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Accountability and Prosecution in the Liberian Transitional Society: Lessons from Rwanda and Sierra Leone

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INTRODUCTION

In the aftermath of World War Two, the International Community has shown a renewed commitment toward the protection of human rights. However, whether during wars or under dictatorial regimes, numerous human rights abuses occurred everywhere in the world, from Latin America to Eastern Europe and from Southern Europe to Africa. Countries which experienced oppressive governance or outrageous atrocities had to address the legacies of their past on the return of democratic rule or peace. In other words, they had to emerge from the darkness of dictatorship or civil war in order to establish a democracy. Several questions were to be addressed.

The first central one was whether or not to prosecute previous perpetrators of human rights violations. A broad academic debate arose around this question between proponents of prosecution as a central accountability mechanism and those arguing that in some instances criminal sanctions have not shown to be effective tools to deal with the past atrocities.

But, it appears from both the practice of transitional societies and from the work of some academics that to achieve an effective transition to democracy, both prosecutorial and non-criminal sanctions should be adopted. This is the result of the fact that where transition is sought three concepts need to be taken into account: Truth, Justice and Reconciliation. So, to achieve a successful transition it appears that aside from prosecution, complementary mechanisms are needed.

Indeed, once a State has made the decision to launch the accountability process, it has various options to shape its response to records of past abuses. Among them are truth commissions, lustration laws or even amnesty laws. The implementation of those mechanisms is related to the circumstances surrounding the transitional process.

Whatever their choice is, most States have tried to avoid perpetuating impunity.

As far as prosecution is concerned, another recurring debate is related to whether the transition will be the result of domestic efforts only, international ones or both.

Today, after 14 years of civil war, Liberia is faced with the challenge of achieving a

successful transition where the imperatives of truth, justice and reconciliation need to be met. To this end it has to address all the previously-mentioned issues.

Even if it is argued that there is not universal model of "the best transition" and although it cannot be said that a specific country had the best transition of all, it appears that it is a recurrent habit of successor governments to assess past experiences of transition in order to find out which practices have shown to be the most efficient and suitable for countries with similar legacies of abuses or comparable historic backgrounds. These lessons from past experiences are also aimed at learning how to avoid failures and shortcomings in the implementation of particular accountability mechanisms and therefore try to improve past practices and develop new mechanisms.

Accordingly, as the Liberian government has not yet decided on how to deal with the legacies of the civil war, it appears that an assessment of the practice of States which have undergone the same types of abuses and present some similarities whether historically or geographically may help reach the goal of establishing a consolidated and sustainable democracy.

The purpose of this research paper is to make some recommendations on the way the accountability process in Liberia should be shaped as far as prosecution is concerned. As a result, the relevance of complementary mechanisms mentioned earlier will not be addressed. However, it has to be bore in mind that this research paper is not denying at all the necessity and importance of implementing other mechanisms like a truth commission, for instance, to deal with the Liberian legacy of abuses and atrocities.

Recommendations that will be made in this paper will be drawn from the experiences of two countries, namely Rwanda and Sierra Leone. Those two countries' transitional processes are the most relevant to the Liberian new government for several reasons. First, these transitions are more relevant than others as they have the same regional background as the Liberian one namely, Africa. Indeed, using European or American experiences would not be that relevant as the infrastructure, financial means and historical background of those societies are really far from the Liberian reality.
Second, the very kind of violence that Rwanda and Sierra Leone experienced, namely

genocide in Rwanda and civil war in Sierra Leone make their experience in transition more relevant to Liberia than the practices of countries which experienced dictatorships for instance.

Lastly, these two experiences need to be assessed if one wants to address the issue of accountability in the Liberian transitional society because they represent two landmark and prominent developments in the field of transitional justice in general and also in the particular African context.

In this paper it will also be shown that the various experiences and options taken in these two countries are characteristic of an evolution in the type of mechanisms used to prosecute those responsible for atrocities.

The study will be conducted in a chronological way. Chapters One and Two provide an appraisal of the adequacy and efficiency of criminal mechanisms used to deal with the Rwandan past, namely the International Criminal Tribunal for Rwanda, the domestics courts and finally, the *Gacaca* or traditional courts. Chapter Three assesses the usefulness of the Special Court for Sierra Leone as a tool for prosecuting perpetrators of atrocities. In each Chapter, a part will be devoted to the assessment of the suitability, efficiency and realism of the implementation of the studied model in the Liberian context.

CHAPTER ONE: AN INTERNATIONAL TRIBUNAL FOR LIBERIA? LESSONS FROM THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

To assess the efficiency, suitability and realism of the possible implementation of an international tribunal to deal with the Liberian past, an evaluation of the work of the ICTR must first be done.

1.1 The ICTR: From expectations to shortcomings

The genocide that happened in Rwanda from April to July 1994 is condemned all over the world today. But at the time of the killings, the international community did not act; it only reacted by mere declarations and forceless resolutions. Thus, the establishment of the ICTR was seen by many observers as a way not only to achieve justice but also to heal the conscience of the International Community. This paper will not engage in such a debate. It will only show that there was a scheme to establish the ICTR which was inherited from the ICTY, that objectives were set and that very soon expectations raised (1.1.1). After recalling those facts, it will become possible to evaluate the work of the Tribunal as it will be shown how those objectives and expectations were fulfilled. In other words what are the achievements, difficulties and shortcomings (1.1.2) of this model of transitional justice.

1.1.1 Establishment of the ICTR, objectives and primary expectations

a) Establishment and legislative history of the ICTR

Howland and Calathes have argued that "The ICTR grew out of the response of the UN human rights system to the Rwandan tragedy"[1].

Indeed, the UN Commission on Human Rights held a special session during which it appointed a Special Rapporteur to assess the situation and it instructed the High Commissioner for Human Rights to create a field office in Rwanda.

It is the report of this Special Rapporteur which led to the adoption of Resolution 935 of the United Nations (UN) Security Council on 1 July 1994.[2] The UN Security Council asked the Secretary General of the UN to appoint an impartial commission of experts to assess whether or not genocide and serious breaches of international humanitarian law were occurring in Rwanda.

As a result, the Commission issued a report stating that "there exists overwhelming evidence to prove that acts of genocide against the Tutsi group were perpetrated by Hutu elements in a concerted, planned, systematic and methodological way". The report went on to say that "mass exterminations perpetrated by Hutu elements against the Tutsi group [...] constitute genocide". [3]

Moreover, the Commission recommended that the Security Council do all that was in its power to "ensure that the individuals responsible [...] are brought to justice before an independent and impartial international criminal tribunal".[4] To achieve this goal, the Commission suggested the amendment of the Statute of the Yugoslav Tribunal in order to "ensure that its jurisdiction covers crimes under international law committed during the armed conflict in Rwanda that began on 6 April 1994".[5] This last recommendation was materialised in a proposal of the United States but was not

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[1] T. Howland and W. Calathes "The U.N.'s international criminal tribunal, is it justice or jingoism for Rwanda? A call for transformation" (1998) 39 *Virginia Journal of International Law,* 140.
[2] S.C. Res. 935, U.N. SCOR, 49th Sess., 3400th mtg., U.N. Doc. S/Res/935 (July 1, 1994).
[3] U.N. Doc. S/1994/1125, at 30, para.148.
[4] Id. at 31, para. 150.
[5] Id., para 152.

approved by some of the Council members who feared that, as Akhavan rightly puts it, "the expansion of an existing ad hoc jurisdiction would lead to a single tribunal that would gradually take on characteristics of a permanent judicial institution"[6].

Thus, a similar but different option was taken by the Security Council when it adopted on 8 November 1994 its Resolution 955.[7] Indeed, after qualifying the situation in Rwanda as "a threat to international peace and security" within the scope of Chapter VII of the Charter, the Council established as an enforcement measure, the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 January 1994 and 31 December 1994 (ICTR) "drawing upon the experience gained in the Yugoslav Tribunal [...]".[8]

Finally, it has to be said that the Rwandan government participated fully in the legislative building of the Tribunal. In fact, in a letter to the President of the Security Council, the Permanent Representative of Rwanda asked for the creation of an international tribunal in September 1994[9]. Furthermore, in October, the President of Rwanda in his speech to the General Assembly stated that "it is absolutely urgent that this international tribunal be established".[10] Reasons that led the Rwandan Government to choose an International tribunal to deal with the genocide were numerous. In sum, they thought that it would serve the international community as a whole as "the genocide committed in Rwanda is a crime against human kind [...]". Furthermore, international justice would protect the Government from being accused of implementing rough and harsh victor's justice. Moreover, the Rwandan authorities see the necessity of such a body to get rid of the culture of impunity and achieve national reconciliation. Finally, an international tribunal presented the advantage of facilitating the arrest and custody of perpetrators who had found refuge in third states.

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[6] P. Akhavan "The international criminal tribunal for Rwanda: The politics and pragmatics of punishment" (1996) 90 *American Journal of International Law,* 502

[7] SC Res. 955 (Nov. 8 1994), reprinted in 33 ILM 1602 (1994).

[8] Report of the Secretary-General pursuant to paragraph 5 of Security Council Resolution 955 (1994), UN Doc. S/1995/134, at 2-3, para. 7.

[9] Letter from the Permanent Representative of Rwanda Addressed to the President of the Security Council (Sept. 28, 1994), UN Doc. S/1994/1115.

[10] UN GAOR, 49th Sess., 21st plen. Mtg., at 5 (1994), quoted in UN Doc. S/PV.3453, at 14 (1994).

b) Objectives and primary expectations

Resolution 955 clearly states some objectives for the ICTR. The tribunal was supposed to help the Council in its aim which was "to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them".[11] The resolution goes on to state that the ad hoc court "would contribute to the process of national reconciliation and to the restoration and maintenance of peace" and that it "will contribute to ensuring that such violations are halted and effectively redressed"[12].

Furthermore, the Prosecutor of the Tribunal at that time, Justice Goldstone, indicated that the "essential objective" of his team was "to bring to justice those most responsible both at the national and local level for the mass killings that took place in Rwanda in 1994"[13].

With objectives as great and important as those previously-cited, numerous expectations were raised.

The most obvious one was that effective and prompt actions would be taken to make sure that main perpetrators of abuses would be judged by the tribunal.

Furthermore, the tribunal was seen as a chance to "provide an impartial and authoritative judicial forum before which the culpability of [those who have used genocide as a mean of rejecting alternate power] may be established.[14]

In the same way, it was hoped that the tribunal would "play a vital role in contributing to lasting reconciliation by facilitating the repatriation of refugees"[15] while prosecuting the extremists preventing it. Indeed, prosecutions were seen as "essential prerequisite for the repatriation efforts of the United Nations and, consequently, for the long-term stability of the entire Great lakes region"[16].

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[11] SC Res. 955, supra note 7, at 1.
[12] Id.
[13] Press Statement by the Prosecutor of the International Criminal Tribunal for Rwanda, Justice Richard Goldstone, December 12, 1995.
[14] P. Akhavan, "Justice and reconciliation in the Great Lakes region of Africa: The contribution of the international criminal tribunal for Rwanda" (1997) 7(2) *Duke Journal of Comparative and International Law*, 336.
[15] Id.
[16] Id., 339.

The Tribunal was also expected to avoid a collective guilt to be entrenched in the Hutu social fabric and rather "become an instrument by which those responsible for the genocide are distinguished from moderate Hutu leaders who have a legitimate right to participate in the government of their country"[17].

Moreover, it was hoped that the ICTR would have both deterrent and truth-telling effects. In fact, Akhavan, for instance, argued that trials "would have considerable impact on national reconciliation as well as deterrence of such crimes in the future"[18] and he went on to state that through the ICTR "the Rwandan people may be witness to the truth and thereby exorcise themselves from the spectre of the past"[19]. He even went to the extent to say that the ad hoc court was "an essential means of preventing vengeful actions and thereby safeguarding the right to life, liberty and security of the person"[20].

Finally, the Rwandan Representative to the Security Council clearly recalled the ultimate expectation raised by the tribunal: "help national reconciliation and the construction of a new society based on social justice and respect for fundamental rights of the human person"[21].

1.1.2 Achievements, shortcomings and difficulties

a) Few but true achievements

Even if Akhavan called them "modest", he and a lot of scholars, human rights activists and legal practitioners have welcomed and acknowledged some positive aspects of the tribunal work.

The first feature which was welcomed was the fact that the tribunal managed to become "operational in a relatively short period of time". Another achievement of the ICTR and one most mentioned, acknowledged and praised is the ability of the ICTR to overcome the obstacle of the cooperation of States in practice.

