Sustaining Peace: Reflections on transitional justice approaches in West Africa
Hundreds of civilians suffered limb amputations while thousands of girls and women were subjected to sexual violence.
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acronym</td>
<td>02</td>
</tr>
<tr>
<td>Context</td>
<td>03</td>
</tr>
<tr>
<td>Transitional Justice Efforts</td>
<td>06</td>
</tr>
<tr>
<td>Key Findings</td>
<td>09</td>
</tr>
<tr>
<td>Conclusion</td>
<td>13</td>
</tr>
<tr>
<td>Recommendation</td>
<td>13</td>
</tr>
</tbody>
</table>
Acronyms

NPFL - National Patriotic Front of Liberia
LURD - Liberians United for Reconciliation and Democracy
RUF - Revolutionary United Front
RPT - Rassemblent du Peuple Togolais
LTRC - Liberia Truth and Reconciliation Commission
SLTRC - Sierra Leone Truth and Reconciliation Commission
SCSL - Special Court for Sierra Leone
CDVR - Commission Dialogue, Vérité et Réconciliation
TRRC- Truth, Reconciliation and Reparations Commission
CVJR- Commission de Vérité, Justice et Réconciliation
ECOWAS – Economic Community of West Africa States.
SGBV – Sexual and Gender Based Violence
CONARIV- Commission Nationale pour la Réconciliation et l’Indemnisation des Victimes
CSOs – Civil Society Organisations.
For several decades, West Africa has faced different and varying degrees of violent conflict, authoritarian and repressive undemocratic governments. The region has witnessed civil wars, political conflicts, insurgencies, intercommunal conflicts and the “not so new” trend of violent extremism. Liberia experienced more than 14 years of civil unrest and conflict.

The country had two distinct civil wars from 1989 to 2003. The first war (1989-1996), generally attributed to the repressive regime of Samuel Doe’s government and campaign to oust him from power by Charles Taylor’s National Patriotic Front of Liberia (NPFL) was considered as one of Africa’s bloodiest. It claimed the lives of over 250,000 with 1 million displaced and at least 25,000 raped.

Three years after the first civil war in 1996, Liberia was again plunged into another civil war, when a rebel group, Liberians United for Reconciliation and Democracy (LURD), with the support of the government of neighbouring Guinea, began a military offensive to topple the government of President Charles Taylor.

The conflict in Liberia spilled over the border into neighbouring Sierra Leone. The war in Sierra Leone was also driven by the attempts to overthrow the government of President Joseph Saidu Momoh, oust corrupt politicians, and redistribute the country’s resources of the Revolutionary United Front (RUF).

The RUF supported by Liberian rebel leader Charles Taylor and the NFPL was a small band of well-armed and funded guerrilla rebels, who rushed into villages in the eastern countryside and quickly gained momentum and territory.

The devastating 11-year conflict which ended in 2002 was characterised by extreme brutality, caused the death over

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¹David Fickling, Charles Taylor and Liberia’s civil wars, the Guardian, April 2006. https://www.theguardian.com/world/2006/apr/03/westafrica.qanda
³Sierra Leone Civil War: Causes & Politics. (September 24 2017).
In Togo, the 1958 election of the nation’s first President, Sylvanus Olympio, was accompanied by violent clashes between the major political factions, leaving hundreds of people dead or injured. The tensions and violence continued throughout Olympio’s presidency until he was assassinated, five years into his tenure.

The interim government established was ousted by another military coup and ushered in the regime of the military colonel Gnassingbé Eyadema. After seizing power, Eyadema declared a state of emergency and embarked on a campaign of violence and terror to entrench his regime.

He suspended the Constitution, dissolved the National Assembly, and granted control over all the state’s civil and political apparatus to the army. He also abolished the multi-party-political system, making his party, the Rassemblement du Peuple Togolais (RPT), the sole political force in Togo. Resentment at Eyadema’s appropriation of powers and at his widespread use of violence and intimidation erupted into large-scale protests and violence in 1990.

The army killed, arrested and injured hundreds of people during these demonstrations. After Eyadema died in 2005, the military proclaimed his son, Faure Gnassingbé, President sparking new tensions and igniting a fresh wave of violent protests across the country.²

In the Gambia, the 22-year rule of Yahya Jammeh who took over power in a 1994 coup d’état was characterised by human rights violations ranging from enforced disappearances, unlawful arrests and killings, torture, sexual and gender-based violence, and persecution of real or perceived political opponents.³

50,000 civilians, and displaced up to a quarter of the population. Rebels, and to a lesser extent government forces, consistently failed to distinguish between civilians and combatants. Hundreds of civilians suffered limb amputations while thousands of girls and women were subjected to sexual violence. All parties to the conflict were said to have recruited, and used, child combatants.  

