MOMENTS OF TRUTH IN SIERRA LEONE

CONTEXTUALISING THE TRUTH AND RECONCILIATION COMMISSION

Introduction

On 22 February 2000, the National Assembly of the Republic of Sierra Leone passed the Truth and Reconciliation Commission Act (TRC). In doing so, it formally established one of the pillars of the Lome peace agreement of 7 July 1999, which was supposed to bring to an end an armed insurgency waged against a succession of governments – since 1996, the democratically-elected government of President Tejan Kabbah -- by the Revolutionary United Front (RUF), led by Corporal Foday Sankoh. However, in May 2000, the slow-moving peace process collapsed when the RUF took hostage hundreds of soldiers of the United Nations Mission in Sierra Leone (UNAMSIL) and advanced on Freetown. Only the rapid intervention of British troops prevented the RUF from taking the capital and seizing power. The breakdown of the peace process has raised questions about the future of the Lome peace accord, including the relevance of the TRC in the new context.

Even before the latest crisis, there were those who questioned the credibility of the Truth and Reconciliation Commission. Most did so because it appeared to be part of a package in the July 1999 peace agreement in which the possibility of trials of those responsible for gross human rights abuses committed by all parties to the conflict, but in particular by the RUF and (since 1997) the former Sierra Leone Army (SLA), was at a stroke apparently wiped out by a blanket amnesty.[1] The amnesty was heavily criticised by international and domestic human rights groups, some of whom then tended to view the TRC as a poor form of compensation for it. Now that judicial options are back on the agenda, some argue that this is now the main priority.

ARTICLE 19, the Global Campaign for Free Expression, and Forum of Conscience, a Sierra Leonean human rights organisation, played an important role in triggering the process which ultimately led to the establishment of a TRC when they called a TC for Sierra Leone in mid-1998 (see below). The organisations joined with many others in consistently opposing the inclusion of a blanket amnesty in any new peace agreement during the first half of 1999. However, once a blanket amnesty was provided for in the Lome peace accord, we argued that a credible and effective TRC could nonetheless have a crucial role to play in establishing at least minimum levels of accountability for human rights abuses on the part of the perpetrators, could provide a process through which ordinary people's experiences and voices were heard and could help in the longer-term to build the foundations for a future Sierra Leone in which impunity is no longer unchallenged. Since the collapse of the peace agreement, the organisations have called for a "two-track" approach: an international tribunal to try Foday Sankoh (who is once again in government hands) and other leaders accused of crimes against humanity plus the TRC. There is little prospect that an international tribunal or the Sierra Leone justice system could promptly and efficiently undertake a

[1] For harrowing details of the human rights abuses committed by the RUF and AFRC, see Amnesty International and Human Rights Watch reports - for example, *Getting away with murder, mutilation and rape* (Human Rights Watch: New York, June 1999).

large number of prosecutions of combatants accused of human rights abuses. Also, many combatants are children who were abducted. Judicial processes may not be appropriate in such cases.

Few would dispute that truth, justice and reconciliation are crucial "chemical elements" in building a sustainable peace based on respect for human rights where there has been violent internal conflict. While it can legitimately be claimed that they are conceptually and theoretically distinct, it is a mistake rigidly to segregate them. That also applies in specific situations. For example, truth processes can help to deliver restorative justice and, in some instances, keep the possibility of retributive justice open. In turn, processes of restorative and retributive justice can often help to establish certain "facts". Equally, truth, justice and reconciliation initiatives can obstruct rather than assist each other. The relationship between them is invariably highly complex and will be profoundly shaped by the context in which they are combining. This is something that is occasionally forgotten by parts of the global human rights movement. A type of judicial absolutism appears to be more and more common in recent years, in which the imperatives of the struggle for justice at the global level (for example, through the establishment of *ad hoc* international tribunals and the agreement of a treaty to establish a International Criminal Court) prevail over messy local realities in which the struggle for justice is likely to be fully won only over a prolonged period of time. Aspects of human rights above and beyond judicial punishment are sometimes too lightly dismissed. In addition, there is not enough acknowledgement that judicial processes can be no less selective or "problematic" than processes geared towards truth or reconciliation. Some organisations appear to have fallen into this trap in relation to Sierra Leone.[2]

