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Gender Aspects of the Truth and Reconciliation Commission in Sierra Leone

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I. Introduction

After eleven years and multiple attempts to restore peace, the civil war in Sierra Leone ended in May 2001 by the signing of the second Abuja Agreement. The complex conflict between the government of Sierra Leone and various military groups, of which the Revolutionary United Front (RUF) was the most important, left trauma in the country. The conflict amongst others grew as a result of criminal involvement in resources management and money-flows from the neighboring country of Liberia, with President Charles Taylor as a leading figure in supporting rebel groups in Sierra Leone.

In the post-conflict period, the international community, represented by the U.N., together with the government of Sierra Leone, chose to establish a Truth and Reconciliation Commission (TRC). The U.N. Security Council Resolution 1315 created an ad hoc tribunal, the Special Court of Sierra Leone. The role of gender in the different steps towards peace, equality and democracy is extremely important in (re)building a broken nation, and was one of the focus areas in Sierra Leone. Women had been the target of violence before and during the civil war. All participating groups, including the official army, made women part of the combatant aspect of the war, by recruiting them to fight, forcing them to carry supplies or by making them sexual property of the

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2 Other involved groups were at the rebel side the Armed Forces Revolutionary Council (AFRC), the West Side Boys and the Civil Defense Forces (CDF), supporting the government.
4 Id. at 79.
5 S.C. Res. 1315, U.N. Doc. S/RES/1315 (August 14, 2000). The complex relationship of the TRC and the Tribunal, as well as their specific approach on gender issues, is not part of the scope of this paper. For comments on the gender-based prosecution in the Special Court, see for example: Valerie Oosterveld, Lessons from the special court for Sierra Leone on the prosecution of gender-based crimes, 17 Am. U. J. Gender Soc. Pol’y & L. 407, 407-430 (2009).
forces. The Truth and Reconciliation Commission relied on previous experiences in different parts of the world with transitional justice and gender related issues. This paper will research the Commission’s mandate, management, and the techniques used to integrate a gender sensitive method in addressing women’s experiences during the conflict in Sierra Leone. The purpose is to improve, in turn, future attempts to conduct similar proceedings in the aftermath of conflict elsewhere. The Commission in Sierra Leone chose to define and research crimes of a sexual nature in depth, in contrast with other crimes, of which the majority was non-sexual. More attention was given to crimes of which women were victims than to crimes committed by women. Future TRCs should be inspired by the gender focus of the TRC in Sierra Leone, but it is equally important that they develop strategies to avoid stereotype confirming language.

II. Pre-war and War in Sierra Leone and the Role of Gender

Similar to other conflicts in the nineties of the previous century, the civil war in Sierra Leone was multifaceted and extremely brutal. It is believed that the lack of democracy, combined with the high level of corruption due to the concentration of political power and resources, led to the outburst of the conflict. Sierra Leone has the potential of having a functional economy, due to its mineral resources. Before the civil war, the social and economic situation of most the civilians did not represent this possibility.

Only six years after its independence from the United Kingdom in 1961, a single political party dominated the entire country, which resulted in inequality, mismanagement and
frustration. \(^{10}\) Human and women’s rights standards were not reached, since the Sierra Leonean government would not provide protection against various forms of discrimination and cultural practices that affected women negatively. \(^{11}\) Even more, the government itself produced laws and maintained discriminatory customary law, which contributed largely to the fact that women had a lower legal status. \(^{12}\) Domestic law and practices violated women’s human rights on almost every aspect of society, including political, economical, cultural, educational, and civil rights. \(^{13}\) There specifically was large scale discrimination in personal and family law, areas of the law that were the closest to the daily life of many women (inequality of rights in a marriage, divorce and inheritance) \(^{14}\), and in the right of ownership of land \(^{15}\).

Sierra Leone reacted inadequately to the widespread domestic and sexual violence. There is a common belief that men can beat their wives and enter into arranged marriages. \(^{16}\) The cultural practice that sexual violence should not be reported by victims was widespread because of shame and fear of stigma, as well as the lack of a functional judicial system. \(^{17}\) This “culture of silence” makes it very difficult for women to talk publicly on their negative experiences. \(^{18}\)

This negative pre-war climate is important to consider both looking back, facing what went wrong, as well as looking ahead, trying to avoid new and other conflicts. Moreover, the pre-war conditions of women, the discriminatory legal system, and the silence around gender

\(^{10}\) Muddell, *supra* note 6, at 85.

\(^{11}\) See for example male favoritism in education (*3B WITNESS TO TRUTH, CHAPTER 3 No. 35*), the lower status of rural women preventing them to hold meaningful politic positions (*Id. No. 55*).

