

Transitional Justice is an Exercise in Dispute System Design

Introduction

We are in an era where conflicts look remarkably different from those that occurred about fifty years ago. Many of today's violent conflicts occur as a result of the failed state,¹ and are characterized by crosscutting actors, issues, and motives.²

Transitional justice mechanisms thus face a daunting task.³ Broken institutions must be repaired, damaged relationships must be restored, and crushed spirits must be revived.

Many varying definitions of transitional justice exist but each usually contains a combination of elements such as combating impunity, addressing past wrongs, and rebuilding for the future.⁴ Thus, although the courts are usually seen as the backbone of a justice system, good transitional justice systems must go far beyond prosecutions. A transitional justice system must be considered a network of interdependent solutions that exist at both the national and international levels.⁵ This network must be customized to the situation in which it will be applied because no two conflicts are alike.⁶ In addition, the principles of systemic inclusiveness and institutional cooperation must guide any

¹ See Volker Boege, Traditional Approaches to Conflict Transformation – Potentials and Limits 2, Berghof Research Center for Constructive Conflict Management, at <http://www.berghof-handbook.net> (February 2, 2007.) Boege uses this term to refer to “places in which diverse and competing institutions and logics of order and behavior overlap and intertwine.” See also The Failed States Index, at http://www.foreignpolicy.com/story/cms.php?story_id=3098 (May 4, 2007), describing a failed state as one in which the “government [] has lost control of its territory or of the monopoly on the legitimate use of force.”

² See *Id.*

³ See Lydiah Bosire, Overpromised, Undelivered: Transitional Justice in Sub-Saharan Africa 1, International Center for Transitional Justice – Occasional Paper Series July 2006, at <http://www.ictj.org/en/news/pubs/index.html> (February 2, 2007). Transitional justice systems usually comprise prosecutions, truth-seeking initiatives, reparations measures, and institutional reform. The goal of these systems is usually described as holding those accountable for their crimes committed during conflict and for sending a message that such actions will not go unpunished.

⁴ See *Id.* at 4.

⁵ See Carsten Stahn, The Geometry of Transitional Justice: Choices of Institutional Design, 18 *Leiden Journal of International Law* 425, 427 (2005).

⁶ See *Id.* at 428.

effort. This means that solutions designed by international actors should promote local ownership and local institutions must be capable of accommodating international actors when it becomes necessary for such actors to step in and fill capacity gaps.⁷

This paper contains a case study of the conflict in Sierra Leone, a critique of the peacebuilding process from a dispute system design perspective, and a discussion of design modifications that may have enhanced the effectiveness of the system. Part I (Setting the Scene) provides an overview of the underlying causes of the war and presents a pictorial description of the main stages of the war. Part II (The Response) examines the peacebuilding strategy of the international community, details the three transitional justice mechanisms that were implemented, and analyzes the relationship among the different mechanisms. Finally, Part III (Reconciling Interests, Rights, and Power) evaluates the effectiveness of the strategy in allocating the system's scarce resources among the conflicting interests of the various stakeholders. In this section, I also highlight the strengths of the system and suggest strategies for addressing the shortcomings.

I will argue that notwithstanding the fact that the transitional justice process in Sierra Leone has been lauded as one of the most successful of the UN, the failure of the implementers to use a system design approach has resulted in the neglect of one of the most important stakeholders, and has thereby diminished the potential effectiveness of the system. My conclusion is that the proper execution of the system design approach would have demonstrated that a dynamic disarmament, demobilization, and reintegration program, supplemented by a solid reparations program and a strong truth and

⁷ See *Id.* at 465-6.

reconciliation commission, would have been a sufficient and ideal transitional justice program for Sierra Leone.

Part I – Setting the Scene

A clear understanding of any conflict and the context within which it occurred is imperative if an appropriate transitional justice system is to be implemented. Thus, it is necessary to not only study the dynamics of the dispute but to also analyze the historical backdrop of the locus of the conflict for insight into the underlying causes of the conflict. This task must consist of more than a cursory examination of the facts, parties, interests, and issues because otherwise the design exercise may fall prey to erroneous assumptions.

Background

Sierra Leone is a small country on the west coast of Africa, with a population of approximately 4.5 million people.⁸ The country gained independence from the British in 1961 and the time between independence and the start of the war was interspersed with coups and undemocratic rule.⁹ This resulted in a freefall of the country's economic development. Sierra Leone is now ranked 176th of 177 countries in the UN's Human Development Index.¹⁰

The civil war, which began in 1991, and continued for about ten years, claimed an estimated 50,000¹¹ lives, and caused 600,000 Sierra Leoneans to become refugees in neighboring countries.¹² It is estimated that between 5,000 and 10,000 child soldiers were involved in the war.¹³ This was a generally unconventional war because civilians

⁸ City Population, at <http://www.citypopulation.de/SierraLeone.html> (April 4, 2007).

⁹ Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission Vol. 3a at 51.

¹⁰ UN Human Development Index, at <http://hdr.undp.org/hdr2006/statistics/> (March 31, 2007).

¹¹ Transcript (November 8, 2003): CNN Inside Africa. Is UN War Crimes Court in Sierra Leone Necessary Part of Country's Recovery?, at http://transcripts.cnn.com/TRANSCRIPTS/0311/08/i_if.01.html (March 31, 2007).

¹² See John Cerone, The Special Court for Sierra Leone: Establishing a New Approach to International Criminal Justice. 8 ILSA J. Int'l & Comp. L. 379, 380. 2002.

¹³ See Diane Marie Amann, Message as Medium in Sierra Leone, 7 ILSA J. Int'l & Comp. L. 237. 2001.

were the usual target and there were only a few instances of face-to-face confrontation between the parties.¹⁴ Victims suffered from horrendous forms of abuse, ranging from forced cannibalism, amputations, and sexual slavery, to torture, forced labor, and arbitrary detentions.¹⁵

The Revolutionary United Front (RUF) initiated the conflict when it invaded Sierra Leone from the northwestern border of Liberia. Although the RUF later degenerated into a group of brigands, who perpetrated atrocious acts, its origin can be traced back to a group of university students, who were expelled from the University of Sierra Leone in 1977 for demonstrating in favor of democracy.¹⁶ These students were given scholarships to study in Ghana by the Libyan government, and were also provided with training in Libya to launch a revolution.¹⁷

The Sierra Leone Truth and Reconciliation Commission (TRC) report lists factors as diverse as colonialism and institutional collapse as contributing to the war, but highlights “years of bad governance, endemic corruption and the denial of basic human rights” as the root causes of the war.¹⁸ This desperate situation was created by the failure of democracy: a one-party system was imposed in Sierra Leone in the 1970s and the ensuing period was marked by several coups and political repression.¹⁹ Political and other offices were allocated as a matter of tribal affiliation as opposed to an appointment

¹⁴ See Witness to Truth, *supra* note 9 at Vol 3a, 550.

¹⁵ *Id.* at 471-98.

¹⁶ See *Id.* at Vol 3b, 58.

¹⁷ *Id.*

¹⁸ *Id.* at Overview of the Sierra Truth and Reconciliation Report, ¶10.

¹⁹ *Id.* at Vol 3a, 29, 34, 41.

or employment process,²⁰ and incredibly, no local government election was conducted from 1985 – 1992.²¹

Another intervening factor was the dearth of economic opportunity for most citizens. Many of the youths who joined the war were either illiterate or poorly educated, and the vast majority of them had no way to generate personal wealth.²² This created a sense of hopelessness that made it quite easy for them to be manipulated and conscripted into any one of the fighting factions.²³

Sierra Leone maintains a dual legal system, where a common law system exists in the western area but is superseded by a traditional law system in the provinces.²⁴ Traditional law is not codified and is instead passed down orally from generation to generation.²⁵ As a result, “judicial” rulings by local chiefs, who usually inherit the position, are sometimes arbitrary and motivated by improper factors. Even in areas where the common law provided protection, citizens were subject to state seizure of their personal property.²⁶ Moreover, the police force that was tasked with protecting the public often subjected citizens to tyrannical acts such as extortion.²⁷

These years of abuse slowly denigrated Sierra Leone’s institutions. For example, the country had a very active press that included some of the first newspapers and television stations in sub-Saharan Africa.²⁸ This esteemed media tradition was gradually extinguished as each successive regime curtailed freedom of speech and media outlets

²⁰ See *Id.* Vol 3a, 61.

²¹ *Id.* at 50-61.

²² *Id.* at 35.

²³ *Id.* at 33.

²⁴ *Id.* at 63.

²⁵ *Id.* at 15.

²⁶ *Id.* at 66.

²⁷ *Id.* at 80.

²⁸ *Id.* at 67.

were appropriated as propaganda machines.²⁹ The country continually regressed and basic necessities such as clean water became unavailable to many, especially those in the rural areas.³⁰ Education was transformed into a privilege, available only to those who could afford private schools,³¹ and Sierra Leone's dependence on imported rice – its staple food – increased dramatically.³²

Contrary to popular belief, the war in Sierra Leone was not caused by diamonds, although the disparity in the distribution of the wealth created by mineral resources was one of the reasons the RUF proffered for initiating the rebellion.³³ Many Sierra Leoneans were upset at the fact that foreigners controlled these resources, especially the diamond trade, while they languished in poverty.³⁴ This stoked already simmering feelings of discontent. The diamond trade also created a war economy because smuggling was rampant and even when the RUF was not directly involved in the sale of diamonds, it earned a lucrative income by charging a “passage tax” to dealers who needed a safe passage for their goods.³⁵

In addition to the internal reasons for the war, several external factors fueled the war. Charles Taylor, the leader of the National Patriotic Front of Liberia (NPFL), a group that had staged a rebel incursion and coup in neighboring Liberia, had a personal vendetta against the government of Sierra Leone for its role as the launching pad for the international military attack against his regime.³⁶ Taylor consorted with another Sierra Leonean, Foday Sankoh, whom he had met at a training camp in Libya, to carry out his

²⁹ *Id.* at 68.

³⁰ *Id.* at 83.

³¹ *Id.*

³² *Id.* at 84.

³³ *Id.* at Vol 3b, 7.

³⁴ *Id.*

³⁵ *Id.* at 20.

³⁶ *Id.* at Vol 3a, 99.

revenge plan.³⁷ Sankoh had been convicted twenty years previously of participating in a coup attempt and had spent four years in a Sierra Leone prison for his offence.³⁸ He had also been introduced to the group of students, who had been planning the Sierra Leone revolution, at a camp in Libya. Sankoh assumed leadership of the organization after those students moved on to other endeavors.

Who were the main actors?

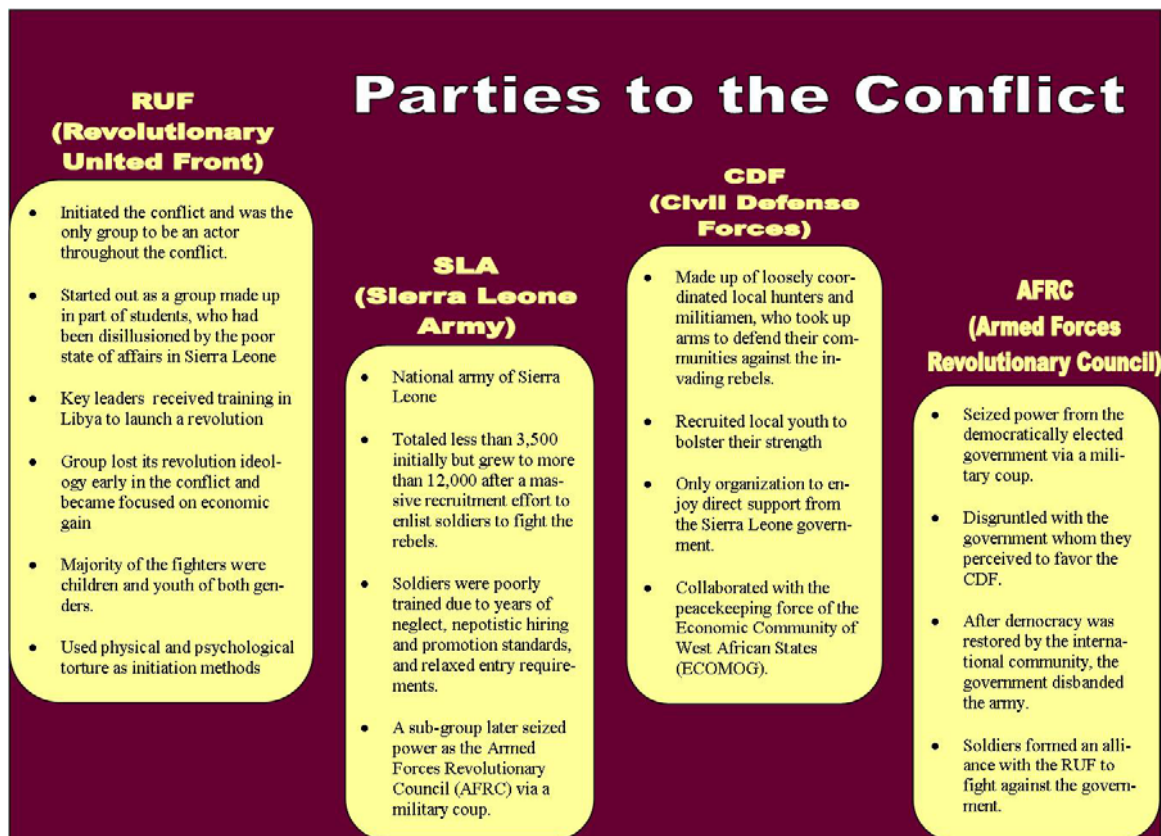
Exhibit 1.1 describes the main parties to the conflict. The chart shows that even though the war was initially waged between the RUF and the government of Sierra Leone, four factions existed by the end of war because new actors had entered the fray while existing groups had splintered. The main factions were the Sierra Leone Army (SLA), the Revolutionary United Front (RUF), the Civil Defense Forces (CDF), and the Armed Forces Revolutionary Council (AFRC).³⁹

³⁷ *Id.* at 98.