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[17] Id., p. 337.
[18] Id., p.339.
[19] Id., p. 341.
[20] Id., p.340.
[21] UN Doc. S/PV. 3453 (1994), at 14.

Indeed, the very own way the tribunal was created, namely under Chapter VII of the UN Charter made this duty to cooperate compulsory in theory.[22].

Proofs of the success of the ICTR in securing assistance from third States are the apprehending, arrests and trials of top leaders. [23]. The Spokesman of the ICTR, Kingsley Chiedu Moghalu, refers to this achievement while recalling that "the tribunal's successes in apprehending "big fishes", [namely] accused persons whom most Rwandans knew were effectively beyond the reach of the domestic judicial system"[24]. Indeed, the ICTR has handed down 19 judgements involving 25 accused and as of May 2005, another 25 accused are on trial. It seems that the ICTR is largely fulfilling the objective of bringing the senior perpetrators of the genocide to justice.

It can even be said that it is fulfilling the previously-mentioned objectives of achieving reconciliation and deterrence. [25] This is the result of the fact that it criminalized Hutu extremists but without stigmatizing the whole ethnic group[26].

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[22] As Nsereko rightly puts it , "[the tribunal] has given life and meaning to Articles 2(5), 2(6), 25, 39 and 49 of the UN Charter [which provide that] all states have an obligation to co-operate with international mechanisms set up by the international community to combat international crime. In D.D.N. Nsereko "Genocidal Conflict in Rwanda and the ICTR" (2001) 48(1) *Netherlands International Law Review*, 53; The Tribunal recalled this obligation under international law in the *Barayagwiza* case when Judge Nieto Navia stated that the duty to co-operate was absolute. In *The Prosecutor* v. *Barayagwiza,* Case No. ICTR-97-19-AR72.

[23]Peskin notes that "the ICTR has recently made some notable progress, both administratively and in terms of arrests and prosecutions" and Nsereko states that "the netting of the top leaders [...] in the commission of the crimes, has so far been a great achievement on the part of the Tribunal". V. Peskin "International Justice and Domestic Rebuilding: An Analysis of the Role of the International Criminal Tribunal for Rwanda" (May 2000), available at http://www.jha.ac/greatlakes/b003.htm; Nesereko, supra note 22, 64.

[24]K.C. Moghalu "Image and Reality of War Crimes Justice: External Perceptions of the International Criminal Tribunal for Rwanda," (2002) 26 *Fletcher Forum for World Affairs*, 29; Some figures confirm the late appraisals: 69 persons out of the 75 indicted were arrested, 63 are detained under the Tribunal's authority, 25 are on trial, 20 have been convicted and 1 released, all of them top civilians or military leaders. For detailed statistics, *Status of ICTR Detainees,* 14 December 2004, available at www.ictr.org/ENGLISH/factsheets/detainee.htm.

[25] This can be drawn from Akhavan's words in 1996 when he argued that "the symbolic effect of prosecuting even a limited number of the perpetrators, especially the leaders who planned and instigated the genocide, would have considerable impact on national reconciliation, as well as on deterrence of such crimes in the future". Akhavan, supra note 6, 509.

[26] As the International Crisis Group rightly puts it, "[the ICTR] has politically neutralised the "Hutu Power" movement's agenda of Tutsi extermination". Moghalu goes on to state that "Such convictions have also had a positive impact by removing extremists from the political space in Rwanda through verdicts that were reached after fair trials". He also rightly described the fact that the ICTR avoided stigmatization when he states that "the conviction of senior figures by the ICTR has contributed to reconciliation in Rwanda by individualizing guilt, in contrast to the tendency to assign guilt to groups".

Aside from bringing perpetrators to justice and acting toward reconciliation, the ICTR is also succeeding in establishing what can be seen as an historical record of the genocide.[27] Furthermore, the tribunal's case law has shown the contribution of the Tribunal to the development of international humanitarian and criminal laws.

Indeed, with the *Kambanda* case, the ICTR became the first international tribunal in history where an individual pleaded guilty on a charge of genocide. It is noteworthy that this individual was not a "common" perpetrator but Rwanda's former prime minister. Thus, the ICTR became also the first to convict a head of government for genocide.[28] In the *Akayesu*[29] case, the ICTR stated that sexual violence in certain circumstances could be held as an act of genocide and became the first to make a finding this extent[30].

Finally, as far as victims are concerned, the work of the Tribunal has to be welcomed as well. Nsereko praises this achievement while stating that "efforts by the Tribunal to assist and rehabilitate some of the victims of the genocide are a veritable contribution to the healing process"[31].

International Crisis Group, *The International Tribunal for Rwanda: Justice delayed,* Africa report n°30, June 2001, available at http://www.icg.org/home/index.cfm?id=1649&l=2. ; Moghalu, supra note 24.

[27] The International Crisis Group fairly notes, "It has provided indisputable recognition of the Rwandan genocide". Moghalu agrees when he argues that verdicts pronounced "establish an indisputable historical record of the planning and execution of the genocide". Magnarella explains that the Tribunal made a significant contribution to the fight against the manipulation of the Rwandan history with the *Kambanda* case. This author argues that "his confession destroys the credibility of revisionist historians, who claim genocide never took place". According to him, this case even has greater consequences as regard to the plea strategy of the other accused who "may well confess, express remorse, and ask for the court's mercy". In the same way Nsereko argues that "his conviction and sentence serve to repudiate the theory that the genocide and other heinous crimes that occurred in Rwanda were the spontaneous acts of civil war that were committed by one side to the war"[27]. He even goes to the extent to say that "the case thus serves to enhance the supremacy of the law and to ring the death knell of the prevalent culture of impunity". International Crisis Group, supra note 26; P. J. Magnarella (2000) *Justice in Africa: Rwanda's genocide, its courts, and the UN Criminal Tribunal. – (Contemporary perspectives on developing societies),* 112; After the *Kambanda* case, other pleas of guilty were secured; An example is the *Serushago* case, ICTR-98-39-1;
Nesereko, supra note 22, 64.

[28] Louise Arbour praised this development while stating that "after fifty years of inertia, international criminal justice after Nuremberg and Tokyo is now well entrenched and has made considerable progress". L. Arbour "The international tribunals for serious violations of international humanitarian law in the former Yugoslavia and Rwanda" (2000) 46(1) *McGill Law Journal*, 196.

[29] *The Prosecutor v. Jean-Paul Akayesu* (1998), case n° ICTR 96-4-T, available at http://www.ictr.org/ENGLISH/cases/AKAYESU/judgment/191000.htm

[30] Therefore, Magnarella rightly states that "The *Akayesu* Judgement will stand as an historic precedent for future tribunals dealing with similar issues" Magnarella, supra note 27, 113.

[31] Nesereko, supra note 22.

Unfortunately, the ICTR did not fulfil all its objectives completely and did not manage to overcome all the difficulties and obstacles encountered. Therefore, it came under strong and harsh criticism for its shortcomings.

b) Obstacles, difficulties and shortcomings

It is usually argued that ICTR lacks funds and that, as a consequence, it does not have the means to achieve its objectives properly. But still, those flaws are real, various and numerous.

Among these shortcomings, the most important is the Tribunal's inability to fight effectively against impunity and bring all perpetrators before the court.
Notwithstanding what was said in the earlier parts of the present study, it appears that the Tribunal failed in protecting witnesses outside courtrooms. Erasmus and Fourie agree on that point while stating that "the work of the Tribunal is hampered by the ineffective protection of witnesses".[32]
The Lawyers Committee and the Integrated Regional Network (IRIN) refer to the physical violence that actual and potential witnesses have been subjected to in the past years. In fact, their reports evoke the fact that "witness and victim protection has already [in 1997] emerged as a major problem for the Tribunal" and give examples of cases where those people were specifically targeted, murdered, injured and intimidated[33]. The IRIN report mentions "scores of genocide survivors" as victims of such acts[34].
Furthermore, there is a real concern about the way witnesses are harassed and humiliated inside courtrooms. The worst example, which was well-publicized, is the one in which a rape victim had to suffer laughs of judges while testifying. Carla del Ponte, ICTR Prosecutor at that time, referred to this particular case as "scandalous"

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[32] G. Erasmus and N. Fourie "The International criminal tribunal for Rwanda: Are all issues addressed? How does it compare to South Africa's Truth and Reconciliation Commission?" (1997) 321 *International Review of the Red Cross*: 705-715.
[33] Lawyers Committee for Human Rights (1997) *Prosecuting genocide in Rwanda: the ICTR and national trials*, 12.
[34] Integrated Regional Information Networks, "Rwanda Reconciliation remains elusive" (31 Dec. 2004), available at http://www.plusnews.org/report.asp?ReportID=44877&SelectRegion=Great_Lakes.
[35] J. Crawford "Rwanda tribunal's witness protection in question" (Dec. 2001), available at: http://www.hirondelle.org/hirondelle.nsf/0/925b4cfad00a68c0c1256820007a56b7?OpenDocument.

and criticized and denounced "the passivity of the presiding judge"[35]. While referring to the situation of witnesses in general, she added:

> "My surprise is that each kind of question is allowed. I am coming from a civil law system and I know that in a common law system it is different, but I am asking my senior trial attorneys from common law if it's normal, if it's useful to aggress in such a way a witness, and I must say I receive the answer no."[36]

She also acknowledged that there was a failure of the prosecution which should have tried to shield witnesses from such verbal aggressions.

Aside from the flaws toward victims, the ICTR also failed to some extent to bring **all** perpetrators to justice and to completely avoid the image of achieving "victor's justice". This has been rightly described by academics as "frustrat[ing] the realization of the Tribunal's goal of ensuring "effective redress"" and as one of the greatest obstacles to the achievement of peace and reconciliation[37].

Even if, as recalled by O'Shea, the very own way international tribunals are created and operate give them "little chance" to avoid such a perception[38], as far as the ICTR is concerned, some jurisdictional limitations have consolidated this accusation. Indeed, its statute establishes geographic (Rwanda and its neighbouring states), temporal (the calendar year 1994) and personal limitations ("natural persons")[39]. Another noteworthy exclusion concerns to criminal penalties and civil damages[40].

All these obstacles have the practical consequence that the issue of complicity in the genocide and other crimes cannot be totally addressed.

The greatest issue that these limitations raise is the one concerning the proceedings and indictments against members of the Tutsi-led group that has ruled Rwanda since mid-1994. Despite the attempts of former ICTR prosecutor Carla del Ponte, this situation has still not been resolved[41] and has led to some criticisms against the Court

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[36] Id.

[37] J. Tebbs (ed.) (1999) *Rwanda, War and peace?!,* 281-282.

[38] A. O'Shea "Ad hoc tribunals in Africa: A wealth of experience but a scarcity of funds" (2003) 12(4) *African Security Review*, available at http://www.iss.org.za/pubs/ASR/12No4/F2.html .

[39] Statute of the ICTR, SC Res. 955, supra note 7.

[40] Tebbs, supra note 35, 281-282 and 284.

[41] Helena Cobban describes this situation while stating that "Del Ponte had consistently pressed—against Rwandan government opposition—for continuing with "special investigations" of allegations that members of the Tutsi-led group that has ruled Rwanda since mid-1994 also committed indictable crimes during the genocide. (When I saw her in Arusha in April, she stressed to me that "we are proceeding with the special investigations.") Now, after Gambia's Hassan Jallow became Chief Prosecutor on October 1, the "special investigations" face an uncertain future." In Cobban, H "Healing

concerning its impartiality and independence[42]. Even if Jallow ensures that he works "independently to seek the truth"[43], there are still troubling facts which show the Rwandan government's power over the institution. Indeed, as Cobban rightly recalls it, despite its promise to cooperate with the Tribunal's work and to get over its primary reservations (that led it to be the only State to vote against resolution 955), "Rwanda's distrust of the ICTR has subsequently constrained important aspects of the court's work".[44] The *Barayagwiza* case, the pressure and persuasion exercised on witnesses before they testify and the removal of Carla del Ponte from office are a few examples of the influence of the Rwandan government.

This tension between Rwanda and the ICTR is strengthened by the fact that justice is not seen to be done by the very own persons who are supposed to be healed by the judicial process. In fact, there is not only a lack of dissemination of detailed accounts of trials[45] but the ICTR also does not involve properly the population in the judicial process[46]. If one adds to this assessment, delays, lengthy trials[47] and proceedings (which show a failure toward its expected deterrent effect)[48], it can only be said that the ICTR's work in dealing with the Rwandan past is less than conclusive. It might be a little to harsh to go to the extent to say that its efforts in achieving justice, peace and reconciliation are "lamentable"[49] or "inexistent"[50], but still, ten years after the genocide it is understandable that survivors and everyone concerned with the issue of human rights conclude that there is still a long way to go for the ICTR to achieve its

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Rwanda: Can an international court deliver justice?" (2003) 28(5) *Boston Review*, available at: http://www.bostonreview.net/BR28.6/cobban.html .

