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**HUMAN RIGHTS IN NEGOTIATING PEACE AGREEMENTS:
SIERRA LEONEⁱ**

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GENERAL: CONTEXT AND BACKGROUND

What peace agreements were produced in the country you are considering? Which agreement provided the main framework for how peace would be achieved? In summary what did it provide for (see more detailed questions below)?

1. The Sierra Leone conflict generated a number of cease-fire, peace and related agreements, some of which were never implemented. The most notable of the unimplemented accords were the Abidjan Agreement of 30 November 1996 and the Conakry Accord of 23 October, 1997. This paper addresses just the peace agreement which formed the basis for the ongoing peace process, that of 7 July 1999, known as the Lomé Agreementⁱⁱ.
2. The Lomé Peace Agreement constituted a formal declaration of cessation of hostilities and provided for a power-sharing arrangement between the elected government and the Revolutionary United Front (RUF). The agreement stipulated that RUF members be appointed to public office and that they be accorded a proportion of seats in the cabinet. Foday Sankoh, leaders of the RUF was accorded the status of a Vice President of the country and appointed as chair of the body responsible for management of national resources (including mineral resources) and national reconstruction. The agreement anticipated a peacekeeping mandate for the UN and accorded to it and the West African regional peacekeeping force, (the Military Observer Group – ECOMOG), the oversight of a national programme of disarmament, demobilisation and reintegration of former combatants. The agreement stipulated that the national army be restructured and that it recruit former combatants from all sides. Other provisions of the agreement addressing amnesty and human rights are discussed below.

What was the background to this agreement being produced?

3. The conflict in Sierra Leone dates from March 1991 when fighters of the RUF launched a war from the east of the country near the border with Liberia to overthrow the government. With the support of ECOMOG Sierra Leone's army tried at first to defend the government but, the

following year, the army itself overthrew the government. Despite the change of power, the RUF continued its attacks. Parliamentary and presidential elections were held in February 1996, and the army relinquished power to the winner, Ahmed Tejan Kabbah. The RUF, however, did not participate in the elections and would not recognise the results. The conflict continued notwithstanding the November 1996 peace agreement between the Government and RUF known as the Abidjan Accord.

4. There was another military coup d'état in May 1997. This time the army joined forces with the RUF and formed a ruling junta. President Kabbah and his government went into exile in neighbouring Guinea. In February 1998, ECOMOG succeeded in ejecting the junta regime from Freetown and much of west and southern Sierra Leone. In March, the government of President Kabbah returned from its exile. The mood of the period was optimistic, at least among the Freetown elites. Though the rebels were still active, particularly in the north and parts of the east, it was widely considered that it could only be a matter of time before they would be overcome by the ECOMOG forces under. A small UN mission, the United Nations Observer Mission in Sierra Leone (UNOMSIL)ⁱⁱⁱ, was established, in which the only military element was a modest team of unarmed officer level observers. The government, confident of its stability embarked on a large scale process of bringing the junta civilian and military leadership before courts to be tried for the capital offence of treason. The rebel leader, Foday Sankoh, who had been in custody in Nigeria from March 1997 to July 1998 and subsequently in Freetown, was also to be tried on similar charges.
5. The optimism was misplaced and it soon dissipated. The rebels continued to wield considerable force. They controlled the principal diamond fields and were in receipt of assistance from Liberia, as well as, at least reportedly, from Libya and Burkina Faso. ECOMOG, for their part, were hampered by the lack of the resources necessary to achieve sustained superiority and it was widely reported that they were suffering heavy losses. Their Sierra Leonean co-fighters, the traditional hunter militia, known as the Civilian Defence Force, or CDF, (comprised principally of the Kamajor group), though vicious in battle, could not be considered a disciplined military body. The remaining months of 1998 saw a pattern of rebel successes, reversing earlier ECOMOG gains. The continued instability and fighting^{iv}, including the deliberate targeting and terrorization of civilians, exacerbated country-wide human suffering. There was ongoing displacement of civilians and high levels of malnutrition and disease. The social and physical infrastructure was destroyed with no opportunity to begin its repair. Throughout 1998 rebel forces perpetrated summary execution, amputation, mutilation and other forms of torture, as well as abduction and rape. Typically they looted and destroyed houses in combat areas. The CDF were also responsible for serious human rights abuses, for instance, ethnically motivated killing of non-combatants as well as the execution and maltreatment of prisoners, and there were persistent reports of unacceptable behaviour by ECOMOG elements, including illegal detention, torture and ill-treatment of combatants during surrender or capture.
6. In the closing months of the year, the treason trials were coming to a close, with most of the civilian defendants found guilty and sentenced to death-though all of the convictions remained subject to consideration by an appeal court. Most of the military defendants were also convicted in a court martial, without right to appeal. Despite condemnation of the military trial process by the UN and others, as well as reminders from the rebels that they would exact revenge for any executions, twenty four of the defendants were killed semi-publicly (in a quarry close to Freetown), with photographs of the scene published in local newspapers.^v
7. By December 1998 the rebels were close to Freetown. Early on the morning of 6 January 1999, the rebels, comprising principally former army elements as well as RUF, attacked, and occupied the eastern part of the city without difficulty. During the course of the following week or so, Freetown experienced an unprecedented savaging.^{vi} It is estimated that some 5,000 Freetown

residents and combatants were killed and thousands more were abducted.^{vii} There were hundreds of incidences of mutilation and amputation of limbs. At least half of the housing stock was destroyed. Many of the rebel fighters were children among whom drug use was common. ECOMOG and government forces also perpetrated grave human rights abuses, such as summary execution of scores of suspected rebel sympathizers and aerial attacks on civilian targets.^{viii}

8. The rebels were unable to maintain their hold in Freetown and they were quickly pushed out of the centre eastwards in heavy fighting which further devastated the city's hinterland. Patterns of perpetration of atrocities by rebels also persisted. ECOMOG, under a new commander, appeared to be gaining the upper hand in the countryside. Meanwhile, the UN and diplomats, as well as a large number of the Sierra Leone elite awaited the possibility of safe return in Conakry, Guinea, where they established useful information exchange arrangements and debated next steps for the country. Most of these evacuees had returned to Freetown by March or April.
9. In the period from January to April 1999 Sierra Leone political discourse, in sharp contrast to the situation for much of 1998, generally assumed that an end to fighting would require an accommodation with the rebels and that the route ahead was that of the "twin-track," that is, of parallel military and diplomatic efforts.^{ix} There was a perception that the rebels were strong and resilient and that ECOMOG would never have the capacity to definitely eradicate them, country-wide. Furthermore, the elected civilian politicians who were about to assume control in Nigeria had made clear that they would take their soldiers home, sooner rather than later, and notwithstanding that Sierra Leone had not yet developed a new army of its own. There was no sense at the time that any other robust international peacekeeping force, such as of the UN, was likely to be established. And just about all parts of the international political community encouraged the seeking of an arrangement with the rebels, with the UK going so far as to demand this in return for its military aid.^x Sierra Leoneans themselves were utterly exhausted of war and desperate for peace and stability.
10. The mood was captured in the proceedings of a national consultative conference which took place in Freetown in April. Attended by the political leadership, traditional leaders, civil society representatives, and even with a message from Foday Sankoh, it proposed terms for a peace settlement, broadly based on the provisions of the unimplemented 1996 Abidjan Peace Agreement.^{xi} In return for a cessation of hostilities and recognition by the rebels of the legitimacy of the government, it suggested limited power-sharing in the lead up to national elections, conferring of amnesty on combatants and establishment of a truth and reconciliation commission.^{xii}
11. Within weeks of the conference, the government and the UN had facilitated a meeting of the RUF in Lomé, Togo, at which it was expected to develop its strategy for a peace process. Sankoh, who until then had remained in custody having been sentenced to death, was allowed to attend. By mid-May, the RUF had submitted its proposals for a peace agreement and the government, though objecting to a number of the provisions (such as for a joint transitional government) replied in a conciliatory manner. On the basis of this exchange, peace talks got underway in Lomé.

What were the main human rights problems prior to the agreement being signed? To what extent were these being addressed locally and internationally prior to the agreement being signed?

12. Regarding the human rights situation see above. See also the 2004 Report of the Sierra Leone Truth and Reconciliation Commission^{xiii}. Its principal summary findings regarding the human rights situation are as follows:

“20. War in Sierra Leone was waged largely by Sierra Leoneans against Sierra Leoneans. All factions specifically targeted civilians.

21. The Sierra Leone civil war was characterised by indiscriminate violence. It broke longstanding rules, defiled cherished traditions, sullied human respect and tore apart the very fabric of society.

22. While the majority of victims were adult males, perpetrators singled out women and children for some of the most brutal violations of human rights recorded in any conflict.

23. Children aged 10-14 were especially targeted for forced recruitment. Girls between the ages of 10-14 were targeted for rape and for abuse as sexual slaves.

