

Truth, Justice and Reconciliation

Analysis of the Prospects and Challenges of the Truth and Reconciliation Commission in Liberia

Dr Abdul Rahman Lamin¹

INTRODUCTION

Since the signing of the ECOWAS-brokered Comprehensive Peace Agreement (CPA) by parties to the Liberian conflict in Accra, Ghana, on 18 August 2003, a semblance of normalcy seems to have returned to one of West Africa's most unstable states. With the official end of the voluntary disarmament and demobilisation process in October 2004, and post-conflict elections scheduled to take place in October 2005, there is a renewed sense of hope in Liberia. The CPA, which remains the fundamental basis for peace, is an embodiment of commitments made by the various parties. Significant among these are the protection of civilians, and a corresponding commitment to uphold the rule of law during the transitional period and beyond.

We should underscore at the outset that Liberia's transitional arrangement was designed to accommodate the interests of competing factions by giving them a role in governance in exchange for their commitment to disengage militarily. Consequently, a two-year National Transitional Government of Liberia (NTGL), with representatives from the various armed groups, was established under the agreement. The mandate of that government is to oversee the peace process, leading up to presidential and legislative elections in October 2005. To be sure, this "power-sharing" arrangement was informed by the assumption that the "exclusion" of any group from the "new" political dispensation would be counterproductive and ultimately undermine efforts toward building lasting peace.

In the context of the long history of the Liberian conflict, this appears to be a well-founded principle, non-adherence to which led to the prolongation of the first civil war in the 1990s. Thus, while some critics have argued that the transformation of warlords into statesmen undermines the rule of law and robs the victims of justice, proponents of "power-sharing" counter that

given the situation that obtained in Liberia prior to the CPA, anything short of an “all-inclusive” political settlement would have been a recipe for future disaster. Of course, only time will tell whether the “inclusiveness” adopted under the Accra process will ultimately achieve the desired results. Even if it does, it still will not address the issue of impunity.

This chapter reviews the challenges and prospects associated with the protection of civilians and restoration of the rule of law in post-conflict Liberia. Specifically, we will address the challenges and prospects related to the establishment of a truth and reconciliation commission (TRC), as a vehicle for addressing past human rights abuses. For one thing, developing a political system and culture anchored on the context of the rule of law understandably requires long-term commitment by the various layers of Liberian society, as well as sustained engagement and support from the country’s external partners. Rebuilding battered institutions of justice that inspire the confidence of all Liberians, and at the same time serve as a bulwark for progress in the long run, is clearly a very tall order. As a consequence, if the process of national reconstruction is to achieve its desired outcome, it needs to be approached from a broadly regional and international perspective.

Structurally, the chapter is divided into four parts. Part 1 provides a brief overview of Liberia’s track record of upholding the rule of law and protecting civilians. Part 2 examines efforts to address issues of accountability with respect to atrocities committed during the war. It offers a review of attempts to fulfil the mandate of the Accra Agreement, with respect to the establishment of a TRC. The wisdom of adopting a “truth-telling” approach to accountability, as opposed to one that emphasises punishment through a criminal justice process is also analysed. The experiences of other accountability mechanisms in the region – specifically the TRC and Special Court in Sierra Leone and the National Reconciliation Commission (NRC) in Ghana – are juxtaposed with Liberia’s attempt to promote reconciliation through “truth telling”. This is followed in the next part by a brief examination of the international community’s efforts to support Liberia in this very costly project. The final part offers some reflections on the way forward as Liberia tries to forge a post-conflict society based on the rule of law and respect for the rights and protection of all citizens.

LIBERIA’S TROUBLED PAST WITH THE RULE OF LAW

While it is beyond the scope of this chapter to catalogue Liberia’s troubled history with respect to the rule of law, it is useful to highlight some key

patterns, particularly in the decades preceding the outbreak of the first wave of civil war in 1989. This historical context has direct relevance for our understanding of the patterns of abuse against civilians during the years of armed conflict. To that end, it should be unequivocally stated at the outset that Liberian civilians, like their counterparts in most parts of West Africa, were historically on the receiving end of authoritarian regimes long before war broke out in 1989. For instance, the pattern of abuse against civilians perpetrated by agencies allied to the state under successive leaders of the True Whig Party is well documented.² The elites associated with this party survived in power for too long by preserving a patronage political system that favoured the minority Kongo ethnic group – otherwise known as Americo-Liberians – and disadvantaged the majority indigenous population. While it may be true to suggest that not all members of the Kongo ethnic group benefited from that system, being a Kongo clearly gave one some advantages over a non-Kongo citizen. To the extent that the state was responsible for the allocation of resources and the provision of social services such as healthcare, education, water and sanitation, there were always clear disparities between Kongos and the indigenous population.³

The Americo-Liberians, like many other groups on West Africa's coastal areas that historically had early contact with Western powers, used their relationship with those external powers to dominate other groups. In the process, their behaviour laid the foundation for future conflict. Although Liberia was never formally colonised, unlike other African countries, interestingly, the minority Kongos had an unfair advantage over the indigenous people by the time the state was established in 1847. As descendants of slaves from the United States, the Kongos used their "unique" status and relationship with America to capture political power and thus preside over a system that advanced their own interests at the expense of other groups. Indeed, it may be argued that this philosophy was espoused in the words: "remember the children of the slaves". That they had better educational opportunities, and were favoured in the public sector, business and other fields for more than a century helped strengthen resentment against the Kongos by other groups who felt excluded.

