



Critical Lessons in Post-Conflict Security in Africa: The case of Liberia's Truth and Reconciliation Commission

Ozonnia Ojielo



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**CRITICAL LESSONS IN POST-CONFLICT SECURITY IN AFRICA:
THE CASE OF LIBERIA'S TRUTH AND RECONCILIATION COMMISSION**

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Introduction¹

It has become a globally accepted axiom that democracy² is the best form of government. It may not be perfect but in an imperfect world, it is seen as the best form of government available. Democracy is also seen as unique in its capacity to manage conflict. As a system for managing difference without recourse to violence, democracy enables processes through which differences could be brought out, acknowledged and dealt with in ways satisfactory to all the actors, and without threatening the system. Liberia was a democratic state that had existed for close to 200 years. Like all democracies, it was expected to have developed the institutions and processes that would manage grievance and difference. It had never been conquered or colonised by any other power. To many scholars of West African history, it was surprising that such a state could collapse and degenerate into lawlessness and disorder. Beneath the façade of democracy in Liberia however, the state was characterised by authoritarianism. When the state imploded in 1989, it might have surprised members of the international community, but not the people of Liberia. Decades of misrule had been marked by violent forms of oppression and egregious human rights violations, ultimately plunging the country into civil war.

In the post-war era, the challenge facing Liberia is how to come to terms with its recent history of violence, ethnic targeting, collapse of institutions and massive violations and abuses of human rights. Given the inconclusive nature of the civil wars in which no clear victor emerged (especially in the second civil war, 1999–2003), there was no consensus within the country or among the international community as to the best ways to move forward.

Recent experience from the sub-region³ as well as a growing international consensus anchored in international law advocating for accountability for human rights violations provide an important roadmap. International humanitarian law does not make distinction for the reasons behind acts of violence as it looks at the participants in an armed conflict without regard to whether their cause is just or legitimate. Instead, it considers the legality of the means and methods of warfare, and the protection of vulnerable groups, especially civilians. It is immaterial whether the combat formation is composed of rebels or government forces. No actor in an armed conflict situation can use the justification of its cause as a defence when perpetrating human rights violations and abuses. Furthermore, in its preamble, the Universal Declaration of Human Rights (UDHR) acknowledges the need for human rights protection under the rule of law as a means to avoid rebellion against tyranny and oppression.

1 Dr Ojielo is the Senior Peace and Development Advisor to the UN Resident and Humanitarian Coordinator in Kenya. He was a former Chief of Operations and later Officer in Charge of the Sierra Leone Truth and Reconciliation Commission.

2 Some would prefer to use the term political pluralism. Democracy is used loosely to denote public participation in governance.

3 With Sierra Leone, Ghana and Nigeria having embarked on Truth And Reconciliation Commissions.

International human rights law also acknowledges the right of states to restrict or suspend certain fundamental rights (such as detentions without trial) when certain conditions exist, such as public emergencies like civil war, that threaten the nation's existence. At the same time, international human rights law insists that certain fundamental rights and freedoms cannot be suspended, even in times of war. These rights, which are deemed sacrosanct, include the right to life, the prohibition of torture and other cruel, inhumane or degrading treatment, and the right to protection against discrimination. No protection is available to a government or its allies when they violate any of these rights.

All international human rights treaties require governments to investigate violations of rights and to provide effective remedies. Conventions dealing with crimes against humanity and war crimes consistently require legal action to be taken against suspects. The 1985 UN Convention against Torture requires state parties to ensure prompt and impartial investigation of torture allegations. The Genocide Convention imposes an obligation to punish, whether perpetrators are 'constitutionally responsible rulers, public officials or private individuals'. Under the Geneva Conventions of 1949, states are required to search for war criminals, and either bring them before their own courts (whatever their nationality) or extradite them for trial in another jurisdiction.

After 14 years of unremitting armed conflict, the people of Liberia had to come to terms with the devastation that visited their country. As the armed factions gathered in Accra, Ghana, in July 2003 to negotiate an end to the war, the few issues on which there was unanimity in the national discourse was the need for an investigation of the factors and context that led to the war, the roles played by different actors and how to ensure that the conflict did not re-occur. This was all the more so because just as the armed groups, political actors and civil society representatives were negotiating peace in Akosombo in Ghana in July 2003, the armed combatants also laid siege on the capital, Monrovia, shelling large parts of it to rubble. The vivid pictures of the attack on the capital as well as the suffering and death that occurred became so etched in the minds of Liberians that the need for accountability was seen as the most important challenge to national renewal and reconciliation. The first steps taken in that direction however, were faltering at best, and almost led to a stillbirth of the national reconciliation project. The approaches that were available to Liberia included criminal prosecution for the violations and abuses that occurred, establishing a Truth and Reconciliation Commission, institutional reforms and lustration.

In light of the jurisprudential foundations established above for punishing human rights violations, it may be surprising that criminal prosecution was rejected outright in the peace accords that ended the civil war in Liberia. Instead, the participants settled for a Truth and Reconciliation Commission as the vehicle for accountability in the country. Additionally, in the re-establishment of state authority and re-composition of its institutions, all those who were suspected of having been involved in the committing of violations and other atrocities were debarred from holding office in the security institutions.

This paper reviews the causes of the conflict, the political settlement that was eventually arrived at in order to bring the conflict to an end as well as the nature of the major transitional justice mechanism that was implemented along with its implications for sustainable peace in Liberia. Because of prolonged instability in Liberia, this study is important in determining how transitional justice has contributed to developing and sustaining a security architecture for the country, that will ensure lasting peace and stability. More importantly, as the sub-region and the continent grapple with violence and insecurity, the discourse on appropriate and effective justice and security architectures becomes very important. While there are interesting experiences across the continent, different approaches have prevailed. The experience of Liberia presents important comparative knowledge that could contribute to this quest for effective justice and security mechanisms.

Background to the conflict and the violations

Liberia has a population of about 3.3 million. For 133 years it was ruled by a small elite composed of Americo-Liberians, freed slaves known as 'Congos'⁴ and their local collaborators, and re-settled in Monrovia. This small band of 'colonialists' constituting only five percent of the population dominated the economic and political life of the country to the exclusion of the majority indigenous population.

Economic growth rates which were high in the 1960s began to show signs of decline in the early 70s. By 1979 unemployment had risen to a staggering 23% nationwide and 39% in Monrovia. The cost of living was at an all-time high with inflation standing at 6% in 1977, 7% in 1978 and 14% in 1979. Food prices in particular rose by 15% between 1976 and 1978 and by 1974 it was estimated that more than three-quarters of households in Liberia earned less than \$50.00 a month, with 50% of the total household income being earned by 5% of the families.⁵ In April 1980, the culmination of the rice riots of 1979 and the constant state of insecurity and uncertainty in the country was that a young army rating, Master Sergeant Samuel Doe, organised a bloody coup d'état. He shot his way to the Executive Mansion and killed President William Richard Tolbert Jr., an Americo-Liberian and grandson of a freed American slave from South Carolina who immigrated to Liberia in 1879. He lined up thirteen officials and advisers to the government and executed them at the Monrovia beach, in what has since become known as the 'Monrovia Beach Party'⁶ The issue that came to the forefront then, was the need to rid Liberia of the monopoly of power enjoyed by the Americo-Liberians. Doe symbolised that determination and struggle. Many people welcomed Doe's takeover of power as a shift which would favour the majority of the population that had been excluded from political and economic power for all of the country's history.