While ARTICLE 19 and Forum of Conscience fully support the principle of judicial punishment of perpetrators of human rights abuses, the organisations nonetheless believe that it is legitimate to try and make the best of bad situations -- which may include aiming for something less than absolute justice where it appears unachievable.[3] This is surely the situation in Sierra Leone. There are positive human rights provisions in the Lome peace accord which have tended to be overlooked by some international human rights organisations. It is at least arguable that those who are calling for a comprehensive programme of judicial prosecutions in Sierra Leone in effect require a massive UN- (or ECOWAS) sponsored war to deliver a decisive military victory to make this possible. This is a war that would almost inevitably spread into Liberia and perhaps into other neighbouring states. Military victory could certainly not be guaranteed. Given the appalling human rights toll which civil war has wrought on the ordinary citizens of Sierra Leone over the past decade, would the implacable pursuit of justice through military means necessarily be the best way of promoting and protecting the human rights of those citizens? This is what Bishop Desmond Tutu once called "justice with ashes". In any case, such a "humanitarian war" has not so far been on the international agenda -- unlike in Kosovo, where its complex impact on the prospects for strengthening respect for human rights there is only gradually becoming clear.

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[2] See, for example, Amnesty International's press release on Sierra Leone of 22 June 2000, "Sierra Leone: real and credible justice is needed" (AI Index AFR 51/045/2000).

[3] Priscilla Hayner quotes a Chilean human rights activist who worked on the El Salvador Truth Commission as saying: "[Truth] Commissions aren't perfect, but what do you do without them?" See "Fifteen Truth Commissions - 1974 to 1994: A Comparative Study", *Human Rights Quarterly*, 16, 1994, 609.

There have been attempts to combine the critical "chemical elements" of truth, justice and reconciliation in different ways at different times since 1998 in Sierra Leone. International and local debate was triggered initially by calls for a Truth Commission with no explicit connection with judicial or reconciliation processes. Then came demands for a Truth, Justice and Reconciliation Commission on the South African model -- all three elements incorporated within one official body. The Truth and Reconciliation Commission established under the peace agreement ruled out domestic judicial action. This immediately produced calls for international action to bring perpetrators of crimes against humanity to justice. Now, with the Lome peace accord in tatters, it appears likely that the TRC will run in parallel to a limited judicial process that will have both an international and domestic dimension.

This bulk of this report comprises key documents in the evolution of the TRC in Sierra Leone (Appendices A-). It is in no way a comprehensive collection, but the documents included undoubtedly make up part of the "pre-history" of the TRC. In order to explain why ARTICLE 19 became involved in debates about truth, justice and reconciliation in Sierra Leone, the first section of the report briefly describes the organisation's position on the "right to truth", which was first elaborated in 1993. Our experience in relation to Sierra Leone suggests that the time may have come for this position to be reviewed. The second section provides a narrative and analytical account of the evolution of the TRC that should be read in conjunction with the key documents.

ARTICLE 19 and Forum of Conscience hope that the report will be seen as a useful resource for those in the academic, human rights and wider policy-making communities who are engaged in an ongoing debate about truth, justice and reconciliation in complex political emergencies such as Sierra Leone.[4] We note that there is still no general consensus within those communities as to what truth, justice and reconciliation should and should not "mean".[5] The report affords an unusual degree of insight into the internal assessment processes that all non-governmental organisations engage in before deciding on their strategies and objectives in a specific context. Although ARTICLE 19 and Forum of Conscience believe that they can justify the strategies and objectives that we have pursued since mid-1998 in Sierra Leone, we are aware that others may disagree strongly. This is difficult and fraught territory and we stand ready to be proved wrong. ARTICLE 19 and Forum of Conscience welcome any comments or criticisms which readers may have in response to the report.

1 ARTICLE 19 AND THE “RIGHT TO TRUTH”

Note: the following position was adapted in July 1999 from ARTICLE 19’s report, *Malawi’s Past: The Right to Truth* (London, November 1993). It formed part of ARTICLE 19's strategy paper of 12 July 1999, entitled *Observations by ARTICLE 19*

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[4] There is an enormous and still growing literature on issues of truth, justice and reconciliation in complex political emergencies and emergent democracies. See select bibliography.

[5] As Donna Pankhurst writes: "no common understanding has yet emerged of the political conditions under which efforts at reconciliation should be restrained and justice promoted, or vice versa, in order to achieve the 'best' peace. Furthermore, contrasting, if not actually contradictory, understandings of justice and reconciliation and their relationship to each other and to peace currently operate, even in the same settings." Quote taken from "Issues of justice and reconciliation in complex political emergencies: conceptualising reconciliation, justice and peace", *Third World Quarterly*, Vol. 20, No. 1, 239-40.

on the proposed Truth and Reconciliation Commission in Sierra Leone following the signing of the Lome peace Accord on 7 July 1999. The other section of the strategy paper can be found as Appendix L.

ARTICLE 19 considers that there is a "right to know the truth" which is contained within the right to "seek, receive and impart information" which is guaranteed by Article 19 of the Universal Declaration of Human Rights (there is a similar "right to receive information" in Article 9 of the African Charter on Human and Peoples' Rights, to which Sierra Leone is a party).

