

# Liberia's Truth Commission Report: Economic, Social, and Cultural Rights in Transitional Justice

*Evelyne Schmid*

## Abstract

**I**n early 2009, the Truth and Reconciliation Commission of Liberia (TRC) released the first volume of its final report. The report claims that the root causes of the civil war that devastated Liberia between 1989 and 2003 were poverty, corruption, and inequality. Despite this diagnosis, the Commission's legal analysis of past abuses barely touches upon violations of economic, social, and cultural rights (ESCR). Likewise, many transitional justice processes around the world sideline considerations of ESCR. This article, based on an analysis of the first volume of the final report of the TRC of Liberia, outlines why violations of ESCR should be addressed by transitional justice processes. This paper also provides recommendations for the final two volumes of the report, to be issued in June 2009.

## Introduction

After the establishment of a comprehensive peace agreement in 2003, Liberia created the Truth and Reconciliation Commission (TRC) to investigate abuses committed during the country's civil war. The Commission addressed abuses committed between 1979, the year before the 1980 coup by former president Samuel Doe, and October 2003, the year when the transitional government was installed. In early 2009, the Commission released the first volume of its findings,<sup>1</sup> which established that the principal causes of the war were economic, social, and cultural rights (ESCR) violations, such as the forcible destruction of homes and the loss of livelihoods. Other ESCR violations included discriminative land practices, and unequal access to education or healthcare. However, there is a significant gap between the Liberian Commission's findings on the

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**Evelyne Schmid** is a PhD student in international law at the Graduate Institute of International and Development Studies (HEID), Geneva. Her research focuses on redress for violations of economic, social, and cultural rights in the aftermath of armed conflict. She obtained a MALD degree from The Fletcher School in 2008 and an International Relations degree from HEID in 2007. She has worked for Transparency International, Amnesty International and the United States Institute of Peace (USIP). She is currently a project coordinator with TRIAL ("Track Impunity Always"), a Geneva-based NGO.

causes of the conflict and its legal analysis of abuses committed. Moreover, an analysis of the Commission's preliminary report reveals that the TRC's diagnosis of the social and economic causes of the conflict has not yet led to the development of appropriate remedies.

***Including ESCR in post-conflict justice has the potential to significantly enhance human security after the conflict.***

The purpose of this article is to outline why violations of ESCR should be addressed by transitional justice processes. Addressing violations of ESCR in transitional justice underscores the idea that all human rights are interrelated and equally important. In addition, including ESCR in post-conflict justice has the potential to significantly enhance human security after the conflict. Continuing violations of ESCR may exacerbate tensions, lead to renewed conflict, and result in further violations of civil and political rights. Simultaneously, addressing ESCR

violations would create opportunities to confront leaders who profit from a conflict by depriving others of economic resources. In the past, elites have often used their assets gained through enrichment and exploitation to shield themselves from accountability, reinforcing their impunity. Further, systematic discrimination and inequality vis-à-vis access to resources, land, work, or housing also have a gender dimension which is overlooked if transitional justice focuses only on civil and political rights. As an example, in countries such as Liberia, women face greater difficulties in accessing land tenure. If a transitional justice mechanism investigates violations of civil and political rights, it will deal with the husband's abduction or death, but it is likely to fail to support the female spouse who may have subsequently lost her and her family's means of subsistence.

Incorporating the full range of abuses would provide a more truthful account of the conflict and would reveal underlying gender dimensions. Such a holistic approach would be more likely to facilitate the debate on how to sustainably redress the complex and interrelated human rights violations of the past, and to prevent their recurrence. As this article argues, transitional justice strategies have only marginally dealt with ESCR. While the TRC of Liberia was given an innovative and broad mandate to address all gross human rights violations, violations of international humanitarian law, and economic crimes, the Commission's first volume of the final report does not address ESCR sufficiently in its legal analysis and recommendations. The remaining volumes of the TRC report, due in June 2009, should analyze violations of ESCR in more detail. The final report should also make specific recommendations to address ESCR violations in order to undergird the ongoing Liberian transitional justice process.

**Civil and Political Rights—The Only “Real” Human Rights?**

The marginalization of ESCR in transitional justice reflects an old ideological dichotomy in human rights discourse between civil and political rights and ESCR. This separation is still apparent in transitional justice discourse and practice. Louise Arbour,

the former UN High Commissioner for Human Rights, has convincingly made the diagnosis that “old misconceptions die hard”<sup>2</sup> when it comes to the determination of which human rights abuses a transitional justice mechanism should address. While torture, persecution, and arbitrary detention are undisputed human rights violations, governments, donor agencies, and practitioners often still view ESCR in a fundamentally different manner. ESCR are often seen as aspirational policy goals instead of legal entitlements.<sup>3</sup>

Contemporary international human rights law defines ESCR as those human rights that relate to the conditions necessary to meet basic needs such as food, water, housing, education, and healthcare. ESCR are contained within the Universal Declaration of Human Rights, a range of international treaties, and international customary law. The widely ratified International Covenant on Economic, Social and Cultural Rights (ICESCR) includes the rights to education, adequate housing, food, work, the highest attainable standard of health, as well as the cultural rights of minorities and indigenous peoples.<sup>4</sup> During times of armed conflict—including periods when the violence in Liberia exceeded the threshold for an armed conflict<sup>5</sup>—international humanitarian law, in addition to human rights law, specifically protects basic ESCR. For instance, humanitarian law prohibits the destruction of objects indispensable to the survival of the civilian population, such as foodstuffs or drinking water installations.<sup>6</sup>

While the Universal Declaration of Human Rights considers all human rights equally, Cold War oppositions influenced the negotiations of the two UN Human Rights Covenants. Most Socialist states were unenthusiastic about civil and political rights (such as the right of assembly and the freedom of speech), while most Western States were resistant to the concept of economic and social rights as legal entitlements. The separation of human rights into two Covenants during the Cold War (the International Covenant on Civil and Political Rights and the ICESCR) has nurtured perceptions that only civil and political rights are justiciable and “real” human rights, especially among Western States and Western human rights organizations.<sup>7</sup> As a sign of this dichotomy, the Reagan Administration ceased to mention social and economic rights in the State Department’s annual human rights reports.<sup>8</sup>

After the Cold War, an increasing number of human rights groups argued that the protection of certain rights in isolation was insufficient.<sup>9</sup> Kofi Annan, the UN secretary-general at the time, echoed the sentiment of many human rights advocates from the Global South, stating “the right to vote is worth little if their children are hungry and

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do not have access to safe water.”<sup>10</sup> The Vienna World Conference on Human Rights in 1993 famously acknowledged that “[a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”<sup>11</sup> Despite this declaration, the problems associated with the dichotomy between civil and political rights and ESCR persist. Transitional justice is one of the areas in which the ramifications of the old dichotomy can still be felt today. While the rhetoric of the indivisibility of rights has entered the transnational justice discourse, the significance of taking all human rights into account remains largely unexplored. As a result, transitional justice continues to marginalize ESCR.

### **Transitional Justice Sidelines ESCR**

As a response to widespread violations of human rights and of international humanitarian law, transitional justice is often perceived as a crucial component of peacebuilding, post-conflict human rights work, and reconciliation. Transitional justice commonly pursues goals such as establishing the truth, providing reparations for harm suffered, restoring the victim’s dignity, ensuring that perpetrators are held accountable, facilitating national reconciliation and a common understanding of the past, legitimizing state institutions, and preventing future abuses.

