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**Liberia**  
**Truth, Justice and Reparation**  
**Memorandum on the Truth and**  
**Reconciliation Commission Act**



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# Liberia

## Truth, Justice and Reparation - Memorandum on the Truth and Reconciliation Commission Act

“The inauguration of the Truth and Reconciliation Commission is an unprecedented testament to the courage we have summoned as a nation and people to reckon with our shameful and despicable past – and to establish a consensus on national truth”.  
President Ellen Johnson Sirleaf, Speech for the inauguration of the Truth and Reconciliation Commission, 20 February 2006<sup>1</sup>

### Introduction

The Truth and Reconciliation Commission of Liberia (TRC or the Commission) was inaugurated by President Ellen Johnson-Sirleaf on 20 February 2006. At the time of writing, the Commission has entered into a three-month preparatory stage, which will finish at the end of June 2006. Its operational work is due to commence on 22 June 2006, when it will be officially launched.

The establishment of the Commission was agreed as part of the Comprehensive Peace Agreement (CPA) in August 2003. Article XIII of the CPA states:

1. A Truth and Reconciliation Commission shall be established to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation.
2. In the spirit of national reconciliation, the Commission shall deal with the root causes of the crises in Liberia, including human rights violations.
3. This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.
4. Membership of the Commission shall be drawn from a cross-section of Liberian society. The Parties request that the International Community

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<sup>1</sup> Quoted in “Liberia’s Truth and Reconciliation Commission inaugurated; SRSG Doss announces \$500,000 donation from UNDP”, UNMIL Press release, UN Doc. UNMIL/PIO/PR/25, 21 February 2006.

provide the necessary financial and technical support for the operations of the Commission.”<sup>2</sup>

The Act to Establish the Truth and Reconciliation Commission of Liberia (TRC Act or the Act) was approved by the National Transitional Legislative Assembly of Liberia on 10 June 2005.<sup>3</sup> Its text is the result of a long process of consultation between the government and civil society, organised by the Human Rights and Protection Section of the United Nations Mission in Liberia (UNMIL), the Transitional Justice Working Group (a coalition of non-governmental organizations)<sup>4</sup> and the United Nations Development Program (UNDP).<sup>5</sup> This consultation process was generally considered to be a genuine effort to ensure the participation and involvement of civil society organizations in the development of the legislation establishing a truth commission and could be taken as a model by other countries.

Amnesty International welcomes the establishment of the Truth and Reconciliation Commission. To overcome its painful and violent recent history, Liberian society must critically face the reality of past violence and violations of human rights. Transition to lasting peace and the rule of law must be based on truth, justice and reparation. The organization hopes that the Commission will be one of the key building blocks in this process of transition,

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<sup>2</sup> Comprehensive Peace Agreement Between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and Political Parties, signed at Accra (Ghana) on 18 August 2003. The text of the CPA is available at <[http://www.usip.org/library/pa/liberia/liberia\\_08182003\\_cpa.html](http://www.usip.org/library/pa/liberia/liberia_08182003_cpa.html)> [website of the United States Institute of Peace, last visited June 2006].

<sup>3</sup> An Act to Establish the Truth and Reconciliation Commission of Liberia, approved 10 June 2005, available at <<http://www.unmil.org/documents/hr/liberiactract.pdf>> [UNMIL website, last visited June 2006]. The TRC Act is reproduced in Annex B. In this memorandum, articles and sections without further references refer to articles and sections of the TRC Act.

<sup>4</sup> The Transitional Justice Working Group is a coalition of human rights, pro-democracy and peace-building organizations created in November 2003, which comprises a number of non-governmental organizations including both international and national organizations: The Association of Female Lawyers in Liberia, Catholic Justice and Peace Commission, Center for Democratic Empowerment, Flomo Theater, Fore-Runners of Children Universal Rights for Survival Growth and Development, Forum for African Women Educationalists, Foundation for Human Rights and Democracy, Foundation for International Dignity, Humanist Watch Liberia, Liberia Democracy Institute, Liberia Girls Guide Association, Movement for Democracy and Human Rights, National Human Rights Center of Liberia, Oxfam GB, Pentecostal Church of God Action for Development and Peace, True Witness, West African Peace-building Network, Search for Common Ground.

