

Painful peace: Amnesty under the Lomé Peace Agreement in Sierra Leone*

ABDUL TEJAN-COLE

Barrister and Solicitor of the High Court of Sierra Leone, Lecturer in Law University of Sierra Leone and General Secretary of the Sierra Leone Bar Association

1 INTRODUCTION

On the morning of 6 January 1999, rebels of the Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC)¹ used residents of the eastern part of Freetown as a human shield to evade several ECOMOG² checkpoints and attack the capital city. For almost three weeks, the rebels occupied the eastern and central parts of the city until they were expelled by reinforced ECOMOG troops. Within this period, the rebels and all the other fighting forces in Sierra Leone committed the most appalling atrocities.³

On 19 January, 12 people were killed in a church in Wellington.⁴ On 22 January, the rebels massacred over 60 people, Muslims as well as Christians, who had sought refuge at the Rogbalan Mosque, Kissy, in the East End of Freetown.⁵ Entire families were killed and several civilians massacred. Some of those killed were burnt alive in their houses. Those who tried to escape from the conflagration were shot as were those who tried to rescue family members and friends.

The rebels also mutilated over 400 people, including Memuna Mansaray, a two year-old child. Hands, arms and legs were amputated with

* This article is dedicated to the memory of Pierre Perkins Boston, former Solicitor General of the Republic of Sierra Leone and all others brutally murdered during the invasion of 6 January 1999. Responsibility for the defects in this article are entirely my own.

1 The rebel movement led by Corporal Foday Saybana Sankoh. The Front started the war in Sierra Leone on 23 March 1991 when it launched an attack from Liberia on the town of Bomalu in eastern Sierra Leone.

2 The AFRC, as it is popularly referred to, which overthrew the government of Ahmed Tejan Kabbah was formed following the military coup on 25 May 1997. Led by Lt. Col. Johnny Paul Koroma, the Council was in power for nine months until ECOMOG forces forced it out of office. It subsequently joined forces with the RUF to invade Freetown in January 1999. However, this coalition was short-lived.

3 The monitoring force, Economic Community of West Africa (ECOWAS), was made up primarily of Nigerian troops.

4 For a detailed account of the atrocities committed in January 1999, see Human Rights Watch Report -<http://www.hrw.org/reports/1999/sierra/>

5 Brothers of the Star and Cross Church.

6 On the previous day the rebels killed 17 people in Kissy.

blunt cutlasses and swords. Women and girls as young as nine years old were raped or sexually abused. These abuses were frequently characterised by extreme brutality. A number of the raped girls were later found to be HIV-positive. Some of the girls were abducted and taken away by the rebels when they were forced out of the capital. The rebels also abducted over 1 500 children from Freetown.

In some parts of the East-End of Freetown like Kissy, Calaba Town and Waterloo, retreating rebels burnt down over 70 percent of the houses. Churches, government buildings, markets and residential houses were randomly set ablaze. Almost all the industries in the Wellington industrial estate were looted and vandalised. Over 60 000 people were internally displaced or forced to flee as refugees to neighbouring countries. Thousands of others were tortured, harassed or severely beaten. There was widespread looting and theft.

For their part, ECOMOG and the Civil Defence Forces (CDF)⁷ summarily executed rebels and individuals suspected of being rebels. Without any inquiry, a number of civilians, identified as rebel sympathisers by other civilians, were summarily executed, tortured or assaulted by pro-government troops. The CDF was also engaged in massive looting of property.

The atrocities committed in January 1999 were not unique and highlighted the atrocities that had been perpetrated in the rest of the country for over eight years. In fact, similar human rights violations have been a characteristic of the war that has ravaged Sierra Leone since the RUF began its rebellion in 1991.⁸ The war has been against innocent and unarmed civilians. In the words of Paul Takirambudde

“This is not a war in which civilians are accidental victims. This is a war in which civilians are the targets. The crimes against humanity . . . are unspeakably brutal, and the world must not simply avert its attention from the crisis. The United Nations and its member states must show that the rights of all human beings are of equal value.”⁹

2 THE LOMÉ PEACE AGREEMENT IN CONTEXT

In November 1996, the democratically elected government led by Ahmed Tejan Kabbah negotiated with the RUF and subsequently signed the Abidjan Peace Accord. The accord failed as soon as it was signed, primarily due to distrust between the parties and the poor execution of its provisions. Following this debacle, the situation in the country deteriorated

7 Civil Defence Forces is made up of traditional hunters and civil militia groups formed to defend the civilian population against the rebels. They include the Kamajors, Kapras and the Tamaboros.

