

Presidential Apologies, the Liberian TRC and the Role of Postconflict Reparations in the Reintegration of Returnees in Liberia

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ABSTRACT

The twentieth century witnessed a staggering amount of deadly conflicts that redefined the study of international and internal warfare, conflict and peace. African conflicts especially have been of such character and consequence that the entire nation reels at the end of them from economic, social, political and psychological repercussions. It is within this scenario that both academic discourse and political practice on reparations and restitutions to victims of such wars have gained momentum. The specific application of the burgeoning international practice of reparations to the situation of returning refugees in [less prosperous] Africa has however witnessed limited application. Therefore this paper assesses the efforts made so far to address reparations to returnee refugees and the likely effects on their reintegration, specifically with reference to the Liberian case.

This paper, though a review of the literature and international praxis, draws on fieldwork carried out in Liberia involving interviews with one hundred persons including returnees, government and non-government sources in Liberia, as well as the collection and review of pertinent documents. The paper argues that beyond the physical and economic aspects of the reintegration of refugees, great attention must be given to the psychosocial and psychological position of those returnees, as these are usually the factors that determine whether returnees remain in the country or leave again. The necessary reparations that may accrue to returnees may involve the five internationally recognised aspects of post war reparation namely, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. With the Liberian Truth and Reconciliation Commission's work already done, the question must necessarily arise as to the potentials of the entire process to contribute to returnee reintegration since it is held generally in the literature that the return and successful reintegration of returnees is a significant milestone for the consolidation of a post war political order.

In light of the fact that up to 75% of the Liberian population was displaced at one time or the other during the two- decades- long political crisis, then the recommendations from this research can be seen as critical to national healing, justice, reconciliation, reintegration, and in the final analysis, sustainable peace.

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PREAMBLE

Two specific incidents directly provoked the analysis in this paper. Early in 2009, the President of Liberia, Madam Ellen Johnson Sirleaf, appeared before the Liberian Truth and Reconciliation Commission in person to give her testimony. That testimony included her admission of and remorse for having once known and supported the warlord-turned-president - Charles Taylor - in his insurgency against the Samuel Doe regime in the late '80s to early '90s. The main question that begged research and contemplation was: What possible implications for the psychosocial reintegration of victims of war could such an apology have? Other equally pertinent questions included: What other measures or tools of reparation could be effective for facilitating the currently hesitant reintegration of the entire war-affected population? Could the Liberian Truth and Reconciliation Commission (hereinafter simply referred to as the TRC, or the Commission) really play a significant role in the above processes? and what implications for sustainable peace in Liberia?

However, later that year (2009) news came in from Liberia: the second volume of the TRC's final report had been released and then withdrawn within twenty four hours. The reason was simple: the report was not well received by the loudest voices in the country, and that was apparent in the first twenty four hours – so apparent that the Commission pulled the “unedited” report that had been published on its website. According to one commentator, it was as if the TRC itself leaked its own document, and then retrieved it by itself. Nonetheless, the information contained in that report can more accurately inform the analysis of the above-stated research questions, and therefore, the TRC's report now constitutes a veritable source of information/data for assessing the role of presidential apologies, and other means of granting post war reparation to the affected population.

INTRODUCTION: CONTEXTUAL BACKGROUND

To this war of every man, against every man, this is also consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law; where no law, no injustice. – Thomas Hobbes (1588-1679), Leviathan.

The small West African country of Liberia has witnessed one of the most devastating conflicts of twentieth century Africa, with approximately one tenth of the population dead, and an estimated three-fourths of the population becoming either internally displaced or

refugees in the period of the wars (1989- 2003). The scale and magnitude of destruction of property and widespread disregard for human rights and the laws of war further exacerbated the implications of the war for civilians who were the main victims of the war. Between June 1990 and August 1996, fourteen peace accords were negotiated without any dividends in terms of peace and stability. Charles Taylor, erstwhile leader of the National Patriotic Front of Liberia (NPFL) became the president of the country in 1997, following national elections at which one of the campaign slogans used by his supporters was: “He kill my ma, he kill my pa, I will vote for him.” Indeed, Thomas Hobbes could have been describing Liberia in his exposition of the state of nature cited above.

When on 11 August 2003 President Charles Taylor stepped aside in the face of defeat from the Liberians United for Reconciliation and Democracy (LURD) and other rebels, and under enormous international pressure, the country was given a glimmer of hope that peace would, and could return. Eventually, the various warring factions, under the guidance and insistence of the international community including ECOWAS, the AU, UN and others, gathered in Accra from 4 June to 18 August 2003 and signed a Comprehensive Peace Agreement (CPA). One of the provisions of that CPA was the establishment of a peace and reconciliation process that would include the establishment of a truth and reconciliation commission.

