‘Governments and a war past: the politics of reconciliation’

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International Relations and Diplomacy Master Thesis

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Abstract

The concept of reconciliation has been researched often by scholars. Reconciliation is part of the post-conflict reconstruction strategy and the process is mostly seen by scholars as a relevant and wanted process. However, is that the case in reality? The question researched here is: why do governments engage in national post-conflict reconciliation strategies? This study reviews two post-conflict situations where a reconciliation process was initiated; Rwanda and Sierra Leone. We aim to determine on what factors governments base their choices regarding reconciliation. The cases are examined from a legalist and pragmatist approach. Legalists argue that states choose reconciliation and justice because they believe in the international norms it represents, because they believe in the preventive and deterrent effect of justice and the educational example it can be. Pragmatists however, argue that states choose reconciliation on the basis of self-interest and the distribution of political power. They also argue that states not always believe in the necessity of reconciliation and acknowledge the usefulness of amnesties.

The cases of Rwanda and Sierra Leone demonstrate that the choice for reconciliation cannot be fully explained from the legalist approach but are better understood from the pragmatist point of view. Both situations show that the choice of a state for reconciliation is based on different factors that can be summarized as the concept ´the politics of reconciliation´. The government of Rwanda uses the fear of the population for a future genocide in order to keep tight control over the country. The reconciliation initiatives are used to keep track of anything that is going on in society that could be a potential threat and to teach the RPF ideology in order to keep a firm grip on political power. Sierra Leone is influenced by the international community that demands post-conflict reconciliation. It has been argued that one of the origins of the Sierra Leone conflict was poverty and the country has the desire to reconstruct its economy for which a high amount of external investment is needed. These reasons fit within the idea of pragmatists, that actors base their choices upon self-interests, in these cases ensuring political power and attracting external investment.

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List of acronyms

Armed Forces Revolutionary Council (AFRC)

Civil Defense Forces (CDF)

European Union (EU)

Independent Expert (IE)

International Criminal Tribunal for Rwanda (ICTR)

International Relations (IR)

Mouvement Democratique Republicain (MDR)

National Electoral commission (NEC)

National Recovery Strategy (NRS)

National Unity and Reconciliation Commission (NURC)

Non-Governmental Organization (NGO)

Rwandan Patriotic Front (RPF)

Revolutionary United Front (RUF)

Revolutionary United Front Party (RUFP)

Sierra Leone People's Party (SLPP)

The Special Court for Sierra Leone (SCSL)

Truth and Reconciliation Commission (TRC)

United Nations (UN)

United Nations Office of the High Commissioner for Human Rights (OHCHR)

Introduction

Adame Kamara was a young mother in Sierra Leone when a rebel forced her to be his wife during the conflict in Sierra Leone. The rebel killed her husband and took her into the bush. Adame came out of the bush when her rapist was killed by someone else. She was left behind with twins from him. However, Adame never kept the truth from her children and told them that their father was a rebel who raped her. She claims she has come to terms with the past (Sunday Tribune, 2006). Most survivors of the genocide in Rwanda felt guilty about surviving the genocide. Jean Paul was nine and running with his brothers and sisters to escape the danger. As he was running, he stumbled and fell into a ditch. In the ditch he realized it was better to hide there than to run. He covered himself with leaves and waited. No matter how irrational, Jean Paul never forgave himself for not calling back his siblings to hide there with him, even though there would have been no space or time. His siblings did not survive the genocide (The New Times 2010).

These examples show how complicated it is for citizens living in a post-conflict society to come to terms with the past they experienced. The process of reconciliation is expected to help citizens with that process. Despite the fact that much has been written on the topic, less attention has been given to the reason why states opt for reconciliation. Often, the assumption made in literature is that reconciliation is needed in order to move forward as a society. The legalist approach however, argues that states choose reconciliation because a government believes in the deterrent and preventive effect of justice and perceives reconciliation as a society`s duty. A second approach, the pragmatist approach, argues that states base their choice for reconciliation on self-interest. Therefore, the timing, form and existence of reconciliation depend on a state`s interest and distribution of political power. These perceptions lead to the question why states opt for reconciliation. The post-conflict cases of Sierra Leone and Rwanda will be analyzed in order to find an answer. Rwanda experienced an intense conflict in 1994 which is perceived as genocide of the Tutsis by the Hutus. In Sierra Leone, the Revolutionary United Front (RUF) and the government fought against each other for more than 10 years until 2002. Both states have set up institutions to promote reconciliation and are therefore interesting to be studied.

Chapter 1 will review the existing literature on reconciliation, explain the theoretical framework and discuss the case studies. Chapter 2 will examine both case studies on the hypotheses of the legalism theory. Chapter 3 will analyze Rwanda and Sierra Leone from the pragmatist perspective and its hypotheses. Finally, we will present the conclusion.

Chapter 1 Theoretical framework

1.1. Introduction

Different views can be derived from literature on reconciliation. In this chapter I will review the existing literature on reconciliation and present the two main opposing theories regarding reconciliation, legalism and pragmatism. Secondly, I will identify the hypotheses and the indicators which will be followed by the case selection and the background on Rwanda and Sierra Leone. Finally, I will explain the strategy of data collection and the method of analysis.

1.2. Literature review

Within the field of International Relations (IR) the concept of reconciliation has gained importance during the last two decades. But opinions about the interpretation of the concept differ considerably. Reconciliation can be seen both as a process and as a goal (Kelman 2008: 17). According to Hoogenboom & Vieille (2009: 186) reconciliation is a means that has a purpose, namely to restore relationships in order to prevent future conflict and to rebuild social trust. According to Trudy Govier (2006: 11-13) reconciliation entails a spectrum of different reconciliation outcomes. The outcomes vary from stopping physical violence to creating unity within a society. It means that if reconciliation is a process it does not necessarily always lead to the outcome of sustainable peace. Skaar et. al (2005: 4) are of the same opinion, by arguing that reconciliation has different meanings in different societies. In order to analyze the choices of states regarding reconciliation, we need to understand what reconciliation entails. The focus of this study is not what reconciliation exactly entails. But in order to analyze a state´s reconciliation process it is necessary to define reconciliation here. The assumption made in this study is that the concept of reconciliation is a process that has an end goal, namely sustainable peace. According to Kriesberg: 'Reconciliation refers to the process by which parties that have experienced an oppressive relationship or a destructive conflict with each other move to attain or to restore a relationship that they believe to be minimally acceptable' (Molenaar 2005: 30). Kriesberg`s definition is broad and objective and thus useful for studying states` behavior in the reconciliation process.

The above-mentioned definitions refer to reconciliation as a post-conflict process in which relationships are restored. However, no mention is made of what reconciliation means in practice and what elements it should include. According to Arthur Molenaar (2005: 35) the elements needed for reconciliation are truth, mercy, justice and peace. Furthermore, reconciliation can be seen as a three stage process: replacing fear by non-violent co-existence, building confidence and trust, and create empathy (Bloomfield et. Al 2003: 19-21). Reconciliation can be a bottom up or a top down approach (Staub 2006: 867). The latter means the process is mostly conducted by state leaders and the media. These two aspects will be paid attention to in this study. The process of reconciliation

needs a ‘culture of reconciliation’ in which all levels of society are involved. This means a culture of forgiveness, truth and justice instead of a culture of violence and conflict (Grohman 2009: 12). Finally, Eugenia Zorbas (2004: 37-39) argues reconciliation does not only include the restoration of relationships but also the restoration of the economy. She states that the decrease of poverty is a means of reconciliation. (Zorbas 2004: 37-39). These authors show that the process of reconciliation is a complicated one, and includes several different elements and phases.

The authors quoted focus on the theoretical meaning of the concept and assume reconciliation is a wanted and relevant process in which citizens of a post-conflict society work on rebuilding their relationships. The reality is, however, that post-conflict societies are often chaotic and that complicated situations lead to the question how the process of reconciliation should be perceived in the context of the chaos of post-conflict societies. Andrew Schaap (2008: 249) takes a closer look at the critiques on reconciliation; the concept is too vague to base a policy on, it tries to construct a harmonic future society that never existed before, it only represents the interests of the ruling elite, and requires giving up resentment and forgiving perpetrators under pressure by the majority and thus it redeems the collective consciousness by symbolic gestures. These arguments raise the question of what reconciliation implies in reality. Dai Yamao refers to the ‘politics of reconciliation’, which means the implementation of reconciliation mechanisms can have other unexpected political results and reconciliation can be used as a political tool (Yamao 2011: 2). Reconciliation is deemed necessary for democratization. The failure of not conducting or completing the process of reconciliation by the ruler of a state will meet with severe criticism and thus shows the importance of reconciliation for the image of a politician (Murphy 2010: 2). Susan Thomson and Rosemary Nagy (2011: 11-12) conclude that despite the innovative image of the transitional justice system in post-conflict Rwanda, the average Rwandese is forced into a process of forgiveness and a sense of guilt without any power over it. Thomson argues that peasants in Rwanda silently protested against the governmentally controlled strategy of reconciliation. According to her, the national strategy was more focused on maintaining power over the population than on real reconciliation (Thomson 2011: 439-440). Other examples are Peru, Guatemala and former Yugoslavia. The report of the Truth and Reconciliation Commission (TRC) in Peru was criticized highly by several political parties which were furious at being blamed for 30 percent of the deaths during the conflict (Govier 2006: 255). The truth and reconciliation initiatives in Guatemala were interfered and polarized by political actions which obstructed efforts to find consensus on the history of the conflict (Isaacs 2010: 251). During the transitional justice efforts in former Yugoslavia, the political elite struggled to satisfy conflicting international and domestic demands. It led to ‘compromise justice’ that did not contribute to the reconciliation process (Grodsky 2009: 687). The local reconciliation rituals in Sierra Leone

include a cleaning ritual of former child soldiers and the communal decision to never ask the child again about his past actions. The concept of `social forgetting` made it possible for communities to live on and recover from the war. However, the opinion of the TRC of Sierra Leone is in contrast with these local rituals because it demands openness and explanation of past crimes. That implies that there is no consideration for cultural values and that the reconciliation did not take into account the needs of the population (Baines 2007: 112).

These examples show how complex reconciliation in reality is. Moreover, they illustrate that the choice for reconciliation is not a simple one that automatically leads to stable peace. Why then do states choose to be engaged in reconciliation? Govier (2006: 209) argues that the reason to choose for reconciliation is clear; there is no attractive alternative. If one chooses to ignore the possibility of reconciliation the only alternatives are doing nothing at all, allowing people to engage in acts of revenge out of frustration, or letting the country revert to the previous war or oppressive regime. Hence, Govier assumes that the choice for reconciliation is made due to the lack of other alternative possibilities. Other scholars assume that states make choices in favor of reconciliation because without addressing the past, there is no future; stable peace is not possible without a reconciled society (Daly & Sarkin 2007: 11). Priscilla Hayner (2001: 23) formulates this point of view as: 'One must confront the legacy of past horrors or there will be no foundation on which to build a new society'. According to Daly and Sarkin (2007: 11) most post-conflict societies in recent history have made a transition to democracy in recent history. A democracy doesn't function without the participation of people and Daly and Sarkin argue people will not participate without a process of reconciliation. This will be an incentive to many states to engage in reconciliation. However, these arguments do not acknowledge the political interests of leaders that lead to the choice for reconciliation. State leaders might agree that reconciliation is the only way to move to the future. But, at the same time, they may have their own interests to engage in the process. Daly and Sarkin do recognize other reasons for nations to engage in reconciliation. They mention examples such as the demand of the population for reconciliation or the desire to be seen as a stable society for outside investors or tourists (2007: 12).

The existing literature on the subject shows several pitfalls. First, the existing assumption that reconciliation could be a political tool is poorly covered. Secondly, the literature shows the conviction that states engage in reconciliation because there is no other alternative than addressing the past before moving towards the future. However, little attention is paid to the power interests of elites and the external pressures or incentives to initiate the process of reconciliation. Hence, the arguments of authors about the choice for reconciliation are not always convincing and call for more research on the subject. In order to fill these pitfalls it is important to enhance the understanding of

the choices that states make in the context of reconciliation. Taken into account the perspective that reconciliation is also a political process in which different political interests are intertwined with the reconciliation process, the research question is formulated as follows; why do states/governments engage in national post-conflict reconciliation strategies?

1.3. Legalist perspective and pragmatist perspective

In order to explain why states choose opt for reconciliation different perspectives can be taken. Vinjamuri and Snyder present three approaches to analyze transitional justice; the legalist approach, the pragmatist approach and the emotional psychology approach. In the third approach the authors argue that `eliminating the conditions that breed atrocities depends on achieving an emotional catharsis in the community of victims and an acceptance of blame by the perpetrators` (Vinjamuri & Snyder 2004: 357). However, this argument implies as shown in the reviewed literature, that reconciliation is necessary to have a future. It does not acknowledge other reasons and interests. That is why the main focus will be on the legalist approach and the pragmatist approach.

1.3.1. Legalism vs. Pragmatism

Legalism comes from the belief in the importance of promoting universal norms and values. Legalists assume that the behavior of actors is guided by norms that they believe to be appropriate. One of these norms is that justice is critical to a lasting peace due to the accountability of justice (Vinjamuri & Snyder 2004: 346). The following arguments form the basis of the legalist framework; first, it is the duty of a society to honor and redeem the suffering of the victims of a conflict. Thus, justice is needed. Legalists do not favor any alternative options as amnesties or even truth commissions because they represent a compromise (Vinjamuri & Snyder 2004: 347).

Secondly, the existence of tribunals can have a significant effect on both preventing and deterring future conflicts. Tribunals deter by placing the guilt of atrocities such as genocide committed by groups, on the shoulders of an individual. Public trials have a preventive effect because they show that future violence will be trialed publicly and not in private (Vinjamuri & Snyder 2004: 347). An international tribunal will also remind abusive leaders of their wrong doings. Furthermore, lawyers, law students and NGO`s will study these phenomena and demand similar initiatives (Rosenberg 1995: 64).

