

CHAPTER THREE

Concepts

Introduction

1. Truth and reconciliation commissions have, in recent years, become well-recognised as valuable and effective mechanisms in societies emerging from conflict. They help to ensure accountability for human rights violations, they clarify the historical record and put myths and lies about the past to rest, and they assist in giving a vision for the future. They are not a cure-all, but they can make a positive contribution when their work and activities are married with the dynamism of a civil society anxious for social transformation. This chapter addresses the principal concepts that underpinned and guided the work of the Sierra Leone Truth and Reconciliation Commission, and which are not specifically dealt with elsewhere in the Report. Concepts dealt with in the chapter include truth and truth telling, just war and just means, victims and perpetrators.
2. The Commission operated in a public and transparent fashion. Commissioners were appointed following a process of public consultation, in which all concerned citizens were invited to submit their names or the names of others as potential candidates. All major protagonists in the conflict were represented in the selection process and gave their consent to the eventual composition of the Commission. The staff members of the Commission were employed following public advertisement and interviews. The funds of the Commission were administered by the United Nations Development Programme office in Freetown, and audited by thoroughly independent accountants. The Commission has regularly reported on its activities, and has constantly called upon the people of Sierra Leone to participate to the fullest extent possible. The work of the Commission has been bolstered in a multitude of respects by civil society, and more specifically by non-governmental organisations (NGOs), both national and international. Funding for the Commission came from several donor countries, the Government of Sierra Leone and from individuals.
3. The underlying principles of the Commission were set out in the 'Memorandum of Objects and Reasons', which was attached to the Truth and Reconciliation Act 2000, the legal instrument responsible for the creation of the Commission. The Memorandum explains that the Commission was 'proposed by Article XXVI of the Lomé Peace Agreement as part of the process of healing the wounds of the armed conflict which began in 1991'. Furthermore, '[s]ection 1 of Article XXVI of the Peace Agreement envisaged the proceedings of the Commission as a catharsis for constructive interchange between the victims and perpetrators of human rights violations and abuses and from this catharsis the Commission is to compile 'a clear picture of the past'. Accordingly, by clause 6, the principal function of the Commission is to create an impartial historical

record of events in question as the basis for the task of preventing their recurrence.¹

4. The Lomé Peace Agreement itself declared that one of the purposes of the Commission was exactly to 'get a clear picture of the past in order to facilitate genuine healing and reconciliation'.²

Truth and truth-telling

5. What the 'Memorandum of Objects and Reasons' does not highlight is the fact that the Commission was created out of a tension between two contradictory intentions, on the one hand an impetus to forget the past and to forgive past violations of human rights, and another calling for the truth of the past to be determined and acknowledged. The controversial premise upon which the Lomé Peace Agreement was predicated is the pardon and amnesty set out in Article IX. The justification appears in the provision itself: 'In order to bring lasting peace to Sierra Leone...' and 'To consolidate the peace and promote the cause of national reconciliation'.
6. International law has acknowledged the validity of granting amnesty to combatants when a conflict comes to an end. In the case of Sierra Leone, as the Commission was told on more than one occasion by participants in the Lomé negotiations, amnesty presented itself as an essential condition if fighting was to stop and peace allowed to break out. The Commission has determined that serious violations of human rights and international humanitarian law took place on all sides in the conflict, so there can be no doubt that all of the participants in the Lomé negotiations in fact benefited from the amnesty. It cannot, in other words, be reduced to a one-sided concession.
7. However, in recent decades, the dangers of granting full amnesty for human rights violations have been increasingly appreciated. Amnesty overrides the interests of individual victims, who are also entitled to see their personal concerns addressed and balanced against those of society as a whole. International law refuses to accept the validity of amnesty for the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. These categories correspond in an approximate sense with the concept of gross and systematic violations of human rights. Even the practical justification for amnesty is called into question: it may not deliver the long-term peace that it promises. If the amnesty is granted in a way that ignores the past, it may sow the seeds for future conflict, and serve as a justification for future generations to settle scores that were left unresolved when the conflict came to an end.
8. All of these concerns meant that the grant of pardon and amnesty in article IX of the Lomé Peace Agreement had to be accompanied with other mechanisms and values that seek to remember and account for the past, and to respond to the needs of victims. It is out of this dialectic that the Truth and Reconciliation Commission was conceived. Truth and truth-telling, and the need to recognise and acknowledge the past, lie at the heart of this.

