



Sierra Leone

Submission to the Universal Periodic Review
of the UN Human Rights Council
11th Session: May 2011

International Center for Transitional Justice (ICTJ)
November 1, 2010

Summary

1. This submission examines Sierra Leone's progress in implementing transitional justice commitments incumbent on the authorities under the Lomé Peace Agreement (LPA) and international law. Sierra Leone has either acceded to or ratified a number of human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on Human and Peoples' Rights. While Sierra Leone has made progress on its obligations to provide justice to victims of serious human rights violations, it needs to work harder toward implementing the recommendations of Sierra Leone's Truth and Reconciliation Commission (TRC), supporting and funding Sierra Leone's reparations program, getting the domestic justice system more involved in the remaining operations of the Special Court for Sierra Leone (SCSL), and extending outreach around the court's activities—particularly about the Charles Taylor trial and post-sentencing residual issues.

Introduction and background to the conflict

2. The civil war in Sierra Leone that took place between several armed groups from 1991 to 2002 was characterized by grave violations of human rights and humanitarian law. Crimes included severing limbs, forcibly recruiting children into armed groups, widespread rape and coercion of women and girls as "bush wives" of combatants, burning houses, and killing and maiming of civilians. More than 200,000 people are estimated to have been killed, and hundreds of thousands more were displaced across the country. The war ended in January 2002 after the United Nations (UN) established a massive peacekeeping force that assisted in establishing peace and stability. Since then, Sierra Leone has initiated reforms establishing systems of accountability for human rights and humanitarian law violations committed during the conflict, and promoting rule of law and democratic governance.

3. The LPA of July 7, 1999, brought about a definitive settlement to the civil war and created measures of transitional justice including accountability for rights violations, institutional reforms, reparations for victims, and reconciliation of the population. The LPA required Sierra Leone to establish a truth commission, provide reparative measures for victims of the conflict, and institute reforms in the military, police, judiciary, and other government institutions. Pursuant to an agreement between the government of Sierra Leone (GoSL) and the UN, the SCSL was also established to prosecute those bearing the greatest responsibility for human rights and humanitarian law violations during the conflict.

Truth and Reconciliation Commission

4. The final report of the TRC was issued in October 2004. It contained a historical record of the violations committed during the war, examined the causes, and made more than 220 recommendations for the future both in terms of redress for victims and as measures toward nonrepetition. The recommendations were divided into four categories according to the urgency and necessity with which the TRC believed they should be implemented: “imperative,” “work toward,” “seriously consider,” and “calls on.” They were aimed at addressing some of the endemic problems that the TRC identified as causes of the war including issues relating to protecting human rights, fighting corruption, the need for wholesale reform of the justice and security sectors, and improving the democratic participation of youth and women.

Successes in implementing the TRC recommendations

5. The recommendations in all categories currently stand at varying levels of implementation. The following examples show the diverse, widespread goals of the TRC’s recommendations and some of the ways in which the government has attempted to tackle implementation. Institutions such as the Human Rights Commission, National Electoral Commission, and Political Party Registration Commission have been established to protect and promote human rights and good governance. The government has enacted various new laws to protect women and children and adopted codes of conduct for judicial officials. Similarly, it has established institutions to support vulnerable groups such as youth, victims of the conflict, and those affected by HIV/AIDS.

Substantive concerns about implementation of the TRC recommendations

6. While the GoSL has made tremendous progress, many of the recommendations still require further steps to implement. For example, the TRC found that the majority of Sierra Leoneans do not have meaningful access to courts due to the scarcity of judicial officials in many parts of the country. At least two districts still rely on magistrates to travel from other districts, and this undermines the rights of suspects and accused persons to a speedy trial. The TRC also recommended drafting a new constitution that accords explicit recognition of the right to human dignity and other rights, but this is yet to happen.¹ A new constitution would, among

¹ Recommendations 35 and 38, Report of the TRC.

other things, separate the Office of Attorney General from the Minister of Justice and could abolish the death penalty. The death penalty remains the applicable punishment for treason, murder, and aggravated robbery; in 2009 the courts imposed three death sentences, bringing the total number of people on death row to 15 (three women and 12 men), although no execution has been carried out since 1998. Further, despite the attempts to improve the legal status of women, the existence of section 27(4)d of the current constitution continues to allow discrimination against women in family and property law, contrary to article 26 of the ICCPR.² The government is also yet to enact freedom of information legislation and establish a public defender's office to better safeguard the rights of people facing criminal proceedings, even though discussion on both of these subjects has begun.

7. Symbolic measures, such as designating a "National Peace Day," have not been carried out by national authorities, nor have victims received specific skills training and education programs.

The Special Court for Sierra Leone

8. The establishment of the SCSL in 2002 brought hope to the millions of Sierra Leoneans who had endured 11 years of fear, brutality, and constant warfare. The court offered the chance for the country to heal by seeking justice for the violations people have suffered from those who bore the greatest responsibility for the atrocities.

Successes of the Special Court

9. The SCSL has achieved important successes, including the following: conducting fair trials that resulted in the conviction of eight people who are now serving sentences ranging from 15 to 52 years in a jail in Rwanda; the ongoing trial of former Liberian president Charles Taylor on 11 counts of war crimes and crimes against humanity; dismissing an attempt to dilute the principle of individual criminal responsibility for the most serious crimes on the basis of the reasons for fighting (just cause); creating a landmark international precedent by confirming that conscripting children younger than 15 into fighting forces was contrary to customary international law as early as 1996; and determining that forced marriage can constitute a separate and distinct crime against humanity as an inhuman act.

