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# Weak States and Political Constraints: Experiments with Truth in Liberia and Sierra Leone

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# Weak States and Political Constraints: Experiments with Truth in Liberia and Sierra Leone

*Focusing on truth and reconciliation commissions in Liberia and Sierra Leone, this thesis examines which political conditions typical of weak states had the greatest impact in deciding the different levels of success between the two cases. Two conditions played a central role in determining each commission's success: the delegitimization of the state and political fragmentation. Their presence in Sierra Leone derailed that truth commission's efforts to carry out its mandate. Conversely, their absence in Liberia allowed its commission to operate relatively free of political impediments, leading to greater success.*

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*I am deeply grateful to you all.*

**Common Acronyms:**

**AFL:** Armed Forces of Liberia

**AFRC:** Armed Forces Revolutionary Council

**APC:** All People's Congress

**CPA:** Comprehensive Peace Agreement

**CONADEP:** Comisión Nacional sobre la Desaparición de Personas

**ECOMOG:** Economic Community of West African States Monitoring Groups

**ECOWAS:** Economic Community of West African States

**GOL:** Government of Liberia

**INPFL:** Independent National Patriotic Front of Liberia

**LDF:** Lofa Defense Force

**LPC:** Liberia Peace Council

**LURD:** Liberians United for Reconciliation and Democracy

**MODEL:** Movement for Democracy in Liberia

**NTGL:** National Transitional Government of Liberia

**NTLA:** National Transitional Legislative Assembly

**NPFL:** National Patriotic Front of Liberia

**NPRC:** National Provisional Ruling Council

**OAU:** Organization of African Unity

**PRC:** People's Redemption Council

**RUF:** Revolutionary United Front

**SCSL:** Special Court for Sierra Leone

**SLA:** Sierra Leone Armed Forces

**SLPP:** Sierra Leone People's Party

**TRC:** Truth and Reconciliation Commission

**ULIMO-(J/K):** United Liberation Movement of Liberia for Democracy (Johnson/Kromah)

**UNAMSIL:** United National Mission in Sierra Leone

**UNMIL:** United Nations Mission in Liberia

# Introduction

*Throughout the earth join all  
the silent wasted lips  
and speak from the depths to me all this long night...  
tell me everything, chain by chain,  
link by link, and step by step,*

- Pablo Neruda, *The Heights of Machu Picchu*

This thesis examines the determinants of success for truth and reconciliation commissions in contexts of near state collapse following violent conflict, focusing specifically on the cases of Liberia and Sierra Leone. Few conflicts of the late twentieth century were as harrowing as the Liberian and Sierra Leonean civil wars. The bitter power struggles between government forces, various rebel factions, and international peacekeepers that raged across these countries from 1989 to 2003 and 1991 to 2002 respectively were some of the bloodiest in African history. By the end of hostilities in each country, over 400,000 people (mostly civilians) had been killed and countless more were injured or displaced in heinous acts of violence.

In the aftermath of these conflicts, adhering to provisions laid out in their respective peace accords, both the Liberian and Sierra Leonean governments founded truth and reconciliation commissions (hereafter truth commissions or TRCs). These commissions were charged with constructing a comprehensive record of the conflicts, citing their antecedents and principal actors, allocating responsibility for the most heinous crimes, and making recommendations to their governments for fostering national reconciliation. While not the first truth commissions in history, the Liberian and Sierra Leonean commission were the first to be attempted in the context of states on the verge of collapse. Labeled ‘failed states’ by much of the international community, after over a

decade of conflict Liberia and Sierra Leone maintained only tenuous control of their territories and, with few resources and little trust in government, faced the daunting task of democratic consolidation. The truth commissions were to play an integral role in this process.

Interestingly, despite a number of common traits shared by the two cases, including similar histories, geography, language, and overlapping civil conflicts, the Liberian and Sierra Leonean commissions have achieved different levels of success. Sierra Leone's commission was undermined nearly from its inception by the concurrent establishment of the Special Court for Sierra Leone, mandated to prosecute the most egregious crimes committed during the war. Further, the non-binding nature of that commission's final recommendations undercut its ability to do much more than produce a final report weighty in detail, but utterly lacking in legal force. The Liberian case, conversely, has no Special Court to compete for resources or detract from its legitimacy. More importantly, of all the truth commissions in history it is the first whose recommendations are legally binding. This greater legal potency and prestige has translated into the Liberian commission collecting thousands of statements from victims, as well as numerous high-profile individuals involved in abuses, allowing it to create a more nuanced depiction of the conflict.

How did this happen? Given the number of similarities between Liberia and Sierra Leone, what accounts for this divergence? How did the political conditions that surrounded the creation and implementation of these commissions, while seemingly so similar, differ in ways that ultimately mattered in shaping the commissions' success? To begin answering these questions, this thesis will adopt a comparative framework. Liberia

and Sierra Leone are comparable in a number of useful ways. For one, the cases are recent. The Liberian civil conflict ended in 2003 and its truth commission's mandate is set to expire in the summer of 2009. Sierra Leone's war ended in 2002 and its commission there completed its work in 2005. Additionally, the countries share geographic proximity, a similar colonial history, ethnic makeup and language. The Economic Community of West African States (ECOWAS) deployed peacekeeping forces in both countries which were largely Nigerian-led and later replaced by much larger UN forces. The economies of Sierra Leone and Liberia are both export-based and centered on primary commodities such as rubber, coffee and diamonds. Most importantly, both Liberia and Sierra Leone are widely accepted by scholars as being prime examples of 'failed states'. Given these similarities, I take a closer look at the Liberian and Sierra Leonean cases in order to identify any underlying differences that may have affected the outcome of their commissions. Specifically, I focus on political conditions, paying special attention to those that are most commonly associated with 'failed states'.

My findings indicate that, although there are a number of factors that exacerbate the challenges related to truth commission implementation, two political conditions in particular play a central role in determining a commission's success: the de-legitimization of the state and political fragmentation. Surprisingly, the existence of these conditions in Sierra Leone appears to have largely derailed that truth commission's efforts to achieve the objectives outlined in its mandate. Conversely, their absence in Liberia seems to have allowed its commission to operate relatively free of political impediments, leading to greater success. These results raise a number of fundamental questions related to the organization of power and its relationship to justice in post-conflict societies or weak

states. Indeed, as will become clear, the paradox presented by the Sierra Leonean case, where two political conditions that historically have *supported* truth commissions in this case hampered its implementation, is certainly a phenomenon warranting future research.

While not delving deeply into the practical applications of these findings, their implications for our understanding of transitional justice are many. The ability of two cases to yield general policy prescriptions for the myriad cases of weak states across the globe is limited, but they do present some preliminary guidelines for determining what forms of transitional justice (prosecutions, truth commissions, reparations, etc.) may work best in a given case. I do not wish to imply that, given the favorability of de-legitimization and political fragmentation, the aim of the transitional justice community should be to promote these conditions. Rather, this thesis simply suggests that we ought to think carefully about when and in what context a truth commission can yield the greatest possible results.

I begin this work by placing the Liberian and Sierra Leonean commissions in their proper historical context. In Chapter 1, I review the existing literature on truth commissions, highlighting the relevant theoretical debates surrounding their role and implementation in post-conflict societies. Since their popularization in the early 1990s, truth commissions have captivated scholars of transitional justice and democratization as a novel and more far-reaching approach to attaining justice in contexts where prosecutorial measures are untenable. The advantage of truth commissions over trials, it is argued, is that they actively play a role in creating and reinforcing the political institutions that promote democratic consolidation while preventing future acts of mass violence. Additionally, truth commissions allow governments of failed or failing states to



recapture lost ground following conflict. In a much broader way than trials alone, TRCs through their establishment of a more democratic narrative and sweeping recommendations provide a foundation for governments to deepen their legitimacy and begin the onerous task of rebuilding institutions, possibly leaving the door open for prosecutions in the future.

Nevertheless, legitimate questions remain surrounding the objectives and merits of such truth-telling. For example, there are concerns that, unless it ultimately leads to prosecution, all of the pain involved in recounting the horrors of the past will be meaningless. That said, the issues concerning the suitability of truth commissions in post-conflict societies cannot be judged solely on theoretical models. Equally at play are numerous political-contextual factors that shape the framework under which the commissions operate and shape the makeup of the commission itself, leading, as this thesis will demonstrate, to alarmingly dissimilar results. Focusing on the composition, mandates, and execution of truth commissions, Chapter 1 pays special attention to the ways the literature argues they have responded to and overcome political constraints. The final section of the chapter aims to contextualize these arguments by providing a brief review of the most successful commission to date: Argentina, Chile, South Africa, El Salvador, and Guatemala.

Yet, as mentioned above, what makes the Liberian and Sierra Leonean commissions unusual is that they were established in contexts of near state collapse, where prevailing political conditions may be very different from those described in Chapter 1. The ‘failed state’ context, I argue, produces a number of additional constraints that no other truth commissions have encountered. That the Liberian and

Sierra Leonean commissions have shown different results despite both being characterized as ‘failed states’ raises intriguing questions about what these constraints may be. The challenge here is that the scholarly community has not reached a consensus on what constitutes a ‘failed state’ or, for that matter, on whether the label has any practical use. Chapter 2 reviews and critiques the literature on failed states, while suggesting it is far more useful to imagine them as one terminus on a spectrum of state strength.

In this manner, we can more easily identify certain political conditions characteristic of what I label ‘weak states’ that may have an impact on the success of truth commissions. That is to say, by understanding state weakness as the product of a number of factors, we can potentially isolate those that have the greatest impact on truth commissions through comparative analysis. Thus, the second part of the chapter outlines six conditions of state failure most commonly cited by the literature: 1) the de-legitimization of the state 2) corruption and the deterioration of public services 3) the failure of democratic norms 4) widespread human rights abuses 5) political fragmentation 6) the presence of an international peacekeeping force.

In Chapter 3, I offer a detailed examination of Sierra Leonean case, providing a history of its civil conflict and peace negotiations, and illustrating how—and to what extent—these conditions emerged. I then examine the circumstances surrounding the establishment of the truth commissions of each country in order to identify which political conditions had the greatest impact. Despite exhibiting a number of conditions related to state weakness following the war, the Sierra Leonean state maintained high levels of legitimacy and succeeded in spurning political fragmentation. These

accomplishments, however, ultimately presented a number of obstacles for that country's truth commission by allowing a small group of state actors led by former President Kabbah to establish the Special Court for Sierra Leone, a prosecutorial mechanism that undermined the truth commission at every turn.

Applying the same framework in Chapter 4, I compare Sierra Leone to Liberia. In this case I find that, while presenting many of the same weak state conditions as the Sierra Leonean state, the Liberian state possessed the additional characteristics of delegitimization and political fragmentation. By significantly reducing the power of the Liberian transitional government, I argue that these conditions reduced the number of obstacles confronted by the truth commission and created a space for members of the legislative body to give it a more progressive mandate.

Although it is impossible to predict the precise implications of these results, I assert that they have the potential to better inform the international community, and in particular scholars and practitioners of transitional justice, as they seek to refine their approaches to conflict resolution, national reconciliation, and democratic consolidation. Indeed, if we are able to identify more concretely which conditions are most favorable to these commissions, that information can aid societies newly-emerged from conflict (Somalia, the Democratic Republic of Congo, or perhaps even Iraq) in selecting the most appropriate approach to redressing past wrongs, conserving scant resources and avoiding unnecessary bloodshed.

# Chapter 1: Truth Commissions and Political Constraints

*Memory is a kind of accomplishment, a sort of renewal, even an initiation, since the spaces that it opens are new places inhabited by hordes heretofore unrealized, of new kinds—since their movements are towards new objectives (even though formerly they were abandoned).*

- William Carlos Williams, *Patterson*

## ***Introduction***

There are few contemporary political entities that generate as much political contestation as truth commissions. The hotly disputed debates that surround them range from the sublime and ideological to the logistical and mundane. What should the role of a truth commission be? How should it be run? What ought to be included (or excluded) from its mandate? What factors influence these decisions? I begin this chapter with a review of the theoretical and practical debates surrounding truth commissions, paying special attention to the role of political constraints in determining their structure and, ultimately, their success. I then contextualize these debates in a brief review of the five most successful examples of truth commissions to date: Argentina, Chile, South Africa, El Salvador, and Guatemala. In completing this evaluation, I underscore the dearth of scholarly work that focuses on how, and which, political constraints play a deciding role in poising a truth commission for success within a context of utter state collapse; a gap that this paper will hopefully begin to fill.

### ***Truth Commissions and the “Truth vs. Justice” Problematic***

Transitional justice, according to Naomi Roht-Arriaza, is “anything that a society does to deal with a legacy of conflict and/or widespread human rights violations”.<sup>1</sup> As she herself admits, such a broad definition covers a broad range of strategies and practices. Falling within this category are trials and, in more recent years, truth commissions.<sup>2</sup>

The emergence of truth commissions as a transitional justice mechanism was by no means certain. The 1945 Nuremberg Tribunals both established a rudimentary legal language for combating human rights abuses and introduced a methodology for dealing with these abuses that centers on prosecutions.<sup>3</sup> For many years this approach experienced a great deal of success. The 1961 trial of Adolf Eichmann in Jerusalem, while deeply unsettling for many scholars, was the natural extension of the precedents set in Germany. Further, the International Criminal Tribunals in the former Yugoslavia and Rwanda continue to build on the tradition of these ad hoc courts.<sup>4</sup> However, successful cases of prosecution have occurred in a context of foreign occupation or extradition, where political stability is, to some extent, guaranteed. The limitations of the prosecutorial approach began to emerge in the 1970s as authoritarian regimes across the globe crumbled and many countries began a painful process of democratic transition. Frequently, there was a great deal of international and domestic pressure for these countries to confront the atrocities committed by their former regimes, but shaky

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<sup>1</sup> Roht-Arriaza, Naomi. “The New Landscape of Transitional Justice”. in *Transitional Justice in the 21<sup>st</sup> Century: Beyond Truth Versus Justice*. Ed. Naomi Roht-Arriaza & Javier Mariezcurrena. New York: Cambridge University Press, 2006 p. 2

<sup>2</sup> Zalaquett, Jose. “Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints” in *State Crimes: Punishment or Pardon* Aspen Institute, 1989

<sup>3</sup> Zalaquett, Jose. “Balancing Ethical Imperatives and Political Constraints: Dilemma of New Democracies Confronting Past Human Rights Violations.” *Hastings Law Review*. 43:6 (August 1992)

<sup>4</sup> Buergenthal, Thomas. “Truth Commissions: Between Impunity and Prosecution”. Transcript from Frederick K. Cox International Law Center Lecture in Global Legal Reform, Case Western University School of Law (2006)

transfers of power between dictatorship and democracy made prosecutions impossible. Truth commissions, the majority of scholars agree, emerged from this impasse.

Beyond a general consensus on the origins of truth commissions, however, the scholarly community has shown little agreement on the role they should play within a particular society. The literature has been characterized by an ideological tug of war between those who downplay their importance, arguing that they are ‘second-best’ options and mere accessories to a prosecutorial campaign, and those who favor them as a true alternative to prosecution capable of fostering broader accountability in societies undergoing a rocky transition.

In the early years of democratic transition, governments regarded truth commissions as “second-best” options for situations when prosecutorial measures were unavailable or, given the fragility of most post-conflict societies, politically untenable.<sup>5</sup> Charles Call asserts that “such commissions, by necessity pursue what is possible rather than the unattainable but righteous path”.<sup>6</sup> “Justice,” as Jonathan Allen succinctly puts it “becomes the casualty of political calculation”.<sup>7</sup> This emphasis on political expedience as the *modus operandi* of truth commissions reflects the underlying fear that they will undermine the eventual prosecution of major human rights violators. It reflects a view that prosecutions are of the utmost importance in a transitioning society as they purportedly strengthen state institutions, demonstrate compliance with international law, foster accountability, and send a clear message to perpetrators that their acts will not go

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<sup>5</sup> Allen, Jonathan. *Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission*. *University of Toronto Law Journal*. 49 (1999); Call, Charles T. “Is Transitional Justice Really Just?” *Brown Journal of World Affairs*. 9:1 (Summer/Fall 2004); Roht-Arriaza, Op cit.

<sup>6</sup> Call, Charles T. “Is Transitional Justice Really Just?” *Brown Journal of World Affairs*. 9:1 (Summer/Fall 2004) p. 103

<sup>7</sup> Allen, Op cit. p. 315

unpunished.<sup>8</sup> Other scholars suggest that allowing major violators to go free is a demoralizing prospect, but that it is premature to place ultimate value on one form of justice over another. Indeed, despite emerging under inauspicious circumstances during messy periods of transition, truth commissions historically have sought to establish themselves as serving ends of their own rather than simply offering alternatives to prosecution.

These arguments constitute a rather narrow understanding of what transitional justice can or should accomplish. Allen asserts that justice ought, to some degree, to be “forward-looking”.<sup>9</sup> Alexander Boraine takes a more expansive approach, envisioning transitional justice as a much “deeper, richer, and broader form of justice” that focuses on more than just perpetrators.<sup>10</sup> In this light, criminal courts such as the ICTY or the Special Court for Sierra Leone do not possess more or less legitimacy than any other mechanism. They simply constitute “realpolitik in another form”.<sup>11</sup>

Justice Albie Sachs, a chief architect of the South African Truth and Reconciliation Commission echoes this claim. He reminds us that justice need not be retributive, coming exclusively through trials and concentrating on punishment, but can be restorative, paying respect to victims and working toward national reconciliation.<sup>12</sup> “Truth commissions,” adds Priscilla Hayner, “should not be seen as a replacement for prosecutions, nor as a second-best, weaker options when ‘real’ justice is not

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<sup>8</sup> Huyse, Luc. “Justice after Transitions: On the Choices Successor Elites Make in Dealing with the Past”. *Law and Social Inquiry*. 20:1 (Winter 1995); Orentlicher, Diane F. “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime”. *Yale Law Journal*. Vol. 100; Santiago Nino

<sup>9</sup> Allen, Op cit. p. 326

<sup>10</sup> Boraine, Alexander L. “Transitional Justice: A Holistic Interpretation”. *Journal of International Affairs*. 60:1 (Fall/Winter, 2006)

<sup>11</sup> Ibid. p. 18

<sup>12</sup> Ibid.

possible...On the contrary [they]...positively contribute to justice and prosecutions”.<sup>13</sup>

Truth commissions, she continues, represent a more democratic approach to transitional justice by directly involving the public in the healing process. In this light, it matters less whether a commission will lead to speedy prosecutions for past offenders than whether it allows a society to begin taking ownership of its violent past. By actively playing a role in creating and reinforcing the political institutions that prevent mass violence truth commissions may be better suited to improving state strength than any trial could be. Martha Minow argues that by opening the process of national healing to the public “the truth commission can help set a tone and create public rituals to build a bridge from a terror-filled past to a collective, constructive future”.<sup>14</sup>

This “constructive future” has often required difficult compromises. The South African Commission, for instance, has demonstrated that forging national consensus on the ‘truth’ generally hinges on state contrition. In many cases factual details matter less than the state publicly acknowledging its complicity or participation in wrongdoing, sharing in the country’s grief and making substantive efforts to redress past injuries. This may come at the cost of some disagreeable concessions that underscore the inadequacies of truth commissions with respect to political housecleaning. Unlike prosecutions, truth commissions cannot guarantee that past offenders, particularly those still in power, will not live on without punishment, creating the potential for a “terrifying culture of impunity”.<sup>15</sup> Nevertheless, citing the conditional amnesty process pioneered in South

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<sup>13</sup> Hayner, Priscilla B. *Unspeakable Truths: Facing the Challenge of Truth Commissions*. New York: Routledge, 2002 p. 88

<sup>14</sup> Minow, Martha. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998 p. 89

<sup>15</sup> Mendez, Juan E. “Accountability for Past Abuses”. *Human Rights Quarterly*. 19:2 (1997); Opatow, Susan. “Reconciliation in Times of Impunity: Challenges for Social Justice”. *Social Justice Research*. 14:2 (June, 2001) p. 150; Seils, Paul F. “Reconciliation in Guatemala: The Role of Intelligent Justice”. *Race and Class*. 44:1 (2002)



Africa in which major violators were pardoned in exchange for their testimony, Minow argues that the “[truth commission] turned the promise of amnesty, wrested from political necessity, into a mechanism for advancing the truth-finding process”.<sup>16</sup> Essentially, justice in one form was sacrificed for justice in another.

Allen also suggests that “justice-related objections” to truth commissions are not objecting to political compromise, but rather are fundamentally concerned with the moral implications of opting not to prosecute certain perpetrators (as was the case in South Africa).<sup>17</sup> Put in these terms it may be possible for advocates of truth commissions to skirt these objections by portraying justice as but a single point in a moral universe that also values “reconciliation, peace, and the common good”. Yet, as many of the scholars reviewed here have demonstrated, truth commissions do not inherently represent a forfeiture of justice. Rather, Allen continues, they act under a form of “principled compromise” where justice may be weakened in the face of other values, but it is not expunged entirely.<sup>18</sup>

Truth commissions ultimately demand re-evaluation of our traditional understandings of truth and justice. Provisional amnesty that releases perpetrators from strict legal accountability may come as an insult to some, but the absence of formal prosecution does not necessarily release them from broader public accountability. There is a difference between a grant of clemency that follows an open and honest account of the truth and an amnesty designed to bury it.<sup>19</sup> A separate concern is that there is no guarantee that the truth, as documented by the commission, will mirror the truth as

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<sup>16</sup> Minow, *Op cit.* 57

<sup>17</sup> Allen, *Op cit.* p. 321

<sup>18</sup> *Ibid.* p. 325

<sup>19</sup> Popkin, Margaret & Roht-Arriaza, Naomi. “Truth as Justice: Investigatory Commissions in Latin America”. *Law & Social Inquiry*. 20:1 (Winter 1995)

experienced by individual victims. (In fact there is a strong possibility that it will not). But does this necessarily undermine the overarching goals of national healing? In these cases, Minow argues for a distinction between “historical truth”, concerned more with the factual details of conflict and state terror, and “psychological truth”, which focuses on broader more emotional themes.<sup>20</sup> Sachs makes a similar argument, comparing what he calls “microscopic truth” to a broader “dialogical truth”.<sup>21</sup>

Clearly, the extant literature on truth commissions taps into many deep philosophical debates on the nature of justice, psychological healing, and national reconciliation. But these debates do little to explain how a truth commission becomes a viable option in the first place. This thesis, while informed by the above arguments, will attempt to step back from the philosophical debates in order to analyze the practical matters that allow for the creation of an effective truth commission. If we are to accept that these commissions appear during times of political transition, when the old and new regimes are struggling to preserve or consolidate power, then we must also address the ways that these power struggles create conditions that limit and shape their options. As the literature demonstrates, these political conditions regularly carry over to dictate how a truth commission, once established, may operate.

The next section reviews what the literature says about the role of political conditions in shaping truth commissions. It then illustrates the evolution of thought among scholars and policymakers about these conditions through a brief review of what are commonly hailed as the most successful commissions to date: Argentina, Chile, South Africa, El Salvador and Guatemala. Hayner argues that these are “illustrative”

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<sup>20</sup> Minow, Op cit.

<sup>21</sup> Boraine, Op cit. p. 21

commissions due to their size, the level of national and international attention they received, and their impact on the country's transition.<sup>22</sup> Through these cases, I draw out the key factors that allowed the commissions to remain viable despite considerable pressures against them. These factors will then provide a framework for approaching the Liberian and Sierra Leonean cases, allowing us to begin identifying what types of constraints caused Sierra Leone's commission to wither into obscurity while poisoning Liberia's for success.

### ***What Should a Truth Commission Look Like?***

Truth commissions occupy a unique space in the field of transitional justice. Freed from focusing on punishing the main offenders of the previous regime, they compile past human rights abuses for public reckoning, creating a common historical lens for addressing the challenges of national reconciliation. Generally speaking, this involves a process of collecting statements from victims on their experiences under the previous regime and producing some form of official report. Moreover, by demonstrating a willingness to confront the past, they seek to endow the new regime with greater political legitimacy.<sup>23</sup> Hayner identifies four central components typical of most truth commissions:

1. They focus on the past.
2. They maintain a broad perspective “[attempting] to paint the overall picture of certain human rights abuses, or violations of international humanitarian law, over a period of time”.
3. They “usually exist temporarily and for a pre-defined period of time, ceasing to exist with the submission of a report of [their] findings”.

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<sup>22</sup> Hayner (2002), Op cit.

<sup>23</sup> Hayner, Priscilla B. *Fifteen Truth Commissions -1974-1994: A Comparative Study*. *Human Rights Quarterly*, 16:4 November, 1994 pp. 597-655; Ratner, Steven R. & Abrams, Jason. S. *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*. Oxford: Oxford University Press, 2001

4. Finally, truth commissions are usually bolstered by some form of government sponsorship “[allowing them] greater access to information, greater security or greater protection to dig into sensitive issues, and a greater impact with its report” often stemming from their ability to include specific recommendation to the government (Hayner, 1994).<sup>24</sup>

Ratner & Abrams build on this definition, elaborating four specific objectives for truth commissions: “(1) creating an authoritative record, (2) providing redress and a platform for victims, (3) making recommendations for reform and (4) establishing accountability for perpetrators”.<sup>25</sup> To these characteristics, Popkin & Roht-Arriaza add the additional criterion of political independence.<sup>26</sup> While nearly every truth commission to date has derived its authority and received a great deal of its funding from the state, their executive panels are composed of individuals not directly involved in governance; they attempt to develop their reports and recommendations with as objective a lens as possible. As Ratner & Abrams put it, “government-sponsored...must not mean government-controlled”.<sup>27</sup>

While most governments have adopted these principles more or less universally, the actual composition of truth commissions has varied considerably. Commissions benefit from a great deal of conceptual malleability, allowing them to operate successfully in a broad array of contexts. According to the literature, these divergences generally occur along three dimensions: the composition of the commission (who administers it), the scope and strength of its mandate, and the execution of its duties.

