

LIBERIA: A BRIEFING PAPER ON THE TRC REPORT

By

Kwesi Aning¹ and Thomas Jaye²



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¹Dr. Kwesi Aning is head of the Research Department of the Kofi Annan International Peacekeeping Training Centre (KAIPTC), Accra, Ghana

² Dr. Thomas Jaye was a Senior Research Fellow at the Research Department of KAIPTC, Accra, Ghana. He is currently Head of the International Centre for Transitional Justice in Liberia

I. Introduction

The issues of national healing, reconciliation, truth and justice are crucial and significant for what happens next in countries emerging out of conflicts such as Liberia. Importantly, these issues constitute a real challenge as well as moral and political dilemmas for countries that are making a transition from war to peace. The real problem is that while Truth Commissions have the potential of creating an enabling environment for truth telling and forgiveness through amnesty, reparations and other things, there are doubts as to whether people and societies torn asunder by protracted period of war can easily be reconciled and healed through forgiveness and impunity.

The history of armed violent conflicts and crimes against humanity tells us that even where people try to forgive, they do not easily forget. There is also the tendency for those who bear the greatest responsibility for war and crimes against humanity to be brought to justice in one form or the other. Irrespective of whatever form that justice may take, this has been the case of the holocaust and the Nuremberg trials that followed it. The cases of the former Yugoslavia, Rwanda and elsewhere bring different experiences in this direction.

Liberia is no exception to the above. When the decision to establish the Truth and Reconciliation Commission (TRC) was made at the Accra peace talks and the Commission was subsequently established in May 2005 by an Act of Legislature, it was clear that the country was bent on seeking the truth in order to create an enabling environment for national healing and reconciliation but without necessarily burying justice. Those who conceived and designed the TRC were fully aware that at the end of the process, the question of justice would be raised. Therefore, room was left for the pursuit of justice through due process.

The issue is that the TRC process does generate a plethora of debate on the issues of reconciliation, truth and justice. It is therefore no surprise that since the publication of the

draft report of the TRC on 30 June 2009 the West African state has been caught in a state of confusion and tension for a number of reasons. Among others things, the TRC report contained a set of recommendations that call for degrees of punishment for certain categories of people who were responsible for the country's civil war. Individuals including President Ellen Johnson-Sirleaf and other senior government officials were named in the report either for aiding and abetting the war whilst others were listed for perpetrating crimes against humanity. Further, corporate entities were recommended for punishment for their role in the conflict years. The other reason is that the report has evoked a debate between justice and order; and justice and impunity. A cross section of Liberians in the country and outside think that the major concern is about the recommendation for the President and other senior state officials to be barred from holding public office for thirty years.

One observation to make on the TRC report and reactions emerging so far is that it seems as though some Liberians did not take the work of the Commission seriously nor did they have confidence in the ability of the Commissioners to take the type of decisions they have reached. Hence, the report comes as a total shock but if this is the case, then it is unfortunate. The TRC was set up as part of the peace process and included in the agreement brokered by the international community of states in Accra, Ghana on 18 August 2003. It was established to provide a forum for truth seeking and telling; it was also about addressing the issue of transitional justice. In this light, its work lays at the heart of what would happen in Liberia in the post-conflict era. In this light, its work should have been taken more seriously than some did.

II. Purpose of this Brief

The main purpose of this policy brief is to critically examine, and provide a capsule analysis and nuanced understanding of the context, mandate, reactions and key issues emerging out of the TRC report and recommendations. Subsequently, the essay puts forward some recommendations for immediate actions by the Government and people of Liberia as well as the broader international community of state and non-state actors in

order to facilitate dialogue and informed social debates around the issues emerging out of the report.

III. Context and Mandate

a) Context

The TRC was set up in 2005 within the context of addressing the issue of impunity after 14 years of war and mayhem. The war caused the death of more than 200,000 people out of a population of 3 million; it displaced more than a million people either as internally displaced persons or as refugees in different parts of the world; it created an environment for the looting of the fragile economy; led to collapse of state and societal structures; destroyed the social infrastructure; and bequeathed a legacy of ethnic hatred, among others. In essence, the war was characterized by gruesome killings and the flagrant abuse of human rights by various factions to the conflict. Today, its victims include orphans, disabled people, displaced persons, refugees, single parents and other legacies.