Finally, legalists argue that crime tribunals serve as an educational example of rule of law to newly established democracies, authoritarian regimes and failed states. The trials show the

appropriate way of dealing with perpetrators (Vinjamuri & Snyder 2004: 348). Orentlicher argues that criminal tribunals may inspire societies that are reexamining their basic values to reaffirm their commitment and respect to the rule of law (Orentlicher 1991: 2542). Legalists thus mostly focus upon the appropriate forum for dealing with war criminals and the implications of war tribunals for further development of international humanitarian and criminal justice systems (Vinjamuri & Snyder 2004: 249). This means that the theoretical assumptions here are that states opt for reconciliation because they believe that it is the appropriate way to deal with past atrocities, their choice in favor of reconciliation is inspired by the belief in the possibility of deterring and preventing a future conflict. Finally, there is the conviction that reconciliation can serve as an educational example.

The second approach is pragmatism. Pragmatists believe that actors are interested in determining what the consequences of their actions are (Vinjamuri & Snyder 2004: 353). Pragmatists argue that actors will try to achieve their goal by using any available resources. Norms and values may be useful in achieving their goal but will only be followed if they are believed to be effective (Vinjamuri & Snyder 2004: 13). The pragmatist approach is based on the following arguments. First, the power and self-interest of political actors are determinants of their actions (Vinjamuri & Snyder 2004: 353). Huntington argues that the actions of people in practice are little affected by moral and legal considerations. They are mostly shaped by politics and the distribution of political power (Vinjamuri & Snyder 2004: 354). Elster makes a distinction between three different kinds of motivations of actors; reasons, interests or passion. By reasons he means any impartial consideration of the common good. Interests he defines as any consideration of an individual or group interest, and passion he describes as a set of emotions like for example vengeance or anger (Elster 1998: 34). This illustrates that legalists mostly focus on the first motivation, while pragmatists are more interested in the latter two. Goldsmith and Krasner argue that the success of international institutions depends on the support of states. However, this support will only be given when the objective of the institution is compatible with the interests of states (Goldsmith & Krasner 2003: 61).

Secondly the consequences of trials for the consolidation of peace and democracy do not always lead to the decision to choose justice. It also means that pragmatists are in favor of granting amnesties in some cases when it serves the strengthening of the rule of law (Vinjamuri & Snyder2003: 14).

Finally, pragmatists believe that justice could be more feasible in a later stage of the post-conflict situation. When the institutions are stronger and more stable in a later stage, the process of post-conflict justice would serve the stable peace. But when institutions are still weak it could do more harm than good (Vinjamuri & Snyder 2003: 15). This means for the theoretical framework that the assumptions are; states are influenced by political- and power interests in

choosing reconciliation, states base their choice for reconciliation on consequential analyses and states believe that justice is sometimes better at a later stage.

It is important to bear in mind that states might argue publicly according the norms of the legalist approach but at the same time in practice might choose to act within the framework of pragmatism (Vinjamuri & Snyder 2004: 355). Elster also underlines that actors might act from an underlying motivation of emotion but will say they act from a desire of universal retribution (Elster 1998: 34).That is why both statements of leaders and their actions will be reviewed in Rwanda and Sierra Leone. It also means that it is not the question here whether only pragmatism or legalism explains the choice of states. The question here is which paradigm dominates in their decisions.

1.4. Hypotheses, concepts, indicators and case selection

The main hypothesis of this thesis is that there are factors influencing the choice for reconciliation in a state. However, if that is true what factors will influence the choice for a reconciliation strategy the most? I can derive the legalist and pragmatist hypotheses from the theoretical framework.

The first hypothesis is H1: *The legalist approach dominates in explaining the choice for reconciliation*. The subdivisions of this hypothesis are based on the set of arguments used by legalists. 1A*: actors believe it is a society`s duty to choose reconciliation*, 1B: *actors choose reconciliation because they believe in the preventive and deterrent effect of war crime tribunals* and 1C: *actors choose reconciliation because they believe in the educational component of war crime tribunals.*

The second hypothesis is H2*: The pragmatist approach dominates in explaining the choice for reconciliation*. The subdivisions of this hypothesis are based on the different arguments favored by pragmatists. 2A: *actors choose reconciliation on the basis of self-interest and political power*, 2B: *actors believe that justice is not always necessary during the post-conflict situation*, 2C*: actors believe that justice is sometimes better at a later stage* and 2D: *actors believe in the usefulness of amnesties.*

The actors studied here are the post-conflict governments of the used cases with, logically, the focus on the state leader that would either be a president or a prime minister. The first concept of this study is the dependent variable: the national post-conflict reconciliation strategy. The definition of this concept used for the purpose of this thesis will be the strategy that aims at what Molenaar refers to as: ‘restoring the relationship between parties that have experienced an oppressive relationship or a destructive conflict, to a level that the parties believe is minimally acceptable’ (Molenaar 2005: 30).

The strategy is conducted by state leaders so the focus will be on the top-down approach of reconciliation strategies. All forms of reconciliation, TRC's and transitional justice etc., will be included because both Molenaar and Grohman give arguments in favor of a culture of forgiveness that includes both justice and truth. Since the thesis will focus upon what influences the reconciliation process and does not aim at defining and researching the actual meaning of reconciliation, all reconciliation efforts will be included.

From the two main hypotheses the two different independent variables can be derived, namely states` behavior according the legalist approach and states` behavior according the pragmatist approach. Both variables will be examined on three dimensions; first, statements made by leaders. This dimension is important because the hypotheses are focused upon state leaders expressing their beliefs. Secondly, the existing reconciliation efforts will be examined since these are part of the whole reconciliation process and strategy, and show the choices made by governments. Third, the political dimension will be examined since the personal- and power interests appear in this dimension.

1.4.1 Indicators

The legalist approach dominates in explaining the choice for reconciliation.

1A: states believe it is a society`s duty to choose reconciliation.

1B: states choose for reconciliation because they believe in the preventive and deterrent effect of war crime tribunals.

1C: states choose for reconciliation because they believe in the educational component of war crime tribunals.

A) Statements of state leaders.

i. Do they refer to a society`s duty to choose for reconciliation?

ii. Do they refer to the deterrent and preventive effect of war crime tribunals?

B) The present international and national reconciliation efforts of international and national justice (tribunal/special courts/national and local courts and Truth and Reconciliation Commissions (TRCs)).

i. Are the international justice efforts an initiative of national leaders or of an international body?

ii. Are the efforts supported by national leaders from the post-conflict government?

iii. By whom is it financed?

iv. Who stand trial in these courts?

v. What are the rules of attendance and the procedural laws?

vi. How are these institutions perceived by experts/NGOs/involved actors?

C) Post-conflict politics.

i. Is the process of reconciliation mentioned and used during election times?

ii. Is there an effort to democratize society?

iii. Are there free and fair elections?

iv. Are there multiple political parties participating during election times?

v. What is the status of the freedom of press/ freedom of expression/ freedom of association?

The pragmatist approach dominates in explaining the choice for reconciliation.

2A: states choose for reconciliation on the basis of self-interest and political power

2B: states believe that justice is not always necessary

2C: states believe that justice is sometimes better in a later stage

2D: states believe in the usefulness of amnesties.

A) Statements of state leaders.

i. Do they refer to the necessity and timing of reconciliation/justice?

ii. Do they refer to the role of amnesties?

B) The present international and national reconciliation efforts of national and international justice (Tribunal/special court/national and local courts and Truth and Reconciliation Commission (TRCs)).

i. Who are organizing these courts?

ii. Who stand trial in these courts?

iii. By who are the efforts financed?

iv. What are the rules of attendance and the procedural laws?

v. How are these institutions perceived by experts/NGOs/involved actors?

C) Post-conflict politics.

i. Is the process of reconciliation mentioned and used during election times?

ii. Is there an effort to democratize society?

iii. Are there free and fair elections?

iv. Are there multiple political parties participating during election times?

v. What is the status of the freedom of press/ freedom of expression/ freedom of association?

D) Amnesties

i. Are there grants of amnesties?

ii. Who are granted amnesty?

1.4.2. Case selection

The research method that will be used here is a case comparison. The aim is to use easy cases or most likely cases that are typical examples of reconciliation. The purpose of using these typical cases is to use them as a so called 'first crash test' in order to show or illustrate in what way reconciliation might be used for other purposes. This method is appropriate here because it seems there is not much substantial, theoretical material on this subject. This study will use two case studies, namely Sierra Leone and Rwanda. Almost half of all African countries and one in three Africans are affected directly or indirectly by conflicts (Devictor et al. 2002: 1). This means that the continent is of great importance when we want to gain insight in post-conflict development and reconciliation, since Africa has had a lot of experience in both these processes. Furthermore, reconciliation has existed for centuries in African societies where the aim was to reconcile disputing parties and restore the relationships within the community instead of punishing the guilty (Daly & Sarkin 2007: 7). This makes the continent even more worth studying on the subject of reconciliation since the concept has been a part of its cultural history.

Sierra Leone and Rwanda both experienced a violent conflict in the 1990s. In 1994, between March and June, between 800,000 and 1,000,000 people were killed in Rwanda. Although the conflict was more complicated, it is mostly referred to as a massacre of Tutsis by Hutus. Most people were killed by means of machetes (Govier 2006: 259). The conflict in Sierra Leone started in 1991 when the Revolutionary United Front (RUF) started a civil war against the government. The war lasted for more than ten years and was mostly known for the recruitment of child soldiers, gang rape of women and girls and brutal amputations (Govier 2006: 268-270).

The case of Rwanda is mostly presented as a role model of successful rapid economic restoration. The data of the World Bank show the differences between the two cases. Sierra Leone has 66.4 % of its population living in poverty, while in Rwanda this number is 58.5 %. The life expectancy in Sierra Leone is 48 while in Rwanda it is 51. Especially the literacy rate shows a remarkable difference; in Sierra Leone it is only 41 %, while in Rwanda it is 71 %. Finally, the urban development such as improved sanitation facilities and access to them for the population is in Sierra Leone only 24 %. In Rwanda this number is 50 % (World Bank Website). This means that after the conflict both cases have not recovered to the same level. Besides these data, the literature also makes a distinction between the two cases. Rwanda is seen as an example of a remarkable transformation. Montei states that the Rwandan president Kagame has focused on campaigning hope and economic development which has led to a 'thriving economic system built on concepts of national self-reliance and global competitiveness' (Montei 2011: 82). The opinion on Sierra Leone is a lot more careful. Andrew Grant (2005: 443) recognizes that Sierra Leone faces major obstacles such as poor governance and corruption. These differences make it interesting to compare both cases and determine how the choices for reconciliation strategies differ.

Both cases used a mix of international and national initiatives, in their post-conflict strategies. Since legalists only favor international justice and pragmatists do not rule out any form, the two cases are appropriate examples to be studied. It will be possible to both examine the international justice favored by legalists and also the granted amnesties, favored by pragmatists. A case comparison of these two countries is therefore interesting because it is a chance to enhance the knowledge of what influences the decision of a state.

1.5. Rwanda conflict and reconciliation initiatives

Belgium inherited Rwanda from Germany after the First World War. The Belgians ruled by indirect rule; the ruling Tutsis were given the power. After the death of King Mutara III in 1959, the conservatives crowned his younger brother as the new king. However, the opposition demanded independence from Belgium. In 1960 the king was overthrown and the road to independence opened up (Nyankanzi 1998: 8). From that time on, several attacks were conducted on the Tutsis by the Hutus (Nyankanzi 1998: 8-10). As a result the exiled Tutsis organized themselves in the Rwandan Patriotic Front (RPF) with Paul Kagame as leader and they started attacking Rwanda`s military positions (Nyankanzi 1998: 9). However, in 1993 a Peace Accord was signed between the RPF and the government. The UN arrived to monitor the Arusha Peace Accords. The Accords were never taken into effect (Nyankanzi 1998: 29).

These events show that prior to the 1994 genocide, the tensions between Hutus and Tutsis had already been tense and hostile for several decades. On 6 April 1994, the plane of President Havyarimana crashed. Both Havyarimana and the President of Burundi, Ntaryamira were found dead. This event triggered off the mass killings (Nyankanzi 1998: 29). Within 24 hours Kigali was full of road blocks and the Presidential Guard went through the city killing members of the opposition. Hutu`s moved from house to house to slaughter every Tutsi they could find. Women`s breasts were sliced as well as the men`s genitals. Most Tutsi`s were buried in mass graves or left rotting somewhere. Some were buried up to their neck and left to die (Nyankanzi 1998: 11). Within a few days all Western embassies closed their doors and evacuated their staff. The UN troops were cut back to 270. More than 500.000 refugees fled to Tanzania within the first 24 hours of the genocide (Nyankanzi 1998: 29-30). Finally 3 months later, on 4 July, the RPF captured Kigali and declared a cease fire 2 weeks later (Nyankanzi 1998: 30). That meant the end of the genocide

After the genocide in 1994, the government adopted a policy of National Unity and Reconciliation. The policy had the aim to build a new society which would be based on the assumption of Rwandaness. A Commission was installed that served as a platform for discussions and debates on issues of education and peace building, by teaching seminars , organizing discussions, workshops and training (Grohman 2009: 21). The NURC was established by the Act of Parliament in 1999 (Natalya Clark 2010: 139). The NURC shows with its name the goal of the government of Rwanda which is Unity. This Unity is achieved by creating a Rwanda identity or Banyarwanda identity that rises above the ethnicities (Natalya Clark 2010: 137). The NURC is initiating reconciliation through the creation on a unity identity that suppresses the ethnic differences in the country. Clark calls it ethnic amnesia (Natalya Clark 2010: 141). That means the past cannot fully be addressed and thus reconciliation is hard. Several other initiatives were set up by the government: the Ingando, the Gacaca courts, the TIG community service and the Imidugudu (Grohman 2009: 21). The Ingando is the name in Kinyarwanda for workshops that are organized for several groups of a society such as ex-combatants, traders, survivors and prisoners. Subjects of the workshops are among others, the history of Rwanda, political issues and economic issues. However, some institutions which researched the practices of the Ingando conclude that the history lessons just blame colonizers for the conflict and only present the facts that prove Hutus are to blame for the genocide (Grohman 2009: 21).

