ORAL SUBMISSION TO THE

TRUTH AND RECONCILIATION COMMISSION

ON THE RULE OF LAW

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SPRINGING NOTES

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NB This Oral Submission Speaking Notes does not constitute the NPWJ Written Submission to the Truth and Reconciliation Commission. The written submission will be prepared on the basis of the results of the data processing and analysis being carried out by the Conflict Mapping Program of NPWJ.
Honourable Chairperson,
Honourable Commissioners,
Ladies and Gentlemen,

Thank you for the opportunity to testify before this Truth and Reconciliation Commission. I am pleased to be here on behalf of my organisation, “No Peace Without Justice”.

With your leave, we would like to follow-up this oral submission with a full written submission, which will be prepared on the basis of the results of the data processing and analysis being carried out by the Conflict Mapping Program of NPWJ.

1. Introduction

Throughout the conflict in Sierra Leone, violations of international humanitarian law and gross abuses of human rights were committed by all parties. The conflict was characterised by extreme brutality, including but not limited to arbitrary executions and amputations of limbs of children and adults. Sierra Leonean society needs there to be accountability for the atrocities it has suffered if it is to move forward and make the transition to permanent peace. A record of the truth must be established and those people who have committed atrocities must be called to account for their actions, in one way or another.

For the restoration of dignity to victims, for peace and in order to create the necessary conditions for Sierra Leone to re-establish itself as a full-fledged democracy governed by the Rule of Law, there must be accountability for the past. Failing to account for past wrongs weakens the Rule of Law as a state of impunity for perpetrators of atrocities prevails, perpetuating a cycle of recrimination and revenge that lays the seed for future conflicts. In the absence of the Rule of Law, democracy falters and the protection and promotion of human rights and the betterment of the living conditions of Sierra Leonians is impaired. Re-establishing and strengthening the Rule of Law will provide the necessary pre-conditions for ensuring respect for human rights and democratic principles. The reestablishment of an effective and accountable constitutional and institutional framework, with safety, security and access to redress at its center, will ensure the restoration of peace in the country and spearhead peacemaking opportunities in the entire region.

My submission today does not seek to outline or elaborate either the violations committed during the conflict or their legal consequences; this will be done by the
Conflict Mapping Report currently being prepared by No Peace Without Justice, which will be presented to the Truth and Reconciliation Commission and others on its completion. Rather, I would seek to mention some aspects of the rule of law in respect of the norms of international law, their implementation and mechanisms by which they might be protected or their violations addressed. My submission today will commence with a brief description of my organisation and our work here, before outlining a working definition of the Rule of Law, then discussing the issue of Amnesties, the Special Court for Sierra Leone and NPWJ’s Conflict Mapping Program.

2. No Peace Without Justice (the organisation)

No Peace Without Justice is an international non-governmental organisation, established in 1993, working for the establishment of an effective system of accountability for the prevention, deterrence and prosecution of war crimes, crimes against humanity and genocide. NPWJ’s major international campaign focuses on the effective establishment of the permanent International Criminal Court (ICC). In the context of this campaign, NPWJ has organised and co-hosted international conferences with a number of governments and undertaken a wide-ranging program of technical assistance through the secondment of legal experts to government delegations during negotiations on the ICC. In addition, NPWJ has carried out a number of country-specific programs utilising its expertise in international criminal law to draft implementing legislation for international treaties at the request of specific governments and undertaking wide scale documentation of violations of international humanitarian law.

In 1998, No Peace Without Justice organised a Judicial Assistance Program to assist smaller delegations to participate fully in negotiations during the Rome Diplomatic Conference for the Establishment of an International Criminal Court. The Program has been ongoing during the follow up negotiations of the Preparatory Commission for the International Criminal Court and the Assembly of States Parties. Since the commencement of the Program during the Rome Diplomatic Conference in 1998, a team of legal experts has been seconded to a number of delegations, including the Republic of Sierra Leone.

In June 2000, during a Preparatory Commission sitting, the President of Sierra Leone, HE President Alhaji Dr Ahmad Tejan Kabbah, requested the assistance of the United Nations in trying those responsible for committing crimes during the ten year conflict in Sierra Leone. Responding to the request of the Sierra Leone Mission to the UN to
provide further assistance at this critical juncture, NPWJ extended its JAP to cover the negotiations on the establishment of the Special Court between the UN and Sierra Leone, by providing legal advice. Two legal experts were seconded to the Office of the Attorney-General and Minister of Justice in Freetown and one legal expert was seconded to the Sierra Leone Mission to the UN in New York to continue the work of assisting the Sierra Leone Ambassador to the UN. This assistance continues today.