About eight different factions fought the war including the following: National Patriotic Front of Liberia (NPFL), Independent National Patriotic Front of Liberia (INPFL), Liberia Peace Council (LPC), United Liberation Movement for Democracy and Justice (ULIMO-J), ULIMO-K, Lofa Defence Force (LDF), Liberians United for Reconciliation and Democracy (LURD), Movement for Democracy in Liberia (MODEL), and the Armed Forces of Liberia (AFL), which virtually constituted a faction on its own. Some people provided support to these groups based upon mixed motives: politics, economics, ethnicity, revenge, survival, and other related factors.

The war also had international dimension and transborder repercussions. Many West African nationals were involved in the initial stages of war as fighters; and it also involved African states, which provided different forms of support to different actors. The states providing support to the armed factions included Libya, Burkina Faso, Cote d'Ivoire, Ghana, Nigeria, Guinea and Sierra Leone. Sierra Leone provided sanctuary to

Liberian rebels trying to overthrow the Taylor regime. In addition, the war also involved non-state actors such as armed dealers like Victor Bout, a Ukrainian national.

In face of these complexities and given the carnage and mayhem that characterized the war from the onset, the ECOWAS intervened both diplomatically and militarily to bring sanity to the situation. In the process, the soldiers of ECOWAS member states that contributed troops to the peace support operation lost their lives.

After fourteen years of war and several peace agreements, on 18 August 2003, the stakeholders to the conflict signed the Comprehensive Peace Agreement (CPA) in Accra, Ghana. The signing of the peace agreement altered the political landscape of the country and set into motion a number of measures aimed at making the recurrence of armed violence difficult, if not impossible. One of these measures was the establishment of the TRC whose mandate is spelt out below. In terms of changes brought to the political landscape of Liberia, it forced Taylor out of office and he was granted refuge in Nigeria before being arrested and flown to The Hague for trial for war crimes. It also created an enabling environment for the holding of the elections of 2005, which brought President Ellen Johnson-Sirleaf to power as the first elected female President in the history of Africa. Thus, most of what has been achieved so far in Liberia can be traced to the signing of the CPA; support of the international community and tenacity of the Liberian people.

b) Mandate

The Act establishing the TRC was enacted on 12 May 2005. The establishment of the Commission was envisaged under Article XIII of the CPA. In keeping with it, the overall objective of the TRC was to promote national peace, security, unity and reconciliation. It would also specifically “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 and reconciliation in order to create a clear picture of the past so as to facilitate genuine healing and reconciliation”.³ This would involve

investigating gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extra-judicial killings and economic crimes, such as exploitation of natural or public resources to perpetuate armed conflicts, during the period January 1979 to October 14, 2003; determining whether these were isolated incidents or part of a systematic pattern; establishing the antecedents, circumstances, factors and context of such violations and abuses; and determining those responsible for the commission of the violations and abuses and their motives as well as their impact on victims.⁴

After three years of work, the TRC was mandated under section ‘j’ of the Act to make recommendations to the Head of State in regard to the followings:

- i) Reparations and rehabilitation of victims and perpetrators in need of specialized psychosocial and other rehabilitation services;
- ii) Legal, institutional and other reforms;
- iii) The need for continuing investigations and inquiries into particular matters, at the discretion of the TRC; and
- iv) The need to hold prosecutions in particular cases as the TRC deems appropriate.⁵

As can be seen from the mandate of the TRC, it was provided with very broad mandates in order to carry out its works. It could also recommend amnesty under conditions and

³See Article III of the Comprehensive Peace Agreement, 18 August 2003.

⁴See Section 4 of Article III of the TRC Act

⁵See Section J of the TRC Act, 12 May 2005

terms established by the TRC. This was enshrined under Section ‘g’ of the Act, which reads that the TRC shall recommend

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 law ad crimes against humanity in conformity with international laws and standards.⁶

Thus, the framers of the Act were very much aware of the implications of its mandate for existing international laws. However, contrary to the widely held view in Monrovia that the Liberian TRC process was patterned after the South African experience and hence South Africa was a metaphor for Liberia, the fact of the matter is that there were different contexts for both countries. First, the SA process involved two structures, the Truth Commission itself, and an Amnesty Committee; and finally, the conditions and context for establishing both TRCs were never the same. South Africa was a case of emerging out of an internal colonial experience whereas Liberia was the case of a country emerging out of a protracted armed violence. Therefore, they were never the same and hence South Africa cannot possibly be a metaphor for Liberia.