The prevailing model of transitional justice is based on the assumption that mechanisms such as truth commissions, trials, reparations, and vetting programs should primarily address civil and political rights violations relating to personal freedoms and physical integrity.<sup>12</sup> Historically, transitional justice mechanisms such as criminal prosecutions, truth commissions, reparations, or institutional reform programs have mostly dealt with torture, killings, arbitrary detention, and “disappearances,” leaving violations of ESCR unaddressed in all but rare instances. Alexander Boraine, former deputy chair of the South African Truth and Reconciliation Commission, advocates for “a deeper, richer and broader vision of justice which seeks to confront perpetrators, address the needs of victims and assist in the start of a process of reconciliation and transformation.”<sup>13</sup> As is the case in Liberia, this “deeper vision” is necessary because victims’ needs are related to violations of ESCR as much as they are related to violations of civil and political rights.<sup>14</sup> However, the transitional justice movement has had a narrow view of what constitutes human rights violations; it must recognize the fact that ESCR are not only part of existing international law but are, moreover, a decisive dimension of the past abuses to be addressed.

The Liberian truth commission is among the first to have an explicit mandate to focus on all gross human rights violations, violations of international humanitarian law, and economic crimes. Despite the broadness of the TRC’s mandate, the first volume of its final report issued in December 2008 is almost silent on violations of ESCR. Before outlining the context in which the commission issued its preliminary report, two limitations of this article should be mentioned. First, the article only discusses the TRC’s first volume of the final report. Therefore, this article does not analyze all other

manifold activities conducted by the Truth Commission nor can it foresee the content of the last two volumes of the final report.<sup>15</sup> Moreover, since the two remaining volumes have not yet been released, it is entirely possible, indeed desirable, that an analysis of the consolidated report would come to different conclusions. Second, it is important to note that this article examines the first volume of the final report as it was posted to the Commission's website on January 24, 2009. The Commission's preliminary report generated controversy when it was released in late January, with four commissioners publicly disowning it in a letter to the president.<sup>16</sup> In mid-February, the report was quietly removed from the TRC's website, officially for "administrative reasons."<sup>17</sup> This article is thus limited to an analysis of how Volume I—as distributed on January 24, 2009—addresses violations of ESCR committed during Liberia's violent past.

## **From Armed Conflict to Truth Commission**

### **Fourteen Years of Conflict**

Violent conflict devastated Liberia between 1989 and 2003. During this time, approximately 200,000 people lost their lives, one million were displaced, and 60-70% of the population suffered some form of sexual violence.<sup>18</sup> After the Special Court for Sierra Leone indicted Charles Taylor, the former Liberian President and warlord, a comprehensive peace agreement was signed in Accra in the summer of 2003. A transitional government was established in October 2003. The Accra agreement called for the establishment of an independent national commission on human rights, and the creation of a Truth and Reconciliation Commission. Additionally, the Accra agreement recommended reform of the Liberian police force and reorganization of the National Elections Commission. In early 2006, Ellen Johnson-Sirleaf was inaugurated as the first elected female president on the African continent. Since her election, there have been efforts to restore basic services such as running water and electricity. Johnson-Sirleaf has also created initiatives to combat sexual violence. However, crime remains rampant,<sup>19</sup> and challenges to peace include weak economic governance, shaky results in the security sector, and a fragile judiciary.<sup>20</sup>

The signing of the comprehensive peace agreement in August 2003 and the passage of the Truth and Reconciliation Act in May 2005 set the stage for a truth commission. The Liberian TRC was inaugurated on February 20, 2006. After many delays, a Secretariat commenced in March 2007, and public hearings began in January 2008.

The general outline of the TRC's mission was included in Part Six, Article XIII of the Accra Peace Accord of August 18, 2003.<sup>21</sup> On May 12, 2005, the Liberian Transitional Legislative Assembly enacted the Truth and Reconciliation Commission Act, which established the Commission and defined its mandate. The Act stipulates that the TRC should "promote national peace, security, unity and reconciliation." The TRC's mandate includes the investigation of gross human rights violations, breaches of humanitarian law, sexual offenses, and economic crimes during the period between January 1979 and October 2003. The Commission's mandate stipulates that the TRC may

also explore the period before 1979. In addition, the Commission shall provide a forum against impunity, establish a record of the past, and compile a public report with findings and recommendations.<sup>22</sup> About a year after the start of public hearings, the first volume of the final report was released.<sup>23</sup>

### **The First Volume of the TRC's Final Report**

Volume I contains an analysis of the legal nature of the conflict, as well as a list of findings and recommendations. The Commission has reserved the right to make additional determinations in the final consolidated report. This decision leaves many thorny questions for the concluding two volumes. For instance, the TRC recommends "prosecutions in a court of competent jurisdiction and other forms of public sanctions."<sup>24</sup> The Commission has promised to issue a list of names of individuals not recommended for prosecution, as well as more detailed proposals on the nature of a criminal court. Unsurprisingly, the recommendation of prosecutions has attracted much attention and controversy.<sup>25</sup> Ex-rebel leader Prince Johnson, now a Senator, threatened to cause trouble if anyone tried to arrest him.<sup>26</sup> While Liberia has a history of impunity and failed peace agreements, the Accra peace agreement explicitly rejects impunity. In its preliminary report, the TRC recommends criminal prosecutions, although without specifying for whom or for which crimes. The prospects of criminal prosecutions have led to heated debates.

Other notable aspects of the report's first volume, including some very positive features, also deserve to be mentioned. Apart from formal prosecutions, the commission also called for the establishment of a National *Palava Hut* Forum as a complementary tool for justice and national reconciliation. The *Palava Hut* process is a traditional dispute resolution mechanism.<sup>27</sup> The TRC suggested that this forum would operate under the aegis of the Independent Human Rights Commission. The TRC will submit a comprehensive recommendation on the competence, jurisdiction, structure, function, and other authority of the *Palava Hut* Forum to the legislature in the second volume of the report.<sup>28</sup> Furthermore, the TRC suggested that reparations should apply to communities and individuals. Amnesties should be granted for children and for those who admit their wrongs and express remorse.

Another positive aspect of Volume I is that the Commission clearly explains its methodology, structure, the key actors involved in its work, and its interpretation of its mandate. Volume I provides an outline of challenges the TRC has faced, especially in the beginning its operations. In addition, it is notable that the Commission did not narrow its analysis to the period of January 1979 to October 2003. The Truth and Reconciliation Act allowed the Commission to include "any other period preceding 1979,"<sup>29</sup> and the TRC has taken full advantage of this clause. The report's analysis of the causes of Liberia's conflict begins in 1822, the year in which Americo-Liberians began settling in Liberia. The commission states that "[o]ne of the major historical and festering antecedents to conflict in Liberia was the enormously disparate socio-political and cultural norms and practices of the Americo-Liberians, who began settling in Liberia

in 1822, and indigenous Liberians, also known as the natives, comprised of sixteen ethno-linguistic groups. Another complex dynamic was the nature of wars between native Liberian groups that reached an apex during the period of the infamous Trans-Atlantic Slave Trade.”<sup>30</sup> The Commission notes that the historical antecedents of conflict are “far more complicated than Black Colonial paradigm machinations,” and the relationship between settlers and natives was wrought with misconceptions, fear, and conflict.<sup>31</sup>

The TRC then outlines the stages of the past conflicts. In order to determine whether international humanitarian law applied at a given time, the Commission concludes that non-international armed conflicts (civil wars) existed between December 1989 and August 1996, and between March 1999 and October 14, 2003.<sup>32</sup> The report lists parties to the conflict and divides them into “significant violator groups” and “less significant violator groups,” according to the number of reported violations.<sup>33</sup> The most notorious among the “significant violator groups” are Charles Taylor’s National Patriotic Front of Liberia (NPFL) and the Liberians United for Reconciliation and Democracy (LURD), who fought against Taylor’s regime.<sup>34</sup>