The Gacaca courts, community-based courts which have their origins in the Rwandan tradition, were presented as the Rwandan answer to the genocide. Judges are part of the community and the accused are given incentives for their confessions, which have to be answered by the victims with forgiveness (Grohman 2009: 22). However, the Gacaca courts were an emergency measure to

cope with the crises that arose after the genocide. Since participation in the genocide had been so widespread, around 120,000 people ended up behind bars after the genocide. At the same time the Rwandan justice system was destroyed by the war and could not manage the high number of suspects. It would have taken up to 200 years to prosecute all prisoners (Molenaar 2005: 2). In elections in 2001, every community in Rwanda chose 19 persons to serve as judge in the Courts (Longman 2010 50). Each community started with a public meeting to develop a record of the committed crimes which also included a list of the killed people. The persons accused of either organizing or participating particularly viciously were still tried in the national courts (Longman 2010: 51). By 2010, over 1.5 million cases were treated in the Gacaca Courts (Longman 2010: 49). Despite its innovative image, the Gacaca courts have received a lot of criticism; the courts are considered to be one-sided, often neither victims nor perpetrators are satisfied with the verdicts and finally the courts are prone to manipulation (Grohman 2009: 22).

The TIG community service means convicted perpetrators can choose to do community service half of the time instead of spending the entire sentence in prison. They construct roads, build houses etc. They help to restore what was destroyed during the genocide. The workers also receive lectures on topics similar as the ones in Ingando (Grohman 2009: 22).

The Imidugudu is a villagisation project that seeks to resettle people, who had been living in houses across the hills in artificial villages. Most of them are refugees returning after the war who have lost their land due to the fact that someone else took the land during the conflict (Grohman 2009: 23).

The International Criminal Tribunal for Rwanda (ICTR) was created by the UN Security Council by resolution 955 on November 8 1994 and it is based in Arusha, Tanzania. The court receives its budget from the UN, approved by the General Assembly (ICTR website). The website of the court says that the ICTR is relevant to peace and justice by teaching African countries the lesson of `never again`, due to the fact that it is bringing high-ranked individuals to trial. It also enhances the cooperation between different African countries because the accused were transferred to the court by different countries (ICTR website).

1.6. Sierra Leone conflict and reconciliation initiatives

Freetown, the capital of Sierra Leone, was established in 1787 by the British for repatriated and freed slaves. Two hundred years later Sierra Leone became independent in 1961. Hopes for a democratic nation were very high. However, soon these hopes were destroyed (Vehnamaki 2002: 62). After failed elections in 1967, a military regime was established; president Stevens relied for security on a

paramilitary body (Reno 2001; 149). Since then, dictators have dominated the political landscape in Sierra Leone.

During the 1980s Sierra Leone experienced an economic downfall which led to a high national unemployment rate. In 1991 the civil war started when a rebel movement, the Revolutionary United Front (RUF), officially demanded from the government to quit their corruption, install a multi-party system and restore the economy (Vehnamaki 2002: 62). Former army corporal Foday Sankoh and the RUF crossed the border from Liberia into Sierra Leone. The RUF received backing from Charles Taylor, then head of the National Patriotic Front (NPFL). Taylor allegedly benefited by receiving diamonds as exchange for his support (Reno 2001: 150). In 1999 the government of Kabbah and the RUF signed the Lomé peace agreement which included disarmament of all groups and the conversion of the RUF into a political party (Reno 2001: 153). However, due to various factors the Lomé peace agreement failed to bring lasting peace and the war continued (Reno 2001: 155). Britain stepped up its engagement by deploying 550 military personnel which finally led to the end of the war (Reno 2001: 158). After ten years, 75.000 deaths and hundreds of thousands refugees, the war ended in 2002. However, the country had to live on with its prominent deep wounds; the RUF was well-known for its brutal strategy to amputate limbs of the civilian population (Vehnamaki 2002: 67). It has been argued that the main cause of the conflict was the economic situation of the people that did not improve since the economic downfall of the 1980´s and excluded mainly the younger generation. David Keen argues that the brutal violence in Sierra Leone aimed at humiliating the victims extremely. For many adolescents it was an opportunity 'to turn the tables'. They themselves had been humiliated before the war when the education system collapsed and schooling became a privilege instead of a right. According to Keen the shame of being excluded from education, which meant modernity, was not bearable (Keen 2005: 72).

After the conflict had ended, the government of Sierra Leone wrote a document called `the National Recovery Strategy`. Although a large part of the document focused on the recovery of the economy, attention was also paid to the importance of reconciliation and peace building (National Recovery Strategy 2002). The Special Court for Sierra Leone was set up jointly by the government of Sierra Leone and the UN. It aimed at bringing to trial, those who are most responsible for serious violations of international humanitarian law and Sierra Leonean law committed in Sierra Leone since 30 November 1996. The trials of three former leaders of the Armed Forces Revolutionary Council (AFRC), of two members of the Civil Defense Forces (CDF) and of three former leaders of the Revolutionary Front (RUF) have been completed. The trial of former Liberian President Charles Taylor is in the defense phase at The Hague (The Special Court for Sierra Leone website).

The Truth and Reconciliation Commission for Sierra Leone was created because it was believed that only the understanding of the horrors of the past and knowledge about them are deterrents against conflict and war. According to the Commission Sierra Leone as a nation had to express and acknowledge the suffering, had to explain and contextualize decisions and conducts, had to heal personally and nationally, and build accountability in order to deal with impunity. The Commission was set up to reach these aims. The Sierra Leone Parliament made provisions for the Commission in 2000 by the Truth and Reconciliation Act, 2000. The Commission was supported in its efforts to raise funds by the United Nations Office of the High Commissioner for Human Rights (OHCHR) (Truth and Reconciliation Commission for Sierra Leone website).

1.7. Data collection and method of analysis

The data collection method mostly depends on documentary data collection. Since the focus of this study is on the post-conflict phase of the countries, the sources should originate in the case of Sierra Leone after 2002 and in the case of Rwanda after June 1994.

The statements of state leaders were derived from public speeches and quotes from interviews in newspapers, magazines and on radio or internet websites. Media sources of foreign newspapers on the subject can be used to gather information through Reuters and BBC World reports. On a national level, national newspapers can be used. Some sources are pro-government, state- owned or private. That means it is hard to find unbiased information. But by using a variety of sources and comparing information given out, it is possible to compare and weigh the information and estimate the reliability of it.

Also, primary sources of statements of the governments are gathered from governmental publications as policy documents that are published on the governmental websites.

A good secondary source is reports from NGOs especially those dealing with the post-conflict reconstruction process. A good example would be the International Crisis Group which has a very objective view on conflicts and the post-conflict situation. Crisis Group wrote several reports on Rwanda, namely `The International Criminal Tribunal for Rwanda: time for pragmatism`, `Rwanda at the end of the transition: a necessary political liberalization`, `The International Criminal Tribunal for Rwanda: the countdown`, `Consensual democracy in post-genocide Rwanda: evaluating the March 2001 district elections` and `Five years after the genocide: justice in question`. On Sierra Leone they published the reports `The Special Court for Sierra Leone: promises and pitfalls of a `new model`` and `Sierra Leone`s Truth and Reconciliation Commission: a fresh start? `.

Human Rights Watch published several reports on the post-conflict reconciliation process of Rwanda, particularly focusing on the local Gacaca courts , which is called `Justice compromised`.

Penal Reform International monitored the Gacaca courts for several years and wrote the report `Eight years on: a record of Gacaca monitoring in Rwanda`. Human Rights Watch also wrote several reports on Sierra Leone, two of them on the Special Court for Sierra Leone: `Justice in motion` and `Bringing justice: the Special Court for Sierra Leone`.

In order to gather information about international courts or reconciliation commissions also primary sources are gathered from their statements and documentation on the cases and reports on sessions. These can be derived from their websites: www.sc-sl.org (Special Court for Sierra Leone) and www.ictr.org (International Criminal Tribunal for Rwanda). The website publishes the daily minutes of the cases on trial and keeps a daily journal. The website of the TRC in Sierra Leone is no longer online but the final document was published on http://www.sierra-leone.org/TRCDocuments.html. The documents of the national court in Rwanda, the Gacaca court, can be found on http://www.inkiko-gacaca.gov.rw/En/EnIntroduction.htm.

The grant of amnesties is often decided during the peace process and can be found in peace agreements. In the case of Sierra Leone this is the Lomé agreement of 1999. In the case of the Rwanda conflict no agreement was reached on this subject. So the grant of amnesties can only be found in the media that mention it.

The International Crisis Group could be used since it also monitors elections in states. Human Rights Watch and Amnesty International will also be used for that purpose since they are internationally well-known and respected for monitoring the political processes. Media sources can also be used on the subject of post-conflict campaigns. Secondly the websites of political parties can be used as primary sources. The human rights mechanism Universal Periodic Review can be consulted to see how free the countries are and what the status of human rights is. The documentation of the UPR can be found on www.ohchr.org.

The method of analysis entails a comparative case study of two cases. In order to examine the statements made by state leaders on the four formed hypotheses, a discourse analysis will be used. A discourse analysis will be used because that is the only way to identify and interpret the statements made by leaders on the subject of reconciliation. Because the choice and strategy of reconciliation entail more than just the words of leaders, the other indicators will be used to examine the actions of state leaders. These will be analyzed by the method of process tracing. This method seeks the causal mechanisms that may lead to the outcome. The method of process tracing will be used to find out whether it affirms the proposed hypotheses. This method is the most appropriate here because it identifies existing causal mechanisms and thus is useful as a first test whether the proposed hypotheses are worth building on further. Process tracing also finds alternative pathways

that lead to the outcome which helps in avoiding equifinality. The concept of equifinality means there are more possible pathways that lead to the outcome.

Chapter 2: Legalist arguments

2.1. Introduction

The post-genocide society of Rwanda and the post-conflict situation in Sierra Leone are the focus of this chapter. On the basis of the collected evidence we will determine whether the cases are in favor

or against the identified sub-hypotheses of the legalist approach. All three sub-hypotheses will be reviewed on the basis of the public statements made by the government, the existing reconciliation projects, initiated by the government and finally the post-conflict politics. We will first consider the evidence regarding Rwanda and at the end present a conclusion. In the second section the case of Sierra Leone will be analyzed in the same manner. Finally, we will make a comparison between both cases in order to determine the similarities and differences.

2.1.1. The legalist arguments in the case of Rwanda

2.1.2. Hypothesis 1: a society`s duty to choose reconciliation

Legalists highly value the promotion of universal norms and values. Legalists argue that the decisions of actors are guided by the norms that they believe are important. One of these norms is the argument that it is a society`s duty to choose reconciliation. After a conflict, it is necessary to redeem society in order to achieve peace. Justice is one of the ways to do so. In order to find the answer on whether the government of Rwanda agrees it is a society`s duty to opt for reconciliation, the public statements made by the government will be reviewed to determine whether they refer to this argument. Secondly, the reconciliation initiatives, set up by the government, should show this norm; from the perspective of perpetrators, victims and government these projects are committed to the goal of reconciliation and thus imply the belief in the duty of society? Finally, the post-conflict politics are crucial in showing the same result; if the government of Rwanda agrees with legalists it is its own- and a society`s duty to reconcile it should be committed to developing a peaceful and stable political climate in which reconciliation takes place. The indicators for such a situation will also be the opinion of the stakeholders and experts.

2.1.2.1 Reconciliation or victor's justice

Paul Kagame, President of Rwanda since 2000, argues that it is a leader`s task to ensure reconciliation and peace. During the 13th commemoration of the genocide of 1994 he said: `For the politicians and religious leaders to carry out their duty of preaching the word of God, reconciliation and peaceful coexistence, we should all work together in order to courageously own up to the wrongs that we committed ` (www.gov.rw). In this statement Kagame not only refers to a leader`s duty but by saying `we should all`, he involves also the citizens of Rwanda. Thus, Kagame here confirms that he chooses reconciliation due to a feeling of obligation and necessity.

During the 15th commemoration speech, Kagame said: `Looking at the demand for justice, part of our achievements has been how we have addressed the need for justice and the need for

reconciliation, with all the underlying complexities, and managed to make progress ` (www.gov.rw). Here, he implies that a society needs justice and reconciliation in order to progress.

Mr. Habyalimana, the Executive Secretary of the National Unity and Reconciliation Commission (NURC) says: `Unity and Reconciliation is a fundamental process for lasting peace and durable development in our country. The success of this policy is above all a challenge for not only political leaders, but all other leaders and educated Rwandans as well` (NURC). The President of the NURC, Bishop John Rucyahana says: `Unity and Reconciliation is a very focal point and imperative requirement for Rwandan recovery. It is the source of energy to engage our hope. Unity and Reconciliation also fuel peace, security, democracy and development` (NURC). Both acknowledge that reconciliation is necessary and imperative which means they argue in favor of the hypothesis. With that, both Habyalimana and Rucyahana argue that the government of Rwanda claims to agree that it is a society`s duty to reconcile.

During the 13th commemoration of the 1994 genocide, Kagame said: `As we develop, correcting bad practices and holding those responsible accountable for their misdeeds, we will continue to work to ensure that Rwandans regain the value that they deserve ` (www.gov.rw). During the 18th commemoration of the genocide Kagame argues that some of the perpetrators are still moving freely abroad. They should be brought to Rwanda to face justice (www.gov.rw). According to Kagame, holding those responsible accountable for their misdeeds has as a consequence that Rwandan citizens regain their value. However, statements of governmental leaders might be biased and thus it is important to review other factors.

