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# report

## Negotiating peace in Liberia: Preserving the possibility for Justice

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The Centre for Humanitarian Dialogue is an independent and impartial foundation, based in Geneva, that promotes and facilitates dialogue to resolve armed conflicts and reduce civilian suffering.

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The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. It assists in the development of integrated, comprehensive, and localized approaches to transitional justice by working closely with organizations and local partners around the world to strengthen this emerging field. Priscilla Hayner is Director of the ICTJ's Peace and Justice Programme and head of the ICTJ Geneva office.

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# Accra, Ghana, 4 June 2003

# Opening Ceremony of the Liberian Peace Talks

The ceremony was starting over an hour late. Some in the hall didn't know why, but it was clear that others must know. Several international delegates were all smiles; others looked agitated and unhappy. Finally, the host and other senior delegates filed into the front of the room. Liberian President Charles Taylor was among them, and he did not look well. After a brief opening ceremony, welcoming the opportunity to talk peace, Taylor was invited to the microphone. The rebel representatives walked out – Taylor was not on the agenda to speak, and this was unwelcome.

'Some people believe that Taylor is the problem', Taylor said, speaking of himself in the third person. 'If President Taylor removes himself from Liberia, will that bring peace? If so, I will remove myself.' As he was speaking, CNN was already announcing that Taylor had been indicted by the Special Court for Sierra Leone. After the ceremony, Ghanaians and other West Africans conferred. Within a few hours, Taylor was on the Ghanaian presidential plane going home to Liberia.

With that, the nature of the peace conference changed. From a gathering for which few had hopes of success, and none expected to last more than two weeks, it became a drawn-out process of 76 days. It concluded in a transitional government and an agreement for institutional reforms, a human rights inquiry, massive disarmament and demobilisation, and a plan for national elections in two years. And an early agreement that Charles Taylor would leave the presidency almost immediately.

# 1 Introduction

Liberia has been at peace since 18 August 2003, when a Comprehensive Peace Agreement was signed in Accra, Ghana. After a brutal war in the early-to-mid-1990s, a repressive government headed by Charles Taylor was in power from 1997. By the time the rebel movement Liberians United for Reconciliation and Democracy started encroaching on the capital in 2003, there was considerable pressure for a firm and lasting peace agreement. But Liberia had seen over a dozen peace agreements in the previous dozen years, and all suffered from questionable political commitment of the signatories actually to keep the peace and build a truly democratic society.[1]

This article is based on extensive interviews with many of those who took part in the 2003 talks.[2] It aims to record the dynamics, actors and elements that determined how and why many of the key decisions were taken that resulted in the 2003 peace agreement, with a particular focus on questions of justice, accountability and the rule of law. It also tracks developments in the four years after the accord was signed, and provides insights that may be useful in future mediation contexts.

The peace agreement signed in Accra covered a broad range of intended reforms, political commitments and demobilisation procedures. It set up a framework for a two-year transitional government, which would consist largely of representatives of the previously warring parties. It committed to a human rights inquiry through a truth commission, and vetting of the security forces on human rights grounds. Despite the fact that the warring factions held considerable power to set the terms of the accord, however, the agreement does not include an amnesty for past crimes, explicitly leaving this open for future consideration.

There are at least five reasons for the non-inclusion of amnesty in the agreement.

1 The focus of the three warring parties was elsewhere. Their main priority was not protection, but power. The factions pushed hard for key political positions, and succeeded in their aims. (While power may grant protection, the positions in government were understood to be for only the short-term transitional government.)
2 The threat of court action was minimal, as national courts were extremely weak, and the Special Court for Sierra Leone was uninterested in any Liberian other than Charles Taylor. There was little worry about prosecutions, and so no one felt it necessary to insist on legal immunity. Meanwhile, verbal assurances from other factions and international participants made clear that no prosecutions were planned.
3 A blanket amnesty was unpalatable to the public, and may have met with loud protest. The war had been too vicious for too long, and was pounding the capital city even as the talks proceeded. Leaders of civil society and hundreds of women from a neighbouring refugee camp were present to keep pressure on the parties.

1 This article uses 'peace agreement' and 'accord' interchangeably, referring to written agreements for peace. Some observers have suggested that there have been over 27 'peace agreements' during the Liberian civil war, including those that did not produce a written accord or document.

2 This paper is based on extensive interviews undertaken with many individuals involved in the 2003 Accra talks, including the mediator and those who represented the warring factions, civil society, political parties and the international community, as well as numerous civil society participants who attended the talks as observers and lobbyists, and others who have since been involved in the implementation of the accord. In-country interviews were undertaken by the author in July and September 2006.

4 Rebel leaders were insisting on justice for some of the notoriously brutal massacres and other atrocities of the past, and also for economic crimes.
5 An alternative to the quandary of amnesty versus prosecutions was quickly found: a truth and reconciliation commission was proposed to fill this space, and kept the other proposals off the table.

Each of these points will be revisited below.

The most important difference between the 2003 peace agreement and the previous, failed agreements comes down to one person: Charles Taylor. His offer to vacate the presidency, which resulted directly from the announcement of his indictment by the Special Court, fundamentally shifted the outlook for the talks and opened up possibilities for a serious peace process.

# 2 Background to the talks

The Comprehensive Peace Agreement (CPA) signed in Ghana in 2003 was by one count the fifteenth peace agreement for Liberia since war began in 1989.[3] Most of the other agreements held for only a few weeks or less. The 2003 agreement sought to cover a broad range of issues, and was more detailed and lengthy than the previous accords. Rather than specifying an interim government excluding warring parties, as did some of the earlier accords, the CPA granted the great majority of ministries in a transitional government to the warring factions that were just putting down their guns. At least in the short term, the spoils of peace would reward those who had benefited also from the spoils of war.

3 For a detailed description of 14 peace agreements between 1990 and 1996, and a useful analysis of why most of these failed, see Adekeye Adebajo, 'Liberia: a warlord's peace' in Stephen John Stedman, Donald Rothchild and Elizabeth M. Cousens (eds), *Ending Civil Wars: The Implementation of Peace Agreements*, Boulder and London: Lynne Rienner, 2002, pp. 599–630. Other analysts have concluded that the CPA is only the 14th, rather than the 15th, official peace agreement.

The previous peace agreements had been signed between 1989 and 1995, addressing a war first started by Charles Taylor as a rebel leader in 1989. A number of splinter factions emerged over several years, and peace negotiations took place throughout the region, usually under the lead of the Economic Community of West African States (ECOWAS), a regional body that became increasingly engaged in peacemaking and other regional matters in the early 1990s. The fighting was marked by brutal and wide-scale atrocities that were increasingly fuelled by, and helped to increase, inter-ethnic tensions. ECOWAS troops, strongly backed by Nigeria, tried to maintain the peace, but were often themselves pulled into the fighting. In addition to waging war at home, Charles Taylor supported and helped to start another war in neighbouring Sierra Leone.

A multi-party peace agreement signed in Abuja in 1995 led to elections in 1997 that swept Charles Taylor into the presidency with a reported 75 per cent of the vote. There was said to be a certain logic to this popular support: had Taylor not been elected, he was fully expected to return to the bush and continue the war – and Liberians were tired of war. Some Liberian monitors of the elections, however, challenged the results as fraudulent.

Accounts of executions by state forces, and of the arrest and torture of opponents, continued with Taylor holding the presidency. His repressive policies at home, and continued support for rebels in neighbouring countries, led

to the founding in 1999 of the armed opposition group, Liberians United for Reconciliation and Democracy (LURD), with initial support from neighbouring Guinea and, to a point, Sierra Leone. In early 2003, a second armed opposition group, the Movement for Democracy in Liberia (MODEL), was formed. Many considered MODEL to be an outgrowth of LURD.

The push for peace talks in 2003 emerged from several directions. An independent civil society effort under the leadership of the Inter-Religious Council of Liberia held meetings with each of the rebel factions, with Taylor, and with governments and bodies in the region to search for a possible route to peace talks and a sustainable peace agreement. A separate initiative by leading political and civil society leaders, known as the Liberia Leadership Forum, met in 2002 and called for a peace conference in 2003, which was ultimately agreed, with ECOWAS to serve as mediator.

The ECOWAS chair met with Charles Taylor in early 2003 to present a list of names of possible facilitators, suggesting notables such as Archbishop Desmond Tutu. General Abdulsalami Abubakar, former President of Nigeria, was also included in the list.[4] Taylor had been impressed with Abubakar during an earlier state visit to Nigeria, recounting to a colleague the calm and control with which Abubakar managed his affairs and his relations with the public. Taylor thus chose Abubakar from the ECOWAS list to mediate the peace conference scheduled for June 2003.