8 For further details of the human rights violations in Sierra Leone, see Tejan-Cole 1998; Anderson website Sierra Leone pages www.sierra-leone.org/slnews.html; Amnesty International 1997; US Department of State 1998.

9 Executive Director, Human Rights Watch Africa Division.

10 United Nations High Commissioner for Human Rights, Mary Robinson, and the United States Special Envoy to Africa, Jesse Jackson, have reportedly described the human rights violations in Sierra Leone as being worse than those in Kosovo.

rapidly. Fighting intensified and human rights violations became more rampant. The unrestrained atrocities heightened the pressure on the government from the national, as well as international community, to negotiate with the RUF. The stance of the hawks within the Kabbah government was further undermined by the death of the Nigerian dictator Sani Abacha,¹¹ a key supporter of ECOMOG's involvement in Sierra Leone. Following his death and Nigeria's move towards democracy, the eventual winner of the Nigerian election, Olusegun Obasanjo, endorsed the clarion call of the Nigerian electorate and notified the Sierra Leone government of its intention to withdraw its troops from ECOMOG.¹² Faced with this mounting pressure, Kabbah yielded and immediately after the January 1999 attack, he commenced negotiations with the RUF leader, Foday Sankoh.¹³ Sankoh visited several West African capitals ending in Lomé, Togo. On 7 July 1999, the government and the RUF signed the Lomé Peace Agreement.¹⁴

3 THE LOMÉ PEACE AGREEMENT – AMNESTY PROVISIONS

The Lomé Peace Agreement contains several human rights provisions. It calls for the establishment of a Truth and Reconciliation Commission to, *inter alia*, address impunity, break the cycle of violence and provide a forum for the victims and perpetrators of human rights violations to tell their story, to get a clear picture of the past and facilitate genuine healing and reconciliation.¹⁵ The agreement recognises the basic civil and political rights adopted by the United Nations and the Organisation of African Unity.¹⁶ The agreement also calls for the strengthening of the existing machinery for addressing grievances of the people in respect of alleged violations of their basic human rights, by the creation of an autonomous quasi-judicial national Human Rights Commission.¹⁷ All the parties to the agreement pledged to promote human rights education throughout the various sectors of Sierra Leonean society.¹⁸

However, the provision that has attracted substantial attention is the article on pardon and amnesty.¹⁹ Article IX(1) of the accord provides that “in order to bring lasting peace to Sierra Leone, the government shall take

-
- 11 Ironically, the late President Sani Abacha was regarded as a liberator by most Sierra Leoneans because of his role in restoring the democratically elected Kabbah government in February 1998. A street in the centre of Freetown is named after the former Nigerian president.
 - 12 Nigeria's involvement in ECOMOG was a financial burden on its declining economy. James Jonah, Sierra Leone's Finance Minister, revealed that Nigeria spent close to US\$1-million a day to maintain its troops in Sierra Leone. Further, over 1 000 Nigerian soldiers are believed to have been killed in Sierra Leone and neighbouring Liberia.
 - 13 Sankoh was by then at the central prisons in Freetown having been convicted of treason and other related charges in the High Court. The matter was waiting on appeal.
 - 14 The agreement was described by a subscriber to Leonet, a listserv and discussion group on the Internet, as “an agreement of the desperate and the exhausted”.
 - 15 Article XXVI of the Lomé Peace Agreement.
 - 16 Article XXIV.
 - 17 Article XXV(1).
 - 18 Article XXV(2).
 - 19 Article IX.

appropriate legal steps to grant the RUF leader, Corporal Foday Sankoh, absolute and free pardon". Under Article IX(2), the government of Sierra Leone agreed to grant absolute and free pardon and reprieve²⁰ to all combatants and collaborators in respect of anything done by them in pursuit of their objectives up to the time of the signing of the agreement.

Further, Article IX(3) states that

"to consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA²¹ or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, up to the time of the signing of the present Agreement²². In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflicts shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality."

The granting of an amnesty to Foday Sankoh and other members of the RUF, SLA and AFRC has led to howls of protest. Human rights groups within and outside Sierra Leone have expressed concern and condemned it. Prior to the signing of the Accord, the Sierra Leone Bar Association and the Sierra Leone Human Rights Committee²³ expressed grave reservations about the granting of a blanket amnesty to the perpetrators of the most appalling atrocities against civilians.²⁴

Human Rights Watch (1999) expressed great disappointment at the news of the inclusion of a sweeping amnesty for war crimes and crimes against humanity in the Accord. It called on the United Nations to reject

