

## **Achieving the Possible?**

Exploring the Treatment of Children  
by Sierra Leone's  
Truth and Reconciliation Commission

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*"We are the victim, the perpetrator and the witness, all at once."*<sup>1</sup>

## I. Introduction

During the 1990s, over two million children<sup>2</sup> died as a direct result of armed conflicts, and more than three times as many became permanently disabled or seriously injured.<sup>3</sup> Globally it is estimated there are over 300,000 child soldiers<sup>4</sup> active in at least twenty countries.<sup>5</sup> Competition over control of resources, the profitability of war, and extreme poverty coupled with the wide availability of small, light weapons have been cited as contributing factors to the increased use of child soldiers.<sup>6</sup> This phenomenon was highlighted in Sierra Leone's decade-long civil war; a war marked for its brutality and significant number of child participants and victims. Estimates of the number of children who participated in the decade-long conflict are made difficult by the variety of definitions used to refer to the overlapping roles many children took on. Higher estimates put the number of children associated with fighting forces at just over 48000,<sup>7</sup> while the lower range places the number closer to 7000.<sup>8</sup> Children, both girls and boys, as young as five were abducted and forcibly recruited for use as soldiers and/or sexual slaves, underwent forced drugging, participated

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<sup>1</sup> Truth and Reconciliation Commission, *Truth and Reconciliation Commission Report For the Children of Sierra Leone – Child-Friendly Version 2004*, at 14, online: UNICEF

<<http://www.unicef.org/infobycountry/files/TRCCF9SeptFINAL.pdf>> [Child Friendly Report]

<sup>2</sup> For the purposes of this paper, "child" is defined as a human being below the age of eighteen years. See Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, art. 1, (entered into force 2 September 1990).

<sup>3</sup> *The Machel Review 1996-2000: War-Affected Children*, (New York: United Nations, 2000), at 2. [Machel Review]

<sup>4</sup> The definition of "child soldiers" used here is "any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms." This definition was adopted in 1997 by participants in the UNICEF-organized Symposium on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa. *Cape Town Annotated Principles and Best Practices*, online: Multi-Country Demobilization and Reintegration Program <<http://www.mdrp.org/capetownprinc.pdf>>

<sup>5</sup> Human Rights Watch, "World Report 2004: Human Rights and Armed Conflict", (2004), at 219, online: Human Rights Watch <<http://hrw.org/wr2k4/>>

<sup>6</sup> Machel Review, *supra* note 3 at 2.

<sup>7</sup> See: Susan McKay and Dyan Mazurana, *Where are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War*, (Montreal: International Centre for Human Rights and Democratic Development, 2004), at 91-93. McKay and Mazurana include all members of the armed forces over the decade-long war, taking into account the many roles children, both boys and girls, occupied within these forces.

<sup>8</sup> Child Friendly Report, *supra* note 1 at 8 noting that thousands more were "targeted for abduction, rape, murder and mutilation." See: Amnesty International, "Sierra Leone: Childhood – a casualty of conflict" (31 August 2000), online: Amnesty International <<http://web.amnesty.org/library/index/ENGAFR510692000>>. [Sierra Leone: Childhood]. This report states more than 5000 children fought as combatants and another 5000 were associated with forces although not directly involved in the conflict. These numbers though do not account for the two years of fighting that erupted after the Lomé Agreement was signed, and thus are low.

in and witnessed murders and massacres, amputations, torture, rape, were placed into forced labour in diamond mines, and were separated from their families, often ending up as unaccompanied minors in refugee or internally displaced persons camps.<sup>9</sup> The dividing line between victim and perpetrator was blurred in this conflict that relied on children to loot, rape, kill and brutalize.

At the close of hostilities, Sierra Leone faced the difficult task of how to appropriately respond to the civil war's effects generally on the country, its future and its children. At a national level, with the support of the international community, the country opted for a two-track transitional justice<sup>10</sup> approach, combining the Special Court for Sierra Leone (SCSL) with a Truth and Reconciliation Commission (TRC). The TRC has been the main institutional response to children and is the first truth commission that had specific and extensive provisions for attempting to deal with children affected by conflict.<sup>11</sup> This paper argues that while the TRC may have failed to achieve all the desired goals, it did provide a concrete and commendable approach to addressing

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<sup>9</sup> Child Friendly Report, *supra* note 1 at 14-20. Many other sources have documented the atrocities committed by and against children in Sierra Leone. See for example: "Sierra Leone: Childhood", *supra* note 8; Stephanie H Bald, "Searching for a Lost Childhood: Will the Special Court of Sierra Leone Find Justice for its Children?", (2002-2003) 18 Am. U. Int'l L. Rev., 545-557; Sarah L. Wells, "Crimes Against Child Soldiers in Armed Conflict Situations: Application and Limits of International Humanitarian Law," (2004) 12 Tul. J. Int'l & Comp. L., 298-304; McKay and Mazurana, *supra* note 7, 91-106; Sierra Leone Truth and Reconciliation Commission Final Report, Chapter 2 "Findings", online: International Center for Transitional Justice <http://www.ictj.org/>, found that 13.6% of the 33196 violations reported to the Commission where age was known were against children under the age of 17 years (¶ 23) [TRC Report].