<sup>5</sup> After a national consultation in five counties to assess Liberians’ views and expectations of a truth commission, in July 2004 the Human Rights and Protection Section of UNMIL, UNDP and the Transitional Justice Working Group organised a consultative TRC Draft Act Workshop, gathering more than 70 civil society organisations and individuals. The following month a technical drafting group made up of civil society members, international experts, lawyers and representatives of the Ministry of Justice conducted a two-weeks long drafting session. The draft elaborated at this session was formally presented to the National Transitional Government of Liberia for review on 22 September 2004.

playing an important role in providing a full account of the human rights violations committed during the conflict, contributing to their investigation and eventual prosecution, preventing their repetition, and ensuring that victims and their relatives are granted full reparation. One activist described the TRC as the “crawling phase” in Liberia’s attempt to address impunity: “We first need to crawl before we can walk. The TRC is the first step that will help us build the foundation to address the cycle of impunity”.<sup>6</sup>

Amnesty International visited Liberia in May 2005 and again in May 2006 and held discussions with key actors, including members of the Commission, representatives of the Human Rights and Protection Section of UNMIL and the Transitional Justice Working Group. The organization appreciated these opportunities to seek clarification with regard to, *inter alia*, the mandate, setting up and intended working methods of the Commission.

Amnesty International is offering a series of observations and recommendations to the Liberian government, to the members of the Commission, to donors and to international organizations, based on its work in researching and reporting on human rights violations in Liberia since 1978, as well as its assessment of the work of truth commissions in many countries worldwide. This memorandum examines the TRC Act in the light of international human rights law and standards (see Annex A: International Standards and Reference Documents). It also makes recommendations as to the requirements that Amnesty International believes are essential to the work of any investigative body entrusted with the task of clarifying past human rights violations and abuses.

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<sup>6</sup> Ezekial Pajibo, Director of the Center for Empowerment and Democracy, interview with Amnesty International, 27 May 2006.

## **I. The role of truth commissions in the respect, protection and promotion of human rights**

Truth commissions have been defined as “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years”.<sup>7</sup> The object of their inquiry (a pattern of human rights violations, rather than a specific event) distinguishes truth commissions from other commissions of inquiry. Their temporary character distinguishes truth commissions from many national human rights commissions and other national institutions for the promotion and protection of human rights, which are permanent monitoring and enforcement bodies. Truth commissions are established by national authorities, generally during a political transition. They take a victim-centred approach and conclude their work with a final report containing findings of fact and recommendations.<sup>8</sup>

In post-conflict contexts, truth commissions can have a broad range of functions. They “have the potential to be of great benefit in helping post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparations and institutional reforms. They can also provide a public platform for victims to address the nation directly with their personal stories and can facilitate public debate about how to come to terms with the past.”<sup>9</sup>

In general references, Amnesty International uses the term “truth commission” in preference to “truth and reconciliation commission”. This is because, while some form of reconciliation may be the desired outcome of a truth-telling process over the medium or longer term, that cannot be imposed by either a truth commission or any other body or procedure (see: *Promoting community and national reconciliation?*, p. 22). In using the term “truth commission”, however, Amnesty International notes that, as commissions of inquiry, truth commissions have the task of investigating and publicizing facts, particularly facts which have hitherto been hidden or misrepresented, rather than uncovering the ‘truth’ in an historical or philosophical sense.<sup>10</sup>

From 1974 to 2006, at least 34 truth commissions were established in 28 countries, including 11 commissions in 8 African countries (see box: Truth commissions: a worldwide

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<sup>7</sup> Updated Set of principles for the protection and promotion of human rights through action to combat impunity (updated Set of principles to combat impunity), Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, Definitions, page 6.