### Commission Composition

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<sup>24</sup> Hayner (1994), Op cit.

<sup>25</sup> Ratner & Abrams, Op cit.

<sup>26</sup> Popkin & Roht-Arriaza, Op cit.

<sup>27</sup> Ratner & Abrams, Op cit. p. 230

Thomas Buergenthal, the American representative at the International Court of Justice (ICJ) and Chief Commissioner of the Salvadoran commission, identifies three types of truth commissions: (1) international commissions run entirely by members of the international community; (2) mixed commissions, managed by a combination of international and national actors; and (3) national commissions, consisting entirely of domestic representatives.<sup>28</sup> Each type, he argues, has its own benefits and drawbacks. International and mixed commissions, best characterized by El Salvador and Guatemala respectively, are often the most useful in cases of civil conflict where it is difficult to find impartial domestic commissioners. Further, foreign arbitrators can often offer legal expertise unavailable in the country in question, instilling a sense of confidence in both victims and government, allowing international commissioners greater access to archives and other sources of sensitive information.<sup>29</sup> Additionally, it is often too dangerous for domestic representatives to oversee such a project, as was evident in early truth commissions in Chad and Uganda, whose commissioners fled the country.<sup>30</sup>

However, because of their distance from the conflict, international commissioners also run the risk of being less sensitive to the fragile nature of post-conflict societies. They risk alienating the population, undermining the investigation process, and delegitimizing the commission as a whole.<sup>31</sup> These “sovereignty sensitivities” make commissions run by foreign experts susceptible to criticism from opponents.<sup>32</sup> National commissions, in contrast, carry greater legitimacy within the country and can often be more effective in ensuring accountability and strengthening institutions following the

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<sup>28</sup> Buergenthal, Thomas. “The United Nations Truth Commission for El Salvador”. *Vanderbilt Journal for Transnational Law*. 27:3 (1994)

<sup>29</sup> Ratner & Abrams, Op cit.

<sup>30</sup> Hayner (2002), Op cit.

<sup>31</sup> Hayner (1994), Op cit.

<sup>32</sup> Ratner & Abrams, Op cit. p.231; Hayner (1994), Op cit.

publication of the commission's report and recommendations; domestic commissioners do not pick up and leave once their work is complete.<sup>33</sup> Finally, an intimate knowledge of the country is often a plus in putting forward a comprehensively researched report that makes appropriate recommendations given the context. Problems of this nature came up frequently in El Salvador where "many of those who knew [the country] best were kept out of the process".<sup>34</sup>

There is some confusion within the literature about which type of composition preferable. Buergenthal leans toward national commissions, but only where the political transition is supported by broad national consensus, or when the previous regime has wholly withdrawn from the political arena.<sup>35</sup> Yet, two of the most prominent national commissions, Argentina's CONADEP and Chile's Rettig Commission, were established in contexts where vestiges of authoritarian rule continued to influence every aspect of government. Further, the South African commission emerged from a political climate where national consensus following the apartheid regime was spread quite thin. Indeed, given considerations of sovereignty and legitimacy, if the objective of the truth commission is broader than simply accruing a body of evidence to support the condemnation of human rights violators, national commissions have sometimes proven to be the superior option. Perhaps the strongest conclusion we can draw from the literature to date is that the efficacy of a particular composition is heavily context-dependent.

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<sup>33</sup> Ratner & Abrams, *Op cit.*

<sup>34</sup> Hayner (1994), *Op cit.* p. 252

<sup>35</sup> Buergenthal, *Op cit.*

## The Mandate

The mandates of truth commissions have varied widely. Most narrowly, it can lay out a skeletal mission to collect evidence, produce a report, and make recommendations. At their broadest, the mandate can call for a sweeping investigation, granting powers of subpoena and discretionary amnesty, and make binding recommendations. From a practical standpoint, where a specific commission falls in relation to these extremes hinges largely upon the timeframe of the investigation, the length of the mandate, and the available resources.<sup>36</sup>

For example, the chronically under-funded Bolivian commission was hard-pressed to conclude its mandate; meanwhile the Guatemalan Historical Clarification Commission was charged with the daunting task of investigating all human rights violations that occurred during its thirty two-year civil war, but was only given a six-month mandate. Conversely, the South African TRC was also given a thirty-year window of investigation, but received an annual stipend of \$18 million and a more comfortable two to three years to complete the project. Indeed, “time pressure may be the most difficult aspect of a truth commission’s work”.<sup>37</sup> The ability to obtain sufficient time and resources can greatly affect the outcome of the commission. When resources are insufficient, a commission will often limit itself to investigating specific types of human rights abuses. A contributing factor to South Africa’s success was that, despite the myriad abuses of the apartheid era, it narrowed its focus to incidents of torture, extrajudicial killings, abductions, and “severe ill-treatment”.<sup>38</sup>

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<sup>36</sup> Hayner (1994), *Op cit.*; Popkin & Roht-Arriaza (1995), *Op cit.*; Ratner & Abrams, *Op cit.*;

<sup>37</sup> Hayner 1994, *Op cit.* p. 249

<sup>38</sup> Ratner & Abrams, *Op cit.* p. 232

In situations of civil conflict, there is the additional question of whether to focus exclusively on the abuses of the government or offer “balanced treatment”, focusing on opposition forces as well.<sup>39</sup> In some cases available resources may only allow for the investigation of the former regime, but this comes with the potential sacrifice of perceived independence. In either case, what to leave in a mandate and what to exclude is a decision not to be taken lightly. Relative to population size the incidents of murder and torture may be few; if the aim of the commission is to promote national reconciliation it must consider subtler, more pervasive forms of cruelty.

In addition to logistical considerations, the identification of perpetrators has thorny political and legal implications. Naming names can have profound effects on a transitional society. In some cases where there is little risk of retaliation it can be an excellent way to foster accountability and purge the new regime of its shadier elements. However, it is equally common that political expedience demands that the names of violators be kept confidential to avoid undermining a fledgling transitional government.<sup>40</sup>

Additionally, naming names raises a number of concerns related to due process. Douglas Cassel offers a biting critique of the Salvadoran commission’s decision to publish the names of perpetrators, pointing out that it trampled the rights of the accused to know and question their accusers and defends themselves before a competent court.<sup>41</sup> This type of legal calculus stems largely from the presence (or lack thereof) of other judicial bodies in the country in question. The extent to which a truth commission will highlight the actions of individual perpetrators is contingent upon the existence and vigor

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<sup>39</sup> Popkin & Roht-Arriaza, *Op cit.* p. 273

<sup>40</sup> Perhaps the shrewdest approach to this dilemma was taken in Argentina, where the commission did not name names in its final report, but then passed them privately to the President’s office where they were subsequently leaked to the press (Ratner & Abrams, *Op cit.*).

<sup>41</sup> Cassel Jr., Douglas. “International Truth Commissions and Justice”. *The Aspen Institute Quarterly*. 5:3 (Summer, 1993)



of other judicial bodies.<sup>42</sup> In El Salvador, the decision to name names is often justified as the only viable way to create accountability due to an utter lack of confidence in the judiciary's capacity to render an uncorrupted verdict.<sup>43</sup>

Considering the number of factors that influence a mandate, a truth commission's success may seem to be based on little more than a serendipitous confluence of good timing, abundant resources, and favorable political and legal conditions. To some extent this is true, but it does not explain why many of the most frequently hailed commissions arose from less than favorable circumstances. To answer that question, we turn from individual factors to questions of procedure.

### Questions of Procedure

How should a commission carry out its mandate while respecting the political fragility of the country in question? Most commissions hold a great deal of discretion as to when, where, and how they act. Powers of subpoena and search and seizure, for example, are often components of more progressive mandates, but the literature suggests that they must be exercised with caution so as not to upset the delicate balance of power that exists in most transitional societies.

Similarly, truth commissions must decide on the extent to which they will publicize their work. In some cases, such as South Africa, they have gone to great lengths to open up the process to the public, assuming that broader participation would promote collective healing and engender a sense of national unity. In other cases, however, prudence has called for more private hearings so as not to upset an unsteady peace or to ensure the security of the victims. Hayner notes that public hearings risk

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<sup>42</sup> Hayner (2002), *Op cit.*; Popkin & Roht-Arriaza, *Op cit.*

<sup>43</sup> Ratner & Abrams, *Op cit.*

making victims too fearful of reprisal to testify. Moreover, she is hesitant to accept the principle that collective healing is the sole rationale of public hearings, arguing that they most likely serve the more subversive purpose of discrediting the old regime, crassly using the commission hearings as a form of propaganda.<sup>44</sup>

Finally, the dissemination of reports is an often overlooked, but equally important consideration. Like so many other aspects of truth commission operation, this is essentially a question of context and should be decided through a careful assessment of the likely impact of the report on society.<sup>45</sup> This implies not only evaluating the potential political backlash, but also such fundamental factors as the country's literacy rate and access to mass media.<sup>46</sup> After all, 10,000 published reports or televised hearings mean little in a society unprepared to access them. From a practical viewpoint all of this is ultimately dependent on staffing and resources. Holding public hearings across the country and broadcasting them on television may seem an excellent idea when you have a staff of hundreds and an ample budget, but perhaps less so, as in the case of Honduras, when the commission's operations were, for all intents and purposes, limited to the investigative capabilities of Leo Valladares, the country's Human Rights Commissioner.<sup>47</sup>

### *Truth Commissions in Historical Context*

#### Truth Commissions in Times of Transition: The Cases of Argentina and Chile

The first experiments with truth as a component of transitional justice occurred in the midst of the tumultuous period of regime change and democratization (or re-

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<sup>44</sup> Hayner (1994), Op cit.

<sup>45</sup> Ratner & Abram, Op cit.

<sup>46</sup> Hayner (1994), Op cit.

<sup>47</sup> Popkin & Roht-Arriaza, Op cit.

democratization) of the 1970s and 80s. Within this uncertain global context, concerns over logistics and implementation played a deciding role in truth commission development. In the early years of the ‘third wave’, this was evidenced by the fact that of all the authoritarian regimes that began to democratize during this period (Spain, Italy, Portugal, Greece, Argentina, and Chile, to name a few) only a handful (Argentina and Chile being the most prominent cases) established truth commissions. It is necessary to touch on these questions briefly within the framework of the Argentine and Chilean cases in order to better understand how, when, and why truth commissions first appeared.

Between 1976 and 1983, Argentina endured the most viciously executed period of state terror in its history. The ruling military junta, led by Rafael Videla, launched an expansive project of economic and political liberalization while purging the country of leftist opposition under the hauntingly prosaic title of *El Proceso de Reorganización Nacional (el Proceso)*. Throughout this period, known as Argentina’s ‘Dirty War’, mass disappearances were common as the state took individuals deemed subversive into state custody and tortured and killed them. Given the sheer brutality of the Videla regime a successful putsch from the opposition seemed wholly untenable. Yet in the turbulent aftermath of Argentina’s humiliating defeat to Great Britain in the Falkland Islands War, even a government built on absolute oppression could no longer contain the groundswell of discontent from below. By 1983 the junta was forced to abdicate direct rule to civilian control.

As Argentina’s newly-elected president, Raul Alfonsín, took power, his options for redressing the wrongs of the ‘Dirty War’ were limited. A pragmatic leader with strong ideals, upon taking office Alfonsín enthusiastically launched a plan to prosecute

members of the junta. Keeping closely in mind the principle of due obedience, he proposed to focus on two categories of perpetrators: high-ranking military leaders who were the chief architects of the *Proceso* and low-level members of the armed forces who personally carried out the acts of terror. However, Alfonsín was also deeply cognizant of the fact that sustained pressure from former military rulers (who still held considerable sway in the country) might ultimately derail the prosecutions and was eager to accumulate a body of evidence that could be made public, undermining their push for impunity. Therefore, he moved forward with the establishment of the *Comisión Nacional sobre la Desaparición de Personas* (the National Commission for Disappeared People or CONADEP).

Established on December 29, 1983 and headed by Ernesto Sábato, a prominent writer and vocal critic of the Videla regime, CONADEP (also known as the Sábato Commission) was given a broad mandate to investigate past human rights abuses, including access to official records and clandestine state detention centers and the ability to gather statements from victims. *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas*, its final report, documented over 9,000 disappearances; the Commission itself filed 1,086 cases of human rights abuses with the judiciary.<sup>48</sup> Unfortunately the armed forces, initially reeling following their defeat in the Falklands, regrouped and were able to block or overturn the majority of prosecutions by pressuring the Alfonsín government to grant military courts jurisdiction over the cases.

The general consensus among scholars in the years following the Argentine transition was that investigatory commissions such as CONADEP were a product of

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<sup>48</sup> Santiago Nino, Op cit.

political expediency.<sup>49</sup> This position gained sway in 1989 when Chile began its democratic transition. Unlike Argentina, Chile's military regime under Augusto Pinochet remained quite strong throughout the process and was able to dictate their terms for its cession of power.<sup>50</sup> After taking power in March of 1990 President Patricio Aylwin had few options for exacting justice and moved to order the creation of the *Comisión para la Verdad y Reconciliación Nacional* (National Commission for Truth and Reconciliation, or the Rettig Commission). "Aylwin's choice hinged on a calculation," asserts Pion-Berlin, "that the military's response to the Commission's findings would be negative, yet measured—stopping far short of a praetorian intervention".<sup>51</sup> Nevertheless, his long-term objective was to use the findings of the Rettig Commission's report to undercut the amnesty laws enacted to protect members of the Pinochet regime. Aylwin assumed that public outcry after hearing the truth regarding the disappearances and other human rights abuses under Pinochet would be sufficient to push prosecutions through the courts, legal barriers notwithstanding.<sup>52</sup>

Closely modeling CONADEP, the Rettig Commission moved forward with its work, despite strong opposition from within the government and almost no cooperation from the military, publishing its 1,800-page report in February 1991. The *Informe Rettig*, documented 2,920 cases of human rights abuses, attributing 95% of these to government forces and 4% to leftist guerilla opposition. Hayner notes that the report "[debunked] one

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<sup>49</sup> Huntington, Samuel P. *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press, 1991; Neir, Aryeh. "What Should Be Done about the Guilty?" *The New York Times Review of Books* (1990); O'Donnell, Guillermo & Schmitter, Philippe C. *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*. Baltimore: Johns Hopkins University Press, 1986; Zelaquett, Jose. "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations". *Hastings Law Journal*. 43:6 (August, 1992)

<sup>50</sup> Ibid.

<sup>51</sup> Pion-Berlin, David. "To Prosecute or Pardon? Human Rights Decisions in the Latin American Southern Cone." *Human Rights Quarterly*. 16:1 (1994)

<sup>52</sup> Popkin & Roht-Arriaza, Op cit.

of the central arguments used by the military to justify its violent tactics, that the country had faced an ‘internal war’ that thus demanded significant force against opponents”.<sup>53</sup> Sadly, a rise in national disquietude following a series of political assassinations prevented the report from receiving the same visibility as the Argentine commission.

Nevertheless, both commissions succeeded in promoting national reconciliation and disseminating knowledge about the abuses of the former regime. With respect to prosecution, *Nunca Más* aided the trials of several ranking members of the Videla government. A shorter version of the report was published and released to the general public; selling 40,000 copies its first day and 150,000 copies in the first two months, it has become one of the best-selling books in Argentina’s history. Likewise, although the *Informe Rettig* was never widely publicized (the majority of copies were mailed directly to families of victims with a letter from President Alywin), it led to the prosecution of several military leaders.<sup>54</sup> Additionally, the Rettig Commission initiated the National Corporation for Reparations and Reconciliation, an organization that has archived the data of the report for public access and continues to provide financial support to families of the victims of the dictatorship to this day. True, justice was not served in the strict legal sense of prosecutions, but these commissions nonetheless played an integral role in reshaping society after more than a decade of state terror.

In the years following the Argentine and Chilean commissions many other nations emerging from periods of violence began to adopt truth commissions not as a mere complement to prosecution, but rather as the centerpiece of their own democratic

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<sup>53</sup> Hayner (2002), Op cit. p. 36

<sup>54</sup> Popkin & Roht-Arriaza, Op cit.

transition. The most noteworthy of these was the South African Truth and Reconciliation Commission.

#### Justice Re-Envisioned: The South African Truth and Reconciliation Commission

Like Argentina and Chile, the South African Commission was formed during a period of political transition and democratization. However, the similarities stop there. Unlike the Videla and Pinochet regimes, which largely controlled the manner of their own demise, the apartheid government was faced with a mounting and ever more sophisticated opposition. Low-intensity conflict between state security forces, paramilitaries, the African National Congress and other opposition factions had been the norm in South Africa for several decades. The extremely tenuous hold the apartheid government had over the country in its final years meant that a peaceful transition was far from certain, and many were preparing for open revolt and civil war. In this volatile context, the newly elected South African government chose to eschew prosecution in favor of the broader vision provided by the truth commission model.

The first to adopt the moniker ‘TRC’ (Truth and Reconciliation Commission), the South African commission, the Commission was formed by parliament in the 1995 Promotion of National Unity and Reconciliation Act. It was given a sweeping mandate and broad jurisdictional powers, including the right to subpoena and seize evidence by force. The Commission was staffed by 300 personnel (just 60 people worked on the Rettig Commission) and endowed with an annual budget of \$18 million, effectively “dwarfing previous commissions in size and reach”.<sup>55</sup>

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<sup>55</sup> Hayner (2002), Op cit.

A controversial feature of the South African TRC was its power to grant conditional amnesty. The dominant position of the ANC in South African politics following the transition presented every opportunity to try and punish major violators from the apartheid government, and quite a number of its members were keen to do so. However, fearing that too aggressive a policy might plunge the country back into violence, parliament agreed that prosecution should come only at the Commission's discretion. Guided tactfully by Archbishop Desmond Tutu, the Commission pursued a truth-for-amnesty scheme in which human rights abusers from the apartheid government, its paramilitary supporters, and the militant wing of the ANC would be protected from prosecution only if they registered an application with the Amnesty Committee and provided a satisfactory account of their actions for the public record. The fact that allegations of misconduct came from both members of the apartheid government and the ANC seems to indicate that the Commission succeeded in maintaining its independence.

For many scholars, the South African TRC was an immense success. That the country was able to transfer power peacefully from a government bent on the marginalization of black Africans to a multiethnic democracy in the midst of widespread violence is often lauded as a political miracle.<sup>56</sup> As a fundamental component of the transition, the TRC rested on a razor's edge, striving on one hand to confront and punish the horrors of the past while, on the other, struggling to avoid plunging the country into civil war. Considering the near impossibility of this task, the incredible display of pragmatism by its leaders is commendable; it is a truth commission that should be hailed as much for its restraint as its progressivism.

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<sup>56</sup> Sparks, Allister. *Beyond the Miracle: Inside the New South Africa*. Chicago: University of Chicago Press, 2003



Nevertheless, many have remained critical of the Commission, arguing that it prioritized reconciliation over truth.<sup>57</sup> Indeed, the TRC's decision not to apply its powers of subpoena to such high-profile individuals as members of the South African Defense Force, the ANC, the Minister of Home Affairs, or Mangosuthu Buthelezi, the President of the Inkatha Freedom Party, seems to demonstrate that political constraints continue to be influential even within institutions designed to circumvent them. Granting clemency to major human rights abusers following their testimony came as a slap in the face to many of their victims. But did these decisions truly undermine the TRC's mission? 21,000 people testified before the Commission, 2,000 in public hearings which the national radio service broadcast for four hours each day. Every major newspaper ran countless articles on its activities, and a weekly television show titled *Truth Commission Special Report* was the most watched program in South Africa. Through its intense and public scrutiny, it tainted the political careers of many prominent leaders, including Winnie Mandikizela Mandela. Never has a society participated so fully in its own transition.

#### Truth Commissions and Civil Conflict: El Salvador and Guatemala

The Salvadoran and Guatemalan states of the late 1980s and early 90s were even more unstable than Argentina, Chile, or South Africa. Unlike the countries mentioned above, political conflict and transition in El Salvador and Guatemala did not end in a relatively peaceful transfer of power from military to civilian hands or the expansion of democratic franchise after three decades of protracted insurgency. Rather, transition in Central

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<sup>57</sup> Hayner (2002), Op cit.

America only came after years of open conflict and human rights violations unrivaled in scale and brutality.

Extending from 1980 until 1992, the Salvadoran Civil War between the country's rightist military government and the Faribundo Martí National Liberation Front (FMLN) killed over 180,000 people, most of whom were civilians. Psychological warfare was a tactic common to both sides. FMLN guerillas attempted to subdue rural areas through village raids and the kidnapping and murder of those suspected to be *orejas* (ears, or traitors). Additionally, by the late 80s, state-led terror campaigns, carried out mainly by death squads in unmarked vans and culminating in the assassination of Archbishop Oscar Romero, had reached levels unparalleled by even the Videla regime in Argentina.<sup>58</sup> To the northwest, Guatemala was experiencing an even more brutal civil conflict. There, warfare between government forces and the Guatemalan National Revolutionary Union (UNRG) guerillas had been nearly constant for thirty six years. During the worst years of the conflict from 1978 to 1984 General Efraim Rios Montt began his "scorched earth counteroffensive", pushing rebels into the Guatemala's mountainous interior and unleashing what has been labeled a "virtual holocaust" against the country's large indigenous population.<sup>59</sup> Between 1981 and 1983 alone, it is estimated that the government killed 150,000 civilians in the fighting. Nevertheless, by the early 1990s the conflicts in both countries had worn down and been replaced by grudging peace accords and a protracted period of democratization. In both the 1992 Salvadoran peace

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<sup>58</sup> Popkin & Roht-Arriaza, Op cit.

<sup>59</sup> Jonas, Susanne. "Guatemala". *Politics of Latin America: The Power Game*. Ed. Harry E. Vanden, Gary Prevost. New York. Oxford: Oxford University Press, 2002

agreement and the Guatemalan 1994 Framework Accord, the warring parties agreed to establish truth commissions to investigate the atrocities of the past decades.

Unlike those in Argentina, Chile or South Africa, the Central American commissions were more international in nature. The Salvadoran *Comision de la Verdad* (Commission of Truth) was mandated by the United Nations. Its commissioners, Judge Thomas Buergenthal, former Colombian President Belisario Bentancur, and former Venezuelan Foreign Minister Renaldo Figueiredo, were charged with the task of investigating all human rights violations that took place during the war and making recommendations to the new Salvadoran government in their final report.<sup>60</sup> The Guatemalan *Comisión para el Esclarecimiento Histórico* (Historical Clarification Commission or CEH) was a hybrid institution managed by one international jurist, Christian Tomuschat, who then appointed two Guatemalan experts on law and indigenous affairs, Alfredo Basells Tojo and Otilia Lux de Cotí. While, covering a much broader timeframe (from 1962 to 1996) the CEH's mandate varied little from El Salvador's commission.

Although the mandates were uncomplicated in language, they proved to be quite complex in practice. Both commissions encountered difficulties collecting statements from victims who were legitimately fearful of reprisal. This was particularly true in El Salvador where FMLN holdouts still occupied parts of the countryside and were not enthusiastic about the prospect of being named in the commission's report.<sup>61</sup> Standing in stark opposition to South Africa, statement taking in El Salvador became a clandestine operation involving shadowy rooms and hushed voices. Likewise, in Guatemala

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<sup>60</sup> Buergenthal (2006), Op cit.

<sup>61</sup> Ibid.; Cassel, Op cit.

obtaining civilian and government cooperation was often difficult and testimony was gathered confidentially. As Popkin and Roht-Arriaza point out, while the Salvadoran military ended the war in a stalemate with the FMLN, the Guatemalan armed forces considered the peace accords a testimony to their victory and were far less inclined to make concessions that would aid the CEH.<sup>62</sup>

Considering the obstacles to their work, both the CEH and the Commission of Truth achieved several important successes in the name of national reconciliation. In El Salvador, the commission succeeded in registering 22,000 complaints, 85% of which were against the military regime. Further, the commission used the added heft provided by its international backing to counter precedent and move forward with naming the names of suspected perpetrators in its final report, including Major Robert D'Aubuisson who ordered the execution of Archbishop Romero.<sup>63</sup> Faced with growing consternation from many members of his government when word broke that they would be accused in the report, President Alfredo Cristiani opted not to comply with the majority of the commission's recommendations. However, the Salvadoran Supreme Court has not precluded future prosecutions for many of those named by the report.

In Guatemala, the military's stronger position in government effectively ruled out any hope of naming names in *Memorias de Silencio* (Memories of Silence), the final report. Nonetheless, the CEH did document 42,275 incidents of human rights abuses, attributing 93% of them to the armed forces. Further, it established that 83% of the victims were of Mayan origin and officially classified the 313 massacres committed by

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<sup>62</sup> Popkin & Roht-Arriaza, Op cit.