The TRC then lists its main findings and recommendations:

#### *Findings*

- The root causes of the conflict are attributable to poverty; greed; corruption; limited access to education; economic, social, civil, and political inequalities; identity conflict; and land tenure and distribution.
- All factions are responsible for egregious violations of domestic law and international human rights and humanitarian law.
- All factions committed gender-based violence and conscripted child soldiers.
- External state actors in Africa, North America, and Europe aided and abetted war and regime change.<sup>35</sup>

#### *Recommendations*

- Prosecutions in a court of competent jurisdiction and the establishment of a National *Palava Hut* Forum.
- Reparations for communities and individuals, especially women and children.
- General amnesty for children and those that the Commission has determined have not committed gross violations.
- Other amnesties, in the interest of national healing and reconciliation, if individuals admit their wrongs and express remorse.
- Reform of public institutions to promote good governance and human rights, to reduce poverty, to alleviate illiteracy, and to provide equal access to public services.<sup>36</sup>

## **Economic, Social, and Cultural Rights: Gaps in Volume I of the Final Report**

***While a few transitional justice mechanisms have investigated ESCR, they have largely failed to propose measures to redress the documented violations.***

Liberia's TRC is one of only a handful of transitional justice mechanisms that have engaged with violations of ESCR.<sup>37</sup> While a few transitional justice mechanisms have investigated ESCR, they have largely failed to propose measures to redress the documented violations. For instance, the Commission for Reception, Truth and Reconciliation in East Timor has documented violations of ESCR in detail; however, when it came to define who was a victim deserving reparations, the Commission limited itself to victims of civil and political rights out of "feasibility and needs-based prioritization."<sup>38</sup> In this respect, Nepal is another case in point. Tafadzwa Pasipanodya argues that while the Nepalese peace agreement reflects a deep commitment to address ESCR viola-

tions as both a cause and result of Nepal's conflict, the international community and the Nepalese government have so far not effectively sought to include ESCR violations in the transitional justice strategy.<sup>39</sup> By focusing on civil and political rights, she argues, international agencies have sidelined the fact that violations of ESCR were as pervasive as violations of civil and political rights. In addition, Pasipanodya shows how a narrow perspective fails to capture the subtle gender dimensions of the conflict and structural inequalities suffered by women and other vulnerable groups.<sup>40</sup>

Volume I of the Liberian TRC report is plagued by a similar lack of consideration of past ESCR violations. Despite the Commission's conclusions on the causes of conflict, the Commission's legal analysis of abuses is detached from its findings concerning the socio-economic causes of civil war. Strikingly, the TRC enumerates a somewhat arbitrary list of what it considered gross violations of human rights. The list includes murder, extermination, enslavement, torture, rape, sexual slavery, enforced prostitution, enforced sterilization, sexual violence, enforced disappearance, persecution, deportation or forcible transfer of population, imprisonment, genocide, and crimes against humanity.<sup>41</sup>

The TRC is correct in stating that the TRC Act encompasses these violations by referring to gross violations of human rights. The Commission does not, however, offer an explanation as to why other violations are not included, and it fails to explain the criteria used to establish this list. While the concept of "gross violations of human rights" is not clearly defined by international law, there is no reason to limit the scope of the term to civil and political rights. A study by the UN's Special Rapporteur on the Right to Reparation to Victims of Gross Violations of Human Rights confirms that the term may extend to ESCR.<sup>42</sup> The discriminative deprivation of access to basic means of survival and the destruction of housing and food stocks all arguably constitute "gross



violations of human rights.” One could, for instance, mention the widespread economic and social exploitation of forcibly recruited children, which is also excluded from the Commission’s list of gross violations.<sup>43</sup>

The report is unclear as to what weight the Commission grants to violations of ESCR. The report states, “[t]he TRC Act is almost exclusively concerned with gross violations of civil and political rights to include economic, social, and cultural rights, with explicit reference to economic crimes.”<sup>44</sup> This vague statement is not further discussed. Whether the term “almost exclusively” indicates a prioritization of civil and political rights over ESCR is left open to interpretation.

In addition, the Commission neglects the opportunity to address violations committed by private citizens against private citizens. The Commission implicitly argues that these violations were unregulated under international human rights law, except with regard to very limited gross human rights violations.<sup>45</sup> The report suggests that in the absence of armed conflict, when only human rights law applies (as opposed to when international humanitarian law and human rights law apply concurrently), only violations committed by the state against private citizens can be addressed. This view ignores the state’s obligations of due diligence, which apply to all human rights. States must prevent and control abusive behavior of non-state actors and take steps to fulfill the human rights contained in the international Bill of Rights.<sup>46</sup> As a result of its failure to take into account how the human rights law framework pertains to non-state actors, the Commission does not fully explore the legal norms on ESCR. Instead of confining itself to the term “economic crimes,” the Commission should look at ESCR more broadly under international human rights law and under international humanitarian law. This approach would mitigate the gap between the Commission’s findings on the main causes of the conflict and its legal analysis of abuses.

Currently, the recommendation for reparations is a mere sentence long and suggests that the TRC considers individual and community reparations that are “desirable and appropriate.”<sup>47</sup> As it stands now, the recommendations made in the preliminary report do not refer to violations of ESCR. Thus, as it continues its work, the Commission must issue more detailed recommendations for how to prevent the recurrence of abuses and on reparations for the full range of abuses, including violations of ESCR.

In short, the first volume of the report of the Liberian TRC exemplifies the tendency of transitional justice processes to marginalize ESCR. At the same time, the ongoing transitional justice experience of Liberia illustrates two arguments for abandoning this conceptual blind spot. First, international law obliges this action, and the Act establishing the Liberian TRC mandates the Commission to address violations of ESCR. Second, there are sound policy reasons to include ESCR in a transitional justice strategy.

### **The Legal Argument for Including ESCR**

There is a straightforward legal argument to support the inclusion of ESCR in the Liberian TRC report. The Act establishing the Commission refers to all gross human rights violations. As mentioned, there is little reason that gross human rights viola-

tions should be limited to civil and political rights. The UN Rapporteur on the Right to Reparation to Victims of Gross Violations of Human Rights, who drafted the UN Basic Principles on the Right to a Remedy, affirms this view.<sup>48</sup> Moreover, Liberia is a state party to the ICESCR and is therefore bound by the legal obligations contained in the Covenant.<sup>49</sup> While the Covenant demands the “progressive realization” of the rights contained therein, some obligations are immediate and independent of resource considerations. First, every State party must take concrete steps to realize ESCR. Second, the obligation of non-discrimination is always binding on State parties.<sup>50</sup> For example, if women face disproportionate economic insecurity because their access to primary means of economic production is dependent on a land-owning male, the State of Liberia faces an immediate legal obligation to take steps to address the situation.