[42] Nsereko, supra note 22, 45; O'shea, supra note 38; C. M. Peter "The international criminal tribunal for Rwanda: bridging killers to book" (1997) 321 *International Review of the Red Cross*: 695-704.

[43] Quoted in Integrated Regional Network, "Rwanda: International prosecutor will resist public pressure" (14 Jan. 2005), available at: http://www.plusnews.org/report.asp?ReportID=45073&SelectRegion=Great_Lakes .

[44] Cobban, supra note 41.

[45] Peskin, supra note 23, recalls that the ICTR "operates in obscurity"; on the importance to see justice done and have the judicial and historical knowledge disseminated, Akhavan, supra note 14, 342.

[46] N. Pillay "A delicate balance: Justice and reconciliation" (2002) *Welcome address at the African Dialogue II Conference : Promoting Justice and reconciliation in Africa : Challenges for Human Rights and Development*, 4, available at: http://www.ictr.org/ENGLISH/africandialogue/papers/Pillay.pdf+Ad+hoc+tribunals+in+Africa&hl=fr JP. Chrétien "Une justice internationale pour le Rwanda, malgré tout" (2002) 87 *Politique Africaine :* 185-188 ; E. Gatari "Une justice internationale dans l'indifférence" (2002) 87 *Politique Africaine :* 189-191.

[47] D.A. Mundis "Improving the operation and functioning of the international criminal tribunals" (2000) 94(4) *American Journal of International Law:* 759-773; Magnarella, supra note 27, 113.

[48] Howland and Calathes, supra note 1, 151.

[49] International Crisis Group, supra note 26.

[50] Id.

objectives and realistically fulfill the primary expectations that were raised after its establishment.

1.2 An ad hoc tribunal for Liberia: from theoretical possibilities to practical realities

The ICTR was established because of the precedent that the ICTY represented. Thus, one may think that theoretically, an ICTL could be established as a way to deal with the Liberian past (1.2.1). But we will see that even if some parallels can be drawn between the two situations, namely Rwanda 1994 and Liberia 2003, the establishment of an ad hoc tribunal for Liberia is very unlikely to happen in practice (1.2.2).

1.2.1 An ICTL: a possible option in theory...

a) Legislative memories of the ICTR: elements of proof and indices underlying the possible establishment of an ICTL

As mentioned above, the ICTR was established after reports by experts and commissions led the Security Council to qualify the situation as a threat to international peace and security.

In the Liberian case the numerous Security Council resolutions are noteworthy because they rightly qualify the various features of the civil war as threats to the stability of the region and to international peace and security.

Indeed, as early as in 1992, the Council in its Resolution 788 determined that "the deterioration of the situation in Liberia constitutes a threat to international peace and security, particularly in West Africa as a whole"[51]. Later on, many other resolutions recalled this position using the same general phrasing[52] or pointing out

[51] SC Res. 788 (Nov. 19 1992), available at: http://daccessdds.un.org/doc/UNDOC/GEN/N93/010/46/IMG/N9301046.pdf?OpenElement .
[52] SC Res. 813 (March 26 1993), available at: http://daccessdds.un.org/doc/UNDOC/GEN/N93/177/39/IMG/N9317739.pdf?OpenElement .

specific aspects like it was the case in Resolution 1343 in 2001, for instance, where the Council stated that "the active support provided by the Government of Liberia to armed rebel groups in neighboring countries, and in particular its support to the Revolutionary United Front (RUF) in Sierra Leone, constitutes a threat to international peace and security in the region"[53]. Finally, since the former President of Liberia, Charles Taylor's resignation and departure, the Security Council which had constantly denounced this regionalization of the conflict[54], spoke of it as a "[continuing] threat to international peace and security" but also as a threat to "the peace process in Liberia"[55]. It appears that even after August 2003 and the handing over of governmental powers to a transitional government, "the proliferation of arms and armed non-States actors"[56] and Taylor's influence[57] were still seen by the Council as threats which could give rise to the implementation of its powers under Chapter VII of the Charter.

This is similar to the Rwandan scenario.

Furthermore, even if in the case of Liberia the public outcry was not as great as the one in 1994, academic writers and decision-makers both nationally and internationally have urged that justice be done.

At the international level, UN bodies[58], the International Crisis Group[59], Amnesty International[60] and Human Rights Watch[61], just to name a few, have called for

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[53] SC Res. 1343 (March 7 2001), available at : http://daccessdds.un.org/doc/UNDOC/GEN/N01/276/08/PDF/N0127608.pdf?OpenElement

[54] For instance in SC Res. 1408 (May 6 2002), available at: http://daccessdds.un.org/doc/UNDOC/GEN/N02/368/48/PDF/N0236848.pdf?OpenElement .

[55] SC Res. 1509 (Sept. 19 2003), available at: http://daccessdds.un.org/doc/UNDOC/GEN/N03/525/70/PDF/N0352570.pdf?OpenElement .

[56] SC Res. 1521 (Dec. 22 2003), available at: http://daccessdds.un.org/doc/UNDOC/GEN/N03/669/60/PDF/N0366960.pdf?OpenElement .

[57] SC Res. 1532 (March 12 2004), available at: http://daccessdds.un.org/doc/UNDOC/GEN/N04/268/48/PDF/N0426848.pdf?OpenElement ; SC Res. 1579 (Dec. 21 2004), available at: http://daccessdds.un.org/doc/UNDOC/GEN/N04/658/25/PDF/N0465825.pdf?OpenElement .

[58] For instance the Secretary General stated in a speech before the UN Commission on Human Rights in Geneva on the day of the Rwanda anniversary that "It is therefore vital that we build and maintain robust judicial systems, both national and international -- so that, over time, people will see there is no impunity for such crimes." The article also quotes as a part of Kofi Annan's plan of action to prevent future atrocities the necessity of "ending impunity". It is argued that "National and international courts must be strengthened to make certain that perpetrators of genocide or other large-scale acts of violence do not escape prosecution." In E. Harsch "UN seeking to avert a 'new Rwanda' " (2004) 18(2) *Africa Renewal*: 14-16, available at: http://www.un.org/ecosocdev/geninfo/afrec/vol18no2/182genocide.htm ; Another example is the one of David Crane, Chief Prosecutor of the Special Court for Sierra Leone, who "called on Liberians [in August 2004] to speak out for a special war crimes tribunal for their country". In A. K. Sirleaf "Liberians Must Make Their Voices Heard for War Crimes Tribunal,

accountability mechanisms to be established. At the national level, every sector of the society, church[62], journalists[63], lawyers[64], politicians[65] and law makers[66] have made same demands.

Thus, it appears that an international tribunal could well be an option.

So it could be possible that, with the past resolutions and the two precedents that the ICTY and the ICTR represent, the Security Council uses its Chapter VII power to establish an ad hoc tribunal to try those responsible for crimes committed during the very protracted civil war.

However, to achieve the maximum effect, lessons learnt from the ICTR's failures must be borne in mind. This is essential for implementing an efficient mechanism of transitional justice.

b) Practical memories of the ICTR: The ICTL, a chance to avoid past failures and flaws

As pointed out in the assessment above, the ICTR failed to fully fulfill the expectations and objectives that were set before it. This is the result of several obstacles and constraints.

First, it was argued that the lack of funding has hampered the work of the tribunal.

So if an ICTL was to be created it should not only secure international support to ensure its recognition and its ability to get custody of alleged perpetrators at large

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Says Chief Prosecutor David Crane", *The Liberian Mandingo Association of New York*, (August 2004), available at: http://limany.org/aksirleaf3.html .

[59] International Crisis Group, *Rebuilding Liberia: Prospects and Perils*, Africa Report n° 75, January 2004, available at: http://www.crisisgroup.org/home/index.cfm?id=2496&l=1 .

[60] Amnesty International, *Report 2004 (Liberia entry),* available at: http://web.amnesty.org/report2004/lbr-summary-fra .

[61] Human Rights Watch, "West Africa: Taylor must face justice", (August 2003), Human Rights Watch Press Release, available at: http://www.hrw.org/press/2003/08/liberia081103.htm .

[62] The Worldwide Faith News, "From fear to hope: Inter-religious groups play central in peace building", (November 2003), available at: http://www.wfn.org/2003/11/msg00288.html ; Adventist World Radio, "Liberian Church Calls for War Crimes Tribunal", (2003), available at: http://english.awr.org/realmedia/361news.htm .

[63] G.I.H. Williams "Association of Liberian Journalists in the Americas asks UN to set up war crimes tribunal for Liberia" (Dec. 1999), available at: http://www.theperspective.org/alja.html .

[64] F.A.B Jayweh "The necessity for a war crimes court for Liberia" (July 2004) *New Democrat*, available at: http://www.newdemocrat.org/other/@@%2016%20July%20Warcrimes.html .

[65] Some members of the Opposition led by T.Q. Harris set the establishment of a war crime tribunal as one of the priority of their presidential campaign. See "Liberia war lords to face war crime tribunal" (2004) available at: http://www.republicofliberia.com/warlords.htm and "The case for a war crimes tribunal" (2004) available at: http://www.republicofliberia.com/thecase.htm .

but it should also be sufficiently and properly funded to ensure that the work could be done efficiently and without delay.

The other great obstacle constraining the work of the tribunal in Tanzania is its conflicting relations with the Government of Rwanda. Thus an ad hoc war crime court for Liberia should try to avoid such a situation and have a constructive and cooperative relation with the Government of Liberia and this from the earliest stage of its creation. Indeed, the tension between the ICTR and the Rwandan government continues.

Moreover, those who would establish an ICTL and work in it would have to bear and keep in mind that the institution will be intended to serve the interest of the Liberians and should therefore be seen to do so. Therefore, the future tribunal's work would have to be publicized, its trial held in open public session, meaning, that particular attention should be given to ensure that victims and their relatives participate to the judicial process. Furthermore, it would be important that a future ICTL be established in Liberia, or at least, have all its components (office of the Prosecutor, chambers, registry etc....) united in one country so that the Rwandan example is not renewed. In fact this would help avoid the image of the tribunal as being far from the victims. It would also prevent the impression that Liberians have been totally excluded from witnessing the accountability process.

By taking these factors into account a new ad hoc tribunal would be able to function in a less cumbersome way than the ICTR does as present.

This would demonstrate a commitment to counteract impunity and would help to reconcile a country torn apart by years of civil war and outrageous and barbarous violations of human rights and integrity.

Unfortunately, this ideal ad hoc war crimes tribunal appears as a holistic dream or put in other words, as wishful thinking when confronted with the international and domestic realities surrounding the Liberian transitional justice issue.

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[66] M.M. Zangar "Lawmaker Wants War Crimes Tribunal Established for Liberia", (July 2003) *The Perspective,* available at: http://www.theperspective.org/davidkortie.html .

1.2.2 An ICTL: the impossibility of going beyond practical realities

a) The international community and the Liberian accountability process: between passivity and wait-and-see policy

In August 2003, the international community welcomed as a whole the end of the 14-years-long Liberian civil war.[67] But since then, even allowing for the measures since implemented by the UN Security Council and other international bodies to reconstruct the country, little has been done to set up an ad hoc tribunal for Liberia. This passivity leads one to wonder if it will ever be done.

Indeed, in the Rwandan case, the Tribunal was set up quickly after an effective and legitimate government was in place. It is true that the situation in Liberia is different as there is a transitional government based on a coalition and as peace is built on a really fragile equilibrium. But still, various other elements seem to imply that the international community is neither ready nor willing to set up another ad hoc court.

The greatest cause of this unwillingness is the funding issue. In fact members of the Security Council have been arguing about the cost of maintaining the already existing tribunals[68].

Then, it can be said that the political will of the UN and other African States concerning a hypothetic ICTL was very weak from the beginning because in the peace agreement it was suggested that the transitional government could decide to grant amnesty for crimes committed by the various factions.[69]

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[67] United Nations Secretary General, *Report to the Security Council on Liberia,* (11 September 2003), S/2003/875, available at: http://www.hri.ca/fortherecord2003/documentation/security/s-2003-875.htm ; Statement by the President of the United Nations Security Council, *The situation in Liberia* (27 August 2003), S/PRST/2003/14, available at: http://www.hri.ca/fortherecord2003/documentation/security/s-prst-2003-14.htm; Security Council Resolution 1521, supra note 56.

