

**SPECIAL COURT FOR SIERRA LEONE  
OUTREACH AND PUBLIC AFFAIRS OFFICE**



Solomon Moriba makes a presentation to 80 visiting students of the Faculty of Law, University of Groningen, Netherlands at the Special Court in The Hague.

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## Jakarta Globe

Tuesday, 12 April 2011

<http://www.thejakartaglobe.com>

### The Dilemma of Amnesty for Dictators

Robert Karniol - Straits Times, Indonesia



*Should Libyan leader Muammar el-Qaddafi and other despots be granted amnesty for their crimes?*

It seems a fairly straightforward solution to horrific circumstances. To end a conflict, to remove a despot, to establish good governance following an unsettled period - just offer amnesty. But there are those who disagree.

In Libya, this diplomatic tool of amnesty might help dislodge Colonel Muammar el-Qaddafi from power, and in Ivory Coast to nudge Laurent Gbagbo towards renouncing his disruptive claim to the presidency. Earlier there was Charles Taylor in Liberia, the Serbian leader Slobodan Milosevic, Chile's Augusto Pinochet and numerous others.

But a core dilemma remains. Does accelerating an end to conflict or suffering in this way supersede the victim's right to justice?

"This is a difficult, difficult issue. And it defies a formulaic simple answer," said Richard Dicker, director of the international justice program at Human Rights Watch, in a telephone interview from New York.

Philip Grant, who heads the Geneva-based legal advocacy center Trial, agrees. "Under international law, you have certain categories of crime that cannot be amnestied, that should be prosecuted without obstacle," he said of genocide, war crimes and crimes against humanity. "But I am not naive. I know that the legal aspect is just a fraction of what people consider when they act."

Who advocates the use of amnesty to hasten the resolution of conflict, then? "Peace negotiators," Grant said. And, presumably, the governments backing them, together with much of the public they answer to.

But Dicker argues that the tactic is often ineffective. "The conventional wisdom we hear again and again, that justice is either an obstacle to peace or will derail prospects of peace, does not hold up to any careful scrutiny," he said.

The prosecutor at the Special Court for Sierra Leone unsealed an indictment against then Liberian President Taylor on the very day that peace negotiations were launched in Ghana, he pointed out. The then United Nations secretary-general Kofi Anan was among those strongly opposed, saying that the unsealing of an arrest warrant while conflict was under way would torpedo the prospect for peace.

Ultimately, it worked out very differently. Taylor stepped down within months after accepting a Nigerian offer of refuge but this was rescinded three years later and he is currently before the court. Rather than scuttling the peace talks, his indictment at their outset effectively ended any chance of his involvement in

a transitional authority.

"The calculations that go into an individual's decision to step down defy easy explanation," Dicker commented.

"[The Serbian leader] Milosevic left power facing indictment in 2000. He never thought that he'd be arrested and sent for trial at The Hague."

Grant pointed out that there is nevertheless no provision for amnesty under international law. Beyond that, the International Criminal Court (ICC) established in 2002 under the Rome Statute can intercede on its own authority if the state where grave crimes occurred is unwilling or unable to prosecute.

However, if there is no de jure basis for amnesty involving grave crimes there may still be a de facto alternative.

"If a guy is sent into exile and isn't prosecuted, well that's the price you might have to pay to save lives. The international community and the UN could say they haven't granted a formal amnesty but still brokered a deal in which some sort of peace could be restored," Grant said.

But even this informal solution has flaws. "Time plays against these dictators," Grant pointed out. "They might be temporarily shielded in a country giving them de facto amnesty but there can come a change of regime or international pressure. The need to prosecute will continue and such crimes are not subject to a statute of limitations."

Dicker further argues that "the peace that emerges from impunity often proves to be short-lived and quite fragile", though political and practical realities can dictate the need for compromise solutions.

"Does that mean that every single individual implicated in the commission of a war crime will be prosecuted? I think, realistically, it doesn't fall out that way," he said. "That's a reality, but it's not the same as saying there's a basis for amnesty."