4 General Abdulsalami Abubakar succeeded Sani Abacha as President of Nigeria in June 1998. He oversaw the adoption of a new constitution and multi-party elections, and turned over power to newly elected President Olusegun Obasanjo in May 1999.

Ghana offered to host the talks. Despite misgivings by LURD, which perceived Ghana to be a close friend of Taylor, it accepted the location and agreed to attend – on condition that the rebels would be provided with bodyguards throughout the talks. Round-the-clock security was provided by Ghana, but sufficient trust had built after several weeks that such security was no longer felt to be necessary. Most participants arrived at the talks knowing that Charles Taylor had no intention of leaving the presidency. It was presumed that he would try to negotiate an end to the fighting while retaining the presidency, with the intention of contesting the elections scheduled for later that year. Meanwhile, the single issue over which the rebel factions would not compromise was the removal and departure of Taylor.

The main force driving the parties to peace talks was the war itself. The rebels were approaching the capital, Monrovia. There were fears that they would fight all the way to the executive mansion and take power by force. For a number of reasons, such an ending would have suited almost no one. Some former rebel leaders now say that they recognised that forcibly taking over government did not serve their interests: they did not have the proper leadership in place, continued fighting remained a risk, and they were being warned by international participants that international support would not be there for a government taken by force. As the rebels closed in on the capital, the US especially, through the local embassy, laid down the line to the rebel leadership, telling them that if their forces crossed a certain strategic bridge into the city, they would be prosecuted in an international war crimes tribunal. As LURD was beginning to approach the outskirts of Monrovia and MODEL was making significant advances in the southeast, all parties came together for peace talks in Ghana.

# 3 The surprise indictment of Charles Taylor

On the morning when the talks were scheduled to begin, in early June 2003, the indictment of Charles Taylor was unsealed and delivered to the Ghanaian government. The chief prosecutor of the Special Court, David Crane, was worried that informing any African leader in advance, or any part of the Ghanaian government, would have leaked to Taylor, and Taylor would then not have travelled to the talks.[5] Caught unawares, Ghanaian officials reacted angrily to the indictment. They insisted that arresting Taylor would be a violation of the commitment they had made to all parties that they would guarantee their security and freedom while attending the peace conference. According to a close adviser, Taylor himself was also shocked at news of the indictment. 'What do you mean, indictment? It's not possible to indict a head of state', he said.[6]

5 Interview with David Crane.

There were and are many strong critics of the Special Court's timing and manner of unsealing the indictment. At the time, many observers feared that the indictment would damage the peace talks and make it harder to extract Taylor from the presidency. Critics of the action say that the prosecutor was acting rashly, indelicately and with insufficient political knowledge and preparation. The prosecutor should have known that Ghana was unlikely to send Taylor to the Court in the context of major peace talks, they say.

6 Those watching the Special Court closely would have presumed that a sealed indictment awaited Taylor, according to observers. The prosecutor had provided many hints in the previous months, and had privately indicated to various governments that he did intend to indict Taylor. This was Taylor's first confirmed trip outside Liberia in many months, so some at the Court thought it odd that so many attendees were surprised by the unsealing of the indictment.

David Crane, the prosecutor, describes his decision to unseal the indictment as a calculated move, to 'embarrass Taylor in front of his West African colleagues', to humble Taylor and make it impossible for him to continue to play a role in the peace talks. He thought it was important to do this at the beginning of the talks, so that everyone involved would be aware of the charges, which would suggest that this individual was not a suitable partner or guarantor for any peace deal. Given Taylor's record of violating previous peace accords, and evidence that a shipment of more arms was soon to arrive to Taylor's forces in Monrovia, Crane also felt sure that unsealing the indictment would support the peace process. If he thought otherwise, he would have delayed unsealing the indictment, he says. But he also knew that it was uncertain whether Taylor would actually be handed over to the Court by the Ghanaian authorities.[7]

7 Interview with David Crane.

Upon hearing of the indictment, none of the African participants or observers had any expectation that Ghana would turn Taylor over to the Court. He was in Ghana as a guest of the government, and his removal would have been a violation of African hospitality, many say. West Africans saw the indictment largely in political and regional terms, a dynamic that was under-appreciated by some of the Court's backers. 'Africans would never have allowed Europeans and Americans to come to Africa and arrest a sitting president', noted one rebel faction leader, in a typical

reaction.[8] The mediator, General Abubakar, believes that the indictment may have the effect of 'undermining the role of African heads of state' in relation to other mediated conflicts.[9] There are however reports of one or two West African leaders trying to work behind the scenes to support the Court and its indictment of Taylor, and the Court says it received private messages of support from other regional leaders. Meanwhile, there were apparently differing opinions on the indictment within the US State Department; some were supportive, but one high-level US official called Crane a day in advance to try to dissuade him from his plan.

Views of the Court's general attitude to the region continued to influence events over the following years. For example, the foreign minister of the transitional government of Liberia refused to meet with the prosecutor during the entire two-year tenure of the government, despite being a firm opponent of Taylor. The political and regional sensitivities of the indictment seem to have been under-appreciated by officials of the Court, and ultimately did damage to the prosecutor's key aims.

However, there seems to be almost universal agreement today among those present at the talks, regardless of their opinion at the time, or their view of the Court's handling of the case, that the unsealing of the indictment had a largely positive effect on the actual negotiations. 'The indictment was the single most important factor that influenced how the peace talks would turn out', argued a political-party representative who played a central role in the talks. 'Had the indictment not been unsealed we probably wouldn't be enjoying the peace we have now', noted a leading advocate of human rights. A religious leader who was active in preparing the road for the talks agreed: 'Charles Taylor saying he wouldn't take part in the elections was a major contribution to resolution of the conflict. No one had that thought in mind.' Many others make the same point: Taylor's departure immediately changed the chemistry, the actual facts and the guiding presumptions of the negotiations.

The indictment de-legitimised Taylor, both domestically and internationally. It effectively removed any last support for him from international partners. Once it was evident that he could not rely on international support, and especially that the US had publicly turned against him, it became clear that he would have to leave the presidency. Equally important, it affected the morale of his own troops, which was already low because the soldiers had not been paid in months.

During the first two weeks of negotiations, the warring parties worked out the terms of a ceasefire, which was signed on June 17. While the actual ceasefire did not hold on the ground, the ceasefire agreement did include the key clause that Taylor would not be included in the transitional government. 'That was the sticking point: it took 14 days to negotiate that one clause', reported one LURD representative. It was clear to all that the indictment of Taylor was the single factor enabling agreement on this point.

There have been claims that the indictment either risked or caused considerable further violence and killing in Monrovia and throughout Liberia. Two things are said to have happened within 24 hours of the indictment. First,

8 Very similar reactions to the indictment came from quite different political quarters. In addition to the rebel leader's reaction cited above, a senior Taylor aide similarly noted, 'ECOWAS was opposed to anything that would have disgraced a sitting head of state. Could African leaders go to Europe and insist that a European head of state be arrested?' These reactions apparently resulted from the fact that most of the senior officials of the Court were American (including Crane himself), with others mostly from Canada or Europe.

9 Interview with General Abdulsalami Abubakar.

serious threats against the Ghanaian community in Liberia were reported almost immediately. Second, LURD began shelling the capital, striking the heart of downtown Monrovia on the day following the indictment. It is true that these events were linked with the indictment – but an interrogation of these developments, and their precise connection to the indictment in Accra, suggests a much more benign effect than might be first assumed.

Many feared that if Taylor was detained in Ghana and sent to the Special Court, his militant followers back home would take revenge against the large Ghanaian community in Liberia.[10] Threats against Ghanaians in Liberia are said to have started almost immediately after the news of the indictment. The streets were tense, and many who were in Monrovia as well as those at the talks in Accra say they expected a mass slaughter if Taylor was not returned home. The Ghanaian ambassador to Liberia reportedly received a message from Taylor's militia threatening to target and kill Ghanaians if Taylor was arrested. The ambassador expedited the message to Accra, urging that Taylor be returned home. The threat was clearly from Taylor's militia supporters, and not from the general public as some suggested at the time.

10 There are hundreds of thousands of Ghanaians in Monrovia. Many of them have lived there for generations, but are still considered Ghanaian and have retained their native language. They mostly live together in coastal fishing communities.