Conflict in Cote d’Ivoire erupted in the aftermath of the civil wars in Liberia and Sierra Leone. The conflict was largely driven by political and social grievances over citizenship. It began in 2002 when a troop mutiny escalated into a full-scale rebellion, voicing the ongoing discontent of northern Muslims who felt they were being discriminated against in Ivorian politics.

Most of the fighting ended in 2004 after a cease-fire in 2003 was followed by political accords in 2007 which eased tensions between the regions. However, the country remained effectively divided. Xenophobic election campaign language in 2010 heightened tensions between the north and south as the incumbent Laurent Gbagbo and his ‘Young Patriot’ supporters questioned the nationality of their main political opponent, northerner Alassane Ouattara. Three years after the end of the first civil war, Cote d’Ivoire fell back into conflict when President Gbagbo rejected the internationally recognised electoral victory of Ouattara and refused to cede power. Within a span of five months, more than 3,000 people were killed and nearly 1 million more displaced as the pro-Gbagbo Armed Forces of the Republic of Cote d’Ivoire fought the pro-Ouattara New Forces for control of the country.  

Other countries in the region such as Togo and The Gambia have witnessed repressive regimes and political violence responsible for numerous deaths and grievous human rights abuses.

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Transitional Justice efforts
Numerous efforts have been made to consolidate peace in the region through the adoption of transitional justice mechanisms. These efforts have been marred by several challenges including the unresolved root causes of the conflict, high levels of corruption, uneven distribution of revenue, compromised judicial systems, economic exclusion and widespread poverty. The failure of transitional processes to achieve the disarmament, demobilisation and rehabilitation of former combatants and the accompanying lack of security sector reform, has meant that conflict drivers have not been fully addressed in some of the countries mentioned above.

Various transitional justice processes have been implemented or are currently ongoing and, in some cases, have spanned for many years, as member states continue to struggle with responding to the multifaceted dimension of justice in the post-conflict era. In Liberia, a Truth and Reconciliation Commission (LTRC) was set up in 2006 to promote national peace, security, unity and reconciliation.

It was intended to enable victims and perpetrators of war atrocities to speak out and gain closure on bitter memories, provide a forum to discuss what went wrong, and promote reconciliation within Liberian society as a way of preventing future conflict. More than a decade after the adoption of the LTRC, some of the key recommendations of report, published in 2009, remain unimplemented as administration after administration has lacked the political will to implement key recommendations.

In Sierra Leone, two transitional justice mechanisms were set up to address the issue of gross human rights violation and other atrocities: the Special Court and the Truth and Reconciliation Commission (SLTRC). The Special Court (2002) was a hybrid court that combined both Sierra Leonean and international laws and was mandated to end impunity and prosecute person guilty of serious violations of human rights. The court was the first mixed tribunal of its kind and composed of Sierra Leonean and United Nation judges. The SLTRC was set up to establish an impartial historical record of violations and abuses of human rights and international humanitarian laws related to the armed conflict in Sierra Leone. Just as in Liberia, the processes in Sierra Leone has been stymied by the failure of the final reports recommendations to be implemented.

Côte d’Ivoire implemented the Commission Dialogue, Vérité et Réconciliation (CDVR) in 2012 with the aim of achieving reconciliation and strengthening social cohesion in the country.

One challenge of the CDVR is that the commission’s public hearings were not broadcast by the state TV channel, meaning that many Ivorians had little opportunity to follow the process. Furthermore, the report’s findings were not accessible to everyone. Despite being presented to President Ouattara in 2014, it was only made public in October 2016. Even then the commission did not make sufficient efforts to raise awareness of its findings among Ivorians to the extent that some victims still today do not know the outcome of the CDVR.
In attempts to emerge from a period of mass human rights abuses and confront the legacy of those abuses, The Gambia and Togo have also established truth commissions to investigate atrocities of the past. The Gambia’s Truth, Reconciliation and Reparations Commission (TRRC) established in October 2018 seeks to uncover the truth about human rights abuses that took place during Yahya Jammeh’s 22-year rule.

