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The Amnesty provision of the Lome Agreement and its impact on The Special Court for Sierra Leone



) - Mes initiatives - Amnistie... Amnésie... Impunité... Justice transitionnelle -
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I wish to commence by thanking the organisers for the opportunity to address this august gathering on the important work of the Special Court for Sierra Leone and its contribution to ending impunity, reconciliation and the healing process after the end of the conflict in Sierra Leone. I thank you for your laudable contribution to the fight against impunity and for your support for transitional justice institutions like the Special Court for Sierra Leone.

I would briefly refer to a statement pertinent to amnesia and impunity by Bishop Joseph Humper, Chairman of the [Truth and Reconciliation Commission in Sierra Leone](#).

"The Commission's findings force us as a nation to confront the past. They reinforce the belief that the past cannot, indeed must not, be forgotten. Forgetting or ignoring the past means we cannot learn its lessons and are at greater risk of repeating it. Through attributing responsibility for the different causes of the conflict, and the many violations of human rights committed throughout it, we create accountability and state unequivocally that we reject impunity. With this knowledge and understanding we vow to build a society that will be able to prevent such causes and violations from recurring".

Background

Sierra Leone has had a unique experience of transitional justice in the post conflict era. It established two parallel bodies to deal with addressing the wrongs that took place during the conflict - a Truth and Reconciliation Commission and the Special Court for Sierra Leone.

The establishment of these two institutions confirm in my view, that rather than forgive and forget the wrongdoings and crimes committed during the conflict, the Government and the people of Sierra Leone have opted for the option to have a record of the conflict as a means to healing and reconciliation. In addition to that, those alleged to be most responsible should not be allowed to get away with impunity and should answer for their crimes before a Court or Tribunal - The Special Court for Sierra Leone.

After the decade long conflict, a Truth and Reconciliation Commission was set up in 2000 by the Truth and Reconciliation Act of 2000. Its main objective was to unravel the truth behind the conflict and to create an historical record of the atrocities that were committed during the event.

The Special Court for Sierra Leone was also set up to try those alleged to bear the greatest responsibility for the crimes that were committed on the territory of Sierra Leone.

The rationale for establishing the two institutions has been questioned by some who believe that the efficacy of a TRC would be threatened by the Special Court as perpetrators may be afraid to speak out at the TRC for fear of being prosecuted.

There are others who have advocated that in a country like Sierra Leone, the people prefer to forgive and forget instead of the establishment of transitional justice institutions. [1] I am of the conviction that these various responses to a conflict can co-exist depending on the gravity of crimes committed and the level of participation. Those most

responsible for the most serious offences should be made to answer for their crimes before a Court.

In the limited time that I have, the focus of my paper would be on the establishment of the Special Court for Sierra Leone in response to the conflict and its role in the prosecution of offenders and ensuring that offences as serious as violations of international humanitarian law are not forgotten, swept under the carpet or committed with impunity.

The Special Court for Sierra Leone

At the end of the conflict, the Government of Sierra Leone requested the United Nations to help establish a mechanism to address the impunities that took place during the conflict. The Special Court for Sierra Leone was established on 16 January 2002 by an Agreement between the Government of Sierra Leone and the United Nations. The Special Court for Sierra Leone was established, pursuant to Security Council Resolution 1315, with the mandate to prosecute "persons who are alleged to bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law, committed in Sierra Leone since 30 November 1996". [2]

One unique feature of the Special Court is that this is the only international war crimes tribunal to sit in the country where the crimes under its jurisdiction took place. The only exception is the case of Charles Taylor, the former President of Liberia. His case was transferred to the Netherlands by the United Nations Security Council due to security concerns if held in West Africa. The case of Charles Taylor is a leading precedent that a sitting Head of State may be indicted for criminal prosecution. It is a warning signal that sitting Heads of state allegedly committing serious crimes may one day have to account for grave crimes committed when they were in office.

The Special Court in its contribution to ending impunity has concluded two trials to date resulting in convictions in the cases of - The Armed Forces Revolutionary Council with 3 Accused persons and the Civil Defence Forces initially with 3 Accused persons. The 3rd Accused person, Hinga Norman, passed away before a verdict was rendered in his case. The 3rd case of the Revolutionary United Front is in the Defence phase at the moment. The 4th case, the trial of Charles Taylor is expected to continue on 7 January 2008.