-
- 20 A free pardon is defined as putting an end to the execution of a penalty; a reprieve is defined as to delay the punishment of (as a condemned prisoner) or to grant relief or pardon for a time. In the exercise of his prerogative of mercy, section 63(1) of the Constitution gives the President powers to grant to any person convicted of any offence in Sierra Leone a pardon, either free or subject to lawful conditions, or to grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence.
 - 21 The Sierra Leone Army, Not all members of the Republic of Sierra Leone Military Forces (RSLMF), as the SLA is officially known, joined the AFRC. A number of them remained loyal to the Kabbah government and fought alongside ECOMOG and the CDF.
 - 22 The effect of this provision is to grant amnesty to the persons named. Legally a distinction is drawn between an amnesty and a free pardon. The definition of a free pardon is given in note 20 above. An amnesty is defined as an act by the legislative power which eliminates the consequences of certain punishable offences, stops prosecutions and quashes convictions. It is derived from the Greek word, *amnestia* which means 'forgetfulness'. It constitutes a declaration that the government intends to obliterate a crime. Whereas an amnesty usually refers to an official act prospectively barring criminal prosecutions, pardons exempt convicted criminals from serving their sentences, in whole or in part, without expunging the conviction.
 - 23 An umbrella group of local and international human rights and humanitarian non-governmental organisations.
 - 24 The Bar Association has also called on the United Nations High Commissioner for Human Rights, Mary Robinson, to assist in the setting up of an independent inquiry into the crimes against humanity, war crimes and gross human rights abuses committed in Sierra Leone since 1991. EEC Shears-Moses, president of the Association, made the call in a meeting held during Robinson's visit to Sierra Leone in June 1999.

the agreement noting that “the atrocities committed in Sierra Leone have shocked the world. The United Nations must not sponsor a peace agreement that pretends they never happened”. They demanded that prosecution was the only acceptable solution.

Similarly, Amnesty International (1999) condemned the granting of total amnesty to the perpetrators of killings, mutilations, rapes and abductions, calling it unjust and unacceptable. Amnesty noted that the armed conflict in Sierra Leone has been characterised by appalling human rights abuses on a massive scale. This was a war against unarmed civilians, it stated, condemning the conferring of complete impunity to those responsible for gross human rights abuses.

Even the United Nations, a guarantor of the agreement, disassociated itself from the amnesty by saying that it does not apply to crimes against humanity, genocide, war crimes and other serious violations of international humanitarian law.²⁵

Reaction to the agreement from the victims of human rights abuses in Sierra Leone has been mixed. In an interview with some of the victims,²⁶ over 60% expressed support for the agreement primarily because they hoped it would bring peace to Sierra Leone. However, when asked what they would do if they accosted the rebel who inflicted the injury on them, the almost unanimous and unhesitating response was that they would seek retribution.

3.1 Total, sweeping or absolute amnesty?

The Lomé Peace Agreement refers to the pardon granted as “absolute”.²⁷ Amnesty International, Human Rights Watch and other national and international organisations have all concluded that the amnesty granted under the agreement is sweeping, total and absolute. But is it?

The courts in Sierra Leone have not yet had an opportunity to adjudicate on this issue and until they do, it will be inconclusive. However, human rights activists working in the interest of the victims of “the gravest violations of international law” have started scrutinising the agreement in search of loopholes.

In the case of the rebel leader, Foday Sankoh, the amnesty appears absolute.²⁸ It extends to him an amnesty that existed under the Abidjan Peace Accord.²⁹ This may be a *de facto* recognition of the fact that he was

25 The United Nations Special Representative in Sierra Leone, Francis Okello, added a reservation to the agreement.

26 Interview conducted by the writer with 50 amputees and internally displaced persons selected randomly from Murray Town and National Workshop Displaced camps in Freetown.

27 Articles IX(1) and (2).

28 This, it seems, was the intention of the drafters. Sankoh had been convicted and sentenced to death on treason-related charges by the High Court of Sierra Leone. As a result of this agreement, he was pardoned.

29 Article 14 of Abidjan Peace Accord provided as follows: “To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL in

not personally engaged in active fighting since the signing of the Abidjan Peace Accord in 1996.³⁰

In Articles IX(2) and (3) of the Accord the meaning of the word amnesty is not clearly defined³¹ and does not, in my humble submission, confer absolute amnesty. Article IX(2) extends amnesty and reprieve to all combatants and collaborators. Article IX(3) provides that no official or judicial action will be taken against members of the RUF/SL, ex-AFRC, ex-SLA and CDF. This immunity will only be granted to former combatants, exiles and other persons currently outside the country for reasons related to the armed conflict. Unlike Article IX(2), it applies to a limited group of persons. The burden is on those claiming pardon, reprieve or immunity, to establish that they fall within the provisions of the relevant articles.