Both these experts are agreed that the issues involved are highly complex and the solutions perhaps more so, with exceptions regularly evident. But despite any imperfections that might arise, justice remains vital.

Dicker pointed out that the post-Nuremberg era of justice, and the expectation of justice, really began with the 1993 Yugoslav tribunal and the advent of the ICC a decade later. So these are early days yet.

Then Grant: "We think it shortsighted to say that justice is a luxury and is less important than regaining peace and rebuilding the state. All these come together."

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# Peace and Conflict Monitor

Tuesday, 5 April 2011

## ESSAY

### **Reparation of Victims: Seeking a Bottom-up Approach to Transitional Justice**

Jerry M'bartee Locula

M'bartee Locula examines the role of reparation for victims in post-conflict transitional justice initiatives, highlighting cases in Liberia and Sierra Leone. He emphasizes the need to prioritize further remuneration and justice-seeking for victims over DDR processes, which favor perpetrators, in order to foster reconciliation toward sustainable peace.

When nations crumble and fail, it leaves states and their peoples with nothingness but pain, resentment, poverty and devastation. Usually, prior to and during the potential descent of such a society, it becomes an expectation of the weak and general consciousness that the state may fall on the pillar of the constitution, because the constitution is the supreme law of the nation, the legal foundation upon which the existence of the state is planted.[1]

Notwithstanding, in a situation where there is no array of structure to enhance that constitution as a result of either institutional inexistence, or reason of accommodating other new or unusual players for the sake of "peace," then additional arrangements can be obtained as a means to institute some sense of national belonging in such a state. The Accra Comprehensive Peace Agreement on Liberia is a classical example of such an arrangement outside of the country's normal constitutional framework.[2] On the other hand, let it be cleared that while it is true that the constitution may be available, realistically, in most instances, it does not function in its entirety as it would in a normal political environment. This is where transitional justice comes in as part of such an arrangement in addressing past human rights abuses to enable the state to become functional.

During the transitional justice period in a post-conflict situation, there are a number of interfacing issues that that are needed to be addressed; both legal and non-legal. For reason of choice and restriction, this paper aspires to discuss 'reparation for the victims in general' as the one, but significant transitional justice issue chosen as vital to the research. In the meantime, let's look at what transitional justice is concerned about so as to enable the paper to appropriately address the reparation concern currently under examination.

#### **Transitional Justice:**

There have been many definitions coined in determining what transitional justice is. For the purpose of this paper, we can employ two definitions from two leading institutions as a means of balancing the concept and to see where the work leads:

"Transitional justice is a way to address past human rights violations so that nations and their people can move forward towards sustainable peace and reconciliation. It refers to four specific areas of legal and non-legal activities that are often used when countries moving from autocratic rule to democracy or from armed conflict to peace: truth-seeking, prosecutions, reparations to victims, institutional reform."[3]

The second definition is: "Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades."[4]

In the first definition, it highlights that transitional justice is a way to address past human rights violations, while in the latter, it maintains that transitional justice is a response to systematic or widespread violations of human rights. Interestingly, what is keen to note in the two definitions is that transitional justice seeks to deal with human rights abuses committed during the breakdown of law and order, after a violent conflict or in the aftermath of autocratic rule. This, then, becomes the bottom-line of the concept on transitional justice.

This is where in most cases, especially after civil war or violent conflict, when mass human rights violations are committed, various provisions outside of many normal national legal systems provide for a variety of measures to address ‘systematic or widespread human rights violations of the past’, either at the fall of democracy, which in many scenarios results in violent conflict, and later proceeds for a just and reconciled future for all. This is where transitional justice is interested. It is a period in which a comprehensive peace agreement is implemented with the inclusion of all warring parties to the conflict alongside government, with human rights abuses being addressed. As mentioned earlier, the Accra Comprehensive Peace Agreement of Liberia[5] is an example, whereby various components of that very arrangement were being addressed, including the human rights violations of the past through the establishment of a truth and reconciliation commission by an act[6] provided for in the agreement.

