture prisons and death squads. After the repression, truth telling was a consistent tool to unveil the former covert state sponsored crimes, reveal clandestine violence, establish accountability and to publicly acknowledge previously suppressed stories and experiences of victims.²⁰⁸⁰ But how to effectuate truth telling in a setting of overt publicly displayed violence, like open air brutalities of Sierra Leone's civil war? In these cases of unconcealed killing, argues anthropologist Rosalind Shaw, truth telling involves a much different politics of memory, recontextualising debates about the violence by demonstrating that atrocities were committed by each side and confirming that crimes against humanity happened. Thus, in these contexts truth commissions rather become "arenas of contested truths rather than sites for redemption."²⁰⁸¹ At worse, they can prove to be counterproductive and even deepen social divisions. The latter has been reason for some countries not to pursue a truth commission or related transitional justice mechanisms, like Spain, Mozambique and Burundi.²⁰⁸²

²⁰⁷⁸ TRCSL, *Witness to Truth*, Vol I, p. 97.

²⁰⁷⁹ TRCSL, *Witness to Truth: Thematic and Institutional Hearings*, p. 200.

²⁰⁸⁰ Shaw, 'Rethinking truth commissions', p. 2.

²⁰⁸¹ Shaw, 'Rethinking truth commissions', p. 3.

²⁰⁸² Burundi did establish a TRC late 2014, but its process was entirely overshadowed by political infighting and renewed ethnic tensions in 2015.

In transitional justice, cultural factors matter.²⁰⁸³ What are the memory practices and techniques in a particular region or locality? In Sierra Leone in particular, it is reported that local ways of dealing with the past are at odds with truth telling advocated by truth commissions. Verbalised memories, as enticed by the TRC, were uncommon in strategies to face the violence in Sierra Leone. Instead, a process of what Shaw calls ‘social forgetting’ was in place, “a refusal to reproduce the violence by talking about it publicly.”²⁰⁸⁴ Almost without exception, concludes Shaw, “people wanted “to forget,” even if such forgetting eluded them, often urging “let’s forgive and forget.””²⁰⁸⁵ At the TRC, different worldviews and memory cultures collided: liberal western versus Sierra Leonean. Consequently, observes historian Berber Bevernage, “for many Sierra Leoneans, the verbal and public recollection of violent events is, contrary to what the SLTRC says, not desirable because it connects the violence to the person remembering and risks rendering it present again.”²⁰⁸⁶ On the cursory outlook, and in theory, there appears to be a conflict: a TRC that entices memory versus a culture that cultivates forgetting. Yet, throughout the hearings that took place in Freetown and in the Districts, a slightly different reality comes to the fore, uncovering paradoxes to these observations. Confused narrations and dialogues sprung off during the public hearings. In the letter, the commission idealised redemptive truth telling and remembering, but in practice too often discoursed the reverse. On many occasions, after swearing that people will tell the truth and nothing but the truth, witnesses “narrated” their experiences, which time and again were unimaginably painful. In reply to frequently detailed stories, which were personally memorised, the commissioners started to tell witnesses to forget. “That also should give you hope and courage to move forward and forget about the past,” Marcus Jones told Adamsay Bangura, the TRC’s 22nd witness.²⁰⁸⁷ She had just testified that her child was hacked to death, only moments before her own head was slashed, she was raped and her hand was chopped of.²⁰⁸⁸ Similar responses ensued throughout the public hearings: “We sympathize with you and we hope that you seek medical attention and try to forget all that has happened”²⁰⁸⁹; “I only hope that with CARITAS you will be able to reshape your life and character again and try to forget about all you have been through”²⁰⁹⁰; or “You should remember that it was not your fault. Get yourself totally involved in your studies in order to forget those evil days.”²⁰⁹¹ Throughout the process, in practice, the truth commissioners went from enticing memories to encouraging oblivion, running counter to their initial ideals.

At other times, commissioners would stress “What we are doing, to actually encourage people to forgive and forget is to tell them to look up to God as He gives and takes and that is the only way

²⁰⁸³ Rosalind Shaw and Lars Waldorf, ‘Introduction. Localizing Transitional Justice’, in: Rosalind Shaw et al., *Localizing Transitional Justice*, pp. 3-26.

²⁰⁸⁴ Shaw, ‘Rethinking truth commissions’, p. 9.

²⁰⁸⁵ *Ibidem*, p. 8.

²⁰⁸⁶ Bevernage, *History, Memory, and State Sponsored Violence*, p. 81.

²⁰⁸⁷ *Ibidem*, p. 56.

²⁰⁸⁸ *Ibidem*, pp. 54-56.

²⁰⁸⁹ *Ibidem*, p. 436.

²⁰⁹⁰ *Ibidem*, p. 753.

²⁰⁹¹ *Ibidem*, p. 978.

we can have everlasting peace: so that what happened cannot repeat itself.”²⁰⁹² For witnesses, this seemed to be illogical: “You are still telling us that we should forgive and forget, how can we forgive when I still have tears running down my eyes?”²⁰⁹³ Sometimes victims and survivors were made to believe that forgetting would benefit their communities. Fatmata Sillah, for instance, wanted “to thank the Commission because they are teaching us to forgive and forget. I believe God is with us; we are gradually putting the past behind us. I want to know how best the Commission can help us rehabilitate our community and help with the education of our children.”²⁰⁹⁴ The reply almost sounded cynical: “That’s a very good question. We have been asked these questions very often. Somebody like you, who has lost about 31 people in the war, including a house and cash of Le. 3, 000,000.00. What do you think anybody can give you that will make you forget?”²⁰⁹⁵ Truth-telling, regardless of cultural incentives or restraints, appeared more and more a cry for financial help or material compensation.²⁰⁹⁶ Bevernage convincingly argues that at “the end of almost every testimony, the commissioners were asked what they planned to do in order to change the victim's state of continuing deprivation.”²⁰⁹⁷

The narrative

We thank you for coming to participate in this hearing. I want to remind you that this is not a court. It is only a Truth and Reconciliation Commission. Please relax to tell us your experience.

- John Kamara, Commissioner²⁰⁹⁸

We were in Pendembu in 1991. It was on a Saturday morning when we heard that Bomaru was attacked. On that Saturday on March 23, 1991, people were moving from Pendembu. I asked why they were moving and said that the war had reached us. We were told that the attackers were thieves and that they had a deal with the soldiers who refused to pay them. Another attack took place in one week’s time. A large number of people were coming from the area. When they arrived, we asked them why and they told us that the war had finally reached Sierra Leone. [...] One day, we saw soldiers coming and at that time my father was a town chief. A soldier came and told my father that the war had entered Sierra Leone and that they could not confront these rebels they are from Liberia. [...] Everybody was moving helter skelter. Some went to Daru and others went to other places. I had no chance to move because my parents were blind; I was unable to take them along. I took them to the village. [...] The rebels said that they had not come for poor people but for the government. We whom they met in the town were told to get out of the bush and get back to town. The number of rebels from Liberia increased. Some went to Bomaru and others to Pendembu. After a couple of days, they captured so many areas. [...] In 1991, we had a Commando called Charles, alias Rambo. His niece came to us and told us that they had killed Rambo. Among those people that brought the news to us were different tribes. There were Kissi, Pele and Gio people.

²⁰⁹² TRCSL, *Witness to Truth: District Headquarter Transcripts*, p. 588.

²⁰⁹³ *Ibidem*, p. 588.

²⁰⁹⁴ *Ibidem*, p. 417.

²⁰⁹⁵ *Ibidem*, p. 588.

²⁰⁹⁶ Bevernage, *History, Memory, and State Sponsored Violence*, p. 78.

²⁰⁹⁷ *Idem*.

²⁰⁹⁸ TRCSL, *Witness to Truth: District Headquarter Transcripts*, p. 214.

Whilst the fighting was going on the fighters from Liberia were called the vanguards. [...] We again witnessed where they forcefully recruited our brothers into the group. When our parents asked them, they said they were going to recruit them. [...] If they met you with food, they would take it and rape your wife in front of you. [...] Sankoh said that he was the leader of the war and he was not alone. [...] Any time they moved they would kill a lot of people. They always told the boys to carry their load. If you refused their orders, they would kill you. [...] People were forced to carry heavy loads like freezers. [...] Sankoh told us “Gentlemen let me ask you, are you not men in your country? If you are really men, you will not be afraid of these kinds of things. [...] There were some boys who were given to him by Charles Taylor; they are called vanguards. They would just look at you and kill you. [...] That is what I know about the war.”

- Maya Gaba, Witness²⁰⁹⁹

Maya Gaba, who had been forced to work and cook for the RUF, was one of the most elaborate witnesses to appear before the commission. Aside from the well-prepared statements, often read out from paper, by a score of officials²¹⁰⁰ at the Thematic and Institutional Hearings, victims, survivors and a handful of perpetrators had provided their “ordeals” in a much less structured manner. With many exceptions to the rule, most testimonies were short, intrinsically personal, sketchy in microscopic detail and particularly ‘local’. Most witnesses would talk about events in their communities and specifically about the violence they had personally seen or experienced. Taken altogether, the public hearings represented a mosaic of diverse stories about the war, its devastating character and the personal – and sometimes communal – impact. The bulk of witnesses, when concluding their story, wished for reparations, most often financially.

Reporting truth

As the conflict exploded into appalling brutality against civilians, the world recoiled in horror at the tactics used by the RUF, its allies and opponents. Reports emerged of indiscriminate amputations, abductions of women and children, recruitment of children as combatants, rape, sexual slavery, cannibalism, gratuitous killings and wanton destruction of villages and towns. This was a war measured not so much in battles and confrontations between combatants as in attacks upon civilian populations. Its awesome climax was the destruction of much of Freetown in January 1999”.²¹⁰¹

When the investigations, research and hearings were finished, the commission embarked on arranging and transmitting its findings into a written account, puzzling together a heap of micro-information that was programmed into a database.²¹⁰² Initially to be concluded in January 2004, the report writing was however hampered by various obstacles and ultimately the final printed account “*Witness to Truth*” was handed to President Kabbah on 5 October 2004. But for technical reasons, the findings did not

²⁰⁹⁹ TRCSL, *Witness to Truth: District Headquarter Transcripts*, pp. 214-217.

²¹⁰⁰ Representing Government (Ministers) political parties, the judiciary, the UN (UNDP, UNAMSIL and UNIFEM), the Ombudsman, national and international NGOs, media, churches, industries, military, foreign embassies (UK and USA), the South African TRC, the Lebanese community, the Anti-Corruption Commission, Indian Business Community. TRCSL, *Witness to Truth: Thematic and Institutional Hearings*, pp. 1-505.

²¹⁰¹ TRCSL, *Witness to truth*. Vol II, p.2.

²¹⁰² Part of the work of the TRC involved the creation of a database to capture details of the violations, victims and perpetrators described in the more than 7000 statements received by the Commission. The data resulted in two lists of victims. The first is an anonymised list, devoted to 1.012 victims of sexual violence and forced conscription. The second contains 11,991 victims named in TRC statements. See: TRCSL, *Witness to Truth*, Vol. II, pp. 273-503. All the data were further progressed in a statistical report: TRCSL, *Witness to Truth, Appendix 1; Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone A Report by the Benetech Human Rights Data Analysis Group to the Truth and Reconciliation Commission* (5 October 2004).

find their immediate way back to the agents sharing their narratives and information, the population at large. It took a whole year before the report was publicly distributed because it was sent back to the Ghanaian printer because of typographical errors.²¹⁰³ Since August 2005, the report was available on a specially designed website, but considering the quality and pricing of internet access in Sierra Leone as well as the level of ‘online-literacy’ one can assume that it was not consulted much. Besides this voluminous report – almost 4,000 pages²¹⁰⁴ – the commission produced a video report,²¹⁰⁵ a children’s version,²¹⁰⁶ and a ‘comic’ version for secondary school students,²¹⁰⁷ bearing in mind the high rate of illiteracy in Sierra Leone.²¹⁰⁸ Combined, these reports shed as much light as possible on the different facets of the civil war and its previous history, but the commission, from the start did not profess to be all-embracing: “the commission endeavoured to produce an authentic and truthful account of the conflict. The commission does not claim to have produced the complete or exhaustive historical record of the conflict”.²¹⁰⁹ When reflecting on its own narrative, the commission concluded that factually, it was “the most thorough account of the conflict that has been produced” and that besides “the sheer volume of these [personal narratives] accounts provided a complex, multi-layered vision of the conflict”.²¹¹⁰ The ‘narrative’ truth thus made a powerful contribution to the picturing and imagining of the conflict. Although these personal stories do not necessarily carry the factual truth, claimed the commission, the totality of the statements provided a full image of the past. In addition, the commission held the opinion that by its public hearings it had contributed to the establishment of a kind of ‘social truth’; “the discrediting of lies about the past through dialogue.” Finally, the public acknowledgement of people’s pain and suffering throughout the process has laid the groundwork for healing, restoration, and the “quest for reconciliation”.²¹¹¹

The first volume further deliberates on the mandate, the commission’s history, concepts, and procedures. It also contained a report evaluating the operational phase wherein the commission did not shun self-criticism by stating that it “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”.²¹¹² Nevertheless, the commission was able to congregate enough information to write a comprehensive account of the conflict in the

²¹⁰³ United Nations Mission in Sierra Leone (UNAMSIL), ‘UNAMSIL Human Rights Launches Distribution of TRC Report’, *UNAMSIL Press Release*, 9 August 2005.

²¹⁰⁴ In addition to the report, the commission issued five appendices. One provides a statistical report; two others contain submissions made to the TRC and transcripts of public hearings. The last two are concerned with memorials and mass graves and amputations.

²¹⁰⁵ TRCSL, *Witness to Truth: A Video Report and Recommendations from the TRC of Sierra Leone* (2004). This 55 minutes’ video-report was produced by the NGO WITNESS, which was invited by the TRC in late 2003 to produce a video accompaniment to the report. Featuring astonishing testimony given before the Commission, *Witness To Truth* summarises the report’s key findings and recommendations, highlighting the causes and consequences of the war, raising public awareness of the TRC’s peace-building efforts throughout the country, and encouraging civil society in Sierra Leone and beyond to hold the government accountable for implementing the binding recommendations issued by the TRC. The video report is for sale on the WITNESS website: http://www.witness.org/squirrelcart/store.php?cm=216&rn=357&action=show_detail (last visit: 17 October 2007).

²¹⁰⁶ TRCSL, *Truth and Reconciliation Commission Report for the Children of Sierra Leone. Child Friendly version* (Freetown 2004). This report was made possible with the help of UNICEF, who provided for the design and printing of the child friendly version of the Commission’s Report.

²¹⁰⁷ TRCSL, *TRC Report: A Senior Secondary School Version* (Freetown 2005). This report was produced by the Truth and Reconciliation Working Group and funded by the Foreign Office and the Institute for Foreign Cultural Relations of the Federal Republic of Germany.

²¹⁰⁸ In 2004 the adult literacy rate was a little over 35 % and was projected to increase to almost 50 % in 2015. See: UNESCO Institute for Statistics (UIS), *Adult and Youth Literacy. National, regional and global trends, 1985-2015* (Montreal: IUS, June 2013), p. 116.

²¹⁰⁹ *Overview of the Sierra Leone Truth & Reconciliation Report* (November 2004), p. 3.

²¹¹⁰ TRCSL, *Witness to Truth*, Vol. I, p. 83.

²¹¹¹ *Ibidem*, pp. 83-84.

²¹¹² TRCSL, *Witness to Truth*, Vol. I, p. 9.

second and third part of its report.²¹¹³ The second volume contains the most important findings concerning the roles played by respectively governments, groups, factions, and individuals.²¹¹⁴ At the end of sub-conclusion, the names and positions of persons found to have been its key office-holders are listed. In circumstances where a finding related to the actions of the government, faction or group in question, those office-holders were held responsible, by ‘implication’.

In terms of truth finding, the report has essential limitations. First, considering the *factual, forensic or microscopic truth*, the commission, through thousands of interviews, independent research, study of documents, and statistical analysis of a comprehensive database, contributed largely to the completion of a portrait of the conflict as provided earlier by journalists, UN reports, individual researchers and NGOs. Until present, the TRC conducted the largest investigation into the history of Sierra Leone ever and in many respects indeed, the commission has “let the chips fall where they may,” and established crucial facts.²¹¹⁵ Second, in terms of personal and narrative truth, the many individual accounts gradually contributed to the more general ‘impartial historical record’ that the TRC was to establish. Next to a history of battles, military leaders and political parties, the witness testimony knitted together a narrative of human suffering, emotions and visions. Although the report merely uses the narrative truth in its report and only selectively highlights quotations from testimony through its macro historical analysis, the transcripts and videos of the hearings form a separate source on the experiences and stories about the past. Thirdly, regarding the most dubious form of truth, *healing and restorative truth*, it can be said that at least the commission acknowledged what had happened, despite the fact that the violence was carried out in plain daylight. Fourth, in terms of social truth, or rather a commonly held perspective on the past, the TRC was able to bring together all factions of society to debate the past. Remarkably enough – and confrontations on factual details and experiences aside – a high level of consensus emerged about the nature of the conflict.

Causes of the Conflict and Remedies

While there were many factors, both internal and external, that explain the cause of the civil war, the Commission came to the conclusion that it was years of bad governance, endemic

²¹¹³ See for a discussion on the report writing process: ‘Shaping the Final Report: Working Presentations’ (www-text: <http://www.sierraleonetr.com/index.php/video-photos/shaping-the-final-report-working-presentations>, visited: 20 September 2016).

²¹¹⁴ The findings chapter sets out the conclusions and findings in relation to the following topics and themes: a. Causes of the Conflict; b. Nature and Characteristics of the Conflict; c. Perpetrator Responsibility; d. Military and Political History of the Conflict; i. Revolutionary United Front (RUF); ii. Sierra Leone Army (SLA); iii. National Provisional Ruling Council (NPRC); iv. Armed Forces Revolutionary Council (AFRC); v. Sierra Leone People’s Party Government (SLPP); vi. Civil Defence Forces (CDF); e. External Actors; i. Libya; ii. Charles Taylor and the National Patriotic Front of Liberia (NPFL); iii. United Liberation Movement for Democracy (ULIMO); iv. Economic Community of West African States (ECOWAS) and ECOWAS Ceasefire Monitoring Group (ECOMOG); v. United Kingdom; vi. Executive Outcomes; vii. United Nations and the International Community; f. The Judiciary, the Rule of Law and the Promotion of Human Rights; g. Youth; h. Children; i. Women; j. Mineral Resources; k. TRC and the Special Court for Sierra Leone.

²¹¹⁵ TRCSL, *Witness to Truth*, Vol. I, 83.

corruption and the denial of basic human rights that created the deplorable conditions that made conflict inevitable. [...] ²¹¹⁶

In summary, ²¹¹⁷ the commission found that the conflict and the post-independence period reflected a failure of leadership of the government, public life and civil society, which was mainly due to the colonial ‘divide and rule’ strategies. The post-colonial successive political elites were responsible for the fundamental roots of the war: endemic greed, corruption, and nepotism leaving the nation deprived and impoverished as these they plundered the country’s assets and mineral riches. The exploitation of diamonds according to the Commission, however, did not cause the conflict, as many believed. This lawless context provided the breeding grounds for rebels to unleash war wherein the hopeless and disillusioned youths were exploited to avenge the ruling elite. In particular, the commission found that Charles Taylor and Foday Sankoh, played pivotal roles in bringing the mayhem to Sierra Leone. The subsequent war that specifically targeted civilians with indiscriminate violence, was waged by Sierra Leoneans against Sierra Leoneans and broke long-standing rules, besmirched respected traditions, violated human respect, and tore apart the fundamental fabric of society. Although the bulk of victims were adult men, perpetrators particularly singled out and targeted women and children who were abducted for recruitment, raped, forced into sexual slavery, and physically and mentally tortured. The commission held the leaderships of all the armed groups to the conflict responsible for either authorising or instigating these human rights violations; failing to stop these abuses or to speak out against them; and for failing to acknowledge the atrocities committed by their followers. The commission found the RUF to have been responsible for most of the human rights violations in the conflict. Moreover, the TRC found that the governments since the outbreak of violence in 1991 neglected to protect its civilians stated that the SLPP government must bear responsibility for the excesses committed by the CDF for failing to stop and address violations. ²¹¹⁸ The causes of conflict, the Commission concluded, had still not been adequately addressed at the background of persisting elitist politics, corruption, nepotism, and bad governance in general: “they are potential causes of conflict, if they remain unaddressed”. ²¹¹⁹ On that basis, the commission

²¹¹⁶ Omitted text: “The Commission commenced its primary findings with the conclusion that the conflict and the independence period preceding it, represented the most shameful years of Sierra Leone’s history. These periods reflected an extraordinary failure of leadership on the part of many of those involved in government, public life and civil society. No enlightened and visionary leaders emerged to steer the country away from the slide into chaos and bloody civil war, the Commission concluded. [...] The story of the war encapsulated in the TRC Report reveals how Sierra Leoneans were denied their humanity [...] According to the TRC Report the overwhelming majority of atrocities were committed by Sierra Leoneans against Sierra Leoneans; all the fighting factions targeted civilians, especially women; and Sierra Leone was systematically plundered and looted by all factions in the conflict. [...] The Commission found that the desire to acquire and exploit diamonds was not the cause of the conflict in Sierra Leone; rather it was an element that fuelled the conflict. Diamonds and other mineral resources were used by each of the factions to finance and support their war efforts. [...] The Commission found that former Liberian President Charles Taylor and the National Patriotic Front of Liberia (NPFL) played key roles in bringing the bloody conflict to Sierra Leone. It calls on Liberia to make symbolic reparation to Sierra Leone. It also calls on Libya, which was found to have provided support to the insurgents, to make financial contributions to the War Victims Fund specifically called for by the TRC Report as well as the 1999 Lomé Peace Accord. The Commission laments the fact that the international community, apart from the ECOWAS states, declined to intervene in the unfolding human catastrophe in Sierra Leone until at a very late stage. [...] The Commission found that women and girls suffered uniquely during the conflict. They were raped, forced into sexual slavery and endured acts of sexual violence. [...] The TRC Report also mentioned that Children were singled out for some of the most brutal violations of human rights recorded in any conflict. A pernicious strategy came to characterize the Sierra Leone conflict, whereby most of the factions forced children into combat.” TRCSL, *Summary of the Findings and the core Recommendations of the Sierra Leone Truth & Reconciliation Commission (TRC)* (2004).

²¹¹⁷ After having discussed in detail, the: “Historical Antecedents to the Conflict”; “Governance”; “The Military and Political History of the Conflict”; “Nature of the Conflict”; “Mineral Resources, their Use and their Impact on the Conflict and the Country”; “External Actors and their Impact on the Conflict”; “Women and the Armed Conflict in Sierra Leone”; “Children and the Armed Conflict in Sierra Leone”; and “Youth”. TRCSL, *Witness to Truth*, Vol. II & TRCSL, *Witness to Truth*, Vol. III.

²¹¹⁸ TRCSL, *Witness to Truth*, Vol. II, pp. 26-29.

²¹¹⁹ TRCSL, *Witness to Truth*, Vol. II, p. 29.

brought up a comprehensive set of short-term, long-term and ‘optional’ recommendations,²¹²⁰ “designed to facilitate the building of a new Sierra Leone based on the values of human dignity, tolerance and respect for the rights of all persons, [...] intended to help create an open and vibrant democracy in which all are treated as equal before the law [and to] assist the people of Sierra Leone to rise above the bitter conflicts of the past, which caused unspeakable violations of human rights and left a legacy of dehumanisation, hatred and fear.”²¹²¹

Because of the delayed publication of the four-volume final report, people often said they had not received any of their findings.²¹²² Despite this fact, there were high expectations on how the government would implement the recommendations. These relative positive prospects, however, were soon reversed when the government responded to the report in June 2005, rejecting many of its recommendations in a 17-page policy document, the so-called *White Paper*. It stated that the government “accepts in principle” the findings on reparations and will implement these “subject to the means available”.²¹²³ Many civil society and human rights observers were profoundly frustrated with this “vague and noncommittal”, “hastily prepared” document on which a coalition of citizens groups commented that it failed to establish a timeline for implementing measures like reparations for war victims, was largely devoid of concrete steps to improve governance or address corruption, and in some cases rejected recommendations, such as the abolition of the death penalty.²¹²⁴ The *White Paper* was also criticised for serious lacking of political will and that it was primarily issued to appease the international (donor) community.²¹²⁵ In addition, many war casualties lamented the government’s commitment to the TRC recommendations, as reparations for amputees and victims -including free health care and monthly pensions – were one of these.²¹²⁶ Despite continuing pressure²¹²⁷ and

²¹²⁰ The recommendations are divided in several categories: protecting human rights; establishing the rule of law; reorganising Security Services; promoting good governance and the fighting of corruption. Besides, there are recommendations regarding children, youth, women, external actors, and mineral resources. Concerning the TRC itself, recommendations on the relationship with the Special Court, reparations, reconciliation, a national vision for Sierra Leone, archiving of documentation, dissemination of the report and a follow-up committee are made. TRCSL, *Witness to Truth*, Vol. I, pp. 123-225.

²¹²¹ TRCSL, *Witness to Truth*. Vol. I, p. 117.

²¹²² Edward Sawyer & Tim Kelsall, ‘Truth versus Justice? Popular views on the Truth and Reconciliation Commission and the Special Court for Sierra Leone’, *Online Journal of Peace and Conflict Resolution*, No. 7.1 (2007), pp. 36-68; 46, note 32.

²¹²³ Government of Sierra Leone, *White Paper on the Report of the Truth and Reconciliation Commission*, Freetown, 27 June 2005. The white paper said it “accepts in principle” the TRC’s findings and recommendations, adding, “the government will use its best endeavours to ensure the full and timely implementation of various reparation programmes recommended by the commission, subject to the means available to the state [...]”.

²¹²⁴ ‘Sierra Leone: Civil society criticises “vague” government plan for post-war reform’, *IRIN*, 13 July 2005. (IRIN (Integrated Regional Information Networks (www.irin.org)) is part of the UN Office for the Coordination of Humanitarian Affairs, but its services are editorially independent.

²¹²⁵ ‘Sierra Leone: Civil society’.

²¹²⁶ ‘Sierra Leone: Civilian war casualties urge government to provide reparations’, *IRIN*, 15 September 2005.

²¹²⁷ By November 2005, in a response to the government’s claim that it lacked expert drafting abilities, the NGOs WITNESS and the ICTJ had prepared draft legislation, the ‘TRC Recommendations Omnibus Bill’ - for the implementation of the recommendations. The Bill, containing provisions for the enactment of the key imperative recommendations, was circulated among senior law officers, parliamentarians, donor representatives, and government members but the government never claimed ownership over the Bill, nor committed itself to pass it through parliament. In the meantime, the National Commission for Social Action (NaCSA), the governmental agency identified by the TRC to implement its recommendations on reparations, has been working on a reparations programme. A Special Fund for War Victims, however, has not been put in place yet since the government constantly met financial and practical obstacles. Also before and during the last elections the implementation of the TRC recommendations came to forefront as many human rights organisations and other stakeholders urged the candidates to address the TRC recommendations. The Sierra Leonean watchdog Sierra Leone Court Monitoring Programme (SLCMP) even made a useful comparison of the party manifesto’s regarding the recommendations. See: ICTJ, *Sierra Leone: Peacebuilding Priorities in the Sphere of Transitional Justice. Submitted to the UN Peacebuilding Commission by the International Center for Transitional Justice* (27 February 2007), p. 5; REDRESS, *Implementation of the Sierra Leone Truth and Reconciliation Commission Recommendations on Reparations. Preliminary options Report* (30 January 2007); Sylvanus Joe Fannah, ‘National Challenges in Ensuring Reparations for Victims. Implementing Reparations for Victims in the Context of Societal Transition and Development: Challenges for Sierra Leone’, *Lecture presented during the: Conference on Reparations for victims of genocide, crimes against humanity and war crimes: Systems in place and systems in the making. The Peace Palace, The Netherlands. 1-2 March 2007* (2 March 2007); Sierra Leone Court Monitor Program (SLCMP), ‘Elections 2007: A Comparison of Party Manifestos Against the Core Recommendations of the Truth and Reconciliation Commission’, 28 July 2007.

promises by president Ernest Bai Koroma (APC)²¹²⁸ who promised his government would establish a TRC Follow-Up Committee,²¹²⁹ none of the recommendations has been implemented so far.