The Truth Commission has an opportunity to examine questions of discrimination based on an analysis of existing inequalities, and to make concrete recommendations for redress. Ideally, this would help the Liberian State comply with its obligation to remedy past abuses. International human rights law demands that States provide a remedy for violations of rights contained in both human rights covenants. This can take the form of restitution, compensation, or satisfaction. They can be granted to individuals or to groups and they may include material as well as symbolic components. While States are granted considerable flexibility in how to provide remedies, the right to a remedy is not an exclusive domain of the Covenant on Civil and Political Rights.<sup>51</sup>

Apart from a human rights law framework, violations of ESCR may fall under international humanitarian law in some circumstances. The Statute of the International Criminal Court (ICC) recognizes the appropriation of property, pillage, and starvation as war crimes.<sup>52</sup> The International Criminal Tribunal for the Former Yugoslavia held that the destruction of homes and property was a crime against humanity if the necessary intent (*mens rea*) could be proven.<sup>53</sup> In the domestic realm, the Accra peace agreement, as well as the Liberian Constitution, include concerns about ESCR and the socio-economic well-being of Liberians.<sup>54</sup> By virtue of the TRC’s mandate and victims’ right to a remedy, the Liberian Truth Commission must address ESCR in a more profound manner than what is currently included in the first volume of its report.

## Policy Arguments

### *Ensuring Sustainability and Increasing Human Security*

The central policy argument for TRC engagement with ESCR violations is sustainability. Whether it be “sustainable peace-building” or “post-conflict conflict prevention,” practitioners have argued that “gains could be unmade if the conditions that led to or aggravated repression and conflict are left to fester, allowing repression to reemerge and conflict to recur.”<sup>55</sup> Mike McGovern, a political anthropologist who works in West Africa, argues that many post-conflict strategies fail to tackle underlying causes and conflict dynamics, and instead focus too narrowly on what he calls “technocratic fixes.” McGovern argues that without looking at the motivations of the corrupt and the violent (two groups who are often one and the same) long-term positive change cannot be as-

sured.<sup>56</sup> The nexus between wealth and power is increasingly seen as crucial to understanding incentives to forge a viable peace and to create an environment conducive to human security and human rights.

Peace will rarely be sustainable if the political-economic incentives for conflict are overlooked, and large groups of the population remain economically or socially marginalized. In Boutros Boutros-Ghali's words, sustainable peace can only be achieved when the "pervasive and deep sources of conflict" have been addressed by enhancing respect for human rights and promoting sustainable economic and social development.<sup>57</sup> Proponents of human security agree that violent threats to individuals are strongly associated with poverty, lack of state capacity, and socio-economic and political inequities.<sup>58</sup> Whether economic and social dynamics were the main cause of the conflict, as the Liberian TRC suggests in its report, or they were "only" fuelling it, is largely irrelevant. In assessing the human security concerns of Liberians, it is safe to conclude that grievances in

Liberia's post-conflict society relate to economic and social rights (access to food, water, healthcare, land, or adequate housing), as well as to civil and political rights.

Ruben Carranza of the International Center for Transitional Justice (ICTJ) adds another sustainability argument to why including ESCR in transitional justice strategies is important. He analyzes the intersection of human rights and economic crimes, and shows how the failure to address accountability for economic crimes reinforces impunity for all abuses, including those relating to civil and political rights. He explains that by violating the economic rights of others, perpetrators often amass financial resources, which help shield them and their allies from accountability after the transition. As an example, he mentions the Abacha family, who use illegally acquired assets to maintain influence in Nigerian politics and to preserve the impunity of those who could still be held accountable.<sup>59</sup> According to Carranza, Charles Taylor uses his fortune in his efforts to intimidate prosecution witnesses appearing in the Special Court for Sierra Leone and in influencing members of the Liberian legislature to defeat proposed laws that would have frozen his assets.<sup>60</sup>

Additionally, Carranza explains how systematically dealing with ESCR and economic crimes could contribute to recovering illegally amassed financial assets, which could be used to fund reparations programs. Partial solutions have been found in Peru, where a special fund was created to govern the use of assets confiscated from Fujimori and his associates. Under this law, recovered assets have been used for both anti-corruption and reparations programs.<sup>61</sup> At the international level, a first step in this direction was the creation of the ICC's trust fund for victims. The ICC statute allows

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the Court to freeze assets of convicted individuals if they amassed assets through the commission of crimes for which they are held guilty.<sup>62</sup> It remains to be seen whether this mechanism will help change the unsuccessful efforts to recover funds from perpetrators.

### *Missing Gender Dimensions*

The lack of in-depth analysis of violations of ESCR may also have serious negative repercussions for the understanding of abuses suffered by women and girls. Violence against women is an important part of both the Commission's mandate and report. The TRC was tasked with analyzing violence against women for good reason. Sexual violence was undoubtedly one of the most horrific aspects of Liberia's conflict, and unfortunately has not ceased since the end of the conflict.<sup>63</sup> In one part of the report, the TRC explicitly states that women's experiences are often not reported or under-reported for "historical, cultural, social, political, economic, and other reasons."<sup>64</sup> As a consequence, the TRC established a gender committee, guidelines for the treatment of women in the TRC process, and special hearings with women's groups.<sup>65</sup> Nevertheless, the diagnosis on the underreporting of women's experiences does not seem to have fundamentally affected the TRC's analysis of the range of past abuses, and gender questions are compartmentalized from the discussion of other problems.

***By narrowly conceptualizing harm suffered by women as only relating to direct sexual violence, the Commission deals exclusively with the civil and political dimensions of women's rights violations.***

The underlying assumption is that when women suffered, it was necessarily from direct sexual violence (gang rape, sexual slavery, torture, etc.).<sup>66</sup> This approach is problematic because it glosses over the more subtle and structural gender dimensions of the conflict. By narrowly conceptualizing harm suffered by women as only relating to direct sexual violence, the Commission deals exclusively with the civil and political dimensions of women's rights violations. The TRC diagnoses issues such as limited access to education or land tenure as a root cause of conflict. However, it fails to discuss the economic, social, and cultural dimensions of human rights violations; and those of women in particular. For instance, the preliminary report does not contain a discussion of whether the diagnosed causes of the conflict have affected women or other groups disproportionately. By only looking at direct sexual violence and failing to analyze other abuses suffered by women, the Commission concludes that, "as a group, men comprise a larger victim category than women."<sup>67</sup>

Mats Utas, a cultural anthropologist focusing on West Africa, has studied the connections between sexual violence and ensuing violations of economic and social rights suffered by survivors. He shows that those who have suffered from sexual violence in

Liberia have developed unique survival strategies to deal with the violation of their civil and political rights (e.g. the instances of rape), as well as tactics to cope with the daily economic and social consequences of those violations. Sexual violence did not merely affect women in civil and political ways. For instance, sexual violence may lead to extreme poverty or social rejection, and state healthcare might not cover the physical and mental damage that results from sexual violence.<sup>68</sup> Implicitly assuming that all harm suffered by women necessarily relates to forms of direct sexual violence is very limiting. Moreover, such an approach risks cementing ideas of women's inequality by addressing their plight only from a narrow perspective of one type of rights violation.

Systematic attention to violations of ESCR and to other economic dimensions of a civil conflict has the potential to address the root causes of many conflicts in a more meaningful way. In sum, the inclusion of these considerations in transitional justice strategies would reveal complex gender dimensions of the past conflict, could enhance the fight against impunity, and may contribute to the provision of financial means for reparations programs. While legal and policy arguments have been identified for addressing ESCR in transitional justice, a number of challenges must be addressed. There are no simple solutions to this problem.