"The right to truth" is important for three reasons:

- Firstly, human rights abuses, by their very nature, are surrounded by a fog of lies. Sometimes, the perpetrators and victims are the only witnesses. Surviving victims and relatives are entitled to a full explanation of what happened and why.

- Secondly, establishing the truth about the past is a precondition for preventing the recurrence of abuses in the future. This may entail punishing those responsible. International instruments such as the Convention Against Torture and the Genocide Convention require that states who are party to them bring criminal proceedings against alleged perpetrators. The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions require governments "to ensure that [all extra-legal, arbitrary and summary executions]… are punishable by appropriate penalties which take into account the seriousness of such offences". Prevention also involves identifying the laws, special powers and armed agencies which have made human rights abuses possible and taking action to reform them. It means establishing laws and entrenched constitutional protection for human rights, as well as agencies to take action in defence of those rights. None of this can be effectively achieved without an examination of what went wrong with the past.

- Thirdly, finding out the truth is a precondition for providing redress for the victims. The International Covenant on Civil and Political Rights provides that any individual whose rights are violated shall have an effective remedy. While criminal remedies are preferable, even civil remedies can help to deal with some of the consequences of a political killing or a "disappearance", such as the loss of a bread-winner. They may also deter the authorities from future abuses.

In many instances the process of telling the truth may itself be part of the reparation which the government or armed insurgent groups owe to the victims of human rights violations. It may also serve to remove the stigma which is often attached to victims of human rights violations. It is a way of saying, in effect, that the victim was wronged and was not a wrongdoer. Telling the truth about acts of brutality can be a first step in empowering the victim and restoring him or her to a respected and useful place in society.

The establishment of an official truth commission to investigate human rights abuses is one way of seeking to establish the truth about the past. Jose Zalaquett, who was later to be a member of the Chilean commission which tried to establish the truth

about human rights abuses during that country's long period of military rule, gave a clear explanation in 1989 why he believed official truth-telling to be essential:

> The Truth must be *officially proclaimed and publicly exposed*. Public knowledge of the truth, following appropriate investigations, is an essential requisite for a policy that covers past human rights abuses because such a policy deals with a problem that affected not only individual victims but society as a whole. It is the people… who must decide on or ratify a human rights policy on past human rights abuses. Hiding the truth perpetuates the actual suffering and indeed the violation of the rights of the relatives of the victims, when their fate is not known; it keeps deep resentments and it makes national unity and reconciliation more difficult. Moreover, hiding the truth allows the military or other groups or institutions responsible for past abuses to escape the judgement of history and to insist on exculpatory versions of what happened; new recruits will absorb an institutional tradition which has not expunged its most objectionable aspects. All this can only weaken efforts to prevent the recurrence of human rights abuse and to reinforce the rule of law.
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> For all these reasons it is not sufficient that well-informed citizens have a reasonably good idea of what really happened. It is not enough either that the mass media or other sources disseminate the truth, however widely. The important thing is that the truth is established in an officially sanctioned way, in a manner which allows the findings to form part of the historical record of the nation and that an establishes an authoritative version of events, over and above partisan considerations.

At the same time, experience over the past decade has confirmed that establishing "authoritative versions of events" is a far from straightforward process. For example, there is a danger that the truth which emerges is more the product of negotiations between the main political forces in a country rather than a sustained attempt to uncover what really happened in the past. For example, some past truth commissions have not been allowed to name those responsible for abuses and blanket amnesties have prevented the bringing of criminal prosecutions based on their findings. Amnesty procedures such as those adopted by the South African Truth and Reconciliation Commission represented an attempt to bridge the gap between the requirements of justice and reconciliation, but this approach has been criticised as inadequate by some victims and their relatives. Furthermore, the linkage of truth with reconciliation in the mandate of some commissions has proven problematic. Reconciliation cannot flow automatically from a process of uncovering the truth, particularly if that process has been tightly circumscribed.

In addition, civil society voices are sometimes excluded from the deliberations of truth commissions and there is a lack of connection between such commissions and the no less important local "truth processes" which are taking place at grass-roots level. Truth commissions should not undermine other "truth processes" and may not always be the most appropriate vehicle in the search for truth. Sometimes, civil society organizations are better equipped and more fully committed to uncover the truth about the past. For example, in Guatemala, the Catholic Church undertook an independent inquiry into human rights abuses during the civil war in the country

which operated alongside the official truth commission. Another possible means of uncovering the truth can be through internationally-sponsored inquiries or through academic studies. Nonetheless, truth commissions can be highly effective vehicles for uncovering the truth about the past, particularly if certain minimum criteria are met:

- A TRC must be seen to be independent, being composed of respected members of society of known integrity

- Its mandate must be broad enough to enable it do do its job. For example, a "Truth Commission" in Uruguay was not allowed to investigate torture, which was one of the main abuses by the security forces

- It must have the legal powers to enable it to investigate effectively – for example, the power to subpoena witnesses and evidence

- It must have the means to do its job properly. Lack of material resources prevented the Ugandan equivalent of a truth commission from reporting for years

- It must report publicly and fully. The authorities should have no power to censor its conclusions or contents. A commission of inquiry into human rights violations in Matabeleland reported to the Zimbabwean Government in 1985, but its report has still not been published – leading church bodies ultimately to undertake their own investigations, which have now been published

- A TRC should have the power to name those responsible for abuses and recommend forms of compensation and restitution to victims and their families

- The process leading to the establishment of a TRC must fully involve civil society organizations and othe non-governmental stakeholders

- Promotion of a TRC should not be at the expense of support for a wide range of grass-roots, everyday "truth processes" which may have been taking place prior to the peace agreement and which are, in any case, crucial to a sustainable peace

Finally, if efforts to uncover the truth about the past are not to founder, it is vital that those undertaking investigations are able to obtain maximum access to public information. This means that fundamental reform of the legal regime governing freedom of expression is an essential precondition for meaningful efforts to uncover the truth about the past. It is not a luxury which can be left until later. For example, freedom of expression and information should be enshrined in a Bill of Rights which is entrenched in the Constitution and enforceable by the courts. Furthermore, where one does not exist, a Freedom of Information Act should be introduced which places the onus on the government to prove to the courts why it should restrict access to information, rather than the reverse – as is still the case in many countries.

2 GENEALOGY OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION

July-December 1998: the Truth Commission phase

In July 1998, an ARTICLE 19 assessment mission visited Sierra Leone. Its agenda had three main components: media-related issues; children's rights; and truth, justice and reconciliation issues. The mission arrived in a country which only five months earlier had seen the ousting by a Nigeria-dominated Economic Community of West African States Cease-fire Monitoring Group (ECOMOG) military force of a rebel RUF/Armed Forces Ruling Council (AFRC) government. The AFRC was based on the former Sierra Leone Army (SLA), which had forced out the democratically-elected government of President Tejan Kabbah in a March 1997 coup and invited the RUF to join them in government. In February 1998, ECOMOG retook the capital, Freetown. Other parts of the country fell in the six months that followed.

Government policy after February 1998, backed by the international community, was a "two-track" (military/political) approach to finally ending Sierra Leone's civil war. In practice, the political track in mid-1998 constituted offers of amnesty to rebels, including leaders, who voluntarily handed themselves in but prosecution of rebel leaders already in custody -- including Foday Sankoh, who was being held in Nigeria -- along with alleged "collaborators" on charges of treason. Convictions followed and in October 1998 24 former AFRC military officers were executed. Sankoh was also found guilty of treason and sentenced to death. As for the military track, ARTICLE 19 encountered in July 1998 a belief at the official level that the rebels could be defeated militarily. This directly contradicted reports that the organisation had received from international and local non-governmental sources that the RUF was rearming itself for a renewed offensive. ECOMOG appeared to have settled for a military stalemate and was largely content for the local Civil Defence Force (CDF), a civilian militia also known as the Kamajors, to do most of the fighting. Indeed, there were allegations that ECOMOG personnel were increasingly involved in the illegal diamond trade that has sustained the RUF insurgency.

ARTICLE 19 expressed its concern in meetings with government officials in July 1998 that the official approach to issues of justice and reconciliation had become confused. More generally, it formed an overwhelming impression that the government had generally failed to adjust to the realities of the situation which it had inherited when returning to Freetown in February 1998 and that there seemed little appetite for honestly addressing the true facts, past or present, of the conflict. There was little indication either that the Kabbah government's international supporters were placing much pressure on it to wake up to those realities. It was in this context that ARTICLE 19, ahead of the meeting on 30 July 1998 of the United Nations (UN) Special Conference on Sierra Leone, called for the first time for the creation of a Truth Commission in Sierra Leone. It argued that a Truth Commission could "assist efforts to find the right balance between the twin requirements of justice and reconciliation" in a future peace process (see Appendix A). Subsequent communications from governments which had participated in the Special Conference indicated that the proposal had been given a hearing.