One of the controversial issues surrounding the work of the TRC is about the implementation of its recommendation. According to Section 48 of the Act, “the Head of State shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to the implementation of the Commission’s recommendations. *All recommendations shall be implemented.* Where the implementation of any recommendation has not been complied with, the Legislature shall

⁶ See Section G of the TRC Act, 12 May 2005

require the Head of State to show cause for such non-compliance”.⁷ As discussed below, the phrase ‘*all recommendations shall be implemented*’ has evoked legal debates about the legality of the Act.

IV. TRC Recommendations

By virtue of its mandate, the TRC was mandated to make recommendations along the following lines: amnesty, reparations, institutional and legal reforms, and prosecution. These measures are contained under Sections 44 and 45 of the Act. For example, Section 44 reads that the “report shall be detailed on all aspects of the TRC’s work, investigations, hearings, findings and recommendations for prosecution”.⁸ Under Section 45 it reads further that “the TRC shall recommend for amnesty persons who qualify under terms and conditions referred to in Section 26 (g) and for reparations for victims, specific actions of government to be taken in furtherance of its findings, the enactment of specific legislations and legal and governmental reforms measures to address specific concerns identified by the TRC and affecting relevant governmental authorities or functionaries”.⁹

The TRC report does outline several recommendations along these lines. Among others, it makes the following recommend to the Government of Liberia for consideration and implementation:

- Promotion of a political culture of tolerance and respect for human rights;
- Outlawing of partisan use of democratic institutions and political control of the military;
- Ensuring that party politics is not permitted in the civil service, military and paramilitary bodies;
- Judicial reforms including strengthening of the weak judiciary;
- Given the role of the police in the dispensation of justice, it calls for a Police Code of Discipline;
- Decentralization of political and economic powers;
- Promotion of good governance and rule of law; and

⁷See Section 46 of the TRC Act, 12 May 2005

⁸ See Section 44 of the TRC Act, 12 May 2005

⁹ See Section 45 of the TRC Act, 12 May 2005

- Enactment of a ‘whistle blower’ statue against corruption.

All of these are vital and relevant to the peace building process in the country and overall process of post-war reconstruction. If Liberia must surge ahead out of the ashes of the 14 years of war, these recommendations should be taken seriously and pursued.

Unfortunately, although the report of the TRC contains these salient of recommendations but they have been ignored. On the contrary, what has caught the attention of people are the recommendations relating to amnesty and prosecution for different degrees of crimes committed by several individuals in the society. Several persons have either been recommended for prosecution or sanction for diverse reasons. For example, about 25 persons and business firms have been charged with committing economic crimes such as illegal arms dealing; illegal extraction and sale of natural resources; trafficking in narcotic drugs; money laundering; robbery; fraud; tax evasion; aiding and abetting economic crime actors; and government procurement fraud.¹⁰ A further 54 persons have been recommended for further investigations. These people could not be investigated because the TRC did not have time on their hand nor did they have the financial resources to do so.

Another category of people of about 6,000 or more have been recommended face a national palaver huts hearing process. This is a traditional approach and justice measure that aims at restoring broken relationships, justice, national reconciliation and accountability through acknowledgement. Hearings are supposed to be held throughout the country from the village to towns and communities in the urban areas. You can seek pardon from the people through the palaver hut process but in the case of those recommended for prosecution and sanction, the palaver hut process may not reduce their debarred period by less than half, and it shall not promote impunity or blanket amnesty.¹¹

¹⁰ See Final Report of the TRC, Vol. II – Consolidated Report, 30 June 2009, p. 368

¹¹ See Final Report of the TRC, Vol. II – Consolidated Report, 30 June 2009, p. 364

In the case of the ex-warlords and others who committed gross human rights violations including international humanitarian law, international human rights law, and war and economic crimes, they are recommended to face an Extraordinary Criminal Court to be established by the Government. About 116 persons fall within this category.¹² There are 39 people who were not recommended for prosecution because they spoke truthfully; and were remorseful during the hearing process.¹³

In sanction category in which President Sirleaf falls, there are 48 people who have been recommended for public sanction. They are recommended to be barred from elective or appointive public office for 30 years. In the meantime, those holding elective office are supposed to complete their tenure but are ineligible to hold public office in the future.¹⁴

The final category of those recommended for punishment is those who committed 'egregious domestic crimes'. These are people that committed rape, torture, kidnapping, attempted murder and other related crimes. They are recommended to be tried in Court 'A' of the First Judicial Circuit Court in Montserrado County. About 44 people fall in this category.

