

# TRANSITIONAL JUSTICE AND NATIONAL CIVIL SOCIETY: A CASE FOR SIERRA LEONE<sup>1</sup>

RESEARCH ARTICLE

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**ABSTRACT:** National civil society has played an integral role in the promotion and support of transitional justice mechanisms in countries and societies that have emerged from protracted armed conflict and repressive authoritarian regimes. These mechanisms have been used to hold national governments to account for human rights violations and international crimes, raise awareness and mobilise society to participate in transitional justice mechanisms, and provide a range of services to victims and witnesses of human rights violations. In the case of truth commissions, they have also been involved in monitoring and disseminating the outcomes and lessons learnt from transitional justice mechanisms to a wider national audience. Furthermore, they have been advocating with national governments and developmental partners to implement the recommendations of the truth commissions. The roles of national civil society in transitional justice mechanisms have been captured in three phases: prior conception and formation, and operations and post-transitional justice mechanisms. There has, however, been little examination of the critical roles played by national civil society in these three phases, particularly in Sierra Leone. Therefore, this article provides an overview of the concept of civil society and its role in transitional justice in post-conflict countries, or countries which are emerging from repressive authoritarian regimes. Lastly, it more broadly examines Sierra Leone's dual transitional justice approach and the role of national civil society in achieving transitional justice in Sierra Leone.

**Keywords:** Transitional justice, Peacebuilding, Civil Society, National Civil Society

## Geçiş Dönemi Adaleti ve Ulusal Sivil Toplum: Sierra Leone Örneği

**ÖZ:** Ulusal sivil toplum, uzun süreli silahlı çatışmalardan ve baskıcı otoriter rejimlerden doğan ülke ve toplumlarda geçiş dönemi adaleti süreçlerinin teşvik edilmesinde ve desteklenmesinde ayrılmaz bir rol oynamıştır. Bu süreçler, ulusal hükümetleri insan hakları ihlallerinden ve uluslararası suçlardan sorumlu tutmak, farkındalığı artırmak ve toplumu geçiş dönemi adaleti süreçlerine katılmaları için harekete geçirmek ve insan hakları ihlallerinin mağdurlarına ve tanıklarına bir dizi hizmet sunmak için kullanılmıştır. Hakikat komisyonları söz konusu olduğunda, geçiş dönemi adaleti süreçlerinden öğrenilen sonuçların ve derslerin izlenmesi ve daha geniş bir ulusal kitleye yayılmasına da dâhil oldular. Ayrıca, hakikat komisyonlarının tavsiyelerini uygulamak için ulusal hükümetler ve kalkınma ortaklarıyla birlikte savunuculuk yapıyorlar. Ulusal sivil toplumun geçiş dönemi adaleti süreçlerindeki rolleri üç aşamada ele alınmıştır: ön anlayış ve oluşum ve operasyonlar ve geçiş dönemi sonrası adalet süreçleri. Sivil toplumun bu üç aşamada, özellikle de Sierra Leone'de oynadığı kritik rollere ilişkin çok az inceleme yapılmıştır. Bu nedenle, bu makale sivil toplum kavramına ve çatışma sonrası ülkelerde veya baskıcı otoriter rejimlerden doğan ülkelerde geçiş dönemi adaletindeki rolüne genel bir bakış sunmaktadır. İkinci olarak, Sierra Leone'nin ikili geçiş dönemi adaleti yaklaşımını ve Sierra Leone'de geçiş dönemi adaletinin sağlanmasında ulusal sivil toplumun rolünü daha geniş bir şekilde incelemektedir.

**Anahtar Kelimeler:** Geçiş dönemi adaleti, Barış inşası, Sivil Toplum, Ulusal Sivil Toplum

## Introduction

Countries and societies which have emerged from conflicts and repressive authoritarian regimes face a set of challenges in handling the legacies of past human rights abuses and being able to promote peace and reconciliation to individuals, communities and the nation (Hazan, 2004). In trying to deal with past injustices as part of efforts to build peace through accountability, most countries tend to employ transitional justice mechanisms. Some have deployed them as means of reconciling divided societies torn

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apart by wars, some as a means an accountability instrument, and others have had both objectives (Hazan, 2006). The latter sought to hold to account those who bear the ‘greatest responsibility’ for human rights violations. Together, truth commissions and judicial proceedings have sought to end the culture of impunity and promote sustainable peace and development.