4 “IN PURSUIT OF THEIR OBJECTIVES”

Article IX(1) was intended to grant an absolute amnesty to Foday Sankoh but Article IX(2) and (3) restricts the amnesty to “anything done by them in pursuit of their objectives”. The use of this expression limits the amnesty. The actions covered are only those done by the persons referred to in pursuit of their objectives or under Article IX(3) in pursuit of their objectives as members of the organisations covered by the agreement.

These articles raise a number of interesting issues. In the first place, what is objective of the RUF/SL? The accord does not define this. Who then determines this? Secondly, whether an act was done in pursuit of the objectives covered by Article IX(2) and (3) requires some investigation. The accord does not prevent victims of human rights violations from instituting legal proceedings against the perpetrators. The burden is on the accused to establish that their acts were done in pursuit of their objectives. The government of Sierra Leone, which under Article IX(3), undertook to ensure that no official or judicial actions will be taken against members of the groups named in the article, must also discharge a similar burden if it seeks to nullify any action instituted against them. It is then up to the courts to determine whether this burden has been discharged or not.

respect of anything done by them in pursuit of their objectives as members of that organisation up to the time of the signing of this agreement. In addition, legislative and other measures necessary to guarantee former RUF/SL combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict, shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality”. The provisions of this article are the same as Article IX(3) of the Lomé Peace Agreement. The scope of the amnesty granted to Foday Sankoh under the Lomé Peace Agreement is broader than that under the Abidjan Peace Accord.

- 30 He was detained in Nigeria in March 1997 on alleged arms charges and subsequently brought to Sierra Leone in 1998 to face trial.
- 31 In an article posted on Leonet on 7 July 1999 John Lansana Musa, Executive Director of the Sierra Leone Institute for Policy Studies, argues that this article was deliberately drafted vaguely and couched in language which hides its meaning in order to minimise the hurt of Sierra Leoneans.

In its manifesto *Footpath to Democracy – Towards a new Sierra Leone*³² the RUF stated *inter alia* “We are fighting for a new Sierra Leone. A new Sierra Leone of freedom, justice and equal opportunity for all. We are fighting for democracy and by democracy we mean equal opportunity and access to power to create wealth through free trade, commerce, agriculture, industry, science and technology. Wealth cannot be created without power. Power cannot be achieved without struggle. And by struggle, we mean the determination, the humanistic urge to remove the shame of poverty, hunger, disease, squalor, illiteracy, loafing and hopelessness from this African land of Sierra Leone blessed with minerals, forests, rivers, and all that is required to restore the dignity, prestige and power of the African as an equal competitor on the world stage. This is what we are fighting for and this is why we are fighting to save Sierra Leone. For, a society has already collapsed when majority of its youth can wake up in the morning with nothing to look up for”. In several other documents, the RUF and its leaders have stated that the Front’s objectives were to bring an end to poverty and corruption and build amenities schools and hospitals and provide modern amenities to its citizens.³³

The courts in Sierra Leone will have to decide whether the deliberate killing of over 60 people at a mosque in Kissy, the raping of an eight year old girl and the amputation of the arm of Memuna Mansaray, two years old, was done in pursuit of the RUF’s objectives as stated in its manifesto and numerous other documents.

Similarly, the CDF was formed with the prime objective of defending the citizens of Sierra Leone against rebel attacks. Can the looting of civilian homes by the CDF be considered to be in pursuit of this objective under the Lomé Peace Agreement? The answer in my humble opinion is an unequivocal no.

However, this interpretation is going strictly by the letter of the agreement. It may be argued that this contention goes against the spirit of the agreement. The general understanding of the provisions by the various

32 This manifesto was published in 1995 and includes quotes from another RUF document that was not widely publicised – the *Basic document of the Revolutionary United Front of Sierra Leone (RUF/SL): the second liberation of Africa* prepared in 1989.

33 Foday Sankoh stated in *Footpaths to democracy: toward a new Sierra Leone* Vol 1 p 19 “We are fighting for a new Sierra Leone . . . for democracy . . . We continue to fight because we are tired of being perpetual victims of state sponsored poverty and human degradation visited on us by years of autocratic rule and militarism. But, we shall exercise restraint and continue to wait patiently at the rendezvous of peace, where we shall all be winners. We are committed to peace, by any means necessary, but what we are not committed to is becoming victims of peace. We know our cause to be just and God/Allah will never abandon us in our struggle to reconstruct a new Sierra Leone”. In *Lasting peace in Sierra Leone: the Revolutionary United Front Sierra Leone (RUF/SL) perspective and vision* 11 May 1999 it is stated “The struggle is for social justice and the equal distribution of the nation’s wealth, for establishing a new political system that would meet the real aspirations of the people, for creating a new dispensation that would alter the political, economic and socio-cultural landscape and transport Sierra Leone into the twenty-first century and beyond. The struggle continues because the people are still denied proper health and education, a tolerable standard of living, the scope and opportunity to develop economically and culturally, as well as to participate fully and effectively in government”.