### **Challenges to the Inclusion of ESCR in Transitional Justice Strategies**

There are three challenges to the inclusion of ESCR in transitional justice strategies. First, armed conflicts and other violent situations lead to circumstances in which numerous competing demands must be addressed while resources fall chronically short of needs. Moreover, efforts to address past violence often take place in fragile political environments. Those who push for accountability and redress for violations of ESCR face economically and politically powerful actors and are moreover often confronted with very high expectations of victims and society. While there is no fundamental obstacle to applying the key elements of transitional justice to violations of ESCR or to large-scale corruption and economic crime, there is also no simple solution to deal with the manifold limitations to the capacity of a transitional justice strategy. In Rama Mani's words, "[w]hen patterns of social injustice are so wide, their victims so many, their impact and consequences so far-ranging for the individuals and communities it is difficult at first glance to envisage how to encompass them within the finite range of the targeted measures of transitional justice."<sup>69</sup> Writing as the guest editor of the *International Journal of Transitional Justice*, she points out that "it is well known that the mandates of existing transitional justice mechanisms are already overcharged, their responsibilities too heavy, public expectations too unrealistic and finances already too lean."<sup>70</sup>

At the same time, the challenges of competing demands, resource constraints, and high expectations are not unique to the inclusion of ESCR into transitional justice work in Liberia and elsewhere. Establishing a reparations program for torture victims or conducting criminal investigations for any human rights abuses are equally likely to

***The inclusion of economic crime into transitional justice could harness resources for repatriations and eliminate the ability of perpetrators to live with impunity.***

demand creative solutions and tenacious work. Surely, transitional justice alone is not a panacea for the complex problems of a post-conflict country. Nevertheless, as Carranza's research shows, the benefits of including ESCR in the mandates of transitional justice mechanisms are considerable. The account of the past will be more complete when ordinary people feel that the root causes of the conflict relate to economic and social exclusion. Reparations programs may be far more relevant to victims if they address the full range of abuses. The inclusion of economic crime into transitional justice could harness resources for repatriations and eliminate the ability of perpetrators to live with impunity.<sup>71</sup>

The second challenge is the further time and effort required to discourage the division of human rights into two disparate discourses. Those who believe that there are fundamental differences between civil and political rights and ESCR argue that the realization of ESCR, whether in situations of transition or not, is expensive and burdensome. While this is largely true, rule of law practitioners involved in reforming justice systems generally agree that guaranteeing due process rights, a classic civil and political right, equally requires financial resources and continuous efforts from the State. Advocates of the inclusion of ESCR in transitional justice will have to continue their efforts to convince governments, donors, scholars, and practitioners that the compartmentalization of human rights is not only unsound, but also unhelpful.

Third, one of the most difficult challenges concerns how reparations programs—whether material, symbolic, individual, collective, or a combination of these—can be designed to meaningfully address past or ongoing violations of ESCR. For example, there is a complicated relationship between collective reparations and development. If reparations too closely resemble development measures, survivors may feel the government is insufficiently responsive to individual violations. They may feel that the government is not addressing past abuses, but instead fulfilling pre-existing obligations to promote development.<sup>72</sup> Designing a reparations plan that addresses the full range of past human rights violations while satisfying the expectations of victims is an extraordinary—but decisive—challenge of transitional justice.

### **Areas for Further Research**

Before recommending how the Liberian TRC could tackle some of the problems mentioned in this article, two other concerns should be targeted for further research. First, cultural rights remain severely understudied, having failed to attract the attention of

scholars and practitioners alike.<sup>73</sup> The second point, which is even more complicated, is that debates on ESCR and on economic crime and grand corruption are overlapping, but not congruent. ESCR are both broader and narrower than the concept of economic crime. ESCR are broader in the sense that they encompass far more than concerns of corruption and economic fraud. At the same time, the debate on ESCR is narrower in the sense that not every instance of economic crime is necessarily a violation of international human rights norms. For instance, a private individual falsifying company records may be committing an economic crime, but the same act would not constitute a human rights violation. As the transitional justice movement begins to address the marginalization of ESCR, the intersections between ESCR and economic crime must be addressed. This demarcation is important because of its legal consequences.

Understanding the distinction between ESCR and economic crime is important to avoid confusion that might reinforce misconceptions about ESCR and provide ammunition to those who argue that ESCR are not “real” human rights. The December 2008 issue of the *International Journal of Transitional Justice* demonstrates that this demarcation remains unclear. For instance, Carranza mentions in his article that one of the main arguments against including ESCR in transitional justice was “that bringing in a *nonhuman rights* component could become a distraction in the work, for instance, of a truth commission.”<sup>74</sup> However, once we have determined which instances of economic crime and corruption concern ESCR—and are hence part of the human rights framework—these would not constitute a “nonhuman rights” component of transitional justice.<sup>75</sup> Similarly, Mani recommends that “the frontiers of transitional justice must be stretched.”<sup>76</sup> By conceiving the inclusion of ESCR as a new component of transitional justice, proponents of ESCR inclusion risk confirming the narrow view of what constitutes human rights violations. Dealing with ESCR is therefore not a “transitional-justice-plus” approach. Rather, it allows for a more complete understanding of human rights violations and for a full exploration of the existing human rights law framework. Incorporating ESCR violations makes the rhetoric of the indivisibility and interrelatedness of rights a reality. As mentioned in previous sections, this is not a simple task. Nevertheless, the Truth and Reconciliation Commission of Liberia should take into account a few additional points when it finalizes its consolidated report.

### **Concluding Notes and Recommendations for the Consolidated Report**

The TRC has promised that the additional volumes of its final report will present a more detailed analysis of the causes of the conflict.<sup>77</sup> The Commission has also announced that the final report will describe specific crimes committed by perpetrators, report findings on individual and group responsibility, and outline more detailed recommendations.<sup>78</sup> The Commission has an opportunity to elaborate on its views and to bridge the current gap between the TRC’s findings on the causes of conflict with its legal analysis in the final report. In order to address this disconnect, the remaining two volumes of the TRC should address the following:

**The TRC should expand its definition of “gross human rights violations” to include ESCR and should analyze violations of ESCR.**

As with all post-conflict interventions, the voices of the affected population should be heard. If few people believe that a prosecutorial mechanism for addressing only violations of civil and political rights will remedy harm suffered,<sup>79</sup> seeking creative ways to address the full range of abuses seems only reasonable. As a first step, the TRC should complete its list of “gross human rights violations” with the inclusion of gross violations of ESCR. The commission could then examine the violations of ESCR under both international humanitarian and human rights law. This would allow the TRC to include a detailed analysis of how the most widespread ESCR violations affected individual victims and their communities. Particular attention should be paid to the relationship between ESCR and civil and political rights abuses, as well as their impact on vulnerable groups.

**The Commission should insist that reparations are necessary as a matter of law and that they should extend to all gross human rights violations.**

As it currently stands, the recommendations of the commission are vague, especially with respect to reparations. While the Commission recognizes that “reparation is a *desirable and appropriate* mechanism to redress the violations of human rights,”<sup>80</sup> it fails to acknowledge that the state of Liberia is obligated to provide them as a matter of international law.<sup>81</sup> The TRC should correct this omission and clearly state that Liberia has legal obligations to provide reparations for harm suffered. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law recognize that reparations can take many forms, including financial and symbolic compensation.<sup>82</sup> Human rights law clearly supports the idea that the right to reparation exists for all violations of gross human rights, including ESCR. While reparations programs are never easily designed and implemented, the TRC is the most legitimate body to make specific recommendations for how to remedy past abuses.

**The Commission should take into account experiences and best practices from other countries.**

Undoubtedly, designing an adequate and feasible reparations program for Liberia will be challenging. Research on this problem was conducted by the Liberian civil society Transitional Justice Working Group in early 2004. More than 1,007 people were interviewed, and the vast majority of respondents said that they had a family member killed, were victims of abuse, had property destroyed or looted, or had to relocate from one place to another, sometimes more than twice.<sup>83</sup> Experiences with collective and individual reparations programs in Sierra Leone, Morocco, and Peru may offer valuable insight to Liberia’s TRC. Experts and members of civil society from these countries could provide helpful advice. They could identify best practices based on experiences in various countries, and may also be able to anticipate the challenges of designing



and implementing reparations programs that include violations of ESCR. Peru, for instance, provides for one of the few existing attempts to include ESCR dimensions in a reparations program.