The Gambian TRRC has so far heard public testimony from over 200 individuals since January 2019. The final report and accompanying recommendations of the commission are expected in the first half of 2021. Togo’s “Commission de Vérité, Justice et Réconciliation” (CVJR) was established in 2009 and mandated to shed light on acts of political violence committed between 1958 and 2005; to identify the people responsible for these acts; propose measures for reparations for the victims; and make recommendations to the Togolese Government on the fate of convicted perpetrators of grave human rights violations, as well as measures to prevent recurrence of such acts.

Other countries in the region including Nigeria, Mali, Guinea and Niger have also implemented sub-national transitional justice processes as a way of dealing with injustices of the past. However, these efforts have been hampered by the continued lack of access to justice, non-implementation of recommendations, abandoned projects and the recurrence of violent conflicts.

Against this backdrop, the Centre for Democracy and Development in collaboration with the ECOWAS Commission and with the support of the Macarthur Foundation organised 3-day consultative meeting in May 2020 which brought together regional experts from Liberia Sierra Leone and Côte D’Ivoire to discuss the experience of transitional justice processes in ECOWAS member states. It aimed to:

**Foster inclusive justice systems** through the implementation of a broad-based, multiple actors and multi-dimensional transitional justice measures in member states.

**Strengthen and integrate indigenous justice systems/instruments in addressing past and present issues of justice in member states.**

**Develop a comprehensive approach to transitional justice**, with the primary objective of achieving sustainable peace in West Africa.

**Promote transitional justice as measures in deepening access to justice, reconciliation, democratic consolidation peacebuilding and development.**

**Evaluate the role of the media in disseminating information about the transitional justice processes.**
The meetings assessed the experience of transitional justice processes and the implementation of indigenous justice mechanisms in West Africa. It explored challenges confronting transitional justice processes such as contestations with indigenous/traditional justice mechanisms, questions around reparations and memorialisation, the need for redistributive or socio-economic justice, and aligning these processes with political and institutional reforms that can support reconciliation and the rebuilding of a degree of social cohesion.

Participants then proffered recommendations to various stakeholders including the ECOWAS commission as to how best it can support the development of a regional policy framework on transitional justice and to strengthen existing transitional justice mechanisms in the region in partnership with civil society.

1.2 Key Findings

Inclusivity of stakeholders in peace processes is key:

The involvement of the community in the design and implementation of transitional justice processes was discussed at length during the consultative meetings. Participants believe that a bottom up approach helps ensure the credibility and legitimacy of transitional justice processes. It is through a participatory process that the specific needs of communities and social segments such as women or persons with disabilities are established, better understood and considered in the formulation of policies.

In Liberia, the lack of proper and community level consultation hindered the outcome of the LTRC. Gender dimensions were not properly embedded in its report as insufficient attention was paid to the issue of sexual and gender-based violence (SGBV). In Sierra Leone, although efforts were made to make the peace process somewhat inclusive, it did not reflect, or have time, to sufficiently accommodate the views of the people.

The peace process was largely between the government, international partners and the warring factions and left out the victims for the most part. In Cote d’Ivoire, the process was done with the participation of some partners including civil society organisations, human rights defenders, traditional leaders and the regional bloc (ECOWAS). However, victims of war were left out of the design process.
The CDVR, which was set up to work in communities and to get the testimonies of the victims did not have the time to listen to all the victims nor did they publish a report reflecting or capturing the testimonies heard during the interviews.

Women were also excluded and left out while conversations and decision about peace processes were being made. Ivorian experts say that not taking gender dimension into account faulted the truth telling process as most victims of SGBV did not trust the facilitators of the interviews nor did they have the confidence to stand before men, who were in the frontlines of commission, to narrate their experiences.

In West Africa, there has generally been a non-implementation of recommendations in peace agreements and truth commissions reports. In Liberia, since the completion of the work of the Truth and Reconciliation Commission in 2009, attempts to implement the LTRC recommendations have stalled.

Over the last 12 years, there has been a lack of political will to make progress on accountability as governments have avoided sensitive issues of accountability because officials of previous and current administrations were indicted for committing crimes. Issues of accountability have been swept under the carpet and efforts have instead focused more on issues of reconciliation and forgiveness.

This remains a problem as perpetrators of war crimes continue to walk free and victims continue to demand justice and accountability. George Weah while campaigning for president in 2017 promised to ensure that the recommendations of the TRC commission were implemented. But since assuming power, his administration has not lived up to its promise. Despite pressure from citizens, women groups and traditional leaders calling for accountability and demanding that a war crime court be instituted.