24. Women and girls were raped, forced into sexual slavery, tortured and suffered cruel and inhumane acts.

25. Forced displacements, abductions, arbitrary detentions and killings were the most common violations.

26. The Commission holds all the armed groups involved in the conflict responsible for systematically plundering and looting Sierra Leone.

27. The Commission finds the leadership of the RUF, the AFRC, the SLA and the CDF to be responsible for either authorising or instigating human rights violations against civilians; alternatively for failing to stop such practices or to speak out against them; and for failing to acknowledge the atrocities committed by their followers or members.

28. The Commission holds the National Patriotic Front of Liberia (NPFL) and the RUF responsible for planning and executing military operations against the state of Sierra Leone. In particular, the Commission finds that the leaders of these organisations, Charles Taylor and Foday Sankoh, played pivotal roles in bringing bloody conflict to Sierra Leone.

29. The Commission found the RUF to have been responsible for the largest number of human rights violations in the conflict.

30. The AFRC committed the second highest rate of violations.

31. The SLA and the CDF were attributed, respectively, with the third and fourth highest institutional counts of violations.

32. The Commission finds that the governments in power at the time of the outbreak of violence in 1991 and during the conflict period neglected to take adequate steps to protect the nation from the aggressive actions of foreign and rebel forces.

33. The Commission finds that the SLPP Government must bear responsibility for the excesses committed by the CDF. The Government failed to stop and address the Commission of human rights violations against civilians and initiates even when knowledge of such violations was brought to its attention.

34. The Commission finds that successive governments abused the death penalty to eliminate political opponents. The Commission finds the continued existence of the death penalty on the statute books of Sierra Leone to be an affront to a civilised society based on respect for human life.

35. The Commission finds that successive regimes in Sierra Leone misused emergency powers to suppress political dissent. The persistent use of so-called “Safe Custody” detention is unlawful and represents gross contempt for the rule of law by the present Government of Sierra Leone”.

13. The local and international actors attempting to address the human rights situation were as follows:

Sierra Leone Groups

14. The Sierra Leone NGOs varied greatly in size and skill, including, for instance, the extremely well-endowed and organized Campaign for Good Governance, a national section of Amnesty International, Church-supported groups like Caritas, and some tiny but intrepid bodies such as Prison Watch. The organizations had limited operating capacity outside the western province (and next to none in rebel controlled areas). A loose coalition of the NGOs, the National Forum for Human Rights, was established with encouragement of the US Embassy in 1996. By 1998 it had eighteen member organizations.

15. A number of NGOs and church related groups which would not describe themselves as human rights organizations also played an important role in the sector. Prominent among these was the

Inter-Religious Council, which brought together the Christian and Muslim leaderships and many of the groups active in the humanitarian sector. In addition, occasionally the Sierra Leone Bar association took positions on issues of human rights.

16. Throughout the period there existed a government-established human rights body, the National Commission for Democracy and Human Rights (NCDHR), which was generously funded by UNDP. It was led for most of the period under review by the highly effective Kadie Sesay. The NCDHR failed to meet the UN standards for independent national human rights institutions, as set out in the Paris Principles,^{xiv} and was never wholly trusted by the NGO community.

The United Nations

17. The first UN human rights presence in Sierra Leone took the form of the deployment, in April 1998, of a Human Rights Advisor to the office of the UN Special Envoy (this title was subsequently changed to “Special Representative”), recruited by the Department of Peacekeeping Operations (DPKO) but in receipt of substantive backstopping from the Office of the High Commissioner for Human Rights (OHCHR). On 13 July 1998, Security Council resolution 1181 (1998) established UNOMSIL (which became UNAMSIL after adoption of the Lomé Agreement in 1999).^{xv} Its mandate dictated that close attention be paid to issues of human rights.
18. To implement the mandate the UNOMSIL/UNAMSIL human rights team concentrated on three areas: monitoring the human rights situation, reporting thereon—both internally and publicly with associated advocacy initiatives, and providing technical cooperation to civil society and the government. It was also involved in the Lomé peace negotiations and the efforts for implementation of the agreement.
19. OHCHR, as well as supporting the UNOMSIL/UNAMSIL human rights team, also was directly engaged in Sierra Leone. During 1998 its activities were mainly of a technical cooperation nature. OHCHR engagement intensified following the visit to Freetown of the High Commissioner in June 1999 and the adoption of the Lomé Agreement.

International NGOs

20. A number of international human rights NGOs were active during the period under review, including Amnesty International, Human Rights Watch, Article, World Conference for Religion and Peace and the International Bar Association, International Human Rights Law Group, International Service for Human Rights and, from 2001, No Peace without Justice.

Human rights coordination

21. In January 1999, the UN institutionalized a coordination framework by establishing a national Human Rights Committee, which brought together all the NGO and other human rights groups in a horizontal structure focused on information exchange. The Committee developed into a context in which to develop common advocacy positions, such as on the issue of combating impunity. The Committee took on specific monitoring and reporting functions after Lomé.
22. Efforts to address the conflict-related human rights situation:

Activities for the empowerment of human rights civil society

23. It was obvious in Sierra Leone that the ability of the human rights community to effectively carry out activities for peace would turn on its strength, skills and capacity to access and influence decision-makers. With this in mind it consciously implemented empowerment activities which persisted throughout 1998-2000. Reference has already been made to the role of the National Forum for Human Rights and the pivotal function of the Human Rights Committee. These bodies gave a vehicle and a voice to the human rights community.
24. There was also an effort made throughout the period for the delivery of conflict-related human rights skills, such as for monitoring and reporting activities. The training lead was taken by the UN human rights team, which delivered its first training program for Freetown based activists in July 1998 and gathered together 80 human rights, humanitarian and faith-bases workers from across the country for a major training in November of that year. Subsequently a number of NGOs implemented targeted trainings across the country, including in rebel controlled areas during periods of limited access.
25. Still another aspect of empowerment activities was the manner in which the members of the human rights community were able to intervene to support each other in handling moments of crisis. This solidarity was most tested at the time of the rebel incursion into Freetown in January 1999. The UN offered to evacuate those of the leadership who wished to leave and a small number took up the offer. Amnesty International also made funds available for evacuation of those other members of the human rights community who were believed to be at particular risk. The National Forum for Human Rights was able to gather most of the others and take them into hiding-and, despite being exposed to extreme risk, they survived. A few weeks later it was the turn of the national NGOs to support their international counterparts: when the UN mission sought to effectively dismantle its human rights team, the NGO community was vociferous in its objections and was paid heed to.^{xvi}

Ensuring the widespread international reporting of the conflict from a human rights perspective

26. The addressing of the human rights abuses of the conflict and ensuring that they be paid attention to in peace strategies required that the plight of civilian victims be effectively reported both directly to key decision makers and publicly.
27. Effective reporting in the first place required countrywide capacity to skilfully gather the information. This posed great challenges in Sierra Leone where the UN human rights team was tiny and the human rights community had limited capacity outside the western area. Reference has already been made to a number of initiatives to overcome these shortcomings, such as the various training initiatives as well as to the attempts to draw humanitarian workers and other into some form of monitoring activities. By and large these efforts had some success, whereby, for instance, some part of the humanitarian community became significant providers of information. Also, the centralized nature of the country meant that information from government controlled areas tended to eventually reach Freetown. Information from deep within rebel controlled areas was more difficult to obtain, at least prior to the slight opening up of access which came with the Lomé Agreement. Before this, a certain amount of information could be obtained from meeting with refugees in Guinea and from internally displaced persons (IDPs).
28. The reporting of the human rights situation was undertaken at the international and national levels and in a variety of guises, by both the UN and the NGOs. The principal UN public reporting tool was the report of the Secretary-General on UNOMSIL/UNAMSIL to the Security Council, which typically issued once every two to three months. This almost invariably contained

a section detailing the human rights situation. Though the human rights section of these reports was always rather short (perhaps two out of a total of 12 pages), it more or less accurately conveyed the situation at any given time. And it was effective in drawing the human rights situation to the attention of the Security Council. The UN reports were much less successful in drawing wide public attention-this was due to the UN weakness in ensuring wide and effective dissemination of its publications. A number of UN reports were also submitted to the Commission on Human Rights as reports of the High Commissioner for Human Rights. These afforded a greater scope to discuss matters in detail. However, they tended to be published with data already in the public domain and they too suffered from the UN poor public dissemination abilities.