Although comparing Liberia's ethnic configuration to that of pre-genocide Rwanda may be a bit risky, parallels between the two should not be lost on observers, particularly since ethnicity has some bearing on the outbreak of conflict in both cases. It is well known that the discriminatory policies practised by Belgian colonialists helped not

only to polarise relations between the Tutsi minority and the majority Hutu at independence in 1962, but also to spark the genocide in 1994.⁴ Similarly, in Liberia, discriminatory practices carried out by the minority, but politically dominant, Kongo against indigenous groups created deep-seated grudges against them that never disappeared, and clearly played a role in sparking war in 1989. The difference between the two cases, however, is that in Rwanda, policies of exclusion were initiated and imposed by external forces, whereas in Liberia they were perpetrated by a handful of the predominantly Monrovia-based Kongo elites.

That notwithstanding, some commentators have compared the dominant influence and ruthless pattern of administration instituted by the minority Kongo-led 'oligarchy' to that which was initiated in colonised African territories by European imperialists. For instance, in analysing the relationship between the two, Alhaji M S Bah points out that although Liberia was formally declared independent in 1847, "citizenship rights" were only granted to the indigenous population in 1904, with "voting rights" following much later in 1946.⁵ Bah also draws attention to the pattern of taxation imposed on the rural population by the Monrovia elites, suggesting that it was clearly "exploitative" and designed primarily to further reinforce Kongo dominance. It is no accident, he argues, that the imposition of a "hut tax" in 1925, and its hostile implementation by the "Liberian Frontier Force" engendered resentment among the population and led to "violent revolts" in rural areas.⁶ This episode is indeed reminiscent of revolts that were sparked in Sierra Leone in 1898 by the indigenous population who rebelled against the imposition of a "hut tax" only two years after the colonial authorities declared that country's hinterland a "protectorate" of the British colony.

There are other parallels to be drawn between ethnic relations in Liberia and in Sierra Leone. In Sierra Leone, as in Liberia, the minority Creoles had earlier contact with Europeans because they were descended from slaves who were resettled in the country, following the abolition of slavery in Europe and America. Because of their early European connections, the Creole elites had access to Western education, which gave them an edge over elites from other groups. Thus by the time the country attained independence in 1961, the Creole elites had strategically placed themselves in the civil service, with a firm grip on the judiciary. However, unlike Liberia, where the Kongos became the dominant political class at the birth of the state, the Creoles never really had political dominance in Sierra Leone. Many Creoles had an early advantage in education, but

a significant group of educated elites among other indigenous groups, particularly the Mendes, served as a counterweight to Creole dominance in the years leading to independence.⁷

Unfortunately, Liberia did not have a comparable indigenous group of elites that could serve as a counterweight to the Kongos. The subjugation of indigenous Liberians by their Kongo “overlords” was entrenched in the structures of the society. Their ill treatment elicited criticism from outside Liberia, and consequently forced the authorities in Monrovia to establish an “International Commission of Inquiry to investigate allegations of slavery and forced labour in Liberia”⁸ in 1930. While modest reforms were implemented as a result of the commission’s recommendations, the status quo did not change much, as repressive policies by the True Whig Party remained in place well into the 20th century.⁹ That it became possible for the Kongos to dominate Liberian political life for more than a century, and use it to their advantage does not come as a surprise, given the nature and pattern of administration they presided over.

The rise to power of Liberia’s first indigenous leader, Master-Sergeant Samuel Kanyon Doe, in 1980 raised hopes among many indigenous people that the pattern of administration maintained under the leadership of the TWP might be reversed. Unfortunately, Doe failed to live up to expectations but followed the pattern of abuse against civilians that preceded his rule. The only difference was that his minority Krahn ethnic group replaced the Kongos as beneficiaries of the largess from the state. The repressive nature of the regime became evident soon after the 1980 coup, as former allies, thought to plotting to unseat the young and inexperienced Doe, were ruthlessly eliminated.¹⁰ To ensure Krahn dominance of the political system, Doe and his cronies went on a purging spree that targeted groups believed to be supportive of “anti-revolutionary” elements within the ranks of Peoples Redemption Council (PRC).¹¹ The Gio and Mano ethnic groups which later formed the support base of Charles Taylor’s National Patriotic Front of Liberia (NPFL) when it invaded the country in 1989 were singled out for repression by Doe because of their perceived association with “anti-revolutionary” elements such as Thomas Weh Seyn and Thomas Quiwonkpa.¹² That less than five years after taking power the Doe administration had ethnically polarised Liberia to the point that the seeds of a brutal conflict had already been sown did not come as much of a surprise to many. Doe’s survival in office for nine years was only guaranteed and made possible because of the strategic alliance he forged with the US, which became Liberia’s major external patron, particularly during the Reagan administration.