¹ Truth and Reconciliation Commission Act 2000, Memorandum of Objects and Reasons.

² Lomé Peace Agreement, art. XXVI(1).

An 'inalienable right to truth'

9. In one of the seminal documents of the United Nations on the issue of impunity for human rights violations, Special Rapporteur Louis Joinet has spoken of the inalienable right to truth: 'Every people has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through the consistent pattern of gross violations of human rights, to the perpetration of aberrant crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of such acts in the future.' Further, he explains: 'This is not simply the right of any individual victim or his nearest and dearest to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a "duty to remember" on the part of the State: to be forearmed against the perversions of history that go under the names of revisionism or negationism, for the history of its oppression is part of a people's national heritage and as such must be preserved. These, then, are the main objectives of the right to know as a collective right.'³
10. Truth commissions have largely come about in recent years to give effect to what Joinet called 'the inalienable right to truth'. There is a belief that truth can be established through mechanisms other than criminal trials which may, in the past, have been considered to be the ideal way to get at the truth. Where amnesty has been granted – this is the case of Sierra Leone, or where effective prosecution is difficult or impossible because of resource issues, or because perpetrators cannot be brought to trial, truth commissions offer a valuable alternative. But trials have their own shortcomings in establishing the truth, and the flexibility of truth commissions may in fact better suit them to this task of establishing and enforcing the 'inalienable right to truth'.⁴
11. The Special Court is also in search of the truth, but the Court's truth will necessarily be limited to the criminal responsibility of the accused. Moreover, the Court will only draw a picture of the criminal responsibility of those that 'bear the greatest responsibility'. The Special Court and the TRC have essentially different, although complementary, roles to play. Whereas the TRC cannot replace judicial investigations into the criminal responsibility of those that bear the greatest responsibility, the Special Court is not as well-suited for a broader inquiry into the causes, nature and circumstances of the conflict.
12. As Pedro Nikken, former president of the Inter-American Court of Human Rights, has written: 'There is no doubt that the discovery of the Truth, which is the responsibility of independent persons, destroys that element which, while not useful in itself for eradicating impunity, fulfils at least a dual function. First, it is useful for society to learn, objectively, what happened in its midst, which translates into a sort of collective catharsis. And second, it contributes to creating a collective conscience as to the need to impede the repetition of

³ Question of the impunity of perpetrators of human rights violations (civil and political), Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, UN Doc. E/CN.4/Sub.2/1997/20, para. 17.

⁴ See the chapter TRC and the Special Court.

similar acts and shows those who are capable of doing so that even if they may escape the action of justice, they are not immune from being publicly recognized as the persons responsible for very grave attacks against other human rights. In this regard, even though [truth commissions] do not constitute punitive mechanisms, they may perform a preventive function that is highly useful in a process of building peace and the transition to democracy.⁵

13. A major challenge is ensuring that the search for the 'truth' or the 'truth' itself does not obscure this 'preventative function'. There are a few important cautions:
 1. The truth must be known;
 2. The truth must be complete;
 3. The truth must be officially proclaimed and publicly exposed.

14. The 'inalienable right to truth' is closely related to the 'right to an effective remedy' for violations of human rights. The right to an effective remedy is firmly entrenched in all major international law instruments.⁶ 'Establishing the truth' has been recognised as an essential part of the right to an effective remedy, as it is a crucial aspect of the guarantee of non-repetition of the original violation or abuse. This link between 'knowing what has happened' and 'avoiding the recurrence of violations in the future' has been repeatedly confirmed.⁷ Very illustrative in this respect is the innovative case law of the Inter-American human rights institutions, borne in the long and painful history of conflict in South and Central America.