In August 1998, ARTICLE 19 published a further press release following the conviction and sentencing to death of five Sierra Leonean journalists for treason. Despite the fact that there had undoubtedly been genuine efforts to ensure that they had received a fair trial, ARTICLE 19 feared that the real basis for their conviction appeared to be that they had been "collaborators" rather than that they had been involved actively in the overthrow of the government of President Tejan Kabbah in

March 1997 (Appendix B). The Attorney General, Hon. Solomon Berewa, replied and argued that our fears were unfounded. (Appendix C)

In September 1998, ARTICLE 19 produced a submission to the government of Sierra Leone and the international community that set out its conclusions and recommendations following the July mission. In the submission, its reasons for calling for a Truth Commission were set out in greater detail (Appendix D).

ARTICLE 19 made its initial interventions based on an assumption that any future peace settlement was likely to include an amnesty element of some sort. The balance of forces suggested that it was highly unlikely that there could be an outright military victory for the Government of Sierra Leone. Indeed, the deeply-flawed “two-track” approach being pursued increased the danger that the RUF might strengthen its bargaining position over the coming months. The failed Abidjan peace accord of 1996 had included a blanket amnesty for all combatants and made no provision for any kind for an official "truth process". It was in this context that the September 1998 submission raised the possibility for debate that a future Truth Commission might have a South African-style amnesty procedure. However, in the absence of any meaningful peace moves in mid-1998, this issue was not explored in detail.

January-July 1999: the Truth, Justice and Reconciliation Commission phase

In December 1998 and January 1999, as many had feared would happen, the military situation in Sierra Leone changed dramatically to the detriment of the government. The RUF came close to taking Freetown, following an offensive which seemed to take the government and ECOMOG by surprise. Even as RUF soldiers stood on the street-corners of Freetown on 6 January 1999, visible to petrified inhabitants, government officials were using the government broadcast media and Radio Democracy, the vehicle of the overthrown Kabbah government during the 1997-8 rebel period, to deny that the RUF was in Freetown and warning that efforts to flee the capital would be interpreted as treachery. Ultimately, the RUF was unable to secure the capital and retreated into surrounding areas. However, the military balance had now shifted heavily in favour of the RUF. Suddenly, there was a sense of urgency on the part of the government and the international community about setting in motion peace negotiations. Talk of reviving the Abidjan peace accord, complete with its blanket amnesty, suddenly revived. ARTICLE 19 produced a further press release in mid-January 1999, ahead of the meeting of the inter-governmental Sierra Leone Contact Group which had been established following the July 1998 Special Conference, in which the organisation again raised the idea of a Truth Commission and called for the provisions of the Abidjan peace accord which provided for a blanket amnesty to be reviewed if that accord was to be the basis for renewed peace efforts (Appendix E).

During and following its July 1998 mission to Sierra Leone, ARTICLE 19 worked closely with Forum of Conscience, a Sierra Leone non-governmental organisation based in Freetown. Forum of Conscience had been arguing for a Truth Commission at the local level, including with officials of the UN Observer Mission to Sierra Leone (UNOMSIL). During the RUF offensive of December 1998 – January 1999, UNOMSIL officials and numerous human rights activists were forced to leave Freetown for security reasons and locate themselves in Conakry, Guinea.

On 19 February 1999, a meeting of the UNOMSIL-convened Human Rights Committee, a co-ordinating body of international and local non-governmental

organisations, including Forum of Conscience, agreed a series of recommendations regarding the peace process. The Committee expressed its reservations about any new peace agreement which contained a blanket amnesty and proposed the creation of a Truth, Justice and Reconciliation Commission in Sierra Leone which could "enable the country to cope with the aftermath of the crisis by hearing the truth directly from perpetrators of gross human rights violations, help survivors of violations cope with their trauma and recommend judicial prosecutions for some of the worst perpetrators of the violations." The Committee also asked international organisations, including the UN, to provide expertise about procedures and mandates of similar Commissions and related post-conflict initiatives in other countries (Appendix F).

The call for a Truth, Justice and Reconciliation Commission was in part an attempt to create a means through which the greatly increased prospect of a blanket amnesty might be averted. In a sense, it was an exercise in damage limitation. ARTICLE 19 issued a press release in early March 1999, supporting the position of the Committee and emphasising the need for extensive public consultations on the issue (Appendix G). The call for public consultations reflected ARTICLE 19's conviction that the process of laying the ground for such a Commission could also be used as a means of mobilising local civil society and ordinary Sierra Leoneans and thereby eroding the monopoly of "official parties" over the peace process.

Peace talks began in late May 1999 in Lome, Togo. In mid-June, ahead of a visit by Mary Robinson, the UN High Commissioner for Human Rights, to Sierra Leone and in response to reports that the government and the RUF had reached agreement on human rights issues, ARTICLE 19 and Forum of Conscience issued a joint press release which again urged that any agreement should not include a blanket amnesty and called for the establishment of a Truth, Justice and Reconciliation Commission (Appendix H). Shortly after this press release was made public, ARTICLE 19 and Forum of Conscience received verbal assurances from a senior minister of the Government of Sierra Leone that a peace agreement would not include a blanket amnesty. There would not be "peace at any price" (Appendix I). However, the weakness of the position of the government in the negotiations meant that it was difficult to place much confidence in such assurances. And so it proved.