The US ambassador in Monrovia at the time, John Blaney, was heavily involved in trying to stop the fighting in Monrovia, and his role in keeping the embassy open throughout this period, and actively pushing to stop the fighting, is praised by all sides. He strongly opposed the timing of the indictment, and believes that 'hundreds if not thousands of people would have died' in retribution if Taylor had been arrested in Ghana on 4 June. 'It would have ended the peace process and the war would have continued. How can you morally put at risk three-and-a-half million people?', he asked.[11]

11 Interview with Ambassador John Blaney.

US citizens and the US embassy were also directly threatened, given the belief widely held in Liberia that the US was the real power behind the Special Court. As tensions increased in the hours after the indictment was announced, the US embassy in Monrovia contacted senior government and military officials and made it clear that they would be held responsible for any breakdown in law and order. A key General went on the radio and urged calm.[12]

12 A detailed account of these and related events, from the perspective of a participant inside the US embassy, can be found in Dante Paradiso, *No Monkey No Dog: War and Diplomacy in Liberia*, publication forthcoming.

While many insist that massive revenge attacks were imminent, it is also true that some well-placed observers strongly dispute the likelihood of this. Even on the very day of the indictment, some civil society activists in Monrovia argued about whether the Taylor forces would react with customary violence. Some in fact recount an air of calm within the senior Taylor leadership in Monrovia, and a readiness for a smooth transition to the vice-president. Some also argue that playing up the threat of violence was in the interests of some Taylor allies. While none of this threatened violence ensued, the actual likelihood of such attacks if Taylor had been arrested cannot be known, as Taylor returned home later that same day and the militia immediately calmed down.

Meanwhile, as tensions increased within Monrovia due to concerns over how the Taylor forces would react, the rebel forces of LURD were quickly approaching the outskirts of Monrovia and preparing their first attack on the capital city. An attack on Monrovia was already planned for early June, and LURD troops were poised nearby. As long as Taylor was in power, they saw

no reason to change that plan, they later explained. Pushing Taylor to leave was their first priority. The LURD chairman was about to do a BBC radio interview just as he heard on the radio that Taylor was going home. He used the occasion of his interview to tell his forces, through the BBC, to move on Monrovia.

The chairman of LURD has clarified that it was not because of the indictment that they attacked, but because of Taylor's return to Monrovia. Taylor was scheduled to return to Monrovia a few days after the opening ceremony in any case. If he had been arrested in Ghana, LURD would have held their attack, they say. 'It wasn't because of the indictment. Whether indicted or not indicted, we were going to fight until he would leave. That was our goal', said the LURD chairman. From this perspective, the indictment may have come close to halting the planned attack, and perhaps ending the fighting two months earlier than when this eventually happened.

# 4 The dynamics of the peace talks

The government, LURD and MODEL were the central actors at the talks. During the ceasefire negotiations at the beginning of the Accra talks, in early June, they negotiated directly with each other, without the involvement of civil society or other parties. For the remainder of the negotiations towards the CPA, international representatives and national civil society actors also played an important role in the plenary sessions, giving input and pressing points. In some cases, the accusation by participants against members of a particular faction that they were 'blocking progress' in the talks was pressure enough to move them to agree to points they were not fully happy with.

Participants have praised General Abubakar's leadership as mediator, and his ability to keep the negotiations on track. Some were frustrated with his style at times: even while Monrovia was being shelled and the urgency seemed great, he remained in listening mode for several weeks, rather than pushing for agreement or action of any kind. He also had to travel for a week or more away from the talks on various occasions. During these times, little if any progress was made.

The primary international actors, in addition to ECOWAS, were the US, represented by persons who rotated in from the State Department's Bureau of West African Affairs in Washington, and the European Union/European Commission (EC), represented by the head of the European Commission mission in Monrovia. The ECOWAS team included several legal or political advisers to Abubakar.

Eighteen political parties were represented at the talks. The majority of these were recent creations of Charles Taylor. 'Taylor diluted the process by registering many new political parties in the period before the talks. The

number of parties grew from five to ten, to close to twenty. And Taylor gave them money to come to the talks', says one Taylor critic. The 18 parties at the talks organised themselves into a 'group of eight', considered independent parties, and a 'group of nine', the parties aligned with Taylor, in addition to Taylor's own party, the National Patriotic Party.

The drafting was done by a number of international participants, including the EC and, on at least one occasion, the US representative. ECOWAS was in control, however, and sometimes removed any sections it considered controversial before distributing drafts for discussion.[13] Suggested language pertaining to accountability was among those issues removed from early drafts, according to one participant. The LURD also put forward its own alternative text very early in the process, providing specific and detailed suggestions on some of the items that were to be addressed during the talks.

13 Drafters provided suggested language to ECOWAS, often reaching ECOWAS representatives late at night. The drafts were distributed for discussion in the morning, but the complete suggested drafts were reportedly not always distributed, allowing ECOWAS to reserve some issues for final discussion or agreement until later in the process.

Plenary discussions addressed broad notions of the accord, rather than details or specific language, and came to general agreement on key elements. There were no sub-committees for more in-depth discussion, although much debate and lobbying took place on the side, outside the formal meetings. The final language of the agreement was seen by delegates only a day or two before the signing, with little opportunity for further input on specifics at that late stage.

Civil society was strongly committed to playing a role at the talks; some had worked for a negotiated end to the war since the early 1990s. A few persons representing inter-religious, human rights, pro-democracy, women's rights, and legal organisations were included as official delegates, and many others attended unofficially as observers. Some risked their lives in travelling to the talks, having been prevented from flying with the official delegations, and having to find their way to Ghana by road, in a harrowing journey. The civil society organisations did not always work in close coordination, however; some felt that their impact could have been greater if they had declared common positions in some key areas.

The Liberia talks stand out for the great number of women who were involved, either directly in the talks, or on the perimeter. This included representatives of women's organisations from Monrovia, and many women who were transported from a Liberian refugee camp nearby.[14] Every day, between 150 and 200 refugee women arrived at the hotel where the talks were being held. Women activists also sought out family members of rebel leaders, including the mother of one, to attend the talks and make a personal plea to stop the shelling of Monrovia.

14 This project to engage the refugee women in the talks was organised by Women of Liberia Mass Action for Peace.

The independent Liberian voices in Accra thus came in two forms. The civil society organisations, including women's organisations from Monrovia, either served as delegates or lobbied the parties on the perimeter of the formal meetings. The Liberian refugee women brought a different kind of presence and pressure: they sat outside the hall holding placards calling for an end to the violence, and sometimes confronted the faction leaders directly and forcefully.

The civil society and refugee women pushed hard for a rapid end to the war. They were in regular touch with Monrovia. 'We would make calls to

frantic relatives and friends, which would make us even more alarmed', one recounted. 'You called someone and could hear shooting, missiles, screams. "They're shooting, we're on the floor, they're all around us!", they would say.' One of the women who had travelled from Monrovia to the talks returned home for a few days. While driving in downtown Monrovia, she watched as a man walking in front of her had his head cut clear off by an incoming shell. She returned to Accra incensed, and insisting on change.

These civil society actors provided a direct link to the horrors of the fighting, and put pressure on the participants to come to an agreement. On one occasion, when one woman received news of a relative having been killed in Monrovia, the group of women responded by physically blockading the door to the delegates' meeting room for several hours, locking them in and refusing to let them leave (or even, as many remember, to use the toilet) until they came to agreements. On another occasion, the women threatened to take their clothes off in protest that the talks were moving too slowly. 'For a son to see his mother's nakedness – it's considered a curse. And to do it in public! So the men were saying, "we better do something because they're threatening to take their clothes off"', remembered one of the women.

The choice of the two-year transitional head of state – to be given the title of chairman – was also an important part of the negotiations, and took place in the very last days at Accra. Civil society and political party delegates first voted on a slate of declared candidates, to narrow the choice to three. The final selection was then made by the three warring factions. Concerns that war criminals might be held to account played a role in the selection, according to a faction leader who played a central part in the process. Ellen Johnson Sirleaf, who two years later was elected as president, was one of the three finalists, and had in fact received the most votes in the civil society and political party tally. But the faction representatives were aware that Johnson Sirleaf might hold the war's perpetrators to account, as she had made public statements to this effect. This was one of the reasons why she was not chosen by the factions as the interim head of state.[15]

15 The reasoning of the factions for not selecting Ellen Johnson Sirleaf was that prosecutions for actions of the war would definitely 'lead to further fighting'. This was one of several concerns of the faction representatives in relation to Johnson Sirleaf.

## Links with the front lines: cell phones and CNN

The continuing violence in Monrovia was of two primary types: either indiscriminate shelling of the city, mostly by the rebels, or targeted and random violence by gangs and militia in the streets of the city. The targeted attacks were particularly severe in the government-controlled areas, by militia aligned with the government, although it is reported that extensive looting also took place in LURD-controlled areas. One human rights organisation was reporting 15–20 people dying in Monrovia each day, during the worst of the shelling.[16]

16 There was also continued fighting in the southeast of the country, where MODEL was making advances, especially towards the end of the peace talks. This was not captured by CNN, however.