To support transitional justice mechanisms, national civil society has played an integral role in the promotion and support of transitional justice mechanisms in countries and societies that have emerged from protracted armed conflict and repressive authoritarian regimes. These mechanisms have been used to hold national governments to account for human rights violations and international crimes, raise awareness and mobilise society to participate in transitional justice mechanisms, and provide a range of services to victims and witnesses of human rights violations.

In the case of truth commissions, they have also been involved in monitoring and disseminating the outcomes and lessons learnt from transitional justice mechanisms to a wider national audience. Furthermore, they have been advocating with national governments and developmental partners to implement the recommendations of the truth commissions. The roles of national civil society in transitional justice mechanisms have been captured in three phases: prior conception and formation, and operations and post-transitional justice mechanisms. There has, however, been little examination of the critical roles played by national civil society in these three phases, particularly in Sierra Leone.

Therefore, this article provides an overview of the concept of civil society and its role in transitional justice in post-conflict countries, or countries which are emerging from repressive authoritarian regimes. Second, it more broadly examines Sierra Leone’s dual transitional justice approach and the role of national civil society in achieving transitional justice in Sierra Leone.

### **The Concept of Civil Society**

Civil society is a concept which lacks a clear definition (Jeffery, 2013, p. 107). It can be applied to a vast array of non-state actors including, but not limited to: non-governmental organisations (NGOs); associations; church and faith-based groups; trade unions; sporting associations; youth groups; and issue-focused organisations. It can also be applied using values, concerns, motivating philosophies, financial means and degrees of political, religious and/or ideological motivation. Regardless, civil society today operates as a kind of ‘floating signifier’, carrying connotations of ‘civility and virtue’ (Shepherd, 2015, p. 893) and is seen to operate in the intersection between state and society.

To bring some context to what is understood by civil society, the origins of the concept can be examined, which are often said to have manifested during the Enlightenment period alongside the emergence of the ‘secular state’ (Jeffery, et al., 2017, p. 381). The seventeenth-century philosophers Hobbes and Grotius stated that a “civil” well-ordered society was essential, whilst for Locke, civil society was the same as the ideal ‘civilised’ state, in contrast to primitive and savage societies. In the eighteenth century, the term ‘civil society’ most popularly referred to a life separate from the state and religion (Jeffery, et al., 2017, p. 382). Civil society became known as a way to guard individual rights against the overuse of state power (Glasius, et al., 2004). Voluntary associations were seen as essential in regulating the power of centralised institutions and protecting pluralism (Edwards, 2004, p. 7).

The notion of civil society resurged in the 1980s when the Cold War ended and socialism collapsed. Political parties and the media increasingly used the term civil society to refer to voluntary associations which had previously been state-controlled – from sports clubs to national groups (Hann, 1996, p. 45). The idea began to signify “utopian conditions, of democratic participation and tolerance, the antithesis of totalitarianism” (Hann, 1996, p. 45). The ‘third wave’ of transitioning from authoritarian rule to democracy occurred in Latin America and Eastern Europe and further reinforced these concepts (Huntington, 1993; Jeffery, et al., 2017, p. 382). The emergent civil societies in these areas have been “credited with effective resistance to repressive authoritarian regimes, democratising society from below while pressuring authoritarians for change” (Foley and Edwards, 1996, p. 38).