³⁸ *Id.* at 117.

³⁹ *See Id.* at Overview of the Sierra Truth and Reconciliation Report, ¶15.

Exhibit 1.1



Each of these groups, however, had sub units within the main organization, and in the latter part of the conflict, some of these had formed coalitions.⁴⁰ The distinctions are also misleading because there was some vacillation among the factions.⁴¹ For example, it was not uncommon for an RUF combatant to take up arms on the side of the CDF and then subsequently enlist in the national army.⁴² This phenomenon occurred even at the group level.⁴³ This has made it quite difficult to determine the overriding motivation for

⁴⁰ See *Id.* at Vol 3a, 524.

⁴¹ See *Id.* at 549.

⁴² *Id.*

⁴³ *Id.* at 551.

the combatants' willingness to take up arms.⁴⁴ Although in varying proportions, all the different factions were responsible for a combination of human rights violations.⁴⁵ The AFRC was found to have caused the greatest number of violations (36.4%), followed by the RUF (33.9%), the SLA (6.0%), and the CDF (6.0%).⁴⁶

The warring parties metamorphosed several times during the conflict so the following pictorial exhibits attempt to provide simplified descriptions of these amorphous relationships. The red bi-directional arrows in each chart depict lines of violent conflict whereas the green arrows depict lines of support (bi-directional green arrows show coalitions and uni-directional green arrows show lines of support).

Exhibit 1.2 demonstrates that the war in Sierra Leone was influenced by many external actors. This is a snapshot of the different parties and their corresponding interests in the early years of the war.

⁴⁴ *Id.* at 552.

⁴⁵ *Id.* at 471-498.

⁴⁶ *Id.* at 553.

Exhibit 1.2

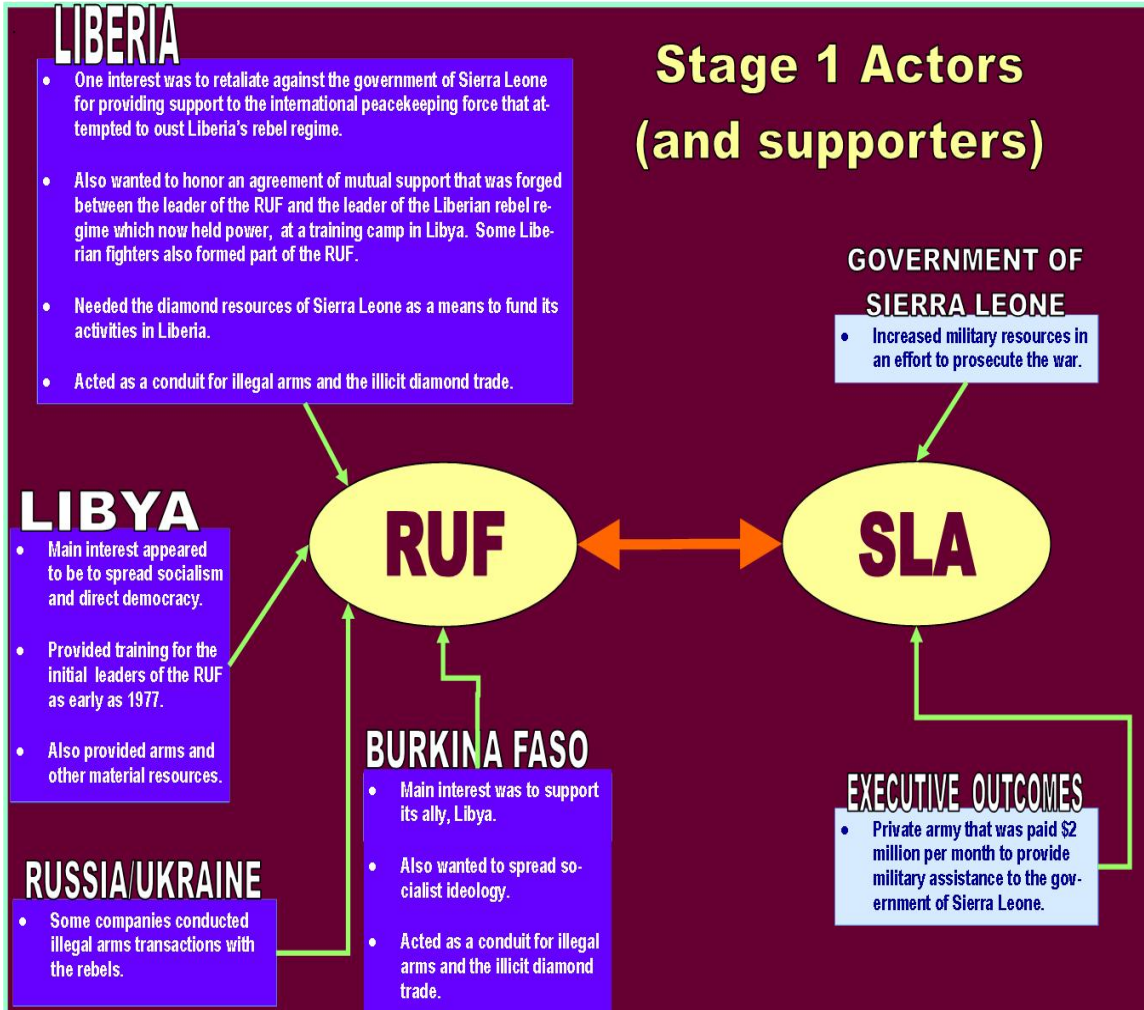


Exhibit 1.3 illustrates the entry of the CDF into the conflict. This occurred when shortly after the first rebel incursion, it became apparent that the government’s effort to repel the rebels was failing to protect the rural communities from attack. The government recognized the value in the attempts of the CDF to protect the rural areas and began providing them with material support.⁴⁷

⁴⁷ *Id.* at 259.

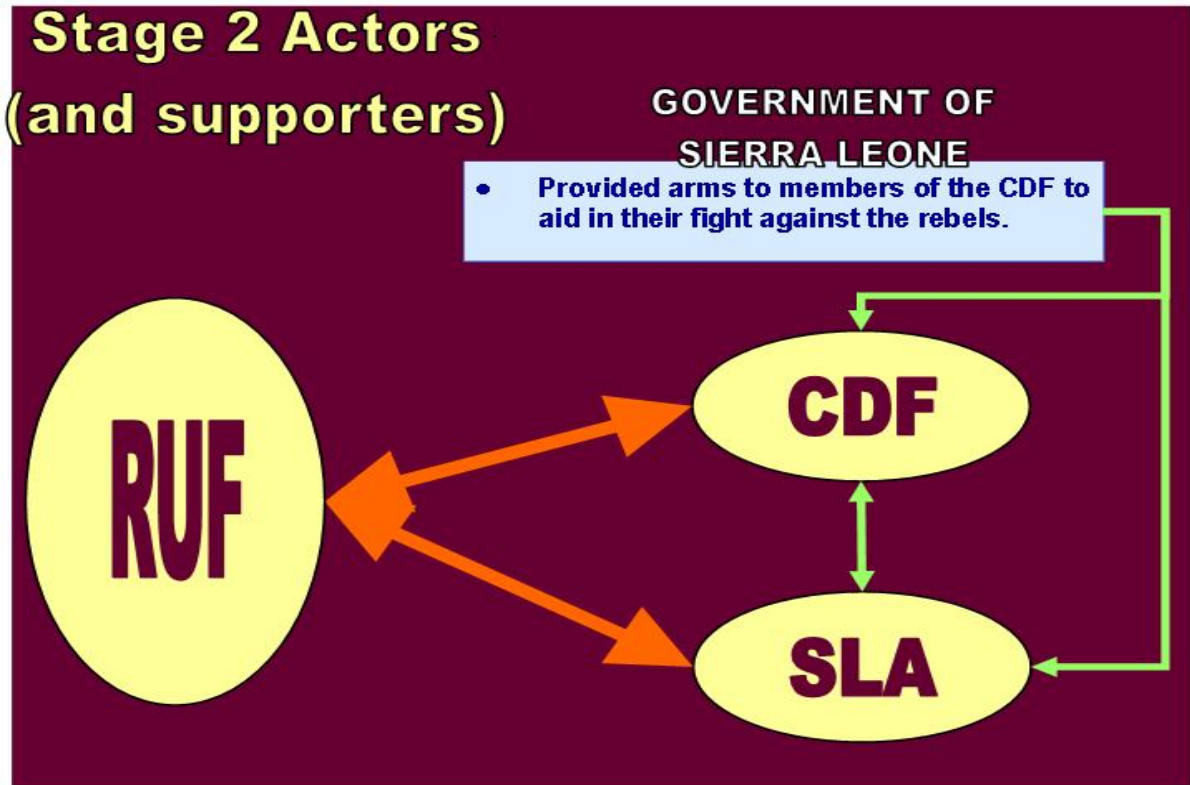
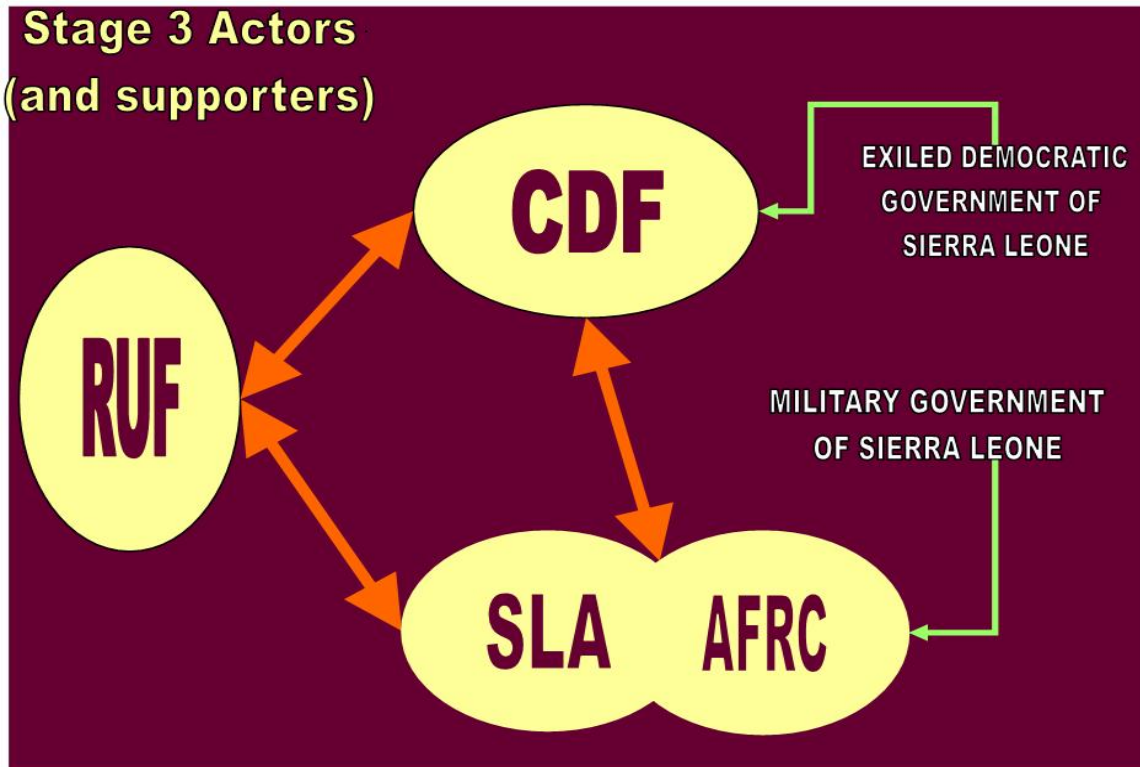
Exhibit 1.3

Exhibit 1.4 shows the arrival of the AFRC as a party to the conflict. The AFRC materialized when a group of soldiers of the Sierra Leone army staged a coup in 1997 and overthrew the democratically elected government.⁴⁸ They were dissatisfied with the government's prosecution of the war and were displeased with what they perceived to be the government diverting resources that rightfully belonged to the army, to the CDF.⁴⁹ They also felt threatened by the CDF because of its historical alliance with the government and thus took up arms against both the CDF and the RUF.⁵⁰

⁴⁸ *Id.* at 265.