“Thin knowledge”

In line with the criticisms on the Sierra Leonean government to implement the TRC’s recommendations, there is much controversy on the TRC’s process itself. As mentioned there was a lot of discontent among the population and the Commission itself on the substantial lack of funding and the subsequent slow process of starting-up. The budgetary and staffing calamities seriously hampered the course of action and the credibility of the commission.²¹³⁰ The TRC for these reasons, according to Dougherty, came too late. By the point the commission began taking statements, the DDR programme had already reintegrated ex-combatants into society.²¹³¹ Moreover, the lack of funds had forced the commission to cut on its information campaign, while the sensitisation of the population was crucial for the TRC’s success. Awareness among the Sierra Leoneans about the meaning of the TRC’s work was poor. In an early opinion poll on the understanding of the TRC in January 2003, the *Campaign for Good Governance* concluded that 74 % of the respondents had heard of the Commission, while only 17 % indicated that they understood the purpose of the Commission.²¹³² The majority of the respondents who had knowledge about the TRC (71 %) heard about it on the radio. Although the representativeness of the poll can be questioned, because first, the percentage of literate respondents (57 %) was relatively high in relation to the national literacy rate, and second, because the poll was held before the TRC started hearings - it can be concluded that most people knew about the TRC but only a minority clearly understood what its function was.²¹³³

In a later study – conducted in July and August 2005 in Freetown and the Western Area, Tokolili, and Kenema – by Edward Sawyer and Tim Kelsall, 90 % indicated that they had heard of the TRC of which only 10 % had a good understanding of the institution against 52 % with poor understanding.²¹³⁴ Amadu Sesay’s statistics, based on research in Freetown in early 2006, do not significantly differ from these figures as he concluded that, except for 17, 7 % of the public, in total 93, 8 % of the respondents were aware of the existence of the TRC.²¹³⁵ The higher number of awareness in Freetown is probably due to the fact that most of the publicity was centred in Freetown. Although Sesay does not provide figures on the understanding of the TRC, the three surveys show an upward number of people who heard about the TRC. Nevertheless, the figures also tend to show that

²¹²⁸ Ernest Bai Koroma, leader of the All People’s Congress (APC), was elected President on 17 September 2007. Pauline Bax, ‘Sierra Leone kiest onbekende tot president’ *NRC Handelsblad*, 18 September 2007. It is interesting to read Koroma’s submission to the TRC – as leader of the APC – wherein he took the opportunity to use the TRC platform to criticise Kabbah’s SLPP for their wrongdoings during the conflict and did not necessarily address issues of reconciliation. He did, however, call for reparations for the victims of war and for review of the death penalty. TRCSL, *Witness to Truth*, ‘Appendix 2’, pp. 1189-1196.

²¹²⁹ ‘Sorie Sudan Sesay, ‘Koroma delivers first address to parliament’, *The Patriotic Vanguard*, 6 October 2007.

²¹³⁰ ICG, ‘Sierra Leone’s Truth and Reconciliation Commission’. & Hayner, *Reviewing the first year*.

²¹³¹ Dougherty, ‘Searching for Answers’, p. 48.

²¹³² 47 % stated that understood the purpose partially and 36 % had no understanding. See: Campaign for Good Governance (CGG), *Opinion Poll Report on the TRC and the Special Court* (Freetown 2003), p. 10.

²¹³³ CGG, *Opinion Poll*, 8.

²¹³⁴ Sawyer, ‘Truth vs. Justice?’, pp. 41-45.

²¹³⁵ Sesay, *Does one size fit all?*, p. 34.

the Commission's popularity was higher after its work than during the process itself. Notwithstanding the relative high awareness figure, it is expedient to relate on the views of Sierra Leoneans on their expectations of the TRC and whether these expectations were met. Sawyer and Kelsall concluded that there is quite some discrepancy in how successful Sierra Leoneans thought the Commission was in reaching its aims. Due to the poor understanding of its work, due to the fact that information on the performance of the TRC was hard to come by or to interpret, and because many were distant from it, there is a high level (42 %) of people 'not knowing' how successful the commission had been in reaching its aims.²¹³⁶ 34 % found the commission 'quite successful' against 9% who thought the TRC not successful. Only 15 % found that the commission was very successful.²¹³⁷ Concluding, Kelsall and Sawyer's findings showed that the TRC had broad public support, although actual knowledge about the institution was thin. A possible reason, that may have confused Sierra Leoneans from all walks of life about what the TRC was there to for, was the presence of the Special Court for Sierra Leone. Some field investigators had changed jobs from the TRC to the SCSL or had been ambiguous as for which institution they were working.²¹³⁸ Popular rumours held that there was even an underground tunnel that connected the two transitional justice institutions, which were both based at Jomo Kenyatta Road in Freetown. It would be no surprise if many Sierra Leoneans were not able to distinguish between the roles of the two bodies: they both dealt with impunity; they both addressed accountability for war-time atrocities; they both focussed on violations of international humanitarian law; they both sent investigators into the field; they both heard testimony from witnesses; and they both made promises in terms of justice, truth and reconciliation.

5.5 'Hybrid' justice: The Special Court for Sierra Leone

The Special Court started because Sierra Leoneans asked the world to help them try those people who are alleged to bear the greatest responsibility for crimes that occurred during the recent war. The international community answered that call because they believed that only by holding people accountable will Sierra Leone truly know lasting peace."²¹³⁹

Notwithstanding efforts from both the TRC and the SCSL to overtly expound their exceptional and autonomous roles in Sierra Leone,²¹⁴⁰ many perpetrators had been loath to appear before the truth commission out of fear that prosecutors would hear their public testimony and pursue them for criminal inquiry. "The Commission's ability to create a forum of exchange between victims and perpetrators was unfortunately retarded by the presence of the Special Court," concluded the TRC.²¹⁴¹ Possibly, the existence of a truth-seeking mechanism and a prosecutorial mechanism at the very same time disadvantaged the truth-finding expenditure of both institutions in practical terms. A question

²¹³⁶ Sawyer, 'Truth vs. Justice?', p. 46.

²¹³⁷ Idem.

²¹³⁸ TRCSL, *Witness to Truth*, Vol. IIIB, pp. 377-378.

²¹³⁹ SCSL & No Peace Without Justice Sierra Leone, *Wetin Na Di Speshal Kot? The Special Court made Simple* (Freetown 2003), p. 7.

²¹⁴⁰ SCSL, OTP, 'TRC Chairman and Special Court Prosecutor Join Hands to Fight Impunity', *Press Release* (Freetown, 10 December 2002).

²¹⁴¹ TRCSL, *Witness to Truth*, Vol. IIIB, p. 378.

that ascends is also whether the tribunal, with its selective and retributive style of investigation, established any kind of historical record. In the coming sections an attempt to an answer will be formulated. From the outset, while doing so, it is central to keep in mind that the SCSL started off on a different proposition than the TRC. On the one hand, the truth commission was seeking, on the balance of probabilities, answers to broad open questions as to the causes and nature of the conflict (context) in relation to key players, factions and society at large in the conflict [collective agency]. Prosecutors, on the other hand, set out to prove, beyond any reasonable doubt, elements of specifically-framed charges against leading figures in a criminal context, including Foday Sankoh and Charles Taylor [individual agency]. Yet, before going into detail, I will introduce the court, the court's history and the court's trials.

Next to the experiment of the South-African styled TRC, Sierra Leone experimented with new type of international criminal justice, one that was different from the UN-tribunal that dealt with the genocide in Rwanda. Different from the UNICTR, that was strictly international but blocked participation of Rwandan judicial staff, the international community sought to merge international and local realms, creating “products of judicial accountability sharing between the states in which they function and international entities, particularly the UN”.²¹⁴² Building on experiences East Timor²¹⁴³ and Kosovo,²¹⁴⁴ Sierra Leone was the situation in which a new type of ‘hybrid’ tribunal²¹⁴⁵ was established.²¹⁴⁶ But like the TRC that was to unravel the causes of the war, ideas about criminal prosecution of crimes committed in Sierra Leone were already shaped in late 1999 and diplomacy for a court started in May 2000.²¹⁴⁷ The arrest of Foday Sankoh by British troops a couple of weeks later²¹⁴⁸ shaped the confidence that if such a tribunal were to be established, at least one suspect was already in custody for trial. Pierre-Richard Prosper,²¹⁴⁹ the former American prosecutor that had led

²¹⁴² Etelle R. Higonnet, ‘Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform’, *Arizona Journal of International and Comparative Law*, No. 2 (2006), p. 352.

²¹⁴³ The *Serious Crimes Panels of the District Court of Dili*, dealt with the brutal East-Timorese independence struggle from Indonesia in 1999. UNGA, *Report on the joint mission to East Timor undertaken by the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, the Special Rapporteur of the Commission on the question of torture and the Special Rapporteur of the Commission on violence against women, its causes and consequences, in accordance with Commission resolution 1999/S-4/1 of 27 September 1999 (A/54/660; 10 December 1999)*; United Nations Transitional Administration in East Timor (UNTAET), *Organization of Courts in East Timor*, (UNTAET/REG/2000/11; 6 March 2000). For a discussion: M. Cherif Bassiouni, *International Criminal Law. Third Edition. Volume III: International Enforcement* (Leiden: Martinus Nijhoff Publishers, 2008), pp. 175-181.

²¹⁴⁴ In the wake of the devastating 1999 ethnic conflict in Kosovo the United Nations Mission in Kosovo (UNMIK) created the so-called “Regulation 64” *Panels in the Courts of Kosovo*. United Nations Interim Administration Mission in Kosovo (UNMIK), *Appointment and Removal from Office of International Judges and International Prosecutors*, (UNMIK/REG/2000/6; 15 February 2000) & UNMIK, *On Assignment of International Judges/Prosecutors and/or change of venue*, (UNMIK/REG/2000/64; 15 December 2000).

²¹⁴⁵ Other hybrid courts followed in Cambodia, Iraq, Bosnia, Lebanon, Chad, Kosovo and the Central African Republic. At the time of writing, ideas, discussions or negotiations are underway for akin courts for the Democratic Republic of the Congo, Burundi, Sri Lanka, South Sudan, Central African Republic and Syria. *Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea* (NS/RKM/1004/006; Phnom Penh 10 August 2001 & *Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodia Law of Crimes Committed During the Period of Democratic Kampuchea* (A/RES/57/228B; 13 May 2003); *Statute of the Iraqi Special Tribunal*; BiH Official Gazette.: 61/04 (*Law on Amendments to the Law on the Court of BiH*; *Law on Amendments to the Law of the Prosecutor's Office of BiH*; *Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Admissibility of Evidence Collected by ICTY in Proceedings before the Courts in BiH*; *Law on Amendments to the Law on Protection of Witnesses under Threat and Vulnerable Witnesses*; and *Law on Amendments to the BiH Criminal Code*; UNSC, *Resolution 1757 (S/RES/1757: 30 May 2007)*; *Accord entre de Gouvernement de la République du Senegal et l'Union Africaine sur la Creation de Chambres Africaines Extraordinaires au sein des Jurisdictions Senegalaises* (Dakar, 22 August 2012); Republic of Kosovo, *Law No.05/L-053, On Specialist Chamber and Specialist Prosecutor's Office* (3 August 2015); UNSC, *Resolution 2217 (S/RES/2217; 28 April 2015)*, pp. 11-12.

²¹⁴⁶ The Special Court for Sierra Leone was closed in December 2013. Since then, it was morphed into the Residual Special Court for Sierra Leone (RSCSL), tasked with continuing legal work, including witness protection, supervision of prison sentences and management of the SCSL archives. See: Government of Sierra Leone, ‘The Residual Special Court for Sierra Leone Agreement’, *Supplement to the Sierra Leone Gazette*, Vol. CXLIII, No. 6 (Freetown, 1 February 2012).

²¹⁴⁷ Scheffer, *All the Missing Souls*, p. 321.

²¹⁴⁸ Norimitsu Onishi, ‘Neighbors Grab Fugitive Rebel in Sierra Leone’, *New York Times*, 18 May 2000.

²¹⁴⁹ A lawyer, who would later succeed David Scheffer as Ambassador-at-large for War Crimes from 2001 to 2005.

the prosecution of Akayesu at the UNICTR, was sent to Freetown to discuss the matter with President Kabbah, who preferred a Security Council tribunal. But the court's protagonists, in particular administrators from the USA and the UK, were not envisioning another lavish legal bureaucracy, like the UN tribunals for the former Yugoslavia and Rwanda. Alternate proposals to proliferate the UNICTR's instruction to include the Sierra Leonean war successively stranded. By then, USA diplomats, headed by 'ambassador at large for war crimes' David Scheffer, drafted a charter for a special court. It would be locally based but supported internationally, financed on a voluntary basis.²¹⁵⁰ But Kabbah was swift to plea for a UN-tribunal. On 12 June 2000, when the groundwork for Sierra Leone's Truth and Reconciliation Commission was already being laid, he sent UN Secretary General Kofi Annan a letter advising him to "initiate a process whereby the United Nations would resolve on the setting up of a special court for Sierra Leone" for the "purpose of such a court is to try and bring to credible justice those members of the Revolutionary United Front (RUF) and their accomplices responsible for committing crimes against the people of Sierra Leone and for the taking of United Nations peacekeepers as hostages".²¹⁵¹ Attached to his memo was a proposed charter for the Special Court for Sierra Leone, practically identical to the USA's design.²¹⁵² Against the background of revitalised bloodshed in May, the Sierra Leonean administration found that the setting up of an extraordinary tribunal would be the most muscular approach to bring and to sustain amity and security in Sierra Leone and the West African sub region.²¹⁵³ Following the call for assistance, a UN information-gathering mission journeyed to Freetown to examine Kabbah's appeal and determined that an apparent preference was expressed for a national court with a strong international component. It was also decided that, consistent with the reservation entered by the United Nations at the signing of the Lomé Agreement, that the subject-matter power of the court should include international crimes such as genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. At the same time, crimes under national law would not be excluded.²¹⁵⁴

On 14 August 2000, the Security Council conclusively answered to the Sierra Leonean cry for aid, "recognizing" that a trustworthy organism of justice and accountability for the atrocities would help "end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace" in Sierra Leone.²¹⁵⁵ The Council evoked the reservation to the amnesty provisions for international crimes of the Lomé Agreement and requested the Secretary-General to discuss an accord with the Sierra Leonean establishment to erect an autonomous special court.²¹⁵⁶ In the subsequent months negotiations with the government were conducted and focused on the legal construction and constitutive apparatus of the tribunal: a treaty-court and a governing

²¹⁵⁰ Scheffer, *All the Missing Souls*, pp. 322-325.

²¹⁵¹ Kabbah's letter is attached to: UNSC, *Annex to the letter dated 9 August 2000*

²¹⁵² UNSC, *Annex to the letter dated 9 August 2000*.

²¹⁵³ *Idem*.

²¹⁵⁴ UNSC, *Fifth report of the Secretary-General on the United Nations Mission in Sierra Leone (S/2000/751; 31 July 2000)*.

²¹⁵⁵ UNSC, *Resolution 1315 (S/RES/1315; 14 August 2000)*, preamble.

²¹⁵⁶ UNSC, *Resolution 1315*.

statute.²¹⁵⁷ It took a while for the actual materialisation of the tribunal to commence, but by January 2002, a UN Planning Mission²¹⁵⁸ prepared the work of the court and signed the formal establishing agreement during a ceremony on 16 January.²¹⁵⁹ This signing took place two days before President Kabbah declared the official end of the war. In April 2002, the legislation to enable the effective operation of the Special Court for Sierra Leone was adopted by parliament.²¹⁶⁰

Paramount to observe is the fact that the Special Court for Sierra Leone was created amidst growing international cynicism towards the UN tribunals for their unhurried advancement, sky-scraping costs, their distance to the crime scenes and lack of outreach to victims.²¹⁶¹ Thus, from the start, the debates on the erection of a new court therefore focused on reducing budgets, minimising the court's scope and streamlining its operations.²¹⁶² Among the principal hurdles however was the question of how the new criminal body would be financed.²¹⁶³ As the Security Council was reluctant to compel its members to pay for it – as was the case already for the UNICTY and UNICTR – it proposed to establish the court by bilateral agreement that provided for voluntary funding. Consequently, the Special Court relied on a charitable funding mechanism overseen by the so-called Management Committee comprising the largest donors to the court.²¹⁶⁴ As a consequence, the court faced struggles to secure funding throughout its lifespan and situations of near bankruptcy.²¹⁶⁵ Another – rather political - issue was the United States' antagonism to the International Criminal Court in The Hague and a number of observers expressed that the sturdy US support for the SCSL has been enthused by the aspiration to exhibit an alternate – hybrid - mechanism. The Sierra Leonean tribunal was subsequently soon also accused of being an US instrument because of its prominent role in the establishment, funding and leading role in the Office of the Prosecutor (OTP) and other branches in the court structure.²¹⁶⁶ The latter was resolved with a reduction of the US positions in the OTP.²¹⁶⁷ Financially, however, the SCSL remained highly troubled by insufficient funding.²¹⁶⁸

In the end, the court was given the power to prosecute those individuals “who bear the greatest responsibility” for serious violations of international humanitarian law²¹⁶⁹ and Sierra Leonean

²¹⁵⁷ *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone* (S/2000/915; 4 October 2000). This report also contains the drafts of the Special Court Agreement and the Statute.

²¹⁵⁸ UNSC, *Report of the Planning Mission on the establishment of the Special Court for Sierra Leone* (S/2002/24; 6 March 2002).

²¹⁵⁹ UNSC, *Report of the Planning Mission*.

²¹⁶⁰ Government of Sierra Leone, *Special Court Agreement, 2002 (Ratification) ACT*, Freetown 25 April 2002.

²¹⁶¹ Alison Smith, 'The Expectations and Role of international and National Civil Society and the SCSL', in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 46-59.

²¹⁶² Tom Perriello & Marieke Wierda, *The Special Court for Sierra Leone under scrutiny* (ICTJ; March 2006), p. 12.

²¹⁶³ Sara Kendall, 'Marketing Accountability at the Special Court', in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 387-405.

²¹⁶⁴ Beth K. Dougherty, 'Right-sizing international criminal justice: the hybrid experiment at the Special Court for Sierra Leone', *International Affairs*, No. 2 (2004), pp. 311-328; 318-319. Among the largest donors are the USA, the UK, and the Netherlands.

²¹⁶⁵ Kendall, 'Marketing Accountability at the Special Court', pp. 387-405.

²¹⁶⁶ Dougherty, 'Right-sizing', 325; ICG, 'The Special Court for Sierra Leone: Promises and Pitfalls of a "New Model"', *Africa Briefing*, No. 16 (Freetown/Brussels, 4 August 2003), pp. 14-18.

²¹⁶⁷ Perriello, *The Special Court for Sierra Leone under scrutiny*, p. 14.

²¹⁶⁸ The court has faced near bankruptcy a few times. In spite of significant budgetary reductions by the court, it continues to experience serious difficulties in securing adequate funding to complete its mandate. This is particularly due to the funding mechanism, which relies solely on the voluntary contributions of the international community. Presently, the court faces a funding gap of \$11.1 million to close the court. SCSL, *Seventh Annual Report of the President of the Special Court for Sierra Leone* (New York September 2010), pp. 35-40.

²¹⁶⁹ Crimes against humanity: Murder; Extermination; Enslavement; Deportation; Imprisonment; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; Persecution on political, racial, ethnic or religious grounds; Other inhumane acts. Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II: Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; Collective punishments; Taking of hostages; Acts of terrorism; Outrages

law²¹⁷⁰ committed in Sierra Leone since 30 November 1996 – coinciding with the signing of the Abidjan Peace Agreement where after large-scale hostilities soon resumed - including those leaders who have threatened the establishment of and implementation of the peace process in Sierra Leone. Unlike Kabbah’s original request to only try Sankoh and the RUF leadership,²¹⁷¹ the Special Court was to prosecute every individual with a leading role in serious crimes committed; in fact the mandate remained silent on the nationality of suspects so that the court could investigate Charles Taylor.²¹⁷² Although the civil war dates back to 1991, in determining a beginning date of the temporal jurisdiction the UN opted for 1996 as it considered that the court’s prosecutor would not be overburdened and the court overloaded. Besides, the beginning date was thought to correspond to an event or new phase in the conflict without specific political connotations and it should encompass the most serious crimes committed by persons of all political and military groups and in all geographical areas of the country.²¹⁷³ Despite the fact that observers lamented the late starting date, the court’s jurisdiction remained silent on when it comes to end, as the Statute does not stipulate an end date.²¹⁷⁴

A controversial provision of the SCSL’s Statute was the court’s jurisdiction over children between 15 and 18, or even younger. Positioned as a “moral dilemma,”²¹⁷⁵ the topic was hotly debated among academics, NGOs and the UN,²¹⁷⁶ but ultimately it was decided that because of the immense number of juvenile offenders of mass violence during the war the clause should be included.²¹⁷⁷ Because of the sensitivity of possible prosecutions of children, the Statute provides that in case of prosecution there should be no imprisonment. Instead, restorative or rehabilitative options are offered: care guidance and supervision, community service, counselling, foster care, correctional, educational and vocational training programmes and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.²¹⁷⁸ At the outset, however, the court’s first prosecutor David Crane (USA) stated that “the children of Sierra Leone have suffered enough, both as victims and perpetrators” and that he was “not interested in prosecuting children. “I want to prosecute the people who forced thousands of children to commit unspeakable

upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; Pillage; The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples; Threats to commit any of the foregoing acts. Other serious violations of international humanitarian law: Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; Conscription or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities. *Statute of the Special Court*, arts. 2-4.

²¹⁷⁰ Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31): Abusing a girl under 13 years of age; Abusing a girl between 13 and 14 years of age; Abduction of a girl for immoral purposes. Offences relating to the wanton destruction of property under the Malicious Damage Act, 1861: Setting fire to dwelling - houses, any person being therein; Setting fire to public buildings; Setting fire to other buildings. *Statute of the Special Court*, art. 5.

²¹⁷¹ Ahmad Tejan Kabbah, *Coming back from the brink Sierra Leone: A memoir* (Accra: EPP Books Services, 2010).

²¹⁷² Scheffer, *All the Missing Souls*, p. 325.

²¹⁷³ *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, pp. 5-6.

²¹⁷⁴ Abdul Tejan-Cole, ‘The complementary and conflicting relationship between the Special Court for Sierra Leone and the Truth and Reconciliation Commission’, *Yearbook of International Humanitarian Law*, No. 5 (2002), pp. 313-330; 321.

²¹⁷⁵ *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, §32.

²¹⁷⁶ See for an overview: Cecile Aptel, ‘The Unpunished Crimes of Child Soldiers’, in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 340-360: 348-350.

²¹⁷⁷ Dougherty, ‘Right-sizing’, pp. 322-323.

²¹⁷⁸ *Statute of the Special Court*, art. 7.

acts.”²¹⁷⁹ Sierra Leoneans and much NGOs who were protecting children’s rights greeted Crane’s decision with great relief.²¹⁸⁰

Setting up court

The tribunal commenced its operations from scratch. There was no appropriate place and so the court had to build its own court —courtrooms, prison facilities and staff offices — in central Freetown on a plot of land donated by the government. Robin Vincent from the United Kingdom was appointed Registrar and David Crane of the United States of America as the Prosecutor. They arrived separately in July and August 2002 with less than half a dozen staff to begin setting up the offices.²¹⁸¹ Eight judges were sworn in in early December.²¹⁸² Until the fortified compound was finished, the first hearing was held in an improvised open-air courtroom at the prison of Bonthe Island, while the prosecutor’s office (OTP) was located in a private villa a few kilometres away. It was not transferred to the permanent premises until August 2003.²¹⁸³

In their report, the Planning Mission emphasised the importance of a well-thought-out Office of The Prosecutor (OTP). It recommended an advance team²¹⁸⁴ to “launch the investigative and prosecutorial process, initiate research on the history of the conflict, take into possession existing evidence from the Sierra Leone Police, UNAMSIL and NGOs and establish an evidentiary basis from which investigations could be launched.”²¹⁸⁵ Yet, fundamentally, the missions’ interim prosecutor and investigators already found that the available evidentiary material was of “limited utility.”²¹⁸⁶ According to them, the only reliable material available was held by the Sierra Leonean police, which pertained exclusively to the period following the 1999 Lomé Agreement, partly because of the decimation of the police force and the destruction of the headquarters of the Criminal Investigation Department by rebel forces in 1999. With few exceptions, therefore, there was “virtually no evidentiary material for the bulk of the crimes committed against the people of Sierra Leone in the decade-long conflict.”²¹⁸⁷ Thus, the paucity of detailed, reliable evidentiary material would place a significant burden on the investigative functions of the Prosecutor.²¹⁸⁸ That was the assessment in early 2002, only months before the actual prosecutor commenced his tasks. Appointed for a three-year term in April 2002, David Crane, a former Pentagon lawyer with a study background in history and

²¹⁷⁹ SCSL, Public Affairs Office, ‘Special Court Prosecutor Says He Will Not Prosecute Children’, *Press Release*, 2 November 2002.

²¹⁸⁰ Dougherty, ‘Right-sizing’, p. 324.

²¹⁸¹ Perriello, *The Special Court for Sierra Leone under scrutiny*, p. 11.

²¹⁸² SCSL, Press and Public Affairs Office, ‘Special Court Judges sworn-in’, *Press Release* (Freetown, 2 December 2002).

²¹⁸³ Eric Stover, Victor Peskin and Alexa Koenig, *Hiding in Plain Sight: The Pursuit of War Criminals from Nuremberg to the War on Terror* (Oakland: University of California Press, 2016), p. 258.

²¹⁸⁴ It should be composed of the Prosecutor, two Trial Attorneys, the Chief of Investigations, the Chief of Evidence, the Evidence Custody Officer, one researcher, three investigators and four support staff. To ensure a rapid deployment, the advance team should include either staff on loan from the two ad hoc Tribunals, or personnel contributed by Governments. UNSC, *Report of the Planning Mission*, pp. 12-13.

²¹⁸⁵ *Idem*.

²¹⁸⁶ *Ibidem*, §26.

²¹⁸⁷ Information of a general nature on crimes committed in Sierra Leone, however, has been collated by the UNAMSIL Human Rights Section, the civilian police and military intelligence, as well as by nongovernmental organizations, Traditional Leaders and churches. In the opinion of the Planning Mission, these were not in a form appropriate for use in court, but such material may be valuable as a lead for further investigations. UNSC, *Report of the Planning Mission*, §26.

²¹⁸⁸ UNSC, *Report of the Planning Mission*, §27.

African affairs,²¹⁸⁹ arrived in Freetown on 6 August 2002.²¹⁹⁰ His office – with the assistance of the Sierra Leonean authorities - was granted the power “to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations.”²¹⁹¹ Crane wanted to move fast and remarkably swiftly assembled an Office of The Prosecutor,²¹⁹² recruiting among his personal connections, former UNICTR and UNICTY staff members, Sierra Leonean expatriates²¹⁹³ and staff from human rights organisations.²¹⁹⁴ Four Sierra Leonean police officers joined the investigations team within the first two weeks of operations to provide local insights and follow leads throughout the process.²¹⁹⁵

Alan White (USA), a close friend and colleague of Crane, was employed as chief investigator, leading a dozen detectives, and made his first rounds through Sierra Leone in July 2002. It was his first time in Africa, but he assumed that war crimes investigations were no different than in any other country. “People are the best source of information and your best source of evidence,” he said, and in “this case, our best evidence is going to be good, credible witness testimony.”²¹⁹⁶ According to him, the “most compelling evidence that you have are the first hand, eye-witness accounts of the atrocities,” and therefore his method was “getting out and talking to people, letting them know what our mission is and soliciting their support. Many Sierra Leoneans wanted this special court; they wanted people to be held accountable. I tell them, 'now is your time to step forward.’”²¹⁹⁷ In the following months, the multicultural investigation team increased to some 20 investigators²¹⁹⁸ alongside almost 50 analysts and lawyers. They included seconded staffs from the UNICTY and UNICTR and interns who, “literally followed the bouncing ball,” were proceeding to trials.²¹⁹⁹ Split in two task forces,²²⁰⁰ on 26 September 2002, investigators cordoned off their first crime scene: a 300 perimeter around a flooded diamond-mining pit in Tombodu in Kono district. Local residents had alleged that the bodies of hundreds of civilians have been dumped there, after being killed in 1998. In other village sites such as houses, numerous human skulls and other remains were found as well, but according to Alan White, these appeared to be tampered with.²²⁰¹ A renowned forensic anthropologist

²¹⁸⁹ CV Professor David M. Crane, available at: http://law.syr.edu/uploads/docs/deans-faculty/2010_CV_-_Crane%2C_David.pdf, visited: 6 May 2015.

²¹⁹⁰ Investigations started 2 weeks after his arrival. David Crane. ‘Dancing with the Devil: Prosecuting West Africa’s Warlords: Building Initial Prosecutorial Strategy for an International Tribunal after Third World Armed Conflicts’, *Case Western Reserve Journal of International Law*, Vol. 37, No. 1 (2005), pp. 1-9: 3.

²¹⁹¹ *Statute of the Special Court for Sierra Leone*, art. 15 (2).

²¹⁹² The Office of The Prosecutor consisted of the Chief Prosecutor, Deputy Prosecutor and encompassed three sections: (1) Investigation (Investigation Team, Intelligence Tracking Team and Crime Scene Investigation Team); (2) Administrative; and (3) Prosecution (Trial Section, Legal Advisory Group and Team Legal Advisors Group). See organisational chart: SCSL, *First Annual Report of the President of the Special Court for Sierra Leone for the Period 2 December 2002-1 December 2003* (Freetown, 2004), p. 34.

²¹⁹³ Thierry Cruvellier and Marieke Wierda, *The Special Court for Sierra Leone: The First Eighteen Months* (ICTJ, March 2004), p. 4.

²¹⁹⁴ For instance, West Africa Researcher Corrine Dufka of HRW. See her testimony: SCSL, *Taylor Transcript* 21 January 2008), pp. 1749-1750.

²¹⁹⁵ Cruvellier & Wierda, *The Special Court for Sierra Leone*, p. 21.

²¹⁹⁶ Charles Cobb Jr., ‘Sierra Leone’s Special Court: Will it Hinder or Help?’, *AllAfrica*, 21 November 2002.

²¹⁹⁷ Cobb, ‘Sierra Leone’s Special Court: Will it Hinder or Help?’.

²¹⁹⁸ They hailed from Sierra Leone, the USA, Canada, Zimbabwe and The Netherlands. Corrine Dufka (HRW), Maxine Marcus (HRW), Louise Taylor (HRW), Brenda Hollis (ICTR/Y). Later, Morie Lengor, from Sierra Leone was added.

