ISSN 2348-3156 (Print)
International Journal of Social Science and Humanities Research ISSN 2348-3164 (online)
Vol. 7, Issue 2, pp: (1374-1382), Month: April - June 2019, Available at: www.researchpublish.com

THE EFFETIVENESS OF THE SPECIAL COURT FOR SIERRA LEONE AS A TRANSITIONAL JUSTICE MECHANISM FOR POST CONFLICT STABILITY

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Abstract: **Since the end of World War II, the international community has had to set up international criminal tribunals to address post conflict justice demands. After the Sierra Leonean civil war, in 2002, the United Nations in agreement with the government of Sierra Leone set up the Special Court for Sierra Leon to try people who were alleged to have committed atrocities and abuses during the war. The study explored the nexus between the stability enjoyed by the country and the activities of the court. The study adopted a survey research design. Using a population made up of the people in Sierra Leone, the study adopted the multi stage sampling technique to arrive at the four towns in Sierra Leone selected for study. The study found that 72% of the respondents and all interview stated that the activities of the court had restrained people from starting another war and only 36% of the respondents agreed that the victims have forgiven their abusers. The study concluded that even though the activities of the Special Court acted as a deterrence to further hostilities in the country, the court did not substantially contribute to the country's post conflict stability to the extent that it did not achieve reconciliation of the victims with their abusers. The study recommends that future international criminal tribunals criminal tribunals should pursue reconciliation of victims and abusers as a matter of deliberate mandate rather than retributive mandate through trials.**

Keywords: **International criminal tribunals, Post conflict stability, Reconciliation, Special court for Sierra Leone, Transitional justice.**

1. INTRODUCTION

It would appear that conflict leading to war is inevitable and has always been part of human existence. Such conflict may be civil or international. During such conflicts the parties often commit various atrocities not only on themselves but also on the civilians who are not part of the conflict (Keller, 2008). Invariably when the conflict comes to an end, an immediate issue for resolution is the demand for justice by those who have suffered abuses and atrocities during the war (Boraine, 2006). The resolution of such justice demands is the purview of transitional justice. The challenge posed by the

demand for transitional justice is usually not left to the local courts of the concerned country largely because such courts are either unwilling or too weak to address the post conflict justice demands (Igwe, 2009). The quest to ensure such justice has also become of interest to the international community which has had, therefore, to set up mechanisms from time to time, to address these issues of transitional justice (Wilson, 2008).

The first such mechanism set up was in 1921 when the allied forces rising from their victory in World War I set up the Leipzig war crimes tribunal to try German Military and political leaders who were accused of war crimes emanating from their actions during the war. In 1945, the International Military Tribunal for Germany was set up by the United Nations (UN) to conduct the trials of German Nazi soldiers accused of atrocities committed during World War II (Dame, 2015; Nkansah, 2011). This was followed by the International Military Tribunal for the Far East (IMTFE) set up to try Japanese leaders for atrocities committed during the same war. In May 1993, the International Criminal Tribunal for Yugoslavia was set up by the UN to try people who were accused of human right abuses during the Yugoslavian war in which about a quarter of a million civilians were killed (Dusimimana, 2013). After the Rwandan genocide which claimed about 800,000 lives, the UN , in 1994, set up the International Criminal Tribunal for Rwanda (Szpak, 2103; UN resolution 955) to redress atrocities allegedly committed during the Rwandan genocidal war (Kaufman, 2008). The tribunal which sat in Arusah, Tanzania, was created as part of efforts to contribute to reconciliation and peace in Rwanda (Westberg, 2010). In 2002, the UN, in agreement with the government of Sierra Leone constituted the Special Court for Sierra Leone to try those who bear the greatest responsibility for atrocities committed during the country's 10 year civil war. To cap the involvement of the international community in the transitional justice process, the UN, also in 2002, set up the International Criminal Court (ICC) sitting in The Hague as a permanent international criminal tribunal to try people who are accused of war time atrocities and abuses anywhere in the world after 1st July, 2002 (ICC Statute, 1998; Nkansah, 2014).

1.1. Statement of the problem

It is now 17 years after the setting up of the Special Court for Sierra Leone (Special Court) and 5 years after its last sitting. It appears that since that Sierra Leone has continued to enjoy peace and stability. This position is remarkable in view of research findings (Suhrke and Samset, 2007) that countries that have had a civil war have nearly a 50% risk of sliding back to war within 5 years and (Ikelegbe, 2010) that 40% of post war countries revert to conflict within a decade of ending the war. It becomes then apposite to examine whether there is nexus between the activities of the Special Court and the apparent peace and stability in the country. Has the court been responsible for the apparent peace and stability in the country? This is the crux of the matter and formed the problem of this study.