⁴⁹ *Id.*

⁵⁰ *Id.*

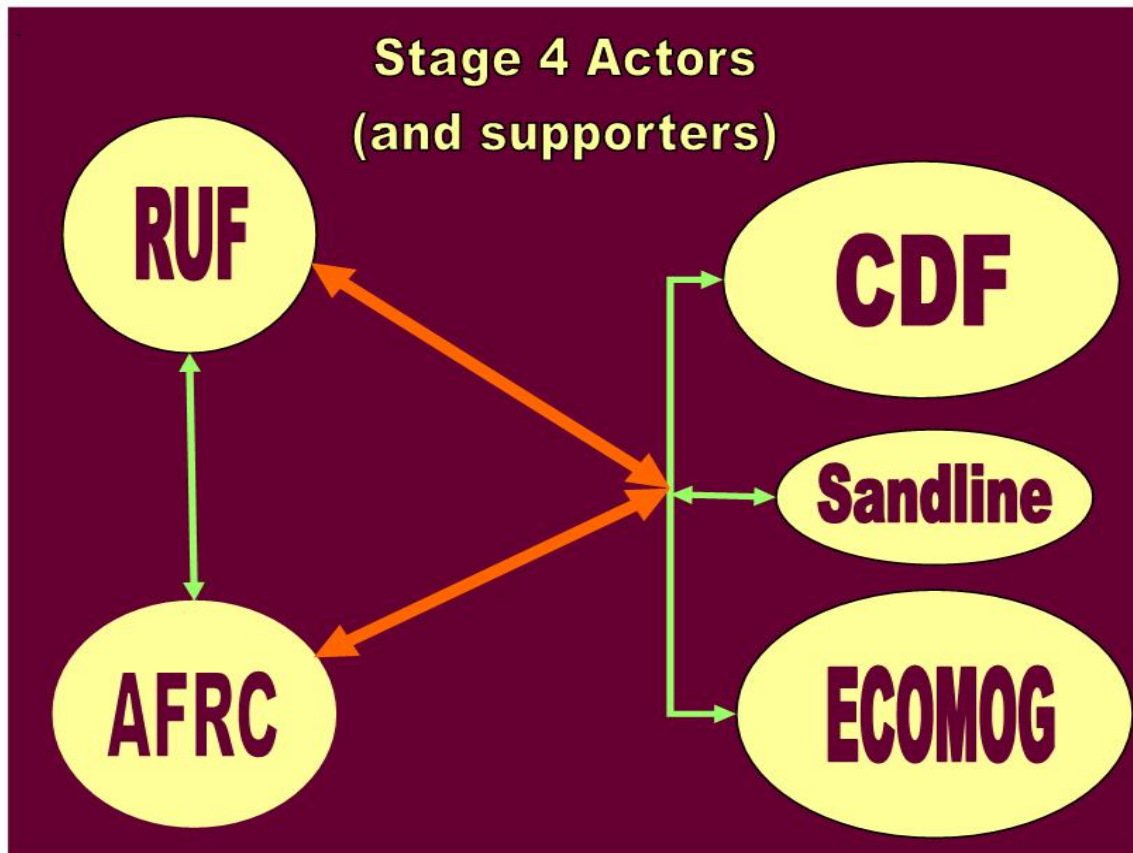
Exhibit 1.4

The dynamics changed again with an international effort to oust the AFRC. Exhibit 1.5 shows the entry of the peacekeeping force of the Economic Community of West African States (ECOMOG). Because ECOMOG was pro-democracy, it endeavored to expel the AFRC and the RUF, and collaborated with the CDF, the government's longstanding ally. The government also hired Sandline International, another private army, to supplement the efforts of ECOMOG, since the international community did not initially provide support to ECOMOG because it was led by Nigeria, which was being ruled by a dictator.⁵¹ The AFRC was greatly weakened by the ECOMOG onslaught and

⁵¹ *Id.* at 77.

the democratically elected government was reinstated in 1998.⁵² The AFRC subsequently formed a coalition with the RUF to consolidate power.⁵³

Exhibit 1.5



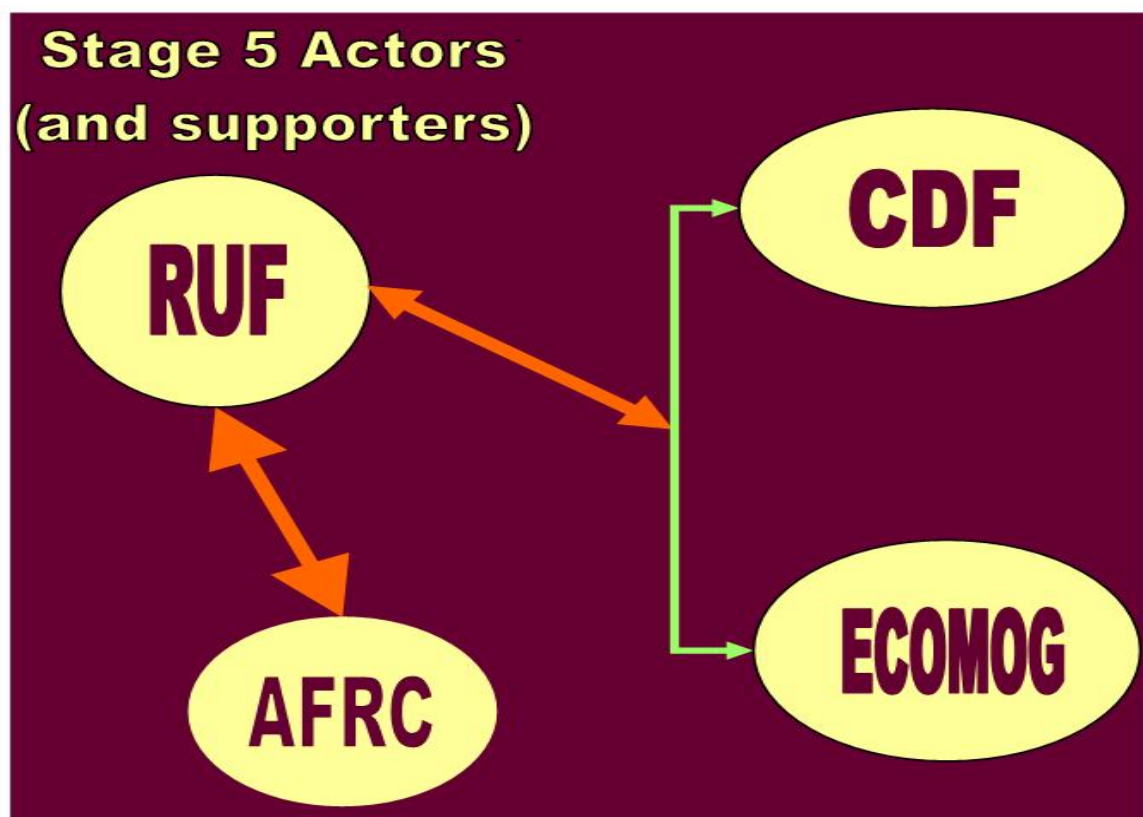
The war transformed one final time, toward the end, after several peace agreements had failed and Sierra Leoneans had become exasperated with the state of affairs. The RUF was sharing power with the elected government by virtue of a 1999

⁵² *Id.* at 291.

⁵³ *Id.* at 295.

peace agreement⁵⁴ but the situation had not improved. The AFRC, which had been a strong supporter of the RUF, appeared to have severed ties with the RUF, and even though they did not collaborate with the existing CDF/ECOMOG alliance, they turned their efforts to toppling the RUF.⁵⁵ The RUF was ousted after a massive demonstration of more than 100,000 Sierra Leoneans from all works of life turned violent,⁵⁶ and the RUF leader was captured and detained extra-judicially under the pretext of Sierra Leone's state of emergency power. This final relationship is depicted in Exhibit 1.6.

Exhibit 1.6



⁵⁴ (Lome) Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, at <http://www.sierra-leone.org/lomeaccord.html> (March 24, 2007).

⁵⁵ Witness to Truth, *supra* note 9 at Vol 3a, 387

⁵⁶ *Id.* at 413.

The following exhibit (1.7) compares the four main peace agreements that were implemented as part of the peace process. By detailing the key provisions of each agreement, the chart provides insight into the interests and motivations of the parties.

Exhibit 1.7 – Peace Agreements

	Abidjan⁵⁷	Conakry⁵⁸	Lome⁵⁹	Abuja I and II⁶⁰
Date	November 30, 1996	23 October 1997	July 1999	November 2000
Parties to Agreement	<ul style="list-style-type: none"> Government of Sierra Leone RUF 	<ul style="list-style-type: none"> AFRC Economic Community of West African States (ECOWAS) 	<ul style="list-style-type: none"> Government of Sierra Leone RUF 	<ul style="list-style-type: none"> Government of Sierra Leone RUF
Other Parties	<p>Other Signatories:</p> <ul style="list-style-type: none"> Cote D'Ivoire, UN, Organization of African Unity (OAU), the Commonwealth <p>Others present:</p> <ul style="list-style-type: none"> Libya – credited with encouraging the RUF to negotiate.⁶¹ 	<p>Other Signatories:</p> <ul style="list-style-type: none"> None <p>Others present:</p> <ul style="list-style-type: none"> UN, OAU 	<p>Moral guarantors⁶²:</p> <ul style="list-style-type: none"> Togo, UN, OAU, ECOWAS, the Commonwealth <p>Others present</p> <ul style="list-style-type: none"> UK and US pledged support. 	<p>Other Signatories:</p> <ul style="list-style-type: none"> None <p>Others present:</p> <ul style="list-style-type: none"> UN, ECOWAS
Key Provisions	<ul style="list-style-type: none"> Ceasefire Commission to oversee the implementation of the provisions International Neutral Monitoring Group to serve as a type of watch dog Disarmament, Demobilization, and Reintegration (DDR) program Transformation of RUF into a legal political party Amnesty to all RUF combatants Release of all political prisoners 	<ul style="list-style-type: none"> Ceasefire Restoration of the democratically elected government Role for the UN High Commission on Refugees to assist in the repatriation and resettlement of refugees General language about “power sharing” among parties 	<ul style="list-style-type: none"> Ceasefire Truth and Reconciliation Commission and DDR program National Commission on Human Rights Blanket amnesty Appointment of RUF leader as the vice-president of Sierra Leone Special fund to aid in the rehabilitation of war victims 	<ul style="list-style-type: none"> Ceasefire agreement Resumption of the DDR program Culled further concessions from the RUF, including ceding control of their strongholds to the government

⁵⁷ (Abidjan) Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, at <http://www.sc-sl.org/abidjanaccord.html> (May 4, 2007).

⁵⁸ (Conakry) ECOWAS Six-month Peace Plan for Sierra Leone; 23 October 1997 – 22 April 1998, at <http://www.sc-sl.org/conakryaccord.html> (March 24, 2007).

⁵⁹ Lome, *supra* note 54.

⁶⁰ Abidjan, *supra* note 57

⁶¹ See Witness to Truth, *supra* note 9, Vol 3b, 72.

⁶² Moral guarantors are usually responsible for facilitating the peacemaking and peacebuilding process.

Part II – The Response

The international community was faced with a complex, perhaps even unique situation in Sierra Leone. A very brutal war was being fought and the parties were not divided by ethnic or political lines. Most of the atrocities were committed locally, citizen against citizen, civilian against civilian.⁶³ Civilians bore not just the psychological scars of the conflict but also the physical reminders of their ordeals in the form of amputations. Many children and youth had become soldiers and were guilty of committing some of the most loathsome acts. The bleak economic outlook at the start of the war meant that the combatants really had nothing to lose by continuing to fight. The leaders of the factions were involved in the illicit diamond trade and were personally profiting from the persistence of the war. After ten years of strife, Sierra Leoneans were weary of the situation and wanted peace at all costs.

Faced with this set of circumstances, the negotiators of the Lome Agreement had no choice but to agree to a blanket amnesty for the rebels since this was the only way to secure the peace. There was immediate outrage from the human rights community and the UN's response, even as they welcomed the agreement as the way forward for Sierra Leone, was to attach a handwritten disclaimer to the signed agreement, which stated that the amnesty provisions did not apply to violations of international humanitarian law.⁶⁴

The most pressing need at that point was for a peacekeeping force that would stabilize the country, and a disarmament, demobilization, and reintegration program that would disarm the fighters. The UN thus set about those tasks. Work then started on establishing a truth and reconciliation commission as was required by the Lome

⁶³ *See Id.* at Overview of the Sierra Truth and Reconciliation Report, ¶15.

⁶⁴ *See Id.* at Vol 3b, 83.

Agreement. The SCSL was created after the Sierra Leone government requested help from the UN to establish a court that would try the RUF for violations of the Lome Agreement.⁶⁵ This was, in my opinion, a way to appease the powerful human rights organizations, including the UN, who were uncomfortable with the blanket amnesty provision that had been negotiated. The argument has also been put forward that the Sierra Leone government requested a criminal tribunal in part because it was motivated by the goal of crushing its political rivals who had been players in the civil war.⁶⁶ This contention becomes stronger when one considers the fact that unlike the UN, the government had not entered a reservation regarding the amnesty provision, and thus could not use that explanation to support its request for a criminal tribunal.⁶⁷

Transitional Justice in Sierra Leone

Sierra Leone's transitional justice program consists of the Disarmament, Demobilization, and Reintegration Program, the Truth and Reconciliation Commission, and the Special Court for Sierra Leone.