On the international level, statements have been made on the post-conflict transformation of Rwanda. A spokesman of the ICTR, Roland Amoussouga, stated that the community-based Rwandan courts had helped bringing about justice and reconciliation in Rwanda (BBC Monitoring Africa 2007). The European Union (EU) representative to Rwanda, Jeremy Leister, has complimented the country for its achievements after the genocide in 1994. ´More progress has been made than could have been dreamed of 10 years ago. Progress in good governance and establishing of new institutions to govern this country were put in place. Senate, Parliament, Ombudsman, tender board, auditor general, it is a long list´ he said (Xinhua General News Service, May 2004). Leister`s quote implies that the difference between the devastation after the war and the current situation shows that progress has been made in the country. In 2000 the EU had officially allocated 7.2 million euros to support the justice system and civil society in Rwanda (BBC Worldwide Monitoring 2000). That implies that the EU trusts the government in successfully developing this process. These quotes show that internationally the perception of both the Gacaca Courts and the reconciliation process in Rwanda in general is positive.

Although the objectivity of Rwandan newspapers is questioned, it is interesting to review their opinion on the post-conflict situation of Rwanda. The newspaper ´The New Times´ writes: `If you want more evidence to corroborate the scientific research, visit any Mudugudu, and see for yourself how people live harmoniously, intermarry, share food and drink and together work on development projects. Listen to local leaders and judge for yourself how the citizen is involved in governance issues including his/ her physical and social security. All these underpin the reconciliation process ` (The New Times, February 10, 2012). Rwanda has often been condemned for its lack of press freedom and thus it is difficult to use a statement made in this newspaper as evidence for the belief in and commitment to the reconciliation process. Nevertheless, we can conclude that the government of Rwanda attempts to be seen as committed to the reconciliation process which is shown by the public statements and the articles in national newspapers.

While the statements of Kagame imply he argues in favour of a society`s duty to reconcile, his actions can be interpreted differently. The existence of the Gacaca Courts and the activities of the National Unity and Reconciliation Commission (NURC) imply a true commitment of the government to the reconciliation process. However, the crimes committed by the Revolutionary Patriotic Front (RPF) are not dealt with in the Gacaca courts or the other courts. Instead, RPF crimes are prosecuted by the military tribunal. However, in 2002 only 20 cases were tried by the military tribunal (Sosnov 2007: 133). This situation is in the eyes of many Rwandans victor`s justice and implies that the government of Rwanda is less interested in reconciliation and justice regarding the RPF crimes.

The exclusion from RPF crimes from the Gacaca Courts and the normal courts shows a discrepancy between the statements made and reality. The picture painted appears to imply victor`s justice and not the feeling of a government`s duty to reconcile the society. Despite the low number of cases tried in military tribunals, since the cases of RPF crimes are still up to a certain extent prosecuted, the hypothesis can be affirmed. Because taken together, the public statements, the existence of the Gacaca courts and the prosecution of RPF cases, the choice of the government of Rwanda can be affirmed by hypothesis 1.

2.1.3. Hypothesis 2: the deterrent and preventive effect of justice

Legalists argue that post-conflict justice has a deterrent effect because it places collectively committed crimes on the shoulders of an individual and because post-conflict justice sends out the message that any future committed crime will be tried as well. Finally, legalists claim that other stakeholders will study these phenomena and will demand the same in another conflict situation. However, the first two are the most important. The case of Rwanda will be tested first by examining the statements of politicians on references made to these arguments, second by examining the

purpose, practice and effect of the reconciliation projects and finally by reviewing the post-conflict politics on references to this belief, policies aimed at sending out this message and the effect of these policies.

2.1.3.1. Promoting stereotypes

The government of Rwanda has spread the message to its citizens that it is determined to bring every participant of the 1994 genocide to trial. That message is demonstrated by the development of the Gacaca courts which were set up to deal with the high number of accused persons. Unlike other countries, Rwanda has brought to trial almost every individual that participated in the genocide. It implies that the government of Rwanda attempts to send out the message that it will not only make sure that every individual, no matter how small the crime was, will be held responsible but also that the courts will have a deterrent effect for the future.

The hypothesis here was that by putting the guilt of a collective genocide on the shoulders of an individual, justice serves as a deterrent tool. However, trying as many Hutus as possible, justice has a different effect; according to `the New Times` 1.5 million cases were tried in 2009 in the Gacaca courts, which is impressive with a population of around 11,000,000 (Index Mundi estimation 2012). This high number of accused Hutus is intimidating to the rest of the Hutu population (Longman 2010: 52). The government´s strategy promotes the stereotypes of the genocide; Hutus as perpetrators and Tutsis as victims. As a consequence Hutus are stuck with the label 'genocidaire'. That label reaches far and has even affected Hutus living in the Democratic Republic of the Congo (DRC), where they were also criminalized and intimidated (Wielinga & Harris 2011: 21). It implies that the Gacaca courts had less to do with teaching citizens about the individuality of the committed crimes. The government sends out a message to frighten and intimidate the Hutu population. In that sense justice might be serving as a deterrent and preventive tool but not on the grounds of legalism. One can thus conclude that the hypothesis cannot be confirmed since there is no sign of the same argumentation behind the policies as legalists would use.

2.1.4. Hypothesis 3: Actors choose reconciliation because they believe in the educational component of war crime tribunals

As we have seen above, legalists believe that actors choose reconciliation and specifically justice because it serves as an educational example for societies. It will lead to societies reexamining their way of dealing with atrocities. In order to examine this hypothesis in the case of Rwanda, three different factors will be examined; the references made to this belief in the public statements of government officials, the reconciliation initiatives that show in their messages, policies that effect

this assumption, and finally the post-conflict politics that try to achieve the status of an educational example through its references to these messages and policies.

2.1.4.1. An anti-foreigner attitude

Serving as an educational example for other societies implies that a government cares about the opinion of the international community. However, the Rwandan government contradicts that assumption. During interviews abroad, Kagame often appears not to be interested in the opinion or influence of the international community. It is often argued that his attitude is a consequence of the international community`s attitude at the time of the 1994 genocide. During the 15th commemoration of the genocide, Kagame said: `No one else other than ourselves owns that future, no one can decide it for us. But we welcome all those, including the friends I mentioned earlier, to give a hand in helping us to shape that future` (15th commemoration, Government website). Whenever an interviewer abroad tries to mention the current political situation in Rwanda, Kagame is not impressed. In an interview in France he answers to the question whether a Hutu will be ever president: `and why not a white man? You, Westerners, reduce everything to a tribal issue. Look, I was elected with over 90% of the vote. Rwandans vote according to political criteria. We must move beyond this tribal reading ` (La Liberation 2011). To the alleged human rights violations in the country he answers that NGO´s do not base their reports upon field research. 'If they would want to know the truth they should ask the Rwandese what they think about the situation' (La Liberation 2011). The fact that Kagame was re-elected with over 90% of the votes is justified by him with the argument that Rwandese choose security and economic development. The same attitude can be identified in other interviews with foreign newspapers (Der Spiegel 2010, BBC 2009, CNN 2010, France 24 2011). During the 18th commemoration of the genocide, Kagame referred to the hypocrisy of the West and the double standards it has; the West should not condemn Rwanda for a lack of democracy and at the same time not bring Rwandese perpetrators living abroad to justice (18th commemoration). These statements thus show the distant attitude of Kagame towards the international community. It means that Kagame did not choose reconciliation because he would like his country to serve as an example for other societies. In fact, he is not interested in other societies` opinions. On the other hand, Kagame recently announced that he wants to lower the state`s dependency on foreign budget. Almost 50 percent of the state`s budget is dependent on foreign funds (News of Rwanda, 2012). Despite this announcement, it means that Rwanda for years has been depending partly on a foreign budget while also demonstrating an anti-foreign attitude. It brings to mind that Kagame`s attitude in practice is not that strong compared to his words in public. It makes his statements less credible and it shows the need to compare the statements with the policies in reality.

There is no better stage to be an educational example for other societies than the international stage. The International Criminal Tribunal for Rwanda (ICTR) was created on request of Rwanda. But the conditions imposed by the UN Security Council – abolishing the death penalty, the headquarters of ICTR should be based outside Rwanda, foreign judges and prosecutors should be included, a mandate that excludes the pre-1994 events and a shared prosecutor with the International Criminal Tribunal for Yugoslavia (ICTY) - led to the fact that in the end Rwanda was the only country that voted against the establishment of the ICTR on November 8, 1994 (ICG 2001: 19). In April 1998 Rwanda published a position paper on the ICTR. It criticized the Court`s problems and stated that `the tribunal was not created to get justice but to nurse the guilt of the international community` (Sosnov 2007: 129-130). Until 1997 the court progressed very slowly and had a low profile. The court was led as an UN agency and that caused several structural problems because a large majority of the administrative staff is UN civil servants (ICG 199: 23-24). These events have led to most Rwandans being skeptical and perceiving the ICTR as a distant institution (ICG 1999: 27). It means that the people of Rwanda themselves don`t perceive the ICTR as an educational example and the government has not contributed to the progress of the ICTR. One could argue that the UN practically made it impossible for Rwanda to cooperate with this initiative since they were the first to request such a tribunal. However, if the government of Rwanda had been truly committed to serve as an educational example internationally it would not have turned its attention to the national efforts but would have remained committed to the ICTR.

Serving as a national example for its own society, the government set up the National Unity and Reconciliation Commission (NURC), which coordinates the reconciliation process in the country. Its efforts are diverse; it conducts education programs in schools, it organizes solidarity camps where Hutus and Tutsis live and work together in order to promote national consciousness and every year the impact of its programs is assessed with a seminar held with the President to discuss issues related to reconciliation. The government of Rwanda promotes sports to bring Rwandans together. Omuganda, community work during every last Saturday of the month, is also meant to promote the interpersonal relations within neighborhoods (The Independent July 2010). And finally, the Ingando or solidarity camps are focused upon re-educating the citizens of Rwanda (Grohman 2009: 21). These initiatives are focused upon promoting national reconciliation but also on educating or re-educating its people. In that way the government does attempt to serve as an educational example for its own citizens. However, Rwanda serves much less as an educational example on the international level and with that the hypothesis cannot be confirmed.

2.1.5. The pitfalls of legalism

The statements of the government of Rwanda refer to a society`s duty to reconcile. Quotes from international individuals and national newspapers show a fairly positive view on the accomplishments of Rwanda after the genocide. From these facts, the conclusion can be made that the government of Rwanda chose reconciliation because it claims to behave according the obligation of a society to reconcile. However, the exclusion from RPF crimes from the Gacaca Courts and the normal courts shows a discrepancy between the statements made and reality. The painted picture appears to imply victor`s justice and not the feeling of a government`s duty to reconcile the society. At the same time, since the cases of RPF crimes are still to a certain extent prosecuted in military tribunals, the hypothesis can be confirmed.

Legalists assume that justice has a deterrent and preventive effect. The case of Rwanda shows that the government of Rwanda acts also according the claim that actors use justice as a preventive and deterrent tool. But the government does not appear to do so on the same grounds as legalists; It has led the Rwandans to confirming the stereotypes of the war in which the Hutu`s are perpetrators and Tutsi`s are victims. With that the government has not placed the guilt on individuals as the legalists assume. Rather, it has placed the guilt on a whole group which does not fit within the legalist hypothesis.

The attitude of the government of Rwanda demonstrates it is not interested in serving as an international educational example. However, although legalists do not focus on that specifically, the existence of the NURC and its projects, show that Rwanda is serving as a national example and with the legalist hypothesis seems to be confirmed.

Overall, it is the question whether the main legalism hypothesis can be confirmed; does legalism dominate in explaining the behavior of the Rwandese government regarding the reconciliation process? Since only the first hypothesis can be confirmed in the case of Rwanda, it is impossible to confirm the legalist hypotheses. However, to reach a more comprehensive answer it will be necessary to analyze the case of Sierra Leone.

2.2. The legalist arguments in the case of Sierra Leone

2.2.1. Introduction

In this section we will focus on the case of Sierra Leone from the legalist perspective. On the basis of the collected evidence in favor of, or against the hypotheses of legalism, we will determine whether from a legalist point of view it is explainable why states choose reconciliation. Three factors will be taken into account; the public statements made by the Sierra Leone government, the existing

reconciliation projects, initiated by the government and finally the post-conflict politics of Sierra Leone.

2.2.2. Hypothesis 1: it is a society`s duty to choose reconciliation

Legalism claims that the decisions of actors are guided by the norms that they believe are important. The main norm of legalists regarding reconciliation is the argument that it is a society`s duty to choose reconciliation. According to legalists this is necessary to recover as society after a conflict in order to reach peace. The case of Sierra Leone will be examined on the basis of three different factors, namely governmental published statements, reconciliation projects and the post-conflict politics.

2.2.2.1. Statements vs. actions

During the inauguration speech of the Truth and Reconciliation Commission (TRC), President at the time, Ahmad Kabbah, stated that the TRC is an instrument for national reconciliation and a means for establishing peace (Sierra Leone Web). At the formal opening of the courthouse for the Special Court for Sierra Leone (SCSL) on March 10 2004, Kabbah stated that the SCSL is a symbol of the rule of law and an essential element in the pursuit of peace, justice and national reconciliation (Sierra Leone Web). Looking at these quotes, Kabbah appears to argue in favor of the importance of justice and reconciliation for peace. In another speech Kabbah argued that there can be no real peace without justice and national reconciliation (Kabbah at Address 57th session of the UNGA 2002). If Kabbah argues in favor of the duty to initiate reconciliation, his statements show here the importance of this process.