<sup>63</sup> Ibid.

government forces between 1982 and 1983 as “acts of genocide”.<sup>64</sup> While keeping a low profile throughout its investigation, the CEH formally released *Memories of Silence* in 1999 in a nationally broadcast ceremony at the National Theater in Guatemala City.<sup>65</sup> Shortly thereafter, President Bill Clinton offered a formal apology for American involvement in the conflict.<sup>66</sup>

As these cases demonstrate, in environments of open conflict special measures may be necessary to preserve a commission’s chances for success. Neither El Salvador nor Guatemala was able to operate as openly or publicly as South Africa or the Southern Cone. Given the continued presence of major human rights violators in both governments, state contrition has been harder to come by. That being said, by playing to their strengths the commissions are still widely regarded as exemplary. Taking full advantage of their international support, the Commission of Truth and the CEH were able to conduct thorough investigations despite considerable resistance.<sup>67</sup> Perhaps more importantly, Hayner and Buergenthal indicate that the commissions were successful because they frequently chose to act boldly rather than reticently, taking calculated risks in spite of hot-tempered and unpredictable opposition.<sup>68</sup>

### ***Conclusion***

As truth commissions evolve from subsidiary bodies to larger justice projects, the intellectual debate has shifted to how they can succeed under less than perfect conditions.

Through this historical review we can develop a better understanding of how truth

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<sup>64</sup> Tomuschat, Christian. Basells Tojo, Alfredo. Lux de Cotí, Otilia. *Guatemala: Memory of Silence: Report of the Commission for Historical Clarification Conclusions and Recommendations*. Guatemalan Commission for Historical Clarification (CEH). 1999 (paragraph 122).

<sup>65</sup> Hayner (2002), Op cit.

<sup>66</sup> Broder, John M. “Clinton Offers His Apologies to Guatemala.” *The New York Times*. 11 Mar. 1999.

<sup>67</sup> Buergenthal (1994), Op cit.; Popkin & Roht-Arriaza, Op cit.

<sup>68</sup> Buergenthal (2006), Op cit.; Hayner (2002), Op cit.

commissions are able respond to political constraints. Further, we begin to establish what elements *must* be present in these commissions for them to become truly beneficial institutions within their unique political milieu. The literature suggests that these elements include: a high public profile (both domestically and internationally), adequate size and staffing given the mandate, and sufficient independence to make calculated decisions that balance political expedience and ethical imperatives.

That said, I should note that the conditions required for a successful truth commission vary across the range of cases. When we compare the commissions described above, we find that the level of state strength in each case is different, a factor that in certain contexts allowed them to act boldly and in others required that they make certain concessions. Sábato and Alfonsín in Argentina, for instance, were able to pressure the military to grant the commission access to detention centers and confidential records. The commission was able to do this largely because it understood that, while the armed forces might balk at the suggestion, they would not openly rebel and chance the erosion of the Argentine state. Moreover, the South African TRC was able to take full advantage of the strong institutions and high levels of bureaucratic capacity (particularly among juridical bodies) left over from the apartheid regime to support a large and logistically complex operation.

Conversely, the El Salvadoran and Guatemalan commissions could not count on the same level of governmental support. In both cases, they had to reach out to the international community for logistical support and judicial expertise. Further, because the consolidation of the El Salvadoran and Guatemalan states was far more tenuous than

in Argentina, Chile or South Africa, the commissions had to operate discretely.<sup>69</sup> This seems to suggest that while the manner in which commissions negotiate political constraints has an important role in determining truth commission success, additional conditions that arise in contexts of state strength may also have a part to play. I address this question in greater detail later in the paper.

At any rate, based on the information provided by the above cases, we now have a basic framework for approaching Liberia and Sierra Leone. The truth commissions in these countries operated and are continuing to operate in a volatile and fragile political climate wholly unlike that of any other commission to date. The Liberian and Sierra Leonean states are so weak that identifying the specific conditions that impacted their truth commissions' outcomes demands that we consult the literature on 'failed' states, as literature on truth commissions in this context is, for all practical purposes, nonexistent. The next chapters thus examine these two cases in greater detail with the objective of evaluating the applicability of the framework created by past truth commissions actions in contexts of mass violence and state collapse.

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<sup>69</sup> By this I mean to say that the commissions in South Africa and the Southern Cone worked in the aftermath of state terror. El Salvador and Guatemala, meanwhile, operated in the aftermath of civil war.

# Chapter 2: Deconstructing Failed States

*People go to Africa and confirm what they already have in their heads and so they fail to see what is there in front of them. This is what people have come to expect. It's not viewed as a serious continent. It's a place of strange, bizarre and illogical things, where people don't do what common sense demands.*

-Chinua Achebe

## ***Introduction***

In Chapter 2 I highlighted many of the theoretical and practical debates that continue to rage over truth commissions. Through this review, I demonstrated how the success of truth commissions depends greatly on their ability to navigate and overcome political constraints. Yet while prone to many of the constraints described in Chapter 2 (political opposition, composition, funding etc.) the Liberian and Sierra Leonean commissions are unusual in that they operated in a political climate far more volatile than any previous case; prior to Sierra Leone, a truth commission had never been attempted in a failed state context. Indeed, the paucity of formal political structures in post-conflict Liberia and Sierra Leone (contrasted with the strong, militarized state that was the primary obstacle to Argentina's commission, for example), suggests that these cases face a number of unique challenges to their implementation. How can a truth commission establish itself as a credible institution in a political space where key institutions lack legitimacy? How does a truth commission thrive or survive in a climate of endemic corruption, intense political fragmentation, and the nebulous maneuverings of international peacekeeping forces? Most importantly for this thesis, how do these conditions shape the outcome of truth commissions? These questions, among many others, are not yet addressed in the literature. As much of the conflict and bloodshed of the twenty-first century is pushed toward the periphery, into the world's ungoverned or ungovernable places, understanding



the capabilities as well as the limitations of truth commissions in these environments is essential to their continued viability.

The purpose of this chapter is twofold. I begin with a brief review of the literature on failed states, tracing its evolution from regarding them almost exclusively as chaotic threats to international security to more nuanced interpretations. The conception of failed states that I use in this thesis is somewhat different. The myriad efforts by the literature on ‘failed states’ (most of which is generated by international relations scholars) to characterize these bodies makes it clear that state failure is better understood not as one side of a binary state, but as one terminus on a spectrum of state weakness. In this sense, we can understand Liberia and Sierra Leone as existing in the same political universe as Argentina, Chile, South Africa, El Salvador, and Guatemala, but possessing certain characteristics that place them further along the path to collapse. This understanding allows us to begin isolating specific conditions that contribute to state weakness while also influencing the success of a truth commission. These conditions will establish the basis for comparison between the two cases in this study. Thus, in the second half of the chapter I highlight those political constraints most associated with failing states whose presence (or absence) may assist in explaining the Liberian and Sierra Leonean commissions’ divergent paths.

### ***Theorizing Failed States***

‘Failed state’ emerged as a political classification and phenomenon in the opening years of the 1990s, following the end of the Cold War. Many states in the developing world, previously locked into the power struggle between the United States and the Soviet Union, were suddenly cast adrift with scant resources, bureaucratic institutions, or

government infrastructure.<sup>70</sup> After years of being propped up by one superpower or another, governments throughout Africa and other regions in the South could not guarantee economic or political stability.<sup>71</sup>

As the post-Cold War years progressed, an increasingly liberalized global economy has exacerbated the problem by exposing weak states to the whims of their more powerful neighbors and international institutions.<sup>72</sup> As these states struggled to catch up with the developed world, they often found themselves hobbled by austerity measures, stringent privatization demands, and requirements that they open their economies to foreign capital imposed by transnational institutions like the IMF, World Bank, and WTO. Almost uniformly, the response to these pressures has been increased poverty and political instability, leading to crumbling economies and collapsed regimes. As Robert Rotberg explains, these governments were no longer capable of delivering “positive political goods” to their constituencies.<sup>73</sup> Indeed, in Liberia and Sierra Leone, along with many other states, “government...lost its minimal capacity and therefore its right to rule”.<sup>74</sup>

Much of the early literature presents a bleak outlook on the prospects of failed states. Most scholars understood these states primarily as threats to international security.<sup>75</sup> The ensuing “civil strife, government breakdown, and economic privation” risked allowing these states to act as platforms of “random warfare” and widespread

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<sup>70</sup> Helman, Gerald B. & Ratner, Steven. “Saving Failed States”. *Foreign Policy*. 89:4 (Winter, 1993) pp. 3-21; Herbst, Jeffrey. “Responding to State Failure in Africa”. *International Security*. 21:3 (Winter, 1996/1997) pp. 120-144

<sup>71</sup> Carment, David. Assessing State Failure: Implications for Theory and Policy. *Third World Quarterly*. 24:3 (2003) pp. 407-427; Zartman, I William. *Collapsed States: The Disintegration and Restoration of Legitimate Authority*. Boulder, CO: Lynne Rienner. 1995

<sup>72</sup> Collier, Paul. “Economic Causes of Conflict and Their Implications for Policy”. World Bank Paper (June, 2000).

<sup>73</sup> Rotberg, Robert I. *State Failure and State Weakness in a Time of Terror*. Washington D.C.: Brookings Institution Press. 2003

<sup>74</sup> Langford, Tonya. “Things Fall Apart: State Failure and the Politics of Intervention”. *International Studies Review*. 1:1 (Spring, 1999) pp. 59-79

<sup>75</sup> Helman & Ratner, Op cit; Zartman, Op cit.

human rights abuses, producing destabilizing refugee flows and drawing entire regions into a chaotic vortex.<sup>76</sup> Perhaps best encapsulating the fearful zeal with which scholars initially approached these ‘benighted’ regions is Robert Kaplan’s 1994 article *The Coming Anarchy* which describes the future of West Africa as a post-apocalyptic nightmare where “disease, overpopulation, unprovoked crime, scarcity of resources, refugee migrations, the increasing erosion of nation-states and international borders, the empowerment of private armies, security and international drug cartels...provide an appropriate introduction to the issues...that will soon confront our civilization”.<sup>77</sup>

However, many scholars are critical of this interpretation.<sup>78</sup> The disquieting neo-colonial subtext of Kaplan’s article aside, they have argued that by portraying failing states as threats to international security or anarchic civilizational frontiers, we are doing little more than re-invigorating the age-old practice of orientalism, carving our fears and prejudices into the landscape of the developing world and constructing the ‘failed state’ as a new form of ‘other’. Lancaster and Opala have expressed concern that what the Western world has labeled statelessness is in reality the messy post-colonial process of indigenous institution building.<sup>79</sup> In a similar vein, Hoffman & Weiss are skeptical of the usefulness of the term ‘failed state’ altogether.<sup>80</sup> They contend that, irrespective of how these states are defined, what is “shared across the categories is a type of order that

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<sup>76</sup> Ibid. p. 1

<sup>77</sup> Kaplan, Robert D. “The Coming Anarchy”. *The Atlantic Monthly*. (Feb. 1994) p. 3-4

<sup>78</sup> Spanger, Han-Joachim. “The Ambiguous Lessons of State Failure”. Presented at the Failed States Conference, Peace Research Institute, Frankfurt, April, 2001

<sup>79</sup> Lancaster, Carol. “The Coming Anarchy”. *CSIS Africa Notes*. 163 (1994); Opala, Joseph. “Reflections on ‘The Coming Anarchy’” *Crosslines*. 4:7 (1996)

<sup>80</sup> Hoffman, Peter J. & Weiss, Thomas G. *Sword & Salve: Confronting New Wars and Humanitarian Crises*. Oxford, UK: Rowman & Littlefield. 2006. p. 63

deviates from textbook patterns, but is still premised on structured arrangements among actors representing political, military and economic power”.<sup>81</sup>

The point is that there is astonishingly little analytical rigor to early scholarly interpretations of failed states. States with diverse political histories and populations are uniformly and insensitively portrayed as lacking some critical component that makes them civilized. While fundamentally true that a state without a legitimate sovereign authority cannot effectively manage all of its responsibilities, and disorder in one state threatens the stability of its neighbors, the myriad political conditions that contribute to this loss of power or legitimacy, as well as the forces that emerge in the vacuum, demand individual analysis in order to identify those factors that weaken the state. Once we begin to identify these factors weak statehood is more usefully understood as a continuum rather than a static condition, where a government’s monopoly over sovereignty is but one of many variables; that is to say, “failed states are not homogenous”.<sup>82</sup> Langford agrees, asserting that “as no two situations are alike, crystallizing an operational definition [of failed state] is difficult”.<sup>83</sup>

Bearing this in mind, scholars have searched for ways to more accurately describe failed states. Rotberg distinguishes between “failed states” that suffer from a progressive decline in the legitimacy of the central authority and “collapsed states” that “exhibit a [total] vacuum of authority”.<sup>84</sup> Helman & Ratner group vulnerable or weakening states into the three rather ambiguous categories of “failed states”, “failing states”, and states

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<sup>81</sup> Ibid.

<sup>82</sup> Germain-Gros-Jean. “Towards a Taxonomy of Failed States in the New World Order: Decaying Somalia, Rwanda, Liberia, and Haiti”. *Third World Quarterly*. 17:3 (Sep. 1996) pp. 455-471; Rotberg, Op cit.

<sup>83</sup> Langford, Op cit.

<sup>84</sup> Rotberg, Op cit.

“whose viability is difficult to assess”.<sup>85</sup> Following this trend, Germain-Gros lays the groundwork for a “taxonomy of failed states” that acknowledges the diverse conditions under which a state can fall into a retrograde political trajectory. In a nuanced, albeit sometimes opaque, review of political conditions in Somalia, Liberia, Rwanda, and Haiti, he offers five types of failed state ranging from “anarchic states” where centralized government is does not exist (Liberia) and the almost mystical “phantom or mirage state” that projects the image of a central authority that does not in fact exercise any control over its territories (Zaire). Additionally, there is the “anemic state” where authority is shared between two or more competing groups (Haiti), the “captured state” where the state apparatus is hijacked by a single elite faction in order to eliminate their rivals (Rwanda), and finally the “aborted state” that “experienced failure even before the process of state formation was consolidated” (Bosnia).<sup>86</sup>

The trouble with this type of characterization is that it ignores a rather glaring contradiction. On one hand, lumping states into categories assumes that state failure is common enough to warrant taxonomy. On the other hand, the growing number of categories required to house these cases (“anemic state”, “phantom state”, etc.) seems to indicate that we are not, in fact, dealing with an expanding universe of atomized events, but rather are witnessing the elaboration and refinement of a spectrum of state strength (or weakness). The question, then, is not “has a state failed or not?” but rather “to what extent has a state failed, and how?”

As we strive to lay out a set of factors to guide our analysis of the Liberian and Sierra Leonean cases, the dichotomies presented in the early literature on failed states are

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<sup>85</sup> Helman & Ratner, Op cit. p. 2-3

<sup>86</sup> Germain-Gros, Op cit. p. 461

not particularly useful. But as we begin to conceptualize states in terms of relative strength or weakness, and to identify the characteristics that define positions on this continuum, we discover factors shared by states characterized as failing. Many of these factors could play crucially important roles in fostering or inhibiting the development of post-conflict institutions such as truth commissions. In this light, we can locate Liberia and Sierra Leone in relation to other cases while remaining cognizant of their unique positions in terms of state weakness. Moreover, by positioning these cases in a more nuanced literature on failed states, we can begin to more legitimately isolate common political conditions that may have played a role in deciding the outcome of their truth commissions. In addition, we are identifying a group of states to which the results of our analysis are potentially transferable.

Beyond offering competing typologies, scholars' characterizations of failed states tend to vary even within a single context. Somalia, regarded by many as the "quintessential failed state", has been described with both profound pessimism and quiet optimism.<sup>87</sup> Lyons and Samatar view Somalia's current plight as the result of a long and arduous process of political decline that "left behind little but the wreckage of distorted traditions and artificial institutions".<sup>88</sup> Conversely, Menkhaus and Prendergast point out that, rather than being condemned to the inchoate anarchy and violence predicted by Kaplan, Somalia has proven surprisingly resilient, with community level political structures emerging to carry out many of the functions of central government.<sup>89</sup> Peter Little adds that Somalia has maintained a vigorous informal economy comparable to the

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<sup>87</sup> Langford, Op cit.

<sup>88</sup> Lyons, Terrence & Samatar, Ahmed. *State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction*. Washington D.C.: Brookings Institution Press. 1995. p. 24

<sup>89</sup> Menkhaus, Ken & Prendergast, John. "Political Economy of Post-Intervention Somalia". *Somalia Task Force Paper #3*. 1995

more formalized economies of its neighbors; all of this despite having existed without a central government for over a decade.<sup>90</sup>

While some failed states have settled into a more or less normalized existence without a central authority, statelessness should not be understood as a permanent or intractable condition.<sup>91</sup> Indeed, to assume that statelessness precludes significant political, economic, or social activity plays into the generalizations that I have attempted to complicate above. Liberia and Sierra Leone, despite entering the decade in utter disarray have slowly begun restoring the elements of legitimate central government. Drawing from the journal *Foreign Policy's* Failed States Index (FSI), which ranks states from 1 (signifying the greatest jeopardy) to 60, Figure 2.1 shows a consistent improvement in the political consolidation of both countries since 2005.<sup>92</sup> The Brookings Institution, opting for the categorization of weak states rather than failed states, ranked Liberia 9<sup>th</sup> and Sierra Leone 13<sup>th</sup> out of 141 countries in 2008. The inconsistencies, both in how we label troubled states and how we measure their weakness reflect the general lack of clarity in the literature on this topic. Failed states are what we make them.

**Figure 2.1: FSI Ranking for Liberia and Sierra Leone 2005-2008**

	Liberia	Sierra Leone
<b>FSI Ranking 2005</b>	9 <sup>th</sup>	6 <sup>th</sup>
<b>FSI Ranking 2006</b>	12 <sup>th</sup>	17 <sup>th</sup>
<b>FSI Ranking 2007</b>	27 <sup>th</sup>	23 <sup>rd</sup>
<b>FSI Ranking 2008</b>	34 <sup>th</sup>	31 <sup>st</sup>

*Source: Fund for Peace, Foreign Policy Magazine (Failed States Index)*

As we strive to lay out a set of factors to guide our analysis of the Liberian and Sierra Leonean cases, the dichotomies presented in the early literature on failed states are not particularly useful. But as we begin to conceptualize states in terms of relative

<sup>90</sup> Little, Peter. *Somalia: Economy without State*. Bloomington, IN: Indiana University Press. 2003

<sup>91</sup> Hoffman & Weiss, Op cit.

<sup>92</sup> Additional information on the Failed States Index can be found at: [www.foreignpolicy.com/story/cms.php?story\\_id=4350](http://www.foreignpolicy.com/story/cms.php?story_id=4350)

strength or weakness, and to identify the characteristics that define positions on this continuum, we discover factors shared by those existing closer to the weak terminus.<sup>93</sup> Returning to the indices offered by *Foreign Policy* and the Brookings Institution, both rank weak or failed states by measuring a variety of indicators or political conditions that such states typically exhibit; the more conditions that are present, or the more acutely they manifest themselves, the weaker the state. Many of these individual conditions could play crucially important roles in supporting or inhibiting the development of post-conflict institutions such as truth commissions. In the following section, I evaluate these political conditions in greater detail.

### ***Deconstructing Failed States***

There are many indicators of state weakness and they are endlessly debatable. Depending on their particular field of interest, scholars have suggested that the origins of state failure can be traced back to flaws within colonial administration or to modern economic mismanagement, while others point to the slow erosion of democratic norms.<sup>94</sup> It is well beyond the scope of this study to weigh in on this debate. However, understanding state weakness as the product of a number of separate, but interrelated conditions allows us to examine the relationship between weak states and truth commission success in a more nuanced manner. Adopting a similar framework as the indices described above and drawing from the literature, the potential constraints to truth commissions operating in failed state contexts that will be examined in this study are the

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<sup>93</sup> While I am aware of the limitations as well as the potential ambiguities of categorizing Liberia and Sierra Leone simply as 'weak' states, I will continue to utilize this label throughout this thesis in order to avoid the types of complications listed above.

<sup>94</sup> Zolberg, Aristide. "The Specter of Anarchy: African States Verging on Dissolution". *Dissent*. 39:3 (1992); Herbst, Op cit; Collier, Paul; Chauvet, Lisa; Hoeffler, Anke. "The Cost of Failing States and the Limits to Sovereignty". Centre for the Study of African Economies, University of Oxford. February, 2007; Helman & Ratner, Op cit; Rotberg, Op cit.



following: 1) the criminalization or de-legitimization of the state 2) corruption & the deterioration of public services 3) the failure of democratic norms 4) widespread human rights abuses 5) political fragmentation and 6) the presence of an international intervention force. These conditions listed below were chosen for two reasons. First, based on the literature they are more or less common to all cases of state failure. Second, they are perhaps the most categorical and thus the least problematic for comparative analysis—the presence of an international intervention force, for example, is not prone to definitional ambiguities. In addition to drawing indicators from the literature, this thesis borrows heavily from both the Failed States Index and the Index of State Weakness, as they have compiled the most comprehensive sets of indicators of state failure to date.<sup>95</sup>

**Figure 2.2 Indicators of state weakness**

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1. De-legitimization of the state
  2. Corruption & deterioration of public services
  3. Failure of democratic norms
  4. Widespread human right abuses
  5. Political fragmentation
  6. Presence of an international intervention force
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*The de-legitimization of the state:* In order for a state to cease to function it must experience a loss of legitimacy in the eyes of its population. There is a broad consensus within the literature positing de-legitimization as a primary warning sign of state collapse.<sup>96</sup> This generally occurs when, through a painful period of de-colonization, political re-shuffling/instability, or economic restructuring/turmoil, the state cannot carry out its duties to its constituency.<sup>97</sup> A loss of legitimacy is in some ways a product of the following 3 conditions, but it is a consequential and measurable factor in its own right.

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<sup>95</sup> The Brookings Institution is an independent think tank based in Washington D.C. Information on the Weak States Index can be found at: [www.brookings.edu](http://www.brookings.edu).

<sup>96</sup> Failed States Index, Brookings Institution

<sup>97</sup> Rotberg (2003), Op cit.

State legitimacy, when translated into political power, can be related in complex and paradoxical ways to the prospects for success of post-conflict institutions and transitional justice mechanisms. On one hand, the absence of state legitimacy poses serious challenges to any form of political consolidation or reconciliation as the state is acting without popular consent. That is, de-legitimization essentially immobilizes state actors by severely restricting their political capital. A lack of respect for state institutions and the resultant turmoil can be anathema to the development of the legal and extra-legal institutions required for democratic consolidation. On the other hand, the existence of state legitimacy does not necessarily guarantee the success of a reconciliation process either. As demonstrated by the cases of Argentina and Chile in the previous chapter, a strong central authority with great legitimacy could explicitly oppose or tacitly derail the reconciliation process should it appear to threaten their continued hold on power. When unchecked by powerful competing institutions and endowed with sufficient political capital, legitimate state actors can undermine national reconciliation.

*Corruption & deterioration of public services:* In some cases, the de-legitimization of the state comes through the corruption of ruling elites (FSI, 2008). Rotberg (2003: 8) explains that while “corruption flourishes in many states...in failed states it often does so on an unusually destructive scale”. By diverting public money into overseas coffers, receiving kickbacks from public works projects and government programs, or converting bureaucratic institutions into private patronage machines (all of this in addition to run-of-the-mill bribery), government officials experience a decline in credibility among the general population. In authoritarian states, or those that are only nominally democratic, there are few mechanisms capable of transforming the grievances

of irate constituencies into political change, further undermining the regime's legitimacy. The immense plutocracy that characterized the final days of the Siaka Stevens administration in Sierra Leone, for instance, was a principal contributor to that country's decline into civil war.<sup>98</sup>

These kinds of corruption are frequently tied to the deterioration of public services.<sup>99</sup> Corruption necessarily diverts government funds from the upkeep of basic infrastructure such as roads and bridges, but also threatens the availability of basic necessities, including water and electricity. Additionally, in cases of costly protracted conflict the state will unlikely be able to expend sufficient resources on these projects. Indeed, the inability of a state to provide basic services generates a lack of trust among its constituents that reverberates across many arenas.<sup>100</sup>

*Failure of democratic norms:* Many states lose legitimacy and ultimately 'fail' due to a deterioration or lack of democratic institutions. As mentioned above, when citizens lose access to government or cannot effectively lobby for political change the resulting alienation can ultimately lead to the establishment of competing institutions that undercut the state's authority. Menkhaus and Prendergast and Little assert that a key challenge to the restitution of statehood in Somalia is the reversion to local level (and generally clan-based) institutions that have taken on a state-like role following the Barre administration's collapse in 1991.<sup>101</sup>

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<sup>98</sup> Rotberg, Robert I. "Failed States in a World of Terror". *Foreign Affairs*. 81:4 (Jul-Aug. 2002) pp. 127-140

<sup>99</sup> Rotberg (2003), Op cit; Rice, Susan E. & Patrick, Stewart. "Index of State Weakness in the Developing World". *The Brookings Institution*. 2008

<sup>100</sup> A similar problem of perception cursed the erstwhile Chadian truth commission where, due to a shortage of office space, the commission was forced to operate out of an infamous former detention center where many of the abuses it was mandated to investigate took place. This ignominious association destroyed the commission (Hayner, 2003).

<sup>101</sup> Menkhaus & Prendergast, Op cit; Little, Op cit.

*Widespread human rights abuses:* Human rights abuses are another principal contributor to a decline in the legitimacy of a state. That said, human rights abuses are by no means a guarantor of state failure. Argentina and Chile did not collapse despite enduring campaigns of state terror against dissidents. What is unique to failed states, however, is the extent of human rights abuse as well as the actors responsible. During the conflicts in Liberia and Sierra Leone (two contexts where human rights abuses reached unparalleled levels), the central government was not the sole participant in mass abuses; rather it was but one actor in a country that had been overtaken by endemic violence. Neighbors were killing neighbors. Thus, through implicit or explicit complicity, or through its sheer inability to maintain order, the legitimacy of the central authority is undercut. The sheer multitude of actors and the convoluted networks of responsibility that arise in the aftermath of particularly bloody civil conflicts pose special challenges to truth commissions, adversely altering the dynamics of implementation, composition and the strength of the mandate.