I would now proceed to briefly discuss the Amnesty provision in the Lome Peace Agreement signed on 7 July 1999 between the Revolutionary United Front and the Government of Sierra Leone. The Agreement sought to grant a blanket amnesty to perpetrators in the Sierra Leonean conflict.

ARTICLE IX OF THE LOME PEACE AGREEMENT - on PARDON AND AMNESTY provides in part as follows:

1. In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon.
2. After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.
3. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related

The Amnesty provision of the Lome Agreement and its impact on The Special Court for Sierra Leone

to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.

4.

It should be noted that the United Nations Special Representative of the Secretary General appended a disclaimer to the Agreement to the effect that the blanket grant of the amnesty and unconditional and free pardon would not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. [3]

The Appeals Chamber found that the validity of the Lome Agreement's amnesty provision in the domestic law of Sierra Leone is of no importance for its conclusion, as it is concerned only with international crimes and whether the Lome amnesty bars the SCSL from exercising jurisdiction over such offences. [4]

The Appeals Chamber evaluated the scope of amnesties in international law and invoked the principle of universal jurisdiction to hold that a State could not deprive another State of its jurisdiction to prosecute perpetrators by granting amnesties. "A state cannot bring into oblivion and forgetfulness a crime, such as a crime against international law, which other States are entitled to keep alive and remember". [5] (emphasis added)

The Appeals Chamber consequently found that amnesties granted by Sierra Leone cannot cover crimes under international law, as they are subject to universal jurisdiction. "The obligation to protect human dignity is a peremptory norm and has assumed the nature of obligation erga omnes." [6]

Outreach

Mention must be made of a key segment of the work of the Special Court - outreach. The outreach section works as a bridge between the Court and the Sierra Leonean community, traversing the various districts of Sierra Leone to explain the work of the Court to the communities. Some of its activities are:

Accountability now clubs in schools focussing on justice, accountability and human rights.

Training the trainer workshops

Radio programs

Transmissions of the proceedings of the court to various communities. The Charles Taylor trial would for instance be transmitted to the Freetown Courtroom and aired on radio stations in the region.

Seminars on the work of the Special Court.

Town hall meetings providing information on the work of the Court.

As part of the mechanism to evaluate the impact of the SCSL outreach programme, a nation-wide survey on public perceptions of the court was conducted in 2006 by the Peace and Conflict Studies Department of the University of Sierra Leone.

Respondents in the survey were chosen at random from predetermined categories including, stakeholders - chiefs, heads of institutions, Government functionaries and professionals; Children, and women. Ten thousand questionnaires were administered throughout the country. The survey aimed to throw light on the achievements and challenges of the Special Court and its Outreach programme and also more importantly contribute to debates about the relevance of transitional criminal justice systems.

The following were some key findings from the general respondents:



The Amnesty provision of the Lomé Agreement and its impact on The Special Court for Sierra Leone

- a. 91 % agreed that the Special Court contributes to peace building in Sierra Leone.
- ▶ b. 88 % said the court was relevant to Sierra Leone.
- ▶ c. 85 % agreed that perpetrators of war crimes should be punished after intense violence.
- ▶ d. 99 % were aware of the existence of the Special Court.
- ▶ e. 68 % indicated that the verdicts of the court will not raise tension in the country.
- ▶ f. 40 % were in favour of the Death Penalty as an instrument of addressing impunity.

I must thank the European Union for its generous financial support for the work of the outreach section of the Special Court.

Conclusion

In conclusion, I commend the unique and successful experiment of Sierra Leone to countries emerging from conflict. The experiment confirms that transitional justice institutions like the TRC can co-exist with criminal courts and that amnesty provisions cannot be extended to crimes as serious as international humanitarian crimes. It further confirms that amnesia is not the panacea for addressing serious violations of international humanitarian law.

There can be no peace without justice, there can be no genuine healing and reconciliation without the prosecution of those alleged to be responsible for egregious violations of international humanitarian law.

I thank you all for your attention.

[1] See for instance [Rethinking Truth and Reconciliation: Lessons from Sierra Leone by Rosalind Shaw](#). The writer stated on page 8 that "... People had been talking about the violence when the violence was present, but once it stopped, healing took place through practices of social forgetting." She later stated that "Social forgetting has been a cornerstone of techniques of reintegration and healing for child and adult ex-combatants in northern Sierra Leone.."