In most cases, for countries emerging out of violent civil war, where hideous human rights violations have been perpetrated against the population, a Truth and Reconciliation Commission (TRC) is instituted. Prosecution and reparation for the victims are major mechanisms in dealing with issues of past human rights violations as part of the transitional justice scheme for the present and the betterment of the future, a measure by which reconciliation is fostered. In Liberia, the TRC was given an enormous task, in which this provision was stipulated: “This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.”[7]

### **What is reparation?**

“Reparation is a principle of law that has existed for centuries. Reparation refers to the obligation of the wrongdoing party to redress the damage caused to the injured party. Under international law, "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”[8]

Based on the definition provided on reparation above, calculating the entire human life span and material value associated with the atrocity, taking into account the many victims, and work with this definition, it would mean so many billion dollars and many endless years to reach the desired end of this reparation scheme. What I think could be much more important is what I refer to as “reasonable compensation” for the victims as a token by the wrongdoer or the system (state). Reasonable is meant in the sense whereby the victims or victims’ families are given some compensation for the ill-repairable loss sustained, other than just telling them the truth and saying forget about what has happened. I believe that after telling the truth, it should be followed by some level of repairing the damage done to the victim, even if not applying the traditional reparation regime. When this happens, reconciliation in transitional justice can be credible. Even though reparation of the victims cannot in anyway reverse what has been lost, it can be a way to create and further navigate a bigger pathway for stronger and credible reconciliation, which is one serious long-term objective of transitional justice.

Reparation of victims is a very crucial element for the advancement of genuine, trustworthy and sustainable peace and reconciliation in any post-war arrangement, and must be institutionalized at all cost for the betterment of that society, rather than letting the victim go without anything as they grieve their pain and loss. Reparation should also be immediate.

One important thing in all of this process is that “reparation impacts both the individual victim and the wider societies and communities affected by refocusing on the restorative in addition to the retributive. In the context of mass atrocities, reparation has a particularly important role to play in rebuilding war-torn societies, by advancing truth and acknowledging the depth of the crimes committed.”[9] There was disillusionment and perhaps misunderstanding in the Liberian community when rebel soldiers were being issued Disarmament, Demobilization, Reintegration and Resettlement (DDRR) packages. Community members were dissatisfied and/or disenchanted on the grounds that they were beaten, their family members killed, women and girls raped, and homes burned by the very rebel soldiers who were in return being paid for the very abuses they committed. And they asked, “why not us who were abused?”

After the TRC hearings in Liberia, reparation was not done to help those victims, even though the report[10] is still deposited with the Parliament in Liberia for action in which reparation is recommended. The emerging concern is, “when will reparation take place when in fact, the legislature has not acted on the TRC reports and recommendations?”

All factors of transitional justice are essential; however in my mind, reparation for the victims surpasses all others because it nurtures the concrete foundation of reconciliation. Therefore, bottom-up approaches are needed to address and normalize post-war nations. Transitional justice is not just about prosecuting individuals with greater responsibilities of war crimes and crimes against humanity; it is also about realistically addressing the physical, psychological, progressive and fundamental needs of those whose human rights have been violated starting with the individual and community. This is the bottom-up approach, which is legitimate, and I think should be pursued.

International legal and political systems have been interested and/or involved with prosecuting individuals who bear larger responsibilities of war crimes and crimes against humanity after violent conflict. At the same time, reconciliation is another goal on the agenda of accomplishment in the post-war era on the community and state levels. Among other things, truth commissions have been set up, advocating for truth-telling and institutional refunds, but leaving reparation of victims unattended or doing very little to repair the victims. If it happens, it takes years to leave the station, when by that time most of the victims have died of their isolation, worry, pain and grief.

Absolutely, there is no productive transitional justice that seeks to lay down the foundation for post-war development if the issue of reparation for the victims is not adequately addressed.