<sup>10</sup> The definition of "transitional justice" is contested. It includes but is not limited to the field of post-conflict justice and it is increasingly invoked as a necessary condition for peace building. It is perhaps best defined through an examination of the approaches it encompasses (discussed below). See: Alex Boraine, "Transitional Justice as an Emerging Field" (Lecture presented to the Repairing the Past: Reparations and Transitions to Democracy Symposium March 2004), online: International Development Research Centre, <<http://web.idrc.ca/uploads/user-S/1082997504/1revised-boraine-ottawa-2004.pdf>>

<sup>11</sup> Previous transitional justice initiatives have dealt with children to varying degrees. The National Commission on Disappeared Persons (Argentina), the South African Truth and Reconciliation Commission, and El Salvador's Truth Commission all made limited attempts to incorporate children and/or young people into their mandates, but to a very limited degree. See: Ilene Cohn, "The Protection of Children in Peacemaking and Peacekeeping Processes", (1999) 12 Harv. Hum. Rts. J., 129 at 174-176. The SCSL had two main provisions related to children. The first was the creation of the offence of conscription or enlistment of children under the age of fifteen years into armed forces or groups or the use of them to actively participate in conflict (Statute of the Special Court for Sierra Leone, Article 4(c), online: Special Court for Sierra Leone, <<http://www.sc-sl.org/scsl-statute.html>>). The second was the establishment of jurisdiction over children alleged to have committed offences when between the ages of fifteen and eighteen years. No child was ever prosecuted though in the SCSL nor will there be such a prosecution. Shortly after it began operating, the Special Prosecutor announced he would not be pursuing any prosecutions against children under the age of eighteen (Special Court Prosecutor, David Crane, announced on 2 November 2002: "The children of Sierra Leone have suffered enough both as victims and perpetrators. I am not interested in prosecuting children. I want to prosecute the people who forced thousands of children to commit unspeakable crimes." Special Court for Sierra Leone, Press Release (2 November 2002), online: Special Court for Sierra Leone, <<http://www.sc-sl.org/Press/pressrelease-110202.pdf>>).

the issues raised around children affected by conflict. Part II of this paper briefly explores the underlying themes animating transitional justice approaches and truth commissions specifically. Part III outlines Sierra Leone's TRC and its provisions for children. Part IV assesses the TRC's treatment of children in light of its mandate, highlighting both successes and failures. Part V offers concluding observations.

## II. Transitional Justice Approaches

In exploring available transitional justice approaches, the appropriate starting point acknowledges that no response to mass atrocity is adequate.<sup>12</sup> The degree of violence and abuse characteristic of many of today's conflicts is not amenable to a simple application of traditional conceptions of criminality, morality, and notions of justice. Drawing analogies between societies entering a transitional justice phase and other societies' responses to ordinary crimes is inherently flawed, often failing to recognize the scale and nature of the "radical evil" that has occurred.<sup>13</sup> Rajeev Bhargava notes that in transiting from a "barbaric to a minimally decent condition" the steps taken by the society must remain "firmly anchored in low-level ground realities" and begin the search for relevant moral principles from there.<sup>14</sup> Even so, Miriam Aukerman argues that in selecting goals for transitional justice mechanisms, "the question of what is possible must follow the question of what is desirable."<sup>15</sup>

The primary transitional justice approaches are prosecutions, non-judicial truth-seeking, reconciliation, reparations and vetting/institutional reform.<sup>16</sup> The success of any transitional justice approach must be measured against the goals identified at the outset and within the paradigm selected. Despite the problems with analogizing between domestic criminal justice and transitional

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<sup>12</sup> Martha Minow, "The Hope for Healing: What Can Truth Commissions Do?" in Robert I. Rotberg and Dennis Thompson ed., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000) 235. [Minow, "The Hope for Healing"]

<sup>13</sup> Miriam J. Aukerman, "Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice" (2002) 15 Harv. Hum. Rts. J. 39 at 45.

<sup>14</sup> Rajeev Bhargava, "Restoring Decency to Barbaric Societies" in Robert I. Rotberg and Dennis Thompson ed., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000) 45 at 48.

<sup>15</sup> Aukerman, *supra* note 13, at 92.