Since February 2001, NPWJ has also embarked on a broad-based program of public information and outreach, designed to ensure that the potential of the Special Court is not impaired by easily avoided misunderstandings about its nature and operations. The aim of our outreach program is to ensure that the general public is informed about the processes and decisions of the Special Court in order to seek fair justice and to enhance its ability to promote redress, reconciliation and reintegration within Sierra Leone. This has taken place in a variety of ways, including the “Freetown Conference on Accountability Mechanisms for Violations of International Humanitarian Law in Sierra Leone” back in February 2001, “Training the Trainers” seminars, during which nearly 2000 people have received training, radio programs and working with performing artists among many other activities. In so doing, NPWJ continues to work closely with the Special Court Working Group, a coalition of Sierra Leonean non-governmental organisations interested in accountability whose coming together we facilitated in the first half of 2001.

NPWJ is also working with the legal profession on issues relating to the Special Court and international humanitarian law in general. As part of this program, in December 2002 we co-organised a seminar with the Sierra Leone Bar Association and the Special Court on the Rules of Procedure and Evidence for the Special Court, which provided an opportunity for members of the Sierra Leone legal profession to discuss their recommendations on the Rules with the newly sworn-in Judges of the Special Court, particularly with a view to incorporating aspects of the Criminal Procedure Act of 1965. Last week, in cooperation with the Bar Human Rights Committee of England and Wales, we ran a training seminar on theoretical and practical aspects of the Special Court for interested members of the Sierra Leone Bar Association and staff of Special Court itself. NPWJ has also opened an International Humanitarian Law and Human Rights Library, with legal materials generously donated from a variety of individuals and institutions, in particular from Columbia University.

In addition, NPWJ is undertaking a conflict mapping program, which aims to provide a chronological and geographical mapping of violations of humanitarian law in Sierra Leone to help create an historical record of the truth, including individual and command responsibility, which will be discussed more later on.
3. The Rule of Law

As I have mentioned, this submission seeks to focus on international law, in particular its implementation and mechanisms by which it might be protected or its violations redressed. To contextualise this submission, I will outline briefly what we consider to be some of the key aspects of the “Rule of Law” and how it applies in practice.

The term "Rule of Law" embodies the basic principles of equal treatment for all people before the law; fairness; and both legal and actual guarantees of basic human rights. A predictable legal system with a participatory law-making process, impartial law enforcement mechanisms and a fair, transparent and effective adjudication system is essential to the credibility of the Law as a means to protect individuals against lawless acts of private individuals and organisations or the arbitrary use of State authority.

The basic concepts underpinning the Rule of Law could be summarised as follows:

1. The Rules both apply and are applied to everyone;
2. These Rules are known or can be known by anyone;
3. Everyone has access to effective means of recourse.

Perhaps the most important corollary to these principles is that the system be perceived as credible by the population it purports to affect. Thus justice must not only be done according to the highest international standards to which Sierra Leone adheres, it must be seen to be done and, furthermore, it must be believed to be done in order for the fundamental principles of the Rule of Law to be satisfied.

In practice, these principles affect individuals in four major ways:

a) protection from violence against person and property, particularly for the most vulnerable members of society;

b) the effectiveness of and access to judicial and administrative structures and other redress mechanisms applying those Rules impartially, consistently and in conformity with a predetermined process;

c) the existence and accessibility of clear written rules to regulate behaviour that are applicable to all, including to agents, institutions and organs of the State; and

d) the existence of a rule-making mechanism that is credible and legitimate in the eyes of the people it purports to affect.
4. **Amnesties**

Bearing these principles in mind, I will now turn to the issue of amnesties. Amnesty can be characterised as the act of “forgetting” a crime: a person who has been granted amnesty will not be prosecuted for a crime covered by the amnesty and their criminal responsibility, if any, will not be established. We the exception of the Ceasefire Agreement between the Government of Sierra Leone and the Revolutionary United Front signed in Abuja on 10 November 2000, all the agreements signed during the conflict, whether or not they have been partially respected and implemented, contain provisions granting amnesty to members of factions involved in the war.

From 1996 to 1999, three different peace agreements were signed, in addition to several ceasefire agreements.

- The Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front was signed in Abidjan on 30 November 1996 and followed soon after a military coup in May 1997.