Doe himself, relying solely on his Krahn⁷ kinsmen and Mandingo loyalists, began a regime of corruption, terror, torture, executions and other human rights violations that drove most members of the intelligentsia either to their graves or to exile. Many of those dissatisfied with his murderous regime, including some of his former associates like Thomas Quiwonkpa, created various networks seeking ways to remove him from power. This was brutally repressed by various means including the 1985 killing of Quiwonkpa and the massacres of Quiwonkpa's sympathisers in Nimba County.⁸ Believing that only military force could remove Doe from power, many of his opponents found their way to Libya and underwent military training at Gaddafi's Ideological Institutes with a view to launching an armed insurrection. The most prominent of these characters was Charles Taylor, leader of the National Patriotic Front of Liberia (NPFL).⁹

With support from Burkina Faso and the Cote d'Ivoire, Taylor fought his way from Nimba County at the Ivorian border in December 1989 to Monrovia in July of 1990. He left in his wake destruction, arson, burning, looting and the killing of members of ethnic groups associated with Doe, or opposed to his NPFL. The war had indeed taken on an ethnic character. This

4 The 'Congos' were slaves rescued from slave ships on the Atlantic and resettled in Monrovia and other coastal areas of the country through the intervention of the American Navy in collaboration with the American Colonisation Society (ACS). The ACS led the process for the resettlement of freed slaves and other African-Americans through the purchase of land from the native kings (usually at gunpoint by the American Navy). In collaboration with the Americo-Liberians, the 'Congos' dominated all facets of life in Liberia (to the total exclusion of the indigenous peoples and with ample support from the US Government) from the declaration of independence in 1847 up to the coup d'état of Samuel Doe in 1980. Most Liberian writers and commentators agree that this dark history permanently sowed the seeds of division and polarisation between the indigenous people and the settlers.

5 The Truth and Reconciliation Commission of Liberia, *Final Report*, 29 June 2009, p. 100.

6 Tolbert V1898 *Lifted Up: Victoria Tolbert's Story*. Minneapolis, MN: Macalester Park Publishing Company, 15.

7 Doe was an ethnic Krahn, a rural tribe in inland Liberia. They were a part of the large majority of Liberian population that were of ethnic descent.

8 Bekerley B 1986 *Liberia: A Promise Betrayed*. New York: Lawyers Committee for Human Rights.

9 See 2004 *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*. 3A: Chapter 2. Accra, Graphic Packaging Limited, for a vivid account of the nature of the ideological institutes and the characters who were present from Liberia and Sierra Leone.

created huge internal displacement and massive refugee flows to neighbouring countries.

Abandoned by the international community, it was left to the leaders of the sub-regional body and the Economic Community of West African States (ECOWAS), in particular Nigeria and Ghana, to articulate a response to the grave humanitarian situation in the country. A ceasefire-monitoring group, the Economic Community of West African States Monitoring Group (ECOMOG),¹⁰ was quickly established in May 1991. Unable to monitor or keep any peace, the Mission became engaged in enforcing peace, and was thus sucked into the conflict in the country.

In response to the ECOWAS action, and in furtherance of understandings reached in Libya with Foday Sankoh, leader of the Revolutionary United Front (RUF), Taylor armed and supported the RUF to wage war on the government of Sierra Leone.¹¹ In retaliation, the Government of Sierra Leone established a unit composed of Liberian exiles within its army, known as the United Liberation Movement for Democracy (ULIMO). Its purpose was to join the fight against the RUF, but it increasingly extended its operations to Liberia, and subsequently relocated to Guinea to continue the war against Charles Taylor.¹²

Between 1990 and 1996, the war see-sawed between ECOMOG, Taylor's NPFL and the different factions of ULIMO,¹³ until ECOWAS managed to broker a final ceasefire agreement in Abuja in 1996. Following the ceasefire, elections were organised in 1997, which Taylor won handsomely. Altogether, a total of fourteen peace agreements were signed before peace could prevail in Liberia in 1997.¹⁴ A flawed disarmament, demobilisation and reintegration process in 1997 allowed Taylor to keep his forces intact, while those of other factions were disarmed.¹⁵ Feeling strengthened by the outcome of the elections, and his armed group still intact, Taylor carried on as president with a predator mindset, exacerbating the divisions and resentments fuelled by the war.¹⁶ This set the stage for the renewal of the conflict in 1999.

During the first war (1989–1996), widespread atrocities were committed by all factions in the conflict. The most prominent were those of revenge killings and attacks by ethnic groups loyal to the armed factions, in particular those between Gios and Manos on one side and Krahn and Mandingos on the other.¹⁷ There were reports of massacres, torture, sexual violence, abductions, executions and looting, among others.¹⁸ It has been estimated that over half of Liberia's population was internally displaced with more than 300 000 as refugees, and that more than 200 000 people were killed in the course of the entire conflict.¹⁹

Between 1997 and 2000, Taylor's regime continued the history of oppression, intimidation, torture, execution of political opponents, arbitrary detentions and extra-judicial killings

10 It was a West-African multilateral armed force established by ECOWAS. The first mission in Liberia was under the command of the Ghanaian General Arnold Quainoo.

11 Taylor had agreed with Foday Sankoh in Libya that they would support their revolutions in their respective countries. The report of the Truth and Reconciliation Commission of Sierra Leone captures how Foday Sankoh commanded one of Taylor's elite groups during the first Liberian civil war, and how the RUF received substantial support in arms, material and fighters from Taylor during the Sierra Leone civil war. See 2004 *Witness to Truth: Report of the Truth and Reconciliation Commission of Sierra Leone*, 3A. Accra, Graphic Communications.

12 2004 *Witness to Truth: Report of the Truth and Reconciliation Commission of Sierra Leone*, 3A. Accra, Graphic Communications.

13 ULIMO J (the faction loyal to General Roosevelt Johnson), mostly Krahn and ULIMO K (loyal to Alhaji Kromah), mostly Mandingos.

14 Meredith M 2006 *The State of Africa: A History of Fifty Years of Independence*. London: Free press, 568

15 The disarmament process had started in the prelude to the 1997 elections, which saw Taylor elected as president. ECOMOG was expected to disarm all the factions and train a new Liberia national army. Taylor peremptorily expelled ECOMOG from Liberia in 1998, citing that it was for the government to disarm all the fighting forces and establish a new army. In practice, he did not disarm his NPFL which he re-integrated into the Armed Forces of Liberia without integrating the fighters from the other groups.

16 Human Rights Watch 2002 *Back to the Brink: War Crimes by the Liberian Government and Rebels*. New York.

17 Taylor's NPFL was composed mostly of Gios and Manos, given the terrible atrocities that Doe's forces committed against people from these two ethnic groups. Doe's forces was composed mostly of his Krahn kinsmen with support from Mandigos. Upon Doe's death and the split of ULIMO, most Krahn supported Roosevelt Johnson in ULIMO-J, while Mandigos supported Kromah in ULIMO-K. The ULIMO forces controlled most of the Western and Southern belts of the country, while Taylor's forces controlled the Central and northern regions.