parties seems to suggest that the interpretation was that this article covered all activities carried out in the course of combat including crimes against humanity, gross violations of human rights and genocide. Had this not been the intended interpretation, then there would have been no need for the United Nations Special Representative in Sierra Leone to add a written caveat to the peace agreement saying that the United Nations would not recognise the amnesty and pardon as applying to genocide, crimes against humanity, war crimes and other serious human rights abuses. This seems to indicate that the amnesty granted under the agreement extends to these crimes.

Notwithstanding the United Nations caveat, at least one participant in the drafting of the Lomé Peace Agreement³⁴ told me she did not agree with this interpretation of the agreement. In the case of Foday Sankoh, the amnesty was intended to cover all crimes but in the case of the other combatants and collaborators this was not so. It was certainly not an error on the part of the drafters of the Accord to have added the phrase "in pursuit of their objectives . . ." under Articles IX(2) and IX(3).

5 AMNESTY AND THE CONSTITUTION

Section 171(15) of the Constitution of Sierra Leone³⁵ provides that the Constitution shall be the supreme law of Sierra Leone and any other law found to be inconsistent with any provision of the Constitution shall, to the extent of the inconsistency, be void and of no effect.

Under Chapter II of the Constitution entitled 'Fundamentals of State Policy', section 5(1) states that the Republic of Sierra Leone shall be a State based on the principles of "freedom, democracy and justice". Also section 8(1) states that the social objectives of the State are founded on the ideals of "freedom, equality and justice". In furtherance of this objective, it provides that every citizen shall have equality of rights, obligations, and opportunities before the law; the government shall secure and maintain the independence, impartiality and integrity of courts of law and unfettered access thereto, and to that end shall ensure that the operation of the legal system promotes justice on the basis of equal opportunity, and that opportunities for security justice are not denied any citizen by reason of economic or other disability.

Although section 14 of the Constitution provides that the provisions contained in Chapter II³⁶ shall not confer legal rights and shall not be enforceable in any court of law, it stipulates that the principles contained therein shall nevertheless be fundamental in the governance of the State, and it shall be the duty of Parliament to apply these principles in making laws. Any laws enacted by Parliament under section 73(3) of the Constitution must conform to the social objectives of the State.³⁷ I submit that such laws must be within the objectives of the State as set out in Chapter II.

34 Lottie Betts Priddy representing civil society movements.

35 Act 6 of 1991.

36 Sections 4–14 of the Constitution.

37 Section 73(3) of the Constitution provides that Parliament may make laws for the peace, security, order and good government of Sierra Leone.

It is my submission based on this argument, that Parliament, in enacting the Act ratifying the Lomé Peace Agreement, acted in violation of the Constitution. Its duty clearly includes enacting laws which would give effect to the social objectives of state, to grant unfettered access to the courts and ensure that justice is not denied to citizens. In enacting the provisions of Lomé, Parliament was in breach of its constitutional duty.

Further Chapter III of the Constitution grants protection from several fundamental human rights including life,³⁸ protection from arbitrary arrest or detention,³⁹ protection of freedom of movement,⁴⁰ protection from slavery and forced labour,⁴¹ protection from inhuman treatment,⁴² protection from deprivation of property,⁴³ protection for privacy of home and other property,⁴⁴ provision to secure protection of law,⁴⁵ protection of freedom of conscience,⁴⁶ protection of freedom of expression⁴⁷ and protection of freedom of assembly and association.⁴⁸ The amnesty and pardon provisions of the Lomé Peace Agreement obliterate these constitutionally-guaranteed rights and defeat the entire purpose of this chapter of the Constitution.

Section 28 of the Constitution gives persons who allege that the provisions of sections 16–27 of the Constitution have been or are likely to be contravened in relation to him, or a detained person, the right to seek redress in the Supreme Court of Sierra Leone. The effect of the amnesty and free pardon is to infringe on the rights of citizens to seek redress. The Constitution grants to all persons the right to seek protection against infringement of these rights. When these rights are invaded, those aggrieved by such invasion have the right to obtain redress in the Supreme Court, the highest court in the land,⁴⁹ and those guilty of perpetrating such violations are answerable before such court. It is my further submission that the amnesty and pardon provisions contained in the Lomé Peace Agreement are unconstitutional as they are inconsistent with the provisions of section 28 of the Constitution. Consequently, under section 171(15), the amnesty and pardon provisions are null and void as they obliterate constitutionally-guaranteed rights.