\(^{12}\) *Id.* at No. 61 and 63.

\(^{13}\) *Id.* at No. 35-104.

\(^{14}\) *Id.* at No. 65 and 109.

\(^{15}\) *Id.* at No. 66.

\(^{16}\) *Id.* at No. 98 and 116.

\(^{17}\) Muddell, *supra* note 6, at 86.

\(^{18}\) *3B WITNESS TO TRUTH, CHAPTER 3 No. 94.*
violence, not only violated human rights law, the TRC stressed it may have contributed to the brutality of incidents against women.\textsuperscript{19}

\section*{III. Post-war Sierra Leone: How did the TRC address Gender-issues?}

The years after the war ended were of major importance to the female citizens. This period would shape the future of the country, and try to deal with inequality and injustice. It is reported that this post-conflict society, however, was not characterized by total change, since both personally and nationally, wounds from the war were still open.\textsuperscript{20} The particular cultural habit in Sierra Leone not to report traumas, and fear of stigmatization, together with a destroyed health sector, resulted in another form of victimization of women.\textsuperscript{21}

\textbf{1. The Potential of a Truth and Reconciliation Commission}

In post-conflict situations, countries often attempt to recover from their painful experiences of war. In order to bring about stability, past atrocities must be confronted. In this transitional period, two major aspects are important: the need to look back at what happened and the need to look toward the future.\textsuperscript{22} Especially in rebuilding the Sierra Leonean nation, the focus should be on meeting the needs of the civilian population, meeting their needs, since the conflict has affected them on a large scale.\textsuperscript{23}

Truth and Reconciliation Commissions are a mechanism used in post-conflict situations, based on the belief in the “universal” value of retelling the stories of the past, in order to help a

\begin{thebibliography}{99}
\bibitem{note19} 3B WITNESS TO TRUTH, CHAPTER 3 No. 103.
\bibitem{note20} Muddell, \textit{supra} note 6, at 86.
\bibitem{note21} \textit{Id.} at 86.
\end{thebibliography}

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society to heal.\textsuperscript{24} Victims, perpetrators and witnesses will testify, to find the truth, and to address what went wrong. The common memory is the central point of focus in this method of peace building, instead of criminalization and finding individual guilt.\textsuperscript{25} Therefore, there is a clear distinction between this form of transitional justice and others, such as tribunals, which focus on individual accountability for atrocities committed during the conflict. The establishment of a TRC can have specific advantages compared to the more traditional legal systems. Accessibility, time and space given to testimonies that might not contain useful evidence in a classical judicial way and attention to a different range of crimes, are amongst those. In relation to gender, this mechanism can give women a voice, and room can be made for a variety of different experiences in the war, as well as broad and deep inequalities in a society.\textsuperscript{26}

One of the most important strengths of TRCs in post-war societies in relation to gender is the capability to have a broader look on structural problems in society.\textsuperscript{27} Without having to deal with, for example, individual evidence beyond reasonable doubt and causation questions, the finger can be put on spots of structural injustices. In particular in Sierra Leone this is crucial, since this structural discrimination played a role in the brutality level of the later conflict. Naming inequalities in family law can support gender activism and actual change. This possibility does not exist in international criminal law, where the focus still remains on individual responsibility. There are many opportunities for TRCs to fill a gap in international law in rebuilding nations. This function of TRCs is still evolving.\textsuperscript{28}

Still, questions can be posed on the use of a TRC, specifically in Sierra Leone, where the common cultural practice of silence determines how people deal with the past. The “forgive and

\textsuperscript{25} Shaw, supra note 24, at 2.
\textsuperscript{26} Fionnuala Ní Aoláin & Catherine Turner, Gender, Truth & Transition, 16 UCLAWLJ 229, 248-249 (2007).
\textsuperscript{27} The Sierra Leonean TRC did this, see supra Part II: Pre-war and war in Sierra Leone and the role of gender.
\textsuperscript{28} Muddell, supra note 6, at 93.
forget” morality makes it hard for Sierra Leonean citizens to talk about horrible things they have been through. Because of this, the so-called universal “truth telling equals healing” belief that provides the underlying rationale for TRCs seems contradictory to the general pre-war culture in Sierra Leone. Indeed, there is a risk that such mechanism will not resonate with society, and therefore, will not be very effective. Nevertheless, establishing a TRC can give many women a voice and the opportunity to step aside from a cultural practice that might be harmful to them.