18 Unpublished report by Human Rights Section of UNMIL.

19 Liberia: the Key to Ending Regional Instability *International Crisis Group*, 24 April 2002.

characteristic of previous governments. He created over eight security agencies, which terrorised the people and made life in Liberia traumatic. Taylor's son, Charles Emmanuel ('Chuckie'), headed a paramilitary, anti-terrorism security unit known as 'Demon Force' for his father. It was accused of beating people to death, burying them alive, rape, torture, sexual molestation and cannibalism. Charles Taylor converted the entire country into one private estate, stripping it of gold, timber, diamonds and other resources.²⁰

Anti-Taylor forces came together in Freetown, Sierra Leone in February 2000 and established the Liberians United for Reconciliation and Democracy (LURD), dominated by members of the Krahn ethnic group. Operating out of bases in Guinea, they began to attack positions of the Liberian Government at the border and deep into Liberia. With support from the Government of Guinea, LURD increasingly inflicted a series of defeats on the forces of the Government of Liberia so that by early 2002, it was 40 kilometres from Monrovia.²¹

In early 2003, an offshoot of LURD, based in Cote d'Ivoire and tracing its origins to ULIMO-J, established itself in the east of the country as the Movement for Democracy in Liberia (MODEL). MODEL received sponsorship from Ivorian president, Laurent Gbagbo, in retaliation for Charles Taylor's support to the New Forces rebel insurrection of 2002 in Cote d'Ivoire. In joint campaigns between LURD and MODEL, they reached the outskirts of Monrovia in July 2003, putting pressure on the embattled government of Charles Taylor to leave the capital.

Charles Taylor's indictment by the Special Court for Sierra Leone in March 2003, in combination with his precarious military situation, provided the context for the rest of the sub-region to nudge him into relinquishing power and to accept an offer of asylum from Nigeria. A subsequent 'Comprehensive Peace Agreement' (CPA) created the framework for a transitional government of national unity that would manage the country for a period of two years and organise general elections in December 2005. The CPA also contained provisions for the establishment of a Truth and Reconciliation Commission (TRC). In March 2006, based on a request from the newly-elected Government of Liberia, Nigeria formally handed Taylor over to the Liberians, following a failed move by him to escape subsequent capture along Nigeria's northeast border with Cameroon. The Liberian government wasted no time in despatching him to the Special Court for Sierra Leone. He is now standing trial for war crimes and crimes against humanity at The Hague.²²

Accountability for human rights violations

The indictment of Charles Taylor while peace negotiations were taking place in Accra, Ghana, gave prominence to discussions about accountability and criminal sanctions at the talks.²³ Given the circumstances of Charles Taylor's departure from power, and the shelling of Monrovia while peace negotiations were taking place at Akosombo, Ghana, there was a general expectation that the CPA would provide criminal sanctions for violations of human rights and of international humanitarian law. Civil society groups at the talks argued vehemently for such a provision. Given the dominance of representatives of factions of the armed groups at the talks, it was not surprising that the final agreement signed by the

20 Meredith M *Ibid*: 572.

21 The report of the TRC of Sierra Leone documents Taylor's support of the RUF for a failed invasion of Guinea early in 2000. Taylor was also supporting Guinean dissidents to wage attacks along the Liberia-Guinea border. It was not surprising that the Guinean government supported the anti-Taylor forces, LURD and subsequently MODEL to wage war on Taylor.

22 He is being tried for six counts of crimes against humanity (including sexual slavery, inhuman acts, enslavement, murder, rape, etc.), four counts of war crimes (including violence to life, health and physical or mental well-being of people, pillage, outrages against personal dignity) and one count of violations of international humanitarian law.

23 Taylor's government of 1997 had also proposed a 'Reconciliation and Unification Commission'. Taylor even referred to this Commission in his inaugural address as president and declared August a national reconciliation month. However, the Commission was never constituted.

parties was silent on criminal punishment and contained provisions for only a Truth and Reconciliation Commission.

There are a number of reasons why the National Transitional Government²⁴ that was established following the peace agreement in 2003, or indeed the government of Ellen Johnson Sirleaf²⁵ after 2005 which succeeded it, cannot engage in criminal prosecutions against those who committed violations of human rights and international humanitarian law during the conflict. They include the following:

First is the importance of prioritising urgent needs. The challenges facing Liberia in the post-Taylor era are huge. The economy is in a shambles.²⁶ According to the TRC of Liberia, 'the Liberian civil war would best be remembered for a long time to come, not simply for the several thousands of lives it claimed – which will surely remain one of the sordid points of the country's chequered history – but for the carnage and the sheer brutality that characterised the war. The horrors of the Liberian war were abhorrent to the sensibilities of all and intolerable as collateral or inevitable consequence of war.' Citing Stephen Ellis, the Commission argued that the Liberian conflict topped and surpassed all other wars in form and character, in intensity, in depravity, in savagery, in barbarism and in horror.²⁷

Second, civil authority is still very fragile outside the capital, Monrovia. Electricity was restored to parts of Monrovia in 2007 but there is still no electricity in most of the country, while running water can only be obtained in parts of Monrovia. The priorities of the international community and of the government have been to re-establish public order as well as a functioning government. Criminal prosecutions could come later but is not viewed as a priority. Even after her election in December 2005, President Ellen Johnson-Sirleaf had declared that her most important priority was to get the state functioning again, rather than prosecuting the faction leaders for the atrocities committed during the war. It was thus surprising to observers of Liberia that she subsequently pressured Nigeria to hand Taylor over.

Third, the post-conflict situation is still very fragile. Prosecuting those who committed human rights violations would likely have destabilised the tenuous peace that exists. The UN Mission in Liberia (UNMIL) disarmed and demobilised more than 100 000 combatants²⁸ but it is still unable to provide skills training for most of the combatants.²⁹ Any prosecution could potentially lead to more violence.³⁰ Since the disarmament, there have been cases of violent demonstrations in Liberia with the protestors using machetes and other instruments against their opponents, leaving the security situation tenuous.³¹

Fourth is the power balance inherent in the Comprehensive Peace Agreement. None of the armed factions in the conflict won a decisive victory and the peace agreement was a political compromise between the armed factions on terms satisfactory to themselves.

24 The parties to the CPA could not agree on who would lead the National Transitional Government of Liberia (NTGL). They settled on businessman Charles Gyude Bryant, while also allocating posts to themselves in the new government. The comprehensive peace agreement also created a national transitional legislative assembly which served as the national assembly during the transition.

25 Ellen Johnson-Sirleaf made history by being the first woman to be elected president of any African country when she was elected president of Liberia in December 2005. She had served in the Tolbert government as Finance Minister and was one of the early supporters of Charles Taylor when he launched his rebellion.