[2] See Article 1 of the Statute of the Special Court. See also Article 2 on the prosecution of crimes against humanity and Article 3 on the prosecution of violations of Article 3 common to the Geneva conventions and of additional protocol II. Article 4 deals with other serious violations of international humanitarian law and Article 5 deals with crimes under Sierra Leonean Law.

[3] Seventh report of the Secretary-General on the United Nations Mission in Sierra Leone, UN Doc. S/1999/836, 30 July

The Truth and Reconciliation Commission

The Lomé Peace Agreement, signed between the Government of Sierra Leone and the Revolutionary United Front, gave birth to a Truth and Reconciliation Commission (TRC) which was enacted into law in February 2000.

Objectives - Section 6 (1) on the functions of the commission

To create an impartial historical record of violations of human rights
To address impunity
To respond to the needs of victims
To promote healing and reconciliation
To prevent a repetition of the violations and abuses suffered

The TRC functioned in a number of ways:

Investigation of key events, causes, patterns of abuse or violations and the parties responsible

Held sessions, some of which may be public, to hear the testimonies and stories of victims and perpetrators and from all other interested parties

Took individual statements and gathered additional that may further an understanding of any events recounted.

In the spirit of national reconciliation, the Commission was established to deal with the question of human rights violations and abuses since the beginning of the Sierra Leone conflict in 1991, to the signing of the Lomé Peace Agreement in July 1999. Truth telling was expected 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.

The Commission has the power to gather any information it considers relevant to achieving its objectives from any source, including government authorities. It can visit any place or establishment and compel the production of information. It can issue summons, interview individuals, groups or members of organisations and can choose to do so in private. It can require statements under oath. However, any information can be provided confidentially and the Commission cannot be made to disclose information given in confidence.

There are limitations to the powers of the Commission. Unlike the Special Court, it cannot punish perpetrators of violence. It can only recommend reforms and other measures, whether legal, political, administrative or otherwise, necessary to achieving its aims.

It should be observed that the TRC was not a court, trying and meting out punishment to any person. It was simply a place where people could express what they witnessed or participated in. TRCs are an important instrument of transitional justice because concealing the truth may be harmful to the healing and reconciliation processes.

Amnesty

Article 10 of the Statute of the Special Court specifically provides that -

An amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in articles 2 to 4 of the present Statute shall not be a bar to prosecution.

The Amnesty provision in the Lomé Peace Agreement, signed between the Government of Sierra Leone and the Revolutionary United Front, provided for an amnesty. This has however not been a bar to prosecutions at the Special Court as would be seen later.

Although the blanket amnesty offered in the Lomé Peace Agreement may have its advantages, it does not augur well for national unity, healing and reconciliation. Such an amnesty means that the perpetrators of some of the most gruesome crimes will not only be free men and women but their victims will not be compensated. Justice is a pre-condition for reconciliation. If the victims of human rights abuses are denied justice, there is every likelihood that they may take the law into their hands and seek retribution. Forgiveness cannot be granted without acknowledgement of crimes and without forgiveness there cannot be meaningful reconciliation.

To ensure that heinous crimes committed during the Sierra Leonean Conflict are not forgotten the TRC and the Special Court under their respective mandates seek to address the wrongdoings and crimes committed.

SCSL Jurisprudence.

The Special Court for Sierra Leone has had to address the question of the legality of the Amnesty provision and its effect if any, on prosecutions at the Court.

The Appeals Chamber has emphatically ruled that amnesties granted to members of the warring factions in the Sierra Leone civil law under the Lome peace agreement is not a bar to prosecutions before the Court.[[The Prosecutor v Morris Kallon and Brima Buzzy Kamara, Special Couourt for Sierra Leone, SCSL-2004-15-AR72(E) and SCSL-2004-16-AR72 (E), Decision on Challenge to Jurisdiction: Lome Accord Amnesty (Appeals Chamber, 13 March 2004).

[4] See Para 50 of the Decision.

[5] *ibid*

The Amnesty provision of the Lome Agreement and its impact on The Special Court for Sierra Leone

[6] See Paras 66 to 82 of the Decision. See also and article on Legality of amnesties in international humanitarian law, The Lome Amnesty Decision of the Special Court for Sierra Leone, Simon Meisenberg, page 842, IRRC December 2004, vol. 86, No 856.