It leaves no doubt that different people in different parts of the world think differently about what the true meaning of justice is and how this can be realized. A balance between the establishment of post-conflict mechanisms, often reflecting a more Western point of view, and at the same time respecting local and cultural practices in dealing with restoring peace, must be pursued. In this, there is a crucial role for civil society, in echoing the different aspects of culture, gender and justice. Diane Orentlicher stressed this in an addendum to her “Report of the independent expert to update the Set of Principles to combat impunity”, a set of principles used by the U.N. Commission on Human Rights in setting up amongst other truth commissions. Principle 6 holds that to the greatest extent possible, decisions to establish a truth commission, define its terms of reference and determine its composition should be based upon broad public consultations in which the views of victims and survivors especially are sought. Special efforts should be made to ensure that men and women participate in these deliberations on a basis of equality. Thus, the use of a TRC must be supported broadly to comply with elementary goals of post-conflict peace restoration, namely to bring a kind of justice to victims they accept as justice.

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29 SHAW, supra note 24, at 3. There also is a general believe that talking about bad things will bring these back. SHAW, supra note 24, at 9.
30 Hoffman, supra note 23, at 130.
32 Id. Principle 6.
In this, special attention should be paid to groups that in the past had to deal with structural inequality. Principle 6 stresses the importance of gender participation in this process of resonance seeking.

2. Setting up the Sierra Leonean TRC

As early as the Peace Accords in Lomé in 1999 the article on war rehabilitation and reconstruction stated: *Given that women have been particularly victimized during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programs, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone.* It was this peace accord that called upon parties to install a TRC. The fact that both parties to this agreement, President Ahmad Tejan Kabbah and RUF- leader, Foday Sankoh, paid attention to gender in referring to it in the Lomé Peace Accords, indicates a common concern on this issue.

There is some ambiguity in the role women are given in this early stage of the rehabilitation process. First, women are viewed primarily, if not solely, as victims in this short article, and this is the only reference that is made to the role of women in post-war Sierra Leone in the Peace Accords. While it is true that women suffered in various ways from the eleven years during conflict, their experiences go far beyond being a victim. In the Sierra Leonean case, this view is particularly counter productive because the recruitment method of both the official army and rebellion groups was known for turning victims into perpetrators.

Second, the article envisions a central role of women in post-war Sierra Leone, as their contribution to the moral reconstruction of Sierra Leone. There is no reference to the central role

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33 This Peace Accord was the second one in Sierra Leone, after the Abidjan Accords, signed in 1996 failed to end the war. The Lomé Peace Accords were also not able to end the war immediately, as it took combined national and international troops another two years to stop the fighting. Hall & Kazemi, supra note 1, at 288-289.
35 Hall & Kazemi, supra note 1, at 291.
women could play in the political and economical rebuilding of the broken nation, yet these were sectors where serious non-representation caused a lack of democracy and the under-application of economic possibilities in pre-war Sierra Leone and contributed to the gruels committed during the war.\textsuperscript{36} A broader view on the role of the Sierra Leonean women in rebuilding the whole nation would have been more appropriate. The Lomé Peace Accords addressed past gender-problems, but apparently were unable to distance themselves completely from those problems.

In reflecting on the U.N. Principles to Combat Impunity\textsuperscript{37}, the role of civil society in writing this debatable article is worth researching. The Commission’s Report mentions the government holding a “consultative conference on peace building” prior to the Lomé meeting.\textsuperscript{38} The United Nations High Commissioner for Human Rights, Mary Robinson, visited Sierra Leone and facilitated a dialogue on human rights, in which the Government and NGOs represented by the National Forum for Human Rights and the National Commission for Democracy and Human Rights, participated.\textsuperscript{39} Agreement was reached on the establishment of a TRC as an accountability mechanism.\textsuperscript{40} Most of the attention, however, was paid to the question whether or not to grant amnesty to the rebel groups, something civil society, in the form of women, religious and student groups, agreed on.\textsuperscript{41} Being aware of this involvement and the U.N. watching, stereotype affirmative language still made it into the final draft. Thus while representation of civil society in deciding upon the establishment of the TRC was, at least partly, complied, women’s groups did not succeed in playing a particular role fighting gender stereotypes.