From all indications, it is the issues of prosecution and amnesty that have sparked debates, tension and confusion in the country.

V. Mixed Reactions to TRC Report

The reactions to the TRC report and the recommendations emerging out of it have been mixed. On the one hand, some Liberians welcome the report and support the call for sanctions whereas others think that the TRC should have granted amnesty to all those associated with war.¹⁵ The country is therefore divided into two great camps. For example, immediately after the draft report was published, some civil society groups

¹²See Final Report of the TRC, Vol. II – Consolidated Report, 30 June 2009, pp. 346 to 350

¹³ See p. 350

¹⁴ See p. 359

¹⁵ Informal discussion with a cross section of ordinary Liberians in Monrovia, 4 August 2009

called for the resignation of the President. The *Forum for the Establishment of War Court in Liberia* called for the resignation of President Sirleaf and other government officials listed in the report because of what it termed loss of public confidence in them.¹⁶ In addition, it was also reported in the *New Democrat* newspaper that a number of civil society groups including Amnesty International, the Catholic Justice and Peace Commission, Centre for Democratic Empowerment (CEDE), National Human Rights Council of Liberia said that the issue of ‘let bygone be bygone’ could undermine the national healing and reconciliation process in the country. In their views,

turning a blind eye to the scores of rapes, tortures, inhumane deaths and wanton destruction of properties that characterized our politics, under the guise of ‘let bygone-be-bygone’ represents the real threats of relapse to conflict as this could dash the hopes of the many brutalized and broken victims, trigger private revenges and undermine the national healing and reconciliation process.¹⁷

In its editorial, the Public Agenda writes that justice should prevail over impunity. In its words, the editorial reads as follow: “right now, the Liberian civil society, the masses, the children and families of the victims of war and the international community are poised to see justice visited upon those for whom justice is due and necessary. And each, according to the weight of his or her guilt and innocence, will get proportionate justice”.¹⁸

Some Liberian political parties have also joined the debate over the recommendations by the TRC. In its statement released to the press on July 17, 2009, the Liberty Party was more cautious. It welcomed the report and commended the TRC for its courage and diligence in completing its work. The party also thanked the TRC staff and volunteers for their dedication in carrying out their work. According to the party, the report has serious

¹⁶War Crimes Group hails TRC Report, *The Inquirer*, Vol. 18, No. 114 Monday, July 6, 2009, p. 1

¹⁷Othello Garblah, “TRC Report: Civil Society Predicts Woes Without Justice”, *New Democrat*, Vol. 16 No. 131, July 21, 2009, p. 12

¹⁸*Public Agenda*, Vol. 4. No. 1 Wednesday, July 22, 2009, p. 3

implications for reconciliation, peace and development in Liberia.¹⁹ In this light, the statement called on the President of Liberia to provide security for every member of the TRC in order to ensure their protection. It also called on

all Liberians to develop an attitude of tolerance and deep reflection, to consider the report in its entirety, and to use the report in furtherance of our efforts to build a peaceful, democratic, and prosperous Liberia. True patriotism and love-for-country call for an unbiased and non-partisan assessment of the TRC Report. If we as a nation ever needed an expression of objectivity and a demonstration of love for country, this is the time.²⁰

Similarly, the New Deal Movement welcomed the report and commended the commissioners for their work; it also cautioned against impunity and called on the President to resign her post.

Although the national legislature was caught in a state of confusion in regards to its role in this process, individual members issued statements to express their concerns. For example, in a statement released to the press and published in the *Public Agenda*, the Representative of District No. 2 from Grand Bassa County, Hon. Vimcius S. Hodges questioned why those who yesterday stood against impunity were now for it. According to him,

is it because of the mention of President Sirleaf as one of those that have been sanctioned by the final report of the body?'. Continuing, Hon Hodges asked: "What are we saying, then? Trash the entire report because we so desperately desire to protect the President and the big guns? No, fellow Liberians!