It is therefore unquestionable that the pattern of abuse instituted by the Doe administration increased the level of discontent in Liberia, and culminated in the outbreak of rebellion in 1989, led by Charles Taylor's National Patriotic Front of Liberia (NPFL).

NATIONAL IMPUNITY: A PARADIGM ROOTED IN THE PAST

That an entrenched culture of political violence and systemic patterns of abuse against civilians was already in place by the time that war broke out in 1989 is not in dispute. Given this backdrop, perhaps, one should not be surprised that non-combatants were subjected to various forms of atrocities by the various warring factions. That armed factions flouted virtually all the rules and norms of warfare governing the treatment of civilians and non-combatants can be partly explained by the long history of abusive, repressive and authoritarian governance. By the time the National Patriotic Party (NPP) government took power following the controversial elections in 1997,¹³ it was predictable that Charles Taylor would follow in the footsteps of his predecessors. In essence, by 1997, Liberia had a well-established culture of national impunity that was deeply rooted in the country's history of poor governance and reckless disregard for fundamental human rights.

The question now, as Liberia slowly but steadily goes through the transition to peace is, what can be done to prevent future governments from reverting to the old ways of regime security tendencies and the abuse of civilians, rather than protecting them? The Accra Agreement provides for the establishment of a truth and reconciliation commission, to address past wrongdoing. This TRC process is designed to serve as an insurance policy that guarantees future protection of civilians. It is worth asking, though, whether this approach is sufficient and, if not, what other alternatives are available, and what are the implications for long-term peace.

RESTORING THE RULE OF LAW AND PROTECTING CIVILIANS: IS THE TRC AN ANSWER?

The legal basis for establishing a TRC for Liberia can be found in Article XIII (1) of the Accra Peace Agreement. Like other transitional societies that have experimented with truth-telling, the idea of a TRC was designed in the hope that it would provide an opportunity for both victims and perpetrators to "tell their stories" about the past. The assumption is that this kind of exercise would enhance the healing and reconciliation processes in the post-conflict period.

Liberia is by no means the first society that has experimented with the idea of establishing a truth commission in the aftermath of a bloody conflict. The dilemma faced by most societies transitioning from war to peace, or from authoritarian rule to democratic governance is the lack of consensus on the kind of institutional mechanism required to deal with past injustices that typically had to do with grave human rights abuses. At issue is whether to “punish” perpetrators of those violations, or to find ways of “reconciling” past enemies. The conceptual debate in this area – transitional justice – borders on two approaches, namely “retributive” or “restorative” justice.

Retributive justice by definition is dispensed through a criminal justice process instituted at national, regional or international level. Such a process can be in the form of an international criminal court or tribunal set up in the aftermath of conflict to prosecute perpetrators of human rights abuses. Recent examples of a retributive model of justice include the International Criminal Tribunals for the former Yugoslavia (ICTY), and Rwanda (ICTR), and the Special Court for Sierra Leone (a “hybrid” international tribunal). An important development in the evolution of international criminal law generally, and more specifically in reinforcing retributive justice, is the adoption in 1998 of the Rome Treaty to establish the International Criminal Court (ICC). The ICC, which came into force in July 2002 following the ratification of the Rome Treaty by 60 state parties, is a significant development that not only reaffirms the rapid evolution of individual human rights, but also underscores the erosion of state sovereignty, and the whole concept of “sovereign impunity”.¹⁴

By contrast, restorative justice is typically dispensed through a legally constituted process that lacks prosecutorial powers, such as a “truth commission” or a “national inquiry.” Well-known examples of the restorative model of justice include truth commissions established in the Latin American countries of Chile, Argentina and Peru, after decades of military autocracy.¹⁵ In Africa, South Africa presents the most celebrated example of a transitional society that has made significant progress toward healing past wounds, thanks to the work of the TRC, which was established after the historic multi-racial and democratic elections of 1994. Little wonder that other transitional societies in the continent have sought to replicate the South African experience, although their historical contexts are radically different from that of South Africa.¹⁶

The issue of blanket or general amnesty is always contentious in designing a transitional justice mechanism such as a truth commission.

