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The Human Rights Approach to Peace in Sierra Leone: The Analysis of the Peace Process and Human Rights Enforcement in a Civil War Situation

Keywords

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THE HUMAN RIGHTS APPROACH TO PEACE IN SIERRA LEONE:

THE ANALYSIS OF THE PEACE PROCESS AND HUMAN RIGHTS ENFORCEMENT IN A CIVIL WAR SITUATION

LAURENCE JUMA*

INTRODUCTION

The idea that perpetrators of human rights abuses should be made accountable for their action has gained currency in international law and practice.¹ Nascent from the general principles of human rights protection and state obligation decreed by international instruments such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide,² the 1949 Geneva Conventions,³ and the International Covenant on Civil and Political Rights (ICCPR),⁴ the idea has crystallized into an expanded scheme of action that calls for the avoidance of blanket amnesties for past violations, imputation of individual criminal responsibility, and the exercise of extraterritorial jurisdiction to try and punish human rights violators.⁵ The argument that past violations may be excusable for reason of democratic consolidation, for societal healing or for merely bringing the belligerents to a negotiation table is becoming unpopular even within nations that have experienced

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1. See generally Juan E. Méndez, *National Reconciliation, Transnational Justice, and the International Criminal Court*, 15 ETHICS AND INT'L AFF., 25 (2001); see also Kristin Henrad, *The Viability of National Amnesties in View of the Increasing Recognition of Individual Criminal Responsibility at International Law*, 8 MSU-DCL J. INT'L L., 595 (1999).

2. The Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter the Genocide Convention]. (recognizing individual criminal responsibility for the crime of genocide). See also Payam Akhavan, *Enforcement of the Genocide Convention: A Challenge to Civilization*, 8 HARV. HUM. RTS. J. 229 (1995).

3. See generally Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1969 (primarily concerned with situations of armed conflict, it imports the notion of punishment for "grave breaches" of international humanitarian law).

4. International Covenant on Civil and Political Rights 21 G.A. Res. 2200, U.N. GAOR, Supp. No. 21 at 52 [hereinafter ICCPR (adopted 16 Dec. 1966, 999 U.N.T.S. 171, entered into force 23 Mar. 1976), U.N. Doc. A/6316 (1966) (requiring state parties "to ensure to all individuals" the enjoyment of all rights recognized by the covenant). See also Juan Méndez, *Accountability for Past Abuses*, 19 HUM. RTS. Q 255, 259 (1997) (interpreting the duty to "ensure" to mean the obligation to "take specific steps to redress the wrong committed by each violation of a right").

5. *Id.*

great political and social upheaval.⁶ However, the development of appropriate enforcement mechanisms that would be in tandem with the unrelenting mood of the international community against human rights violations has been very slow.⁷ The difficulty of marshalling the consensus necessary for treaty formation and the general political suspicion against the diminishing sovereignty privileges has impacted negatively on such an enterprise.⁸ The result has been a pathetic recourse to ad hoc measures meant to bridge the gap between the genuine concerns for the eradication of human rights abuses and the political desires to retain sovereignty and block interference with so called "internal affairs."⁹

One area in which such a policy has become evident is with the prosecution and punishment of war criminals through the ad hoc international war crimes tribunals.¹⁰ The tribunals are a compromise between two competing forces – a creature of convenience crafted to satisfy the overwhelming demand for response against massive violations of human rights, but with restricted temporal and substantive jurisdiction to match the cynicism of the western political influence.¹¹ As one scholar has observed:

The Yugoslav and Rwanda Tribunals were not established because of the United Nations, or the powerful states that control it. They were not established because of an intrinsic value on punishing war criminals or upholding the rule of law. Rather, the mobilization of shame by non-governmental organizations and especially the grisly pictures beamed to the world by the television camera created a public relations nightmare and made liars of the centers of Western civilization.¹²

Because of the restrictions placed on them by their constitutive statutes, lack of uniformity and the fact of their temporary presence, the tribunal's practical effect as a deterrent measure has been negligible - a fact conceded by even their most ardent of supporters.¹³ Despite this, the United Nations Security Council has persisted in this endeavor, making such tribunals the most preferred method of dealing with international crimes and human rights abuses.¹⁴ The Nuremberg and Tokyo tribunals have thus created an enduring framework for a watered down international response to gross violations of human rights.¹⁵ The Yugoslavia and Rwanda tribunals have followed in this tradition and the proposed Sierra Leone tribu-

6. See Juan Méndez, *Latin American Experience of Accountability*, in THE POLITICS OF MEMORY: TRUTH HEALING AND SOCIAL JUSTICE 127 (Ifi Amadiume & Abdullahi An-Na'im eds., 2000).

7. See *id.*

8. See *id.*

9. See *id.*

10. See *id.*

11. See *id.*

12. Makau Mutua, *Never Again: Questioning the Yugoslav and Rwanda Tribunals*, 11 TEMP. INT'L & COMP. L.J. 167, 168 (1997).

13. See MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS 50, (1998). See generally Michael P. Scharf, *The Politics of Establishing an International Criminal Court*, 6 DUKE J. COMP. & INT'L L. 167, 169 (1995).

14. See Genocide Convention, *supra* note 2, at 277.

15. See JOHN R. CARTWRIGHT, POLITICS OF SIERRA LEONE 1947-67 156 (1970).

nal/court may be no different.¹⁶

Whereas the institution of war crimes tribunals in relatively "peaceful" times has achieved some measure of "success," the viability of such schemes in the face of an ongoing civil war, as well as their perceived incompatibility with peace processes, reveals a consistent contradiction in the implementation of international human rights law.¹⁷ One reason could be the unpredictability of outcomes, given the inherent weaknesses in the normative structure of the current web of international human rights regimes.¹⁸ Obviously, these weaknesses are augmented by the incongruent policy objectives of the determinate authorities and by the exigencies of international politics.¹⁹ The other could be that the threat of punishment as an object of an international criminal process excites emotions and evokes fear amongst warring parties, thereby diminishing any chances of seeking a negotiated solution to a civil war.²⁰ But perhaps what is germane to this discourse is whether the propagation of these international schemes, especially those that investigate, prosecute, and punish individuals responsible for international crimes, is consistent with the overall objective of creating peace. While conceding that the punishment of human rights violations is essential to the promotion of international peace and security,²¹ designing an appropriate mechanism for its enforcement, especially in conditions of conflict, is a task that has received very scant normative attention. However, one fact remains undisputed: for societies in turmoil, the promotion of human rights as part and parcel of a holistic framework for peace, reconstruction, and overall societal development presents a better opportunity for its enforcement than the piecemeal approach favored by some powerful nations.

This article questions whether the establishment of a hybrid war crimes tribunal is an appropriate response to the current civil war in Sierra Leone. It analyzes the Sierra Leone problem in the context of its historical evolution and draws the conclusion that what is best for the country is an integrated program of action that will address the peremptory factors inhibiting the maturation of the peace process. Further, this article discounts the ad hoc interventionist programs propagated by the UN and its collaborators upon their obvious inability to bring the war to an end, bolster development of institutions of democracy, and eradicate violations of human rights abuses.²² The article examines the relationship that exists between the peace process and human rights so as to provide context to the discussion on the nature of the proposed 'special international criminal court' now in the process of being established in Sierra Leone.

16. See CARTWRIGHT, *supra* note 15, at 156..

17. See *id.*

18. See *id.*

19. See *id.*

20. See *id.*

21. See Preamble to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 754 U.N.T.S. 73, 74-75, adopted Nov., 26 1968, entered into force Nov., 11 1970, *reprinted in* 8 ILM 68 (1969).

22. See CARTWRIGHT, *supra* note 15, at 158.

I. BACKGROUND TO THE SIERRA LEONE CONFLICT

In 1961, Sierra Leone gained its independence from the British.²³ The dispensation of power was not immediately followed by elections, but rather adopted the political structure that had been in place since the 1957 election.²⁴ This created tension between the powerful Sierra Leone Peoples Party (SLPP) led by Sir Milton Magai, who, by virtue of being a majority leader in the colonial legislature, had assumed the post of prime minister, and the bulwark of opposition leaders.²⁵ This was indeed a false start in the long path towards democratic self-governance. The uneasiness generated by squabbling amongst political leaders and the fear that such morose political atmosphere may erode public confidence in the government, prompted Milton Magai to dissolve parliament on April 17, 1962 and to call for general elections on May 25 of the same year.²⁶ It was not surprising that the mainstream political parties were unable to secure majority votes.²⁷ In fact, the independent candidates secured 42.6 percent of the votes against the SLPP 34.7 percent, All Peoples Congress (APC) 17.2 percent, Sierra Leone Progressive Independence Movement (SLPIM) 5.2 percent and UPP 0.3 percent; SLPP was, however, allowed to form the government because it had the majority of seats amongst the organized political groups.²⁸

On taking leadership, the SLPP sought to consolidate its hold on power by intimidating and weakening opposition groups.²⁹ Rural chiefdoms were encouraged to harass and intimidate opposition politicians.³⁰ At the same time, the SLPP enticed leaders of opposition parties to abandon their parties and join its ranks.³¹ Though the long-term benefit of this strategy was doubtful, it succeeded in temporarily eliminating threats against its leadership.³² Magai pursued policies aimed at cutting the electoral base for the opposition parties, as well as debilitating their efforts to consolidate their internal structures.³³ By the time of his death on April 28, 1964, Magai had created a strong central government controlled by a small clique of wealthy African elites.³⁴ His management style had encouraged and indeed sanctioned the use of the state instrumentality to convert political power and posi-

23. See CARTWRIGHT, *supra* note 15, at 158.

24. See *id.*

25. See *id.*

26. See *id.*

27. See *id.*

28. See *id.*

29. See *id.*

30. See *id.* at 170. Janneh, an APC supporter, was jailed by the Native Court in Samu Chiefdom, Kambu district, for incitement and undermining the authority of the paramount chief. See CARTWRIGHT, *supra* note 15.

31. CARTWRIGHT, *supra* note 15, at 168. A prominent APC supporter, Samura Sesay, announced on October 20, 1962 that he was abandoning APC because it had "no substantial political ideology." See *id.*

32. See *id.*

33. See *id.* at 170. For example, an APC candidate was deported back to Liberia after winning council elections in Freetown on a very flimsy allegation of being a Liberian. See *id.*

34. See *id.* at 156.

tions into economic wealth for the privileged minority group.³⁵ To a large extent, this explains the decay of state economic power in the years that followed, despite the abundance of mineral and other natural resources within the territory of Sierra Leone.³⁶ It also explains why the endemic problems of corruption and other malfeasance became defining characteristics of successive regimes, let alone a justifying epithet for the military coups the country was to endure in the following decade.³⁷ In many ways, the stage had been set for Sierra Leone's descent into turmoil and political quagmire.³⁸

After Milton Magai's death, his brother, one Albert Magai, thence occupied the office of the Prime Minister.³⁹ His reign was characterized by high levels of corruption, mismanagement, and political highhandedness, an all too familiar pattern of postcolonial administration in most African countries.⁴⁰ Freedom of speech was nonexistent as the government cracked down hard on pro-opposition newspapers.⁴¹ Political rallies were strictly regulated by law:⁴² before any gathering could be allowed, the conveners were required to obtain licenses from regional government officials.⁴³ The judiciary was equally muzzled.⁴⁴ In 1965, the Chief Justice of Sierra Leone, Sir Samuel Bankole-Jones, was removed from office and appointed the President of the Court of Appeal.⁴⁵ His removal was attributed to his unwavering belief for the independence of the judiciary.⁴⁶ He refused to be compromised into being an SLPP stooge and often times acquitted persons who were perceived to be anti-government.⁴⁷ Albert Magai also sought to destroy opposition parties and impose a one-party state.⁴⁸ On March 30, 1965, he told APC members of parliament that "the tide was ebbing fast" and that it would soon be easy to eliminate them:

Now coming to the one party system in this country, if my interpretation is correct the question of one party is a reality within this house. . . In the past when we

35. CARTWRIGHT, *supra* note 15, at 156.

36. *See id.* at 170.

37. *See id.*

38. *See id.*

39. *See id.*

40. *See id.*

41. *See id.* at 201. In one such case, a local newspaper reported that the Prime Minister had condemned corruption in the Produce and Marketing Board. According to the paper, the managing director and other senior managers of the Board had used the Board's assets for their own development. When a private criminal prosecution was instituted, the Attorney General hurriedly entered a *nolle prosequi* on the grounds that the move had been accentuated by political reasons. The editor and the reporter who did the story were arraigned in court on charges of sedition. *See id.*

42. *See id.* at 242.

43. *See* CARTWRIGHT, *supra* note 15, at 243. The Public Order Act, its subsequent amendments in 1966, and especially Section 24, gave the chiefs absolute discretion to allow or forbid any meeting of twelve or more persons within their area of jurisdiction. *See id.*

44. *See id.*

45. *See id.*

46. *See id.*

47. *See id.*

48. *See id.* at 242.

speak of a two party system we had a government and a recognized opposition. . . I am sure that the word "recognized" would not apply to you for long.⁴⁹

The government and other SLPP operatives justified the one party system on several grounds.⁵⁰ First, it was argued that it was in the national interest to have a one-party state because multi-partyism encouraged tribal polarization that in turn affected negatively foreign investments.⁵¹ Second, the constant criticism of the government by the opposition denigrated government image.⁵² Third, a one-party state would eliminate an organized nucleus around which the Prime Minister's personal opponents would rally.⁵³ Though the idea of a one-party state was later dropped, the government's performance never improved and the relentless criticism and attack by the opposition leaders further diminished its support amongst the citizens.⁵⁴ It is against this backdrop that the general election of 1967 was called.⁵⁵

More than anything else, the outcome of this election revealed sharp political divisions based on tribal or ethnic allegiances.⁵⁶ The APC, which won the majority of votes, secured all seats in the Northern and western provinces mainly inhabited by the *Temne*.⁵⁷ The SLPP, the ruling party, won seats in *Mende* country.⁵⁸ In all, the APC secured 286,585 (44.3 percent) votes against 231,567 (35 percent) of the SLPP.⁵⁹ The Governor-General proposed that the two parties form a coalition government.⁶⁰ The APC leader Siaka Stevens rejected this proposal outright.⁶¹ A day later, the Governor-General summoned him to state house and swore him in as Prime Minister.⁶² The events that followed were very dramatic. On the same day, military commander Brigadier David Lansana, on instigation by the besieged leader of the SLPP, Albert Magai, proclaimed martial law.⁶³ On March 23, a group of army officers led by Major Charles Blake arrested Lansana, suspended all

49. CARTWRIGHT, *supra* note 15, at 210.

50. *See id.*

51. *See id.*

52. *See id.*

53. *See id.*

54. *See id.*

55. *See id.*

56. *See id.*

57. *See id.* at 210.

58. *See id.*

59. *See id.* at 249-50.

60. *See id.* The Governor-General could exercise considerable discretion under the Constitution. For example, Section 58(6)(a) provided that the office of Prime Minister become vacant when "after any dissolution. . . the person holding that office is informed by the governor-general that the governor general is about to re-appoint him as Prime Minister or to appoint someone else as Prime Minister". However, he can only do so if "it appears to him that the Prime Minister no longer commands the support of the majority". Whether or not this proviso limits the discretion of the Governor-General or widens it, is really a matter of interpretation. *See* CARTWRIGHT, *supra* note 15, 156.

61. *See id.*

62. *See id.*

63. *See id.* at 252.

political activities,⁶⁴ and announced the formation of the "National Advisory Council" to take charge of the country.⁶⁵ A year later another military coup took place and the military junta comprised of non-commissioned officers invited Siaka Stevens, a civilian leader, to become President.⁶⁶ Siaka Stevens retired in 1985 to give way to Joseph Momoh, whose first test of leadership came with the violent labor and student unrest.⁶⁷

It was during the Momoh regime that the current civil war started.⁶⁸ The history of Sierra Leone before this period testifies to the fact that the signs of dissatisfaction amongst the populace and inherent spite for government had emerged early enough to allow for action, both from the government of Sierra Leone and the international polities.⁶⁹ Early warning signs included "the abysmal performance of the economy, the emergence of a disaffected intelligentsia, the gulf between senior and junior military officers, and the prospect that the Liberian civil war might spillover into Sierra Leone."⁷⁰ Ethnic hatred, accentuated by economic and social differentiation and fanned by political competition within the dysfunctional state, catalyzed the insurgency.⁷¹ But, as in other African states, the incumbency took advantage of the uncertain political atmosphere to line its pockets with the country's wealth, completely oblivious to the plight of the masses.⁷²

Thus, when the Revolutionary United Front (RUF) invaded the country in 1991, most Sierra Leonians welcomed the effort to rid the country of corrupt and ineffective leadership.⁷³ The civil war in Sierra Leone rages even today.⁷⁴ Many efforts to resolve it have failed because of the international community's unwillingness to come to terms with the deeply engrained social differentiation that the leadership in Sierra Leone has imprinted over the four decades since the country's independence.⁷⁵ The lack of political will, coupled with incongruent policy formulations, has resulted in inept interventionist programs aimed at fulfilling short-term goals.⁷⁶ This article suggests that such programs have had the effect of prolonging the war and maintaining a weak and ineffective state structure, which at best serves the interests of smugglers and international business concerns which benefit from contraband goods.

64. See CARTWRIGHT, *supra* note 15, at 252.

65. See *id.* at 254.

66. See *id.*

67. See *id.*

68. See *id.*

69. See *id.*

70. Alfred B. Zack-Williams, *Sierra Leone: The Political Economy of Civil War, 1991-98*, 20 THIRD WORLD Q. 143, 159 (1999).