1.2 Objective of the study/ Research question

The objective of the study is to examine the impact of the Special Court for Sierra Leone in promoting post conflict stability in Sierra Leone.

The research question was: What had been the impact of the Special Court for Sierra Leone on post conflict stability in Sierra Leone?

1.3 Significance of the Study

Though the study is specifically on Sierra Leone, the study would have significance not only for the government of Sierra Leone but also for donor agencies. The government would for example need to understand what went wrong leading to the war and how within the ambit of transitional justice efforts could be directed at maintaining stability in the country. For the international donor agencies, the study would be useful as they consider involvement and prioritisation of efforts in post conflict communities.

1.4 Scope of the Study

The study examined how effective the Special Court for Sierra Leone (SCSL) had been in promoting post conflict stability in Sierra Leone within the time frame of 2002 and 2018. The Special Court was set up in 2002 and had its last sitting in 2013. However the coverage of the study was extended to 2018 to accommodate views that post conflict countries risk slipping back to war within 5 years of end of hostilities (Suhrke & Samset, 2007).

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2. LITERATURE REVIEW

2.1 Conceptualising transitional justice

In his contributions as to the origin of transitional justice, Leebaw (2008) noted that transitional justice has now moved away from the democracy promoting focus and is now associated with the international agenda to promote targets that are more explicit on conflict resolution and promotion of the rule of law and (according to Sharp, 2013) post conflict peace building generally. This is similar to the view of Grodsky (2009) who asserted that since after the trials conducted by the International Criminal Tribunal for Yugoslavia (ICTY), international law had promoted the prosecution of human rights criminals. Olsen, Payne and Reiter (2010) adopted the view of Teitel (2003) that transitional justice is a process which is associated with 'periods of political change' (p. 805) for the purpose of confronting the wrongs and abuses of past regimes. However, it would seem that with the involvement of the UN in redressing atrocities committed especially in the Balkans and Rwanda, actors in the field are conceptualizing transitional justice in terms of post conflict justice. Within this new framework, Olsen et al (2010) adopted a definition that considers transitional justice as "the array of processes designed to address systematic or widespread human rights violations committed during periods of state repression or armed conflict" (p. 805).

Closely related to the clarification of the concept of transitional justice is the examination of the need for the adoption of transitional justice in today's world. In the view of Evenson (2004) transitional justice process arises out of the obligation of successive regimes to provide a means of accountability and redress for war time abuses. According to Olsen et al (2010) the transitional justice mechanisms may be applied as part of the peace process to pave the way for transition or introduced after the transition. In addition, it is widely believed that the pursuit of transitional justice would act as deterrence to occurrence of future abuses (Nkansah, 2011). It has been asserted, too, that the transitional justice process (and its mechanisms) is the only process that could be used to avoid escalation of violence in states which are threatened with fragmentation and it is a compass which shows "the way of institutional and political reforms (and) which gradually contributes to the establishment and consolidation of peace and the rule of law" (Hazan 2006, p. 20).

On the other hand, Leebaw (2008) asserts that a fundamental reason given to justify the transitional justice process is that it helps to "establish a historical record of…violence" and also assists in countering denial of "responsibility for past violence" (p.107) though Aiken (2008, p.18) had postulated that "preventing recurrence of violence and stabilising post conflict peace are the ultimate goals" of almost all transitional justice process. For Bisset, Moxham and Zyl Smit (2014) and Chistike (2012), however, the cardinal objective of the transitional justice is to confront past abuses in a holistic manner and to ensure (that the abuses) do not recur. The report of the African Union (AU, 2013) 'panel of the wise' probably sums up most appropriately the justification of the transitional justice process. According to the panel, transitional justice has several overlapping goals but at the end of the day ultimately all transition processes aim basically at building a "culture of the rule of law, lay the foundation for long term reconciliation and political transformation and prevent the recurrence" of abuses in the future (African Union, 2013, p. 13).