The argument that the victims of human rights abuses or their families have a right to insist that the perpetrators should properly be prosecuted and punished was advanced before the Constitutional Court of South Africa in the case of *Azanian People's Organisation and others v President of*

38 Section 16.

39 Section 17.

40 Section 18.

41 Section 19.

42 Section 20.

43 Section 21.

44 Section 22.

45 Section 23.

46 Section 24.

47 Section 25.

48 Section 26.

49 Section 122 of the Constitution. Under section 124, the Supreme Court has original jurisdiction in constitutional matters.

the Republic of South Africa and others.⁵⁰ In delivering judgment, Deputy President Mahomed dismissed this argument on the ground that the epilogue to the South African Constitution authorised and contemplated an “amnesty” in its most comprehensive and generous meaning so as to enhance and optimise the prospect of facilitating the constitutional journey from the shame of the past to the promise of the future.

A similar line of reasoning cannot be canvassed in Sierra Leone. The drafters of the 1991 Constitution did not authorise nor did they contemplate the granting of amnesty. On the contrary, the objectives of the drafters were to guarantee justice,⁵¹ the rule of law and democracy, principles which conflict with amnesty. The political objectives of the State include protecting and defending the liberty of the individual, enforcing the rule of law and ensuring the efficient functioning of government services.⁵² Denying victims the right to seek redress and unfettered access to the courts conflicts these objectives, particularly that of enforcing the rule of law.

A further distinction which could be drawn is that in Sierra Leone, unlike South Africa, the amnesty granted was a blanket amnesty.⁵³ Mahomed (DP) noted that “the amnesty contemplated is not a blanket amnesty against criminal prosecution for all and sundry, granted automatically as a uniform act of compulsory statutory amnesia. It is specifically authorised for the purpose of effecting a constructive transition towards a democratic order. It is available only where there is a full disclosure of all facts to the Amnesty Committee and where it is clear that the particular transgression was perpetrated during the prescribed period and with a political objective committed in the course of the conflicts of the past. The objective has to be evaluated having regard to the careful criteria listed in section 20(3) of the Act,⁵⁴

50 1996 (8) Butterworths Constitutional Law Reports 1015 and 1996 SACLX LEXIS 20. On this case and the South African Truth and Reconciliation Commission in general see Sarkin 1996; 1997; 1998.

51 The motto of Sierra Leone as stated in section 6(1) of the Constitution is unity, freedom and justice. Throughout the Constitution, the term “justice” is regularly used. This term is defined as meaning fairness, a state of affairs in which conduct or action is both fair and right, given the circumstances. In law, it more specifically refers to the paramount obligation to ensure that all persons are treated fairly. Litigants “seek justice” by asking for compensation for wrongs committed against them; to right the inequity such that, with the compensation, a wrong has been righted and the balance of “good” or “virtue” over “wrong” or “evil” has been corrected. I submit that the amnesty conflicts with the principle of justice.

52 Section 6(4).

53 Another distinction that could be drawn between the Sierra Leonean and South African situations relates to international law. The applicants in the South African case had contended that the State was obliged by international law to prosecute those responsible for gross human rights violations. Mahomed DP held that it was doubtful whether the instruments of international law relied on, including Article 6(5) of Protocol II to the Geneva Convention, applied to the situation which South Africa found itself in during the years of conflict. In Sierra Leone, there is no doubt that the provisions of the Geneva Convention and its Protocols apply to the conflict. As is stated in note 56, the issue is whether the provisions which relate to internal or international armed conflicts apply.

54 The criteria listed included the motive of the person who committed the act, omission or offence, the context in which it took place, its legal and factual nature and the relationship between the act, omission or offence and the political objective pursued.

including the very important relationship which the act perpetrated bears in proportion to the object pursued.”

The amnesty granted under Lomé was granted to all and sundry and was a classic example of what the learned judge referred to as “a uniform act of compulsory statutory amnesia”. It involved no preliminary process. The amnesty has already been granted and the truth and reconciliation process would follow subsequently.⁵⁶

6 APPLICABLE TO INTERNATIONAL LAW?

Regardless of the decision of the courts in Sierra Leone and the interpretations given to Article IX(2) and (3) of the Lomé Peace Agreement, it is clearly settled that the amnesty granted under the agreement applies only to national law and not to international law. It is not legally binding outside the borders of Sierra Leone.