²¹⁹⁹ Crane. ‘Dancing with the Devil’, pp. 5-6. The OTP had generally filled top investigator positions with international staff. However, some of the investigators, while experienced in their national systems, were loaned by their home governments often on a short-term basis and are not always well prepared. Sierra Leonean investigators, with better local knowledge and available to work long-term, yet did not fill senior posts. See: Thierry Cruvellier, *From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test* (ICTJ & Sierra Leone Court Monitoring Programme, 2009), p. 32. In 2003, the number of staff members in the OTP – including 47 posts, six Canadian secondees, about nine Sierra Leonean (national police) secondees and two Swiss secondees – rose to a maximum of 64. See: Gregory Townsend, ‘Structure and Management’ in: Luc Reydam, Jan Wouters and Cedric Ryngaert, *International Prosecutions* (Oxford: Oxford University Press, 2012), pp. 171-318: 276.

²²⁰⁰ TF1 focussed on the rebel-side of the conflict: AFRC, RUF and Charles Taylor. The TF1-cases were interrelated and often shared crime base. TF2 focused on the government side to the conflict: the CDF. When the CDF concluded, TF 2 investigators and attorney’s switched to TF1. Gregory Townsend, ‘Structure and Management’ in: Luc Reydam et al., *International Prosecutions*, p. 277.

²²⁰¹ SCSL, Press and Public Affairs Office, ‘Special Court Investigators Cordon off their First Crime Scene’, *Press Release* (Freetown, 27 September 2002).

with global expertise on international crimes, William Haglund, was hired to assist in pathological analysis.²²⁰² He reviewed existing data on latent gravesites already mustered by an Argentinean team that had worked for the TRC and the UN.²²⁰³ In the autumn of 2003, he revisited Sierra Leone to corroborate witness statements, visiting and photographing some 20 burial spots across the country. With the help of local residents and family members he identified four people he had excavated, identifying marks of blunt-force and sharp-force injuries.²²⁰⁴ Yet, aside from the three Argentinians and Haglund's visits to Sierra Leone, no other forensic examinations were shepherded. Whereas the indictments were filed and suspects arrested, investigative teams were frequently deployed up-country and abroad to interview witnesses and collect evidence throughout 2003.²²⁰⁵

Across the board, however, the focus of the OTP investigators was on finding witnesses and collecting statements, mostly from victims (crime base) and perpetrators (insiders).²²⁰⁶ While White spent much time following leads that would bring him Charles Taylor, back in Sierra Leone, Canadian investigator Gilbert Morrisette was flipping over potential 'insider witnesses'. Within the OTP, the "old prosecutorial trick" of flipping potential indictees to testify against their superiors was soon the standard.²²⁰⁷ On that testimonial basis, the first round of investigations that lasted about six months, the first indictments were drawn up, approved and (partially) executed during two targeted missions.²²⁰⁸ Like pursuing the mafia, the investigators went on undercover operations, posing as diamond dealers, in refugee camps to track informants whom they would offer a deal: "testify and you'll be safe. In return, we'll take care of you and your family."²²⁰⁹ All the collected testimonies and witnesses were lined up to lay the evidentiary basis under the four main trials that followed in the court's history. In a record time, the first eight indictments against high-level suspects were issued and confirmed. By the end of June, another four indictments were completed and by November 2003, thirteen persons had been indicted, ten of whom were then already arrested.²²¹⁰ Although the Special Court had indicted high-level individuals, bringing them to actual justice soon proved to be a challenge: Taylor went into exile, Sam 'Mosquito' Bockarie was killed and Johnny Paul Koroma was hiding.²²¹¹ While these three key individuals were either deceased, missing or in exile, suspect

²²⁰² SCSL, Press and Public Affairs Office, 'Forensic Expert Begins Examination of Mass Graves', *Press Release* (Freetown, 25 October 2002).

²²⁰³ At the request of the United Nations Office of the High Commissioner for Human Rights (OHCHR), three members of the Argentine Forensic Anthropology Team conducted a preliminary forensic examination of alleged killing and burial sites in Sierra Leone from 16 June to 12 July 2002. See: Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense, EAAF), *Country Report: Sierra Leone* (2002).

²²⁰⁴ See expert testimony of William Haglund (Witness "TF2-EW3"): SCSL, TCI, *The prosecutor of the special court v. Sam Hinga Norman Moinina Fofana & Allieu Kondewa: Transcript* (SCSL-2004-14-T; 20 June 2005).

²²⁰⁵ SCSL, *First Annual Report*, pp. 14-15.

²²⁰⁶ Author's interview, Corrine Dufka, Telephone, 15 March 2015.

²²⁰⁷ Eric Stover et al., *Hiding in Plain Sight*, p. 261.

²²⁰⁸ The first secret militarily organised arrest mission was planned from September 2002 onwards ("Operation Justice") and executed in 55 minutes in the afternoon of 10 March 2003. The second "psychological operation" ("Operation Rope") was directed at luring Charles Taylor out of Liberia to serve him with an international arrest warrant in order to "blow him off the map." See for a detailed description of both operations the narration by the former SCSL Prosecutor: David M. Crane, 'The Take Down: Case Studies Regarding "Lawfare" in International Criminal Justice: The West African Experience', *Case Western Reserve Journal of International Law*, Vol. 43, No. 1/2 (January 2011), pp. 201-214.

²²⁰⁹ Stover et al., *Hiding in Plain Sight*, p. 261.

²²¹⁰ Foday Sankoh; Issa Sesay, who replaced Foday Sankoh as leader of the RUF; Morris Kallon and Augustine Gbao, senior RUF commanders; Alex Tamba Brima, Ibrahim "Bazzy" Kamara, and Santigie Kanu, senior members of the AFRC; Sam Hinga Norman, Moinina Fofana, Director of War for the CDF; and Allieu Kondewa, Chief Initiator and High Priest of the Kamajors. Three accused were at large, dead, or allegedly dead: Sam "Mosquito" Bockarie, former Battlefield commander of the RUF; Johnny Paul Koroma, and Charles Taylor.

²²¹¹ The Security Council recently sounded a new international alert for Koroma, "*Urging* all States to cooperate with and render assistance to the Special Court for Sierra Leone, or any institution to which the Special Court has transferred his case, to bring Johnny Paul Koroma to justice if he is found to be alive, and

‘number one’, Foday Sankoh, only appeared in court twice, but very sick and incapable to communicate.²²¹² Because of an outstanding travel ban still in place, the court was not in a position to transfer Sankoh to a foreign hospital and he ultimately died on 29 July 2003. “He has been granted the peaceful end that he denied to so many others,” Desmond de Silva, the deputy prosecutor of the court, commented in a statement.²²¹³ His indictment was withdrawn on the same day as Bockarie’s.²²¹⁴

Trial observers at the time, commented, that “with Sankoh and Bockarie dead, Koroma missing, and Taylor out of reach, the Court may be unable to try its four most prominent suspects. Norman by then was the most high profile individual to come before the Special Court.”²²¹⁵ Cynically, Taylor was finally arrested in 2006, but on 22 February 2007 Samuel Hinga Norman, after a routine medical check-up, died in a military hospital in Dakar, Senegal.²²¹⁶ Gberie Lansana, commented that Norman’s death, together with the other two earlier deaths, left the court virtually with empty hands, as all eight left indicted before the court “are virtually unknown, and their fate is of little concern to the public”.²²¹⁷ With only Charles Taylor left as a ‘big fish’, the court’s success rested on this case. The tribunal’s legacy was thus soon scarred by the deaths of its most prominent suspects, leading observers to note “The Special Court doesn’t have a death penalty, but all the big indictees are dying [...] No one quite knows who is left.”²²¹⁸ Notwithstanding these serious hampers, nine suspects were left in the detention centre at the SCSL in Freetown. In January 2004, it was decided to join the trials of all accused in line with the organisations they belonged to with the result that the cases of nine defendants were grouped into three trials of three defendants each.²²¹⁹ Accordingly, the SCSL’s caseload was grouped into one trial each for the RUF, AFRC, and CDF.²²²⁰ At first the prosecution proposed conducting a joint trial of all six alleged RUF and AFRC accused – since they cooperated during the junta period - but judges ruled to try them in separate groups. Although the prosecution’s ‘motion for joinder’ was denied, the charges of the RUF and AFRC indictments are virtually one and the same since both original indictments charged eighteen counts of various crimes committed in nearly identical periods of time and locations.²²²¹ The other - more controversial - case before the court has been the one against alleged members of the Civil Defence Forces (CDF), or Kamajors. The Kamajor hunting societies were widely perceived by most Sierra Leoneans as a powerful resistance

calls on him to surrender. *Calling on all States to cooperate with the International Criminal Police Organisation (INTERPOL) in apprehending and transferring Johnny Paul Koroma, if he is found to be alive.* See: UNSC, *Resolution 1940* (UN-doc: S/RES/1940 (2010); 29 September 2010).

²²¹² SCSL, *The Prosecutor of the Special Court v. Foday Saybana Sankoh: Transcript* (SCSL-2003-02-I; 21 March 2003); SCSL, *The Prosecutor of the Special Court v. Foday Saybana Sankoh: Transcript* (SCSL-2003-02-I; 22 July 2003).

²²¹³ ‘African held for war crimes dies in custody of a tribunal’, *New York Times*, 31 July 2003.

²²¹⁴ SCSL, *Prosecutor against Foday Saybana Sankoh: Withdrawal of indictment* (SCSL-2003-02-PT; 8 December 2003).

²²¹⁵ ICTJ, *The Special Court*, 7.

²²¹⁶ SCSL, ‘Special Court Indictee Sam Hinga Norman Dies in Dakar’ *Press Release*, 22 January 2007.

²²¹⁷ Lansana Gberie, ‘Sierra Leone: What use the Special Court?’, *New African*, No. 461 (2007), pp. 20-21.

²²¹⁸ Somini Sengupta, ‘African held for war crimes dies in custody of a tribunal’, *The New York Times*, 31 July 2003.

²²¹⁹ SCSL, *Second Annual Report of the Special Court for Sierra Leone for the period 1 January 2004 – 17 January 2005* (Freetown 2005), p. 7.

²²²⁰ CDF-case: SCSL, *The Prosecutor against Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa: Indictment* (SCSL-04-14; 4 February 2004); RUF-case: SCSL, *The Prosecutor against Issa Hassan Sesay also known as Issa Sesay, Morris Kallon also known as Bilal Karim, and Augustine Gbao also known as Augustine Bao: Corrected amended indictment* (SCSL-04-15; 2 August 2006). AFRC-case: SCSL, *The Prosecutor against Alex Tanba Brima also known as Tamba Alex Brima also known as Gullit, Brima Bazzy Kamara also known as Ibrahim Bazzy Kamara also known as Alhaji Ibrahim Kamara, and Santigie Borbor Kanu also known as 55 also known as Five-Five also known as Santigie Khanu also known as Santigie Kanu also known as S. B. Khanu also known as S. B. Kanu also known as Santigie Bobson Kanu also known as Borbor Santigie Kanu: Further amended consolidated indictment* (SCSL-04-16; 18 February 2005).

²²²¹ Michelle Staggs & Sara Kendall, *Interim Report on the Special Court for Sierra Leone: From Mandate to Legacy: The Special Court for Sierra Leone as a Model for “Hybrid Justice”* (UC Berkeley War Crimes Studies Center; April 2005), pp. 8-9.

force against the rebels. Samuel Norman was a celebrated hero by many Sierra Leoneans because he was the central player in restoring peace through his efforts in mobilising and coordinating the Kamajor to fight rebel forces. His arrest - Norman at the time was Minister of Interior in the Kabbah government - was widely contested and generated substantial criticism towards the court within the country.²²²² Despite this discontent among many Sierra Leoneans, the court nevertheless proceeded and issued a consolidated indictment, which included eight counts consisting of crimes against humanity and war crimes. In particular, the CDF men were charged with unlawful killings, physical violence and mental suffering, looting and burning, terrorising the civilian population and collective punishments, and recruiting child soldiers.²²²³

²²²² Staggs, *Interim Report*, 10-11.

²²²³ SCSL, *Prosecutor against Samuel Hinga Norman et al.*, §25-29.

5.6 Unfolding the trial narrative

During the trial, the Prosecutor and the Defence will tell the Judges their own version of the facts. The Prosecutor will accuse the indictees of crimes and give all his evidence to the Judges. The indictees will answer the charges with the help of Defence lawyers. Both sides can ask questions and make objections. Both sides are allowed to call witnesses and present evidence. Both sides will try to convince the Judges that they are right. Almost all the testimony is held in public. Trial sessions are closed to the public only when the Judges believe that it is necessary for the security and the safety of witnesses and victims. The judgment that the Judges make in the end is pronounced in public. This means that everyone can find out what is happening during the trials.

– SCSL Outreach²²²⁴

In its lifetime, the two SCSL trial chambers²²²⁵ held four substantive trials for international crimes committed in Sierra Leone, including accused from three warring factions. In addition, several persons were prosecuted for interference with the course of justice, particularly interference with witnesses in the main trials. Below, a cursory overview of the cases is provided, followed by an analysis of the historical narratives which transpired in those trials with a highlighted focus on the major case against Charles Taylor.

The CDF case

May it please this Chamber, Your Honours. On this solemn occasion mankind is once again assembled before an international tribunal to begin the sober and steady climb upwards toward the towering summit of justice. The path will be strewn with the bones of the dead, the mourns of the mutilated, the cries of agony of the tortured echoing down into the valley of death below. Horrors beyond the imagination will slide into this hallowed hall as this trek upward comes to a most certain and just conclusion. The long dark shadows of war are retreated. Pain, agony, the destruction and the uncertainty are fading; the light of truth, the fresh breeze of justice moves freely about this beaten and broken land. The rule of law marches out of the camps of the downtrodden onward under the banners of never again and no more [...] Norman, Fofana and Kondewa, individually or in concert, exercised authority, command and control over all subordinate members of the CDF. Their plan and purpose, and that of their subordinates, was to defeat by any means necessary the Revolutionary United Front (RUF) to include the complete elimination of the RUF and members of the Armed Forces Revolutionary Council (AFRC), their supporters, sympathisers and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone.

- David Crane, Prosecutor²²²⁶

²²²⁴ SCSL, *Wetin Na Di Speshal Kot?*, p. 20.

²²²⁵ Originally, the Special Court had two Chambers – a Trial Chamber composed of three Judges and an Appeals Chamber composed of five Judges. The Trial Chamber consisted of two Judges appointed by the UN Secretary-General and one appointed by the Government of Sierra Leone. The Appeals Chamber consisted of three Judges appointed by the UN Secretary-General and two appointed by the Government of Sierra Leone. Pierre Boutet (Canada), Benjamin Mutanga Itoe (Cameroon) and Rosolu John Bankole Thompson (Sierra Leone) were sworn in to sit as the Trial Chamber. George Gelaga King (Sierra Leone), Emmanuel Ayoola (Nigeria), Justice Renate Winter (Austria), Justice Hassan Jallow (The Gambia) and Justice Geoffrey Robertson (United Kingdom) were sworn in to sit as the Appeals Chamber. The composition of the Appeals Chamber changed over time. On 10 March 2004, Justice A. Raja N. Fernando (Sri Lanka) replaced Justice Hassan Jallow following his appointment to the ICTR. On 7 November 2007, Jon Kamanda (Sierra Leone) was sworn in to replace Justice Geoffrey Robertson, whose term of office had ended. On 4 May 2009, following the death of Fernando, Shireen Avis Fisher (United States of America) was sworn in as a Judge of the Appeals Chamber. On 27 February 2012, Philip Nyamu Waki (Kenya) was sworn in as an Alternate Judge to sit in any appeal proceedings, which might arise from the Taylor trial. Considering the foreseeable workload, a second trial chamber was inaugurated in January 2005. On 17 January 2005, Justice Teresa Doherty from Northern Ireland, Justice Julia Sebutinde from Uganda and Justice Richard Lussick from Samoa were sworn in to sit as Trial Chamber II. On 9 May 2007, Justice El Hadji Malick Sow from Senegal was sworn in as an Alternate Judge of Trial Chamber II, to sit in the trial of Charles Taylor.

²²²⁶ Opening statement, David Crane: SCSL, *Norman, Fofana & Kondewa Transcript* (3 June 2004), pp. 6 & 10.

With these dramatic and theatrical phrasings, David Crane unlocked the first trial proceedings before a crowded public gallery in Freetown. In the dock, wearing headphones, were three leaders of the former Civil Defence Forces (CDF):²²²⁷ “National Coordinator” Samuel Hinga Norman,²²²⁸ “Director of War” Moinina Fofana²²²⁹ and High Priest” Allieu Kondewa²²³⁰ All three accused men faced eight counts of serious crimes,²²³¹ to which they pleaded not guilty. Calling 75 live witnesses,²²³² the Prosecution presented its case between 3 June 2004 and 14 July 2005, while the defence concluded its presentation of evidence on 18 October 2005, after calling 45 witnesses.²²³³ In a sweeping turn when the case was already closed and the judges were deliberating their judgement, Norman deceased while receiving medical treatment in Senegal, leading to the dissolution of his case.²²³⁴ As a consequence, the trial Judgement, which was rendered on 2 August 2007, only pertained to Fofana and Kondewa, yet it was reached on the consideration of the entirety of the evidence adduced during the trial,²²³⁵ including Norman’s testimony, cross-examination and re-examination.²²³⁶ With the Sierra Leonean judge, Bankole Thompson, ‘dissenting’,²²³⁷ the chamber condemned Fofana and Kondewa for an assortment of crimes, including murder, cruel treatment, pillage, collective punishments and enlistment of child soldiers. But it acquitted them for two counts of crimes against humanity.²²³⁸ In lieu of his dissent, Thompson declined to partake in the sentencing of Fofana to six years and

²²²⁷ A comprehensive analysis of the trial is provided by anthropologist Tim Kelsall: Kelsall, *Culture under Cross-Examination*, pp. 36-71; The War Crimes Studies Center of the University of California Berkeley monitored the proceedings. Its archived reports are available at <http://wscs.berkeley.edu/tag/cdf/>, visited: 6 May 2015.

²²²⁸ Samuel Hinga Norman was born on 1st January 1940. He served in the armed forces of Sierra Leone from 1959 to 1972 reaching the rank of Captain. After serving as Vice Minister of Defence he became Interior Affairs Minister for Sierra Leone up until the time of his arrest. Norman was the national coordinator of the CDF, in particular after 30 November 1996. Due to this position, he is considered to have been the principal authority with the power to establish, organise, support, and lend logistical support and to further the aims of the CDF. During the conflict, he was also reported to have been the leader of the pro-government militia, the Kamajors, who put themselves at the disposition of President Kabbah in 1996 in order to combat the rebels of the RUF. As the national coordinator of the CDF and Commander of the Kamajors, Norman is said to have known about and approved the recruitment, initiation and training of the Kamajors as well as young children of less than 15 years of age, who subsequently were used to take part in hostilities.

²²²⁹ Moinina Fofana was born in 1950. Up until his arrest, he was Chiefdom Speaker of Nongoba Bullom. Fofana was a leading member of the CDF and National Director of War of the CDF. He was considered one of the leaders of the CDF, receiving his orders from Norman who was his immediate superior. Fofana is supposed to have led the CDF whenever Norman was absent and to have been second in charge. As National Director of War, he is considered directly responsible for the implementation of war policy and strategy. In addition to his functions on the national level, Fofana commanded one of the battalions of the CDF.

²²³⁰ Allieu Kondewa, also known as King Dr. Allieu Kondewa was presumably born in the Bo district of Sierra Leone. Up until his arrest, he lived in the Chiefdom of Bumpah, Bo district, and worked as a farmer and herbs specialist. Kondewa was a leading member and “High Priest” of the CDF. Like Moinina Fofana, Kondewa received his orders from Norman who was his immediate superior. As High Priest, Kondewa was in charge and in control of the supervision of all initiations to the CDF, including initiations of children of less than 15 years. He is also supposed to have carried out and lead numerous operations and to have had authority over the CDF units responsible for such operations.

²²³¹ (i) Two counts of crimes against humanity, namely: murder (Count 1); and other inhumane acts (Count 3); (ii) Five counts of violations of Common Article 3 to the Geneva Conventions and Additional Protocol II thereto, namely: violence to life, health and physical or mental well-being of persons, in particular murder (Count 2); violence to life, health and physical or mental well-being of persons, in particular cruel treatment (Count 4); pillage (Count 5); acts of terrorism (Count 6); and collective punishments (Count 7); (iii) One count of other serious violations of international humanitarian law, namely: conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities (Count 8).

²²³² See for an overview: SCSL, OTP, *The Prosecutor against Minima Faena & Allieu Kondewa: Prosecution Supplemental Brief Pursuant to Order to the Prosecution to File a Supplemental pre-trial brief. Annex A: Testimonial Evidence* (SCSL-04-14-PT; 22 April 2004), pp. 3436-3463.

²²³³ SCSL, *Prosecutor against Moinina Fofana & Allieu Kondewa: Judgement. Annex F: Procedural History* (SCSL-04-14-T; 2 August 2007).

²²³⁴ SCSL, *Prosecutor Against Samuel Hinga Norman, Moinina Fofana & Allieu Kondewa: Decision on Registrar’s Submission of Evidence of Death of Accused Samuel Hinga Norman and Consequential Issues* (SCSL-04-14-T; 21 May 2007), §18.

²²³⁵ SCSL, *Prosecutor Against Moinina Fofana & Allieu Kondewa: Judgement* (SCSL-04-14-T; 2 August 2007), §4-8.

²²³⁶ Norman was the first defence witness in his own defence, he testified for 11 days: SCSL, *Norman, Fofana & Kondewa Transcript* (24 January 2006); continued testimony on: 25, 26, 27, 30, 31 January and 1, 2, 3, 6, 7 February 2006.

²²³⁷ SCSL, *Prosecutor Against Moinina Fofana & Allieu Kondewa: Judgement. Annex C: Separate Concurring and Partially Dissenting Opinion of Hon. Justice Bankole Thompson Filed Pursuant to Article 18 of the Statute* (SCSL-04-14-T; 2 August 2007).

²²³⁸ SCSL, *Prosecutor Against Moinina Fofana & Allieu Kondewa: Judgement*. (SCSL-04-14-T; 2 August 2007), pp. 290-291. Thus, Fofana and Kondewa were convicted by majority. Judge Itoe also entered a dissenting opinion regarding Fofana’s not guilty finding under Count 8, and would have convicted him. Canadian Judge Boutet voiced his disagreement with the prominence of the role of President Kabbah in the judgement, which he considered it “a collateral matter” that should not have received so much attention. SCSL, *Prosecutor Against Moinina Fofana & Allieu Kondewa: Judgement. Annex A: Separate and partially dissenting opinion only on count 8 of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge of the Chamber on the judgement of the learned justices of trial chamber I in the case of Moinina Fofana and Allieu Kondewa* (SCSL-04-14-T; 2 August 2007); SCSL, *Prosecutor Against Moinina Fofana & Allieu Kondewa: Judgement. Annex B: Separate and concurring opinion of justice Boutet* (SCSL-04-14-T; 2 August 2007).

Kondewa of eight years imprisonment.²²³⁹ In their reasoning leading to these relatively low punishments given the gravity of the crimes, the judges took the stance that crimes were grave but that in the CDF case there were no aggravating factors. Instead, they accepted the shown remorse by both convicts to be sincere and deemed the contribution of Fofana and Kondewa to peace and re-establishment of the rule of law in Sierra Leone a meaningful mitigation factor²²⁴⁰ and found that: “a manifestly repressive sentence, rather than providing the deterrent objective which it is meant to achieve, will be counterproductive to the Sierra Leonean society in that it will neither be consonant with nor will it be in the overall interests and ultimate aims and objectives of justice, peace, and reconciliation that this court in mandated to achieve. The motivation of the accused in this case, where they fought to reinstate democracy, and the prevailing circumstances in which their crimes were committed, has therefore been taken into consideration by the Chamber in arriving at an appropriate sentence.”²²⁴¹ While crediting the role of the CDF and the Kamajors in the ending of the war in Sierra Leone the judges somehow belittled the crimes that were committed in the course of this liberation, implying that the end justified the means. With their reduced punishments the magistrates wished to: “send a message to future pro-democracy armed forces or militia groups that notwithstanding the justness or propriety of their cause, they must observe the laws of war in pursuing of defending legitimate causes, and that they must not recruit or use children as agents or instruments of war. It will, in addition, remind them of their obligations to protect civilians who are unarmed and not participating in hostilities, and whose aspiration is only protection, regardless of their perceived affiliation.”²²⁴² On appeal, both acquittals were reversed and the sentences, which were deemed “manifestly inadequate”, upgraded to 15 years for Fofana and 20 years for Kondewa.²²⁴³ In handing down the substantially increased sentences, the majority of the bench held that the Trial Chamber had erred in considering political motives or fighting for a “just cause” as a mitigating factor in sentencing.²²⁴⁴

With the CDF case, the SCSL Prosecutor had built a controversial legacy from its very beginning, immediately leaving a rather bitter taste with many Sierra Leoneans. Not only did the entire case against the civil defence forces come as an unwanted surprise to many people in Sierra Leone, but also more so, observes Lansana Gberie, the fact the Prosecution opened with it, proved to be a miscalculated strategy. It did not win the hearts and minds of Sierra Leoneans, including victims and survivors. Even more so, it was a great perversion he argues: “its attempt to criminalize legitimate and necessary civilian defence against armed and highly predatory and criminal elements was both an attempt to distort the collective memory of the people of Sierra Leone and to besmirch the reputation

²²³⁹ SCSL, *Prosecutor Against Moinina Fofana & Allieu Kondewa: Judgement on the Sentencing of Noinina Fofana and Allieu Kondewa* (SCSL-04-14-T; 9 October 2007).

²²⁴⁰ SCSL, *Fofana and Allieu Sentencing Judgement*, §87-91.

²²⁴¹ SCSL, *Fofana and Allieu Sentencing Judgement*, §95.

²²⁴² *Ibidem*, §96.

²²⁴³ SCSL, AC, *The Prosecutor against Moinina Fofana & Allieu Kondewa: Judgement* (SCSL-04-14-A; 28 May 2008), §553.

²²⁴⁴ SCSL, AC, *Fofana & Kondewa Judgement*, ‘Disposition’.

of its national heroes. It should have never been allowed to happen.”²²⁴⁵ After all, it was the RUF that started the war so the choice for the prosecution of the Kamajors – fighting to oust the RUF – as starting case was at minimum an insensitive miscalculation. The RUF had started the war, but the trial against some of its members started a month later than against the CDF figures.

The RUF case

May it please the Court, this is a tale of horror, beyond the gothic into the realm of Dante's inferno. They came across the border, dark shadows, on a warm spring day, 23 March of 1991. Hardened rebels trained by outside actors from Liberia, Libya and Burkina Faso. These dogs of war, these hounds from hell, unleashed by cynical [...] These rebels consisted of Sierra Leoneans and Liberians were assisted by Libyan Special Forces. Among their goals were the diamond fields of eastern Sierra Leone. Their motive: power, riches, and control in furtherance of a joint criminal enterprise that extended from West Africa north into the Mediterranean Region, Europe, and the Middle East. Blood diamonds are the common thread that bound together this criminal enterprise. The rule of the gun reigned supreme. [...] The reality of these crimes done in Sierra Leone that were committed by the RUF are so much against nature, against logic, against life itself. These crimes in our joint indictment against Sesay, Kallon and Gbao certainly defy any logic, any reason; the purely evil of these deeds of destruction are so horrific, terrible and devastating in their scope, words in any language do not describe the offences committed by these indictees. We are in the presence of crimes beyond description, but our witnesses, the people of Sierra Leone, will testify in their proud, yet humble, way and relive these crimes for this tribunal.

- David Crane, Prosecutor²²⁴⁶

Like in the CDF case, Crane, with much histrionic rhetoric, drew the dramatic scenery of the Sierra Leone war and pictured those at trial as brutal men; “the evil spawn of this unholy union, this joint criminal enterprise.”²²⁴⁷ This time, however, his rhetoric was immediately interrupted by defence objections and the presiding judge, Benjamin Itoe, who told Crane: “You will limit your observations to the facts. [...] Please, to the facts -- I am not interested in knowing, you know, whether they were trained in Libya or what have you, so please limit your observations to the facts – [...] -- which intend to prove the case. Nothing political, please.”²²⁴⁸ On that account, the Prosecution’s second trial²²⁴⁹ focused on three members of the Revolutionary United Front (RUF): Interim leader Issa Hassan Sesay,²²⁵⁰ former commander Morris Kallon,²²⁵¹ and former senior officer and Chief of Security

²²⁴⁵ Lansana Gberie, *The Civil Defence Forces Trial: Limit to International Justice?*, in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 624-641: 630 & 641.

²²⁴⁶ SCSL, *Sesay, Kallon & Gbao Transcript* (5 July 2004), pp. 19- 20 & 29-30.

²²⁴⁷ *Idem*.

²²⁴⁸ *Ibidem*, p. 19.

²²⁴⁹ For details on the trial, see the trial monitoring reports offered by the War Crimes Center at the University of California Berkeley at [www-page: http://wccsc.berkeley.edu/tag/RUF/](http://wccsc.berkeley.edu/tag/RUF/), visited: 6 May 2015.

²²⁵⁰ *Issa Hassan Sesay* was a former senior officer of the RUF and commander in AFRC. He was born on June 27, 1970 in Freetown, Sierra Leone. He served as area commander of the RUF between early 1993 and early 1997. From this time until December 1999, he also was Battle Group Commander of the RUF subordinated exclusively to the Battlefield Commander of the RUF, Sam Bockarie, also known as Mosquito, and to Foday Sankoh, leader of the RUF and Johnny Paul Koroma, leader of the AFRC. According to the indictment act of the SCSL, he was a member of the governing body of the Junta at the time relevant to the case. From January 2000 to August 2000, he was promoted Battlefield Commander of the RUF. When Foday Sankoh was incarcerated in the Republic of Sierra Leone in May 2000, Issa Hassan Sesay was ordered to direct all RUF activities in Sierra Leone until March 10, 2003 when he was arrested and transferred to the SCSL. After trial, he was imprisoned in Mpanga prison in Nyanza, Rwanda. See also the documentary about his case, including interviews with Sesay: Rebecca Richman Cohen, *War Don Don* (Racing Horse Productions, 2010).