<sup>8</sup> The rule of law and transitional justice in conflict and post-conflict societies, report of the UN Secretary-General, UN Doc. S/2004/616, 23 August 2004, par. 50.

<sup>9</sup> *Ibid.*

<sup>10</sup> See also: Article 19, “*Who wants to forget?*”: *Truth and access to information about past human rights violations* (London, December 2000), p. 41-44.



phenomenon, p. 6). More than half of these commissions have been established in the past ten years.

Amnesty International has particularly followed the work of the truth commissions in Chile, Timor-Leste, Ecuador, El Salvador, Guatemala, Haiti, Morocco, Nepal, Nigeria, Peru, Sierra Leone, South Africa, Sri Lanka and Uruguay. On the basis of this experience, the organization considers that truth commissions can help to ensure a state's compliance with its obligation to respect, protect and fulfil the right of victims of human rights violations to an effective remedy.<sup>11</sup> This obligation includes three elements:

- **Truth:** establish the facts about violations of human rights that occurred in the past;
- **Justice:** investigate past violations and prosecute the suspected perpetrators;
- **Reparation:** provide full reparation to the victims and their families, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>12</sup>

With respect to past human rights violations, states must ensure that the truth is told, that justice is done and that reparation is provided to all the victims. In this sense, truth, justice and reparation are three aspects of the struggle against impunity. However, as an element of the rule of law, the principle of non-impunity has a wider application: states must also prevent further human rights violations from happening in the future.

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<sup>11</sup> The right to an effective remedy for victims of human rights violations is enshrined in article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Liberia on 22 September 2004. It is also recognized in article 7 of the African Charter on Human and Peoples' Rights, article 8 of the Universal Declaration of Human Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 39 of the Convention on the Rights of the Child, article 3 of the 1907 Hague Convention concerning the Laws and Customs of War on Land, article 91 of the Protocol I Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) and article 75 of the Rome Statute of the International Criminal Court.

<sup>12</sup> Principle VII of the 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 (Basic principles on the right to a remedy and reparation, adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147) explains:

“Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms.”

**Truth commissions: a worldwide phenomenon**

From 1974 to 2006, at least 34 truth commissions were established in 28 countries: Argentina (National Commission on the Disappearance of Persons, 1983), Bolivia (National Commission of Inquiry into Disappearances, 1982), Chad (Commission of Inquiry on the Crimes and Misappropriations Committed by the ex-President Habré, his Accomplices and/or Accessories, 1991), Chile (National Commission for Truth and Reconciliation, 1990; National Commission on Political Imprisonment and Torture, 2003), Democratic Republic of Congo (Truth and Reconciliation Commission, 2003), Ecuador (Truth and Justice Commission, 1996), El Salvador (Commission of Truth, 1992), Germany (Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany, 1992), Ghana (National Reconciliation Commission, 2002), Guatemala (Commission for the Historical Clarification of Human Rights Violations and Acts of Violence which Caused Suffering to the Guatemalan People, 1997), Haiti (National Commission for Truth and Justice, 1995), Indonesia (Truth and Reconciliation Commission, 2004), Liberia (Truth and Reconciliation Commission, 2005), Morocco (Equity and Reconciliation Commission, 2004), Nepal (Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period, 1990), Nigeria (Human Rights Violations Investigation Commission, 1999), Panama (Truth Commission, 2001), Paraguay (Truth and Justice Commission, 2003), Peru (Truth and Reconciliation Commission, 2000), Philippines (Presidential Committee on Human Rights, 1986), Serbia and Montenegro (Truth and Reconciliation Commission, 2002), Sierra Leone (Truth and Reconciliation Commission, 2002), South Africa (Commission of Enquiry into Complaints by Former African National Congress Prisoners and Detainees, 1992; Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuse against ANC Prisoners and Detainees by ANC Members, 1993; Truth and Reconciliation Commission, 1995), South Korea (Presidential Truth Commission on Suspicious Deaths, 2000), Sri Lanka (Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in Western, Southern and Sabaragamuwa Provinces, Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in the Central, North Western, North Central and Uva Provinces and Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in the Northern & Eastern Provinces, 1994; Commission Of Inquiry into Involuntary Removal and Disappearance of Certain Persons - All Island, 1998), Timor-Leste (Commission for Reception, Truth and Reconciliation, 2002), Uganda (Commission of Inquiry into the Disappearance of people in Uganda, 1974 and Commission of inquiry into Violations of Human Rights, 1986), Uruguay (Investigative Commission on the Situation of Disappeared People and its Causes, 1985 and Peace Commission, 2000).