71. See *id.*

72. See Zack-Williams, *supra* note 70, at 159.

73. See *id.*

74. See CARTWRIGHT, *supra* note 15, at 255.

75. See *id.*

76. See *id.*

II. THE REALITY OF THE SIERRA LEONE CIVIL WAR

As witnessed from most writings on the subject of peace and conflict, the reality of a conflict is often overshadowed by the subaltern concern for its consequences.⁷⁷ The latter presents to academia, mainstream media, and political organizations an amiable platform from which to configure their response.⁷⁸ Concern for refugees, incarceration of war criminals, provision of humanitarian aid, and rehabilitation of child soldiers and many other reactive programs of this type have assumed prominence at the expense of integrated and pragmatic approaches capable of not only satisfying the exigencies of the moment, but creating an enduring framework for societal reconstruction, support, and accommodation.⁷⁹ The reason is understandable. Most politically motivated responses define their constituency in terms of what is achievable in the short term. The UN Security Council for example, will pass resolutions that mandate action within a specific period.⁸⁰ After expiry of that period, concerned parties must seek a fresh mandate.⁸¹ It is ironic that while politicians are quick to proclaim success measured in terms of the short term strategies, they are nevertheless slow to commit to a long-term program of sustaining the fruits of that success, if any.⁸²

The above notwithstanding, addressing the consequences of a conflict could provide a window through which the underlying forces responsible for its eruption could be discerned and ultimately remedied. Interventionist programs in conflict situations must thus incorporate and indeed define their constituency in a more elaborate, flexible, and inclusive fashion so as to be able to evolve pragmatic responses. Obviously, the overall objective must be right and the political climate favorable. The absence of such expansive programs has in many ways undermined the ability of the UN and indeed other regional and sub-regional organizations to resolve African conflicts.⁸³ Interventionist programs heralded by international legal institutions find themselves in a rather awkward position in this regard. Their preoccupation with punishment or retribution based on the sacrosanctity of extant norms is questioned by the prevalence of violations of human rights and other internationally recognized principles all over the globe.⁸⁴ Further, in conflict situations, both sides violate one norm or the other. After all, war is all about gains. The war crimes tribunals, whenever they are established, end up punishing the losers even if the victors were just as guilty.⁸⁵

77. See CARTWRIGHT, *supra* note 15, at 255.

78. See *id.*

79. See *id.*

80. See *e.g.*, U.N. SCOR, 98th Sess., Doc. 1156/98, 1162/98, 1171/98, and 1181/98. The UN Security Council has passed more than six resolutions extending the mandate for UN keeping forces in Sierra Leone. In 1998 alone, there were four extensions. See U.N. SCOR, 98th Sess., Doc. 1171/98.

81. See *id.*

82. See Laurence Juma, *Regional Initiatives for Peace: Lessons from IGAD and ECOWAS/ECOMOG*, 40 AFR. Q. 85, 87 (2000).

83. See *id.*

84. *Id.*

85. See generally Zack-Williams, *supra* note 70, at 159.

In the case of Sierra Leone, the difficulty of pursuing such an objective may be compounded by the fact of a continuing civil war. Moreover, the catalogue of causality factors exemplified through the consequences of the war attests to the fact that an appropriate approach far more than the envisaged war crimes tribunal may be required.⁸⁶ Improper governance structure, ethnicity, abuse of human rights, economic mismanagement, and the evolution of a lumpen proletariat - all these factors combined to constitute a substantial base for the eruption of violence and conflict in Sierra Leone.⁸⁷ Interventionist programs that fail to address these factors will no doubt fail to make a positive impact towards the resolution of the conflict. The lop-sided approach actuated by ad hoc programs may in fact prolong the war. In the following section, I attempt a discussion of the most salient of these factors with the view of showing that the envisaged war crimes tribunal may indeed be a far cry from an integrated international response that may foster the resolution of the ongoing civil war and restore peace in Sierra Leone.

Improper Governance Structures:

Sierra Leone's descent into war was a result of the progressive weakening of the state structure due to inept leadership.⁸⁸ Throughout its history, Sierra Leone never constructed legitimate political institutions capable of generating legitimate political leadership.⁸⁹ Instead, its leadership evolved a predatory functionality, redirecting the use of political power towards pillage, massification of society, and the acquisition of wealth by the ruling elite.⁹⁰ A dysfunctional state, incapable of exercising political power towards maintaining national cohesion, proved helpless in the face of a deadly struggle for access to the country's mineral resources.⁹¹ Because the state's autonomy was completely eroded and legitimate political order lacking, infiltration into the government by corrupt and incompetent personalities became a matter of political expediency.⁹² During his reign, Siaka Stevens turned over the entire diamond and fishing industry to his friend and business associate, an Afro-Lebanese named Jamil Said Mohammed,⁹³ who became so powerful that he "attended cabinet meetings though he was not a minister, on occasion vetoed ministerial appointments, reversed ministerial decisions and routinely violated government foreign exchange regulations."⁹⁴

The country's leadership was controlled by elites who were not only steeped in massive corruption, but also used their wealth to propagate terror.⁹⁵ President

86. See Zack-Williams, *supra* note 70, at 159

87. See *id.*

88. See *id.*

89. See *id.*

90. See *id.*

91. See *id.*

92. See *id.*

93. See *id.*

94. Jimmy D. Kandeh, *Ransoming the State: Elite Origins of Subaltern Terror in Sierra Leone*, 81 REV. AFR. POL. ECON. 349, 351 (1999).

95. See *id.*

Ahmed Tejan Kabba, on being reinstated to power on March 10, 1998, lamented at the collaboration of prominent leaders with rebels:

[T]he people we forgave and those whose misdeeds we overlooked were the key collaborators with those who raped our women and children, killed unarmed men and women and almost destroyed our country. . . While we unreservedly condemn the junta and its RUF allies, we must not forget to ask ourselves why it happened. Where did we go wrong as a nation? . . . [G]reed and treachery. . . were the underlying causes of this tragedy. . . Some of the collaborators were the very people who presided over this system of corruption and incompetence.⁹⁶

Despite the rhetoric, Kabba's government has failed to rid itself of the so-called "corrupt and incompetent politicians."⁹⁷ The inclusion of former war criminals into the cabinet⁹⁸ and the invitation of two Lebanese businessmen, Musa K. Suma and Jamil Said Mohammed, back into the country, have irked many Sierra Leonians.⁹⁹ Kabba has also been criticized for overlooking corruption in the government.¹⁰⁰ A crisis of leadership exists in Sierra Leone. The crisis, reminiscent of the systematic destruction of legitimate political institutions capable of generating democratic leadership structures, needs to be remedied by the establishment of democratic institutions based on civil authority.¹⁰¹

Ethnicity

The civil war in Sierra Leone has not been categorized as an "ethnic conflict" because it manifests no ethnic, religious, or communal challenge to the government.¹⁰² Kaufman observes that ethnic groups in conflict "hold irreconcilable visions of identity, borders and citizenship of the state."¹⁰³ Because the RUF and other rebel organizations in Sierra Leone are neither homogeneous in terms of their ethnic composition nor do they propagate ethnic claims to territory or power, the ethnic question, though potent, has been largely ignored.¹⁰⁴ The civil war in Sierra Leone may not be an ethnic conflict in the popular conception of the term, but the factors responsible for its eruption have ethnic bearing.¹⁰⁵ Further, the resolution of the ongoing civil war may ultimately depend on how the Sierra Leone society will be able to deal with ethnic cleavages that have become so manifest during the

96. Kandeh, *supra* note 94, at 349.

97. *Id.* at 349

98. *See id.*

99. *See Kabbah's Comeback*, AFR. CONFIDENTIAL, Feb. 10, 1998, at 7.

100. *See id.*

101. *See id.*

102. *See* JOHN DARBY, SCORPIONS IN A BOTTLE: CONFLICTING CULTURES IN NORTHERN IRELAND 111 (1997) (noting that the term "ethnic conflicts" now describes a specific area of study that has acquired its own academic space).

103. Chaim Kaufman, *Possible and Impossible Solutions to Ethnic Conflict*, 20 INT'L SECURITY 136, 174 (1996).

104. *See id.*

105. *See id.* at 175.

war.¹⁰⁶ By examining the evolution of the problems of ethnic diversity in Sierra Leone, a little light may be shed on how international responses to the civil war situation could take cognizance of ethnic polarities and hopefully convert such tensions into useful synergies for societal transformation and development.

Ethnicity is a term that has often been associated with conflict and intrastate violence.¹⁰⁷ The genocide in Rwanda, the civil wars in Congo and Somali, and the problems in the Balkans have all been attributed to ethnic differences.¹⁰⁸ Ethnicity has become a term of art used to describe cultural identities of groups in conflict.¹⁰⁹ The term derives meaning from a somewhat misleading precept that ethnic identities are primordial and that such identity difference motivates people into war.¹¹⁰ Scholars who support this view argue that human persons have a primordial need for group affiliations that can only be satisfied by the maintenance of identity.¹¹¹ In their view, ethnic contests are inherent to human nature and cannot be explained merely in terms of political competition in a modern society.¹¹² For example, Shills argues that the group concern based on primordial attachments is "unresponsive to the symbols of a larger society."¹¹³ According to him, "the ethos and tone necessary for the maintenance of civil society is seen to be inimical to the fervour and passion of the primary group."¹¹⁴ This assertion has been discredited on many counts.¹¹⁵ Van Den Berghe summarizes the tenuity of this position as follows:

Primordial position on ethnicity is vulnerable on two scores. 1. It generally stopped at asserting that fundamental nature of ethnic sentiments without suggesting any explanations of why that should be the case. . . What kind of mysterious and suspicious force was this "voice of blood" that moved people to tribalism, racism, and ethnic intolerance? 2. If ethnicity was primordial, then was it not so ineluctable and immutable? Yet, patently, ethnic sentiments waxed and waned according to circumstances. . . How are all these circumstantial fluidity reconcilable with primordialist position?¹¹⁶

Ethnicity refers to the entire cultural attributes of a person or group of persons.¹¹⁷ An ethnic group shares a language, tradition, and customs unique from

106. See Kaufman, *supra* note 103, at 175.

107. See *id.*

108. See John Mueller, *The Banality of Ethnic War*, 25 INT'L SECURITY 42, 62 (2000) (arguing that even in the cases of Yugoslavia and Rwanda ethnicity was not the cause of the conflict but a mere "ordering device or principal."). In his view, ethnicity in these cases "proved essentially to be simply the characteristic around which the perpetrators and politicians who recruited and encouraged them happened to array themselves." See *id.*

109. See *id.*

110. See John Bowen, *Ethnic Relations: Ethnicity: Pluralism*, CURRENT, January 1997, at 16.

111. See generally Edward Shills, *Primordial, Personal, Sacred and Civil Ties*, 8 BRIT. J. SOC. 130 (1957).

112. See *id.*

113. *Id.* at 143.

114. *Id.* at 144.

115. See PIERE VAN DEN BERGHE, *ETHNIC PHENOMENON* 16 (1981).

116. See *id.*

117. See *id.*

other groups.¹¹⁸ It is thus a segment of a larger society whose members are perceived, by themselves or others, as having "a common origin and . . . shar[ing] important segments of a common culture" and also "participat[ing] in shared activities in which the common origin and culture are significant ingredients."¹¹⁹ Ethnicity is not necessarily negative. In all societies, aspects of ethnic culture, tradition, dressing, and food are a source of great pride.¹²⁰ One scholar has observed:

Attitudes towards ethnicity have changed dramatically over the years to the point when to be lacking in an ethnic background is to be perceived as culturally disadvantaged. . . Today ethnic identity is not a shameful thing: In fact its absence is. Ethnic pride is not limited to the group itself: It is the heritage of each and every member. It is the savor and remembrance of the past. More important, it's the promise of the future.¹²¹

Moreover, recent studies have shown that liberalization and democratization can both take place in situations of great ethnic diversity.¹²² Advancing this *instrumentalist* notion of ethnicity, Glickman has written:

[D]espite the persistence of ethnic conflict in the politics of all African states, significant liberalization and democratization are possible. . . [C]ertain constitutional and democratic practices permit the expression and demonstration of ethnic differences in relatively constructive ways. Ethnic conflict is not incompatible with institutions of democratic government if it finds expression as a group interest among other interests, and if the means of expression provide openings for rewards and not merely sure defeats.¹²³

This is a radical departure from the hitherto common understanding that democracy was impossible to nurture in multiethnic conditions.¹²⁴ John Stuart Mills thought that democracy could not exist in such societies because "free institutions are next to impossible in a country made up of different nationalities."¹²⁵ Bingham Powell believes that government instability correlates with ethnic fractionalization.¹²⁶ In his work, *Contemporary Democracies*, he argues that there is indeed a positive relationship between increasing fractionalization and high rates of death by violence.¹²⁷ In a more recent discourse, Arend Lijphart has written that the optimal number of groups for peaceful ethnic conflict management is three to four with the conditions becoming less favorable as the numbers increase.¹²⁸

118. PIERE VAN DEN BERGHE, *ETHNIC PHENOMENON* 16 (1981).

119. YINGER J. MILTON, *ETHNICITY, SOURCE OF STRENGTH? SOURCE OF CONFLICT?* 3 (1994).

120. *See id.*

121. A.P. ROYCE, *ETHNIC IDENTITY: STRATEGY OF DIVERSITY* 231-32 (1982).

122. *See* *ETHNIC CONFLICT AND DEMOCRATIZATION IN AFRICA* 2 (Harvey Glickman ed., 1995).

123. *Id.* at 3.

124. *See id.* at 4.

125. JOHN S. MILLS, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 230 (1958).

126. G. BINGHAM POWELL JR., *CONTEMPORARY DEMOCRACIES: PARTICIPATION, STABILITY AND VIOLENCE* 44-46 (1982).

127. *See id.*

128. *See* AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* 56

Generally speaking, the peoples of Africa are divided into "tribes,"¹²⁹ a term coined by early European ethnographers in an attempt to show that the members of the primitive society had unique ethnic identities.¹³⁰ During the "scramble for Africa," European powers carved out spheres of influences in the African continent declaring them colonies and protectorates.¹³¹ In the process, Africa was partitioned into over fifty separate territories.¹³² Administrative regions set up by the colonizers did not necessarily respect the ethnic boundaries of the African people. In many cases, groups found themselves living on either side of the administrative boundary.¹³³ The African peoples stiffly resisted the imposition of colonial rule.¹³⁴ The resistance was a crucial factor in the evolution of colonial administrative policies.¹³⁵ The policy of indirect rule, for example, emerged out of the need to minimize African opposition to colonial administration at the local level.¹³⁶ The policy, considered to have been largely responsible for the pacification of the Africans and the sustenance of the colonial hegemony, owed its success to the "tribalization" of the Africans.¹³⁷ In essence, the policy of indirect rule relied on the succinct recognition of the difference between the British and their colonial subjects as well as that between the various African groups.¹³⁸ Thus, it advocated for the use of African institutions to govern the Africans as progress was made to civilize and transform African cultures to modernity.¹³⁹ Through this process, tribes were made or unmade depending on the administrative convenience of the colonizers.¹⁴⁰ Manning observes that:

[E]thnicity was sometimes simply a matter of administrative convenience; the government labelled a group or combined several groups to fit its convenience,

(1977).

129. LEWIS H. MORGAN, *ANCIENT SOCIETY* 40 (1964). In this paper, "tribe" is used interchangeably with "ethnic group." "Tribe" is given a wider meaning than the original reference to a division of the Roman people. In some discourses "tribe" has been used to make reference to a small, preliterate and pre-industrial, relatively isolated, endogamous (with exogamous sub-tribal divisions), united mainly by kinship and culture and strongly ethnocentric. *See id.* at 42. "Tribe" has also been defined as a group with "a common territory, a tradition of common descent, common language, common culture, a common name." CAROLE E. DUPRÉ, *THE LUO OF KENYA: AN ANNOTATED BIBLIOGRAPHY* 2 (1968). From "tribe" comes the word "tribalism," a pejorative inscription of the differences amongst African peoples based on culture, language, social structure and political organization. *See id.*

130. *See* PATRICK MANNING, *FRANCOPHONE SUB-SAHARAN AFRICA 1880-1995* 41 (1998).

131. *See id.*

132. *See id.*

133. *See id.* For example, the Ewe were divided between Gold Coast and Togo, Ibo between Nigeria and Cameroon and the Somali between Ethiopia, Kenya, and Somali. *See* THE FUTURE OF THE CENTRALIZED STATE: INSTITUTION AND SELF-GOVERNANCE IN AFRICA 35 (Dele Oluwu & James S. Wunsch, eds., 1990).

134. *See generally* WEST AFRICAN RESISTANCE: THE MILITARY RESPONSE TO COLONIAL OCCUPATION (Michael Crowder ed., 1971).

135. MANNING, *supra* note 130, at 41.

136. *See id.*

137. *See id.*

138. *See id.*

139. *See id.*

140. *See id.*

and the label stuck. Many of the labels by which African ethnic groups are known today were given to them in the beginning of this century by the colonial officials who wrote studies of these groups in hopes of learning how better to rule them.¹⁴¹

Like many social processes, ethnic relations have always been influenced by historical factors.¹⁴² The transition to modern statehood and the onset of colonial hegemony was initially characterized by the discrimination of subordinate groups.¹⁴³ This subordination was facilitated by the stigmatization of the said groups, whose ethnic tendencies and way of life were considered sub-human.¹⁴⁴ The identities often ascribed to the subordinate groups were artificial and not primordial.¹⁴⁵ The impact of colonialism in the ethnic relations in many African countries can be summarized as follows. First, the boundaries created by colonial administrations defied the primordial geographical structure of the African communities.¹⁴⁶ Technically, the ethnic groups were unified (in a very informal sense) in the state system.¹⁴⁷ Second, the colonial policy incorporated ethnic flavor in its administrative system.¹⁴⁸ Third, it created a system of uneven development, thus magnifying ethnic cleavages.¹⁴⁹ Finally, it encapsulated Christian religious tendencies by allowing missionary activity to "pacify" the ethnic groups so as to ease political domination.¹⁵⁰ The interplay of these factors raised ethnic consciousness to be part and parcel of the African political life.¹⁵¹ In the post-colonial era, ethnicity is perceived as the opposite of a national culture, and thus inimical to the propagation of civic unity.¹⁵² The trend in Africa has been to downplay the importance of ethnicity and to devise institutions that would minimize its impact.¹⁵³ "Tribalism," or allegiance to ethnic grouping, is discouraged in public and yet privately manipulated for political mileage.¹⁵⁴ Political manipulation of ethnic differ-

141. MANNING, *supra* note 130, at 42-43.

142. *See id.* at 43.

143. *See id.*

144. *See id.*

145. *See id.* at 41.