Should blanket amnesty be granted to (ex-)combatants in exchange for their cooperation with the peace process, as in Sierra Leone, or should amnesty be predicated on the willingness of perpetrators to accept wrongdoing, as the South African experience shows? What are the limitations of amnesty agreements reached by the conflicting parties themselves? These and other key questions are crucial to our understanding of the controversial “peace versus justice”, debate in transitional societies. If “retributive” justice is the preferred approach for dealing with past abuses, is it likely to contribute to lasting peace? Conversely, what is the likelihood that future abuses will be deterred if perpetrators of past abuses are not punished? In other words, does “restorative” justice not have the potential to undermine long-term peace? In effect, is there a trade-off between “peace” and “justice” and if so, what impact does that have on the post-conflict environment? It perhaps comes as no surprise that immediately after the CPA came into force, an intense debate was rekindled about criminal accountability for past atrocities. To be precise, strong voices, mainly from among Liberian civil society, advocated the establishment of a war crimes tribunal to prosecute perpetrators of atrocities. According to the thinking of this group, a TRC would not be a sufficient mechanism to attain justice for the victims, in the light of the bloody past. They argued that given the systemic nature of abuses that occurred during the conflict, Liberians cannot simply overlook past crimes and pretend that reconciliation can be achieved smoothly. While the TRC may be of value to long-term peace-building efforts, it is not sufficient by itself. A parallel institution, with prosecutorial powers, is required to complement the work of the TRC.

Despite these arguments, and given some of the pitfalls of the TRC model, it currently appears that this is the approach that will be taken. A counter-argument was immediately offered by Gyude Bryant, on taking office as chairman of the NTGL in October 2003. Bryant unequivocally ruled out the idea of a tribunal to prosecute key perpetrators of war crimes, many of whom were already leading members of his transitional government.¹⁷ Bryant’s view was that retributive justice, particularly in the aftermath of the Accra Agreement, would be counterproductive to more urgent tasks such as disarmament and demobilisation of ex-combatants. It is quite plausible to argue that Bryant’s position on this critical subject was influenced largely by his weak or almost non-existent political base within the NTGL. As head of a body dominated by former warlords, the chairman was probably keen to maintain the delicate political balance, knowing full well that any talk of prosecutions would

not only undermine his limited authority but could potentially lead to the disintegration of the fragile coalition. It is perhaps not far-fetched to suggest that in recognition of Bryant's weak political capabilities, some civil society organisations in Liberia were tinkering with the idea of expanding the mandate of the Special Court for Sierra Leone to cover cases in Liberia, instead of having a cottage industry of ad hoc tribunals and Special Courts.¹⁸

Given his opposition to the criminal tribunal approach, Bryant's next policy move should not have come as a surprise to critics. In January 2004, without prior consultation with other stakeholders, the chairman announced the names of TRC members. Under the CPA, the TRC would have a mandate "to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation." This move understandably drew immediate fire from critics. They contended that the chairman's actions could potentially undermine "ownership" of the process, something that was of crucial importance to the overall success of the commission and the process of democratic consolidation in Liberia.

While these criticisms are well placed, it appears from careful reading of the situation that Bryant was merely taking advantage of a legal void that existed at the time. Although Article XIII (1) of the CPA called for the establishment of a TRC, it did not spell out the process that should be followed prior to the appointment of commissioners. Furthermore, unlike Sierra Leone and Ghana, where national legislatures first passed legislation establishing the commissions and outlined the consultative process to be followed prior to the appointment of commissioners, in Liberia no such legislation was in place at the time that Bryant made his announcement. To that extent, one can only conclude that the chairman took advantage of the situation. Indeed, it is also possible that by not consulting the key interested parties, particularly the former warlords sitting on his cabinet, Chairman Bryant was simply making amends for the obvious political expediency of the CPA and, perhaps more importantly, was seeking to avoid the issue becoming a whitewash of recriminations between the major players in the war.

It may be no accident that the NTLA, in consultation with local and international NGOs, later embarked on a process of drafting a law that would formally deal with this issue. Out of this consultative process, draft legislation establishing a TRC, and clearly spelling out its composition, mandate and jurisdiction, was put together in late 2004, by

the NTLA.¹⁹ Of course one should acknowledge, like some of Bryant's critics on this issue, that the process will move on from here, albeit with some reservations about the manner in which the chairman handled the appointment issue.²⁰ The point is that a compromise will have to be sought if the TRC is to be effective in carrying out its mandate and, more importantly, if it is to have a meaningful impact on peace-building in post-conflict Liberia. In fact, a cursory glance at the draft legislation clearly attests to this. For instance, Section 9(b) of the draft Act states that the nine commissioners appointed prior to the enactment of the law will be "included in the list of nominees" forwarded to the head of state by a "selection panel" to be coordinated by an ECOWAS representative.²¹ In an attempt to rectify Bryant's "non-inclusive" approach in appointing the initial nine commissioners, the draft legislation provides for an "inclusive" selection process with representatives from civil society, political parties, ECOWAS and the UN. At the same time, the legislation recognises the chairman's initial appointees and agrees to retain them on the future list that will be developed by the selection panel. In effect, this is a win-win situation for all stakeholders involved in the process.