<sup>16</sup> International Center for Transitional Justice, "Transitional Justice Approaches," online: International Center for Transitional Justice <<http://www.ictj.org/approaches.asp>>. An exploration of each approach is beyond the scope of this paper.

justice, there are overlapping theoretical concepts that can be applied to both. Our concepts of what is right and wrong, desirable and not are variably reflected in the paradigms of retribution or vengeance, deterrence, rehabilitation, restorative justice, or communication/condemnation or a combination thereof.<sup>17</sup> Martha Minow describes vengeance and forgiveness as “marks along the spectrum of human responses to atrocity.”<sup>18</sup> These paradigms or “marks” represent modes of achieving and conceiving of the two goals that responses to atrocity seek: justice and truth.<sup>19</sup> The close relationship between the right to know truth, the right to justice, the right to reparation and national reconciliation is highly complex and contested.<sup>20</sup>

The field of transitional justice is relatively new – the Nuremberg and Tokyo trials being conducted after World War II and truth commissions being instituted in the 1970s.<sup>21</sup> Political, economic, social, cultural, religious and historical factors determine a society’s selection of the appropriate approach. This choice will be influenced by the international community’s demands, as societies embarking on transitional justice initiatives are typically impoverished, reliant on external financial and, to an extent, moral or political support.

### **Truth Commissions**

Truth-seeking mechanisms are most commonly in the form of truth commissions. Priscilla Hayner has identified four elements essential to truth commissions: they examine the past; focus on painting an overall picture as opposed to a focussing on a specific event; exist temporarily and for a pre-defined period of time; and are always vested with some sort of authority allowing for greater access to information, security, protection that allows for their reports and recommendations to have greater impact.<sup>22</sup>

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<sup>17</sup> See: Aukerman, *supra* note 13, for an exploration of these essentially domestic approaches to criminal justice and their potential application to transitional justice.

<sup>18</sup> Martha Minow, *Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998) at 21. [Minow, *Vengeance and Forgiveness*]

<sup>19</sup> Minow, *Vengeance and Forgiveness*, *supra* note 18, at 9.

<sup>20</sup> Rodolfo Mattarollo, “Truth Commissions”, in M. Cherif Bassiouni ed., *Post Conflict Justice* (Ardsley: Transnational Publishers, Inc., 2002) 295 at 302.

<sup>21</sup> See: Priscilla Hayner, “Fifteen Truth Commissions – 1974 to 1994: A Comparative Study” (1994) 16(4) *Hum. Rts. Qtrly.* 597 at 601-603. [Hayner, “Fifteen Truth Commissions”]

<sup>22</sup> Hayner, “Fifteen Truth Commissions”, *supra* note 21, at 604.

Potential contributions of truth commissions include the establishment of an authoritative record of the past; imposition of moral condemnation; demonstration of the priority of human rights in a new regime; exploration of the country's specific historical and political context and the ability to make recommendations for future actions and prevention; and psychological healing of victims and families.<sup>23</sup> They can be especially attractive to countries with limited resources and which lack a strong and impartial legal system.<sup>24</sup> The most central feature of truth commissions is their namesake: they are held up as the most likely process for uncovering as complete a truth as possible. David Crocker discusses three forms of truth that they may seek to uncover: "forensic", which answers the who, what, when, where and why questions; "emotional", which speaks to the knowledge concerning the psychological and physical impact on victims of rights abuses and their families; and a "general" truth, which looks at state actions, causal explanations, institutional structures and political and economic problems that led to rights violations.<sup>25</sup>

Truth commissions tend to be more closely allied with restorative approaches to justice, especially so when they are mandated to be truth and reconciliation commissions. Restorative justice initiatives emphasize the need for "atonement, shaming and reintegration" and have been argued as well-suited to societies where both victims and aggressors need to be accommodated.<sup>26</sup> Truth commissions may offer a form of "political" restorative justice by attempting to address the legitimate concerns of victims and survivors while seeking to reintegrate perpetrators into the community.<sup>27</sup> The theoretical underpinnings are based on the acknowledgement and respect that victims recover in telling their stories, typically on public platforms to officials.<sup>28</sup> The restorative

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<sup>23</sup> Jason S. Abrams and Priscilla Hayner, "Documenting, Acknowledging, and Publicizing the Truth" in M. Cherif Bassiouni ed., *Post Conflict Justice* (Ardsey: Transnational Publishers, Inc., 2002) 283 at 290-291.

<sup>24</sup> Abrams and Hayner, *supra* note 23, at 291.

<sup>25</sup> David Crocker, "Truth Commissions, Transitional Justice, and Civil Society" in Robert I. Rotberg and Dennis Thompson eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000) 99 at 100.

<sup>26</sup> Paul Roberts, "Restoration and Retribution in International Criminal Justice", in Andrew von Hirsch, Julian V. Roberts, Anthony Bottoms, eds., *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Portland: Hart Publishing, 2003) 115 at 126. See also: Hugo van der Merwe, "Reconciliation and Justice in South Africa: Lessons from the TRC's Community's Interventions" in Mohammed Abu-Nimer ed., *Reconciliation, Justice, and Coexistence: Theory & Practice* (Maryland: Lexington Books, 2001) at 201-202.

<sup>27</sup> Dumisa B. Ntsebeza, "The Uses of Truth Commissions: Lessons for the World," in Robert I. Rotberg and Dennis Thompson eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000) 158 at 165.