146. *See id.*

147. *See id.*

148. *See id.*

149. *See id.* For example, in Rwanda the colonial rule helped shape the state building processes that propagated the "corporate vision of the ethnic groups." Catherine Newbury, *Ethnicity and Politics of History in Rwanda*, 45 AFRICA TODAY 7, 11 (1998).

150. *See* MANNING, *supra* note 130, at 94. Archbishop Desmond Tutu in his acceptance speech of the Nobel Peace Prize in 1984 said, "when the missionaries came, they had the bible and we had the land. They said, 'Let us pray.' They taught us to close our eyes to pray and when we opened them again, we had the bible and they had the land." BILL RAU, FROM FEAST TO FAMINE: OFFICIAL CURES AND GRASS ROOTS REMEDIES TO AFRICA'S FOOD CRISIS 31 (1991).

151. *See* MANNING, *supra* note 130, at 41.

152. *See id.*

153. *See id.* For example, the African Charter on Human and Peoples Rights, OAU Doc. CAB/LEG/67/3/Rev. 5(1981) reprinted in 21 ILM 59 (1982), also known as the 'Banjul Charter,' avoided the mention of ethnic groups and instead used "peoples" as constituent members of society. *See* Richard Kiwanuka, *The Meaning of People in the African Charter on Human and Peoples Rights*, 82 AM. J. INT'L L. 80 (1988).

154. *See* MANNING, *supra* note 130, at 35.

ences may well be the major cause of African intrastate conflicts.¹⁵⁵

According to a 1995 study, ethnic divergences will become disruptive if several risk factors exist.¹⁵⁶ These include a history of lost political autonomy, active economic and political discrimination against groups, and a history of state repression.¹⁵⁷ The risk posed by these factors is compounded by a group's capacity to sustain collective action and the availability of opportunity for such action.¹⁵⁸ Recent discourse suggests that ethnic conflicts are a creature of the post cold war era.¹⁵⁹ This may not be entirely true; ethnic contests and skirmishes have been with us all along.¹⁶⁰ In Africa, tribal wars predate the arrival of the European colonizers.¹⁶¹ Yet in all these cases, the wars were not as disruptive as the civil wars experienced today.¹⁶² Sources of conflict were clearly delineated and, once resolved, the ethnic groups lived together in peace.¹⁶³ Whatever differences existed between the various ethnic groups were submerged during the independence struggles, but only resurfaced after independence.¹⁶⁴ This indicates that ethnicity can be responsive to civic nationalism and hence foster peace. In the words of Bowen, "states do make choices, particularly about political processes, that ease or exacerbate inter-group tensions. . . What the myth of ethnic conflict would say are ever-present tensions, are in fact the product of political choices."¹⁶⁵

When Sierra Leone was declared a British protectorate in 1896, the country was inhabited by the *Temne*, *Mende*, the *Limba*, *Kono*, and about 12 other indigenous African tribes.¹⁶⁶ Significant populations of the "Creole" were also in occupation.¹⁶⁷ Comprised of Africans liberated from slaving ships, those coming from England, refugees fleeing the American Revolution, and the Maroon from Jamaica and Nova Scotia,¹⁶⁸ the Creole were by far the most politically articulate segment of the African community.¹⁶⁹ They were also the most educated and economically

155. See MANNING, *supra* note 130, at 35.

156. See Ted Robert Gurr & Monty G. Marshall, *Assessing Risks of Future Ethnic Wars*, in PEOPLES VERSUS STATES: MINORITIES AT RISK IN THE NEW CENTURY 1, 7 (Gurr eds., 1998).

157. *See id.*

158. *See id.*

159. *See id.* at 9.

160. See MANNING, *supra* note 130, at 35.

161. *See id.* These wars were predicated upon the need to secure grazing lands or merely retrieve stolen cattle. The rules of war were definite and everybody involved knew of the methods of bringing it to an end. *See id.*

162. *See id.*

163. *See id.*

164. *See id.*

165. John R. Bowen, *The Myth of Global Ethnic Conflict*, 7 J. DEMOCRACY 4, 12-13 (1996).

166. See generally CHRISTOPHER FYFE, *A HISTORY OF SIERRA LEONE* (1962).

167. See ARTHUR T. PORTER, *CREOLEDOM: A STUDY OF THE DEVELOPMENT OF FREETOWN SOCIETY* 3-16 (1963). "Creole" is a collective name given to former African slaves who were resettled along the Sierra Leone coast. *See id.*; see also ALEXANDER PETER KUPP, *SIERRA LEONE: A CONCISE HISTORY* 114 (1975).

168. See generally MAVIS C. CAMPBELL, *BACK TO AFRICA: GEORGE ROSS AND THE MAROONS: FROM NOVA SCOTIA TO SIERRA LEONE* (1993).

169. See PORTER, *supra* note 167, at 12.

active.¹⁷⁰ The British colonial administration used them as a medium through which policies could be propagated amongst the indigenous communities.¹⁷¹ They were "sufficiently westernized" as compared to the people of the interior and could, therefore, "act as spearheads of the western cultural advance."¹⁷² The African suspicion of the Creole was widespread and within two years of the declaration of the protectorate, it erupted in the Hut Tax War of 1898.¹⁷³ During the independence movements, the involvement of the Creole was highly detested.¹⁷⁴ Dr. Magai, while in parliament in 1947, lamented thus:

Sierra Leone, which has been the foremost of all west African colonies, is still saddled with archaic constitution with official majority. The reason for this backwardness is evidently due to the fact that that our forefathers, I regret very much to say, had given shelter to a handful of foreigners [i.e., Creoles] who have no will to cooperate with us and imagine themselves to be our superiors because they are aping the western mode of living, and have never breathed the true spirit of independence. . . We are very much unfortunate to have with us in this country a handful of foreigners whose leaders, whatever one may do, can never bring themselves to wipe off the superiority complex, and they imagine themselves more like Europeans than Africans, which is indeed a very sad state of affairs; moreover they have never impressed us as being sincere in their actions towards us.¹⁷⁵

The ascendancy of indigenous Africans to leadership after the declaration of independence in 1961 accentuated bitter political rivalry amongst them.¹⁷⁶ Political party competition, coupled with corruption and inept leadership, magnified the claims to power based on ethnic allegiance.¹⁷⁷ The SLPP, mainly a *Mende* outfit, formed government amidst great mistrust by other parties.¹⁷⁸ The UPC, a rival party having support amongst the northerners - mainly the *Limba* and *Temne* -¹⁷⁹ succeeded in dislodging the SLPP from power after the 1967 elections.¹⁸⁰ At the beginning of the UPC reign, tribal rioting between the *Mende* and *Temne* occurred in many parts of the country.¹⁸¹ Though these riots were eventually suppressed by

170. See PORTER, *supra* note 167, at 12.

171. See *id.*

172. *Id.*

173. See *id.* About 1,000 Creoles were slaughtered by the Mende in this war. See CARTWRIGHT, *supra* note 15, at 16. See also FYFE, *supra* note 166, at 558-559.

174. See PORTER, *supra* note 167, at 13.

175. MARTIN KILSON, *POLITICAL CHANGE IN A WEST AFRICAN STATE: A STUDY OF THE MODERNIZATION PROGRESS IN SIERRA LEONE* 169 (1966).

176. See MANNING, *supra* note 130, at 52.

177. See *id.*

178. See CARTWRIGHT, *supra* note 15, at 61. The SLPP was formed in 1951 after the dissolution of the Sierra Leone Organization Society (SOS), a representative body created for the purposes of advancing educational goals. The leaders of SLPP were Dr Magai, a grandson of a *Mende* warrior chief and son of a wealthy merchant, his brother Albert, Chief Julius Gulama, AJ Momoh, Arthur Masally, and William Fitzjohn, all of whom were from the *Mende* ethnic group. See CARTWRIGHT, *supra* note 15, at 61.

179. See *id.*

180. See *id.*

181. See *id.*

the government, "the Mendes remained un-reconciled to the change of the regime."¹⁸²

With the onset of the civil war, things have become worse.¹⁸³ The conflict itself is not without its share of ethnic influence.¹⁸⁴ Bangura makes a befitting summation of the situation that "even though the RUF rebellion is not ethnic, and the RUF (more eastern and southern composition) and AFRC (more northern and western area) formed an alliance in pursuing a common goal, the conflict had strong ethnic overtones among key political elites."¹⁸⁵ While addressing a London Conference in 1997, President Kabba acknowledged that "tribal differences" were the biggest cause of the Sierra Leone problems.¹⁸⁶ But his regime has done little to obviate this calamitous state of affairs.¹⁸⁷ His recruitment of the ethnic Kamajor to be part of the national security apparatus and his failure to ensure equitable distribution of civil service jobs has not made it any better.¹⁸⁸ Ethnic problems continue to bedevil Sierra Leone's political development and may diminish any gains made so far in the peace process.¹⁸⁹

Economic Depravity and the Rise of Lumpen Proletariat

By the time Siaka Stevens hand picked Momoh to succeed him, the state was already on the verge of collapse.¹⁹⁰ The gross domestic product (GDP) had fallen from \$1.1 billion in 1980 to a paltry \$857 million and the annual growth rate from 3 percent to 1 percent, while international reserves stood at only \$5 million.¹⁹¹ No single economic sector or activity registered any growth.¹⁹² The export sector had been utterly ruined by closure of iron mines and diamond smuggling by rogue politicians.¹⁹³ The economy was hard hit by the massive debt burden, with external debt alone amounting to \$723 million.¹⁹⁴ With the dismal performance of the economic sector, the government's grip of power slowly drifted from state bureaucracy to a consortium of corrupt politicians and businessmen financed by mineral riches, especially diamonds.¹⁹⁵

182. CARTWRIGHT, *supra* note 15, at 62.

183. *See id.*

184. *See id.*

185. Yusuf Bangura, *Strategic Policy Failure and Governance in Sierra Leone*, 38 J. MODERN AFR. STUD. 4, 551-553 (2000).

186. *See A Recipe for Anarchy*, WEST AFRICA, Oct. 29, 1997 at 1671.

187. *See id.*

188. *See id.*

189. *See id.*

190. *See Zach-Williams, supra* note 70, at 153.

191. *See id.*

192. *See id.*

193. *See id.*

194. *See id.*

195. *See id.* Sierra Leone is currently listed as one of the poorest countries on earth. Its life expectancy is estimated at 40, literacy at 30 percent and infant mortality rate at 179 per 1000 births. Less than a third of the population have access to health services, safe drinking water, and sanitation. It has a GNP of \$180. *See id.*

Long before the war, economic deprivation had created a lumpen class amongst the youths in Sierra Leone.¹⁹⁶ This group of urban youth, for whom combat appeared to be the only viable means of survival, formed a reservoir from which the RUF could recruit soldiers.¹⁹⁷ According to some analysts, recruitments into the RUF occurred heavily amongst lumpen youth living in Freetown who were then taken to Libya for military training.¹⁹⁸ Bangura has noted:

Majority of those trained in Libya were either from the loosely structured "lumpen" classes or those with troubled educational history. . . drawn from a stratum of Sierra Leonean society that is hooked on drugs, alcohol and street gambling. They have a very limited education and are prone to gangster type of activities – sometimes acting as clients of "strong men" in society or leading political figures and government officials.¹⁹⁹

In every aspect of the RUF campaign, the lumpen culture has manifested itself.²⁰⁰ The ruthlessness exemplified by the human rights abuses, theft, and pillage of resources are all deeply engrained into the culture of the lumpen youth in many cities of Africa.²⁰¹ No wonder that they were attracted by the "simplistic emancipatory rhetoric" of the RUF commanders and motivated by the acquisition of wealth through extralegal means:

The "freedom fighter" mantle - idealized in *pote* culture and given resonance by the RUF's appeal and initial success - coupled with the reversal of social hierarchy through the possession of the means of violence, had long been perceived in the lumpen world view as a necessary route to heroism and self-actualization.²⁰²

Sierra Leonians need to revitalize their economy and international assistance towards this objective may indeed be necessary. The IMF structural adjustment strategies, which have in the past contributed to the impoverization and lumpenization of Sierra Leone society, do not speak well of past involvement by the international community.²⁰³ Moreover, the overt dealings in the mining industry by international conglomerates, despite condemnation of trade in contraband diamonds from Sierra Leone and other conflict areas, valorizes the hope that globalization trends may catalyze economic development and hence foster peace.²⁰⁴

196. See Yusuf Bangura, *Understanding the Political and Cultural Dynamics of Sierra Leone War: A Critique of Paul Richards Fighting for the Rain Forest*, XXII AFR. DEV. 114, 117 (1997).

197. *See id.*

198. *See id.*

199. *Id.* at 126.

200. *See id.*

201. *See id.*

202. Ibrahim Abdullah & Patrick Muana, *The Revolutionary United Front of Sierra Leone*, in AFRICAN GUERRILLAS 178 (1998).

203. *See id.* at 179.

204. *See id.*

III. THE SIERRA LEONE PEACE PROCESS

The primary objective of any peace process is to bring the conflict to an end. As described by one treatise, peace processes represent the "state of tension between the custom of violence and the resolution of differences through negotiation."²⁰⁵ They defy any uniform definition, as the methods that may be employed in instigating and conducting negotiations will always depend on the nature of the conflict.²⁰⁶ The process may involve a range of activities, from discreet night meetings to visible and high-level political talks, both of which may culminate in agreements between the parties (often referred to as Accords).²⁰⁷ There may be several of such activities in any one conflict, spanning over a long period of time. The Israel/Palestine peace process is still continuing,²⁰⁸ while the peace process to the Liberian civil war may have ended with the election held in 1998.²⁰⁹ Both the protracted nature of peace processes and the fluidity of the parties' commitment to the Accords have fuelled skepticism on their viability as proper instruments of conflict resolution.²¹⁰ In some instances, the government in power, in complete disregard of the effects of the conflict, may seek to use the peace process as an alternative to a military campaign against the rebels.²¹¹ They may perceive the process as a means of legitimizing their retention of power.²¹² In other cases, the peace process may merely slow the momentum of the conflict without altering its eventual outcome.²¹³ In Rwanda, for example, the peace process and the concomitant Accords signed in Arusha failed to forestall the military takeover by the RPF and may have catalyzed the genocide.²¹⁴ Lemarchand observes:

The transition bargain in Rwanda emerges in retrospect as a recipe for disaster; not only were the negotiations conducted under tremendous external pressures, but partly for this reason, the concessions made to the FPR were seen by the Hutu hard-liners as a sell out imposed by outsiders. For the Tutsi "rebels" to end up claiming as many cabinet posts in the transitional government as the ruling MNRD (including interior and communal development) as well as half of the field-grade officers and above, was immediately viewed by extremists in the so

205. John Darby and Roger Mac Ginty, *Conclusion: The Management of Peace*, in *THE MANAGEMENT OF PEACE PROCESSES* 260 (John Darby & Roger Mac Ginty eds., 2000).

206. *See id.*

207. *See id.*

208. *See id.*

209. *See* Laurence Juma, *Regional Initiatives for Peace: Lessons from IGAD and ECOWAS/ECOMOG*, 40 *AFR. Q.* 85 (2000).

210. *See* GEORGE B.N. AYITTEY, *AFRICA IN CHAOS* 76 (1998). Ayittey's observation that negotiations can help solve conflicts only "if both parties are willing to sit down and talk, both show good faith in the deliberations and both are willing to abide by the results" may indeed be true of all peace processes. But commitments to the process can also be induced or forced through military action or sanctions. *See id.*

211. *See* AYITTEY, *supra* note 210, at 76.

212. *See id.*

213. *See id.*

214. *See id.*

called "*mouvance presidentielle*" as a surrender to blackmail.²¹⁵

The disparity in the methods, structure, and even the product of negotiations in the many peace processes that have been studied, indicate the near impossibility of drawing an accurate and uniform methodology for negotiating peace.²¹⁶ However certain general characteristics are imbibed in many peace processes.²¹⁷ The immediate cessation of hostilities (generally referred to as a ceasefire), the inclusion of all parties to the negotiations, and the disarmament and reform of the army and other government security apparatus are all factors which peace processes seek to address at the first available opportunity.²¹⁸ The complex issues of government and sharing of power, as well as human rights concerns, if any, usually come later.²¹⁹

When the Sierra Leone civil war broke out in 1991, the country was greatly divided between proponents of the All Peoples Party (APC) regime and the growing number of embittered political and business rivals.²²⁰ However, it was a small force of the little known Revolutionary United Front (RUF), led by Foday Saybana Sankoh, who crossed the Manu River from Liberia into the southern Pejehun district of Sierra Leone to begin a military campaign against the government.²²¹ The Momoh regime dismissed the insurgence as inconsequential, believing they posed no threat to his hold on power.²²² In 1992, disgruntled army generals overthrew Momoh and Captain Valentine Strasser became chairman of the National Provisional Ruling Council (NPRC).²²³ Despite the NPRC's claim that one of its principal objectives was to end the war, no tangible efforts were made to negotiate peace with the RUF.²²⁴ Instead, the NPRC directed its military efforts towards securing Kono, the mineral rich district, from the rebel infiltration.²²⁵ The government acquired the services of Executive Outcomes (EO), a South African mercenary outfit, to help ward off rebel advances to the mineral-rich areas.²²⁶ While

215. R. Lemarchand, *Managing Transition Anarchies: Rwanda, Burundi and South Africa in Comparative Perspective*, 32 J. MOD. AFR. STUD. 4, 581 (1994).

216. *See id.* at 582.

217. *See id.*

218. *See id.*

219. *See id.* at 583.

220. *See id.*

221. *See id.*

222. *See Lemarchand, supra* note 215, at 584.