Article XIII of the Accra CPA declares that:

1. A Truth and Reconciliation Commission shall be established 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.
2. In the spirit of national reconciliation, the Commission shall deal with the root causes of the crises in Liberia, including human rights violations.
3. This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.... (Government of Liberia 2003).

Consequently, the National Transitional Government of Liberia passed *An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia* (hereafter referred to as the TRC

Act) on the 10th of June 2005 (Ministry of Foreign Affairs Liberia 2005). It is apposite here to briefly highlight some of the relevant provisions of that piece of legislation which have defined the Commission's activities. Section 4 of the TRC Act states that "the objectives/purpose of the Commission shall be to promote national peace, security, unity and reconciliation." Article IV of the TRC Act goes on to enumerate the TRC's mandate to be:

- a. Investigating gross human rights violations and violations of international humanitarian law... during the period January 1979 to October 14, 2003...;
- b. Providing a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators... to share their experiences in order to create a clear picture of the past...
- c. Investigating the antecedents of the crises...
- d. Conducting a critical review of Liberia's historical past, with the view to establishing and giving recognition to historical truths...
- e. Adopting specific mechanisms and procedures to address the experiences of women, children and vulnerable groups... addressing concerns and recommending measures to be taken for the rehabilitation of victims of human rights violations...
- f. Compiling a report that includes a comprehensive account of the activities of the Commission, and its findings.

This mandate was further elaborated in the TRC Act in another section (Article VII, Section 26) in specific functions and powers to be arrogated to the Commission.

With the successful conclusion of national elections in 2005, and the inauguration of a new government in January of 2006, the truth commission became a priority for the new administration of the country. In the years since then, the Liberian Truth and Reconciliation Commission has sought to understand, interpret and fulfil its core mandate(s) as explicated in both the Accra CPA and the TRC Act.

Given the events and efforts reviewed above, we will explore in this paper the burgeoning literature on reparations in international law, paying specific attention to the connections between truth commissions and transitional justice, truth commissions and reparations specifically, public apologies and post war reparations, and the prospects for a Liberian peace in light of what we may be learnt from elsewhere.

THE PSYCHOSOCIAL APPROACH

The psychosocial approach is associated with medical work, psychotherapy, social work, and related professions. According to Kelly Tobey (2008), the psychosocial approach involves understanding a person's internal psychological processes (as a result of heredity and environment) as well as how these processes interact with one's current social and physical conditions (relationships, support system, employment, living situation, health). In this school of thought, the psychosocial approach recognizes that an individual's mind and behaviour are subject to the influences of the social world around him/her.

We find especially pertinent here the attempts in the literature to apply a psychosocial analysis to the situation of returnee refugees of war, as this may be effectively extended to other categories of war affected persons. The clearest argument for a psychosocial discussion of the social, physical and psychological needs of returnee refugees is set forth by Tania Ghanem (2003) in her study titled: *When forced migrants return 'home': the psychosocial difficulties returnees encounter in the reintegration process*. In linking this approach to the return of refugees, Ghanem (2003: 7-8) posits thus: "In the context of refugees... it is the interplay between the returnee's personality and the different social settings in which he/she lives that is important, as it will impact one's construction of the notion of 'home', the latter in turn influencing the returnee's reintegration in his/her country of origin."

Thus, "a *psychosocial* analysis of the reintegration difficulties encountered by refugees upon repatriation thus provides us with a useful framework in examining how exiles experience their return, as it makes allowances for both the identification of the various stages in which the notion of 'home' is challenged, and the acknowledgement of the variations between returnees' individual experiences" (Ghanem 2003, p. 20). And according to Majodina (1995: 202), "the extent to which returning exiles experience difficulties depends not only on the extent of these difficulties, but on the social support they receive and the strategies they use to cope."

For the purposes of this paper (see also Yacob-Haliso 2008), the psychosocial approach reminds us that the return experience of returnees, in this case over 75% of the Liberian population, is by no means singular, linear or generalisable. Return and rehabilitation is an

individual experience that is based on a person's previous experiences before and during the war. Therefore the return phase of displacement is multidimensional and cannot be understood independently of other social phenomena such as community acceptance and national policy of post war healing. Furthermore, the reintegration of returnees is unique to the individual, and there are no right or wrong perceptions of reintegration, as long as it is the perspective and voice of the returnee himself or herself that is being considered.