<sup>28</sup> Crocker, *supra* note 25 at 102.

power of truth-telling has been cited as foundational for any reconciliation to occur.<sup>29</sup> Johan Galtung defines reconciliation, which occurs between perpetrators and victims, as the result of closure (an end to hostilities) combined with healing (being rehabilitated).<sup>30</sup> Hugo van der Merwe tells us that reconciliation, in the context of South Africa's Truth and Reconciliation Commission, was to be achieved through the public truth telling rather than through the retributive justice process.<sup>31</sup>

The difficulties and disadvantages of truth commissions are numerous. They are vulnerable to politically imposed limitations, especially true when there is a weak civilian government and defiant military; they may destabilize a nascent state structure; mire a society in its past, preventing it from moving forwards; and they have the potential to re-victimize the victims by having them re-live their trauma.<sup>32</sup> Truth commissions have been criticized as reflective of assumptions based on Western modes of thought, religious beliefs and values.<sup>33</sup> Furthermore, when a truth commission has an explicit mandate of promoting reconciliation the criticisms are even sharper. We are cautioned in embracing truth commissions' utopian aims if "healing the nation" attempts to usurp the powers of forgiveness that rightfully belong to the victims, not the state or its institutions.<sup>34</sup> Truth commissions may be dangerous or at best, unnecessary, if they compel victims to forgive, contain their hatred or overcome resentment.

### **III. Sierra Leone's Truth and Reconciliation Commission**

#### **a. Overview**

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<sup>29</sup> Minow, "The Hope for Healing" *supra* note 12 at 243. See also: Aukerman, *supra* note 13 at 47.

<sup>30</sup> Johan Galtung, "After Violence, Reconstruction, Reconciliation, and Resolution: Coping With Visible and Invisible Effects of War and Violence," in Mohammed Abu-Nimer ed., *Reconciliation, Justice, and Coexistence: Theory & Practice* (Maryland: Lexington Books, 2001) at 4.

<sup>31</sup> van der Merwe, *supra* note 26 at 190.

<sup>32</sup> See generally: Hayner, "Fifteen Truth Commissions", *supra* note 21 at 600 and 636; Minow, "The Hope for Healing" *supra* note 12 at 241; Bhargava, *supra* note 14 at 60; Amy Gutmann and Dennis Thompson, "The Moral Foundations of Truth Commissions," in Robert I. Rotberg and Dennis Thompson eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000) 22 at 30 (noting that one nongovernmental group in the Cape Town area reported that 50 to 60 percent of the victims they saw suffered serious difficulties after giving testimony at South Africa's Truth and Reconciliation Commission).

<sup>33</sup> Minow, "The Hope for Healing" *supra* note 12 at 241. See also: Crocker, *supra* note 25 at 62.

<sup>34</sup> Gutmann and Thompson, *supra* note 32 at 32.

The Lomé Peace Agreement of 1999 was negotiated between the Revolutionary United Front (RUF) (the main opposition) and the government of Sierra Leone.<sup>35</sup> The Lomé Agreement provided for the establishment of the TRC.<sup>36</sup> The procedures, powers and administration of the TRC were set out in *The Truth and Reconciliation Commission Act 2000*.<sup>37</sup> The TRC was tasked with

“creating an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.”<sup>38</sup>

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<sup>35</sup> Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), July 7, 1999, U.N. Doc. S/1999/777 (1999), online: Sierra Leone Web, <<http://www.sierra-leone.org/lomeaccord.htm>> [Lomé Agreement]. Among the concessions gained by the RUF was a general amnesty for all crimes committed during the war by article IX, Lomé Agreement. At the last minute, the U.N. secretary-general's special representative at the talks added a hand-written qualification that the U.N. held the understanding that the amnesty and pardon provided for in Article IX did not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. It was this caveat that allowed for the establishment of The Special Court for Sierra Leone on 16 January 2002 through an agreement between the United Nations and the Government of Sierra Leone pursuant to UNSC, Resolution 1315, S/RES/1315 (14 August 2000), online: The Special Court for Sierra Leone <http://www.sc-sl.org/>. The SCSL was not part of the Lomé Agreement of 1999. The SCSL's establishment stripped the amnesty provision of its legal effect, reasoning the amnesty was impermissible under customary international law (See: Jennifer Poole, “Post-Conflict Justice in Sierra Leone” in M. Cherif Bassiouni ed., *Post Conflict Justice* (Ardsey: Transnational Publishers, Inc., 2002) 563 at 581). The SCSL is a hybrid court, having the power to “prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law.” (Statute of the Special Court for Sierra Leone, *supra* note 11, Article 1(1)). The SCSL continues to operate and has issued over a dozen indictments against junta leaders and members of rebel forces. The simultaneous operation of the TRC and the SCSL is a unique situation in transitional justice terms. Much has been written about the interrelationship between the two institutions, but an exploration of this is beyond the scope of this paper. See generally: Human Rights Watch, “Policy Paper On The Interrelationship Between The Sierra Leone Special Court And Truth And Reconciliation Commission,” (2002) online: Human Rights Watch <http://www.hrw.org/press/2002/04/sierraleoneTRC0418.htm>; Poole, *supra* note 35 at 589-591; Elizabeth M. Evenson, “Truth and Justice in Sierra Leone: Coordination Between Commission and Court”, (2004) 104 *Columbia Law Review*, 730-767; Marieke Wierda, Priscilla Hayner and Paul van Zyl, “Exploring the Relationship Between the Special Court and the Truth and Reconciliation Commission of Sierra Leone” (New York: The International Center for Transitional Justice, 24 June 2002).