²²⁵¹ *Morris Kallon* was born on January 1, 1964 at Bo, district of Bo in Sierra Leone.183 He was a senior officer and commander in the RUF, Junta and RUF/AFRC.184 Between May 1996 and April 1998 he was Deputy Area Commander for the RUF then Battlefield Inspector until December 1999. Following this assignment, he became directly subordinated to Issa Hassan Sesay, Foday Sankoh and Johnny Paul Koroma as Battle Group Commander in the RUF. In June 2001, he became Battlefield Commander of the RUF. According to the indictment act of the Court, Kallon was also a member of the governing body of the

Augustine Gbao.²²⁵² Absent from the trial were those generally held to be the real ‘most responsible’, Foday Sankoh²²⁵³ and RUF battlefield commander Samuel Bockarie.²²⁵⁴ All of the three remaining accused were charged with 18 counts,²²⁵⁵ to which they pleaded not guilty. Their case was joined and evidentiary hearings started on 5 July 2004, with the Prosecution calling 85 witnesses and closing its case on 2 August 2006.²²⁵⁶ Sesay’s defence, in particular, took considerable time, from 3 May 2007 to 13 March 2008, with himself on the stand for 25 days²²⁵⁷ and calling Alhaji Dr Ahmad Tejan Kabbah, former President of Sierra Leone²²⁵⁸ and 58 other witnesses to the stand. After hearing testimony for 308 days and admitting 437 exhibits, closing arguments were delivered in early August 2008 and judgement was passed 5 months later.²²⁵⁹ The three men were each found guilty of acts of terrorism, collective punishments, extermination, murder as a crime against humanity, murder as a war crime, rape, sexual slavery, forced marriage as an “other inhumane act”, outrages upon personal dignity, mutilations, physical violence as a crime against humanity, enslavement as a crime against humanity, pillage, intentionally directing attacks against UNAMSIL peacekeepers, and murder in relation to the UNAMSIL peacekeepers. Sesay and Kallon were also found guilty of the crime of using children under the age of 15 years to participate actively in hostilities,²²⁶⁰ with the first receiving a record sentence of 52 years, the latter 40 and Gbao 25 years.²²⁶¹ Dismissing 96 defence grounds for appeal, the convictions were upheld on appeal, while the Appeals Chamber affirmed that the three convicts had participated in a joint criminal enterprise and affirmed their sentences.²²⁶²

Junta at the time relevant to the case. He was arrested and transferred to the SCSL on March 10, 2003. After trial, he was imprisoned in Mpanga prison in Nyanza, Rwanda.

²²⁵² Augustine Gbao was a former police officer born on August 13, 1948 in Blama, district of Kenema in Sierra Leone. During the time period related to the case he was a senior officer and Commander in the RUF, which he had joined in 1991 in Liberia, the Junta, and the RUF/AFRC. Between 1996 and 1998 he was alleged to have been Senior Commander of the RUF in control of the region of Kailahun, subordinate only to the RUF Battlefield Commander as well as to the leaders of the RUF and AFRC, Foday Sankoh and Johnny Paul Koroma. 189 Before this assignment he was Commander of the RUF Internal Defence Unit. He later occupied a position of greater importance within the RUF/AFRC forces as Overall Security Commander until 2002. This commanding position included responsibility for all the Intelligence and Security Units of the organization and direct contact with the leaders of the RUF and AFRC. 190 In the meantime, from March 1999 until January 2002; he was also the joint Commander of the RUF/AFRC forces in the Makeni area. Augustine Gbao was arrested and transferred to the SCSL in March 2003. After trial, he was imprisoned in Mpanga prison in Nyanza, Rwanda.

²²⁵³ His initial appearance took place on 15 March, without Sankoh responding to questions and a psychiatric and medical evaluation was ordered. During the continued first appearance on 21 March he also remained silent throughout the hearing. SCSL, *The Prosecutor Against Foday Saybana Sankoh also known as POPAY also known as PAPA also known as PA: Indictment* (SCSL-03-I; 3 March 2003); SCSL, Press and Public Affairs Office, *Press Release* (Bonthe, Sierra Leone, 15 March 2003); SCSL, *The Prosecutor of the Special Court v. Foday Saybana Sankoh: Transcript* (SCSL-2003-02-I; 21 March 2003).

²²⁵⁴ SCSL, *The Prosecutor Against Sam Bockarie also known as MOSQUITO also known as MASKITA: Indictment* (SCSL-03- - I; 3 March 2003).

²²⁵⁵ (i) Eight counts of crimes against humanity, namely: extermination (Count 3); murder (Count 4); rape (Count 6); sexual slavery y and any other form of sexual violence (Count 7); other inhumane acts (Counts 8, 11); enslavement (Count 13); and murder (committed United Nations peacekeepers) (Count 16); (ii) Eight counts of violations of Common Article 3 to the Geneva Conventions and Additional Protocol II thereto, namely: acts of terrorism (Count 1); collective punishments (Count 2); violence to life, health and physical or mental well-being of persons, in particular murder (Count 5); outrages upon personal dignity (Count 9); violence to life, health and physical or mental well-being of persons, in particular mutilation (Count 10); pillage (Count 14); violence to life, health and physical or mental well-being of persons, in particular murder (committed against UNAMSIL peacekeepers) (Count 17); and the taking of hostages (committed against UNAMSIL peacekeepers) (Count 18); (iii) Two counts of other serious violations of international humanitarian law, namely: conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 12); and intentionally attacking personnel on a peacekeeping mission (committed against UNAMSIL peacekeepers) (Count 15).

²²⁵⁶ SCSL, *The Prosecutor against Issa Hassan Sesay, Morris Kallon & Augustine Gbao: Judgement. Annex B: Procedural History* (SCSL-04-15-T; 2 March 2009), pp. 737-787.

²²⁵⁷ On 3, 4, 8, 9, 11, 15, 16, 17, 18, 22, 23 May and 1, 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 21, 22 and 26 June 2007. Transcripts: SCSL, *Sesay, Kallon & Gbao Transcript*.

²²⁵⁸ SCSL, *Sesay, Kallon & Gbao Transcript* (16 May 2008).

²²⁵⁹ SCSL, *Sesay, Kallon & Gbao Judgement*, pp. 737-787.

²²⁶⁰ Sesay and Kallon were each found guilty on 16 of the 18 counts in the indictment. Gbao was found guilty on 14 counts. The Court found all three accused not guilty on count 16 (murder, a crime against humanity) and count 18 (the taking of hostages) in connection with the May 2000 abduction of United Nations peacekeepers. In addition, Gbao was found not guilty on count 12 (conscripting of child soldiers), and count 17 (murder, a war crime) in relation to the abduction of peacekeepers. The Trial Chamber concluded that the three were not responsible for crimes committed in three districts and the Western Area. This included the bloody January 1999 attack on Freetown, which left over 5,000 dead. SCSL, Appeals Chamber, *Sesay, Kallon & Gbao Judgement*.

²²⁶¹ SCSL, TCI, *The Prosecutor against Issa Hassan Sesay, Morris Kallon & Augustine Gbao: Sentencing Judgement* (SCSL-04-15-T; 8 April 2009).

²²⁶² The Appeals Chamber only overturned Gbao’s conviction on Count 2. SCSL, AC, *Sesay, Kallon & Gbao Judgement*, pp. 477-481.

The AFRC case

The facts in this case, we allege, will show pain, agony, suffering, sorrow, and grief far beyond human description, understanding, and reason. Murder, rape, terror, maiming, mutilation, enslavement, sexual slavery, forced marriage, looting, pillaging, and conscripting child soldiers are mere legal terms by which the statute allows us to categorise war crimes and crimes against humanity and other serious violations of international humanitarian law committed by these persons in Sierra Leone, but reality can only be captured by our witnesses, the victims of the egregious crimes that we alleged were committed. Just such a witness is the young man who will testify that during Operation No Living Thing, a cruel military operation that was in effect as the AFRC/RUF forces were leaving Freetown in January and February 1999. He and his two brothers were captured and taken to a rebel base in front of a primary school in Kissy. These three terrified civilians were told that they would be given a message for Tejan Kabbah. Four other men were brought out as well, and one by one they were ordered to extend their hands, and one by one their hands were severed with an axe by a member of the AFRC/RUF forces there. The cuts were not clean, he will testify, and it took four long blows before his hand fell to the ground. The screaming and mutilated civilians were told that Tejan Kabbah had new hands for them. Who are these people, these men of responsibility and command of rebel combatants?

- David Crane, Prosecutor²²⁶³

Third in a row was the *AFRC* case, the trial against three leaders of the Armed Forces Revolutionary Council (AFRC): Staff Sergeant Alex Tamba Brima (aka “Gullit”)²²⁶⁴; Sergeant Brima Bazy Kamara²²⁶⁵ and Sergeant Santigie Borbor Kanu (aka “Five-Five”).²²⁶⁶ The indictment²²⁶⁷ contained a total of 14 counts of crimes against humanity and war crimes committed between 25 May 1997 and January 2000 by each of the accused.²²⁶⁸ At their initial appearances, all men pleaded not guilty to all charges. Evidentiary hearings began on 7 March 2005, with the Prosecution closing its case on 29 November 2005 and the defence, after an interlude, on 27 October 2006. Over a total period of 176

²²⁶³ SCSL, TCI, *The Prosecutor of the Special Court v. Alex Tamba Brima, Brima Kamara & Santigie Kanu: Transcript* (SCSL-2004-16-T; 7 March 2005), pp. 20-21.

²²⁶⁴ Alex Tamba Brima was born on 23 November 1971. In April 1985, he joined the army, where he was promoted to the rank of Staff Sergeant. Brima allegedly participated in the AFRC-government and was nominated by Johnny Paul Koroma to the post of Public Liaison Officer as well as to being a member of the AFRC Supreme Council, both of which posts he held until 1998. Between February 1998 and 30 April 1998, Brima was Commander of the AFRC/RUF forces in the district of Kono in the east of Sierra Leone. He was also the Commanders of the AFRC/RUF forces, which conducted armed operations throughout the north, the east and the centre of the country. Brima is alleged to have been the Commander in Chief who led the attack against Freetown in 1999 and who directed ground operations. These operations were marked by the great number of atrocities committed against the civilian population of Freetown as well as against the civilian population living in the region surrounding the capital. Alex Tamba Brima was arrested and transferred to the SCSL on 10 March 2003.

²²⁶⁵ Brima Bazy Kamara was born on 7 May 1968. He joined the army in May 1991. Like Brima, Kamara participated in the AFRC- government and was nominated to Public Liaison Officer and member of the AFRC Supreme Council. Together with Brima Kamara was Commander of the AFRC/RUF forces in the district of Kono. Brima Bazy Kamara was one of the Commanders who led the attack against Freetown, which was marked, by the great number of atrocities committed against the civilian population. Brima Bazy Kamara was arrested and transferred to the Court 29 May 2003.

²²⁶⁶ Santigie Borbor Kanu was born in March 1965 and he joined the Sierra Leone Army (SLA) on 27 November 1990, where he was promoted to the rank of Sergeant. Kanu was a member of a group of 17 soldiers, which took power by force on 25 May 1997 in Freetown and overthrew the democratically elected government of President Kabbah. He participated in the government thus set up as a member of the AFRC Supreme Council. Like his co-accused, Kanu one of the commanders of the AFRC/RUF forces. He was arrested on 16 September 2003.

²²⁶⁷ SCSL, *The Prosecutor against Alex Tamba Brima - also known as Tamba Alex Brima also known as Gullit- , Brima Bazy Kamara - also known as Ibrahim Bazy Kamara also known as Alhaji Ibrahim Kamara - and Santigie Borbor Kanu also known as 55 also known as Five-Five also known as Santigie Kanu also known as Santigie Kanu also known as S. B. Khanu also known as S. B. Kanu also known as Santigie Bobson Kanu also known as Borbor Santigie Kanu: Further amended consolidated indictment* (SCSL-04-16; 18 February 2005).

²²⁶⁸ (i) Seven counts of crimes against humanity, namely: extermination (Count 3); murder (Count 4); rape (Count 6); sexual slavery and other forms of sexual violence (Count 7); other inhumane acts (Counts 8, 11); and enslavement (Count 13); (ii) Six counts of violations of Common Article 3 and Additional Protocol II, namely: acts of terrorism (Count 1); collective punishments (Count 2); violence to life, health and physical or mental well-being of persons, in particular murder (Count 5); out- rages upon personal dignity (Count 9); violence to life, health and physical or mental well-being of persons, in particular mutilation (Count 10); and pillage (Count 14); (iii) One count of other serious violations of international humanitarian law, namely, conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 12). The prosecution in addition alleged that the defendants – by holding senior positions within the AFRC fighting forces– were individually responsible for all atrocities by these forces and further held that Brima, Kamara, and Kanu participated in a ‘Joint Criminal Enterprise’ (JCE) with the RUF, with the intention to ultimately gain and exercise political power and control over the country. SCSL, *The Prosecutor against Alex Tamba Brima - also known as Tamba Alex Brima also known as Gullit- , Brima Bazy Kamara - also known as Ibrahim Bazy Kamara also known as Alhaji Ibrahim Kamara - and Santigie Borbor Kanu also known as 55 also known as Five-Five also known as Santigie Kanu also known as Santigie Kanu also known as S. B. Khanu also known as S. B. Kanu also known as Santigie Bobson Kanu also known as Borbor Santigie Kanu: Further amended consolidated indictment* (SCSL-04-16; 18 February 2005), §33-34.

trial days, the judges heard testimony from 59 Prosecution witnesses and the 87 Defence witnesses, while admitting 119 exhibits.²²⁶⁹ Judgement was delivered in Freetown on 20 June 2007²²⁷⁰ and prison sentences between 45 and 50 years handed out a month later.²²⁷¹ After both parties appealed the verdicts and sentences, the Appeals Chambers quashed all defence arguments, upheld the Prosecutor's argument that convictions for forced marriage should have been entered, declined to enter new convictions and affirmed the sentences.²²⁷² A fourth suspect, AFRC Chairman Johnny Paul Koroma, has reportedly been killed in Liberia but whereas his death has not been confirmed his indictment remains vacant.²²⁷³ If he were to appear the Residual Special Court for Sierra Leone would arrange for him to be brought to trial.

Contempt cases

Apart from tackling substantive international crimes cases, the Special Court expended considerable energy in trying persons who clogged its administration of justice, predominantly contempt of court by means of witness interferences.²²⁷⁴ Throughout its lifespan, it shepherded more trials for disrespect of its proceedings than for wartime atrocities.²²⁷⁵ A first case arose in 2005, involving the wives and a friend of the accused in the AFRC trial, in which Margaret Fomba Brima, Neneh Bai Jalloh, Esther Kamara and Anifa Kamara pleaded guilty to threatening and intimidating a witness on account of her in court testimony. They were sentenced to 'probation'.²²⁷⁶ Then Brima Samura, an investigator attached to the defence team of Alex Tamba Brima, was prosecuted for disclosing the name of the protected witness in the aforementioned case but found not guilty of knowingly and wilfully violating the protection order.²²⁷⁷ In 2012, former RUF member Eric Koi Senessie was convicted for interfering

²²⁶⁹ SCSL, *Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara, Santigie Barbor Kanu: Judgement. Annex A: Procedural History* (SCSL-04-16-T; 20 June 2007), §58-63.

²²⁷⁰ The three Accused were found guilty of acts of terrorism, collective punishments, extermination, murder, rape, outrages upon personal dignity, physical violence, conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, enslavement and pillage. SCSL, *Brima, Bazzy Kamara, Barbor Kanu: Judgement*, §2121-2123.

²²⁷¹ SCSL, *Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara, Santigie Barbor Kanu: Sentencing Judgement* (SCSL-04-16-T; 19 July 2007), pp. 13-18.

²²⁷² SCSL, Appeals Chamber, *The Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara, Santigie Barbor Kanu: Judgement* (Case No.: SCSL-2004-16-A; 28 February 2008) 'Disposition'. The Appeals Chamber also reversed a Trial Chamber decision that the Prosecution had not properly pleaded the issue of Joint Criminal Enterprise (JCE). The Appeals Chamber found that the common criminal purpose of the JCE had been correctly pleaded in the indictment, but again refrained from entering additional convictions.

²²⁷³ SCSL, *The Prosecutor Against Johnny Paul Koroma also known as JPK: Indictment* (SCSL-03-I; 3 March 2003); SCSL, *The Prosecutor Against Johnny Paul Koroma also known as JPK: Warrant of Arrest and Order of Transfer and Detention* (SCSL-2003-03-I; London, 7 March 2003). The Security Council in 2010 sounded a new international alert for Koroma, "Urging all States to cooperate with and render assistance to the Special Court for Sierra Leone, or any institution to which the Special Court has transferred his case, to bring Johnny Paul Koroma to justice if he is found to be alive, and calls on him to surrender. Calling on all States to cooperate with the International Criminal Police Organisation (INTERPOL) in apprehending and transferring Johnny Paul Koroma, if he is found to be alive." See: UNSC, *Resolution 1940* (UN-doc: S/RES/1940 (2010); 29 September 2010).

²²⁷⁴ "(A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice, including any person who: (i) being a witness before a Chamber, subject to Rule 90(E) refuses or fails to answer a question; (ii) discloses information relating to proceedings in knowing violation of an order of a Chamber; (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber; (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or (vi) knowingly assists an accused person to evade the jurisdiction of the Special Court. See: SCSL, *Rules of Procedure and Evidence* (London, 7 March 2003), art. 77.

²²⁷⁵ In lieu of one disciplinary hearing against counsels Yada Williams and Ibrahim Yillah, alleging professional misconduct: SCSL, *Code of Conduct Hearing: Decision* (Freetown, 10 November 2005).

²²⁷⁶ SCSL, *Independent Counsel Against Margeret Fomba Brima, Neneh Binta Bah Jalloh & Ester Kamara: Sentencing Judgement in Contempt Proceedings* (SCSL-2005-02 & SCSL-2005-03; 21 September 2005).

²²⁷⁷ SCSL, *Independent Counsel Against Brima Samura: Judgement in Contempt Proceedings* (SCSL-2005-01; 26 October 2005).

with several prosecution witnesses in the Taylor trial and sentenced to two years imprisonment.²²⁷⁸ The fourth case involved charges against Charles Taylor’s lead counsel, Courtenay Griffiths. He was found not guilty of “wilfully and knowingly, and/ or with reckless indifference to Court-ordered protective measure” disclosing the identities of seven protected witnesses.²²⁷⁹ On 25 September 2012, four former AFRC leaders (Hassan Papa Bangura, Samuel Kargbo, Brima Bazzy Kamara and Santigie Borbor Kanu) were convicted of tampering - bribing or otherwise interfering - with a former prosecution witnesses.²²⁸⁰ In the sixth contempt case, former Defence Investigator Prince Taylor was convicted for interference with Prosecution witnesses in Charles Taylor’s trial²²⁸¹ but later cleared by the Appeals Chamber, in what became the final judgement the court ever delivered.²²⁸²

Case SCSL-03-01

I will be very honest. I was afraid of confrontation. You know, sometimes I just want the war to be out of my memory: it does not help me. So I wanted to forget. So going back to this trial, hear all those stories, I thought, would just affect me more. And I didn’t want to confront Charles Taylor.

– Babah Tarawally²²⁸³

While the UNICTY and UNICTR had just commenced their most critical trials – versus Milošević and Bagosora – in 2002, prosecutors in Freetown had only just commended inquiries into the atrocities throughout the second half of Sierra Leone’s civil war.²²⁸⁴ Whereas David Crane presented indictments against the leadership of the main Sierra Leonean warring parties,²²⁸⁵ his chief suspect, from the start, was a non-Sierra Leonean. Marked ‘SCSL-03-01’, the first case file and the court’s first indictment²²⁸⁶ concerned Charles Ghankay Taylor, then President of Liberia.²²⁸⁷ Crane had it planned carefully. His plot was “to blow him off the map” in a “psychological operation” that “was to draw him out and corner him politically to a place where he had few options.”²²⁸⁸ ‘Operation Rope’, a textbook sample of ‘law fare’, intended to do just that: lure Taylor out of Liberia to unseal the

²²⁷⁸ He was convicted on eight of nine contempt of court charges alleging that he had attempted to induce five prosecution witnesses who testified in the Taylor trial to recant their testimony. Four of the counts alleged he had offered a bribe to a witness, and five of the counts alleged that he had attempted to influence a witness. He was convicted on all four counts of offering a bribe to a witness, and on four of the five counts of attempting to influence a witness. SCSL, TCI, *Prosecutor v. Eric Senessie: Judgement in Contempt Proceedings* (SCSL-2011-01-T; 16 August 2012).

²²⁷⁹ SCSL, TCII, *In the Matter of Contempt Proceedings Arising from the Case of The Prosecutor v. Charles Ghankay Taylor: Judgement in Contempt Proceedings* (SCSL-12-01-T; 19 October 2012).

²²⁸⁰ SCSL, Appeals Chamber, *The Independent Counsel Against Hassan Papa Bangura, Samuel Kargbo, Santigie Borbor Kanu & Brima Bazzy Kamara: Judgement in Contempt Proceedings* (SCSL-11-02-A).

²²⁸¹ He was sentenced to serve a total of 2-1/2 years on his conviction on four counts of inducing witnesses who had testified against Charles Taylor to recant testimony and one count of interfering with Eric Koi Senessie at a time when he was a potential witness in contempt proceedings before the court. SCSL, TCII, *Independent Counsel v. Prince Taylor: Judgement in Contempt Proceedings* (SCSL-12-02-T; 25 January 2013).

²²⁸² A three-judge panel overturned his conviction on the grounds that it relied heavily on testimony by Eric Koi Senessie, who had admitted giving false testimony in his own contempt trial. The Judges found that the evidence used to corroborate Senessie’s testimony was either circumstantial and could be subject to another interpretation, or did not in fact corroborate Senessie’s evidence. By a majority, the court found that no reasonable trier of fact could have placed decisive weight on Senessie’s evidence to convict Prince Taylor, and therefore acquitted him. SCSL, Appeals Chamber, *Independent Counsel Against Prince Taylor: Judgement in Contempt Proceedings* (SCSL-12-02-T; 14 May 2013).

²²⁸³ ‘Babah’s day in court’, *The State We’re in*, 18 August 2009.

²²⁸⁴ SCSL, *First Annual Report of the President of the Special Court for Sierra Leone* (Freetown 2003), pp. 14-15.

²²⁸⁵ By November 2003, 13 individuals had been indicted, 10 of whom were in the Special Court’s custody: Foday Sankoh, the RUF founder and former leader; Issa Sesay, who replaced Foday Sankoh as leader of the RUF; Morris Kallon and Augustine Gbao, senior RUF commanders; Alex Tamba Brima, Ibrahim “Bazzy” Kamara, and Santigie Kanu, senior members of the AFRC; Sam Hinga Norman, national coordinator of the CDF and Minister of Internal Affairs and National Security at the time of this arrest; Moinina Fofanah, Director of War for the CDF; and Allieu Kondewa, Chief Initiator and High Priest of the Kamajors. Three additional accused were at large, dead, or allegedly dead: Sam “Mosquito” Bockarie, former Battlefield commander of the RUF; Johnny Paul Koroma, head of the AFRC; and Charles Taylor, former President of Liberia.

²²⁸⁶ Stover et al., *Hiding in Plain Sight*, p. 263.

²²⁸⁷ See for a detailed study on Taylor: Waugh, *Charles Taylor and Liberia*.

²²⁸⁸ Crane, *The Take down*. p. 209.

indictment, by surprise. It worked.²²⁸⁹ Whilst dispensing several public declarations targeting Taylor and fuelling signals to various Liberian forces that the President was in possible legal trouble, the LURD²²⁹⁰ and MODEL²²⁹¹ rebellious factions began to move towards Monrovia, mounting pressure led Taylor to voyage to Ghana for peace talks.²²⁹² In the morning of 4 June, Taylor landed in Accra to join the conference. As he was speaking, CNN broke the news that the Special Court for Sierra Leone had indicted Taylor,²²⁹³ on no less than seventeen counts of war crimes and crimes against humanity.²²⁹⁴ Yet, after the ceremony, the dismayed, offended and disrespected Ghanaian President, John Kufuor, provided Taylor with a presidential jet, to securely return back to Monrovia,²²⁹⁵ while the talks continued and ultimately led to a peace arrangement 76 days later.²²⁹⁶ Along the time, back in Liberia, Taylor calculated his options. In Accra, the parties insisted on a transitional government, excluding Taylor.²²⁹⁷ A way out was offered by Nigeria, which – with the critical support of the international community - was prepared to offer a safe haven in return for Taylor’s retreat from power. That is what happened exactly. On 11 August 2003 Taylor resigned with the movie-styled words “God willing, I will be back”²²⁹⁸ and flew off to Calabar, a quiet town in south-eastern Nigeria, the settle into three comfortable villas with his close family and his aides.²²⁹⁹ While Taylor was in exile, the prosecution had its indictment amended, reducing it from 17 to 11 counts.²³⁰⁰

With Taylor relishing his new life in Nigeria, the lobby to rescind the asylum deal was immediately kick-started. In Freetown, at the donor-reliant court, there was an urge to get Taylor before its judges to provide the SCSL a crucial boost to ascertain funding and political support.²³⁰¹ Human rights groups united in the campaign,²³⁰² US Congress issued a \$2 million reward for his arrest²³⁰³ and the UN Security Council – having already placed travel bans on Taylor when leaving Nigeria – froze Taylor’s assets.²³⁰⁴ After a period of silent petitioning, pressure mounted from early 2005, including from the European Union,²³⁰⁵ followed by the USA²³⁰⁶ and elevated by the United

²²⁸⁹ Stover et al., *Hiding in Plain Sight*, p. 267.

²²⁹⁰ Liberians United for Reconciliation and Democracy (LURD)

²²⁹¹ Movement for Democracy in Liberia (MODEL)

²²⁹² Crane, ‘The Take Down’, pp. 210-211.

²²⁹³ Priscilla Hayner, *Negotiating Peace in Liberia. Preserving the Possibility for Justice* (Geneva: ICTJ & Center for Humanitarian Dialogue, November 2007), p. 4.

²²⁹⁴ SCSL, *The Prosecutor Against Charles Ghankay Taylor also known as Charles Ghankay Macarthur Taylor: Indictment* (SCSL-03 –1; 3 March 2003).

²²⁹⁵ Kufuor later recounted the event in an interview in which he narrates how he felt betrayed and that he informed the United States of America (USA) of the embarrassment that the announcement caused. See: Lansana Gberie, Jarlawah Tonph, Efam Dovi and Osei Boateng, ‘Charles Taylor Why Me?’, *New African*, May 2006.

²²⁹⁶ *Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* (Accra; 18 August 2003), art. XX.

²²⁹⁷ *Idem*.

²²⁹⁸ ‘Liberia’s Leader Defiant’, *BBC News*, 11 August 2003.

²²⁹⁹ Tejan-Cole, ‘A Big Man in a Small Cell’, p. 215.

²³⁰⁰ (i) Five counts of crimes against humanity, namely: murder (Count 2); rape (Count 4); sexual slavery (Count 5); other inhumane acts (Count 8); and enslavement (Count 10); (ii) Five counts of violations of Common Article 3 and of Additional Protocol II, namely: acts of terrorism (Count 1); violence to life, health and physical or mental well-being of persons, in particular murder (Count 3); out- rages upon personal dignity (Count 6); violence to life, health and physical or mental well-being of persons, in particular cruel treatment (Count 7); and pillage (Count 11); (iii) One count of conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 9), a serious violation of international humanitarian law.

²³⁰¹ Tejan-Cole, ‘A Big Man in a Small Cell’, pp. 215-221.

²³⁰² AI, ‘Nigeria: No Impunity for Charles Taylor’, *Press Release* (12 August 2003).

²³⁰³ Tejan-Cole, ‘A Big Man in a Small Cell’, pp. 215-221.

²³⁰⁴ UNSC, *Report of the Panel of Experts appointed pursuant to Security Council Resolution 1306* (S/2000/1195; 20 December 2000); UNSC, *Resolution 1343* (S/RES/1343 (2001); 7 March 2001); UNSC, *Resolution 1532* (S/RES/1532 (2004); 12 March 2004).

²³⁰⁵ European Parliament, *European Parliament Resolution on the Special Court for Sierra Leone: The Case of Charles Taylor* (P6 TA(2005)0059; 24 February 2005).

²³⁰⁶ United States Congress, ‘Charles Ghankay Taylor – Transfer to the Special Court for Sierra Leone.’ *H.Con.Res. 127*, 109th Cong., 1st sess. (10 May 2005).