“Justice is generally understood to mean what is right, fair, appropriate, deserved. Justice is achieved when an unjust act is redressed and the victim feels whole again. Justice also means the offender is held accountable for his/her behavior.”[11] Critically considering this, one can interpret that justice in this context means different things and/or requires different measures to different people. For certain people, justice could mean confession or shaming; while for others, it could be prosecution or even the very reparation we are discussing. If this is the case in post-war situations, where the international community and state collaborate to carry out these programs, and if perpetrators are encouraged to tell the truth, which also opens the wounds of the victims or their families, in order for reconciliation to take place, let there be reparation measures for the victims so that such reconciliation will be genuine. Reparation can serve as a measure of justice and would cultivate reconciliation since it would soften the heart and bring about acceptance.

Alhaji Jusu Jaka, Chairman of the Amputee War affected Association of Sierra Leone and an amputee himself, said: “Reparation thus is like a bandage, or, a medicine to lessen the pain and help heal the pain of the victim. But it is not only the victim who is healed; the entire society would be healed by reparations.”[12]

Disillusionments have also been expressed in some transitional justice quarters about the way perpetrators of human rights violations are well-treated, leaving out the victims themselves. As noted earlier, in Liberia, community residents conveyed disappointment during the DDRR period when cash and packages were being awarded to ex-combatants. During this time, I was working in the DDRR Camp in Buchanan when the citizens complained that the people who raped and killed them were now being given pay for the bad things they did. The same sentiment is told of Sierra Leone. Jusu Jaka notes, “In the DDR programme, millions of dollars have been spent in rehabilitating and resettling some of the perpetrators of the war – nothing close has been spent on the victims of the war.”[13]

In my mind and as discussed, reparation for the victims is not necessarily an equal determination for the imbalance created between the perpetrators and the victims. I am referring to grave human rights violations; but the fact that states and institutions employ the necessary mechanisms through concrete appraisal of victims after truth-accountability, proves that this is an effort that can lead to lasting peace and pave the way for sustainable prosperity, which is an achievement for the transitional justice framework.

During the transitional justice period, all attention, effort and emphasis should not be placed only on truth-telling about the violence perpetrators inflicted against victims; but rather effort should be made to create a sense of remittance through the joint acknowledgement of reparation by the state and its international partners. This reparation, in which some level of remittance is made, is not in my mind serving as full payment of the person’s total loss, but as an indication whereby the victim or victims’ families are brought to the realization that the community or state stands by them, thus amending and fostering the process of reconciliation.

Reparation is a key element for the promotion of transitional justice and thus serves as a milestone for sustainable peace and reconciliation. Reparation is the driving force behind sustainable reconciliation. When reparation for the victim is demonstrated, the victim sees hope as alive through the tune of compassion and makes way for

reconciliation, since reconciliation itself is a painful process. Reparation is an individual need, but compulsory for a community, and must be seen as a national responsibility as well as an international project for the common good of that country; an objective of the transitional justice program.

Reparation is the only redress in the form of justice that victims can obtain in order to earn a sense of accountability, to once more feel a part of society, and thus, begin to cope with that society despite their loss. Usually, the grave trauma that victims sustain from their perpetrators can only be an added coping mechanism if reparation can occur after actors say what they have done to them. "Trauma is injury/shock that leaves lasting memories in an individual." [14] And the reparation is therefore a coping element for the victims.

As Amnesty International puts it, "Victims have often been silent partners in the legal process, with little role other than as witnesses, and at the mercy of the courts. In the past, victims were practically shut out of the very process that was supposed to address the wrongs they had suffered, and few steps were taken to reduce their alienation from the process, or to ensure that the experience did not contribute to further trauma or to a risk of reprisals." [15] Here, I am with the strong conviction that during the transitional justice period, states and their international counterparts involved in the programs need to ensure that efficient reparations for the victims are part of the entire process; not only to bring superior war criminals and sponsors to justice, but to guarantee accountability to those victimized through reparation.

Effective reparation for the victims is the foundation for genuine post-war reconstruction, social cohesiveness and development.