The delegates at the talks maintained daily close contact, via cell phones, with their forces on the front line in Liberia, either directly (in the case of MODEL and the government) or indirectly (in the case of LURD, which

usually communicated through its commanders based in Guinea).[17] Those at the peace talks could also watch the war on their television screens, as CNN provided live coverage from Monrovia. The shelling of the city was covered extensively, with mixed effects on the peace talks. Sometimes, what people witnessed on CNN one day would further strengthen their resolve the next day to stop the fighting. But sometimes the fighting was so intense that it stopped the talks altogether.

Some of the warring parties' delegates reportedly used the live CNN coverage, and their ability to influence events on the ground, as a trump card to increase their gains at the peace table. On at least one or two occasions, according to a number of participants, a faction representative who was insistent on winning certain ministries in the government, but found himself blocked, used the shelling for leverage. He made a call on his cell phone to the front lines, ordering more shelling into Monrovia. All watched live on television as mortar rounds landed in Monrovia. The opposing parties at the talks then granted that faction what it wanted, witnesses say.

Civil society participants also felt this pressure. 'One or two rockets would be sent into Monrovia, and people in Monrovia would be telling us, "you have to give them anything they want, to get it to stop"', recalls one. 'Once they felt they were getting what they wanted, the fighting would simmer down. Sometimes I thought they were blackmailing us.'

The first draft of a peace agreement was distributed in mid-July. The draft reflected the firm position of the US at that time: no faction representatives should hold positions in the transitional government. Civil society representatives gave a round of applause. The rebel factions, however, were furious and, according to one observer, threatened to take action to obtain their desired ends. The next day, the most serious assault on Monrovia began, with intense shelling of the city. It was the beginning of a two-to-three week period that Liberians refer to as 'World War Three'.[18] The fighting was so intense on July 19, the first day of renewed shelling, that the peace talks stopped; instead, the delegates watched the war on their hotel television sets.

But the heavy shelling also put great pressure on the delegates to come to an agreement. The mediator quietly brokered an arrangement that, in the views of some, swung too far in the opposite direction, awarding the great majority of ministries to the three warring factions. In addition, there would be no process in forming the transitional government of reviewing or approving those persons put forward to be ministers. Some political party delegates had been pushing for vetting or review on the grounds of competence, at least. This was left out.

17 As a result of the Accra peace conference, contact with the front lines sometimes crossed warring lines. Charles Taylor's Minister of Defence attended the first weeks of the Accra talks, and became well acquainted with the rebel leadership. When the shelling of Monrovia worsened, he returned home to lead the defence of the city. On two occasions, when the shelling was particularly intense, he made a phone call to the LURD delegation in Accra and asked them to 'cool it down'.

18 Liberians refer to the three periods of shelling that took place from June to August 2003 as World War One, World War Two, and – the most intense – World War Three. The first two periods of shelling took place in early and late June.

# 5 Justice in the negotiations

## War crimes tribunal, amnesty or truth commission?

The issue of accountability emerged early in the negotiations, shortly after the ceasefire agreement was signed. It first arose as a proposal for a war crimes tribunal, pushed by civil society representatives. Representatives of the rebel factions were also initially demanding justice for the Taylor government. The mediator, General Abubakar, reminded them that they could also be accused of war crimes, 'and then they were much more careful about their call for justice'.[19] Some remember the factions proposing an amnesty, but this was not pushed hard. The mediator, for example, remembers no discussion of an amnesty, and insists that some atrocities were so severe that they could simply never be amnestied, and had to be brought to justice. He suggested, however, that these decisions should await the elected government. Instead of having a war crimes tribunal, and cutting short any discussion of amnesty, a truth and reconciliation commission was proposed, and fairly quickly accepted.[20] The whole discussion took less than a week, perhaps three or four days, in plenary session.

The trade-off between a tribunal and a TRC seems to have been explicit in everyone's minds. 'We chose a TRC because we didn't want a war crimes tribunal. A tribunal would be seen as witch-hunting', was a typical comment – in this case, from the military leader of one of the rebel factions. A leading civil society delegate at the talks remembers this dynamic clearly: 'The TRC became a very attractive option, because the dominant view of participants from civil society and political parties was for a war crimes court. The TRC was very attractive. You didn't need a general amnesty, because the TRC would give you an amnesty, it was thought. There was a sense that it was clear: a tribunal means you'd be put away, but the TRC wouldn't put you in jail. No one paid any attention to explaining what this meant.' The agreement on a TRC effectively ended any discussion about amnesty, which had begun to be raised by the factions.

In the course of these trade-offs, any suggestion of an amnesty was short-lived, and some downplay the issue altogether in recounting the discussions in Accra. While some remember a clear demand for an amnesty, the factions themselves, the mediator, and a variety of other observers say that this was never seriously proposed or considered. Indeed, draft text presented by LURD early in the talks called for amnesty in the context of demobilisation and disarmament of troops, but in a qualified manner that explicitly excluded serious human rights crimes.[21] One LURD legal adviser had been an independent human rights advocate in the 1980s, and another was generally knowledgeable of international human rights and humanitarian law. They also relied on Liberia's previous peace agreements, which excluded amnesty for serious crimes.

As the war was taking place in Monrovia, and viewed on television each day, many observers considered it bad taste to speak of an amnesty. There

19 The rebels did not at first see themselves as committing crimes, but rather acting in revenge in response to the crimes of the government. Interview with General Abdulsalami Abubakar.

20 A proposal for a truth and reconciliation commission was first put forward in a document prepared by representatives of civil society and political parties in 2002, which called for the creation of such a commission as a 'critical path to security', and a means to address acts of impunity. (*Position Statement on Security, Reconciliation and Peace in Liberia, Presented to the Authority of ECOWAS and the Government of the Federal Republic of Nigeria,* March 15, 2002, p. 3).

21 The LURD's proposal suggests that demobilisation 'may include the granting of amnesty and political asylum, except for genocidal', and that disarming armed groups 'may include the granting of amnesty. It shall, however, not apply in the case of suspects of the crimes against humanity' (*Lurd Draft Proposal*, Articles 7.2 and 6(q) respectively (on file with author)).

was a sense that anyone calling for an amnesty was perceived as having done something wrong. Others say that the issue was simply not a priority for the factions, and that sufficient assurances had been given informally that prosecutions would not take place so that the factions did not fear any possibility of court action. Faction representatives and others at the talks assured each other that no one was interested in 'witch-hunting', and insisted that neither the parties nor the international community intended to prosecute anyone for past crimes.

Thus, without spelling it out in the agreement, a level of comfort developed such that no one feared prosecution and many assumed somehow that an amnesty was included within the text. The lack of close attention to this issue should also be seen in the national context, where no one had been held legally accountable for human rights abuses since war began in 1989. Even the most renowned perpetrators, whose acts were well known and well documented, had not been held to account.

In the end, the final language in the accord on the subject of amnesty reads as follows:

> *The NTGL (National Transitional Government of Liberia) shall give consideration to a recommendation for general amnesty to all persons and parties engaged or involved in military activities during the Liberian civil conflict that is the subject of this Agreement.*[22]

22 Accra Comprehensive Peace Agreement (CPA), Article XXXIV.

The intention of this language is to leave the question open for future consideration. Among those participants who were watching this issue closely, there was an interesting logic to this conclusion. At least one senior adviser in the government delegation said that they did not want to grant an amnesty to rebels because they felt it might encourage wars in the future. But if they threatened prosecution, they reasoned, it would be difficult to end this war. So in his view, it was intentional not to spell it out. The same reasoning was cited for not wanting to give senior positions in government to rebel leaders – not wanting to encourage future rebellions (although this resistance was quickly defeated).

Civil society participants, such as those from the Association of Female Lawyers of Liberia (AFELL), also watched the discussion around accountability closely. While the main interest of AFELL members was to ensure that faction leaders did not get senior positions in government, they also kept an eye on any discussion around amnesty. If there had been a blanket amnesty on the table, they would have insisted that it should exclude crimes against humanity, war crimes and other serious abuses, they said. They also noted that the final accord refers to future consideration of an amnesty for 'military activities', which in their view would exclude acts such as raping and maiming.

As mentioned above, the historical context influenced the conversation and expectations around an amnesty. Of the prior 14 peace agreements in Liberia since 1990, only one contained an amnesty: the Cotonou Agreement of

1993.[23] But this amnesty clause, which refers repeatedly to acts committed 'while in actual combat', was clearly understood at the time not to cover war crimes such as rape or other atrocities, according to one of the key delegates who took part in these talks.[24] In addition, that amnesty was contingent on a successful ceasefire and disarmament of forces, neither of which took place.