In Sierra Leone, there remains a huge challenge in the implementation of recommendations when it comes to reparations. The compensation demands of victims of SGBV the war wounded, and amputees have still not been met more than a decade after.

In Cote d’Ivoire, the report of the CDVR was at the beginning not accessible to the everyone. It is now public, but insufficient awareness raising about its findings means that some victims still do not know the report of the CDVR is out and can be accessed. This has significant impacts for ensuring that its recommendations are implemented.
3. There is an important role for traditional/indigenous justice mechanisms:

Traditional justice mechanisms have played important roles in peace processes in the region. They have broadly complemented transitional justice processes, although in Cote d’Ivoire traditional justice was not highlighted, nor explored despite recommendations from traditional leaders who had requested the inclusion of some cultural ceremonies. In Sierra Leone, the idea of “fambul tok” which translates to family talk, was used to bring people together, including ex-combatants, to discuss issues of reintegration and reconciliation.

In the north of the country, there was also the “Tabo-Saneh” (from the indigenous Temne language) which literally translates as hanging head and involves sitting around in group and bending forward to listen, speak and guide each other. It is a setting where people come together to discuss problems or grievances with the aim of finding ways of moving forward. Storytelling and social dramas have also been used to resolve grievances. In Liberia, the “Palava hut” an indigenous mechanism was embedded in the LTRC as a mechanism for reconciliation that would take place at the community level. The Palava hut is a complimentary traditional conflict resolution method wherein respectable members in the community mediate in matters of grave concern. This mechanism seeks to resolve issues between individuals and/or communities at that level.

4. Reparations matter to victims:

Reparation programmes have been very problematic with most abandoned or implemented only partially. In Sierra Leone, reparations were designed to address the needs of the victims, collectively. For instance, the National Commission for Social Action set up projects for amputees and war wounded, which included building homes for these groups.

However, some victims were left out and this failure to include all continues to have long-term impacts. In Cote d’Ivoire, mechanisms for reparations were put in place but a lack of coordination on the part of agencies involved in the reparations process has limited their impact. The Commission Nationale pour la Réconciliation et l’Indemnisation des Victimes (CONARIV) for instance faced challenges transmitting the names of victims to the Ministère de la solidarité, de la cohésion sociale et de l’Indemnisation des Victimes.

The lack of transparency in the choosing of who a victim was, remained another challenge in Cote d’Ivoire as criteria were not made public. It is also instructive to note that these reparation projects did not explore symbolic gestures. The process was largely based on material reparations, forgetting that forgiveness is a very key and important aspect of transitional justice. Justice mean different things to different victims and this also applies to reparations, which do not necessarily have to be financial. Symbolic gestures such as public admission of guilt, public apologies and shows of remorse, memorials for victims of conflict and letters to families can go a long way in helping victims of war begin to forgive and heal.
5. Impunity still reigns:

Peace processes have been fraught with impunity to the extent that people continue to disregard the rule of law. In Liberia, issues around impunity continue to linger and prevail with alleged perpetrators still part of the government. Corruption and a lack of transparency is an interconnected challenge. The lack of transparency in the criteria used to determine who qualifies as a victim has hugely impacted reparation programmes in all three states.

6. Memorialisation matters:

Memorialisation is the process of creating public memorials that provide opportunities for public involvement. Memorials and commemoration, although often neglected, are important aspects of transitional justice processes, and serve as ways of dealing with the past.

In Sierra Leone experts say extensive work was done by the SLTRC. Landmark places were renamed by the commission. However, the memorialisation process was not successful in the country because it became a SLTRC process rather than an inclusive, national process.

The commission carried out “projects”, but community members and citizens were left out of the process. The repercussion is that most communities do not remember or own these so-called “symbolic spaces”. War monuments created by the government are deserted and left in very dilapidated condition. This is also because successive governments are not paying sufficient attention to the importance of memorialisation.

Peace monuments supported by the United Nations are not being maintained or serving their educational purpose. In Côte d’Ivoire, 16 December was set aside to annually commemorate the “journée du pardon et du souvenir” (a day of forgiveness and remembrance in tribute to all the victims of the crises in Côte d’Ivoire). But experts shared concerns about how victims were again left out in the choosing and identifying of the date for the day, reducing citizens interest in marking it.
1.3 Conclusion

Transitional justice mechanisms are established to respond to systemic and widespread human rights violations and the society’s desire to rebuild social trust, repair fractured justice system and heal from past abuses. Reconciliation, reparations, truth and forgiveness are all key and important aspects but remains insufficient. Lessons from Liberia, Cote d’Ivoire and Sierra Leone underpin that justice in transition must address the injustices of the past by ensuring that victims access justice in its broadest forms. Member states must also look beyond the immediate triggers of wars and pay more attention to the region’s structural issues of marginalisation and economic injustices if they are to ensure that sustainable peace is built.