REPARATIONS IN INTERNATIONAL LAW AND PRAXIS

The discourse on post war reparations in the literature reflects a progress in international law from the traditional state-centric view of the international political system, to one in which the rights and duties of individuals are recognized and affirmed (Ellis and Hutton 2002). This is because international law traditionally addressed states as its primary subjects, and issues of wrongful acts and subsequent reparations were addressed as a matter of inter-State responsibility (OHCHR 2008). According to the United Nations Office of the High Commissioner for Human Rights (OHCHR), "the prevailing view in international law was that wrongs committed by a State against its own nationals were essentially a domestic matter and that wrongs committed by a State against nationals of another State could give rise to claims only by that other State as asserting its own rights."

However in the period since the Second World War and the establishment of the United Nations as well as the conclusion of various human rights instruments, individuals have progressively been accorded the right to make claims under international law, and states became liable for offences committed against persons within their domestic jurisdiction. Bradley (2005: 4) observes that the progress made in codifying the state's responsibilities to individuals has prompted some progressive scholars and governments to argue that a state's claim to sovereignty depends on that state's ability to effectively shoulder its primary responsibilities, including the protection of human rights (cf. Slaughter 2003).

It is within this framework that international law and practice on reparations have found meaning. The principle of reparations has long been established in international relations. According to Redress, a UK-based organisation that seeks reparations for torture victims, it [reparation] is a principle of law that has been in existence for centuries, and refers to "the obligation of the wrongdoing party to redress the damage caused to the injured party." This

principle was famously explicated in the *Chorzow Factory Case* of 1927, at which the Permanent Court of International Justice (PCIJ) opined that: “It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form” (PCIJ 1927: 21). In this tradition, reparation must “as far as possible wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed” (PCIJ 1927; Redress 2009; Shelton 2002).

The principle of reparation is also sometimes referred to as the ‘right to a remedy’ in various human rights instruments (although the legal right to a remedy may encompass measures that go beyond reparations to victims). Some such international instruments that affirm the individual’s claim to reparations include the Universal Declaration of Human rights (Art. 8), the International Covenant on Civil and Political Rights (Art. 2); the International Convention on the Elimination of All Forms of Racial Discrimination (Art. 6); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Art. 14); the Convention on the Rights of the Child (Art. 39); the Hague Convention respecting the Laws and Customs of War on Land (Art. 3), the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Art. 91) and the Rome Statute of the International Criminal Court (Articles 68 and 75) (OHCHR 2008: 5-6).

More specifically, reparation is elaborately defined and expounded by the International Law Commission (ILC) Articles on State Responsibility and the Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (simply, Draft Principles on Reparation). The Draft Principles on Reparation became the Basic Principles and Guidelines [on reparation] when they were adopted by the United Nations General Assembly as Resolution 60/147. According to the Basic Principles and Guidelines, reparation may encompass four [or five] types of remedy, namely: restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition.

→ Restitution is considered ‘the first form of reparation’ (Bradley 2005: 9; Shelton 2002: 849), and the Basic Principles and Guidelines state that: “Restitution should, whenever possible, restore the victim to the original situation before the violations of international

human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.”

- Compensation “should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law.” Such damages may include physical or mental harm, including pain, suffering and emotional distress; lost opportunities, including education; material damages and loss of earnings, including loss of earning potential; harm to reputation or dignity; and costs required for legal or expert assistance, medicines and medical services, and psychological and social services.
- Rehabilitation is recommended to “include medical and psychological care as well as legal and social services.”
- Satisfaction and guarantees of non-repetition are aimed at non-material injuries. Satisfaction requires the employment of a range of measures including: the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others; the search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities; an official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim; apology, including public acknowledgement of the facts and acceptance of responsibility; judicial or administrative sanctions against persons responsible for the violations; commemorations and tributes to the victims; inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels; and guarantees of non-repetition.
- Guarantees of non-repetition are specifically aimed at preventing the recurrence of such violations of human rights, and to complete the measures of satisfaction. Specifically, measures in this regard include: ensuring effective civilian control of military and security forces; restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces; strengthening the independence of the judiciary; protecting persons in the legal, media and other related

professions and human rights defenders; conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials; promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises; creating mechanisms for monitoring conflict resolution and preventive intervention.

The five forms of reparation above present a very comprehensive overview of what may be needed to provide victims of human rights abuses with full and final legal remedy. These five forms of reparations spelled out by the Basic Principles and Guidelines can be organized around two fundamental distinctions: between material and symbolic reparations, and between the individual and the collective distribution of either kind (OHCHR 2008: 22).