[68] They were told that the money invested in justice in those post conflict situations is necessary and even compulsory to avoid future strives and that finally it was cheaper for the institution to support judicial bodies than to have to deal with conflicts. In E.M. Lederer "Security Council told to stop complaining about high cost of war crimes tribunal" (Oct. 2004) *Associated Press*, available at: http://www.globalpolicy.org/intljustice/general/2004/1007cost.htm ; UN News centre, "Progress is made on Liberian peace agreement, but funding urgently needed - UN report" (March 2005), available at: http://www.un.org/apps/news/story.asp?NewsID=13741&Cr=liberia&Cr1=.

[69] Amnesty International, supra note 60, (see the paragraph concerning impunity).; Human Rights Watch also criticizes this missed occasion of putting in place foundations for accountability with the adoption of the peace agreement when it states: "For example, in a quick bid to end the first brutal Liberian civil war and in the face of massive crimes committed against civilians, U.N. and West African leaders agreed to a peace plan that dispensed with justice and rushed an election that installed warlord Charles Taylor as president in 1997. Not surprisingly, within a short time, the country was

Another sign that an ICTL is unlikely to be the chosen way to deal with the Liberian past is the fact that it is only in March 2004 that a workshop was organized on transitional justice by UN bodies present in Liberia and managing reconstruction.[70]

Furthermore, many calls have been made by the international community for this issue to be dealt with by Liberians[71].

Another reality that seriously constrains the establishment of such a Court is the atmosphere that surrounded the adoption of the ICC Statute and its existence.

Indeed, the difficulties experienced, the reluctance shown and all the lengthy debates and compromises to have it set up, show how the actual international context is not in favor of new international criminal bodies.[72]Moreover having established an international court to deal with human rights abuses, the international community is supposed to use this mechanism to make perpetrators accountable around the world so it would not be consistent to have recourse to an ad hoc jurisdiction. Actually, it has to be said that the ICC could play a role in the Liberian transitional process[73]. As a matter of fact, Liberia signed the Rome Statute on July 17, 1998 and ratified it on September 22, 2004[74].

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back at war. The six years of repressive rule by President Charles Taylor that followed and the next war were characterized by the same egregious abuses against civilians as the earlier war and further set the country back. Despite this reality, in the recent peace deal in Liberia, well known war criminals were given high-level ministry positions within the National Transitional Government of Liberia." In Human Rights Watch, "Combating war crimes in Africa: Testimony of Corinne Dufka before the US House International Relations Committee, Africa Subcommittee" (June 2004), available at: http://hrw.org/english/docs/2004/06/25/africa8990.htm .

[70] Relief Web, "Liberia: First workshop on transitional justice begins" (March 2004), available at: http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/e3b96c8c421f500285256e5c00615fb8

[71] For instance see the position of David Crane, supra note 58; and the critics of Danny Hoffman who rightly speaks about "the misplaced emphasis on indigenous, local, or state-based solutions – the famous "African solutions to African problems" – that so often signifies a lack of international will to devote serious resources and attention to problems on the continent." In D. Hoffman "Despot deposed: Charles Taylor and the challenge of state reconstruction in Liberia" (2005), available at: http://www.yale.edu/ycias/ocvprogram/Despot%20Deposed%20(Hoffman)1.pdf , p. 13.

[72] It is true that in the case of a court which jurisdiction will be restricted to Liberia the geopolitical interests will be less important but it still seems very unlikely that States will embark again in such a hard and difficult process.

[73] For an assessment of the role that the ICC can play and the way to avoid the temporal limitation to its jurisdiction on the Liberian past, see M. Du Plessix "The Creation of the ICC: Implications for Africa's despots, crackpots and hotspots" (2003) 12(4) *African Security Review*, available at: http://www.iss.org.za/pubs/ASR/12No4/F1.html .

[74] The Coalition for the ICC, *State Signatures and Ratifications Chart,* available at: http://www.iccnow.org/countryinfo/worldsigsandratifications.html .

[75] Amnesty International, supra note 60; Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, (18 August 2003) signed in Accra, available at: http://www.usip.org/library/pa/liberia/liberia_08182003_toc.html .

b) The Liberian institutions: between the imperatives of reconciliation and the constraints of shared power

As mentioned above, the peace agreement that led to the end of the civil war in August 2003 was already a sign that the warring factions that were parties to this agreement were not ready to be confronted with their past actions. Indeed, they agreed on a text which not only does not provide for the establishment of a war crimes court but also makes reference to a possible amnesty[75].

Another reality that seriously constrains the possibility of seeing the National Transitional Liberian Government (NTG) follow the example of the Rwandan one (which asked for the establishment of the ICTR) is that the NTG is not composed of one victorious movement. Actually, it is a government of national unity which includes people from all the various movements which took part in the long lasting fighting, not to say to the atrocities committed. [76] Therefore, there is no way that such a government could be totally in favour of advocating the establishment of an ICTL.

Furthermore, even if some people within the government would be in favour of such a transitional mechanism they will be forced to abstain from calling on its establishment as those who could be prosecuted for their past actions now sitting in the government will curtail these efforts and may even quit the government and resume fighting.[77]

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[76] This government of so-called "National Unity" came to power as a result of the Accra peace agreement and regroups officials from the former government and from the various rebel factions (LURD and MODEL groups).

[77] The chairman of Liberia's new transitional government, Gyude Bryant reportedly said that the armed factions were adamant during peace talks that a war crimes tribunal must not be included in any deal : "The warring factions made it very clear during the talks that had we insisted on a war crimes tribunal at this time, there would have been no peace agreement.", in allAfrica.com, "Transitional Gob's Chairman Rules Out War Crimes Tribunal", (August 2003), available at : http://fr.allafrica.com/stories/200308280225.html .

[78] For instance, the very own chief of the government said that he is not in favour of such a mechanism, that he is rather in favour of an amnesty to be granted and that even if there was to be a tribunal set up it could only be done so after the election of October 2005 because the judicial accountability process is beyond the mandate of his actual government who is supposed to ensure reconstruction by demobilizing troops and reintegrating former fighters, in allAfrica.com, supra note 77; Even the Justice Minister rejected the idea of establishing a war crime tribunal for Liberia, in J. Paye-Layleh "Liberian

It is therefore not surprising that many people in the transitional government express publicly their reluctance to take actions toward the establishment of a war crime tribunal and show their preference for amnesties to be granted.[78]

This lack of power and of political will can be seen in the case of the extradition of Charles Taylor who is now living in exile in Nigeria. The legislative power of Liberia, namely the National Transitional Legislative Assembly, dismissed in November 2004 a petition seeking to have former president Taylor extradited from Nigeria.[79]

So, both the executive and the legislative powers base their actual refusal to deal with judicial accountability issues on their lack of jurisdictional, political and real power.

The other reason which could be seen as a practical limit to the establishment of an ICTL is that reconciliation is seen as THE priority and that a war crimes tribunal is seen as "premature"[80].

Lastly, what makes one think that an ICTL is very unlikely to be set up is the fact that, at the time of the writing, there is a lack of security in the country and it would not be possible to investigate, have witnesses and victims coming to testify or even getting well-known political figures to come to court and be confronted with their crimes.[81]

So, it appears that the choice of an international criminal tribunal to deal with the Liberian past is not the most suitable, efficient and realistic option. It is therefore useful to see whether domestic courts would be suitable forums for dealing with such cases.

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official rejects war crimes court", (January 2004), *Associated Press,* available on: http://www.globalpolicy.org/intljustice/general/2004/0114reject.htm .

[79] In November 2003, the Nigerian President Obasanjo announced that if Liberia wanted to prosecute Taylor he will send him back. As a result the Liberian Assembly was seized by various activists but the institution rejected the petition on the basis that it had no jurisdiction to effect the extradition and that "the issue of Taylor's extradition is a matter for the international community and not the Assembly". In The Norwegian Council for Africa, "Liberia: Assembly leaves Taylor-issue with international community", (November 2004), available at: http://www.afrika.no/Detailed/5742.html .

80 E. Neufville "Demanding justice : War crimes tribunal and the task of rebuilding Liberia", (August 2003), *The Perspective*, available at: **http://www.theperspective.org/demandingjustice.html** ; also on this point, allAfrica.com, "Exiled Politician Brumskine Returns Home to Prepare for Elections", (Jan. 2003), available at: **http://fr.allafrica.com/stories/200301210656.html**; allAfrica.com, "Liberia: Brumskine sets reconciliation goals for "new Liberia", (March 2005), available at: **http://allafrica.com/stories/200503100495.html** .

CHAPTER TWO: DOMESTIC AND TRADITIONAL COURTS AS TRANSITIONAL JUSTICE MECHANISMS IN LIBERIA? LESSONS FROM RWANDAN NATIONAL AND GACACA COURTS

In this part, the same method used in Chapter One will be followed. To evaluate whether the Liberian national and traditional court system can be suitably, efficiently and realistically used as a transitional justice tool, one needs at first to assess Rwandan domestic and gacaca courts.

2.1 The Rwandan national justice system and gacaca courts: one solution after another

2.1.1 National courts in Rwanda: political will vs. dire circumstances

a) Establishment and achievements

As was said earlier in this paper, the Rwandan government was not convinced from the very beginning of the suitability of the ICTR as decided in Resolution 955.
Indeed, in 1994, the Rwandan representative objected that the temporal jurisdiction, the "composition and structure"[82], the human and the financial resources of the Tribunal were inappropriate and ineffective.[83] He went further while questioning the impartiality of candidate judges who were citizens from certain countries which "took a very active part in the civil war in Rwanda" and the suitability of having some

[81] Amnesty International, supra note 60.
[82] UN Doc. S/PV.3453, (1994), p. 15.
[83] On this point, Akhavan, supra note 6, p.505-508.

convicted *génocidaires* serving their prison sentences outside Rwanda.[84] Other points of contention were the disparity in sentences (between those judged by the ICTR and those judged locally) and the seat of the Tribunal. In 1997, after the ICTR just started operating, the government issued a statement containing various complaints about the UN institution.[85] It stated in substance that there were major flaws in areas such as the organization, the personnel, the prosecution and investigation strategy of the Tribunal. Lastly, it pointed out what the Rwandan government saw as a misconceptualization of purpose of the ICTR by senior ICTR officials.[86]

But the establishment of the ICTR did not bar the government in Kigali from adopting national measures. In fact, the statute provided for a system of concurrent jurisdiction[87].

As there was no applicable provision in the pre-genocide Penal Code, a law was adopted in August 1996 to fill this loophole.[88] It gave jurisdiction to national courts over offenses constituting genocide or crimes against humanity committed between 1990 and 1994. Offenders are divided in four categories ranging from genocide planners to perpetrators of crimes against property.[89] This law introduced the concepts of a confession and guilty plea procedure.[90]

What appears from the above mentioned facts is that the Rwandan government achieved a great deal while managing to use its justice system to deal with the past. Indeed, knowing how terribly inadequate the judiciary was in the direct aftermath of the genocide, it seems incredible that with so little means (not to say none) trials were and are still held.[91]

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[84] UN Doc., supra note 82.
[85] On this point, Magnarella, supra note 27, 63-64.
[86] Id.
[87] Statute of the ICTR, supra note 39, article 8.
[88] Organic Law No 08/96, *Organization of Prosecutions for offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since 1 October 1990*, (August 30, 1996), in Official Journal of the Republic of Rwanda (Sept. 1, 1996), available at : http://www.preventgenocide.org/law/domestic/rwanda.htm .
[89] Id., art. 2.
[90] This procedure has been rightly described as "the cornerstone of the Organic Law" in O. Dubois "Rwanda's national criminal courts and the International tribunal" (1997) 321 *International Review of the Red Cross*, 729.
[91] In the aftermath of the genocide there were few survivors within the judiciary and there was no court functioning. On this point, Magnarella, supra note 27, 72; United Nations High Commissioner for Human Rights Field Operation in Rwanda, *The administration of justice in post-genocide Rwanda,* (1996), UN Doc. HRFOR/JUSTICE/June 1996/E.

The Rwandan government also needs to be praised not only for its efforts in fighting impunity but also for the fact that it respected the rule of law and the democratic legal process in doing so.[92]

Furthermore, it can be seen from the letter of the law that a great importance was given to speed up the process and made it realistic. The categorization of offenders and the guilty plea procedure express this concern.[93]

Finally, there is a positive aspect concerning reconciliation as speedy trials and the naming of individual perpetrators might well prevent the Tutsis from taking revenge and the Hutus from fleeing.[94]

b) Obstacles, difficulties and shortcomings

Unfortunately, this ambitious will to prosecute the maximum suspects without delays has its drawbacks and shortcomings. Indeed, the genocide trials taking place in Rwanda have been criticized on various grounds.