The Disarmament, Demobilization and Reintegration Program (DDR)

The Lome Peace Agreement explicitly provided for the implementation of a DDR program in Sierra Leone.⁶⁸ The goal of the DDR program was three-fold: (1) to collect, register, disable, and destroy all conventional weapons and munitions retrieved from

⁶⁵ *Id.* at 362.

⁶⁶ Interview with Gavin Simpson. Staff Member, Truth and Reconciliation Commission (Sierra Leone), January 17, 2007.

⁶⁷ *Id.*

⁶⁸ Mark Malan et al., *Sierra Leone: Building the Road to Recovery*. Institute for Security Studies. Monograph 80, 23 March 1, 2003.

combatants; (2) to demobilize approximately 45,000 combatants of whom 12% were expected to be women; and (3) to prepare and support ex-combatants for socio-economic reintegration upon discharge from demobilization centers.⁶⁹ The government, the UN, and the RUF collectively monitored the program, and other international and national non-governmental organizations collaborated on the project.⁷⁰ The estimated cost of the DDR program was \$80 million⁷¹ and funding was provided by a multi-donor trust fund for Sierra Leone.⁷²

The disarmament process was a five-step program that consisted of an orientation program for ex-combatants, an interview process to allow personal identification and verification, the weapons collection stage, where weapons were tagged for final processing, an eligibility verification stage, and a final stage where ex-combatants were transported to demobilization centers.⁷³ At these centers, ex-combatants were provided with basic necessities together with counseling sessions and civic duty lessons.⁷⁴ They were then given transitional allowances and provided with transportation to the local communities where they would settle.⁷⁵

By most accounts the disarmament and demobilization aspects of the DDR program has been a success.⁷⁶ The program disarmed 72,490 combatants and destroyed 42,300 weapons and 1.2 million pieces of ammunition.⁷⁷ By neutralizing any real threat

⁶⁹ *Id.* at 25.

⁷⁰ *Id.* at 24.

⁷¹ UN DDR Resource Center Country Program Report – Sierra Leone, available at <http://www.unddr.org/countryprogrammes.php?c=60>, (March 15, 2007).

⁷² See Malan, *supra* note 69, at 24.

⁷³ *Id.* at 26-7.

⁷⁴ *Id.* at 27.

⁷⁵ *Id.*

⁷⁶ *Id.* at 32.

⁷⁷ *Id.* at 33.

of large scale violence, the DDR program has been largely credited with facilitating a “free and fair” presidential election in Sierra Leone in 2002.⁷⁸

It is, however, currently unclear how successful the reintegration aspect has been.⁷⁹ The reintegration program consisted of providing ex-combatants with skills that would enhance their employability, and facilitating their acceptance into the community through sensitization measures.⁸⁰ The program was plagued by a serious lack of funding⁸¹ and its duration has diluted its potential impact – the entire program, including job training, was only six months long. The implementation partners simply did not have the capacity to deliver longer-term programs and there has not been a corresponding development of infrastructure and employment opportunities. Participants are thus unable to transform the skills obtained into economic reward.⁸² Moreover, the DDR program’s one fighter, one weapon policy has overlooked individuals such as bush wives,⁸³ who had worked alongside the combatants but did not have weapons to turn in.⁸⁴ This left an especially vulnerable group out of the reintegration equation.⁸⁵

The Truth and Reconciliation Commission (TRC)

The Lome Agreement also specifically mandated the creation of a truth and reconciliation commission.⁸⁶ Since the agreement granted a blanket amnesty to all fighting factions, it was the intention that this would be the mechanism through which the

⁷⁸ *Id.*

⁷⁹ *Id.* at 39.

⁸⁰ *Id.* at 41.

⁸¹ *Id.* at 42.

⁸² *Id.*

⁸³ Bush wives are girls who were abducted by the rebels and forced to travel with them. They were often sex slaves and also performed all household duties for the rebels.

⁸⁴ UN DDR Resource Center. Sierra Leone Country Program Report, *supra* note 72.

⁸⁵ *Id.*

⁸⁶ *See* Witness to Truth, *supra* note 9, Vol 3b, 360.

perpetrators would be identified and held accountable for their actions.⁸⁷ One of the main goals of the TRC was “to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone.”⁸⁸ It was designed to function as a multi-purpose initiative that would launch the nationwide reconciliation process and make recommendations of measures that would help prevent the recurrence of hostilities or human rights violations.⁸⁹ The Sierra Leone government was given the responsibility of implementing these recommendations in a timely manner and was tasked with creating a follow-up committee to monitor the implementation of the recommendations.⁹⁰

The TRC was an independent body, which was not subject to the control of any person or body.⁹¹ It was given the power to appoint committees to assist in administration and other matters, and its activities were to be financed from funds given by the Sierra Leone and other governments, and non-governmental organizations.⁹² The TRC Act⁹³ provided for a twelve-month life for the TRC and the project plan was devised by the UN Office of the High Commissioner for Human Rights in Geneva.⁹⁴ The TRC has concluded its activities and issued its final report in 2004.⁹⁵

⁸⁷ *Id.*

⁸⁸ The Truth and Reconciliation Commission Act 2000. Supplement to the Sierra Leone Gazette Vol. Cxxxix, No. 9, § 6, February 10, 2000, available at <http://www.sierra-leone.org/trcbook-TRCAct.html>.

⁸⁹ *See* Witness to Truth, *supra* note 9, Vol 3b, 360.

⁹⁰ *Id.* at § 18.

⁹¹ *Id.* at § 14.

⁹² *Id.* at §§ 10-12.

⁹³ *Id.*

⁹⁴ *See* Witness to Truth, *supra* note 9, Vol 1, 94.

⁹⁵ *Id.* at 2.

The Special Court of Sierra Leone (SCSL)

The SCSL was established by the Statute of the Special Court of Sierra Leone, which is an agreement between the UN and the Government of Sierra Leone.⁹⁶ The agreement was the result of UN Security Council resolution 1315,⁹⁷ which responded to President Kabbah's request to the UN for a tribunal to try the RUF for violations of the Lome Agreement.⁹⁸ The SCSL has the power "to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law."⁹⁹ Its jurisdiction is, however, temporal and is only valid for violations that occurred from November 30, 1996, onwards.¹⁰⁰ The court also has jurisdiction over only persons who were fifteen years of age or older when the alleged crime was committed,¹⁰¹ and the statute specifically outlines crimes such as murder, enslavement, and torture (crimes against humanity), and sexual abuse and arson (crimes under Sierra Leonean law) as those ripe for prosecution.¹⁰² One of the important and most controversial provisions of the statute is that it voided the blanket amnesty that had been granted by the Lome Agreement.¹⁰³ In addition, persons who had acted in an official capacity were not exempt from prosecution.¹⁰⁴ The statute also provides for a registrar, a

⁹⁶ Statute of the Special Court for Sierra Leone, available at <http://www.sc-sl.org/scsl-statute.html> (March 26, 2007).

⁹⁷ *Id.*

⁹⁸ *See* Witness to Truth, *supra* note 9, Vol 3b, 362.

⁹⁹ *See* Statute of the Special Court for Sierra Leone, *supra* note 97, § 1.

¹⁰⁰ William A. Schabas, The Relationships Between Truth Commissions and International Courts: The Case of Sierra Leone, 25 Human Rights Quarterly (2003) 1035, 1041.

¹⁰¹ *See* Statute of the Special Court for Sierra Leone, *supra* note 97 § 7.

¹⁰² *See Id.* at §§ 2, 5.

¹⁰³ *Id.* at § 10.

¹⁰⁴ *Id.* at § 6.

staff member of the UN who would be responsible for the administration of the court, including its financial and human resources.¹⁰⁵

Sierra Leone was not in a position to establish the court itself because its penal code did not contain provisions for violations of international humanitarian law, and after the 11-year civil war, the country was in no financial position to fund such an undertaking.¹⁰⁶ The UN Security Council thus proposed that the Court be funded through voluntary contributions from both governmental and non-governmental organizations.¹⁰⁷ To date the SCSL has indicted 13 people, including one person that many Sierra Leoneans consider a hero of the war, and is not expected to issue any further indictments.¹⁰⁸ The SCSL is also not expected to exist beyond the initial three-year period for which a budget had been drawn.¹⁰⁹

The relationship among the different mechanisms

The DDR program existed as essentially an island within Sierra Leone's transitional justice program.¹¹⁰ This is probably because this program was inaugurated long before the SCSL and the TRC were formed. DDR programs present a special dilemma for transitional justice: for security reasons, it is imperative that combatants be

¹⁰⁵ Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, available at <http://www.sc-sl.org/scsl-agreement.html> (March 27, 2007).

¹⁰⁶ Nsongurua J. Udombana, Globalization of Justice and the Special Court for Sierra Leone's War Crimes, 17 *Emory Int'l L. Rev.* 55, 69, 2003.

¹⁰⁷ UN DDR Resource Center. Sierra Leone Country Program Report, *supra* note 72.

¹⁰⁸ *See* Bosire, *supra* note 3, at note 52. The indictment and incarceration of Chief Hinga Norman has been a cause for concern for many citizens, including victims, who view his enlistment of villagers to fend off the rebels as a critical form of protection during the war. *See also*, Witness to Truth, *supra* note 9, at Vol 3a, 360. There was no question that the CDF enjoyed the imprimatur of the government, evidenced by President Kabbah's acknowledgment that the CDF played a significant role in the government's effort to suppress the RUF. Hinga Norman passed away on February 22, 2007, in the custody of the SCSL. The government of Sierra Leone announced that he would receive a state funeral.

¹⁰⁹ *See* Schabas, *supra* note 101, at 1040.

¹¹⁰ UN DDR Resource Center. Sierra Leone Country Program Report, *supra* note 72.

induced to give up their arms but the inducement offered is often seen as a reward for perpetrators, especially from the point of view of victims, who are not eligible to receive benefits under a DDR program.¹¹¹

Although the concurrent operation of a truth commission and a special court in Sierra Leone was seen by many as an important international experiment, the two institutions were not initially conceived to exist contemporaneously.¹¹² The intent of the designers of the SCSL was for this mechanism to complement the other transitional justice initiatives.¹¹³ They were aware of the potential for the SCSL to interfere with the operation of the TRC and the UN Secretary-General urged the Security Council to ensure that the two organizations “operate in a complementary and mutually supportive manner, fully respectful of their distinct but related functions.”¹¹⁴ Toward this end, there were many draft proposals that formulated the relationship between the SCSL and the TRC, especially in the area of information sharing, but the Commissioners of the TRC rejected all such proposals because they believed that any form of information sharing would undermine the effectiveness of the TRC.¹¹⁵

One of the ways in which the creation of the SCSL impacted the operation of the TRC was in the refusal of some ex-combatants to testify in front of the TRC because they believed that such testimony could be used to prosecute them, since the SCSL statute had voided the amnesty provisions of the Lome Agreement.¹¹⁶ Another clash between the two operations occurred when the SCSL, without explanation, refused to allow some of

¹¹¹ See Bosire, *supra* note 3, at 26.

¹¹² See Witness to Truth, *supra* note 9, at Vol 3b, 359.

¹¹³ First Annual Report of the President of the Special Court for Sierra Leone: 2 December 2002 – 1 December 2003. 29 Commw. L. Bull. 891, 2003.

¹¹⁴ See Schabas, *supra* note 101, at 1038.

¹¹⁵ See *Id.* at 1050.

¹¹⁶ *Id.*

the perpetrators it had indicted to testify before the TRC, even though they had expressed a wish to do so.¹¹⁷ Nevertheless, much of the direct tension that had been forecasted to occur between the SCSL and the TRC did not materialize.¹¹⁸

The TRC's prospects for funding was negatively affected by the advent of the Special Court partly because of problems that the TRC's interim secretariat experienced initially but more importantly because funders faced a dilemma of choosing which transitional justice mechanism to fund.¹¹⁹ The US had taken a clear stand in favor of the SCSL so it is not implausible that other nations would follow this lead at the expense of the TRC. The initial budget of the TRC was almost \$10 million but after it became clear that there would be a funding shortfall, the budget was then reduced to approximately \$6.6 million.¹²⁰ Actual pledges received amounted to only \$3.7 million.¹²¹ The practical consequences of this shortfall included a reduction of proposed staff by almost 30%, a merger of the legal and reconciliation units, and the reduction of administrative necessities like vehicles, office equipment, and communications equipment.¹²² By the report writing stage, many staff members were not being paid and had to rely on personal resources to support themselves.¹²³

When one compares the premises of the SCSL and that of the TRC, there is no question about which of the two mechanisms is more powerful and holds more sway with

¹¹⁷ *Id.* at 1051.

¹¹⁸ *Id.* at 1065.

¹¹⁹ Interview with Yasmin Sooka. Commissioner, Truth and Reconciliation Commission (Sierra Leone). (February 8, 2007).