\textsuperscript{36} See \textit{supra} Part II: Pre-war and War in Sierra Leone and the Role of Gender.
\textsuperscript{37} See \textit{supra} Part III, 1. The potential of a Truth and Reconciliation Commission.
\textsuperscript{38} \textit{1 Witness to Truth, Chapter 2} No. 15.
\textsuperscript{39} \textit{Id.} at No.16.
\textsuperscript{40} \textit{Id.}
3. The TRC Mandate and Composition

The next stage of setting up the TRC, as foreseen in article 26 of the Lomé Accords, called for the government of Sierra Leone to work closely together with the United Nations.\(^{42}\) According to the TRC Act of 2000, the Commission’s main objective would be to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.\(^{43}\) The clear political will to build a judicial mechanism that is particularly sensitive to experiences of women in the past conflict remains absent in the Act establishing the Sierra Leonean TRC in 2000. The Act is written in gender-neutral terms, and there is no special “vulnerable” group created composed of women and children as one category of victims. One of the aims of the TRC is, for example, to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict.\(^{44}\) As language is an important tool in law and in coloring the reality, it is of the upmost importance that stereotype confirming language is left behind. This was after all not

\(^{42}\) Hall & Kazemi, supra note 1, at 289.
\(^{44}\) Id. Art. 6 (2), (b).
the case in the Lomé Accords, in which women were automatically identified with victims. In contrast, the TRC is installed for all victims, regardless of their gender.

Interestingly enough, the TRC interpreted the phrase “giving special attention to the subject of sexual abuses” as referring to the overwhelming amount of women who were victims of sexual abuse, and that this meant that it should pay special attention to all the experiences of women and girls. Nevertheless, the Commission recognized that women were more than victims of the war, stating women took up other roles too, such as those of perpetrators or collaborators. The interpretation of the TRC is clearly inspired by gender theories.

The TRC Act refers directly to gender twice, in the provisions related to the composition of committees functioning under the Commission, and the Selection Panel and Coordinator; these require that gender as well as regional representation will be taken into account. No reference is made to the composition of the highest organ itself, the Commission. This textual shortcoming was compensated by the gender balance in practice, where three out of seven commissioners were women. However, this does not mean future TRCs should leave this to the chance and good will of governments. Mandates must contain a clear provision stating the inclusion of women and men in equal numbers on each Commission and gender affirmative recruitment at all levels.

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45 See supra Part III, 2. Setting up the Sierra Leonean TRC.
46 Hall & Kazemi, supra note 1, at 292.
47 As many as 275,000 women and girls may have been sexually violated during the war. Human Rights Watch, “We’ll Kill You if you Cry”, a report on gender-based violence during the conflict in Sierra Leone, Vol. 95, No. 1(a), New York, January 2003.
48 3B WITNESS TO TRUTH, CHAPTER 3 No. 10 and 11. “The Commission intends in this chapter to capture the experiences of both women and girls in respect of sexual violence, as well as their complete gendered experiences at a political, legal, health and social welfare level.”
49 Id. at 11.
50 While the majority of the women in Sierra Leone were victims, the Commission recognizes that many women took on the role of perpetrators and / or collaborators, out of personal conviction or simply in order to survive.
51 Art. 10 (2) TRC Act.
In general, the inclusion of gender as a criterion in the recruitment of a TRC’s staff, as well as other factors, such as class, race, ethnicity, age and religion, has the potential to make victims more comfortable giving testimony.\(^5\) On the other hand, having women on the Commission and its sub-organs alone is in itself insufficient, training of the staff is also crucial to approach gender issues.\(^4\)

4. TRC Strategy and Methods

The TRC’s working methods had three components: *undertaking investigation and research into key events, causes, patterns of abuse or violation and the parties responsible; holding sessions, some of which may be public, to hear from the victims and perpetrators of any abuses or violations of from other interested parties; and taking individual statements and gathering additional information with regard to the matters referred to in previous paragraphs.*\(^5\)

Effort was put in bringing the hearings close to the people, by holding these throughout the country and broadcasting hearings on the radio and television.\(^6\)

The Truth and Reconciliation Commission’s final report describes how the Commission had various strategies in addressing women in their methodology. The TRC chose to dedicate a separate chapter on women during the civil war, that allowed them to focus on the specificity of the experiences of the female population. It is important to mention again the attention given to language, as the chapter in this report dealing with women, is called “Women & the Armed Conflict in Sierra Leone.” The language is inclusive, in the sense that it addresses all women who were involved in the conflict in one way or the other and no prejudicial connotation is made between women and victims in general or specifically as victims of sexual violence. This

\(^{5}\) Nesiah, *supra* note 52 at 10.

\(^{4}\) *Id.*

\(^{5}\) Art. 7 TRC Act.

inclusiveness approach also led to different subdivisions in the chapter, such as “women as perpetrators and collaborators” and “women as mediators and peacemakers.”