On 24 June 1999, at the end of Mary Robinson's visit to Sierra Leone, a landmark *Human Rights Manifesto* was signed by the Government of Sierra Leone, the UN High Commissioner for Human Rights, the Special Representative of the Secretary-General of the UN, the National Forum for Human Rights and the National Commission for Democracy and Human Rights (Appendix J). Among many important and positive provisions, it declared that the establishment of a TRC would be a key step in the search for peace with justice and respect for human rights. The UN pledged that it would provide technical assistance for the establishment of a TRC. The human rights manifesto was warmly welcomed, although it is interesting in retrospect to note the disappearance of the word "justice" from the proposed official title of the Commission.

Whether the *Human Rights Manifesto* was a straw in the wind or not, the Lome peace agreement of 7 July 1999 confirmed that the blanket amnesty included in the 1996 Abidjan peace accord had been retained. There was strong pressure from key Western and African governments upon the Government of Sierra Leone to accept the deal. However, there were some important differences between the two agreements. The Representative of the Secretary-General of the UN attached a hand-written note that stated that the UN did not recognise the blanket amnesty in relation to crimes against humanity. Within days, Amnesty International and Human Rights Watch had

called for the establishment of an international inquiry to investigate war crimes in Sierra Leone which could study the possibility of bringing perpetrators to justice before the courts of other countries or before an international criminal tribunal. Mary Robinson, the UN High Commissioner for Human Rights, quickly announced that the UN would explore the feasibility of such an inquiry. Another key difference was the provision for the establishment of a TRC (Appendix K). The view of Amnesty International and Human Rights Watch was that the TRC could not guarantee the rights of victims to justice and reparation given the fact of the blanket amnesty within Sierra Leone's jurisdiction.

7 July 1999-May 2000: the Truth and Reconciliation Commission phase

Following the signing of the Lome Accord, ARTICLE 19 focused on seeking to assist Sierra Leonean human rights activists in working out their attitude to the TRC in the context of the blanket amnesty. Five days after the signature of the peace agreement, the organisation circulated a strategy paper on this question (Appendix L). Forum of Conscience coordinated consultations on the issue. The strategy paper set out a number of options for Sierra Leonean human rights activists: agree minimum criteria for assessing whether the TRC can be meaningful and credible; explore the possibility of high-profile "parallel" or "alternative" truth processes; throw support behind the international inquiry which was being considered; or focus wholly on grassroots, low-key truth processes. The strategy paper argued that different options could potentially be combined or sequenced over time. In addition, ARTICLE 19 commissioned a discussion paper by Priscilla Hayner, an independent expert on comparative Truth Commissions, as a contribution to the debate in Sierra Leone (Appendix M). This was also circulated during July by Forum of Conscience. Priscilla Hayner was later appointed a UN consultant, tasked with assisting in the formulation of the mandate of the Sierra Leone TRC.

In order to assist the process of public consultation on the TRC which it was undertaking, ARTICLE 19 began to provide small levels of financial assistance to Forum of Conscience for that purpose. Forum of Conscience subsequently played the leading role in the establishment of a Sierra Leone Working Group on the TRC involving civil society representatives and representatives of leading religious bodies. By August, ARTICLE 19 and the Working Group on the TRC had agreed that they would provide critical support for the TRC while exploring over time the feasibility and desirability of "alternative" or "parallel" truth processes. It had quickly become clear that there was insufficient support within the international community for the moment for the proposed international investigation into war crimes in Sierra Leone. Little urgency was being shown by the UN in exploring its feasibility.

In September 1999, the National Commission for Democracy and Human Rights (NCDHR), a government-appointed body (Appendix N), and the Working Group on the TRC (Appendix O) both published recommendations on the mandate and operation of the TRC. The Working Group's recommendations constituted an attempt to identify minimum criteria for an effective and credible TRC (Appendix 13). Two "bottom-line" issues came to the fore. First, it was recommended that there should be international commissioners as well as national commissioners on the TRC. This was because it was felt that it would be very difficult to find Sierra Leoneans of sufficient objectivity following 8 years of painful and brutal civil war and because the presence of international commissioners would provide some protection for national

commissioners who might come under pressure from interested parties within Sierra Leone. Second, it was recommended that the TRC should have powers to sub-poena individuals in the event that they refused to attend before the TRC voluntarily. Without such powers, it was feared that its credibility and effectiveness would be fatally undermined.