15. In the case of *Ellacuria v. El Salvador*, the Inter-American Commission for Human Rights presented the right to know the truth as a direct remedy in itself, based on Article 1.1 of the Inter-American Convention providing that 'a State party is obligated to guarantee the full and free exercise of the rights recognized by the Convention'. In the opinion of the Inter-American Commission, ensuring rights for the future requires a society to learn from the abuses of the past. States must inform their citizens about the truth. This right to know the truth has two components: an individual right applying to the victim and family members and a general societal right. With respect to the public

⁵ Paragraph 149.

⁶ Examples are Article 8 of the Universal Declaration of Human Rights (1948) and Article 2 of the International Covenant of Civil and Political Rights (1966). All the major human rights instruments including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (article 2.3), the American Convention on Human Rights (article 29) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 13) all guarantee the right to an "effective" remedy or recourse after a violation has occurred.

⁷ See for instance the "Proposed Basic Principles and Guidelines" attached to the Final Report submitted by Mr. Theo van Boven, Special Rapporteur, to the UN Commission on Human Rights, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, dated 2 July 1993 (E/CN.4/Sub.2/1993/8) and more recently the "Basic Principles and Guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law", annex to the Final Report of the Special Rapporteur, Mr. Cherif Bassiouni, to the UN Commission on Human Rights, *The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, dated 18 January 2000 (E/CN.4/2000/62). Also very relevant in this respect is the Revised final report prepared by Mr. Joinet on the *Question of the impunity of perpetrators of human rights violations (civil and political)*, presented to the UN Commission on Human Rights on 2 October 1997 (E/CN.4/Sub.2/1997/20/Rev.1). Both the UN Human Rights Committee and the European Court of Human Rights also recognize a positive duty of States to investigate human rights violations.

right, the Inter-American Commission said: 'Every society has the inalienable right to know the truth about what has occurred, as well as the reasons and circumstances in which those crimes came to be committed, so as to avoid repetition of such events in the future.'⁸

16. These principles were developed further by the Inter-American Commission on Human Rights in the case of *Romero v. El Salvador*⁹. The Commission referred again to the dual character of the right: 'The right to the truth is a collective right that enables society to have access to information essential to the development of democracies. At the same time, it is a private right of the next-of-kin of victims that makes possible one form of reparation, especially where amnesty laws are applied.' Elaborating on society's right to be duly informed, the Commission stated that it had held before that:

Independently of the problem of proving guilt, which in every case must be determined individually and with due process guarantees, by a pre existing court which applies the law in force at the time the crime was committed, one of the first matters that the Commission feels obliged to give its opinion on in this regard is the need to investigate the human rights violations committed prior to the establishment of the democratic government.... Every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future. Moreover, the family members of the victims are entitled to information as to what happened to their relatives.... Such access to the truth presupposes freedom of speech....¹⁰

The Inter-American Commission concluded that the 'right that all persons and society have to know the full, complete, and public truth as to the events transpired, their specific circumstances, and who participated in them is part of the right to reparation for human rights violations, with respect to satisfaction and guarantees of non-repetition. The right of a society to have full knowledge of its past is not only a mode of reparation and clarification of what has happened, but is also aimed at preventing future violations.'¹¹

17. An important aspect of the right to an effective remedy is the duty that international human rights law imposes upon States to investigate human rights violations and abuses. For example, the European Court of Human Rights has held that the right to an effective remedy (article 13 of the European Convention on Human Rights) guarantees both the availability of an effective domestic remedy to be exercised at the initiative of complainants and, in the event of very serious allegations, the carrying out of a full investigation by public authorities.¹² In *McCann v. United Kingdom*,¹³ the Court said that '[t]he obligation to protect the right to life under [article 2], read in conjunction with the State's general duty under [a]rticle 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force

⁸ *Ellacuria v. El Salvador*, Case No. 10 488, Inter-Am. C.H.R., OEA/ser.L/V/II.106, do. 3 rev. (1999).

⁹ *Romero y Galdamez v. El Salvador*, Inter-Am. C.H.R., OEA/ser.L/V/II.106.

¹⁰ *Ibid.*, paragraph 146.

¹¹ *Ibid.*, paragraph 148.

¹² *Aksoy v. Turkey*, 26 Eur. Ct. H.R. 2260 (1996); *Mentes v. Turkey*, 59 Eur. Ct. H.R. 2689 (1997).