Meanwhile, several key international delegates insisted that an amnesty for serious crimes was not allowed under international law. They cited the 'war crimes convention' as prohibiting such amnesties. In fact, no such war crimes convention exists, as such – although it is true that customary and treaty-based international law generally frowns on, and in some cases prohibits, amnesty for certain crimes.[25] One international delegate was also greatly concerned that granting an amnesty would establish an unacceptable precedent, which he was intent on avoiding – unaware that other prior peace agreements, even in recent years and in neighbouring countries, had in fact granted such blanket amnesties.[26]

It is not clear how critical a role the international voices played in the conversation about amnesty during the negotiations in Accra. The internal logic of the talks, as described above, already seemed to be heading off any idea of a blanket amnesty, and Liberians rarely cite the role of internationals when explaining the decisions taken on this issue. It is also clear, however, that the positions of a number of international participants were based on incorrect information, on issues of either law or precedent.

The informal discussions and assurances that took place on the sidelines to the talks led to assumptions about the accord, still carried today, that are not actually reflected in the peace agreement. One is that the TRC would have the power to grant individual amnesties for past crimes. The legal advisers to two of the factions both had this understanding, for example – although with only a skeletal idea of how it might work. A central religious leader, who was at the talks for the full period representing the Inter Religious Council, says he talked about the idea of the amnesty with many people: 'It was understood that a list will be prepared by warring factions, and submitted for consideration. But first, it will pass through the TRC. The TRC will examine the case of any person and ascertain whether he deserves amnesty. The idea was to include a provision for amnesty, but you need a methodology for how it is to be done. But then the TRC didn't come into being during the transitional government, so we couldn't do it.'

That they had an amnesty-for-truth idea in mind is not surprising, given that most of the delegates knew only of the prior existence of the South African Truth and Reconciliation Commission (TRC), and were unaware of any other examples of truth commissions elsewhere in the world. Even the transitional head of state, Gyude Bryant, said, three years after the talks and well after the TRC has started work, that he did not know of any truth commission other than the South African TRC.[27] Perhaps most surprisingly, participants seem to have been unaware that their next-door neighbour, Sierra Leone, had included a truth commission in its peace accord of 1999. At the time of the Liberia peace discussions in 2003, the Sierra Leone TRC was entering into full

23 In addition, Article 97 of the Liberian Constitution of 1986, currently in force, provides a broad amnesty for events that took place during and after the coup in 1980 by the People's Redemption Council. This does not seem to have been a point of reference or influence during the Accra peace negotiations, however.

24 The Cotonou Agreement of 1993 states that 'The Parties hereby agree that upon the execution of this Agreement there shall be a general amnesty granted to all persons and parties involved in the Liberian civil conflict in the course of actual military engagements. Accordingly, acts committed by the Parties or by their forces while in actual combat or on authority of any of the Parties in the course of actual combat are herby granted amnesty' (Article 19, 'General Amnesty', Agreement signed at Cotonou, Benin, 25 July 1993).

25 For a description of the current state of the law on amnesties and other aspects of accountability, see *Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening their Domestic Capacity to Combat All Aspects of Impunity*, by Professor Diane Orentlicher, UN Doc. E/CN.4/2004/88; and *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1.

26 The 1999 peace agreement for neighbouring Sierra Leone, signed in Lomé, Togo, included a blanket amnesty, for example. This was very controversial, however, and the UN insisted as a signing witness that the amnesty could not apply to serious international crimes. A previous amnesty in Sierra Leone, three years earlier, received very little attention. Many other amnesties, some conditioned or limited in important ways, have been included in other peace accords, but in recent years amnesties intended to cover serious international crimes have been strongly frowned upon by the international community.

27 Interview with Gyude Bryant.

operation. There have also been at least thirty other truth commissions around the world, each quite different from the South African model. During the talks, several faction representatives were actively seeking further information about how truth commissions work. The protocol officer at the South African embassy in Accra brought them some background materials on the South African TRC, which became their main reference source.

A second misconception which remains in Liberia today is that many people, in particular the former faction representatives, believe that there was a blanket amnesty in the accord. This confusion may have stemmed in part from the tight deadline for signing the accord. After three months of sometimes slow-moving negotiations and mounting frustration on the part of observers, there was considerable pressure to sign, and limited opportunity to go over specific language of the final accord.[28] The general agreement to leave an amnesty aside (as well as the proposal for a special tribunal), in exchange for a truth commission, was made early in the talks and was not returned to in detail later.

Meanwhile, unknown to most delegates in Accra, Charles Taylor was trying to short-circuit the accountability issue by having an amnesty passed by the Liberian legislature just days before he left office in early August.[29] The 'Act to Grant Immunity From Both Civil and Criminal Proceedings Against All Persons With In the Jurisdiction of Republic of Liberia From Acts or Crimes Committed During the Civil War From December 1989 to August 2003' was passed on 7 August and published on 8 August – or so the handbill says, with legitimate passage claimed by members of the Taylor government and then-legislators.[30] Whether the legislature was in fact meeting at that time, and had a quorum sufficient to pass laws, is questionable, despite the existence of the handbill. Some NGO leaders who were then in Monrovia say the proper procedures were not followed and the law was not in fact legitimately passed. Very few people, including relevant members of the current government, are even aware of this amnesty law, and it has not been applied since 2003. Its validity remains in question.

News of the Taylor amnesty reached some (but not all) of the delegates in Accra. A legal adviser to LURD said that he had heard of it, and immediately wondered whether it complied with international law. The mediator, General Abubakar, was not aware of this amnesty, and believes such a unilaterally-granted amnesty could have created a difficulty for the talks if it had been more widely known.

## Vetting and reform of the security forces

The CPA has strong language on the reform of the security forces, including vetting on human rights grounds. It calls for restructuring of the army, and states that:

> *Incoming service personnel shall be screened with respect to educational, professional, medical and fitness qualifications as well as prior history with regard to human rights abuses.*[31]

28 To prevent further delay, the international participants – including the mediator and with the backing of regional and donor states – decided to set a firm deadline for signing the accord, providing a number of days' notice for final matters to be agreed. This deadline was enforced by making clear that donors were not willing to cover hotel or per diem costs for any additional days.

29 Charles Taylor departed the presidency on August 11, 2003, and was granted asylum in Nigeria. He turned over the presidency to his Vice President, Moses Blah, until a transitional government was installed in October.

30 The Act states that 'from and immediately after the passage of this act, immunity is hereby granted from both civil and criminal proceedings against all persons, Officials of Government, Representatives of Warring Factions and combatants within the jurisdiction of the Republic of Liberia from all acts, and or crimes committed by them during the 13 (thirteen) years and 8 (eight) months of the civil wars covering from December 1989 to August 2003' (Section 1, Published by Authority of the Ministry of Foreign Affairs, Monrovia, Liberia, 8 August 2003).

31 CPA, Article VII(2)(a).

This does not seem to have been controversial in the negotiations.[32] However, the interpretation of 'restructuring', to mean disbanding the army entirely, has been met with considerable bitterness. The US, through an agreement with the government, and subcontracting to the private contractor Dyncorp International, has undertaken the process of retiring existing forces and recruiting and training a new army. This process has included extensive vetting and background checks on each new recruit. However, the Dyncorp process has been criticised by civil society and other independent observers for a lack of consultation and transparency in designing and carrying out the vetting and restructuring of the army.

32 LURD was however disappointed that its proposal that an American should lead the army and police, argued in terms of competence and avoiding corruption, was not accepted.

The language of the Comprehensive Peace Agreement pertaining to the police, on the other hand, does not specifically call for vetting on human rights grounds, but it does indicate that the restructured police force shall emphasise 'a respect for human rights'. The UN Mission in Liberia (UNMIL) was given the lead role in police reform, and has included procedures to screen for any past human rights abuse.

## Judicial and legal reform

Also uncontroversial and little discussed during the negotiations was a means to reform the judiciary through the appointment of temporary judges. The CPA states that all members of the Supreme Court shall be deemed to have resigned with the signing of the accord. This was seen to be necessary since the serving judges had been appointed by Taylor and were not considered impartial. Thereafter, new judicial appointments were to be made from a shortlist provided by the National Bar Association. The CPA also stated that these interim justices would be prohibited from contesting for elective office during the 2005 elections – presumably intended to keep the judiciary free from political influence.[33]

33 CPA, Article XXVII, 'The Judiciary'.

However, the CPA does not seriously grapple with the needs of the justice sector. Given the extremely weak state of this sector, there could be no reasonable expectation for a functioning system based on the rule of law without serious and dedicated reform efforts. These needs were apparently not discussed at Accra, and have received relatively little attention since, as will be further discussed below.