29. The UN also submitted highly detailed weekly and monthly internal reports to headquarters in New York as well as to the High Commissioner for Human Rights. The reports to New York were used systematically in closed briefings to the Security Council. They were made available to the Sierra Leone government and the diplomatic community in Freetown.
30. Two international NGOs took the lead in undertaking independent international reporting of the situation-Amnesty International and Human Rights Watch. Though these reports appeared somewhat sporadically and did not purport to provide comprehensive coverage over time, they were always authoritative and detailed. They received wide distribution. These reports complemented the UN public reporting very well in that they could be much more expansive. They also benefited greatly from the far superior public dissemination skills and capacities of the NGOs.
31. It can be concluded that the international reporting of the situation by the Sierra Leone human rights community was effective. It is clear that the UN reports had an impact on the Security Council. A correlation can be drawn between references to human rights in these reports and the Council's own outputs, such as the president's statements and resolutions, which increasingly came to describe and define the situation in Sierra Leone as being one of fundamental human rights abuse. The NGO reports for their part deserve the credit for attracting wide international public interest. The UN and NGO reports, together, notwithstanding their shortcomings, succeeded in defining international perceptions of the conflict and in ensuring that human rights considerations would require to inform the peace process.

Undertaking human rights advocacy and interventions

32. Human rights reporting was occasionally supported by highly targeted appeals deliberately intended to bring pressure on the combatants. These sometimes had a discernible impact on at least the reported levels of human rights abuse in the country. For instance, on 17 June 1998, the heads of UNICEF, Carol Bellamy, OCHA, Sergio Viera de Mello, and the High Commissioner for Human Rights, Mary Robinson, issued a strongly worded joint statement describing the acts of the rebels as "outrageous violations of human rights . . . and grave breaches of international humanitarian law."^{xvii} They called for judicial accountability for such abuses. The statement got wide publicity and was conveyed throughout Sierra Leone by means of BBC World Service. During subsequent weeks, clinics reported a palpable, albeit short-lived, drop in the rates of admission of victims of amputation and other forms of mutilation. Though similar reactions could be observed on other such occasions no particularly systematic study has ever been attempted to attempt to measure or predict the correlation between such actions and levels/patterns of abuse.
33. The human rights community also intervened directly with the parties. This was, inevitably, most easy to undertake with the government. There were, for instance, frequent interventions

throughout the period under review regarding the recruitment of child combatants within the CDF, and human rights activists considered that these tended to have an immediate if not particularly lasting impact. The UN had more success in its interventions regarding the 1998 civilian treason trials, which it had closely monitored. In almost every instance when it complained regarding the judicial process or the conditions of detention of the prisoners, the government reacted constructively. The UN and NGOs had no such success in their efforts to ensure a fair trial of those military personnel subject to trial by court martial, probably because they were perceived as the junta ringleaders and it was felt that their swift punishment would allay public anger. However, the United Nations strident efforts^{xviii} to protest the sentences of death probably influenced the government decision to spare the lives of a small number of the condemned.

34. There were also direct interventions with the rebel forces. Religious-based human rights actors had some success in making specific requests, such as regarding the situation of individual abducted or limited humanitarian access. The UN also frequently attempted to engage with the rebels. For instance, on 21 February 1999, following a meeting with RUF leaders, the rebels announced that they would, “take punitive measures against any members who would violate human rights” and that they, “condemn all human rights violations and atrocities including amputations, mutilations, maiming, rape, etc., perpetrated against the civilian population.”^{xix} The most conspicuous UN effort was the delivery to the RUF leadership at their Lomé meeting in May 1999 of an “Aide Memoire,”^{xx} which stated the various human rights and humanitarian law provisions related to the patterns of abuse which they perpetrated. The note also drew attention to the international criminal law consequences of these abuses. The rebels accepted the note saying that they had not previously been aware of the legal consequences of their acts and that they would abide by its provisions. For a period subsequently the note was delivered to rebel leaders whenever UN human rights staff encountered them. While there is no evidence that the Aide Memoire had any significant impact on actual behaviour, it in itself, with the manner of its acceptance, did remove from the rebels the excuse that they had often employed: that their noble cause justified their deeds, or the no less often repeated denial that they were responsible for the abuse of civilians.^{xxi}

Establishing Building Blocks for Future Accountability for Human Rights Abuses

35. Throughout 1998-2000 the human rights community sought to put in place elements necessary to ensure that some form of accountability might eventually occur. Firstly, it remained preoccupied to record the situation as it unfolded: not just to assist individual criminal trials but also to establish an historical account which might combat tendencies towards myth-making or those subsequent distortions of the truth which could fuel hatred and prejudice.
36. The UN and other public reporting was clearly intended to serve this purpose. The authors of the UN internal human rights reports also had in mind the value of these texts as detailed, if incomplete, documents of record which might at an appropriate time be placed in the public domain. UN reports, however, only covered the period since the appointment of the UN human rights advisor in April 1998, and, with the exception of some excellent material published by Amnesty International, there was a dearth of recorded information regarding the period of brutal junta control (May 1997 to January 1998). Throughout 1998 the UN human rights team, recognizing that it clearly did not itself have the resources, sought financial assistance to undertake a modest chronicling exercise regarding the junta period. The efforts were unsuccessful—at least partly because of reluctance on the part of many donors to recognize the worth of the exercise. In any case, the evacuations of January 1999 and such subsequent developments as the discussion of establishment of a truth commission overtook the proposal and it was not pursued further.

37. The other major contribution by the human rights community to ensure eventual accountability was its sustained effort to keep alive discussion of the eventual establishment of some form of formal accountability and reconciliation mechanism. The discussion first emerged in an unfocussed manner in 1998, largely in reaction to repeated, inconsistent and unclear government offers of amnesty to rebels who would lay down their arms. The credibility of the offers was never clear and in any case there appeared to be no public appetite for generosity to the rebels.
38. By the time of the rebel incursion into Freetown the situation had dramatically altered, with more and more voices calling for a settlement with the rebels. The UN human rights team responded to the real possibility of the granting of impunity by expressing its concern to the government in the person of the Attorney General and Minister for Justice. It initiated an internal reflection, involving OHCHR, on strategies to ensure accountability of at least the principal offenders and how best to support the eventual establishment of a sturdy truth and reconciliation commission.
39. The UN also requested the human rights community, in the framework of the Human Rights Committee, meeting first in Conakry and, from March in Freetown, to develop proposals on the matter. The Committee called for the establishment of a “Truth, Justice and Reconciliation Commission” at some future time in the context of a peace agreement. The concept was spelled out in a statement delivered to President Kabbah, of 1 March 1999, signed by representatives of twenty-two Sierra Leone human rights groups, which stated:

The Human Rights Community is of the view that while it is important to look forward to the future rather than the past during this critical peace process, the disturbing cycle of impunity in Sierra Leone will not be broken unless there is some form of censure or punishment to some perpetrators of gross abuses of human rights in the country. Accordingly, therefore, the Human Rights Community proposes the creation of a Truth, Justice and Reconciliation Commission in Sierra Leone which will, inter-alia, enable the country to cope with the aftermath of the crisis by hearing the truth directly from perpetrators of gross human rights violations, help survivors of violations cope with their trauma, and recommend judicial prosecutions for some of the worst perpetrators of the violations.^{xxii}

To what extent was human rights law considered to apply? Were treaties ratified, were derogations entered? To what extent was international humanitarian law considered to apply?

40. Human rights law was considered to apply. Sierra Leone had ratified all seven of the principal international human rights treaties, including the two covenants. It had also ratified the first optional Protocol to the Covenant on Civil and Political Rights (CCPR). The government at no time took any action to comply with the derogation notification provisions of CCPR, though it had declared a state of national emergency. The principal formal problem of the application of international law was the identity of the primary perpetrators of human rights abuse – the rebels. In the absence of a formal obligation on them to comply with international human rights law, a number of efforts were made to seek their voluntary adhesion to the legal standards – please see above regarding the delivery to them of a human rights “aide memoire”. It was also repeatedly brought to the attention of perpetrators that they were in violation of domestic law^{xxiii}. The latter reminders were largely futile given the lack of capacity of the Government to police beyond Freetown. Furthermore, the criminal process was corrupt, inefficient, capable of producing great injustice and heavily reliant on the death penalty^{xxiv}. International humanitarian law was also considered to apply, as was reiterated on a number of occasions by the Security Council and in the statements of international personalities. Its application has been retrospectively indicated by the practice of the Special Court for Sierra Leone of issuing war crimes indictments. During the conflict, however, little effort was made to precisely analyze situations in terms of the application of international humanitarian law, not least given the difficulty of determining the application of Common Article 3.

Can you provide a short overview of the human rights issues included in the agreement?

41. See below.

Who were the main proponents, and opponents of, inclusion of human rights references in the peace agreement during the negotiations, and why?