2.2 International criminal tribunals as transitional justice mechanisms

Even though international criminal tribunals have been deployed as a mechanism of transitional justice, there is no unanimity, in the literature, as to how effective these tribunals have been in addressing the goals of transitional justice. However, deciding whether a transitional justice mechanism is effective or not often comes down to identifying which of the aims of transitional justice (as known) should be uppermost in the minds of the actors. In the first place, the overriding task of the international criminal tribunals is to punish the worst abusers ("backward looking") but there is also the expectation ("forward looking") that the tribunals would, through their activities, influence the affected societies or communities and contribute to conflict prevention (Stensrud, 2009). These mandates are all broadly reflected in the various instruments setting up the international criminal tribunals. In setting up the ICTR, for example, the UN by its Resolution No 955 noted that prosecution by the tribunal "would contribute to the process of national reconciliation and to the restoration and maintenance of peace" (Stensrud 2009, p. 6). In respect of the ICTY, it was mandated to ensure that violations of international law were "halted and effectively redressed" (UNSC Resolution No 827 of 25th May 1993; Wilson, 2008, p. 88). In the preamble to the statute of the ICC, the UN Security Council stated it's believe that the court by punishing the most serious human right abuses would contribute to the prevention of such crimes (Statute of the ICC). Tenove (2013) contextualised the issue of the effectiveness of international criminal tribunals and opined that this may only be properly addressed within the "peace and Justice" debates featuring in transitional justice discourse. This

debate relates to whether international criminal tribunals should be more interested in pursuing peace rather than justice or vice versa. As was noted by the report of the African Union Panel of the wise (AU, 2013), ending violence by negotiated settlement has regularly raised the "difficult question of whether peace and justice are competing goals or whether peace (should) precede justice" (AU, 2013, p. 10). To Rubin (2003) it appears that the answer is neither here nor there. This is because, as stated by Rubin, on the one hand a state at peace is one "where people have a reasonable expectation ... (of) justice" and on the other hand, "Justice cannot be done in a state of war" (p. 577). It was suggested by Grono and O'Brien (2008) that a way out of the dilemma over the primacy of peace over justice in the transitional justice project is the adoption of a 'sequential approach' to transitional justice. By this, Grono and O'Brien (2008) meant that the transitional justice process should start with getting a peace agreement, then later dealing with the issue of justice. A limitation of this approach, however, is that sometimes for pragmatic reasons, most of the peace accords expressly provide amnesty for the right-violators as a way to avoid further conflict and also to enable handover of power.

2.3 Post conflict stability

Apart from the economic perspectives of post conflict stability, factors that have also been touted as essential for the attainment or maintenance of post conflict stability in a country are the twin factors of justice and reconciliation. According to Lambourne (2004) these two factors are 'fundamentally significant goals that need to be addressed in the design of a successful process for post conflict stability' (p. 2). This position is similar to that of Pearson and Pedersen (2016) who concluded that a particular driver of post conflict stability is reconciliation. They noted, from a study of situation in Uganda, that cessation of hostilities could actually be 'war fatigue' which is a 'latent calm' before a new conflict breaks out, unless there is reconciliation. Lambourne (2004) shares the view that the cessation of violence (by whatever means obtained) does not necessarily amount to achievement of peace. He advocates that both justice and reconciliation are very important issues that must be tackled at the time of contemplation of a successful post conflict peace building process

On the other hand, it has been asserted that the conduct of successful post conflict election is important for fostering peace and stability in transitional setting (Faith-Lihic and Brancati, 2017). Even the UN as part of its post war state building interventions in Namibia and Cambodia, expanded its peace keeping mandate to include "not only military security but (also) the coordination of elections" in the affected post conflict countries (Lambourne, 2004, p. 2).

2.4 Theoretical framework

The deterrence theory and the responsibility to Protect principle formed the theoretical framework for the study.

The Deterrence theory

The deterrence theory is largely associated with utilitarian theorists like Jeremy Bentham (1774-1832) and his contemporary, Beccaria (1738-1794). These theorists contend that punishment must serve as an instrument for reducing crime either by deterring the offender or others from doing similar acts in future or it should prevent the commission of offence by incapacitating the offender (Quadric, 2005). Beccaria, for instance, had noted that "the purpose of punishment is none other than to prevent the criminal from doing fresh harm to fellow citizens and to deter others from doing the same …" (Materni, 2013, p. 270). Deterrence is the ultimate in punishment and "the chief end of the law of crime is to make the evil doer an example and warning to all that are like minded with him" (Mishra, 2016, p. 76). The core assumptions of the deterrence theory are that; human being are rational thinkers who carefully weigh the relative cost and benefit inherent in an act before deciding whether to do the act or not. The theory considers criminality as "a gamble undertaken by a rational individual" (McCrary and Chalfin, 2017, p. 5). The deterrence theory has however been criticized on the grounds that as a penal policy it has failed to reduce crime (Mishra, 2016). Studies have shown that erstwhile non criminals do enter into the life of crime just as old criminals show act of recidivism (Meyer, 1969). The assumption of the theory that human beings are rational actors is also faulty. The deterrence theory would not be adequate in situations of crimes of passion or acts motivated by fear for instance. This is because, apart from rationality, other factors such as peer influence, family, and differential association impact on behaviour of human beings (Meyer, 1969). For example, in a study it was revealed that "half of state prisoners were under the influence of drugs or alcohol at the time of their offence" (Wright, 2010, p. 2). Deterrence as a penal policy may also lead a criminal being punished in excess of his 'just desert'- that is, beyond the level that is necessitated by his crime as he may end up bearing a punishment larger than he deserves just so that he could serve as an example to others that criminality does not pay