First of all, it was argued that in most trials the rights of the accused as recognized nationally and internationally were not respected. Actually, most of the accused lacked legal counseling and were compelled to defend themselves.[95] Another proof of the non-respect of the guarantees of fair trial is the fact jurists and other people involved in trials are victims of threats and intimidation and fear for their lives.[96] Disappearances cases and military summary executions have even been reported[97].

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[92] In fact, it took the option of adopting a specific constitutional law to avoid a breach of the *nulla poena sine lege* (non-retroactivity) rule and the text was not an act of the sole executive power as it was approved by Rwanda's National Assembly. On this points, Dubois, supra note 90, 717; W.A. Schabas "Perverse effects of the nulla poena principle: national practice and the ad hoc tribunals" (2000) 11(3) *European Journal of International Law:* 521-539.

[93] As Morris rightly argues, "an approach such as adopted in Rwanda offers the benefit of expediency in handling an enormous volume of cases and may contribute to national healing and reconciliation", in M.H. Morris "The trials of concurrent jurisdiction: the case of Rwanda", (1997) 7 *Duke Journal of Comparative and International Law*, 360.

[94] As Magnarella rightly puts it, "this law was designed to expedite the trials of the thousands held in prison and to encourage Hutu refugees to return from abroad. The government hoped that once the judiciaries identified and prosecuted those primarily responsible for the genocide, Rwanda's Tutsi would believe justice was being served and would be less likely to seek revenge on returning Hutu refugees", supra note 27, 73.

[95] Lawyers Committee, supra note 33, 36-37; Morris, supra note 93, 361 and note 72.

[96] Amnesty International "Rwanda: Unfair trials, justice denied" (1997) AI Index AFR 47/08/97, available at: http://web.amnesty.org/library/Index/ENGAFR470081997?open&of=ENG-2F2 .

[97] For instance, according to Amnesty International previously mentioned report, Innocent Murengezi, defence lawyer in genocide trials was arrested but never reappeared. On military exactions and summary executions, HRFOR Status Report, "Human rights incidents involving recent returnees from Zaire and Tanzania: November 1996 – January 1997" HRFOR/STRPT/39/2/28, p.3.

Concerning the breach of the rights of the defence, the state of Rwandan prisons has also to be denounced. Indeed, reports show clearly how the penitentiary system was not designed to cope with such a huge number of suspects, and with the slow pace of justice, the periods of pre-trial detentions exceed the legal limit.[98] Moreover, the genocide law has the consequence of limiting judicial and appellate review.[99] The mandatory death penalty provision is also questionable as it prevents the impact of mitigating factors on the sentences.[100] Finally, the categorization of offenders might put a presumption of guilt (thus breaching the right to be presumed innocent) on people who exercised certain functions in the government or civil society in pre-genocide Rwanda.[101]

Then, what appears as a great shortcoming of the attempt of the national system to deal with the past is the fact that public executions were held as the result of some trials and represent important threats to reconciliation and may reinforce the image of a justice system serving revenge.[102]

Moreover, the fact that the judiciary is working under tremendous domestic and international pressure for results opens the way to potential miscarriages of justice.

But it has to be said that it was acknowledged that the Rwandan government took various measures to deal with the previously mentioned issues.[103]

However, there is one parameter that cannot be changed or improved: It is the enormous number of suspects awaiting trial[104]. To achieve and fulfill its goals of justice, social reconciliation and reintegration, the Rwandan government decided to use another judicial forum to overcome the huge backlog of genocide cases.

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[98] Lawyers Committee, supra note 33, 31-34; HRFOR, supra note 91, 7; R. Degni-ségui, *Report on the situation of human rights in Rwanda* (1997) UN Doc. E/CN.4/1997/61, 29.

[99] On this point, Lawyers Committee, supra note 33, 30.

[100] Id.

[101] For the process to be fair, the mere fact that somebody was a government, church or military official at the times of killings cannot be sufficient to find that he or she guilty. It must be shown that this person committed crimes such as those covered by the genocide law.

[102] On these executions, Magnarella, supra note 27, 80.

[103] More defence lawyers are available coming from foreign countries, procedural rules are followed in a stricter way by courts, a Bar has been constituted and the plea bargaining procedure is more used by detainees. On this point, HRFOR (ed.) *Genocide trials to 30 June 1997 – Status report as of 15 July 1997*, (1997), Doc. FRFOR/STRPT/52/1/15 JULY 1997/E.

[104] It is estimated that there are still 90, 000 detainees awaiting trials in jail facilities all over Rwanda. Figures taken from Vesperini, H "A decade after the genocide, Rwanda still scarred", (1997) *Relief Web,* available at: http://www.reliefweb.int/rw/rwb.nsf/0/6e0025fa91234dd449256e3e000ea8cf?OpenDocument .

2.1.2 Gacaca courts: the ultimate chance to achieve transitional justice in Rwanda?

a) Notion and advantages

Gacaca is a word in kinyarwanda that means grass and by extension it refers to a reunion of neighbors sitting on the grass when they settle domestic disputes. This institution does not find its sources in legal instruments but is recognized by both the population and authorities as one of the fora for administering local justice involving mainly property issues.[105]

The Rwandan government decided to use this model of justice to help diminish the backlog before the "regular" domestic courts. A law was enacted[106] to adapt this traditional form of civil justice to criminal justice in order to punish the "most quotidian crimes of the genocide"[107]. The law was published in January 2001.[108] It provides that gacaca courts will have jurisdiction over all kind of homicides, assaults against persons and crimes related to property committed between October 1, 1990 and December 31, 1994. In other words, gacaca tribunals are supposed to be used to judge "small fishes", namely those accused of category 2 to 4 crimes under the genocide law.[109] On 4 October 2001 judges were elected at various community levels (cells, sectors then districts and finally prefectures). The 260 000 elected judges were than supposed to receive training for a few months[110] and then trials were to start in May 2002. In June 2002, 12 pilot trials started and in the following months 760 out of the estimated 10 000 gacaca courts launched their pre-trial phases.[111]

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[105] F. Reyntjens « Le gacaca ou la justice du gazon au Rwanda », (1990) 40 *Politique Africaine*, 32-33.
[106] The Parliament enacted unanimously a law establishing gacaca tribunals in February 2000. Integrated Regional Information Networks of the UNOCHA, "Update 862 for the Great Lakes, 16 February 2000", available at: http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/37f37ac5bd0d02ac85256887005da543 .
[107] E. Daly "Between punitive and reconstructive justice: The gacaca courts in Rwanda", (2002) 34(2) *New York University Journal of International Law and Politics*, 371.
[108] Fondation Hirondelle "Law on traditional courts declared constitutional" (Feb. 2001), available at: http://www.hirondelle.org .
[109] Thus, gacaca courts do not have jurisdiction over crimes relating to the planning and propaganda of the genocide and over crimes resulting of sexual violence. Organic Law, supra note 88, arts 2, 14 a, 14b.
[110] This choice of a short training is said to be motivated by the fact that "gacaca justice should largely be based on the wisdom of basic principles of social justice". In Foundation Hirondelle, "Rwandans express mixed feelings on new court system", (May 2001), available at: http://www.hirondelle.org .
[111] A.E. Tiemessen "After Arusha: Gacaca justice in post-genocide Rwanda", (2004) 8(1) *African Studies Quarterly*, available at: http://web.africa.ufl.edu/asq/v8/v8i1a4.htm .

The gacaca model is seen by many scholars as a potential solution to the Rwandan transition with the past[112] and some even go to the extent to qualify traditional justice as the only or ultimate chance to overcome past tensions and rebuild the country.[113] No less than 80% of the population is said to support the process.[114]

This is the result of the various advantages that the use of gacaca tribunals presents. The primary one is that, as Daly rightly notes, "as a grass-roots effort, it could help to rebuild the communities that have been so profoundly damaged by the genocide".[115] In fact this process allows the involvement of ordinary people and thus ensures a cohesion that strengthens post-genocide divided communities.[116] The system also offers guarantees of expediency, visibility by victims and independence from the central power.[117] Thus, there is a good chance that gacacas enhance the trust of Rwandans in the judicial process and give credibility to the trials and their outcome.[118]Finally, the gacaca system might well play a huge role in the research of the truth.[119]

But there are also skeptics who warn about existing dangers in using traditional courts to deal with genocide.

b) Dangers, drawbacks and flaws of the gacaca system

What has been described in the latter part as advantages of the system, namely expediency and efficiency, is also seen as a threat to the respect of due process and

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[112] Among them are J. Sarkin "Preconditions and processes for establishing a truth and reconciliation commission in Rwanda: The possible interim role of gacaca community courts" (1999) *Law, Democracy and Development*: 253; Daly, supra note 107; J. Widner "Courts and democracy in post conflict transitions: A social scientist's perspective on the African case" (2001) 95 *American journal of International Law:* 64-75.

[113] For instance, R. Sezibera "The only way to bring justice to Rwanda" (April 2002) *Washington Post,* available at: http://www.globalpolicy.org/intljustice/tribunals/rwanda/2002/0407sezibera.htm ; J. B. Katushabe (2002) *Justice, Truth and reconciliation Under Rwandan Domestic Courts: Specific Reference to the Traditional Gacaca Courts,* Cape Town: University of the Western Cape.

[114] Foundation Hirondelle, supra note 110.

[115] Daly, supra note 107, 356.

[116] Id., 376.

[117] Id., p. 377.

[118] Katushabe, supra note 123, p. 43.

[119] Sarkin, J "The tension between justice and reconciliation in Rwanda: Politics, human rights, due process and the role of the gacaca courts in dealing with the genocide" (2001) 45(2) *Journal of African Law*, p. 170.

fairness. Indeed, Sarkin, the OUA[120], Amnesty International and Human Rights Watch, just to name a few, point out the flaws that exist in gacaca justice.

First of all, the very own fact that gacaca courts are used to achieve criminal justice is criticized because it is not their original function and because genocide cannot be dealt with like cattle or corn thefts.[121]

Other issues that raise concerns are the election and training of judges. Indeed, they are empowered by the law to pronounce heavy sentences and even life imprisonments[122]. So the discrimination contained in the law excluding some of the most educated people from reaching this position and the little legal training that the chosen candidates receive appear to be not sufficient to ensure proper exercise of justice.[123] Furthermore, there is a real lack of accountability of judges who are nearly "omnipotent" in their grass court.

The issue most put forward is the breach of the accused's procedural rights. In fact, no legal representation is provided for[124] and the appeal process is far from being fair[125]. It is also feared that because of the absence of preceding judgments there will be no consistency in the treatment of the various accused at the beginning of the process[126]. There is also the risk of seeing people confess to avoid jail or heavy sentences.[127] With the accusation relying mainly on testimonies from relatives of victims and with the judge coming from the same neighborhood there is also a strong risk of partiality and of mob justice[128].

Finally, it appears that the use of community courts might well have no effect on prison overcrowding. Indeed, even if many detainees will be released after confessing, their testimonies will implicate other people who will be arrested and jailed in return.[129]

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[120] The Organization of the African Unity, *Report of the seven member international panel assembled to investigate the genocide in Rwanda* (2000), chapter 18, available at: http://www.oau-oua.org/document/ipep/ipep.htm .

[121] Amnesty International, *Rwanda : The troubled course of justice,* (2000) AI Index No. AFR 47/010/2000, available at: http://www.amnesty.org , note 32.

[122] Organic law, supra note 88, article 14 b.

[123] Sarkin, supra note 119, 168; Foundation Hirondelle, "Gacaca judges to be elected on October 4th" (August 2001) available at: http://www.hirondelle.org .

[124] Human Rights Watch "Backgrounder: Rwanda – President Paul Kagame's Washington Visit", Press release (Feb. 2001), available at: http://www.hrw.org/backgrounder/africa/rwanda-bck-0131.htm

[125] Amnesty International, supra note 121.

[126] Daly, supra note 107, 382.

[127] Organic Law, supra note 111, chap. III.

[128] Human Rights Watch, supra note 124.

[129] On this point , discussion paper for the Belgian Secretary of State for development and cooperation, P. Uvin, *The introduction of a modernized gacaca for judging suspects of participation in the Genocide*

However, as Katushabe rightly puts it, "Gacaca may not be perfect, but perfection is hardly realizable under such circumstances. Rwandans hope gacaca is the nearest-to-perfect alternative. [...] If one weighs the negative side of the gacaca courts against the positive within the context of Rwanda, the positive outweigh the negative ones."[130]

2.2 Liberian national justice system to deal with past abuses: the necessity of overcoming historical and practical difficulties

2.2.1 History, image and actual state of the Liberian judiciary

a) The Liberian judiciary before August 2003

The Liberian political system was built on the American model[131]. Indeed, it is organized around a Supreme Court, criminal courts, appeal courts and magistrate courts. Traditional and lay courts also exist.[132]

After the 1980 coup of Master Sergeant Doe, the country experienced a dictatorial regime that was characterized by broad corruption and judicial submission to the executive power.[133] Human Rights Watch described the Liberian judiciary as been "virtually non-functional in 1989".[134] The 1989-1996 civil war just worsened this situation and weakened the state of the national justice system.[135]

The subsequent regime of Charles Taylor did not achieve a better record.

