

Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims

Binaifer Nowrojee*

When the civil war in Sierra Leone came to an end in 2002, the international community created two transitional justice mechanisms to address past atrocities: the Truth and Reconciliation Commission (“TRC”) and the Special Court for Sierra Leone. Little attention has been paid in the international community or in the scholarly literature to the efforts made by these institutions to address and redress the wartime sexual violence routinely directed at women and girls. The two institutions in Sierra Leone are noteworthy for seriously undertaking to fulfill their mandate to address crimes against women and for using gender-sensitive strategies to ensure the comfort, safety, and dignity of the rape victims coming forward to testify. While this should be standard operating practice for international institutions, the practices of the ad hoc international criminal tribunals and other transitional justice mechanisms illustrate the unfortunate fact that gender justice often remains the exception rather than the rule in post-conflict societies. Additionally, Sierra Leone represents one of the only places in which the international community has set up both a truth commission and a court in a post-conflict setting; utilizing both institutions concurrently has already produced both positive and negative effects for Sierra Leone, raising crucial questions and setting important precedents for future conflict resolution scenarios.

Although the ultimate success of these two international justice mechanisms in the particular arena of gender justice in Sierra Leone remains to be seen, the steps taken so far are encouraging. Together, they can provide a “best practices” model for other international justice mechanisms, including the International Criminal Court. Sexual violence has been an invisible war crime in

* Counsel, Human Rights Watch Africa; Lecturer, Harvard Law School. As a Human Rights Watch researcher for the past ten years, the author has interviewed hundreds of rape victims from a number of conflict areas in Africa including Burundi, Liberia, Rwanda, and Somalia. In Sierra Leone she served as a facilitator in the gender training conducted for the Truth and Reconciliation Commission (“TRC”) commissioners and their staff by the U.N. Fund for Women (“UNIFEM”), assisted national women’s groups with their written submissions before the TRC, and testified at the TRC hearings as a representative of the Coalition on Women’s Human Rights in Conflict. She has also testified as an expert witness on sexual violence before the International Criminal Tribunal for Rwanda (“ICTR”). The author would like to thank her colleagues and friends in the Coalition on Women’s Human Rights in Conflict Situations as well as Harvard Law School students Zinaida Miller, Jennifer House, and Naomi Loewith.

a wide variety of contemporary conflicts and mass atrocities; inclusion of gender violence in the post-conflict world of international justice can help to condemn these horrors and to make the perpetrators accountable for the particularly brutal violence perpetrated against women in wartime.

I. MAKING THE INVISIBLE VISIBLE

It seemed as though women were everywhere that day in May 2003. Morning traffic came to a halt as women marched en masse on the road from Victoria Park in the center of Freetown, Sierra Leone to the YMCA Hall where the TRC was about to commence three days of dedicated hearings on violence against women. Accompanied by several school marching bands playing rousing music, women walked with signs aloft that read “No Violence Against Women” and “Justice for Women.” Women continued to join the march as it approached the TRC hall. By the time the hearings began, women packed the large auditorium, demonstrating solidarity with the rape victims and others who would speak about the atrocities committed against women and girls during the decade-long civil war in Sierra Leone. Gasps and tears could be heard throughout the session as rape victims, hidden behind a screen, recounted their harrowing experiences to the commissioners. The voices of victims were finally being heard by the nation.¹

Sierra Leone’s civil war conjures images of hacked-off hands and arms; the conflict was notorious worldwide for the widely reported amputations. Yet sexual violence was committed on a much larger scale than amputations. Why has this fact failed to characterize the conflict for the international community? The U.N. Special Rapporteur on the Elimination of Violence Against Women, Radhika Coomaraswamy, estimated that 72% of Sierra Leonean women and girls experienced human rights abuses during the war and that over 50% were victims of sexual violence.² From 1991, when the war began, thousands of Sierra Leonean women and girls were raped, gang-raped, held in sexual slavery, or raped with objects, including weapons, wood, and umbrellas. All sides of the conflict subjected females of all ages and ethnic groups to sexual violence of extraordinary brutality. Many women and girls suffered irreparable vaginal tearing; some bled to death as a result of the extreme violence with which they were raped. The rapes were primarily committed by rebel forces and, to a lesser extent, by government soldiers throughout the country.³

1. Author was present at the hearings, Freetown, Sierra Leone, May 22, 2003.

2. Radhika Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, Comm’n on Hum. Rts., 58th Sess., Provisional Agenda Item 12(a), at 15, U.N. Doc. E/CN.4/2002/83/Add.2 (2002).

3. HUMAN RIGHTS WATCH, *WE’LL KILL YOU IF YOU CRY: SEXUAL VIOLENCE IN THE SIERRA LEONE CONFLICT* (2003), available at <http://www.hrw.org/reports/2003/sierraleone/sierleon0103.pdf> (last visited Feb. 28, 2005).

Just as women appeared to be everywhere that day in Freetown at the TRC special hearings, however, they seemed paradoxically invisible during the war. Throughout the decade of conflict, most journalists and international observers paid little or no attention (and subsequently failed to publicize) the widespread and ongoing attacks directed against women and girls. Sexual violence was Sierra Leone's invisible war crime. Tragically, the lacunae surrounding sexual crimes in Sierra Leone closely resemble the treatment of these crimes in other conflict situations. The lack of attention to these crimes enables the international community to downplay women's particular suffering and, as such, renders women invisible. This invisibility usually continues after a conflict ends, exacerbated by the stigma attached to sexual violence. Although rape and other forms of sexual violence often legally constitute torture, genocide, mutilation, and enslavement, they have, with rare exceptions, not been treated with the same seriousness as other war crimes.

Ensuring accountability for women's experiences in the arena of international justice remains a critical challenge. Increasingly, justice mechanisms such as truth commissions and courts are being created in post-conflict societies, often with U.N. support, in order to prosecute war crimes and to promote justice, peace, and reconciliation. Legal scholars have written much literature celebrating the international tribunals and the International Criminal Court as important steps forward in ending impunity for sexual violence against women.⁴ While it is true that some gains have been made as international institutions formally recognize sexual violence as a crime and even nominally include sexual violence charges within the indictments, institutional efforts remain fraught with problems that prevent these mechanisms from comprehensively and sensitively rendering justice to female victims.