¹³ *McCann v. United Kingdom*, 324 Eur. Cr. H.R. (1995)

by, inter alia, agents of the State'.¹⁴ In *Tanrikulu v. Turkey*, despite insufficient evidence to implicate the Turkish government in a victim's death, the European Court said that the duty to investigate was not confined to cases where it had been established that the killing was caused by an agent of the State. The fact that the authorities were informed of the murder established a right to an effective investigation.¹⁵

18. The same interpretation, by which the fundamental right to a remedy includes an entitlement to know the truth, through investigation, appears in the case law of the Inter-American Court of Human Rights. In *Velásquez Rodríguez v. Honduras*, the Inter-American Court held that the State is required to investigate every context involving a violation of the rights enshrined in the American Convention on Human Rights, even if the perpetrator is a private person. The 'effective search for the truth' must be assumed by the State itself and is not dependent on victims' initiatives. The Court also demanded an effective investigation despite the existence of difficult conditions within the country.¹⁶ Even where there are amnesty laws, the Inter-American Court has declared that the State is still obliged to use the means at its disposal to inform the relatives of the fate of the victims, and the location of their remains, if they have been killed.¹⁷
19. The United Nations Human Rights Commission has spoken of this right to an investigation to establish the truth in cases of forced disappearance. According to the Committee, 'state parties should also take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to investigate thoroughly, by an appropriate and impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life'.¹⁸ It has also said that complaints of torture and inhuman treatment 'must be investigated promptly and impartially by competent authorities so as to make the remedy effective'.¹⁹

Categories of truth

20. The Commission has had to address different types of truth. The Canadian writer Michael Ignatief, has stated that 'all a Truth Commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse. In Argentina, its work has made it impossible to claim, for example that the military did not throw half-dead victims in the sea from helicopters. In Chile, it is no longer permissible to assert in public that the Pinochet regime did not dispatch thousand of entirely innocent people'.²⁰ In South Africa, no one can now claim that the apartheid state was not a criminal state who unleashed violence and death squads on its own citizens who opposed the state and dissented from it.

¹⁴ *Ibid.* p. 161

¹⁵ *Tanrikulu v. Turkey*, 1999-IV Eur. Ct. H.R. 459 (1999)

¹⁶ *Velásquez Rodríguez Case*, Inter-Am. Ct. H.R., ser. C, no 4, P91 (July 19 1988), available at <http://www.corteidh.or.cr>.

¹⁷ *Barrios Altos Case*, Inter-Am. Ct. H.R. Ser. C. no 75P41 (March 14 2001)

¹⁸ *Laureano v. Peru*, U.N. GAOR, Hum. Rts. Comm. 56th Sess. P8.3, U.N. Doc. CCPR/C/56/D/540/1993 (1996)

¹⁹ *Rodríguez v. Uruguay*, UN. GAOR, Hum. Rts Committee, 51th sess. P12.3, UN Doc.

CCPR/C/51/D/322/1988 (1994).

²⁰ 'Articles of Faith', *Index on Censorship* (5) 1996, p. 113.