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and the massacres in Rwanda, (June 2000), available at: http://fletcher.tufts.edu/humansecurity/pdf/Boutmans.pdf .

[130] Katushabe, supra note 113, 51.

[131] US Department of State, "Background note: Liberia", (Nov. 2004), available at: http://www.state.gov/r/pa/ei/bgn/6618.htm .

[132] On how the Liberian judicial system is organized, Human Rights Watch, *Emerging from the destruction: Human rights challenges facing the new Liberian government,* (Nov. 1997), available at: http://www.hrw.org/reports/1997/liberia/Liberia-04.htm .

[133] Id.

[134] Id.

[135] Id.

Indeed, although he swore at the beginning of his "mandate" to respect the Constitution, human rights and the rule of law[136], he manipulated the courts to get rid of his political opponents.[137] This was facilitated by the fact that the 1986 Constitution did not provide for a system of checks and balances ensuring a minimum of accountability for the executive branch.[138] Moreover, traditionally, Liberian presidents have concentrated extraordinary powers in their hands.[139] Thus, the judiciary under Taylor's government was largely ineffective and clearly lacked appreciation for due process. There was also a lack of court infrastructure and judicial training. Indeed, arbitrary arrests and detentions, dire prison conditions, executive interferences and pressure on judges were common under this regime.[140] The national justice system also suffered from lack of resources and was therefore totally unable to ensure the respect of Liberians' rights to due process and fair trials. Thus, those who said that they were "convinced that the Taylor Government has lost the moral authority to enforce compliance with the rule of law in Liberia, create opportunities for social, economic and political advancement of the Liberian people" were deeply right.[141]

b) The Liberian judiciary in the aftermath of Taylor's departure

In May 2004, the Liberian lawyer Frederick Jayweh wrote an article entitled "What has changed in Liberia" and rightly noted that after Taylor was deposed there were things that had not changed and others that had to be changed. In sum, what he ironically highlighted is that as far as the judiciary, in particular, and public institutions in general were concerned nothing had actually changed since 11 August 2003.[142] In fact, corruption is still widespread and both the judiciary and the

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[136] T. Gongloe "Aloysius Toe: Another Prisoner of conscience", (Nov. 2002), *The Perspective*, available at: http://www.theperspective.org/toe_prisnorofconscience.html .
[137] Human Rights Watch, "HRW honors Liberian lawyer", (Nov. 2003), available at: http://www.hrw.org/press/2003/11/hrdefender-liberia110603.htm .
[138] The Jurist, "Liberia: Liberian law, legal research, human rights" (2002), available at: http://jurist.law.pitt.edu/world/liberia.htm .
[139] Id.
[140] Id.; Human Rights Watch, *World Report 2002 [Liberia entry]*, available at: http://hrw.org/wr2k2/africa7.html ; Human Rights Watch, *World Report 2003 [Liberia entry]*, available at: http://www.hrw.org/wr2k3/africa7.html .
[141] The movement for democratic change in Liberia (MDCL), "MDCL wants Liberia included in war crimes tribunal on Sierra Leone's" (Jan. 2001), available at: http://www.mdcl.org/mdclresolution.htm .
[142] FAB Jayweh "What has changed in Liberia", (June 2004), available at: http://www.liberianforum.com/articles/jayweh003.htm .

legislature are kept silent.[143]In the same way, Etim-Bassey and Ako rightly noted, in October 2003, that "the situational reality is that Liberia is a failed state in every context. Institutional capacity is subverted and eroded, lawlessness and genocidal carnage prevail creating a multiplicity of socio-eco-political "stress" in the West African sub-region".[144] Human Rights Watch has on various occasions described the post-August 2003 Liberian justice system as one which is "shattered"[145], "remained weak and cowed"[146] and "must be rebuilt"[147]. Indeed, the organization recalled that Liberian courts were "crumbling [and had been] "looted" during the civil war.[148] Similarly, Amnesty International reported that "judicial institutions throughout Liberia have collapsed; most courts no longer function and much of the infrastructure has been destroyed and looted. Corruption and political interference have undermined public confidence in the judiciary"[149]. The United Nations Secretary General himself reported that "serious challenges remain regarding strengthening capacity in several areas pertaining to State administration".[150]

Finally, a survey shows that "much of the public has reservations about the ability of the current court system to fairly prosecute and render judgments".[151]

So, it appears that for domestic and traditional courts to be efficiently and realistically used to deal with the Liberian past there is a need for changes and reforms.

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[143] Id.

[144] W. Etim-Bassey and C. Ako "Situation in Liberia", (Oct. 2003), available at: http://www.nigerdeltacongress.com/sarticles/situation_liberia_1.htm .

[145] HRW, supra note 137.

[146] HRW, *World report* 2003, supra note 140.

[147] C. Dufka "Liberia: Do not forget the crimes", (Feb. 2004), available at: http://hrw.org/english/docs/2004/02/06/liberi7280.htm .

[148] Id.

[149] Amnesty International US, "Liberia: Human rights must be priority at International Reconstruction Conference", (Feb. 2004), available at: http://www.amnestyusa.org/countries/liberia/document.do?id=80256DD400782B8480256E3100615817 .

[150] UN Secretary-General, *Fourth progress report on the United Nations Mission in Liberia*, (September 2004), available at: http://www.humanitarianinfo.org/liberia/infocentre/general/docs/UNMIL%204th%20Progress%20Report.%2015%20Sep%202004.pdf , para. 14, 4. For a detailed description of the state of Liberian courts , para. 23, 6.

[151] M. Feierstein and J. Moreira, *National Consensus on Dealing with War Crimes – Report on the Baseline Survey and Focus Groups*, (Nov. 2004), available at: http://www.greenbergresearch.com/publications/reports/r_liberia_memo111604.pdf .

2.2.2 Reforms, importance and advantages in using Liberian domestic and traditional courts to deal with the past.

a) Reforming Liberian national justice system

The American Department of State reported in November 2004 that "the judicial system [is] largely dysfunctional for now"[152]. Calls have been made for this situation to be improved. The rehabilitation of the Liberian judiciary[153] and the need to strengthen it[154], according to Amnesty International, are seen as central issues if Liberia wants to achieve a successful transition.

Dufka, for Human Rights Watch, goes further when she argues that justice should be put at the centre of reconstruction.[155] Tiawan Gongloe agrees while stating that "what Liberia desperately needs today is to rebuild a culture of respect for human rights and the rule of law. That is my mission."[156] Human Rights Watch also recommended that the Liberian Transitional Government "establish without delays a genuine justice and accountability process".[157]

To repair infrastructure, train judges, lawyers, draft and revise laws, funding is essential. That is why NGOs have urged donors present at the February 2004 Conference on the reconstruction of Liberia not to forget courts.[158] More money than expected was promised (520 millions Dollars instead of 500) but those promises were fulfilled only in a limited way.[159] In fact, as of August 2004, out of the 520 millions pledged 244 millions Dollars have been received.[160] However, it is noteworthy that the United States has agreed in September 2004 to provide US 10 millions Dollars to assist the Liberian Government in its attempts to rebuild and reform the National Police and the judiciary.[161]

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[152] US Department of State, supra note 131.
[153] Amnesty International US, supra note 149.
[154] Amnesty International, "Liberia: One year after Accra – immense human rights challenges remain", (August 2004), available at: http://web.amnesty.org/library/index/ENGAFR340122004 .
[155] Dufka, supra note 147.
[156] HRW, supra note 137.
[157] Human Rights Watch, "Briefing to the 60th Session of the UN Commission on Human Rights", (Jan. 2004), available at: http://hrw.org/english/docs/2004/01/29/liberi7246.htm .
[158] International Crisis Group, "Liberia and Sierra Leone: Rebuilding failed States", (Dec. 2004) Africa Report n° 87, available at: http://www.crisisgroup.org/home/index.cfm?id=3156&l=2 .
[159] Amnesty International, supra note 154.
[160] UN Secretary-General, supra note 150. 49- 50, 13.
[161] It has to be noted that out of the 10 millions only one is going to the reform of the judiciary. US Department of State, supra note 131.

The United Nations Mission in Liberia (UNMIL) has also played a role in securing funding and facilitating the judicial reform.[162] A reform of the correctional system has also been launched by UNMIL whose representatives recalled that for all the judicial reforms funding is fundamental and thus donors have a critical role in ensuring the success of the reconstruction project.[163]
If the judiciary is rehabilitated and properly reformed it seems that it could well play a great role in the trial of perpetrators of human rights abuses in Liberia.

b) Liberian domestic and traditional courts: important tools to achieve transition

As was said in earlier parts of the study, Liberian authorities have not decided yet how and where to prosecute people who are responsible for atrocities committed during the civil war. The fact of the matter is that they are compelled to use domestic courts. Indeed, as was the case in Rwanda, to prosecute perpetrators close to their victims has the advantage of preventing impunity and it ensures a form of effective redress for victims. As seen in the case of the ICTR if victims do not participate and are kept far from the judicial process, the whole transitional enterprise is threatened as justice is not seen to be done.[164]

Furthermore, Liberia has wonderful opportunity to be at the center of an ambitious international program of reconstruction. Funding, therefore which has been a major issue for all the institutions analyzed above, should not be an obstacle for Monrovia.
Moreover, the legal aspect (laws granting jurisdiction to national and traditional courts to judge serious breaches of humanitarian law) can be taken care of by the various UNMIL programs so that respect of the rule of law and general principle of Law is ensured.[165]

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[162] UN Secretary-General, supra note 150, para. 22, 6.
[163] Id. para. 25, 5.

[164] Katushabe, supra note 113, 45.
[165] UN Secretary General, supra note 162.

It is true that, as in Rwanda, there are numerous alleged suspects. Therefore, Liberia will have to manage the trial of huge numbers of accused, a problem that the Kigali government is confronted with at present.[166]

That is where traditional courts could intervene. Such courts should be given even a greater role than the one given to Gacaca courts in Rwanda. Indeed, contrary to these latter, justice rendered by chiefs and paramount chiefs has not been limited in the past to civil matters regarding domestic dispute; their courts also dealt with criminal cases[167]. Thus, with an appropriate infrastructure, traditional courts could associate efficiency and expediency with due process and fair trial guarantees.

In this way, the imperative of reconciliation between the various tribes involved in the civil war could also be achieved. Furthermore the social fabric, which was destroyed by the massive enrolment of children in armed factions and the atrocities that they committed on civilians (sometimes their very own relatives or neighbours), could be reconstructed and reinforced.
Finally, the fact that the use of traditional courts can enhance the truth telling process is also very relevant in the Liberian context as many children, men and women have been abducted and their whereabouts are still ignored.

But there is a reality that the use of domestic and traditional courts cannot resolve. It is the fact that some of the alleged worst offenders who are suspected of ordering the use of horrific violence against civilians, for instance, are presently holding political positions and are shielded from domestic prosecution in a very volatile socio-political atmosphere. Thus, it appears that a complementary option should be used to ensure a full accountability process in Liberia.

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[166] This issue of the great number of offenders has led Cyril Laucci to argue that "domestic courts should be used as the main agents for rendering justice" in transitional societies. C. Laucci "Prosecuting authors of serious violations of international humanitarian law and having them prosecuted – Reflections on the mission of the International Criminal Tribunals and on the means available to accomplish their tasks." (2001) 842 *International Review of the Red Cross*, 439.

[167] According to HRW, "Liberia also has traditional courts that are bound by customary and unwritten law in domestic and land disputes, as well as petty crimes. Traditional courts cannot rule on issues governed by statutory law, and decisions by traditional courts can be reviewed in the statutory court system". HRW, supra note 132; According to *The Jurist*, in 2001 under Taylor's rule, "in some rural

CHAPTER III: INTERNATIONALIZED JUSTICE FOR LIBERIA? LESSONS FROM THE SPECIAL COURT FOR SIERRA LEONE (SCSL)

To assess the efficiency, suitability and realism of the possible use of a hybrid court to deal with the Liberian past, an evaluation of the work of the SCSL must first be done.