(Meyer, 1969). Actually, an 18th century judge, while sentencing to death, a person found guilty of stealing a sheep was noted to have said to the convict "you are to be hanged not because you have stolen a sheep but in order that others may not steal sheep" (Quadric, 2005, p. 127).

Responsibility to protect principle

As a consequence of the gross human rights atrocities in Rwanda and the Balkans in the 1990's, it dawned on the international community that there was the need to consider how to react effectively when the right of citizens are grossly and systematically violated either by their states or in circumstances where the state is helpless in controlling the abuses. The core of the debate was whether individual states have inviolable sovereignty over their affairs or whether, under some circumstance, the international community would have a responsibility to intervene in the internal affairs of a particular country for humanitarian purposes. The dilemma then was whether in order not to violate the sovereignty of a particular state, the international society should watch helplessly while humanitarian disasters evolve through violence period atrocities. The phrase "responsibility to protect" (as a principle of international law) was first used in the report of the International Commission on Intervention and State Sovereignty (ICISS). The commission was set up by the Canadian government in 2001, in response to Kofi Annan's "acknowledgement of the international need to develop a new response to massive intra-state human rights violations" (Pupparo, 2015, p. 8) particularly as to when the international community could intervene to prevent a humanitarian crisis happening in a particular country' (Gagro, 2014, p. 64). This dilemma was highlighted by the then Secretary General of the UN, Kofi Anan, in his year 2000 Millennium Report in which, while alluding to the failure of the UNSC to stop the carnage in Rwanda and Yugoslavia, he nudge the international community to action by asking "… if humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to Srebrenica, to gross and systematic violation of human rights that offend every percept of our common humanity" (Gagro, 2014, p. 63).

The ICISS in its report, noted that even though the right of a state to control its internal affairs gave it a responsibility to protect the people within its borders, there is a concomitant responsibility on the international community to offer such protection in a situation where the state is either unable or unwilling to offer such protection. The responsibility to protect has been described as "an emerging international norm, which sets forth that states have the primary responsibility to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing, but that when the state fails to protect its populations, the responsibility falls to the international community" (Foley, 2013, p.10).

Consequent upon this, the international community began serious consideration of its responsibility to protect national citizens from gross humanitarian abuses regardless of the eroding impact on state sovereignty. The responsibility to protect rests on the understanding that state sovereignty exists basically to protectits people but that the state would forfeit this primary status in situations where it is unable or unwilling to ensure this protection. In such a case, it the responsibility falls on the international community to act to protect the people (Gagro, 2014). Notable theorists in the emerging field are Buchanam (2003); Luck (2013); and Sigman (2013) (Gagro, 2014). Their writings revolved round clarification of the attitude of States (to humanitarian crisis) which could justify international intervention and the modalities for such intervention. Sigman (2013) opined that intervention could be justified in situation of violations of human rights after diplomatic efforts have failed. Buchanan (2003) stated that unilateral intervention by another state would be justified on the basis of moral necessity, protection of human rights and for moral improvements on the legal system (Gagro, 2014). A major criticism of the principle is that it may be used as an excuse by stronger nations to invade the sovereignty of smaller or weaker states. This may be exemplified by the US invasion of Iraq in 1989 under the pretext of destroying weapon of mass destruction. Another example is the controversial involvement of US and Russia in the current Syrian crisis.

2.5 The Country, the War and the Court

Sierra Leone is a former British Colony which gained political independence on 27th April, 1961 (County Watch, 2017) and with a population of about 7 million (Government of Sierra Leone, 2015). The West African country with Freetown as its capital is bounded by Guinea in the North and Liberia in the East and has 17 ethnic groups (Higbie and Moigula, 2017).