1.4 Recommendations

Transitional justice processes in the region must seek to halt and prevent all forms of human rights abuse and end impunity; seek truth; investigate past crimes and identify those responsible for human rights violations; and provide reparations to victims. The following are some key recommendations to different stakeholders in ensuring the success of ongoing or future transitional justice processes in the region.

ECOWAS COMMISSION

- The ECOWAS commission in the drafting of its policy framework must prioritise the inclusion of gender and other vulnerable groups including persons with disability and young people.

- The ECOWAS policy framework should accommodate traditional mechanisms that originate from local communities.

- Transitional justice processes should have jurisdictional intervention within the ECOWAS community court of justice.

- The commission must ensure that psychosocial support for victims is highlighted in the policy document.

- ECOWAS must broaden the definition of victims and perpetrator in the policy framework. This will ensure that mistakes made in countries like Sierra Leone are not repeated. In Sierra Leone, the criteria for determining an ex-combatant was dependent on if the perpetrator could present weapon. Child soldiers and women were consequently left out in the reintegration programme because they could not present weapons. In Cote d’Ivoire, 5,000 names were removed from the 8,000 names on the victim list collected by the CDVR on the basis that they did not have any means of identification. The ECOWAS policy framework must develop measures, such as testimony from community members, by which victims can be identified with or without IDs that often go missing in times of war.
NATIONAL GOVERNMENTS

A) Governments in the region must build institutions that will bring justice to the past wrongs while also showing commitment to good governance for the future.

B) Social and economic rights are justiciable and not mere policies that are not constitutionally driven. They must also ensure that provisions of the peace agreement are honoured and used to build peace.

C) The use of multisectoral dialogues and continuous engagement with civil society organisations should be encouraged to strengthen the national cohesion process. The need for transitional justice processes to be more inclusive with community consultations made at the inception of the peace agreement was a clear outcome of the discussion with experts from member states.

D) National reconciliation is important, but it should work alongside person to person and community level reconciliation to preserve and enhance sustainable peace.

E) Governments also need to ensure continual support for victims that have been incapacitated and are unable to fend for themselves for the rest of their lives.

F) States across the region must ensure local ownership of the process, whether that be the formal transitional justice process or the indigenous systems as this will ensure sustainability. Member states must also ensure national ownership is the hallmark of memorialisation and commemoration projects so people are aware and properly sensitised of certain places or monuments or events that should remind them to “never again” go back to violence. It is also pertinent to have a mixed/inclusive commission or body set up for the purposes of commemoration, composed of civil society, victims and the government.

G) Reparations and commemoration initiatives must be depoliticised.

H) Training peace ambassadors to drive community-based reconciliation and peace processes can help embed change at the local level.

I) Governments should teach more national history in schools to help youth learn about the civil wars and other conflicts and their impacts. This can contribute to avoiding a repeat of the violence.

J) The media needs to be involved in peace process from the beginning and national governments must ensure they are provided with the right information to avoid speculations and misconceptions around the process as it unfolds. Importantly, local media outlets who have networks at the grassroots must also be involved in the process so that media can play the key role of disseminating information and improving community-level understanding of the process.

K) States can create an independent commission for peace and national cohesion that will continue the work of transitional justice processes when they conclude.
CIVIL SOCIETY ORGANISATIONS (CSOS)

- The need for reflections and workshops involving CSOs to discuss the implementation of the commission’s report in member states is needed to support a push for those recommendations to be enacted. Constant advocacy in this regard is an area where CSOs can contribute to ensuring the work of commissions, and their promises, are not forgotten.

- Provide broader support to state actors including informed policy recommendations to improve access to justice, transparency and accountability in transitional justice processes.

- CSOs must build partnerships with the media to promote the dissemination of information about transitional justice processes and keep citizens abreast and informed. This will go a long way to tackle misinformation and misconceptions about what is happening and what can be expected to happen.

- CSOs in the region need to create a transitional justice working group which will serve as a regional forum for sharing experiences and lesson learned. CSOs in countries like Sierra Leone, Cote d’Ivoire, and Liberia can share best practices with countries like The Gambia who are at the early stage of implementing transitional justice mechanisms.