¹²⁰ *See* Witness to Truth, *supra* note 9, at Vol 1, 106. Compare to the South Africa Truth and Reconciliation Commission, which had a total budget of approximately \$27 million, over three years. www.truthcommissions.org/commission.php?cid=3&case-x=0&lang=en, (May 3, 2007).

¹²¹ *See* Witness to Truth, *supra* note 9, Vol 1, 106.

¹²² *Id.* at 108. *See also* Interview with Bishop Humber. Chairman, Truth and Reconciliation Commission (Sierra Leone), January 19, 2007.

¹²³ *See* Interview with Gavin Simpson, *supra* note 67.

the international community.¹²⁴ The SCSL is an impressive structure occupying its own grounds in the city of Freetown, with power generators that are rumored to be powerful enough to provide electricity to a large portion of the city, while the TRC rented cheap office space and some of the Commissioners of the TRC had to use their personal computers to conduct the business of the TRC.¹²⁵

¹²⁴ See First Annual Report of the President of the Special Court for Sierra Leone, *supra* note 115. The SCSL was the pet project of many in the international community, including the UN.

¹²⁵ See Interview with Bishop Humper, *supra* note 124.

Part III – Reconciling Interests, Rights, and Power

Helping post conflict societies address past wrongs and build a sustainable future is a daunting task that requires multiple inputs ranging from peace and security to financial resources and technical capacity.¹²⁶ “[T]he availability of resources to compensate for the loss of income for former combatants, the revival of the economy, and the establishment of infrastructure destroyed by the war” are all crucial components of a successful peace process.¹²⁷ These factors have been referred to as the peace dividend.¹²⁸

Transitional justice mechanisms must thus wear numerous hats. Systems must be put in place to address issues such as the need of victims to obtain redress for their injuries, the need of the country to assemble an accurate record of conflict, and the need for all citizens to engage in reconciliation.¹²⁹ It is however of utmost importance that the various elements of the system communicate effectively because any system in which the moving parts conflict is doomed.¹³⁰ For example, while the work of truth commissions with victims may lay the foundation for a reparations program, there is evidence that a reparations program without a corresponding attempt to seek judicial redress will be less effective.¹³¹ For organs such as a special court and a truth commission to co-exist effectively, it is necessary to draw clear jurisdictional boundaries between the two, and to establish a means of communication and coordination.¹³² This will enable each

¹²⁶ Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, August 23, 2004, ¶ 3, available at <http://www1.umn.edu/humanrts/links/sec-genreport2004.html>.

¹²⁷ Lawrence Juma, *The Human Rights Approach to Peace in Sierra Leone: The Analysis of the Peace Process and Human Rights Enforcement in a Civil War Situation*, 30 *Denv. J. Int’l L. Pol’y* 325, 357. 2002.

¹²⁸ *Id.*

¹²⁹ See Report of the Secretary-General, *supra* note 128, at ¶ 47.

¹³⁰ See Bosire, *supra* note 3, at 5.

¹³¹ *Id.*

¹³² See Carsten Stahn, *supra* note 5, at 458

mechanism to function to its full potential because conflicts would have been addressed *ex ante*.¹³³

Furthermore, if the anticipated outcomes of a transitional justice system are to be realized, the system must have a clear mission that will effectively guide the efforts of the numerous components.¹³⁴ This requires actively involving the various actors within the system in both setting the policy and designing the system.¹³⁵ Such input will bring to light more effective ways of managing the parties' conflicting interests.¹³⁶

The sheer magnitude of a dispute resolution system that addresses intractable conflict poses overwhelming sequencing problems. Many parts of the system have to be implemented in rapid succession, and sometimes concurrently, in order to respond to the urgent needs of the different stakeholders. Competition among the various mechanisms for resources will often drown the intended message and create a sub-optimal allocation of scarce resources.

The issues described above can be addressed to a large extent, even if not entirely, by employing a systems design approach to any attempt to manage a conflict. A systems design approach involves a deliberate assembly of resources in a manner that is anticipated to satisfy stated objectives.¹³⁷ Rather than allow the "system" to develop only in response to external stimuli, the objective is to make a purposeful, pragmatic, selection from many possible alternatives, after a thorough evaluation of factors that are specific to

¹³³ *Id.*

¹³⁴ See Cathy A. Costantino and Christina Sickles Merchant, Designing Conflict Management Systems, 24-25, Jossey-Bass Inc., Publishers, San Francisco, CA. 1996.

¹³⁵ *Id.* at 23.

¹³⁶ *Id.*

¹³⁷ Khalil Z. Shariff, Designing Institutions to Manage Conflict: Principles for the Problem Solving Organization, 8 Harv Neg. L. Rev., 133, 139, 2003.

the locale in which the system will be implemented.¹³⁸ The design process thus requires not only allocating resources in the most efficient manner, but as the word implies, it also demands creativity in sculpting a solution that will address seemingly insurmountable problems.¹³⁹ Attention to efficiency *and* creativity will ensure that the strategy is both shaped to manage the uniqueness of each situation, and designed to be responsive to changing needs.¹⁴⁰

Although it is unquestionable that conflict management strategies should not be simply imported into a particular situation without first understanding the local dynamics, including culture,¹⁴¹ the international community has developed a repertoire of ready-made interventions that it applies indiscriminatingly to conflicts around the world.¹⁴² Transitional justice programs have been guilty of foregoing a pragmatic approach to peacebuilding that creates an enduring framework that can facilitate a society's recovery from devastating conflict, in favor of an ad hoc approach, where reactive programs address singular needs.¹⁴³ This piecemeal approach can seriously dampen the effectiveness of conflict intervention strategies, which must remain dynamic and highly responsive to changing conditions.¹⁴⁴

The failure to apply a holistic approach to peacebuilding has been blamed for the inability of the UN and the international community to address persistent conflicts in

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See Cordula Reimann, Assessing the State-of-the-Art in Conflict Transformation. Berghof Research Center for Constructive Conflict Management, 11, August 2004, available at <http://www.berghof-handbook.net>.

¹⁴² See, Thania Paffenholz, Designing Transformation and Intervention Processes. Berghof Research Center for Constructive Conflict Management, 2, available at <http://www.berghof-handbook.net>.

¹⁴³ See Juma, *supra* note 129, at 332.

¹⁴⁴ See Reimann, *supra* note 143, at 4. See Report of the Secretary-General, *supra* note 128, at ¶ 23.

places like Africa¹⁴⁵ – the UN has never at the outset outlined a long-term, comprehensive action plan for any of the conflicts it has become involved with and has instead simply provided support to the victors, while facilitating the punishment of the losers.¹⁴⁶

Peacebuilding in Sierra Leone

The transitional justice strategy in Sierra Leone has not been much different. The international community has implemented its trademark trio of interventions: a program to end violent conflict – the Sierra Leone DDR program; a program to facilitate reconciliation – the Sierra Leone TRC; and a program to address human rights violators – the SCSL. Unfortunately, there does not appear to have been any concerted effort to customize the solution and ensure that the different components work harmoniously to achieve the stated goal.

There was no initial plan to integrate all the aspects of the peacebuilding plan in Sierra Leone.¹⁴⁷ This means that the peace, security, relief, and recovery initiatives were sometimes isolated from the political developments and decision-making, leading to many difficulties, some of which were described earlier. Furthermore, some facets of the programs did not receive adequate attention while others did not receive the necessary resources for proper implementation.¹⁴⁸

As a result, many Sierra Leoneans share the opinion that the transitional justice program has been inadequate and too perpetrator-centric. Conversations about the peace

¹⁴⁵ See Juma, *supra* note 129, at 332.

¹⁴⁶ *Id.* at 375.

¹⁴⁷ Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, 78, Peacekeeping Best Practices Unit, Department of Peacekeeping Operations. September 2003.

¹⁴⁸ *Id.*

process will often contain statements like “those who have ruined us are being given the chance to become better persons financially, academically and skills-wise.”¹⁴⁹ This problem is exacerbated by the fact that the difficult economic conditions that exist for the average Sierra Leonean seem not to be improving and the process of rebuilding is going nowhere.¹⁵⁰

Some of the challenges the peacebuilding program in Sierra Leone has faced would have been avoided by approaching the program as an exercise in dispute system design, and using the requisite tools of such an approach. This would have forced the parties to (1) analyze the conflict and its main actors so a customized intervention can be proposed; (2) identify a clear vision and the corresponding goals that will guide the conflict intervention process; (3) define strategies and roles to promote the optimal allocation of resources; (4) time interventions to minimize conflict among the components of the program; (5) facilitate coordination and cooperation among all actors to ensure that the best combination of resources is directed at each task; and (6) build structures that will sustain the peace and allow for continuous feedback.¹⁵¹ Attention to these factors can help create a roadmap for an effective intervention program.

In a 2004 report, the UN Secretary-General implicitly recognized the importance of these factors to the success of a conflict management system. He pointed to a lack of several of the system design steps described above as reasons for the muted success of

¹⁴⁹ See Malan, *supra* note 69, at 46. *Quoting* NCDDR briefing, August 2002, Freetown, Sierra Leone.

¹⁵⁰ Based on my observations of the progress of the reconstruction of Freetown, between December 10, 2006 and January 22, 2007.

¹⁵¹ See Paffenholz, *supra* note 144, at 3. Paffenholz describes ten critical issues that must be addressed for proper conflict intervention design. These issues are: (1) visions, goals, commitments; (2) analyzing conflicts and actors; (3) strategies and roles; (4) right partners; (5) timing interventions; (6) building structures; (7) the right people; (8) coordination and cooperation; (9) sustainability; and (10) building learning into the process. I have consolidated these ten issues into six to minimize overlap among the categories. I believe that these six broader categories will allow for a more robust analysis.

the organization's efforts to implement effective conflict management systems.¹⁵² The report acknowledges that “advancing [justice, peace, and democracy] in fragile post conflict systems requires strategic planning, careful integration, and sensible sequencing of activities.”¹⁵³

In the following section, I will discuss how taking special cognizance of the factors defined above could have improved the results of the Sierra Leone transitional justice system. I will also highlight the strengths of the system, where applicable, and suggest ways to deal with weaknesses.

1. **Analyze the conflict and its main actors so a customized intervention can be proposed.** Before any attempt is made to design a dispute system, it is imperative that the system designers have a clear understanding of the circumstances surrounding the conflict such as the history, issues, and dynamics.¹⁵⁴ An analysis of the interests of all the main stakeholders must also be conducted.

In a general assessment of its conflict intervention programs (“Conflict Analysis Report”), the UN Secretary-General stated that it is imperative that solutions be tailored to the context in which they are to be implemented and condemned “one-size-fits-all formulas and importation of foreign models.”¹⁵⁵ In other words, a proper analysis of factors such as the causes of the underlying conflict, the nature of the local institutions, and the relationships among the different actors should be undertaken before any attempt is made to design an intervention program.¹⁵⁶

¹⁵² See Report of the Secretary-General, *supra* note 128.

¹⁵³ *Id.*

¹⁵⁴ See Paffenholz, *supra* note 144, at 3.

¹⁵⁵ See Report of the Secretary-General, *supra* note 128.

¹⁵⁶ *Id.* at ¶ 14.

There are several indications that this critical step was not completed as thoroughly as necessary before the peacebuilding process began in Sierra Leone. First, the peacebuilding process largely ignored the needs of one of the most important stakeholders, the victims, in the interest of appeasing other stakeholders such as the international human rights community.

The story of MK¹⁵⁷ illustrates my point. MK was a peanut farmer in the northern province of Kambia before the war started. She had worked very hard and had turned her family's plot of land into a lucrative business. She was able to build a 7-room house and could afford to send her children to school. When the rebels attacked her village, she left everything behind and ran into the bush. She started planting another plot of land at her hideout but the rebels attacked again, this time, just before harvest. Her right leg was amputated just below her shin, and she was left to die.

MK reports that she bears no ill will towards her attackers for what they did to her. She has a strong faith in God and believes that this incident was her destiny. Sadly, she believes that her time has past so her biggest concern is now that her children get the opportunity to attend school so they can build a better life for themselves. She reports many health issues surrounding her amputation and wonders why the government has not been able to provide victims with even basic healthcare. The hardest part of this ordeal for her is not that there are people who have not been punished for their crimes but that she perceives that they have been "paid" by the government, while she is left with no option other than to beg on the streets so she can provide basic necessities for her family.

¹⁵⁷ Interview with a victim of the war. A first and last initial is being used to protect the identity of the interviewee. Interview conducted on January 10, 2007.

This is especially difficult when she remembers what she had accomplished before the war.

The UN has stated that the victims in a country under transition are “a particularly important constituency,” who deserve the “greatest attention” from international actors.¹⁵⁸ Victims from the first Gulf War received in excess of \$18 billion from the United Nations Compensation Commission.¹⁵⁹ If attention to the needs of victims is a yardstick by which to evaluate the transitional justice system in Sierra Leone, there is no question that the system miserably failed. The majority of Sierra Leoneans believe that the transitional justice system left the victims behind.¹⁶⁰

A cursory interests analysis of the stakeholders of the transitional justice system would have revealed the plight of the victims and perhaps motivated a response to their needs. “The demands of justice and the dictates of peace require that something be done to compensate victims,”¹⁶¹ and one of the most effective ways to do this is through reparations. Reparations generally serve three goals: acknowledge that victims have been wronged; rebuild relationships between victims and society; and restore trust between the state and victims.¹⁶² Such a program may be used to provide justice for victims since it is impossible to try all perpetrators.¹⁶³ This is especially important in those situations like Sierra Leone, where a general amnesty had been granted to perpetrators and victims had consequently lost their right of judicial redress, if any existed.¹⁶⁴

¹⁵⁸ See Report of the Secretary-General, *supra* note 128, at ¶ 18.