Reversing this legacy remains the obligation of every transitional justice institution charged with examining or prosecuting crimes committed during conflict. International prosecutors must ensure that they deliver inclusive and non-discriminatory justice. The rape of women in wartime is a deliberate act of dominance and violence that targets women's sexuality and gender roles. Rape and sexual violence are regularly used as weapons of war to

4. The widespread evidence that sexual violence was used as a weapon of conflict in the former Yugoslavia and during the genocide in Rwanda has led to groundbreaking judgments by the two ad hoc tribunals set up by the U.N. to convict those responsible for crimes against humanity, genocide, and war crimes. In 1998, the ICTR handed down a landmark judgment in the case of *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998). It was the first conviction for genocide by an international court, the first time an international court punished sexual violence in an internal conflict, and the first time that rape was found to be an act of genocide. In a second significant development, the International Criminal Tribunal for the former Yugoslavia ("ICTY") convicted three men for rape, torture, and enslavement as crimes against humanity in the 2002 *Foca* case. *Prosecutor v. Kunarac, Kovac & Vukovic*, Case Nos. IT-96-23 & IT-96-23/1-A, Judgment (June 12, 2002). It was the first indictment by an international tribunal solely for crimes of sexual violence against women and the first conviction by the ICTY for rape and enslavement as crimes against humanity. For further discussion of the development of international jurisprudence on sexual violence, see Katherine Hall-Martinez & Barbara Bedont, *Ending Impunity for Gender Crimes Under the International Criminal Court*, 6 BROWN J. WORLD AFF. 65 (1999).

further the military and political goals of a conflict.⁵ Visibility and accountability for gender crimes through international justice mechanisms can advance the cause of justice for women.

The Truth and Reconciliation Commission and the Special Court for Sierra Leone play a role in the reconstruction efforts in Sierra Leone. These two international justice mechanisms have existed concurrently since the end of the war in 2002⁶: the TRC functioned for two years, from mid-2002 to 2004, and the Special Court, established with a three-year mandate, began its operations in August 2002. Following hearings and the publication of the TRC's report and recommendations in 2004, its work drew to a close. Concomitantly, the Special Court began work on approximately a dozen cases against those who bore the greatest responsibility for the atrocities committed.

These two institutions offer a crucial opportunity to examine and record fully the crimes of sexual violence inflicted against Sierra Leonean women during the conflict. Although sexual violence constitutes a crime in Sierra Leone, only the rape of a virgin is generally perceived as a serious crime. The rape of a married woman or a non-virgin is often not considered a crime at all; many people believe the woman must have consented. Moreover, the decimation of Sierra Leone's already inefficient law enforcement and justice systems during the war created a climate of impunity that persists today, allowing perpetrators of sexual violence (as well as of other crimes) to escape justice. Finally, the dearth of attention to conflict-related sexual violence means that few assistance programs have been established for women and girls who were subjected to rape and sexual slavery during the civil war. Women in Sierra Leone who have survived these atrocities continue to live with the trauma and injuries of the violence inflicted on them. Impunity remains the order of the day for the perpetrators of these crimes.⁷

Both the TRC commissioners and the Prosecutor's Office at the Special Court deserve credit for their careful and sensitive efforts to seek some justice and accountability—however limited—for the thousands of rape victims in Sierra Leone. While it is too early to know the precise impact of their efforts, it is an important first step that both institutions have made women's experiences visible and that they have taken concrete steps to protect rape victims. This Article represents a modest initial effort to examine these institutions as a model of best practice for similar international justice mechanisms.

5. See generally HUMAN RIGHTS WATCH, *THE HUMAN RIGHTS WATCH GLOBAL REPORT ON WOMEN'S HUMAN RIGHTS* (1995).

6. In November 2000, the government of Sierra Leone and the Revolutionary United Front ("RUF") signed a ceasefire agreement, but the armed conflict was only officially declared over in a public ceremony on January 18, 2002. For a transcript of the public declaration, see Ahmad Tejan Kabbah, *Address at the Ceremony Marking the Conclusion of Disarmament and the Destruction of Weapons* (Jan. 18, 2002), available at <http://www.sierra-leone.org/kabbah011802.html>.

7. HUMAN RIGHTS WATCH, *supra* note 3, at 5.

II. SEXUAL VIOLENCE DURING THE CONFLICT⁸

In order to grasp the importance of the work of the international justice mechanisms in Sierra Leone, we must first comprehend the pervasiveness and brutal treatment of women during the war. This Part portrays the widespread nature of the egregious crimes committed against women during the conflict and describes the background of those responsible for committing sexual violence.

Indiscriminate killings, amputations, rapes, and abductions characterized Sierra Leone's decade-long conflict. The crimes of sexual violence committed against thousands of women and girls were extraordinarily brutal and were often accompanied by other egregious abuses of the victim and her family. Women of all ages were raped, including those who were pregnant at the time. Many women died as a consequence of the violence of their rapes while others miscarried. Many will suffer lifelong health problems as a consequence of the violence.⁹

In addition, violence against women was employed to attack their loved ones and their children. Family members were often forced to watch the rape of their wives, mothers, or daughters as a means of further terrorizing and subjugating the women and their communities. Young women and girls who the rebels thought were virgins were particularly targeted for rape and sexual slavery; many of the younger victims did not survive. Adult women were raped so violently that they sometimes bled to death or suffered irreparable tearing in the genital area, causing long-term incontinence and severe infections. Numerous pregnant women had their bellies slit open by rebels who placed bets on the sex of the fetus.¹⁰

Rebels abducted thousands of women and girls and subjected them to sexual slavery, forcibly conscripted them into the rebel forces, or "married" them to members of the rebel force. The women were held for prolonged periods of time. Aside from sexually servicing rebel fighters, "civilian" abductees (those not conscripted) were also required to perform forced labor, such as cooking, washing, and portering (carrying ammunition and other looted items) for the rebels. Some of these women had children fathered by rebels.¹¹

Terrorized by their captors and by the coercive environment, the women and girls often felt powerless to escape. Some rebels made escape more difficult by carving the name of their faction into the chests of the abducted women and girls. If pro-government forces discovered these marked women and girls, they accused them of aiding the rebels and often killed them. Even for women who were able to escape, it was easy to be recaptured, sometimes by a different unit or by a different rebel faction. An unknown number of women

8. This Part is largely drawn from HUMAN RIGHTS WATCH, *id.*

9. *Id.* at 3.

10. *Id.*

11. *Id.*

and girls still remain with their rebel “husbands,” although the war was declared over on January 18, 2002.¹²

*A. The Prevalence of Gender Violence in the Conflict*¹³

In 2001, Physicians for Human Rights (“PHR”) conducted a population-based assessment of the prevalence and impact of sexual violence and other human rights abuses among internally displaced persons (“IDPs”) in Sierra Leone. PHR found that internally displaced women and girls in Sierra Leone suffered an extraordinary level of rape, sexual violence, and other gross human rights violations during the civil war, with half of those who said they came into contact with the rebel Revolutionary United Front (“RUF”) forces reporting sexual violence. Approximately one of every eight household members (13%) reported one or more incidents of war-related sexual violence. Nine percent of respondents (94/991) reported war-related sexual violence.