However, the actual application of these remedies has not been as comprehensive in any known instance the world over. The UN High Commissioner for Human Rights in its manual on reparation in post conflict states (OHCHR 2008: 9) observes that “the five categories go well beyond the mandate of any reparations programme to date: no reparations programme has been thought to be responsible for ‘distributing’ the set of ‘benefits’ grouped under the categories of satisfaction and, especially, of guarantees of non-repetition in the Basic Principles and Guidelines.” Thus reparations programmes are usually operated as part of broader transitional justice processes in post-conflict states. Although the Basic Principles and Guidelines do not explicitly mandate the setting up of truth commissions, they have become quite attractive to regimes designing transitional justice systems in a wide variety of contexts, from South Africa to El Salvador.

Finally on reparations, it is very important that reparations programmes and efforts be linked with other transitional justice measures such as truth telling, institutional reform and criminal justice. When reparations programmes fulfil this important requirement, they are said to be *externally coherent* or said to have *external integrity* (OHCHR 2008; Pablo de Greiff 2007a). External coherence or integrity refers to the relationship between reparations efforts and other justice measures, usually existing in a two-way relationship, or in backward and forward linkages, to employ economics terms.

Therefore, the following sections explore the relationship between reparations and truth telling and public apologies, as relevant to this paper.

Truth Commissions as Tools of Transitional Justice

It has been said that post-conflict justice is a form of justice located between an 'old order', often characterized by violations of human rights, oppression and violence, and a 'new order' that promises democracy (Heyns and Stefiszyn 2006: 363). This is why it is most frequently referred to as "transitional" justice; it is justice that lays between two [supposedly] diametrically opposed regimes. However, this type of justice does not necessarily refer only to criminal punishment of perpetrators of gross human rights abuses; on the contrary, the societies that require transitional justice mechanisms rarely have the infrastructure or the will to pursue such measures wholeheartedly. Thus, as the Deputy Chairperson of the South African Truth and Reconciliation Commission puts it: "[T]ransitional justice is not a contradiction of criminal justice but rather a deeper, richer and broader vision of justice which seeks to confront perpetrators, address the needs of victims and start a process of reconciliation and transformation towards a more just and humane society" (Boraine 2004).

In the post- Second World War international system, the perpetrators of gross and widespread human rights abuses have been dealt with in different ways, ranging from pardon/impunity/amnesty, to amnesia/forgiveness and to punishment/prosecution. Luc Huyse (2008) cites post-Khmer Rouge Cambodia and Pinochet's Spain as examples of the tendency towards silence/amnesia on the one hand and amnesty/impunity on the other. This is surprising because in the immediate post- Second World War period, the emphasis was on accountability as evidenced in the 1948 Convention on the prevention and punishment of the Crime of Genocide, the four Geneva Conventions of 1949 and the tribunals at Nuremberg and Tokyo that tried the war time leaders of Germany and Japan (Huyse 2008: 2). However, the 1990s revived a period of accountability and a struggle against promoting impunity for gross abuses of human rights, based on the increasingly sophisticated international legal regime of human rights protection. However, there has remained a debate on the use of trials in achieving transitional justice and reconciliation,

and the possible utility of varied forms of bringing justice to the victims of human rights abuses while not focusing solely on the perpetrators of the crimes.

It is in light of this that truth commissions seem to have become popular for achieving the goals of transitional justice (see Martha Minow 1998) as defined by specific societies in transition. Freeman and Hayner (2003) inform us that at least 25 official truth commissions have been established around the world since 1974, and they have gone by different names: 'commissions for the disappeared' in Argentina, Uganda and Sri Lanka; 'truth and justice commissions' in Haiti and Ecuador; 'truth and reconciliation commissions' in Chile, South Africa, Sierra Leone, the Federal Republic of Yugoslavia, and Liberia; a 'commission of reception, truth and reconciliation' in East Timor; and the 'commission on truth and friendship' for Indonesia and Timor Leste (Heyns and Steffens 2006; 395; Hirst 2009).

By definition,

A truth commission is a body established to investigate human rights violations committed by military, government, or other armed forces under the previous regime or during a civil war. Truth commissions are not courts of law. Their primary purpose is to provide an accurate record of who was responsible for extra-judicial killings, such as assassinations and "disappearances", massacres, and grievous human rights abuses in a country's past so that the truth can be made part of a nation's common history and the process of national reconciliation can be facilitated" (Harris and Reilly 1998: 282).