**The TRC and its supporters should ensure widespread and meaningful dissemination of the Commission's findings and recommendations.**

It is unlikely that many Liberians have been able to access the preliminary report, especially in light of the fact that the report was removed from the Commission's website. Once the final consolidated report is released, the act establishing the TRC requires the Commission to submit it to the National Legislature and to publish its key findings in at least three local newspapers.<sup>84</sup> Hopefully this provision will ensure extensive dissemination of the report. At the same time, considerations of how to present the account of the past may facilitate the dissemination of the Commission's findings and recommendations.

The first volume of the final report takes a very legalistic approach, even if the Commission states that it is “not a court or tribunal.”<sup>85</sup> Volume I presents the past abuses in a “faceless” way, without including individual accounts or descriptions of specific violations. The Commission started with an in-depth legal analysis of the vast time span covered by its mandate in order to lay the groundwork on which to assess what body of law applied at a given moment. The final report should take advantage of this groundwork, and the Commission should apply its legal conclusions to specific violations. Compared to reports of other truth commissions, the first volume is silent about the concrete experiences of the population during the years of violent conflict. This begs the question of the extent to which it will resonate with ordinary Liberians. The consolidated version should give those who testified a voice in the final report, using the statements, videos, photographs, and drawings it amassed during its investigation. Including some of this material—with the consent of those concerned and adhering to agreements of confidentiality—might help make the report more accessible and relevant to ordinary citizens.

***The consolidated version should give those who testified a voice in the final report, using the statements, videos, photographs, and drawings it amassed during its investigation.***

In order to disseminate its findings in a more effective manner, the Liberian TRC could follow the example of the Sierra Leonean TRC and produce illustrated versions of its report for young children and for students.<sup>86</sup> WITNESS, an international NGO, was invited by the Sierra Leonean TRC to produce a video accompaniment to the official report. The objective of the video was to raise public awareness of the TRC's peace-building efforts throughout the country, and to encourage civil society to hold the government accountable for implementing the TRC's recommendations.<sup>87</sup>

### **The TRC should recommend that Liberia Ratifies the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR).**

Finally, the TRC should recommend that Liberia ratifies the Optional Protocol (OP) to the ICESCR. On December 10, 2008, the UN General Assembly unanimously adopted a facultative protocol to the Covenant on ESCR. Once entered into force, the protocol will under certain circumstances allow individuals and groups of victims to access the independent expert committee supervising the implementation of the Covenant.<sup>88</sup> While the legal obligations of the Covenant exist for all state parties to the treaty, the OP would allow the committee to develop case law, which could contribute to the realization of ESCR protection at the national level.

While the Liberian TRC deepens its analysis of ESCR in its consolidated report, it could lay the groundwork for Liberian civil society to continue the endeavor to enhance protection for all human rights. The Act establishing the Liberian TRC foresees that the Independent National Human Rights Commission of Liberia

shall be seized with the responsibility to ensure that all the recommendations contained in the Report of the TRC are implemented, and that civil society organizations and moral guarantors of the CPA [Comprehensive Peace Agreement] shall have the responsibility to monitor and campaign for the scrupulous implementation of all recommendations contained in the report.<sup>89</sup>

The ratification of the Optional Protocol could be a tool for both the civil society and the Independent National Human Rights Commission to hold the government accountable for implementing the obligations of the ICESCR.

The Liberian TRC has an exceptionally broad mandate which includes ESCR and economic crimes. It remains to be seen if this promising feature will be fully explored in the final consolidated report. The Liberian TRC should use the upcoming report to ensure that its recommendations are in line with its diagnosis that the root causes of conflict are linked to violations of ESCR. In doing so, the TRC should insist on the centrality of economic, social, and cultural rights for the dignity of each person as well as the idea that all human rights are indivisible, interdependent, and interrelated.

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## **Endnotes**

- 1 The report was presented on December 19, 2008 by TRC Chairman Cllr. Jerome Verdier. It was made available on the commission's website in late January 2009.
- 2 Louis Arbour has used the expression in her article on the issue: Louise Arbour, "Economic and Social Justice for Societies in Transition," *New York University Journal of International Law and Politics* 40, no. 1 (2007): 10.
- 3 Arbour, "Economic and Social Justice for Societies in Transition," 3.
- 4 "International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976." See also the "African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986."

- 5 According to the TRC, the situation in Liberia qualified as an armed conflict in two episodes, namely between December 1989 and August 1996 as well as between March 1999 and October 2003. Truth and Reconciliation Commission of Liberia, *Final Report of the Truth and Reconciliation Commission of Liberia (TRC): Volume I: Findings and Determinations* (2008). [Hereafter TRC Liberia, *Final Report Volume I*], 78. In another part of the report, the commission specifies that it considers all episodes of the conflict as an armed conflict not of an international character. *Ibid.*, 36.
- 6 “Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3, entered into force Dec. 7, 1978,” Article 54. According to a study by the International Committee of the Red Cross, this prohibition is part of customary international law and applies in international as well as in non-international armed conflict. See Jean-Marie Henckaerts, Louise Doswald-Beck, and International Committee of the Red Cross, *Customary International Humanitarian Law: Volume I, Rules* (Cambridge: Cambridge University Press, 2007), Rule 54.
- 7 The term “justiciable” refers to the capability of a human right, or a treaty provision on a human right, to be invoked and applied in a judicial, quasi-judicial or other procedure. On the justiciability of ESCR, see for instance: Fons Coomans, *Justiciability of Economic and Social Rights : Experiences from Domestic Systems* (Antwerpen: Intersentia, 2006). Asbjörn Eide, Catarina Krause, and Allan Rosas, *Economic, Social, and Cultural Rights: A Textbook* (Dordrecht: M. Nijhoff Publishers, 1995).
- 8 The Nation, December 25, 2000 Issue.
- 9 For instance, Amnesty International in 2001 changed its mission statement. While the movement previously focused mostly on freeing prisoners of conscious, on fair trial rights, abolishing the death penalty, torture, mistreatment, political killings and “disappearances”, the new mandate tasked Amnesty International to campaign for all human rights. See: Curt Goering, “Amnesty International and Economic, Social and Cultural Rights,” in *Ethics in Action : the Ethical Challenges of International Human Rights Nongovernmental Organizations*, ed. Daniel Bell and Jean-Marc Coicaud (Cambridge; New York: Cambridge University Press, 2007).
- 10 Kofi Annan, “24 April 2003 - Secretary-General’s statement to the Commission on Human Rights [as delivered],” (Geneva, 2003).
- 11 United Nations, “World Conference on Human Rights: The Vienna Declaration and Programme of Action A/CONF.157/23, 12 July 1993,” in *New York: United Nations* (1993), para. 5.
- 12 While it is often said that civil and political rights protect personal freedom and physical integrity, the same is true for ESCR. In the absence of food, water or health care, one’s physical integrity can easily be harmed. In addition, personal freedom is often correlated with an individual’s economic well-being. This shows that classifying human rights into different groups is not only unhelpful, but does also not capture the complexity of human rights.
- 13 Alexander Boraine, “Transitional Justice: A Holistic Interpretation,” *Journal of International Affairs - Columbia University* 60, no. 1 (2006): 17. Cited in Arbour, “Economic and Social Justice for Societies in Transition,” 2.
- 14 It is important to note that assessing needs is not always the same as assessing past human rights violations. For instance, victims may be poor and therefore need assistance without necessarily a violation of ESCR.
- 15 The article does not, for instance, include an analysis of the TRC’s hearings on corruption and economic crime conducted in mid-February 2009. The article focuses on the prelimi-