223. *See id.*

224. *See id.*

225. *See id.*

226. *See David J. Francis, Mercenary Intervention in Sierra Leone: Providing National security or International Exploitation*, 20 THIRD WORLD Q. 319, 328 (1999). Executive Outcomes (EO) came on the scene in March 1995 after Gurkha Security Guards Ltd., a UK based mercenary outfit, had failed to completely wipe out the RUF threat in the diamond mining areas. EO is part of Strategic Resources Corporation, a multinational firm which also owns Branch-Heritage Group, a mining and exploration company. There is no coincidence that EO was involved in the Angolan civil war, another diamond rich nation. Its deployment in Sierra Leone cost the government \$ 1.225 million a month in salary and huge concessions to Branch-Heritage Company. In return, EO would provide 150-2000 soldiers fully equipped with helicopter support, train a national army, and assist in the war against RUF. *See id.*

widespread looting, corruption, and opulence became evident amongst the higher echelons of military leadership, the lower cadre military personnel and the public were not happy with the government.²²⁷ On January 16, 1996, Strasser's deputy carried out a military coup that sent Strasser to exile and installed Julius Maada Bio as the new head of state.²²⁸

The new government was more receptive to the idea of peace negotiations with the rebels.²²⁹ Bio made public announcements calling for peace and asking Sankoh to agree to meet him, assured Sankoh and his supporters of a "safe travel passage," and decreed amnesty to all combatants to facilitate their participation in peace talks.²³⁰ A public demonstration in Freetown and the constitutional conference affirmed the public support for the peace initiative.²³¹ The RUF responded to these gestures positively and indeed confirmed their willingness to participate in the peace talks.²³²

The Abidjan Accord (1996)

The events leading to the Abidjan Accord affirm the view that parties to a conflict may be ready for a negotiated settlement when they become aware that their objectives may no longer be tenable through violence - a condition which commentators have referred to as a "mutually hurting stalemate" or "ripe moments."²³³ At this stage, both sides to the conflict are expected to choose the path of negotiation so as to convert their weakness into strength and to conserve whatever gains they had previously made.²³⁴ In Sierra Leone, by the time of the Abidjan Accord, the combined force of the government, the Kamajors, and the mercenaries (EO) had severely overrun the RUF strongholds and pushed them away from the diamond-rich regions.²³⁵ At the same time, the general public and the civil society were disenchanted with the military leadership.²³⁶ Strong appeals were made for the restoration of democratic government and the disbanding of the Kamajor forces.²³⁷

The "hurting stalemate" scenario may not solely explain the drive towards the Abidjan Accord.²³⁸ Moreover, the mere acknowledgement of the necessity of a ceasefire and the desire for negotiations may not be effectuated without the help of an impartial arbiter who, apart from facilitating negotiations, may also provide

227. See Francis, *supra* 226, at 328.

228. See *Sierra Leone: Strasser Ousted in Palace Coup*, WEST AFR., Jan. 28, 1996 at 102.

229. See *id.*

230. See K-Roy Steven, *Whither Sierra Leone*, WEST AFR., Feb. 4, 1996 at 137.

231. See *id.*

232. See *Sierra Leone on the Brink*, NEW AFR., Mar., 1996 at 15.

233. See HUGH MIALL, ET AL., CONTEMPORARY CONFLICT RESOLUTION 162-63 (1999).

234. See *id.*

235. See *Sierra Leone on the Brink*, *supra* note 233, at 15.

236. See *id.*

237. See *id.*

238. See MIALL, *supra* note 234, at 162.

support and police compliance.²³⁹ In the case of Sierra Leone, the powerful intervention of various organizations exerted considerable pressure on both sides to concede to a negotiation.²⁴⁰ Through the efforts of the International Committee of the Red Cross (ICRC), London-based International Alert (IA), OAU, and the Ivorian Foreign minister Amara Essy, Sankoh agreed to meet with the NPRC in Abidjan.²⁴¹ The talks, which began on February 1996, coincided with the general elections in which Ahmed Tejan Kabba was elected president.²⁴² After nine months of negotiations between the government and the RUF, a peace agreement was formally drawn in November 1996.²⁴³ President Kabba signed the peace agreement on behalf of the government, while Foday Sankoh did so on behalf of the RUF.²⁴⁴

The Accord proclaimed an immediate end to the war and the immediate withdrawal of mercenary and regional forces.²⁴⁵ A disarmament process was to be initiated with the stipulation that the RUF forces would be integrated into the national security apparatus.²⁴⁶ The agreement also dealt with electoral issues, judicial reform and human rights protection, improved health care, housing and educational services, job creation, and the protection of the environment.²⁴⁷ A commission for the consolidation of peace was created in order to oversee the implementation of the Accord with the assistance of a "neutral Monitoring group from the international community."²⁴⁸ The Accord however failed to provide adequate measures for resolving conflicts within the Commission.²⁴⁹ Other than stating that the Commission was expected to consult with the RUF and government at the top most levels, no mention was made of the need to establish or streamline the internal judicial process.²⁵⁰ This was indeed crucial because after the coup of May 25, most lawyers, magistrates, and judges had fled the country, leaving judicial functions in the hands of ad hoc military tribunals which were far from being impartial.²⁵¹

Perhaps the most controversial aspect of the Accord was its grant of immunity

239. See MIALI, *supra* note 234, at 162.

240. See *ECOWAS Intervenes to Restore Democracy*, AFRICA TODAY, July/Aug. 1997 at 24.

241. *See id.*

242. *See id.* The first elections held in February failed to produce clear winners. The Sierra Leone Peoples Party (SLPP) candidate, Dr. Ahmed Tejan Kabba who came out on top failed to secure 55 percent of the total votes and instead had only 35.8 percent. In second place was the United Peoples Party (UPP) candidate, Dr. John Karefa Smart who received 22 percent, followed by Thaimu Bangura of the Peoples Democratic Party (PDP) with 16 percent. In the run off between SLPP and UPP, the former emerged the winner. *See id.* *See also SLPP Makes Comeback*, WEST AFR., Mar. 17, 1996 at 385.

243. *See* Abidjan Accord, available at <http://www.c-r.org/accord9/keytext.htm> (last visited on June 6, 2001).

244. *See id.*

245. *See* Abidjan Accord at preamble.

246. *See id.* at art. 5.

247. *See id.* at art. 18.

248. *Id.* at art. 11.

249. *See id.*

250. *See id.*

251. *See* Zack-Williams, *supra* note 71, at 158.

to RUF members.²⁵² Article 14 of the Accord provided that:

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 in respect of anything done by them in pursuit of their objectives as members of that organization up to the time of the signing of this Agreement. In addition, legislative and other measures necessary to guarantee former RUF/SL combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to reintegration within the framework of full legality.²⁵³

In essence, the Commission would not have the powers to investigate the atrocities and human rights violations committed during the war.²⁵⁴ While commentators have acknowledged that the threat of prosecution of the RUF or any other parties of war crimes may have jeopardized the peace process, the need for some form of public revelation of such atrocities may have been necessary.²⁵⁵ Bangura called for the establishment of some form of "truth commission" in which there would be public acknowledgement of the human rights violation by those responsible:

Our society cannot make progress in the area of human rights if we do not squarely face these atrocities and try to understand why people who claim to be liberating or defending society from oppression and exploitation had to slit the throats of innocent villagers, sever their heads, cut their hands, pluck their eyes off, disembowel pregnant women, abduct and rape women, burn down whole villages and enlist children as young as ten into the war.²⁵⁶

The Accord failed to guarantee a power sharing arrangement between the constitutionality elected government of President Kabba and the RUF.²⁵⁷ Other than the military and the National Electoral Commission, RUF participation in most institutions of government was completely avoided.²⁵⁸ The RUF was locked out of parliament, was not given any post in government, and would not control any local government, district or province.²⁵⁹ One analyst has argued that the elections of 1996, in which the RUF never participated, were considered a great success and thus disturbing its institutions would have attracted a lot of ire from the sponsors of the Accord.²⁶⁰ It also brought in a new set of players who were not as-

252. See Abidjan Accord, *supra* note 244 at art. 14.

253. *Id.*

254. *See id.*

255. See Yusuf Bangura, *Reflections on the 1996 Sierra Leone Peace Accord*, at <http://www.unrisd.org/engindex/media/articles/bang/toc.htm> (last visited on June 6, 2001).

256. *Id.*

257. *See id.*

258. *See id.*

259. *See id.*

260. *See id.*

sociated with the causes of war.²⁶¹

The ceasefire never materialized as both sides continued fighting.²⁶² Within a very short period, the bright glow of political fervor and hope that had greeted the signing of the Accord faded into the dull gray of skepticism and doubt.²⁶³ The UN Security Council failed to back a plan of sending 720 peacekeeping troops, 60 military observers, and about 276 civilian staff, drawn by the UN Secretary General in January 1997.²⁶⁴ Foday Sankoh had equally opposed the creation of a UN peacekeeping mission in Sierra Leone.²⁶⁵ The RUF chief argued that the Accord had no mention of the UN peacekeeping arrangement and that a force of this nature may end up getting involved in the conflict.²⁶⁶ He called for efforts and finances to be directed towards the reconstruction of the country.²⁶⁷ But a visible UN presence was indeed necessary at this stage of the peace process, not only for the assistance of the demobilization process, but also to affirm the international community's commitment to the peace process.

The problems of implementing the Accord were further compounded by the arrest of Foday Sankoh in March 1997 in Nigeria.²⁶⁸ In May 1997, President Kabba was deposed by a military junta headed by Paul Koroma and went into exile in Guinea.²⁶⁹ Ironically, Koroma claimed in his takeover that the government's failure to bring peace was one of the major reasons for the coup, blaming the Kabba government for polarizing the country into "regional and tribal factions."²⁷⁰ The army's loss of political power and marginalization from lucrative political and economic processes by the civilian government may have prompted this action.²⁷¹ Furthermore, Kabba's preferred use of the Kamajors instead of the regular army did not sit very well with military officers and soldiers alike.²⁷² A flurry of international condemnation followed the coup.²⁷³ The OAU ministers meeting in Harare issued a strong communiqué condemning the coup and calling for "the immediate restoration of constitutional order."²⁷⁴ UN Secretary General Kofi Annan, while addressing the same meeting, made a similar appeal: "Where democracy has

261. See Bangura, *supra* note 256.

262. See *id.*

263. See *id.*

264. See Mark Twain, *UN Failure in Sierra Leone Feeds Recrimination*, THE GUARDIAN, May 29, 1997. The failure of the Clinton administration to support this move was largely responsible for this inaction. At the time the US congress was involved the "delicate" discussion of the payment of its arrears to the UN amounting to over US \$1 billion. See *id.*

265. See Bangura, *supra* note 256.

266. See *id.*

267. See *Sierra Leone: Sankoh Sticks Out*, AFRICA CONFIDENTIAL, Vol. 38, No. 5, Feb. 28, 1997 at 5.

268. See *The Sankoh Affair*, NEW AFR., June 1997 at 12.

269. See *Sierra Leone: Koroma's Coup*, AFRICA CONFIDENTIAL, Vol. 38, No.12, June 6, 1997 at 1.

270. *Id.*

271. See *id.*

272. See *id.*

273. See *id.*

274. OAU Council of Ministers 66th Ordinary Session, at Harare, Zimbabwe, May 28-30, 1997, Draft Decisions, CM/Draft/Dec. (LXVI) Rev. 1 at 18.

been usurped, let us do all in our power to restore it to the people."²⁷⁵ He called on "neighboring states, regional groups and international organizations" to play their part in restoring Sierra Leone's constitutional and democratic government.²⁷⁶ The United States government and the United Nations equally called for the restoration of democratic government.²⁷⁷

The military leadership of the Junta spurred deep hatred from the populace.²⁷⁸ The wanton killings of opposition personalities and persons suspected of being allied to the Kabba regime were widespread.²⁷⁹ The ethnic rivalry between the *Limba* (from the north) and the *Mende* (from the south, Kabba's tribe) was heightened by open hostility towards the *Mende*.²⁸⁰ The murder of three persons, all *Mendes*, at a military camp just outside Freetown exemplified the distrust and hatred with which the Junta viewed their ethnic rivals.²⁸¹

The Conakry Peace Plan (1997)

The collapse of the Abidjan Accord and the subsequent change of government in Sierra Leone ushered in new challenges to the peace process.²⁸² New actors came onto the scene, some of whom had a completely different agenda.²⁸³ Amongst the new actors was the sub-regional organization ECOWAS and its peace keeping forces known as ECOMOG.²⁸⁴ The notable ECOMOG peace involvements in Liberia in 1990 had given it credibility as a viable regional approach to peace and security.²⁸⁵ The ECOWAS foreign ministers meeting on June 26, 1997, one month after the coup, recommended a three-pronged approach to the Sierra

275. OAU Council of Ministers 66th Ordinary Session, at Harare, Zimbabwe, May 28-30, 1997, Draft Decisions, CM/Draft/Dec. (LXVI) Rev. 1 at 18.

276. Andrew Meldrum, *Annan and OAU Leaders Endorse Intervention Against Usurpers*, THE GUARDIAN, June 3, 1997.

277. *See id.*

278. *See id.*

279. *See id.*

280. *See id.*

281. *See* AFR. CONFIDENTIAL, Vol. 38, No. 23, Nov. 21, 1997

282. *Id.*

283. *Id.*

284. *See* Treaty of Economic Community of West African States (ECOWAS), May 28, 1975, 1010 U.N.T.S. 17, 14 I.L.M. 1200 (1975). ECOWAS was founded in 1975 as a prime vehicle for the promotion of regional cooperation and economic development primarily in industry, communication, energy, natural resources, and monetary and fiscal management. *See id.* ECOWAS member states are Nigeria, Mali, Togo, Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Guinea, Guinea-Bissau, Liberia, Mauritania, Niger, Senegal and Sierra Leone. *See* S.K.B. ASANTE, POLITICAL ECONOMY OF REGIONALISM: A DECADE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (1985). ECOMOG (ECOWAS Ceasefire Monitoring Group) was established in August 1990 by the ECOWAS Standing Mediation Committee in response to the Liberian crisis. *See* ECOWAS Standing Mediation Committee, Decision A/DEC.11/8/90, on the Cease-fire and Establishment of an ECOWAS Cease-fire Monitoring Group for Liberia, Banjul, Republic of Gambia, August 7, 1990, reprinted in REGIONAL PEACE KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS 32-33 (M. Weller ed., 1994).

285. *See* Juma, *supra* note 83. at 85.

Leone problem: negotiations, embargo, and the possible use of force.²⁸⁶ Upon request by the deposed President, and also under the SOFA arrangements, Nigeria unilaterally sent troops into Sierra Leone.²⁸⁷ These were in addition to the Nigerian Forces Assistant Group (NIFAG), who were already on the ground, and the ECOMOG forces who had used the country as a base for their operations in Liberia.²⁸⁸ In August, the ECOWAS heads of state declared a blockade on Sierra Leone and established what they called a sub-regional force for Sierra Leone, mandated to enforce the embargo.²⁸⁹ The United Nations Security Council strongly supported ECOWAS and encouraged it "to continue to work for the peaceful restoration of constitutional order including through the resumption of negotiations."²⁹⁰ The Security Council also imposed an arms and petroleum embargo on the military Junta.²⁹¹

Amidst the growing strength of the sub-regional forces, and the mounting international support of a military action against the Junta, the Junta invited the RUF to join it.²⁹² The absent RUF leader Foday Sankoh was named vice-chairman to the ruling Junta.²⁹³ But the AFRC/RUF alliance was met with civil disobedience and widespread international condemnation.²⁹⁴ Following the economic sanctions on Sierra Leone, the economic situation deteriorated to the extent that there was hardly any petrol in Freetown.²⁹⁵ Essential drugs were running low and Government revenues fell by ninety percent due to a lack of foreign monetary support.²⁹⁶ There was little option left other than to negotiate the future return of democracy.²⁹⁷ The Junta also saw this as a window of opportunity to gain legitimacy in the eyes of the international community and to seek relaxation of economic restric-

286. See Abass Bundu, *Beyond Peace Keeping*, WEST AFR., Dec. 6, 1999 at 15.

287. See Jeremy Levitt, *Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone*, 12 TEMPLE INT'L & COMP. L.J. 333, 366 (1998).

288. See *id.*

289. See *id.*

290. U.N. SCOR., 1132, Oct. 8 1997, UN doc. S/RES/1132 (1997).

291. See *id.* Despite the embargo, the British government later in the year supplied arms to Sierra Leone through a London based mercenary organization, Sandline Ltd., which helped to restore Kabba to power. The scandal generated a lot of publicity in the British press with some sections calling for the resignation of foreign secretary Robin Cook and Tony Lloyd, minister of State for Africa. See Richard Norton-Taylor, *Cook Rocked by Coup Row*, THE GUARDIAN, May 7, 1998; See also *Observer Investigator*, THE OBSERVER, May 10, 1998, at 5; Stephen Castle, *Nasty Little War in Whitehall*, THE INDEPENDENT, May 10, 1998, at 3. The fiasco begun when Sandline Ltd. was put under 'criminal' investigation on alleged charges of shipping arms to Sierra Leone despite UN Security Council Resolution 1132 (sponsored by Britain). Prime Minister Tony Blair exonerated British officials saying that the whole matter was an "overblown hoohah". He later explained the British position as follows:

Don't let us forget that what was happening was that the UN and the UK were both trying to help the democratic regime restore its position from an illegal military coup. They were quite right in trying to do it.

Baffour Ankomah, *Sierra Leone: How the 'Good Guys' Won*, NEW AFR., July/Aug. 1998 at 8.