<sup>36</sup> Lomé Agreement, *supra* note 35, Article XXVI, provided general instructions on the establishment of a Truth and Reconciliation Commission. It was to “address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.” It was to be established within 90 days after the signing of the Lomé Agreement and submit its report to the Government not later than 12 months after the commencement of its work.

<sup>37</sup> *The Truth and Reconciliation Commission Act 2000*, February 20, 2000, online: Sierra Leone Web, < [www.sierra-leone.org/trcact2000.html](http://www.sierra-leone.org/trcact2000.html)> [TRC Act]

<sup>38</sup> TRC Act, *supra* note 37, Article 6(1),

The TRC was plagued with difficulties in its start-up phase but by December 2002 had deployed statement takers to begin collecting stories.<sup>39</sup> It also held public hearings in Sierra Leone's districts and thematic hearings on specific issues. The TRC's final report was released in October 2004.<sup>40</sup> The report was 1500 pages long and contained 3500 pages of transcripts of testimony, representing over 8000 statements.<sup>41</sup>

## **b. Provisions for Children**

The TRC had a substantial orientation towards the issues raised by children's participation in the conflict. The Lomé Agreement referred to the need to pay "particular attention" to the issue of child soldiers.<sup>42</sup> Its preamble noted

"[t]he children of Sierra Leone, especially those affected by armed conflict, in view of their vulnerability, are entitled to special care and the protection of their inherent right to life, survival and development, in accordance with the provisions of the International Convention on the Rights of the Child."

The TRC Act stated that in carrying out its mandate, the TRC must give attention to "the experiences of children within armed conflict."<sup>43</sup> Furthermore, the TRC had to implement special procedures for statement-giving and public hearings addressing child victims, those who suffered sexual abuses, and child perpetrators of abuses or violations.<sup>44</sup> In formulating these procedures, the TRC worked with UNICEF, United Nations Mission in Sierra Leone (UNAMSIL), children's groups and children's advocates. The procedures selected included: treating all children as witnesses, not separating them into victims or perpetrators; all participation was voluntary; children gave statements in child-friendly places, with regard given to safety and security; children's names, identities, and stories remained confidential with no information shared with the SCSL; children could choose to give their statements in the presence of a social worker and/or family member; girls were interviewed by female statement takers; counsellors were provided before, during and

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<sup>39</sup> International Crisis Group, "Sierra Leone's Truth and Reconciliation Commission: A Fresh Start?" (20 December 2002) online: International Crisis Group <<http://www.icg.org/home/index.cfm?id=1801&l=1>>

<sup>40</sup> See: "Final Report on ten-year Sierra Leone conflict published; seeks to set out historical record, offer guidance for future" Press Release, ECOSOC/6140, GA/10287, SC/8227, online: UN <<http://www.un.org/News/Press/docs/2004/ecosoc6140.doc.htm>>

<sup>41</sup> Over 13% of the statements were from perpetrators. See: Priscilla Hayner, "The Sierra Leone Truth and Reconciliation Commission: Reviewing the First Year", online: International Center for Transitional Justice, <[www.ictr.org](http://www.ictr.org)>

<sup>42</sup> Lomé Agreement, *supra* note 35 Article XXX.

<sup>43</sup> TRC Act, *supra* note 37 Article 6(2)(b).

<sup>44</sup> TRC Act, *supra* note 37 Article 7(4).

after statements or testimony were given; and children were involved in the drafting of the child-friendly version of the TRC report.<sup>45</sup>

The TRC collected over 300 statements from children in all districts in Sierra Leone. Some of the children who gave statements were invited to testify at the district hearings which occurred between April and August 2003. In addition to these hearings, there was a thematic hearing held on children in Freetown on 16 and 17 June 2003. There were eleven children-focused submissions from children's groups and advocates to the TRC. Lastly, a child-friendly version of the TRC report was produced through a joint effort of UNICEF, UNAMSIL, the Children's Forum Network and Voice of Children Radio.<sup>46</sup>

#### **IV. Assessing the TRC**

The paucity of data on the psychosocial impact of peace processes on children creates difficulties in assessing the TRC's approach to this group.<sup>47</sup> There is a further lack of data on the long-term effects of truth-seeking processes on societies and individuals in general.<sup>48</sup> One way to assess the TRC's success is to tease out the information that is known about children's experiences of armed conflict against the mandate and work of the TRC.<sup>49</sup>

***"... creating an impartial historical record of violations and abuses of human rights and international humanitarian law ..."***

The TRC, while criticized at the outset, ultimately conducted a tremendous amount of work in gathering statements and holding hearings that involved all segments of the country's population. The findings and recommendations in the TRC Report are extensive and highlight abuses of all parties to the conflict, lending legitimacy to the process and its product. The Child Friendly Report explains the concept and methodology of the TRC, details the experience of children in the conflict, outlines their status post-conflict, provides findings and recommendations, and concludes with a vision for the future and plan of action for implementing the TRC's

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<sup>45</sup> Child Friendly Report, *supra* note 1 at 11-13.