Under the Lome peace agreement, the NCDHR is due to hand over its responsibilities with regard to human rights to a statutorily independent human rights commission established in line with international standards.

UN consultants on the TRC first visited Sierra Leone in August 1999. In September, they produced a draft mandate for the TRC. Despite requests by the Working Group on the TRC, it was subject to only very limited circulation within Sierra Leone. The Working Group largely took on that task itself. In late October, one of the UN consultants returned to Sierra Leone to consult with stakeholders about the draft mandate. The Working Group on the TRC organised two stakeholders' workshops to discuss the draft mandate. One was held in Freetown and the other in Bo, Sierra Leone's second city (Appendix P). The Bo workshop was the first large-scale public consultation exercise on the TRC that had taken place outside Freetown. The UN consultant was able to attend the Freetown workshop in person. As a result of these workshops, the Working Group on the TRC increased its membership to over 40 organisations, including the Inter religious Council, the Council of Churches of Sierra Leone and the National Amputees Association.

Also in October, ARTICLE 19 and the Working Group on the TRC also discussed a range of ideas for promoting public awareness and support for the TRC and communicated these ideas to donors and the UN. Amongst them were a proposal to hold an international workshop during the preparatory phase of the TRC which would bring people with experience of truth processes in other countries; an expanded programme of public sensitisation activities on the TRC, including in relation to traditional leaders; the establishment of a Truth Bulletin to monitor the TRC process; and to promote ownership and support, the production of a TRC "share voucher", or appropriate equivalent, which could be sold for the smallest possible cash denomination to all members of the Sierra Leonean public.

Geneva's final recommendations for the implementing legislation on the TRC were completed in December 1999. The strong recommendations paved the way for a credible and effective TRC. They included, *inter alia*, provisions for international commissioners and sub-poena powers. However, they were once again subject to limited distribution within Sierra Leonean civil society. This was despite that fact that the report recommended full public consultation before legislation was passed. On 10 February, the Government of Sierra Leone published the Truth and Reconciliation Commission Bill. ARTICLE 19 and the Working Group on the TRC issued a joint press release calling for a period of at least three weeks of public consultation (Appendix Q). This did not take place. The Act passed on 22 February was virtually identical in its provisions to the UN's final recommendations (Appendix R). But a major opportunity to use the legislative process to build public support and understanding for the TRC had been missed.

The lack of commitment shown by the UN and the Government of Sierra Leone to encouraging broad-based public consultations on the TRC Bill may have been the product of a desire to avoid a sensitive issue spiralling out of control, leading to delays in pushing the process forward. It is undoubtedly the case that the attitude of the RUF to the TRC became increasingly negative as the months passed -- although the leader of the AFRC, Johnny Paul Koroma, had declared his support for it.

However, ARTICLE 19 and Forum of Conscience believe that another danger -- that the TRC will be poorly understood by ordinary Sierra Leoneans and seen as an outside imposition -- was underplayed.

The failure to see the urgency and importance of public consultation and sensitisation work grew more acute after the Bill was passed into law. During early 2000, large sums of money were pledged by international donors for the TRC. This included UK £250,000 from the British Government, which was specifically designated for public consultation and sensitisation work. The Office of the UN High Commissioner for Human Rights in Geneva was charged with the responsibility of overseeing the expenditure of the sums pledged. In early March, shortly after the TRC Act was passed, it began discussions with international consultants tasked with developing detailed plans of action for public information and research activities, including training. These discussions proceeded extremely slowly and allowed little space for consultation with Sierra Leonean stakeholders, who lacked the resources to proceed on an interim basis while plans were being finalised. The result was that during March and April 2000, very little public consultation and sensitisation work was undertaken within Sierra Leone. Local momentum on the TRC was lost.

In early May 2000, ARTICLE 19 and the Working Group on the TRC issued a joint press release calling on the Office of the UN High Commissioner for Human Rights to show greater urgency and undertake full consultation with Sierra Leonean stakeholders (Appendix S). Without detracting from the value of the role it had played in defining the mandate of the TRC, the performance of the OHCHR after the passage of the Act raised questions about whether it was the appropriate body to oversee the implementation of that mandate.

These problems regarding the TRC reflected broader failings in the manner in which the international community, including the UN, had discharged their responsibilities in Sierra Leone under the Lome peace accord. Widespread (if understandable) ambivalence about the blanket amnesty and other aspects of the peace agreement (including the fact that the RUF was given control of the diamond mining sector) contributed to an extremely sluggish attitude towards implementation of key elements of the agreement. This was particularly the case in relation to the building up of the peace-keeping force. Western governments declined to contribute. The pace of deployment was painfully slow. By early May -- nine months after the signing of the agreement -- only 8,000 of the total 11,000 to be deployed as part of the UN Armed Mission to Sierra Leone (UNAMSIL), had arrived in Sierra Leone. They were poorly equipped and trained.