LIBERIA'S PROPOSED TRC: A COPY-CAT OF POST-CONFLICT PEACE-BUILDING EXPERIMENTS IN WEST AFRICA?

TRCs have become a fashionable approach by many post-conflict societies, particularly in Africa. In the past decade and a half, virtually all peace settlements reached by conflicting parties after long-drawn-out conflicts have addressed the issue of reconciliation within the context of finding a mechanism or framework for former protagonists to engage in a "dialogue" about the past, in the hope that this might expedite the healing process. In spite of its unfulfilled promises, the South African TRC has emerged as a model for societies making the transition from war to peace in Africa. However, given the "uniqueness" of the dynamics of every conflict, there is always a danger that replicating one experience in completely different settings could backfire and potentially lead to the unravelling of the relevant peace accord. That said, the success or failure of Liberia's proposed TRC is dependent on how much it can benefit from similar experiences in the sub-region by building on their strengths. To that end, it is useful to briefly examine how Liberia's proposed TRC compares with those established in Sierra Leone and Ghana.²²

Like the Sierra Leonean TRC, the proposed Liberian TRC is the product of a political compromise by armed groups that were involved

in a protracted bloody armed conflict. After more than a decade of conflicts, characterised by gruesome atrocities in both Sierra Leone and Liberia, the belligerents, with the assistance of external mediators, reached political settlements that in essence traded justice for peace.

In Ghana, on the other hand, a democratically elected government established the NRC to investigate human rights violations that occurred during decades of authoritarian rule, even though it fell short of mandating the commission to investigate all violations committed during civilian and military misrule and dictatorships after independence in 1957, or after the unconstitutional overthrow of the country's first president, Kwame Nkrumah. The government of President John Kufuor used its legitimacy as an elected representative of the people to establish the NRC, despite opposition from certain figures in the former ruling party.

Unlike Ghana, but like Sierra Leone, eligibility for appointment to the Liberian TRC is not limited to Liberian citizenship. The draft TRC Act makes provision for the appointment of three non-Liberians out of a total of nine. Like Sierra Leone, where the commission was made up of four Sierra Leonean nationals and three foreign nationals, Liberia's future TRC will comprise Liberian and foreign nationals.

Unlike Sierra Leone and Ghana, where the TRC and NRC respectively had no power to grant amnesty to past human rights violators, the proposed Liberian TRC is empowered to consider the issue. In Sierra Leone, because of the blanket amnesty granted to ex-combatants under the Lomé Peace Accord and subsequently incorporated into the TRC Act of 2000, the commission had no legal authority to consider the subject. Similarly, the National Reconciliation Commission Act (Act 611) of 2002 that established the NRC in Ghana is completely silent on the subject. The Accra Agreement merely states that the NTGL "shall give consideration to a recommendation for general amnesty to all persons and parties engaged or involved in military activities during the Liberian civil war" without stating from whom those "recommendations" should emanate, or what would be the basis for even making them. But the draft TRC Act is very clear in stating that the commission can actually "recommend amnesty" provided an applicant makes "full disclosure", and expresses "remorse ... and provided that amnesty or exoneration shall not apply to violations of international humanitarian law". This point is quite instructive since Charles Taylor, one of the main characters responsible for the abuses in Liberia and the entire sub-region for that matter, was granted asylum in Nigeria as part of a compromise that enabled him to "honourably" relinquish power. While it may have been

politically expedient for the ECOWAS leadership to do so, this issue remains very controversial, as it highlights the contradictions inherent in the group's peacemaking role in Liberia and elsewhere. This complicates even the role of the UN, which has unequivocally spoken out against impunity in Liberia, but is so constrained by the volatility of the security situation, that it has been very cautious in making pronouncements about the controversy.

In Sierra Leone and Ghana, the national legislatures passed laws formally establishing and incorporating the TRCs into the legal and political framework of the state prior to the appointment of commissioners. In Liberia, however, no such law existed before the NTGL chairman made his initial appointments to the commission. To rectify this mistake, efforts to draft an enabling law commenced after nine commissioners were appointed by the interim leader. As a compromise, the initial nominations made by the interim leader will be considered as part of a much larger list of candidates to be vetted by a selection panel.

This analysis illustrates that Liberia is not short of options and precedents, as it navigates the delicate path towards building a post-conflict society that underlines the importance of justice. The choice of a restorative model of justice certainly has its advantages and limitations, as does the competing retributive approach. Given the "unique" circumstance of each conflict setting, it is critical that transitional societies, such as Liberia, carve their own unique niches, since it could be potentially disastrous if the experiences of others are replicated wholesale. It is therefore now up to the Liberians to learn from the plethora of approaches and experiences, to ultimately achieve the desired outcome of dispensing justice during this transition from war to peace.