- nary report only.
- 16 International Center for Transitional Justice, "TRANSITIONS: Transitional Justice News from Around the World," (2009), 4.
  - 17 Author's E-Mail Correspondence with staff of the TRC.
  - 18 BBC News Africa, "Country profile: Liberia" [http://news.bbc.co.uk/2/hi/africa/country\\_profiles/1043500.stm](http://news.bbc.co.uk/2/hi/africa/country_profiles/1043500.stm). Accessed 02/06/2009. A good introduction is the following video: BBC News, "Whose Justice? Liberia" <http://news.bbc.co.uk/2/hi/programmes/newsnight/7861430.stm#3>. Accessed 02/07/2009.
  - 19 In December 2008, the UN Security Council extended arms and travel embargoes for another year in response to ongoing high levels of gun violence. S/RES/1854 (2008).
  - 20 International Crisis Group, "Liberia: Uneven Progress in Security Sector Reform," (2009). See also: Priscilla Hayner, "Negotiating Peace in Liberia: Preserving the Possibility for Justice," *International Center for Transitional Justice*, November (2007).
  - 21 "Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties," (Accra August, 18 2003).
  - 22 *Act Establishing the Truth And Reconciliation Commission (TRC) of Liberia*, (May 12, 2005). Accessed 02/06/2009.
  - 23 TRC Liberia, *Final Report Volume I*, supra note 5. As mentioned in the introduction, the report was quietly removed from the TRC's website in mid-February 2009. The report is on file with the author.
  - 24 *Ibid.*, supra note 5, 11.
  - 25 Not only has the release of the first volume of the commission's report reanimated the debate over the desirability of prosecutions and amnesties, it has also led to tensions between the government and the commission and apparently between commissioners themselves. Shortly after the launch of the volume, President Johnson Sirleaf said she wanted to meet with members of the TRC to discuss what her spokesman called "issues within the commission." Some have alleged that President Sirleaf, before she was elected president, played a role in the conduct of Charles Taylor's war efforts. President Sirleaf testified to the TRC on February 12, 2009 and has apologized for her backing of ex-rebel Charles Taylor. See James Butty, "Liberia's Truth Commission Releases Preliminary Report, Calls for Setting up a Criminal Court," *VOANews.com*, January 22, 2009 2009.<http://www.voanews.com/english/africa/2009-01-22-voa6.cfm?rss=africa>. Accessed 02/05/2009. And "Sirleaf 'sorry' she backed Taylor," *BBC News Africa*, 2009.
  - 26 "Liberian ex-warlord claims war crimes indictments pending," *Agence France Presse*, January 12, 2009.
  - 27 Thijs Bouwknecht, "The Liberian TRC - Immunity Versus Prosecutions," *Radio Netherlands Worldwide*, July 29, 2008.
  - 28 TRC Liberia, *Final Report Volume I*, supra note 5, 76.
  - 29 *Act Establishing the Truth And Reconciliation Commission (TRC) of Liberia*, supra note 22, Section 4(a).
  - 30 TRC Liberia, *Final Report Volume I*, supra note 5, 65.
  - 31 *Ibid.*, supra note 5, 65-66.
  - 32 *Ibid.*, supra note 5, 78-79.
  - 33 *Ibid.*, supra note 5, 73-74. While this is a speculation, the controversy around the first volume of the report and its removal from the TRC's website might well be due to this

somewhat problematic classification. The “significance” of a group is measured according to the number of violations reported against them. Obviously, larger groups will probably be ranked as more “significant perpetrators” than smaller groups. Moreover, this classification is silent on the qualitative significance of each reported violation. Where witnesses did not state which groups committed the crime against them, the violations were attributed to “unknown.” “Unknown” comprised the eighth most significant violators group.

- 34 Ibid., supra note 5, 73-74.
- 35 The TRC did not specify this finding, except for saying that these foreign State actors pursued “political, economic, and foreign policy advantages or gains.” TRC Liberia, *Final Report Volume I*, supra note 5, 10.
- 36 TRC Liberia, *Final Report Volume I*, supra note 5, 11-12.
- 37 Apart from the Liberian TRC, the mandates of truth commissions in Sierra Leone, East Timor, and Chad have also included economic and social aspects. In October 2008, the Kenyan National Assembly adopted a bill which includes economic rights among the issues to be investigated by the planned Truth, Justice and Reconciliation Commission. *The Truth, Justice and Reconciliation Commission Bill*, (signed into law on November 28, 2008), Article 5. Available at [http://www.kenyalaw.org/Downloads/Bills/2008/The\\_Truth\\_Justice\\_and\\_Reconciliation\\_Commission\\_Bill\\_2008.pdf](http://www.kenyalaw.org/Downloads/Bills/2008/The_Truth_Justice_and_Reconciliation_Commission_Bill_2008.pdf). Accessed 02/06/2009.
- 38 Truth and Reconciliation in Timor-Leste Commission for Reception, “Chega! Final Report: Recommendations Part 11,” 40-41.. This approach was criticized by the UN Secretary-General: U. N. Secretary-General, “Question of the realization in all countries of economic, social and cultural rights : report of the Secretary-General,” (Geneva: UN, 2007), para 42.
- 39 Tafadzwa Pasipanodya, “A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal,” *International Journal of Transitional Justice* 2, no. 3 (2008): 382.
- 40 Ibid., 387-388. The author discusses a survey undertaken by the International Center for Transitional Justice and Phorama Edbhokesi, “Nepali voices perceptions of truth, justice, reconciliation, reparations and the transition in Nepal,” International Center for Transitional Justice, <http://www.ictj.org/images/content/8/3/830.pdf>. Accessed 02/06/2009.
- 41 TRC Liberia, *Final Report Volume I*, supra note 5, 35. It is also unclear why the commission says that these violations “abrogate preemptory norms of international human rights law.” Imprisonment for instance is certainly not illegal in all circumstances and the commission probably made allusion to the concept of “arbitrary detention” instead. Legally speaking, it is not clear what the concept of “preemptory norms of international human rights law” refers to and whether the commission alludes to non-derogable human rights or to the concept of jus cogens.
- 42 Theo van Boven, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: Final Report* (UN, 1990).
- 43 Under the analysis of international humanitarian law (IHL), the commission briefly mentions pillage, but not other violations of economic, social, or cultural aspects contained in conventional and customary IHL. TRC Liberia, *Final Report Volume I*, supra note 5, 106.
- 44 TRC Liberia, *Final Report Volume I*, supra note 5, 35.
- 45 Ibid., supra note 5, 34. On p. 89 of the report, the TRC attenuates its statement on p. 34 and mentions that “while human rights obligations generally apply to state actors, select [gross human rights violations] including, for example, enslavement, genocide and crimes against humanity which sit atop the hierarchy of [international human rights law] and [international humanitarian law] increasingly extend to private persons and to private action.”