<sup>46</sup> See generally: Child Friendly Report, *supra* note 1.

<sup>47</sup> Cohn, *supra* note 11 at 134.

<sup>48</sup> Cohn, *supra* note 11 at 177.

<sup>49</sup> For convenience, the relevant portions of the TRC's mandate are reproduced here in discussing the relevant provisions made for children.

recommendations. One of the main problems with the production of written reports (both the TRC's Report and the Child Friendly Report) is that approximately two-thirds of Sierra Leone's population is illiterate.<sup>50</sup> There have been steps suggested to mitigate this problem, but further information on this is not yet available.<sup>51</sup>

**“... to address impunity, to respond to the needs of the victims, to promote healing and reconciliation ...”**

Armed conflict exerts a differential impact on children and adolescents mediated through age, physical nature, and developmental factors.<sup>52</sup> A child's moral intelligence will reflect his or her war-time suffering more than an adult's, the experiences having occurred early in the stages of his or her moral development.<sup>53</sup> Extreme and prolonged circumstances of conflict interfere with children's identity development.<sup>54</sup> Trauma<sup>55</sup> from children's exposure to armed conflict manifests in a variety of symptoms.<sup>56</sup> Children may cope either by confronting the events that caused the trauma or through avoidance or dissociation.<sup>57</sup> One of the striking features that emerges from the literature on the psychosocial impacts of armed conflict on children is the lack of differentiation between child perpetrators and victims. This may reflect one of two situations. First, the phenomenon of child perpetrators of atrocities is relatively new and/or understudied and thus the literature largely focuses on children as victims, even if not explicitly stated. On the other hand, it may reflect the notion that all children, regardless of whether they were perpetrators themselves or not, are victims of circumstances that allowed atrocities to be committed.

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<sup>50</sup> UNDP, *Human Development Indicators 2003 – Sierra Leone* online: UNDP, <[http://www.undp.org/hdr2003/indicator/cty\\_f\\_SLE.html](http://www.undp.org/hdr2003/indicator/cty_f_SLE.html)>

<sup>51</sup> The Child Friendly Report suggested the use of Voice of Children Radio, the production of dramas about the report and other forms of dissemination apart from the written report. See: Child Friendly Report, *supra* note 1 at 45-46.

<sup>52</sup> Cohn, *supra* note 11 at 134.

<sup>53</sup> Cohn, *supra* note 11 at 135.

<sup>54</sup> *Impact of Armed Conflict on Children, Report of the Expert of the Secretary-General, Ms. Graça Machel*, (1996) U.N. Doc. A/51/306, ¶ 170 [Machel Study].

<sup>55</sup> Trauma here is defined as an “event in which the physical and/or psychological integrity of a person or of their significant others is endangered or attacked”, from Gisela Perren-Klingler “Psychotrauma: A Change in Perspective. From Pathology to Coping, from Individual to Community, from Victim to Survivor” in Stifting für Kinder ed., *Children – War and Persecution. Proceedings of the Congress Hamburg Held September 26-29 1993*. (Osnabrück: secolo verlag, 1995), at 245.

<sup>56</sup> These include separation anxiety, developmental delays, sleep disturbances, nightmares, lack of appetite, withdrawn behaviour, lack of interest in play, learning difficulties, anxious or aggressive behaviour, and depression which may or may not lead to substance abuse. See: Machel Study, *supra* note 54 ¶ 168.

<sup>57</sup> Perrin-Klingler, *supra* note 55 at 246 (noting either or both of these coping strategies may be used depending on the individual child and their situation).

The TRC's decision to treat all children as witnesses reflects the latter situation. It acknowledges that the choices available to Sierra Leone's children in many instances were not "choices" so much as harsh realities. Those who were perpetrators tended to come from the most marginalized populations of a country that already ranks as one of the worst performers for human development.<sup>58</sup> The TRC found that children who were perpetrators were invariably acting under strictly enforced orders and were instructed that if they did not follow them, they would be killed.<sup>59</sup> Perpetrating violence became a primary means of survival.<sup>60</sup> The refusal to label children as perpetrators in the proceedings along with the provisions for confidentiality and anonymity holds the most potential for allowing for long-term reintegration of child perpetrators. Reintegration has been cited as a key to promoting the psychosocial well-being of children affected by conflict.<sup>61</sup>

The confidentiality and anonymity provisions also recognized the security needs of children, allowing for a safe environment to share their stories. While much has been made about the need for truth commissions to operate in a public manner, the confidentiality afforded to children in this process represents the weighing of gaining the truth while protecting the vulnerable. The demands for public platforms for victims to share their stories are especially salient where much of the abuses incurred have been through the use of covert state violence.<sup>62</sup> That was not the overarching character of Sierra Leone's conflict, which may alleviate some of the concern about confidentiality.