Participants reporting war-related sexual violence recounted the following types of abuses: rape (89%), being forced to undress/stripped of clothing (37%), gang rape (33%), abduction (33%), molestation (14%), sexual slavery (15%), forced marriage (9%), and insertion of foreign objects into the genital opening or anus (4%). In addition, 23% of the women who experienced sexual violence reported being pregnant at the time of the attack, with an average gestation of three months.

When these ratios are calculated using the total female population of IDPs in Sierra Leone, it becomes clear that 50,000 to 64,000 female IDPs may have suffered sexual violence. If we add non-war-related sexual violence committed against females who are not internally displaced (assuming a nine percent prevalence rate), we find that as many as 215,000 to 257,000 women and girls in Sierra Leone may have been affected by sexual violence.

B. The Perpetrators

The main perpetrators of sexual violence, including sexual slavery, were the rebel forces of the RUF, the Armed Forces Revolutionary Council (“AFRC”), and the West Side Boys, a splinter group of the AFRC. Human Rights Watch has documented over 300 cases of sexual violence by the rebels; countless other incidents have not, and may never be, documented. After launching a rebellion from Liberia in March 1991, triggering the war, the RUF perpetrated widespread and systematic sexual violence across the country. The AFRC, a group of disaffected Sierra Leone Army (“SLA”) soldiers who overthrew the elected government of President Ahmad Tejan Kabbah in

12. *Id.*

13. PHYSICIANS FOR HUMAN RIGHTS, WAR-RELATED SEXUAL VIOLENCE IN SIERRA LEONE: A POPULATION BASED ASSESSMENT (2002), available at http://www.phrusa.org/research/sierra_leone/report.html (last visited Feb. 28, 2005). The statistics reported are taken from pages 1–3 of this PHR Assessment.

May 1997, also subjected thousands of women and girls to sexual violence, including sexual slavery.¹⁴

After the signing of the peace agreement in Lomé, Togo in July 1999,¹⁵ sexual violence, including sexual slavery, continued unabated in RUF-controlled areas and was also perpetrated by the West Side Boys, who operated outside of the capital of Freetown. Fighting broke out again—with consequent increases in the number of human rights violations—in May 2000. Finally, in mid-2001, relative peace was re-established with the aid of the United Nations and Great Britain. The prevalence of sexual violence peaked during active military operations and when the rebels were on patrol. Even in times of relative peace, however, the rebels continued to commit sexual violence against the thousands of women and girls they had abducted and subjected to sexual slavery.¹⁶

A limited number of cases of sexual violence by pro-government forces, the SLA, and the militia known as Civil Defense Forces (“CDF”) (groups of traditional hunters and young men whom the government called upon to defend their home areas), have been documented by Human Rights Watch.¹⁷ Human Rights Watch did not document any cases of sexual violence by the SLA prior to 1997. This may in part stem from the fact that many survivors would have found it difficult to distinguish between rebel and government soldiers, as the latter frequently colluded with, and/or disguised themselves as, RUF forces.

Sexual violence was committed less frequently by the CDF than by the rebel groups, perhaps due to the CDF’s internal rules forbidding sexual intercourse before going to battle due to a belief that sexual abstinence preserves the power and potency of warriors. Some of this internal discipline, however, was lost as the CDF moved away from their native areas and traditional leaders and gained more responsibility for national security. Human Rights Watch has documented several cases of rape by the largest and most powerful CDF group, the Kamajors, who operated predominantly in the South and East.

There were also several cases of sexual violence by peacekeepers with the U.N. Mission in Sierra Leone (“UNAMSIL”), including the rape of a twelve-year-old girl in Bo by a soldier of the Guinean contingent and the gang rape of a woman by two Ukrainian soldiers near Kenema. Reports of rape by peacekeepers with the Economic Community of West African States Monitoring Group (“ECOMOG”), the majority of whom were Nigerian and who were deployed at an earlier stage in the war, were rare. Both ECOMOG and

14. HUMAN RIGHTS WATCH, *supra* note 3, at 3.

15. See Lomé Accord, July 7, 1999, available at <http://www.sc-sl.org/lomeaccord.html>.

16. HUMAN RIGHTS WATCH, *supra* note 3, at 3.

17. *Id.*

UNAMSIL peacekeepers, however, have sexually exploited women—including soliciting child prostitutes—while deployed in Sierra Leone.¹⁸

III. THE TRUTH AND RECONCILIATION COMMISSION

The TRC, established through an act of parliament in February 2000, was mandated by the 1999 Lomé Peace Accord to create an impartial historical record of human rights abuses that occurred from 1991 to 1999 during the war in Sierra Leone.¹⁹ Since the Lomé Peace Accord provided a blanket amnesty to all combatants, the purpose of the TRC was to provide a justice mechanism, albeit limited, that would promote truth-telling.

The Truth and Reconciliation Commission Act describes the TRC as an independent institution designed to “address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.”²⁰ The Commission was tasked with the following responsibilities:

[T]o investigate and report on the causes, nature and extent of the violations and abuses . . . to the fullest degree possible, including their antecedents, the context in which the violations and abuses occurred, the question of whether those violations and abuses were the result of deliberate planning, policy or authorisation by any government, group or individual, and the role of both internal and external factors in the conflict . . . to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators.²¹

Modeled after the Truth Commission in South Africa, the TRC began its work in late 2002, holding hearings around the country to compile a record of abuses committed during the war and to prepare a submission to the Sierra Leonean government and to the U.N. Security Council. The TRC was composed of four Sierra Leonean nationals and three international commissioners, along with a small staff.²² The TRC mandate specifically emphasized that the seven-member commission should “work to help restore the human

18. *Id.* at 4.

19. The Truth and Reconciliation Commission Act (2000) (Sierra Leone), *available at* http://www.usip.org/library/tc/doc/charters/tc_sierra_leone_02102000.html [hereinafter TRC Act].

20. *Id.* pt. III (6)(1).

21. *Id.* pt. III (6)(2)(a)(b).

22. For a list of the TRC commissioners and staff, see Truth and Reconciliation Commission, Professional Staff and Commissioners, *available at* <http://www.sierra-leone.org/trc-biographies.html> (last visited Feb. 10, 2005). The commissioners were Bishop Joseph C. Humper, Chair (Sierra Leone), Laura Marcus-Jones, Deputy Chair (Sierra Leone), John Kamara (Sierra Leone), Sylvanus Tortu (Sierra Leone), Ajaaratou Satang Jow (Gambia), Yasmin Sooka (South Africa), and William Schabas (Canada).

dignity of victims and promote reconciliation,” and that it should pay “special attention to the subject of sexual abuses.”²³

For one year, the Commission recorded written statements from a cross-section of people, including victims, perpetrators, and witnesses to the events. They also held hearings around the country where victims, perpetrators, and witnesses came forward to recount what had occurred.