292. See *Jump or be Pushed*, AFR. CONFIDENTIAL, Vol. 39, No 3, 1998 at 7.

293. See *id.*

294. See *id.*

295. See *id.*

296. See *id.*

297. See *id.*

tions.²⁹⁸ In the estimation of the Junta leaders, their hold on power for a little longer might give them ample opportunity to transform themselves into a political unit capable of winning election and thus retaining leadership of the country.²⁹⁹

The sub-regional forces, spearheaded by Nigeria, exerted extreme military pressure to match the frantic diplomatic efforts to persuade the Junta to give up power.³⁰⁰ It was against this background that the AFRC/RUF alliance agreed to participate in a peace plan signed in Conakry on October 23, 1997.³⁰¹ The peace plan was a purely ECOWAS initiative heavily sponsored by Nigeria.³⁰² It set out a six-month peace plan that called for an immediate end to the fighting, disarmament and demobilization of troops, resumption of humanitarian aid, return of refugees and displaced persons, and the restoration of the civilian government.³⁰³ The plan also contained a clause granting unconditional immunity from prosecution to the plotters of the May 25 coup.³⁰⁴

There seemed to be no likelihood that the Junta would peacefully relinquish power to the Kabba government despite their undertaking at Conakry.³⁰⁵ Instead, Koroma announced his intention to remain in leadership until fresh democratic elections were held.³⁰⁶ He also called for the immediate withdrawal of all Nigerian troops from the territory of Sierra Leone.³⁰⁷ The RUF, for its part, announced that its soldiers would not succumb to any disarmament process until Foday Sankoh was unconditionally released.³⁰⁸ Thus, despite the peace plan, ECOMOG continued its military campaign against the AFRC/RUF alliance.³⁰⁹ On February 5, 1998, ECOMOG, with the assistance of arms and ammunition supplied by Sandline Ltd.³¹⁰ and a strong force of 5,000 Kamajor militias,³¹¹ launched a major

298. See *Jump or be Pushed*, AFR. CONFIDENTIAL, Vol. 39, No 3, 1998 at 7.

299. See *id.*

300. See *id.*

301. See *The Conakry Peace Plan*, available at <http://www.c-r.org/accord9/keytext.htm> (last visited on June 13, 2001). The Peace Plan was signed by Chief Tom Ikimi (Minister of Foreign affairs, Federal Republic of Nigeria), Lamine Kamara (Minister of Foreign Affairs Republic of Guinea), Abdul Karim Sesay (Secretary General AFRC), and Alimamy Pallo Bangura (Secretary of State Foreign Affairs). The two witnesses to the agreement were Ibrahim Fall of the UN and Adwoa Coleman of the OAU. See *id.*

302. See *id.*

303. See *id.*

304. See *id.* at art. 8.

305. See *id.* According to the Accord, the Junta agreed to hand over power by April. See *id.*

306. See *Jump or be Pushed*, *supra* note 292, at 7.

307. See *Sankoh Sticks Out*, *supra* note 267, at 5.

308. See Sheku Saccoh, *Sierra Leone: Cry the Beloved Country*, NEW AFR., Jan. 1998 at 23.

309. See *id.*

310. See David J Francis, *Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?*, 20 THIRD WORLD. Q. 319 (1999). The Sandline operation cost the government of Sierra Leone an estimated £10 million and mining concessions worth \$150 million to Rakesh Saxena, an Asian-born individual wanted for defrauding a bank of £55 million in Thailand, and on bail from a court in Vancouver on charges of traveling on a false passport. It is alleged that a memorandum of understanding between Kabba and Saxena was signed in London in September 1997. The meeting between the two that took place at St. James Court Hotel in London and was arranged through Dr. Amrit Sarup, Saxena's mother and a senior official at the Commonwealth Secretariat. See *id.*

offensive that led to the removal of the Junta from power on February 12, 1998, and the restoration of Kabba in March of the same year.³¹² The UN Security Council commended ECOMOG for restoring peace in Sierra Leone and authorized the deployment of UN personnel to assist ECOMOG in the disarmament and demobilization of the rebel forces.³¹³

The return of Kabba and the restoration of the democratically elected government in Sierra Leone have raised the question of the extent to which external forces influence the political development in Sierra Leone. This issue is crucial to the understanding of the general management of peace processes in Africa. After the military takeover of the government, the country was completely torn apart with no single army dedicated to the defense of the country.³¹⁴ Regions were locally controlled by whoever had the guns and power to do so.³¹⁵ The rich mining fields were in the hands of external companies with strong private security arrangements, with remnants falling to the RUF, belligerent government soldiers, and ECOMOG.³¹⁶ The government's inability to formulate a coherent policy on national security has impacted negatively on the peace process.³¹⁷ The initial program of training and engaging former RSLMF soldiers to constitute a new national army seems to have withered.³¹⁸ Thus, while the government continues to rely on foreign troops, the RUF and other rebel organizations have continued to abduct young men and children to fill their military ranks.³¹⁹ The folly of its reliance on foreign armies is no less exemplified in the surrender of the country's mineral wealth to the control of international companies whose interests in making profits surpass the mere stability of government.³²⁰ Crucial to the enterprise for peace is the apparent inability of the government to make decisions as the bona fide representative of the people of Sierra Leone. Kabba has become a stooge whose action is dictated by power wielders who are by no means controlled by the wishes of the Sierra Leonians.³²¹ Conflicting interests of these power wielders, and the scramble for minerals and other wealth, has dictated the pace of the peace process.³²²

The collapse of the state system wrought difficulty in the process of creating viable political leadership capable of commanding support from all sections of Sierra Leone society.³²³ It also created a vacuum, which, in the eyes of powerful ex-

Sandline's military personnel were also directly involved in the January/February military offensive against the Junta. They provided intelligence gathering facilities, logistical support, and controlled ECOMOG's air operations. *See id.*

311. *See Kabba Return to Crisis Country*, NEW AFR., April 1998 at 9.

312. *See id.*

313. *See* U.N. SCOR, 3872d mtg., UN Doc. S/RES/1162 (1998).

314. *See* Bangura, *supra* note 185, at 558.

315. *See id.*

316. *See id.* at 560-61.

317. *See id.* at 564.

318. *See id.* at 554.

319. *See id.*

320. *See id.* at 561.

321. *See id.* at 562.

322. *See id.*

323. *See id.* at 566.

ternal interests, needed to be filled if the lucrative mining industry in Sierra Leone were to be maintained.³²⁴ In this respect, the activities of the international conglomerates involved in the Sierra Leone mining industry are no different from the complicity of corporate organizations to the apartheid era in South Africa or the exploitation of human and physical resources during the colonial period.³²⁵ The peace process has become a game of legitimizing economic interests while maintaining a favorable international image.

The Lomé Accord (1999)

The negotiations towards the Lomé Accord occurred against a backdrop of waning public support for the sub-regional military activity and great anxiety due to the possibility of an RUF overrun of Freetown.³²⁶ Amidst growing international pressure on the government to open negotiations with the AFRC/RUF alliance, President Kabba announced that he would pursue a “two track approach” - fighting the rebels while at the same time attempting to negotiate with them.³²⁷ With presidential election campaigns going on in Nigeria (and each presidential hopeful promising to withdraw forces from Sierra Leone), the Malian contingent withdrawing to Freetown after suffering heavy losses in Port Loko, and the general weariness and fear on the part of neighboring leaders that the endless war was devastating the economies of their countries, pursuing peace seemed to be the only available option for Kabba.³²⁸ As for the AFRC/RUF alliance, the talks would present an opportunity to acquire freedom for its leaders, amnesty for war crimes and legitimate political power through negotiation.³²⁹ The RUF requested a “a negotiated settlement to the crisis in the country” in a letter dated May 12, 1998, sent to Tony Blair, UN Secretary General Kofi Annan, President Nelson Mandela of

324. See Bangura, *supra* note 185, at 571.

325. *See id.*

326. See Will Reno, *No Peace for Sierra Leone*, ROAPE 325 (2000). An RUF offensive on the capital in January 6 had briefly sent Kabba to exile and provoked speculation that the government may be unable to bring the war to an end without negotiating peace with the rebels. The attack was seen as a total humiliation to the Nigerian led ECOMOG forces and it resulted in the firing of its commander, General Shelpidi. *See id.* See also Baffour Ankomah, *Why General Shelpidi was Fired*, NEW AFR., May 1999, at 18.

327. *See* Ankomah, *supra* note 327, at 18. Kabba was merely echoing the British official position. *See id.*

328. *See* Ismail Rashid, *Paying the Price – The Sierra Leone Peace Process: The Lomé Peace Negotiations*, available at <http://www.c-r.org/accord/accord9/peace.htm> (last visited on June 6, 2001).

329. *See* Sheku Saccoh, *Sierra Leone: Agonizing Recovery*, NEW AFR. 26 (June, 1998). After its reinstatement in March, the Kabba government undertook systematic prosecution of RUF soldiers captured during the war. About 59 persons were charged with treason for collaborating with the Junta, among them former president Joseph Momoh, Junta spokesman Alieu Kamara, former secretary to Kabba Alhaji Bayoh, former Central bank governor Christian Kargbo, and a member of parliament Victor Foh. On April 8, 1998, the government suspended the Criminal Procedure Act so as to allow for speedy trials under emergency regulations. On August 25, 1998, 16 of the accused, among them five journalists, were sentenced to death. *See* Balfour Ankomah, *Oh, so they are All Criminals*, NEW AFR. 7 (October, 1998). Foday Sankoh, who had been detained in Nigeria, was extradited to Sierra Leone, tried for treason, and sentenced to death. *See* Reno, *supra* note 327, at 325.

South Africa, Konan Bedie of Côte d'Ivoire, and General Sani Abacha of Nigeria.³³⁰ The talks, held in Lomé, culminated in the signing of a peace agreement on July 7, 1999.³³¹

The centerpiece of the Accord was the power-sharing arrangement between the RUF and the government.³³² In the first place, the RUF was allowed to transform itself into a political party and its members allowed to hold public offices.³³³ Sankoh was appointed Chairman of the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD), and was to "enjoy the status of Vice President," answerable only to the President.³³⁴ The government also granted to the RUF one senior ministerial position, three other cabinet positions and four deputy ministerial posts.³³⁵ As far as security issues were concerned, the agreement recognized the role of the United Nations Observer Mission in Sierra Leone (UNOMSIL) in monitoring the ceasefire.³³⁶ ECOWAS was requested to revise ECOMOG's mandate to include peacekeeping, security, protection of UNOMSIL, and disarmament/demobilization of personnel.³³⁷

Human rights were dealt with as a post-conflict management issue.³³⁸ In its Preamble, the Accord noted the commitment of all the parties to the promotion and respect of "human rights and humanitarian law."³³⁹ In Article XXIV, the Accord provided that:

The basic civil and political liberties recognized by the Sierra Leone legal system and contained in the declarations and principles of Human Rights adopted by the UN and OAU, especially the Universal Declaration of Human Rights and the African Charter on Human and Peoples Rights, shall be fully protected and promoted within Sierra Leonean society.³⁴⁰

Particular emphasis was placed on the right to life and liberty, freedom from torture, the right to a fair trial, freedom of conscience, expression and association, and the right to take part in the governance of the country.³⁴¹ A human rights commission was established to address the grievances of the people in respect to

330. Ankomah, *supra* note 327, at 18. The letter was signed by Major Paul Koroma, Brigadier Sam Bokarie of RUF and a Mr. SYB Rogers. *See id.*

331. *See id.*

332. *See* Lomé Agreement, available at <http://www.c-r.org/accord9/keytext.htm> (last visited on June 6, 2001).

333. *See id.* at art. III.

334. *Id.* at art. V(2). The CMRRD was given the responsibility of "securing and monitoring the legitimate exploitation of Sierra Leone's gold and diamonds, and other resources determined to be of strategic importance for national security and welfare." *Id.* at art. VII(1).

335. *See id.* at art. V.

336. *See id.* at art. II.

337. *See id.* at art. XIII.

338. *See id.* at art. VI.

339. *Id.* at preamble.

340. *Id.* at art. XXIV.

341. *See* Lomé Agreement, *supra* note 332, at art. XXIV(2).

alleged violations.³⁴² The commission was to function as a quasi-judicial organ.³⁴³ The Accord did not specify its temporal mandate, but from the reading of the agreement as whole, one gets the impression that the commission was intended to deal with violations occurring after the signing of the Accord.³⁴⁴

The Accord dealt with past human rights violations in two ways.³⁴⁵ First, it provided for a blanket amnesty against violations to members of the RUF and other forces.³⁴⁶ As a condition precedent to the negotiation, Foday Sankoh was pardoned of his past misdeeds.³⁴⁷ The government was mandated in Article IX of the Accord to "take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon."³⁴⁸ Similarly, all combatants were granted reprieve against any acts that they may have committed in "pursuit of their objectives up to the time of signing of the agreement."³⁴⁹ In order to promote peace and national reconciliation, the government committed itself to ensuring that no "official or judicial action" was taken against any member of RUF/SL, ex AFRC, ex SLA or CDF in respect of any of their actions prior to the signing of the agreement.³⁵⁰ The grant of amnesty did not sit very well with the UN special representative present at the meeting.³⁵¹ A handwritten disclaimer was attached to the final draft to the effect that the UN interpretation of the amnesty clauses in the agreement did not include "international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law."³⁵² International human rights organizations openly criticized the grant of amnesty to the RUF and called for justice.³⁵³ The United States and British governments supported the Accord.³⁵⁴ In their view, the Accord presented the most practical way of ending the fighting and restoring democracy in Sierra Leone.³⁵⁵

Secondly, the Accord established a Truth and Reconciliation Commission to "deal with the question of human rights violations since the beginning of the Sierra Leonian Conflict in 1991."³⁵⁶ The Commission was to provide a forum in which

342. See Lomé Agreement, *supra* note 332, at art. XXV.

343. See *id.*

344. See *id.* at preamble.

345. See *id.* at art. XXVI.

346. See *id.*

347. See *id.* at art. IX.

348. *Id.*

349. *Id.* at art. IX(2).

350. See *id.* at art. IX(3).

351. See *id.* at art. XXXIII.

352. U.N. Seventh Report of the Secretary General on the UN Observer Mission in Sierra Leone, UN Doc. S/1999/836 (1999) at 2; see also Babafemi Akinrinade, *International Humanitarian Law and the Conflict in Sierra Leone*, N.D. J. L. ETHICS & PUB. POL'Y 391 (2001).

353. See Amnesty International, *Sierra Leone: Peace Agreement but no Justice*, Amnesty International News Release - AFR 51/07/99, July 9, 1999, available at <http://www.amnesty.org/news/1999/151000799.htm> (last visited Feb. 27, 2002).

354. See Steven Mufson, *US Backs Amnesty in Sierra Leone*, WASH. POST, October 18, 1999 at A13.

355. See *id.*

356. Lomé Agreement *supra* note 332, at art. XXVI(2).

victims and perpetrators alike would narrate their stories so as to promote national reconciliation.³⁵⁷ The Commission was expected to complete its work within twelve months of its establishment and to prepare a report detailing its findings and recommendations for government action.³⁵⁸ The idea of a Truth Commission was not a bad one. After all, they do provide ample opportunity for recording international crimes and allowing society to learn from "its past in order to prevent a repetition of such violence in the future."³⁵⁹ However, they are a poor substitute for prosecution because they are vulnerable to political manipulation and often parties do not enjoy the full array of rights that a court proceeding may provide.³⁶⁰

The framework for peace drawn by the Lomé Accord had considerable shortcomings that became apparent immediately after it was signed. The organs upon which the enterprise for peace was anchored were only loosely connected. Take, for example, the Joint Implementation Committee (JIC).³⁶¹ Apparently it was envisaged that the JIC, chaired by ECOWAS and comprised of the CCP and diplomatic representatives of the OAU, UN, and the Commonwealth, could oversee the implementation of the Accord.³⁶² Each of the members was a bureaucratic organization controlled from abroad.³⁶³ Their mandate in the Sierra Leone peace process was part of a larger program of action drawn by their governing authorities.³⁶⁴ Generally speaking, the JIC was comprised of independent organs each of which pursued goals consistent with their interests.³⁶⁵ The UN function was mandated by the Security Council while ECOMOG continued to get its command from the Nigerian authorities.³⁶⁶ Soon after the signing of the Accord, the roles of some of the JIC member organs began to conflict.³⁶⁷ Similarly, financial resources were not jointly shared.³⁶⁸ The poorer organizations, especially those based in Sierra Leone, were left incapable of making any meaningful contribution to the process.³⁶⁹ The upshot of the matter was that the JIC could not function as a single unit, but rather became a mouthpiece of the most financially endowed organizations.

The problem of implementing the Accord was compounded by the lack of political will to accommodate former rivals and work together towards the realization of peace.³⁷⁰ As observed by Barbara Watter, a peace accord will succeed if "it consolidates the previously warring factions into a single state" and creates a sys-

357. See Lomé Agreement *supra* note 332, at art. XXVI(1).

358. See *id.*

359. Priscilla B. Hayner, *Fifteen Truth Commissions 1974-1994: A Comparative Study in Transitional Justice*, US INSTITUTE OF PEACE 220, 225 (1994).