The LURD proposed the establishment of a commission to review the constitution, especially in relation to presidential powers, and to undertake other law-reform measures, both areas where they saw an urgent need. There was apparently no opposition to this from the other factions, but international participants strongly objected to the idea, and it was ultimately taken out of the accord. The reasons for this opposition were unclear, but included a concern for the resources and time that a constitutional review would require. The international participants suggested that this instead be included as a campaign issue during the next election.

LURD representatives, including its senior lawyers, still speak at length about the need for reform in the constitution and in national legislation.

'The moment they got our proposal, they said we can't do it', said one LURD representative. 'I was devastated, to be honest. It took the breath out of me. You then realise you have people around the table with very little understanding of our problems, yet they were the brokers – and they threaten you with being "obstacles to the peace process" if you hold out for too long.' One international participant remembers responding negatively to the idea of a law-reform commission. His main worry was that proposals for a parliamentary system, then quietly being discussed among the mediators, would be given life in any constitutional review. This participant was sure that a parliamentary system wouldn't work – as Liberians were unfamiliar with it – and was worried this would cause havoc in a transitional government.

The LURD's proposal for legal and constitutional reform was responding to a real and unaddressed need. Three years later, after the transitional government, serious discussions began on the creation of a law reform commission. As of early 2007, it was not clear what the new commission's mandate and reach would be.

## Other forward-looking commitments on human rights

The accord states a commitment to guarantees of 'civil and political rights' as set out in a number of international instruments. To monitor compliance, and to promote human rights education, it was agreed that an Independent National Human Rights Commission would be established. The process of selecting the members of this commission was still underway four years later, after some controversy in the first attempts.

In addition, the accord states a commitment to international humanitarian law and humanitarian relief, attention to the needs of vulnerable groups and the rehabilitation of war victims, assisting the return of refugees and displaced persons, governance reform and a governance reform commission, and electoral reform. These elements of the agreement met with little resistance or debate.

## Left unaddressed: reparations and other questions

The subject of reparations for victims was never seriously addressed at the talks. Some international participants considered it briefly, but decided it would be too costly. The starting assumption was that virtually everyone in Liberia is a victim, and therefore reparations could not realistically be undertaken. But leaving the subject in silence missed an opportunity to explore creative approaches and lessons learned from other experiences around the world, and to consider non-financial or less costly forms of reparation (such as memorials, apologies, days of remembrance, or benefit-based programmes such as schooling or health care). To make up for this gap, when the TRC Act was passed in 2005 it included a mandate for the Commission to make recommendations on reparations.

Second, while vetting of the security forces was accepted easily, the idea that candidates for public office should be vetted on human rights grounds, or be prohibited from serving because of a record of human rights abuse, was apparently never discussed at the talks. Raising the question now meets with strong opposition from former faction leaders. 'If someone committed atrocities, you have laws to prosecute them', said a senior member of LURD. 'Our view was: if you don't want a murderer in power, vote against him', said a senior member of the Taylor government. This became an issue around the 2005 elections, which resulted in the election to Congress of several people well known for serious human rights violations, some elected as senior senators with nine-year terms.

# 6 Justice and accountability four years later

Almost four years since the Accra agreement was signed, Liberia has taken only a few steps towards accounting for the crimes of the war, mostly through the work of the national truth commission. It has made some important but still limited progress in reforming the security sector, but less so the judiciary, in order to provide for stronger institutions in the future. Some questions, such as whether there will be prosecutions in national courts for past human rights crimes, remain open and still largely unaddressed, but may well receive more attention in future. The country is settling well into its new-found peace, but has hardly succeeded in addressing the legacy of the war from which it is emerging.

## A challenging start for the truth commission

Perhaps the most visible accountability effort in the first years after the war, which at least initially gained strong civil society support, interest, and engagement, is the Truth and Reconciliation Commission. However, the Commission was founded with great difficulty, and has struggled to establish its operations now over a year into its two-year mandate. The reasons for this are complex, and in some ways only highlight the challenge of carrying out such a difficult and resource-intensive human rights inquiry in a context such as Liberia. Limitations of infrastructure, human resources and funding, and other basic structural and organisational demands, have compounded what was already an enormous task of investigations, statement-taking and public hearings, in a context where known perpetrators live freely and are watching the Commission closely.

The language in the CPA provided only general guidance on the Commission's structure, membership and form, leaving a more detailed discussion for intensive consultation and drafting that would take place later,

and ultimately leaving most operational decisions to the Commission itself. This was an appropriate approach, but the opportunity for further consultation was almost missed. Shortly after coming to power, the transitional head of state appointed nine Commission members after only perfunctory consultation with some civil society organisations, and before a bill had been drafted setting out the specific terms of the Commission. Both the process and the selected members were criticised by many independent observers. Ultimately, an 18-month process of drafting the TRC bill concluded in an agreement to vet the original members and set up a representative selection committee to identify the final commissioners. This contentious beginning could have been avoided by providing simple guidance in the Accra accord on how the TRC members would be selected.[34] The five men and four women who were eventually selected were considered to be broadly representative of Liberian society. They chose among them a prominent human rights lawyer, Jerome Verdier, to be the chair.

The TRC Act gives the Commission the power to recommend individual amnesties, but explicitly prohibits amnesty for violations of international humanitarian law and crimes against humanity.[35] It also indicates that the Commission may recommend prosecutions, and gives nearly mandatory force to any recommendations it makes. The Commission was inaugurated in February 2006, and is expected to conclude by September 2008, although it has the possibility of an extension of up to one year.[36]

By early 2007, the Commission had trained and initially deployed over 190 statement-takers, who gathered over five thousand detailed statements in three months. Funding shortages and other organisational demands forced the Commission to cease statement-taking for a number of months, although in May 2007 it launched a statement-taking project in a refugee camp in Ghana that was soon to be closed. An organisation in the United States, the Minnesota Advocates for Human Rights, worked in partnership with the Commission to receive statements from the large Liberian diaspora community throughout the US. Many other international NGOs and UN agencies provided technical assistance and training for the commissioners and staff.[37] National NGOs designed programmes for public outreach and sensitisation on the TRC, as well as monitoring the Commission's operations.

The Commission intended to launch public hearings in Liberia in mid-2007. It has also indicated an intention to make recommendations for victim reparations, and to undertake public consultation in designing such a programme, which was a subject that otherwise had not yet received public attention. While the Commission struggled with limited funds, the Liberian government provided support at the impressive level of US$1.4 million during the Commission's first year, and repeatedly expressed support for a strong and independent TRC process.[38] Many international donors, while also supportive of the process, waited for clarity of workplan, budget and structure before committing funds.[39]

34 There are many lessons and guidelines that have emerged from other truth commissions to date which could be considered by mediators, regarding selection procedures, public consultation, key aspects of a truth commission mandate and other issues. See *Rule of Law Tools for Post Conflict States: Truth Commissions*, Office of the UN High Commission for Human Rights, 2006 (available at: http://www.ohchr.org/english/about/publications/docs/ruleoflaw-TruthCommissions_en.pdf).

35 The TRC Act states that the commission may 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 humanitarian law and crimes against humanity in conformity with international laws and standards' (Article VII(g)).

36 For further information on the TRC, the TRC Act, and other background documents, see www.trcofliberia.org or www.ictj.org.

37 Technical assistance and training was provided by the International Center for Transitional Justice (including the author of this paper), Benetech, the UNMIL human rights office, UNICEF, UNIFEM and others.

38 The intended two-year budget for the TRC, first projected to be over US$14 million, was reduced to approximately $8 million as of June 2007.

39 The Commission did however receive early support from the Open Society Institute of West Africa, the UN Development Programme and the European Commission.

# Reform of the judicial and security sectors

In the years since the CPA, very little progress has been made in reforming the judicial sector. Assessments of the Liberian judicial system refer to a 'severely dysfunctional', 'miserable' system that 'instead of confronting impunity… is actually contributing to it'.[40] It was reported that, as of late 2005, an astounding 97 per cent of inmates in Liberia's prisons were being held in pre-trial detention.[41] One 2003 study describes 'an almost unanimous distrust of Liberia's courts and a corresponding collapse of the rule of law', referring to problems of systemic corruption, destroyed court houses and other infrastructure, lack of qualified personnel, unpaid salaries for judges, prosecutors, and court staff, little effective separation of powers, and a limited understanding of the principles of transparency and accountability.[42]

During the two-year transitional government, however, many donors were hesitant to invest in this sector, hoping for a long-term strategic plan and a clear political commitment to making necessary reforms. But the transitional government showed little interest in this area. Several international efforts have had some, limited impact.