- On 23 October 1997, the ECOWAS Six-Month Peace Plan for Sierra Leone was signed in Conakry, which prompted the military junta to agree to a peace deal. However, in January 1998, clashes began in Freetown between soldiers loyal to the military junta and the Nigerian-led force, ECOMOG.

- In January 1999, RUF forces launched an offensive against Freetown. On 17 April 1999, a cease-fire agreement was signed between the Sierra Leone Government and the Revolutionary United Front, which was followed by a new Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone and was signed in July 1999.

These events demonstrate that not only are amnesties damaging on a number of levels, which I will now discuss, they simply do not work to bring long term or even short term peace.

Amnesty provisions in peace agreements are generally included as a compromise on justice in the short term to meet longer terms objectives of peace and stability. Also, given the lack of an effective judicial system and the insufficient capacities of the government in that regard, amnesty is often claimed to be the only practical measure available to deal with past events. Those who support the provision of amnesties following an armed conflict claim that there is a need to strike a balance between the imperative to bring to justice and hold accountable those who allegedly committed serious crimes under international law, and the imperative of immediate peace and the finding of short term solutions to a conflict.
However, amnesty means amnesia and grants impunity for human rights violations committed during the conflict. This devalues the Rule of Law by ignoring the need for accountability and turning a blind eye to the claims for justice from civil populations, in particular by victims of those violations. Moreover, it puts at risk the healing process by removing the possibility to collect evidence and testimony and to establish a record of events, to address the underlying problems at stake and to allow the country to deal with its past.

Amnesty for serious violations of international law is itself a violation of international law.

International law does, in fact, support amnesty provisions in the aftermath of armed conflicts for having taken part in the conflict but not for any war crimes committed. However, such an amnesty should only extend to the fact of having participated in the conflict and should not extend to serious violations of international humanitarian and human rights law. State Parties to the 1949 Geneva Conventions – including Sierra Leone – undertook to prosecute such crimes and, as such, cannot grant immunity for those crimes through an amnesty either under national law or as part of a Peace Agreement. Amnesty for war crimes, crimes against humanity and genocide are therefore illegal under international law, irrespective of the position under national law.

More importantly, however, sacrificing the goals of justice and redress to reach the goal of reconciliation simply does not work and did not meet the concerns of Sierra Leoneans, especially since the cycle of impunity contributed to the origins of the war. Restoring confidence in the Rule of Law and the justice system was not achieved through the granting of amnesty, which neither led to any kind of durable peace nor achieved the cessation of human rights abuses.

Saying that people who have committed crimes under international law, including crimes against humanity and war crimes, would not be prosecuted also meant that the rights of victims and their relatives to justice and redress were ignored.

In addition, such an amnesty contradicts the provisions of the Constitution of Sierra Leone (1991) dealing with the recognition and protection of fundamental human rights and freedoms of the individual. Protection of the right to life, freedom from arbitrary arrest or detention, from slavery and forced labour, from inhuman treatment, from deprivation of property and the right to secure protection of law, among others, are guaranteed under Chapter III of the Constitution. Section 28 of the Constitution guarantees the enforcement of protective provisions before the Supreme Court of Sierra Leone. The amnesty provision stands in contradiction to these constitutional
provisions in that it allows neither the enforcement of such rights nor relief for their violation.

Dealing with the past, especially when a conflict has occurred, requires full knowledge of the chain of events and responsibilities that led to the conflict. It is important that emphasis be put on justice as a means of reconciliation. I could not put it better than the words of the Honourable Vice President, in the TRC Handbook from 2001, when he said “In the Lome Agreement the only means of accountability provided was through the TRC. It was then thought that with peace at hand, the wounds of war could be handled through reconciliation. In other words, it was recognised that truth was as good as, or at least a substitute for, justice. The Government of Sierra Leone reassessed this position only in May 2000.”

Amnesty provisions granted under the three peace agreements opened the floor to more problems and concerns than they resolved and put an unnecessary burden on the process of the reconstruction of the State and of the Rule of Law in Sierra Leone. In Resolution 1315 (2000), the Security Council recognised that “in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace […]”, thereby acknowledging that the two processes are indeed closely interrelated. Indeed, the failures of the three agreements granting amnesty indicate that the imperatives of peace and the imperatives of justice are difficult, if not impossible, to separate.