*Political Fragmentation:* While some level of political fragmentation, understood as the existence of a number of distinct (and occasionally armed) political factions, is natural in any society, it can become a major hindrance to states where the central government is struggling to consolidate power and where opposition groups are often armed. Jochen Hippler explains that in countries where armed groups are “not only competing politically but also fighting among themselves...the bi-polar structure of a conflict will be transformed into a multi-polar structure and the danger of a complete social breakdown is high”.<sup>102</sup> Indeed, he continues “a multitude of independent armed

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<sup>102</sup> Hippler, Jochen. “Democratization after Civil Wars – Key Problems and Experiences”. *Democratization*. 15:3 (June, 2008) p. 558.

groups fighting the government and simultaneously one another tends to ‘depoliticize’ a conflict and emphasize narrow group interests over national interests”.<sup>103</sup> Further, when a civil conflict splinters along ethnic lines (as it did in Bosnia, Afghanistan, Somalia and Liberia) the potential for continued domestic conflict increases considerably.<sup>104</sup>

Considering the challenges it presents for democratization, the potential troubles that political fragmentation poses for democratic consolidation are quite evident. Fractured or myopic conceptions of national interest possessed by various warring factions are likely to rule out sweeping national reconciliation projects, particularly when these factions stand to lose credibility in the process. Walter asserts that the “greatest challenge [to a democratic transition] is to design a treaty that convinces the combatants to [take steps] that will increase their vulnerability and limit their ability to enforce the treaty’s other terms”.<sup>105</sup>

*Presence of an international intervention force:* A final indicator of state failure that may hold consequence for a truth commission is the presence of an international intervention force. International intervention in a civil conflict or humanitarian crisis can have a profound impact on political consolidation and democratization by adding another layer of intrigue to an already complex political environment and, moreover, calls into question the authority of the state.<sup>106</sup> Further, international intervention may have the adverse effect of prolonging the conflict or crystallizing it in a limbo-like state.<sup>107</sup> This risk is heightened in cases where the international actor is from the region and may have

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<sup>103</sup> Ibid. p. 558

<sup>104</sup> Ellingsen, Tanja. “Colorful Community or Ethnic Witches Brew? Multiethnicity and Domestic Conflict during and after the Cold War.” *The Journal of Conflict Resolution*. 44:2 (Apr. 2000) pp. 228-249

<sup>105</sup> Walter, Barbara F. “Designing Transitions from Civil War: Demobilisation, Democratization, and Commitments to Peace”. *International Security*. 22:1 (Summer, 1999) p. 129

<sup>106</sup> Duffield, Mark. *Global Government and the New Wars: The Merging of Development and Security*. New York: Zed Books, 2001

<sup>107</sup> Terry, Fiona. *Condemned to Repeat? The Paradox of Humanitarian Action*. Ithaca: Cornell University Press, 2002

an intense interest in the occupied country's domestic affairs, making them virtual playing fields for pushing agendas and settling old scores.<sup>108</sup>

### ***Conclusion***

This chapter reviews the literature on failed states in an attempt to complicate common perceptions of state weakness. Having realized that the label 'failed state' alone does not possess a great deal of descriptive power, scholars have struggled to attach a number of additional qualifiers, ranging from 'collapsed state' to 'anemic state'. The result has been to atomize 'failed states' into seemingly infinite sets of categories and subcategories. I contend that this process is indicative of a broader misconception about how these 'benighted' states relate to their more stable counterparts. That is, rather than understanding state failure as a binary condition, I argue that it is far more useful to imagine it as one terminus on a spectrum of state strength.

In this manner, we can more easily identify certain political conditions characteristic extreme state weakness that may have an impact on the success of truth commissions. Further, this approach allows us to examine these states in relation to one another, telling us more about which conditions have the greatest impact on truth commissions.

As I mentioned above, what makes the Liberian and Sierra Leonean commissions unusual is that they were established in precisely this type of context. Yet while both countries are typically described as 'failed states', their respective truth commissions experienced markedly different levels of success, thus indicating that there were some differences in the political conditions present in each case. Indeed, in cases of extreme

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<sup>108</sup> Adebajo, Adekeye. "Building Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau." *International Peace Academy Occasional Paper Series*. London: Lynne Rienner Publishers, 2002

state weakness, many of the political constraints described in Chapter 1 may not be present while other, new conditions may play a deciding role. In Chapters 3 and 4, therefore, I attempt to do two things. First, after reviewing the Sierra Leonean and Liberian conflicts, I will identify which of the political conditions outlined above appeared in each case. Second, looking closely at the events surrounding both the creation and the implementation of the truth commissions in both countries, I evaluate which of these conditions had the greatest impact on their success as defined by their respective mandates.

# Chapter 3: Sierra Leone

*Yes, we have committed atrocities. One day we shall stand before the people and ask for forgiveness.*

- Foday Sankoh

## ***Introduction***

The civil war that raged across Sierra Leone from 1991 to 2002 was one of the most horrifying events in African history. Following years of political decline and a slow erosion of democratic institutions, the conflict ostensibly began as a violent outpouring of public frustration with the slow pace of de-colonization and a desire for deeper democratic reform. However, as the rebel group Revolutionary United Front (RUF) became the central voice of opposition, whatever political subtext the war may originally have possessed was quickly replaced by unarticulated fury and bitter resentment with the status quo which, unfortunately, was often directed at the civilian population. In addition to the tens of thousands killed in the conflict, countless more were scarred by shocking acts of cruelty, including rape and sexual violence, amputations, the recruitment of child soldiers and forced cannibalism. In its aftermath, the Sierra Leonean state established two institutions designed to spark a process of national reconciliation: the Sierra Leonean Truth and Reconciliation Commission (TRC) and the Special Court for Sierra Leone. However, only the Special Court appears to have ultimately succeeded in carrying out its mandate. The TRC meanwhile experienced significant challenges in achieving its fundamental objectives of accounting for the origins of the conflict and serving as the venue for national reconciliation.

This chapter attempts to account for these shortcomings. Specifically, I explore how certain political constraints created by state weakness were instrumental in



determining the Sierra Leonean TRCs reduced success in carrying out its mandate. I begin by reviewing the Sierra Leonean conflict and explaining how the war and subsequent peace accords led to the emergence of many of the political conditions laid out in Chapter 2. Looking at events surrounding the creation of the Commission and the Special Court as well as the relationship between the two bodies, I then discuss the failings of the TRC in greater detail, identifying connections between the shortcomings of the latter and the political conditions associated with the weakness of the Sierra Leonean state. Ultimately, I argue that while many of these political conditions did present challenges to the Commission's work they did not significantly undermine its objectives. Counter intuitively, the absence of two of these conditions (de-legitimization and political fragmentation) appears to have dealt the killing blow to the Commission by empowering the Sierra Leonean state to move forward with the special Court. This act proved to be insurmountably problematic, as the Special Court prevented the TRC from communicating with many high-profile individuals involved in the conflict and engendering doubt among the country's population regarding its true motives. In essence, the *strengths* of the Sierra Leonean state jeopardized the work of the Commission. I elaborate on this claim extensively later in the chapter. First, however, it would be useful to account for the events that led to the creation of these institutions.

### ***Origins of the Conflict: 1961-1991***

Although armed conflict in Sierra Leone began in 1991, its roots stretch back to the early years of de-colonization. The United Kingdom relinquished control of the country leaders thirty years earlier in 1961, following a gradual transfer of administrative responsibilities over the previous decade. In parliamentary elections the following year,

Sir Milton Margai, a shining star of the Colonial Medical Service and candidate of the Sierra Leone People's Party (SLPP) was elected Prime Minister only to die two years later, leaving his brother, Sir Albert Margai, as his successor. Sir Albert's administration was met with criticism from the beginning. A member of the Mende ethnic group, he was accused, legitimately, of doling out favors and political patronage to his ethnic cohort as well as attempting to establish a one-party state. Tainted by this scandal, Margai was ousted by the All People's Congress (APC) and British Governor-General accepted candidate Siaka Stevens, then the Mayor of Freetown, as the country's new Prime Minister in 1967.<sup>109</sup>

This was far from a model transfer of power, leading to a coup d'état in which Stevens and Margai were arrested. After a second coup, re-established Stevens was re-established as the legitimate leader of the country in 1968. Perhaps more than any other political figure, he was responsible for Sierra Leone's descent into chaos. A charismatic leader who had emerged onto the political scene out of Freetown's trade unions, he initially enjoyed a great deal of popular support, particularly among the Temne and Limba ethnic groups, as well as the smaller populations of Mandingos, Lokos and Susus, for his leftist, anti-colonial rhetoric. However, shortly after taking office, Stevens abandoned much of his leftist agenda and began laying the groundwork for what would become a massive, and massively corrupt, political machine.<sup>110</sup> By 1980, Stevens' personal wealth was estimated at roughly \$500 million U.S. His years of corrupt leadership were punctuated by the infamously lavish 1980 Organization of African Unity

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<sup>109</sup> U.S. Department of State. "Background Notes: Sierra Leone". October 2008

<sup>110</sup> Ibid.

(OAU) summit in Freetown, the cost of which was rumored to match the annual expenditures of the entire country.<sup>111</sup>

Throughout the 1980s the Sierra Leonean economy experienced a precipitous decline. Diamond revenues, which in 1968 had accounted for nearly \$200 million U.S., barely reached \$100,000 in 1985, as “a motley crew of adventurist rogues and shady Israeli firms” took over the resource’s production and export.<sup>112</sup> Meanwhile, spending on education declined from 15.6% of the national budget in 1975 to 8.6% in 1988. Health care and housing spending also dropped from 6.6% and 4.8% to 2.9% and 0.3% respectively over the same period.<sup>113</sup>

Amid swelling popular discontent, Stevens abdicated in 1985, passing the presidency to his army chief of staff, General Joseph Momoh. Momoh, however, proved to be a far less competent leader than Stevens. In 1987, when it was discovered that Stevens was preparing to assassinate the new President and re-take office, Momoh placed him under house arrest, where he died soon afterward.<sup>114</sup> Nevertheless, the economy continued its downward slide and citizens expecting a change were vocal in their disappointment. Under pressure, President Momoh amended the constitution in October 1991, returning the country to a multi-party system.

It was too little, too late. Earlier that year in March, a small band of roughly 300 Sierra Leonean rebels, supported by ‘special forces’ units from Liberian rebel leader Charles Taylor’s National Patriotic Front of Liberia (NPFL) and Burkinabe

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<sup>111</sup> Adebajo, Adekeye. “Building Peace in West Africa: Liberia, Sierra Leone and Guinea-Bissau”. *International Peace Academy Occasional Paper Series*. London: Lynne Rienner, 2002

<sup>112</sup> *Ibid.* pp. 81

<sup>113</sup> Abdullah, Ibrahim. “Bush Path to Destruction: The Origin and Character of the Revolutionary United Front/Sierra Leone.” *The Journal of Modern African Studies*. 36:2 (Jun. 1998) pp. 203-235

<sup>114</sup> Hirsch, John L. “Sierra Leone: Diamonds and the Struggle for Democracy.” *International Peace Academy Occasional Paper Series*. London: Lynne Rienner Publishers, 2001

mercenaries, and calling themselves the Revolutionary United Front of Sierra Leone (RUF) appeared in the provincial town of Bomaru, Kailahun District after slipping unnoticed across the border from Liberia.<sup>115</sup> A second force entered the country from the southwest a few days later. One of the bloodiest conflicts in African history had begun.

### ***Papa's War: 1991-2002***

Much of the literature on the conflicts in Liberia and Sierra Leone characterizes them as a single, cross-border conflict and to some extent this is true.<sup>116</sup> After all, it was Charles Taylor who bankrolled the RUF during their first incursions in Sierra Leone and provided military support throughout the conflict. Perpetuating a state of war in Sierra Leone was economically advantageous for Taylor because, with Sierra Leone in disarray all diamond exports had to be funneled through Liberia.<sup>117</sup> Yet while there are many ways in which these two conflicts were linked, they were nonetheless distinct events with markedly different trajectories.

Foday Sankoh, the leader of the RUF, was an ex-corporal in the Sierra Leonean army who, after being imprisoned and discharged by Stevens following a failed coup attempt in 1973, had begun a career as a professional photographer. An older man (he was fifty four when the war began) who was called 'Papa' by his troops, Sankoh had trained in Libya with Taylor in the late 1980s where he networked with a number of prominent West African revolutionaries. However, he shared little of ideological

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<sup>115</sup> Estimates of the exact number of rebels who entered the country vary. Hirsch (2001) asserts that it was closer to 100. In any case, RUF ranks swelled to nearly 4,000 after they crossed the border and 'recruited' additional support.

<sup>116</sup> Adebajo, Op cit; Hirsch, Op cit.

<sup>117</sup> Ellis, Stephen. *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War*. New York: NYU Press, 2007

aspirations common to his radical cohort. From the very onset the RUF's political ambitions were vague, drawing almost at random from Qaddafi's Green Book along with a smattering of Mao Zedong; they conveyed little more than an unarticulated desire to end the corruption and incompetence of APC. The rebels had no intellectual leader and there was no central planning committee; the entire operation was loosely organized around Sankoh and his compatriots, Abu Kanu and Rashid Mansaray.<sup>118</sup> The lack of a clear goal hindered the RUF's ability to build a constituency in the countryside, a challenge that was exacerbated by the group's brutal tactics. Sankoh's forces, and particularly his captains Papa Kamara and Sam Bockarie, regularly raped, murdered, tortured and mutilated the inhabitants of rural villages. The image of children whose hands had been chopped off by rebels became the most harrowing symbol of the conflict.

Ironically, the support Sankoh did receive was the direct result of economic decline under the Stevens administration. By the early 1990s, Sierra Leone possessed a vast sector of unemployed youths, most of whom were secondary school drop-outs or college graduates unable to find work. Left with few other options, most of these youths made a living through the informal economy, smuggling diamonds, weapons and narcotics. This made them easy recruits for the RUF.<sup>119</sup> The rest of the rebel group's support came from 'conscripted' boys, gathered from rural villages and forced to fight. The extensive recruitment of child soldiers (initially by the RUF, but later by the Sierra Leonean Army as well) was another hallmark of the civil war and the most evident

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<sup>118</sup> Abdullah, Op cit.

<sup>119</sup> Ibid.

manifestation of the human rights abuses that had become commonplace throughout the country.<sup>120</sup>

Despite never winning popular sympathy, the RUF maintained a small following and was able to continue in his efforts to seize control of the country for much of the decade. For all his shortcomings as an ideological leader, Sankoh was a brilliant strategist and the Sierra Leone Armed Forces (SLA) were too underequipped and poorly trained to hold off the rebel advance. In 1992, frustration with the leadership of President Momoh, the SLA seized control of the Freetown government. The newly founded National Provisional Ruling Council (NPRC), headed by Captain Valentine Strasser, attempted a peace deal with the RUF, offering the possibility of a coalition government. Sankoh (allegedly under advisement from his contacts in the NPFL) rejected the deal.<sup>121</sup>

For several years, the RUF continued its methodical progress across the countryside. In 1994, they had taken control of the Sierra Leone's diamond mines and were pressing toward Freetown. By this point, the SLA outnumbered the RUF by nearly 10,000 troops. These numbers were bolstered by a peacekeeping force deployed by the Economic Community of West African States Monitoring Group (ECOMOG) and a number of civil defense militias called *kamajors*.<sup>122</sup> Nevertheless, the rebel forces gained a foothold in the suburbs surrounding the capital. In 1995, Strasser enlisted the support of the South African mercenary outfit, Executive Outcomes, to aid in repelling the attack and to retake the diamond mines. The RUF was severely outgunned and within weeks

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<sup>120</sup> Beah, Ishmael. *A Long Way Gone: Memoirs of a Boy Soldier*. New York: Sarah Crichton Books, 2007

<sup>121</sup> Hirsch, Op cit.

<sup>122</sup> Ibid

Sankoh and his army had been pushed back to the borderlands between Sierra Leone and Liberia.<sup>123</sup>

This victory was fleeting. The NPRC was rocked by a January 1996 coup in which Brigadier-General Julius Maada Bio replaced Strasser as the NPRC chairman. Under pressure from the United States and Great Britain, the confident General Bio called for elections later that year; SLPP representative Ahmed Tejan Kabbah won the presidency on March 17, 1996. During his first ten months in office, Kabbah survived three coup plots and was regularly criticized at home and abroad for not properly managing the conflict. Nevertheless, by November 1996 he had forced the RUF, weakened significantly by the mercenary-led counteroffensive, to accede to peace talks in Abidjan.

Sankoh's attitude toward the Ivorian-brokered peace talks was cool at best. He disliked having to leave Sierra Leone and did not trust the UN Special Envoy, Berhana Dinka. In addition Akyaaba Addai Sebo, the NGO International Alert's representative and friend of Charles Taylor attempted to dissuade Sankoh from making concessions or entering into any binding agreement. Still, after months of negotiation, President Kabbah and Sankoh were able to strike a tentative deal on November 30, 1996. The RUF would become a political party and its members would receive a blanket amnesty, Executive Outcomes as well as all foreign troops would withdraw from Sierra Leone, and Cote d'Ivoire would lead a 'Neutral Monitoring Group' responsible for the disarmament of both parties.<sup>124</sup>

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid

This agreement was never realized. It appears that the NPRC's commitment to the accord and the Kabbah administration were not entirely sound. On March 25, 1996, in the days leading up to the transfer of power from military to civilian rule, Sankoh and Maada Bio met in Yamoussoukro where the General apparently offered the RUF commander either a position in the NPRC or the vice-presidency, depending on whether the military decided to allow the elections to continue—promises he was not prepared to keep. Thus, despite formal commitments between Sankoh and Kabbah to continue negotiations following the conference, Sankoh's insistence on the vice-presidency was a conversation stopper. Further, *kamajor* militias, ostensibly with the blessing of the Freetown government, continued raiding RUF camps along the Sierra Leonean border. An intercepted message between Sankoh and his commanders revealed that the RUF leader had only agreed to the Abidjan accords to buy the rebels more time. This cast doubt on whether Sankoh or President had committed to the ceasefire in good faith.<sup>125</sup>

Any lasting hope of peace was entirely forgotten the following year in March 1997, when Sankoh was arrested while traveling to Nigeria. Scholarly accounts of why Sankoh had left Cote d'Ivoire differ, but it seems that RUF arms supplies were drying up and Sankoh had gone to Lagos to secure a new source.<sup>126</sup> The Nigerian authorities, keen to destabilize the RUF, held the commander in Lagos until 1999. Meanwhile, in Freetown the Kabbah administration was disintegrating. Incensed by rumors of army downsizing and resentful of the President's reliance on Nigerian bodyguards and the *kamajor* militias for security, junior SLA officers seized control of the government on May 25, 1997. The newly minted Armed Forces Revolutionary Council (AFRC), led by Major Johnny Paul

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<sup>125</sup> Adebajo, Op cit.

<sup>126</sup> Adebajo, Op cit; Hirsch, Op cit.



Koromah, assured Sierra Leoneans in a radio address that its actions were for “the good of the country”.<sup>127</sup>

In an astonishing turn of events the AFRC invited the RUF into Freetown to form a ruling coalition, just hours after taking power. The RUF seized the opportunity and within days its troops spilled into the city, fueling the chaos. What ensued was a protracted and violent battle for the capital between the AFRC/RUF junta, senior SLA factions still loyal to Kabbah (who was now living in exile in Conakry), and the Nigerian ECOMOG peacekeepers. While regional and international powers waited anxiously for the force to restore peace and attempted to find a diplomatic solution to the crisis, the AFRC/RUF or ‘sobels’, as they were labeled by the locals, dug in their heels. Nine months later on February 15, 1998, after several abortive negotiations and the gradual rearmament of ECOMOG forces, the AFRC/RUF was forced out of Freetown, killing hundreds of civilians in their wake. Pitched battles between ECOMOG and the sobels continued for the rest of 1998. On January 6, 1999 the RUF began a six-week siege on Freetown. The consequent ECOMOG retaliation, shored up by Nigerian jets and warships, destroyed much of the city and killed 3,000 civilians.<sup>128</sup>

The fact that the rebels were able to sack Freetown (albeit temporarily) humiliated ECOMOG. Nigeria, as the largest contributor to the Sierra Leonean and Liberian peacekeeping missions, was spending nearly US \$1 million per day on the conflict and could not bear the cost of continued fighting.<sup>129</sup> This put a great deal of domestic pressure on newly elected Nigerian president, Olusegun Obasanjo, to withdraw from the two countries. Having only recently returned to Freetown, however, President Kabbah

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<sup>127</sup> Beah, Op cit.

<sup>128</sup> Hirsch, Op cit.

<sup>129</sup> Rashid, Ismail. “The Lomé Peace Negotiations”. *Conciliation Resources*. 2000

was keenly aware that if ECOMOG withdrew all the legitimacy in the world would not protect him or his government from a second rebel incursion and began exploring diplomatic solutions to the conflict.<sup>130</sup> Meanwhile, the AFRC/RUF alliance was rapidly deteriorating. Many of the soldiers had become disenchanted with the collaboration and wanted to return home. Moreover, the RUF had lost nearly 2,000 troops in the battle for Freetown, along with much of the scant popular support it still possessed.<sup>131</sup> The time seemed right for another attempt at peace.

### *The Lomé Accords*

The Lomé Accords were the result of a protracted negotiating process that spanned the better part of a year. Although sporadic fighting persisted across the country, President Kabbah and Foday Sankoh, who had been extradited to Sierra Leone in July and was facing treason charges, began speaking in person or by telephone almost daily between January and March, 1999. This open line of communication allowed for many small, but symbolically important acts, including Sankoh's release of several captive children and his acknowledgement of President Kabbah as the legitimate leader of the country. It also gave Sankoh an opportunity to communicate with his commanders in the field, foreign diplomats, and members of civil society who urged him to return to the negotiation table.<sup>132</sup> President Kabbah even went so far as to take Sankoh on a tour of the most damaged areas of Freetown, an event that seems to have softened the rebel leader's stance.<sup>133</sup>

Yet before formal negotiations could begin, both the Freetown government and the RUF needed to convene separately and work out their positions. After years of

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<sup>130</sup> Hirsch, Op cit.

<sup>131</sup> Adebajo, Op cit.

<sup>132</sup> Rashid, Op cit.

<sup>133</sup> Hirsch, Op cit.

fighting with Sankoh behind bars, RUF leadership was showing signs of splintering and, while always ambiguous, their political agenda seemed increasingly disjointed. Thus, through UN envoy Francis Okelo and RUF legal advisor Omrie Golley, President Kabbah quietly reached out to RUF leadership and agreed to allow Sankoh to travel to the Togolese capital of Lomé to hold a consultative “family meeting” with his commanders.<sup>134</sup>

The RUF meetings convened on April 25, 1999 and lasted for three weeks. Most of the time was spent re-asserting Sankoh’s position as the top commander of the rebel group and finding consensus on a common negotiating position. However, since 1991, the rebels had matured in political savvy and immediately began making overtures to the leaders of neighboring countries for endorsements.<sup>135</sup> Ultimately, the meeting yielded a fifty-nine page proposal outlining a number of demands, including a blanket amnesty for all AFRC and RUF fighters, the release of all prisoners, a transitional government in which power would be shared between the Freetown government and RUF leadership, the withdrawal of ECOMOG troops, and the establishment of an independent international peacekeeping force. Further, as a condition for the peace negotiations, Sankoh was to be “immediately and unconditionally” released (Rashid, 2000:3). For President Kabbah, the release of Sankoh was a non-starter. The Freetown government had consulted with civil society and reaffirmed its position as the legitimate government of Sierra Leone. Setting the RUF commander free would only undercut their superior bargaining position. The peace negotiations, they asserted, would be based on the 1991

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<sup>134</sup> Rashid, Op cit.

<sup>135</sup> Ibid.

constitution and the Abidjan and Conakry Accords. Sankoh, would only be released after the RUF signed the peace agreement.

The Freetown government prevailed. On May 18, 1999, President Kabbah and Sankoh defied expectations by meeting in Lomé to sign a ceasefire agreement. One week later, the talks began. Representing the Freetown delegation were Attorney General and Minister of Justice, Solomon Berewa, Deputy Foreign Minister Sahr Matturi and National Security Advisor Sheka Mansaray, among others. RUF representatives included, Omrie Golley, AFRC Foreign Minister, Pallo Bangura and several field officers from both groups.<sup>136</sup> Protesting Kabbah's refusal to grant him clemency, Sankoh himself did not directly participate in the negotiations, instead passing his days in a local hotel and giving interviews to the international press.<sup>137</sup>

Compared with the Abidjan Accords, the RUF was now in a stronger bargaining position. They had retaken swathes of the Sierra Leonean interior and had even won a few sympathizers in the Freetown government. Negotiations surrounding the humanitarian and military conditions of the peace agreement were therefore conducted with relative expediency. Both parties agreed to allow humanitarian aid into the countryside and ECOWAS was pegged to lead a Joint Implementation Committee that would oversee repatriation of over 500,000 refugees who had fled to Liberia and Guinea. The RUF was also able to secure the same controversial blanket amnesty that they had received in Cote d'Ivoire. Additionally, the Lomé Accord reinstated the defunct

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<sup>136</sup> Rashid, Op cit.

<sup>137</sup> Hirsch, Op cit.