The International Institute for Democracy and Electoral Assistance (2003) elaborate the characteristics that define truth commissions in its book, *Reconciliation after violent conflict: A Handbook*. According to them, 'truth commissions':

- (1) Are temporary bodies, usually in operation from one to two years;
- (2) Are officially sanctioned, authorised or empowered by the state and in some cases, by the armed opposition as well in a peace accord;
- (3) Are non-judicial bodies that enjoy a measure of *de jure* independence;
- (4) Are usually created at a point of political transition, either from war to peace or from authoritarian rule to democracy;
- (5) Focus on the past;

- (6) Investigate patterns of abuses and specific violations committed over a period of time, not just a single specific event;
- (7) Complete their work with the submission of a final report that contains conclusions and recommendations; and
- (8) Focus on violations of human rights and sometimes of humanitarian norms as well (Heyns and Stefiszyn 2006: 394-395).

The above characteristics summarize the essential aspects of a truth commission that distinguish it from other post conflict mechanisms for peace building and transitional justice. These features also sum up the commonalities to be identified among truth commissions that have existed the world over, in spite of their widely differing mandates and peculiar political and cultural emphases.

The potential benefits of truth commissions are that: they can help establish the truth about the past; promote the accountability of perpetrators of human rights violations; provide a public platform for victims; inform and catalyze public debate; recommend victim reparation; recommend necessary legal and institutional reforms; promote reconciliation; and consolidate a democratic transition (Freeman and Hayner 2003). Their limitations lie in the fact that they are limited in implementing their recommendations; cannot substitute for criminal justice; and cannot investigate the current situation even if abuses continue (as they did in El Salvador) (Harris and Reilly 1998: 285).

The limitation most lamented by scholars in the literature is the fact that the recommendations of truth commissions have historically been given short or limited application by incumbent political regimes. According to the authors of the international IDEA handbook:

*Once a truth commission submits its final report, archives its files and is formally dissolved, the task of carrying out its recommendations will naturally fall to others. Unfortunately, **the implementation of recommendations has frequently been a major shortcoming for truth commissions....** One of the main causes of non-implementation appears to be lack of political will; but even when sufficient political will is present, there may not be sufficient institutional capacity or funds (Freeman and Hayner 2003, in Heyns and Stefiszyn 2006: 402, emphasis mine).*

This tendency is due to the non-judicial, non-permanent nature of truth commissions: “The fact that more often than not their recommendations are not binding means that Governments can ignore them. Even if they are binding, this does not guarantee implementation.... The temporary nature of truth commissions also means that, unless specific provisions are made in advance, there may be little or no follow up on their recommendations...” (OHCHR 2008: 11-12).

Truth Commissions and Reparations

The relationship between reparations and truth commissions is well worth investigating as “there seems to be a trend towards establishing truth commissions in post-conflict societies and societies in transition and entrusting them with making recommendations concerning reparations” (OHCHR 2008: 11). In fact, Boraine (2004) states quite explicitly that in the absence of other “positive and tangible manifestations” or benefits, truth telling by itself “can easily be considered an empty gesture – as cheap and inconsequential talk”. According to him, reparations are, for the victims, the “most tangible manifestation of the efforts of the state to remedy the harms they have suffered.” On the other hand, reparations such as restitution and compensation, without truth telling may be perceived by the victims as an attempt to buy their silence.

In *Between vengeance and forgiveness: Facing history after genocide and mass violence*, Minow (1998) critically examines the South African TRC’s approach to transitional justice, and makes a claim that is universal for truth commissions. She opines that:

The TRC’s pursuit of restorative justice is also in jeopardy if it presages no changes in the material circumstances of those most victimised. Characterised as only one step in the process of reconciliation, the TRC is designed to propose specific economic reparations and also to assist the development of a society stable enough... to redress the massive economic imbalances in the country.... The longer term vision of social transformation holds out the idea of redemption for suffering, and yet if progress towards this vision is not made, scepticism about the goals of healing and reconciliation will surely mount.

However, it must be noted that some truth commissions have not been given this mandate of designing reparation programs for victims of human rights violations. Some such examples are those of Argentina and El Salvador. Consequently, we can identify some

countries in which reparations efforts that were implemented did not stem from any truth commission recommendation, but were sometimes the product of specific legislative procedures, creation of reparations commissions, and so on. Examples in this category include Argentina, Germany, Malawi, Morocco, and Brazil. Probably the saddest fact is that even when commissions with the mandate to recommend reparations do so, such recommendations are not implemented, or are implemented only partially. Such instances include South Africa, Peru, Guatemala, and Haiti (OHCHR 2008). Unfortunately, as established in the preceding section, there is nothing the truth commission itself can do to enforce the implementation of reparations to victims, if that power was not included in its enabling Act or similar legislation.