A. *Political Will To Address Gender Crimes*

The TRC took its responsibility to address gender crimes seriously. The commissioners and their staff varied widely in terms of their sensitization to, and experience in, dealing with this issue. Some commissioners had previously worked on women’s rights issues while others held traditional views on women’s role in society and had no previous exposure to or experience in dealing with rape victims. On occasion, this lack of experience was evidenced during the hearings in the form of questions framed insensitively by some of the male commissioners.

The responsibility for ensuring that the TRC fulfilled its mandate to address sexual abuses therefore fell on select commissioners and senior staff members. That they did this willingly and ably underscores the importance and need for the appointment of TRC commissioners and senior staff with a prior commitment to addressing, and experience in dealing with, gender crimes. In particular, Commissioner Jow had previously worked with women’s nongovernmental groups in her home country of Gambia and Commissioner Sooka had served on the South African TRC and had helped to organize the gender hearings of that commission.²⁴

B. *Gender Training for Commissioners and Staff*

In April 2003, before the dedicated hearings on gender crimes, the commissioners and their staff underwent a two-day training facilitated by the U.N. Fund for Women (“UNIFEM”) and the Urgent Action Fund. The training focused on, among other relevant topics, the international law pertaining to sexual violence, methodology for interviewing rape victims, and issues relating to the support and protection of women witnesses. Given the spectrum of experience among the commissioners, portions of the training at any given time must have seemed either too simplistic or too complex depending on the commissioner.²⁵ However, attendance throughout the training by the commissioners and relevant staff sent a strong message within the institution that the issue of gender violence was an institutional priority.

23. TRC Act, *supra* note 19, pt. III (6)(2)(b).

24. Credit also goes to senior staff members Ozonnia Ojielo, chief of information management, and Martien Schotsmans, chief of legal and reconciliation, as well as Nwanneakolam Vwede-Obahor, TRC researcher.

25. Author was one of the UNIFEM trainers and present at the gender training along with Florence Butegwa (of UNIFEM) and Betty Murungi (of the Urgent Action Fund), Sierra Leone, April 2003.

C. *Creating an Enabling Environment at the TRC for Rape Victims*

In advance of the dedicated special hearings on women, the TRC commissioners and their staff took care to ensure that women could come forward to testify in comfort and with privacy. Originally, the TRC had decided to hear all rape testimonies *in camera*. However, this would have further shrouded the experiences of women because their voices would not have been heard by the rest of the nation. An important goal of gender justice is to shatter the silence and stigma surrounding rape. After deliberation following the gender training, rape victims who wanted to speak before the commission could choose to do so in three ways: they could testify *in camera* before the commission; they could speak at the public hearings where their testimony would be heard, but their identity would be shielded by a screen; or they could speak openly and in front of the audience at the public hearings. These options empowered rape victims to choose how public or private to make their testimony—an important consideration given the stigma attached to being a rape victim.

As an added consideration in making victims more comfortable, only female commissioners questioned rape victims. While, ideally, all commissioners should be trained and able to ask such questions empathetically, consideration was given to the possibility that a rape victim may feel more comfortable recounting her testimony to another female. If a witness at a hearing not specifically designated for sexual violence began to testify about rape and no female commissioner was present, the witness would be notified that she could give her testimony at another time to a female commissioner if she preferred. The TRC commissioners also visited the YMCA hall in Freetown with UNIFEM to examine the physical space and to prepare the space for the special hearings on gender violence. The TRC gave careful consideration to providing a comfortable, private space for women before and after they testified, protecting their identity as they entered and left the hall, and ensuring their privacy by shielding them with a screen throughout their testimony. Additionally, the TRC contacted the local Red Cross and had a nurse and ambulance available throughout the hearings in case a witness became emotionally distraught.²⁶

D. *Outreach to Women's Organizations*

The TRC also attempted to reach out to women's rights nongovernmental organizations to encourage them to participate in the hearings, either by giving testimony or by providing assistance and support during the dedicated hearings. Because the TRC staff was overwhelmed and under-funded, it was unable to follow up consistently with the women's organizations or to pay them for their assistance. UNIFEM and the Urgent Action Fund again

26. Author was present at the hearings, Freetown, Sierra Leone, May 22, 2003.

provided support, holding a one-day workshop for the women's groups to discuss the TRC's processes, to assist the groups in drafting their thematic submissions, and to identify other ways in which they could assist the TRC. As a result, a number of women's groups provided written submissions and gave oral testimony at the hearings, in addition to organizing the women's march preceding the session. The TRC invited the Ministry of Social Welfare, Gender, and Children's Affairs to open the dedicated session and the National Police sent female members of their Family Support Units to listen to the hearings.

E. Dedicated Special Hearings on Women

Sierra Leonean women's groups spoke positively about the special hearings on the situation of women in Sierra Leone. The TRC later reported that the hearings on gender violence had garnered the largest attendance of all the TRC sessions. Rape victims who testified before the TRC appeared to have few complaints about their experience testifying.²⁷

F. A Section on Women in the Final TRC Report

In October 2004, the TRC submitted a 1500-page report with a 3500-page annex to the government.²⁸ The report addressed various aspects of the war, including its historical antecedents and causes; the conflict itself and the human rights violations that occurred; the role of external actors and circumstances in fuelling the war; the impact of warfare on various groups, particularly women, children, and youths; the relationship between the TRC and the Special Court for Sierra Leone; and the initiatives to help Sierra Leone reconcile with its past, including the proposed reparations program and the National Vision for Sierra Leone, a still-inchoate project that was the direct offshoot of the TRC.²⁹ The report also included detailed recommendations that the government and international actors can use to address the needs of the war-affected population.

Specifically, the TRC report contained a section on "Women and Armed Conflict" dedicated to highlighting the gender crimes committed during the war and to providing recommendations to address the needs of women. The overview of the TRC report concluded in its summary of the section on "Women and Armed Conflict":

27. Interviews with Sierra Leonean Women's Groups, in Freetown, Sierra Leone (May 2003).

28. See TRC, SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION FINAL REPORT (2004), overview available at <http://www.ictj.org/downloads/SL.TRC.overview.pdf> (last visited Feb. 28, 2005). See also public chapters of the TRC Final Report (on file with the Harvard Human Rights Journal).

29. *Id.* at 14 (describing the National Vision as an effort in which the TRC commissioners looked to the past to tell the story of the civil war, and looked to the future to describe the kind of post-conflict society that they and Sierra Leone's citizenry envisioned).

Women and girls became targets for abuse in the brutal conflict in Sierra Leone. They suffered abductions and exploitation at the hands of their abduct[ors]. Their vulnerability was exploited in order to dehumanize them. Women and girls were raped, forced into sexual slavery and endured acts of sexual violence. Many suffered mutilations, torture and a host of other cruel and inhumane acts.