Many of the civil society movement protagonists became the main actors in the 1980s’ transitional justice debates. These actors “brought with them a set of agendas that emphasised, among other priorities, the pursuit of formal state-led responses to human rights violations” (Jeffery, et al., 2017, p. 382). These agendas had a significant influence on the understanding of ‘transitional justice’ and civil society’s role in advancing a transitional justice agenda, the idea of which became equated with legal responses to

past violence, including legal accountability for human rights violators and legal-institutional reform. Civil society began to support this agenda and was distinct from the state (Jeffery, et al., 2017, p. 383).

The relationship between civil society and transitional justice began in the 1980s and is still evolving as a field of transitional justice. Concerns from transitional justice scholars and practitioners now encompass transitions from authoritarian rule to democracy and from conflict to peace (Jeffery and Kim, 2014, p. 5). Since the 1990s, transitional justice mechanisms have formed a greater component of the United Nations (UN) 'tool-kit' for successful peacebuilding after conflicts (Subotic, 2009, p. 21; Kent 2012, p. 5). The field is now wider and encompasses additional mechanisms, including truth commissions, institutional reforms, vetting procedures, customary reconciliation processes, memorialisation and reform of the history curriculum. This has occurred together with an increased interest in 'localising' transitional justice and adapting transitional justice to meet the requirements of post-conflict societies (Shaw, et al., 2012).

These shifts have renewed interest in civil society actors and what civil society can achieve. While civil society remains secular, it is also seen as the repository of 'local knowledge' and is crucial to increasing public debate about transitional justice mechanisms and norms (Kelsal, 2005, p. 18). Regarding peacebuilding and state-building intervention, civil society is sometimes used to propose notions of "autonomy, population participation and democratic validation" (Jeffrey, 2013, p. 113). It is believed to "carry the best hopes for a genuine democratic counterweight to the power-brokers, economic exploiters and warlords" (Pouligny, 2005, p. 496). These assumptions tend not to be critically examined (Hovil and Okello, 2011; Subotic, 2012, p. 112).

### **Transitional Justice and National Civil Society**

Civil society is closely interconnected to the fate of transitional justice and has often documented human rights abuses in civil conflicts or counterinsurgency action, which subsequently justifies attempts at transitional justice. In a post-conflict scenario, civil society advocates for accountability of the past. However, civil society has often criticised the Government's pursuance of transitional justice and, where government actions are insufficient, the civil society conducts its investigations into past abuses of human rights.

Civil society commonly suffers during civil conflict or under government repression. However, some will not be cowed. For example, the Mothers of the Plaza de Mayo, at the risk of torture and death, marched in central Buenos Aires to demand that the Argentine military junta reveal the fate of their 'disappeared' loved ones. The Mothers drew attention to the Government's human rights violations, with the resulting publicity hindering the junta's international diplomacy.

In the Southern Cone, the Chilean Catholic Church-based Vicaría de la Solidaridad, the Center for Legal and Social Studies and the Mothers of the Plaza de Mayo of Argentina, and Uruguay's Office of the Regional Service for Peace and Justice pressured governments before and after democratic transition by publicising proof of human rights violations (Bickford, 2000). This helped to achieve accountability through trials or truth commissions both during and after the political transition. In the post-conflict environment, civil society maintains a crucial role in achieving justice for past violations of human rights. Where NGOs have survived or been revived after conflicts, they can pressure the transitional government to conduct investigations into past human rights abuses. Victim groups, where they have not already done so, often emerge in a transitional context.

They have much interest in investigating and punishing offenders and can have significant influence; "Mothers" groups, for instance, have responded powerfully to systematic, widespread violence. Civil society can occasionally provide counterweights to any perpetrator in post-conflict contexts and the latter frequently have significant power and incentives to restrict the scope of transitional justice.

Domestic groups can also have significant roles in determining transitional justice mechanisms. For example, human rights groups frequently supply legal expertise to pressure the judicial system to act on past violations of human rights. In Argentina and Chile, they have designed innovative legal arguments, for instance, redefining a disappearance as a kidnapping to avoid statutes of limitations. In Guatemala, the Alliance Against Impunity has ensured that the National Reconciliation Law excludes amnesty for gross human rights violations, e.g. genocide (Popkin and Nehal, 1999).