26 All accounts of the conflict in Liberia, including the report of the TRC, document the destruction of Liberia caused by the conflict. There is hardly any family in Liberia that did not lose a member. The entire infrastructure (public buildings, institutions, facilities private businesses, markets etc.) was looted and destroyed.

27 Final Report of the TRC of Liberia, June 2009, 136. www.trcofliberia.org/reports/final

28 UNMIL 2007 The DRR Programme in Liberia: Lessons Learned. Unpublished document.

29 23,000 ex-combatants were unable to be trained or re-integrated in their communities due to the curtailment of donor funding. See www.irinnews.org/report.aspx?ReportID=71730

30 The new Armed Forces of Liberia includes members of the various factions. Their loyalties are still held by their former commanders. Putting the commanders on trial could potentially jeopardise the ongoing reform of the security sector.

31 A clear example was the violent demonstration that took place early in 2007 by ex-combatants complaining about the delay in the payment of their DDR allowances.

The Transitional National Government³² contained leaders of the armed factions, many of whom were accused of being personally responsible for gross violations of human rights and international humanitarian law.

Fifth, the current government contains elements of the old regime. The former Speaker of the National Assembly was one of Doe's closest associates.³³ Jewel Howard Taylor, Charles Taylor's former wife, won a seat to the Senate in the December 2005 general elections along with some of the other factional leaders such as Prince Yormie Johnson. Obtaining legislative approval for a criminal punishment regime that would have affected them would have been impossible. In addition, a far-reaching purge of administrative and managerial staff who were implicated in and committed violations would have had a crippling effect on governance and would have endangered vital political and economic development. At any rate, the new leaders were not inclined to commit self-immolation by legislating criminal prosecution for their conduct. The issue of criminal prosecution for those responsible for the human rights violations remains a sensitive subject in Liberia. Even the final TRC report which recommended further investigation and prosecution of some of the faction leaders has polarised the government. Thus, it is unlikely that the government would move towards prosecution in the foreseeable future.

Sixth is the weakness of the criminal justice system. Liberia's best judges and counsellors emigrated during the war years and combatants destroyed judicial infrastructure as well as other facilities such as public buildings and social amenities. Previous governments in Liberia had used the police and the judiciary as tools for regime security and protection. However, public confidence in both institutions is very low. Their capacity to deliver justice to the victims of the conflict remains in doubt. If the political will existed to embark on criminal prosecution, the government could at least have explored other arrangements that could have included recruiting qualified Liberians in the diaspora and/or judicial and prosecutorial personnel from other jurisdictions.

Seventh, the ethnic dimensions of the war are another factor militating against carrying out prosecutions. Each armed faction was dominated by one or a combination of ethnic groups, and waged war against other ethnic groups. Ethnic tensions are still high and prosecutions could very easily be misconstrued as a continuation of the war by other means.

In the fragile, post-conflict environment that exists in Liberia, the convenient approach was to support the establishment of a Truth and Reconciliation Commission. To the leadership, the Commission represented the most appealing vehicle for revisiting the past and providing justice to the victims of the wars and atrocities that dogged Liberia's history.

The Liberian Truth and Reconciliation Commission

Article XIII of the Comprehensive Peace Agreement³⁴ provided for a Truth and Reconciliation Commission as a forum that would address issues of impunity. It would also provide an opportunity for both victims and perpetrators of human rights violations to share their experiences to get a clear picture of the past in order to facilitate genuine healing and reconciliation. The Commission is also tasked with addressing the root causes of the crisis in Liberia, including human rights violations. The Act had charged the commission with conducting a critical review of Liberia's historical past, with a view to establishing and

32 The NTGL was composed of representatives of the political parties and the armed factions that took part in the war. Examples included: Cheyee Doe who was Managing Director of the National Port Authority, the brother of Samuel Doe and leader of MODEL; Thomas Yaya who was the Foreign Minister and chairman of MODEL; Daniel Chea who was Taylor's Defence Minister and was also appointed Minister for Defence for the Transitional Government; Harry Greaves, the advisor to the chairman of the Transitional Government on Economic Affairs and was one of the financiers of Taylor's revolution; the chief of staff of the LURD forces was also appointed the chief of staff of the army.

33 George Dweh of LURD was linked to Doe's death squads. He was also associated with atrocities during the war and had initially fought for ULIMO. See <http://www.tlcafrica.com/qualified.htm>

34 www.iansa.org/...Liberia-comprehensive_peace_agreement.doc

giving recognition to historical truths in order to address falsehoods and misconceptions of the past, relating to the nation's socio-economic and political development. Scholars of Liberian history and politics would acknowledge that the genesis of the crisis could be traced to the settlement of the colonists and the discriminatory policies pursued by the settlers. This requirement of the Act was aimed at correcting an interpretation of history that was a dominant narrative up to the time of the war and to reflect the contributions of the indigenous people before and after the arrival of the settlers.

In article XXXIV, there was a further provision that 'the National Transitional Government of Liberia shall give consideration to a recommendation for general amnesty to all persons and parties engaged or involved in military activities during the Liberian civil conflict that is the subject of this agreement'. This issue was highly contested during the drafting of the CPA, with representatives of the armed factions keen to submit the list of persons to whom amnesty should be granted. Following strong pressures from the international community and Liberian civil society groups, it was agreed in principle that the implementation of this clause should be left to the TRC.

Following the implementation of the CPA and the inauguration of the transitional government, Charles Bryant, the Chairman of the National Transitional Government in early 2004, established a Truth and Reconciliation Commission composed of seven commissioners. Liberian civil society immediately reacted negatively to the proposed composition, arguing that there wasn't an enabling legislation to support the composition of the Commission; its mandate was not yet defined, as the CPA provided only a general statement of intent. Finally, they contested the list of nominees appointed to the Commission, claiming that most were unqualified for the positions.³⁵

During May 2004, the author and two consultants were invited by the United Nations Mission in Liberia and the International Centre for Transitional Justice (ICTJ)³⁶ to facilitate a series of consultations. These were to be held with civil society actors, the international community and the then members of the TRC in order to define the parameters of an Act to formally establish the Commission. There was a strong clamour to establish a Truth, Justice and Reconciliation Commission, as many civil society activists argued for linking the Commission with a criminal prosecution mechanism. A draft Act produced during the consultation contained provisions for elaborate amnesty processes and for investigations into the abuse of privilege and authority, among others. These are the kinds of inquiries which, on their own, can tie up a Commission for years well beyond its mandated period of two years.

The group repeatedly urged the participants to think through the implications of adopting a South African style TRC, and that the participants should focus on drafting an Act that could respond to the unique Liberian experience of conflict. The group was rebuffed on the grounds that this was a Liberian process and that the participants knew what was in their own best interests. Following additional consultations organised by the UN Mission and by ICTJ over the following year, the National Transitional Legislative Assembly enacted the Truth and Reconciliation Commission Act of Liberia on 12 May 2005.