The working method in obtaining testimonies started in local town halls were the TRC tried to reach out to women and women’s groups.\(^57\) In this, the cooperation with UNIFEM was extremely important.\(^58\) The TRC worked with female statement-takers, who were trained in dealing with sensitive topics as sexual violence.\(^59\) This training focused on taking statements of victims of sexual abuse.\(^60\) These took place on a one-to-one basis, as much as possible by female statement-takers and preferably not in presence of a male family member. Still, the testifier could always ask for male statement-takers or presence, so the freedom of choice was maintained.\(^61\) Trainings of statement-takers included educating women on the possibilities to testify in the TRC, whether or not in closed hearings.\(^62\) During testimonies, counselors were present to sit beside the women and offer assistance.\(^63\) In the Final Report of the TRC, however, no reference was made to training in interrogation techniques. Nonetheless, a crucial aspect of getting clear testimonies, is asking the right questions.

Later, the TRC started holding separate sessions on sexual violence and other crimes, using both *in camera* and public hearings.\(^64\) Written statements were welcomed too by the commission, as well as statements from minors.\(^65\) It was a positive decision to let the final choice to speak in an open or a closed session to the testifier, as many women in rural areas asked

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\(^{57}\) 3B WITNESS TO TRUTH, CHAPTER 3 No. 19.
\(^{58}\) *Id.* at No. 31-34.
\(^{59}\) *Id.* at No. 17.
\(^{60}\) *Id.* at No. 20.
\(^{61}\) *Id.* at No. 20.
\(^{62}\) *Id.* at No. 21.
\(^{63}\) *Id.* at No. 24-25.
\(^{64}\) *Id.* at No. 23.
\(^{65}\) *Id.* at No. 27.
explicitly to tell their stories, even on sexual violence, to the whole community.\textsuperscript{66} This outstanding request contradicts criticizers who made the argument that a TRC was not the right mechanism to use in Sierra Leone because of the “culture of silence”.\textsuperscript{67} For many women, it was useful to publicly give testimonies before they could move to the cultural significant stage of “forgive and forget”. The Sierra Leonean TRC has proven to be able to integrate local culture and the use of truth telling and reconciliation mechanisms as discussed \textit{supra}.\textsuperscript{68}

An important aspect of the methodology used by the Commission can be found in connecting with civil society and more concretely with women’s groups. Again, UNIFEM helped facilitate gathering input from women in the provinces on which recommendations the TRC should make on women.\textsuperscript{69} Civil society also was represented in the thematic, institutional and event-specific hearings of the Commission.\textsuperscript{70}

5. Legal Reasoning by the TRC

5.1. Introduction

It is estimated nearly 275,000 women and girls have experienced sexual violations during the war.\textsuperscript{71} Given this outrageous amount it is even harder not to stereotype women as victims or more specifically of victims of sexual violence. Women and girls were targeted because of their gender, using extraordinary and everlasting techniques.\textsuperscript{72} The most common violations against

\textsuperscript{66} 3B WITNESS TO TRUTH, CHAPTER 3 No. 27.
\textsuperscript{67} See supra
\textsuperscript{68} 3B WITNESS TO TRUTH, CHAPTER 3 No. 19.
\textsuperscript{69} 1 WITNESS TO TRUTH, CHAPTER 5 No. 102.
\textsuperscript{70} \textit{Id.} at No. 198.
\textsuperscript{71} Human Rights Watch, “We’ll Kill You if you Cry”, \textit{a report on gender-based violence during the conflict in Sierra Leone}, Vol. 95, No. 1(a), New York, January 2003.
\textsuperscript{72} 3B WITNESS TO TRUTH, CHAPTER 3 No. 203-204.
women were, however, respectively: forced displacement (23.5%), abduction (15.7%), and arbitrary detention (12.0%).\textsuperscript{73}

Although the TRC is not a typical judicial body, recent international humanitarian law and international criminal law, as well as techniques of creative jurisprudence and advocacy, were used to strengthen its final report. Thus, it is necessary to look closer to the application by the TRC of classical international law and jurisprudence in dealing with crimes against and committed by women. The Truth and Reconciliation Commission focused for the most part on crimes of a sexual nature, defining these in the light of international criminal statutory and case law. This was not the case for all the crimes of a non-sexual nature. The section on women as perpetrators is equally under exposed in the Final Report. Although it planned not to, the TRC seems to confirm more stereotypes than it invalidates them. This is something future TRCs must stay watchful not to make this same mistake.