¹⁹See Initial Statement of Liberty Party on the Report of the Truth and Reconciliation Commission (TRC), *The Analyst*, Vol. 10, No. 246, Friday, July 17, 2009, p. 4

²⁰See Initial Statement of Liberty Party, July 17, 2009, p. 4

Liberia cannot move along the path of progress, if we continue to cleave to narrow views of what justice and reconciliation are, and who are those that must fall under the radar of the two concepts. All must fall to the fair arms of the law.²¹

Similarly, a petty trader in Monrovia, Ma-Lorpu Kollie told *The Evidence* that she lost her husband and two children during the war and so commends the TRC for recommending that the perpetrators be punished. In her own words, “those people came and kill all our people, destroyed all that we have worked for and shortened our lives, then we should say let’s forgive them, for what?”²²

Nevertheless, it is not all Liberians that share the above views. There are those who see the recommendations as a divisive tool and an effort aimed at undermining the legitimacy of the administration of President Sirleaf. Some civil society groups, the ex-warlords, and supporters of the President have all argued against implementation of the recommendations of the TRC report because of what they perceive as the negative impact that this could have on the politics of the country. For example, the *Coalition for Peace and Tranquility* issued a statement in the *Inquirer newspaper* in which they accused the TRC of having the ‘propensity to ferment chaos, derail the already fragile peace process and democracy, threaten the stability of the Liberian state and politically dislodge potential political leaders in Liberia’.²³ The group also questioned the authority of the TRC to make the recommendations contained in its report. In this light, they asserted that the TRC was established to promote ‘genuine reconciliation, psychological relief and peace; but on the contrary, it has arrogated unto itself the powers to render verdicts on individuals without conducting a hearing and by so doing criminalizing people. According to them, there were others whose names should have appeared in the report but did not. Specific reference was made to members of the Association for Constitutional Democracy in Liberia (ACDL), a group organized in the US in the 1980s to oppose the dictatorial regime of Samuel Doe. President Sirleaf was part of this group

²¹ *Public Agenda*, Vol. 4, No. 1, Wednesday, July, 22, 2009, p. 5

²² “TRC Report: Hard Nut to Crack”, *The Evidence*, Vol. 7, No. 2, Wednesday, July 7, 2009, p. 3

²³ Coalition for Peace brushes TRC Report, *The Inquirer*, Vol. 18. No. 114, Monday July 6, 2009, p. 3

and so were prominent Liberian scholars like Dr. Amos Sawyer, former Interim President, and Dr. Patrick L.N. Seyon, former Vice President for Administration of the University of Liberia. In their argument, the *Coalition* questioned why Sirleaf has been sanctioned and not other members of the ACDL like those named above.²⁴ According to sources in Monrovia, members of the ACDL were split on the issue of support to Taylor. While Mrs. Sirleaf and others voted in favor of raising money to support the war, Dr. Sawyer, Dr. Seyon and others refused to support the move.²⁵

Ex-warlords were unanimous in their opposition to the recommendations. They were recommended for war crimes and this caused an outrage among them. In a clever move to cause panic and gain the support of the President, they argued that the TRC report was a calculated effort by members of the commission to overthrow the government of President Sirleaf and cause serious chaos in the country.²⁶ Those converging at the Monrovia City Hall to condemn the TRC report included representatives of the following defunct armed factions: National Patriotic Front of Liberia (NPFL), Liberia Peace Council (LPC), Movement for Democracy in Liberia (MODEL), and the Liberians United for Reconciliation and Democracy (LURD).²⁷ In response to the statement by the warlords, in its editorial, the *Public Agenda* had this to say: “in their unremorseful state, they are still barking with the venoms of death, promising chaos and betting atrocities. They are calling the Truth and Reconciliation Commission (TRC), by extension Liberians, toothless bulldog”.²⁸

Some members of the Liberian Legislature also reportedly condemned the report. For example, according to the *Evidence*, Senator Richard Divine of Bomi County²⁹ asserted that the report has the propensity to create disunity as opposed to finding a solution. In his view, the report could bring down the government and create chaos.³⁰ In similar vein,

²⁴Coalition for Peace, *Inquirer*, July 6, 2009, p. 3

²⁵Informal Discussion with a prominent Liberian in Monrovia, August 3, 2009

²⁶David B. Kolley, “TRC Seeks to Overthrow Ellen – Ex-Warlords”, *Daily Observer*, Vol. 13 No. 4, Tuesday, July 7, 2009, p. 1

²⁷Festus Poque, “Ex-Warlords Denounce TRC”, *New Democrat*, Vol. 16, No. 121, July 7, 2009, p. 1