Public Apologies as Reparation

We torture survivors who have chosen to follow the path of reparation face many obstacles.... For many of us the goal, as a matter of honour, is for the states to admit that we had been tortured. – Torture Survivor, 19 November 1993, in REDRESS (2001).

The Basic Principles and Guidelines on Reparation identify a public apology from the State in which violations have occurred as a measure of satisfaction. Section 25 on measures of satisfaction and guarantees of non-repetition includes sub-section (e): “Apology, including public acknowledgement of the facts and acceptance of responsibility.” Without a doubt, it has been established in the literature that it is not only the existence of a truth commission that assuages the grief of victims, it is important that the State takes responsibility *explicitly*, if possible *verbally* in the form of a statement of apology, and *publicly*, for the violations of citizens’ rights in the past. Without this critical element, other measures of reparation may not *satisfy* the victims who often desire such an affirmation of their horrific experiences, and help them move on.

Bradley (2005: 17) highlights the perspective of legal experts who have debated whether restitution and compensation can technically take place without this sort of public acknowledgment of wrong-doing. According to Ellis and Hutton (2002: 344): “it is difficult to imagine restitution and reparations without accountability... a state must demonstrate that it accepts moral responsibility for its past. Restitution and reparation must, at a minimum, be integrated with the distinct concepts of acknowledgement and accountability.”

A public apology is a “collective reparations” measure to the extent that all the members of a group/State receive this particular benefit when it is issued. A public apology is undisputedly justified in situations of widespread violations of human rights in a State. According to Pablo de Greiff (2007b) the aims of such measures include giving recognition to victims, but also reaffirming the validity of the general norms that were transgressed (and in this way, indirectly, reaffirming the significance of rights in general, including, of course, the rights of victims, thereby strengthening the status of victims not just as victims but as rights holders).

When a public apology is absent, other reparations measures have been proven in practice to be of limited or non- effect. Two examples are instructive here. In Chile, where the truth and reconciliation commission investigated human rights abuses during the Pinochet regime, the Commission at the end of its work issued compensation to the victims of these abuses. Regrettably, though, neither individual leaders nor the State as a corporate entity took responsibility for those rights violations, neither by a public apology nor by any other such means. For many of the victims, the offer of compensation was insulting (Bradley 2005; Garry 1998).

In the case of the Japanese *ianfu* or ‘comfort women’ that were sexually enslaved by the Japanese military during the Second World War, financial compensation was also offered them by the Japanese government. However, because such compensation was not accompanied by full acknowledgement of Japan’s complicity and its acceptance of responsibility, the women rejected the compensation. “More than money, the women sought accountability in the form of an official state apology and the inclusion of their story in Japanese history curricula. In the absence of such gestures, the last *ianfu* are dying unreconciled, a clear testimony to the inextricability of accountability from restitution” (Bradley 2005: 17). In the text cited, Bradley aptly equates a public apology with accountability.

However, in a contrary example, the bilateral commission set up for Indonesia and East Timor to review the work of earlier commissions and arrive at the ‘conclusive truth’ about rights abuses by state institutions in 1999, the Commission of Truth and Friendship (CTF) submitted its report in July 2008. After much criticism from the public and doubts about the

independence and powers of the body, the official acceptance of the CTF's report provided an opportunity for the population to achieve some satisfaction, and indeed favour the recommendations of the report. "By endorsing the report's findings at the ceremony to mark its submission, President Susilo Bambang Yudhoyono provided Indonesia's first official recognition that its state institutions had systematically violated human rights in East Timor. These developments were justifiably greeted with both relief and praise" (Hirst 2009).

Such public gestures by state authorities must be seen as corollary to other transitional justice mechanisms including truth commissions, and must be promoted for "truth" to be accepted as *fact*, and not state-sponsored fiction.

CHALLENGES TO THE REINTEGRATION OF LIBERIA'S RETURNEE REFUGEES

Refugees are by definition persons who are forced to flee as a result of political and social persecution, widespread human rights abuses, or generalized violence in their country of origin or of habitual residence. When these negative conditions abate, most refugees return to their country of origin, if it is possible for them to do so. In fact, the *right to return* is guaranteed by the International Covenant on Civil and Political Rights. The convention states that: 'No one shall be arbitrarily deprived of the right to enter his own country' (International Covenant on Civil and Political Rights, UNGA 1966). In the case of Liberia under investigation, by June 2007, more than 160,000 Liberian refugees had returned home from Guinea, Sierra Leone, Cote d'Ivoire, Ghana and Nigeria (UNHCR 2008). Reintegration is the process that enables former refugees and displaced persons to enjoy a progressively greater degree of physical, social, legal and material security (UNHCR 1998). It encompasses legal, political, economic and social aspects.