The chapter titled "Women and the Armed Conflict" sets out the violations suffered by women and considers the current position of women in Sierra Leone. The Commission makes specific recommendations to redress the marginalization of women in the political and social life of Sierra Leone, including a minimum percentage of women to be represented in public office and as candidates in national and local government elections.³⁰

The Sierra Leone TRC commissioners and senior staff are to be commended for comprehensively including sexual violence against women in their documentation of the civil war, for taking steps to train themselves and their staff on this issue, and for ensuring that the hearings were conducted with support for, and sensitivity to, the needs of rape victims. The fact that the commissioners' efforts were constrained by logistical, financial, timing, and staffing limitations is an even greater testament to their efforts.

IV. THE SPECIAL COURT FOR SIERRA LEONE

The Special Court, which commenced operations in 2002, is an independent tribunal established jointly by the U.N. and the Government of Sierra Leone.³¹ It is mandated to prosecute crimes against humanity, war crimes, and other serious violations of international humanitarian law, and to bring to justice those who bear the greatest responsibility for atrocities committed in Sierra Leone during the war.³² The Special Court has a temporal jurisdiction limiting its mandate to events after November 30, 1996.³³ Although the conflict started in 1991, interested parties agreed that it would be too great a burden on the Court to expand the temporal mandate. The Court is expected to prosecute for command responsibility approximately a dozen of the top leaders from the various factions.

In an important move for international justice and accountability, the U.N. refused to recognize national amnesties for crimes against humanity and war crimes. Although the 1999 Lomé Peace Agreement granted a general amnesty

30. *Id.* at 7.

31. See S.C. Res. 1315, U.N. SCOR, 55th Sess., U.N. Doc S/RES/1315 (2000) (regarding the establishment of a Special Court for Sierra Leone).

32. Statute of the Special Court for Sierra Leone, art. 1, available at <http://www.sc-sl.org/scsl-statute.html> [hereinafter Special Court Statute].

33. *Id.*

to all combatants, the U.N. determined that the general amnesty did not apply to accountability for crimes under international law.³⁴

Touted as a leaner, quicker, and more efficient institution than the two ad hoc tribunals for the former Yugoslavia and Rwanda, the Special Court is a hybrid consisting of both international and Sierra Leonean staff members and differs to some extent from the two ad hoc tribunals. The Sierra Leonean Court is based on a treaty agreement between the U.N. and the Sierra Leonean government. Unlike the ad hoc tribunals, it cannot assert primacy over national courts of other states nor can it mandate the handover of accused individuals located in another state.

Staff at the Special Court, including the judges, prosecutors, and investigators, is composed of both Sierra Leoneans and international staffers. Two Sierra Leonean judges sit alongside five U.N.-appointed foreign judges.³⁵ Unlike the ad hoc tribunals, which are funded by the U.N. budget, the Special Court is funded on a voluntary basis by donor countries and functions on a much smaller budget with a shorter timeline (U.S. \$57 million was originally budgeted for its three-year existence).³⁶ The involvement of Sierra Leoneans in this hybrid justice institution and the fact that it is seated in Sierra Leone should theoretically make it more accessible to Sierra Leoneans, although more could still be done to achieve this important goal of international justice.³⁷

A. Gender-Specific Mandate

The statute of the Special Court explicitly refers to crimes of sexual violence. The statute, in listing the crimes against humanity that can be prosecuted by the Court, includes “rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence” when committed “as part of a widespread or systematic attack” against civilians. The Court also expressly defines “rape, enforced prostitution and any form of indecent assault” as violations of humanitarian law as enshrined in the Geneva Conventions.³⁸

34. The rejection at the international level of the amnesty provision in the Sierra Leone peace accord was a significant gain against national amnesties that allow impunity for gross human rights violations. See AMNESTY INTERNATIONAL, SPECIAL COURT FOR SIERRA LEONE: DENIAL OF RIGHT TO APPEAL AND PROHIBITION OF AMNESTIES FOR CRIMES UNDER INTERNATIONAL LAW, AI Index AFR 51/012/2003 (2003).

35. Special Court Statute, *supra* note 32, art. 12(1).

36. By contrast, the ICTR and ICTY each cost approximately U.S. \$100 million per year. See *Eleventh Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, U.N. GAOR, 59th Sess., Provisional Agenda Item 52, U.N. Doc A/59/215 (2004); ICTR, *General Information on the ICTR*, at <http://www.ictt.org/ENGLISH/geninfo/index.htm> (last visited Feb. 28, 2005).

37. This differs from the ad hoc tribunals, which have few Rwandan or Yugoslav nationals employed at the professional and senior levels and are located far from the scene of the crimes; their inaccessibility to the victim populations impairs their impact and relevance for the victims.

38. Special Court Statute, *supra* note 32, arts. 2, 3.

The Court is also mandated to consider gender-specific crimes that fall under Sierra Leonean law, but these provisions do not meet international standards for the definition of, and punishment for, crimes and have therefore not been applied. The statute gives the Court the power to prosecute “[o]ffenses relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926,” including “abusing a girl under 13 years of age,” “abusing a girl between 13 and 14 years of age,” and “abduction of a girl for immoral purposes.”³⁹

The statute also stipulates that given “the nature of the crimes committed and the particular sensitivities of girls, young women, and children [sic] victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.”⁴⁰

B. Prosecutor Brings Rape Charges Against Indictees

As of November 2004, the Prosecutor had indicted thirteen persons associated with every faction on various charges of war crimes, crimes against humanity, and other serious violations of international humanitarian law. Nine indictees from the government-backed CDF and the rebel forces, the RUF and the AFRC, are currently in the custody of the Court.⁴¹ Of the four indictees not in custody, two are dead,⁴² one is believed to be dead, and one, former Liberian president Charles Taylor, is in exile in Nigeria.⁴³ Trials began in 2004 and are expected to conclude by the end of 2006.

The charges against these indictees include command responsibility for murder, rape, extermination, acts of terror, enslavement, looting and burning, sexual slavery, conscription of children into an armed force, and attacks on U.N. peacekeepers and humanitarian workers, among others. All of the

39. *Id.* art. 5(a).

40. *Id.* art. 15(4).

41. Those in custody are from both the government-backed CDF and the rebel forces (the RUF and the AFRC). From the CDF: Sam Hinga Norman (former Deputy Defense Minister and later Minister of Internal Affairs, alleged National Coordinator of CDF), Moinina Fofana (alleged National Director of War for CDF), and Allieu Kondewa (alleged High Priest of CDF). From the RUF: Issa Hassan Sesay (alleged interim leader of RUF), Morris Kallon (alleged former commander of RUF) and Augustine Gbao (alleged senior officer and commander of RUF). From the AFRC: Alex Tamba Brima (alleged former official of AFRC), Brima Bazzy Kamara (alleged senior member of AFRC) and Santigie Borbor Kanu (alleged senior member of AFRC). For listing of indictments, see Special Court for Sierra Leone, *Cases*, at <http://www.sc-sl.org> (last visited Feb. 28, 2005).