42. A response to this question requires exploration of the role played by human rights protagonists during the two-month period preceding the talks as well as while at Lomé itself.
43. The 1 March meeting with the president, referred to above, can be seen as the initial formal engagement of the human rights community with what would become known as the Lomé peace process. At that meeting an agenda for peace was spelled out^{xxv}. As well as calling for accountability in the manner described above, the human rights leadership also proposed:
- That it, and other parts of civil society, be allowed to play an active role in the peace process;
 - That any peace agreement contain clear provisions for the protection and promotion of human rights;
 - That a peace agreement not provide for power-sharing with rebels prior to a general election.
44. Just five weeks later, at the behest of the government, the NCDHR convened the national consultative conference on the peace process, intended to build national consensus around broad negotiating parameters for future peace talks^{xxvi}. The human rights community played an active part in the conference and convened its own working group. It also heavily influenced the proceedings by ensuring the inclusion of such standard discussion items in the taskings for all of the conference's nineteen working groups as regarding the possible role of a truth and reconciliation commission, the manner in which a peace agreement should address the plight of abductees and the possible role of a reparation fund for victims of human rights abuse.
45. In its report to the plenary^{xxvii} the human rights working group largely reflected the positions which had been stated to the president with the addition of a call for a peace agreement to include a provision for the release of all abductees. The group also endorsed the idea that a reparation fund should be established for victims of gross human rights violations, funded by government and donors. The one significant deviation from the proposals put to the president was that the group disagreed regarding whether there could be any role for an amnesty in a peace agreement.^{xxviii}
46. Ultimately the conference Conclusions,^{xxix} though reflecting to a great extent the elements of the unimplemented 1996 Abidjan Peace Agreement, endorsed many of the proposals, including the call for a role for civil society in the peace process, the need for peace negotiations to address the plight of abductees, opposition to power-sharing before elections, the establishment of a reparation fund for victims and the establishment of a commission to be termed, a "truth and reconciliation commission"-thus the term, "justice" disappeared. The Conclusions further proposed that the establishment of the commission should be accompanied by an amnesty for combatants.^{xxx} The Conclusions were described as a "conference consensus" though a number of participants complained privately that, with regard to the amnesty provision, they had been bullied into acquiescing in an outcome insisted upon by the government and its international supporters. Notwithstanding, the human rights community could depart from the Conference satisfied that it had introduced or encouraged the introduction of a number of issues which would become agenda items for the peace talks themselves.

47. The weeks following the conference were ones of intense activity for the human rights community. Within the framework of the Human Rights Committee and with the support of the UN human rights team, it hammered out positions on the various aspects of the peace process. It was encouraged by the unexpected announcement of the president, on 27 April, that a new Human Rights Commission would be established by statute, which would conform to international standards and would wield considerable powers. The UN immediately promised its full support for this initiative. Another surprise in those weeks was the extension by the government of an invitation to the High Commissioner for Human Rights, Mary Robinson, to visit the country. In agreeing, she said that one of the primary purposes of her visit would be to support the peace process.^{xxxii}
48. The peace talks actually got underway on 26 May and, in conformity with the conclusions of the April conference, the leadership of the human rights community was invited to participate in an observer status, while the NCDHR chair, Kadie Sesay, was appointed as a negotiator. The leader of the government delegation was Solomon Berewa, the Attorney General and Minister for Justice, who had a record of maintaining close and generally constructive contact with the UN human rights team. UN human rights officers were also to be present throughout as part of the UN observer team and UN humanitarian officers participated from time to time.
49. The negotiations were organized within the framework of a number of drafting committees, one of which was designated, “the committee for humanitarian, human rights and socio-economic issues.” This committee was co-chaired by Kadie Sesay. The committee was tasked with addressing a range of human rights and related issues. RUF delegates to the committee were not of the first ranks of the RUF team and proved to be largely uninterested and even disengaged^{xxxiii}. The co-chairperson, Kadie Sesay was, on the other hand, a strong personality and to some extent open to the consideration of human rights proposals. Observers, such as UN officers and civil society representatives, had little difficulty, in practice, in engaging with Committee members^{xxxiii}. The committee was precluded from dealing with all aspects of the amnesty discussions, which were instead assigned to a political committee. The manner in which the amnesty and related issues were dealt with is discussed below.
50. The following are the principal human rights elements of the peace agreement, together with an indication of the extent of influence exerted by human rights observers present in Lomé:
51. Article XV accords freedom of movement and guarantees for security of UNOMSIL human rights officers. This was inserted at the behest of UN human rights observers.^{xxxiv}
52. Article XXII provides for the return and reintegration of refugees and IDPs. At the request of the UN observers it is stipulated that such return must be “voluntary.”^{xxxv}
53. Article XXIV, using identical words to a provision of the 1996 Abidjan peace Agreement, affirms the importance of “the basic civil and political liberties” as contained in Sierra Leone law and international human rights instruments. The human rights observers, while welcoming the thrust of this provision, were unsuccessful in extending it to cover also economic, social and cultural rights.^{xxxvi}
54. There is a provision for establishment of an independent human rights commission and for national programs of human rights education and awareness raising (Article XXV). The UN observers were able to adjust the language of the provision whereby it provided the basis for establishment of a commission in conformity with international best practice, and the UN also encouraged the drafters to include the provision whereby the High Commissioner for Human Rights and others might render technical cooperation.^{xxxvii}

55. Article XXVI stipulates the establishment of a truth and reconciliation commission, “to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.” The Commission would also be tasked to address the rehabilitation of victims. This article was fashioned to substitute for judicial accountability and the language used, for instance regarding the addressing of impunity, was directly influenced by human rights lobbying. However, efforts to insert the word “justice” in the title of the commission were unsuccessful.^{xxxviii}
56. Article XXVII-on humanitarian access, and Article XXI on release of prisoners and abductees: see below regarding the two sideline agreements.^{xxxix}
57. Article XXIX stipulates that there shall be a program for rehabilitation of war victims.^{xl}
58. Article XXX provides that special attention be paid to the needs of child combatants and that resources be mobilized in this regard, including through the Office of the UN Special Representative for Children in Armed Conflict (UNSRSGCAAC), UNICEF and other agencies. The agreement’s preamble also refers specifically to the needs of children and the central importance of adherence to the Convention on the Rights of the Child. These provisions were inserted on the suggestion of UNSRSGCAAC and child protection bodies.^{xli}
59. There were also two sideline agreements of the parties for the release of all abductees and the removal of obstructions to the delivery of humanitarian assistance. Both of these issues had been the focus of hard lobbying by the human rights and humanitarian observers. The agreement on humanitarian access, in particular, was a result of the intensive efforts of the UN humanitarian coordinator.

CURRENT PROTECTION ISSUES IN THE PEACE AGREEMENT

What human rights provisions in the peace agreement aimed at current protection?

Were broad statement of support for human rights, or principles of human rights asserted to be relevant?

60. Such statements were included in the agreement. The preamble identified the pursuit of human rights as a goal of the agreement. However, the only human rights legal instrument specifically referred to in the preamble is the Convention on the Rights of the Child. This isolated reference is entirely as a result of the focused lobbying of the SRSRSGCAAC. As noted above, the operative part of the agreement, at article XXIV, equates civil and political rights with human rights.

Did the peace agreement provide for any human rights standards or rights frameworks to be applied, such as Bills of rights, lists of rights, or incorporation of, or commitments to international treaties? Where were these rights drawn from?

61. There were two specific references to sets of human rights standards. The first of these, to the Convention on the Rights of the Child, was inserted at the behest of SRSRSGCAAC. The other, at article XXIV, reads: “The basic civil and political liberties recognized by the Sierra Leone legal system and contained in the declarations and principles of Human Rights adopted by the UN and OAU, especially the Universal Declaration of Human Rights and the African Charter on Human and People’s Rights, shall be fully protected and promoted within Sierra Leonean society....(t)hese include the right to life and liberty, freedom from torture, the right to a fair trial, freedom of conscience, expression and association, and the right to take part in the governance

of one's country". The language closely reflects a provision of the earlier unimplemented Abidjan agreement. Efforts were made at Lomé by human rights actors to have the language broadened. However the negotiators were reluctant to reopen for discussion a text which, having already proved acceptable at the Abidjan talks, was likely to be adopted without controversy. In any case the present writer is unaware of any perception at Lomé or since that the other general references to human rights in the agreement were confined just to civil and political matters.

Did the peace agreement provide for any mechanisms to enforce these rights, or processes to produce such mechanisms? For example, constitutional courts, ombudspersons, national institutions?