In addition to the 34 truth commissions listed above, there are at the time of writing debates going on about establishing truth commissions in Burundi and Bosnia and Herzegovina, and for a bi-national truth and friendship commission by Indonesia and Timor-Leste.

## **A. The need for a comprehensive action plan for truth, justice and reparation**

“There are times when we are told that justice must be set aside in the interests of peace. It is true that justice can only be dispensed when the peaceful order of society is secure. But we have come to understand that the reverse is also true: without justice, there can be no lasting peace”.

Kofi Annan, UN Secretary-General<sup>13</sup>

Amnesty International believes that societies emerging from a history of crimes under international law and other serious human rights violations should create a long-term strategic action plan, developed and led at the national level, to ensure that the truth is told, that justice is done and that reparation is provided to all the victims.

Thorough investigations into allegations of human rights violations must be undertaken by independent and impartial institutions, which must be granted the necessary authority and resources for their task. The results of such investigations should be made public to provide a full account of the facts to the victims, their relatives and society as a whole.

If sufficient admissible evidence is gathered, those alleged to be responsible for crimes under international law must be prosecuted (regardless of whether they are officials of a past or current government, or, indeed, members of the opposition or armed groups) in trials that fully respect international standards of fairness and without recourse to the death penalty or other cruel, inhuman or degrading punishment.

Victims of gross violations of international human rights law and serious violations of international humanitarian law have the right to be provided with full and effective reparation in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (see: *Providing full reparation to the victims and their families*, p. 50).

When new security or armed forces are established and recruited, perpetrators should not be placed in command positions or lower-level positions where they could repeat their crimes. An impartial mechanism should be established to ensure that those reasonably suspected of crimes under international law or other human rights violations are not recruited into the new security or armed forces, pending independent and impartial investigations. Such a screening mechanism should work alongside independent and impartial investigations to identify suspected perpetrators and judicial proceedings to bring them to justice. It should comply with international law, in particular standards of fairness.

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<sup>13</sup> “International Criminal Court Judges embody ‘our collective conscience’ says Secretary-General to inaugural meeting in the Hague”, Press release, UN Doc. SG/SM/8628, L/3027, 11 March 2003.

Legislative, institutional and other reforms must be passed to address the causes of the human rights violations of the past. This should include reforming the national criminal legislation to ensure that it fully complies with international law.

Judicial measures may be combined with non-judicial measures (including truth commissions, effective procedures for granting reparation and mechanisms for vetting armed and security forces), with the aim of designing a comprehensive transitional justice strategy tailored to the particular country situation.<sup>14</sup> This should be done in a coordinated process of national consultation. “Where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissal, or an appropriately conceived combination thereof.”<sup>15</sup>

## **B. The role of truth commissions in a comprehensive action plan for truth, justice and reparation**

Truth commissions generally focus on drawing the historical picture of the factors allowing human rights violations to occur, such as the broad *modus operandi* of the armed and security forces, the possible links of armed groups with foreign countries, etc. Their task is different in nature from the task of criminal proceedings designed to establish individual criminal responsibility and should not be confused with it. Truth commissions are not intended to act as substitutes for the civil, administrative or criminal courts.<sup>16</sup>

The role of truth commissions is naturally complementary to the role of national (and international) courts.<sup>17</sup> The UN Commission on Human Rights encouraged states “to consider establishing specific judicial mechanisms as well as, where appropriate, truth and reconciliation commissions to complement the justice system, to investigate and address gross violations of human rights and serious violations of international humanitarian law”.<sup>18</sup> While recommending that the Security Council refer the situation in Darfur to the Prosecutor of the

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<sup>14</sup> “The notion of ‘transitional justice’ ... comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof”. The rule of law and transitional justice in conflict and post-conflict societies, report of the UN Secretary-General, UN Doc. S/2004/616, 23 August 2004, para. 8.