21. The South African Truth and Reconciliation Commission, which is in many respects the model for so many other similar institutions, including the Commission, dealt in its report with four different kinds of truth: factual or forensic truth; personal and narrative truth; social truth; healing and restorative truth. The list is probably not exhaustive.
22. *Factual or forensic truth.* One of South Africa's great human rights jurists, Albie Sachs, has called this 'microscopic truth'. It is akin to a version of events that is accepted after all the facts have been examined and can be supported by evidence. It involves bringing the facts to light. In this respect, the Commission was mandated by legislation to provide an impartial record into the violations and abuses of human rights and humanitarian law that were committed during the conflict. It was provided with robust powers of investigation, including the authority to summon witnesses and compel testimony, and to conduct searches and to take custody of documents and other material evidence.
23. Though not a court in the traditional strict sense, these powers of the Commission are akin to those available to traditional methods of justice, including criminal justice. The Commission used them, although sparingly, because as a general rule Sierra Leoneans were committed to the truth-seeking process and as a result they cooperated fully. But on occasion it was as a result of the threat to use these powers that witnesses appeared before the Commission, that official documents were provided, and that access was gained to premises normally closed to the public and to human rights investigators from NGOs and the United Nations.
24. In this area, the factual findings by the Commission complete a partial portrait of the conflict that has been provided in the past by journalists, by United Nations reports, and by the studies of various individual researchers and NGOs. This is, without doubt, the most thorough account of the conflict that has been produced. It is based on thousands of interviews, independent research, study of documents, and statistical analysis of a comprehensive database. And it is, as the Truth and Reconciliation Act 2000 requires, a truly *independent* account. Fact-finding has been approached empirically, without any preconceived notions about the 'truth' being sought. The approach of the Commission has been to investigate the truth according to an accepted methodology, and then to 'let the chips fall where they may'.
25. *Personal and narrative truth.* This is a witness's personal truth which he or she tells either in a statement or at a hearing. This is what he or she believes and should be respected. Often, the individual accounts did not initially appear to contribute significantly to the more general 'impartial historical record' that the Truth and Reconciliation Commission Act 2000 requires of the Commission. But over time, the sheer volume of these accounts provided a complex, multi-layered vision of the conflict. This truth is not the history of battles, military leaders and political parties, but rather a series of personal stories and accounts, telling a tale of the suffering, the pain and of the immense dignity of the common people of Sierra Leone. It is, perhaps more than anything else, a vision of the truth that describes the fundamental humanity of the people of this country.
26. The personal and narrative truth which the Commission has endeavoured to capture faithfully is inadequately presented in the present report of the Commission. It is simply impossible, in a document the length of the Commission's report, to provide a fair account of the complexity of the personal

truths that make up the story of the conflict. But the materials remain largely available, in the archives of the Commission. Many of them have been transcribed. A full videographic record of the public hearings of the Commission was taken and can be accessed by the public and researchers. The individual statements that were taken by the Commission have been coded and analysed in a data base to facilitate their consultation. We are confident that these resources will be drawn upon for years, possibly decades and even generations to come.

27. *Social truth.* This may come the closest to what the Truth and Reconciliation Commission is expected to establish. It is the truth established after interaction and dialogue that will be accepted by all after the myths and the lies have been discredited and disproven. In order to determine this 'social truth', the Commission endeavoured to provide a forum where the parties to the conflict, and the various components of civil society, including faith communities, political parties, the country's principal institutions, and various constituencies such as women, youth and children, could come together for debate and exchange. Even informally, out of this process a form of consensus has emerged about the nature of the conflict. The dynamics that were established between the participants in this process may provide a basis for future understanding and relationships.
28. *Healing and restorative truth.* This truth is necessary for the nation to cope with its pain. It is the truth of what happened. It involves an acknowledgement of people's pain and suffering by the nation. There were many opportunities for participants in the conflict to acknowledge the truth of what had happened and, in many cases, what they had themselves done to others. A significant number took full advantage of this opportunity. Their admissions and acknowledgement contribute without doubt to this 'healing and restorative truth'.
29. On occasion after occasion, and often during the public hearings, victims and perpetrators confronted each other, sometimes agreeing and sometimes disagreeing about the 'facts' of their encounters during the conflict. Out of this process a vision of the truth emerged that enables these members of Sierra Leonean society to deal with the past and, in a sense, put it behind them. The 'healing and restorative truth' in many respects, provides the foundation upon which the other wing of the mandate of the Commission, namely the quest for reconciliation can be built.

The relationship between reparation, truth and reconciliation

30. As a consequence of their victimisation, people often find themselves in a condition which is not conducive to forgiveness and reconciliation. The vast majority of them live in abject poverty, some having to endure the loss of limbs and others shunned because of their personal experiences such as rape and sexual slavery. Their dependency and social exclusion are constant reminders of the suffering they have endured. Faced almost on a daily basis by those who have harmed them, it is difficult to find within themselves the capacity to forgive. The humiliation of being dependent on the charity of others and often having to beg in order to live re-victimizes the victims, leaving conditions under which thoughts of revenge fester and grow. A reparations programme will assist those whose lives have been most devastated to move beyond the

position they are in currently as a consequence of the war. The cycle of suffering must be broken.