62. Though the Lomé Agreement provided for a number of monitoring/implementation bodies, it had no provision regarding the specific supervision of implementation of its human rights elements. The Human Rights Committee, recognizing this gap, and borrowing heavily from similar initiatives^{xlii} following Bosnia and Herzegovina's Dayton/Paris Peace Agreement established a tracking mechanism. The Committee undertook to make periodic assessments on the status of the key human rights provisions as well as to document steps taken, programs initiated or achievements made in each thematic area. Findings were to be published in an "Implementation Bulletin." The thematic areas were identified as: establishment of institutions and mechanisms; release of abductees; specific issues related to children; promotion of the voluntary return of refugees and IDPs; promotion of economic, social and cultural rights, including the issue of humanitarian assessment; promotion of civil and political rights and constitutional review; and, sensitization of the community regarding the human rights provisions of the agreement.
63. The Bulletin was prepared on behalf of the Committee by the UN human rights team, based on information provided by the Committee membership. It was disseminated to all stakeholders, to the media, international human rights groups and to UN headquarters. About four editions of the Bulletin appeared in 1999 and a similar number in the first part of 2000. It slipped into abeyance with the incidents of May 2000 (see below). In the preceding months it had been experiencing the difficulty that there was so little implementation to report. Its real period of usefulness was in the months immediately following the adoption of the agreement, when it constituted the only reporting device of its type and it served to both raise awareness of and clarify key implementation issues. It, for instance, helped maintain attention to the plight of abductees—a voiceless community often overlooked.
64. The High Commissioner for Human Rights had committed to support the establishment of the Human Rights Commission and the Truth and Reconciliation Commission. She made good her commitment by already confirming her offer of assistance in a letter to President Kabbah on the day following the Lomé signing. During what remained of 1999 the assistance took the form of deployment of experts to assist the UN human rights team in providing the technical support for the design of the institutions.
65. UN efforts for the establishment of the Truth and Reconciliation Commission were closely coordinated with a sub-group of the Human Rights Committee, which, with NCDHR, facilitated a set of national consultations on how the commission should look in practice. It was this UN/civil society partnership which ultimately provided the elements for a draft statute which the UN put before the government. The government accepted the draft with little change and it was adopted into law on 22 February 2000.^{xliii} The statute, drawing on the extensive consultations, as well as emerging international "best practice," proposed a study commission, comprising both national and international commissioners, with subpoena powers and authorized to review the period since 1991. The Commission would be empowered to make binding recommendations to

government regarding the ensuring of an impartial historical record, preventing the repetition of the violations of abuses suffered, addressing impunity, responding to the needs of victims and promoting healing and reconciliation.

66. With the adoption of the statute, the High Commissioner began implementation of a pre-establishment phase for the Commission, comprising, inter-alia, the development of a national public awareness campaign and the commissioning of studies which would assist the Commission in its work. Not much had been achieved however by the time of the May 2000 incidents and, at the request of the UK, the program was suspended pending clarification of the situation. Only in September of that year did efforts resume with a visit by an OHCHR technical mission^{xliv}. The process of preparing for establishment of the Commission got underway properly following a national conference in November which issued a strong declaration calling for establishment of the Commission side by side with a “Special Court.”^{xlv} For an overview of the manner in which the Truth and reconciliation Commission implemented its mandate see its own account, contained in its 2004 Final Report^{xlvi}.
67. UN efforts for establishment of the Human Rights Commission proceeded also, but with little output. A number of OHCHR missions were undertaken in 1999 and 2000 and work began on the drafting of a statute for consideration by the government. However, the human rights community in Sierra Leone, by and large, was concentrated on efforts for establishment of the Truth and Reconciliation Commission, and the UN human rights team resources were stretched to their limits. In any case, what momentum there had been was lost for the remainder of 2000 following the May incidents (see below). A parliamentary bill for establishment of the Commission eventually appeared in 2004.
68. Implementation of the agreement struck at Lomé for release of what it termed, “prisoners of war and non-combatants,” was to be facilitated by a UN committee with NGO and ICRC participation. The human rights community was represented in the committee through, among others, the UN human rights team, UNICEF child protection staff and a representative of the National Forum for Human Rights. The committee saw its work as comprising advocacy for release, care for released persons and the maintenance of a database on abductees. It also inevitably took on an analysis role.
69. The range of tasks of the committee gave it a novel dimension, bringing together the classic human rights community with humanitarian colleagues, and dealing with everything from negotiation with rebel commanders to construction of camps. A clear division of labour emerged, in which the human rights specialists, especially the UN human rights and child protection teams, took the lead in negotiations with the rebels. Negotiation teams visited rebel camps at about five locations during the closing months of 1999 and succeeded in gaining the release of several hundred abductees, almost all of them children. On one occasion a negotiator was held captive for a number of days and the generally declining security situation rendered visits such as these increasingly difficult to implement. It also quickly became clear that it would prove exceptionally difficult to secure the release of adolescent and adult women, all of whom had been claimed as “wives” of the combatants, and many of whom knew of no other life. And it became obvious that the incidence of sexual abuse of women abductees was at 100 percent.
70. With the deteriorating post-Lomé situation, the efforts for the release of abductees grew less and less successful. Also, a certain ratio of releases occurred spontaneously and without the intervention or knowledge of the Committee (and therefore without its being able to offer the housing and medical support which it had put in place). The efforts did, however, assist to maintain the issue on the political agenda. The committee’s efforts also provided the data and analysis whereby the plight of victims of war-related sexual abuse was highlighted.

Were these human rights provisions implemented, and did enforcement mechanisms begin their adjudicatory functions?

71. See above.

Were reforms to institutions of justice provided for in the peace agreement? If so, what were they? Criminal justice reform? Reform of the judiciary? Reform of policing?

72. The Lomé Agreement contains no such provisions.

To what extent were these reforms implemented?

73. Not applicable

Was provision made for economic and social rights in the peace agreement? Did policies address socio-economic issues?

74. The limited nature of the provisions of article XXIV have been discussed above. Otherwise, the agreement contains a provision for humanitarian access as well as one addressing, “post-war rehabilitation and reconstruction”. Neither of these provisions was framed in the language of human rights.

Did the donor community fund any of these programmes?

75. At the time of the Lomé Agreement Sierra Leone was almost entirely dependent on international aid and assistance. The principal substantive actors have been described above. Donor aid was channeled multilaterally and bilaterally. Multilateral programmes included those of the UN and the World Bank. Principal bilateral donors included the UK, US and Canada. A number of the programmes addressing implementation of human rights-related provisions of the agreement were persistently under funded. For instance, great difficulty was experienced in raising the sums needed for the establishment and support to the Truth and Reconciliation Commission.

SPECIFIC PROTECTION ISSUES

Was specific provision made for women, and women's rights?

76. The Lomé Agreement contains one specific reference to women, in the context of the provision on national reconstruction at Article XXVIII: “Given that women have been particularly victimized during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programmes, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone”.

Was specific provision made for children and children's rights?

77. The preamble to the agreement “recogn(ises) the imperative that the children of Sierra Leone, especially those affected by armed conflict, in view of their vulnerability, are entitled to special care and the protection of their inherent right to life, survival and development, in accordance with the provisions of the International Convention on the Rights of the Child”. According to article XXX, “The Government shall accord particular attention to the issue of child soldiers. It shall, accordingly, mobilize resources, both within the country and from the International Community, and especially through the Office of the UN Special Representative for Children in Armed Conflict, UNICEF and other agencies, to address the special needs of these children in the existing disarmament, demobilization and reintegration processes”. As has been noted above, these provisions were as a direct result of the interventions of the SRSGCAAC.

Was provision made for the return of refugees and displaced persons?

78. Yes. ARTICLE XXII stipulates that, “(t)he Parties through the National Commission for Resettlement, Rehabilitation and Reconstruction agree to seek funding from and the involvement of the UN and other agencies, including friendly countries, in order to design and implement a plan for voluntary repatriation and reintegration of Sierra Leonean refugees and internally displaced persons, including non-combatants, in conformity with international conventions, norms and practices”.

Were human rights matters relevant to ensuring the protection of returning refugees and displaced persons included?

79. Yes. ARTICLE XXIII states that, “As a reaffirmation of their commitment to the observation of the conventions and principles of human rights and the status of refugees, the Parties shall take effective and appropriate measures to ensure that the right of Sierra Leoneans to asylum is fully respected and that no camps or dwellings of refugees or displaced persons are violated”.

To what extent were refugees and displaced persons able to return in practice?

80. Fighting continued after the adoption of the Lomé Agreement, rendering it impossible to envisage widespread return. It was only from late 2000 that significant numbers of refugees and IDPs were able to return to their homes, at first spontaneously and subsequently with the assistance of UNHCR. It proved particularly difficult to encourage IDPs to leave the Freetown area as they were reluctant to lose what they saw as the economic advantage of living in the capital city. Reportedly, rebel groups encouraged or at least in some cases facilitated return of

refugees and IDPs to areas under their control – allegedly in the hope of attracting increased levels of humanitarian assistance^{xlvii}.

Were there tensions between the right to return and peace-making? What were they, how were they dealt with?

81. No such tensions manifested themselves in Sierra Leone. The conflict had not been an ideological or ethnic one dividing peoples, nor was it about ownership of real estate. Accordingly, returnees did not, as such, present a threat to the controllers of territory.

If relevant, was the issue of return of property addressed in the peace agreement?

82. The issue was not identified as a major concern in the peace process and was not addressed.

Was this implemented in practice? What issues arose and how were they resolved?