- 46 Ibid., supra note 5, 34. The TRC argued that when only human rights law applies (as opposed to when IHL and human rights law both apply), only crimes committed by the state against private citizens could be dealt with by the human rights framework. This approach, however, omits the due diligence obligations of states in controlling and preventing abusive behavior of non-state actors. See also Andrew Clapham, *Human rights obligations of non-state actors*, The collected courses of the Academy of European Law (Oxford; New York: Oxford University Press, 2006).
- 47 Ibid., supra note 5, 77.
- 48 For a discussion of the term “gross violations of human rights” in international law, see: Theo van Boven, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: Final Report*. The UN rapporteur clearly included considerations of ESCR in his study. See paras 12, 21, 70, or 89.
- 49 Liberia ratified the ICESCR on September 22, 2004 (Office of the High Commissioner for Human Rights, “Status of Ratification of the International Covenant on Economic, Social and Cultural Rights,” <http://www2.ohchr.org/english/bodies/ratification/3.htm>. Accessed 02/06/2009.) While the armed conflict ended in 2003, customary obligations were binding on Liberia during the conflict. Moreover, Liberia already signed the Covenant in 1967; thus undertaking the obligation “to refrain from acts which would defeat the object and purpose of a treaty” (“Vienna Convention on the Law of Treaties, Article 31(1), May 23, 1969, 1155 U.N.T.S. 331,” Article 18.)
- 50 “International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976,” Article 2.
- 51 “International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171,” Article 2(3); “International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976,” Article 2(1); And Committee on Economic Social and Cultural Rights, “General Comment 3: The nature of States parties obligations (Art. 2, par.1)” (1990): para.5.
- 52 “Rome Statute of the International Criminal Court, U.N. Doc. 2187 U.N.T.S. 90, entered into force July 1, 2002,” Article 8.
- 53 “Prosecutor vs. Kupreskic et al, Trial Judgement,” para. 628ff.
- 54 *Constitution of the Republic of Liberia*, (6 Jan 1986), Articles 18, 22. Article 18 deals with the right to work and the right to equal pay for equal work. Article 22 contains the right to own property. Article 6 and 7 in the constitution’s section on “General Principles of National Policy” stipulate that the Republic shall provide equal access to educational opportunities and that the Republic shall manage the national economy and natural resources of Liberia “in such manner as shall ensure the maximum feasible participation of Liberian citizens under conditions of equality as to advance the general welfare of the Liberian people.” The constitution does not grant access to judicial means if an individual claims that the State is not upholding its promise.
- 55 Ruben Carranza, “Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?,” *International Journal of Transitional Justice* 2, no. 3 (2008): 329.
- 56 International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States*, ICG Africa report, no. 87 (Dakar; Brussels: International Crisis Group, 2004), 31.
- 57 Agenda for Peace, UN-Doc. A/47/277-S/24111, 1992, para 5.

- 58 Human Security Report Project, "Human Security Brief 2007," <http://www.humansecuritybrief.info/whatis.html>.
- 59 Carranza, 312-13.
- 60 Ibid., 314.
- 61 Ibid., 324.
- 62 See Pablo de Greiff and Marieke Wierda, "The Trust Fund for Victims of the International Criminal Court: Between Possibilities and Constraints," in *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, ed. K. de Feyter, et al. (Antwerp: Intersentia, 2005).
- 63 Kathryn Birch, "If we could read and hear their stories: Protection Strategies Employed by Victims of Sexual Violence: A Comparative Study of Liberia and the Democratic Republic of the Congo," *PRAXIS: The Fletcher Journal of Human Security* 23 (2008). Global Witness, "Liberia: Greater Protection Required for Civilians Still at Risk," (Briefing Paper. New York: Human Rights Watch, 2003).
- 64 TRC Liberia, *Final Report Volume I*, supra note 5, 51.
- 65 Ibid., supra note 5, 52.
- 66 Ibid., 63. The commission states that 28% of reported violations were committed against women. The reported violations apparently "only" include instances of sexual violence, but this is not explicitly stated.
- 67 Ibid., 63.
- 68 Mats Utas, "Victimcy, Girlfriending, Soldiering: Tactic Agency in a Young Woman's Social Navigation of the Liberian War Zone," *Anthropological Quarterly* 78, no. 2 (2005).
- 69 Rama Mani, "Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development," *International Journal of Transitional Justice* 2, no. 3 (2008): 255.
- 70 Ibid.
- 71 Carranza, 320. Rama Mani points out that Sierra Leone has established a precedent by declaring that earnings from the diamonds that fuelled the war should be directed to paying a part of the reparations required to alleviate the impact of war on victims. Mani, 258.
- 72 Lisa Magarrell, "Reparations in Theory and Practice," (International Center for Transitional Justice, 2007), 6. See also: L Laplante, "On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development," *Yale Human Rights & Development Law Journal*: 141.
- 73 Notable exceptions are: Francesco Francioni and Martin Scheinin, *Cultural Human Rights*, (Leiden; Boston: Martinus Nijhoff Publishers, 2008). Or Patrice Meyer-Bisch, "Les Droits Culturels : Une Catégorie Sous-Développée de Droits de l'Homme / Actes du VIIIe Colloque Interdisciplinaire sur les Droits de l'Homme ; Patrice Meyer-Bisch (éd.)" (Fribourg, 1993). Or Rodolfo Stavenhagen, *Cultural Rights: A Social Science Perspective* (Netherlands: Kluwer Law International, 2001).
- 74 Carranza, 330. (emphasis added).
- 75 The intersections of corruption and human rights slowly start to gain the attention they deserve. An early influential includes: Laurence Cockroft, "Corruption and Human Rights: A Crucial Link," (TI Working Paper (Transparency International), 1998). See also Evelyne Schmid, "Comment la Corruption affecte-t-elle les Droits de l'Homme? Une Approche Internationale et l'Observation du Cas Libanais," ed. *ASA-Programm Final Report* (2005). Both papers and others are available on [VOLUME XXIV - 2009](http://www.business-humanrights.org/Catego-</a></p>
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- ries/Issues/Other/Corruption. Access 02/06/2009.
- 76 Mani, 256.
- 77 TRC Liberia, *Final Report Volume I*, supra note 5, 64.
- 78 Ibid., supra note 5, 73.
- 79 This was for instance the result of a survey conducted in Nepal: ICTJ and Edbhokesi, “Nepali Voices: Perceptions of Truth, Justice, Reconciliation, Reparations and the Transition in Nepal,” supra note 39, 33.
- 80 TRC Liberia, *Final Report Volume I*, supra note 5, 9,11 (emphasis added).
- 81 U. N. Commission on Human Rights, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” (2005).
- 82 Ibid. See also the case-law of the International Court of Justice dealing with the legal consequences of breaches of international law: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, General List No. 131, #43 I.L.M. 1009, paras. 148-53 (2004).
- 83 Transitional Justice Working Group, “The Road to Peace in Liberia: Citizens Views on Transitional Justice,” (Monrovia, 2004).
- 84 *Act Establishing the Truth And Reconciliation Commission (TRC) of Liberia*, supra note 22, Section 43.
- 85 TRC Liberia, *Final Report Volume I*, supra note 5, 33.
- 86 Sierra Leone Truth and Reconciliation Commission, *The final report of the Truth & Reconciliation Commission of Sierra Leone*, Truth and Reconciliation Commission: Open Society Initiative for West Africa, <http://www.trcsierraleone.org/drwebsite/publish/index.shtml>. Accessed 02/07/2009.
- 87 Witness and Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: A Video Report and Recommendations from the Truth and Reconciliation Commission of Sierra Leone*, 2004.
- 88 The OP will come into force once the tenth instrument of ratification is deposited with the Secretary-General. GA Resolution A/RES/63/117 (December 10, 2008), Article 18. Readers interested in the Optional Protocol may wish to consult Claire Mahon, “Progress at the Front: The Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,” *Human Rights Law Review* 8, no. 4 (2008).
- 89 *Act Establishing the Truth And Reconciliation Commission (TRC) of Liberia*, supra note 22, Section 46.