In 2003, the SCSL indicted Sam Hinga (CDF), Charles Taylor (Liberia), the late Foday Sankoh, Issa Sesay (RUF), Sam Bockarie (RUF), Morris Kallon (RUF), Augustine Gbao (RUF), Paul Koroma (APRC), Alextamba Brima, Ibrahim Kamara, Moninia Fofana, Allieu Kondewa. They were all charged with crimes against humanity and war crimes (ICG 2003: 4). In 2011 the UK government provided a further 1 million pounds for the SCSL. The grant will help the court conclude the Charles Taylor trial (Concord Times February 10, 2011). The fact that individuals of all rivaling groups identified during the conflict, were indicted shows that the SCSL has the aim to be objective and does not want to be seen as a court that conducts victor`s justice. That way, the government of Sierra Leone appears to try to show its commitment to the reconciliation process. However, total objectivity of the Court would also have meant that former President Kabbah should be tried since he was the former leader of the army during the conflict (Concord Times, 2011). But the indictment of members of the CDF is especially showing the objectivity of the court since the CDF consists of citizens who decided to

protect their homes due to a lack of security in the communities. The SCSL sends out the message that no matter how noble or understandable the cause, accountability is crucial (Weirda 2009: 218).

The government and the SCSL have shown their commitment by involving its citizens in several ways. After the court was established in 2002, the prosecutor David Crane and the registrar Robin Vincent conducted town hall meetings throughout Sierra Leone to give information about the court. That shows the commitment of the court to involve the citizens of Sierra Leone and thus start the process of reconciliation (ICG Report 2003: 13). The fact that the court is actually based in Sierra Leone shows also the attempt to familiarize the citizens with the SCSL. An international lawyer in Freetown said: `The most special thing about the Special Court is that its leaders are trying to ensure that the tribunal has a real effect in the country where the atrocities occurred` (ICG Report 2003: 13).These efforts have generated an effect on the Sierra Leoneans. An opinion poll in Sierra Leone showed that 67 % of the citizens had heard about the Special Court, 62 % considered it necessary and 61 % thought it was intended to benefit the people of the country (ICG Report 2003: 17). The only way a reconciliation process will succeed is by having the citizens involved. These facts show that the government of Sierra Leone has attempted to do so.

In 2011, current President Koroma received the Africa-America Institute's African National Reconciliation and Peace Award on behalf of the people of Sierra Leone (Newswire 2011). The British ex-Prime Minister Tony Blair said: ´Each time I visit Freetown, I see evidence of the achievements. To me, there's no doubt that Sierra Leone is a country on the move and it gives me immense pleasure to congratulate President Koroma and his people on their incredible journey so far.´ The award shows the international appreciation for the progress that Sierra Leone has made. The current stable situation in Sierra Leone demonstrates why Blair congratulates the country. The 2007 elections in Sierra Leone were the first since the war that passed peacefully (Chatham House 2008: 2). This was also largely due to the fact that the National Electoral Commission (NEC) proved to be more resilient and efficient during the election times than expected (Chatham House 2008: 3). This shows that the government of Sierra Leone is attempting to become a democracy and is allowing an institution as the NEC have influence on the election process.

A lot has changed since the civil war in Sierra Leone. A peace agreement is in place, calm elections have been held, and the government is in control of the country. 47,000 combatants put their guns down and begun rehabilitation programs. Around 80,000 refugees have returned home, and tens of thousands more displaced people have been reunited with their families (Christian Science Monitor Boston, September 2002). The RUF has its own political party Revolutionary United Front Party (RUFP) and participated in the 2002 elections. They did not win one seat in parliament. Mr. Collins, one of the leaders of the RUFP, said: ´We are disappointed but it was expected, for these

are early days for us politically.´ However, no matter what, there is no intention to return to armed struggle. ´We are still trying to change the system but now we have a political platform and that's the way we will proceed´ (Christian Science Monitor Boston, September 2002). It shows how much has changed in the country. However, one has to take into account that Blair justifies and congratulates the United Kingdom (UK) as well for helping Sierra Leone. There are a few facts that show the involvement of the UK with Sierra Leone. As a former colony, Sierra Leone is part of the UK´s Commonwealth (UK Foreign and Commonwealth Office) and thus the UK has been supporting the country in different ways including economically. The deployment of 550 UK soldiers to Sierra Leone was one of the factors that ended the conflict (Reno 2001: 158). As is mentioned above, the recent financial contribution of the UK to the reconciliation process in Sierra Leone of 1 million pounds shows the commitment of the UK to the post-conflict situation in Sierra Leone. The involvement of the UK thus has to be justified and as a consequence the UK´s opinion regarding Sierra Leone is less credible.

The problem is that a number of evidences go against these positive factors. One of these is the conclusion of the Truth and Reconciliation Commission (TRC). In 2003 it held public hearings during three months and the same year it had already gathered 6000 public statements (Agence France Press 2003). President Kabbah and other high officials such as former President Joseph Momoh testified for the TRC (Agence France Press 2003). After conclusion of the TRC, a list of recommendations was presented. However, until now most of these recommendations have not been implemented (OHCHR 2012). One of the recommendations was that the government should distribute copies of the TRC report with the findings and recommendations throughout the country. A children's version was printed, audio tapes made and songs composed in local languages, in order to spread the message of the TRC report. Most of these tools failed to reach the communities of Sierra Leone. Many think the government has not been pro-active in organizing the distribution (Inter Press Service, 2010). As a result of the lack of initiative of the government, a NGO ´Fambul Tok´ developed its own reconciliation project. Fambul Tok´s executive director, John Caulker, is a former member of the TRC working committee. He says: ´We have waited for too long but nothing seems to be working practically. The nation is still bitterly divided, families are torn apart and tension is still mounting in the communities. This is why we have stepped in to help heal the wounds of war.´ Fambul Tok has reconciled hundreds of communities by bringing perpetrators and victims together to share their stories (Inter Press Service, 2010). The initiative of Fambul Tok demonstrates that citizens of Sierra Leone are not satisfied with the steps taken by the government.

The concluding report of the TRC also recommended that the government should make reparations to amputee victims, as well as giving free medical treatment and free schooling for their

children. However, such a fund has not been established (Christian Science Monitor, 2007). The lack of commitment of the government implies that although the statements made are consistent with the legalist hypothesis and reconciliation projects were set up, it does not mean that the government of Sierra Leone is choosing reconciliation because it believes in it.

Second, the fact that such a low number was indicted by the SCSL has been judged as a lack of commitment from the government side. It implies the attitude ´let´s get it quickly done´ of the government. An opinion poll showed that only 10 % stated they fully understood the purpose of the Special Court, 43 % expressed no understanding of the Court at all and 68 % did not know the difference between the TRC and the SCSL (ICG Report 2003: 17). The information on these two institutions is scarce in some places of the country. Especially since Sierra Leone has an illiteracy rate of 80%, it is difficult to involve the people of Sierra Leone. The court is also controversial to many who want to move forward and rebuild the economy. The 71.5 million dollar fund, donated by 33 UN member states, could have been used for that purpose (M2, 2004). Others argue that the Court is not credible as long as the government of Sierra Leone is not trying to solve the root causes of the conflict: mass poverty, youth unemployment, regional and tribal divide and corruption (Inter Press Service, 2009).

These factors show contradicting pictures. The statements of the government as well as the international favorable reception should confirm the hypothesis. However, the actions of the government show less commitment to the reconciliation process than was hoped for. This shows the argument of Elster that there is a discrepancy between what governmental actors argue and do in reality. However, since actions are worth more than statements, the hypothesis here cannot be confirmed. Whether the situation in Sierra Leone is explainable form a legalist framework needs to be determined when analyzing the next two hypotheses.

2.2.3. Hypothesis 2: actors choose reconciliation because they believe in the preventive and deterrent effect of war crime tribunals

According to legalism, actors choose reconciliation because they believe that war crime tribunals have a preventive and deterrent effect because it places a collective guilt on the shoulders of individuals and because it spreads the message that future crimes will be punished. We will present the evidence in favor of or against this hypothesis based upon three factors: public statements, governmental reconciliation projects and post-conflict politics.

2.2.3.1. The message of the SCSL

In 2002, the government of Sierra Leone composed the National Recovery Strategy (NRS) for the country. In the NRS, the government argued that it is a challenge for the country to address the past human rights violations that took place during the conflict in order to prevent the reoccurrence of violations (National Recovery Strategy 2002: 47). Although the NRS does not mention international justice, the term ´addressing´ is used which implies prosecuting the human rights violations or acknowledging them in the form of a TRC. According to Kabbah, the TRC will reconcile the population and ensure that Sierra Leone will never again experience the evils of the past conflict (Address by Kabbah public hearings TRC, 14 April 2003). On the SCSL current President Koroma argues that the court spreads the message that `nobody can shoot you away to get to power and expect to get away with it` (Interview with Koroma 2011 Deutsche Welle Radio). With these statements, both the former and current presidents appear to argue in favor of the deterrent and preventive effect of reconciliation initiatives. Kabbah argues he has faith in the effect of the TRC and the SCSL for the stable peace of Sierra Leone. Koroma argues he believes in the deterrent effect of the court because it spreads the message that nobody will be unpunished if he tries to commit any crimes.

According to legalists the deterrent effect comes from the fact that collectively committed crimes are put on the shoulders of individuals. In that sense, the SCSL fits within the legalist framework. It only prosecuted a low number of individuals and claimed it wants to prosecute those who are most responsible. One can doubt however, whether that is the true reason. An underlying argument could be the lack of funding or the desire of the US, the main funder, to show how quick an ad hoc tribunal can work as is not the case with the ICC. Still, taken into account the previous mentioned statements of the government and the existence of the SCSL the situation of Sierra Leone fits within the legalist framework.

On the other hand, true legalists claim that only justice will serve the aim of peace. TRCs are therefore not an option since they prioritize the truth over justice. Sierra Leone has both a court and a TRC which implies that from a legalist perspective that is not the right strategy. Legalists do not take into account the possibility of setting up both a court and a TRC. The existence of a TRC does not necessarily influence the prioritization of justice and thus the choice made by the government of Sierra Leone still fits within the hypothesis. Therefore, it can be argued that the hypothesis can be confirmed since the message sent out by the government is very clear on this subject and the existence of the SCSL confirms the hypothesis as well.

2.2.4. Hypothesis 3: Actors choose reconciliation because they believe in the educational component of war crime tribunals

Legalists claim actors choose reconciliation based upon the argument a country can serve as an educational example of reconciliation and justice since it will lead to societies reviewing their way of dealing with past atrocities. The question is whether the choices made by the government of Sierra Leone can be explained from the legalist perspective. We will confirm or deny the hypothesis on the basis of public statements, post-conflict politics and the reconciliation projects.

2.2.4.1. A hybrid court

The SCSL is an innovative example of post-conflict justice since it is a mixture of national and international effort. The SCSL proves that countries not necessarily have to leave post-conflict justice completely to an international institution as the UN and have the reconciliation process take place abroad, where no Sierra Leonean can stay in connection with it. On the international level the SCSL serves as an example because it is the first court which prosecutes the accused within the country by a mixture of national and international staff. That way the hypothesis can be confirmed because the SCSL proves to serve as an international educational example and leads other to societies reviewing their strategy of dealing with a war past and shows a new possibility of transitional justice.
On the national level, the reconciliation process appears to serve less as an educational example. As has been mentioned before, the lack of commitment to the national reconciliation process of the government as is shown by the lack of implementation of the TRC recommendations and the lack of involvement of the Sierra Leoneans as is demonstrated by opinion polls and the existence of Fambul Tok, imply that the government is less interested in serving as an educational example. This is demonstrated especially when compared to the case of Rwanda where a high effort to re-educate has been made while in Sierra Leone ex-combatants have only received economic aid.

Nevertheless, the legalist theory focuses more on the international level and analyses the effect on other societies to review their own policies. In that way, the case of Sierra Leone and its innovative SCSL confirms the legalist hypothesis.

2.2.5. Legalism as an explanation?

Despite the positive opinion on the progress Sierra Leone made and the statements of governments on the duty of a society to reconcile, there is more evidence proving the contrary. The lack of commitment of the government to follow up with the reconciliation process as stated in the recommendations of the TRC, the poor effort to reach out to communities and the existence of Fambul Tok representing the frustration of persons closely involved with the reconciliation process, paint a different picture. It shows that the government of Sierra Leone does not act according to

what it argues, namely that it is a duty to reconcile a society and thus the first hypothesis cannot be confirmed.

The evidence on the second hypothesis shows that despite the existence of the TRC, the case of Sierra Leone confirms the assumption that the government acts according the belief in the deterrent and preventive effect of reconciliation. Although it is hard to determine whether the published statements are genuine and despite possible underlying argumentation, it can be concluded that the hypothesis can be confirmed.

Despite the lack of effort to serve as a national educational example for the citizens of Sierra Leone, the government shows with the SCSL that it can serve as an international educational example because the country is the first to set up a hybrid court that is based in the country itself. Therefore, the situation of Sierra Leone confirms the assumption that states choose reconciliation because they claim to believe in the educational component of war crime tribunals.

2.3. Rwanda vs. Sierra Leone

Comparing the cases of Sierra Leone and Rwanda regarding the legalist theory shows both similarities and differences. First, we will pay attention to the similarities. Both governments often argue that reconciliation and justice are needed in a society in order to achieve peace. Sierra Leone values justice as a means to achieve peace. Rwanda values acknowledging the past mistakes and holding those responsible for these mistakes. Both cases show that justice and national reconciliation are the basic ingredients for the national governmental reconciliation process. Sierra Leone conducts reconciliation with the SCSL and the TRC. The governmental reconciliation projects of Rwanda are the Gacaca courts, the activities of the NURC and the ICTR. However, the ICTR is organized on an international level and appears also to be against Rwanda`s will. Both cases are mainly concerned with national initiatives; Sierra Leone has a mixed court based on its own territory as well as the TRC. Rwanda conducts its traditional courts and finally refused to cooperate with the ICTR.

Both states seek for truth. Sierra Leone`s TRC gathered a high number of testimonies on the events of the conflict and compiled a list of recommendations for the government. Rwanda`s Gacaca courts are focused upon bringing justice to those who deserve it but they also collect the testimonies of victims and perpetrators. Finally, both Rwanda and Sierra Leone are similar in one respect: both are mostly applauded for their development since the war, Rwanda mostly economically and Sierra Leone democratically. But, the differences between both states are far more interesting.