The TRC Act charged the Commission to, among other things: (a) Investigate gross human rights violations and violations of international humanitarian law and abuses that occurred including massacres, sexual violations, murder, extra-judicial killings and economic crimes such as the exploitation of natural or public resources, to perpetuate armed conflicts; (b) Provide a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to create a clear picture of the past to facilitate genuine healing and reconciliation; (c) Investigate the antecedents of the crises which given rise to and impacted the violent conflict in Liberia;

35 In May 2004, I was part of a team of consultants that facilitated a training programme in transitional justice for the then Commissioners and for civil society groups. One of the outcomes of that training was a resolution by the CSOs that the appointment of Commissioners of the TRC should be started afresh and if any of the then Commissioners felt that they were qualified, they should re-apply.

36 The others were George Sarpong, a media trainer from Ghana and Marieke Wierda of the International Centre for Transitional Justice, New York.

(d) Conduct a critical review of Liberia's historical past, with a view to establishing and giving recognition to historical truths in order to address falsehoods and misconceptions of the past relating to the nation's socio-economic and political development; (e) To adopt specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender-based violations, as well as to the issue of child soldiers, and to provide opportunities for them to relate their stories; (f) To compile a report that includes a comprehensive account of the activities of the Commission and its findings.³⁷

The temporal jurisdiction of the Commission was from 1979 to 2003 but the Commission was at liberty to begin its inquiries from pre-1979 events. Furthermore, the Commission was charged with the following functions and powers:

Facilitating, and where necessary, initiating and coordinating enquiries into, and investigating,

- i. Gross violations and abuses of human rights, privileges, powers and authority in Liberia including violations, which were part of a systematic pattern of abuses;
- ii. The nature, causes and extent of gross violations and abuses of human rights, including the root causes, circumstances, factors, context, motives, and perspectives which led to such violations;
- a. Identifying where possible persons, authorities, institutions and organisations involved in the violations;
- b. Determining whether such violations were the result of deliberate planning on the part of the state authority, or political organisation, movement or group of individuals; and
- c. Ensuring accountability, political or otherwise, for any such violation.
- d. Gathering information and receiving evidence from any person or persons, including persons claiming to be victims of such violations or the representatives of such victims, individuals, groups of individuals, perpetrators, witnesses and institutions through the taking of statements and through evidence gathered through the conduct of both public and confidential hearings upon request of witnesses, informants, petitioners, either as victims or perpetrators, subject to the exclusive discretion and authority of the TRC;
- e. Helping to restore the human dignity of victims and to promote reconciliation by providing an opportunity for victims, witnesses, and others to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, in an environment conducive to constructive interchange between victims and perpetrators, giving special attention to the issues of sexual and gender-based violence, and most especially to the experiences of children and women during armed conflicts in Liberia;
- f. Recommending amnesty under terms and conditions established by the TRC upon application of individual persons making full disclosures of their wrongs and thereby expressing remorse for their acts and/or omissions, whether as an accomplice or a perpetrator, provided that amnesty or exoneration shall not apply to violations of international humanitarian law and crimes against humanity in conformity with international laws and standards;
- g. Preparing a comprehensive report which sets out its activities and findings based on factual and objective information and evidence collected or received by it or placed at its disposal; and
- h. Creating an independent, accurate and objective record of the past and making recommendations reflective of the truth, to re-unify and reconcile contending groups and/or the peoples of Liberia.³⁸

³⁷ <http://www.trcofliberia.org/>

³⁸ Article VII Section 26 of the TRC Act.

Other components of this section give the Commission powers to make recommendations to the head of state on a range of issues including reparations, making findings and determinations on all matters brought before the Commission and adopting its own rules, among others.

Contending issues

The Act is a very ambitious document that gave the Commission a very broad mandate, which included documenting a historical narrative of the causes of the conflict, investigating human rights violations and investigating economic crimes and abuses of privilege. In the desire to respond to all the elements of its mandate, there was a danger that the Commission might fail to prioritise its key tasks, given its limited time frame and resources. This would therefore result in a loss of focus and a failure to achieve its core mandate. For example, a number of questions on the interpretation of the Act immediately arose.

The author raised the following concerns before the commissioners and key staff during the week of 5 to 9 February 2007 when he visited Liberia as part of a three-person team of international experts to train the commissioners in preparation for the conduction of hearings by the Commission.³⁹

First, the TRC Act uses the phrase ‘gross human rights violations and violations of international humanitarian law’. This would imply that the investigating powers of the Commission are limited to these acts only. There is a legal difference between gross human rights violations and violations and abuse of human rights. Gross violations would refer to what, in human rights parlance, are construed as ‘serious or grave breaches’. Were the drafters of the Act, by this limitation, trying to suggest to the Commission areas of priority that should engage its attention, or would the commissioners investigate every violation and abuse of human rights that is reported to it? In its report, the Commission acknowledged the distinction between gross human rights violations and violations of human rights. It accepted testimonies on all violations but its investigations focused more on gross violations of human rights, given the pervasive nature of such violations. However, its recommendations for amnesty included persons who the Commission acknowledged had committed gross violations of human rights.

Second, the Act makes reference to economic crimes such as the exploitation of natural or public resources. Which operative legal regime will guide the Commission in deciding whether a particular act amounts to an economic crime or to the exploitation of public resources? The Commission adopted the following two definitions of economic crimes: (a) ‘any prohibited activity committed for the purpose of generating economic gains or that in fact generates economic gains. It applies to any state or non-state actor with a link to the conflict in Liberia, including but not limited to public and private individuals, corporations, and other business entities whose economic activities contributed to those human rights and/or humanitarian law violations in Liberia or that otherwise perpetrated armed conflict in Liberia as well as those who benefitted economically from armed conflict in Liberia’ and (b) ‘any activity by a public or private person of any nationality, domestic or international corporate entity conducting or facilitating business in or related to Liberia, or on behalf of the Liberian government, a Liberian business, or Liberian resident or citizen, committed with the objective of generating illicit profit either individually or collectively or in any organised manner by engaging in, among others, the following activities: fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms dealing, smuggling, sexual slavery, human trafficking and child labour, illegal mining, illegal natural resource extraction, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy,

39 Other members of the team were Dr. Alex Boraine, the former Deputy Chairperson of the South African TRC and the then President of the International Centre for Transitional Justice, New York, and Javier Cuilizer, former Executive Secretary of the Peruvian TRC and current professor of human rights law at the University of Lima, Peru.

open market abuse, dumping of toxic wastes and prohibited goods, and any other activity unlawful under domestic or international law.⁴⁰

It is unclear where the Commission imported these definitions from as there is no reference in the report to any Liberian law or international treaty to which Liberia is a signatory as the foundation for the definitions. That said, the definitions are so broad as to amount to nothing. Many of the issues contained in the definitions are treated as crimes under other penal legislations (such as sexual slavery, child labour, illegal mining, illegal natural resource extraction, tax evasion, etc.) rather than as economic crimes. Lumping all of them under the same heading makes for confusion, and all the more so when the Commission adds a link between these crimes and the commission of human rights violations. Many of those who benefitted materially from the conflict may not have been complicit in the commission of human rights violations. Some may even plead ignorance of knowledge that such violations were being committed.