²⁸*Public Agenda*, Vol. 4 No. 1, Wednesday, July 22, 2009, p. 3

²⁹President Sirleaf is from the same County

³⁰TRC Report: Hard Nut to Crack”, *The Evidence*, Vol. 7. No. 2, Wednesday, July 7, 2009, p. 3

one of the leading opposition figures whose party, the Liberia Action Party, has merged with President Sirleaf's Unity Party (UP), Cllr. Varney Sherman also issued a statement in which he condemned the intents of the report. According to him, while he would not condone human rights violations, he has serious doubt as to whether genuine healing and reconciliation can be fostered among the people of Liberia by recommending that President Sirleaf be barred from holding appointed and elected positions in the country. In this light, he sees the report as being more divisive than reconciliatory.³¹

President Sirleaf has been cautious in addressing the issue of the report. Although she has refrained from condemning the report, she has also not issued any statement indicating how the recommendations will be implemented because the TRC mandates the Executive to implement the recommendations of the TRC. In her speech on the occasion of the 162nd Independence Anniversary of Liberia, she acknowledged that tens of thousands of Liberians took part in the process over a three years period and for this she commended the TRC and those who participated in the process. However, she said that “where the report lives up to its mission and mandate, the Liberian people have my commitment to work with all branches of government, the Independent Human Rights Commission, the religious community, civil society and the media to actualize its recommendation”.³² The president has not made any further comments on the report because according to her, this would be legally imprudent and misinterpreted as an effort to influence whatever action the national legislature would take on the matter.³³ But she has established the Independent National Human Rights Commission of Liberia, which in keeping with the TRC Act is the moral guarantor of the CPA and has the responsibility to monitor, and campaign for the implementation of all recommendations emanating from the TRC report.³⁴

³¹“I’ll Defend Pres. Sirleaf, If... Cllr. Varney Sherman vows: Says TRC report flawed politically and legally”, The Analyst, Vol. 10, No. 246, Friday, July 17, 2009, p. 2

³²Special Message by Her Excellency Mrs. Ellen Johnson-Sirleaf, President of the Republic of Liberia on the Occasion of the 162nd Independence Anniversary of the Republic of Liberia, Gbarnga, Bong County, 27 July 2009, The Analyst, Vol. 10, No. 252, Wednesday, July 29, 2009, p. 7

³³ Special Message by Her Excellency, Mrs. Ellen Johnson-Sirleaf, The Analyst, July 29, 2009, p. 7

³⁴See Section 46 of the TRC Act, 12 May 2005

In its case, the Legislature has no decision to make in relation to the implementation of the recommendations by the TRC other than to monitor it. In keeping with Section 48 of the Act, the Head of State is expected to “report to the National legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to the implementation of the Commission’s recommendations...Where the implementation of any recommendation has not been complied with, the Legislature shall require the Head of State to show cause for such non-compliance”.³⁵

From the above, the report has thrown Liberians into different camps and it has created some tension in the country. One of the issues emerging from the report is that there is also confusion over who is responsible for the implementation of the TRC recommendations and how this will be done. It therefore has serious implications for post-war peacebuilding and reconstruction, the next focus of this essay.

VI. Key issues and Implications for Post-War Peacebuilding and Reconstruction

What are the key issues emerging out of this process and how do they impact on the overall process of post-war peacebuilding? The current state of tension, fear and confusion over the TRC report illustrates that societies emerging out of war situation do face serious challenges that if not fully addressed could derail the process of post-war reconstruction and create the basis for relapse into armed violence. One of the critical issues has to do with truth telling, reconciliation, justice and order. While lessons from other societies that have emerged out of conflicts can be useful, we are also mindful that each society has its own unique way of dealing with these issues. It is with this understanding that we present below what we see as the key issues emerging out of the TRC process and their possible implications for post-war peacebuilding.

Firstly, the report has thrown up a legal issue. Section 48 of the TRC Act reads that all its recommendations shall be implemented. If this is strictly adhered to, then President