Any truth-seeking process is constantly striking a balance between society's needs and those of the individual at issue, and in recognizing this, it can be posited that the TRC in Sierra Leone struck the appropriate one, at least in respect to children. Children who gave statements and participated in hearings were still able to obtain official acknowledgement and their stories were used to construct part of the overall truth in the form of the TRC's report, both of which fulfill

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<sup>58</sup> UNDP, *Human Development Report 2004* online: UNDP <[http://hdr.undp.org/reports/global/2004/pdf/hdr04\\_HDI.pdf](http://hdr.undp.org/reports/global/2004/pdf/hdr04_HDI.pdf)>; Michael A. Corriero, "The Involvement and Protection of Children in Truth and Justice-Seeking Prosecutions: The Special Court for Sierra Leone" (2001-2002) N.Y.L. Sch. J. Hum. Rts. 337 at 340, notes that there was a disproportionately high number of displaced, young heads of households, and/or orphans represented in armed groups. They tended to be the poorest and least educated of Sierra Leone's children.

<sup>59</sup> TRC Report, Chapter 2, *supra* note 9, ¶ 151.

<sup>60</sup> TRC Report, Chapter 2, *supra* note 9, ¶ 169.

<sup>61</sup> Machel Study, *supra* note 54 ¶ 183(d).

<sup>62</sup> Crocker, *supra* note 25 at 102.

objectives of truth-seeking processes. After participating in hearings, many children expressed a sense of relief and pride in having been able to contribute to the process and in gaining the acknowledgment and respect of the adult commissioners.<sup>63</sup>

One of the implications of the confidential nature of children's participation is the denial of an opportunity for victims and perpetrators to meet. This speaks to the reconciliation aspect that is often held out as a fundamental purpose of a truth commission, albeit a contested one. In rejecting the use of prosecutions to deal with child perpetrators, fears of impunity for these individuals were raised. Even accepting, as most have, that perpetrators were very often victims first, it would be a mistake to presume that a "forgive and forget" approach is the most appropriate. Children's moral development, having been conditioned in conflict, would only be further hindered this. A more restorative paradigm of juvenile justice emphasizes the need for perpetrators to be accountable for harms caused and notes that until an offender becomes aware of the harm caused and the consequences of his or her behaviours, true rehabilitation will never occur.<sup>64</sup> To restore the morality, the "minimal decency" of a society, recognition of mutual victimization can validate both the victims' innocence while still condemning the behaviours that produced the abuse.<sup>65</sup> Child perpetrators have a dual engagement with harm as the harm done to others causes harm to themselves. The necessity for healing these wounds thus requires an acknowledgment of both of these harms and through the process of recognition there may in fact be the potential for reconciliation.<sup>66</sup>

A realistic perspective of TRC's approach acknowledges the hopelessness of achieving true reconciliation through this process for all the children affected by the conflict. The limitations of time and immensity of the effects of a decade-long war are simply not conducive to achieving this goal. If instead of holding the TRC up to the impossible task of *producing reconciliation* we modify our expectations for it to create *conditions for reconciliation*, we may be more satisfied. Additionally, the TRC worked closely with the civil society groups on community-based

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<sup>63</sup> *Adolescent Programming in Conflict and Post-Conflict Situations – Case Studies* (New York: UNICEF, 2003), at 59, online: UNICEF <[http://www.unicef.org/publications/index\\_pubs\\_ac.html](http://www.unicef.org/publications/index_pubs_ac.html)> [Adolescent Programming]

<sup>64</sup> Gordon Bazemore, "Three Paradigms for Juvenile Justice," in Burt Galaway and Joe Hudson eds., *Restorative Justice: International Perspectives* (New York: Criminal Justice Press, 1996), 37 at 48.

<sup>65</sup> Ervin Staub, *The Psychology of Good and Evil: Why Children, Adults and Groups Help and Harm Others* (Cambridge: Cambridge University Press, 2003) at 440.

<sup>66</sup> Staub, *supra* note 65 at 434.

reconciliation efforts. These efforts are likely the most appropriate ones to be used in achieving any form of reconciliation as they are best able to provide long-term stable and supportive environments necessary for recovery.<sup>67</sup>

One operational problem highlighted with the TRC's treatment of children was timing. The UN-managed Disarmament, Demobilization and Reintegration Programme (DDR) was nearly complete by the time the TRC began operation. There were provisions in the DDR for community reintegration and on the whole, Sierra Leoneans exhibited a forgiving attitude towards children.<sup>68</sup> The TRC's effect may have been greater in terms of unifying these strategies at a national level if it had been operating at the time of the DDR process. There may have been more statements and hearings from children had the DDR process not been largely complete.