360. See *id.*

361. See Lomé Agreement, *supra* note 332, at art. XXXII.

362. See *id.*

363. See *id.*

364. See *id.*

365. See *id.*

366. See *id.*

367. See Barbara F. Watter, *Designing Transition From Civil War*, 24 INT'L SECURITY 127, 133 (1999).

368. See *id.*

369. See *id.*

370. See *id.*

tem of government that will cater to the interests of all the parties.³⁷¹ The RUF leadership refused even to acknowledge the role of the UN peacekeepers.³⁷² On May 1, 2000, RUF soldiers seized 500 UN peacekeepers and killed four of them.³⁷³ The RUF also continued to appropriate diamonds in complete disregard of Article XX of the Accord.³⁷⁴ In February 2000, Sankoh was quoted as saying that the RUF "was not going to give up diamonds or guns to anybody."³⁷⁵ With the RUF refusing to meet their end of the bargain, the Kabba government opted to intensify its military campaign against the rebels.³⁷⁶ The British government supported the move and sent thirteen hundred troops to Sierra Leone.³⁷⁷

As already mentioned, the Accord was not backed by adequate finances. In any peace process, the availability of resources to compensate for the loss of income for former combatants, the revival of the economy, and the establishment of infrastructure destroyed by the war is crucial to its success.³⁷⁸ John Darby calls it the "peace dividend."³⁷⁹ In the case of Sierra Leone, the international community had pledged to give a total of £45 million.³⁸⁰ The United Kingdom was to provide £10 million of that amount.³⁸¹ According to Solomon Berewa, Kabba's Minister for Justice, the international community had pledged the money in exchange for the ministerial seats given to the RUF in the Lomé arrangements.³⁸² Despite the provisions for anti-poverty programs in the Accord, a proper framework for the raising and management of funds was not laid out.³⁸³ Reconstruction and general development of institutions in the post-war period would require enormous financial intervention from the international community.³⁸⁴ A cue should have been taken from the Mozambiquean example where various international organizations, including the UN, lobbied for the relaxation of fiscal commitments to the IMF.³⁸⁵

Despite their earlier defiance of the Accord, the RUF does not appear poised to continue fighting.³⁸⁶ Though this augurs well for the peace initiatives, it does not signify a quick end to the civil war. It may very well be that violence by the splinter groups or renegade soldiers will not end until some successful arrangements for permanent peace are made. As matters now stand, a number of events

371. Barbara F. Watter, *Designing Transition From Civil War*, 24 INT'L SECURITY 127, 133 (1999).

372. See Muzondwa Banda, *Sierra Leone: What went Wrong?*, NEW AFR., June 2000 at 10.

373. See *id.* Those killed were part of the Kenyan contingent. See *id.*

374. See *id.*

375. Sheryl Dickey, *Sierra Leone: Diamonds for Arms*, 7 HUM. RTS. BR. 9, 10 (2000).

376. See *id.*

377. See Banda, *supra* note 372, at 10.

378. See DARBY, *supra* note 102, at 111.

379. *Id.*

380. See Banda, *supra* note 372, at 10.

381. See *id.*

382. See Sheku Saccoh, *When Money Matters*, NEW AFR., October 1999 at 7.

383. See *id.*

384. See *id.*

385. See Yusuf Bangura, *Whither Peace Accord*, WEST AFR., Feb., 23, 1997 at 269.

386. See *id.*

seemed to have worked against the RUF.³⁸⁷ First was the capture of Foday Sankoh in May 2000.³⁸⁸ While many analysts had predicted the diminishing authority of Sankoh as the acclaimed head of the RUF, his departure from the scene has demoralized many of his supporters and given voice to splinter groups hitherto unknown and unrepresented in the peace process.³⁸⁹ The threat of his indictment for war crimes has had a chilling effect on the organization military commanders and affirmed the likelihood of the RUF losing support among the international community if the war is not negotiated to an end.³⁹⁰

Second, the RUF connection with the Liberian leader Charles Taylor seems to be under a lot of strain.³⁹¹ The relationship dates back to the days of the Liberian civil war, when the RUF was formed by soldiers who had fought along side the SPLF.³⁹² During its campaign in Sierra Leone, Liberia acted as a clearinghouse for all the diamonds illegally acquired. It was these diamonds that financially sustained RUF operations.³⁹³ The RUF soldiers also enjoyed sanctuary in Liberia whenever they were escaping from the government or ECOMOG onslaught.³⁹⁴ During the peace process, the United Nations, the US, and Britain put a lot of pressure on Charles Taylor to stop dealing Sierra Leone's diamonds.³⁹⁵ Economic and other sanctions were imposed on Liberia by the United Nations and other leading world governments.³⁹⁶ For example, at the behest of Britain, the European Union blocked the \$50 million grant to Liberia.³⁹⁷ To this end, Taylor became a key player in persuading the RUF to participate in the Lomé peace process.³⁹⁸

Third, the military capacity of the forces fighting against the rebels had been considerably revamped.³⁹⁹ UNOMSIL, established by the UN Security Council in June 1998,⁴⁰⁰ received a further mandate in October 1999 to establish UNAMSIL in its stead - a larger mission with 6,000 military personnel and 260 military ob-

387. See James Rupert, *Rebels Free 180 More Hostages; Sierra Leonean President says RUF V Chief will be put on Trial*, WASH. POST, May 27 (2000) at A01.

388. See *id.*

389. See *id.*

390. See *id.*

391. See *id.*

392. See *id.*

393. See Dickey *supra* note 376, at 9.

394. See William Reno, *Failure of Peace Keeping in Sierra Leone*, 100 CURRENT HISTORY 219, 222 (2000). In 2001, Taylor had allowed a RUF commander, Sam 'Maskita' Bockaire, to recruit fighters in Liberia. In October 1997, Taylor had detained an ECOMOG plane carrying South African mercenaries and 'Kamajor' fighters who were fighting against the military Junta. See *Junta Versus Junta*, in 38 AFR. CONFIDENTIAL, Oct. 24, 1997 at 8.

395. See Reno, *supra* note 395, at 223.

396. See *id.*

397. See Francois Miser, *Knives Out for Taylor*, NEW AFR., Sept., 2000 at 11; see also *Does Britain Produce Diamonds*, NEW AFR., Nov., 2000 at 28.

398. See Miser, *supra* note 398, at 10.

399. See *id.*

400. See U.N. SCOR, 4099th mtg. at 1270, U.N. Doc. S/Res/1270 (2000). Initially UNOMSIL was to last for only six months. Special envoy Okelo of Uganda was named head of its operations by the UN secretary-General. See *id.*

servers.⁴⁰¹ In February 2000, the Security Council, by its resolution 1289, further revised the UNAMSIL mandate and expanded its military component to 11,100 persons.⁴⁰² In May 2000, a further increment to 13,000 was affected.⁴⁰³ To date, there are about 17,500 military personnel under the UNAMSIL command.⁴⁰⁴ Apart from the UN, the British force's continued presence in Sierra Leone affirms its government's commitment to the campaign against the RUF and other rebel forces.⁴⁰⁵ The announcement by Jonathan Riley, the British force commander in Sierra Leone that, "we will leave when the war is either won or resolved in favorable terms" is an indication of this commitment.⁴⁰⁶

Despite these developments, the disarmament process has not fully taken place.⁴⁰⁷ Sporadic surrenders of weapons have been reported by UNAMSIL in some parts of the country.⁴⁰⁸ UNAMSIL continues to hold that it is implementing the terms of the Lomé Accord.⁴⁰⁹ Kabba, on the other hand, maintains that his hold on power is based on the constitution.⁴¹⁰

IV. THE HUMAN RIGHTS APPROACH TO PEACE

Understanding the Human Rights - Peace Nexus

The concept of human rights encapsulates notions of justice and fairness to all humans. They are the benefits that are deemed essential for the individual's well being, dignity, and fulfilment and that reflect a common sense of justice, fairness and decency. Human rights evolved from the concept of "natural rights" and the "rights of man," both of which have their origins in the pre-modern natural law doctrines of Greek stoicism.⁴¹¹ Natural law was seen as the embodiment of duties imposed upon society by God.⁴¹² These duties were to become the natural rights of persons.⁴¹³ The belief that there was a higher law superior to the law of humans later became associated with liberal theories and natural rights.⁴¹⁴ After the Middle Ages, these ideas fermented resistance to religious intolerance and political oppression.⁴¹⁵ Notions of freedom and equality became pervasive not only within

401. See U.N. SCOR, 4099th mtg. at 1270, U.N. Doc. S/Res/1270 (2000).

402. See *id.* at 1289.

403. See *id.* at 1299.

404. See *id.* at 1346.

405. See Reno, *supra* note 325 at 395.

406. See *id.*

407. See *id.* at 397.

408. See *id.* at 397-98.

409. See *id.*

410. See *id.*

411. See Burns H. Weston, *Human Rights*, 6 HUM. RTS. Q. 257, 258 (1984).

412. See *id.*

413. See *id.*

414. See *id.*

415. See *id.*

the realm of politics but also with regard to the use and ownership of property.⁴¹⁶

However, political commitment to human rights came only after the First World War.⁴¹⁷ The Peace Conference held after this war established a Labor Commission under the leadership of Samuel Gompers, the President of the American Federation of Labor.⁴¹⁸ It was this Commission that drafted the first Charter establishing the present day International Labor Organization (ILO).⁴¹⁹ Amongst the underlying principles that informed this Charter's formulation was that of social justice -⁴²⁰ that it would not be possible to achieve sustainable peace unless the rights of working men, women, and children were protected.⁴²¹ After the Second World War, the nations of the world, desiring to put an end to further wars, established the United Nations and enacted the Universal Declaration of Human Rights (UDHR).⁴²² It not only incorporated several of those rights contained in the ILO document, but also decreed that the rights were to be enjoyed by everyone "without distinction of any kind such as race, color, sex, language, religion political or other opinion or social origin property, birth or other status."⁴²³ The UDHR is the force behind the International Covenant on Civil and Political Rights (ICCPR)⁴²⁴ and the International Covenant on Social and Cultural Rights (ICSCR),⁴²⁵ the three

416. See Weston, *supra* note 411, at 259.

417. See *id.*

418. See *id.*

419. See generally, E.A. LANDY, THE EFFECTIVENESS OF INTERNATIONAL SUPERVISION: THIRTY YEARS OF I.L.O. EXPERIENCE (2d ed., 1995); see also Thomas Wolf, *ILO Experience in Implementation of Human Rights*, 10 J. INT'L L. ECON. 599 (1975); Jean-Michel Servais, *ILO Standards on Freedom of Association and their Implementation*, 123 INT'L LAB. REV. 765 (1984); N. VALITICOS & G. VON POTOBSKY, INTERNATIONAL LABOUR LAW (2d ed. 1995).

420. See generally, WILFRED JENKS, HUMAN RIGHTS, SOCIAL JUSTICE AND PEACE: THE BROADER SIGNIFICANCE OF THE I.L.O. EXPERIENCE 21 (1968); WILFRED JENKS, SOCIAL JUSTICE IN THE LAW OF NATIONS: THE ILO IMPACT AFTER FIFTY YEARS (1969).

421. See *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948), available at <http://www.ilo.org/public/english/about/iloconst.htm>. [hereinafter UNDRH]. This was the embodiment of the principals contained in the Philadelphia Declaration of 1944, which was incorporated into the ILO constitution in 1946. See *id.* art. I. The Declaration reemphasized the belief on the observance of the right of "all human beings, irrespective of race, creed or sex. . .to pursue their material well being. . .in conditions of freedom and dignity, of economic security and economic opportunity" and further that "the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy." See *id.* at Annex. It also affirmed the ILO principles that labor is not a commodity; that freedom of association are essential to sustained progress; and that poverty anywhere constitutes a danger to prosperity everywhere. See UNDRH.

422. See UNDRH, *supra* note 421.; see also U.N. Centre for Human Rights, *Human Rights: A Compilation of International Instruments*, U.N. Doc. ST/HR/1/Rev. 5, U.N. Sales No. E.94.XIV.1 (1994) available at <http://www.umn.edu/humanrts/bibliog/BIBLIO.htm>. The UNDRH is a declaration of the UN General Assembly (UNGA) adopted in Paris France, on December 10, 1948, the date that has been subsequently proclaimed as the human rights day of the United Nations and it is annually celebrated as such. See *id.* at preamble See generally NEHEMIAH ROBINSON, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS; ITS ORIGIN, SIGNIFICANCE, APPLICATION, AND INTERPRETATION (1958).

423. UNDRH, *supra* note 421, at art. 2, available at <http://www.unhchr.ch/udhr/lang/eng.htm>.

424. See ICCPR, *supra* note 4, at 52.

425. See *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A, U.N.

of them comprising what can be termed the "International Bill of Rights."

The dynamism of the international community has inspired the adoption of many treaties in the field of human rights and it may not be feasible to discuss all of them in this paper. It should, however, be mentioned here that international regimes currently define human rights as comprising civil and political rights on the one hand and social and economic rights on the other, thus creating the erroneous impression that some rights are more important than others.⁴²⁶ Human rights are interrelated, indivisible, and highly interdependent; the so-called civil and political rights are just as important and urgent as the social, economic, and cultural rights.⁴²⁷

The juridical conception of human rights provides an amiable avenue through which states may minimize if not completely eliminate the causes of internal conflicts. Civil and political rights guarantees, as contained in the ICCPR, encapsulate norms basic to any democratic practice which ensure generic standards of non-discrimination in all spheres of life.⁴²⁸ For example, the right to free speech under Article 19(1) of ICCPR emphasizes that "everyone shall have the right to hold opinion without interference."⁴²⁹ Free speech is central to democratic governance, which in turn influences the attainment of peace or reduction of political violence. Economic and social rights address issues of human welfare that are a precondition for the enjoyment of life in dignity and for the harmonious and non-violent development of national and international society.

In 1984, the UN General Assembly made a declaration on the right of people to peace.⁴³⁰ Though made largely in reaction to the threat of nuclear war, it equally befits the current spate of internal conflicts.⁴³¹ In its Preamble it expresses "the will and the aspiration of all people to eradicate war from life of mankind and, above all, to avert a world wide nuclear catastrophe."⁴³² The Annex states that each State;

[s]olemnly proclaims that the peoples of our planet have the sacred right to peace; . . . [e]mphasizes that ensuring the exercise of the right of peoples to peace demands that the policies of the States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the UN.⁴³³

GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966) [hereinafter ICESCR], available at http://www.unhcr.ch/html/menu3/b/a_ceschr.htm.

426. See ICESCR.

427. See *id.*

428. See ICCPR, *supra* note 4, at 52.

429. ICCPR, *supra* note 4, at art. 19; see also ICESCR, *supra* note 425, at art. 19(2) (providing for the right to freedom of expression).

430. See U.N. GAOR, 39th Sess., 57th mtg, Doc. A/Res/39/11 (1984), available at gopher1.un.org/00/ga/recs/39/11.

431. See *id.*

432. *Id.*

433. *Id.*

The desire for peace runs through the entire spectrum of international human rights regimes.⁴³⁴ The Human Rights Committee, while commenting on the right to life, has observed:

It is a right which should not be interpreted narrowly. . . The committee observes that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. . . The committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life.⁴³⁵

In all, a vast body of legal norms establishes a veritable human rights code that gives meaning to the phrase "human rights and fundamental freedoms" and clarifies the obligations of member states imposed by the UN Charter.⁴³⁶ Today, despite any controversies in which the concept of human rights may be enmeshed,⁴³⁷ it is generally accepted that human rights are universal: they are inalienable and inherent birthrights that are due and applicable to every human being in any society regardless of any distinction.⁴³⁸

Human Rights Question in the Sierra Leone Civil War

The greatest tragedy of the Sierra Leone civil war is the widespread violations of human rights.⁴³⁹ It is estimated that since 1991, over 20,000 Sierra Leonians have been killed as a result of the civil war and more than one third of the popula-

434. See U.N. GAOR, 39th Sess., 57th mtg, Doc. A/Res/39/11 (1984), available at [gopher://gopher1.un.org/00/ga/recs/39/11](http://gopher1.un.org/00/ga/recs/39/11).

435. MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 851 (1993), available at <http://www.umn.edu/humanrts/peace/docs/hrcom6.htm>.

436. See NOWAK, *supra* note 435.

437. See generally MAURICE CRAMSTON, HUMAN RIGHTS, REAL OR SUPPOSED IN POLITICAL THEORY AND THE RIGHTS OF MAN 43 (1967) (arguing against the expansion of traditional human rights which are civil and political in nature, into social and economic rights); F.E. DOWRICK, HUMAN RIGHTS: PROBLEMS, PERSPECTIVE, AND TEXTS: A SERIES OF LECTURES AND SEMINARS PAPERS DELIVERED IN THE UNIVERSITY OF DURHAM IN 1978, WITH SUPPORTING TEXTS (1979); HUMAN RIGHT: FROM RHETORIC TO REALITY (1986) (offering an analysis of various human rights issues such as reproductive rights, medical treatment, criminal procedure and labor issues); INTERNATIONAL PROTECTION OF HUMAN RIGHTS: PROCEEDING OF THE SEVENTH NOBEL SYMPOSIUM, OSLO, SEPTEMBER 25-27, 1967 (Asbjorn Eide & August Schou eds., 1968) (acknowledging the need to deliberate an expansive implementation of human rights measures worldwide).

438. See U.N. GAOR, 48th Sess., 22nd mtg. at 20, U.N. Doc. A/Conf.157/24 (1993), available at <http://www1.umn.edu/humanrts/instree/11viidec.html>, see also FRANCESCO FRANCESCONI, THE JURISPRUDENCE OF INTERNATIONAL HUMAN RIGHTS ENFORCEMENT: REFLECTIONS ON THE ITALIAN EXPERIENCE, IN ENFORCING INTERNATIONAL HUMAN RIGHTS IN DOMESTIC COURTS (1997); Kofi A. Annan, *Strengthening United Nation in the Field of Human Rights: Prospects and Priorities*, 10 HARV. HUM. RTS. J. 1 (1997); Louis Henkin, *Rights: Here and There*, 81 COLUM. L. REV. 1582 (1981).

439. See Alahji Bah, *Exploring the Dynamics of the Sierra Leone Conflict*, 29 PEACEMAKING & INT'L REL. 1 (2000).

tion of 4.5 million people have been displaced.⁴⁴⁰ There is no question that human rights violations, as defined by international law, have characterized the RUF campaign against the government forces since 1911 when it first began its operations.⁴⁴¹ Analysts agree that the intensity of violations increased after the May 25 coup that ousted President Kabba and brought to power the AFRC/RUF coalition.⁴⁴² The military junta that assumed power suspended the constitution and established a Kangaroo court system – the Peoples Revolutionary courts manned by civilians – to supplement the Military courts.⁴⁴³ The situation was no doubt exacerbated by the confrontation between the AFRC/RUF and the Nigerian-led ECOMOG forces.⁴⁴⁴ Human Rights Watch has summarized it as follows:

The rebel occupation of Freetown was characterized by the systematic and widespread perpetration of all classes of gross human rights abuses against the civilian population. Civilians were gunned down within their houses, rounded up and massacred on the streets, thrown from upper floors of buildings, used as human shields, and burned alive in cars and houses. They had their limbs hacked off with machetes, eyes gouged out with knives, hands smashed with hammers, and bodies burned with boiling water. Women and girls were systematically sexually abused and children and young people abducted by hundreds.⁴⁴⁵

But atrocities in the Sierra Leone civil war have not been limited to rebel activity.⁴⁴⁶ The mercenary forces, Nigerian led ECOMOG forces, Kamajors,⁴⁴⁷ and the government forces have been equally guilty of violations.⁴⁴⁸ The South African mercenary outfit EO was reputed for putting land mines in diamond mining areas to deter unauthorized mining.⁴⁴⁹ On October 19, 1998, the Nigerian ECOMOG soldiers executed twenty-four army officers, including former chief-of-staff Conteh and Colonel SFY Koroma, who had been convicted by a military tribunal but denied the right to appeal.⁴⁵⁰ A Human Rights Watch report has criticized the shelling of civilian areas by ECOMOG in 1996 and also castigated the Kamajors for killings, torture, and the obstruction of humanitarian assistance.⁴⁵¹ In a 1999 report, Human Rights Watch documented the spate of executions carried

440. See Bah, *supra* note 439, at 1.

441. See Zack-Williams, *supra* note 71, at 158.

442. See *id.*

443. See *id.*

444. See *Sierra Leone: Getting Away with Murder, Mutilation, Rape*, HUM. RTS. WATCH, July 1999, available at <http://www.hrw.org/reports/1999/sierra/index.htm>.