INTERNATIONAL EFFORTS TO PROMOTE THE RULE OF LAW IN LIBERIA

Since 2003 there has been an influx of international agencies into Liberia with the objective of "helping" the country to get back on its feet. Although it is too early to tell how much positive impact such interventions will produce, it is worth reviewing these efforts, particularly in the area of restoring the rule of law and protection of civilians.

By far the most visible international involvement in Liberia to date is that of the United Nations. It is important to remember, however, that prior to the deployment of UN peacekeepers in October 2003, ECOWAS played a crucial role. The deployment of an advanced contingent of ECOWAS forces – otherwise known as ECOMIL – effectively pacified

the situation and thus paved the way for the deployment of larger UN multinational and multidisciplinary force. In UN Security Council Resolution 1509 council members commended ECOWAS for its timely intervention, which helped save thousands of civilians trapped in Monrovia.

In keeping with its commitment to assist Liberia achieve lasting peace, the United Nations Mission in Liberia (UNMIL) has worked with other local and international partners to help disarm and demobilise ex-combatants. Because UNMIL's mandate is not restricted to providing security, it has been active in other areas dealing directly with protection and rule of law. Part of the mission's human rights mandate, which is carried out by its human rights unit, requires that it monitor the human rights situation, and at the same time provide training for Liberian civil society in particular, to help develop and strengthen their capacity in this area. Additionally, the unit has been working with civil society and other stakeholders in the NTLA to establish a credible and independent human rights commission that will play an oversight role in the post-conflict dispensation. Consequently, UNMIL human rights officers, along with their counterparts in the UN Development Programme (UNDP), continue to work with Liberian civil society organisations to achieve this mandate.²³

The UN has also worked with various institutions of the transitional government to ensure that Liberia puts in place the necessary legal frameworks that will guarantee the protection of civilians in the long term. For instance, in his fifth report to the Security Council on UNMIL's activities UN Secretary General Kofi Annan outlines various international treaties and agreements dealing with the broad subject of human rights that Liberia has signed and or ratified, because of the collaboration between UNMIL personnel and the domestic actors.²⁴

With specific reference to the TRC, Annan acknowledges the role of the UN mission in providing support to move the process forward. Although the details of UN support are not outlined, unmistakably the world body is trying to fulfil its obligations to help the Liberian people rebuild the shattered institutions that will be of crucial importance in furtherance of human rights in Liberia.

The UN's effort is complemented by the numerous international NGOs that typically have a broad mandate to monitor and report about human rights and humanitarian situations globally. Mostly headquartered in the global north, whenever they become involved in a conflict zone, these groups have a strategy of partnering with

local organisations to push forward their agendas, and Liberia in the post-Accra period is not an exception. These organisations may be divided into two main categories. The first category includes those that maintain a physical presence in the country by deploying expert field staff whose role it is to monitor the situation, work with local partners and occasionally write reports that are used to influence national and international policies on a given subject. For example, the UK-based international humanitarian organisation Oxfam, has been in the country since the signing of the CPA. Oxfam is working with local partners, among other things, to raise awareness about the need for criminal after years of atrocities. Oxfam has partnered other like-minded groups to establish the Transitional Working Group, which has carried out some preparatory work on conflict mapping and the collection of evidence for future war crimes trials.²⁵

The other category includes those groups that have no field presence in the conflict zone, but occasionally send in their staff, sometimes for prolonged research visits, to assess the situation and then write their reports, which are also used as advocacy tools. Such groups would include Amnesty International, Human Rights Watch, and International Centre for Transitional Justice and the International Crisis Group.²⁶ While these efforts cannot be discounted, it remains to be seen what positive impact their work will have on the situation in the long term. The verdict on how meaningful the TRC will be for Liberia's future is dependent on its ability to overcome the legal and political constraints mentioned earlier.

REFLECTIONS AND SOME THOUGHTS ON THE WAY FORWARD

While Liberia has come a long way since the Accra Agreement was signed almost two years ago, many challenges remain, not least in the area of restoring the rule of law and protecting civilians in the long run. It is obviously going to take decades for Liberia to revamp its chequered institutions and build new ones that will consolidate the rule of law and help to win the confidence of the people. As stated above, the impact that the TRC will ultimately have on long-term peace-building is unknown. Without attempting to address operational issues, it is worth recounting some of the conceptual and practical difficulties that would have to be overcome as this process moves forward.

First, Liberian society as a whole will have to revisit the unfinished debate on accountability, if the TRC is to have a meaningful impact.