### **Conclusion:**

Reparation for the victims must be taken as a major component in transitional justice projects. Without suitable and relevant reparation for the victims, all other activities in the project are not authentic, even though it may seem that progress has been made at some front. Let not transitional justice only focus on prosecuting "big fish" or those bearing greater responsibilities of war crimes and crimes against humanity, which end up spending all financial resources on such prosecutions. Reparation for the victims must be a serious venture - a community owned project; a bottom-up approach. When transitional justice takes this form, the process can be legitimate and successful; thus, achieving the fundamental objectives of transitional justice projects.

Reparation for the victims is a major form of justice that victims themselves see, allowing them to feel that some sort of justice has taken place and that society stands by them after the affliction and abuses incurred, rather than spending lump-sums in millions of dollars on prosecuting a few individuals while hundreds of victims languish in destitution and hopelessness.

## Hirondelle News Agency

Monday, 11 April 2011

### **Nzabonimana defence pushes for investigations over inapt use of funds**

Defence lawyers for former Youth Minister Callixte Nzabonimana have requested the United Nations to set up an independent body to investigate on alleged disbursement of funds to the Rwandan authorities for "treatment" of prosecution witnesses in their client's case.

"Investigation by a different United Nations branch, independent from the Tribunal, is necessary. It is now necessary to get a full picture of the unfortunate accounting practices that took place in the course of Nzabonimana investigation in 1998," Counsels Vincent Courcelle-Labrousse and Philippe Larochelle said.

In their detailed report to the Office of Internal Oversight Services (OIOS) Headquarters in New York, USA and Investigations Division Regional Offices in Nairobi, the two lawyers have attached documents showing payments of 245, 000 Rwandan Francs to Adamou Allagouma, a prosecutor investigator at the International Criminal Tribunal for Rwanda (ICTR), for "treatment" of witnesses who testified in the defendant's trial.

Referring to a report of the Food and Agricultural Organization (FAO) report of February 1998, the lawyers said the average salary of a Rwandan in 1998 was 336 Rwandan Francs per day. Therefore, they said, the 245,000 Rwandan Francs were equivalent of the monthly salary of 23 persons.

It is alleged that witnesses were indemnified during investigations of Nzabonimana's case in Gitarama prefecture (Central Rwanda), where the defendant is accused of having played an important role in the massacres of Tutsis in 1994 Rwandan genocide.

One of the witnesses who allegedly received the payment is Jean-Marie Vianney Mporanzi, a former Mayor of Rutobwe Commune in Gitarama prefecture. After being dropped by prosecution he testified as defence witness in May 2010 that he received 2,000 Rwandan Francs from sub-prefect of Gitarama after being interrogated by ICTR investigators.

The lawyer stated in the report that Nzabonimana was accused following such investigations and the documents in question reveal not only a blatant disregard for the usual procedure to be followed in indemnifying witnesses, but also a worrying proximity with the Rwandan authorities instead of the independent which should have characterized the prosecution of the defendant.

"Nzabonimana is entitled to obtain a detailed ventilation of the use of those 245,000 Rwandan Francs. It must also be determined what directives the investigators had received that led them to have recourse to such irregular methods of investigation and where these directives emanated from," they charged.

While the defence for Nzabonimana is seeking for such investigation, the Tribunal has denied the motion by the lawyers to have Allagouma and his co-investigator Almahamoud Sidibe and Sub-prefect of Gitarama, Immaculée Mukamasabo summoned to testify on the documents.

The documents, according to the defence, suggest that the prosecution had colluded with the Rwandan authorities to lure witnesses to testify against Nzabonimana. The Tribunal ruled, among others, that "the defence has not established a prima-facie case supporting its contention that the prosecution bribed its witnesses ..."

Nzabonimana is charged with genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, extermination and murder. On April 7, 2011, the Tribunal declared that his defence case was officially closed, at the exception of the hearing of two French witnesses whose identity was not disclosed.

The trial resumes on May 3, when the prosecution is expected to call its witness to rebut the defence of alibi of Nzabonimana that he was at the French Embassy in Kigali between April 7 and 11, 1994.

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