5. The Special Court

Honourable Commissioners, with your permission I would now like to say a few words on the Special Court for Sierra Leone. The Special Court for Sierra Leone was established by Agreement between the Government of Sierra Leone and the United Nations to prosecute those who bear the greatest responsibility for violations of international humanitarian law and Sierra Leone law during the conflict. In so doing, it can demonstrate both that there are rules applicable during times of armed conflict and that there is a price to pay for violating those rules, no matter a person’s position. Closely aligned with this is the broader objective of strengthening the protective function of the law through scrutiny of conduct during a conflict, application and development of the rules regulating that conduct and enforcement of those rules through the attribution of individual criminal responsibility. The Court is thus aimed at ending impunity, deterring would-be perpetrators and providing a measure of
justice for the victims and, if implemented properly, it can also help strengthen the Rule of Law in Sierra Leone and contribute to capacity building within the country. The Special Court therefore has both backward and forward looking aims: to provide redress for what happened in Sierra Leone and to contribute to lasting peace, a strengthened Rule of Law and the future protection of people involved in a conflict, both in Sierra Leone and elsewhere.

The Special Court has both the ability and the mandate to extract justice from those who were responsible at the highest levels of policy-making, namely those leaders who decided what methods of warfare were to be used.

Crimes under international law do not simply occur in the heat of battle, but rather result from following orders devised by political and military leaders, who weigh the perceived gains of specific methods of warfare against the possible consequences, which can include the likelihood of criminal prosecution. By focusing on those who devise wartime policies, responsibility is placed with those who actually planned the criminal acts and ordered or allowed them to occur. Holding these people to account for their actions is in itself necessary to strengthen the perception of the general population that justice is being done. By focusing on the leaders who have planned and instigated atrocities – rather than the 'trigger-pullers' – the deterrent effect of international prosecutions will be enhanced.

However, it must be borne in mind that while the mere existence of the Special Court is already, in many ways, having a positive impact on the Rule of Law in Sierra Leone, the process by which it undertakes its work is equally important. The perception that Sierra Leoneans have of the accountability mechanisms working on their behalf is in itself paramount to their success. The Court must therefore ensure that it involves the general population at every step of the way, ensuring that people understand the processes and why certain things are done in certain ways. In addition, the Court itself must adhere to the principles of the Rule of Law, in terms of following its own rules, abiding by the laws of Sierra Leone and abiding by international law and practice. The recent illustration of the handling of Charles Taylor’s indictment demonstrates this very clearly, as the Court -at the very least- appeared to violate its own orders relating to non-disclosure and to expect Ghana to violate its own domestic laws.

In requesting the Secretary-General’s assistance to establish the Special Court, Sierra Leone was courageously finding ways to abide by the "aut dedere aut judicare" obligations, namely the obligation to extradite or prosecute, that are at the basis of the enforcement of the laws of war.
The purpose of the Special Court is not only to punish individuals, or even just to "demonstrate" for the world and future conflicts the principle of individual responsibility, but also -and for Sierra Leoneans perhaps primarily- to restore some confidence in the Rule of Law (and the judicial process). As a matter of policy, it is essential that the Special Court does everything first and foremost with the prime objective of encouraging local accountability efforts. More than that: the Special Court should work with the police and prison system to improve their standards of practice and with the bar and the judiciary to increase their capacity, particularly in the area of international law. To a large extent, the Special Court has been doing this and should be commended for its efforts to make the most of its presence in the country.

However, with the Special Court and the TRC, Sierra Leone, Sierra Leoneans and the international community had an opportunity to create an integrated system of accountability for this country, which was lost when the TRC and the Special Court decided to operate at arms’ length. This has harmed the credibility of both institutions and multiplied the resources required to provide Sierra Leoneans with an understanding of what happened in their country and who was responsible for it. Indeed, a central part of this, namely the discussions here and abroad which put into question the compliance that -as a matter of law- is due to the Special Court, belittled the incredibly bold step that Sierra Leone took of renouncing her sovereignty in respect of compliance with orders and decisions of the Special Court. Furthermore, it damaged the Rule of Law by denying the fundamental principle that the rules should apply equally to everyone.