Both cases confirm the second hypothesis, namely the belief in the deterrent and preventive effect of war crime tribunals. Both Sierra Leone and Rwanda spread the message that perpetrators will be prosecuted. However, the underlying assumption made by legalists is only confirmed in the

case of Sierra Leone which prosecuted only a low number of individuals and demonstrated that it puts the collectively committed crimes on the shoulders of individuals. Rwanda prosecutes every single participant and promotes with that the stereotypes of Hutus as perpetrators and Tutsis as victims and therefore does not argue in line with the legalist framework.

A difference between both cases is that Sierra Leone appears to believe in serving as an international educational example while Rwanda is refusing to cooperate with the ICTR and focuses heavily on re-educating its own citizens. Another difference is that Sierra Leone is attempting to be perceived as objective while Rwanda has received allegations of performing victor`s justice. The SCSL has indicted persons from all different sides of the conflict in order to show the court is not taking any sides. Rwanda has indicted a high number of people with the Gacaca courts. However, it only takes to trial the Hutus who killed the Tutsis. The crimes committed by the RPF were judged by a separate military court and these persons received less high punishments. It raises the feeling of victor`s justice.

Both cases can partly be explained from the legalist perspective. The choice for truth and justice by both governments shows that they act according to the belief in the purpose of reconciliation and confirm the legalist hypothesis on the role justice can play in the process of reconciliation. However, neither of them confirms all hypotheses. Rwanda does not confirm to believe in serving as an educational example and Sierra Leone lacks commitment to prove it truly believes in its duty to reconcile. Sierra Leone also confirms the hypothesis with different arguments from legalism as is shown in the case of Rwanda and its belief in the deterrent and preventive effect of justice. That means it remains to be seen whether pragmatism is dominating more than legalism in explaining the cases of Rwanda and Sierra Leone.

Chapter 3: Pragmatist arguments

3.1. Introduction

In this chapter we will focus upon both Rwanda and Sierra Leone and review the pragmatist hypotheses on the basis of the collected evidence that consists of the public statements made by the government, the existing reconciliation projects, initiated by the government and finally the post-conflict politics. We will present a conclusion on both cases. First, Rwanda will be examined

followed by Sierra Leone. We will compare the cases at the end of the chapter in order to determine the differences and similarities.

3.1.1. Reviewing the pragmatist arguments in the case of Rwanda

3.1.2. Hypothesis 1: self-interest and political power

Pragmatists assume that actors shape their decisions by the distribution of political power. Actors make decisions based upon their perceived self-interest. This means that if the government of Rwanda decides on reconciliation it identifies its self-interest and thus looks for the benefits from reconciliation. Based upon the evidence from public statements, reconciliation projects and post-conflict politics we will analyze how Rwanda is benefitting from the reconciliation process and how its political power is shown.

3.1.2.1. The firm hand of the government

After the genocide, the government of Rwanda promoted the story of one national Rwandese identity (McDoom 2011: 3). Central to the history in Rwanda is a narrative of the groups Hutu, Tutsi and Twa which claims that their ethnic character is not Rwandan, but was constructed by European colonialism and therefore that Rwandan society should be de-ethnicized to restore its pre-colonial unity (McLean Hilker 2009: 82). Although many young people feel that the government has promoted inter-ethnic equality in areas such as access to education, there is a wide-spread perception that the Tutsi are in power and that access to influential political posts and state sector jobs is restricted to a small group of Tutsis close to the RPF inner circle (McLean Hilker 2009: 83).

Although rarely spoken about ethnicity in public, it is always just below the surface in everyday social life and is regularly discussed in the private sphere among close friends and family (Mclean Hilker 2009: 84). The de-ethnicization of society in Rwanda has created an atmosphere in which public discussions about ethnicity are taboo but continue in private (McLean Hilker 2009: 96). It means that the existing identities or stereotypes of Hutus and Tutsis cannot be freely discussed and thus have more chance to persist (McLean Hilker 2009: 96).That is in contrast with for example Rwanda`s neighbor Burundi. There a power-sharing deal was established after the ethnic conflict (McDoom 2011: 9). Burundi shows that it is not always necessary per se to eliminate any ethnicity from public discourse in order to avoid a second genocide.

There are doubts whether a society without ethnicity is emerging in Rwanda. Critics see Rwanda as a society in which the non-violent co-existence is forced upon on its citizens. The policies have little to do with reconciliation (McDoom 2011: 3). When one looks at the Rwandan constitution

on genocide, it describes the genocide strictly as genocide of Tutsis. Also, Article 13 of the Constitution says `Revisionism, negationism, and trivialization of genocide are punishable by law` (AllAfrica.com 2011). It means that any reference to genocide ideology is punishable. But at the same time this law does not give space for nuance and leaves out the massacres of the Hutus who refused to participate or the crimes committed by the RPF (Rwanda Rw´abanyarwanda, interview with Deo Mushayidi 2009). The United Nations (UN) Independent Expert (IE) on minority issues recommended the government of Rwanda to revise the genocide ideology law by precisely defining the crime in line with international standards. Also, he recommended that the law relating to the punishment of the crime of `genocide ideology` is not manipulated or interpreted in a manner that restricts the freedom of opinion (UPR report 2011: 1). The IE urged the government to take immediate action in order to allow journalists, political activists and human rights defenders to exercise their right to freedom of expression. The general recommendations of the UPR report show the same concerns (UPR report 2011: 14-16). These factors imply that there is reason to doubt the emergence of a post-conflict society without ethnicity. The post-conflict politics in Rwanda may appear stable and peaceful but that is only due to a repressive policy of the government. The government of Rwanda defends its tough position stating that it is hard for a society to recover from genocide. Gerry Caplan, a genocide scholar, argues that more societies have taken measures in the past and present to punish those who deny genocide. However, he also recognizes that governments tend to play the `genocide card` to further their interests. He says: `This should concern all who believe reconciliation is vital to the future well-being of Rwandans` (allAfrica.com 2011).

In 2002 during the annual reconciliation summit, it was recommended that the `Mouvement Democratique Republicain` (MDR) should be banned from Rwandan politics since it is proving to be an obstacle for national reconciliation. According to the participants of the summit the MDR was sowing seeds of ethnic hatred (BBC Summary of World Broadcasts October 29, 2002, Tuesday). As a consequence, the MDR was banned in 2003 (Freedom House 2010). This implies that the freedom of political parties is restricted due to the fact that it is possible to be accused of promoting ethnic hatred and thus can be banned. It restricts the political freedom. However, Mahmoud Mamdani says: `after 1994, the Tutsi want justice above all else, and the Hutu democracy above all else. The minority fears democracy. The majority fears justice. The minority fears that democracy is a mask for finishing an unfinished genocide. The majority fears the demand for justice is a minority ploy to usurp power forever` (Sarkin 2001: 149). This shows how the government of Rwanda benefits from the reconciliation process; as a minority it has the power to bring the majority to justice and keep tight control over them. According to a report of the Organization of African Unity (OAU) that is logical: from a government´s perspective it is necessary because without the arrests, the Hutus might

revolt against the minority government (Sarkin 2001: 149). For the reconciliation process the government`s campaign against divisionism and genocide ideology has a bad effect on Rwandan`s ability and willingness to express themselves (HRW 2011: 50). That implies that if the government of Rwanda is genuinely pursuing reconciliation it would have considered the effect of its policies on its citizens. This proves it has not considered the effects of its policies regarding the aim of reconciliation.

Rwanda is often perceived as a stable country. But its apparent stability depends in large part on the RPF and Paul Kagame. The government is sensitive to the views of outsiders given the international indifference to the situation in 1994 (McDoom 2011: 2). It has led to Rwanda being unconstrained internationally since the international community has little leverage over the government due to the history (McDoom 2011: 13). McDoom says: ` Put differently, regime capacity –the ability of the regime to control its population- is a different cause of internal order to regime legitimacy- the accepted right of the regime to govern a people` (McDoom 2011: 4). At the same time, Kagame says: `it is not my duty to create opposition` (the Wall Street Journal 2010). The Minister of Foreign Affairs, Louise Mushikiwabo, denies the repression of other political parties. Speaking about the Democratic Green Party of Rwanda, she says: `Do you think this party is a threat to the ruling party? ` (The New York Times, 2010). She implies that the government of Rwanda does not repress political parties because they are not a threat anyway. However, Rwisereka, the first vice president of the Democratic Green Party, was found dead near the border with Burundi, his head almost detached (Fox News 2010). Also, the European Election Observer Mission questioned the legitimacy of the 2003 elections. The mission stated: `the RPF and its candidate Paul Kagame dominated the two electoral campaigns which were marked by a climate of intimidation, questionings and arrests` (Mbgako 2005: 207). Rwanda`s policies are contradictory on the point of ethnicity; a report of the NURC researched the origins of the genocide in 1994. It concluded that the Rwanda genocide was neither ethnic nor racial based (Shyaka: 38). The notion of the division between Hutus and Tutsis was identity based which was fuelled by colonial powers. The identity crisis that led to the conflict in Rwanda was based upon three factors: the socio-economic crisis, the state crisis or proximity heterogeneity (Shyaka: 8). However, the government does not make an effort to explain the different identities. The before-mentioned factors show that the government puts a huge effort in avoiding any reference to Hutus and Tutsis which implies that it actually fears the issue of ethnicity as if it believed it was one of the causes of the genocide. The issue of the existence or non- existence of ethnicity is important since the policies of the government are based on this issue by propagating the identity ´Rwandaness´.

Another factor is the Gacaca courts. Although the Gacaca courts are often hailed for their traditional origins, there are also doubts about the existence of these grass root courts. According to a Human Rights Watch (HRW) report the community participation in Gacaca courts decreased after a while due to the fact that it costs a day of work and economically most Rwandese can`t afford that. The Rwandese government responded to that by forcing the citizens` participation with fining citizens that would not show up (HRW report 2011: 33). Not only are citizens forced to participate in these courts, there are many concerns about the practices of these courts. It is believed by many that the Gacaca courts are often used for personal gains due to the fact that the courts are held on a community level and many judges are not skilled enough to perform in the courts (HRW report 2011: 47-48). An anonymous source, who has extensive experience in working with the Gacaca courts in Rwanda, stated that the government of Rwanda uses the Gacaca courts to identify if there is still a threat for conflict. By making everybody testify what happened during the 1994 genocide, it is easy to determine who is still a threat. The same source stated that in almost every place where the Gacaca Courts take place, a military official is present. Which might not even be a bad idea since, contrary to the common opinion, the threat could be still present in the country (interview 12 April 2012).

In theory the participants of the Gacaca courts were supposed to discuss all violence that took place in 1994, government officials who were present to observe the process, quickly would intervene when RPF crimes were discussed. Gacaca is generally also assumed to be a traditional African tool for reconciliation. The Gacaca Courts were presented as such and implied the attempt of the government of Rwanda to find an African way to reconcile. In many foreign media and academic articles, Gacaca was referred to as traditional or village (Clark 2007: 775). However, the differences between the modern Gacaca and its predecessor from the past are considerable. Traditionally, Gacaca was only used for minor disputes. It was not used for grave crimes as murder (Clark 2007: 145). Gacaca functioned by the social pressure on members of communities to participate. However, the modern Gacaca is ruled by the government and obliges citizens to participate. These differences change the image of the court. It also appears that the government of Rwanda was using the Gacaca processes to intimidate the Hutu population. It is speculated that over 2 million cases could be tried despite the fact that at the time of the genocide less than 2 million men were old enough to participate in the genocide (Longman 2010: 52). Suspects in the Gacaca courts receive 50 % reduction of their prison time if they confess. They even receive a two third reduction when they confess prior to the Gacaca hearings. The problem with this is that some confess only one or two committed crimes but not more. In order to receive their reduction they are prepared to confess something but not to tell the truth. In order to stay out of the category I placement nobody

confesses more than one murder which together does not add up for the genocide. Category I is reserved for the planners of the genocide and for people who were in high authority positions. Category 2 crimes include murder and bodily harm and Category 3 includes only property crimes (Powers 2011: 1). Also, it is estimated that between 25.000 and 50.000 women were raped. However, no one has confessed any rape case during the Gacaca courts (Longman 2010: 137). The same goes for witnesses. They face criminal liability for what they have witnessed without helping and thus they are reluctant to confess (Longman 2010: 137). There are several cases of genocide survivors who were killed when they were expected to testify in Gacaca courts. Between July and December 2006 there were at least 16 murders and 24 attempts of witnesses (Longman 2010: 138).

The fact that only Hutu crimes are prosecuted and RPF crimes are left aside, establishes the truth before the Courts even started. It shows a one-sided side of the truth in which there is no place for the complicated truth of this genocide (Longman 2010: 139). The truth that has to be told in the Gacaca courts is one dimensional and denies the complex reality. The testimony of a Hutu shows that; he killed people during the genocide while he was married to a Tutsi. He tried to save her and his three children (Thomson & Nagy 2011: 22).

To complicate matters more, the experiences of the Twa are not recognized anywhere (Thomson & Nagy 2011: 27-28). Although it is estimated that only 33 000 people in Rwanda are Twa, they are called the forgotten victims of the genocide. About 10 000 of them, nearly one third of the whole Twa population, was killed during the 1994 genocide. The Twa are a minority group but in general they are seen as associating with Tutsis although both Hutus and Tutsis in general see the Twa as uncivilized and ignorant (Minority Rights Group International 2004).

The initial idea of the Gacaca courts was that those who confessed to be guilty would spend part of their sentence doing public work in the communities where they lived. However, many were sent to work outside their communities in work camps where they repaired roads or maintained city gardens. These jobs have very little to do with reconciling the perpetrators with the communities. Rather, they are used for the benefit of the state (Longman 2010: 51). That shows the government of Rwanda is using the reconciliation process for the state´s own interest.