83. Not applicable

If not already addressed, how were the property rights of returnees balanced with the rights of those who held the property post-conflict?

84. This issue did not present as a significant problem in Sierra Leone.

Were other issues of current protection addressed in the peace agreement?

85. Yes, see above.

Were other issues of reparations for human rights or humanitarian law violations addressed in the peace agreement?

86. Article XXIX provides for establishment of a fund for victims, “(t)he Government, with the support of the International Community, shall design and implement a programme for the rehabilitation of war victims. For this purpose, a special fund shall be set up”. As a matter of practice the issue of reparations was left for the consideration of the Truth and Reconciliation Commission. The statute of the Commission specifically mandates it to address the matter. The Commission, in its final report, has made detailed recommendations for the making of reparations related to health, housing, pensions, education, skills training, micro-credit, community reparations and symbolic reparations.

DEALING WITH THE PAST

How was the past dealt with in the peace agreement?

87. This paper has already addressed the pre-Lomé debate on accountability and the efforts of civil society and other actors. The Lomé agreement, at Article XXVI, stipulates the establishment of a truth and reconciliation commission, “to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.” The Commission would also be tasked to address the rehabilitation of victims. This article was fashioned to substitute for judicial accountability and the language used, for instance regarding the addressing of impunity, was directly influenced by human rights lobbying. However, efforts to insert the word “justice” in the title of the commission were unsuccessful.^{xlviii}
88. The committee with responsibility for drafting the terms of the proposed amnesty for all past actions of combatants was not amenable to the lobbying efforts of the human rights community. A number of attempts were, however, made to moderate the scope of the proposed sweeping provision. In particular, the UN senior observer, the Special Representative of the Secretary-General, Francis Okelo, was advised by his human rights team to seek amendments to the draft provision whereby it did not extend to international crimes and that its application in any individual case be dependent on full cooperation with the Truth and Reconciliation Commission. He was further encouraged to take a strong position by, inter-alia, the issuance during the period of the talks of guidelines of the Secretary-General regarding UN involvement in peace talks which set limits on the extent to which the UN could associate itself with amnesty provisions.
89. These efforts were unsuccessful and Article IX provides for the pardoning of Foday Sankoh and the granting of, “absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the signing of the present Agreement.” The UN Secretary-General immediately instructed Okelo to disassociate the organization from the provision by appending to his signature as witness to the agreement, the words, “the United Nations holds the understanding that the amnesty and pardon in Article IX of the agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law.”^{xlix}
90. While the agreement was being negotiated, Mary Robinson, the UN High Commissioner for Human Rights, had visited Freetown and drawn attention to the acute levels of human rights abuse and the need for justice and accountability. As already noted, she committed her office to, inter-alia, support the establishment of the truth and reconciliation commission and the new human rights commission. She also initiated a study on how to counter impunity, such as, at least initially, by means of an international commission of enquiry.

Were amnesties provided for? If so, what was the nature of these amnesties?

91. See above

What was the reaction of the population at large and of civil society organisations vis-à-vis such amnesties?

92. The mood and expectations in Sierra Leone prior to and during the Lomé talks have been described above. In this context, the amnesty came as no surprise and there was no Sierra Leonean public outcry opposing it. The human rights community, for its part, having struggled

hard to keep alive the debate on accountability, considered the attainment of a truth and reconciliation commission to be an important achievement. The international human rights community, however, expressed outrage with the amnesty provision. Its denunciation was expressed, for instance, in the form of condemnatory statements by Human Rights Watch and Amnesty International.¹ There were calls for the establishment by the UN of an international commission of enquiry.

93. The proposal for a commission of inquiry had already been introduced by the High Commissioner for Human Rights during her (pre-Lomé) visit to Freetown and she undertook to continue to support it, but in a way not disruptive of implementation of the peace agreement. Her perception of the form of such a commission was described in the Secretary General's report to the Security Council of 30 July 1999, "the Security Council may wish to consider . . . the establishment in due course of a commission of enquiry, as recommended to the Government of Sierra Leone by the High Commissioner for Human Rights. Such a commission would investigate and assess human rights and humanitarian law violations and abuses perpetrated by all parties since the commencement of the conflict in 1991."ⁱⁱ
94. In order to keep the proposal alive she requested a senior Kenyan lawyer, Bethuel Kipligat, to develop modalities for the operation of such a commission side by side with a truth and reconciliation process. He had not yet reported at the time of the May 2000 incidents (see below) and, in any case, events overtook his task with the subsequent developments regarding the Special Court.
95. In the meantime, UN human rights reporting of the ongoing situation continued, as did that of the NGO community. Through the closing months of 1999 and into 2000 combatants were repeatedly reminded, in meetings, press statements, UN reports and the media, that the amnesty provision had no effect regarding international crimes and that, in any case, it did not even purport to apply to actions committed following the signing of the Lomé Agreement. Human rights activists also met with the newly appointed head of the Sierra Leone police, a former senior UK police officer, Keith Biddle, requesting that contemporaneous incidents of human rights abuses be investigated and treated as criminal matters. He agreed. Police efforts, however, were greatly constrained by limited capacity as well as by very partial deployment in the provinces, and none at all in rebel controlled areas.
96. The situation in Sierra Leone continued to slide through 1999 and into 2000ⁱⁱⁱ. Rebel obstruction and disregard for the peace agreement was exacerbated by the phased withdrawal of ECOMOG and the failure of the UN to deploy a sturdy peacekeeping force in good time. The new UN mission, UNAMSIL, was only established in October 1999, with the first armed troops not arriving until 29 November.
97. During May 2000, the lightly armed, under-manned and poorly-led UNAMSIL forces came under rebel attack in a number of locations. By the middle of that month 352 of them had been abducted and eleven peacekeepers had been killed. At the same time, with fears of another rebel incursion to Freetown there were evacuations of UN and other foreigners. The situation only began to stabilize with the deployment of British armed forces who secured the international airport and the city.ⁱⁱⁱⁱ
98. The events of May 2000 led to some fundamental changes of approach by the government and the UN.^{lv} The government deemed the amnesty to have been revoked at least as concerning rebel elements. Sankoh and other senior RUF personalities were taken into custody. The government requested UN assistance for the establishment of an international court to try the top RUF leadership. UNAMSIL was reconfigured whereby it would have sturdy terms of

engagement as a Chapter VII peace-enforcement mission and it became the largest UN peacekeeping mission in the world.

99. During July the human rights community convened a number of meetings on the issue of an international court at which some common positions were developed. In the first place it was felt that the personal jurisdiction, targeting just the RUF, was unacceptably narrow. Secondly it was considered that the court should be entirely internationalized, without the involvement of Sierra Leone judges or its laws. It was also agreed that the court should exist side by side with the Truth and Reconciliation Commission. Finally, it was argued that the amnesty provision of the Lomé Agreement should be considered null and void.
100. These views were conveyed to relevant parts of the UN system, notably the Office of Legal Affairs, (which at least at that time appeared to have limited experience of engagement with civil society actors), as well as to the government. There was general agreement regarding all but the proposals for complete internationalization of the court. International human rights NGOs, such as Human Rights Watch, had also, in their advocacy, conceded the possibility that the court have a mixed national/international character.
101. On 14 August, the Security Council proposed establishment of a court, to be termed a Special Court to, “prosecute persons who bear the greatest responsibility” for perpetration of, “crimes against humanity, war crimes and other gross abuses of international humanitarian and Sierra Leonean law.”^{iv} It was left to the Secretary-General to propose the various details to the Council for its subsequent consideration. These views were contained in a report to the Council, dated 4 October,^{vi} which had benefited from extensive consultation on the ground, including with the Human Rights Committee membership. The proposals in the report were broadly welcomed by the human rights community, notwithstanding some concerns regarding the formulation of the personal and temporal jurisdiction, worries over the part-national nature of the court, the manner in which it might choose to prosecute children, and the eventual relationship with the Truth and Reconciliation Commission.

Were mechanisms for accountability provided for? What crimes/abuses did these cover?

102. See references to the amnesty and the Truth and Reconciliation Commission

Were these then implemented?

103. Ibid.

If not provided in the agreement, did any mechanisms for dealing with the past, or issues of amnesty, or provision for victim's rights later emerge (or had they existed previously outside of the agreement)?

104. See above

To what extent was the question of international requirements of accountability a controversial issue, perceived to be in conflict with the requirements of peace-making?

105. See above.

To what extent were victims rights provided for in the peace agreement?

106. See above

To what extent were these measures implemented?

107. See above

- **If not provided for in the peace agreement, were victims rights addressed elsewhere in the process?**

RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE PEACE AGREEMENT

Were other human rights issues addressed in the peace agreement?

108. See above.

Was it later felt that other human rights issues which could usefully have been addressed in the agreement?