¹⁵⁹ *Id.* at ¶ 54.

¹⁶⁰ See Interview with Gavin Simpson, *supra* note 67.

¹⁶¹ See Report of the Secretary-General, *supra* note 128, at ¶ 55.

¹⁶² See Bosire, *supra* note 3, at 17.

¹⁶³ *Id.* at 17.

¹⁶⁴ *Id.*

Sierra Leone is one of the poorest countries in the world¹⁶⁵ and this means that for a large portion of the population, obtaining basic necessities is a daily struggle. In an environment such as this, reparations become more important than any other aspect of a transitional justice system. Victims that testified in front of the TRC overwhelmingly talked about reparations as the way to make them whole.¹⁶⁶ Material needs such as housing, health care, and tuition for their children was rated significantly higher than any idea of retribution.¹⁶⁷ Thus, even though reparations were not an explicit mandate of the Truth and Reconciliation Act, the Commissioners of the TRC deemed it important to put forth recommendations for such a program.¹⁶⁸ To date, however, those recommendations have not been implemented.¹⁶⁹

Yet the international community has spent millions of dollars in building the SCSL. Tribunals have historically been the most expensive components of a transitional justice system and the two current UN tribunals (ICTY and ICTR) boast a combined annual budget of over a quarter of a billion dollars or more than fifteen percent of the UN's total budget.¹⁷⁰ The SCSL's budget for 2005-6 was \$25.5 million and the amounts spent in 2004-5 and 2003-4 were \$29.9 million and \$34 million, respectively.¹⁷¹ When the number of cases that these tribunals have heard is taken into account these mechanisms raise serious issues regarding their utility.¹⁷²

¹⁶⁵ See UN Human Development Index, *supra* note 10.

¹⁶⁶ See Interview with Gavin Simpson, *supra* note 67.

¹⁶⁷ *Id.* This statement was based on the results of more than 9,000 statements taken from victims at TRC hearings.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See Report of the Secretary-General, *supra* note 128, at ¶ 42.

¹⁷¹ Special Court for Sierra Leone Budget 2005-2006, available at <http://www.scsl.org/Documents/budget2005-2006.pdf> (March 27, 2007).

¹⁷² The SCSL has indicted only thirteen people. Three of the indicted are dead and the whereabouts of one remains unknown.

I therefore question the wisdom of spending large amounts of money prosecuting cases where the necessary conditions to facilitate the prosecution do not exist. The usual rationale behind tribunals mimics that proffered by David Crane, prosecutor of the SCSL. He stated that “you cannot have true peace or true forgiveness unless you hold those who, in fact, started it, sustained it throughout these past 10 years.”¹⁷³ However, to many of the victims, vindication is not found in the punishment of the perpetrators as some advocate, but in the fulfillment of their human needs.¹⁷⁴

Members of the press have also questioned the prudence of a criminal tribunal in the context of Sierra Leone. A reporter for Inside Africa challenged the appropriateness of the SCSL when he noted, “for Africa and here in Sierra Leone, almost \$100 million has already been spent on an experiment [- the SCSL]. As I see U.N. personnel relaxing on the beaches and see the [sport utility vehicles] littering the streets of Freetown, I wonder if the U.N. has got this all wrong. What is the point of spending millions on trying a handful of men, some of whom are dead, in a land that is desperately poor? The money being spent here is not consolidating the peace. It is money that will not be seen by Sierra Leoneans. The West, it seems, is imposing justice when they have little part in ending Sierra Leone's war.”¹⁷⁵ It is quite easy for individuals, especially westerners, to proclaim that the “ethically defensible treatment of past wrongs requires that those individuals and groups responsible for past crimes be held accountable and receive

¹⁷³ See Transcript. CNN. Inside Africa, *supra* note 11.

¹⁷⁴ See Udombana, *supra* note 107, 121.

¹⁷⁵ See Transcript. CNN. Inside Africa, *supra* note 11.

appropriate sanctions or punishment,”¹⁷⁶ when they are far removed from the humanitarian situation on the ground.

One of the underlying causes of the conflict in Sierra Leone was the lack of economic opportunity for the youth, and UN’s evaluation report of its mission in Sierra Leone (Lessons Learned Report), rightly concludes that this is one of the pressing issues that must be addressed.¹⁷⁷ The UN has also stated that “viable economic opportunities for ex-combatants are the key to longer-term stability.”¹⁷⁸ The demographic profiles of ex-combatants show that there were no significant differences among the factions in terms of ethnic, regional, or religious lines, and each group did not show overwhelming affiliation with one particular political party.¹⁷⁹ Most combatants were uneducated and poor and many had suffered the loss of at least one parent before they joined their faction.¹⁸⁰ Thus, many of those who took up arms did so partly because they had no other attractive alternative – they had no bright future to look forward to. Their overriding interest was to secure basic necessities such as security, food, and education, and they were consequently most interested in the Lome Agreement provisions that ended the violence, awarded them amnesty, and facilitated their employment.¹⁸¹

¹⁷⁶ See Udombana, *supra* note 107, 120. Udombana strongly refutes the argument that prosecutions are anathematic to transitional justice programs. The only support he proposes for this contention is that TRCs do not necessarily elicit more evidence because some high ranking officials may reject the invitation of the TRC to testify. This response does not address the heart of the matter, which is often that these expensive prosecutorial programs are implemented at the expense of human needs. See also, Amann, *supra* note 13, at 245. Arguing that punishing those responsible for committing atrocities would begin to break the cycle of violence.

¹⁷⁷ See Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, *supra* note 149, at 31.

¹⁷⁸ *Id.*

¹⁷⁹ Macartan Humphreys and Jeremy Weinstein, What the Fighters Say: A Survey of Ex-Combatants in Sierra Leone. Working Papers Series. Center on Globalization and Sustainable Development. Working Paper No. 20, 3, August 2004.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 4.

The DDR program woefully missed the mark in its attempt to address this issue since most of the skills training provided to ex-combatants was inappropriate for the Sierra Leone context. Moreover, the short duration of the program meant that students did not obtain a good grasp of the material before they were dismissed. Also, although child combatants and female fighters were given special attention due to their unique needs,¹⁸² the program's one fighter-one weapon policy shut out others like bush wives, who were no less a part of the rebels' fighting machine. Again, a proper analysis of the issues and interests would have facilitated a proper design of the DDR program.

Although not a party to the conflict, the international community is also a major stakeholder in the transitional justice program. In addition to general goals of fostering adherence to human rights and sustaining democracy, individual countries have specific foreign policy goals that they seek to promote.¹⁸³ Furthermore, the majority of the resources for transitional justice programs is furnished by the UN and countries like the UK and the US. These parties are constrained by their local constituents in the types of programs they can endorse and support. Interest groups in these countries are often very vocal about what they believe is the best way to approach conflict management, and governments often must take heed of those demands to preserve their political power. Thus, transitional justice components like ad hoc tribunals have often been assembled as part of the dispute resolution system not merely because of some perceived value in addressing impunity, but more so because of pressure from non-governmental

¹⁸² See Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, *supra* note 149, at 31.

¹⁸³ For example, national security is of utmost importance to the US, and because it believes that "[g]overnments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people[,] and are likely to seek their objectives by coercion and force in the international field[,]" the official US foreign policy has been to support human rights initiatives in transitional justice programs. Speech, Ambassador, Richard S. Williamson. 2 *Cardozo Pub. L. Pol'y & Ethics J.* 1, 2004.

organizations, especially human rights groups, who have used the media to shame the parties into action.¹⁸⁴

Many human rights organizations, including the UN, have argued that amnesty cannot be bartered in exchange for peace in situations where the most heinous crimes have been committed¹⁸⁵ so one begins to understand the reasoning behind the creation of the SCSL. However, it is the task of the system designer to understand and devise ways of managing conflicting interests. The alternative to the amnesty provisions in the case of Sierra Leone was the continuation of the brutal war, which had primarily targeted innocent civilians. Although the cessation of hostilities did not occur immediately following the signing of the Lome Agreement, it nevertheless provided the impetus for peace and facilitated the return of normalcy for the people of Sierra Leone.¹⁸⁶

Before the Lome Agreement was negotiated, the National Consultative Conference on the Peace Process convened in Freetown to formulate the country's response to the demands of the rebels.¹⁸⁷ This conference brought together five representatives from each of the country's thirteen districts, as well as representatives from various members of Sierra Leone civil society.¹⁸⁸ The consensus reached on the amnesty issue was to grant "blanket amnesty with certain conditions."¹⁸⁹ The vote was to forgo prosecution of those most responsible for war crimes, in the interest of securing the peace and restoring daily life. The country was fed up with living in constant fear of

¹⁸⁴ See e.g. Juma, *supra* note 129, at 326.

¹⁸⁵ See Witness to Truth, *supra* note 9 at Vol 3b, 361. See also Report of the Secretary-General, *supra* note 128.

¹⁸⁶ See Witness to Truth, *supra* note 9 at Vol 3b, 361.

¹⁸⁷ Sierra Leone News and Information Archive. April, 1999, available at <http://www.sierra-leone.org/slnews0499.html> (May 3, 2007).

¹⁸⁸ *Id.*

¹⁸⁹ Summary of Consensus, National Consultative Conference on the Peace Process. April 12, 1999, available at <http://www.sierra-leone.org/nccpp041299.html> (May 3, 2007).

brutal attack and longed for the day when it could carry on its daily business without such fear.¹⁹⁰ Incredibly, organizations like Amnesty International have continued to advocate for a strengthening of the Sierra Leone justice system “to investigate and prosecute the many people responsible for crimes... who will not be indicted by the Special Court.”¹⁹¹

Here also, the system designers have failed to recognize the interests of Sierra Leoneans, who are fatigued from the burden of the war and would simply like to forget and move on. Like the victims, the ex-combatants are weary of the burden brought about by the war and greatly value the opportunity to move forward in a positive manner. The public understands that the entire country, victims and perpetrators alike, must share the same community peacefully and continue to do so long-term. An elderly Sierra Leonean, whose house was destroyed by the rebels, summed up this viewpoint in his response to a question about the Lome Agreement amnesty provision. He said, “[w]e just have to forget, really, we just have to forget. Nothing else. ... We just have to unite together and build the country back up together. Finished, finished, that is all.”¹⁹²

- 2. Identify a clear vision and the corresponding goals that will guide the conflict intervention process.** It is very important for the system designers to define a clear goal and to align the underlying theory that will guide the pursuit of that goal with the real needs of the parties to the conflict. Otherwise, it becomes quite easy for the intervention to be driven by considerations that are extraneous to the goal.¹⁹³

One possible starting point for this discussion is to determine which of the three-fold understanding of conflict management approaches (conflict settlement, conflict

¹⁹⁰ See Witness to Truth, *supra* note 9 at Vol 3b, 361.

¹⁹¹ Amnesty International. Statement to the National Victims Commemoration Conference. Freetown, March 1 and 2, 2005, available at [http://www.amnesty.org.ru/library/pdf/AFR510022005ENGLISH/\\$File/AFR5100205.pdf](http://www.amnesty.org.ru/library/pdf/AFR510022005ENGLISH/$File/AFR5100205.pdf). (March 26, 2007).

¹⁹² See Amann, *supra* note 13, at 241.

¹⁹³ See Paffenholz, *supra* note 144, at 2.

resolution, and conflict transformation) applies to the conflict.¹⁹⁴ Conflict settlement refers to strategies that are more focused on ending violent conflict and less on those that address the underlying causes of the conflict.¹⁹⁵ In this case, success is defined in terms of a sustained suspension of hostilities with no emphasis on longer term peace interventions.¹⁹⁶ Conflict resolution is more comprehensive than conflict settlement.¹⁹⁷ While it incorporates aspects of conflict settlement, it expands that strategy by addressing the underlying causes of conflict across structural and cultural dimensions.¹⁹⁸ Conflict transformation is the most comprehensive strategy and combines conflict settlement strategies with an emphasis on local interventions.¹⁹⁹ This is an “open-ended, long-term, multi-track and dynamic process, which significantly widens the scope of actors involved.”²⁰⁰ The premise is that it is necessary to combine several approaches to conflict management to adequately deal with the complexity of prolonged conflicts.²⁰¹ One of the goals of conflict transformation systems is to address the structural inequalities that are usually impediments to long-term social reconstruction and reconciliation.²⁰² Conflict transformation is thus the means with which to restore broken relationships.²⁰³

Given that Sierra Leone is a failed state, a conflict transformation approach is arguably the most sustainable of the three approaches to conflict management. Because the war in Sierra Leone was fueled by complex issues like poor economic development, a

¹⁹⁴ See Cordula, *supra* note 143, at 7.