445. *Id.*

446. See *id.*

447. See *id.* These were groups of youth mobilized by the government to support civilians. The units were organized in such way that combatants were posted only to their chiefdoms. The esoteric Mende cult of "invincible and heroism" was revived to imbue the units with a sense of responsibility and courage, necessary for ensuring safety of their locality from the intrusion of the rebels. See *id.*

448. See *id.*

449. See *Sierra Leone: Human Rights Crisis*, WEST AFRICA, Dec/Jan 1996, at 1994.

450. See Andrew McGregor, *Quagmire in West Africa*, 3 INT'L J. 482, 499 (1999).

451. See *Sierra Leone Sowing Terror: Atrocities against Civilians in Sierra Leone*, HUM. RTS. WATCH, July 1998, available at <http://www.hrw.org/reports98/sierra>.

out by the joint ECOMOG, CDF, and Kamajor militias.⁴⁵² The report points to the difficulty of ascertaining whether the ECOMOG high command was aware of these activities.⁴⁵³ It is likely that this was so because the executions were usually carried out in public places and in front of large crowds.⁴⁵⁴ In February 1999, the UN released a report in which it blamed ECOMOG for summarily executing rebels and their sympathizers.⁴⁵⁵ The report singled out one occasion when about forty people were executed and their bodies disposed of by ECOMOG.⁴⁵⁶

Human rights violations in the Sierra Leone civil war are a reflection of the emerging trends in modern warfare – what has been termed the “wars of the third kind.”⁴⁵⁷ Looked at in this context, the violations are more than just the “flagrant disobedience of legal norms,” but a product of an acculturation process that defines the means through which groups assert their needs.⁴⁵⁸ Unfortunately, international law and the institutions that foster it are not equipped to deal with sociological problems which give rise to discordant and culpable actions/omissions, and therefore are non-suited to remedy complexities that such sociological trends engender.⁴⁵⁹ But the overwhelming desire to do something about the conduct of war which causes such widespread human suffering has led to the recognition that certain kinds of activities may be categorized as international crimes, including genocide,⁴⁶⁰ war crimes, and crimes against humanity.⁴⁶¹ This development has sig-

452. See HUM. RTS. WATCH, *supra* note 445.

453. See *id.*

454. See *id.*

455. See Fifth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, March 4, 1999, U.N. Doc. S/1999/237, available at <http://www.un.org/Docs/sc/reports/1999/s1999237.htm>; see also Sheku Saccoh, *Nigerians Execute Sierra Leone Coupists*, NEW AFR., Dec. 1998 at 24.

456. See *id.*

457. K.J. HOLSTI, *THE STATE, WAR, AND THE STATE OF WAR, 19-40* (1996). “Wars of a third kind” involve non-combatants in far larger proportions than has previously been witnessed, engenders the politicization of the masses, have fluid battle lines, and magnify identity as a key factor of differentiation. These characteristics are a manifestation of how the cultural and social linkages underpin the evolution of the phenomenon of war and violence. The linkages are profound because they define, characterize, and provide windows through which the phenomenon of war and violence can be amiably understood and studied. Human rights discourse, and particularly international human rights law, can benefit from this analysis because it presents a powerful paradigmatic shift from the conception of law as an extant, immutable, phenomenon incapable of bending to the demands of societal interrelation and cultural evolution. See *id.* at 36.

458. David J. Scheffer, *The International Criminal Tribunal Forward: Deterrence of War Crimes in the 21st Century*, 23 MD. J. INT'L L. & TRADE 1, 2 (1999). Acknowledging these changes, the US Ambassador at large for war crimes, David J. Scheffer, while addressing the International Military Operations and Law Conference in Honolulu, Hawaii on February 23, 1999, observed that, “conventional warfare has been transformed in our lifetimes. Armed conflict has become increasingly identified not with clash of armies across sovereign borders, or between ‘isms,’ but with the assault by government and its military on its own population, or by a rebel force bent on terrorizing its own society, or by use of weapons that have as their aim indiscriminate mass murder.” See *id.*

459. See *id.*

460. See Genocide Convention G.A. Res. 260, U.N. GAOR, at art. 2 (1948), available at <http://yale.edu/cgp/dccam/genocide.htm> (defining genocide to mean any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a)

naled a further erosion of state sovereignty principles⁴⁶² and called for the expansion of international mechanisms for ensuring the full operation of law in circumstances of both internal and international conflicts.

As already adumbrated, the development of conventional international law to cover civil war situations has not been complemented by effective enforcement machinery at the international level.⁴⁶³ Therefore, the problem is not the lack of law, "but how this law can be applied in the absence of enforcement provisions."⁴⁶⁴ The UN Security Council has attempted to fill this vacuum by creating ad hoc international criminal tribunals.⁴⁶⁵ Under Article 39 of the UN Charter,⁴⁶⁶ the Security Council has power to determine whether any action or activity poses a threat to world peace and to make a recommendation in accordance with Article 41 and 42.⁴⁶⁷ It is undisputed that internal civil wars such as the one in Sierra Leone threaten world peace.⁴⁶⁸ The question remains as to whether the ad hoc tribunals do help to bring about peace.

The Politics of AD HOC International Criminal Tribunals

The ad hoc war crimes tribunals began with the Nuremberg⁴⁶⁹ and Tokyo⁴⁷⁰ tribunals that were set up after World War II to try war criminals. Since then, the UN Security Council has established two other tribunals, the Yugoslavia and the Rwanda tribunals.⁴⁷¹ The process for the establishment of the fourth tribunal in

killing members of the group; (b) causing serious bodily harm. . . (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction. . . (d) imposing measures intended to prevent births. . . and (e) forcibly transferring children of the group to another group).

461. See Genocide Convention G.A. Res. 260, U.N. GAOR, at art. 2 (1948).

462. See U.N. CHARTER art. 2, para. 7, available at <http://www.un.org/Overview/contents.html> (asserting that the doctrine of state sovereignty militates against the intrusion into matters that occur within the territorial borders of any state). Article 2(7) of the United Nations Charter excludes any UN action in "matters which are essentially within the jurisdiction of any state." See U.N. CHARTER art. 2, para. 7

463. See David Turns, *War Crimes Without War? The Applicability of International Humanitarian Law to Atrocities in Non-International Armed Conflicts*, 7 AFR. J. INT'L COMP. L. 804, 805 (1995).

464. *Id.*

465. See U.N. CHARTER, *supra* note 464, at art. 39.

466. See *id.*

467. See *id.*

468. See *International Criminal Tribunal for the Former Yugoslavia: Excerpts from Judgment in Prosecutor v. Dusko Tadic, and Dissenting Opinion (Applicability of the Grave Breaches Provisions of the Geneva Convention of 1949; Laws of War; Crimes Against Humanity*, 36 I.L.M. 908 (1997).

469. See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement), Aug. 8, 1945, 58 Stat. 1544, 82 U.N.T.S. 279, 284.

470. See The International Military Tribunal for the Far East at Tokyo, established by Charter of the International Military Tribunal for Far east at Tokyo (1946), Special Proclamation by the Supreme Commander for the Allied Powers at Tokyo, TIAS No 1589, reprinted in 4 Treaties and Other International Agreements of the United States of America 27 (1946). The tribunal was established by an executive order of General Douglas McArthur and not by the multilateral treaty. He also appointed the judges and the prosecutor for the tribunal. See *id.*

471. See Cherif Bassiouni, *From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court*, 10 HARV. HUM. RTS. J. 11, 14 (1997).

Sierra Leone has just begun.⁴⁷²

It was the revulsion against the atrocities committed by the Nazis during the war and the desire to rid the world of any such calamity in the future that inspired a major political campaign for the establishment of some form of judicial institution to try and punish war offenders.⁴⁷³ The promulgation of the Nuremberg Charter and the establishment of the tribunal was the culmination of an ages-long quest for international action against violations of the rules of war.⁴⁷⁴ The unsuccessful attempts to prosecute German military personnel pursuant to the Treaty of Versailles,⁴⁷⁵ and the very mediocre trials at Leipzig by the German Supreme Court⁴⁷⁶ after World War I, evaporated hopes of establishing an international justice system free from political subjugation. The defeat of Germany by the Allied powers provided an opportunity in which Germany's military aggression and the heinous conduct of some of its military officers could be put to trial.⁴⁷⁷ Indeed, when the four Allied powers met on August 8, 1945, an agreement for the prosecution and punishment of the major war criminals of the European Axis was made.⁴⁷⁸ A Charter was also drawn creating an international tribunal with jurisdiction to try crimes against the peace, war crimes, and crimes against humanity.⁴⁷⁹

The anachronism of applying international law to non-state actors (established by the Nuremberg process), while seeking individual accountability for crimes of war has become a benchmark for the enforcement of international human rights law.⁴⁸⁰ The process has, however, generated a fair share of criticism. To some observers, the symbolism of Nuremberg remains as an affirmation of the complete

472. See Bassiouni, *supra* note 471, at 14.

473. See *id.* at 11-12.

474. See *id.* at 20.

475. Treaty of Peace Between the Allied and Associated Powers and Germany, concluded at Versailles, June 28, 1919, 2 Bevens 43.

476. See Bassiouni, *supra* note 471, at 20.

477. See *id.* at 25.

478. See *id.* Article 6 provided as follows: The Tribunal established by the agreement referred to in article 1 hereof for the trial and punishment of the major war criminals of the European axis countries shall have the power to try and punish persons who, acting in the interests of the European axis countries, whether as individuals or as members of organizations, committed any of the following crimes:

The following acts, or any of them, are crimes coming within the jurisdiction of the tribunal for which there shall be individual responsibility:

Crimes against peace: namely, planning, preparation, initiation or waging of war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

War crimes: namely violations of custom of war.

Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of a country where perpetrated. *Id.*

481. See *id.*

defeat of Germany by the Allied powers, rather than the triumph of international law over abhorrent conduct of war.⁴⁸¹ Chief Justice Harlan Fiske Stone of the US Supreme Court observed:

So far as the Nuremberg trial is an attempt to justify the application of the power of the victor to the vanquished because the vanquished made aggressive war. . . I dislike extremely to see it dressed up with false façade of legality. The best that can be said for it is that it is a political act of the victorious states which may be morally right.⁴⁸²

Recently, the tribunal has been described as “a patchwork of political convenience, the arrogance of military victory over defeat, and the ascendancy of American, Anglo-Saxon hegemony over the globe.”⁴⁸³ Viewed against the opposition to the establishment of a permanent court by the United States and others,⁴⁸⁴ such criticisms are not misplaced. Moreover, time and again, the idiosyncrasies of moral superiority professed by powerful nations have never been translated into an articulate program of rescue, especially when calamity strikes in poor nations of the south.⁴⁸⁵ The tribunals have thus been seen as a mere apologia for the international community’s inaction in situations of flagrant human rights abuses.⁴⁸⁶ The Rwandan case is perhaps the best example in this regard. On April 21, 1994, just when the genocide was beginning, the United Nations passed a resolution that reduced its peacekeeping force to a paltry two hundred and seventy persons.⁴⁸⁷ According to one observer, the apparent lack of interest in the Rwandan genocide “can be attributed single-handedly to the United States.”⁴⁸⁸ Since the debacle in Somali, the United States has been keen to avoid any involvement in peacekeeping operations in Africa.⁴⁸⁹ Congress had in this regard drafted Presidential Decision Directive 25, urging that “the US should persuade others not to undertake the missions it wished to avoid.”⁴⁹⁰

No matter the perception, the Nuremberg process established a legacy that was followed in Tokyo and most recently in Yugoslavia and Rwanda.⁴⁹¹ Lessons from these tribunals reveal a litany of conceptual and structural difficulties, thus

481. See Bassiouni, *supra* note 471, at 25.

482. ALPHEUS THOMAS MASON, HARLAN FISKE STONE: PILLAR OF THE LAW 715 (1956).

483. M. Mutua, Never Again: Questioning the Yugoslav and the Rwanda Tribunals, 11 TEMP. INT’L & COMP. L.J. 167, 170 (1997).

484. See Robert Johansen, US Opposition to the International Criminal Court: Unfounded Fears, Policy Brief, No. 7, JOAN B. KROC INSTITUTE FOR INTERNATIONAL PEACE STUDIES, NOTRE DAME (2001), available at <http://www.nd.edu/~krocinst/polbriefs/pbrief7.html>. According to Johansen, “the reason for US opposition is simple. All the temporary tribunals that the US has supported were limited to investigating others; they would not hold US citizens accountable.” *Id.*

485. See *id.*

486. See Nehal Bhuta, *Paved With Good Intentions – Humanitarian War, The New Interventionism and Legal Regulation of the Use of Force*, 25 MELB. U. L. REV. 843, 858 (2001).

487. See S.C. Res. 912, U.N. SCOR, 49th Sess., 3368th mtg. P 4, U.N. Doc. S/RES/912 (1994).

488. MANNING, *supra* note 130, at 150.

489. See *id.*

490. *Id.*

491. See *id.*

relegating their significance to mere acknowledgement of the necessity for a more robust system of legal intervention.⁴⁹² Secondly, they have been bedevilled by lack of finances, impacting negatively in their pursuit of witnesses and staffing.⁴⁹³ Thirdly, pure logistical problems of apprehending culprits have not been resolved. For example, while the arraignment of Milosevic before The Hague tribunal is commendable, known perpetrators of the massacre at Suva Reka in southern Kosovo are still at large.⁴⁹⁴

From a more ideological standpoint, some nations have opposed the creation of these tribunals because the permanent members of the Security Council can use them to insulate themselves and their allies from investigation.⁴⁹⁵ When the Security Council debated the establishment of the Yugoslavia and Rwanda tribunals, China expressed fear that the tribunals may set precedent for the creation of yet another tribunal.⁴⁹⁶ The prediction has indeed come true with the now proposed Sierra Leone Court. Questions have also arisen as to why tribunals should be created in certain cases and not in others.⁴⁹⁷ The hue against "tribunal fatigue" impacted rather positively on the movement towards the creation of a permanent court.⁴⁹⁸ The feeling that the process of establishing a tribunal is slow and expensive has added impetus to claims that a permanent institution is probably what the world needs.⁴⁹⁹

The "Special Court" for Sierra Leone

On August 14, 2000, the UN Security Council unanimously voted for the establishment of a war crimes tribunal for Sierra Leone.⁵⁰⁰ After the Yugoslavia and Rwanda tribunals, this will be the third tribunal created in two decades to deal with war crimes.⁵⁰¹ Unlike the Rwandan tribunal, the resolution for the establishment of this tribunal was fully supported by the Sierra Leone government.⁵⁰² Indeed, it

492. See MANNING, *supra* note 130, at 150.

493. See *id.*

494. See Roy Gutman and Rod Nordland, *Yugoslavia: A Massacre and the Case Against Milosevic*, NEWSWEEK 34-38, Jun. 23, 2001.

495. See Jelena Pejic, *Creating a Permanent International Court: The Obstacles to Independence and Effectiveness*, 29 COLUM. HUM. RTS. L. REV. 291, 298 (1998).

496. See VIRGINIA MORRIS & MICHAEL SCHARF, AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR FORMER YUGOSLAVIA 200 (1995). China abstained from voting on Security Council Resolution 955 establishing the Rwanda Tribunal. See U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/PV.3453, at 11 (1994).

497. See Bartram S. Brown, *Primacy or Complimentarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals*, 23 YALE J. INT'L L. 383, 386 (1998).

498. See *id.*

499. See *id.*

500. See U.N. SCOR, 54th Sess., 4186th mtg., U.N. Doc. S/RES/1315 (2000).

501. See *id.* The Yugoslavia tribunal was set up in May 1993 as a reaction to the crimes committed during the war in Bosnia-Herzegovina between Muslims, Serbs, and Croats. The Rwanda tribunal, set up in November 1994, was a response to large-scale massacres of the Tutsis by Hutus immediately after the killing of the Rwanda president Juvenal Habriyimana. See *id.*

502. See Nicole Fritz & Alison Smith, *Current Apathy for Coming Anarchy: Building the Special Court For Sierra Leone*, 25 FORDHAM INT'L L.J. 391, 404 (2001).

was the request made by President Ahmad Tejan Kabba of Sierra Leone to Secretary General Kofi Annan in June 2000 that ignited the UN process.⁵⁰³ The government of Sierra Leone sought international assistance in establishing a special court to try members of Foday Sankoh's RUF.⁵⁰⁴ A court created by the United Nations, Kabba had stated, would "have the advantage of strong enforcement powers that will call for cooperation from states in the investigations, arrest, extradition and the enforcement of sentence."⁵⁰⁵

The proposed tribunal is set to try "crimes against humanity, war crimes and other serious violations of international humanitarian law as well as crimes under relevant Sierra Leone law committed within the territory of Sierra Leone."⁵⁰⁶ The special court will have jurisdiction to try persons who have the greatest responsibility for the commission of such crimes.⁵⁰⁷ As a follow-up procedure to Resolution 1315, the Security Council authorized the Secretary General to commence consultation with the Sierra Leone government with a view to setting out recommendations as to the court's jurisdiction, its appellate procedures, and matters relating to its physical location.⁵⁰⁸

In October 2000, the Secretary General presented his report to the Security Council.⁵⁰⁹ According to this report, the special court in Sierra Leone will not be anything close to the Yugoslavia and the Rwanda tribunals, but will instead be a hybrid tribunal whose composition and general mandate, while remaining specific to the circumstances of Sierra Leone, may come directly under the control of the Kabba government.⁵¹⁰ The Sierra Leone government will be allowed to appoint one judge each for the two trial chambers and two judges in the appeals chamber.⁵¹¹ Secondly, unlike the Rwanda and the Yugoslavia tribunals, the special court in Sierra Leone will be constituted out of an agreement between the UN and the government of Sierra Leone.⁵¹² The court will thus have concurrent jurisdic-

503. See Fritz, *supra* note 502, at 400.

504. See generally *id.*

505. Barbara Crossette, *Sierra Leone Asks UN for Role in War Court*, N.Y. TIMES, Jun. 21, 2000. The British and US government supported the move though not exactly on the same terms. The US was initially opposed to the idea of a UN tribunal akin to Yugoslavia and Rwanda, asserting that the process of establishing such a tribunal may take a long time. See *id.* It nevertheless supported the creation of some kind of "international war crime umbrella to cover these odious people." *Id.* The British, on the other hand, supported the proposal by Kabba for a hybrid court which would be under the control of Sierra Leone government, would try members of the RUF, would apply international law as well as Sierra Leone law, and would enjoy monetary support of the UN Trust Fund. See *id.* Both countries were able to garner international support for the establishment of the tribunal. See *id.*

506. U.N. SCOR, *supra* note 500.

507. Draft Statute for the Special Court for Sierra Leone, art. 1(1), available at <http://www.specialcourt.org/documents/statute.html> (last visited March 12, 2002).