109. As has been discussed above, efforts to limit the amnesty provision and to strengthen the justice related function of the proposed Truth and Reconciliation Commission were not successful. Also, suggestions for specific language in the human rights provisions met with only partial success.

110. More generally, the agreement missed a number of opportunities. For instance, it did not address issues of human rights-related institutional reform of the public service, the police and the judiciary. Issues of the promotion and protection of the human rights of women should have received much more attention. The peace agreement would also have benefited from the insertion of a specific monitoring mechanism to oversee implementation of the human rights related provisions. Furthermore, with the benefit of hindsight, it can be argued plausibly that the peace agreement missed the opportunity to address significant but little adverted to causes for Sierra Leone's instability, such as its inequitable systems of land ownership and of traditional leadership in rural areas^{lvii}.

When human rights issues were not addressed in the agreement, but came to be addressed subsequently, what difference, if any, did it make that the agreement did not address these issues?

111. This issue arose most starkly with the eventual determination, first by the Government, and subsequently by the UN and other actors, that the amnesty had been revoked or otherwise fallen into abeyance. See further above.

Can the peace agreement be considered be successful? Please use your own measure of success – you may consider it relevant for example whether violence was reduced, reforms, implemented, or past problems, addressed with some success.

112. The Sierra Leone peace process, starting in March-April 1999, succeeded in bringing the principal combatants to the negotiation table. The process sharply reduced levels of fighting and human rights abuse across the country, the incidence of which would never again reach the pre-peace process levels. The access to leaders which the process provided also, at least to some extent, facilitated the opening up of humanitarian access. The peace agreement itself succeeded in triggering a number of important actions, including the establishment of a UN peacekeeping mission, the commencement of a disarmament, demobilization and reintegration programme (DDR), the release of some of the civilian abductees held by rebel groups (children mostly), commencement of a restructuring of the army, significantly enhanced humanitarian access and first steps in national reconstruction and development.
113. That the peace floundered less than a year after the adoption of the agreement is the fault of many actors. The RUF and other rebel groups bear the primary responsibility in that they either failed or were unable to control many of their armed elements. Their leaderships persistently ignored or subverted aspects of the agreement. The Government also stands accused of often acting in bad faith or incompetently, for instance for its efforts to have the Lomé amnesty selectively lifted whereby only RUF members might be prosecuted. As ECOMOG withdrew, its successor, the UN peacekeeping mission, proved itself to be inept and ill-equipped. Liberia continued its interference in Sierra Leone's affairs.
114. The collapse of the peace resulted in the abandonment of those parts of the Lomé Agreement which addressed such issues as power-sharing and impunity. Other parts of the agreement remained operational and their implementation requires to be acknowledged. Thus, efforts continued for establishment of the Truth and Reconciliation Commission, for DDR, reform of the army, release of abductees and return of the displaced^{lviii}. By 2004, these programmes have, to a significant extent, been completed, albeit imperfectly^{lix} and, very late in the day, significant strides have been taken towards establishment of a national human rights commission. The peace process and the Agreement itself were also the catalysts for a number of positive developments not specifically referred to in the Lomé documents. For instance, UNAMSIL, in cooperation with bilateral programmes, has undertaken a partial reform of the police system and its human rights and child protection units have undertaken major capacity building programmes with the government and civil society.
115. It can even be argued that we have the Lomé peace process to credit for the establishment of the Special Court (and for its coexistence with the Truth and Reconciliation Commission)^{lx} - in that the Court grew out of a set of specific circumstances triggered by the peace process.
116. However, the peace process has been far from an unqualified success. A recent report of the International Crisis Group (ICG) suggests that the country's political evolution has resulted in no more than "same car, different driver", and it quotes a diplomat in Freetown as saying that, "all our resources have gone towards recreating the conditions that caused the conflict", i.e., corruption, lack of accountability weak national institutions (including the revenue, judicial and security systems), mismanagement of the nation's mineral wealth, neglect of the agricultural sector, failure to meet the needs and expectations of youths and unwillingness to address the iniquities of the systems of traditional leadership and land ownership in rural areas.^{lxi} Recent assessments by the UN, while not uncritical, have been somewhat more positive^{lxii}.

To what extent did the human rights dimensions included in the agreement contribute to the agreement's success?

117. It is difficult to determine whether those human rights provisions addressing immediate protection needs in any way contributed to any “success” of the agreement. Some, such as the demobilization of child combatants, release of abductees and the return of the displaced probably did contribute to the pacification of society. However, in general, a better measure of their utility might be the extent to which these provisions served their own humanitarian ends, in which case they can be seen, overall, as successful. It is also noteworthy that these provisions do not seem to have in any way undermined or destabilized the peace agreement.
118. It is no less difficult, at least as yet, to assess the extent to which future-focused institutional human rights provisions may contribute to consolidation of peace. The Truth and Reconciliation Commission has now completed its work and it remains to be seen how its findings and recommendations will help shape the future of Sierra Leone. The national Human Rights Commission is only now in gestation and no assessment may yet be made of its likely impact.
119. Account needs also to be taken of the future impact of the activities of the Special Court. Misgivings are currently being expressed regarding its potentially de-stabilizing influence. In 2004, in its Final Report, the Truth and Reconciliation Commission suggested that the establishment of the Special Court may have been a mistake and that the Lomé amnesty should have been retained for purposes of national reconciliation and the promotion of sustainable peace: “(t)he Commission subscribes to the view that there will be circumstances where a trade of peace for amnesty represents the least bad of the available alternatives” and, “the Commission views the amnesty granted as necessary in the circumstances that prevailed at the time”. With regard to its record of partnership with the Special Court, the Commission reports a series of missed opportunities and states that, “the two bodies had little contact and when they intersected at the operational level, the relation was a troubled one”^{lxiii} The Special Court, for its part, decided in 2004 that the Lomé amnesty provision did not constitute any impediment to its jurisdiction^{lxiv}
120. With regard to the beneficial impact of those other human rights programmes which were implemented in the framework of the peace process but which were not specifically mandated thereby see above.

To what extent did limitations in the human rights provision of the agreement, impact negatively on the agreement's success?

121. See above.

Was it claimed that human rights measures undermined peace-making? Were the claims founded?

122. No such view was proposed regarding most of the human rights provisions. Those which were exhortatory or vaguely aspirational were perceived as non-contentious, even innocuous (albeit, as described above, suggested improvements, such as to the reference to “civil and political rights”, met with unexpected resistance). Others, such as for release of abductees and demobilization of children, were perceived to be logistically challenging but unobjectionable on humanitarian grounds.

123. The one area in which serious problems was that concerned impunity. See above with regard to the inability of the human rights community to have issues of accountability more sturdily addressed at Lomé. However, it should be recalled that prior to and during the Lomé talks, neither the local nor the UN human rights actors ever called for comprehensive and immediate judicial accountability. They were not blind to the argument that the rebels need to be attracted to the negotiation table. However they were of the view that a range of options could be considered side by side with some form of amnesty – such as for the amnesty to exclude war crimes and crimes against humanity, for amnesty to be conditional on cooperation with a truth commission, for such a commission to have the power to recommend prosecutions, and for establishment of an international commission of inquiry. That none of these options was explored at the time may reflect a failure of imagination the part of negotiators rather than any validity in the claim that the proposals would undermine the peace process.

To what extent did the agreement enable civic society and human rights NGOs to promote and protect human rights?

124. As indicated throughout this paper, the human rights community made an important contribution to all phases of the peace process. It played a prominent role in ensuring that issues of human rights informed the pre-talks phase, it created and maintained lobbies for inclusion of human rights language in the text, it supported implementation of the human rights-related provisions and, in all phases, it struggled, with some success, to ensure that issues of accountability for human rights abuses be addressed.. It is possible to discern a number of overarching factors and considerations which to a significant extent determined the performance of the human rights community.

125. In the first place, the many human rights actors could legitimately be described as a cohesive group, well-coordinated and capable of working in concert with each other. This was as a result both of the strong and open leadership within a number of the organizations and the existence of key coordination mechanisms, above all the National Forum for Human Rights and the Human Rights Committee. The wide membership of the Committee, including NGOs, the UN, humanitarian organizations and others was also critical to its success. Within the context of these coordination arrangements, the human rights community succeeded in both articulating and programmatically implementing a vision of a human rights contribution to peacemaking.

126. There were limits, however, to both the structures and the scope of the vision. The community was never entirely cohesive and was hampered by the less than enthusiastic participation of such major bodies as the NCDHR. Furthermore, at key moments the community failed to speak with one voice on fundamental issues-as was the case regarding justice and accountability at the time of the April 1999 national consultative conference.