The existence of the Ingando raises the same concerns as the Gacaca courts. According to Mgbako, the Ingando or solidarity camps have a double goal, both to `plant the seeds of reconciliation and at the same time to disseminate pro-RPF ideology through political indoctrination. Students, politicians, church leaders, ex-soldiers, ex-combatants, ´genocidaires´ and others attended the ingando camps (Mgbako 2005: 202). As is claimed at the Gacaca courts, the Ingando are supposed to be a Rwandan tradition as well. The government of Rwanda legitimizes the existence of Ingando by stating it is a traditional institution. However Mgbako calls it `inventing traditions`

(Mgbako 2005: 208). Mgbako acknowledges the existence of the elders of communities gathering to solve community problems. However, he claims there is very little evidence that these gatherings resemble the Ingando (Mgbako 2005: 208). The Ingando camps were set up in 1996 and it is the plan of the NURC for every Rwandan of majority age to attend Ingando at some point during his or her life (Mgbako 2005: 209). It means a great opportunity for the government teaching the participants their RPF ideology and maintaining power with that. Also, the fact that most lectures at the Ingando are given by government representatives implies that the information taught at the Ingando is biased. Although the NURC claims that any organization is welcome to speak at Ingando as long as they are not supporting genocide ideology, none of the lectures was given by people critical of the government and its policies (Mgbako 2005: 213-214). The fact that the government provides reintegration and economic aid with the Ingando and money to rebels appears to be done out of fear; if it does not assist these rebels in peaceful resettlement they will revitalize the insurgency (Mgbako 2005: 210). Although that appears very logical, it has nothing to do with reconciliation. Rather, it has to do with maintaining the current status quo.

The government is not teaching history in Rwandan schools because the RPF does not know how it wants to present history (Mgbako 2005: 221). History is written by victors and the winners of a conflict need a history that unifies a society. According to Buckley-Zistel part of reconciliation is developing a common history that overcomes the causes of the conflict. However, authorities invent traditions, in order to maintain authority, strengthen social cohesion and create a common culture (Buckley-Zistel 2009: 32). Although Caplan points out that the natural manner of thinking of governments dealing with a post -genocide society and taken the several factors together, it is demonstrated that the government of Rwanda is determined to rewrite history in order to keep a simple and understandable explanation of the conflict in 1994. With that it is implied that the government of Rwanda is focused upon keeping tight control over its population, even when teaching history lessons.

The National Unity and Reconciliation Commission (NURC) claims, on the other hand, that the overall opinion on the reconciliation process in Rwanda is positive. It conducted a research on the opinion of Rwandans on reconciliation, called the "Rwanda Reconciliation Barometer". According to the report Rwandans are proud to be Rwandan and wish their children to perceive themselves as Rwandans instead of an ethnicity. 94% confirmed that common values shared by all Rwandans have accelerated reconciliation and 96% confirmed that every day conduct and actions of Rwandans is conducive to reconciliation (The New Times, February 10, 2012). However, this research was conducted by the NURC, which is responsible for the reconciliation process and thus is faring well on positive results. When a study was conducted by a UN expert, Gay McDougall, on whether the

Rwandans live in harmony, it was condemned by the NURC. The Executive Secretary of the NURC, Dr. Jean Baptiste Habyarimana, stated that the last 16 years have seen great efforts to unite the Rwandan people, and that every study that has been carried out to evaluate the success of the country`s policy has already demonstrated that the Rwandan people are living in harmony (BBC Monitoring Africa February 2011). However, most conducted studies originate from the NURC and it is thus raising doubts why the NURC is so hostile about the study of the UN expert.

As Caplan argues, the government of Rwanda is not interested in true reconciliation. Rather, it is interested in preventing genocide. An anonymous source who has extensive knowledge on present day Rwanda, argues that Kagame uses the fear of genocide of the citizens of Rwanda to remain in power. As Kagame stated before, the citizens choose security and stability and Kagame gives them that in exchange for power (Interview 31 March 2012). Therefore, the first pragmatist hypothesis can be confirmed since the government´s actions imply the desire and interest for holding on to political power.

3.1.3. Hypothesis 2: justice is not always necessary during the post-conflict situation or better set up at a later stage

Pragmatists argue that states do not always think justice is necessary during a post-conflict situation since actors might argue that peace and democracy is more important than justice. Secondly, pragmatists argue that actors claim justice is better implemented at a later stage when the institutions are stronger developed after the conflict. The question is whether these claims are also true in the case of Rwanda?

3.1.3.1. Stability and security

During a visit to the International Institute for Strategic Studies in London, Kagame argued that the most important thing for a country coming out of a conflict should be stabilization and security. According to him that requires strong internal political leadership, systems and institutions (Demotix 2010). The above referred to factors of post-politics and this statement of Kagame show that the government of Rwanda does act according to the idea that stability and security are highly important in a post-conflict society.

However, at the same time, do the existence of the Gacaca courts and the activities of the NURC show that the government does not agree that reconciliation is unnecessary in Rwanda. On the other hand, the Gacaca courts were not set up until 2001 which is seven years after the end of the conflict (Powers 2011: 1). The NURC was not created until 1999 (www.NURC.gov.rw) and as was said before, the Ingando camps were set up in 1996. However, that might not have been based upon

the pragmatist arguments but on logistic reasons. The government of Rwanda developed the Gacaca courts when it realized that the normal courts could not process the high number of cases. It means that the fact that these institutions were not set up right after the conflict because of logistic reasons and not because the government believed the reconciliation process had to be postponed due to the fact it prioritized stability and security over reconciliation and justice.

3.1.4. Hypothesis 3: actors believe in the usefulness of amnesties

Pragmatists argue that actors sometimes choose to grant amnesties to individuals when it serves to strengthen the rule of law in the country. Is this claim true in the case of Rwanda? Based upon the gathered data we will review whether the hypothesis can be confirmed.

3.1.4.1. Convenient amnesties

The government of Rwanda refused to grant amnesty to any genocide participant who committed a more severe crime than property damage (Sosnov 2007: 142). That fact shows the government of Rwanda does not argue in favor of the usefulness of amnesties. It refuses to grant it and even attempts to indict every participant of the genocide. But at the same time, the government of Rwanda carried out a mass release of 23 000 prisoners accused of genocide in 2002. Although the released 'genocidaires' were people who participated in the government confession program, persons who were children during the genocide, elderly or terminally ill, the government still decided to grant these persons amnesty (Mgbako 2005: 222). That implies that although the government claims it is against amnesties, it acts differently in practice. It seems to actually favor amnesties when the persons that are granted amnesties do not belong to the group that conducted severe crimes. However, the mass release might have had little to do with strengthening the rule of law. Rather, it had more to do with the practice of limited prison space. That means, the granted amnesties were not based upon believing that amnesties strengthen the rule of law and thus the hypothesis cannot be confirmed in this case.

3.1.5. The politics of reconciliation in Rwanda

The presented evidence regarding the first hypothesis shows that the hypothesis can be confirmed; states choose reconciliation based upon self-interest and political power. The firm power of the RPF government also means it has a tight grip on the reconciliation process. The Gacaca courts, the Ingando camps and the existence of the NURC points out that the government of Rwanda tries to construct a new post-ethnic identity in which it is clear that the genocide was conducted by the Hutus against Tutsis and shows a forced participation in which there is a clear indication of

indoctrination of RPF ideology. It leads to the conclusion that the government of Rwanda uses the process of reconciliation in order to maintain its power.

The existing reconciliation projects and Gacaca courts show that the government of Rwanda does believe in the necessity of reconciliation and does not believe in setting up these projects in a later stage. The Gacaca courts were set up at a later stage but only because the government realized at that point that it did not have the facilities to prosecute all the accused, not because it believed in strengthening the institutions first before initiating justice. It means that the second hypothesis cannot be confirmed.

The case of Rwanda shows that although some amnesties have been granted to groups of the accused, it does not fit within the logic of the pragmatist hypothesis and the third pragmatist hypothesis cannot be confirmed.

3.2. The pragmatist arguments in the case of Sierra Leone

3.2.1. Introduction

In this section the three different sub-hypotheses of the pragmatist approach will be analyzed on the basis of the found evidence. We will analyze the case of Sierra Leone on the evidence found from public statements, the reconciliation initiatives and the post-conflict politics. Finally, we will present the conclusion regarding Sierra Leone and pragmatism.

3.2.2. Hypothesis 1: self-interest and political power

Pragmatists claim that actors make their choice based upon the distribution of political power and the self-interest that originates from it. In order to confirm or deny the hypothesis, it is important to

identify in what manner the government is benefitting from the reconciliation process it chose. We will do that on the basis of the gathered evidence.

3.2.2.1. The importance of external investment

As is shown by the statements of government officials before, the budget of Sierra Leone depends heavily on foreign countries as for example the United Kingdom. That dependency could be a reason to make certain decisions.

The Vice President of Sierra Leone in 2005, Solomon E. Berewa, argued that foreign investors shy away from countries that are notorious for corruption. Therefore, fighting corruption is crucial and thus Sierra Leone has established the Anti-corruption Act. According to the Vice President, the improved security in Sierra Leone means there is no better time to invest in Sierra Leone (Chatham House 2005). The Minister for Trade and Industry said: `Given that 50% of Sierra Leone`s budget is donor funded, the country would need continued assistance from donors in the future` (Chatham House 2005).

The desire to attract foreign investment from the government sheds a different light on governmental policies. One of these policies is the creation of the Anti-Corruption Act. The Act was created in 2008 by President Koroma and Members of Parliament (Anti-Corruption Act 2008). Setting up the Anti-Corruption Act could attract more investment from outside since it leads to a better image of the country. On the other hand, Sierra Leone might be very serious on banning corruption. However, according to the Sierra Leone`s newspaper Concord Times: ` It will be an underestimation to conclude that President Koroma is not at all serious about fighting corruption` (Concord Times 2011). It could indicate that the intention behind Koroma`s policy is not just about banning corruption. Although the initiative of the Anti-Corruption Act can be perceived as a genuine effort to rebuild the country, the speech here implies also something else; Sierra Leone needs foreign investment and therefore introduces an anti-corruption strategy. The same idea can be derived from statements of the current President Koroma. During an interview with CFR, Koroma says: `When we assumed office in 2007, it was very clear that the economy was down. However, the potential of the country is great. How do you attract external investment? Now, we have in the first place, to go out there and tell the pictures of the new Sierra Leone: show it out to the international community, to the international investors that Sierra Leone is not what you used to know. ` During his inauguration speech, Koroma promised that he would run Sierra Leone like a business concern (The Salone Reporter Independent). During an interview with CNN Koroma acknowledges Sierra Leone has a dark history but focuses on the future. He is committed to make sure the war is not repeated and wants to build a democracy. One of the ways to pursue that is by the establishment of the Anti-Corruption Act

that prosecutes anybody that is believed to be corrupt (CNN interview 2010). Although one might think these statements have nothing to do with the choice for reconciliation, these statements imply that policies of the government in Sierra Leone are focused upon economic development and attracting foreign investment. That also accounts for reconciliation. Koroma argues he set up the Anti- Corruption Act in order to develop democracy in Sierra Leone, but the framing of economic development as the central focus in speeches is dominating instead of the democracy perception. Also, these statements confirm that for this economic development a positive image of Sierra Leone is required. Reconciliation contributes to that purpose. An anonymous source, with great experience in Sierra Leone, confirmed that Sierra Leone`s government is mostly interested in economic development and wants to do just about everything to gain foreign investment. (Interview 21 March 2012). It indicates that the government bases its decisions upon self-interests. In what way could its perception on the distribution of political power influence the decisions regarding reconciliation?

Interviews conducted by Millar on the local level, prove that people expected more from the TRC than just the truth. They were expecting the reconstruction of local and national infrastructures and the provision of social services (Millar 2011: 524). People felt that the work of a transitional justice project aimed at bringing peace to the country must include the construction of schools, medical facilities, roads etc., not trials, nor truth telling (Millar 2011: 526). Economic aid makes sense in a society full of amputees that have to live the rest of their lives disabled. Their perspective and needs for reconciliation are fundamentally different. Millar argues that the people of Sierra Leone feel improvements in their lives will make them forget about the past crimes (Millar 2011: 527). So why does the government of Sierra not give its citizens what they desire and need? Some have argued that current transitional justice approaches are mostly focused on serving the needs of the international community than on focusing on the needs of the citizens of a country (Millar 2011: 530).

The fact that the recommendations of the TRC were not implemented by the Sierra Leone government indicates a lack of commitment to the reconciliation process. A reason for that could be the political sensitivity of the recommendations. For instance, one of the recommendations of the TRC is to set up a follow-up committee to maintain on-going monitoring regarding the performance of the government in the implementation process of the recommendations. That could be perceived by the government as unwanted (TRC report 2004: 120). That the government of Sierra Leone is reluctant to do so is also shown by the UN Universal Periodic Review report on Sierra Leone of 2011; Recommendations 81.5-81.9 ask for the implementation of a TRC follow-up Committee (UPR Sierra Leone 2011: 16). However, on these recommendations the government of Sierra Leone says it believes to have done so already and thus does not see it as a relevant recommendation (UPR Sierra

Leone 2011: 16). Sierra Leone did initiate the reconciliation process but did not commit itself fully. It indicates that the choices the government of Sierra Leone made are based upon the distribution of political power. The government has set up the reconciliation process but does not continue with it when it might jeopardize its position. It shows that the hypothesis here can be confirmed and indicates that governments are influenced by their perception of the distribution of political power.

The lack of commitment to the reconciliation process is also shown by the appointment of former combatants. The government of Sierra Leone hired former combatants instead of reconciling them with their communities. As a consequence, citizens are forced to watch some of the worse perpetrators during the conflict, working now with the security service of the President. By seeing these persons dressed up in uniforms with weapons, citizens are confronted with a past they are trying to get over. It demonstrates little consideration from the government for its citizens. The Information and Communication Minister Ibrahim Ben Kargbo legitimates the choice of the government with: `Those security guys have been retrained and made to be more professional. If anything, they are now being kept busy so that they stay away from violence` (Inter Press Service 2010). However, that argumentation has nothing to do with reconciliation. Rather, it means the government of Sierra Leone is trying to keep the status quo. Especially since according to Jacob Jusu-Saffa, the secretary-general of the main opposition Sierra Leone People's Party (SLPP), state security personnel have been involved in several politically-motivated acts of violence since the 2007 elections (Inter Press Service 2010). It demonstrates the lack of consideration for the effect of its policies on the citizens of Sierra Leone and with that it is implied that the basis of this policy is not the desire to reconcile society. Therefore, the first pragmatist hypothesis can be confirmed.