There are two situations that the Commission lumped together. The first situation related to officials of the state of Liberia who committed economic crimes in the years before the civil war. Was there a legal regime that dealt with those kinds of issues? The Commission did not deal with this. The general understanding of economic crime is the exploitation of public office or the use/manipulation of financial instruments and institutions for personal benefit, as well as the collusion, aiding and abetting of such conduct. Therefore, the requirement of proof is not as onerous as the Commission's definitions require. The proof beyond reasonable doubt required in criminal prosecutions seeks materials or facts that demonstrate that the intention to commit a crime existed and moreover, that a crime was in fact committed, which resulted in benefit at the expense of the state. The field of endeavour is immaterial and therefore, the listing of the various acts of criminal conduct is not necessary.

The second situation concerns the context of the armed conflict in which many actors sought to use the confusion and mayhem created by the conflict to generate private rents and in which the authority of the state was so weak that it could not control the activities of these actors. In this case, different armed groups controlled portions of the state and awarded concessions for exploitation of resources in areas under their control. Would they be said to be acting in the name of the state of Liberia and, in that context, were public officials indeed of the state of Liberia? This is still a grey area that needs further research, especially as many new truth commissions are adding elements of economic crimes to their mandates.

Section 4 of the Act charges the Commission to determine those responsible for the violations and abuses and their motives as well as impact on victims. This would imply a duty on the Commission to name perpetrators. What legal and other considerations has the Commission established to guide it in this process? In its final report, on the 'determination of responsibility of individual perpetrators', the Commission decided that 'all individuals affiliated with warring factions or armed groups in positions of command authority and decision-making including heads of warring factions, commanders, foot soldiers, financiers and political leaders are responsible for the commission of gross human rights violations, including violations of international humanitarian law, international human rights law, war crimes and egregious domestic law violations of Liberia, and further that all individuals acting as financiers and providing political leadership to warring factions or armed factions or armed groups are responsible for the commission of gross human rights violations, including violations of international humanitarian law, international human rights law, war crimes and egregious domestic law violations of Liberia'.⁴¹ The Commission clearly went beyond the strict liability basis of responsibility for violations to establish a sweeping, blanket responsibility for persons associated with the armed factions, even where they didn't hold command positions in the factions. There are many levels of accountability, including criminal, moral and political accountability. Some of those caught within the Commission's sweeping determination would more likely fall under political or moral accountability than

40 Final Report of the TRC, Volume II: Consolidated Final Report, 30 June 2009: 286–287.

41 *Ibid.*: 335–337.

criminal. Had the Commission devoted time to establishing the basis for making conclusions on accountability, the cause of transitional justice would have been better served.

Section 4(d) of the Act charges the Commission to conduct a critical review of Liberia's historical past, with a view to establishing and giving recognition to historical truths so as to address falsehoods and misconceptions of the past, relating to the country's socio-economic and political development. How would the Commission determine the meaning of a historical truth and what processes would lead it to such a truth? What are these falsehoods and misconceptions that the Act refers to? Did the commissioners focus their minds to the fact that they are being called upon to write one history of the country that everyone can accept? How is such history written and how does one ensure that all other narratives are also factored into this history? The Commission hired a team of researchers who adopted a historical, chronological approach to interrogate epochs in the history of the country which contributed to shaping and defining the political direction of the country and the state of inter-group relations. This section of the report is quite comprehensive and authoritative and will contribute to a better understanding of the structural context that led to the conflict.

At the time of this meeting, just before the Commission embarked on hearings, it had not yet developed any policies or procedures to guide its work, despite the fact that the Act establishing the Commission clearly allowed for this. Experience from other truth commissions recommends that a truth commission spend part of its preparatory period developing the policies, procedures and mechanisms that would guide its work. By the time it gets confronted with sensitive issues on which there may be high-level interested actors, it would simply apply the framework to the presenting problems. Leaving the issues until very late in its processes might present challenges to the Commission in applying its policies and procedures. For example, in situations where the impact of the application on identified groups and individuals would be obvious, some commissioners may be compelled to seek ways to bend the rules.

In the Liberia case, the Commissioners were consumed by other things. One of them was in relation to the provision on amnesty under section 26(g). Much effort had been expended in deciding whether the amnesty provision should be addressed first and discussing the fact that many ex-combatants wanted assurances from the Commission that they would receive amnesty if they testified before it. The entire second day of the training for the commissioners was taken up with discussion of the amnesty provision.

A clear reading of the relevant sections of the Act would show that the amnesty provision was incidental to the performance of the mandate of the Commission, which was clearly established under section 4. The Commission was charged to promote national peace, security, unity and reconciliation. Under the various subsections of this section, the methodology for achieving these objectives was outlined. To ensure that the Commission achieved its objectives, it was given certain functions and powers. While these functions and powers could be read and construed as part of the mandate, they were essentially designed to ensure that the mandate was realised. In fact, Section 30 of the Act refers to statements made or evidence given before the TRC as being in *advancement of the public interest objective inherent in the functions and objects of the TRC and pursuant to the successful execution of its mandate* (emphasis mine). The amnesty provisions are therefore incidental to the mandate and are not ends in themselves.

This interpretation of the amnesty section is also borne out by the provisions of Rule 47 of the Rules of Procedure⁴² of the Commission, modelled after Section 30 of the TRC Act. The rule states as follows:

Every witness seeking immunity from prosecution or tort actions on account of statements made or evidence given before the Commission pursuant to Article VII, Section 30 of the TRC Act, shall make a formal application for such immunity and give reasons for such a request in order to enable the Commission make a decision on whether or not to grant the immunity requested.

42 'Republic of Liberia, Truth and Reconciliation Commission: Rules of Procedure', 2 September 2006.

For our purposes, the relevant portion here is the phrase ‘on account of statements made or evidence given before the Commission’. This implies that the intended applicant would first make a statement or give evidence to the Commission and only thereafter apply for immunity. If the granting of immunity is conditional on statements first being made to the Commission, the furore about the placement of the amnesty provision was therefore misplaced, and had consumed unnecessary attention from the Commission.

By the operation of this rule, the correct interpretation would be that the application for amnesty is an administrative procedure. Based on statements made or evidence given, a person can apply for amnesty. The interpretation here is that if the statement or evidence would assist the Commission in creating the historical truth that is part of its mandate, it may be inclined to recommend amnesty for the person. This reading will accord with the general intention in establishing the Commission; to promote peace and reconciliation in the country.

Legal jurists might argue that amnesty processes are judicial processes, since the outcome has legal implications on the rights and liabilities of the citizen. This was the interpretation adopted by the South African Truth and Reconciliation Commission. Its approach however, was specifically mandated by the Act establishing the commission, which provided that the commission had powers to grant amnesty that would serve as immunity from prosecution.⁴³ Thus, anyone whose amnesty application was rejected could be prosecuted in court. The South African TRC therefore adopted a strict due process approach. In consequence, the amnesty processes lasted for four years and delayed the conclusion of the work of the TRC.

There is a certain global fascination with the work of the South African TRC. Perhaps because it was the first truth commission to make its hearings public or because of the significant role played by the media in broadcasting its processes and attracting a huge global audience. Subsequent truth commissions have modelled their enabling legislations on the South African one, with space for local peculiarities in the mandate and operations of the commission. There is a certain suspicion that Liberian civil society actors wanted to re-enact a similar process, believing that given the global awareness of the violence that attended the Liberian civil war, there would be a corresponding interest in the work of the Commission since the scale of atrocities was worse than in South Africa.