Substantive concerns about the operation of the Special Court

10. The primary concerns about the court relate to its ability to contribute to the reform of the ordinary justice sector in Sierra Leone and its ability to provide a transparent example of justice for Sierra Leoneans. The decision to transfer Charles Taylor's trial to The Hague

² The legal system of Sierra Leone is made up of the constitution, common law, statutory law, and an unwritten customary law. The laws proclaiming to prohibit discrimination have been undermined by a number of legislative exceptions. For instance, section 27(1) of the 1991 constitution states, "No law shall make any provision that is discriminatory in itself or its effect," but this is weakened by the exceptions in section 27(4)d, which says "It shall not apply to any law that makes provision for adoption, marriage, divorce, burial, devolution of property on death and customary law." Customary law inherently discriminates against women in all these areas.

rather than holding it in Freetown, the theater of the crimes, lessened the accessibility of the court to ordinary Sierra Leoneans. While the court's judicial proceedings have been generally of a high standard, they have operated quite separately from the ordinary courts. As a result, the court has had limited impact in strengthening the domestic legal sector and judiciary because of insufficient involvement of Sierra Leonean legal personnel in the court and a lack of incorporation of national laws into the SCSL's operations.

Reparations

11. Sierra Leone's reparations program was launched in January 2009, seven years after the war ended and nearly five after the TRC issued its report. The state's obligation to provide reparations to victims of human rights violations derives both from international law and domestic sources, in that reference is made to such an obligation in the LPA as well as in the TRC's recommendations. The National Commission for Social Action (NaCSA), the agency implementing the reparations program, has registered and verified 27,992 victims across the country in all categories including children, amputees, and others wounded in the fighting, war widows, and victims of sexual violence. In December 2009 the Trust Fund for Victims was launched, and in March 2010 President Ernest Bai Koroma finally issued a public apology to all women for the violations they suffered during the conflict.

Successes in delivering reparations

12. In 2008 the GoSL started a commendable reparations process when it undertook a one-year project aimed at building the institutional capacity needed to implement the TRC recommendations. During the "Year One Project," NaCSA offered an interim relief package that provided support to 20,000 beneficiaries. Each received 300,000 leones (approximately \$100). In addition to that, 200 victims of sexual violence were given medical support for various ailments including fistula surgery and treatment for sexually transmitted diseases. The GoSL also instituted a scheme called emergency medical assistance to support more than 49 victims who still suffer from bullet wounds and other injuries sustained during the war.
13. NaCSA—through various service providers—has also completed symbolic and memorialization events in 40 of Sierra Leone's 149 chiefdoms. The events have included conducting religious and traditional rites, erecting tombstones, memorials, and monuments, and carrying out community processes of remembrance, commemoration, reburials, and feasting ceremonies. There are 109 more events outstanding.

Substantive concerns

14. The services described above were meant to provide both immediate and interim relief for victims while NaCSA prepared for larger-scale reparations work in January 2010. According to the TRC recommendations, which NaCSA has insisted will guide its work, victims were to benefit from various schemes such as health care (physical and psycho-social support), education, skills training, micro-grants, pensions, and community and symbolic reparations. However, The Year Two implementation plan has come to a standstill because it lacks funds.

15. Reparation is a basic human right that obliges states to provide victims of human rights violations an effective remedy. Sierra Leone's treaty obligations in this regard include article 8 of the Universal Declaration of Human Rights, article 2.3 of the ICCPR, article 14 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and articles 7 and 21 of the African Charter on Human and Peoples' Rights. Further, the Basic Principles and Guidelines on the Right to a Remedy and Reparation adopted by the UN General Assembly in 2005—through a long drafting process that Sierra Leone participated in—set out the same obligation. The failure to implement the reparations program is a breach of these international obligations. The only program that will resume before the end of 2010 is a project supported by the UN Trust Fund to End Violence against Women: UNIFEM approved \$1 million to support a total of 650 female victims of sexual violence. All other reparations activities have been put on hold including micro-credit support for small businesses, a pension scheme, and skills training for people with disabilities, health care, transportation, and agricultural support for farming families.

Recommendations

16. The GoSL should:

- Without further delay establish a follow-up committee to oversee the implementation of the recommendations of the TRC.
- Clearly delineate the goals and responsibilities for the various ministries, departments, and agencies, with timetables, appropriate resource distribution, and cross-sector collaboration when necessary for implementing the recommendations.
- Proceed with a review of the constitution and ensure that relevant TRC recommendations are included in any proposed revisions.
- Increase budgetary support to the reparations program.
- Incorporate certain components of the reparations program (including health care, education, and transportation) into existing structures, and place special emphasis on the needs of victims.
- Give NaCSA and the trustees of the Trust Fund for Victims the capacity to enable them to generate funding for reparations program through alternative means.

17. The Special Court should:

- Dedicate institutional attention to closer links with the domestic legal system for the remainder of the court's existence to enhance its legacy.
- Increase its outreach efforts as the Taylor trial comes to a close, including post-sentencing outreach to educate people about what will happen after the court's primary work is completed.