\textbf{5.2. Crimes of a Sexual Nature}

The working method of the TRC dealing with different forms of sexual violence against women was based on looking at internationally recognizable crimes.\textsuperscript{74} After the more factual analysis of statements by victims which had dealt with various forms of sexual violence, the TRC chose to define the crimes of rape\textsuperscript{75}, sexual slavery\textsuperscript{76}, forced impregnation\textsuperscript{77}, and enforced sterilization\textsuperscript{78}. The Commission revealed the historical background of internationally criminalizing sexual violence\textsuperscript{79}, and recent international jurisprudence in particular was used to

\begin{itemize}
\item \textsuperscript{73} Id. at No. 201.
\item \textsuperscript{74} 3B WITNESS TO TRUTH, CHAPTER 3 No. 179.
\item \textsuperscript{75} Id. at No. 180.
\item \textsuperscript{76} Id. at No. 183.
\item \textsuperscript{77} Id. at No. 185.
\item \textsuperscript{78} Id. at No. 186.
\item \textsuperscript{79} Id. at No. 170-176.
\end{itemize}
show direct correlation between elements in international tribunals’ definitions and the brutalities in Sierra Leone.

The crime of rape was studied using jurisprudence from both the ICTY and ICTR, as well as the Rome Statute. The TRC in Sierra Leone discussed the definition of rape in the wording of the Furundzija Judgement of the ICTY, because it is the more detailed. Special attention was first paid to the elements of force or coercion in the context of the civil war in Sierra Leone. Similar to the Akayesu and Kunarac, respectively before the ICTR and ICTY, these concepts of force and coercion are viewed as broad, and can be inherent to a military presence in itself. The TRC is of the opinion that both the elements of force and coercion were present in the Sierra Leone case. Second, and in line with modern gender conscious jurisprudence, the element of consent was taken into account. The TRC based its argument on the ICC Rules of Procedure and Evidence, which state that sexual encounters with minors or by coercion undermine the ability to give consent to sexual intercourse.

As mentioned above, the abduction of women was widespread during the Sierra Leonean conflict and many of these women became “bush wives” of the troops and rebels. The Commission linked this practice to sexual slavery, defining this by stressing the two components of this crime. On the one hand there has to be “enslavement” as defined by the Rome

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80 (i) the sexual penetration, however slight:
   (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the ; or
   b) of the mouth of the victim by the penis of the perpetrator;
   (ii) by coercion or force or threat of force against the victim or a third person. 

81 Prosecutor v. Jean Paul Akayesu, Trial Judgement, case ICTR-96-4-T, Ch.1, 2 September 1998.


83 3B WITNESS TO TRUTH, CHAPTER 3 No. 181.

84 Id. at No. 182.

85 ICC Rules of Procedure and Evidence, ICC-ASP/1/3, Rule 70 (a),(b),(c).

86 3B WITNESS TO TRUTH, CHAPTER 3 No. 85.

87 Id. at No. 184.
Statute\textsuperscript{88}, and on the other hand, forced participation in one or more acts of sexual violence.\textsuperscript{89} The Commission concluded that the related crimes of “forced marriage” and “detention in rape camps” are likewise forms of sexual slavery if the components are fulfilled.\textsuperscript{90}

The Commission makes a less clear link between the crime of “forced impregnation” and international law. The testimonies before the TRC focused on the prohibition by perpetrators to obtain abortions. In the Rome Statute the denial of an abortion was not seen as an element of the crime of forced impregnation.\textsuperscript{91} The TRC seems to regret this choice, by referring to the 1993 Vienna Declaration and Program of Action, in which “forced pregnancy” was first articulated.\textsuperscript{92}

Subsequently, the TRC recognizes “forced sterilization” as a separate crime and in a number of testimonies this practice was brought up.\textsuperscript{93} The absence of the listing of “forced sterilization” in the Statute of the Special Court of Sierra Leone is signaled by the Commission. Last, emphasis is put on the fact that the judicial thinking exercise of the Commission in relation to sexual slavery is not exhaustive, and that other forms can constitute “war crimes” or “crimes against humanity” as well, if respectively, a certain level of “seriousness” or “comparable gravity to other crimes” is reached.\textsuperscript{94}

The TRC chose to define rather carefully a set of crimes of a sexual nature, on the basis of internationally recognizable crimes. Support was found in the way international tribunals and the Rome Statute deal with this matter. Although none of the definitions is used directly to judge the

\textsuperscript{88} ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; Rome Statute of the International Criminal Court, at Article 7(2)(c).
\textsuperscript{89} 3B WITNESS TO TRUTH, CHAPTER 3 No. 183.
\textsuperscript{90} 3B WITNESS TO TRUTH, CHAPTER 3 No. 184.
\textsuperscript{93} 3B WITNESS TO TRUTH, CHAPTER 3 No. 186.
\textsuperscript{94} \textit{Id.} at No. 186.
events described by the witnesses and perpetrators, it seems the Commission wanted to support its conclusions on these by giving an overview of the current international law. The role of a TRC after all is not one of judging individual cases, and in this view the references to high-level judgments in international humanitarian law are thorough in evaluating large-scale crimes of a sexual nature against women. However, it is notable that this non-judicial mechanism of truth telling seems to rely on jurisprudence of strictly judicial bodies in order to strengthen its own decisions and recommendations.