The major difference is that while the South African government contributed more than 60% to the budget of its TRC, which enabled the commission to last as long as it did, the Liberian government did not have the resources to substantially finance the work of its own TRC. The Liberian TRC was financed mostly from contributions by the international community.⁴⁴ There was therefore some unease within the international community in Liberia, regarding the fact that if the commission wanted to go the route of the South African experience, it would be stuck midway, as the amnesty processes could prove inconclusive, implying that the truth and accountability process would not be completed.

Section 26(g) of the TRC Act dealing with the granting of amnesty is poorly drafted. It charges the Commission to recommend amnesty under terms and conditions established by itself. However, no terms and conditions had been established by the time the Commission began public hearings. Until the training programme referred to earlier, the commissioners had not realised that they had to establish the conditions for amnesty. In the South African experience, the applicant had to show that the crime for which amnesty was being sought was committed in the pursuit of a political objective. Most of the violations committed during the conflicts in Liberia were deliberate attacks on citizens and their communities. Would such attacks be rationalised as part of a political objective or whatever other criteria the Commission may establish?

The Act also insisted that the applicant make full disclosure of their wrongs and ‘thereby

43 See the Truth and Reconciliation Commission Act of South Africa.

44 Contributions were received from the European Union, the UN Mission in Liberia (UNMIL) and a host of UN agencies including UNDP, UNIFEM, UNICEF etc; several international organisations such as the Open Society Institute for West Africa (OSIWA) and international NGOs such as the International Centre for Transitional Justice.

express remorse for their acts and/or omissions'. The mere act of full disclosure is equated as tantamount to the expression of remorse. One major challenge that all truth commissions face is the measure of truth they receive. Particularly from ex-combatant communities, the amount and quality of truth told during commission hearings is usually selective, especially where the commission is hampered by resources from investigating the stories told by the ex-combatants. How then would the Liberian TRC measure full disclosure so that the applicant could be deemed to have expressed remorse for his actions?

Finally, the Act stated that amnesty or exoneration would not apply to violations of international humanitarian law and crimes against humanity, in conformity with international laws and standards. Most of the violations committed during the conflict were violations of international humanitarian law such as attacking unarmed civilians who were not combatants in the conflict, murder and abductions or crimes against humanity such as massacres and the targeting of people on the basis of their ethnicity. In reality therefore, the amnesty provision amounted to nothing. Unfortunately, the Commission had devoted a substantial part of its time to debating issues that would add limited value to its work.

What the above analysis demonstrates clearly, is the importance of planning in the operations of a truth commission. The preparatory period is supposed to enable the commission not only to engage in public education activities, but also to develop and test its policies and procedures before it embarks on its operational phase. The Liberian TRC seems to have developed many of its policies retroactively. This perhaps accounts for the lack of explanation for many of the final decisions made by the Commission. None of the two volumes of its report, for example, offered an explanation as to how the Commission came to the conclusion to ban a certain category of public officers from continuing to hold public office, or of the facts considered by the Commission in coming to such a decision. In addition, there was no explanation of why the Commission recommended amnesty for persons who, in the opinion of the Commission, had committed gross violations of international humanitarian law and international human rights. The issue is not whether the Commission had powers to grant amnesty for violations of international humanitarian law (which it did not). If the Commission had clearly developed policies and procedures at the beginning of its work and applied them correctly, many of the decisions for which the Commission is being criticised might have been avoided.

The Commission has since concluded its work and between June and December 2009 produced its final reports which tried to respond to some of the issues contained in its mandate. Let us now briefly examine the conclusions and recommendations of the Commission contained in the final reports.

Conclusions and recommendations of the Commission

The Commission called its report a 'forthright response' to its mandate of investigating and determining responsibility for gross human rights violations and examining the root causes of the various episodes of state breakdown and violent conflicts. It hoped the Report would part 'a mountainous and depraved sea built on 186 years (1822–2006) of misunderstanding, inequality, poverty, oppression and deadly conflict with the enduring principles of truth, justice and reconciliation'.⁴⁵

The Commission concluded that the origin of the conflict could be traced to the foundations of the state of Liberia. It established three critical junctures in the history of the country that made civil war seem inevitable. The first spanning from 1822, when the state of Liberia was founded,⁴⁶ to 1847 when it declared independence. That period was characterised by conflict

45 2008 *Final Report of the Truth and Reconciliation Commission of Liberia (TRC)*, Vol. 1: Findings and Determinations, www.trcofliberia.org

46 The American Colonisation Society (ACS), an organisation of slave owners, abolitionists and white clergymen, founded in 1816 by a Presbyterian minister called Robert Finley, resettled some 10,000 African-Americans and several thousand interdicted slave ships between 1821 and 1867. It governed the Commonwealth of Liberia until independence in 1847.

and wars, especially over the attempts by some of the native kings to continue engaging in the slave trade, and the autocratic policies of the American Colonisation Society (ACS) which managed the new territory, backed by the United States government and culminating in the forceful seizure of native lands. A process of inferiorisation of native identity and culture typical of colonialist policies in other parts of the world was begun by the settlers. This contributed to further impoverishing the natives, as only those who conformed to settler social norms could gain employment or access to public services, and to the undermining of inter-group unity and national identity since. The second critical juncture was from the formation of the state in 1847 to 1989, when the civil war started. It was this time that the pre-existing tensions were not only exacerbated but new ones created as well. The natives were disenfranchised from all sectors of political and economic activity and were not considered citizens until legal discrimination was eradicated in 1904.⁴⁷ Even when universal adult suffrage was introduced in 1946, only those natives who paid hut taxes could vote in elections.⁴⁸ This situation was compounded by the rise of authoritarianism during Tubmans' presidency (1944–1971), the politicisation of the military and the consequent abuses of human rights and freedoms that followed as well as the culture of constitutional subversion that followed. The third period, 1990 to 2003, marked the period of the civil wars.

The Commission found that all the factions in the conflict were responsible for human rights violations. There were significant and less significant violator groups. These include: Charles Taylor's National Patriotic Front of Liberia (NPFL); Liberian United for Reconciliation and Democracy (LURD); the Liberian Peace Council (LPC); the Movement for Democracy in Liberia (MODEL); the United Liberation Movement (ULIMO) and the two offshoots (ULIMO-K and ULIMO-J); the Armed Forces of Liberia; and the Independent National Patriotic Front of Liberia (INPFL). None of the factions took any reasonable measures to protect the civilians under their control from human rights violations perpetrated by their combatants and followers. The violations were systematic and premeditated and were clearly the result of deliberate planning, organised and orchestrated to achieve military or political objectives irrespective of the rights of the non-combatants, women and children. These findings are significant because the conflict started in December 1989 ostensibly to remove an oppressive government from power. The so-called 'liberation movements' which set out to liberate the Liberian citizens from the rule of a tyrant became more tyrannical than the tyrant himself. All the factions targeted individuals and committed horrendous brutalities against them. This included the institutions of the state security apparatus that were no less discriminating in their attacks on civilians.