In all cases, when refugees return they usually must battle enormous odds to survive and to reintegrate into their communities of return. At the end of the fourteen year old conflict in Liberia in 2003, the economy was in shambles, an entire generation had either been born in exile or fought as child soldiers in the duration of the conflict, and the worst forms of human rights abuses had been perpetrated by all sides to the conflict. More than 80% of the population was unemployed, and the most basic amenities such as electricity were not available.

Returnee refugees informed this researcher that their greatest difficulty was access to food on a daily basis, as well as shelter and livelihood. There was a fundamental lack of jobs for these people to apply for, nor did they have the resources to start a viable business. The skills they were taught as part of official repatriation programs were not marketable in the severely slumped economy. Most of the returnees relied on family members, neighbours, boyfriends and friends, or charity for some 'income'. Access to potable water and education was very limited, especially for women who have children and family members to care for. A basic challenge was the lack of a veritable social support system in a post war environment in which neighbours are wartime enemies, sexual exploitation was rampant and common, and family members are either dead or not traceable.

Compounding all the above are the memories of the atrocities committed against various groups and individuals during the war, both within and without the country. Inevitably, many refugees could not cope, and either returned to the country of asylum, or remained in the capital, Monrovia, never bothering to find their former places of residence in the counties. In interviews with various government and non-government organisations involved in the reintegration of these persons, we learnt that the weakest link in the official reintegration package is the psychosocial rehabilitation of this war-affected population. One may ask, then: how can transitional justice mechanisms identified earlier in this article benefit these returnees? This is the preoccupation of the next section.

AN EXPLORATION OF THE ROLE OF PRESIDENTIAL APOLOGIES AND THE LIBERIAN TRC

Two specific mechanisms that have been deployed in the Liberian case are in focus here: the Truth and Reconciliation Commission and the President's personal apology. Both of these mechanisms are mainly symbolic as opposed to material instruments of transitional justice, and have collective benefits over and above the individual benefits that may accrue.

The Liberian TRC had a broad mandate to establish truth, propose remedies and prosecutions, and promote reconciliation in its recommendations. Whereas the first two broad objectives were addressed in its final report, it remains to be seen how the Commission's work would contribute towards reconciliation in Liberia. Regrettably, the initial response of Liberians at home and abroad to the TRC final report were anxiety, fear and even outrage at some of its recommendations. Thus, it is indeed apposite here to

interrogate in succinct terms the potentialities of the process of transitional justice in Liberia as a means of applying the lessons learnt from experiments elsewhere as explicated in the review contained in the preceding sections of this paper.

In this paper, we use the term 'presidential apologies' to refer of course to the testimony of Ellen Johnson Sirleaf to the TRC at which she apologized for her role in supporting and financing the campaign of Charles Taylor. However, in light of the broader literature, the meaning of presidential apologies will be extended to all state measures to acknowledge the sufferings of the victims of the conflict, and accept accountability for the crimes committed against individuals and the nation as a whole. Therefore, in the Liberian case, the establishment of a TRC could be considered the first measure of public acknowledgement that crimes were perpetrated, truth hidden, and offences committed by various parties to the conflict.

Strictly speaking, the apology by Sirleaf was neither a state acknowledgment, nor an apology that would serve as a measure of satisfaction for Liberians devastated by the conflict. As discussed above, a public apology must be an explicit, verbal or written statement, publicly given. As a researcher in the field, it had been mooted on occasion in several conversations with informants that Sirleaf was an accomplice to Taylor, and it seemed to be widely believed. The value of the public testimony to the TRC by Sirleaf therefore was to contribute to the establishment of Truth by publicly acknowledging the rumours, thereby creating Fact and ending speculations. With such a presidential apology, it became unnecessary for her supporters to weave stories to debunk the rumours; instead, it became imperative for the entire nation to reconcile their image of a heroine-grandmother figure to include that of a warlord financier – a challenging mental exercise at best. On the optimistic side, Sirleaf became more human to those who venerated her as *the* strongwoman of Liberia, a mover and shaker, in the words of one observer, a sort of de-sexed national heroine. For these Liberians, they could more easily identify with a person who is not perfect and who makes mistakes like everybody else. More pessimistically though, Sirleaf's admission disappointed many who thought her incapable of wrongdoing, minimizing her stature in their eyes, and in effect disillusioning such people.