In South Africa, national NGOs assisted with drafting legislation that established the Truth and Reconciliation Commission (Hayner, 2001). The Commission selection process also involved representatives

from government and civil society; the nominees were debated amongst human rights and survivor groups (Sarkin, 1996). In Guatemala, the Assembly of Civil Society played an important role in achieving an agreement between the government and the rebels for a truth commission as a component of the UN-brokered peace agreement (Whitfield, 1999).

In the design of compensation measures, civil society helps to ensure that needs will be met, and that compensation will be received. The South African reparations programme was introduced after extensive consultations with survivor groups, community organisations, religious groups and South African and international NGOs (Graybill, 1998). In general, when human rights organisations and the Church are more substantial, then transitional justice policies are better (Barahona de Brito, 1997).

Post-conflict situations involve external powers on an increasing basis. The UN has been involved in several transitional justice experiments, providing technical and financial support to the truth commissions in El Salvador, Guatemala, and the hybrid tribunals in East Timor and Sierra Leone. Thus, domestic groups can offer local perspectives to international actors to help with post-conflict reconstruction (Roht-Arriaza, 2002). However, there is significant variation in the willingness of external actors to take this advice.

Even after selecting the transitional justice mechanisms, civil society maintains a vital role. Groups put pressure on governments to continue their investigations, and for funding truth commissions and reparations programmes, and to have full cooperation with investigations. Because they tend to have greater credibility in communities, local organisations can win the cooperation of those who are untrusting of governmental entities. Community trust also allows NGOs to encourage support and additional resources for exhumations and reburials. Consequently, truth commissions or criminal investigators can gather additional information. Civic leaders often act as commissioners and usually stem from a pool of neutral, widely respected members of society, including activists, lawyers and clergy.

During and after conflicts, civil society groups can provide vital trauma-support for human rights violation victims. Truth commissions and trials are reliant on survivor testimony, but often provide little support towards facilitating psychological and physical healing. Recalling their suffering can be painful for victims and bring on post-traumatic stress. In this regard, professional and religious organisations often have a crucial role. For example, in South Africa, this includes the Centre for the Study of Violence and Reconciliation Trauma Clinic and the Trauma Centre for Survivors of Violence and Torture which provided counselling and care, as did other victim groups.

Since truth commissions are temporary, they cannot establish if governments act on their findings. Thus, civil society can provide pressure towards implementing the Commission's recommendations for reform. When the government is uninterested, civil society has translated the truth commission reports into local languages and printed and distributed them. Therefore, transitional justice efforts which focus on reconstructing society can help re-energise civil society groups and refocus their effort (Roht-Arriaza, 2002). Civil societies also develop memorials and other remembrances by pressuring governments and by developing their projects when the government does not act (Witz et al., 2001).

The relationships between civil society and trials or truth commissions are often uneasy (Hayner, 2001). For instance, in Argentina, the Mothers of the Plaza de Mayo did not want to engage with the truth commission, as they saw it as trying to avoid full disclosure and accountability for the acts committed upon their loved ones. They also rejected every suggestion of reparation, regarding it as blood money (Lutz, 1989).

In South Africa, there were differing ideas about reconciliation strategies (Van der Merwe, 2001). Groups in Guatemala and South Africa disagreed about whether amnesties were useful and if truth commissions could be used as a substitute for a trial (Wilson, 1997). Van der Merwe (2001) states that, in South Africa, the TRC's aim towards national reconciliation clashed with the focus on community-level healing by local groups. In South Africa, civil society groups felt threatened as they viewed changes to funding patterns as evidence that the TRC was stealing their financial support.

Where governments refuse to investigate human rights violations, civil society groups can perform their truth commission-like investigations. In early 1979, the Archbishop of São Paulo and the World Council of Churches sponsored undercover non-governmental investigations of human rights abuses by the military. Documents of over 700 cases were brought before the courts, which were immediately copied,

microfilmed and sent abroad for safekeeping (Catholic Church, Archdiocese of São Paulo in Brazil, and Dassin, 1986).