5.3. Crimes of a Non-sexual Nature

In evaluating the hearings across the country of Sierra Leone, the TRC was confronted with a great amount of crimes against humanity and war crimes of a non-sexual nature as well. Torture\(^{95}\), enslavement\(^{96}\), mutilation\(^{97}\), cruel treatment\(^{98}\), and others\(^{99}\), were used against women during the civil war. The Commission used the Rome Statute and the Statutes of the ICTY and ICTR to define these crimes.

A different approach is used on the vast majority of crimes of a non-sexual nature. The Commission chose to restate experiences of women on crimes such as abduction\(^{100}\), forced recruitment\(^{101}\), mutilation\(^{102}\), detention\(^{103}\), forced displacement\(^{104}\), forced labor\(^{105}\), assault\(^{106}\), forced drugging\(^{107}\), disembowelment of pregnant women\(^{108}\) and amputation\(^{109}\). However, these

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\(^{95}\) 3B WITNESS TO TRUTH, CHAPTER 3 No. 191.
\(^{96}\) Id. at No. 194.
\(^{97}\) Id. at No. 197.
\(^{98}\) Id. at No. 198.
\(^{99}\) Id. at No. 196.
\(^{100}\) Id. at No. 208.
\(^{101}\) Id. at No. 214.
\(^{102}\) Id. at No. 218.
\(^{103}\) Id. at No. 220.
\(^{104}\) Id. at No. 226.
\(^{105}\) Id. at No. 237.
\(^{106}\) Id. at No. 243.
\(^{107}\) Id. at No. 254.
\(^{108}\) Id. at No. 263.
were not reviewed in the light of international criminal law, human rights law, refugee law, and humanitarian law, since the TRC focused on the narrative and factual aspects only, without explaining this choice. Separate attention is given to factual experiences of women as victims of looting, the destruction of property and extortion.\footnote{Id. at No. 270.}

It is regrettable that the Commission made this choice, since alliances with classical judicial concepts make final recommendations based on the international tribunals stronger. In defining the sexual crimes, the need to refer to the jurisprudence was presumed necessary by the TRC. Although no clarification is given why exactly this choice was made, one explanation can be that the TRC did this in order to gain support in international jurisprudence for its own findings. It is equally unclear why the Commission failed to legally address the large number of forced displacements, abductions, and arbitrary detentions, women testified on. Unfortunately, none of these top three crimes resulted in an extensive review, as was the case for all the crimes of a sexual nature and a limited list of crimes of a non-sexual nature dealt with by the Commission. Different explanations can be suggested, from the lack of resources to write this critique in depth, to an existing classification between different types of crimes. Either way, the choice was made to use a legal characterization that focused on all the crimes of a sexual nature, and only on a small part of the other crimes. It could be expected equal attention would be given to all major crimes women testified on, for two reasons. First, the most common crimes talked about by witnesses were not sexual. Second, there was the initial intent of the Commission not to solely see women as victims of sexual crimes.

It is indisputable that sexual crimes are vital to address, however, this should not detract from the importance of non-sexual crimes. The reason why this was not the case in the TRC’s

\footnote{3B WITNESS TO TRUTH. CHAPTER 3 No. 376, 381, 386.}
final report is unclear, but a suggestion can be made. Is this approached used because sexual crimes need a more extensive motivation? After all, the major reason for using judgments and statutes was seeking support in these, in order to strengthen the recommendations of the Commission on the particular crimes, clarifying definitions and the elements. Even if it is the case that some crimes need more explanation before they are applicable, questions can be asked about the choices made by the TRC. For example, a distinction is made in the crimes in the non-sexual category too. Is it true that the common understanding of an arbitrary detention is that much clearer than that of for example mutilation? Still, the first is not substantially explained in the light of international criminal and humanitarian law, while the latter is. Even more so, the extensive defining exercise happened for all of the crimes of a sexual nature, and only for some of the non-sexual ones.