International humanitarian and human rights law applicable to the conflict in Sierra Leone⁵⁵ contain certain basic principles that are non-derogable. They cannot be suspended nor can amnesty be granted in respect of them. All four Geneva Conventions contain provisions which state that “The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanction for persons committing, or ordering to be committed, any of the grave breaches”⁵⁷ Grave breaches are defined to include, *inter alia*, wilful killing, torture or inhuman treatment and wilfully causing great suffering or serious injury to body or health.⁵⁸ The conventions further provide that each High Contracting Party shall be under an obligation to search for persons alleged to have committed such grave breaches and shall bring such persons, regardless of nationality, before its own courts.⁵⁹

Further, Article 6(5) of Protocol II,⁶⁰ dealing with internal armed conflicts, provides that “at the end of hostilities, the authorities in power shall

55 Other than South Africa, amnesty for the purpose of facilitating a transition to and consolidate an overtaking democratic order has been accorded in El Salvador, Chile and Argentina, Brazil, Uruguay, Guatemala, Nicaragua, Namibia and Suriname. In most of these cases the truth and reconciliation process was first applied before the granting of amnesty.

56 The humanitarian laws applicable to the conflict in Sierra Leone depend on whether the war is regarded as an internal or international armed conflict. Due to the alleged involvement of Liberia and Burkina Faso on the side of the rebels and ECOMOG on the side of the government, it may be argued that the conflict is an international one. If it is considered an international conflict then it is important to note that all the countries contributing to troops to ECOMOG, Liberia and Burkina Faso have ratified the 1949 Geneva Conventions and the 1977 Protocols.

57 Article 49 of the first; Article 50 of the second; Article 129 of the third; and Article 146 of the fourth Geneva Convention.

58 Article 50 of the first; Article 51 of the second; Article 130 of the third; and Article 147 of the fourth Geneva Convention.

59 Article 49 of the first; Article 50 of the second; Article 129 of the third; and Article 146 of the fourth Geneva Convention.

60 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). Adopted on 8

endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained". This article has been given a restrictive interpretation and does not include the granting of amnesty to persons who participated in grave breaches. If it is otherwise, it defeats the *raison d'être* of the Geneva Conventions and their Protocols. It may also be submitted that amnesty under international law is limited to treason and common crimes.⁶¹ It does not apply to violations of international humanitarian law, which were widespread in Sierra Leone.

As regards international human rights law, most of the Conventions that Sierra Leone has ratified⁶² are silent about the duty to punish violations of the rights they ensure. But according to Diane Orentlicher (1991),⁶³ authoritative interpretations of these treaties make clear that a state party fails in its duty to ensure the cluster of rights protecting physical integrity if it does not investigate violations and seek to punish those who are responsible.⁶⁴ Further customary international law also requires all states to punish persons that commit certain human rights violations, such as genocide, in their territorial jurisdiction (Orentlicher 1991).

Amnesty International (1999) endorses this view. The organisation argues that even if the peace agreement confers immunity from prosecution within Sierra Leone, certain gross human rights abuses committed during the conflict remain crimes under universal jurisdiction and the perpetrators may be prosecuted if they travel outside Sierra Leone.

The African Charter on Human and People's Rights, which Sierra Leone has ratified, provides that state parties shall recognise the rights, duties and freedoms enshrined in Chapter I and shall undertake to adopt legislative or other measures to give effect to them.⁶⁴ It also declares that "every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter . . ."⁶⁵ It also provides that

"every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force".⁶⁶

June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

- 61 Bernhardt 1992 vol 2: 148 states that amnesty clauses are frequently found in peace treaties and signify the will of the parties to apply the principle of *tabula rasa* to past offences, generally political delicts such as treason, sedition and rebellion, but also to war crimes.
- 62 *Inter alia*, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. It has not ratified the two conventions which contain the most explicit obligation to punish human rights crimes – the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.
- 63 The writer further asserts that a state's failure to punish repeated and notorious violations breaches the customary obligation to respect the pre-eminent rights.
- 64 Article 1.
- 65 Article 2.
- 66 Article 7(1).

Although this charter does not explicitly require state parties to prosecute or punish violations of rights set forth in the charter, I submit that these affirmative obligations imply a duty to bring to justice those responsible for violations of the provisions of the charter.⁶⁷

7 CONCLUSION

As I have illustrated, there is general dissatisfaction with the amnesty and pardon provision. The agreement contains little or no consolation for the victims of appalling atrocities and human rights abuses. It makes provision for the setting up of a Truth and Reconciliation Commission to provide a forum for victims to tell their story.⁶⁸ This commission has no justice element and its terms, under the agreement, are uncertain. It is not clear whether the commission will be able to address the rights of victims to truth, justice and reparations. Having been granted an amnesty, it is doubtful whether combatants and collaborators will participate in the truth and reconciliation process.