In Uruguay, the 1985 Service for Peace and Justice report detailed the military's human rights abuses from 1973-1982 (Hayner, 1994). In the late 1990s, the Archdiocese of Guatemala City's Human Rights Office performed its own human rights violation investigation for the civil war period, entitled the Project for the Recovery of Historical Memory (Whitfield, 1999). Unfortunately, governments have failed to act on NGO evidence of past human rights violations (Backer, 2003).

## **National Civil Society's Contributions to Peace in Sierra Leone**

### **Before and After the 1999 Lomé Peace Agreement**

Between 1991 and 2002, Sierra Leone witnessed a devastating civil armed conflict which led to the collapse of law and order, characterised by extreme brutality and widespread human rights abuses against civilians. Most crimes were perpetrated by rebels from the Armed Forces Revolutionary Council and the Revolutionary United Front (RUF). However, government forces and their allies, notably the Civil Defence Forces, also committed serious crimes, albeit on a smaller scale.

During the conflict, tens of thousands of civilians were killed or suffered limb amputation, and up to one-quarter of the population was internally displaced, and some became refugees in neighbouring Guinea, while thousands of girls and women were subjected to sexual violence (Dougherty, 2004, p. 1).

The Inter-Religious Council of Sierra Leone (IRCSL), which includes the largest representative inter-faith organisation in Sierra Leone, predominately Christianity and Islam and a 13-member cross-section of secular civil society organisations in collaboration with the UN, Mano River Union, Economic Community of West African States, and African Union, lobbied the Government of Sierra Leone and their allies to participate in the planned Lomé Peace Agreement in 1999, signed on 7 July, 1999, made provision for transitional justice, specifically a truth commission (Dyfan, 2003, pp. 6-10).

After the Lomé Peace Agreement, the IRCSL translated the main sections of the Peace Agreement into local language radio jingles and aired them through radio and television programmes. The IRCSL also monitored the implementation of the Lomé Peace Agreement and engaged the Government of Sierra Leone and its development partners, including the UN, in charting a way towards credible and inclusive transitional justice institutions.

### **Establishment and Operations of Transitional Justice Mechanisms**

In trying to deal with past injustices, countries employed transitional justice mechanisms. Some deployed them as an accountability instrument to reconcile divided societies torn apart by civil armed conflict or repressive authoritarian regimes, and others have had both objectives. Sierra Leone chose the third option, introducing the truth commission as recommended by the 1999 Lomé Peace Agreement, which gave a blanket amnesty to all who participated in the conflict up until the signing of the agreement.

On 28 July 1999, the Government of Sierra Leone claims that the RUF violated the cease-fire provision noted in the Lomé Peace Agreement, following the resumption of hostilities and the hostage-taking of 340 UN Peacekeepers (Wierda, 2002:2). These developments stimulated the need for a tribunal to punish persons bearing the "greatest responsibility" for crimes against humanity, war crimes and other serious violation of humanitarian law (Miraldi 2004). In January 2002, the SCSL was established as the result of a request to the UN Security Council in 2000 by the Government of Sierra Leone (GoSL) to prosecute those who bore "the greatest responsibility for war crimes during the country's decade-long (1991-2002) civil war" (Tejan-Cole, 2009, p. 227). Subsequently, the blanket amnesty granted in the Lomé Peace Agreement with only the establishment of the Truth Reconciliation Commission (TRC) as a transitional justice mechanism was not adhered to.

The Sierra Leone Truth Reconciliation Commission (SLTRC) and Special Court for Sierra Leone (SCSL) were established in July 2002 and January 2002, respectively. Although both institutions aimed to serve justice and contribute to reconciliation and peace, their approach and mandate differed significantly.

In the case of the SLTRC, the IRCSL helped to draft the SLTRC Act 2000 and lobbied with the GoSL for its enactment. The IRCSL also led to the establishment of transitional justice civil society coalitions, namely the SLTRC working group and, later, SCSL working group, later renamed the Coalition of Justice

and Accountability. The role of these two national civil society coalitions has two phases, during and after transitional justice mechanisms.