An unintended consequence of this is that the Commission, even having good intentions to treat all testimonies the same way and seeing women’s suffering broader than the sexual defined ones, might have confirmed more stereotypes than it planned too. It can not be ignored that the Commission treats sexual crimes differently than others. Therefore, it is regretful the most common crimes testified on did not get an in depth legal analysis as other crimes did, because of the consequences on the long term and the message it sends out.

5.4. **Women as Perpetrators and Collaborators**

The TRC stressed the various roles women played in the Sierra Leonean civil war. It is notable that the TRC immediately starts with explaining why women take up these roles. It is one of the few times a certain form of preconceived opinion takes over in the final report of the Commission. The TRC presumes that women only took part in the war because of socio-
Many women experienced personal losses, which hurt them a great deal and led them into enrolling in the Army to avenge their loved ones. The gender stereotype that women base their decisions on emotional motives is emphasized. In the Sierra Leonean conflict, a certain tactic used by fighting groups in fact was to abduct women and turn them into perpetrators. Once involved in the war, serious human rights violations were committed by women, some of them even got famous because of it. Taking testimonies of female perpetrators was difficult, because of fear of stigmatization by the perpetrators.

The Commission report does not research these crimes as thoroughly as it did for the crimes against women. The concealed danger of gender stereotyping in addressing crimes is present again.

IV. Rebuilding Sierra Leone in a Gendered Way

The TRC Act of 2000 did not include a scenario for what would happen after the TRC had ended its final conclusions. The Commission’s Final Report, however, made recommendations on a variety of aspects in society. Legal, social, political, educational and economic reforms would be necessary in Sierra Leone, as steps towards avoiding future broad attacks on women as a victimized group. Here too, emphasis is placed on women as the only victims of the war. When in reality, the entire society was a victim of the Sierra Leone.
After the final report has ended the activities of the TRC in Sierra Leone, the need to maintain talking about what happened in the eleven years of the civil war, has paved the way for various other experiments of transitional justice. In general, these forums are approached locally and stress is on the participation of village communities.117

The TRC pointed out that nothing had really changed in the general subordination of women in Sierra Leonean society.118 Experts, who researched Sierra Leone some years after the Commission’s final report, regrettably decided the culture has not substantially improved in reference to women’s rights. In the light of the Commission’s findings that structural discrimination contributed to brutalities during the war, it is problematic that recommendations by the TRC that call for reform of statutory and customary laws are neglected by the new government.119

V. Conclusion

One of the general goals of a TRC is to talk about the past, to give the truth a room, in order to learn from it in the future. This is particularly true for the people of Sierra Leone, but more general these experiences can be used in post-war situations all over the world. The TRC in Sierra Leone did have the clear purpose to include gender related questions and problems, in its mandate, working method, and vision on the future of the country. In pre-war Sierra Leone women’s rights standards were not met, inequality was present in written and customary law, as well as cultural practices. An important conclusion of the TRC was that this climate might have contributed to the brutalities during the civil war, and must be challenged to positively change the society.

117 Hoffman, supra note 23, at 132. In this article, the work of ‘Fambul Tok’, an on-the-ground project seeking community healing by thinking small, is discussed.
118 3B WITNESS TO TRUTH, CHAPTER 3 No. 104.
119 Franke, supra note 22, at 827.
The choice for transitional justice to restore Sierra Leone can be criticized, because it seems to contrast local beliefs such as the “culture of silence”. Nevertheless, there was an effort to include civil society in setting up the TRC, and, with support of the U.N. programs, local resonance was sought. Future TRCs should continue to look for active civil society involvement, paying special attention to gender aspects, making sure their particular interests are effectively reflected.

The Sierra Leone case has paved the way for the inclusion of gender, clearly inspired by recent trends in international humanitarian law and feminist jurisprudence. The important connection with international criminal law and humanitarian law was particularly used in defining part of the crimes committed against women. Attention was paid especially to crimes of a sexual nature. The intent of the Commission to address women in gender neutral terms, in a “Women & Conflict”–chapter, turned out to only be a step in the right direction, and improvement is necessary to include all women in a post-conflict situation. There always seems to be the hidden danger of revitalization or maintaining gender stereotypes, even if good will is present. Roles of women, besides those as a victim, could have been clarified better in Sierra Leone. Future TRCs can use the Sierra Leonean technique to focus on gender in a separate chapter, but must avoid language that confirms gender stereotypes.

Models of transitional justice especially could play a larger role in rebuilding gender-neutral and equal societies. Whereas inequality too often leads to conflict, equality is one of the best buffers against it.