The country fought a brutal 10 year war which officially ended in 2001. The war began on March 23, 1991 with an invasion of the country by Rebels of the Revolutionary United Front (RUF) led by Foday Sankoh (Akinrinde, 2011; Higbie and Moigula, 2017).

Between the beginning of the war and the end of hostilities, attempt were made to broker peace in the country. These attempts resulted in the Abidjan peace accord of 1996, the Conakry peace plan of 1997, The Lome peace agreement of 1999 and the Abuja cease fire agreement of 2000 and 2001 (Sesay& Suma, 2009). However, none of these peace deals ended the hostilities (Dana 2014; Hayner, 2007; Jalloh 2015,).

The war witnessed horrendous human rights abuses which have been described as the worst in living memory (Country watch, 2017) and as "unprecedented in the history of civil war not just in West Africa but also in other parts of the world (Sesay& Suma, 2009, p. 6). By the end of the war, between 50,000 to 75,000 Sierra Leoneans had been killed (Ayittey, 2018); more than half of the population had been displaced; thousands had become victims of rape and other violent sexual abuses (Bellows and Miguel, 2009); about 40,000 became survivors of amputation of one or more limbs (Ainley, Friedman and Mahony, 2015); at least 5000 children have become "brutal combatants" (Nkansah, 2011b, p. 160); and 800 peace keepers killed. (Nkansah, 2011b).

In June 2002, following a request by the President of Sierra Leone, Tijan Kabbah, the Special Court for Sierra Leone was established through a treaty between the UN and the government of Sierra Leone. In the request, Kabbah noted that it was only after the leaders of the rebel RUF are brought to justice that 'peace, national reconciliation and the strengthening of democracy would be restored to Sierra Leone' (Jalloh, 2011, p. 399). The government stated that it wanted a 'special court' that would try serious crimes committed during the 10 year civil war in the country (Shockan, 2002).

By the time the court ended its sitting in 2013, out of 13 indictments issued,10 person were brought to trial and sentenced to various term of imprisonment. Those imprisoned included Charles Taylor, the former Liberian President, who was convicted and sentences to 50 years imprisonment.

3. METHODOLOGY

The study adopted the survey research design. The population of the study consists of the people of Sierra Leone, that is 7,092,113 people (Government of Sierra Leone, 2015). The sampling technique adopted was the multi stage sampling technique through which the 4 towns studied were selected. The sample size of 400 was arrived at using the Taro Yemane formula and the sample size was distributed proportionally among the 4 towns chosen. Data was collected using a questionnaire and semi structured interview. The sources of data for the study were both primary and secondary sources. The data collected from the questionnaire was analysed using descriptive statistics by way of frequency distribution, mean and standard deviation. The interview was thematically analyzed.

4. SUMMARY OF FINDINGS

The possibility of being tried by the court had restrained people from starting another war or hostilities. This was the view of 79% of the respondents and all interviewees

Only 36% of the respondents agreed that after the trials, the victims no longer hold any grudges against their abusers even as 80% respondents noted that they thought one of the mandates of the Special Court was to achieve reconciliation.

In addition it was found that the average Sierra Leonean has not yet fully recovered from the effects of the civil war (38% of the respondents).

4.1 Conclusions

The court's judgment has acted as deterrence against recurrence of hostilities or war in Sierra Leone. Given this fact and the legacy effect of the court on the Sierra Leonean judicial system, and the fact that the people were satisfied with the trial conducted by the court, it is concluded that the court have contributed to maintenance of peace in Sierra Leone Therefore the court had been an effective mechanism for transitional justice.

However, the court has not contributed fully to reconciliation in Sierra Leone. This is because the victims of the war time abuses still have grudges against their abusers. To that extent, the court had not fully contributed to post conflict stability in Sierra Leone.

4.2 Recommendation

In future, where international criminal tribunals are to be set up, especially ad hoc criminal tribunals, the enabling statute or agreement should provide that such tribunals should allow and consider reconciliation of the parties while retaining the

power to mete out retributive justice. That is that, such tribunals should keep an eye on possible reconciliation (of victims and right abusers). Such an arrangement would give victims and their right abusers a framework within which acceptable terms for genuine and enduring reconciliation could be achieved if they place premium on reconciliation rather than on punishment.

Where mass right abuses have been committed in a country, the peace and continued stability of that country is better sustained by the use of ad hoc international criminal tribunals to try the right violators. Such tribunal should sit in the country of conflict and conduct all trials in that country. Such an arrangement would help to strengthen post conflict stability in the country of conflict. This, among other things, is because of the legacy impact of that such sitting would have on the national judicial institutions of country.

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