The civil society transitional justice working groups which preceded the SLTRC and SCSL served as a source of contact for recruitment and initial information in tracing the history of human rights violations. Specifically, at the initial phase of the SLTRC, the working group seconded some experienced staff to support the initial work of the SLTRC. The two working groups held community town hall meetings at district headquarter towns across the country, allowing citizens to understand and encourage their participation in the SLTRC and SCSL.

They also assisted in setting up public hearings at the SLTRC and SCSL, which included victims, perpetrators and witnesses. Additionally, they monitored the proceedings of the SLTRC and SCSL and assisted in public outreach regarding the roles and operations using different media platforms and provided media training and monitoring of transitional justice issues to national media houses (Caulker, 2010).

### **Post-Transitional Justice Phase**

The TRC presented its final report to the GoSL in October 2004, while the SCSL issued its first indictments in March 2003 (Schabas, 2006, p. 23). The civil society working group on TRC continued to advocate the GoSL and its development partners to ensure all the TRC recommendations are implemented to prevent the factors that led to the civil conflict.

With financial and operational support from the UN Integrated Peacebuilding Mission in Sierra Leone, national civil society continued to maintain close contacts with the political parties, emphasising dialogue and political tolerance and targeting Non-State Actors, including women and youth associations, traditional and religious leaders, the media, academia, artists and other key stakeholders. After its closure in March 2014, the UN Development Programme (UNDP) continued to support national civil society efforts to identify and resolve tensions and threats of potential conflict. Furthermore, the UNDP continued to support national civil society involved in institutionalising systems for preserving peace through an early warning and response system, creating a culture of dialogue focusing especially on youth at risk, and re-introduction of civic education in formal and informal sectors (UNDP, 2015).

Also, Fambul Tok (family talk), a national civil society which was also a member of the SLTRC working group, continued community building peace and reconciliation sessions, mostly in remote areas where victims and perpetrators were not able to testify before the Commission (Fambul Tok International, 2010).

Allen, Lahai and O'Connell (2003) noted that the role of national civil society in the transitional justice mechanisms in Sierra Leone has been identified as a means to ensure that policies designed by the state hold individuals accountable for international crimes and abuses of human rights and that these mechanisms can bring about justice and reconciliation. Therefore, it is concluded that Sierra Leone's civil society can assume its role in the process of transitional justice and executing the functions that would allow it to do so actively.

### **Conclusion**

Over the last three decades, national civil society has played a critical role in the successful implementation of transitional justice mechanisms, not only as an auxiliary factor, but also as an integral component, while also voicing its own independent agenda. National civil society has helped to initiate, advocate for and shape some of the most robust and most interesting transitional justice mechanisms implemented in post-conflict countries. For instance, in Ghana, Sierra Leone, Liberia, Côte d'Ivoire, South Africa, Kenya, Uganda, Tunisia, East Timor and Peru, national civil society played a critical role in shaping the justice systems responsible for dealing with the legacies of human rights abuses (Hayner, 2005).

In Sierra Leone, the legacies of human rights abuses presented unique opportunities for national civil society to participate in and promote transitional justice mechanisms. For instance, during the Sierra Leone peace talks in 1999, the international community strengthened its commitment to human rights in diplomacy, bolstering national civil society support for peace and openness, and creating significant opportunities for victims and national civil society to campaign for truth and justice. As a result, civil society advocated for the establishment of the truth commission, and later supported and monitored the operations of the truth commission and the special court. After the operations of the truth commission,

national civil society continued to lobby the GoSL and its development partners for the implementation of the recommendations proffered by the Commission. Additionally, after the traditional justice mechanisms, in trying to further deal with past injustices as part of efforts to build peace through accountability, Famul Tok, a national civil society, has been instrumental in developing and implementing community-based conflict prevention and peacebuilding initiatives to further address the legacies of violence.

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