- The Legal and Judicial System Support Division of the UN Mission in Liberia (UNMIL) has worked to strengthen the justice sector throughout its tenure. UNMIL provided training for prosecutors and public defence staff, and engaged a number of defence lawyers to represent indigent defendants.
- In 2005, the US Congress provided short-term funding for a Justice Sector Support Program, which provided five lawyers for training and advising of public prosecutors, developing a public defence office, and assisting with case management and financial oversight. This is currently funded through 2008.
- The American Bar Association, also with US government support, has started a legal aid clinic at the Louis Arthur Grimes Law School in Monrovia.

However, these relatively modest programmes hold little prospect of making deep-rooted and system-wide change.[43] Through these various efforts, it has been reported that case-load management and public confidence in the justice sector has improved somewhat, but many serious problems remain.[44]

A law reform commission was recently proposed, as was a judicial service commission and a judicial training institute, which together could contribute to major reforms of the judicial system.[45] Two major studies have outlined the needs of this sector, noting, among other problems, the lack of clear government policy or coordination in judicial reform efforts to date.[46]

Despite what are clearly massive needs in this sector, serious proposals for reform did not begin to emerge until several years after the peace agreement was signed, and even four years after the agreement there was still no agreed policy or plan. The limited attention to this subject in the peace agreement

40 Human Rights Watch, 'Liberia at a Crossroads: Human Rights Challenges for the New Government', 30 September 2005. See also: International Crisis Group, 'Liberia: Resurrecting the Justice System', Africa Report 107, 6 April 2006.

41 Human Rights Watch, op. cit, quoting interview with UNMIL Human Rights Section.

42 International Legal Assistance Consortium, 'ILAC Report: Liberia', December 2003.

43 The comparison with Sierra Leone is striking. There, the UK government has made a five-year commitment of GB£25 million, equivalent to US$50 million, and is working with a broad team of local and international experts, staff and consultants, as well as providing direct grants, in an attempt to make fundamental changes in the justice sector.

44 *Amnesty International Report 2007.*

45 The Law Reform Commission would 'bring order and credibility to the nation's laws'; the Judicial Service Commission would recommend the appointment and removal of judicial officials, and take any necessary disciplinary actions; and the Judicial Training Institute would provide training for lower court judges. See Philip Banks, 'Concept Paper on Reforming Liberia's Legal and Judicial System and to Enhance the Rule of Law', Governance Reform Commission 2007.

46 UNMIL worked with the government to establish a Rule of Law Task Force in November 2005, late in the transitional government. The task force produced a solid report, but included few government or other Liberian participants, and so its impact was reduced. The Governance Reform Commission commissioned a hard-hitting study on the judicial sector, which was completed in 2007.

was perhaps a lost opportunity to focus early and more forceful attention to this sector, from both the government and the international community. While LURD had tried to include a legal reform commission in the agreement, this was kept out, and there was no insistence on other structural reforms that would help build a functional and accessible system, and ultimately make the rule of law a reality for all Liberians.

As noted above, security-sector reform has received more attention. The restructuring of the army and the police (which included dismantling many independent and sometimes overlapping security forces) was done separately (by Dyncorp and UNMIL, respectively), but both processes included vetting on human rights grounds. These procedures have been criticised by some independent observers for inadequate public involvement in screening out those with a record of human rights abuse, and relatively few persons were in fact vetted out on human rights grounds. More thorough assessments of these reform and vetting procedures are only beginning now. However, the specific attention to this subject in the peace agreement – together with the obvious priority of establishing post-war security in the country – led to immediate programming by the UN and donor states, in contrast to the treatment of the judicial system.

## Prosecutions: beyond Charles Taylor?

Given the weak state of the national judiciary, the potential role for any international or hybrid court, or other form of international assistance to future national trials, remains important. Indeed, the biggest event in post-war Liberia in the justice arena was the transfer of Charles Taylor to the Special Court for Sierra Leone, from his comfortable exile in Nigeria, two-and-a-half years after his indictment was unsealed at Accra. Liberia's new democratically elected president, Ellen Johnson Sirleaf, made the request to Nigeria not long after she came to power in early 2006. After a last-minute attempted escape, Taylor was arrested and flown to Sierra Leone in March 2006. In response to security concerns he was later transferred to The Hague, Netherlands, where preliminary proceedings for his trial began in late June 2007, still under the auspices of the Special Court.

The Liberian public response to his arrest was generally very positive: people described a 'calming' effect of his arrest and detention, since this removed the worry that he might somehow continue to play a covert destabilising role in Liberia, given his many supporters still in the country. But public opinion towards the planned trial is mixed. Taylor is being tried on crimes that took place in Sierra Leone during the civil war there, and many Liberians want him instead to be tried for events in their own country. Some members of the Liberian public also question whether the trial will respect due-process rights; this concern was increased by Taylor's refusal to take part in the preliminary proceedings in June 2007.[47]

Shortly after Taylor's arrest in 2006, a new civil society organisation was formed, called the Forum for the Establishment of a War Crimes Tribunal. The Forum pressed for an international tribunal specific to Liberia, similar to the Special Court for Sierra Leone. As this organisation gained attention, some

47 Preliminary analysis of public and media response to the trial of Charles Taylor was done by ICTJ staff in Monrovia, June 2007 (on file with author).

people involved in past events or who formed part of Taylor's government began to question whether they should cooperate with the TRC, fearing that they might implicate themselves in relation to a future tribunal. The Forum did not emerge from the traditional human rights community in Liberia, and some questions were raised about its origins and aims. Many, including Taylor associates, acknowledged that the organisation seemed to emerge initially from supporters of Taylor (perhaps hoping to pull others, including opposing faction leaders, into the snare of justice). While its membership later broadened, the group appeared to remain active for only a relatively brief period.

Meanwhile, most long-standing national human rights advocates prioritised the work of the TRC, and insisted that it was premature to raise questions about prosecutions. With time, greater stability in the country would allow such discussions to take place, they suggested, and furthermore the truth commission should be allowed to conclude its work before questions were raised about prosecutions. President Ellen Johnson Sirleaf also held this position. The UN mission mostly remained silent on the subject, but has expressed general support for the President's view.

# 7 Lessons from the Liberia case

Experience from the Liberian negotiations highlights several lessons that may be useful for future peace negotiations elsewhere.

## 1. An international indictment may bring unexpected benefits

A bold and unexpected move such as indicting a political leader is likely to influence negotiations in unexpected ways. Some of the effect may be unexpectedly positive. For those focused on the priority of obtaining a firm and lasting agreement in the swiftest space of time, it is important to assess all of these dynamics, and to welcome and seek to reinforce the positive contributions such an event could bring.

There is often a fear that an indictment or other moves to investigate and prosecute key players will only do damage to the possibility of talks, or to the possibility of persuading those indicted to stop fighting. An indictment by an international court may be seen as especially troublesome, because national authorities have no power to grant immunity or amnesty from the reach of such a court.[48] If the alternative is jail, why would someone give up the fight? That is the basic logic that has pervaded negotiations in a number of contexts around the world in recent years. These dynamics and fears are most clearly playing out around Northern Uganda, where the indictment by the International Criminal Court of five leaders of the rebel Lord's Resistance Army has raised concern.

48 A national amnesty, if granted, generally would not affect the jurisdiction of an international court.

As detailed above, similar fears were present in the context of Liberia. In addition to the worry that the indictment of Taylor made it harder to extract him from the presidency even when he was cornered and under intense fire, others have suggested that the indictment spurred the rebels to begin their attack of the city, causing many additional deaths which could be indirectly attributed to the Special Court. In retrospect, however, events did not develop in that way, or for those reasons. In fact, the indictment is widely reported to have greatly strengthened the talks – and thus allowed a real transition and end to the war – by fundamentally changing the dynamics, as Taylor was effectively removed from playing a role in any future government.

## 2. Leaving some accountability questions for the future may be the optimal approach

Many peace agreements in recent years have left open some key questions pertaining to justice, accountability and the rule of law. Leaving these issues in silence may hold certain advantages. In the case of Liberia, the parties were keen to halt the proposal for a war crimes tribunal. While some may have been interested in an amnesty, they did not follow through to ensure favourable language in the agreement. The idea of a truth commission, little explored or explained in relation to the experience of many previous truth commissions, seemed sufficiently attractive and harmless to be quickly agreed and accepted. It also served to halt the discussion of other accountability or impunity measures. Usefully, the precise terms of the commission, too, were left for a later process of drafting and consultation, enabling a robust mandate to be drafted that explicitly prohibited any amnesty for serious international crimes.