Nations, which expanded its Liberian missions' mandate to arrest and detain the indictee.²³⁰⁷ Opportunities rose with the transformation of the political landscape in Liberia. In its first post-conflict polls in October 2005, Ellen Johnson-Sirleaf was voted into the presidency. Pressured by the international community, she officially called on Nigeria to send back Taylor.²³⁰⁸ The following days set in motion a rollercoaster. After Obasanjo said Liberia was free to come and get Taylor, the fugitive went 'missing' – reportedly escaped -, only to resurface again when US President George Bush threatened to cancel a scheduled meeting with the Nigerian President.²³⁰⁹ Hours later, Taylor was arrested and Obasanjo announced at the White House that Taylor was on his way to Liberia.²³¹⁰ He was flown to Monrovia on 29 March and directly transferred by UN peacekeepers to Sierra Leone.²³¹¹

Although the proceedings and trials ought to be publicly held in Freetown, concerns emitted about putting Charles Taylor in the dock in West Africa, a region in the midst of transitional justice processes, political changes and rising conflict in Côte d'Ivoire. Court officials feared that his appearance in the courtroom could trigger rescue attempts or spark renewed fighting in Sierra Leone. Regardless of speculations that the USA, the AU, ECOWAS and President Johnson-Sirleaf pushed – and agreed on - for the trial to be held outside of the region,²³¹² the SCSL requested the Netherlands and the International Criminal Court (ICC) to facilitate, by using its own trial chamber, running Taylor's trial in The Hague.²³¹³ Dodging critique from civil society and NGOs that taking the trial elsewhere would restrict the public to attend the trial, the official reasons provided by the court were “concerns about the stability in the region.”²³¹⁴ Taylor opposed such a transfer, citing that he would not have access to family or the witnesses.²³¹⁵ Despite Taylor's opposition, civil society disappointment, and practical dilemmas and against the spirit of the SCSL to make proceedings accessible to the public in the affected country,²³¹⁶ Taylor was moved to The Netherlands.²³¹⁷ He only spent three months in the heavily fortified walled compound in Freetown. In advance, the United Kingdom agreed, if Taylor was to be convicted and sentenced, to take on the responsibility for

²³⁰⁷ “[...] the mandate of the United Nations Mission in Liberia (UNMIL) shall include the following additional element: to apprehend and detain former President Charles Taylor in the event of a return to Liberia and to transfer him or facilitate his transfer to Sierra Leone for prosecution before the Special Court for Sierra Leone [...]”. UNSC, *Resolution 1638* (S/RES/1638 (2005); 11 November 2005), §1.

²³⁰⁸ UNSC, *5383th Meeting*, (S/PV.5389; New York, 17 March 2006), pp. 2-3.

²³⁰⁹ Taylor himself testified about his arrest, which took place, according to him, when he was on his way to meet Chad's President Idriss Déby. He also felt betrayed by Obasanjo, he said: “I would probably want to find out from him, “Why in the hell did you do this?” And maybe the next thing would probably be maybe two former Presidents involved in a little tussle, because I am damn angry of what Obasanjo did to me. He had - until now I do not understand it.” SCSL, *Taylor Transcript* (14 July 2009), pp. 24347 – 24351.

²³¹⁰ US Department of State, ‘President Bush Welcomes President Obasanjo of Nigeria to the White House’, *Press Release* (Washington D.C, 29 March 2006).

²³¹¹ See for a detailed narrative about these events: Tejan-Cole, ‘A Big Man in a Small Cell’, pp.215-221.

²³¹² Tejan-Cole, ‘A Big Man in a Small Cell’, pp. 205-233:

²³¹³ See for comprehensive reporting on the trial, the www-pages of the Open Society Justice Initiative’ Trial Monitoring programme: <http://www.ijmonitor.org/category/charles-taylor/>, visited: 6 May 2015.

²³¹⁴ SCSL, ‘Special Court President Requests Charles Taylor be Tried in The Hague’, *Press Release* (30 March 2006).

²³¹⁵ SCSL, PTC, *The Prosecutor vs. Charles Ghankay Taylor: Defence Motion For An Order That No Change Of Venue From The Seat Of The Court In Freetown Be Ordered Without The Defence Being Heard On The Issue And Motion That The Trial Chamber Request The President Of The Special Court To Withdraw The Requests Reportedly Made To (1) The Government Of The Kingdom Of The Netherlands To Permit That The Trial Of Charles Ghankay Taylor Be Conducted On Its Territory & (2) To The President Of The Icc For Use Of The Icc Building And Facilities In The Netherlands During The Proposed Trial Of Charles Ghankay Taylor* (SCSL-03-01-PT; 6 April 2006).

²³¹⁶ Jennifer Easterday, *The Trial of Charles Taylor Part I: Prosecuting “Persons who bear the Greatest Responsibility”* (UC Berkeley War Crimes Studies Center, June 2010), pp. 7-13.

²³¹⁷ Through bilateral agreement: ‘Headquarters agreement between the Kingdom of the Netherlands and the Special Court for Sierra Leone’, *Tractatenblad Koninkrijk Der Nederlanden*, Vol. 2006, No. 131 (DJZ/VE-262/06; 19 June 2006).

overseeing his incarceration in Great Britain.²³¹⁸ Only Taylor's first appearance – and a handful of subsequent status conferences - was arranged in Sierra Leone. "Most definitely, Your Honour, I did not and could not have committed these acts against the sister Republic of Sierra Leone," he told the judges in April 2006. "[...] so most definitely I am not guilty."²³¹⁹ With these words, he became the first ousted African head of state to find himself before an international criminal court. Soon, despite the controversial political manoeuvres to dethrone him in Liberia, the controversies surrounding the CDF trial and the deaths of ringleaders of the atrocities, he became the "jewel in the crown" of the SCSL.²³²⁰

The Trial

When in The Hague – paradoxically commencing the first trial ever held in a courtroom at the ICC²³²¹ - the trial that was highly anticipated in Africa and elsewhere had a "false start."²³²² Taylor did not attend the opening of the trial on 4 June 2007, refusing to cooperate. Instead, he only sent his lawyer, Karim Kahn, a former UNICTY Prosecutor, to inform the chamber - through a written letter - he and his defence team had been dismissed from the case.²³²³ Kahn walked out of the courtroom and Chief Prosecutor Stephen Rapp, whom we know from the ICTR's media trial, nevertheless gave his opening statement, before an empty dock - but before a fully packed public gallery.²³²⁴

How are we to grasp what happened in Sierra Leone? The world, I think, knows only part of the story. A small West Africa nation on the Atlantic Ocean. From it, in the late 1990s, came images in the media of some of the ugliest scenes of viciousness in recent memory. Human beings, young and old, mutilated. Rebels chopping off arms and legs, gouging out eyes, chopping at ears. Girls and women enslaved and sexually violated. Children committing some of the most awful crimes. The exploitation of the resources of Sierra Leone used not for the benefit of its citizens but to maim and kill its citizens. The very worst that human beings are capable of doing to one another. For those of us who were not there, it is almost impossible, I think, to comprehend the horrors suffered by the people of this small country. How did it happen? [...] To fully understand the crimes that we have described in the indictment and the central role that the accused had in the commission of them, it's important to look at the history and understand the major political events that led to the campaign of terror against the civilian population of Sierra Leone."²³²⁵

From the start, the Taylor trial seemed to be all about history. But it took some time before the

²³¹⁸ *Agreement between the Special Court for Sierra Leone and the Government of the United Kingdom of Great Britain and Northern Ireland on the Enforcement of Sentences of the Special Court for Sierra Leone* (London, 10 July 2007).

²³¹⁹ SCSL, *Taylor Transcript* (3 April 2006), p. 15.

²³²⁰ Cruvellier, *From the Taylor Trial to a Lasting Legacy*, p. 5.

²³²¹ Only pre-trial hearings in the ICC case vs. Thomas Lubanga Dyilo were held there prior.

²³²² Stephanie Nolen, "Taylor war crimes trial unhinged by false start, *The Globe and Mail*, 26 June 2007.

²³²³ Parts of the letter read: "I am driven to the conclusion that I will not receive a fair trial before the Special Court at this point. It is therefore with great regret that I must decline to attend any further hearings in this case until adequate time and facilities are provided to my Defence team and until my other long-standing reasonable complaints are dealt with. It follows that I must terminate instructions to my legal representatives in this matter. Despite my complete confidence in their ability and competence, I must ask that they cease to represent me before the Special Court and instruct them accordingly. I cannot participate in a charade that does injustice to the people of Sierra Leone and Liberia and the people of Africa and to the international community in whose name this Court claims to speak. I cannot, I choose not to, be a fig leaf of legitimacy for this process. I hope and pray for a fair trial that will perhaps bring to an end the cycles of injustice. I stand ready to participate in such a trial and let justice be done for myself and for those who have suffered far more than me in Liberia and Sierra Leone." SCSL, *Taylor Transcript* (4 June 2007), p.250.

²³²⁴ Author's observation, 4 June 2007.

²³²⁵ SCSL, *Taylor Transcript* (4 June 2007), pp. 269; 274-275.

prosecution could argue this case theory, which held that Taylor was Kingpin in the atrocious history of West-Africa from the 1980s. “If the roots of a mango tree are cut, the tree will die,” Prosecutor Brenda Hollis said, quoting a Sierra Leonean chief. ‘Mr. Taylor was the root which fed and maintained the RUF and kept the AFRC/RUF alliance alive; without him the rebel movement, with its attendant crimes, would have suffered an earlier death,’ she continued.²³²⁶ “The evidence in this case shows that the RUF was a terrorist army created and supported and directed by Charles Taylor who, in truth, is the person most responsible for the crimes charged,” Hollis alleged in her final brief.²³²⁷ But like the UNICTR, the Special Court was confronted with a complex oral society and an absence of a clear paper trail or forensics. The tribunal therefore heavily relied on testimonial evidence. “Without witnesses, no trials would be possible,” Hollis told the UN Security Council.²³²⁸ Consequently, since 2008, testimony on the forgotten cruelties of the Sierra Leonean civil war echoed in the courtrooms. “All this suffering, all these atrocities to feed the greed and lust for power of Charles Taylor,” argued the prosecution.²³²⁹ Indeed, Taylor’s crimes in Liberia have now been well documented by historians and truth and reconciliation commissions in Liberia and Sierra Leone.²³³⁰ Yet, the biggest hurdles for the prosecution were time and space. As outlined above, the SCSL may only deal with crimes committed in Sierra Leone from November 1996 onwards. But at this time, Taylor was not at this crime scene and is rather infamous for spearheading bloodshed in his own country, a history outside of the scope of the SCSL’s mandate. This restriction, however, did not prevent prosecutors from dwelling into that history.

On the first day of the trial, Stephen Rapp was unambiguous about the role of history in the Prosecution’s case: “Your Honours,” he addressed the court:

it's important, I believe, to make a review of the history, not all of the history but the relevant portions, of the execution of this plan, and it really begins, as we indicated, before 1991, before 1996, in 1988 or 1989, with the military training in North Africa of Charles Taylor and Foday Sankoh and other people who later became leaders of the RUF and NPFL.”²³³¹

In line with Rapp’s opening statement, the prosecution’s case summary reads that “the indictment crimes did not happen overnight.”²³³² Their case therefore focused on highlighting a long-standing relationship between Taylor and the RUF. The prosecution claims that this bond lasted throughout the 1990s, and when Taylor became president in 1997, Taylor continued to be the “chief,” “father” and

²³²⁶ SCSL, *Taylor Transcript* (16 May 2012), p. 49691.

²³²⁷ SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Prosecution Final Brief* (SCSL-2003-01-T; The Hague; 8 April 2011), p. 531.

²³²⁸ Chief Prosecutor Brenda Hollis reiterated this fact in her address to the United Nations Security Council: “Without witnesses, no trials would be possible. Our main challenges were to communicate and meet with some 800 potential witnesses in a safe environment, and, in cooperation with the Registry’s Witness and Victim Section, to ensure the security before, during and after the trial, of the more than 300 Prosecution witnesses who testified.” SCSL, OTP, *Statement by Prosecutor Brenda J. Hollis, Special Court for Sierra Leone to the United Nations Security Council* (New York, 9 October 2012), p. 5.

²³²⁹ SCSL, *Taylor Transcript* (8 February 2011), p. 49150.

²³³⁰ See: TRCSL, *Witness to Truth*; Truth and Reconciliation Commission for Liberia (TRCL), *Consolidated Final Report* (Monrovia, 30 June 2009).

²³³¹ SCSL, ‘Opening Statement’, *Transcript* (SCSL-2003-01-T; The Hague; 4 June 2007) 282. Stephen Rapp – currently Ambassador-at-Large, heading the Office of Global Criminal Justice in the U.S. Department of State – also led the ICTR’s ‘Media’ case discussed above. Rapp, who is married to an historian, left the ICTR, where he worked as Chief of Prosecutions, in 2006 to become the SCSL Chief Prosecutor. See: Stephen J. Rapp, ‘Achieving Justice for Victims of Genocide, War Crimes and Crimes Against Humanity’, *Joan B. Kroc Institute For Peace & Justice: Distinguished Lecture Series* (Joan B. Kroc School of Peace Studies, University of San Diego California, 17 February 2011).

²³³² SCSL, *Taylor: Prosecution Final Brief*, p. 31.

“godfather” of ‘his proxy forces the RUF and later the RUF/AFRC.’²³³³ Depicting him as ‘a master of manipulation’ and a ‘liar’ the prosecution claimed Taylor controlled the RUF from behind the façade of being a regional peace broker. Still, while the bench was extremely compassionate towards the prosecution in allowing evidence falling outside the scope of the indictment, it was hard to present ‘smoking guns’ and precise testimony in support of the Prosecution’s case theory.²³³⁴ Particularly, the relationship between Sankoh and Taylor in Libya – the very basis of criminal charges – was a contentious issue. And according to the prosecution Taylor had done everything to conceal his crimes and destroy evidence of links with the RUF rebels, accusing Taylor of killing his ‘favourite’ RUF general Sam Bockarie and AFRC junta leader Johnny Paul Koroma after they were charged by the SCSL.²³³⁵

After the initial hiccups and Rapp’s opening statement, the trial adjourned for six months, allowing Taylor’s newly furnished defence – this time led by Old Baily Queens Counsel Courtenay Griffiths, Terry Munyard and Adrew Caley - team to get up to speed with the dossier.²³³⁶ Then finally, four years after the unleashing of the indictment and toppling of the Taylor regime, the presentation of evidence commenced in January 2008. Rapp had announced the trial was to “go ahead full speed” and would last for some 8 months, in which he would bring to court 54 linkage witnesses, 10 crime-base witnesses and 8 witnesses “who are experts with a historical background in the conflict.”²³³⁷ In the following 13 months, the prosecution rolled out its charges and, stretched over 906 hours and 53 minutes,²³³⁸ elicited evidence from 94 live witnesses.²³³⁹ The strategy embarked on setting the contextual stage: the diamond mining and trade in West-Africa, the historical backgrounds to the deadly conflicts in Liberia and Sierra Leone and the scale of human rights abuses during the wars. Alongside, it called witnesses, from the crime scenes, many of whom with physical scars,²³⁴⁰ to show

²³³³ SCSL, *Taylor: Prosecution Final Brief*, p. 34.

²³³⁴ Although several of Taylor’s former aides indeed testified to regular communications taking place between Taylor and other RUF commanders such as Sam Bockarie and the convicted Issa Sesay.

²³³⁵ *Taylor: Prosecution Final Brief*, pp. 491-509.

²³³⁶ Easterday, *The Trial of Charles Taylor Part I*, pp. 13-15.

²³³⁷ Press conference, SCSL, 4 January 2008.

²³³⁸ Easterday, *The Trial of Charles Taylor Part I*, p. 35.

²³³⁹ Ian Smillie (diamond expert); Alex Tamba Teh (Pastor); Vamunyan Sherif (Liberian ex-security force); Dennis Koker (ex- NPRC soldier); Dr. Stephen Ellis (expert-historian); Maria Caballero (Spanish Catholic Priest); Corinne Dufka (HRW); Abu Keita (ex- Liberian soldier); TF1-371 (protected linkage Witness); Perry Mohamed Kamara (ex- RUF radio communications operator); Suwandi Camara (Gambian soldier); TF1-026 (Crime base); Mohamed Sesay (amputee); Musa Koroma (amputee); TF1-150 (protected factual witness); Aruna Gbondo (rice farmer); Foday Lansana (Liberian ex- NPFL/RUF radio operator); TF1-362 (protected insider); Mustapha Marvin Mansaray (ex- RUF Commander); Isaac Tamba Mongor (ex-AFRC and RUF); Joseph D. Marzah (NPFL Chief of Operations); TF1-516 (ex-RUF radio communications operator); Alimamy Bobson Sesay (ex- SLA and AFRC-turned pastor); TF1-143 (former child soldier); TF1-028 (victim); Karmoh Kanneh (ex-RUF Commander); Moses Zeh Blah (ex-Vice-President of Liberia during Taylor’s Presidency); Samuel Kargbo (ex-AFRC Council member and Sierra Leone Army soldier); Albert Hindowa Saidu (ex-junior commando); TF1-539 (protected insider witness); TF1-590 (protected insider witness); Alice Pyne (ex- NPFL/RUF radio communications operator); TF1-375 (ex-child soldier); TF1-567 (ex- bodyguard to Foday Sankoh); Jabati Jaward (ex-member Small Boys Unit); TF1-367 (former RUF mining commander); TF1-338 (ex- RUF member); TF1-585 (ex-RUF radio operator); Mohamed Berete Kabbah (ex-RUF commander); TF1-189 (victim); Alex Sheku Bao (Police Officer); Stephen Smith (US journalist); Edesanya Sandy Hyde (police officer); Samuel Bull (civilian witness); TF1-459 (civilian witness); Tamba Mondeh (crime base); Abdul Otonjo Conteh (insider RUF); TF1-064 (crime base); Osman Jalloh (amputee); Patrick Sheriff (crime base); Komba Sumana (ex-child soldier); TF1-305 (crime base); James Kpungu (crime base); Samuel Komba (crime base); Sorie Kondeh (crime base); Yei Sundu Macualey (crime base); Sieh Mansaray (insider); Ruko Turay (crime base); Sahr Charles (insider); Sia Kamara (crime base); Alhaji Tejan Cole (crime base); Sahr Bindi (crime base); Ibrahim Wai (amputee); Edna Bangura (insider); TF1-158 (ex-child soldier); TF1-023 (crime base); TF1-029 (crime base); Sarah Koroma (crime base); Mohamed Samson Blah (amputee); Alpha Jalloh (ex- soldier); Samuel Radder (crime base); Akiatu Tholley (rape victim); Paul Nabieu Conteh (crime base); Ibrahim Fofanah (insider); Gibril Sesay (insider); Kumba Bindi (rape victim); Abu Bakarr Mansaray (crime base); Mustapha Mansaray (insider); Sheku Bah Kuyateh (crime base); TF1-579 (insider); Augustine Sama Mallah (insider); TF1-358 (expert medical witness); Dauda A. Fornie, (ex-RUF commander); TF1-274 (insider); Hassan Bility (Liberian journalist); Tariq Malik (Head of SCSL evidence unit); TF1-168 (insider); TF1-062 (crime base); TF1-174 (crime base); Finda Gbamanja (crime base); TF1-303 (rape victim); Alusine Conteh (amputee); Naomi Campbell (US model); Mia Farrow (US actress); Carole White (British business woman).

²³⁴⁰ Some entered in wheelchairs, others had their limbs amputated. ‘Author’s observations.’

that the crimes listed in the indictment were actually committed.²³⁴¹ Thirdly, the aim was to link Taylor to crimes committed in Sierra Leone through insider witnesses.²³⁴² In the end, everything was brought together and reinforced, highlighting Taylor's criminal responsibility.

Central in their case was the link between Taylor's alleged greed for diamonds and the atrocities committed in Sierra Leone. In order to contour this narrative, a mixed group of experts was called to the stand. Ian Smillie, a Research Coordinator with Partnership Africa Canada's "Diamonds and Human Security Project" and a diamond expert, testified about conflict diamonds, detailing the trade trail from RUF's controlled mines in Sierra Leone, via Liberia into the world market. He was the first witness and the prosecutor had expected him to testify on the history of Sierra Leone. Judge Julia Sebutinde, who was presiding, stopped the prosecutor several times during his examination: "Mr Prosecutor, I have listened with interest to your line of questioning, but with the greatest respect this sounds like a history lesson. We are now into the Jurassic period. Does any of this relate to the Indictment?"²³⁴³ Earlier on, she had already warned the prosecutor that Ian Smillie has not come here to give his testimony as a historian: "So you cannot ask questions that allude to the history."²³⁴⁴ Next in line was Dr. Stephen Ellis, a British historian. He took the court through a cursory lesson of the history of West African politics and Taylor's links with Sierra Leone.²³⁴⁵ Stephen Smith, a former journalist in West Africa who had studied history in Germany equally testified on the historical context in which Charles Taylor operated at the time.²³⁴⁶ A former SCSL investigator and Human Rights Watch researcher, Corinne Dufka,²³⁴⁷ detailed – in the capacity of "witness of fact" – the atrocities and abuses she had reported on from the field.²³⁴⁸ In between the expert testimonies in the first month of the trial, the prosecution called a handful of crime base-, linkage-, and insider- and fact witnesses,²³⁴⁹ asking them to discuss their first-hand experiences and observations of violence, linking

²³⁴¹ For instance, the last prosecution witness, Alusine Conte, entered the court room with his hand wrapped in bandages. He testified as to how the rebels had chopped off both his hands: "So, the civilian raised the axe and hacked once and making it two. Then my child screamed and said, "Soldier, don't cut off my father's hand" and they said the child was causing noise. Then they loosened the child from the mother's back and I said, "What?" I said, "This was my child. Why should you cut his hands off?" And they said, "Oh, you stopping here? You not going?" And I said, "I'm not going. I would rather you cut off both hands. As long as I have even a little, I don't mind." "Oh", they said, "Oh, is that what you're saying?" And I said, "Yes" and they said, "Put it" and I placed my right hand and they hacked it twice." SCSL, *Taylor Trial Transcript*, 30 January 2009, p. 24030.

²³⁴² From his wheelchair, Mustapha Mansaray, told the court: "Why I was willing to come and testify? It was for one reason: Because there was a man they used to call Charles Taylor. At the time there was war in Liberia he said that that war that had come to Liberia, we would taste the bitterness of that one in Sierra Leone. Everybody heard that in the radio. So if indeed the war came to Sierra Leone, and I am like this, this is my own portion of the bitterness that I tasted. Both of my hands were amputated. What he said was what came to pass. Those were his children who did that." SCSL, *Taylor Transcript* (30 October 2008), p. 19629.

²³⁴³ SCSL, *Taylor Transcript* (7 January 2007), p. 520.

²³⁴⁴ *Ibidem*, p. 502.

²³⁴⁵ SCSL, *Taylor Transcript* (16 January 2008) & SCSL, *Taylor Transcript* (18 January 2008). Also see: Stephen Ellis, *Report for the Special Court for Sierra Leone: Charles Taylor and the war in Sierra Leone* (5 December 2006), p. 3.

²³⁴⁶ SCSL, *Taylor Transcript* (22 September 2008).

²³⁴⁷ Between October 2002 and October 2003 she worked with the OTP as Senior Human Rights Advisor. Her duties included: Providing orientation and background on the Sierra Leonean conflict to new members of the investigation and the prosecution teams; Maintaining an archive of reports and historical information on the Sierra Leone armed conflict; locating and conducting in-depth interviews with potential witnesses (victims and perpetrators); collecting evidence; assisting mission planning by providing leads, context, contacts, maps and orientation; Advising OTP on background of potential suspect and witnesses; identifying key overview and expert witnesses; maintaining record of atrocities; liaising with third-party organisations: See: SCSL, OTP, *Prosecuting Filing of Expert Report Pursuant to Rule 94bis: Report of Corinne Dufka – Human Rights Watch to the Office of The Prosecutor: Special Court for Sierra Leone* (Freetown, 1 June 2007), p.6.

²³⁴⁸ SCSL, *Taylor Transcript* (21 January 2008).

²³⁴⁹ Alex Tamba Teh (TF1-015): Crime base Witness, a Sierra Leonean Pastor, born in Tomبودو, in Kono District; Vamunyan Sherif (TF1-406): Linkage Witness, a former member of Taylor's personal security force (Special Security Service or SSS), born in Voinjama in Liberia; Dennis Koker (TF1-114): Crime base Witness, a former soldier for the NPRC in Sierra Leone, he provided security for the advisor to the President, E.B. Jumu, who was a member of the Supreme Council of State; from the Mende tribe; José Maria Caballero (a.k.a. Father Cheema) (TF1-326): Factual Witness, a Spanish Catholic Priest, working in Sierra Leone, started a program of reintegrating and educating child soldiers; Abu Keita (TF1-276): Linkage Witness, a Mandingo, born in Zorzor, Lofa County, Liberia; he has been in the Armed Forces of Liberia (AFL), the LUDF, ULIMO and ULIMO-K, was deputy Chief of Staff in ULIMO-K and ranked General until disarmed in 1996; TF1-371: Linkage Witness, closed session testimony.

Taylor to crimes and trying to highlight the former Liberian President's motives. "When they captured somebody they would take a razor blade, or any other sharp object, a knife, or the zinc, and they would write on your chest "RUF" and they would turn you and they will carve on your back "AFRC". Those things I saw," testified Alex Tamba.²³⁵⁰ The 47-year-old pastor testified to incidents in Koidu town, which he had fled after rebels attacked. He had seen a lot of violence; rebels shooting and killing a man; counting as many as 50 corpses on the way to Sunna Mosque, including men, women and small children; the shooting to death 101 civilian men; the cutting off of arms and legs of a boy; rapes; forced labour; burning down houses. He was a victim himself: a rebel commander had forced Teh to put a stick in his mouth and knocked out most of his teeth on his upper and lower jaw by hitting him with the barrel of a pistol.²³⁵¹ Teh showed the Court his injuries and the false teeth he wears to assist in speaking. Next on the stand was high-level insider Varmuyan Sherif, a former member of Taylor's personal Special Security Service (SSS). As a linkage witness, he spoke of Taylor's radio communications from his Executive Mansion in Liberia with fighters in Sierra Leone, including Sam Bockarie, whom he was instructed to bring to Monrovia. On their way, he saw Bockarie remove a mayonnaise bottle filled with diamonds – destined for Taylor - from his pocket.²³⁵² On 25 January the curtain were closed down, for a seven day interval of closed session testimony of an insider witness, TFI-371.

Thirty-four 'insiders' were called to The Hague from the third week of the trial. A score of former RUF, AFRC, NPFL and SSS soldiers and commanders and radio operators testified about events that linked to Charles Taylor to the RUF, diamond mining, weapon trading and the Liberian President's command over the RUF and AFRC. They told the court about Taylor arranging weapons, troops and finances for the RUF, particularly before the Freetown invasion; all in exchange for diamonds. Allegedly, the RUF used the precious stones to buy Taylor's support. On his turn, according to the prosecution, control over Sierra Leone's diamond mines is what drove Taylor to support atrocities. Activities in and around the mines were central in the testimony. They were to prove allegations of forced labour, ill-treatment and a long list of other types of violence against civilians. It was what Taylor had conspired with the RUF: a joint criminal enterprise of gun-running and diamond-smuggling. Many insider witnesses testified about Taylor's leadership of the RUF, referring to him as "Pa", "father" or Commander in Chief. Other witnesses highlighted Taylor's bond with Foday Sankoh, Sam Bockarie and Issa Sesay, prominent rebel figures. Radio officers gave evidence on frequent contact between Taylor and the RUF leadership. Taylor's involvement in the RUF/AFRC junta was demonstrated by the presence of many Liberian fighters in Sierra Leone, who were under the direct command of Taylor and linked to crimes on the ground, particularly in

²³⁵⁰ SCSL, *Taylor Transcript* (8 January 2007), p. 707.

²³⁵¹ SCSL, *Taylor Transcript* (8 January 2007), p. 711.

²³⁵² SCSL, *Taylor Transcript* (9 January 2007), p. 845.

Freetown.²³⁵³ Throughout the trial, the only direct evidence connecting a campaign of murder, mutilation and rape in Sierra Leone to Charles Taylor came from insider witnesses, a strategy that followed from the very start of the investigations. But some of them, arguably, had strong reasons to testify against their political rival. Others were downright criminals, like Joseph Marzah. Nicknamed ‘zigzag’, the former secret service agent confessed to mass murder, killing babies, cutting open pregnant women and eating ‘Nigerians and white people as pork,’ during a chaotic and sketchy three day testimony.²³⁵⁴ In rebuttal, the defence did not need too much energy in discrediting the credibility of these kinds of witnesses.

Despite the fact that linkage evidence through insider testimony is most crucial in adjudicating individual criminal responsibility, almost two-third of the Prosecution’s witnesses brought to The Netherlands were victims and eye-witnesses. At the beginning of the trial, when media were still covering the proceedings, the Prosecution had called a handful of these so-called *crime base* witnesses, people who had seen, experienced or survived violence. But this type of evidence, often provided by traumatised victims, was only strongly featured later on in the trial. From September through October, no less than 39 crime base witnesses were flown in to The Hague, describing their painful ordeals. They were pivotal in establishing the long list of acts that constituted the actual crimes Taylor was accused of. Often, the prosecution also sought to elicit the identity of perpetrators, trying for instance to demonstrate that the reign of ‘terror’ inflicted on civilians were indeed committed by members of the RUF or the AFRC. Most of the witnesses, when asked, talked about the implications of the violence. Some were not able to work, while other suffered from ongoing medical and psychological problems. At the conclusion of its case, in the spring of 2009, the linkage evidence and scarce documentary authentication were only briefly underlined, only to bring again in four victims. The first testified about a massacre of 24 people, the second about the massive use of child soldiers and the third about being raped.²³⁵⁵ As the last witness, the prosecution called an amputation victim.

Seated in the witness chair, Alusine Conteh’s scars from the war were visible. Wrapped in bandage at elbow’s height, he missed both his hands; they were cut off in order to save his child. His left hand was chopped off by rebels during the 1999 rebel invasion of Freetown, only to also have his right amputated as a sacrifice to save his 4-year-old son, Karim, from amputation: “Then my child screamed and said, "Soldier, don't cut off my father's hand" and they said the child was causing noise. Then they loosened the child from the mother's back and I said, “What?” I said, "This was my child. Why should you cut his hands off?" And they said, "Oh, you stopping here? You not going?" And I said, "I'm not going. I would rather you cut off both hands. As long as I have even a little, I don't

²³⁵³ Jennifer Easterday, ‘Charles Taylor Trial Report (December 1, 2008 – February 28, 2009’, *Sierra Leone Trial Monitoring Program* (U.C. Berkeley War Crimes Studies Center), pp. 40-42.