With reference to the TRC report, however, it is disappointing that the Commission listed various reparations measures, but nowhere recommends a state/official apology that the literature affirms as necessary for other reparations measures to be effective. The Commission merely mentions a public apology as part of sanctions against persons determined to have committed public abuses (Republic of Liberia TRC 2009, p. 271); the recommendation is at the individual level, and is not a *state* admission of official responsibility. With the widespread human rights abuses perpetrated by all sides to the conflict, a necessary starting point should have been the requirement for the state to issue an official apology in addition to the other measures of compensation, rehabilitation, and memorialization. Guarantees of non-repetition would in light of this be meaningful only when the state has accepted responsibility for its part in the atrocities experienced by majority of the population, and thereby contribute to assuaging the grief of the people.

Further disappointing, even to international observers is the fact that the recommendations of the TRC have not been implemented in any way in the many months since the release of the final report in June 2009. The TRC Act stipulates several steps for the incumbent government to execute upon the end of the Commission's mandate, including the empowering of a National Human Rights Commission to implement the recommendations of the report. Regrettably, the government of Liberia – legislature, executive, and judiciary – have shown hesitancy in completing the objectives of the TRC by taking the necessary actions.

This disinclination to pursue the implementation of the TRC report to its fullest extent can certainly be traced to the nature of the recommendations in that report. For many weeks after the report was released, citizens, civil society, government officials, academics and national and international observers of Liberia were in a tizzy about one particular recommendation of the TRC above all: Public Sanctions. Contained in Section 14.0, the TRC report stipulates the justification for public sanctions and, more to the point, provides a list of fifty-two individuals who are “associated with former warring factions, their leaders, political decision makers, financiers, organizers, commanders, foot soldiers....” These persons were to be “subject to public sanctions as herein described above in section 14.2 and specifically barred from holding public offices; elected or appointed for a period of thirty (30) years.” Apart from the debarment of these persons, other measures

recommended for their chastisement in Section 14.2 included “lustrations, debarment from holding public offices, restitution, public apologies; written or oral, community service, compensation of victims and other social responsibilities....” (Republic of Liberia 2009, pp. 271-272). Most importantly, though, this particular recommendation was fated because some of the names listed in this section of the report are currently serving public officers, including President Sirleaf herself.

On the other hand, it is pertinent to recall the critical flaw of all truth commissions set up as tools of transitional justice:

*Once a truth commission submits its final report, archives its files and is formally dissolved, the task of carrying out its recommendations will naturally fall to others. Unfortunately, **the implementation of recommendations has frequently been a major shortcoming for truth commissions....*** (Heyns and Stefiszyn 2006: 402, emphasis mine).

Consequently, the report of the Liberian TRC is doubly fated: the lack of political will and resources to be expected from the experience elsewhere is complicated by the naming of influential persons in Liberia, persons with the power to bury the report; and secondly, in light of the literature and the experience from elsewhere, the prognosis was never good.

CONCLUSIONS AND FURTHER QUESTIONS

The TRC determines: That national healing and reconciliation is essential for national unity and rebirth of a new nation founded on the principles of universal human rights, the rule of law and justice for all. – Republic of Liberia TRC Final Report, Volume II, p. 266.

Mr. President, Excellencies: In closing, we say again that Liberia is on the way to recovery. We have thrown off the label of a pariah state. We have restored hope to our people, credibility and honour to our national integrity, and won international creditworthiness and respect. Our confidence in the future of our country is firm. – President Ellen Johnson Sirleaf, in a speech to the 65th regular session of the UN General Assembly on 24 September, 2010.

Whereas this paper has established the importance of apologies, truth commissions and reparations for the national healing, reconciliation and progress of post war societies, it concludes most emphatically that these benefits are as yet to be reaped in the Liberian situation. The problem here is not the lack of initiative to pursue redress, as the government

has indeed taken tentative steps towards this, but the seeming fatality of these well-intentioned steps in light of the TRC's recommendations.

Whereas the TRC and President Sirleaf agree that a brighter future is imperative for the war-weary nation, it seems that there is little congruence between this vision and the present trend towards amnesia – Amnesia, because it seems that after getting the TRC to unearth the “truth” of the war, the government by omitting decisive and quick action will thereby impose amnesia on the populace. The question that arises for the consideration of other researchers and interested observers however is this: What exactly do the Liberian people want now? Would they pursue the prosecutions, lustrations and debarments the TRC proposes, or would they prefer amnesia at this stage? How do they conceive of the new nation they are building, and what path do they wish to take towards national reconciliation and peacebuilding? And how can the whole process benefit returnees who have become an ‘invisible’ category in the communities they have returned to?

This is because in the end, the solutions that the government and people of Liberia adopt must be rooted not merely in the esoteric dictums of western philosophies on justice or peace or forgiveness, but to be enduring must be authentically Liberian. This is the Truth that remains yet to be determined.

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