A second and somewhat related problem is that of addressing girls affected by the conflict. Many of them were subject to the most brutal violations and abuses and in the TRC process expressed fear and an initial desire not to share their stories.<sup>69</sup> Additionally there were extensive problems with the under representation of girls in the DDR, meaning they may have missed out on the opportunities it afforded and also may have let fear keep them from participating in the TRC.<sup>70</sup> The TRC did incorporate a gender awareness component into its work and this is to be commended.

***"... to prevent a repetition of the violations and abuses suffered ..."***

The very fact that children, long excluded and marginalized in Sierra Leone,<sup>71</sup> were involved in the TRC early on, that their voices were heard, that their stories were written down,

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<sup>67</sup> See: Machel Study, *supra* note 54, ¶ 175. Examples of these programs include those from the Office of Transition Initiatives' Program in Sierra Leone [See those outlined in *Map of Programmes for Adolescent Participation During Conflict and Post-Conflict Situations* (New York: UNICEF, 2003), online: UNICEF, <[http://www.unicef.org/emerg/files/Map\\_of\\_Programmes.pdf](http://www.unicef.org/emerg/files/Map_of_Programmes.pdf)> Sierra Leone's programs are detailed at 82-101.

<sup>68</sup> Beth K. Dougherty, "Sierra Leone's Truth and Reconciliation Commission", (2004) 8(1) *African Studies Quarterly*, 39 at 50, noting an estimated 7000 child combatants had already gone through the DDR process.

<sup>69</sup> Adolescent Programming, *supra* note 63 at 57.

<sup>70</sup> Mazurana and McKay, *supra* note 7 at 98-105.

<sup>71</sup> See: Angela McIntyre and Thokozani Thusi, "Children and Youth in Sierra Leone's Peace-Building Process", (2003) 12(2) *African Security Review*, at 3. See also: Canadian Centre for Foreign Policy Development, *National Forum 2000 on Canada's International Relations for Youth on War-Affected Children Students' Commission* (December 2000), at 11.

bodes well for creating a foundation for moving forwards that is more inclusive and attentive to their needs and experiences. The true test of the country's ability to comprehensively respond to the needs of its children will lie in its implementation of the TRC's recommendations and the sustainable commitment to improving the lives of its most vulnerable population. The TRC's contribution to this process stems from its unique position to explore at a national level the conflict and its effects and to highlight the overarching patterns and needs that plague the country's children. Pumla Gobodo-Madikizela suggests the possibility of societal groups transcending violence is made more certain when "supported by an ethos of acknowledgement and accommodation and underpinned by the nationally constructed language, cues, and symbols of national reconciliation."<sup>72</sup>

The TRC has produced an extensive set of recommendations related to children covering a number of areas of national life.<sup>73</sup> The most crucial items needing to be addressed remain the education and social welfare of children. In fact, many of the children who gave statements and participated in the hearings requested health care, shelter and education.<sup>74</sup> If the government fails to act on these recommendations, the possibility exists that children remain open to exploitation and abuse if violence were to erupt again. Even without the eruption of violence, there has already been a sharp increase in sexual exploitation, trafficking in children and forced labour.<sup>75</sup>

## V. Conclusion

To answer Aukerman's "what is desirable?" we may say the ideal transitional justice approach should

"Focus on victims and try to restore their dignity; focus on truth and try to tell it whole. Redefine victims as the entire society, and redefine justice as accountability. Seek repair, not revenge; reconciliation, not recrimination. Honor and attend in public to the process of remembering."<sup>76</sup>

The transitional justice mechanism selected at a national level to incorporate and respond to children was the TRC. In rejecting the use of prosecutions to deal with children and embracing

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<sup>72</sup> Pumla Gobodo-Madikizela, *A Human Being Died That Night*, (NY: First Mariner Books, 2003), 133.

<sup>73</sup> See generally: TRC Report, Chapter 3, *supra* note 9, ¶¶377-410.

<sup>74</sup> Adolescent Programming, *supra* note 63 at 58.

<sup>75</sup> TRC Report, Chapter 2, *supra* note 9, ¶ 492-494.

<sup>76</sup> Minow, "The Hope for Healing", *supra* note 12 at 251.

instead the truth-seeking process, Sierra Leone attempted to balance the complex nature of “culpability, a community’s sense of justice and the “best interests of the child.””<sup>77</sup> The very involvement of children in a conflict highlights the desperation of a situation, commanding us to call into question notions of justice. The TRC was not a perfect process either in general nor in relation to children. However by addressing children throughout its operation and producing an extensive set of recommendations that may lay a foundation for their future, it has done what no other truth-seeking process has even attempted. Within a modified set of expectations and goals, mindful of “what is possible”, the TRC’s engagement with children affected by Sierra Leone’s conflict can be termed a success, while recognizing there are many lessons to be learned.

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<sup>77</sup> Machel Study, above note 54 ¶ 250.

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