Commission for the Consolidation of Peace, and provided a framework for the disarmament of all sides and the gradual formation of a new Sierra Leonean army.<sup>138</sup>

More contentious was the debate over Sierra Leone's political future; according to Ishmail Rashid, "nothing came closer to scuttling the talks".<sup>139</sup> The RUF, he explains, while confident of their strength, "knew that the major obstacle to their entrenchment in Freetown had been the presence of a government with both popular and constitutional legitimacy".<sup>140</sup> Thus they began the negotiations by stridently demanding a four-year unity government with Sankoh as vice-president. In addition, they wanted the cabinet to be expanded to twenty positions, eleven of which they would control, including finance, defense, justice, and foreign affairs. Further, they asked for several diplomatic posts as well as the control of eleven parastatal institutions such as the Bank of Sierra Leone and the Port Authority.<sup>141</sup>

This was simply too much for the Freetown delegation. Although, Kabbah's representatives agreed in principle on a unity government, they stalwartly opposed giving Sankoh the vice-presidency or making any concession that would contravene the 1991 constitution. Constitutional legitimacy was the Freetown government's single greatest strategic asset; bringing the rebels into a transitional government on equal footing would render their position as the true leaders of the country untenable.<sup>142</sup> "Now that just doesn't make sense. It cannot be acceptable," claimed Julius Spencer, the Sierra Leonean Information Minister, referring to the RUF proposal.<sup>143</sup> Moreover, without constitutional

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<sup>138</sup> Rashid, Op cit.

<sup>139</sup> Ibid. pp. 5

<sup>140</sup> Ibid. pp. 5

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Sierra Leone News. "June 1999." *Sierra Leone Web*. 1999

legitimacy they could no longer count on continued military support from ECOMOG, which they desperately needed.

What followed was over a month of political wrangling and several near breakdowns. Protests rocked Freetown, shutting the city down entirely in mid-June. The RUF, perhaps sensing their weakening position, staged several vociferous and very public outbursts in an effort to intimidate their adversaries and regain lost ground. While these tactics succeeded in temporarily stalling negotiations, they ultimately did little to change the terms of the final agreement. Ultimately, both parties settled on an RUF allotment of four cabinet positions and four deputy-ministerial positions, Sankoh was given a titular vice-presidential position as well as the chairmanship of the Commission for the Management of Strategic Resources, National Reconstruction and Development (in essence, control of the diamond mines), and ECOMOG forces would be maintain a presence in the country until a UN peacekeeping force (UNAMSIL) could be deployed the following year.<sup>144</sup> Sankoh's allies attempted to ease any lingering doubts, encouraging the RUF leader to begin thinking of "a transitional phase, rather than a transitional government" and convincing Kabbah to grant him a symbolic vice-presidency.<sup>145</sup> After six weeks of talks, the Lomé Peace Accord was signed by both parties on July 7, 1999.

Tragically, the agreement did not immediately precipitate change on the ground. Written commitments to Lomé on the part of the international community were never realized as actual support. Conflicts in Kosovo and East Timor had become a distraction

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<sup>144</sup> Rashid, *Op cit.*

<sup>145</sup> *Ibid.* pp. 6

and critical financial support for the disarmament quickly dried up.<sup>146</sup> Lacking a cash incentive, the RUF refused to disarm, openly confronting and capturing hundreds of UNAMSIL peacekeepers. This antagonism precipitated escalation and more hostilities as Great Britain deployed a large expeditionary force to bolster the international troops and protect increasingly vulnerable Freetown in May 2000. On May 8, massive protests in support of the release of UN troops quickly turned violent as crowds of protestors surrounded Sankoh's home. The rebel leader cum vice-president escaped by clambering over a wall dressed in women's clothing, but not before his bodyguards had lost control, shooting wildly into the crowd and killing seventeen. Deemed responsible for the killings, Sankoh was imprisoned one week later.<sup>147</sup> Their leader incarcerated for the second time and under growing pressure from a Freetown government now backed by 12,000 UN peacekeepers, the RUF submitted to a ceasefire in Abuja in May 2001. On January 18, 2002, President Kabbah declared the war officially over.

This review of Sierra Leone's civil war and peace process has explored the events that contributed to state weakness. Throughout this long and violent decade, the Sierra Leonean state neared total collapse. Fighting consumed the country, destroying basic infrastructure and severely restricting access to public services. After years of rule by various military councils the democratic institutions had eroded, leaving President Kabbah with skeletal and inadequate state bureaucracies and a population distrustful of government. This challenge was exacerbated by the fact that, due to stipulations in the Lomé Accord, the President did not command a standing army and relied heavily on first ECOMOG and then UNAMSIL peacekeepers. Following years of dubious political

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<sup>146</sup> Adebajo, Op cit; Hirsch, Op cit.

<sup>147</sup> Hirsch, Op cit.

maneuverings on the part of West African peacekeepers, many in Sierra Leone were apprehensive about who truly was in charge. In the immediate aftermath of the conflict, these were immense challenges to the Sierra Leonean state's consolidation or, for that matter, any attempt at fostering restorative justice. Nevertheless, in the wake of the Sierra Leonean conflict two conditions of state weakness did not present themselves: de-legitimization and political fragmentation. As I explain later, this came as a considerable boon for the Sierra Leonean government, but posed a momentous challenge to the reconciliation process. The next section describes the materialization of these weak state conditions and details how their presence (or absence) may influence the success of a truth commission.

### ***The Aftermath of Conflict and Emergent Aspects of State Failure: Sierra Leone***

In Chapter 2, I outlined a number of political conditions which I argue are characteristic of weak or failing states: de-legitimization of the state, corruption & the deterioration of public services, failure of democratic norms, widespread human rights abuses, political fragmentation, and the presence of an international intervention force. Following Sierra Leone's decade-long civil war, many of these conditions emerged, profoundly compromising the vigor and structure of the state. With respect to human rights violations, the conflict had killed over 150,000 people, mostly civilians. In all, two million people (roughly one-third of the population) were either internally displaced or forced across the border as refugees.<sup>148</sup> An entire generation of children (45% of the population) has been permanently scarred.<sup>149</sup> At least 5,000 were directly from their

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<sup>148</sup> Truth and Reconciliation Commission of Sierra Leone. *Witness to Truth*. Freetown, Truth & Reconciliation Commission, Sierra Leone, 2004

<sup>149</sup> CIA World Factbook. *Sierra Leone*. March 5, 2009



participation in the conflict as child soldiers while countless others witnessed or experienced incidents of horrible abuse (there are currently 4,000 amputee survivors living in Sierra Leone today).<sup>150</sup> The sheer scale of human rights abuses committed collectively by the RUF, the SLA, and the *kamajor* militias proved deeply traumatic for the majority of Sierra Leoneans. Rekindling citizen trust in government following such horror will prove a daunting task.

“The [Sierra Leonean] civil war festered in the wounds of colonialism and decades of post-independence corruption,” write Nicole Fritz and Allison Smith.<sup>151</sup> Reciprocally, the conflict engendered a favorable climate for the continuation and growth of corruption as well as a deterioration of infrastructure and public services.<sup>152</sup> A 2003 study conducted by the World Bank Institute found that roughly 95% of public officials polled and 90% of private households cited corruption and poor infrastructure as “key problems”.<sup>153</sup> By the end of the war, the woeful condition of the country’s roads, bridges, electrical grids, etc. reflected over ten years of damage and neglect. The last assessment of the country’s freshwater resources, for example, took place in 1987. The most recent estimate of the size of the country’s workforce is from 1981. Just .4% of the country’s land is irrigated and 8% of its roads are paved.<sup>154</sup> After the conflict, access to even basic public services such as water and electricity was almost universally unavailable and continues to be limited to Freetown and a few other urban centers. The fact that the war left the country essentially bankrupt with few safeguards against

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<sup>150</sup> Evenson, Elizabeth M. “Truth and Justice in Sierra Leone: Coordination between Commission and Court”. *Columbia Law Review*. 104:3 (Apr. 2004). p. 732

<sup>151</sup> *Ibid.* p. 739

<sup>152</sup> Kandeh, Jimmy D. “What Does the Militariat Do When it Rules? Military Regimes: The Gambia, Sierra Leone, and Liberia”. *Review of African Political Economy*. 23:69 (Sep. 1996).

<sup>153</sup> World Bank Institute. “Governance and Anti-Corruption Diagnostic Study: Methodology and Findings”. October 2003.

<sup>154</sup> CIA World Factbook, *Op cit.*

corruption was, and continues to be, a formidable challenge to the Sierra Leonean state as it attempts to secure financial support, reaches out to rural communities and works toward democratic consolidation.

Political infrastructure was also dealt a serious blow by the conflict. Although Sierra Leone has held several elections during and after the conflict, witnessing the successful transfer of power from President Kabbah to President Ernest Bai Koromah in 2007, democratic institutions were not nearly as robust in the immediate aftermath of the conflict. In the years surrounding the establishment of Sierra Leone's transitional justice mechanisms, strong governing bodies such as an independent judiciary, a strong parliament, and other mediums for dialogue and trust-building between state and citizen were virtually non-existent. As I explain below, this made it exceedingly difficult for the Sierra Leonean TRC to convince citizens to give testimony, a problem exacerbated by the Special Court for Sierra Leone.

Another key aspect of state weakness that surfaced during the Sierra Leonean conflict is the presence of an international peacekeeping force. During much of the war, the Nigerian-led ECOMOG force complicated the conflict by using its presence in Sierra Leone to foster a larger project to consolidate its regional hegemony. During and after the war they used their position as the de fact protectors of Freetown to exert political pressure on the Sierra Leonean government.<sup>155</sup> Yet the ECOMOG force itself also became a pawn of international politics. Canada, for instance, was criticized by ECOMOG command for selectively donating medicine and other supplies to the Ghanaian and Guinean contingents of the force, but not the Nigerians.<sup>156</sup> The result on

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<sup>155</sup> Adebajo, Op cit.

<sup>156</sup> Ibid.

the ground was an often confused jumbling of domestic, regional, and international interests that paralyzed the peacekeepers and left the country vulnerable to greater levels of violence. The situation improved somewhat following the Lomé Accords, when ECOMOG began a phased withdrawal in preparation for the arrival of UNAMSIL. The public, however, remained skeptical and questioned who held ultimate authority in country. As Kabbah began working toward transitional justice, the heavy consultative role played by the UN left many perplexed as to who these bodies would ultimately cater.<sup>157</sup>

Deviating from the model of state weakness laid out in Chapter 2 the Sierra Leonean case never exhibited widespread political fragmentation. Indeed, with the exception of the rift between junior and senior officers of the SLA and the peripheral participation of the *kamajor* militias, participation in the civil war was limited to two primary actors: the Freetown government and the RUF. During and after the peace process, the RUF became discredited as a political actor to the point that the Sierra Leonean state had essentially no competitors or significant challengers as it pursued political consolidation and national reconciliation.

Tied closely to political fragmentation, Sierra Leone's government consistently enjoyed high levels of legitimacy in the years immediately after the war. The failure of the RUF to articulate a coherent political agenda or develop a local constituency due to their indiscriminately violent tactics ultimately proved a boon for President Kabbah as the Freetown government entered the Lomé negotiations and set in motion the country's transitional justice mechanisms. His credibility endowed him with considerable power and flexibility in the months and years following the peace agreement. As the concluding

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<sup>157</sup> Ibid.

sections of this chapter demonstrate, this was chiefly evident during the concomitant establishment of the Sierra Leonean TRC and Special Court and played a principal role in the anemic successes of the former.

***Post-Conflict Justice and Accountability: The Special Court for Sierra Leone***

Two institutions of transitional justice have their roots in Sierra Leone's tumultuous post-war years: The Special Court for Sierra Leone (SCSL) and the Truth and Reconciliation Commission of Sierra Leone. Although this paper is primarily concerned with the Truth and Reconciliation Commission, the fate of the Commission is also directly linked to the Special Court and therefore the latter warrants some attention here.

President Kabbah took full advantage of a surge in political capital following Sankoh's 2000 arrest, flouting the amnesty provisions in the Lomé agreement and bringing charges of war crimes and crimes against humanity against Sankoh and other senior members of the RUF. While the amnesty provision of the Lomé Accord prevented the Sierra Leonean government from carrying out the prosecutions, the President was aware that the UN had only endorsed the agreement on the condition that the amnesty provision would not apply to international crimes.<sup>158</sup> Thus in a letter addressed to UN Secretary General Kofi Annan and the UN Security Council on June 16, 2000, he formally requested assistance in establishing "an independent special court".<sup>159</sup>

Annan was enthusiastic about the proposal and pressured the Security Council to pass Resolution 1315, granting him permission to begin drafting an agreement with the Sierra Leonean government. In October, 2000 he reported back with a proposal and was

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<sup>158</sup> Rashid, Op cit.

<sup>159</sup> United Nations Security Council. "Letter Dated 9 August 2000 from the permanent representative of Sierra Leone to the United Nations Addressed to the President of the Security Council." S/2000/786

given approval to proceed defining the specific nature of the Court, “including funding options, the particular crimes and their definitions, and the category of persons that would be in their jurisdiction”.<sup>160</sup> Fifteen months later, on January 16, 2002, the Government of Sierra Leone and the UN signed the final agreement establishing the Court. Unlike the ad hoc tribunals of Yugoslavia and Rwanda, the SCSL was designed as a hybrid court, giving it both domestic and international jurisdiction.<sup>161</sup> The Court headquarters are located in Freetown, but it may hold sessions elsewhere as expediency requires (as in the trial of Charles Taylor, which is at present being held at The Hague).<sup>162</sup> Claiming universal jurisdiction, the Court is licensed to prosecute “persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996”.<sup>163</sup> The specific crimes included in this mandate include: war crimes, crimes against humanity, and certain crimes under Sierra Leonean law, such as the 1926 Cruelty to Children Act and the 1861 Malicious Damage Act.<sup>164</sup>

On March 7, 2003, the SCSL indicted Foday Sankoh, Sam Bockarie, and Johnny Paul Koromah on 17 counts of crimes against humanity as well as violations of Common Article 3 and Additional Protocol II of the Geneva Conventions. Sankoh died in custody of natural causes on July 29, 2003 before the case could be completed. Bockarie was killed in Liberia in 2003 prior to being arrested. Koromah disappeared from Freetown in January 2003 and his whereabouts remain unknown. Nevertheless, the SCSL has successfully prosecuted several leaders of the *kamajor* Civil Defense Force. The cases of

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<sup>160</sup> International Committee of the Red Cross. “Agreement for and Statute of the Special Court for Sierra Leone.” August 17, 2008

<sup>161</sup> Special Court Agreement, 2002. Government of Sierra Leone. March 29, 2002. Articles 2.1, 10, 11.1, 11.2)

<sup>162</sup> Ibid. Article 10

<sup>163</sup> Statute of the Special Court for Sierra Leone. 2002. Article 1.1

<sup>164</sup> Ibid. Article 5

RUF commanders Issa Hassan Sesay, Morris Kallon, and Augustine Gbao (all of whom are in SCSL custody) concluded in February 2009 with each defendant receiving a guilty verdict. Exact sentencing is still pending.<sup>165</sup>

***Post-conflict Justice and Accountability: The Truth and Reconciliation Commission of Sierra Leone***

The Truth and Reconciliation of Sierra Leone originated in the 1999 Lomé Accords. Concerned with the controversial blanket amnesty, representatives from Sierra Leonean civil society were dogged in their efforts to formalize some type of “mechanism for [victims of the war] to deal with their anguish”.<sup>166</sup> Thus they pushed for the insertion of relatively modest clause in the final draft of the agreement, articulating the Commission’s preliminary framework. Article 26.1 states:

A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide and forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of their past in order to facilitate genuine healing and reconciliation.<sup>167</sup>

In February 2000, parliament formalized Article 26 in the Truth and Reconciliation Act, articulating the precise objectives of the Commission and establishing the parameters of the Commission’s actions in the years to come.

Acting under advisement from the TRC Working Group, parliament agreed that the Commission would be headed by a combination of four Sierra Leonean citizens and three representatives of the international community, so as to limit “parochial interests” and “bring a fresh perspective”.<sup>168</sup> All of the commissioners would be appointed directly

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<sup>165</sup> The Special Court of Sierra Leone. “Revolutionary United Front Trial”. 2008 [www.scs-sl.org/CASES/tabid/71/Default.aspx](http://www.scs-sl.org/CASES/tabid/71/Default.aspx)

<sup>166</sup> Truth and Reconciliation Commission of Sierra Leone, Op cit. Chapter 2, paragraph 2

<sup>167</sup> Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999. Article 26

<sup>168</sup> Truth and Reconciliation Commission of Sierra Leone, Op cit. Chapter 2, paragraph 2

by President Kabbah.<sup>169</sup> The length of the mandate remained at a somewhat restrictive twelve months, but with a clause allowing the President the option of a six-month extension for “good cause”.<sup>170</sup>

While it sets an operational timeline and establishes clear procedures for the appointment of commissioners the TRC Act is often exasperatingly vague when outlining the Commission’s mandate. With thinly veiled frustration, the TRC’s final report exclaims:

The word ‘mandate’ is used three times in the Act, in the context of references to ‘fulfillment of the commission’s mandate’...but nowhere is there any attempt to explain or define what the mandate actually consists of...The Act also contains references to the ‘functions of the Commission’... [Thus] for the purposes of this discussion there does not seem to be any useful or meaningful distinction between ‘mandate’, ‘objects’, and ‘function’ of the commission.<sup>171</sup>

This formalized ambiguity made it difficult for the Commission to determine what, precisely, it could and could not do and left it vulnerable to a multitude of legal challenges; a problem that, as I explain below, would become increasingly evident following the creation of the Special Court.

The resumption of armed conflict in May 2000 put the Commission’s development on hold until March 2002, when President Kabbah approved the appointment of the seven commissioners. In cooperation with the OHCHR, the Commission launched a countrywide public awareness campaign, established a research agenda and financial management structure, acquired regional offices, and began preliminary research on the history of the conflict. Despite the obstacles presented by the

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<sup>169</sup> Truth and Reconciliation Act. Government of Sierra Leone. Article 3.1. 2000

<sup>170</sup> Ibid. Article 5.1

<sup>171</sup> Truth and Reconciliation Commission of Sierra Leone, Op cit.

lack of clarity of the TRC Act, the Commission appeared poised for a smooth beginning as the date for the commencement of its operations drew closer.

This, however, was not entirely the case. Internally, these preparations were blighted by a bitter political battle among the Commission's staff. When the Commissioners took control in March, they found that the Interim Secretariat charged with preparing for their arrival had been woefully inept in drawing up a budget. "The Commissioners were shocked to find that [they] had no funds to operate with", laments the Commission's final report.<sup>172</sup> Although the budget was supposed to have been finalized the previous month, considerable donor resistance meant that, in place of the expected US \$9.6 million, the Commissioners had less than \$1.5 million "in cash and pledges" to carry out the initial fieldwork.<sup>173</sup> Over the next year, the total operating budget was whittled down to \$4.7 million and the ensuing polarization of the staff over the allotment of blame for the mishap, crippled operations for several months.

Happily, this internal drama seems to have been limited to the preparatory phase of operations. "The Commission had managed to weather the storm that threatened to tear it apart and moved quickly to consolidate its activities, with a view to restoring donor and stakeholder confidence in its activities", the final report asserts.<sup>174</sup> External challenges, however, would continue to plague the Commission for the extent of its mandate.

### ***Truth Commission and Special Court: A Troubled Relationship.***

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<sup>172</sup> Ibid

<sup>173</sup> UN Integrated Regional Information Networks. "Focus on the Challenges of Reconciliation". July 15, 2002.

<sup>174</sup> Truth and Reconciliation Commission of Sierra Leone, Op cit.



Within three months of each other, both the Commission and the Special Court began their work with much fanfare. The simultaneous operation of a war crimes court and a truth commission had never been attempted and was expected to deliver a potent one-two punch of transitional justice; “a unique opportunity to advance complementary processes for accountability”, lauded one article.<sup>175</sup> Commenting on the relationship between the two institutions, Kofi Annan wrote: “Care must be taken to ensure that the Special Court for Sierra Leone and the Truth and Reconciliation Commission will operate in a complementary and mutually supportive manner, fully respectful of their distinct, but related functions”.<sup>176</sup> Unfortunately, this idyllic model of a fruitful partnership never manifested itself. From the very beginning, the Commission was plagued by an implicit competition for attention and resources with the court, a problem exacerbated by a legal relationship which for all intents and purposes gave the Commission subaltern status. The 2002 Special Court Agreement (Ratification) asserts that: “Notwithstanding any other law, every natural person, corporation, or other body created by or under Sierra Leonean law shall comply with any direction specified in an order of the Special Court”.<sup>177</sup>

Given this language, the potential for legal complications between the two institutions is immense. The Commission, for example, could collect information on the civil war with a guarantee of confidentiality. But what if this information was subpoenaed by the Special Court? Under the above law, the Commission was

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<sup>175</sup> Wierda, Marieke, Hayner, Priscilla, and Paul van Zyl. “Exploring the Relationship between the Special Court and the Truth and Reconciliation Commission of Sierra Leone.” *The International Center for Transitional Justice*. June 24, 2002. pp. 2

<sup>176</sup> United Nations Security Council (S/2001/40)

<sup>177</sup> Special Court Agreement, 2002 (Ratification) Act. Government of Sierra Leone. March 29, 2002. Section 21(2)

theoretically compelled to pass the information on to aid in prosecution. “Section 21(2) does not legislate explicitly for the Commission, but [nonetheless] binds it”, argues the International Center for Transitional Justice.<sup>178</sup> The TRC, meanwhile, has no legal power to access information on the conflict divulged at the Court. “No formal coordination agreements were [ever] concluded between the TRC and the Special Court,” writes Elizabeth Evenson.<sup>179</sup>

This conflict of interest was not lost on Sierra Leonean citizens and became a major liability for the Commission as it commenced the statement taking portion of its mandate. Citizens across the country, particularly those who participated in the conflict, were reluctant to give any testimony for fear that it would eventually be used to bring charges against them. Gibril Massaquoi, an RUF spokesman conjectured that “From our understanding it seems as if the Truth and Reconciliation is a court of first instance...Confessions of RUF members at the [TRC] are going to be used as evidence in the Special Tribunal for the sole purpose of prosecution”.<sup>180</sup> A hotel employee in Freetown added: “The main problem is a question of motivation. Suppose I was a victim, why should I go to the TRC? How does it help me? Maybe I’d rather go to the Special Court where penalties may be handed down on the perpetrators. But even then how can I be sure that justice will be delivered?”<sup>181</sup> Public incredulity reached almost paranoid heights when rumors that the Commission and the Special Court headquarters were linked by a secret tunnel spread across Freetown.<sup>182</sup>

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<sup>178</sup> Wierda, Hayner, and van Zyl. Op cit. pp. 5

<sup>179</sup> Evenson, Op cit. p. 732

<sup>180</sup> PANA News Agency, “Sierra Leone: Rebel Group Fears Being Target of Truth and Reconciliation Court” *BBC Monitoring Africa*. August 19, 2001.

<sup>181</sup> UN Integrated Regional Information Networks. “Focus on the Challenges of Reconciliation”. July 15, 2002.

<sup>182</sup> “TRC, War Crimes Court Can’t Go Together”. *The Inquirer*. May 12, 2006.

Part of the blame for this logjam has been attributed to the failure of the Commissioners to effectively convey the distinct objectives of the Commission and the Special Court to the public. Following the Commission's first six months of operation, the NGO, International Crisis Group published a briefing paper alleging that "the TRC commissioners are still a largely dysfunctional body that has not yet developed a comprehensive operational plan".<sup>183</sup> This was not entirely fair. Given a vague mandate and an immensely challenging work environment, the Commissioners did their best to act boldly and test the limits of their power. In 2004, they filed a formal appeal to the Special Court, requesting the testimony of Augustine Gbao in order to gather information on RUF activities during the conflict. The Court flatly denied this appeal, along with several others, on the principle that all defendants are innocent until proven guilty.<sup>184</sup> In a separate appeal, Judge Geoffrey Robertson openly suggested that the Commission ought to suspend its operations until the Special Court had completed its prosecutions.<sup>185</sup>

The Commissioners hands were tied. President Kabbah and the Sierra Leonean government had turned their attention elsewhere and the Commission did not receive adequate support or guidance in coordinating with the Special Court and had little choice but to carry out their duties as best they could. *Witness to Truth*, the Commission's final report submitted to the government on October 5, 2004, bitterly chastises Kabbah and the Special Court, stating:

The Commission finds it somewhat incongruous that one complementary post-conflict body sets itself up as the primary body to achieve the stated aim of the other post-conflict body, namely the Truth and Reconciliation Commission. It is also incongruous to assert

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<sup>183</sup> International Crisis Group. "Sierra Leone's Truth and Reconciliation Commission: A Fresh Start?" *International Crisis Group*, December 20, 2002

<sup>184</sup> Justice Renate Winter. "Decision on Appeal of the Truth and Reconciliation Commission (TRC) and Accused against the Decision of Judge Bankole Thompson Delivered on 3 November 2003 to deny the TRC's Request to Hold a Public Hearing with Augustine Gbao." *Special Court for Sierra Leone*. May 7, 2004.

<sup>185</sup> Truth and Reconciliation Commission of Sierra Leone, *Op cit*. Vol. 3 Paragraphs 146.

that the prerequisite for achieving reconciliation is to carry out a function that the other complementary body is not empowered to do; namely to prosecute offenders in a court of law...The two bodies were not created out of some concerted and coherent plan. Rather, they arose from two different initiatives that were themselves contradictory. The TRC grew out of the amnesty in the Lomé Peace Agreement, while the Special Court emerged subsequently out of the decision to withdraw the amnesty, at least with respect to a limited number of persons. The international community has signaled to combatants in future wars that peace agreements containing amnesty clauses ought not to be trusted and, in doing so, has undermined the legitimacy of such national and regional peace initiatives.<sup>186</sup>

Perhaps vexed by these accusations, President Kabbah's response to the Commission's final recommendations, delivered in the June 2005 "White Paper", was lukewarm. While accepting the proposal that the Sierra Leonean government should work to foster a culture of human rights in the country, the twelve-page report made no formal or specific commitments to implement the vast majority of the Commission's recommendations.<sup>187</sup>

Following the government response, the Commission's mandate officially ended.