6. The NPWJ Conflict Mapping Program

With your permission, Honourable Commissioners, I would like to conclude my submission by discussing NPWJ’s Conflict Mapping Program. The Conflict Mapping program aims to reconstruct the chain of events during a conflict through gathering information in the field and analysing the decision-making processes, the order of battle and command structures of the various forces as they evolved over time and space to ascertain the role of those who bear the greatest responsibility for policies of systematic and massive violations of the laws of war. This chronological and geographical mapping of the conflict, including reconstructing the order of battle and chain of command, serves to prevent denial of those events. An analysis of events according to international law establishes prima facie accountability for violations of international humanitarian law.
In so doing, it both serves to strengthen the Rule of Law and to promote and defend human rights by publicising the price for violating them. In addition, establishing the real chain of command within the fighting factions operating in Sierra Leone and assembling these disparate pieces of information to create the bigger picture of the decade long conflict enables the crucial first phase of establishing who bears direct and command responsibility for atrocities committed during the conflict, thereby avoiding the trap of blaming a group or segment of society and promoting peaceful conciliation.

The NPWJ Conflict Mapping Program was conceived on the basis that only if the accountability process belongs to each and every community -- and if each community is able to participate in it -- would it be possible for former combatants to be accepted and for meaningful long-term reintegration to take place. Rehabilitation and reintegration is not simply a matter of locating next of kin and assisting in individual reintegration; it is about enabling society and each community to move forward and to accept individuals back into its fold.

NPWJ is now undertaking a nation-wide conflict mapping program operating in conjunction with our outreach program that has contributed towards establishing confidence in the accountability mechanisms, by providing victims and witnesses the opportunity to recount their stories in such a way as to enable them to understand their personal and their communities’ experiences in the context of the war.

Marrying the sensitisation and the documentation processes ensures that the perception of the communities reached is not that of being “told” about the accountability process as something that happens elsewhere and is relevant to others, but rather of truly taking part in it. The conflict mapping program has involved as much of the country as possible in conducting sensitisation and documentation in this manner so as to encourage a sense of ownership of the processes by the people of Sierra Leone.

The gathering of information has been conducted by national human rights workers acting as "Conflict Mapping Recorders", trained and supervised by NPWJ personnel, in communities and villages throughout the country. The CMRs interview key persons, whose profession, role in their community or in the forces involved in the conflict, placed them in a position to follow events as they unfolded. These selected individuals have therefore been able to give an overview of the conflict for a given geographical area. The key persons were asked to relate not only what happened to them or their family but also what happened to their community, their village, section and chiefdom.
The training process of these Conflict Mapping recorders was divided in four stages, which are now complete. Each of the twelve District capitals, where training took place, has therefore been visited four times by the NPWJ conflict mapping team. The actual carrying out of the work by 140 NPWJ CMRs working for a period of 6 months, has taken place in nearly every chiefdom across the country and has enhanced community understanding and acceptance of the processes.

The final result of this process will be the production of a public report that records geographically and historically the occurrence of violations of international humanitarian law analysed in the light of international criminal law, particularly as applied by the Special Court. This comprehensive report will include information gathered and processed by experienced analysts with the assistance of advanced database and mapping software, with the information checked and cross checked to ensure that it is consistent, complete and correct. It must however be emphasised that the process in itself is as important as the final document, because the direct involvement of Sierra Leoneans (both as interviewer and interviewee) in this project allows them to be at the heart of the accountability work being carried out in the country.
7. **Preliminary Recommendations**

I would like now to outline very briefly some of the preliminary recommendations we would like to include, with your leave, in our written submission. Specifically, we would recommend the following:

- That the Special Court and the TRC follow the fundamental principles of the rule of law in all aspects of its operations;

- That the international community continue to support accountability efforts in Sierra Leone, in particular by concluding agreements for cooperation with the Special Court and by providing necessary financial support for the TRC and the Special Court;

- That the international community extend its support to efforts aimed at rebuilding the judiciary in Sierra Leone, including through support to the Law Officers Department and to updating and harmonising legislation and law reporting in Sierra Leone, particularly in light of Sierra Leone’s international obligations;

- That the Government of Sierra Leone and others work to ensure the security forces are trained in and adhere to all relevant aspects of international humanitarian and human rights law.

- Also, that the Government of Sierra Leone and others work to ensure that information on international humanitarian and human rights law be provided to the general public.

- That the TRC acknowledge the importance of instituting the Rule of Law in Sierra Leonean society as one of the key elements for attaining sustainable peace and reconciliation. The Commission, therefore, should highlight the role past impunity and corruption of the Rule of Law played in initiating and sustaining the ten-year conflict. Efforts to restore Rule of Law should therefore be a priority of national reconciliation efforts and should include not only the protection of human rights but also the support of those mechanisms (such as the Special Court) addressing the impunity of the past.

- Finally, the TRC should recognize that adherence to international humanitarian law is not only an obligation of the Government and the State, but essential to the interests of peace and reconciliation of the nation.