²³⁵⁴ SCSL, *Taylor Transcript* (13 March 2008), p. 5998. Marzah testified from 12 to 14 March 2008.

²³⁵⁵ Easterday, ‘Charles Taylor Trial Report (December 1, 2008 – February 28, 2009’, pp. 13-17.

mind." "Oh", they said, "Oh, is that what you're saying?" And I said, "Yes" and they said, "Put it" and I placed my right hand and they hacked it twice."²³⁵⁶ Thus, the prosecution ended with a shock effect and emotional appeal to the judges, highlighting the injuries suffered by Sierra Leonean, rather than stressing the strength of the evidence linking Taylor with those atrocities. Prosecutor Rapp commented his "team had "achieved what we set out to do" with the presentation of testimony in the trial" and praised the contribution to justice made by the victim witnesses: "Brave men, women and children have taken the stand against Charles Taylor and recounted their suffering. They have included amputees, rape victims, former child soldiers, and persons enslaved, robbed, and terrorized. We are awed by their courage and grateful for their willingness to travel thousands of miles to bear witness. The contrast between these victims and the accused could not be starker."²³⁵⁷ Thus, the trial of the century ended with a shock effect, a display of suffering and an emotional appeal to the judges, highlighting the injuries suffered by Sierra Leonean rather than stressing the strength of the evidence linking them to Taylor's actions and inactions. Meanwhile, testimony on the main charges – Taylor's conspiracy with Sankoh – had remained inconclusive. No documentary evidence has shown that the two met each other between 1991 and 1999. Even historian Stephen Ellis could only account - based on interviews with third parties - that the two met 'sometime between 1987 and 1989.'²³⁵⁸ In contrast, at the trial it was Taylor himself who shed most light on his relations with the RUF, which in his version was to stop rebels from insurgency into Liberia, but only from the early 1990s.

5.7 Competing narrative

A court trying a president cannot escape debating politics and history. And indeed two diametrically opposed narratives about Taylor's role in West Africa were put before the judges. Producing almost 50 000 pages of transcript and over a thousand exhibits, the Taylor trial offers a unique insight into the Liberian and Sierra Leonean history. In the prosecution's version, as shown above, for a decade West Africa was the darkest corner of the world. From the trial and the presentation of evidence, two completely different narratives transpire.²³⁵⁹ It is a story of the "Godfather of terror" who brought the "bitterness of war" to Sierra Leone and beyond versus the story of a Pan-Africanist statesman who, like Mandela,²³⁶⁰ fought racism and branded a terrorist by the USA. In brief, the prosecution, as shown above, held that Taylor, over a period of 61 months and 19 days (30 November 1996 - 18 January 2002), was responsible for crimes committed in six Sierra Leonean districts by members of the RUF, AFRC, AFRC/RUF Junta and Liberian fighters. Taylor assisted, encouraged or acted in concert with these groups, who were either under his direction, control or otherwise subordinate to

²³⁵⁶ SCSL, *Taylor Transcript* (30 January 2009), pp. 24039-24030

²³⁵⁷ SCSL, Office of The Prosecutor, 'Testimony for the Prosecution Concluded in Taylor Trial', *Press Release*, 2 February 2009.

²³⁵⁸ SCSL, *Taylor Transcript* (16 January 2008), pp. 1426-7 & SCSL, *Taylor Transcript* (18 January 2008), p. 1530. Also see: Stephen Ellis, *Report for the Special Court for Sierra Leone*, p. 3.

²³⁵⁹ Also see: Marlies Glasius and Tim Meijers, 'Constructions of Legitimacy: The Charles Taylor Trial', *The International Journal of Transitional Justice*, Vol. 6, No. 2 (2012), pp. 229-252.

²³⁶⁰ Q [Griffiths]: I mean Nelson Mandela was called a terrorist at one time, wasn't he, Mr Taylor? A [Taylor]: Yes, I think for a long time he - even upon becoming President they still had that on certain books in America, SCSL, *Taylor Transcript* (29 July, 2009), p. 25495.

him. His criminal liability, according to the OTP, stemmed either from his actions or his omissions regarding crimes, which he had planned, instigated, ordered or committed. Otherwise he aided and abetted the planning, preparation or execution of these crimes. Or the crimes “amounted to or were involved within a common plan, design or purpose” in which Taylor “participated, or were a reasonably foreseeable consequence of such common plan, design or purpose.”²³⁶¹ That was not it. The prosecution alleged “in addition or alternatively” that Taylor, “while holding positions of superior responsibility and exercising command and control over subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, is individually criminally responsible for the crimes as alleged in the Indictment. It charges that the Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and the Accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”²³⁶² Moving outside of its temporal scope, the prosecution alleged that was the kingpin “in a ten-year campaign of terror,”²³⁶³ played a key role in the Freetown invasion,²³⁶⁴ looted diamonds since 1992,²³⁶⁵ knew of the atrocities in Sierra Leone,²³⁶⁶ that the RUF was an extension of Taylor’s NPFL,²³⁶⁷ created and controlled the RUF before 1991,²³⁶⁸ ran his scheme in Sierra Leone through Sam Bockarie²³⁶⁹ and concealed his links with the RUF from its inception to its demise, (even ordering the execution of Bockarie in 2003).²³⁷⁰ From the beginning, the RUF and NPFL “were one family, brothers and sisters.”²³⁷¹ Throughout the conflict Taylor further guided his proxy forces, the RUF and AFRC, as a “chief,”²³⁷² “father,” “Papay,” “Pa” and “godfather.”²³⁷³

While the prosecution proclaimed that “all this suffering, all these atrocities” were carried out “to feed the greed and lust for power of Charles Taylor,”²³⁷⁴ Taylor never denied the facts on the ground, nor the personal stories of victims and survivors who had come to trial. In rebuttal, Taylor presented himself not as war criminal but as peacemaker, who was left carrying the can for the international community. In sum, the defence countered the prosecution in its totality. He was not denying that crimes against humanity and war crimes were committed in the armed conflict in Sierra Leone during the period laid out in the indictment, but maintained he was not responsible for them. Pleading not guilty to all charges, he argued he could not have been fighting a war in Sierra Leone and that it ran counter to his interests. Economically, he argued, he was “effectively bankrupt” and

²³⁶¹ SCSL, *Prosecutor v. Taylor: Prosecution’s Second Amended Indictment* (SCSL-03-01-PT-263; 29 May 2007).

²³⁶² SCSL, *Taylor: Second Amended Indictment*, §34.

²³⁶³ SCSL, *Taylor: Prosecution Final Brief*, §1-8.

²³⁶⁴ *Ibidem*, §9-17.

²³⁶⁵ *Ibidem*, §18-21.

²³⁶⁶ *Ibidem*, §22-24.

²³⁶⁷ *Ibidem*, §25- 28.

²³⁶⁸ *Ibidem*, §26.

²³⁶⁹ *Ibidem*, §34-36.

²³⁷⁰ *Ibidem*, §37-39

²³⁷¹ *Ibidem*, §61.

²³⁷² *Ibidem*, §54-57.

²³⁷³ *Ibidem*, §58-60.

²³⁷⁴ SCSL, *Taylor Transcript* (8 February 2011), p. 49150.

faced an arms embargo and thus did not have the means.²³⁷⁵ And even then, he claimed he had no reason to plunder Sierra Leone's resources since "he had vast amounts of untapped natural resources in Liberia."²³⁷⁶ Politically, Taylor claims he feared regional instability because of the Sierra Leonean war and it would be "incredulous" if he "would have been in cahoots with the Junta."²³⁷⁷ Therefore, and most contrary to the prosecutions' submissions, he claims to have played a substantial role in fostering peace and security in Sierra Leone and that his contribution to the peace process was significant.²³⁷⁸ Taylor, in his defence, refuted the charge that he was at the very centre of the web of these crimes. And according to him, no evidence transpired to the contrary during the trial. "Throw it in the bin. That is what we submit the court should do with this body of evidence: Get rid of it."²³⁷⁹ That was the message of Taylor's lawyers throughout the defence case. Witnesses had been paid in exchange for their incriminating testimony, argued the lawyers: "By lavishing funds on witnesses which go well beyond compensating them for their actual expenses or losses consequent on their giving time to the Prosecution, this money, we say, has been used to pollute the pure waters of justice and the court cannot turn a blind eye to the effect that such financial rewards are likely to have on the evidence, and we invite the Court, when considering each and every witness about whom you have heard evidence of receipt of monies, to look very carefully at that witness's evidence."²³⁸⁰ In their challenging of the publicly held grand narrative – as progressed in the prosecutorial case theory - that he was at the very centre of the web of all the crimes in West Africa, the defence's main strategy was to cast doubts over the credibility of the insider witnesses and to present the judges with a completely different picture of Taylor's role. Acknowledging, that "a criminal trial is not a beauty contest," his defence submitted "that this man, however he has been painted in the public [but] when this indictment is approached in that independent, reasonable, unemotional way, there can only be one verdict on all these counts, and that is a verdict - and those are verdicts of not guilty."²³⁸¹

Taylor on the stand

Q. [Mr Griffiths]. Now, Mr Taylor, as you're aware you are charged on an indictment containing 11 counts, which alleges that you are everything from a terrorist to a rapist. What do you say about that?

A. [Mr. Taylor]. It is quite incredible that such descriptions of me would come about. Very, very, very unfortunate that the Prosecution, because of disinformation, misinformation, lies, rumours, would associate me with such titles or descriptions. I am none of those, have never been and will never be whether they think so or not. I am a father of 14 children, grandchildren, with love for humanity. I have fought all my life to do what I thought was right in the interests of justice and fair play. I resent that characterisation of me, it is false, it is malicious and I stop there.²³⁸²

²³⁷⁵ SCSL, *The Prosecutor of the Special Court for Sierra Leone v. Charles Ghankay Taylor: Defence Final Trial Brief* (SCSL-2003-01-T), §461-471; 707.

²³⁷⁶ SCSL, *Taylor: Defence Final Trial Brief*, §468.

²³⁷⁷ *Ibidem*, §859

²³⁷⁸ *Ibidem*, §87-102.

²³⁷⁹ SCSL, *Taylor Transcript* (9 March 2011), p. 49454.

²³⁸⁰ SCSL, *Taylor Transcript* (10 March 2011), p. 49475.

²³⁸¹ SCSL, *Taylor Transcript* (9 March 2011), p. 49470.

²³⁸² SCSL, *Taylor Transcript* (14 July 2010), pp. 24324-24325.

From 14 July 2010, Charles Taylor himself took the stand, as the first witness in his own defence. Wearing sunglasses, dressed up in a dark blue suit with a pin depicting the flag of Liberia, the former president commenced his 13-week direct testimony, examined in chief by his lead lawyer Courtenay Griffiths. A clear strategy was in place: presenting an opposite narrative to the case the prosecution painted through its 91 witnesses. Unprecedented in the history of international criminal justice, Taylor was allowed to provide the court with his own version of events, both in Liberia and in Sierra Leone. He did so enthusiastically, delivering his story in an ever eloquent style and in rich detail. And in his version, he is not a war criminal. Rather, he would have had to be a “superman” to run his own war-torn country, while also planning and ordering the commission of crimes on the other side of the border.²³⁸³ On the main charge of the conspiracy to attack Sierra Leone he was clear from the beginning:

Q. Now moving on, Mr Taylor, did you knowingly assist Foday Sankoh and the RUF to invade Sierra Leone?

A. I, Charles Ghankay Taylor, never ever at any time knowingly assist Foday Sankoh in the invasion of Sierra Leone.

Q. Did you plan such an invasion with him?

A. I never ever planned any invasion of that friendly country with Foday Sankoh.”²³⁸⁴

Throughout his testimony and cross-examination that lasted for no less than seven months, Taylor attempted to present to the court - and through the media to the world - his rational, reasonable and empathic character, that of an ‘ordinary man’.²³⁸⁵ Unsurprisingly, most of the content of Taylor’s testimony contained a political rebuttal, not only of the prosecution’s case but also of popular common knowledge about his role in West-Africa. This stage was explicitly set in the opening of the defence case the day before. On 13 July Courtenay Griffiths had made what the defence believed was the undercurrent of the “lofty” prosecution of Taylor, by quoting his fellow countryman Bob Marley: “working iniquity to achieve vanity”.²³⁸⁶ He was referring, most notably, to the large involvement of the US government “to publicly strip in front of the world this war lord of his power” through the financing and staffing the court.²³⁸⁷ Alluding to the sentiments of history, the defence uttered that Taylor’s case was political, perhaps even racist: “he [Taylor] was taken in chains from the shores of Africa and taken to Holland, thousands of miles away. The country of one of the colonisers of the black race for centuries. A historically familiar journey for some. So that was the challenge we faced as his Defence.”²³⁸⁸ As the tone of the defence case was set, Taylor’s testimony meandered through

²³⁸³ Thijs Bouwknecht, ‘Taylor takes the stand’, *International Justice Tribune*, No. 90 (30 September 2009), pp. 1-2.

²³⁸⁴ SCSL, *Taylor Transcript* (14 July 2010), pp. 24327-24328.

²³⁸⁵ Berkeley War Crimes Project, *Charles Taylor Trial Report* (July 13 –November, 2009), p. 3.

²³⁸⁶ SCSL, *Taylor Transcript* (13 July 2010), p. 24291.

²³⁸⁷ *Idem*.

²³⁸⁸ *Ibidem*, p 24294.

key themes, in a tabulated chronology and in response to every count of the indictment and allegations made by prosecution witnesses against him.

It started with his personality: who is Charles Taylor? From the public impression of Taylor as a ‘lord of war’ and the prosecution’s depiction of him as a terrorist and demon, the defence sought to repaint the picture of a man who made it from rags to riches. Going through his personal and family history by asking him about his social, economic and cultural background, Taylor’s team sought to humanise the former Liberian President. He came from a modest background, growing up in a mud house, without running water. Up to his eighth or ninth year, he walked to kindergarten school bare feet. “No, no, I came up in some very, very, very, very humble circumstances”, he reiterated.²³⁸⁹ Stemming from a mixed Americo-indigenous background and being a self-proclaimed Pan-Africanist, Taylor had shown himself to be self-made man. He highlighted his ambitions as he took the court through his personal history, interweaved with the political history of Liberia and West-Africa. Aiming to present Taylor as an ambitious and educated person who struggled to fight for what was best for his country, the defence sought to portray him as an African statesman who eventually became a scapegoat for the international community. Branding himself a peacemaker in the region, he distanced himself from the RUF, shifted the blame to the international community (particularly the USA and UK), highlighted the myriad of regional and international players involved in the Sierra Leone conflict, showed he had good relations with the Sierra Leonean government and was working on his own country’s self-defence against rebels and insurgents: "How could I have been micromanaging a conflict in neighbouring Sierra Leone as alleged when I, as newly elected President of the Republic of Liberia, had so much on my plate to deal with?"²³⁹⁰

Since its inception in January 2008, the prosecution had used its witness testimony to show that Taylor and RUF leader Foday Sankoh established a relationship in Libya in the late 1980s, and designed a ‘common plan’ to support each other’s efforts to capture political power in their home countries. This bond lasted throughout the 1990s they allege, and when Taylor became president in 1997, he continued to provide support for the RUF and AFRC military junta - even as these groups were committing atrocities in Sierra Leone. Taylor admits to working with the RUF in the early 1990s but says it was to fight rival Liberian rebels operating on the border of Sierra Leone. “My relationship with Sankoh was a pure and simple security relationship to protect my border, that we would fight ULIMO [United Liberation Movement of Liberia for Democracy] in Sierra Leone without having to fight them in Liberia.” But, he insists: “I say it to these judges: I, Charles Ghankay Taylor never talked to Sankoh after May of 1992 until I saw Sankoh in 1999 July in Lomé. I did not.” In order to substantiate the claim Taylor never set foot in Sierra Leone, Griffiths submitted photographs of Taylor travelling abroad in an effort to show that he could not have been in Sierra Leone at the times alleged,

²³⁸⁹ SCSL, *Taylor Transcript* (14 July 2010), p. 24362.

²³⁹⁰ SCSL, *Taylor Transcript* (13 July 2010), p. 24307.

in rebuttal of prosecution witness evidence to regular communications taking place between Taylor and other RUF commanders Sam Bockarie and Issa Sesay. Vital to Taylor's defence is the claim that he was acting at the behest of both the Economic Community of West African States (ECOWAS) and the United Nations to broker peace between the warring factions in Sierra Leone and negotiate with rebels to release abducted UN peacekeepers. Taylor took on his peacekeeping role, he claims, as the head of the Committee of Five - a group set up by ECOWAS designed to bring calm to Sierra Leone. He says he was actively involved in efforts to get former President of Sierra Leone, Tejan Kabbah, and the RUF leadership to the negotiating table, eventually leading to the signing of the Lomé peace agreement. "I spoke to the RUF many times by inviting the leadership to Liberia, by hosting them, everything with the knowledge and consent of the committee and ECOWAS. [...] Of course the United Nations knew because most of my discussions in Sierra Leone I either spoke to Kofi Annan directly or through his special representative in Liberia, where I insisted on making sure that we had notice of communications. All of those are available to present to this Court," Taylor said. Unlike the prosecution, Taylor's defence heavily relied on documentary evidence, many coming from Taylor's personal Presidential archives. In trying to show that Taylor always acted transparently in his dealings with the RUF, Griffiths has been taking the court through scores of cables and memoranda between Taylor, the UN and ECOWAS. Meanwhile, he held that he was a victim of preconceptions. "They had made up their minds, it really did not matter whatever I did," Taylor told the judges when responding to a 2000 UN Expert Panel Report which forms the core of the prosecution case.

Courtenay Griffiths' examination in chief came to a final on 10 November 2009. In his ever-elloquent, intelligent and penetrating style, just the day before the British-Jamaican Queen's Counsel ended by soliciting Taylor reaction to a statement former SCSL prosecutor David Crane presented months before Taylor was surrendered by Obasanjo – saying "the getting a West African's leader's attention is cash, plain and simple" – at an official meeting talking about the Taylor case.²³⁹¹ "One word: Racist", replied Taylor.²³⁹² The next day, after going through events leading up to his transfer to the court, it was the prosecution's turn to cross-examine Taylor, the man they had indicted six years before. Having sought to portray himself a decent, informed and forthcoming statesman in the first 13 weeks of his testimony, Taylor's attitude changed when examined by American trial attorney, Brenda Hollis, who later succeeded Stephen Rapp as Chief Prosecutor. Often argumentative, angry and defiant, his demeanour was challenging and confrontational. His response to the prosecution's strategy to impeach his prior testimony was at time virtually aggressive, contrary to the image his defence had intended to imprint on the judges. Taylor was full of deceit, as the argument progressed by the prosecution: "Charles Taylor proved himself to be intelligent, charismatic, and quick-thinking. He displayed a wide knowledge of international, regional and Liberian national history and his

²³⁹¹ House of Representatives, *The Impact of Liberia's Election on West Africa. Hearing Before the Subcommittee on Africa, Global Human Rights and International Operations of the Committee on International Relations House of Representatives*, 109th Congress, Second Session (Serial No. 109-146 (Washington, 8 February 2006), p. 81, footnote 26.

²³⁹² SCSL, *Taylor Transcript* (9 November 2009), pp. 31481-31482.

testimony was well-organized. Honesty, however, was notably absent from Taylor's testimony. On numerous occasions, on matters ranging from details to matters central to the charges, Taylor intentionally lied under oath. His testimony was incredible: much of what he said was contradicted by his own evidence, prosecution witnesses, and even his own defence witnesses and documentary evidence.”²³⁹³ Throughout the cross-examination, the prosecution sought to highlight their assertion that Taylor perjured himself, “repeatedly attempting to conceal his central role in the creation and crimes of the RUF and AFRC/RUF.”²³⁹⁴

When Taylor was finished with his testimony, the defence called another 20 witnesses on his behalf. The list included many Taylor’s former close associates. Yanks Smythe, the second to testify, had served as Taylor’s bodyguard, became the Assistant Director of Operations of the Special Security Services (SSS) and later became Liberia’s ambassador to Libya. Others had been former Liberian RUF or NPFL members, the military, a businesswoman, the widow of Taylor’s former Vice President Enoch Dogolea and SCSL convict Issa Hassan Sesay. In chronology, the witnesses denied Taylor had formed a criminal plan in Libya, that RUF rebels were trained in Liberia and they never heard about RUF rebels giving Taylor diamonds or had joined the RUF voluntarily. A close associate to Foday Sankoh and well respected RUF member, Isatu Kallon, claimed responsibility for the purchase of arms and ammunition, food, and fuel for the RUF from ECOMOG and Guinean soldiers, denying that they came from Taylor in return for diamonds.²³⁹⁵ One of the last witnesses, Sesay, who by then was already serving a 52-year sentence, dismissed prosecutors’ claims that he took orders from Taylor and bringing him diamonds: “Has Charles Taylor ever been in charge of the RUF?” asked Taylor's lawyer Courtenay Griffiths. "As far as I know, no," Sesay replied. "Have you ever given diamonds to Charles Taylor?" Griffiths continued. "No, I do not remember having given diamonds to Mr. Charles Taylor," the 40-year-old former rebel replied.²³⁹⁶

The model and the warlord

Diamonds – which were alleged to be the driving motive behind Taylor’s involvement in Sierra Leone and the cause of the violence – became a hotly contested issue again at the end of the trial. While Sesay was in the midst of giving his testimony, the prosecution sought to enter new evidence – this time through the testimony of three new witnesses. Never had so many court personnel assembled in the courtroom in the trial as on 5 August 2010: all the seats were taken for the first time in the court’s history. The reason was simple: in the dock was supermodel Naomi Campbell. The prosecution had summoned her to relate on events in 1997 at a dinner party in South Africa, hosted by Nelson Mandela. Campbell was there among the VIP guests, alongside actress Mia Farrow, singer Quincy Jones but also the freshly elected President of Liberia, Charles Taylor. After the dinner, Campbell had

²³⁹³ SCSL, *Taylor: Prosecution Final Brief*, §497.

²³⁹⁴ *Ibidem*, §497.

²³⁹⁵ Open Society Justice Initiative (OSJI), *The Trial of Charles Taylor by the Special Court for Sierra Leone: The Judgment* (April 2012), pp. 8-9.

²³⁹⁶ Thijs Bouwknegt, ‘Ex-Sierra Leone rebel testifies at Charles Taylor trial’, *Radio Netherlands Worldwide International Justice*, 5 July 2010.

received diamonds from unidentified men. Gossip through Campbell's former agent Carole White and Ms. Farrow, the next day during breakfast, suggested that the stones must have come from Taylor. SCSL prosecutors, in search of connecting Taylor to the possession of 'blood diamonds', followed up on the story and called the three ladies, Campbell, Farrow and White, to give their versions of the events to corroborate their narrative that Taylor was dealing in illegal diamonds. But in court, the story backfired. Campbell, who was subpoenaed to The Hague since she did not want anything to do with the case against Taylor whom she had looked up "on the internet," had a different story. She claimed in her short testimony that she had indeed received "dirty pebbles" and had given them to a representative of Mandela's charity fund for children. But she had no idea who they came from, not even caring about it because she was used to receiving presents all the time and at the strangest hours. Vagueness thus prevailed and court attendance was again at a record low in the afternoon for Sesay's continued testimony. After the weekend, Taylor's defence successfully managed to question the credibility of Farrow, portraying her as an activist fighting to get African dictators behind bars, and particularly Carole White. In a dramatic cross-examination, Griffiths highlighted that White had ulterior motives to connect Campbell to Taylor as she was suing her in a separate court case in New York over a million dollars' business feud. Despite unprecedented media attention for the Hollywood witnesses, the testimony was useless, even up to a point where even Brenda Hollis sought to argue that Campbell was not even a prosecution witness, but a "court witness." Hoping to present some 'smoking guns' at the end of trial, the diamond saga ended with a fizzle for the prosecution.

Judgement

Although attracting the world's attention once more to the carnage in Sierra Leone and the realm of international justice, the prosecution's last bid to directly tie Taylor to blood diamonds and prove their key argument that Taylor's motive was greed did not hold up. But it did not change the course of events. Two years later, Taylor was sentenced to 50 years imprisonment.²³⁹⁷ After 420 trial days, in which Taylor gave testimony for seven months,²³⁹⁸ the Chamber delivered its judgement on 26 April 2012.²³⁹⁹ It shattered the Prosecution's grand narrative because it found that Taylor's alleged superior responsibility over the rebels, his participation in a joint criminal enterprise and his orders to the RUF to commit crimes were not proven beyond any reasonable doubt. Instead, the Irish, Samoan and Ugandan judges unanimously found that Taylor aided and abetted²⁴⁰⁰ a long list of crimes committed by merciless rebels - including acts of terrorism, murder, rape and sexual slavery, enslavement,

²³⁹⁷ SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Sentencing Judgement* (SCSL-2003-01-T; The Hague; 30 May 2012).

²³⁹⁸ From 14 July 2009 until 18 February 2010, producing 11,123 pages of trial transcript, 22.4 % of the total trial transcript.

²³⁹⁹ From the commencement of the trial on 4 June 2007 until its closure on 11 March 2011, the Trial Chamber heard evidence on 420 trial days. In total, 115 witnesses testified *viva voce*, of whom two were subpoenaed. 15673 In addition to the *viva voce* witnesses, the Trial Chamber admitted into evidence written statements and/or prior testimony of four witnesses. 1521 exhibits were admitted into evidence. 15675. The trial record includes 49622 pages of transcripts and 1279 filings and decisions, totalling 38069 pages. SCSL, *Taylor Judgement. Annex B: Procedural History*, pp. 2490-2491

²⁴⁰⁰ The Trial Chamber found that the Prosecution had failed to prove beyond a reasonable doubt that Taylor had superior responsibility for the RUF, AFRC, joint RUF-AFRC junta and/or Liberian fighters, or that he participated in a Joint Criminal Enterprise with these groups. The Trial Chamber also found that the Prosecution had failed to prove beyond a reasonable doubt that Taylor ordered RUF or AFRC crimes in Sierra Leone.

pillage, and the conscription and enlistment of child soldiers.²⁴⁰¹ In their verdict – numbering almost 2500 pages - the three judges also detailed how Taylor took part in planning attacks on Kono, Makeni and Freetown between December 1998 and February 1999 and instructed rebels of the Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC) to ‘make the operation [s] fearful.’ They further outlined how Taylor had aided and abetted the rebels in committing atrocities by providing arms and ammunition, military personnel, operational support and moral support.²⁴⁰² For those crimes, Taylor was sentenced to a term of 50 years imprisonment,²⁴⁰³ a term that was upheld – next to almost all convictions – on appeal on 26 September 2013.²⁴⁰⁴

Unlike all other SCSL convicts, who are imprisoned in Mpanga prison in Rwanda, Taylor serves his sentence in the HM Prison Frankland, a ‘category A’ men’s prison in Brasside, England. For the SCSL it was a victory. It was the first modern international tribunal that had investigated, prosecuted, judged, convicted and sentenced a former head of state. Only Karl Dönitz had preceded Charles Taylor at the IMT. Taylor furthermore outlived Milošević at the UNICTY and went before Gbagbo and Kenyatta at the ICC. Although popularly celebrated as a shining example of the long arm of international criminal justice, his criminal case was not crystal clear. Joining Bagosora at the UNICTR, his case is emblematic of an erratic balance between history and the law in international trials. Ultimately, his verdict left a legacy of bloodshed unaddressed as most of Taylor’s alleged crimes – particularly in Liberia. This historical episode fell outside the straitjacket of his prosecution. Although the victim testimony on how RUF rebels sowed death and destruction, hacking off limbs, raping women and pillaging diamond mines presented a gruesome picture of what had happened in Sierra Leone and Liberia, tangible evidence that Taylor was directly involved hardly transpired. Moreover, if it was up to one the judges, Taylor should have not been convicted at all, as he alleged that his colleagues had not even deliberated on the evidence, which according to him left too many doubts.

Sitting in the Antonio Cassese courtroom rented from the Special Tribunal for Lebanon (STL) on 26 April 2012, Judge Richard Lussick told Taylor that “the Trial Chamber unanimously finds you guilty of aiding and abetting the commission of the following crimes pursuant to Article 6(1) of the Statute during the indictment period, and planning the commission of the following crimes in the attacks on Kono and Makeni in December 1998, and in the invasion of and retreat from Freetown between December 1998 and February 1999: [...]”²⁴⁰⁵ On the public gallery overlooking the

²⁴⁰¹ In particular by providing assistance in the following ways (while and among others): (i) By providing arms and ammunition, either directly or through intermediaries; (ii) By providing military personnel, including the Scorpion Unit, who helped commit crimes in various operations; (iii) By providing communications support, logistical support, financial support and other operational support (e.g. an RUF guesthouse in Monrovia, safe haven for RUF fighters in Liberia, medical support, food, clothes, cigarettes and alcohol for the RUF); and (iv) By providing moral support through on-going advice and encouragement to senior members of the RUF on tactics.

²⁴⁰² SCSL, *Taylor Judgement*.

²⁴⁰³ SCSL, *Taylor Sentencing Judgement*.

²⁴⁰⁴ The Appeals Chamber unanimously allowed Charles Taylor’s Ground 11 in part, and revised the Trial Chamber’s Disposition for planning liability under Article 6(1) of the Statute to exclude Kono District under Counts 1-8 and 11; dismissed Taylor’s remaining grounds of appeal and affirmed his convictions and his sentence of 50 years’ imprisonment. SCSL, Appeals Chamber, *Prosecutor Against Charles Ghankay Taylor: Judgment* (SCSL-03-01-A; 26 September 2013).