The process of Disarmament, Demobilisation and Rehabilitation (DDR) had proceeded equally slowly. The human rights component of DDR was turning out in practice to be largely token. ARTICLE 19 and the Working Group on the TRC had called for sensitisation about the TRC to be an important part of wider human rights sensitisation work in the context of DDR. This had not happened.

No less importantly, there seemed to be insufficient acknowledgement that human rights sensitisation work with combatants might accelerate the DDR process, while similar initiatives at community-level could help in their eventual reintegration into those communities. Legitimate concerns about security may have been one of the reasons for the cautious approach taken. However, sometimes it is necessary to take reasonable risks to increase levels of security. UN personnel as a rule are less willing to take such risks. Sierra Leoneans might have been more prepared to take such risks but were given insufficient opportunity or resources to do so. For example, in January, representatives of the Working Group on the TRC had travelled into RUF-controlled

areas to talk with combatants about the TRC. They found that most fighters were either unaware or initially suspicious of the TRC but after discussing it appeared more open to cooperating with it.

In addition, continuing serious human rights abuses by RUF and SLA fighting forces after the signing of the peace agreement were documented by UNAMSIL and other human rights groups. Although these abuses were not covered by the blanket amnesty, no action was taken to bring perpetators to justice. Many justifiably questioned just how far a real peace process was taking place.

Developments since May 2000: towards a "two-track" approach to truth and justice?

In early-May 2000 the July 1999 Lome peace agreement collapsed. RUF forces took over 500 UN peace-keepers hostage in the north and east of Sierra Leone. The peace-keepers had been seeking access to RUF-controlled territory, including diamond mining areas which the rebel movement had long depended on to fund its insurgency. The Government of Sierra Leone accused the RUF of planning a coup and Foday Sankoh disappeared from Freetown. The credibility of the UN with Sierra Leoneans was badly damaged by the crisis. For a brief period, it appeared as if Freetown might be taken by the RUF, but the situation stabilised as pro-government forces organised and British troops, ostensibly flown in to oversee the evacuation of British citizens, provided logistical and other assistance. On 17 May, Foday Sankoh was captured by government forces and detained. In the weeks that followed, other senior RUF figures were also detained. On 15 May, Forum of Conscience called for the establishment of an international criminal tribunal for Sierra Leone to bring to justice those guilty of crimes against humanity since the signing of the Lome peace accord. International human rights organisations also called for the scrapping of the blanket amnesty regarding human rights abuses committed prior to the accord. On 24 May, ARTICLE 19 and Forum of Conscience issued a press release calling for a "two-track" approach to truth and justice: retention of the TRC provided for under the Lome peace agreement and an international war crimes tribunal to try Foday Sankoh and other leaders accused of crimes against humanity (Appendix T) [contents summarised in **Introduction**].

In mid-June, the Working Group on the TRC organised regional consultations on truth and justice issues that endorsed the "two-track" approach (Appendix U). By the end of June, it was clear that the TRC would be retained. The UN has resumed plans to launch the preparatory stage of the TRC. On the justice track, discussions are taking place within the UN Security Council about what structures to establish to try Foday Sankoh and other leaders.

ARTICLE 19 and Forum of Conscience welcome the decision to retain the TRC despite the collapse of the Lome peace accord. It is no accident that its reaffirmation coincides with a growing realisation once again that a rapid military defeat of the RUF is still at best a long-term objective. Talk of retaking the diamond fields from the RUF has also receded. The British presence has been scaled down and the fragility of the unity among pro-government armed factions has become clearer. International attention is turning once more to a political settlement.

The legislation to establish the TRC met key tests of credibility and effectiveness in terms of its mandate and structure. The challenge now is to meet similar tests that relate to implementation. In this regard, it is essential that immediate

priority is given to supporting the public consultation and sensitisation initiatives which will build support and a genuine sense of ownership of the TRC among ordinary Sierra Leoneans. To do this, the UN should operate on the basis of an equal partnership with and participation from Sierra Leonean civil society and religious bodies, including the Working Group on the TRC. It should not expect -- whether by design or by default -- to dictate the terms and pace of implementation. That would be the quickest route to discrediting the TRC. Finally, it is crucial that advocates of the TRC should see it not as a static "thing" but as the apex of broader truth and reconciliation processes, for which it should be a catalyst. These broader truth and reconciliation processes should continue long after the TRC has completed its work and wound down. In this sense, the TRC is very much a moment of truth in Sierra Leone -- no more, no less.

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