### ***The TRC's Failures and the Role of Weak State Conditions***

Modeling earlier truth commissions, the Sierra Leonean TRC Act describes the fundamental aim of the Sierra Leonean commission as being to "create an impartial historical record of violations and abuses of human rights and international humanitarian law...; address impunity; respond to the needs of the victims; promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered". To this end, it denotes three primary objectives for the Commission: 1) "to investigate and report on the causes of the violations and abuses to the fullest degree possible" 2) "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

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<sup>186</sup> Ibid. Vol. 3 Paragraphs 214, 221

<sup>187</sup> Sierra Leone Government. "White Paper on the Report of the Truth and Reconciliation Commission". June, 2005

perpetrators to relate their experiences” and 3) “to do all such things as may contribute to the fulfillment of the object of the Commission”.<sup>188</sup>

While by no means an abject failure, the Sierra Leonean TRC fell well short of achieving these goals in three important ways. First, although it was able to complete its statement taking operations, hold some public hearings and produce a detailed and gripping final report, the Commission’s findings were compromised by the fact that it could not comprehensively outline the antecedents of the conflict or describe the roles of many of its major violators. For example, while the Commission was able to determine that the RUF bore the greatest responsibility for the war (60.5% of all violations) they were unable to take critical testimony from its ranking members because they either refused to participate or were being held for questioning by the Special Court.<sup>189</sup> Investigating the causes of the conflict to the “fullest degree possible” had to be completed without perpetrator testimony, compromising the objective of impartiality.

Second, the Commission’s objective to provide a forum for victims was severely curtailed by the fact that few citizens fully understood or were even suspicious of its relationship with the Special Court and were therefore hesitant to give testimony. “The Commission’s ability to create a forum of exchange between victims and perpetrators was unfortunately retarded by the presence of the Special Court,” its final report laments.<sup>190</sup> 60% of Sierra Leoneans polled by the Campaign for Good Governance responded that they thought the TRC “would not provide security and confidentiality to

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<sup>188</sup> TRC Act, Op cit. Articles 6,7

<sup>189</sup> Truth and Reconciliation Commission of Sierra Leone, Op cit. Volume 2, paragraphs 37-39

<sup>190</sup> Ibid. Volume 3, paragraph 59

its witnesses or were unsure it would do so”.<sup>191</sup> Given that a fundamental task of the TRC was to foster national reconciliation through honest dialogue, the specter of distrust that tainted its activities can hardly be heralded as a success.

Finally, the Commission’s long-term impact on national reconciliation was curtailed when President Kabbah opted to ignore the vast majority of the recommendations presented in its final report. Indeed, Sierra Leonean civil society has described the President’s response to the recommendations as “vague and noncommittal” and not reflecting “serious engagement on the part of [the] government”.<sup>192</sup> As I explained in Chapter 1, because mandates for truth commissions rarely extend longer than one or two years, the implementation of their final recommendations are crucial to their lasting success. The recommendations of the South African TRC, for instance, led to a dramatic shift in the country’s management of its prison system following the apartheid regime. The Sierra Leonean state’s decision to discount this component of the TRC’s work jeopardized the most fundamental objectives of its mandate.

Before moving forward, I offer a brief caveat to this argument. In this paper, I am determining success almost exclusively in the short term. While I hold that much of a truth commission’s success can reasonably be predicted through the language of the mandate and initial results in areas such as statement-taking and public relations, I am aware that this paper’s ability to determine broader, long-term, success is necessarily limited. The fundamental objective of truth commissions, after all, is to promote lasting

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<sup>191</sup> Dougherty, Beth K. “Searching for Answers: Sierra Leone’s Truth & Reconciliation Commission”. *African Studies Quarterly*. 8:1, Fall 2004

<sup>192</sup> James-Allen, Paul. “Civil Society Response to the Government’s ‘White Paper on the Truth and Reconciliation Report’”. *National Forum for Human Rights*. July, 2005

peace and reconciliation. Preliminary successes or failures do not presage the achievement of these goals.

Although a significant portion of blame can be attributed to the Commission's discordant relationship with the Special Court, these anemic results are reflective of deeper challenges related to political conditions that appeared as a consequence of the civil war. This section examines the ways in which the weakness of the Sierra Leonean following the conflict state adversely impacted the TRC's ability to effectively pursue its mandate. Specifically, I argue that, adhering to the framework established in Chapter 2 it was not the presence of weak state conditions that had the greatest impact on the Commission's success, but President Kabbah's strong hand and tight control over the process as well as the state's commitment to the Special Court. These challenges were in fact related to the *absence* of political fragmentation and the enduring legitimacy of the Sierra Leonean state. Knowing this, we can begin to make more general prescriptions with respect to the viability of truth commissions in a climate of weak statehood. These questions, however, will be more fully elaborated in Chapter 4. For the moment, I return to the relationship between conditions of weak statehood and the TRC.

As mentioned above, a major source of anxiety during the early days of the Sierra Leonean TRC was its lack of financial support. For example, by December 2002 the government had donated just U.S. \$97,000 to the Commission, along with a building to house the Secretariat. Massive corruption and the destruction of economic infrastructure that supported resource extraction and other key industries were major contributors to this tightfistedness. Yet while the paucity of government funds in the early post-conflict years may have played a part in the Commission's chronic lack of resources, it does not

appear to have been the primary source of the problem. Rather, most sources indicate that the international donor community is to blame. According to the TRC Statute, the Commission's financial support was to come from a single fund, pooling donations from the Sierra Leonean government, but also foreign governments, and NGOs. Donor fatigue following concurrent humanitarian projects in countries such as Kosovo and Afghanistan, among others, meant that few were animated to contribute to the TRC.<sup>193</sup> Further, the early organizational failures of the TRC, particularly during its preparatory phase, meant that donors were being asked to contribute without seeing a completed budget—something that few organizations were prepared to do.<sup>194</sup>

Nevertheless, funding difficulties, whether stemming from corruption, poverty, or a lack of international support, do not account for the failures described above. Despite having to make considerable revisions to their operating budget, the Commission asserts in the final report that it “is satisfied that it was able to carry out important activities such as statement taking, public hearings, research and investigations which enabled it to deliver a credible final report to the people of Sierra Leone”.<sup>195</sup> Moreover, these challenges were primarily internal and thus sufficiently insulated from the corruption and poverty stemming from the weakness of the Sierra Leonean state following the civil war.

Looking more closely at infrastructure and public services, the TRC encountered several problems in this area, but they did not significantly undercut its mandate. Public education, for instance, was in an abysmal state following the conflict. The country's 80% illiteracy rate and uneven English language competency were serious challenges to raising public awareness of the TRC, compromising the Commission's ability to forge a

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<sup>193</sup> International Crisis Group, *Op cit.*

<sup>194</sup> *Ibid.*

<sup>195</sup> Truth and Reconciliation Commission of Sierra Leone, *Op cit.* Volume 2, paragraph 90



relationship with the public.<sup>196</sup> Further, its final report cites the lack of transportation and communication infrastructure outside of Freetown as considerable obstacles to shoring up rural participation in the reconciliation process.<sup>197</sup> Acquiring four wheel drive vehicles, storage space for documents, or even basic recording equipment for statement takers, for example, was a constant problem.<sup>198</sup> However, although these challenges are generally exacerbated in contexts of state weakness, the TRC seems to have overcome them by significantly de-centralizing its operations and subcontracting much of its work in rural areas to village councils and local civil society partners.<sup>199</sup>

In addition to deemphasizing the lack of infrastructure or public services as contributing to its shortcomings, the Commission's effective incorporation of local governance and civil society partners also suggests that the erosion of democratic norms threatened, but did not ultimately undermine, its success. Many of the features of weak states that we are examining are common to most cases where TRCs have been established. For example, while Sierra Leonean citizens were suspicious of the TRC and housed a number of misconceptions about its work (that the TRC would pass their testimony on to the Special Court is probably the most common example), this appears to stem more from difficulties in publically communicating its purpose or adequately defining its independence from the Special Court. Referring to the Commission's 'sensitization campaign' the final report notes that "overall, the visits [to various communities] were not well planned".<sup>200</sup> This, however, is a problem common to both

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<sup>196</sup> International Crisis Group, Op cit.

<sup>197</sup> Truth and Reconciliation Commission of Sierra Leone, Op cit. Volume 1, paragraph 48

<sup>198</sup> Ibid. Volume 1, paragraph 16, 22

<sup>199</sup> Ibid. Volume 1, paragraph 8, 14, 15

<sup>200</sup> Ibid. Volume 1 paragraph 96

successful and unsuccessful truth commissions throughout history and across the spectrum of state strength.

In a similar vein, it is unlikely that the scale of the human rights abuses committed in Sierra Leone played a deciding role in the outcome of the commission. While perhaps more austere and extensive in cases of state weakness, human rights abuses are an unfortunate hallmark of all transitional justice mechanisms regardless of their successes. In Chapter 2, I warned that the convoluted networks of responsibility that arise after events of mass violence where the central state is not the sole perpetrator may create special challenges for truth commissions (for instance, some victims continue to live in close proximity to perpetrators and may fear reprisal). However, the Sierra Leonean commission's final report makes scant mention of this problem and there is nothing to indicate that the severity of the country's human rights abuses represented a significant challenge to its success.

Turning to international peacekeeping forces, although UNAMSIL and the TRC worked closely throughout the Commission's operational period, they failed to develop a strong professional rapport. That being said, there is little evidence to show that this ultimately played an important role in derailing the Commission's work. The peacekeepers could perhaps be faulted for not offering the Commission enough logistical support (they did not), but as they had few immediate political interests in the region (particularly when contrasted with ECOMOG) and were in fact mandated to facilitate the reconciliation process, they never acted to undermine the TRC directly.<sup>201</sup> Additionally, while there were concerns that the peacekeepers' relationship with the TRC would prove detrimental to its image, this does not seem to have been the case. The Sierra Leonean

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<sup>201</sup> International Crisis Group, Op cit.

public's distrust of the Commission appears to be only circuitously related to the consultative status of the peacekeeping force and was instead largely founded on fears that their testimony would be made public or used against them by the Special Court.

Political fragmentation was not present in the case of Sierra Leone. In other words, power was consolidated in the hands of one or a few powerful state actors. As we have seen, this has been a primary contributor to the difficulties the Commission faced. As the literature on fragmentation reviewed briefly in Chapter 2 explains, the greater the number of distinct (and possibly armed) political factions, the more challenging democratic consolidation becomes. A higher number of competing interests promotes political impasse and requires a substantial amount of compromise. In such a context, it would have made it far more difficult for President Kabbah to press forward with the Special Court. However, while deficient in many ways, the level of consolidation of the Sierra Leonean state following the civil war was relatively high. As the RUF was the President's only significant rival following the conflict, political expedience did not require him to scale back or moderate his own prosecutorial agenda in favor of the TRC. In fact, as I explain in Chapter 4, there is evidence in the Liberian case that political fragmentation may have indirectly supported its own commission's work by diffusing opposition to its operation across a broad and disjointed political spectrum.

Perhaps the principal factor contributing to the failures of the Sierra Leonean TRC was the high level of legitimacy possessed by the Sierra Leonean state and President Kabbah. Although the TRC was one of the principal specifications of the Lomé Accords, tied closely with the general amnesty provision, Kabbah quickly discovered that his strong position allowed him to circumvent the agreement in favor of prosecutions.

Indeed, with Sankoh imprisoned and the remainder of the RUF routed, there were few serious political obstacles to prosecuting his enemies for war crimes. Further, the President's international credibility, as demonstrated by his strong support at Lomé, allowed him to reach out to the UN for political and logistical support in the endeavor. Had Kabbah not been viewed as favorably in Sierra Leonean society, or had his support base not been as broad, he could not so easily have shirked the amnesty provisions of the peace accord. This newfound political capital primarily manifested itself in the Special Court, virtually ending the Commission's hope of successfully carrying out its mandate.

Curiously, while many of the characteristics of weak states were present in Sierra Leone when Kabbah launched his transitional justice agenda, their impact on the Sierra Leonean TRC appears to be negligible. While present, corruption, the lack of public services, basic infrastructure, and democratic norms as well the scale of human rights abuses during the conflict and the presence of an international intervention force were not responsible for the Commission's operational deficiencies. These conditions created a challenging environment for TRC operations, but they did not significantly hinder its fundamental objectives of developing a balanced review of the antecedents of the conflict, offering a public space for dialogue and reconciliation, and overseeing the realization of its recommendations. Rather, given these objectives, the legitimacy of the Sierra Leonean state and the relatively high level of political consolidation seem to have had the greatest influence on the TRC's outcome. These conditions, in turn, manifested themselves in the form of the Special Court, an institution that placed stringent limitations on the Commission's success by barring the RUF and other high-profile perpetrators from providing testimony and contributing to public skepticism of its

activities. Additionally, the power that Kabbah derived from these conditions protected him from making formal commitments to the Commission's recommendations.

The implications of these findings are both startling and vexing. Recalling the cases described in Chapter 1, successful truth commissions are generally *aided* by high levels of state legitimacy and political consolidation. For example, following years of military rule in Argentina, President Alfonsín and his commission enjoyed broad popular support. Although the Argentine military (the primary source of opposition) was deeply suspicious of CONADEP, breaking from the government and upsetting the consolidation of state power was never an option. In South Africa, the legitimacy of the post-apartheid government and its accommodation of institutions and individuals from the old regime shielded the TRC from attack and allowed it to wield enormous jurisdictional powers as it began investigations and implemented the truth-for-amnesty program. In Sierra Leone, however, these conditions had the opposite effect. Considering that the strengths of the Sierra Leonean state led to the attenuation of its truth commission, is it possible that greater state weakness could in fact facilitate restorative justice mechanisms such as truth commissions? This is a question that warrants further discussion and I address it in greater detail in the following chapter.

### ***Conclusion***

The Sierra Leonean TRC had few successes. It was underfunded, poorly managed, and, most importantly, undermined from the onset by its theoretical partner in national reconciliation, the Special Court. While it is impossible to accurately speculate on what the Commission could have accomplished in the absence of these constraints, we can draw several lessons from this case with respect to state failure. Admittedly, the lack of

financial support and poor management were primarily the responsibility of the Commission itself; the Sierra Leonean state's endemic corruption, lack of infrastructure, resources, and democratic institutions were all challenges to the TRC's success, but they were not insurmountable. Rather, it was President Kabbah's legitimacy in the aftermath of the conflict and the consolidation made possible by the absence of formidable resistance that allowed him to proceed with the implementation of the Special Court. Ironically, it was the strengths of the Sierra Leonean state that brought down the TRC.

Yet it would be mistaken to say that Sierra Leone's truth commission was an absolute failure. Indeed, its three-volume report is perhaps the most comprehensive record of the brutality of the civil war period in existence. Because of the Commission's work we know roughly how many people were killed in the conflict. We know how they died and when. We know whether their deaths came instantaneously, as collateral damage in the midst of pitched battle, or were defined by an act of sinister and well-practiced cruelty, darkly conceived by a single mind and executed with a single pair of hands. As they grow into adulthood, the innumerable children orphaned and abused in the conflict can perhaps find some solace in the knowledge of their parents' final resting place and of the fact that they were not alone in their suffering. Further, as those conscripted to fight as child soldiers struggle to make sense of the conflict and their role in it, the report will provide some context for their actions. Older participants will have the opportunity to reflect on the events of their baneful past as part of a greater tragedy and (hopefully) begin to search for forgiveness.

But would the Commission's record have been more complete, its recommendations more potent, if expediency had not forced it to perform a balancing act

between the search for truth and political calculation? It is impossible to know for sure. Reconciliation is not easily quantified and the many failures of the Sierra Leonean Commission may not wholly manifest themselves for years to come. Whatever the outcome, this chapter has made it clear that these failures do not stem from an acrimonious and narrowly conceived relationship between two institutions, but reflect broader constraints present in Sierra Leone's transitioning society. It has demonstrated that state legitimacy and the level of political consolidation mattered in the development of the Sierra Leonean commission. In the following chapter I explore this question in detail, assess the applicability of these findings in the Liberian case and evaluate their broader implications for future truth commissions.

# Chapter 4: Liberia

*I have been looking for an opportunity to tell the true story about my life; and every time I tell people my story, I feel relieved...I could be electrocuted, I could be hanged, but I think forgiveness and reconciliation is the right way to go.*

- Milton Blahyi (General 'Butt Naked')

## ***Introduction***

Reminiscent of the Sierra Leonean case, the Liberian Truth and Reconciliation Commission was also created in the aftermath of a brutal civil war. Thirteen years of fighting between Charles Taylor's NPFL, the Liberian government, and numerous warring factions left the country in utter turmoil. Over 250,000 people were killed and perhaps as many as 2.5 million were displaced. Liberian civilians were regularly subjected to ghastly atrocities. Politically speaking, the Liberian state emerged from the conflict in disarray. The National Transitional Government of Liberia (NTGL), essentially an amalgamation of various rebel groups and members of civil society, was confronted with the immense undertaking of rebuilding the country

Despite the similarities with Sierra Leone, both real and apparent, Liberia's truth commission has encountered considerably more success in carrying out its mandate. Returning to the conditions of state weakness, this chapter strives to account for this discrepancy. After providing an account of the Liberian conflict in order to contextualize the emergence of weak state conditions, I explain how these conditions influenced the creation of the TRC as well as its implementation. Specifically, I argue that the existence of two conditions of state weakness not present in Sierra Leone bear the greatest responsibility for the Commission's relative success: the de-legitimization of the state and political fragmentation. Unlike in Sierra Leone, where the absence of these



conditions allowed President Kabbah and other state actors to undermine that country's truth commission, de-legitimization and political fragmentation in the wake of the Liberian conflict opened a space virtually free of political constraints where the Commission was able to operate more effectively.

I address the implications of this argument in greater detail later in the chapter. This chapter begins, however, by placing the development of the Liberian TRC in its historical context.

### ***The Liberian Tragedy: 1990-2003***

The roots of the Liberian civil war can be traced back to the 1980 assassination of President William Tolbert. A variety of factors led to the President's untimely end and the rapid deterioration of "Africa's oldest republic".<sup>202</sup> For one, the majority of the population viewed the President as a hopelessly corrupt leader with a penchant for embezzlement and nepotism. Moreover, Tolbert was a firmly established member of the Americo-Liberian elite, and the country's young, educated, and largely indigenous population feared that his presidency was little more than a continuation of Americo-Liberian oligarchy and would do little to address the needs of the country's poor and middle classes.<sup>203</sup> These fears were realized when he attempted to eliminate government subsidies for the rice industry, leading to a spike in prices. The President argued that the price increase was meant to stimulate domestic production, reducing imports and promoting rapid urbanization. This assertion was met with skepticism by the indigenous

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<sup>202</sup> Ellis, Stephen. *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War*. New York: NYU Press, 2007.

<sup>203</sup> 'Americo-Liberian' refers to the elite class of former slaves that settled in Liberia during the 19<sup>th</sup> century. Levitt, Jeremy I. *The Evolution of Deadly Conflict in Liberia: From 'Paternalitarianism' to State Collapse*. Durham: Carolina Academic Press, 2005

African population which depended heavily on rice as a staple crop and pointed out that Tolbert's family was the single largest rice producer in the country and stood to gain handsomely from the price increase. The President further stoked discontent by invoking a 150 year-old law that barred landless Liberians (his most vocal opposition) from voting.<sup>204</sup> Tensions climaxed the following year in 1980 when the ensuing Rice Riots brought the country to a standstill. In April, frustration with the government finally boiled over and President Tolbert was ousted in a military coup led by Master Sergeant Samuel Doe, an ethnic Krahn. Doe killed the former President in his bed after removing one of his eyes and, in the following weeks, executed 13 of his ministers.<sup>205</sup>

The new regime fared little better than its predecessor. President Doe was not particularly well-liked by the Liberian people. He had very little leadership experience or formal education and was probably illiterate.<sup>206</sup> Shortly after the takeover, his newly formed People's Redemption Council (PRC) seized absolute control of the state and abolished the Constitution, while doing little to change Tolbert's hated economic policies.<sup>207</sup> In what Peter Dennis describes as a "paranoid" effort to keep power, Doe began to stack the PRC, previously an institution of mixed ethnicity, with Krahns.<sup>208</sup> In 1981, he killed his vice-president, citing an alleged conspiracy to unseat him and purged the Armed Forces of Liberia (AFL) of its senior leadership. By 1983, frustration with his increasingly irrational and autocratic behavior led three of his closest and most influential allies, Thomas Quiwonkpa, Prince Yormie Johnson, and Charles Taylor, to leave the PRC.

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<sup>204</sup> Ibid.

<sup>205</sup> Marcus, David L. "Liberian President Has Problem in Plymouth." *The Boston Globe*. August 14, 1997. A1

<sup>206</sup> Ellis, Op cit.

<sup>207</sup> Outram, Quentin. "'It's Terminal Either Way': An Analysis of Armed Conflict in Liberia 1989-1996." *Review of African Political Economy*. 24:73 (Sep. 1997) pp. 355-371

<sup>208</sup> Dennis, Peter. "A Brief History of Liberia". *The International Center for Transitional Justice*. May 2006

Eventually succumbing to international and domestic pressure, President Doe held elections in October, 1985. He edged out his closest rival, Jackson F. Doe (no relation) by a slim margin in a contest widely regarded as fraudulent. Human rights abuses were common in the aftermath of the election as the Doe government attempted to further consolidate its hold on the country by violent means.<sup>209</sup> The President's crackdown was exacerbated two months later when Quiwonkpa attempted to seize power with a small rebel army based in Liberia's eastern Nimba County. The takeover failed and Quiwonkpa was executed in Monrovia. Meanwhile, the AFL, mainly ethnic Krahn who remained loyal to Doe, pushed Quiwonkpa's forces back into the countryside, launching a bloody campaign in which 3,000 of Nimba County's ethnic Gios and Manos accused of supporting the rebellion were murdered.

The bitter resentment that this reprisal fostered among Liberia's rural population opened the door for future attempts to topple the Doe government. "Before Doe, Liberia was one of the few African countries without serious tribal hostility," wrote an American journalist. Four years later, Charles Taylor, who deserted the PRD with Quiwonkpa, saw an opportunity to stage his own rebellion. Taylor, who had been living in Boston and had recently escaped from a Massachusetts jail where he was awaiting extradition to Liberia on embezzlement charges, returned to Africa in 1986 and began plotting to oust Doe.<sup>210</sup> On December 24, 1989, he and a band of 168 rebels trained and equipped by Libya and Burkina Faso crossed the border from neighboring Cote d'Ivoire.<sup>211</sup> The National Patriotic Front of Liberia (NPFL) initially enjoyed popular support in the Liberian

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<sup>209</sup> Levitt, Op cit.

<sup>210</sup> Ellis, Op cit.

<sup>211</sup> Adebajo, Adekeye. "Building Peace in West Africa: Liberia, Sierra Leone and Guinea-Bissau." *International Peace Academy Occasional Paper Series*. London: Lynne Rienner, 2002

countryside; particularly in Nimba County which was still seething from the AFL's recent incursion. Riding this support, the NPFL quickly grew to 10,000 troops and advanced to the outskirts of Monrovia, slaughtering Krahn's and Mandingos, presumed to be Doe sympathizers, as they went.<sup>212</sup>

The civil conflict worsened during this period and by 1990 the Liberian countryside was close to descending into chaos. In a final effort to maintain order, the Economic Community of West African States Monitoring Group (ECOMOG) deployed a peacekeeping force of 3,000 troops to Monrovia to facilitate a peace agreement and, at least temporarily, hold Taylor's forces at bay outside the city.<sup>213</sup> However, Aboagye and Bah assert that "by the time ECOMOG deployed in Liberia, there was virtually no peace to keep".<sup>214</sup> At this time, NPFL leadership began to splinter as relations between Charles Taylor and Prince Johnson (another PRD deserter) soured. Johnson and his supporters broke off from the NPFL in July of that year to form the Independent National Patriotic Front of Liberia (INPFL). The two militias constantly attempted to outflank each other as they steadily pushed AFL forces back into the heart of Monrovia and became embroiled in a deadly race to seize control of the capital.<sup>215</sup>

The INPFL ultimately won this contest and, in September 1990, they entered the city. While smaller than Taylor's NPFL, the INPFL enjoyed an informal alliance with the ECOMOG peacekeepers who depended on Johnson for supplies and safe-passage through the city.<sup>216</sup> Under pressure from this combined force, Doe agreed to a ceasefire and to work with Johnson to eliminate the NPFL. Yet this agreement was short-lived.

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<sup>212</sup> Aboagye, Festus B. & Bah, Alhaji M.S. "Liberia at a Crossroads: A Preliminary Look at the United Nations Mission in Liberia and the Protection of Civilians". *Institute for Security Studies* No. 95 November, 2004

<sup>213</sup> Adebajo, Op cit.

<sup>214</sup> Aboagye & Bah, Op cit. p. 1

<sup>215</sup> Adebajo, Op cit.

<sup>216</sup> Ellis, Op cit.