Although the idea of instituting a war crimes tribunal for past atrocities currently seems to have little weight, one has to assume that it is by no means a dead idea. It is arguably a question of timing the two processes and selecting the appropriate stage of the peace process to seriously revisit the issue. Indeed, Bryant's opposition to the establishment of such a tribunal when the country needed to first disarm all combatants and restore security is quite logical. However, given the persistent advocacy of civil society groups – local and international – one cannot be sure that the debate will not intensify, particularly after the 2005 elections. A future elected government may yield to pressure from local and external actors to begin a process of criminal inquiry into past atrocities. Should that happen, what impact will it have on the TRC's ability to fulfil its mandate? However, the UN Civilian Police in Liberia have already established a databank of human rights abuses committed during the war. This is significant, especially if a future administration decides, or is compelled, to pursue the option of prosecuting past offenders, or as a minimum, barring them from ever holding public office.

To that end, Sierra Leone's experience with the institution of two accountability mechanisms – the TRC and Special Court – is instructive for Liberia. In Sierra Leone, while the consequences may have been unintended, the simultaneous operation of the TRC and Special Court has led to a situation where the impact of these institutions on peace-building may prove counterproductive in the long run. While the initial intention of creating a Special Court to prosecute principal perpetrators of atrocities may have been noble, the court has become so controversial that many, including those who initially supported the idea now openly question its value.²⁷ For one thing, the court's mandate is so broad that ironically it indicted individuals who had fought to restore the democratically elected government, but failed to apprehend or bring to trial some of the most notorious offenders.²⁸

Furthermore, the undiplomatic and aggressive manner in which court officials handled the high profile-indictment of Charles Taylor undercut its credibility in the region and thus made it difficult for states, even those serving on the court's management committee – Nigeria – to cooperate with it. As a result, there is a sense now in Sierra Leone (and the sub-region for that matter) that the Special Court has generated so much controversy that its contribution to justice and lasting peace could be miniscule. That said, Nigeria's insistence of honouring its "asylum" commitment to Taylor, while politically expedient at the time, will continue to undermine the struggle against impunity in Liberia, and

certainly the sub-region as whole. On a somewhat related note, although the Sierra Leone TRC has already concluded its work and submitted its final report to the government, it is doubtful what long-term impact this will have on peace-building, particularly given the climate and environment under which the commission operated.

The controversy surrounding the selection of commissioners by the transitional leader will have to be overcome for the TRC to achieve the success desired. Beyond the fact that legislation is now being drafted to address the concerns of other stakeholders, once the commission begins its work it should undertake vigorous outreach and advocacy activities throughout Liberia to develop a sense of “ownership” by all Liberians. Here too, the experience of Sierra Leone and Ghana in terms of enabling legislation and public outreach could be of value to Liberia. Meanwhile, it is important to ensure that the process of drafting the legislation relating to the TRC is as consultative as possible.

On the broader question of institutionalising the rule of law and guaranteeing the protection of civilians, Liberia’s judicial system needs serious revamping. Strong intellectual capital must be developed that will ensure that professionalism and ethical conduct become the hallmarks of the new judicial system. Liberia’s judicial system, like many facets of its society, had been completely degraded by years of conflict. To be sure, the disintegration of the judicial system and lack of public trust in the dispensation of justice predate the war. The chronic nature of corruption and incompetence during the TWG era, as well as under Doe, affected not only the executive branch of government, but also the judiciary, which is supposed to be the custodian of law and order in any democratic society. Before 1989 the judiciary lacked this attribute, and many qualified and competent professionals fled the country, ultimately leaving the administration of justice in the hands of unqualified and incompetent officials who kept their positions, thanks to the patronage system propounded by successive governments. To reverse this situation, more needs to be done to attract skilled and qualified Liberians who will help restore the lost confidence in the judicial system, so that by the time the international community disengages there will be something substantive in place beyond the so-called high tech buildings that will be seen as their legacy.²⁹

Finally, in mapping out the ‘way forward’ the need to reform the socio-political imbalances in the Kongo-indigenous relationships vis-à-vis democratic governance in Liberia must be emphasised. In our analysis of the transition, considerable space has been given to the historical

background of unconstitutionalism, repression, misrule and the gross abuse of human rights in Liberia. Perhaps, among other arrangements, the proposed constitutional framework in the post-war dispensation should provide for an inclusive politics, accountability, probity and transparency in public office. Establishing new institutional mechanisms to check public and private sector corruption, etc, could significantly help to confront some of the structural problems that created the conditions for conflict in the first place.

On a related note, it may be necessary to consider the expediency of excluding persons suspected of war crimes and crimes against humanity from public office and, retrospectively, from contesting the elections, after the transitional period ending in October 2005. However, it is uncertain how this can be achieved, given that once the 2005 elections are conducted in accordance with the provisions of the CPA, the outcome will become a fact of Liberia's political history, which will then be difficult to reverse.