127. Second, the presence of a UN human rights team in Sierra Leone was critically important. Its reporting on the situation directly impacted the UN understanding of and response to the situation in Sierra Leone. The team's location within the peacekeeping mission context also permitted it to have high level access to government, rebel leadership and in the peace negotiations. The UN strong attachment to the local NGO community greatly enhanced the latter's status and influence within political circles. The UN also undertook significant skills transfer and repeatedly encouraged the human rights groups to address issues related to the peace process. UN human rights efforts on the ground were significantly augmented by the engagement of OHCHR-without the support of which it is unlikely that the Truth and Reconciliation Commission would ever have been established.

128. The UN human rights engagement was not an unqualified success. The UN programme was gravely under-resourced and a problem of lack of human resources was compounded by the flawed procedures for recruitment of human rights officers. Occasionally fraught relationships with the peacekeeping mission leadership, such as during the downsizing of the mission in January 1999, also had a debilitating effect.
129. Thirdly, the international human rights NGOs played an important role. Support provided by Amnesty International to its local section sustained and encouraged the high quality leadership within the local NGO community. Amnesty International also drew international attention to Sierra Leone during 1998, a role which it subsequently came to share with Human Rights Watch which took the important initiative of opening a country office. Peace-related human rights advocacy was also both undertaken and creatively supported by such humanitarian organizations as MSF. International NGOs, in addition, provided significant and necessary technical assistance, for instance for the establishment of the Truth and Reconciliation Commission.
130. Finally, the successes of the human rights community were at least in part thanks to the relatively open attitude of government, which repeatedly gave civil society, and its human rights component, opportunities to present their positions and even to influence the peace negotiation process. Such cooperation, of course, had its limits. There were many instances of the government acting directly contrary to the recommendations of the human rights community as well as itself being responsible for serious violations of human rights.

ⁱ This paper follows the question and answer format of the template provided by ICHRP. Among other sources it draws on the present writer's article, Sierra Leone's Peace Process: The Role of the Human Rights Community, *Human Rights Quarterly*, 26 (2004) 29-62. That article is not further cited in the paper.

ⁱⁱ Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 7 July 1999, done at Lomé, Togo, (Hereinafter, The Peace Agreement), *available at* www.Sierra-Leone.org.

ⁱⁱⁱ Resolution s1181 (1998).

^{iv} See the fourth and fifth progress reports of the Secretary-General on UNOMSIL, UN Docs S/1999/20 and 237.

^v Most Freetown newspapers carried photographs of the executions during the following week. See, for example, editions of THE HERALD GUARDIAN and THE AFRICAN CHAMPION.

^{vi} See the fourth and fifth progress reports of the Secretary-General on UNOMSIL, UN Docs. S/1999/20, 237.

^{vii} Internal UNOMSIL report, REPORT OF HUMAN RIGHTS ASSESSMENT MISSION TO FREETOWN 25 JANUARY AND 1 TO 4 FEBRUARY 1999, written by the present writer, and subsequently made public by Special Representative of the Secretary-General Francis Okelo. See also Fifth Report of the Secretary General on UNOMSIL, UN Doc S/1999/237, at ¶ 2.

^{viii} *Id*

^{ix} UN Doc. S/1999/237.

^x Address of the UK High Commissioner, Peter Penfold, to the April 1999 National Consultative Conference, reported in, National Commission for Democracy and Human Rights, THE ROAD TO PEACE: REPORT OF NATIONAL CONSULTATIVE CONFERENCE ON THE PEACE PROCESS IN SIERRA LEONE 50-54 (Freetown, Apr. 1999) (hereinafter ROAD TO PEACE).

^{xi} *Available at* www.Sierra-Leone.org.

^{xii} *See* ROAD TO PEACE, *supra*.

^{xiii} *Accessible at* www.ictj.org

^{xiv} United Nations High Commission for Human Rights, PARIS PRINCIPLES, FACT SHEET NO. 19, *available at* www.unhchr.ch/html/menu6/2/fs19.

^{xv} Security Council Res. 1181, *supra* note 3.

^{xvi} Local NGOs made a number of oral interventions with UNOMSIL management. Written appeals were sent by international NGOs, including Amnesty International.

^{xvii} UN Doc. HR/98/40.

^{xviii} Including appeals by the UN Secretary-General, the High Commissioner for Human Rights, the UN Human Rights Committee and Amnesty International.

^{xix} UN and RUF Joint Communiqué, on file with the present writer.

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- xx A copy of the aide memoire is on file with the present writer
- xxi For an exposition of RUF thinking see, RUF, FOOTPATHS TO DEMOCRACY -TOWARDS A NEW SIERRA LEONE (Vol. 1, 1995) (on file with the present writer). The back cover of this publication states:
Each generation has the onerous task to judge the performance of its institutions, particularly the government. The African people of Sierra Leone evaluated the performance of the (government) and the consensus was that in order to save the nation from its perennial political, social and economic predicament, the entrenched system could only be changed by armed uprising of the people imbued with a clear ideology.
- xxii A copy of the statement is on file with the present writer.
- xxiii See the Aide Memoire, *supra* note xx.
- xxiv See further International Crisis Group, LIBERIA AND SIERRA LEONE – REBUILDING FAILED STATES, (December 2004).
- xxv A copy of the statement is on file with the present writer
- xxvi See ROAD TO PEACE, *supra*.
- xxvii *Id.* at 100-03.
- xxviii *Id.* at 100
- xxix *Id.* at 36-39.
- xxx *Id.* at 36
- xxxi Address of the High Commissioner at the ceremony of signing of the Human Rights Manifesto, Freetown, 24 June 1999, address on file with the present writer
- xxxii Personal observations of the present writer based on his contemporary observations
- xxxiii *Id.*
- xxxiv The Peace Agreement, Article XV,
- xxxv *Id.* Article XXII
- xxxvi *Id.* Article XXIV
- xxxvii *Id.* Article XXV
- xxxviii *Id.* Article XXVI
- xxxix *Id.* Article XXVII
- xl *Id.* Article XXIX
- xli *Id.* Article XXX
- xlii See POST-WAR PROTECTION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA (Michael O’Flaherty & G. Gisvold, eds., 1998); Michael O’Flaherty, *International Human Rights Operations in Bosnia and Herzegovina*, in HONOURING HUMAN RIGHTS 227-52 (Alice Henkin ed., 2000).
- xliiii The statute of the commission is *available at* www.Sierra-Leone.org.
- xliv Mission led by the present writer
- xlv Declaration on file with the present writer
- xlvi See note xliii *supra*.
- xlvii For an overview of the situation of displacement in 2001, see UN Doc S/2001/513 of 23 May 2001
- xlviii The Peace Agreement, Article XXVI
- xlx See UN Doc. S/1999/836 at ¶ 7
- ¹ See, Amnesty International, SIERRA LEONE-ENDING IMPUNITY – AN OPPORTUNITY NOT TO BE MISSED, 2000 (AI INDEX: AFR 51/60/00)
- li UN Doc. S/1999/836, at ¶ 47.
- lii *Id.* as well as subsequent progress reports of the Secretary-General, in particular UN Docs. S/2000/13, 455.
- liii See progress reports of the Secretary-General, UN Docs. S/2000/751, 832.
- liv *Id.* See also progress reports of the Secretary-General, UN Docs. S/2000/1055, 1199.
- lv Resolution S1315 (2000).
- lvi UN Doc. S/2000/915.
- lvii See International Crisis Group, LIBERIA AND SIERRA LEONE – REBUILDING FAILED STATES, *supra*.
- lviii For an interesting analysis of implementation of the peace process as of mid-2003, see, International Crisis Group, SIERRA LEONE: THE STATE OF SECURITY AND GOVERNANCE (2 September 2003)
- lix The need for sustained attention to the various programmes is acknowledged, for instance, in the 23rd progress report of the Secretary-General, UN Doc S/2004/724.
- lx On the relationship between the two institutions see W. Schabas (insert reference)
- lxi International Crisis Group, LIBERIA AND SIERRA LEONE – REBUILDING FAILED STATES, *supra*.
- lxii See Report of the Security Council Mission to West Africa, 20-29 June 2004, UN Doc S/2004/525 at ¶ 33 – 42, and the 24th progress report of the Secretary-General, U.N. Doc S/2004/965.
- lxiii Truth and Reconciliation Commission Findings at ¶ 559 to 563.
- lxiv The Special Court held that the general amnesty granted in the 1999 Lomé peace agreement was "ineffective" in preventing international courts, such as the Special Court, or foreign courts from prosecuting crimes against humanity and war crimes. It also considered as "in accordance with international law" the instruction by the United Nations Secretary-General to his Special Representative for Sierra Leone to append to his signature of the

peace agreement an explicit proviso that the amnesty "shall not apply to international crimes of genocide, crimes against humanity and other serious violations of international humanitarian law". Case No.SCSL-2004-15-AR72 (E) and Case No.SCSL-2004-16-AR72 (E), Decision No.SCSL-04-15-PT-060-I and Decision No.SCSL-04-15-PT-060-II (Decision rejecting amnesty). The decision was published on 15 March 2004.