²⁴⁰⁵ SCSL, *Taylor Transcript* (26 April 2012), pp. 49676-49677.

courtroom, a joyful rendezvous of old friends took place. Former prosecutors David Crane and Stephen Rapp, court staff, diplomats, NGO staffers and a handful of victims, who were invited by the OTP, shook hand and congratulated each other in this “historic verdict.”²⁴⁰⁶ In a corner sat Taylor’s family, observing the mini summit of the international justice inner circle. But then a somewhat surrealistic drama evolved in the courtroom. As Lussick and his two colleagues walked out of the courtroom, the alternate judge, El Hadji Malik Sow from Senegal took the floor and stuttered:

The only moment where a Judge can express his opinion is during the deliberations or in the courtroom, and pursuant to the rules, when there is no deliberation, the only place for me in the courtroom. I won’t get – because I think we have been sitting for too long but for me I have my dissenting opinion and I disagree with the findings and conclusions of the other Judges, standard of proof the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the Prosecution. And my only worry is that the whole system is not consistent with all the principles we know and love, and the system is not consistent with the values of international criminal justice, and I’m afraid the whole system is under grave danger of just losing all credibility, and I’m afraid this whole thing is heading for failure.”²⁴⁰⁷

His words came as a shocking surprise to all; to the lawyers and clerks still in the courtroom and those in the public gallery. But after about a minute, the microphones were cut off and a metal grate was lowered over the glass that separates the courtroom from the public gallery. He could not finish and a few days later, the plenary of judges met and recommended his suspension.²⁴⁰⁸ Legal commentators and international justice professionals lamented Sow’s alleged improper behaviour and have argued that because he was an alternate judge, his opinion was not of any significance.²⁴⁰⁹ Yet, the four-year trial thus ended with a dramatic twist: a judge who had attended all hearings and deliberations for five years publicly posing questions to whether to facts had actually been proved. “Charles Taylor should have walked free,” he said in an interview, months after he censored by his colleagues and his name deleted from the judgement’s cover sheet.²⁴¹⁰

I’m a professional judge,” he continued, “and I’m bound by the evidence. I have serious doubts about the evidence. The prosecution case is altogether very unsatisfactory, inherently disharmonious, and filled with too many confusions and inaccuracies; and this, to my opinion, is fatal to the prosecution’s case. If you don’t see the truth, at least you must see the lies. I have seen too many lies, too many deceptions, and I haven’t seen any proof of guilt of this accused: [...] you cannot have such a trial and base your decision on the questionable evidence that we have received in this trial.”²⁴¹¹

Having observed the entire trial as the stand-in judge, Sow’s reasonable doubts speak volumes about the quality of the trial, the evidence and the political nature of the international criminal justice

²⁴⁰⁶ Author’s personal observations, 26 April 2012.

²⁴⁰⁷ El Hadj Malick Sow, ‘Oral Statement’ (Leidschendam, 26 April 2012) on file with author. The court stenographer had continued to type into the transcription program [Live Note], which appeared on the screens of those seated in the courtroom. One of the legal assistants from the Taylor defence team copied the text, saved it, printed it out and spread it amongst journalists during the press conferences after the judgment. The paragraph does not reappear in the official transcripts of the proceedings. See for a further analysis: Thijs Bouwknegt, ‘International Justice and History: an imperfect balance’, *Newsletter Criminology and International Crimes*, 7 (1) (July 2012) 5-7; and Thijs Bouwknegt, ‘An ill-fitting Taylor-made trial’, *International Justice Tribune*, No. 150 (25 April 2012), p. 1-2.

²⁴⁰⁸ SCSL, *Taylor Transcript* (16 May 2012), pp. 49681 - 49683.

²⁴⁰⁹ See for more: William Schabas, ‘PhD Studies in Human Rights’, *Blog* (www-text: <http://humanrightsdoctorate.blogspot.nl>, last visit: 10 October 2012).

²⁴¹⁰ ‘Justice Sow: Charles Taylor should have walked free’, pp. 46-53.

²⁴¹¹ *Ibidem*, p. 53.

enterprise. His voice has been censored from the trial record, his professional opinion sanctioned and the contents of his message shoved under the carpet as a footnote in the literature. As such, his reasonable doubt, which by his peers was deemed unreasonable – even contemptuous – was not taken into account in the final narrative progressed by the Special Court for Sierra Leone.

Thus, omitting Judge Sow’s name from the judgement, a certain historical narrative about the events in Liberia and Sierra Leone unfolds. In a section of 27 pages (out of 2539 pages), entitled ‘context’, the trial judges set out to provide “an introduction to the politics, personalities and events necessary to understand the allegations against the Accused.”²⁴¹² Further, they write “as the Accused is alleged to have participated in the civil war without being physically present on the territory of Sierra Leone, it is necessary to provide a brief outline of the broader geopolitical context in which the civil war took place.” In a cursory and factual tone, they go through the start of the war on 23 March 1991 “when armed fighters known as the Revolutionary United Front (“RUF”) launched an insurgency from Liberia’s Lofa County into Sierra Leone’s Kailahun District” up until the end when “President Ahmad Tejan Kabbah of Sierra Leone announced the cessation of hostilities on 18 January 2002.” Yet, before discussing the war, the judgement highlights key events since Sierra Leone’s independence in 1961, including several coups, the rise of Siaka Stevens, the established a one-party state, economic decline in the 1980s and the rise of Pan-Africanism. Then it outlines the ‘origins’ of the war²⁴¹³: “Disenchanted by the political and economic decadence, a dissident group known as the RUF was formed in the late 1980s/early 1990s with the aim of forcibly removing the APC Government and restoring democracy and good governance to Sierra Leone.” From there on, it runs through events during the war, in a monotonous style, bluntly describing undisputed facts during four time frames: “Civil war in Sierra Leone (1991-1996)”; “AFRC/RUF Junta Period (1997-1998)”; “Civil war in Sierra Leone (1998-1999)”; and “Civil war in Sierra Leone (1999-2002).”²⁴¹⁴ The most substantial part of the judgement, however, is the discussion on the factual findings concerning

²⁴¹² SCSL, *Taylor Judgement*, §18-70.

²⁴¹³ Citing from the testimonies of Stephen Ellis, Charles Taylor and a score of documents from the RUF and Africa Confidential.

²⁴¹⁴ In every section, the trial chamber also highlights major areas of dispute between the prosecution and the defence, briefly summarising them.

Taylor, in relation to the specific charges pressed against him.²⁴¹⁵ In doing so, and stretching way beyond the temporal jurisdiction of the court, they observe that they have “considered evidence prior to the Indictment period only for the purposes of clarifying the context, or establishing by inference the elements of criminal conduct.”²⁴¹⁶ On a crucial matter, touching the foundational part of the prosecution narrative, they found that, based on the evidence,²⁴¹⁷ “although the exact circumstances of their meeting are not specified, the Trial Chamber is convinced that the Accused met Sankoh while they were both in Libya. However, there is no evidence that Sankoh, the Accused and Dr Manneh all met together in Libya. More significantly, the Trial Chamber notes that no evidence was adduced regarding the content of any alleged meeting if such meetings did take place. Nothing in the Prosecution’s evidence establishes that the Accused, Sankoh and Dr Manneh agreed in Libya on a common plan to terrorize the civilian population to gain control of Liberia and Sierra-Leone.”²⁴¹⁸ The pre-indictment period narrative is straightforward:

At the end of the 1980s, a number of West African revolutionaries were trained in Libya, including the Accused, Ali Kabbah and Foday Sankoh from Sierra Leone and Kukoi Samba Sanyang (a.k.a. “Dr Manneh”) from the Gambia. The Accused met Sankoh in Libya, although the exact circumstances of their meeting are not known. Contrary to the Prosecution’s submissions, the evidence did not establish that prior to 1996, the Accused, Sankoh and Dr Manneh participated in any common plan, nor that the three men even met together. After the invasion of Sierra Leone in 1991, the findings of the Trial Chamber relate only to the relationship between Sankoh and the Accused. The Trial Chamber finds that the Prosecution has failed to prove that Sankoh and the Accused established a common plan. The evidence rather shows that the Accused’s NPFL and Sankoh’s RUF had parallel goals and aspirations. During the pre-Indictment period, the Accused provided the RUF with a training camp, instructors, recruits and material support, including food and other supplies. However, again contrary to the Prosecution’s submissions, the evidence did not establish that the RUF was under the superior authority of the Accused or the NPFL chain of command, or that they were instructed in NPFL terror tactics. The Accused supported the invasion of Sierra Leone in March 1991 and NPFL troops actively participated in it. However, the Prosecution failed to prove that the Accused participated in the planning of the invasion. The Prosecution also failed to prove that the support of the Accused for the invasion of Sierra Leone was

²⁴¹⁵ The trial chamber, in sum, found that - (i) Between 1986 and 1989, revolutionary movements and their leaders received training in Libya and that at some point, between 1986 and 1989, Taylor, Foday Sankoh and Dr Manneh were in Libya, and that the Accused met Sankoh in Libya during this time; (ii) The prosecution failed to prove that between 1986 and 1989, Taylor, Sankoh and Dr Manneh met together and established a common plan to terrorize the Sierra Leonean population and to forcibly control the population and territory of Sierra Leone; (iii) In 1989, after their training in Libya, Taylor and his Liberian revolutionary group and Dr Manneh and his Gambian revolutionary group went to Burkina Faso; (iv) The prosecution failed to prove that in 1989, Foday Sankoh was also in Burkina Faso and that Taylor, Sankoh and Dr Manneh met and agreed to support each other in their respective wars; (v) From August 1990 until March 1991, Taylor provided the RUF with the training camp of Crab Hole, instructors, recruits and material support, including food and other supplies; (vi) The prosecution failed to prove that from August 1990 until March 1991, as a matter of policy, NPFL instructors in Crab Hole taught terror methods to RUF recruits; (vii) The prosecution failed to prove that Liberian and Sierra Leonean trainees at Camp Naama had no separate chain of command and were treated as one body under the command of Taylor; (viii) The prosecution failed to prove that in Voinjama in March 1991, Taylor, Foday Sankoh and Dr Manneh together with NPFL and RUF commanders held a meeting during which they planned and organised the invasion of Sierra Leone in accordance with the strategy hatched in Libya and Burkina Faso; (ix) Taylor supported the invasion of Sierra Leone; (x) After the invasion, NPFL troops committed crimes against Sierra Leonean civilians; (xi) The prosecution failed to prove that the support of Taylor for the invasion of Sierra Leone was undertaken pursuant to a common purpose to terrorize the civilian population of Sierra Leone; (xii) Around November 1992, Taylor provided Sankoh with arms and ammunition for an attack on Kono; (xiii) During this time Taylor received diamonds from Sankoh; (xiv) The prosecution failed to prove that in 1992 Taylor and Sankoh formed a common plan to capture Kono, or that Taylor directed Sankoh to capture Kono, because it was a diamondiferous area; (xv) In 1993, following a request from Taylor, Sankoh sent RUF personnel under the command of Morris Kallon to Liberia to fight with the NPFL against ULIMO; (xvi) The prosecution failed to prove that Taylor instructed Joseph (a.k.a. Zigzag) Marzah to establish a relationship with persons in Guinea in order to take materiel into Guinea for the RUF; (xvii) In 1994, Taylor advised Sankoh to attack a major place in Sierra Leone, and pursuant to this advice Sankoh ordered the RUF to attack Sierra Rutile. Following the attack, Taylor gave Sankoh further advice with regard to the use of the money looted and the hostages abducted during the course of the attack on Sierra Rutile; (xviii) In early 1996 before the elections, Foday Sankoh ordered the RUF to attack and burn polling stations in all major towns including Kenema, Bo and Magburaka and to shoot and kill or to amputate the hands or fingers of any civilian believed to participate in the elections, an attack dubbed “Operation Stop Election”; (xix) The Prosecution failed to prove that before ordering Operation Stop Election, Sankoh sought the approval and guidance of Taylor. See SCSL, *Taylor Judgement*, §2195-2563.

²⁴¹⁶ SCSL, *Taylor Judgement*, §2193.

²⁴¹⁷ *Ibidem*, §2195-2227.

²⁴¹⁸ SCSL, *Taylor Judgement*, §2228-2232.

undertaken pursuant to a common purpose to terrorize the civilian population. Rather, the evidence shows that the Accused and Sankoh had a common interest in fighting a common enemy, ULIMO, a Liberian insurgency group in Sierra Leone, and the Sierra Leonean Government forces which was supporting ULIMO. The Accused withdrew his NPFL troops from Sierra Leone after the fallout between the NPFL and RUF troops in 1992, culminating in Operations Top 20, Top 40, and Top Final. While the Defence maintains that the Accused had no further contact or cooperation with Sankoh after 1992 following Top Final, the Trial Chamber has found otherwise. Although the Liberia-Sierra Leone border was closed by ULIMO and the Sierra Leone Government forces, it remained porous, enabling the flow of arms, ammunition and other supplies from Liberia during the remainder of the pre-Indictment period. The Trial Chamber has found that the Accused provided arms and ammunition to Sankoh for an attack on Kono in November 1992, and that he advised Sankoh prior to and following the attack on Sierra Rutile. The Accused also asked Sankoh to send troops in 1993 to help him fight ULIMO. Having failed to prove the existence of a common plan formulated in Libya and Burkina Faso, the evidence relied on by the Prosecution indicates that during this pre-Indictment period Sankoh operated independently of the Accused, and while relying at times on his guidance and support, did not take orders from the Accused.”²⁴¹⁹

Thus, the undercurrent of the prosecution’s case was not proved beyond any reasonable doubt. However, the findings on Taylor’s role during the indictment period do connect Taylor with crimes committed in Sierra Leone. That narrative is much more detailed in fact and it goes way beyond the scope of this research to reproduce it. In sum,²⁴²⁰ however, it still remains a complex story. Crucial findings, which led to convictions, included some key events, particularly between mid-1998 and beginning of 1999. In the lead up to the Freetown invasion in January 1999, Taylor and his subordinates maintained communications with the AFRC/RUF forces, mainly to maintain control over the diamond-rich Kono area, where he instructed attacks and supplied arms and ammunition for the operations. In November/December 1998, Taylor planned a two-pronged attack on Kono, Kenema and Freetown and told Bockarie to make the operation “fearful” in order to pressure the Government of Sierra Leone into negotiations on the release of Foday Sankoh from prison, as well as to use “all means” to get to Freetown. Subsequently, Bockarie named the operation “Operation No Living Thing,” implying that anything that stood in their way should be eliminated. However, it is not clear that Taylor had any level of control over the conduct of these operations. In addition to planning and advising on the Kono-Freetown operation, Taylor provided military and other support, including arms and ammunition, which was used in the attacks on Kono and Kenema in December 1998. Taylor also sent personnel in the form of at least four former Sierra Leone Army (SLA) fighters, who participated in the attack on Kono, as well as 20 former NPFL fighters and a group of 150 fighters from the Scorpion Unit. Next to support for specific military operations, Taylor provided to the RUF, and the RUF/AFRC alliance, sustained and significant communications support, financial support, military training, technical support and other operational support. In Monrovia between 1998 and 2001, Taylor provided the RUF with a guesthouse, equipped with a long-range radio and telephone, RUF radio

²⁴¹⁹ Ibidem, §2564-2569.

²⁴²⁰ SCSL, TCII, *Prosecutor v. Charles Ghankay Taylor: Judgement Summary* (SCSL-03-1-T; 26 April 2011)

operators, SSS security, cooks and a caretaker. Although the guesthouse was used by RUF members partly for matters relevant to the peace process or for diplomatic purposes, it was also used to facilitate the transfer of arms, ammunition and funds directly from the Accused to the RUF, and the delivery of diamonds from the RUF directly to Taylor. As to the role of his alibi as a peace maker, the judges found that while Taylor publicly played a substantial role in the Sierra Leone peace process, including as a member of the ECOWAS Committee of Five (later Committee of Six), secretly he was fuelling hostilities between the AFRC/RUF and the democratically elected authorities in Sierra Leone, by urging the former not to disarm and actively providing them with arms and ammunition, acting, as the Prosecution described, as “a two-headed Janus”.²⁴²¹

Based on these facts, in its Judgement the trial chamber found that at all times relevant to the Indictment, there was an armed conflict in Sierra Leone involving, among others, members of the RUF, AFRC and CDF, and that the RUF/AFRC directed a widespread and systematic attack against the Sierra Leonean civilian population. Subsequently, Taylor was convicted on all eleven counts of the indictment and found him individually criminally liable for “aiding and abetting” the commission of crimes between 30 November 1996 and 18 January 2002 in the Districts of Bombali, Kailahun, Kenema, Kono, Port Loko and Freetown and the Western Area.²⁴²² It further found Taylor individually criminally liable for “planning” the commission of crimes, charged in all eleven counts, between December 1998 and February 1999 in the Districts of Bombali, Kailahun, Kono, Port Loko and Freetown and the Western Area and that were committed in the attacks on Kono and Makeni in December 1998, and in the invasion of and retreat from Freetown, between December 1998 and

²⁴²¹ SCSL, *Taylor Judgement Summary*, §119.

²⁴²² Count 1: Acts of terrorism, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(d) of the Statute in Kenema, Kono, and Kailahun Districts and in Freetown and the Western Area; Count 2: Murder, a crime against humanity pursuant to Article 2(a) of the Statute in Kenema, Kono and Kailahun Districts, and in Freetown and the Western Area; Count 3: Violence to life, health and physical or mental well-being of persons, in particular murder, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute in Kenema, Kono and Kailahun Districts, and in Freetown and the Western Area; Count 4: Rape, a crime against humanity, punishable under Article 2(g) of the Statute in Kono District and in Freetown and the Western Area; Count 5: Sexual slavery, a crime against humanity, punishable under Article 2(g) of the Statute in Kono and Kailahun Districts, and in Freetown and the Western Area; Count 6: Outrages upon personal dignity, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(e) of the Statute in Kono District and in Freetown and the Western Area; Count 7: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute in Kono District and in Freetown and the Western Area; Count 8: Other inhumane acts, a crime against humanity pursuant to Article 2(i) of the Statute in Kono District and in Freetown and the Western Area; Count 9: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, another serious violation of international humanitarian law pursuant to Article 4(c) of the Statute in Tonkolili, Kailahun, Kono, Bombali, Port Loko, Kenema and Koinadugu Districts and in Freetown and the Western Area; Count 10: Enslavement, a crime against humanity pursuant to Article 2 (c) of the Statute in Kenema, Kono and Kailahun Districts, and in Freetown and the Western Area; Count 11: Pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(f) of the Statute in Kono, Bombali, and Port Loko Districts and in Freetown and the Western Area. SCSL, *Taylor Judgement*, §6994 (a).

February 1999. The Trial Chamber found that the Prosecution failed to prove beyond a reasonable doubt that Taylor was criminally liable under Article 6(3) of the Statute.²⁴²³

Both parties appealed the judgement. On the prosecution side, four grounds of appeal were filed,²⁴²⁴ while the defence raised 45 grounds on which they say the trial chamber “erred” in fact and in law as they convicted and sentenced Taylor in 2012.²⁴²⁵ In general terms, Taylor’s team argued that the “colossal judgement [...] is plagued throughout by internal inconsistencies, misstatements of evidence and conflicting findings, [...] errors which reflect the weakness of the case against Mr. Taylor, at whose feet the Chamber has laid responsibility for crimes committed by foreign forces over whom he had no effective control, did not command or instigate, with manifest disregard to his physical and legal remoteness from the events in question.”²⁴²⁶ After more than a year of deliberations however, the five appeals judges did not revise their colleagues’ findings, other than partly allowing one ground of appeal of the prosecution as well as one ground of the defence. As a result, the sole alteration in the original judgement is that Kono District was deleted – under counts 1-8 and 11 – when it came to Taylor’s planning of crimes.²⁴²⁷ Perhaps, the most surprising element in the appeals judgement is ‘Annex D’, a detailed list of “persons,” including RUF/AFRC members and “associates or subordinates of Charles Taylor.”²⁴²⁸ Without any explanation elsewhere in the findings, the appeals judges list the names, alongside their “role in the conflict”, of 41 people. Including all eight other SCSL convicts, the deceased indictees and the remaining fugitive Paul Koroma, the appeals chamber seems to implicitly connect 29 others to the crimes committed in Sierra Leone and even in Liberia. Some had testified about their violent role in the conflict, like Joseph Marzah, but others had not. In all, it appears that the judges, in their very last judgement, wanted to add an extra element to the historical record, but beyond their competence.

Irrevocably, the historical narrative that was foreseen to be established and written by the prosecuting agents of the SCSL did not hold up in court. Only a fraction of it was found to be proved, using the legal standards of proof. From a Godfather, who had prophesised that Sierra Leone would

²⁴²³ Count 1: Acts of terrorism, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(d) of the Statute in Kenema, Kono, and Kailahun Districts and in Freetown and the Western Area; Count 2: Murder, a crime against humanity pursuant to Article 2(a) of the Statute in Kenema, Kono and Kailahun Districts, and in Freetown and the Western Area; Count 3: Violence to life, health and physical or mental well-being of persons, in particular murder, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute in Kenema, Kono and Kailahun Districts, and in Freetown and the Western Area; Count 4: Rape, a crime against humanity, punishable under Article 2(g) of the Statute in Kono District and in Freetown and the Western Area; Count 5: Sexual slavery, a crime against humanity, punishable under Article 2(g) of the Statute in Kono and Kailahun Districts, and in Freetown and the Western Area; Count 6: Outrages upon personal dignity, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(e) of the Statute in Kono District and in Freetown and the Western Area; Count 7: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute in Kono District and in Freetown and the Western Area; Count 8: Other inhumane acts, a crime against humanity pursuant to Article 2(i) of the Statute in Kono District and in Freetown and the Western Area; Count 9: Conscription or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, another serious violation of international humanitarian law pursuant to Article 4(c) of the Statute in Tonkolili, Kailahun, Kono, Bombali, Port Loko, Kenema and Koinadugu Districts and in Freetown and the Western Area; Count 10: Enslavement, a crime against humanity pursuant to Article 2 (c) of the Statute in Kenema, Kono and Kailahun Districts, and in Freetown and the Western Area; Count 11: Pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(f) of the Statute in Kono, Bombali, and Port Loko Districts and in Freetown and the Western Area. SCSL, *Taylor Judgement*, §6994 (b).

²⁴²⁴ The OTP sought to find Taylor liable for (1) ordering and (2) instigating the commission of crimes, (3) find him liable for crimes committed in certain locations in five districts on the ground that they fell outside the scope of the indictment and (4) to raise the sentence to 80 years. SCSL, Appeals Chamber, *The Prosecutor Against Charles Ghankay Taylor: Public Prosecution Appellant’s Submission* (SCSL-03-01-A; 1 October 2012).

²⁴²⁵ SCSL, Appeals Chamber, *The Prosecutor Against Charles Ghankay Taylor: Appellant’s Submissions of Charles Ghankay Taylor* (SCSL-03-01-A; 1 October 2012).

²⁴²⁶ SCSL, *Appellant’s Submissions of Charles Ghankay Taylor*, §4-6.

²⁴²⁷ SCSL, *Taylor Judgement*, p. 305.

²⁴²⁸ SCSL, *Taylor Judgement*, ‘Annex D: List of Persons’, pp. 342-347.

taste the bitterness of war, his role was reduced to an 'aider and abetter' to crimes committed by a foreign rebel force over the period of four months. From the case, and particularly through Taylor's own testimony, the narrative that prevails is that Charles "Dankpannah"²⁴²⁹ Taylor, a self-made man, who made it from a mathematics teacher, via a rebel life to become President,²⁴³⁰ had not shunned away from violence. In the end, his career ended in the dock in the Netherlands, far from his home in West Africa and he will spend the remainder of his 50 year prison sentence in a prison in the UK.²⁴³¹ It reads like a classic script on the rise and fall of a dictator.

Taylor goes into history as the first former African head of state to be judged, convicted and sentenced before an international criminal tribunal. A jewel in the crown of the SCSL, his criminal case was not crystal clear.²⁴³² It is rather characteristic of the tumbling balance between history and the law. In the end, the file left a legacy of bloodshed unaddressed as most of Taylor's alleged crimes fell outside the straitjacket of his prosecution. Armed with a limited mandate – they could only prosecute crimes committed from November 1996²⁴³³ - prosecutors have had an exceptionally demanding job to criminally tie Taylor to the bloodshed. Consequently, the SCSL's main shortcoming in this trial was that it could not deal with Taylor's full role in West Africa's atrocious history. Taylor's crimes in Liberia have been well documented by historians and the truth and reconciliation commissions in Liberia and Sierra Leone.²⁴³⁴ The reality is that they remained outside the reach of the SCSL and this has caused problems to their case because they had to establish Taylor's alleged crimes in Sierra Leone, although it did not prevent prosecutors from delving into history. And the bench was compassionate in allowing evidence falling outside the scope of the indictment. But no 'smoking guns' were presented. Like at the UNICTR, the Court was confronted with a complex oral society and an absence of a clear paper trail or forensics. The tribunal therefore almost exclusively relied on testimonial evidence, echoing the forgotten cruelties of the Sierra Leonean civil war in the courtroom. The only direct evidence that connected a campaign of murder, mutilation and rape in Sierra Leone to Charles Taylor came from his own former aides and enemies. But the use of this *insider witness* testimony had to stand the test of credibility on the grounds of their ethnic/regional/national loyalties, or because of their own implication in crimes. Some of them had strong reasons to testify against their political rival. There is therefore a lack of precision and proof at the heart of the testimony heard in court. The relationship between Sankoh and Taylor in Libya – the very basis of criminal charges - still

²⁴²⁹ Taylor explained "That means I am the national chief. Still I hold that position and I hold it until death. That's what "Dankpannah" means." SCSL, *Taylor Transcript* (14 July 2009), pp. 24347 – 24351.

²⁴³⁰ In between he washed dishes and cleaned floors while studying accounting and economics, worked in Plastic factory and entered Diaspora politics in the USA. After spending time in the Liberian government in the early 1980s, returning back to the USA, being arrested on embezzlement charges and breaking out of a maximum security prison in Plymouth, he became a notorious rebel in Liberia, in the end toppling the government of Samuel Doe. See for a detailed study on Charles Taylor and his campaign towards becoming president of Liberia: Waugh, *Charles Taylor and Liberia*, pp. 228-240. Otherwise the trial transcripts in Taylor's trial, altogether, provide the view from Taylor himself. SCSL, *Taylor Transcript* (15 July 2009), pp. 24517-24522; SCSL, *Taylor Transcript* (16 July 2009).

²⁴³¹ RSCSL, Public Information, *In the matter of Charles Ghankay Taylor: Decision on Charles Ghankay Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda AND ON Defence Application for Leave to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda* (RSCSL-03-01-ES; 21 May 2015).

²⁴³² Thierry Cruvellier, *From the Taylor Trial to a Lasting Legacy*, p. 5.

²⁴³³ *Agreement between the United Nations and the government of Sierra Leone on the establishment of a Special Court for Sierra Leone & Statute of the Special Court for Sierra Leone*.

²⁴³⁴ See: TRCSL, *Witness to Truth*; TRCL, *Consolidated Final Report*.

remains shrouded in mist. No documentary evidence has shown that the two met each other between 1991 and 1999. Historian and expert witness Stephen Ellis could only account that the two met ‘sometime between 1987 and 1989,’ and the court could not make any finding of what had been discussed in the case they had met.

A court trying a former president cannot escape debating politics and history. And in the end, two diametrically opposed narratives about Taylor’s role in West Africa were put before the judges but also the general public. Producing almost 50 000 pages of transcript and over a thousand exhibits, the Taylor trial thus offers a unique tabulated roadmap through competing versions Liberian and Sierra Leonean history, through witness testimony. And so do the other three trials.

Bundled together, the entire SCSL trial record and the archives of the TRC comprise the fullest available collection of information on the Sierra Leonean war. It is no surprise that its sources, as well as its findings, have already made their way into the historiography of the conflict, to a very large degree. Although the conclusion may vary – due to methodological issues – the process of fact-finding has elucidated much detail, to an extent that historians – and most of those specialised in the region have contributed in some way - could have never uncovered in such a relative short time-span. Unprecedented in Sierra Leonean history, up to ten thousand people have provided testimony about their experiences during the war which are transcribed and archived, establishing a unique source of oral history that without the TRC and the SCSL would most likely never had been uncovered.

The SCSL Narrative

Prosecutors at the international criminal tribunals not only use discourses, references and appeals to history, to broach legitimacy to what they do, particularly during opening statements.²⁴³⁵ Even more so, they use the legal arena as a stage to unveil their interpretation of historical events and present a particular narrative thereof. At the SCSL, it was first David Crane who outlined the story of Sierra Leone in general terms and later Stephen Rapp who developed it in a very particular direction in the Taylor case. In the first trial, during opening statements, the Prosecution even went further than outlining facts of the case and made a solemn promise to lay bare the truth about what happened in Sierra Leone. Only four months before the TRC report was publicized and without referencing the truth commission during his entire statement, the Sierra Leonean prosecution counsel Joseph Kamara, uttered in court that it was the SCSL’s “obligation to all the people of Sierra Leone and humanity, to show why and how these abominable things happened.”²⁴³⁶ Moreover, he continued, “the savages of the war are still alive in the minds of the people. Humanity must not and will not allow these savageries to share the conscience of mankind. It is vitally important that the brutality and savagery of this war are exposed and chronicled so that we have an official record of the horrors that befell this

²⁴³⁵ Sofia Stolk, “The Record on Which History Will Judge Us Tomorrow’: Auto-History in the Opening Statements of International Criminal Trials, *Leiden Journal of International Law*, Vol. 18, No. 4 (2015), pp. 993–1012.