³⁵ See Section 48 of the TRC Act, 12 May 2005

Sirleaf and others would be barred from participating in the forthcoming 2011 elections. This has both legal and political implications. Legally, this statement in the Act seems problematic because only the Courts of Liberia could provide for the mandatory punishment of anyone in the territorial confines of Liberia. If interpreted narrowly, this aspect of the Act does not provide room for due process of the law, a sacred constitutional principle of the country. As the supreme legal regime of Liberia, the constitution takes precedence over all other subsidiary legal documents. Nonetheless, there is argument to be made that the Act should be interpreted from a broader perspective. The Act was enacted by the legislature, the highest law making body in the country. Moreover, TRC was established under the terms and conditions of the Comprehensive Peace Agreement (CPA) of 18 August 2003 that brought the 14 years civil war to an end. Accordingly, the CPA suspended parts of the Constitution in the name of peace and security. At the time of establishing the TRC in 2005 the suspended parts of the Constitution were never brought to force; they remained suspended. However, the suspended parts were restored after the inauguration of President Sirleaf in January 2006 but whether this has retrospective effect on the TRC Act is debatable. According to Commissioner J. H. Stewart, the TRC Act does not undermine due process because implementing the recommendations of the Commission requires going before a competent court of jurisdiction. In this sense, it encourages the due process of law than do otherwise.³⁶ About the suspension of parts of the Constitution, Stewart argues that it was under the conditions of the CPA that many people ran for the presidency even though they did not meet the residency clause, which calls for ten years of continuous residency before anyone can be eligible to run for the presidency.³⁷ Whether this part of the Constitution will remain suspended will provide the test for constitutionalism in Liberia. Currently, President Sirleaf and few of the leading presidential aspirants would not meet the terms of the ten years residency clause. Explaining further why this clause was inserted in the TRC Act, Commissioner Stewart argues that more than 13 peace agreements were signed before the CPA. All of these were characterized by appeasement for the warlords but rather than resolve the crisis, it encouraged impunity. The framers of

³⁶Interview with Commissioner J.H. T. Stewart, Accra, Ghana, 30 September 2009

³⁷Interview with Commissioner J.H. T. Stewart, Accra, Ghana, 30 September 2009

the TRC Act were aware of this trend and this is why the clause was inserted making it mandatory for the recommendations of the TRC to be implemented.³⁸

Secondly, implementation of recommendations in relation to prosecution raises some practical issues: political will, human and financial. Implementing this requires political will on the part of the existing government. Further, it requires financial and human resources. In this direction, the role of international will and consent is crucial because on its own, there are doubts as to whether Liberia can shoulder the responsibility of financing such a lengthy process. The other issue is that the appointment of a Prosecutor is not an overnight affair; it requires time to do so. The person must undergo public scrutiny and command public trust and confidence. When appointed the team for the court will carry out its own investigation because the findings of the Commission may not be admissible in the court. Conducting such investigations could take between 5 to 10 years before the process is complete.

Thirdly, even if the implementation of Section 48 is legally suspect, there are political implications for the TRC recommendations. In 2011 Liberia will be holding its second election after the war. The sitting President and other Liberians who many think may run for the presidency and other elected positions have been recommended to be barred from partaking in elections. Will the President and others defy the recommendations of the report and contest these elections or will they comply with them? The overwhelming view in Monrovia is that she will test the legitimacy of these recommendations by running. If this is the case then her opponents will use this as a campaign issue. In a country in which more than 70% of the people cannot read or write, this has implications about the way in which she will be perceived. Therefore, it raises the issue of legitimacy. Already, some opposition and civil society groups are calling on the President to step down as a consequence of the report. During the elections the situation could be even worse. On 1 October 2009, the New Deal Movement wrote to the Chair of the National Elections Commission requesting that it remove from the name of Alhaji G.V. Kromah

³⁸ Interview with Commissioner J.H.T. Stewart, Accra, Ghana, 30 September 2009

from the list of candidates vying in the by-elections for the vacant senatorial seat created by the death of Senator Hannah Brent.³⁹

Fourthly, the report raises the issue of reconciliation and national healing. Do the TRC recommendations provide the basis for healing and reconciliation or do they divide the country? The answer to this cannot be a straight-forward yes or no. In order to provide an answer to this question, one must understand the contexts, nature and consequences of the war. The point is that reconciliation does not lead to justice nor does truth lead to healing. Hence, if truth seeking and reconciliation are viewed as preventive measures, then the issue of impunity should be brought into the picture. Therefore, like elsewhere, there is a huge tension between truth, justice and reconciliation in Liberia.

To the victims of war and their sympathizers in the larger society including human rights and other civil society groups, the failure to pursue justice by refusing to implement the recommendations of the TRC illustrates two basic things. First, that the perpetrators of crime and those who aided and abetted the war have crafted their own version of truth and want to impose their own version or style of unity, healing and reconciliation upon the society. Finally, the failure to implement these recommendations illustrates the logic that ‘might make right’. While we can speak of unity, healing and reconciliation, we should also be aware that forgetting cannot be imposed.