3.1 The SCSL: From doubts to reasonable cause for hope

The civil war that Sierra Leone experienced was characterized by outrageous attacks against civilians. The conflict which started in 1991 and ended in 1999 saw government forces fight against the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council. This conflict was rightly described as one of the most "brutal and most overlooked war in recent memory".[168]

Throughout this period the International Community was quite discrete and only sent ECOMOG troops (The Economic Community of West African States Monitoring Group) in late 1997. One peace agreement after another were signed and not respected until 1999. The Lomé Peace Agreement made everyone concerned because of the fact that it would grant a blanket amnesty to all combatants. But it was defended as the price for lasting peace. Impunity would have lasted if fighting did not resume in May 2000.

As a consequence of the resurgence of hostilities, the government in Freetown asked the UN in June 2000, to help it establish a war crime tribunal. This chapter focuses on the establishment of the Special Court, its structure, primary objectives and doubts raised concerning its creation. Thereafter, the obstacles, shortcomings and achievements of the hybrid tribunal will be highlighted.

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areas where the judiciary had not been re-established, clan chieftains administered criminal justice through the traditional practice of trial-by-ordeal". The Jurist, supra note 138.

[168] C. Chicken "The Special Court for Sierra Leone: Overview and recommendations" (2002) 20 *Berkeley Journal of International Law*, 436.

3.1.1 Establishment of the SCSL, structure, objectives and primary doubts

a) Establishment and structure

In August 2000, responding to a call by President Ahmad Tejan Kabbah, the Security Council requested the UN Secretary-General to start negotiations with the government of Sierra Leone in order to establish a special court to prosecute perpetrators of atrocities during the civil war. In this Resolution 1315, the Council used the same reasoning as the one it followed to provide legal basis for the ICTY and the ICTR. It emphasized that accountability for international crimes "would contribute to the process of national reconciliation and to the restoration and maintenance of peace".[169]
A formal agreement for a Special Court to be created in Freetown to try persons "bearing the greatest responsibility" for crimes committed during the war, was reached and signed in January 2002.[170] To enable the effective setting up of the Court and implement the agreement in Sierra Leonean domestic law, a Special Court Agreement (Ratification) Act was adopted in April 2002.[171] In May 2002, the American prosecutor, David Crane, was appointed by the Secretary-General and Robin Vincent was chosen as acting Registrar. In July 2002, eight judges were appointed and took their oaths of office in December 2002.
What has to be noted is that this Court is not an ad hoc tribunal like its Rwandan and Yugoslav counterparts. It is referred to as a "hybrid" tribunal because it has a mixed jurisdiction and structure. It has jurisdiction over international crimes constituting breaches of international humanitarian law and it can also try cases dealing with certain violations of Sierra Leonean Law.[172]
Furthermore, this hybrid nature can also be seen in the domestic and international origins of the staff in general and judges in particular.[173]

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[169] S.C. Res. 1315, U.N. SCOR, 4186 mtg., UN Doc. S/RES/2000/1315, available at: http://daccessdds.un.org/doc/UNDOC/GEN/N00/605/32/PDF/N0060532.pdf?OpenElement .
[170] It has to be said that on the same date the war was officially declared over. International Center for Transitional Justice (ICTJ), "The special court for Sierra Leone: the first eighteen months", (March 2004), available at: http://www.ictj.org/downloads/SC_SL_Case_Study_designed.pdf , p.1
[171] There was a need to adopt a ratification act because Sierra Leone is a common law country of dualist tradition where international instruments are not directly enforceable before domestic courts if they are not implemented.
[172] Statute of the SCSL, available at: http://www.sc-sl.org , arts. 2-5.
[173] Id., arts 2 and 3.

The fact that the Court is funded by voluntary contributions and is independent and distinct from Sierra Leone's legal system reinforces the fact that it is not a completely international or a totally domestic institution. The court was set to work for 3 years and trials started in May 2004.[174] Actually as reported on the SCSL website, "currently, eleven persons associated with all three of the country's former warring factions stand indicted by the Special Court."

This brand new mechanism raised a lot of expectations and objectives but also doubts.

b) Objectives and doubts

The principal objective of the Special Court is to "prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996 [...]".[175]

It appears from this general mission that the aim of the court is to deliver justice, address the issue of impunity and ensure accountability for human rights violations. Furthermore, this hybrid tribunal also aims at, as Malan rightly puts it, "achieving efficiency and cost effectiveness".[176]

The choice of this model of transitional justice was also made to ensure that Sierra Leonean people are not deprived of their right to deal with their past themselves. One of the primary objectives of the Court is to provide a forum for victims where they could be recognized as such and be granted effective redress.[177]

Lastly, other objectives that can be noted for the Special Court are its contribution to the reconciliation process[178] and to the rebuilding of the Sierra Leonean society.

The work of the court, in Schabas' words, "should undermine future efforts to distort and deform the truth" and the Special Court will play a role in "clarify[ing] the historical truth"[179].

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[174] ICTJ, supra note 170, 2 and 3.
[175] Statute of the SCSL, supra note 172, art. I (1).
[176] M. Malan "The challenge of justice and reconciliation" in *Sierra Leone – Building the road to recovery*, (2003) Institute for Security Studies (Monograph N°80), available at: http://www.iss.co.za/Pubs/Monographs/No80/Chap8.html .
[177] WA Schabas "The relationship between truth commissions and international courts: The case of Sierra Leone" (2003) 25 *Human Rights Quarterly*, 1064.
[178] A. McDonald "Sierra Leone's shoestring Special Court" (March 2002), 84(845) *International Review of the Red Cross*, 140; AS, Rodella "L'expérience hybride de la Sierra Leone: De la cour spéciale à la commission Vérité et Réconciliation et au-delà." (Dec. 2003) 92 *Politique Africaine*, 65.
[179] Schabas, supra note 177.

It hast to be noted that this new model of transitional justice was not unanimously accepted when the idea was first developed. Rodella recalls the context of general incredulity that surrounded the creation of the court whose implementation was seen as very difficult, not to say impossible.[180] In fact, the population of Sierra Leone itself was very perplexed and even worried by the adoption of a model which was supposed to rely heavily on national authorities and a small budget[181].

Furthermore, some people were worried that the involvement of the government in the process would make indictments very political and that the RUF would be accused at as the only organisation responsible for committing atrocities, leaving perpetrators from governmental forces and other rebel factions untouched.[182]

Finally, it is the very own choice of the establishment of tribunals to deal with outrageous conflicts like the Sierra Leonean one that attracts skepticism. Indeed, Kaplan argues that "institutionalizing war-crimes tribunals will have as much effect on future war crimes as Geneva Conventions have had on the Iraqi and Serbian militaries".[183]

Some of these doubts have shown themselves to be exaggerated, but it has to be said that the Court has come under much criticism. However, it will be shown that it also has to be praised for a lot of positive features.

3.1.2 Difficulties, flaws and achievements

a) Obstacles, difficulties and shortcomings

The greatest obstacle that the Special Court is confronted with is the funding issue.

The choice to base the budget on voluntary contributions has been criticized as challenging the independence of the institution as it might have to follow donors'

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[180] Rodella, supra note 178, 59.
[181] Id.
[182] Id., 62.
[183] R. Kaplan *The Coming Anarchy : Shattering the Dreams of the Post Cold War*, (2000), 100, quoted in N. Fritz and A. Smith "Current apathy for coming anarchy: Building the Special Court for Sierra Leone", 392, note 4.

views and will. Furthermore, with this system of funding there is no guarantee of perenniality[184].

The actual budget itself is seen as not sufficient to achieve the tribunal's objectives. This lack of proper funding is denounced because it can be a serious obstacle for staff to properly investigate, prosecute and ensure minimum due process and fair trial guarantees[185]. Funding shortage might well cause delays as many potential defendants are awaiting trials.[186]

Deficiencies contained in the SCSL's Statute are also obstacles to its efficiency.

The limitation of its temporal jurisdiction is clearly one of these flaws.[187] As a result of the fact that only crimes committed since 30 November 1996 come under the SCSL jurisdiction, atrocities that were committed in the Sierra Leonean provinces from 1991 until the end of 1996 (as fighting "only" took place in Freetown from 1998 on) will go unpunished.[188]

Another flaw in the Statute is the issue of child offenders[189]. In the view of the number of former child soldiers who were victims of forcible recruitments and are sometimes accused of the worst crimes, it should be a central issue in any attempt to deal with the past. Unfortunately, it is only provided that the Court will try no one under 15 and will have jurisdiction only over people who recruited children under 15 forcibly.[190]

Finally, the fact that slavery and genocide are not listed in crimes over which the SCSL has jurisdiction, has also been criticized.[191]

Aside from the previously-mentioned flaws, the treatment of victims in the process is also highly questionable. In fact, there is a total absence of provisions relating to the

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[184] Rodella, supra note 178, 62; R. Cryer "A "Special Court" for Sierra Leone?" (Ap. 2001) 50(2) *International and Comparative Law Quarterly*, 439.
[185] McDonald, supra note 178.
[186] Id.
[187] Indeed, as HRW rightly notes, "it is highly regrettable that the court's temporal jurisdiction does not extend to the beginning of the conflict (March 23, 1991)". Human Rights Watch, "We'll kill you if you cry – Sexual violence in the Sierra Leone conflict", (Jan. 2003), available at: http://www.hrw.org/reports/2003/sierraleone/ , Chap. VIII.
[188] Rodella, supra note 178, 60.
[189] M. Sieff "War criminal: Watch out" (Feb.2001) *The World Today,* 20; Cryer, supra note 184, 441; Schocken, supra note 168.
[190] It is a huge shortcoming compared to the Rome Statute which criminalizes all forms of recruitment of children under 15. The Optional Protocol to the CRC goes even further while banning compulsory recruitment of children under 18.
[191] McDonald, supra note 178.

issue of reparations. Victims will just be able to participate in trials as witnesses, not in their quality of victims.[192]

This situation, coupled to the greater number of international judges than national ones,[193] and the fact that key positions (such as that of the registrar and the prosecutor) are occupied by foreigners, leads to the conclusion that the principle of "ownership"[194] on which the SCSL is based is not properly implemented in practice as the national component is very relative.

The credibility of the SCSL has also been challenged. For instance, the absence of chapter VII powers represents a great obstacle to the tribunal's work as it precludes the enforcement abroad of the SCSL's decisions[195]. Furthermore, the limitation to the "most responsible persons" will have the consequence that the vast majority of offenders will walk free (because of the Lomé Amnesty provisions) and that might provoke important deception among victims[196]. The absence of the death penalty will also have an effect on the Court's credibility as it will be seen as administering less severe justice than domestic courts which can sentence offenders to death[197]. Also challenging the Court's credibility are the death of two of its most prominent indictees, the escape of another and the fact that Taylor's extradition has still not been processed.[198]

Finally, it is the simultaneous existence of a Truth and Reconciliation Commission that is seen as a difficulty as mandates of both institutions overlap on certain points (witnesses, confessions of accused persons). This particular issue needs clarification to avoid clashes[199].

b) Positive features and achievements

Primary positive features of the SCSL are its specific aspects as a hybrid tribunal. Indeed it was the first international criminal tribunal to sit in the country where

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[192] C. Denis « Le tribunal spécial pour la Sierra Leone – Quelques observations », (2001) 1 *Revue Belge de Droit International*, 272.
[193] There are three Sierra Leonean judges for five international judges.
[194] For a discussion on the "ownership" principle, Rodella, supra note 178, 60-61.
[195] Fritz and Smith, supra note 183, 415-418.
[196] Sieff, supra note 189, 19.
[197] Denis, supra note 192.
[198] Foday Sankoh and Sam Bockarie are dead, Johnny Paul Koroma is at large and Charles Taylor has been grant asylum in Nigeria. Rodella, supra note 178, p 66.
[199] HRW, supra note 187.

atrocities took place and it was created out of joint efforts from the UN and Sierra Leone. The fact that the SCSL was sponsored by the UN, gives to the process greater legitimacy than if justice was to be administered just by domestic courts, and it also contributes to ensure stability and lasting peace.[200]

The international component of the Court is also laudable as it allows it to overcome the amnesty provision contained in the Lomé Accord, as it only applies to domestic crimes. Thus, even if the Court cannot judge certain crimes under Sierra Leonean law because of the amnesty, it managed to avoid total impunity.[201] This fight against impunity is even pushed further as the SCSL has jurisdiction over crimes committed by peacekeepers or humanitarian personnel[202].