²⁴³⁶ SCSL, *Norman, Fofana & Kondewa Transcript* (3 June 2004), p. 15.

nation.”²⁴³⁷ However, the narrative progressed during the trials was an uncomplicated and stereotypical story of ‘Third-World ‘evil criminal savagery, spelled out by David Crane:

In the dark corners of the world lurks the future of armed conflict. [...] The real threat to humanity on several levels is bred in the fields of lawlessness in the third world. Fertilized by greed and corruption, what grows out of these regions of the world are terror, war crimes, and crimes against humanity. Conflicts in these dark corners are evolving into uncivilized events. They appear to be less political and are more criminal in origin and scope. Combatants lost in this dismal swamp become mere pawns in a deadly joint criminal enterprise started by actors for their own personal criminal gain. [...] The impunity by which these warlords move about a region unmolested, or with little accountability, breeds a lack of respect by the populace for the rule of law. The corruption so endemic in these societies fosters a healthy lack of respect for institutions of any kind, certainly a wary distrust.”²⁴³⁸

Informed on the one hand by the reports of journalists and human rights organisations that had framed the Sierra Leonean war as sheer anarchy and dread and post 9/11 discourse of terrorism, this narrative was progressed throughout the SCSL trials. In the RUF case, Crane said “this is a tale of horror, beyond the gothic into the realm of Dante’s inferno.”²⁴³⁹ A year later, at the beginning of the AFRC trial, Crane talked about events, “unimaginable in their brutality, unspeakable beyond description.”²⁴⁴⁰ According to him:

if you listen closely to their [witnesses] testimony, you can almost hear the screaming, the rattling of gun fire, the crying of infants being thrown in the fires. By the truth of the witnesses, the past will unfold before you. We must go back in time before Sierra Leone can move forward into the light of a brighter tomorrow.”²⁴⁴¹

He raised high expectations of what the court could achieve, but he totally went beyond the finding by the TRC, whose narrative was already much more complicated. Interestingly enough, despite the fact that two fact-finding entities were at play at the same in Sierra Leone, both seeking to unearth what had happened during Sierra Leone’s war, the Prosecution barely talked about the TRC report and subsequently the Special Court for Sierra Leone hardly referred to the TRC’s findings in its four judgements.²⁴⁴² It somehow was a historiographical surprise. An academic historian and jurist himself, William Schabas, who also happened to be one of the international truth commissioners, notes there were some initial suggestions that the TRC provide historical background to the prosecutions at the SCSL.²⁴⁴³ It would have been an interesting feature of innovative transitional justice dualism, but the idea shipwrecked. At the TRC’s legal counterpart, exactly the reverse was contemplated. In a ruling

²⁴³⁷ Ibidem, pp. 15-16.

²⁴³⁸ Crane, ‘Dancing with the Devil’, p. 4.

²⁴³⁹ SCSL, *Sesay, Kallon & Gbao Transcript* (5 July 2004), p. 1.

²⁴⁴⁰ SCSL, *Brima, Kamara & Kanu Transcript* (7 March 2005), pp. 20-21.

²⁴⁴¹ Ibidem, pp. 20-21.

²⁴⁴² William A. Schabas, ‘Foreword’, in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, p. xxvi.

²⁴⁴³ Schabas, *Unimaginable Atrocities*, p. 169.

dismissing the TRC's request for SCSL's defendants to give their testimony at the commission,²⁴⁴⁴ Judge Robertson suggested the TRC issued a preliminary report "and then suspend its operations until the trial process has been completed, when it would reconvene to consider the trial evidence and prepare and publish a final report, incorporating the results of the trials."²⁴⁴⁵ Consensus on complementarity was thus deadlocked and the two did not come to a common understanding of the history of the conflict. Constricted by its mandate in temporal scope and agency, the Court – in particular the OTP – tended to emphasise external causes, such as political manipulation by foreign political leaders – Gadaffi, Compaoré, and Taylor etcetera – and the international diamond trade. Through its much wider lens, the commission focused on internal factors, such as the despotic rule over several decades by a corrupt oligarchy, while also addressing foreign influences. Commissioner Schabas attributes the dichotomy to the assessments of the individuals – including him - who were involved and the scope of the evidentiary ingredients before each of the bodies. Perhaps such diversity is inevitable, he writes, when different researchers or organisations seek to understand historical truth: they do not always reach the same conclusions.²⁴⁴⁶

After over a decade of adjudicating acts of nine individuals during Sierra Leone's war, the court crafted a sober, concise and regulated historical narrative. In its final report, the court thrifty summarises it back to less than 900 words. Extracted from the four substantive judgements rendered by six judges divided in two trial chambers,²⁴⁴⁷ the court, recounts that:

Sierra Leone gained independence from Britain on 27 April 1961. In 1978, a one-party state (the All People's Congress ("APC")) under President Siaka Stevens was established. In the period that followed, Sierra Leone experienced general economic decline. This coincided with the creation of an armed opposition known as the Revolutionary United Front (RUF) in the late 1980s. Headed by a Sierra Leonean called Foday Sankoh, a former corporal in the Sierra Leone Army ("SLA"), the RUF was comprised of former students of middle class origin, alienated and impoverished youths, former members of the SLA and Liberian fighters from a rebel group led by Charles Taylor known as the National Patriotic Front of Liberia ("NPFL"). The aim of the RUF was to forcibly remove the APC Government and to restore democracy and good governance to Sierra Leone. On 23 March 1991, the RUF launched an invasion into eastern Sierra Leone. This commenced the conflict in Sierra Leone. [...] The armed conflict in Sierra Leone spanned a period of eleven years from 1991 to 2002. During that period, Sierra Leone experienced atrocity crimes. These crimes included mass killings, widespread amputation of limbs and mutilation of civilians, sexual violence and the use of children in armed conflict. [...]²⁴⁴⁸

The three judgements rendered in Freetown – in the CDF, RUF and AFRC – leave little room for

²⁴⁴⁴ SCSL, *Request SHN 001 / Submitted on 07 October 2003*. By the truth and reconciliation commission for sierra Leone to conduct a public hearing with chief Samuel Hinga Norman JP In terms of the Special Court for Sierra Leone practice direction adopted on 9 September 2003, as amended on 4 October 2003 (SCSL-2003-08-PT; 7 October 2003).

²⁴⁴⁵ SCSL, *Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone ("TRC" of "The Commission") and Chief Samuel Hinga Norman jP Against The decision of his Lordship, Mr Justice Bankole Thompson*. Delivered on 30 October 2003 to deny the TRC's request to hold a public Hearing with Chief Samuel Hinga Norman JP (SCSL-2003-08-PT; 28 November 2003), p. 16.

²⁴⁴⁶ Schabas, *Unimaginable Atrocities*, p. 169.

²⁴⁴⁷ Rendered by Benjamin Mutanga Itoe, Bankole Thompson and Pierre Boutet in TCI (CDF & RUF) & Richard Lussick, Teresa Doherty and Julia Sebutinde in TCI (AFRC & Charles Taylor).

²⁴⁴⁸ SCSL, *Eleventh and Final Report*, pp. 7-9.

historical exposition, let alone discussion on causes and motive of historical agents. In the case of the civil defence forces, somewhat remarkably, there is hardly even a discussion on the bigger picture, or context, of the precedents to or the unfolding of the war. It merely summarises key events during the height of the conflict and the rise of the military junta, but it only does so in order to outline the rise of civil defence initiatives, the role of ‘secret societies’ and the formal organisation of the CDF.²⁴⁴⁹ From thereon, the judgement discusses the crimes committed and the individual roles of the three accused (although deceased, Norman remains a central figure in the findings) in light of the law. In the AFRC case, the judgement is only little more informative, dedicating 15 out of 631 pages to historical facts. Contextualising the alleged crimes, the chamber sweepingly comments on a handful of events since independence in 1961 before shortly describing crucial moments and events in the war and the position of the AFRC.²⁴⁵⁰ Only in the RUF case, the Trial Chamber stepped outside the temporal scope of the court’s jurisdiction, seeking an explanation for the rise of the RUF. In sum, it concludes that the country since independence suffered several military coups, became a one-party State and despite its rich natural resources experienced an economic decline throughout the 1980s and growing corruption.

As a result of this flagrant corruption an armed opposition group, the Revolutionary United Front (“RUF”), was formed in the late 1980s with the aim of overthrowing the one-party rule of the All Peoples Congress (“APC”) Government. [...] The leadership of the RUF accused the APC of endemic corruption and oppression of the people of Sierra Leone. The RUF professed that the use of arms was the only way to bring democracy to Sierra Leone and to fight the injustice, nepotism and penury they claimed was prevailing. The RUF was originally composed largely of former students of middle class origin; alienated and impoverished youths; former members of the SLA; and Liberian fighters from the National Patriotic Front of Liberia (“NPFL”).²⁴⁵¹

Despite underlining internal resentment as the cause of the civil war, the judgement, as a matter of a side event, mentions that the NPFL – which was a rebel group led by Charles Taylor that initiated and fought in the Liberian civil war – “provided important military and logistical resources to the RUF thereby creating an intimate link between the civil wars in Liberia and Sierra Leone.”²⁴⁵² A crucial highlight in the judgement is when the chamber, counters the prosecution narrative that Taylor was part of a Joint Criminal Enterprise with the RUF arguing that “prior to July 1997, Taylor’s National Patriotic Front for Liberia (NPFL) was itself a rebel organisation and did not represent the Republic of Liberia. Although evidence was adduced demonstrating long-standing links between Liberians including Charles Taylor and the RUF, this evidence was neither sufficiently comprehensive nor compelling for the Chamber to determine the precise nature and extent of the relationship after July 1997. In our opinion, the evidence does not establish beyond reasonable doubt that Taylor’s

²⁴⁴⁹ SCSL, *CDF Judgement*, §50-86.

²⁴⁵⁰ SCSL, *AFRC Judgement*, §155-209.

²⁴⁵¹ Heavily citing HRW reports. SCSL, *RUF Judgement*, §7-9.

²⁴⁵² SCSL, *RUF Judgement*, §10.

interactions with the RUF leadership were such that he was in a position to exercise overall control over the RUF as an organisation.”²⁴⁵³ Still, the prosecution maintained this interconnectedness in its major case against Taylor, extending it also to the AFRC, while the Judgement in the latter only mentions Taylor once in an explanatory footnote.²⁴⁵⁴

Reviewing the Special Court

After the closure of the SCSL in 2013, comprehensive academic studies on its historical legacy, if any, have yet to transpire.²⁴⁵⁵ So far, however, practitioners, legal scholars and NGOs have mainly appraised the court,²⁴⁵⁶ while some criticism remains. Some of these criticisms may have tainted the historical record adjudicated. First, on the political level, there was the controversial and prime role played by the USA in the prosecutions against the background of their pre-war interferences in Liberia. Secondly, many possible “most responsible” players identified by the TRC,²⁴⁵⁷ including Presidents Gaddafi (Libya), Conté (Guinea), Compaoré (Burkina Faso)²⁴⁵⁸ and Kabbah,²⁴⁵⁹ were not prosecuted, while others deceased before trial or remained at large. Not only did it leave the court with mid-level convicts, it also never touched upon key players and contexts crucial to understand the conflict.²⁴⁶⁰ Related is the fact that the SCSL has not investigated any international or national commercial companies who were involved in illegal diamond trade or gun-smuggling.²⁴⁶¹ Fourth, the court never fully engaged with the findings by the TRC²⁴⁶² Fifth, Sierra Leoneans felt that the court’s progress was too slow; creating a sensation of impunity, even up to a point leading to ethnic tensions.²⁴⁶³ Sixth, some Sierra Leoneans felt they did not find truth at the court, citing the fact that witnesses were allegedly paid for testimony at the court while others argued that Sierra Leone was too

²⁴⁵³ Ibidem, §976.

²⁴⁵⁴ SCSL, *AFRC Judgement*, footnote 1207, p. 187. The CDF Judgement does not mention Charles Taylor at all.

²⁴⁵⁵ Former court employee - Jalloh served as Legal Advisor to the Defence Office at the SCSL and was court-appointed duty counsel for Charles Taylor. - and legal scholar Charles Jalloh has assembled a range of authors – most of whom with professional ties to Sierra Leone or the court - to assess the court’s legal legacy and its impact of Africa and International Criminal Law. Jalloh, *The Sierra Leone Special Court and Its Legacy*, ‘Biographies of Contributors’, xiii-xxiv.

²⁴⁵⁶ On the other hand, the ‘greatest responsibility’ standard was believed to allow too many key people – for example in the army - to remain outside the hands of justice. Many Sierra Leoneans have expressed frustrations regarding the fact that the Special Court has not tried lower level commanders who were actually committing the atrocities. No Peace Without Justice, *Making Justice Count: Assessing the impact and legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia* (SCSL & NPWJ, 2012).

²⁴⁵⁷ See: TRCSL, *Witness to Truth*, Vol. IIIB, “Chapter II”.

²⁴⁵⁸ Concerning Libya’s leader, David Crane revealed that pressure was put on him not to indict Gaddafi despite evidence that implicated him as a trainer and financier in the Sierra Leone war. Prosecutors named Colonel Gaddafi in the indictment of Charles Taylor, but due to resistance from UN member states, including Britain, the decision was made not to indict the Libyan leader. Crane said ““It was my political sense, dealing with senior leadership in the United Kingdom, United States, Canada, United Nations, and the Netherlands, that this would not be welcome,” he said. “This [Colonel Gaddafi’s involvement] is not speculation on my part. We named and shamed him in the actual indictment [...] Welcome to the world of oil.” Soraya Kishtwari, ‘Prosecutor reveals how Britain let Gaddafi off’, *The Times*, 25 February 2011.

²⁴⁵⁹ Some latent indictees were arguably shielded from prosecution for political motives. It is, for example, curious that President Kabbah has not been investigated and indicted, given that he acted as Minister of Defence during the war, while Sam Hinga Norman was Deputy Minister of Defence during the war. President Kabbah has refused to take any responsibility for any of the crimes committed by the CDF or the Army that helped restore him to power during an appearance before the TRC. Periello & Wierda, *Special Court under Scrutiny*, pp. 26–29.

²⁴⁶⁰ Interview Brima Sheriff, Director Amnesty International Sierra Leone (Amsterdam 25 October 2007).

²⁴⁶¹ This was done to some extent, however, in The Netherlands, in a case concerning Dutch businessman Guus Kouwenhoven in relation to alleged acts in Liberia. Accused of breaching an arms embargo and complicity in war crimes, his case remains under review by a criminal court in The Netherlands: HRW, *The Long Arm of Justice. Lessons From the Specialized War Crimes Units in France, Germany and The Netherlands* (New York: HRW, September 2014) 97-98; Hoge Raad, *Uitspraak* (S 08/01322; Den Bosch, 20 April 2010).

²⁴⁶² See for an insightful article on the OTP’s strategy: Stephen Rapp, ‘The Challenge of Choice in the Investigation and Prosecution of International Crimes in Post-Conflict Sierra Leone’, in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 23-40.

²⁴⁶³ Some said the court came too soon, while others reported that the court was too costly and that, instead, the money should have been spent on developing the country’s services and infrastructure. In this sense, a shocking observation is that the court’s convicts are most probably better off (in terms of access to food and facilities) than ordinary Sierra Leoneans. The convicts are serving their time in the modern Mpanga prison in Rwanda – built largely with funds from the Dutch government. They reside in a special wing that includes a spacious open-air fitness room and a volleyball field. The rooms – which are open - are big and each have a private bath and provide a lot of privacy. There is a large kitchen with a television, computer and cooking utilities. The atmosphere in the prison is calm. (The author visited the prison facilities in 2009, 2012 & 2013).

dependent on the West for sorting out its own problems.²⁴⁶⁴ Seventh, although the SCSL's endeavours in outreach were praiseworthy,²⁴⁶⁵ popular support remained low and understanding thin.²⁴⁶⁶

From early on, the court was not only concerned with its direct effects on the ground through outreach, but also in actively creating a legacy. In its own words, the court left jurisprudence, it has worked to strengthen the domestic justice system and various national institutions and it educated Sierra Leonean staff.²⁴⁶⁷ In a further self-assessment, surveyed through the NGO No Peace Without Justice (NPWJ) among 2,841 people in Sierra Leone and Liberia, "the overall feeling towards the SCSL and the work it has carried out over the past 10 years is very positive. It is safe to conclude that the SCSL has, on the whole, been successful in achieving what it set out to achieve, which – according to the majority of people in Sierra Leone and Liberia – is first and foremost to carry out prosecutions, with the next most common answers being to bring justice, bring peace and establish the rule of law." It furthermore applauded the "high awareness of the SCSL, its purposes and work is evident in both countries, with more than 90% of overall respondents having heard of the SCSL, around 65% of people indicating they were interested in the Court's work and nearly 50% having participated in outreach activities at some point over the 10 years of the Court's existence, including listening to radio programs."²⁴⁶⁸ Testing the waters of impact and legacy is a tricky slope, highly depending on momentum. NPWJ's survey came at the height of the court's work, during the final stages of its best-known case; the delivery of judgement in the Charles Taylor case. The outcomes of future surveys will ultimately differ. Perhaps it is too early indeed, as Jalloh writes, to appreciate the SCSL's complete impact. As a lawyer he notes that at least "the SCSL made some useful contributions to the emerging system of international criminal justice", though it is "not perfect."²⁴⁶⁹ The primary legacy now, he rightfully continues, is "the trials, guilty verdicts, reasoned judgements, and factual findings bequeathed to the people of Sierra Leone."²⁴⁷⁰ The secondary, which he does not define, may transpire from that trial record; that is the historical narrative.

5.8 Conclusions

This chapter that has shown that whereas in Rwanda hotly contested narratives about the genocide

²⁴⁶⁴ Sawyer, 'Truth vs. Justice?', pp. 55-56.

²⁴⁶⁵ The Special Court's Outreach and Public Affairs Section was the first to have a presence on the ground in a post-conflict country, the sub-region and beyond. From January 2003, the Outreach section undertook several activities to endorse understanding of the court by conducting training sessions, an extensive program of activities with schools and colleges nationwide, as well as conducting a series of Victims Commemoration Conferences at the regional and national level with civil society activists and other interested parties. Throughout most of 2005-2006 as the trials were coming to a close, the section focused on increasing public attendance of the trial proceedings by using town-hall meetings, radio programmes, publications, video screenings of trial proceedings, and seminars. It has also expanded its activities to Liberia because of the Charles Taylor trial. Staggs, *Interim Report on the Special Court*, 32-34; SCSL, *Seventh Annual Report*, p. 43; SCSL, *Eleventh and Final Report*, pp. 35-36.

²⁴⁶⁶ Regarding the understanding, perceived success and importance to peace Sawyer and Kelsall concluded that the Special Court still had broad public support but that the actual knowledge of the institution was rather thin – as was also the case regarding the TRC. Overall most people (91%) had knowledge of the court's existence, but only a relatively small percentage of people (15%) had a good understanding - knowing that it was created to prosecute those most responsible - of the court. would. A larger 36% understood that the SCSL was to judge people but they would have little appreciation of its restricted mandate. Almost half of the Sierra Leoneans, by contrast, had a poor understanding of what the court is doing often mentioning that it was there to judge people, but not mention the war. Sawyer, 'Truth vs. Justice?', pp. 43-46; Stuart Ford, 'How Special Is the Special Court's Outreach Section?' in: Charles Charnor Jalloh, 'Conclusion', in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 505-526.

²⁴⁶⁷ SCSL, *Eleventh and Final Report*, p. 39.

²⁴⁶⁸ No Peace Without Justice, *Making Justice Count*.

²⁴⁶⁹ Charles Charnor Jalloh, 'Conclusion', in: Jalloh, *The Sierra Leone Special Court and Its Legacy*, pp. 770-774.

²⁴⁷⁰ *Ibidem*, p. 772.

prevail, the debate on the history of the civil war in Sierra Leone has not taken such a virulent turn. There are several reasons, discussed above, that may explain this. First, most atrocities, by all sides to the conflict, are widely known in Sierra Leone. Second, the discourse that animated the violence in Sierra Leone was not deeply ideological and was not framed in a discourse of historical enemies. Third, the nature of the atrocities was not genocidal and there were no specific social categories targeted for extermination and played out against each other as was the case in Rwanda. Accordingly, after the war in Sierra Leone, there was no particular group that came out of the war victorious to the extent that the RPF did in Rwanda. Thus, the dealing with the past through transitional justice was not tarnished by absolute victor's justice and the shifting of responsibility on one collective, as was the case in Rwanda with Hutu population. Fourth, whereas the RPF complexly constructed the abstract idea that genocide was the historical endgame of Belgian colonial policy in the 1930s, in Sierra Leone the real culprits and instigators of mass atrocity were concrete living human beings who operated from the outside and remained outside during the war. Fifth, there was also no radical ideological regime change as in Rwanda and those in power had no urge, like the authoritarian RPF, to rewrite history and create a new founding narrative that was coerced on society as a whole. A particular version of history in Sierra Leone, although painful, did not become the foundational ideology of the post-conflict state and a rather pluralistic public space to hold one's own opinion and version about past atrocities has remained. Sixth, Sierra Leone rather aspired a future-making project which focused on a common destiny rather than an articulation of a common past. Finally, Sierra Leone hardly had time to come to terms with the violence as extreme poverty and new crises shifted the focus on the immediate present and future hardships, not so much on the past.

This chapter, in the first place, has shown that the Sierra Leonean case differs fundamentally from Rwanda in terms of the deeply ingrained contestation of narratives about the violent past. Not only was the pre-conflict history strikingly different, the dealing with the past also took a different route. Sierra Leone, embarked on a truth commission process, hardly held national proceedings and pursued, conjointly with the United Nations, on a hybrid prosecution and judgement of some of those who were believed to bear to biggest responsibility for atrocity crimes from all sides of the conflict in front of a court that was based in the capital. Crucial as well was the fact that different from the UNICTR, the SCSL had Sierra Leonean judges on the bench.

Another key difference that thesis has uncovered is that, unlike in Rwanda, the process of transitional justice as a whole has had a much bigger role on the historiography of the war, than the UNICTR had on the historiography of the genocide. Absent the government's active meddling in (re-) writing history and the magnitude of critical historical scholarship on the genocide in Rwanda, basic knowledge on and explanations of key events, issues and agency in Sierra Leone were, and remain to be, particularly established, enticed and narrated through the truth commission and the Special Court for Sierra Leone. Other sources have so far remained relatively scarce and this was also the reason

why in this chapter, the truth commission warranted special attention and broader analysis. Overall, the difference in the narratives between the TRC and the SCSL was that truth commission's main focus was on national causes and local dynamics of the war, while the court highlighted international causes and macro-dynamics.

There are however, some crucial similarities, in the way transitional justice was done. First, like in Rwanda, the epistemological base for truth-finding was almost entirely witness testimony, enticed through a legalistic lens. Secondly, there was hardly any forensic corroboration possible for those testimonies. Third, the rationale of transitional justice agents was ambitious. Not only, did the truth commission try to unravel and write the first comprehensive and authoritative long history of Sierra Leone, it also set out to, amongst many other things, spark reconciliation, contribute to national healing and forge a vision for the future. At the Special Court it was not different. Prosecutors promised Sierra Leoneans to enlighten them with the truth about what had happened in dark Sierra Leone, while former UNICTR investigators were scrambling for evidence in the Sierra Leonean forests the same way they had done in the Rwandan hills. Also coming from the UNICTR was Stephen Rapp, who had led the media case against Ferdinand Nahimana. His task was to prosecute the SCSL's main case against Charles Taylor. However, as we have seen, the historical charges levelled against Taylor as a conspirator of mass atrocity and godfather of terror, did not hold up in court, beyond any reasonable doubt. Having said that, I have limited this study to three questions: how to understand the invocations of historical narratives at the SCSL, how do its judgements square with historiography and how to approach the SCSL trials as historical sources.

Regarding the first question, I have shown that the invocation of historical narratives at the SCSL stems from several reasons. First of all, agency mattered. Those doyens, who researched, exposed and publicised the human rights abuses during the war from the mid-1990s onwards were either professional historians, were trained in history or were interested in history. Tribunal staff, some of whom came in from the UNICTR, brought in their experience from working on the Rwanda case, which to some extent became a bit of a blueprinted *modus operandi*. Yet, as we saw in this chapter, the narrative that was to transpire and was litigated in the SCSL's main cases in Freetown (CDF, RUF, AFRC) was of a different sophistication than those progressed at the UNICTR. In contrast, the narrative progressed by Prosecutor David Crane was stereotypical, uninformed and uncomplicated and pictured Sierra Leone as a uncivilised place, thrown back to the ages of barbarity and the agents of violence were depicted as monsters. During the trials, however the overall context was not as crucial as at the UNICTR, also because on each bench there was a Sierra Leonean judge, fully aware of what had transpired. Moreover, since the accused on the docket were mainly mid-level personalities close to the atrocities, there was no specific need to delve into macro-historical questions in order to fit their agency in the lexicon of the tribunal's jurisdiction. Moreover, the fact that there genocide was no part of the allegations did not force the prosecution to highlight complex historical

patterns, social-identity markers and political intentions. History was thus not a key element in the prosecution's narrative. Different, however, was the Charles Taylor case, a suspect from abroad and whose pre-indictment actions and intentions became fundamental for the prosecution's case. History was invoked particularly to tie Charles Taylor to events in Sierra Leone, with the OTP progressing the narrative that Taylor had conspired his alleged crimes already in the late 1980s in Libya. Stephen Rapp, who had led the trial of the historians at the UNICTR, ambitiously took on this task. However, as shown above, in the end the SCSL judges could convict Taylor for only a relatively limited period and set of crimes. What turned out was that it was impossible to prove, with the available evidence, a long-standing plan to terrorise and plunder Sierra Leone for Taylor's private benefit.

Secondly, how do the SCSL judgements square with historiography? In the case of Sierra Leone, the answer appears to be more rudimentary than at the UNICTR. While the tribunal in Arusha dealt with more than 70 cases over a time span of 20 years, the SCSL only concluded nine cases, including four factions, over a period of 11 years. We may, thus, not expect the same kind of sophistication and specialisation at the SCSL. As shown, although expectations were raised to uncover the truth about what had happened, the three judgements rendered in Freetown leave little room for historical exposition, let alone discussion on causes and motives of historical agents. In the case of the civil defence forces, somewhat remarkably, there is hardly even a discussion on the bigger picture, or context, of the precedents to or the unfolding of the war. It merely summarises key events during the height of the conflict and the rise of the military junta, but it only does so in order to outline the rise of civil defence initiatives, the role of 'secret societies' and the formal organisation of the CDF. In the AFRC case, the judgement is only a little more informative, dedicating 15 out of 631 pages to historical facts. Only in the RUF case, the Trial Chamber stepped outside the temporal scope of the court's jurisdiction, seeking an explanation for the rise of the RUF. Interestingly, the judgement underlines internal resentment as the cause of the civil war and ruled out Taylor's overall control over the RUF as an organisation. The Taylor judgement – which rules out Taylor's agency prior to December 1998 – only depicts the Liberian President as an 'aider and abettor' to their atrocities, not as a grand conspirator and terrorist. Overall, the SCSL's findings largely conflict with the more general historiography, which places Charles Taylor at the heart of the Sierra Leonean war. However, based on the testimonial and circumstantial evidence, no such claims could be substantiated beyond any reasonable doubt. Hence, in terms of its contribution to historiography, the SCSL judgements provide a much more complex discussion, although they were obviously restrained by their mandate.

Thirdly, how to approach the SCSL trials as historical sources? Like at the UNICTR, the SCSL was troubled by a modus operandi of fact finding without facts, relying almost exclusively on troublesome witness testimony. This chapter has shown and critically assessed how this has impacted the truth finding capabilities of the SCSL investigators, prosecutors and judges. So even though, the SCSL collected historically interesting testimonies, they can only be read with due care and in context

of the way they were elicited. On another level, the SCSL court records contain the longest testimony of a defendant before an international criminal tribunal to date. Taylor testified for over half a year under oath and this unique material may be of specific interest for future historians of West Africa or social scientists in the field of perpetrator studies. Similarly interesting is that the SCSL trials and records do not stand in isolation, as is to some extent the case with the UNICTR. The parallel process of a truth commission cannot be obscured when approaching the trial record. Understanding their relationship is equally significant. At the time, it was expected that the TRC narrative would provide the historical basis and background for the SCSL. But what became a historiographical surprise, the SCSL Prosecution barely talked about the TRC report and subsequently the Special Court for Sierra Leone hardly referred to the TRC's findings in its four judgements. Moreover, the SCSL ruled out its complementary relationship by denying suspects to also testify before the TRC. Subsequently, the narratives contained in the records, differ significantly. Constricted by its mandate in temporal scope and agency, the Court emphasised external causes, such as political manipulation by foreign political leaders and the international diamond trade. Through its much wider lens, the commission focused on internal factors, such as the despotic rule over several decades by a corrupt oligarchy, while also addressing foreign influences. Bearing in mind these differences, bundled together, the entire SCSL trial record and the archives of the TRC comprise the fullest available collection of information on the Sierra Leonean war. It is no surprise that its sources, as well as its findings, have already made their way into the historiography of the conflict, to a very large degree. Although the conclusion may vary – due to methodological issues – the process of fact-finding has elucidated much detail, to an extent that historians – and most of those specialised in the region have contributed in some way - could have never uncovered in such a relative short time-span. Unprecedented in Sierra Leonean history, up to ten thousand people have provided testimony about their experiences during the war which are transcribed and archived, establishing a unique source of oral history that without the TRC and the SCSL would most likely never have been uncovered.