For the perpetrators of crime and those who supported the war, the recommendations are a recipe for disunity, disorder and chaos. In their views, if the ex-warlords and ‘big men’ and ‘big women’ named in the report are punished, this could derail the peace process and undermine the emerging democratic process. For them, the way forward is to ‘let bygones be bygones’ and the country should privilege order and security over justice.

Therefore, the major challenge facing Liberia and its leaders is choosing between order and justice. On this issue, one observer in Liberia argues that if impunity is allowed under

³⁹See Letter to Chairman James Fromoyan, Chairman of the National Elections Commission, 1 October 2009

the present circumstances, this would enable anti-democratic elements within society to drive the process of forging a future for Liberia. If democracy and rule of law are the future of Liberia, then such move would certainly undermine emerging democratic process as well as the confidence of the people in such future.⁴⁰

Fifthly, while order is important, there is an argument to be made that impunity could undermine the peace process and therefore thrashing the report would not help Liberia's peacebuilding process. As Commissioner Stewart asserts, the measures recommended could serve as a deterrence for others who may want to start war tomorrow, kill innocent people and get away with under the alibi of peace and security. In this light, he points out that implementation of the recommendation would help in consummating the Accra peace process out of which the TRC was set up. Publication of the draft report is not the end of the process; it only starts the process but implementing it is the way forward.⁴¹

Conclusion and the Way Forward

In conclusion, it is vital to stress that the TRC report has created an opportunity for Liberians to begin to debate the future of their country; to debate the future of the new and emerging social and political order that will be acceptable to all Liberians; an order that reflects their concerns and needs. This is the only way in which a democratic polity can be established that is based on rule of law as opposed to impunity, the bane of any society. As Mahmood Mandani would argue, "truth is not an alternative but a prerequisite for justice. The real alternative is not between truth and justice, but between forms of justice".⁴² In this vein, Liberians could seek justice through different means other than the courts.

The way forward therefore is to agree on the form of justice that will be acceptable to the majority of Liberians. More concretely, we would like to make the following proposals

⁴⁰Informal Discussion with a Liberian Political Activist, 6 August 2009, Monrovia, Liberia

⁴¹ Interview with Commissioner Stewart, Accra, Ghana

⁴²See Mahmood Mandani

for consideration by the Government of Liberia and the broader international community of state and non-state actors who are working in Liberia.

First, the government should create the soil for a national debate of the report and its findings. This is important because people will have an opportunity to understand and appreciate it. The more that people debate this report, the better it is for the country. Sweeping it under carpet is not the way forward.

Historically, the TRC report constitutes an example of other events in Liberia which emerged in order to address the issue of injustice. For example, the resettlement of freed black slaves from America to establish Liberia in 1822 was a result of the need to address the issue of slavery in North America. When the founders of Liberia declared independence from the tutelage of the American Colonization Society (ACS) on 26 July 1847, they did so for the purpose of self-rule. Similarly, the military coup of 12 April 1980 occurred after long years of asymmetrical power relations and dynamics, and poor social relations between the settlers and the indigenous peoples. The recurring ‘tribal’ wars of resistance from the 1850s onwards verify this assumption. This was about addressing the issue of political exclusion and long years of single party rule under the True Whig Party (TWP); the 24 December 1989 invasion by the National Patriotic Front of Liberia (NPFL) led by Charles Taylor was also an attempt to address the issue of ten years of military dictatorship; and the recurrence of armed violence in July 1999 was an attempt to address the inability of Taylor to create an enabling environment for democratic politics in Liberia.

Second, the national dialogue process could precede a more serious national forum in the form of a ‘sovereign national conference’ that will provide the basis for Liberians to critically examine the issues facing the country including implementation of the TRC report and its recommendations. The report should not be viewed as ‘witch-hunting’ but an opportunity to address those things that should have even been addressed before the elections of 2005. These include certain reform issues including constitutional reform and the forum should provide the basis for a commitment on the part of the government and the people to move the country forward along democratic lines.



About the authors: Dr. Kwesi Aning is head of the Research Department of the Kofi Annan International Peacekeeping Training Centre (KAIPTC), Accra, Ghana.
Dr. Thomas Jaye was a Senior Research Fellow at the Research Department of KAIPTC. He is currently Head of the International Centre for Transitional Justice in Liberia

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