31. One of the objectives of the Commission is to foster reconciliation in the country. A reconciliation which is based on a common understanding of the past and which allows both victims and perpetrators to find the space to live side by side in a spirit of tolerance and respect. Truth and reparation are key components of reconciliation. In most transitional societies, the political realities of the day force compromises on new governments which result in the rights of victims being compromised. Victims are required to forgive and to forgo opportunities to seek redress and punishment for wrongs done to them. They bear the brunt of these political compromises. In such societies truth telling and reparations become even more important.
32. Jose Zalaquett, a member of the Chilean Truth and Reconciliation Commission, has explained this in the following way:

To provide for measures of reparation and prevention, it must be clearly known what should be repaired and prevented. Further, society cannot simply block out a chapter of its history; it cannot deny the facts of its past, however differently these may be interpreted. Inevitably the void would be filled with lies or with conflicting, confusing versions of the past. A nation's unity depends on a shared identity, which in turn depends largely on a shared memory. The truth also brings a measure of healthy social catharsis and helps to prevent the past from reoccurring.²¹
33. If the Commission had not intended to pursue a reparation policy for victims, truth-telling without reparation could conceivably be perceived by the victims to be an incomplete process in which they have revealed their pain and suffering without any mechanism being put in place to deal with the consequences of that pain. Similarly, reparations without truth-telling could be perceived by the beneficiaries as an attempt to buy their silence. Restorative justice requires not only truth telling but reparations which will strengthen the reconciliation process.
34. Reparations are an important instrument to achieving this goal. A sincere commitment from the Government to the execution of the proposed Reparations Programme would give a clear sign to the victims that the State and their fellow citizens are serious in their efforts to re-establish relations of equality and respect.²² Acknowledging the wrongdoing done to victims, engaging with those victimized and disempowered will lead to members of society having a renewed faith in the democratic process. This leads to the restoration of civic trust and a sense of ownership for the nation, attributes necessary if Sierra Leone is to take its rightful place in the community of nations.

²¹ J. Zalaquett, "extract from the Matthew O. Tobriner Lecture. Balancing Ethical Imperatives and Political constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations" 1992, 43 Hastings L.J. 1425, 1433.

²² Pablo De Greiff, "The Role of Reparations in Transition to Democracy", paper written for the International Center for Transitional Justice, New York, pp. 18-21 (forthcoming in "Repairing the Past").

Just war and just means

35. In the course of its work, the Commission frequently encountered those who consider that the justification for the conflict – on all sides - needed to be taken into account in assessing the existence and seriousness of alleged violations of human rights and international humanitarian law principles. For example, the Commission has often been told that the violations and abuses of human rights and humanitarian law for which the Civil Defense Forces (CDF) bears responsibility are in some sense less important than the violations attributable to the Revolutionary United Front (RUF), because the CDF was endeavouring to resist the rebels, a cause perceived by most to be just.
36. This argument is tantamount to saying that because a cause might have been just, the means used to pursue it are irrelevant. In other words, the ends justify the means. But this reasoning is not compatible with the normative framework of the Commission, which is to examine violations and abuses of human rights and international humanitarian law. Violations and abuses of human rights and international humanitarian law can be neither justified nor excused on the grounds that they are in some way responding to violations and abuses by the other side in a conflict.
37. At the outset, it seems important to state that the Commission is not called upon to assess the justness of the conflict itself. It may be argued by some that those who initiated the attempts to overthrow the Momoh regime were justified in taking up arms. The preamble of the *Universal Declaration of Human Rights* states: 'Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.' Accordingly, human rights law seems to acknowledge that in extreme conditions, there is a 'right of rebellion'. It does not encourage rebellion, nor does it sanction *coups d'état*. Human rights law assumes that rights will be pursued using legal means and in a rule of law framework. The *Universal Declaration of Human Rights* declares that the will of the people shall be the basis of the authority of government, and that it shall be expressed in periodic and genuine elections. Governmental change, in principle, is to be effected at the ballot box. Sometimes, however, after long years of dictatorship, this aspiration may seem unlikely or even impossible. The Commission need not determine whether the conditions mentioned in the preamble of the *Universal Declaration of Human Rights* for the right of rebellion were indeed fulfilled. But, as this Report explains elsewhere, there is little doubt that the words 'tyranny' and 'oppression', and the failure to protect human rights by the Rule of Law, were appropriate descriptions of Sierra Leone in March 1991.
38. On the other hand, international human rights law also acknowledges the right of States to restrict and even suspend certain fundamental rights under certain circumstances. The *International Covenant on Civil and Political Rights*, in article 4, allows such suspension '[i]n time of public emergency which threatens the life of the nation...' Few would quarrel with the applicability of this provision to the situation in Sierra Leone during the decade-long war. Nevertheless, certain fundamental rights and freedoms cannot be suspended even in time of war. These core rights, which are sacrosanct, include the right to life, the prohibition of torture and other cruel, inhuman or degrading treatment, and the