3.2.3. Hypothesis 2: Justice is not always necessary during the post-conflict situation or better set up at a later stage

As was explained before, pragmatists argue that actors believe justice is not always necessary during post-conflict situations and jeopardizes the national security and peace. Second, pragmatists argue that actors argue justice has to wait until the institutions are strengthened and can handle the need for justice and reconciliation. These claims will be reviewed in the case of Sierra Leone based upon the evidence that is found in public statements, the reconciliation projects and the situation of post-conflict politics.

3.2.3.1. Delay means denial

President Kabbah argues that justice is needed in a post conflict society and that it needs to be set up right away. During his inauguration speech he said: `we must always be in a position to ensure that

matters brought to court are dealt with fairly and expeditiously. As the saying goes `justice delayed is justice denied `` (Sierra Leone Web). That means Kabbah does not agree that justice should be sometimes set up in a later stage. Rather, postponing justice is denying justice. Thus, the government of Sierra Leone does not believe that justice and reconciliation are unnecessary or that justice should be set up at a later stage. This is in line with the legalist approach which argues that for reconciliation to take place, justice is needed right away.

However, among the citizens of Sierra Leone, the timing was a discussion. The RUF rebels were against the SCSL for obvious reasons but also regular citizens argued justice would be an obstacle for peace and it was more important to restore and rebuild the country (IPS, 2002). Others claimed that the TRC started too early, the wounds were too fresh. Then again, some also argue that the process will only stall if it is extended (Agence France Press 2003). This argument implies that maybe not the government but at least society approached the reconciliation process from a pragmatist perspective. The concerns of citizens also seemed to be focused upon other factors of post-conflict reconstruction; at the start of the TRC, the amputees refused to cooperate. They claimed they should be paid for it due to their current disabled situation (Agence France Press 2003). Their children should receive free schooling and health care (Associated Press Worldstream 2002). However, eventually they fully cooperated with the TRC (Agence France Press 2003). Despite the fact that the rebels and citizens of Sierra Leone are also legitimate actors in the reconciliation process, the focus of this research is the government. Although the government of Sierra Leone could pay attention to the discussion within society, its statements demonstrate that the hypothesis cannot be confirmed because the government of Sierra Leone argues that delay of justice is denial of justice.

3.2.4. Hypothesis 3: actors believe in the usefulness of amnesties

Pragmatists argue that actors believe in the usefulness of amnesties when they believe it strengthens the rule of law. The aim here is to search for the evidence in favor of or against that claim in the case of Sierra Leone.

3.2.4.1. Amnesty in exchange for peace

The SCSL prosecuted the persons most responsible for crimes against humanity. However, it did not bring to trial those fighters that participated in the gang rapes and diamond smuggle. Moreover, combatants received 300,000 Leones in order to encourage them to give up their weapons (The Independent, 2002). The Lomé Agreement, which was signed in 1999, promised the members of the RUF the freedom to transform the movement into a political party and assume public office positions (Sierra LeoneWeb). The measure of reward in exchange for money without prosecution is not

officially an amnesty and the Lomé Agreement was never implemented. However, these factors show that the government of Sierra Leone has considered these measures and does not completely deny or confirm the belief in amnesties. The point is though, that the Lomé Agreement was signed out of the desire to end the conflict finally. It was not signed due to the belief of actors in strengthening the rule of law by giving amnesties. Thus, it might be possible to identify a trend but at the same time it does not confirm the logic of the pragmatists. That means the hypothesis cannot be confirmed.

3.2.5. The politics of reconciliation in Sierra Leone

The presented evidence on the first hypothesis demonstrates that it is highly possible the government of Sierra Leone chooses reconciliation based upon self-interest and political power. It is interested in attracting investment and ensuring economic development and is prepared to show the international community it is reconciling and banning corruption. Also, the government has set up reconciliation projects but appears to be uninterested in reconciliation when it could mean it will have to give up power. Finally, the government shows a lack of consideration for its citizens which is shown by hiring former rebels. It could indeed imply that the government is aiming to control the former rebels in order to make sure a future conflict will be prevented. However, that is a different aim than reconciling society. Here, the politics of reconciliation comes to the surface. The interest of the Sierra Leonean government in economic development leads to choosing reconciliation and with that confirms the existence of political factors influencing the reconciliation process.

President Kabbah states that he believes that delaying justice is denying justice. In that quote both parts of the second hypothesis are denied. Although high doubts exist among the citizens of Sierra Leone, the government shows a strong position and thus it means the hypothesis cannot be confirmed.

Although the government has agreed upon amnesties in the past and has granted economic aid to combatants after the conflict, these actions were not based upon the belief in strengthening the rule of law. Rather, it was mostly based upon the desire to finally ending the conflict that had been protracted for more than ten years.

3.3. Rwanda vs. Sierra Leone

From a pragmatist perspective both cases show again some similarities and differences. The main similarity is that both Rwanda and Sierra Leone could be well explained from the pragmatist view because their choice for reconciliation is influenced by self-interest and political power distribution. However, the interests differ between both cases. The government of Rwanda is influenced by being a minority having power over a majority that partly is responsible for the genocide of 1994. The

reconciliation process appears to be focused upon controlling the population with the excuse of preventing a new conflict and reconciling society. Sierra Leone on the other hand, is largely influenced by the self-interest of attracting foreign investment. The demand for reconciliation from the international community and the realization of the government that foreign investment only is received when a positive image of the country can be shown influences the government to choose reconciliation. It means that the focus of both countries differs politically. Sierra Leone is devoting all its attention to economic development and recovering from the past conflict. All its actions and policies are serving that goal. Rwanda appears to focus on preventing of the 1994 genocide and with that designs its policies in the light of keeping control over the population.

Both cases fail to confirm the second hypothesis of pragmatism. Both the public statements and the existing reconciliation projects show that they do believe in the necessity of justice and do not believe in postponing justice to a later stage.

However, on the third hypothesis the cases differ. The agreed amnesties in an earlier peace accord and the granted economic aid to former rebels in the case of Sierra Leone show a more flexible attitude than legalists would assume and thus confirms the pragmatist hypothesis. Rwanda on the other hand, has just released a high number of prisoners who belonged to the least powerful groups during the genocide. Next to these releases it has been very strict in prosecuting every single participant. That leads to the conclusion that the third hypothesis cannot be confirmed in the case of Rwanda.

In general the most important difference between the two cases is that Rwanda appears to have tight control over its population. The activities of the NURC, education programs and solidarity programs, appear to be focused upon ensuring the participation in the reconciliation process of all citizens of Rwanda. Sierra Leone on the contrary, has initiated the reconciliation process but appears to be less committed to fully completing the process. It has attempted to involve its citizens but at the same time does not seem to take all measures necessary in order to achieve that. The national repression in Rwanda against journalists, opposition parties and human rights defenders seems to be far greater than in Sierra Leone. The engagement with the citizens of Rwanda appears to be controlling them and seems to use the past genocide and current reconciliation as an excuse to maintain power firmly. The government of Sierra Leone seems far less interested in its citizens. The lack of respect for its citizens with the hiring and paying of former combatants shows that. One can wonder where the difference in focus between the two countries comes from: Sierra Leone has a focus upon the international level which is shown by its commitment to being an international example while Rwanda focuses upon the national level where all the activities of the NURC take place. From a pragmatist perspective these points could imply underlying political interests. It is in

Rwanda´s interest to re-educate its own citizens but is less interested in winning the international opinion for its cause. Sierra Leone on the other hand is more interested in the international opinion since its main focus is attracting investment.

From a pragmatist perspective however, it is implied that the post-conflict politics regarding reconciliation are serving the interests of the government. The process of reconciliation is integrated in post conflict politics and part of the post conflict reconstruction process. Therefore, it would be wrong to assume that reconciliation just is influenced by the desire of governmental actors to reconcile its citizens in order to move to the future. It would also be wrong to assume that governmental actors choose reconciliation because they are influenced by morals and norms. With any other political subject that would be called naïve. Reconciliation does not take place outside the political context where power and interests prevail.

Conclusion

The process of reconciliation has often been studied and many assumptions exist on the subject. In this study the cases of Rwanda and Sierra Leone have been reviewed as examples of post-conflict reconciliation. The research question analyzed here is: *why do states engage in reconciliation?* Two opposing explanations have been analyzed, namely legalism and pragmatism. On the one hand, legalists argue that states choose reconciliation because they act according existing international norms and believe in a society´s duty to reconcile, because they assume reconciliation has a deterrent and preventive effect and because international justice and reconciliation serve as educational components. Pragmatists on the other hand, argue that actors choose reconciliation based upon self-interests and the distribution of political power. Pragmatists believe in the usefulness of amnesties and do not always argue in favor of justice but sometimes believe in justice in a later stage.

Three different components have been used to analyze the cases: the statements made by government officials, the post-conflict reconciliation initiatives set up by governments and finally the

post-conflict politics. All three components have been reviewed from both a legalist and pragmatist perspective and were analyzed on the separate sub hypotheses of both legalism and pragmatism. Several concluding remarks can be derived from this study.

The empirical evidence of the legalist arguments shows that the main legalist hypothesis, which is *legalism dominates in explaining the choice of states for reconciliation*, is partly true. The case of Rwanda demonstrates a firm commitment to the reconciliation process which is visible from both public statements but also from the existing reconciliation initiatives and the transitional justice of the Gacaca courts. Although there exists a feeling of victor´s justice, due to the exclusion of RPF crimes from the normal courts, the evidence for the hypothesis holds. However, although the government of Rwanda shows to argue in favor of the deterrent and preventive effect of transitional justice, it is not based upon legalist arguments. The government does not place collective guilt on the shoulders of individuals but prosecutes almost every individual who participated in the 1994 genocide. Finally, the government of Rwanda does not show any interest in serving as an example for other societies than its own and therefore does not comply with the legalist hypothesis. The empirical evidence on the legalist arguments regarding Sierra Leone shows as well that legalism only partly explains the choice for reconciliation. The lack of commitment of the government to the follow up of the TRC and the lack of effort made by the government to involve its citizens, demonstrates that it is not acting according to the argument that it is a society´s duty to reconcile. However, the creation of the SCSL as a new hybrid court shows the status of Sierra Leone as an educational example for other societies.

The examination of the pragmatist hypothesis, which is *pragmatism dominates in explaining the choice of states for reconciliation*, shows that the pragmatist framework mainly holds. Both Rwanda and Sierra Leone demonstrate strong evidence that states base their choice for reconciliation on their self –interests and political power. It can be argued that the fear experienced by the people of Rwanda for a new conflict is used by its government to keep tight control over the population. Sierra Leone on the other hand, appears to invest in reconciliation because it is mostly interested in rebuilding its economy. Although the reasoning for both cases differs, one can generalize in arguing that the choice of states for reconciliation is dominated by self-interest and political power and thus the pragmatist approach dominates as explanation. The policy of Rwanda serves the government of Rwanda well and the same goes for Sierra Leone. These two cases demonstrate that pragmatism explains the choice for reconciliation better than legalism. The aim of this study is to contribute to firstly understand the cases of Sierra Leone and Rwanda better but more importantly to enhance our understanding of reconciliation processes and with that contribute to the theory regarding reconciliation. This study proves that legalism fails to explain the cases of

Rwanda and Sierra Leone completely. The pragmatist framework proves to give a more comprehensive understanding of the choices made by states regarding reconciliation. Pragmatism shows that states base their choices upon self-interests. Pragmatism argues that justice is not always necessary or could be postponed which contradicts with the reality of the cases. Despite that, the evidence on the first hypothesis is strong and proves the existence of the politics of reconciliation.

However, this study shows two remarks on both theories. First, it is interesting that the statements of governments show to often fit in with the legalist arguments. They all refer on different occasions to the duty of a society to reconcile, to the need to show that committed atrocities will be punished and with that prevent and deter future conflict. At the same time, their policies prove to contradict their statements. As Elster argues, political actors might argue something on one dimension but act differently on another dimension. Thus, often the public statements are not in accordance with the actions and policies of both governments.

Second, although states demonstrate to act according to legalist or pragmatist arguments, alternative explanations show that these acts are not based upon the theoretical arguments. This appears in the case of Rwanda prosecuting almost every individual instead of a few high placed persons leading to a deterrent and preventive effect and in the case of Sierra Leone where it agreed upon amnesties in order to sign peace with the RUF instead as using amnesties as a tool for strengthening the state´s rule of law. That complicates the determination of whether the cases fit within the theory or not. However, these two remarks show that more research is needed in order to determine whether these theoretical trends are also visible in other cases.

The aim of this study is, in the first place, to contribute to a better understanding of the cases, but even more important, to enhance our understanding of reconciliation processes and with that contribute to the theory regarding reconciliation. This study demonstrates that the process of reconciliation should not be placed outside the political context of a society because the political context determines the governmental choices regarding the reconciliation process. The political context before, during and after the conflict needs to be taken into account in order to understand the choices made by states regarding reconciliation. As is said before, often governments are the winner of a previous conflict which influences their choices in a post-conflict society. Reconciliation is developed by governmental actors and is thus just as any other governmental subject, influenced by political factors. Therefore, we can conclude that national reconciliation processes can only be understood when the politics of reconciliation are taken into account.

More research is needed in order to determine whether the identified behavior and conclusions in these two cases also appear in other cases. In order to be able to do an in-depth study, it was not possible to use more than two cases for this study. However, two cases are not enough in

order to make a generalization about reality and therefore when more case studies will be conducted, a more comprehensive generalization can be made.

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