¹⁹⁵ *Id.* CR 7.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 10.

¹⁹⁸ *Id.*.

¹⁹⁹ *Id.* at 13.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See Boege, *supra* note 1, at 7.

conflict settlement approach that simply puts an end to the violence or a conflict resolution approach that addresses underlying causes but does not underscore localized solutions will not be sustainable. Any attempt to consolidate peace must not only involve the aforementioned strategies but must also partner with local stakeholders to reconstruct the institutions that sustain the state.

The transitional justice program in Sierra Leone appears to be straddling the distinction between conflict resolution and conflict transformation. The international community has ended the conflict by using peacekeeping methods, supplemented by a DDR program, and has attempted to address underlying causes of the war through the TRC and the SCSL, and to a lesser extent, through institution building projects. The implementers of the program have, however, failed to seek out local input in a meaningful way and have thus lost a critical opportunity to encourage national ownership of the major components of the plan.²⁰⁴ For example, the designers of the SCSL envisioned a vehicle that would combine local input with international expertise.²⁰⁵ The idea was that this would encourage Sierra Leoneans to take ownership in the project and would also contribute greatly to the justice fabric of the country by providing training and experience for local lawyers.²⁰⁶ With only 56 percent of the workforce claiming Sierra Leone citizenship, and a majority of this group being low-level employees (only two are judges),²⁰⁷ one wonders where the positive impact will be created. Before the creation of the SCSL, the total estimate for refurbishing the main courthouse, which had been burnt

²⁰⁴ See Report of the Secretary-General, *supra* note 128, at ¶ 15.

²⁰⁵ See First Annual Report of the President of the Special Court for Sierra Leone, *supra* note 155, at 891.

²⁰⁶ *Id.* CL 891.

²⁰⁷ International Crisis Group. Africa Briefing: The Special Court for Sierra Leone: Promises and Pitfalls of a “New Model,” 19, August 4, 2003, available at http://www.crisisgroup.org/library/documents/report_archive/A401076_04082003.pdf.

down by the rebels was \$1.5 million and the cost to build a new one was set at \$5.8 million.²⁰⁸ To me, this would have been a more lasting legacy and a more concrete and pragmatic execution of the goal to support the justice system of Sierra Leone, especially since the total spent to date just on operations of the SCSL is about \$90 million.

Moreover, many in Sierra Leone consider the SCSL to be an institution that was imposed on Sierra Leone by outsiders.²⁰⁹ In particular, there is concern among some Sierra Leoneans that the SCSL is simply a US foreign policy vehicle since it is funded in large part by the US, which has declined to become a signatory to the International Criminal Court.²¹⁰ While many Sierra Leoneans know of the existence of the SCSL and in an abstract way believe that its presence will benefit the country, before trials began, close to half did not understand its purpose and slightly more than two-thirds failed to outline a difference between the SCSL and the TRC.²¹¹ Sierra Leoneans, for the most part, feel no affinity to the SCSL and do not consider its operation to be an important part of their community. Of all the people I talked to, very few expressed more than a passing curiosity in the operation of the special court.²¹² The local media has also not given significant coverage to the proceedings of the court.²¹³ The daily life of the average Sierra Leonean, much like the amputee victims, is consumed with securing food, clothing, shelter, and enjoying time with family and friends, rather than with harboring resentment for the perpetrators of the war.

²⁰⁸ The Special Court for Sierra Leone: Conceptual Concerns and Alternatives. 1 Afr. Hum. Rts. L.J. 107, 125, 2001.

²⁰⁹ See Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, *supra* note 149, at 62.

²¹⁰ See International Crisis Group, *supra* note 209, at 15. The US played an important role in the creation of the Special Court and was the first to make a contribution to the budget.

²¹¹ See *Id.* at 17.

²¹² Compilation of results of surveys conducted with lay people in Freetown (January 3 – 22) *Id.* at *Id.* at.

²¹³ See International Crisis Group, *supra* note 209, at 19.

- 3. Define strategies and roles to promote the optimal allocation of resources.** The vision articulated by the parties must be converted into operation level actions that facilitate the achievement of the stated goals. It is also important for the parties to define their respective roles and acknowledge any limit to their capacity.²¹⁴

A successful transitional justice system will require not only advance planning and coordination among implementation partners but also a clear demarcation of the role and mandate of each player.²¹⁵ In the Lessons Learned Report, the UN stated that “the mandate of a multidimensional peacekeeping operations should be clear, realistic, and robust....”²¹⁶ It also recommended that parties in a peacebuilding program establish a strategic plan because this clarifies the roles of each partner, and establishes resource requirements, timeframes, and benchmarks, among other things.²¹⁷ This plan must also serve as an important way to integrate all the different interventions by providing a shared framework within which all programs can operate.²¹⁸ One example of this type of plan is the UK’s internal strategy for conflict prevention in Sierra Leone, which outlined objectives such as strengthening Sierra Leone’s infrastructure in terms of democracy, human rights, and economic development, and lists operational level plans for dealing with local, regional, and international issues.²¹⁹

²¹⁴ See Paffenholz, *supra* note 144, at 4.

²¹⁵ See Stahn, *supra* note 5, at 427.

²¹⁶ See Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, *supra* note 149 at 13.

²¹⁷ *Id.* at 76.

²¹⁸ *Id.*

²¹⁹ Department for International Development. Evaluation of the Conflict Prevention Pools – Sierra Leone, 43-45, March 2004, available at <http://www.dfid.gov.uk/aboutdfid/performance/files/ev647sleone.pdf>.

4. **Time interventions to minimize conflict among the components of the program.**

It is important to implement the various local and international conflict intervention strategies at the point in the implementation time frame, where they would create the greatest impact. Proper timing is also necessary to prevent conflict between strategies that may conflict at the operational level even though they undergird the overall vision of the program.²²⁰

The UN Secretary-General envisions an ideal transitional justice system to consist of a variety of strategies, including individual prosecutions, reparations, truth seeking, and institutional reform.²²¹ Such a complex program with so many potentially components will pose inordinate sequencing problems. The various interventions must be timed correctly to ensure that they complement each other, and do not instead compete for resources, thereby canceling the net gains.²²² The UN thus underscores the importance of proper coordination through advance planning and consultation in these cases.²²³ For example, if criminal tribunals are to be part of the transitional justice system, it is vital that they are coordinated with other economic and humanitarian programs, which may conflict with the goals of the tribunal.²²⁴ While there cannot be one blueprint for all dispute resolution systems, especially where violent conflict is involved, general patterns do exist. Most peacebuilding efforts are ushered in with an immediate ceasefire, which is usually followed by some sort of disarmament and demobilization program.²²⁵ Attempts to address the underlying issues in the conflict, if any, usually occur at a later point.²²⁶

²²⁰ See Paffenholz, *supra* note *supra* 144, at 5.

²²¹ See Report of the Secretary-General, *supra* note 128, at ¶ 26.

²²² *Id.* at 21.

²²³ *Id.* at 26.

²²⁴ See Juma, *supra* note 129, at 375.

²²⁵ *Id.* at 344.

²²⁶ *Id.*

Sequencing could have been beneficial to the peacebuilding process in Sierra Leone in several ways. First, attention to timing issues would have forced the system designers to recognize the importance of implementing the DDR program in tandem with a program that addressed victims' needs.²²⁷ Some type of resettlement package for displaced victims and the war wounded would have eased some the tension that was created by the perceived payoff of the ex-combatants. Understandably, the most pressing need when an era of violent conflict ends is the need to sustain peace. Thus, conflict management programs automatically mobilize some type of disarmament program. The victims are usually not the focus at this point because they are not considered threats to security.

But this assumption does not often hold true indefinitely. In Sierra Leone, the amputees and war wounded have formed many interest-based organizations and now constitute a strong and vocal lobby. They have converged on the city of Freetown for several demonstrations in the past and have threatened an indefinite sit-in at the main law courts building in Freetown, as well as a boycott of the next general elections.²²⁸ Thus, this is not a constituent that should not be taken lightly. The sequencing challenge can be addressed by using the conflict analysis step in the design process to pinpoint the groups whose needs must be addressed by the program, evaluating the impact of each specific intervention on others within the program, and then adjusting the timing sequence to manage the conflict.

Unlike in the case of a DDR program, where a relatively simple counter would be to implement a reparations or resettlement program that is essentially on par with the

²²⁷ See Interview with Yasmin Sooka, *supra* note 121.

²²⁸ Focus group conducted with a group of war-wounded victims. January 9, 2007.

DDR program, the issue becomes much more complicated when mechanisms like a truth commission and a criminal tribunal – two vehicles with substantially different goals – are involved. One advocate has suggested implementing a truth and reconciliation commission as soon as is logistically possible after the end of conflict and then following that process with a criminal tribunal.²²⁹ The Chairman of the Sierra Leone TRC has proposed that if the two mechanisms must co-exist, then at the very least, a framework within which they will co-exist must be devised at the outset, and that system designers must properly consider and address the effects of each mechanism on the transitional justice system as a whole.²³⁰ This would include specifying parameters for potentially contentious issues such as information sharing, and determining which organ is procedurally superior should disputes arise. Moreover, if the truth commission is operating under the presumption of amnesty for all its participants, exceptions to the amnesty must be carved out at the beginning of the process to avoid confusion about the applicability of the amnesty provision.

I believe that timing issues arose in Sierra Leone in part because of the failure of system designers to implement a suitable array of mechanisms. I am not convinced of the value of establishing the SCSL, especially given the resource and other problems its advent created for the other transitional initiatives. Criminal tribunals are often “an ineffective effort to right past wrongs [because it] creat[es] martyrs and foster[s] political alienation, rather than contribut[e] to a genuine sense of vindication.”²³¹ It has also been acknowledged that targeted prosecutions may not carry any meaning for victims who

²²⁹ See Interview with Yasmin Sooka, *supra* note 121.

²³⁰ See Interview with Bishop Humper, *supra* note 124.

²³¹ Charles Villa-Vicencio, Why Perpetrators Should Not Always Be Prosecuted: Where the International Criminal Court and Truth Commissions Meet, 49 Emory L. J. 205,206 2000. *Referring* to Bruce Ackerman, *The Future of the Liberal Revolution* (1992).

continue to live beside their actual perpetrators.²³² Thus, even if one accepts the view that criminal tribunals are an important element of a transitional justice system,²³³ it does not follow that perpetrators must be punished at all costs. Similarly, I find the argument that there exists a duty to prosecute war crimes dubious,²³⁴ and supposing this duty does indeed exist, it must be overruled by the more immediate needs of the society, which in the case of Sierra Leone are the most pressing human needs.²³⁵

Opponents of international criminal tribunals have also attacked the legitimacy of international law, especially in instances where it forms the basis for international tribunals, because they argue that international law does not require the direct assent of states, and thus may not be enforced consistently.²³⁶ This is true in the case of Sierra Leone because the SCSL is now faced with the conundrum of proclaiming that certain human rights are sacrosanct in certain situations, while ignoring those same violations in other contexts or for other individuals.²³⁷ For example, there is good evidence that the CDF conducted its activities with the imprimatur of the Sierra Leone government, yet neither the president nor any of his top aides have been prosecuted.²³⁸ Furthermore, even though the leaders of the Sierra Leone peacekeeping force of the Economic Community of West African states have been found to have been aware of summary public executions of suspected rebels by their personnel, the SCSL was not given jurisdiction to

²³² See Bosire, *supra* note 3, at 9.

²³³ *Id.* A Criminal tribunal is one of the best ways of restoring victims' faith in the justice system.

²³⁴ Transcript, Ellen L. Lutz, Human Rights and Community Relations: Competing or Complementary Approaches in Responding to Conflict, 7, November 2002. Belfast. Some contend that international human rights and humanitarian law imposes a duty to prosecute serious violations of human rights, including war crimes.

²³⁵ See Villa-Vicencio, *supra* note 233, at 220.

²³⁶ *Id.* at 208. Referring to John R. Bolton, The Global Prosecutors: Hunting War Criminals in the Name of Utopia, Foreign Affairs, Jan – Feb 1999.

²³⁷ See Juma, *supra* note 129, at 332.

²³⁸ The only government person prosecuted was Hinga Norman, who headed the war effort on behalf of the pro-government factions, while the government was in exile.

try these perpetrators.²³⁹ As one scholar asserts, the default of war crimes tribunals is to try only the losers of the conflict, despite the culpability of the victors.²⁴⁰ The SCSL has also been forced to rely on international human rights law because Sierra Leonean law does not provide for crimes against humanity.²⁴¹

- 5. Facilitate coordination and cooperation among all actors to ensure that the best combination of resources is directed at each task.** Since the most successful transitional justice systems will consist of different types of interventions that focus on different aspects of the problem, it is important for the system to coordinate actors at all levels so conflicting strategies may be eliminated. Provisions should be made for dialogue, information sharing, division of labor, etc.²⁴² Responsibility for the operational items should be assigned according to the strengths and weaknesses of the actors and this determination should be made across tangible criteria such as economic resources and intangible criteria such as perceived legitimacy. Also, the program must endeavor not to place an excessive focus on professional qualifications at the expense other important attributes such as personal motivations and local knowledge.²⁴³ Moreover, implementing actors must foster a cooperative relationship.²⁴⁴

Notwithstanding the problem of lack of political will to share power with former rivals, the Lome Agreement failed in part because of a lack of coordination among the implementing bodies.²⁴⁵ The Joint Implementation Committee (JIC) was made of numerous organizations and states, including ECOWAS, the OAU, the UN, and the Commonwealth, each of whom was governed by external parties with different interests in the conflict.²⁴⁶ Not only did these interests sometimes collide but the conflicts were often decided in the favor of the parties with the strongest financial contribution to the

²³⁹ See Statute of the Special Court for Sierra Leone, *supra* note 97, § 1.