42. Foday Sankoh, former leader of the RUF, died of natural causes in July 2003, while in U.N. custody. See Press Release, Special Court for Sierra Leone, Registrar Announces the Death of Foday Sankoh (July 30, 2003), available at <http://www.sc-sl.org/Press/pressrelease-073003.html>. Johnny Paul Koroma, former leader of the AFRC, was reported dead in 2003. See *Sierra Leone Death Report*, N.Y. TIMES, June 16, 2003, at A2. Sam “Mosquito” Bockarie, battlefield commander of the RUF, was killed in 2003 fighting in Liberia. See Douglas Farah, *Guerrilla Boss Reported Killed in Liberia*, WASH. POST, May 7, 2003, at A28.

43. See Douglas Farah, *Taylor Put on Interpol List of World's Most Wanted*, WASH. POST, Dec. 5, 2003, at A18.

cases, except for the three pro-government militia leaders, include sexual violence charges. Having later unearthed evidence of sexual violence crimes by the CDF leaders, the Prosecutor's Office brought a request to amend the charges to add rape and sexual slavery charges. The Court, however, denied the request to add rape charges in the cases of the three CDF leaders, citing prejudice to the defense due to the late notice.⁴⁴

C. Political Will and a Prosecutorial Strategy that Integrated Rape

Lest it be said that such crimes are too difficult to investigate or prosecute,⁴⁵ the experience of the Special Court illustrates that sexual crimes can be effectively addressed if the appropriate political will exists. Despite having significantly fewer resources and staff at his disposal than the ad hoc tribunals possess, Prosecutor David Crane has made a concerted effort to deliver justice to Sierra Leonean victims of sexual violence. He spearheaded a prosecution strategy that incorporated sexual violence crimes from the outset and which was consistently followed by the staff on a daily basis. The work of the Special Court has repeatedly demonstrated that, even with extreme constraints, the political will of the Prosecutor and his senior staff can shift the balance toward justice for victims of sexual crimes.

The efforts in Sierra Leone contrast sharply with the experience of the International Criminal Tribunal for Rwanda ("ICTR"), where ten years after the genocide, international justice for Rwandan women remains unrealized largely because of a lack of political will in the Prosecutor's Office to investigate comprehensively or to reflect fully in the indictments the widespread sexual violence that occurred during the genocide. There have been some commendable efforts made at the ICTR at various times, but they have not been coordinated or consistently pursued. Despite the repeated rhetoric expressing a commitment to prosecuting rape, the Prosecutor's Office at the ICTR has never articulated and pursued a consistent prosecution strategy identifying how rape fit into the policies of the architects of the genocide nor has it consistently employed effective investigative techniques to document fully crimes committed against women.⁴⁶ The four prosecutors who have held this office since 1994 have adopted varying approaches to this issue. As a result, throughout the ten years of the ICTR's existence, there has

44. Prosecutor v. Norman, Fofana & Kondewa, Case No. SCSL-04-14-PT, Decision on Prosecution Request for Leave to Amend the Indictment (May 20, 2004). The appeal was denied in early 2005.

45. See, e.g., Kelly D. Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law*, 21 BERKELEY J. INT'L L. 288, 346 (noting that "[s]ex crimes are undoubtedly some of the most difficult to investigate and prosecute.").

46. In a 1996 Human Rights Watch/Fédération Internationale des Ligues des Droits de l'Homme interview, Judge Honoré Rakotomanana, the Deputy Prosecutor of the ICTR at the time, stated that "the reason they have not collected rape testimonies is because African women don't want to talk about rape We haven't received any real complaints. It's rare in investigations that women refer to rape." Quoted in BINAIFER NOWROJEE, HUMAN RIGHTS WATCH, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH (1996), available at http://www.hrw.org/reports/1996/Rwanda.htm#P828_231328 (last visited Feb. 28, 2005).

never been a unified work plan pursued consistently by all investigators and trial lawyers in crafting their cases on this issue. The squandered opportunities, periods of neglect, and repeated mistakes have caused major setbacks to effective investigations and prosecutions of sexual violence crimes. The Prosecutor's Office at the Special Court for Sierra Leone has avoided making similar mistakes.

D. Effective Investigative and Prosecutorial Methodology

With only ten investigators on his team, Prosecutor Crane dedicated two dynamic and experienced female investigators to sexual assault investigations (an estimated twenty percent of his investigations team as opposed to, for example, the ICTR, which has never dedicated more than one to two percent of its investigative team of approximately 100 persons to this issue).⁴⁷ Having two experienced female investigators on staff ensured the Prosecutor's interviewing methodology and environment were conducive to making rape victims feel comfortable enough to recount their experiences.⁴⁸ Given the stigma attached to rape, failing to use sensitive interviewing techniques can prevent an interviewer from establishing the trust necessary to elicit rape testimonies. Moreover, all of the indictments against the rebel factions included sexual violence charges and were brought as original indictments, rather than belatedly through an amendment (which has been the pattern at the ICTR). However, an effort by the Prosecutor's Office to add sexual violence charges to the CDF cases was denied by the Special Court in May 2004; the Trial Chamber's decision was confirmed on appeal in early 2005.⁴⁹

At the prosecutorial level, the Chief of Prosecutions Luc Cote has followed through to ensure inclusion of this evidence in the courtroom and has dedicated a trial attorney to the prosecution plan for the sexual violence crimes. Crane's office is not only bringing rape charges, but is also planning to prosecute the full range of sexual violence crimes that were committed and to set out legal arguments that seek to broaden and expand existing international law.

E. Seeking To Expand the Jurisprudence

In seeking to prosecute gender crimes, Prosecutor Crane has demonstrated his commitment to ensuring that the many different forms of gender-based violence are prosecuted. Again, by contrast to the ICTR, where the Prosecutor has brought only the narrow charge of rape for sex crimes, the Special

47. Interviews with ICTR Staff in Kigali, Rwanda and Arusha, Tanz. (1996–2004); Interviews with Special Court staff, in Freetown, Sierra Leone (2002–2004).