right to protection against discrimination. Many acts committed by the Government and by forces loyal to it cannot be excused on the grounds that the State was dealing with a public emergency.

39. If human rights law seems to leave a small amount of room for taking into account the justice of the cause being defended by the alleged perpetrator, international humanitarian law is essentially indifferent to the question altogether. International humanitarian law looks at the participants in an armed conflict without regard to whether or not the cause is legitimate. Its only concern is with the legality of the means and methods of warfare, and with the protection of vulnerable groups, especially civilians. Whether we are speaking of rebels or pro-Government forces, neither side can invoke the alleged justice of its cause as a defence to inhuman acts perpetrated by its combatants and collaborators.
40. The Commission need not examine the justness of the rebellion to overthrow the government in 1991, in order to fulfil its mandate, which is to address violations and abuses of human rights and international humanitarian law. Nor does it consider that those who fought to defend a democratically elected regime, from 1996 onwards were justified in using any means necessary to ensure that those chosen by the people actually governed the country.
41. Finally, a word should be said about the impermissibility of reprisals. Reprisals are undertaken in order to punish those who breach the rules of humanitarian law during armed conflict. In the past, international humanitarian law may have tolerated reprisals, but the permissibility has been constantly restricted over the years. It is now well established that under no circumstances may reprisals be committed against civilians, or against combatants who have laid down their arms and been taken prisoner. Even if they may be allowed *among* genuine combatants, they can only be used to the strict extent necessary, in order to compel the other side to stop its violations of the laws of armed conflict.

Victims

42. The Commission adopts the definition of a victim that is now generally accepted in international law,

A person is a 'victim' where as a result of acts or omissions that constitute a violation of international human rights and humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A 'victim' may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm.²³

²³ The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni, submitted in accordance with Commission resolution 1999/33, UN Doc. E/CN.4/2000/62, para. 8.

Perpetrators

43. The term 'perpetrator' is widely used in international human rights law to describe individuals who are responsible for violations of human rights and international humanitarian law. Accordingly, the United Nation's Sub-Commission on the Protection and Promotion of Human Rights, in mandating Louis Joinet to examine the question of impunity, spoke of the 'Question of the impunity of perpetrators of human rights violations'.²⁴ A distinction is made here with the State itself, which is also responsible for human rights violations under international law.
44. Historically, human rights law addressed itself essentially to violations committed by the State. The rights of the individual were viewed in this context. The development of the concept of 'perpetrators' indicates a desire to focus on individuals who bear personal responsibility for human rights violations and abuses.
45. Perpetrators may be public officials or members of quasi-governmental or private armed groups with any kind of link to the State, or of non-governmental armed movements having the status of belligerents. Perpetrators may be the direct offenders, or they may be accomplices. Often, the accomplice is actually the person with greater responsibility for violations, because it is the accomplice who, from a leadership position, directs and encourages the violations, even if he or she does not personally commit the atrocity. At the same time, the fact that the perpetrator of violations acted on the orders of his Government or of a superior does not exempt him or her from criminal or other responsibility.

²⁴ UN Doc. E/CN.4/Sub.2/1997/20/Rev.1.