On September 9, 1990, in one of the more gruesome moments of the early war years, Doe traveled across Monrovia to meet with the ECOMOG commander Lieutenant-General Arnold Quainoo. The meeting was interrupted by the arrival of Johnson and a contingent of INPFL fighters outside of the compound; a firefright quickly broke out between the INPFL and Doe's seventy AFL bodyguards. Doe and his top aides barricaded themselves in an office, but were discovered as Johnson's men stormed the building while ECOMOG troops stood by. The President was then bound and taken to Johnson's headquarters. A video of the subsequent events shows images of a nearly naked Doe being slowly tortured by Johnson, who was becoming progressively more inebriated. At some point during the process, the President died.<sup>217</sup>

Simultaneously embarrassed and emboldened by Doe's murder, the Nigerian-led ECOMOG seized the opportunity presented by the subsequent power vacuum to strengthen their position in Monrovia, replacing Quainoo, a Ghanaian, with General Joshua Dongorayo, a Nigerian.<sup>218</sup> They quickly moved forward with the establishment of the Interim Government of National Unity (IGNU), led by former dean of Political Science at the University of Liberia, Amos Sawyer.<sup>219</sup> Simultaneously, they deployed reinforcements in the city and forced Johnson, who had by then declared himself President, into the city suburbs.

While Johnson and ECOMOG forces battled to secure Monrovia, Taylor changed tactics. The NPFL leader realized that, although he could not take the capital by force, he could make its possession irrelevant. Over the next several years, the NPFL (now some

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<sup>217</sup> Ibid.

<sup>218</sup> Adeleke, Ademola. "The Politics and Diplomacy of Peacekeeping in West Africa: The ECOWAS Operation in Liberia". *The Journal of Modern African Studies*. 33:4 (Jan. 1995)

<sup>219</sup> Throughout the Liberian conflict, Nigeria provided roughly 80% of ECOMOG troops and 90% of its funding. Ibid.

12,500 strong) expanded their sphere of control across the country. Thus, the first half of the 1990s was characterized by the parallel development of two Liberian governments: the internationally recognized IGNU based in Monrovia and the NPFL government which, from its stronghold in the town of Gbarnga, controlled the rest of the country—a virtual state within a state. The latter, due to its tight hold over the country’s export economy, became increasingly wealthy and powerful, accruing more than U.S. \$100 million annually.<sup>220</sup> It was from this position that Taylor began providing financial and logistical support to Foday Sankoh and the RUF in Sierra Leone.

Yet Taylor’s position as de facto leader of the country did not go unchallenged. Those who remained of the defeated AFL fled to Sierra Leone where, with the support of Liberia’s Mandingo and Krahn populations, they formed the United Liberation Movement of Liberia for Democracy (ULIMO) and launched incursions into their homeland. In 1994, ULIMO splintered along ethnic lines, forming the Krahn-led ULIMO-J and the Mandingo-dominated ULIMO-K, named respectively for their leaders Roosevelt Johnson and Alhaji Kromah.<sup>221</sup> In 1993 a former minister under Tolbert and Doe named George Boley entered the fray with his paradoxically named Liberia Peace Council (LPC). Later that year, these groups were joined by the Lofa Defense Force (LDF), a proxy group of the NPFL led by François Massaquoi. Similar to the RUF, the political agenda of these groups was not particularly sophisticated. Adekeye Adebajo explains that:

Taylor claimed to be waging the war to remove Doe, but opposed the principle of democratic elections for years. Anti-NPFL factions claimed to be fighting for the democratic rights of all Liberians, but were essentially ad hoc ethnic armies led by individuals with dubious democratic credentials... Underfed and mostly unpaid fighters,

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<sup>220</sup> Ellis, Op cit.

<sup>221</sup> Adebajo, Op cit.

many of them drug-induced children, were often only nominally controlled by their leaders.<sup>222</sup>

Fighting in the countryside became the stuff of nightmares. Warlords adopted disquieting and enigmatic *noms de guerre* such as “General Peanut Butter”, “General Butt Naked”, “Cuckoo” and “Bulldog” and led bands of soldiers into battle wearing ball gowns, clown wigs, or sometimes nothing at all.<sup>223</sup> The period between 1989 and 1996 was the bloodiest of the war. Civilians were tortured, raped, and forced into slavery. Indeed, in a corner of the world not unfamiliar with violence, the Liberian conflict is nonetheless regarded as “peculiarly horrible”.<sup>224</sup> In 1991 alone it is estimated that 15,000 to 20,000 Liberians were killed and another 2 to 2.5 million were displaced. By 1996 the death toll had risen to over 200,000, roughly four percent of the population.<sup>225</sup>

Over time the continued fragmentation of the various militias began to destabilize Taylor’s power base. Further, a changing of the guard within ECOMOG made the peacekeeping force more amenable to the idea of NPFL rule.<sup>226</sup> After over a dozen failed negotiations spanning five years, he agreed to form a transitional government and called for elections at the Abuja Accords of 1996. The NPFL became the National Patriotic Party with the rather unnerving motto: “He killed my ma. He killed my pa. But I’ll still vote for him”.<sup>227</sup> Taylor, most likely due to Liberians’ desire for some form of stability, won handily in the July 1997 elections which international observers deemed free and fair.<sup>228</sup> “War fatigue,” writes Jeremy Levitt, “rather than Taylor’s popularity was the

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<sup>222</sup> Ibid. p. 47

<sup>223</sup> Boas, Morten. “The Liberian Civil War: New War/Old War?” *Global Security* 19:1 January, 2005

<sup>224</sup> Ellis, Op cit. p. 20

<sup>225</sup> U.S. Department of State. *Background Note: Liberia*. May, 2007

<sup>226</sup> Adebajo, Op cit.

<sup>227</sup> Ellis, Op cit. p. 109

<sup>228</sup> Harris, David. “From ‘Warlord’ to ‘Democratic’ President: How Charles Taylor Won the 1997 Election”. *The Journal of Modern African Studies*. 37:3 (Sep. 1999)

ultimate determiner at the polls”.<sup>229</sup> True to its objective, the following six years saw a decrease in fighting as Taylor settled in to his new office. However, this proved to be nothing more than a hiatus.

Between 1997 and 1999, Liberia became the smuggling hub for the “conflict diamonds” that funded the war raging across the northern border in Sierra Leone. In 1999 alone Liberia was recorded as having exported 31 million carats of diamonds despite the fact that the country had only produced 500,000 carats domestically that year.<sup>230</sup> Yet despite riches accrued from the smuggling trade, the Liberian people saw few improvements in their quality of life. Further, as the decade progressed, Taylor became increasingly autocratic. Flaunting prior agreements with ECOMOG, he reconstituted and expanded the military. He dismissed political dissenters within the new government and simply killed those outside of it. Security in the countryside deteriorated and popular discontent grew.<sup>231</sup> By April 1999, yet another rebel army appeared on the scene. Based across the border in Guinea and likely bankrolled by the Guinean armed forces, Liberians United for Reconciliation and Democracy (LURD) swept across the country and, in 2002, was poised to take Monrovia.<sup>232</sup>

However, in what had become something of a tradition in the country, LURD was soon joined by an additional rebel force known as the Movement for Democracy in Liberia (MODEL). Many of the worst human rights abuses of the war occurred in the ensuing bedlam. LURD, for instance, would regularly attack IDP camps in order to ‘recruit’ child soldiers. Entire towns were plundered to support the war effort. Caught

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<sup>229</sup> Levitt, Op cit. p. 210

<sup>230</sup> Sparks, Allister. *Beyond the Miracle: Inside the New South Africa*. Chicago: The University of Chicago Press, 2003 p. 315

<sup>231</sup> Ellis, Op cit.

<sup>232</sup> Jaye, Thomas. “Liberia: An Analysis of Post-Taylor Politics.” *Review of African Political Economy*. 30:98 (Dec. 2003) p. 643-648



between LURD and MODEL, which were supported by a steady flow of arms from Guinea and Cote d'Ivoire, Taylor was eventually forced to accept an ECOWAS-brokered peace accord in Accra, Ghana in June 2003.<sup>233</sup>

### ***The Accra Accords***

Interestingly, the 2003 Accra Accords owe a great deal of their success to the Special Court of Sierra Leone. In the days leading up to the peace talks, many of the participants, which included representatives of LURD, MODEL, and the Government of Liberia (GOL), as well as representatives from civil society and registered political parties, were apprehensive that no real peace could be achieved as long as Taylor was involved. Then, on the first morning of talks, Taylor was indicted by the Special Court for his role in the Sierra Leonean conflict, drastically weakening his position as the legitimate leader of Liberia. He left the conference almost immediately after unsealing the indictment and on August 11, 2003 fled to exile in Nigeria. "Taylor's departure immediately changed the chemistry, the actual facts, and the guiding presumptions of the negotiations," writes Priscilla Hayner.<sup>234</sup> The power dynamics of the Accords were dramatically altered as the GOL lost credibility. Over the following two weeks the parties continued the talks without Taylor, agreeing on June 17 to a ceasefire that included a clause barring the former president from any participation in the new government.<sup>235</sup>

The following weeks of negotiations were an intense and violent period. Rebel leaders maintained steady contact with their field commanders via cell phone and quickly discovered that they could impress their agendas on other parties by ordering renewed

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<sup>233</sup> Levitt, Op cit.

<sup>234</sup> Hayner, Priscilla. "Negotiating Peace in Liberia: Preserving the Possibility for Justice." *International Center for Transitional Justice*. Nov. 2007 p. 9

<sup>235</sup> Ibid.

shelling on Monrovia. Violent images of the attacks would appear almost instantaneously on CNN and civil society representatives received phone calls describing the carnage on the ground, leading the rebels' opponents to cede important negotiating points. "One or more rockets would be sent into Monrovia, and people in Monrovia would be telling us 'you have to give them anything they want to get it to stop,'" noted one civil society representative.<sup>236</sup> Civil society groups also applied considerable pressure to the various delegations. As many as two hundred protestors would stand outside the meeting hall each day and one women's group memorably sealed the delegates in, refusing to let them leave until they had reached an agreement.<sup>237</sup>

A major component of the negotiation was the appointment of a head of state for the two-year transitional period leading up to the 2005 elections. The delegations representing civil society and the political parties drew up a short list that included Ellen Johnson-Sirleaf, Rudolph Sherman, and Gyude Bryant which would then be submitted for final approval by MODEL, LURD and the GOL.<sup>238</sup> Johnson-Sirleaf, who would win the presidential election two years later, was the most popular candidate, but she was ultimately rejected by the warring parties for fear that she might "hold the war's perpetrators to account".<sup>239</sup> Gyude Bryant became Chair of the interim government.

The final phase of the Comprehensive Peace Agreement (CPA) concerning the exact nature and structure of the transitional government (the National Transitional Government of Liberia, or NTGL), was drafted and signed hastily. Shelling in Monrovia had intensified throughout the months of July and August, compelling the delegates to

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<sup>236</sup> Ibid. p. 14

<sup>237</sup> Ibid. p. 13

<sup>238</sup> Jaye, Op cit.

<sup>239</sup> Hayner, Op cit. p. 13

include final components into the agreement without much (if any) negotiation. The completed document allocated a large number of seats in the National Transitional Legislative Authority (NTLA0—the NTGL’s legislative arm—to MODEL, LURD, and the GOL. Further, it gave the warring parties nearly all of the ministerial position and contained few provisions for oversight or vetting.<sup>240</sup> Nevertheless, all parties signed the agreement on August 18, 2003.

The above narrative is designed to highlight the ways in which the political conditions elaborated in Chapter 2 emerged during the Liberian civil war and Accra Accords. Similar to Sierra Leone, corruption, the deterioration of infrastructure and public services, widespread human rights abuses, and the presence of an international intervention force represented significant challenges to a peaceful, democratic consolidation in Liberia in the immediate post-conflict period. Additionally, the Liberian case was characterized low levels of state legitimacy and high levels of political fragmentation, two conditions that were not present in Sierra Leone at the time that country began its reconciliation process. The following section addresses these conditions in more detail, recalling from the previous chapter how they may have influenced the development of Liberia’s truth commission.

### ***The Aftermath of Conflict and Emergent Aspects of State Weakness: Liberia***

The Liberian civil war mirrors the Sierra Leonean case in many important ways. Fourteen years of conflict have left the country on the brink of failure, fostering the emergence of many of the political conditions laid out in Chapter 2. Human rights abuses were propagated on an unimaginable scale. Over 250,000 people were killed in the

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<sup>240</sup> Ibid.

fighting.<sup>241</sup> Cases of torture, the recruitment of child soldiers, and sexual violence were a common occurrence throughout the war. The continual breakdown and loose discipline of the numerous rebel groups heightened the acuteness of the abuses by scattering the fighting across the country. There was no central theater to this conflict as battles raged from county to county and town to town.

As in Sierra Leone, endemic corruption and a breakdown of infrastructure have emerged as fundamental challenges in the wake of the conflict.<sup>242</sup> Transparency International, a watchdog group, has cited an entrenched culture of “petty corruption” that, coupled with a woefully underequipped judicial system, “cannot support an anti-corruption regimen”.<sup>243</sup> U.S. law firm Dorsey & Whitney adds that “corruption is a problem in all levels of government”.<sup>244</sup> These institutionalized inefficiencies have contributed to an overall deterioration of infrastructure and public services. Electricity is only sporadically available outside of downtown Monrovia. In 1997, 58% of households had access to clean drinking water while by 2005 that number had dropped to 27%.<sup>245</sup> Orchestrating any type of national reconciliation effort becomes all the more challenging where transportation and communications infrastructure are absent and trust in government institutions is low.

The erosion of democratic norms following the civil war was a grave problem in post-conflict Liberia and, as I explain below, has remained a challenge throughout the Liberian TRC’s operational mandate. In the wake of the conflict, the NTGL Results

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<sup>241</sup> BBC News. “Liberia: Country Profile.” Nov. 2008

<sup>242</sup> Kandeh, Jimmy D. “What Does the Militariat Do When it Rules? Military Regimes: The Gambia, Sierra Leone, and Liberia”. *Review of African Political Economy*. 23:69 (Sep. 1996).

<sup>243</sup> Transparency International. “New Anti-Corruption Governments: Liberia’s Challenge to Deliver.” 2006

<sup>244</sup> The Law Offices of Dorsey & Whitney. *Liberia Is Not Ready: A Report of Country Conditions in Liberia and Reasons the United States Should Not End Temporary Protected Status for Liberians*. August, 2007

<sup>245</sup> Ibid.

Focused Transitional Framework highlighted the need for dramatic reform in “key public sector establishments, the public service, and the main economic governance institutions”.<sup>246</sup> “Against the background of weak institutional apparatus and the vagaries of factional transitional government,” it continues, “continuous engagement represents the strongest [method] to hold the transition process to acceptable standards of performance”.<sup>247</sup> “The brutality with which political opposition of any kind has been dealt in recent decades has made most citizens fearful of participating in the political process,” adds the National Democratic Institute for International Affairs.<sup>248</sup> Rebuilding networks of trust between state and citizen will remain a crucial project in the coming years.

The presence of 15,000 UNMIL peacekeepers remains a haunting reminder of past violence and a visible testament to Liberia’s continued reliance on an external military force to provide security. As was so repugnantly evident during the final days of Samuel Doe’s presidency, peacekeepers are capable of becoming mired in national conflicts and pressing their own political agendas and acting out their ambitions on the local population.<sup>249</sup> Indeed, ECOMOG’s regional ambitions were played out in equal measure in Liberia and Sierra Leone.<sup>250</sup> While the UNMIL force is more tightly constrained than ECOMOG, the specific responsibilities of the force continue to be a controversial issue and will be of central importance as the Liberian state works toward a more robust consolidation.<sup>251</sup>

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<sup>246</sup> National Transitional Government of Liberia. “Results Focused Transitional Framework”. April 2005

<sup>247</sup> Ibid.

<sup>248</sup> National Democratic Institute for International Affairs. “Liberia: Civil Society’s Role in Political Transition”. Jan. 2004

<sup>249</sup> Adeleke, Op cit.

<sup>250</sup> Adebajo, Op cit.

<sup>251</sup> National Democratic Institute for International Affairs, Op cit.

Despite the similarities between Liberia and Sierra Leone in the aftermath of their civil wars, the countries diverge in two important respects. First, the NTGL did not enjoy the same amount of legitimacy as President Kabbah's government upon taking power. After Taylor was forced to resign and flee to Nigeria there was no nationally recognized leader to take his place. Gyude Bryant, an Episcopalian minister and businessman, was eventually selected by the warring parties as NTGL Chair because he was widely viewed to be politically neutral.<sup>252</sup> However, this neutrality and his selection as a "compromise candidate" proved to be his greatest liability, as few Liberians had any idea who their new leader was and were reluctant to rally behind him.<sup>253</sup>

The selection process for the NTLA also threatened to undermine the new government's credibility. Although the CPA stipulated that LURD and MODEL, the primary rebel factions in the country, would be dissolved once the agreement was signed, the agreement explicitly states that there would be "no restrictions" on these groups entering the government as political parties.<sup>254</sup> The final composition of the NTLA included: 12 LURD representatives, 12 representatives from the GOL, 12 MODEL representatives, 18 representatives from the political parties, 7 representatives from civil society and 'special interest groups', and 15 representatives from the country's counties.<sup>255</sup> Unlike President Kabbah, whose support carried over from his 1996 elections, the Center for Democratic Empowerment writes that "none of the current

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<sup>252</sup> Jaye, Op cit.

<sup>253</sup> BBC News. "Liberia's New Consensus Leader". August 21, 2003; AllAfrica.com "Gyude Bryant Named Transition Leader for Liberia". August 21, 2003.

<sup>254</sup> Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties. Article 21.6. August 18, 2003

<sup>255</sup> Ibid. Article 24

members of the NTLA obtained their position by means of a democratic election...they do not have any popular mandate to serve”.<sup>256</sup>

Additionally, the composition of the NTLA reflects a pervasive characteristic of the Liberian conflict that never manifested itself in Sierra Leone: political fragmentation. As elaborated in the previous section, rebel groups in the Liberian conflict were involved in a near constant process of breakdown and reformation. Differing from the RUF, Liberian rebels rarely fought under a single banner. This was certainly the case with MODEL and LURD, who were little more than nominal representatives of a far more nebulous constituency whose interests did not always align.<sup>257</sup> Once established, the NTLA therefore acted centrifugally and each member worked to secure their own interests. As the next section demonstrates, the de-legitimization of the Liberian government and its continued fragmentation are of crucial importance in understanding the eventual development of the Liberian TRC.

### ***The Creation of the Liberian TRC***

The sheer scope of the violence that enveloped Liberia over the previous 14 years brought national reconciliation to the center of the 2003 Accra Accords; the precise form this reconciliation would take, however, became a hotly debated issue. The majority of civil society groups, such as the Women of Liberia Mass Action for Peace, as well as the political parties that participated in the talks emphasized retributive justice and strongly advocated for the creation of a war crimes tribunal of a similar model to the SCSL.

MODEL, LURD, and other warring parties meanwhile pushed hard for a truth

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<sup>256</sup> Pajibo, Ezekiel. “Strengthening Parliament in Post-Conflict Situations: Liberia Case Study”. *Center for Democratic Empowerment*. p. 4

<sup>257</sup> Jaye, Op cit; Aboagye & Bah, Op cit.

commission because it improved their chances of receiving amnesty.<sup>258</sup> Aaron Sleh writes that “justice, in the traditional legal sense, had to become a currency for purchasing peace”.<sup>259</sup>

Ultimately, the truth commission lobby prevailed largely because of their superior military strength. However, while the rebel factions at Accra succeeded in obtaining the truth commission, the final agreement did not include a blanket amnesty provision as the RUF had at Lomé. Hayner argues that a primary reason for this was the fact that most parties assumed that, given the shoddy condition of Liberia’s domestic courts, a TRC would amount to the same thing. “The TRC was very attractive,” a representative of civil society noted, “You didn’t need a general amnesty, because the TRC would give you an amnesty, it was thought. There was a sense that it was clear: a tribunal means you’d be put away, but the TRC wouldn’t put you in jail”.<sup>260</sup> Indeed, no one at the Accords seemed to be paying attention and “a level of comfort developed such that no one feared prosecution and many assumed somehow that an amnesty was included within the text”.<sup>261</sup> The combative nature of the agreements (major hostilities continued in throughout the summer of 2003), coupled with the fact that no single group would have enough power to prosecute its rivals seems to have fed this complacency. Indeed, the final draft of the agreement gave 12 seats on the National Transitional Legislative Assembly to both LURD and MODEL, making it unlikely that either party could eliminate its rivals through a prosecutorial campaign. “The idea of a TRC became more

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<sup>258</sup> Hayner, Op cit.

<sup>259</sup> Sleh, Aaron. “Amnesty and the Liberian TRC: Who is Pardonable?” *The Perspective*. 18 April, 2006

<sup>260</sup> Hayner, Op cit. p. 15

<sup>261</sup> Ibid. p. 16



attractive than a war crimes tribunal,” writes Thomas Jaye, “the nature of the outcome of the war did not favor the latter”.<sup>262</sup>

Thus, Article 8 of the Comprehensive Peace Agreement proclaims that:

A Truth and Reconciliation Commission shall be established to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and the perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and recreation.<sup>263</sup>

As in Sierra Leone, the road from a clause embedded in a peace accord to an actual truth commission was long. The CPA’s language regarding the truth commission was vague, leaving many decisions about its structure and membership to the NTLA and, more importantly, to the Commission itself.<sup>264</sup> This lack of guidance nearly derailed the entire process at its inception when the Transitional Chairman announced the appointment of the TRC commissioners in early 2004 without the consent or participation of the NTLA and prior to any form of legislative agreement on what the TRC’s mandate would be.

As Liberia continued to move toward relative stability, however, the national legislature’s attitude toward the TRC became one of wholehearted acceptance and in the following weeks and months, Liberian civil society both within and outside the NTLA, along with a slew of international supporters began to rectify the situation. Working closely with the Center for Democratic Empowerment, they began to draft the 2005 TRC Bill, including a number of progressive provisions and strong language designed to aid the TRC in acting with the most efficacy possible.<sup>265</sup> Indeed, the TRC Bill, in addition to adding much needed structure to the Commission established one of the most progressive

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<sup>262</sup> Jaye, Thomas. “Liberia’s TRC: Context, Mandate and Challenges”. *The New Liberian*. January 11, 2008

<sup>263</sup> Comprehensive Peace Agreement, Op cit. Article 8.

<sup>264</sup> Hayner, Op cit.

<sup>265</sup> European Union Election Observation Mission. “Liberia: Presidential and Legislative Elections: Final Report”. Mar. 2, 2006

mandates ever laid out for a truth commission. The powers granted to the new TRC are sweeping. Article 6, section 21 of the Mandate states:

The TRC shall enjoy full independence in pursuit of the scope of its mandate and the exercise of its duties...its work shall be regarded as a matter of national priority; all matters of the TRC appearing before the Supreme Court of Liberia shall be advanced...without the slightest delay as a matter of first priority.

Section 21 continues: “The full authority and capacity, and the resources of the Government of Liberia shall and is hereby placed at the disposal of the TRC...”<sup>266</sup>

Regarding the question of amnesty, Article 7, Section 26 of the mandate leaves the final say to the Commission, granting it the power to make recommendations with regard to “legal, institutional, and other reforms and the need to hold prosecutions in particular cases as the TRC deems appropriate”.<sup>267</sup> In cases of crimes against humanity or violations of international humanitarian law, the TRC is explicitly forbidden from offering amnesty.<sup>268</sup> That said, at the time of writing the TRC has not yet adopted a prosecutorial framework that explicitly spells out who is and is not exempt from receiving amnesty.<sup>269</sup>

In an unprecedented move, the NTLA mandated that the Commission’s recommendations will be legally binding. Article 10, Section 48 of the Mandate asserts:

The Head of State shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to the implementation of the Commission’s recommendations. *All recommendations shall be implemented.* When the implementation of the any recommendation has not been complied with, the legislature shall require the Head of State to show cause for such non-compliance. [my emphasis].<sup>270</sup>

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<sup>266</sup> National Transitional Legislative Assembly. “An Act to Establish the Truth and Reconciliation of Liberia”. 12 May, 2005 Article 6.21

<sup>267</sup> Ibid. Article 7.26

<sup>268</sup> Sleh, Op cit.

<sup>269</sup> Amnesty International. “Liberia: Towards the Final Phase of the Truth and Reconciliation Commission”. Jul. 2008

<sup>270</sup> National Transitional Legislative Assembly, Op cit. 10.48

This provision essentially gives the TRC the final word on who will receive amnesty and who will be prosecuted.

Additionally, the Commission is the first in history to take statements from the diaspora communities of Liberian refugees who fled to Ghana, the United States, and the United Kingdom. The two-year operational period of the Liberian TRC began in June 2006. Public hearings began in January 2008. The Commission has requested and been approved to extend its mandate for an additional twelve months, allowing it time to take testimony from President Johnson-Sirleaf and complete the compilation of its final report.

### ***The Role of Weak State Conditions in the Initial Success of the Liberian TRC***

In Chapter 3 I asserted that the relative legitimacy of the Sierra Leonean state and the absence of political fragmentation in the immediate aftermath of the civil war were the primary inhibitors of its truth commission's success. Although most of the weak state conditions described in Chapter 2 were present in Sierra Leone and did hinder the TRC's operations, they did not significantly influence its success in achieving the objectives outlined in its mandate. Broadly speaking, these findings appear to suggest that in a weak state context state legitimacy and political fragmentation matter in determining truth commission success. In this section I intend to put this suggestion to the test.

Through a review of its civil conflict, I have shown that Liberia exhibits the same political conditions that emerged in Sierra Leone during and after its own civil war, with the additional conditions of state de-legitimization and political fragmentation. The question, then, is did these conditions produce different results in the Liberian case? Did the presence of these additional conditions of state weakness have an impact on the Liberian TRC's success? In this section, I argue that the Liberian state's weakness,

demonstrated by the presence of the above conditions, created a political space in which the Commission was able to operate with fewer constraints, paving the way for greater success.