48. The two female investigators were Virginia Chitanda of Zimbabwe and Louise Taylor of Canada.

49. See *Norman, Fofana & Kondewa*, Case No. SCSL-04-14-PT.

Court's Prosecutor has brought charges not only for rape but also for sexual slavery.⁵⁰

Additionally, Prosecutor Crane has attempted to expand international jurisprudence by bringing a new charge of "forced marriage" as a crime against humanity. During the Sierra Leone war, it was widespread practice by combatants to abduct women as "wives," forcing them to have sex and bear children. Arguing the case before the Court, Crane emphasized that this was not just rape because the women, often known as "bush wives," were held for so long under the threat of harm or death and were forced to clean, cook, and porter for their combatant "husbands."⁵¹ The Prosecutor has creatively used the section of "other inhumane acts" under crimes against humanity—a catch-all category meant to encompass acts that are of similar gravity and seriousness to the enumerated crimes—to expand legal recognition for the types of sexual violence that women endure in conflict.⁵²

In May 2004, the Trial Chamber of the Special Court approved the addition of "forced marriage" to the counts contained in an indictment against six defendants accused of heading the former rebel AFRC and RUF. The Trial Chamber's decision marks the first time that an international court will recognize "forced marriage" as a possible category of "other inhumane acts" within the legal category of crimes against humanity.⁵³ Whether this new charge will ultimately further the jurisprudence on gender crimes remains to

50. "The RUF (Sesay, Kallon, Gbao) and AFRC (Brima, Kamara, Kanu) indictees each face an eighteen-count indictment for crimes against humanity," including "sexual slavery and any other form of sexual violence." Special Court for Sierra Leone, *Summary of Charges Against the RUF Accused*, at <http://www.scs-l.org/RUFcasesummary.html> (last visited Feb. 28, 2005).

51. On May 17, 2004, six indictees were arraigned on new charges of "other inhumane acts" relating to forced marriage. Prosecutor Crane stated that "[t]hese additional charges of crimes against humanity reflect the fact that women and girls suffered greatly during the war, including through widespread forced marriage These new charges recognise another way that women and girls suffered during the conflict." Press Release, Special Court for Sierra Leone, Prosecutor Welcomes Arraignment of RUF and AFRC Indictees on Charges Related to Forced Marriage (May 17, 2004), available at <http://www.scs-l.org/prosecutor-051704.html>. See also Angela Stephens, *Forced Marriage Pursued as Crime in Sierra Leone Tribunal Cases*, U.N. WIRE, Apr. 16, 2004, at http://www.unwire.org/UNWire/20040416/449_22909.asp (quoting Prosecutor Crane's speech at Georgetown University Law Center, saying that women "were herded like cattle from Freetown in 1999 and made to have children Even now, an unknown number of women remain with their rebel 'husbands.'").

52. Special Court Statute, *supra* note 32, art. 2(i). See, e.g., Prosecutor v. Kayishema & Ruzindana, Case No. ICTR 95-1-T, Judgment, ¶ 583 (May 21, 1999) (stating that "[f]or the accused to be found guilty of crimes against humanity for other inhumane acts they must, *inter alia*, commit an act of similar gravity and seriousness to the other enumerated crimes, with the intention to cause the other inhumane act The crime of other inhumane acts is not a lesser-included offence of the other enumerated crimes.").

53. The ruling was decided by a 2-1 majority comprising Judge Benjamin Mutanga Itoe and Judge Pierre Boutet. The majority found that since the motions were brought at a stage of the proceedings prior to trial, the new charge would not prejudice the rights of the accused. The judges ruled that the new counts were based on the same evidence as other existing charges related to gender crimes and so would not give undue advantage to the prosecution. Judge Bankole Thompson, Presiding Judge of the Chamber, dissented from both decisions. Judge Thompson found that the new charges were prejudicial to the rights of the accused to a fair and speedy trial, given what he said was the prosecution's unjustifiable delay of eight months between the discovery of the evidence and the motion to amend the indictment. See Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-PT, Decision on Prosecution Request for Leave to Amend the Indictment (May 6, 2004); *id.* at Dissenting Opinion of Judge Bankole Thompson.

be seen. How “forced marriage” will be distinguished from “sexual slavery” has yet to be argued in the courtroom.⁵⁴ Some of the elements that appear to be present in arguing a crime of forced marriage include sexual slavery in a marital-type union where the woman is labeled as “wife,” but where the conjugal status is imposed through coercion or threat. Other considerations include the diminished capacity of the victim to leave the perpetrator “husband,” perhaps due to a number of reasons such as forcible impregnation; physical scarring or branding by the perpetrator with the mark of the militia group as a sign of ownership; the fact that the victim has been with the perpetrator for so protracted a period that she is unable to adjust and reintegrate into her community; or the fact that the “wife” will bear the stigma of having been “married” to a rebel. After the conflict, the victim is more likely to remain linked to the perpetrator than would be a survivor of sexual slavery, in part because she may be viewed as a collaborator or because she will not be accepted back by her family or her community.

While this initiative is clearly exciting and has the potential to expand international law, there are accompanying pitfalls in this strategy. The Prosecutor and the Court should take care that patriarchal gender stereotypes of a wife’s role, such as household cooking and cleaning, are not inadvertently incorporated into jurisprudence that nominally seeks to make gains for women. Care must also be taken to distinguish this crime from the Sierra Leonean practice of arranged marriage, in which the family chooses the women’s spouse for her. Additionally, in prosecuting sex crimes, the courts must recognize that sexual violence can also be perpetrated against men and that if a crime such as “forced marriage” is defined according to a patriarchal definition of marriage, there may be little flexibility to prosecute a similar situation in which a man is held in sexual servitude.

V. A TRUTH COMMISSION AND A COURT: COMPLEMENTING EFFORTS

Sierra Leone is in the unique position of having benefited from two international transitional justice institutions. Most post-conflict societies do not find themselves in such a situation. While it is currently too soon to know how broad the impact of these two institutions will be, some positive and negative implications are already clear.

The Special Court and its mandate to prosecute and hold accountable the chief perpetrators of the violence in Sierra Leone represent important steps toward dismantling the various military and militia factions. Soon after the Special Court arrested Foday Sankoh of the RUF, the latter effectively dissolved on its own. Similarly, Charles Taylor abandoned the presidency and sought exile in Nigeria shortly after he was indicted by the Special Court.

54. For definitions of sexual slavery under international law, see *Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict*, U.N. ESCOR, Comm’n on Hum. Rts., 50th Sess., Provisional Agenda Item 6, U.N. Doc. E/CN.4/Sub.2/1998/13 (1998).

The proximity of these events to one another implies the judicial, political, and social significance of an international institution that can arrest, try, and punish.

However, international courts play a definably limited role in post-conflict justice, since they prosecute only the chief architects of the violence. Most victims never appear before an international court (and not all would desire to do so), and the overwhelming number of rank-and-file perpetrators are never held accountable by such an institution. Part of the Special Court's strategy has been to limit the number of witnesses who appear before the Court with the aim of having a few very strong witnesses testify in order to speed up the trial process. The adversarial nature of the courtroom also means that witnesses cannot recount their experiences as an uninterrupted narrative and are often subjected to hostile interrogation on cross-examination.