The Commission therefore recommended the establishment of a criminal court to determine the criminal responsibility of individuals, armed groups and other entities that it determined were responsible for the violations that occurred. The Commission addressed the issue of individual responsibility in its Final Report. During the hearings, many of the victims mentioned the names of those who were responsible for the violations that they suffered. Based on these testimonies and its investigations, the Commission had invited many of the alleged perpetrators to testify before it. The Commission published the names of fifty persons (including the president Ellen Johnson-Sirleaf) which it recommended should be barred from holding public office for a period of thirty years, because of the roles they played during the war or the support they provided to the armed factions. Prosecuting many of the alleged perpetrators would send the clearest signal that a new era has dawned in Liberia and that those who do wrong would ultimately be held accountable.

Unfortunately, the Commission did not review the evidence against these people in the report, nor did it provide a justification for its recommendation. The reader is left to conjecture the reasons. The report also did not show that the Commission had advised those persons that it would make adverse recommendations against them, and afforded them the opportunity to respond to the evidence against them. By its approach that was totally devoid of fairness

47 Volume 2 Consolidated Final Report of the TRC June 2009: 70. www.trcofliberia.org/reports/final

48 Volume 2 Consolidated Final Report of the TRC. *Ibid.*

and equity, the Commission jeopardised the long-term consolidation of peace and security in the country. The persons adversely mentioned would certainly continue to challenge the conclusions of the Commission and deny their involvement in the war. By not putting out all the relevant evidence and the basis upon which it came to its conclusions, the Commission is allowing a competing history of the events to be promoted.

The Commission recommended the establishment of 'National Palava Hut Fora', under the aegis of the Independent Human Rights Commission, to provide victims a public venue to confront perpetrators living in their communities and facilitate reconciliation between individuals, groups and communities. This is a critical recommendation since reconciliation takes a long time, and despite the end of the war, ethnic animosities and resentments are still strong in the country. One of the challenges most truth commissions face is their inability to go to all parts of the country during their public hearings. The decision of where to conduct hearings is not always influenced by the nature and numbers of human rights violations committed in the community. Most often, this is influenced by extraneous factors such as the availability of hotel accommodation and venues, presence of broadcast media to give the widest coverage to the commission's proceedings, financial constraints and by the fact that the location visited may be the administrative capital of the district or region. Large parts of the country could therefore be excluded from a commission hearing beyond participating in the statement making process. During these hearings, only a select number of victims and alleged perpetrators participated in the commission's proceedings. The vast majority of victims never had their stories acknowledged publicly, nor did they have a platform to confront their perpetrators. In such cases, a tenuous peace exists between victim and perpetrator. In the eagerness to move on as a nation following such a violent past, the country fails to establish the minimum conditions for mutual existence between victim and perpetrator.

In the Liberian context, given the over two decades-long history of violence and abuse, National Palava Hut Fora is imperative, especially when it is recalled that a substantial number of the perpetrators were family members, friends or neighbours. The National Palava Huts will enable communities to examine their own local dynamics in the conflicts and establish the conditions for moving forward as a community. More importantly, applying traditional methods of justice and reconciliation could potentially result in reparations by the perpetrators and the use of other traditional methods of expiating guilt and crime sufficient to bring about reconciliation in the communities. Experience from Sierra Leone showed that in many of the communities, the cleansing of perpetrators within the sacred groves and shrines amounted to expiation of guilt and provided them with a new beginning sufficient for community members to reconcile and accept the perpetrators back into the community.

With regards to amnesty, the Commission recommended that certain persons who appeared before it should not be prosecuted. It proposed that all individuals admitting their wrongs and speaking truthfully before it as an expression of remorse should not be prosecuted. This recommendation is in keeping with the Act establishing the Commission that amnesty could be offered to those who testified truthfully and expressed remorse. The challenge was in how the Commission established the truth of the statement made by the alleged perpetrators. What was the minimum condition or element of truth acceptable to the Commission? What was the role of the victim or of the victim's family in the decision of whether to offer amnesty or not. How did the Commission measure remorse to decide whether it was genuine or not? A number of those recommended for amnesty have allegations of gross human rights violations hanging over their heads. These are relevant questions and the Final Reports of the Commission did not offer any rationale or explanation as to how the Commission came to these decisions. Finally, the Commission proposed a general amnesty for all child combatants. This is in keeping with international law and practice, including the practice of the Nuremberg tribunals and the Special Tribunal for Sierra Leone.

Conclusion

While the work of the Commission is now concluded, its Final Report and its processes provide penetrating insights into the challenges Liberia faces in consolidating the peace and providing security to its citizens. Many citizens testified to the erosion of public confidence in the institutions of the state, as these had become agents of oppression and were no longer delivering public goods and services. They also testified to the intense ethnic rivalries that the conflict generated and the need to re-develop a sense of the nation and national loyalty. The Commission's second volume contains recommendations for institutional reform and national renewal. Above all, the Commission's key finding was that the major root causes of the conflict were: poverty; greed; corruption; limited access to education; economic, social, civil and political inequities; identity; and land tenure and distribution.

If the ruling government effectively implements current programmes and actions to respond to these factors, it would hopefully remove the underlying factors that can lead to a resurgence of violence and conflict. That would provide a fitting legacy to the work of the Commission – as a catharsis for national and community discourses on their recent violent past; the actions needed to draw a line between the past and the future, establishing minimum standards and rules of conduct for public officers anchored on the rule of law; as well as the necessity to come together again as a nation and as a people to reconstruct the social fibre, rebuild lives and communities. Seeking the accuracy of the past through an impartial historical narrative is a vital ingredient in this renewal, as it would prevent selective interpretations of the history in the future. In the same way, justice is important in the healing and recovery of victims and the restoration of their dignity. While the report of the Commission contains many weaknesses, what it does demonstrate is that through the work of such commissions, ordinary people can demand accountability from their leaders. That a sitting president could be held accountable for human rights violations and declared unfit for public office is groundbreaking in Africa, and serves to demonstrate that even the powerful could be held to account. This is an element that has been missing from Liberia's miserable past.

What the work of the TRC of Liberia and other similar mechanisms across the continent demonstrate is that the construction of justice and security architectures for Africa is incomplete unless each nation openly confronts its past and interrogates it to unearth the culture of impunity that is part of the national political order. It must bring to account 'yesterday's powerful men', providing the narrative of how they conspired to loot their respective countries and undermined state institutions in the quest to ensure regime security. This accountability process is a fundamental element of the change in mindset that is required to convince ordinary people that the old order has vanished and therefore encourage them to vigorously demand accountability from their leaders. This lays the critical foundation for the rule of law, respect for human rights and the integrity and independence of the oversight institutions of the state, including the judiciary, and for the consolidation of democracy in the country.

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About the author

Dr Ozonnia Ojielo is Senior Peace and Development Advisor to the United Nations Resident and Humanitarian Coordinator in Kenya. He was a former Chief of Operations and later Officer in Charge of the Sierra Leone Truth and Reconciliation Commission.

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