508. See U.N. SCOR, *supra* note 500, at para. 7.

509. See Seventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, U.N. Doc. S/2000/1055 (2000) at 34.

510. See Seventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, U.N. Doc. S/2000/1055 (2000) at 34.

511. See Draft Statute, *supra* note 507, at art. 12(1)(a).

512. See *id.* at preamble.

tion and even primacy over the local courts in Sierra Leone, but will lack "power to assert its primacy over national courts in third states in connection with crimes committed in Sierra Leone."⁵¹³ Similarly, the court will lack the power to "request the surrender of suspects from any third states" or to "induce the compliance of its authorities with any such request."⁵¹⁴ The fact that the court will have jurisdiction to try offences under the domestic law lends credence to its diminished international character; the possibility of manipulation by the government of Sierra Leone, to ensure the incarceration of its political rivals, cannot be ruled out.⁵¹⁵

The court will only deal with crimes committed after November 30, 1996.⁵¹⁶ The narrow temporal jurisdiction of the court may limit its ability to deal effectively with crimes committed throughout the civil war. Since the war begun in 1991, the level of involvement of the various personalities may have changed. Foday Sankoh, the proclaimed leader of the RUF, having been out of prison for only 4 months after November 1996, may escape prosecution for crimes committed before that time. Setting the temporal jurisdiction of international criminal tribunals has always been controversial. When the Rwanda tribunal was set up, the Security Council limited its jurisdiction to the period between January 1, 1994 and December 31, 1994.⁵¹⁷ The government voted against the resolution and sought an amendment to extend the jurisdiction of the tribunal to cover the entire period of the civil war, arguing that the genocide committed in 1994 was the result of "a long period of planning" and that the refusal of the international tribunal to take account of such planning may be disastrous towards the process of creating a climate conducive for national reconciliation.⁵¹⁸

The argument that stretching the jurisdiction to cover the entire period of the war may overburden the court is not plausible enough to allay fears that the court is representative of the international community's lukewarm response to African problems.⁵¹⁹ Indeed, such a stance is consistent with the United States policy towards Sierra Leone, which has advocated all along for negotiations with the RUF, despite the poor human rights record of the latter.⁵²⁰ Moreover the idea that the United Nations, and indeed the international community, may not be prepared to take the full burden of dealing with war crimes and crimes against humanity sends a wrong signal and slows down the momentum towards the support for the international criminal court.

The above notwithstanding, the establishment of a special court affirms the

513. Draft Statute, *supra* note 507, at art. 12(1)(a).

514. *Id.*

515. *See id.*

516. *See* Diane Marie Amann, *Message as Medium in Sierra Leone*, 7 ILSA J. INT'L & COMP. L. 237, 244 (2001).

517. *See* S.C. Res. 955, U.N. Doc. S/RES/955 (1994) (with annexed Statute). *See also* Payam Akhavan, *The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment*, 90 AM. J. INT'L L. 501 (1996).

518. *See* U.N. SCOR, *supra* note 496.

519. *See* U.N. SCOR, *supra* note 496.

520. *See id.*

international community's revulsion against war crimes, crimes against humanity, and the general abuse of human rights. The constitutive statute sets out the legal competence of the court to deal with four sets of crimes, namely, crimes against humanity, violations of Article 3 common to the Geneva Conventions, serious violations of international humanitarian law, and crimes under Sierra Leone law.⁵²¹

(a) Crimes Against Humanity

According to Article 2 of the statute, the special court shall have the power to prosecute crimes against humanity.⁵²² These crimes are specified as murder, extermination, enslavement, deportation, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence, persecution on political racial, ethnic or religious grounds, and other inhumane acts.⁵²³ The acts that constitute crimes against humanity have their origins in the Nuremberg Charter.⁵²⁴ Since then, rape and torture have been added to the list by the Yugoslav Statute. The Rome Statute of the International Criminal Court (ICC)⁵²⁵ has added to the list the enforced disappearance of persons and crime of apartheid. Such acts will constitute the offense if they are committed against civilian population and are "widespread or systematic."⁵²⁶

(b) Violations of Article 3 common to the Geneva Conventions and Additional Protocol II

The Geneva Conventions are an embodiment of a set of rules guiding humanitarian action in armed conflict situations. Central to the Conventions is the principle that persons not actively involved in warfare should be treated humanely.⁵²⁷ Common Article 3 introduces the application of this principle to "armed conflicts not of an international character"⁵²⁸ and sets out minimum guarantees for the pro-

521. See S.C. Res. 955, *supra* note 517.

522. See *id.*

523. See *id.*

524. See *id.* at art. 6.

525. Rome Statute of the International Criminal Court, July 17, 1998, UN Doc A/CONF. 183/9 (1998) [hereinafter ICC Treaty].

526. *Id.* at art. 7.

527. See *id.*

528. *Id.* at art. 3. In *Prosecutor v. Jean-Paul Akeyesu*, the ICTR observed that an armed conflict may be said to exist "whenever there is . . . protracted armed violence between governmental authorities and organized groups or between such groups within a state." See International Criminal Tribunal for Rwanda, Case No. ICTR-96-4-T, Sept. 2, quoted in Babafemi Akinrinade, "International Humanitarian Law and the Conflict in Sierra Leone", LLM University of Notre Dame Law School Thesis 2000, at 32. Note, however, that by virtue of Article 1(4) of Protocol I, 1977, armed conflict of an international character is defined to include wars against colonial domination, alien occupation and racist regimes. See David P. Forsyth, *Legal Management of International War*, 72 AM. J. INT'L L. 272 (1978). Non-international conflicts, on the other hand, may be difficult to define. They may range from full-scale civil wars to relatively minor disturbances. Article I of Protocol II prevents the application of its provisions from internal unrest including "riots, isolated and sporadic acts of violence and other acts of similar nature as not being armed conflicts." *Id.*

tection of non-combatants, providing in pertinent part:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflicts shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.⁵²⁹

The article delineates acts that are prohibited to include murder, torture, mutilation and all forms of cruel and inhuman treatment, the taking of hostages, humiliating and degrading treatment, and the passing of sentences and carrying out executions without due process.⁵³⁰ Protocol II reaffirms the rules set out in Common Article 3 and expands the protection to include prohibitions against slavery, pillage, rape, and acts of terrorism, as well as the threat to commit such acts.⁵³¹ The statute of the Special Court draws from the Convention to create offenses that the court will have jurisdiction to try.⁵³² In Article 3, the following offenses are listed: violence to life including murder and cruel treatment, collective punishments, the taking of hostages, terrorism, rape, indecent assault and other forms of degrading punishments, pillage, the passing of sentences and executions without recourse to court and judicial guarantees, as well as threats to commit those offenses.⁵³³

The Sierra Leone Special Court statute adopts the innovation created by the Rwanda statute where, for the first time, the UN Security Council criminalized breaches against the Geneva Convention.⁵³⁴ Generally speaking, breaches to the provisions of Common Article 3 and the additional Protocol II do not attract penal sanctions unless individual member states enact such provisions into their domestic criminal legislation.⁵³⁵ Questions thus arose as to whether the inclusion of Common Article 3 and the additional Protocol II provisions into the statute of the Rwanda tribunal established individual criminal responsibility of the violators.⁵³⁶ In his report on the Rwanda tribunal, the UN Secretary General noted that the Security Council had adopted a more expansive approach to the subject matter juris-

529. Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31, Article 3 [hereinafter Common Article 3].

530. *See id.*

531. *See id.* at art. 4

532. *See id.*

533. *See id.*

534. *See* Theodor Meron, *International Criminalization of Internal Atrocities*, 89 AM. J. INT'L L. 554, 558 (1995).

535. *See id.*

536. *See* Tara Sapru, *Into the Heart of Darkness: The Case Against the Foray of the Security Council Tribunal into Rwanda Crisis*, in 32 TEX. INT'L. L. J. 329 (1997).

diction of the tribunal and thus included in the treaty "international instruments regardless of whether they were considered part of customary international law or whether they have customarily entailed individual criminal responsibility of the perpetrator of the crime."⁵³⁷ No scholar less venerable than Theodore Meron has asserted that since Nuremberg, there has never been any doubt that certain kinds of conduct, violating norms of international order as it were, should attract individual criminal sanctions.⁵³⁸ To determine which kinds of conduct should be considered for such sanctions, he suggests that the test should be as follows:

Whether international law creates criminal responsibility depends on such considerations as whether the prohibitory norm in question, which may be conventional or customary, is directed to individuals, states, groups or other authorities, and/or to all these. The extent to which the prohibition is addressed to individuals, whether the prohibition is unequivocal in character, the gravity of the act, and the interests of the international community are all relevant factors in determining the criminality of various acts.⁵³⁹

Like the Rwanda statute, the Sierra Leone statute has specifically affirmed that persons who plan, instigate, order, commit, aid and abet in the planning or execution of crimes provided for under the statute will bear individual criminal responsibility.⁵⁴⁰ The statute does not absolve actions carried out in official capacity, nor does it grant reprieve to superiors for actions committed by their subordinates, provided that such superior knew of the acts and never took any reasonable step to prevent or stop them.⁵⁴¹

(c) Other Violations of International Humanitarian Law

Apart from the Geneva Conventions, the Special Court has been accorded jurisdiction to try several other breaches against humanitarian law, including deliberate attacks on civilians and humanitarian personnel, installations, materials, or vehicles involved in "humanitarian assistance or peacekeeping missions."⁵⁴² The inclusion of these acts into the category of international crimes to be tried by the court is largely a reaction to the rampant incursions against peacekeeping and humanitarian activities by soldiers of the RUF, which have variously been reported as holding UN peacekeepers hostage, confiscating their weapons, and even killing them.⁵⁴³ Also included in this category is the offence of abduction and forced recruitment of children below age 15 into armed forces.⁵⁴⁴

537. Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955, U.N. SCOR, 50th Sess., 134th mtg., U.N. Doc. S/1995/134 (1995) at para. 12.

538. See Meron, *supra* note 534, at 554.

539. See *id.* at 562.

540. See Draft Statute, *supra* note 507, at art. 6.

541. See *id.* at art. 6(2)-(3).

542. See *id.* at art. 4(b).

543. See *id.*

544. See *id.* at art. 4(c).

(d) Crimes Under Sierra Leone Law

The only Sierra Leone offenses over which the court will exercise jurisdiction are those created under sections six, seven, and twelve of the Prevention of Cruelty to Children Act of 1926 (Chapter 31 of the Laws of Sierra Leone)⁵⁴⁵ and section two, five, and six of the Malicious Damages Act of 1861.⁵⁴⁶ The first set of offenses relates to the abuse and abduction of girls below the age of fourteen, while the second set includes prohibitions against wanton destruction of property (particularly buildings).⁵⁴⁷

Problems and Prospects

On passing the resolution establishing the court, the Security Council acknowledged that the civil war in Sierra Leone was indeed a threat to international peace and security in terms of Article 39 of the UN Charter, thus necessitating action under Chapter VII of the Charter.⁵⁴⁸ The establishment of the court may indeed be a milestone towards ensuring international justice, but whether it may influence the resolution of the ongoing civil strife in that country and other regions in Africa is a matter that is open to debate. When the Rwanda and Yugoslavia tribunals were set up the proclaimed purpose was to "put an end" to unconscionable violations of human rights and to bring the perpetrators of such violations to justice.⁵⁴⁹ Clearly the purpose of the intended tribunal in Sierra Leone is not different, except that in this case, the war has not ended. The question to ask is whether the commitment to punish human rights violations and war crimes is matched by an appropriate interventionist program capable of ending hostilities and restoring complete democracy.

The United Nations, as a world government, is often faced with restricted choices in view of the legal construction of its mandate. In the first place, its jurisdiction extends over states, not individuals.⁵⁵⁰ Second, the bureaucracy inherent in its internal structure and the consensual prerequisites in all its decision-making processes often diminishes its ability to make a timely response to any issue.⁵⁵¹ Treaties take ages to ratify, appointments face immeasurable political hurdles, and finances are perpetually unavailable. Be that as it may, the UN has attempted to make some contribution to the process of conflict resolution in almost all parts of the world, including peacekeeping initiatives such as those in Kosovo, Rwanda, Angola, Sierra Leone, East Timor and Congo, and including refugee assistance, election monitoring and other humanitarian programs just to mention a few.⁵⁵² But these initiatives have more often than not been a patchwork of uncoordinated activ-

545. *See* Draft Statute, *supra* note 507, at art. 5(a).

546. *See id.* at art. 5(b).

547. *See id.* at art. 4-5.

548. *See id.*

549. *See* S.C. Res. 827, U.N. Doc. S/RES/827 (1993).

550. *See id.*

551. *See id.*

552. *See id.*

ity mandated by Security Council Resolutions. The UN has never been in the habit of laying down a five or ten-year conflict resolution action plan in respect to each conflict situation in which it chooses to become involved. The result has been disastrous. The ad hoc measures often resorted to end up prolonging the conflict instead of remedying it. The debacle in Somali and the now ended civil war in Liberia are good examples. Somali is now a "failed state" while the Liberia civil war took seven years to resolve.⁵⁵³ In cases where the UN has chosen to get involved after a civil war, it has most certainly rewarded the victors with political support and assisted in the punishment of the losers.

In either case, human rights are treated as a separate agenda and are never integrated into the economic and other humanitarian programs undertaken by the UN and its collaborators. In almost all cases where ad hoc tribunals have been created, the violation of human rights is treated as unconnected to other aspects of societal life. The tribunals function as mechanical vehicles for punishing acts committed within a set period, without enjoying any flexibility at all, and thus cannot adjust their mandates to deal with new circumstances as they arise. The Rwanda tribunal now sitting in Arusha does not have the mandate to try *Tutsi* militias who massacred *Hutus* living in refugee camps after 1994 - yet these cases were widely reported.⁵⁵⁴ The tribunal *raison d'être* notwithstanding, the general perception that it supports the *Tutsi*-led regime in Rwanda tampers its stature as an impartial organ of international justice.

In Sierra Leone, similar questions arise. How impartial will the court be considering that the Kabba government is taking part in the creation and appointment of judges? Given that the government sponsored militia - Kamajors, ECOMOG, international mercenary groups, and even government soldiers - have committed some form of human rights violations,⁵⁵⁵ what is the likelihood that they may face trial? Since the war is still going on, the consequences of the court, if established, may be different but probably more calamitous. In the first place, it will diminish any chances of getting the belligerents to comply with the Lomé Accord, especially the disarmament provisions which are currently being enforced by UNAMSIL. Obviously everybody will fear arrest and prosecution. Second, it may legitimize the Kabba government despite the government's ineffectiveness. Third, it may create an aura of political uncertainty as belligerents may scheme for complete victory in the civil war to avoid prosecution. It is perhaps because of these reasons that most processes, for example the Northern Ireland peace process and even the South African negotiated transition, begin with a blanket declaration of amnesties for past violations.⁵⁵⁶ For Sierra Leone, much effort should be directed towards the complete cessation of hostilities and the restoration of democracy. Thereafter, seeking justice becomes a natural component to the process of societal healing and reconstruction.

553. See S.C. Res. 827, U.N. Doc. S/RES/827 (1993).

554. See Christina Carroll, *An Assessment of the Role and Effectiveness of the International Criminal Tribunal for Rwanda*, 18 B.U. INT'L L.J. 163, 185 (2000).

555. See Juma, *supra* note 82, at 86.

556. See Lemarchand, *supra* note 215, at 581.

Whereas human rights regimes define an important constituency in the foray of conflict resolution processes, the methods of its enforcement have remained too restricted. Violations of human rights, such as those witnessed in Sierra Leone, demand much more than an ad hoc war crimes tribunal with a restricted mandate. The argument could have been different if, at the time the war began, there was an international criminal court exercising extraterritorial jurisdiction. The approach, therefore, favors the establishment of a permanent international court capable of exercising a wide jurisdiction, supervising regimes and institutions whose conduct is found wanting, and, above all, of establishing linkages with other forums working towards peace. The permanency will allow for long-term planning and integration, obviate naivety in the whole process of determining the culpability of an insurgency, and may keep governments warned of the consequences of their indiscretion. In the words of Bassiouni:

The ICC is the most appropriate international mechanism through which the prescriptive norms against genocide, crimes against humanity and war crimes can become more effective instrumental norms as opposed to being essentially the embodiment of intrinsic values reflecting international social expectation.⁵⁵⁷

CONCLUSION

In this article, I have traced the political developments of Sierra Leone since independence. I have demonstrated that the civil war that began in 1991 did not occur in a vacuum, but was the culmination of the process of decay enunciated by poor leadership from the time of Sir Milton Magai to the present. In the trajectory, different factors, some inextricably intertwined with the cultural and sociological milieu in which the country found itself, have emerged to explain why the intractable civil war has survived to this day. I have argued that the international response to this conflict must take cognizance of these factors. Indications give little hope that the UN or its collaborators will do so. The proposed war crimes tribunal is probably not the best strategy for resolving the war at this point in time. Designing a more integrated plan capable of dealing with all the poignant issues of the Sierra Leone civil war may be a good starting point. The plan should address issues of economic disparity and ethno-political contests and should help Sierra Leonians build a true democratic society capable of nurturing good political leadership and respect for human rights.

557. M. Cherif Bassiouni, *Policy Perspectives Favoring the Establishment of an International Criminal Court*, 52 J. INT'L AFF'S, 795, 805 (1999).