Truth commissions offer a larger number of victims the opportunity to recount the wrongs committed against them in a more comfortable and supportive setting. Testimonies before truth commissions are delivered in a more narrative format without cross-examination.⁵⁵

Many Sierra Leoneans, however, have had some misgivings. Many realistically fear that arrests and prosecutions by the Special Court could upset the fragile peace. There were also fears (which have since been allayed) that victims and perpetrators who testified before the TRC could be subpoenaed or arrested by the Special Court.⁵⁶ However, the Prosecutor of the Special Court made it clear from the outset that he would not use witnesses from the TRC. In fact, the Prosecutor's Office moved so quickly that it had already finished much of its investigation before the TRC began its hearings.

One could argue that the Special Court fundamentally impeded the TRC's ability to investigate by restricting the commissioners' access to the accused in the Court's custody.⁵⁷ The result—from the TRC's perspective—was to fetter the ability of the commissioners to investigate and discover the

55. See PRISCILLA HAYNER, *UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY* (2002). See also MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER MASS GENOCIDE AND VIOLENCE* (1998).

56. Interviews with Sierra Leoneans and others, in Freetown, Sierra Leone and surrounding areas (Jan. 2003–Dec. 2004).

57. Prosecutor v. Sam Hinga Norman, Case No. SCSL-2003-08-PT, Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman JP Against the Decision of His Lordship, Mr. Justice Bankole Thompson, Delivered on October 30, 2003 to Deny the TRC's Request to Hold a Public Hearing with Chief Samuel Hinga Norman JP, ¶ 6 (Nov. 28, 2003). The Court herein stated:

The Office of the Prosecutor, which has substantially more resources than the TRC, has followed a different and independent process of investigation. The Prosecutor even announced that he would not use any evidence collected or heard by the Commission, although this undertaking was made at a time when it was not envisaged that any indictee would testify (and the Prosecutor has made clear that he will not be constrained from using indictee testimony).

Id. See also Special Court for Sierra Leone, *TRC Hearings*, at <http://www.sc-sl.org/TRC-English.html> (last visited Feb. 28, 2005) (noting that Prosecutor Crane stated: "I can assure all Sierra Leoneans who I represent as their prosecutor that I will not, I will not use any information that goes before the Truth and Reconciliation Commission at any part of my investigations").

truth. This tension suggests one challenge in having two judicial mechanisms functioning concurrently, despite generally positive effects of their integration. Another charge leveled at both institutions is that they have remained marginal to the lives of most Sierra Leoneans and that their limited impact on the society as a whole has been disproportionate to the significant amount of money that has been spent on them.

VI. CONCLUSION

Public acknowledgment and condemnation of egregious abuses suffered are important first steps in providing recognition and redress to victims of violence. Speaking the truth and condemning the atrocities committed against a person constitute steps to restore the humanity of the victim and her value in society. This is an especially critical step for a person who has been stripped of everything, including her essential humanity. For rape victims, breaking the silence that surrounds sexual violence is all the more important because of the particular stigma and shame that attaches to rape.

Although a seemingly simple concept, the importance of holding perpetrators responsible for their actions cannot be underestimated as an aspect of healing the victims of, and witnesses to, major atrocity. In his work with survivors of the Nazi concentration camps, Robert Lifton labeled this process the survivor's "struggle for meaning." He observed that concentration camp survivors "seek something beyond economic or social restitution—something closer to acknowledgment for crimes committed against them and punishment of those responsible—in order to reestablish at least the semblance of a moral universe."⁵⁸ Conversely, when society is silent or denies the experiences of a victim of violence, the damage can be significant.

People who have been brutalized in any context need to reach some form of reconciliation with the violence that they have experienced in order to move forward with their lives.⁵⁹ For survivors of mass atrocities, this is particularly resonant. Such survivors have not only been the target of violence themselves but have had to cope simultaneously with the loss of their loved ones and the disintegration of their communities. In a post-conflict situation, social institutions that publicly condemn the brutality of recent atrocities represent one way in which the process of rebuilding can begin for victims. Another positive result is that the TRC and the Special Court have both raised awareness about gender-based violence, thus building consciousness among Sierra Leoneans that rape and other forms of sexual violence are serious crimes. This will hopefully mean that sexual violence crimes will have an enhanced likelihood of being prosecuted in the local judiciary and will perhaps mobilize women to organize around this issue.

58. Robert J. Lifton, *The Concept of the Survivor*, in *SURVIVORS, VICTIMS, AND PERPETRATORS: ESSAYS ON THE NAZI HOLOCAUST* 113, 123 (Joel E. Dimsdale ed., 1980).

59. MINOW, *supra* note 55, at 76. See also Martha Minow, *The Work of Re-Membering: After Genocide and Mass Atrocity*, 23 *FORDHAM INT'L L.J.* 429, 430 (1999).

The documentation of historical truth is another important function of justice; history is constituted not merely by the events of the past but by the scribe's interpretation of those events. In this case, transitional justice mechanisms serve not only as an arbiter of justice but also as a documenter of the narrative of the Sierra Leonean war. Implicit in the mandates of the TRC and the Special Court is the need to establish an accurate public record of the events that occurred. The TRC's and the Special Court's interpretation of those events, through their report and judgments, respectively, will color how future generations view what happened in Sierra Leone and who bears responsibility for crimes, including crimes of sexual violence.

The TRC and the Special Court are both designed to promote the chances of lasting peace in Sierra Leone and to reduce the likelihood of future violence there. Together, their work can help to reverse the legacy of impunity. The fact that both institutions have paid attention to the violence suffered by women is extremely important. The TRC and the Prosecutor's Office at the Special Court have both recognized that sexual violence directed against women represents a crime under international humanitarian and human rights law. Significant efforts have been made by both institutions to acknowledge the suffering of Sierra Leonean women fully and responsibly. Unfortunately, this is a rare exception in international justice institutions. It represents an important step forward toward countering the deeply engrained cultural and legal attitudes that tend to minimize rape and other sexual violence crimes.

It is too soon to know what the long-term impact of the Sierra Leonean experience will be, both for Sierra Leone and for international justice. Whether the Sierra Leone government and the international community will implement the TRC's recommendations and how the judges at the Special Court will write their judgments remains to be seen. The fact, however, that both justice mechanisms have included women's experiences and voices in their work has already advanced the struggle against women's invisibility. A large proportion of the survivors of conflict are women, and if justice is to best serve the living, the international community has a responsibility—indeed, a duty and an obligation—to condemn and prosecute effectively and vigorously those responsible for the mass rapes that occur routinely in conflicts around the world.

The Sierra Leone TRC commissioners, the Special Court Prosecutor, and all of the staff members involved in this work deserve recognition and credit for their efforts to ensure that women are not forgotten by the mechanisms of international justice.