As in Chapter 3, I evaluate success based on each commission's ability to achieve the objectives laid out in their respective mandates. Before launching into an assessment of the Liberian TRC's success, I should offer a brief caveat: because the Liberian TRC is still in operation, it is not possible to as completely evaluate successes and failures. Unlike in the Sierra Leonean case, there is no final report that outlines the Liberian commission's operational challenges and weak points. Nevertheless, by examining its mandate as well as the information it has released in quarterly and semi-annual progress reports, we can begin to establish some guidelines for measuring its achievements.

Closely mirroring the Sierra Leonean TRC Act, The TRC Act of Liberia defines Commission's primary objectives as:

- a) Investigating gross human rights violations and violations of international humanitarian law as well as abuses that occurred... determining whether these were isolated incidents or part of a systematic pattern; establishing the antecedents, circumstances factors and context of such violations and abuses; and determining those responsible for the commission of the violations and abuses and their motives as well as their impact on victims.
- b) Providing a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to create a clear picture of the past so as to facilitate genuine healing and reconciliation.

In addition, the Commission is tasked with compiling a "comprehensive" and "critical review of Liberia's historical past in order to address falsehoods and misconceptions about the nation's past socioeconomic and political development".

When compared to Sierra Leone's truth commission, the Liberian TRC has come far closer to achieving these goals. Overcoming considerable obstacles, including a lack of funds, poor infrastructure, and a low level of trust among much of the Liberian public, it has succeeded in taking approximately 24,000 statements from victims and perpetrators across the country in addition to hundreds more from diaspora communities.<sup>271</sup> During its mandate, the Sierra Leonean Commission collected only 7,706.<sup>272</sup> Moreover, the Liberian TRC took testimony from several high-profile figures, including: President Ellen Johnson-Sirleaf, former INPFL leader Prince Johnson, former AFL Chief of Staff Henry Dubar, former LPC leader George Boley, Deputy Foreign Affairs Minister Commany Wisseh, Milton Blahyi (also known as General 'Butt Naked'), and former U.S. Assistant Secretary of State for African Affairs Herman Cohen, who apologized for American failures to stop the conflict.<sup>273</sup> As Chapter 3 explained, similar high-profile testimony was not possible in Sierra Leone.

Yet in addition to these relative accomplishments, the Liberian Commission's mandate also endows it with powers and responsibilities that extend well beyond those of the Sierra Leonean TRC and in fact are reminiscent of truth commissions in much stronger states such as South Africa. For instance, it is the first commission in history whose recommendations are legally binding and, due to the absence of a general amnesty, it reserves the right to recommend prosecutions on an individual basis.<sup>274</sup> These variances beg two questions. First, given all of the contextual similarities underpinning these two cases, how, then, did the Liberian context differ from Sierra

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<sup>271</sup> UN Integrated Regional Information Networks. "Liberia: Truth Commission Seeks Answers". Jan. 10, 2008

<sup>272</sup> Truth and Reconciliation Commission of Sierra Leone. *Witness to Truth*. Freetown, Truth & Reconciliation Commission, 2004

<sup>273</sup> The Analyst. "Top Liberians Face TRC Next Week". August 1, 2008

<sup>274</sup> National Transitional Legislative Assembly, Op cit. Articles 7 & 10

Leone in ways that ultimately mattered in shaping the success of its truth commission? Second, what aspects of the Liberian political climate following the civil war allowed for its mandate to extend beyond that of the Sierra Leonean commission in scope and power? Addressing the first question, we must briefly review the ways in which conditions of state weakness affected the Commission's work.

In the immediate aftermath of the Liberian civil war, corruption and the absence of substantial transportation and communications infrastructure created significant challenges for the Liberian TRC. Throughout the Commission's operation period, financial support from the Liberian government has been steady but slight. International donors, meanwhile, were reluctant to give to the TRC amidst growing concerns over corruption and the size of its budget.<sup>275</sup> In early 2007, for example, the Commission was nearly shut down due to a lack of funds.<sup>276</sup> After significant restructuring, it was able to resume its operations, albeit on a slightly less robust scale.

The sorry state of Liberia's infrastructure was an additional problem. Hayner asserts that "limitations of infrastructure, human resources and funding, and other basic structural and organizational demands, have compounded what was already an enormous task of investigations, statement-taking and public hearings".<sup>277</sup> Similar to Sierra Leone, the Commission has responded to this hindrance by engaging a number of civil society partners and de-centralizing its operations across the country's 13 counties, thus minimizing the necessity for transportation between sites and allowing the various departments to work semi-independently. For example, the Advocates for Human

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<sup>275</sup> International Federation for Human Rights. "Ballots not Bullets! Will Human Rights Be Respected in Liberia?" January 2006.

<sup>276</sup> Amnesty International. "Liberia: Towards the Final Phase of the Truth and Reconciliation Commission". July 2008

<sup>277</sup> Hayner, Op cit. p. 21

Rights, a U.S. based NGO was charged with developing community outreach activities and managing statement taking in the U.S., the United Kingdom, and Ghana.<sup>278</sup>

Nevertheless, a lack of financial support and infrastructural deficiencies remained obstacles throughout the process. This problem was shared by both the Sierra Leonean and Liberian cases, however, and its ability to explain the variation between their truth commissions is negligible.

Likewise, the failure of democratic norms and flagrant human rights abuses were equally encumbering conditions in both the Liberian and Sierra Leonean cases. As the TRC was a product of the unelected and warlord-run NTGL, winning the trust of the Liberian public was a daunting task. Perhaps recalling how similar troubles for the Sierra Leonean commission were exacerbated by the Special Court, one advertisement for the Commission read “TRC public hearings: Not a court house”.<sup>279</sup> Additionally, memories of the horrific violence of the war years remained omnipresent for most Liberians and as the TRC began its investigation and statement-taking operations it was forced to go to great lengths to convince the public that it was safe to provide testimony. Women were particularly vulnerable during this period and the TRC is often cited as not having done enough to protect them from retaliation.<sup>280</sup> Strengthening democratic institutions and reducing the stigma created by massive human rights abuses during the war will continue to be a sluggish process in Liberia. However, this is a characteristic common to many post-conflict societies, including Sierra Leone. It is unlikely that these conditions underscore a significant divergence between the two cases.

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<sup>278</sup> Amnesty International, Op cit.

<sup>279</sup> Ibid.

<sup>280</sup> Ibid.

International peacekeeping forces do not appear to have had a major impact on the success of the Liberian TRC. As in Sierra Leone, ECOMOG forces were viewed by most Liberians as politically motivated and untrustworthy. To a large extent, however, this stigma has not carried over to UNMIL forces. Conversely, the considerable logistical support and counseling they have provided the Commission has greatly enhanced its investigative capabilities, particularly in the area of gender violence. In this respect, the Liberian case varies little from Sierra Leone.

Whereas the political conditions cited above were shared by both the Liberian and Sierra Leonean cases, the Liberian state has also been plagued by low levels of legitimacy and high levels of political fragmentation. Indeed, political fragmentation played a large part in the success of the Liberia's truth commission. The marked ethnic dimension of Liberia's civil war (not present in Sierra Leone) along with a general lack of cohesion among armed groups greatly facilitated the fragmentation of the conflict. Fragmentation, in turn, did two things to heighten the Liberian TRC's success. First, it prevented any of the parties at Accra from considering the implications of there being no general amnesty provision in the final agreement. With Taylor essentially removed from play following his war crimes indictment, the GOL and its military backers were greatly weakened. Control of the country was up for grabs and the pitched battle that ensued meant that no party was in a position to force an agenda.

Similarly, the segmented character of the Liberian government following the Accra Accords prevented any serious challenges to the Commission's work from materializing. For instance, shortly after the TRC began its public statement-taking phase a number of Charles Taylor supporters united under the banner of the Association for the



Legal Defense of Charles G. Taylor moved to block all testimony against the former president. The Liberian Supreme Court struck down this motion, vividly illustrating, although Taylor had at one time enjoyed considerable popular backing, the fractious nature of post-war politics in Liberia prevented his supporters from overriding the reconciliation process.<sup>281</sup> This stands in stark contrast with the Sierra Leonean case, where President Kabbah was able to unilaterally move forward with prosecutions as there was no opposition group strong enough to stop him.

Second, fragmentation opened a political space that allowed the architects of the Liberian TRC to insert a number of progressive and powerful provisions into its mandate. Following the Accra Accords, fragmentation was institutionalized in the NTGL as each warring party as well as civil society representatives received roughly the same number of seats in the NTLA. Power within the legislative body was thus diffused to such an extent that, when the TRC subcommittee began cooperating with international NGOs to draft the more progressive clauses of the TRC Act, no single faction had the power to upset the process. In contrast with the Sierra Leonean TRC, the result has been a truth commission that holds exclusive control over amnesty and prosecution for perpetrators and legally binding authority over the Liberian parliament.

In addition to political fragmentation, the lack of legitimacy possessed by the Liberian government in the early years after Accra shielded the commission from disruption by a powerful head of state. Compared to Kabbah and the Freetown government in post-conflict Sierra Leone, the NTGL did not possess remotely the same level of legitimacy in the eyes of the public. For one, the NTGL was not democratically elected, whereas President Kabbah was able to ride his support from the 1996 elections to

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<sup>281</sup> Amnesty International, *Op cit.*

undertake an ambitious agenda of government reforms and reconciliation efforts. The immediate post-war period in Liberia, led by the NTLA and Chairman Bryant, meanwhile, was plagued by impotence and self-interest. Indeed, reflecting their compromised position, rather than attempt to draw up any ambitious plans for reform the NTLA became immersed in the trivialities of government. Ezekiel Pajibo, Director of the Center for Democratic Empowerment, explains that:

Most legislative debates [between 2003 and 2004] centered around pecuniary benefits to legislative members including the purchases of luxury vehicles, the vaunted “resettlement package” – a financial package to assist members of the Assembly to comfortably “resettle” themselves in Monrovia and the refurbishment of homes and offices of leaders of the Assembly...the public felt that given the special circumstances within the country, it was not helpful for members of the legislature to be more concerned about their individual comfort while the overwhelming majority of Liberians were living in destitute conditions.<sup>282</sup>

The circumstances surrounding the NTGL’s creation prevented them from acting boldly or swiftly. It was widely joked that the acronym stood for “Nothing to Give Liberia”.<sup>283</sup> President Kabbah and the Freetown government, free from transitional entrenchment, were capable of pursuing the Special Court which, as I explained in Chapter 3, derailed the TRC. The lack of legitimacy of state actors in Liberia inadvertently translated into political capital for the truth commission and thus made similar action in that country impossible.

Political fragmentation and the de-legitimization of the state were the primary factors in determining the success of the Liberian TRC. The absence of these conditions in Sierra Leone was essential in precipitating its truth commission’s failures. Recalling the Sierra Leonean case, we found that the greater legitimacy of the Sierra Leonean state, coupled with the lack of powerful or well-defined opposition groups undermined its truth

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<sup>282</sup> Pajibo, Op cit. p. 7-8

<sup>283</sup> Jaye (2008), Op cit.

commission's efforts toward restorative justice. Conversely, in Liberia the absence of state legitimacy and multitude of weak opposition groups has actually *aided* restorative justice. These findings suggest that in contexts of extreme state weakness traditional assumptions about what political conditions are favorable for truth commissions, no longer hold. That is, the weaker the state in certain respects, the greater the potential for the truth commission to successfully carry out its mandate.

Through the cases of Liberia and Sierra Leone, this paper has offered preliminary evidence for such a phenomenon. *Why* this seems to occur is a subject for future study. However, it appears that when certain conditions of state weakness are carried to their extreme, as was the case in Liberia, they carve new political spaces where restorative justice mechanisms such as truth commissions can flourish. As I explained in Chapter 1, the most successful truth commissions historically have been those that were able to negotiate the political constraints specific to their particular context. In Chapter 2, I postulated that extremely weak states may present a number of political conditions that previous truth commissions never had to face: de-legitimization of the state; corruption and the deterioration of public services; the failure of democratic norms, widespread human rights abuses; political fragmentation; and the presence of an international intervention force. Surprisingly, these findings indicate is that when two of these conditions, de-legitimization and political fragmentation, are present in weak states, they actually liberate the truth commission from political constraints.

Put another way, on a fundamental level these findings deal with power. De-legitimization and political fragmentation are epi-phenomena that reflect the ways that power in post-conflict Liberia and Sierra Leone was channeled, diffused, consolidated, or

equalized. They are conditions that can either enhance or limit the power of state actors. As we have seen, the case of Sierra Leone represents the former, where power was consolidate into the hands of a few legitimate state actors, and Liberia the latter, where power was diffused across a much broader array of actors. Although additional conditions of state weakness can create problems related to funding, poor infrastructure and public skepticism, this study has shown that they are not insurmountable challenges.

Of course, none of this is meant to give the impression that we should forgo political consolidation in favor of restorative justice; de-legitimization and fragmentation are not the goal. However, in terms of transitional justice policy, these findings can offer guidance as to how reconciliation efforts should take shape in order to yield the best results. By appraising, or possibly even shaping, the fundamental currents of power in states that exhibit signs of extreme weakness, policymakers and state actors may be able to amend the political climate in order to make it more favorable to one form of justice or another. For instance, in cases where the state exhibits a number of conditions of weakness, but is largely perceived as legitimate and has few strong competitors, the interests of state actors will govern what is possible. On the other hand, states that are by and large not viewed as legitimate actors and are characterized by pervasive factionalism may present greater opportunities for truth commissions because disparate groups will need to negotiate and makes concessions to maintain their grip on power.

### ***Conclusion***

The wounds of Liberia's tragic civil war will likely take generations to fully heal. Ultimately, reconciliation must occur in the minds of victims and perpetrators;

mechanisms of transitional justice, retributive or restorative in nature, only act as mediums in this process. Nevertheless, mechanisms and truth commissions and particular do not serve simply as tools for individual reconciliation, but also national reconciliation and therefore their successes and failures matter greatly.

In this chapter I have explored the emergence of political conditions characteristic of weak states in Liberia in comparison to Sierra Leone in order to evaluate which of these conditions had the greatest impact on the Liberian TRC's success. Despite exhibiting many of the same conditions as Sierra Leone, including high levels of corruption, a deterioration of infrastructure and public services, widespread human rights abuses and the presence of an international intervention force, Liberia displays two additional characteristics: de-legitimization and political fragmentation. These conditions, I argue, played the single greatest role in determining the Liberian TRC's success by opening up a political space absent of the constraints where the Commission could operate more freely. That is to say, de-legitimization and political fragmentation reflect the fundamental currents of power in each case which play an enormous role in determining the success of truth commissions as well as other transitional justice mechanisms. While it is difficult to assess the numerous potential ramifications of these findings, they have the potential to offer guidance for future states emerging from conflict and the transitional justice community as they strive to achieve lasting peace and national reconciliation.

# Conclusion

*This is how one pictures the angel of history. His face is turned toward the past. Where we perceive a chain of events, he sees one single catastrophe which keeps piling wreckage upon wreckage and hurls it in front of his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing in from Paradise...this storm irresistibly propels him into the future to which his back is turned, while the pile of debris before him grows skyward. This storm is what we call progress.*

- Walter Benjamin

This has been a story of two truth commissions that, while established in states regularly characterized as weak or ‘failed’, diverged considerably in their efforts to promote restorative justice. The fundamental goal of these commissions, as with all truth commissions, is through exhaustive research and statement-taking from both victims and perpetrators to establish a universal record of past events that simultaneously offers the public solace by placing their personal tragedies into a greater context and acts as a platform for governmental reforms designed to promote national reconciliation. As the last two chapters have shown, Sierra Leone and Liberia were not equally successful in this endeavor.

Why, then, despite similar national origins, political histories and patterns of conflict, did Liberia and Sierra Leone diverge so dramatically in implementing effective mechanisms of restorative justice? Superficially, the answer seems to be the existence of the Special Court. Proving too strong a competitor for resources and international attention, as well as taking advantage of an undefined, but inherently unequal legal relationship with the Sierra Leonean TRC, the Special Court ran roughshod over the Commission’s agenda and substantially weakened its ability to seek out the roots causes of conflict and promote national reconciliation. But the SCSL is not the root of the

discrepancy. Rather, it is symptomatic of more fundamental differences in the existing political conditions that shaped the two cases.

My study indicates that transitional justice mechanisms rely upon some facets of state power more than others. Following periods of mass violence, obstacles to truth commission implementation become most acute under specific conditions. In chapter 2 I argued that state failure should be understood as a single terminus of a broad spectrum of state strength. I then reviewed the range of political conditions characteristic of weak states and outlined those most commonly cited in the literature as challenges to stability and political consolidation. Assuming that a greater accumulation of these conditions translates into a weaker state, the presence of political fragmentation and state de-legitimization in Liberia suggests that they were crucial in promoting the initial success of the Liberian TRC. Contrary to much of the literature on weak states, which portrays these conditions as anathema to democratic consolidation, my findings suggest that the degree of state weakness in a particular case relates directly to the success of one form of transitional justice over another. Counter intuitively, Sierra Leone was stronger in two ways that derailed its commission.

Despite the apparent similarities of Liberia and Sierra Leone, de-legitimization and fragmentation dramatically altered the political landscape in which their respective truth commissions operations (see Figure 5.1). While nearly being torn apart by an appallingly violent and prolonged period of conflict, the Sierra Leonean state managed to weather the chaos with a great deal of its legitimacy intact. Additionally, with the exception of the largely discredited RUF, it had no challengers to its rule. In the years following the end of hostilities, President Kabbah, while acceding to a truth commission

at the Lomé peace talks, had every incentive—and very few disincentives—to shirk his commitment to the TRC and work to eliminate his political rivals through prosecution.

In the aftermath of its own conflict Liberia differed in both of these respects. Contrasted with the Freetown government, the NTGL was simply not credible and therefore did not have the necessary political capital to attempt any form of retributive justice. Moreover, the level of political fragmentation in Liberia following the war was such that no group was powerful enough to harness a prosecutorial mechanism. This fragmentation also presented an opportunity for Liberia’s truth commission by preventing a general amnesty provision or concrete guidelines for a truth commission from making their way into the final language of the Accra Accords, leaving the door open for future prosecution.

**Figure 5.1: Weak state conditions and their significance in determining truth commission success**

	<b>Present in Sierra Leone?</b>	<b>Present in Liberia?</b>	<b>Important for truth commission success?</b>
<b>1. De-legitimization of the state</b>	No	Yes	Yes
<b>2. Corruption &amp; deterioration of public services</b>	Yes	Yes	No
<b>3. Failure of democratic norms</b>	Yes	Yes	No
<b>4. Widespread human rights abuses</b>	Yes	Yes	No
<b>5. Political fragmentation</b>	No	Yes	Yes
<b>6. Presence of an international intervention force</b>	Yes	Yes	No

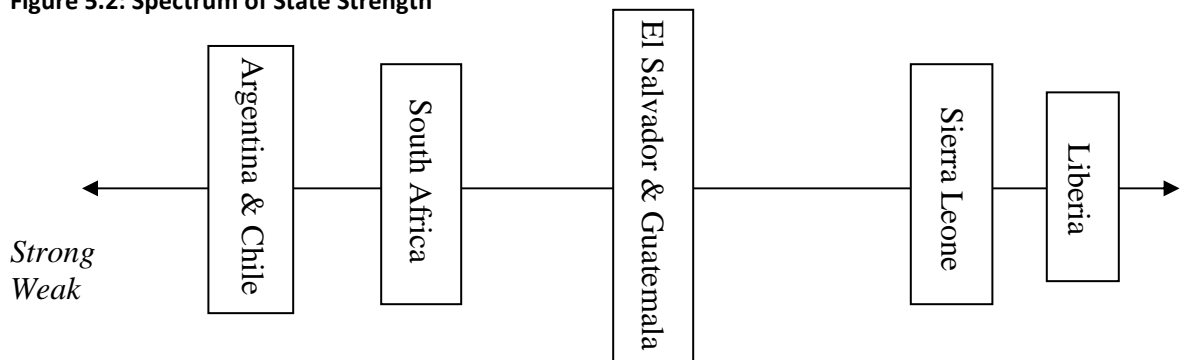
This presents a paradox. How do we explain the fact that truth commissions in states much stronger than Sierra Leone (Argentina, South Africa, etc.) have had greater success? This is a question that warrants future research, but addressing it briefly here I would argue that, similar to weak states, strong states present additional political conditions that are favorable to restorative justice. For instance, President Alfonsín in Argentina and Aylwin in Chile had to deal with a number of competing interests,



including the persistent opposition of the military, which prevented prosecutions, but opened a space for a strong truth commission. Conversely, Sierra Leone, a state that like Argentina and Chile exhibits high levels of legitimacy and consolidation was able to move forward with prosecutions that ultimately undermined its TRC.

State legitimacy and consolidation, it seems, only support truth commissions in the presence of additional conditions of state strength. Unlike Argentina or Chile, the Sierra Leonean conflict scoured the country of rival institutions, granting President Kabbah unchecked power to pursue his retributive agenda and make the Special Court essentially the only game in town. Put differently, Sierra Leone occupies a unique space on the spectrum of state strength where it is strong in two important ways that allowed it to pursue a prosecutorial agenda, but lacking in a number of additional conditions that would have better supported a truth commission (see Figure 5.2).

**Figure 5.2: Spectrum of State Strength**



Still a more fundamental issue looms. This study has demonstrated that state legitimacy and political fragmentation matter in the creation of a truth commission, but it has only begun to elaborate *how* they matter. These conditions reflect deeper questions about how power is organized in the aftermath of violent conflict. As demonstrated above, the concentration of power in the hands of a small group of state actors creates a

political climate quite favorable to retributive justice, but anathema to truth commissions. When power is concentrated in a number of competing institutions, as in Argentina, Chile or other strong states, prosecutions become untenable while the favorability for truth commissions increases. The Liberian case demonstrates a similar phenomenon in which power is so fragmented or diffuse that no single state actor is capable of launching prosecutions or disrupting a commission. Interestingly, this implies that, in terms of achievement, it makes little difference whether a truth commission operates in a strong state or a state that is extremely weak. Rather, it is the more ambiguous space where conditions of weakness interlace with conditions of strength that is most likely to jeopardize their success.

How these varying currents of power manifest themselves in areas outside of transitional justice is a question that demands closer scrutiny. For example, I have spent little time addressing the unique role civil society played in these contexts. Women's groups, for instance, while never previously a force to be reckoned with in Liberia, appeared at Accra *en masse* and have been the principal advocates of the Liberian TRC since its inception. Looking beyond the immediate political implications of de-legitimization and fragmentation, is it possible that civil conflict and state failure act as some form of violent purging process, stripping away old institutions and social inhibitors and carving a new, unobstructed political landscape where previously silenced social groups and actors are freed to endorse radical new agendas? Does a greater level of state failure paradoxically promote not only truth commissions, but an entirely novel and progressive social order? While I cannot offer an adequate answer here, recent

research by Aili Tripp, for example, suggests that this type of fragmentation may open spaces for women to participate in politics in new ways.

What, then, are the implications of *this* study? Ideally, its applications will extend well beyond Liberia and Sierra Leone. How to best address the wrongs of the past has become a question with profound consequences for post-conflict societies. State weakness clearly should not be a goal and I do not mean to put forward such a notion here. However, if we are able to more concretely identify the political conditions that are most favorable to the establishment of a truth commissions, the information can aid societies newly-emerged from conflict in selecting the appropriate approach to redressing past wrongs. As the international community and, more specifically, the transitional justice community turns its gaze to new cases such as Somalia, the Democratic Republic of Congo, Afghanistan, and Iraq we may now have a better idea of what type of transitional justice mechanism certain contexts demand. Particularly in cases of states recently emerged from conflict and near collapse, where resources are scant, infrastructure is shattered, and trust is hard to come by, this could save a state both financial and political capital while avoiding future bloodshed.

That being said, I remain deeply cognizant of limitations of this thesis. As I have striven to emphasize throughout this study, states are unique to a point where categorization begets only over-generalization and confusion. Somalia, for example, has exhibited a particularly high level of political fragmentation, but unlike Liberia or Sierra Leone, it has also developed highly sophisticated local level institutions that may be more adept at dealing with issues of justice and reconciliation. In the Democratic Republic of Congo, moreover, geographical limitations (the country is roughly the size of continental

Europe) may render a national reconciliation project excessively unwieldy. Thus, whether these results would hold true in other contexts has yet to be determined.

A more specific concern is this paper's limited definition of success. As I warned in Chapter 3, my understanding of success is necessarily based on each commission's mandate as well as their short-term achievements. Although weak state conditions appear to have supported Liberia's commission in these respects, when we consider broader points of success such as a sustained peace, democratic consolidation, and national reconciliation they still loom large; the good produced by these conditions may still be overwhelmed by the bad. Indeed, it is quite possible that Liberia's infrastructural and political limitations will ultimately bar it from following through on its commitment to the implement the commission's recommendations. Equally worrying is the possibility that, should the Liberian government decide to move forward with large-scale reforms and prosecutions (as President Johnson-Sirleaf recently promised), it will upset the delicate peace and democratic gains accumulated over the past six years.

This study represents the first step in a much broader process of honing our collective understanding of conflict resolution, national reconciliation, and democratic consolidation. What holds constant is that, irrespective of the form it takes, justice is a political and social imperative. Making wise choices about implementation can make the difference between sustained progress toward lasting peace and a return to violence; it can begin to close old wounds or tear them anew.

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