Crafting the language calling for a truth commission can be particularly tricky. Even in a situation where the intentions of the parties might be to instil a proactive, justice-seeking truth commission, it is generally not feasible to work out the detailed terms of such a body in the context of pressured negotiations. It is preferable to have a later process of consultation and careful drafting, with only the skeletal terms set out in the accord.[49] This is also true of other justice mechanisms, such as reparations, or the specifics of DDR or vetting.

Leaving the question of amnesty open for future consideration is often the best solution to this complex issue. Some countries have felt the need to spell out the terms of amnesties to allow the armed opposition to return home safely.[50] There might then be an attempt to specify precisely what crimes cannot be amnestied, according to international law. But such specificity can raise considerable controversy and contention, and is often rushed, without time to consider the legal constraints and ramifications.[51] If the parties are willing to remain silent on some aspects of justice, or at least leave considerable room for manoeuvre, as they did in Liberia, this will allow time for greater consultation in the future.

## 3. The risk of ongoing fighting: avoiding the warfront being used as blackmail

Ideally, a war should be brought to at least a temporary standstill when peace negotiations begin. In Liberia, the factions worked hard to come to

49 For further information on the proper establishment of a truth commission, see United Nations, *Rule of Law Tools*, op. cit.

50 For example, an amnesty could reasonably protect them from prosecution for treason, arms trafficking and other political crimes, such protection being acceptable under international law.

51 Guatemala is such a case. See forthcoming article by author.

an agreement on an early ceasefire agreement, but the ceasefire did not hold. It is not unusual for warring parties in any conflict to use the warfront to try to gain advantage at the peace table, such as trying to capture more territory before sitting down to talk peace. But with technological advances – cell phones and live CNN coverage – the Liberian rebels perhaps took this leverage to new levels.

A mediator should work to prevent the talks being held hostage by threatened or actual attacks in the theatre of war. Where these attacks are against civilian populations, as they were in Liberia, this also raises immediate questions of war crimes being committed with the knowledge and perhaps direct involvement of the very people simultaneously negotiating peace. Avoiding these problems may best be done by closely tracking the developments on the ground, and making clear to the parties that ongoing fighting, after a ceasefire has been signed, is unacceptable. If any direct link is suggested between the talks and ongoing abuses taking place in the theatre of war, such allegations should be addressed directly with the parties.

## 4. The mediator should guard against unilateral policy-making

Typically, a peace conference or formal negotiations are held outside the country where the war or conflict is taking place. As much as possible, the mediator should stay attentive to developments in-country, and should discourage any advance movement on policy issues that are planned for discussion and agreement at the talks.

The Liberian government's attempt to pass an amnesty law just three days before Charles Taylor left power is a good example of bad faith, and unfair to the negotiations underway in Ghana. At these negotiations, it had already been decided to leave the amnesty issue open and to focus instead on truth-seeking. Taylor was represented at the talks by senior members of his government and was in regular contact with them; if the mediator had known of the amnesty being proposed in Monrovia, he might have raised this with them to insist that such key issues should not be addressed outside the ongoing negotiations.

## 5. The mediator should ensure unbiased selection of civil society representatives

At each set of peace negotiations, it must be decided who will be present at the table, and whether the talks will be physically accessible for non-delegates to attend and to lobby the parties. The Liberia case demonstrates that the presence of representatives of civil society can play a powerful and balancing role. Civil society organisations provided an element of urgency and forcefulness to the negotiations, and a constant reminder that people were dying daily. While these organisations certainly did not achieve everything that they hoped for, their influence can be seen in helping to set the terms of the debate, and in their constant pressure to bring an end to the fighting as quickly as possible. They worked closely with the independent political parties to provide a neutral voice in the proceedings.

The process of selecting the civil society representatives must be considered carefully. In Liberia, ECOWAS reportedly provided Charles Taylor in advance with a list of the proposed civil society delegates, and he was able to influence who was invited to take part. This selection process favoured those from civil society who were closest to him. While independent groups also attended, some of those who had publicly opposed Taylor were forced to travel separately and surreptitiously to the talks. The selection of civil society groups should not be determined by only one party to the talks, but rather through a process that fairly includes the range of national civil society perspectives.

## 6. Key bilateral partners should deepen investment in negotiations

The United States was represented at the Accra talks by one or two people at any given time. These representatives rotated every month, as each lead person was pulled back to Washington to take care of other business. There was very little guidance or input from Washington as the talks proceeded, and little if any pre- or post-briefing or de-briefing. However, when the final peace agreement was signed, the US Congress immediately allocated close to half a billion dollars towards the implementation of the accord, for both the UN peacekeeping troops and other implementation efforts. At the State Department, the Liberia meetings grew from the four people who had been tracking Liberia most closely over the previous years, to a room full of interested persons.

Most other international participants were also sole representatives of their country or institution. One who served as a primary drafter of the accord received little back up from his headquarters, communicating primarily through regular email reports. A second or third person on his team could have provided valuable input on law, precedent and policy issues, he suggested. Given the huge financial and political investment that is generally put into the implementation of a peace agreement over many years after an agreement is signed, the negotiations that lead to an agreement should also receive significant attention.

The main area where this attention is lacking, from the perspective of the Liberian experience, is in the number of personnel assigned to the talks by key bilateral states and some intergovernmental institutions. Such individuals can play an extremely important role in drafting, consulting, advising on implementation realities, pushing for fair and just terms, and guiding on relevant international law, among other contributions. Even if officially only observers, they are often quickly and usefully drawn into direct participation to assist the process forward. An increased investment in the negotiation process, especially in the personnel and expertise dedicated to the discussions, would serve negotiations well. This would very likely result in a much stronger framework for implementation.

## 7. Funding for the talks can be a source of significant influence or control

The Liberian talks ended when the money stopped. After seventy-plus days of watching the delegates 'living large', the funders, together with the West

African political leadership, decided unilaterally to set a deadline for a signing ceremony a few days later.

By this time, the parties were close enough to agreement on all issues that it was perhaps a necessary forced end. The main questions still unresolved were those of the transitional government. In just 48 hours, the parties set up a system for choosing the interim head of state, ran an election that included civil society participation, and decided on the final candidate.

The power of the purse must be kept in check. Those willing to provide funds for the talks also largely determine who can attend, and how many. Civil society groups often have to raise funding independently, in order to take part.

### 8. Educate for options, providing better information on policy choices

Decisions on justice policies in Liberia were taken on the basis of minimal, and sometimes quite inaccurate, information. The kind of information that would be useful is not so complicated or difficult, but it does require careful presentation of clear facts, and a comparative view of what policies have been enacted elsewhere and with what result. This could range from a brief overview of international legal obligations and constraints, to a descriptive view of how truth commissions have operated in different countries. Some of the delegates in Liberia did try to find information, especially on this last point, but the information they obtained was specific only to South Africa, further cementing in their minds a very particular set of experiences.

Given the considerable time available during some peace processes – with days between sessions while the mediator is travelling, for example, or other forced breaks – there may be a golden opportunity for targeted workshops or seminars. This has been realised in the context of other peace talks, although only to a limited extent. A greater focus on these opportunities might go far in strengthening the final accord.

# 8 Conclusion

Liberia has completed its two-year transitional government, and successfully completed an historic election that brought to power the first female head of state in Africa, Ellen Johnson Sirleaf. Over a year and a half into her term, huge transitional challenges still confront the country: massive economic needs; a crippled judicial system; high unemployment, particularly among the youth and former combatants; and, importantly, unsteady states on its borders which could lead to renewed regional conflicts. The United Nations has maintained one of its largest deployments of peacekeeping troops in the country for nearly four years, and plans to retain a significant force there for some time.

The challenge of justice for massive crimes of the past remains a contentious issue in Liberia in peacetime, just as it was during the period of negotiating the peace. Building a functional system for the rule of law also remains a challenge. The peace agreement did not ultimately settle how the country would handle some of these fundamental questions of accountability. But, very importantly, it did conclude the war without violating any principles of international law, or trampling on the possibilities of justice in the future. Time, and the realities of local circumstance, will now determine whether a slowly solidifying peace may ultimately allow not only an exploration of the truth, but perhaps also consequences for those persons responsible for the worst of the war's crimes.

# Acronyms and abbreviations

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| **CNN** | Cable News Network |
| **CPA** | Comprehensive Peace Agreement |
| **DDR** | disarmament, demobilisation and reintegration |
| **ECOWAS** | Economic Community of West African States |
| **ICTJ** | International Center for Transitional Justice |
| **LURD** | Liberians United for Reconciliation and Democracy |
| **MODEL** | Movement for Democracy in Liberia |
| **TRC** | Truth and Reconciliation Commission |
| **UNMIL** | UN Mission in Liberia |