The agreement also makes provision for a special fund to be set up for war victims.⁶⁹ The government, with the support of the international community, must set this up. Considering previous promises by the government, particularly President Kabbah's unfulfilled promise in a nation-wide address⁷⁰ to provide loans to enable victims whose houses have been burnt to rebuild. Most victims I spoke to were sceptical about receiving any reparation.

Contrast the almost total neglect of the victims of the human right abuses with the specific provisions for the perpetrators of these abuses. The agreement makes provision for the setting up of a Commission for the Management of Strategic Resources, National Reconstruction and Development.⁷¹ RUF leader Foday Sankoh is the chairman of the Board of the Commission and "he enjoys the status of Vice-President and shall therefore be answerable only to the President of Sierra Leone".⁷²

Further, the Revolutionary United Front Sierra Leone was given four cabinet positions, one of which was a senior cabinet appointment such as Minister of Finance, Foreign Affairs or Justice.⁷³ The rebels will also serve in several committees established under the agreement.

67 No decision has been made by the African commission set up to monitor the compliance of state parties with the Charter. However, authoritative interpretation of the American Convention on Human Rights, which contains similarly affirmative obligations, have stated that the Convention requires state parties generally to investigate serious violations and bring to justice those who are responsible.

68 Article XXVI(1).

69 Article XXIX.

70 Broadcasted by the national radio on 1 February 1999.

71 Article VII. The commission is charged with the responsibility of securing and monitoring the legitimate exploitation of Sierra Leone's gold and diamonds and other resources.

72 Article V(2). In the words of John Lansana Musa, "the father of the Sierra Leone tragedy will walk away whistling into a big position kindred to the Vice-Presidency. At Lomé, Government negotiators' best bargain style was to be malleable at any price to enable a deal. The deal struck is kin to the Faustian bargain between Dr Faustus and the devil, Mephistopheles, to trade everything for power."

73 Article V(3). Four RUF ministers presently serve in the Cabinet. They include Mike Lamin, Minister of Trade and Industry and Alimamy P Bangura, Minister of Energy and Power.

The agreement adequately addresses the needs of the perpetrators, although it may not be inaccurate to declare that it rewards them whilst leaving the victims empty-handed. It is regrettable that the United Nations and Commonwealth⁷⁴ facilitated such an agreement that clearly flouts international human rights and humanitarian law. It is difficult to see how true and lasting peace and reconciliation could be achieved in Sierra Leone when the rights of the victim to truth, justice and reparation have not been adequately addressed. Impunity must be tackled not pushed under the carpet. The lesson Sierra Leone "has not learnt" is that rewarding the perpetrators of these grave human rights abuses simply encourages others to repeat the same with the hope of being similarly rewarded.⁷⁵ There cannot be lasting peace in Sierra Leone without justice.

Sources

- Amnesty International *Sierra Leone: a disastrous set-back for human rights* 20 October AI Index no AFR 51/05/97 London 1997.
- Amnesty International "A peace agreement but no justice" News release 9 July AI Index AFR 51/07/99 London 1999.
- Bernhardt R (ed) *Encyclopaedia of public international law* North-Holland Amsterdam 1992.
- Human Rights Watch "Letter to United Nations Secretary General Kofi" Annan 9 July 1999.
- Orentlicher D "Settling accounts: the duty to prosecute human rights violations of a prior regime" *Yale Law Journal* 100: 2537 1991.
- Sarkin J "The trials and tribulations of South Africa's Truth and Reconciliation Commission" *South African Journal on Human Rights* 12 617 1996.
- Sarkin J "The Truth and Reconciliation Commission in South Africa" *Commonwealth Law Bulletin* 528 1997.
- Sarkin J "The development of a human rights culture in South Africa" *Human Rights Quarterly* 20(3) 628 1998.
- Tejan-Cole A "Human rights under the Armed Forces Revolutionary Council: a catalogue of abuses" *African Journal of International and Comparative Law* October 1998.
- US Department of State Bureau for Democracy, Human Rights and Labor. *Sierra Leone country report on human rights practices for 1997* Washington DC 1998.

74 The Commonwealth representative, Dr Moses KZ Anafu, also signed the agreement as a moral guarantor. In the light of the Commonwealth Ministerial Action Group's frequent condemnation of the human rights abuses in Sierra Leone and the Harare Declaration, it was disappointing to see it endorse the Lomé Peace Accord's amnesty and pardon provisions.

75 The National Provisional Ruling Council (NPRC) military government, which ruled Sierra Leone between 1992 and 1996, were reportedly given scholarships and other perks by the United Nations.