NOTES

- 1 Dr Abdul Rahman Lamin is a lecturer at the Department of International Relations, University of the Witwatersrand, Johannesburg. The author would like to thank Festus Aboagye and Dr Alhaji M S Bah for useful comments on earlier drafts of this chapter.
- 2 For more Liberian politics, see Adekeye Adebajo, *Building peace in West Africa: Liberia, Sierra Leone and Guinea Bissau*, Lynne Rienner Publishers, Boulder, 2002; and Christopher Clapham (ed), *African guerrillas*, James Currey, Oxford, 1998.
- 3 In launching his presidential campaign in Monrovia recently, Winston Tubman, a leading Liberian diplomat, acknowledged the need to "unite" the country, by bridging the Kongo-indigenous people divide that has existed for centuries.
- 4 See Gerard Prunier, *The Rwanda crisis, 1959–1994: History of a genocide*, Hurst, London, 1995.
- 5 See Alhaji M S Bah, ECOWAS and the dynamics of constructing a security regime in West Africa, Unpublished PhD thesis, Queen's University, Ottawa, Canada, 2004.
- 6 Bah, op cit; for more on the "hut tax" see Stephen Ellis, *The mask of anarchy: The destruction of Liberia and the religious dimensions of an African civil war*, New York University Press, New York, 1996.
- 7 For more on the tensions between Creoles and their counterparts from the interior prior to independence, see Abdul Rahman Lamin, Post-conflict elections, peace-building and democracy consolidation in Sierra Leone, *Journal of African Elections* 3(1), June 2004.
- 8 Bah, op cit.

- 9 Ibid.
- 10 Ibid.
- 11 Ibid.
- 12 Ibid.
- 13 The NPP under Charles Taylor won the 1997 elections largely because it was deemed to be the strongest armed group, with the potential to return to war if they lost the elections. While Taylor and his supporters claim that the elections were won in a free and fair contest, the environment in which those elections took place was one of fear and intimidation of the electorate. The NPP therefore derived its legitimacy from the perceived threat and capability to use force, in the event that things did not go its way.
- 14 For more on the concept of “sovereign impunity”, see Ramesh Thakur and Peter Malcontent, *From sovereign impunity to international accountability: The search for global justice in a world of states*, United Nations University Press, Tokyo, 2004.
- 15 For more on transitional justice in Latin America, see Priscilla B Hayner, *Unspeakable truth: Confronting state terror and atrocity*, Routledge, New York, 2001.
- 16 Abdul Rahman Lamin, The politics of reconciliation in the Mano River Union: Challenges and prospects for peace-building, *Institute for Global Dialogue Occasional Paper 45*, Midrand, South Africa, July 2004.
- 17 The NTGL draws its leadership from representatives of the various armed factions as well as members of civil society.
- 18 See Festus B Aboagye and Alhaji M S Bah, Liberia at a crossroads: A preliminary look at the United Nations Mission in Liberia (UNMIL) and the protection of civilians, *ISS Occasional Paper 95*, November 2004.
- 19 The draft legislation has not yet been promulgated into law.
- 20 Author’s interview with Hon Commany Wesseh, Chairman of the Peace Process Implementation Committee of the National Transitional Legislative Assembly, Monrovia, February 2004.
- 21 See Draft TRC Act of 2004.
- 22 Both Commissions have already submitted their reports, which contain recommendations, to their respective governments.
- 23 See UN Secretary General’s Fifth Report to the Security Council on the situation in Liberia, S/2004/972.
- 24 Ibid.
- 25 Abdul Rahman Lamin, *op cit*.
- 26 A few of these organisations, such as Human Rights Watch and the International Crisis Group, currently have personnel stationed in the neighbourhood to cover events in the entire sub-region.
- 27 This author counts himself among those who initially supported the establishment of the Special Court but are now very concerned about its impact on lasting peace in Sierra Leone. For more on the author’s views, see Abdul Rahman Lamin, *op cit*.

- 28 Since the first set of indictments were unsealed in 2003, virtually all the principal actors in the main rebel groups have either died or cannot be accounted for by the court. Apart from low-level operatives on the rebel side currently in custody, the biggest name under arrest is the country's popular former Deputy Defence Minister, Chief Hinga Norman, who fought during the war to restore the elected government to power after it was violently overthrown. Norman's indictment and arrest have sparked a serious debate in the country about the existence of the Special Court.
- 29 In an interview this author conducted with David Crane, the Chief Prosecutor of the Special Court in Sierra Leone, in February 2004, Crane pointed to the new structures and facilities built by the court as one of the lasting legacies it would leave behind for Sierra Leone. There was no attempt on Crane's part to conceptualise the Special Court's legacy within the context of helping develop the capacity of the Sierra Leone's moribund judicial system.