As the Court is supposed to judge those accused of the most serious crimes, its rulings could be crucial to develop the legal notion of hierarchical responsibility[203]. Actually, it was even argued that the very own Statute of the Court contributes to reinforce and confirm the content of certain international crimes.[204]

As stated above, two very positive features of the Court are its participatory (or ownership) aspect and its cost-effectiveness which might prevent shortcomings that the ICTR and ICTY experienced. This Special Court is therefore correctly described as being of "greater relevance for the population" than was the case with the ad hoc tribunals, for instance.[205]

Undoubtedly, one of the most significant achievements of the Court is the establishment of a list of indicted personalities. It is praiseworthy because it clearly establishes that all parties to the conflict have perpetrated atrocities. Indeed, indictees are top leaders from the RUF, the AFRC and even former governmental ministers.[206] With the above-mentioned deaths, now 11 people remain indicted and nine of them are in the Special Court's custody.[207]

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[200] Fritz and Smith, supra note 183, 430.
[201] Cryer, supra note 184, 442-443.
[202] This is provided for in the *Status of Mission Agreement* signed between the United Nations, the government of Sierra Leone and other organizations. This point is recalled in art. 1(2) of the SCSL's statute, supra note 172.
[203] Rodella, supra note 178, 66.
[204] Denis, supra note 192, 271.
[205] MacDonald, supra note 178.
[206] Among the indictees are Issa Sesay, Morris Kallon and Augustine Gbao from the RUF ; Alex Tamba Brima, Brima "Bazzy" Kamara and Santigie Kanu from the AFRC; the former Minister of Domestic Affairs, Sam Hinga Norman, is also detained in the Special Court prison facilities.
[207] Rodella, supra note 178, 63.

The prosecutorial strategy has to be saluted further because of the use of public statements (which help ensure that justice is seen to be done by the population) and particular adoption of positions such as the one concerning the absence of intention of the prosecutor to try any offender who was under 18 at the time of the alleged violations.[208]

The work of the Registrar, too, deserves praise as the office has managed to establish infrastructure and provide security in a very short time.[209]

As a result, as Fritz and Smith argue, quoting Kritz, "Sierra Leone's Special Court appears to represent the "best scenario" in which the international community provides "appropriate assistance to enable a society emerging from mass abuse to deal with the issues of justice and accountability itself"". [210]

3.2 A hybrid tribunal for Liberia: a chance to develop regional justice and existing mechanisms

The issue of creating a new mechanism was already debated in Chapter One. It appeared from Chapter Two that domestic and traditional jurisdictions had a role to play in the administration of transitional justice but that they had to be seconded by a mechanism which would be capable of indicting "big fishes". Thus, this part of the paper focuses on the suitability of implementing internationalized justice in the Liberian context. This will be followed by some recommendations on the dynamic role that the SCSL can play to deal with the Liberian past

3.2.1 Internationalized justice for Liberia: a taylor-made option

a) Advantages and suitability of hybrid justice in the Liberian context

The model that has been implemented in Sierra Leone presents the primary advantage for a transitional society, namely that it can participate fully in the accountability process.

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[208] Schabas, supra note 177, p. 1045.
[209] ICTJ, supra note 170, p. 4.
[210] Fritz and Smith, supra note 183, p. 406 and note 80.

In the Liberian case this clearly appears as an advantage because of the fact that the country emerged from civil war as well and needs a mechanism which will be closed to victims.

But the chosen mechanism will also have to be powerful enough. That is where the international component of a Special Court can serve the interests of the Liberian transition. Indeed, it can enable (as was the case with the SCSL to some extent) the arrest and indictment of those previously-mentioned "big fishes" who, although they bear the greatest responsibility for crimes, atrocities and various violations of international humanitarian law that were committed during the war, still hold governmental positions today. The fact that the SCSL indicted a serving President in the Taylor case set a precedent that leads one to think that no one whatever position he is holding is above the law. Furthermore, the Sierra Leonean example shows that even if the newly elected Liberian government make the choice of passing an amnesty law there will still be room for prosecution of international crimes.

Thus, the use of an hybrid court to deal with the Liberian past could really help to fight impunity and class justice where lower ranking officers would be tried and top leaders not.

Then, the fact that a hybrid court can try all factions involved would be a great asset in Liberia as it might well contribute to lasting peace and reconciliation by removing top rebel and governmental leaders from power. Actually, if it recognized that every faction, governmental as well as rebel, have committed atrocities and if those responsible for planning and ordering these outrageous acts are tried, the existing divisions within the population might well disappear. It will be a scenario where collective and antagonist guilt will be lifted, leaving the rest of the population identified as victims.

But it has to be said that those advantages will only be possible if the statute of this hybrid court for Liberia takes properly into account issues like funding, reparations to victims and the latest developments in international law concerning juvenile justice, definitions of international crimes and the responsibility of "greatest offenders".

Finally, it is also important that such a court be based on a compromise that ensures the effective enforcement of its decisions in third States.

Unfortunately, as it was argued earlier in this paper concerning an ICTL, it is very unlikely that a Special Court for Liberia will be established in the near future.

b) A Special Court for Liberia: Falling short from being the best option

As appears from the second part of Chapter One, both the international community and the Liberian government are not really willing to see a war crime tribunal established for Liberia.[211] The international community is not favourable to the proliferation of international criminal tribunals because of the financial, political and ideological issues that they raise.[212]

In the case of the SCSL, various analysts agree on the fact that it owes its creation to a clear lack of political will and to the support of the United States who saw it as a way to curtail efforts to create the ICC.[213]

The problem is that Liberia does not benefit from such a context. Indeed, the ICC exists and is about to start its work and the UN is dealing simultaneously with the functioning or setting up of various other hybrid tribunals[214]. Therefore, the creation of a brand new jurisdiction with regards to criteria such as sufficient and lasting funding, obligation of third states to cooperate with it based on a statute which gives it broad personal and temporal jurisdiction appears to be very unlikely due to the lack of consensus.

Furthermore, it has to be said that the SCSL, like the ICTR came into existence because of an original request from the governments of Sierra Leone and Rwanda. In the Liberian case, the incumbent government has clearly stated that this choice will be made by the following government.[215] There is a danger that the newly-elected government will not have the political will or power to launch out in lengthy and difficult negotiations.

Finally, what makes a special court for Liberia (SCL) fall short from being the perfect mechanism is the very own existence of the SCSL which has jurisdiction over crimes committed by certain Liberian perpetrators. As a result the creation of a SCL might be seen to some extent as superfluous.

As a result, the only option available to deal with the Liberian past within the framework of international criminal law is the SCSL itself.

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[211] P. 22-23 of the present study.
[212] Id.
[213] For instance, Rodella, supra note 178, 59.
[214] It is the case in East Timor, Cambodia, Kosovo and it might be the chosen model to deal with the Iraqi past.
[215] Paye-Layleh, supra note 79.

3.2.2 The SCSL: the indispensable actor of the Liberian transition

a) The support of Liberians to the use of hybrid justice in general and of the SCSL in particular to deal with their past

As was stated before in this study, the civil society in Liberia has shown itself to be in favour of establishing of a war crimes tribunal. Zangar reported in *The Perspective* as early as 1 July 2003 that "the creation of a war crimes tribunal for Liberia is already an item on the draft agenda to be adopted by Liberian political parties attending the peace summit in Accra".[216]

Furthermore, it appears that it is not any kind of war crimes tribunal that is meant here. Indeed, in several analyses it clearly appears that it is a Special Court that is envisaged.

For instance, the vast majority of Liberian political parties (14 out of 18) reportedly stated in July 2003 that "those committing atrocities against the Liberian people run the risk of being prosecuted by a future **special international war crimes tribunal for Liberia**."[217] This choice is even clearer in the report giving the results of a survey that was run in 2004. It found that 59 % of Liberians are in favour of prosecuting faction leaders and commanders. The report furthermore states that "Liberians support the creation of a **special court** made up of Liberians and international jurists to prosecute [them]"[218].

Finally, some even go to the extent to judge that the solution to the Liberian transitional justice issue, as far as prosecution is concerned, lies in the amendment of the SCSL's statute.

Indeed, the Movement for Democratic Change in Liberia (MDCL) in a resolution passed in December 2000 already stated that it "will seek to influence the UN to broaden the mandate of the War Crimes Tribunal on Sierra Leone, such that it is equal to that of the Rwandan War Crime Tribunal currently trying Rwandans and foreigners alike implicated in the genocide against the people of Rwanda."[219] The resolution from this group of Liberian citizens living in the United States goes on to state that the

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[216] Zangar, supra note 66.
[217] Id.
[218] Feierstein and Moreira, supra note 151.
[219] MDCL, "MDCL wants Liberia included in war crimes tribunal on Sierra Leone's" (A resolution), (Jan. 2001) *The Perspective*, available at: http://www.theperspective.org/mcdl.htmlb .

MDCL "will offer legal assistance to the UN sponsored War Crimes Tribunal on Sierra Leone so that it can effectively facilitate the adjudication of individuals implicated from Liberia".

b) The SCSL: A regional court to deal with the past of countries from the Mano River region

The problem with the actual situation has been well described by MacDonald when she argues that one consequence of the wording of the SCSL's Statute is that "the conflict in Sierra Leone will be treated in isolation, rather than as part of a regional conflict, and its root causes will not be properly or fully addressed."[220] Indeed, facts speak for themselves, and it clearly appears that conflicts in the region have consequences on neighbouring countries as regards the influx of refugees, support for rebels, housing and the need for safe haven.[221] Thus, it would be ridiculous and redundant to judge crimes committed in each country before three Special Courts (the SCSL, one in Liberia and one in Guinea). That is why the UN needs to amend the Statute of the SCSL so that it could be a regional forum for dealing with all the top leaders and commanders of the region who, just like Taylor, are accused of being involved in many crimes committed in Sierra Leone (as it is described in indictment sheet act) and, of course, in Liberia.

The SCSL as a regional court will be the best option because if it is only to judge Liberians for what they did in Sierra Leone, Liberian victims of atrocities from 1991 on in Liberia would not be redressed for their personal sufferings.

The amendments suggested are not meant as a challenge to the whole system. They would merely give greater jurisdiction to the Court. In fact, article 1(1) of the statute could be modified in such a way that the territorial jurisdiction is broadened from violations "committed in the territory of Sierra Leone" to "violations committed in the Mano river region" for instance. The personal jurisdiction is already compatible with the idea of a regional court as it does not take into account the nationality of offenders and can therefore prosecute a Liberian or a Guinean just like a Sierra Leonean.

It is true that there is a long way to the amendment of the SCSL in order to make it an efficient regionalized hybrid court but it appears to be the most realistic option

[220] Macdonald, supra note 178.

available to deal with top leaders responsible for atrocities in Liberia. This idea might raise some skepticism but this is always the case when a new mechanism of transitional justice emerges.

[221] On this point, special issue of *Politique Africaine* entitled "Liberia, Sierra Leone, Guinée: La régionalistation de la guerre", (Dec. 2002) 68 *Politique Africaine.*

CONCLUSION

This research paper has shown that a total international approach to the issue of accountability and prosecution in Liberia is not the most efficient, realistic and suitable one. This is the result of the fact that the establishment of an ad hoc International Criminal Tribunal for Liberia is very unlikely to happen due to a lack of political will and because of domestic constraints such as the issue of reconciliation and the volatile political climate.

Then, it was shown that to prosecute alleged perpetrators only before domestic courts would be far too ambitious but that it could be a perfect forum of justice for low ranking offenders. Indeed, it was shown that regular courts could be helped in their work by traditional courts and that their involvement would contribute to reconciliation.

As far as top leaders and commanders are concerned, it was concluded that in the particular Liberian context domestic courts, whose independence from the executive is questionable, might no be willing or able to prosecute them. So, it appeared that there was a need for a forum which would have the power to ensure those prosecutions.

As a result, the hybrid court model was studied and it appeared that it was not only the most suitable and efficient forum to deal with top leaders but it was also demonstrated that Liberians support the use of this mechanism to deal with their past.

Finally, it was argued that instead of creating a brand new Special court for Liberia, it would be more realistic and suitable to amend the statute of the Special Court for Sierra Leone to turn it into a regional court in charge of atrocities committed in the region (Sierra Leone, Liberia and Guinea) because of the regional character of wars in the Mano River region.

In sum, this research paper argues that the government that will be elected by Liberians in October 2005 should strengthen and rebuild its judiciary, respect the principle of the separation of powers and ensure prosecution of basic executioners domestically. It should also use traditional mechanisms to ensure the reintegration of juvenile offenders in particular and the reconstruction of the social fabric. Finally, it should start as soon as possible to negotiate with the UN to have the SCSL's statute amended so that top Liberian war criminals could be tried, among them Charles Taylor, for **all** their alleged crimes whenever and wherever they took place in the region.

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