²⁴⁰ See Juma, *supra* note 129, at 332.

²⁴¹ See Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, *supra* note 106.

²⁴² See Paffenholz, *supra* note 144, at 5.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ See Juma, *supra* note 129, at 356.

²⁴⁶ *Id.*

effort.²⁴⁷ Thus, instead of functioning as one unit, working towards a common goal, the parties sometimes found themselves going in different directions and marginalizing the financially weaker parties in the process, even though they may have been able to make significant non-financial contributions to the process.²⁴⁸ Early in the peacekeeping phase, the International Crisis Group noted the pressing need for the UK, who had taken the role as lead nation, and the UN mission to “harmonize” their “divergent approaches.”²⁴⁹ The international community also overlooked the importance of the contribution of sub-regional actors²⁵⁰ when it refused to support Nigeria’s initial peacekeeping efforts in Sierra Leone, even as it continued to trade and engage in other diplomatic activities with Nigeria, because Nigeria was being ruled by a dictator²⁵¹

The consequences of uncoordinated interventions are duplication, wasted resources, and implementation gaps, so it is imperative that donors, peace missions, private foundations, non-governmental organizations, etc. integrate their efforts beyond mundane information sharing, and instead assess their relative capacities so the ideal allocation of resources can be attained.²⁵² One way in which effective coordination can be achieved is by electing a lead nation who takes on the management role and makes a credible commitment to the process by deploying significant resources to the project.²⁵³ In Sierra Leone, the UK took on that role and together with Nigeria, was instrumental in

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ See Department for International Development. Evaluation of the Conflict Prevention Pools – Sierra Leone, *supra* note 221, at 18. *Quoting* April 2001 International Crisis Group Report.

²⁵⁰ See Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, *supra* note 149, at 17.

²⁵¹ See Witness to Truth, *supra* note 9, Vol 3b, 76.

²⁵² See Report of the Secretary-General, *supra* note 128.

²⁵³ See Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, *supra* note 149, at 16.

ending the violent clashes.²⁵⁴ The UK has also been a very effective advocate for the peace process and has been able to lobby for vital financial and other types of support from other governments.²⁵⁵

Parties can also assume roles that complement the efforts of other actors. For example, the US was reluctant to contribute funds to the multi-donor pool that funded the DDR program because it preferred to maintain more control over the disbursement of funds, and also because the Foreign Assistance Act of Congress prohibited it from funding programs that support combatants.²⁵⁶ The solution was for other countries to take the lead in implementing the disarmament and demobilization parts of the DDR program, and for the US to contribute to reintegration programs through organizations such as the US Agency for International Development (USAID).²⁵⁷

Lessons of the past have shown that for an intervention at the top to be sustainable, there must be support for it at the base.²⁵⁸ Delivering a successful solution to a war-torn country will require a program with diverse components, including victim protection and support, property dispute resolution, and legislative work, in addition to the transitional justice staples like police services and judicial development²⁵⁹ but the results cannot be sustained if the technical know-how is not transferred to local constituents.²⁶⁰

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 17.

²⁵⁶ Refugees International Focus: Disarmament, Demobilization, and Reintegration in Sierra Leone, August 9, 2002, available at <http://www.refugeesinternational.org/content/article/detail/884> (March 27, 2007).

²⁵⁷ *Id.*

²⁵⁸ See Boege, *supra* note 1, at 10.

²⁵⁹ See Report of the Secretary-General, *supra* note 128.

²⁶⁰ See Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, *supra* note 149, at 51.

Another important element of any peacebuilding partnership is the involvement of civil society actors, who can provide vital input to the process and play a role in demanding accountability.²⁶¹ In addition, because ownership of transitional justice programs by local constituents is imperative for sustainability, national stakeholders must be substantially engaged from program design implementation and feedback.²⁶² The UN found that its DDR program in Sierra Leone was most effective when all stakeholders, including local actors, were actively involved in the program.²⁶³

The peace process in Sierra Leone was impeded by the failure of the implementing parties to fully leveraged Sierra Leone's historically engaged civil society. For example, women's groups played an important role in bringing an end to the conflict early on and have contributed greatly to reconciliation efforts.²⁶⁴ Inviting these groups into the design and implementation process would have bestowed automatic legitimacy on the programs. These groups can also supplement the efforts of the transitional justice program when there is insufficient expertise, political will, resources, etc. to address certain community needs. For example, although the government has not implemented the vast majority of the recommendations of the TRC, the reconciliation process in Sierra Leone is moving forward because civil society has taken the initiative to fill some of the gaps. One such organization that is helping to consolidate peace is Help a Needy Child International (HANCI). This organization has adjusted its orphanage program to address the pressing need for family tracing and reconciliation for some of the former child

²⁶¹ *Id.* at 21.

²⁶² See Report of the Secretary-General, *supra* note 128, at ¶ 15.

²⁶³ See Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone, *supra* note 149, at 26.

²⁶⁴ *Id.* at 21.

soldiers and bush wives.²⁶⁵ It has been able to make an important impact in the lives of the residents of the town of Makeni, where HANCI counselors have been working tirelessly to reunite children with their families and have provided starter kits to families to help ease the transition.²⁶⁶ Another HANCI project is implementing peace clubs within area schools to provide a support network for children attending those schools who were victims of the war.²⁶⁷

6. Build structures that will sustain the peace and allow for continuous feedback.

The aim here is to construct peace-building structures such as a consolidated democracy, a legitimate and restorative justice system, a free market system, and a revamped education, information, and communication system.²⁶⁸ The sustainability of the program can be secured by building a monitoring system with a continuous feedback loop to facilitate follow-up.²⁶⁹ The monitoring system will also support the learning process.²⁷⁰

Other than adjustments for external issues such as funding shortfalls, there does not seem to have been a concerted effort to keep the Sierra Leone transitional justice system responsive to stakeholders. I am not aware of any evaluation and/or adjustments of any of the peacebuilding components during the implementation stage. The lack of a feedback loop within the implementation process led to several missed opportunities for the implementers to improve the system. For example, the implementers of the DDR program could not modify the training program that was administered to combatants because the evaluation process, which determined that the skills training provided was inappropriate for the context, occurred only at the conclusion of the program.

²⁶⁵ Interview with Kelfa Kargbo, Manager, Help a Needy Child International (HANCI), in Sierra Leone.

²⁶⁶ *Id.* Makeni is a major town in the northern province of Sierra Leone.

²⁶⁷ *Id.*

²⁶⁸ See Paffenholz, *supra* note 144, at 7.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

The peacebuilding process must be supported by a “means by which the system clarifies its goals and measures progress toward and achievement of those goals.”²⁷¹ Instead of approaching this phase almost as an afterthought, the feedback procedure should be determined early in the design process, and as can be seen from the example above, the evaluation process must occur during the implementation phase instead of at the conclusion of the program, to provide stakeholders with adequate opportunity to adjust their strategy if necessary.²⁷² Furthermore, instead of simply employing outside experts to render an opinion about the system, the feedback process should seek significant input from stakeholders and encourage disputants to propose possible solutions to the problems that are uncovered.²⁷³

An excellent supplement to a feedback program is a knowledge base that system designers can refer to in order not to repeat mistakes of the past. The UN has made a conscientious effort to develop a database of lessons learned in the conflicts in which it has intervened. It has an established unit within its Department of Peacekeeping to implement this goal – the Peacekeeping Best Practices Unit.²⁷⁴ This unit produced an evaluation of the mission in Sierra Leone entitled *Lessons Learned from United Nations Peacekeeping Experiences in Sierra Leone*.²⁷⁵ The Secretary-General of the UN has supplemented this repository with his 2004 report, *the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*. This report takes a critical look at the UN’s conduct of peacebuilding missions, and issues several directives on the future path that such programs should take.

²⁷¹ See Cathy A. Costantino, *supra* note 136, at 168.

²⁷² *Id.* at 168-9.

²⁷³ *Id.* at 168.

²⁷⁴ See *Lessons Learned From United Nations Peacekeeping Experiences in Sierra Leone*, *supra* note 149.

²⁷⁵ *Id.*

Conclusion

The Secretary-General of the UN has described the situation in Sierra Leone as “definitely one of the success stories” of the UN.²⁷⁶ The country has been stable since the Abuja Agreements (2001-2002), and democratic elections were held in 2002, and are again scheduled for July of 2007. The UN, however, does acknowledge that the work is not done.²⁷⁷ The Secretary-General specifically urges continued support to help establish effective institutions that deal with security, human rights, and justice.²⁷⁸ To that list, I would add vehicles that facilitate reconciliation, and effective mechanisms for dealing with both the serious human needs of the victims and the desperate state of the economy.

Although the failure of the international community to intervene sooner in Sierra Leone is abominable, it must be commended, especially countries like Nigeria and the UK, for the integral role it played in securing the peace. Ex-combatants were generally satisfied with the DDR program and appeared ready to become contributing members of society.²⁷⁹ Many report that they no longer view violence as a means of creating political change and are optimistic about their chances of influencing the political machine through democratic means.²⁸⁰

Notwithstanding the real results achieved in the areas of peace and security, there remains a question mark over the sustainability of the results because unfortunately, the victims, an important constituent in the system, have been left behind. Moreover, there is no indication that there are systems in place to deal with some of the underlying causes of

²⁷⁶ Remarks of UN Secretary-General to the Security Council, December 22, 2006. Secretary-General SG/SM/10813; SC/8923, available at <http://www.un.org/News/Press/docs/2006/sgsm10813.doc.htm> (April 2, 2007).

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ See Humphreys, *supra* note 181, at 4.

²⁸⁰ *Id.* at 5.

the conflict. For example, the economic disparity issue has not been addressed to any significant extent.²⁸¹

The mission would have been more successful had the parties utilized a systems design approach at the outset. The system design approach would have produced a program that not only sought to end the violent conflict but one that also endeavored to address the underlying causes of the conflict, while involving all stakeholders, including those at the local level, in the most meaningful way. Furthermore, such an approach would have also provided an effective feedback system that could have been used to monitor the program and modify it as was necessary to ensure it continued to be responsive. Other implementation inefficiencies such as the failure to coordinate the DDR, TRC, and SCSL could have also been avoided through a systems design approach.²⁸²

I am also inclined to agree that the proper execution of the system design approach would have demonstrated that a dynamic disarmament, demobilization, and reintegration program, supplemented by a solid reparations program and a strong TRC, would have been a sufficient and ideal transitional justice program for Sierra Leone. Although I do not dismiss the symbolic value of bringing perpetrators to justice and the deterrence value, however slight, of a criminal tribunal, I believe that after all the local factors are taken into account, it is questionable whether the SCSL was a good addition to the conflict resolution program in Sierra Leone. The focus of the prosecution in a criminal trial is to establish a case against the accused and that of the defense is to refute

²⁸¹ See Juma, *supra* note 129, at 376.

²⁸² See Interview with Bishop Humper, *supra* note 124.

that case. This process fails to serve the very important function of rooting out the underlying causes of the war and repairing damaged relationships.

It is important to note here that my point is not that a criminal tribunal for those responsible for perpetrating the most heinous war crimes should never be implemented as part of a transitional justice program. Other transitional justice mechanisms are not without controversy. For example, there is some question about whether a truth and reconciliation commission is a meaningful way for victims to reconcile with the perpetrators at an interpersonal level.²⁸³ Some have also argued that this was not a culturally relevant form of reconciliation for most Sierra Leoneans.²⁸⁴ Nevertheless, many who have studied traditional societies agree that conflict resolution in those societies focuses on processes that restore relationships by reconciling feuding parties.²⁸⁵ My contention is thus that any aspect of a transitional justice program should be implemented only if it is practical for the unique context in which the program will exist.

The international community is now recognizing the value in the systems design approach and is taking steps to incorporate it in its response to conflict situations. The UN, together with the government of Sierra Leone, and other international partners, has devised a Peacebuilding and Recovery Strategy, which sets out a framework for its operations in Sierra Leone.²⁸⁶ This plan includes specific objectives to deal with security, national recovery, good governance, human rights, and reconciliation.²⁸⁷ It is

²⁸³ See Bosire, *supra* note 3, at 28.

²⁸⁴ *Id.* at 155

²⁸⁵ See Boege, *supra* note 1, at 7.

²⁸⁶ See Department for International Development. Evaluation of the Conflict Prevention Pools – Sierra Leone, *supra* note 221, at 19.

²⁸⁷ *Id.*

just unfortunate that this plan was created several years after the end of the conflict and after the Sierra Leoneans had suffered through the inefficiency of the ad hoc approach.