<sup>15</sup> *Ibid.*, para. 26.

<sup>16</sup> Updated Set of principles to combat impunity, *supra*, Principle 8.

<sup>17</sup> The UN Commission on Human Rights noted that “the work of truth and reconciliation commissions and other commissions of inquiry can be complementary to the essential role of judicial mechanisms in protecting human rights and combating impunity”. Commission on Human Rights, Resolution 2005/81, Impunity, 21 April 2005, para. 14.

<sup>18</sup> Commission on Human Rights, Resolution 2005/66, Right to the truth, 20 April 2005, para. 4.

International Criminal Court for investigation, the International Commission of Inquiry on Darfur adopted the approach suggested by the UN Commission on Human Rights and discussed other complementary mechanisms to ensure accountability for the crimes committed in the region:

“[A] Truth and Reconciliation Commission could play an important role in ensuring justice and accountability. Criminal courts, by themselves, may not be suited to reveal the broadest spectrum of crimes that took place during a period of repression, in part because they may convict only on proof beyond a reasonable doubt. In situations of mass crime, such as have taken place in Darfur, a relatively limited number of prosecutions, no matter how successful, may not completely satisfy victims’ expectations of acknowledgement of their suffering. What is important, in Sudan, is a full disclosure of the whole range of criminality.”<sup>19</sup>

However, due to the fact that they are usually established during a period of transition, truth commissions rarely coexist with a fully functioning national justice system. The national justice system may have been seriously deprived of human and material resources during an armed conflict, to the point that it is effectively unable to function. Alternatively, it may have a record of collusion with those in power who were responsible for committing human rights violations in the past. In many cases, truth commissions are called to cover, at least in part, the vacuum left by an ineffective national justice system and have broad powers with respect to the investigation of human rights violations and the preservation of evidence.

Although it may be part of a truth commission’s mandate to inquire into and report on credible evidence establishing individual criminal responsibility, the responsibility for initiating prosecutions in cases where there is sufficient admissible evidence rests with the relevant state authorities, rather than with the truth commission itself. Truth commissions cannot be a substitute for a court of law to try alleged perpetrators. They should complement judicial processes, rather than being used as an alternative to formal criminal justice.

Decisions made solely by political organs or subordinate administrative organs (including a truth commission established by the government) do not by themselves constitute an effective remedy for victims of human rights violations.<sup>20</sup> Article 2 (3) (b) of the International Covenant on Civil and Political Rights (ICCPR) obliges states parties to give priority to judicial remedies over other types of remedies. The Inter-American Commission on Human Rights has held that the establishment of truth commissions, as well as measures to compensate victims and their families, do not in any way exonerate the state from its obligation to guarantee the victims’ right to obtain “a judicial investigation in a court of

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<sup>19</sup> Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, pursuant to Security Council Resolution 1564 of 18 September 2004, 25 January 2005, par. 617; available at <[http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)> [last visited June 2006].

<sup>20</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl – Strasbourg – Arlington: N.P. Engel Publisher, 2<sup>nd</sup> revised edition 2005), 64.

criminal law to determine those responsible for the crimes committed”.<sup>21</sup> In the case of Chile, the Inter-American Commission on Human Rights noted:

“[The National Commission for Truth and Reconciliation] was not a judicial body and its work was limited to establishing the identity of the victims whose right to life had been violated. Under the terms of its mandate, the Commission was not empowered to publish the names of those who had committed the crimes, nor to impose any type of sanction on them. For this reason, despite its important role in establishing the facts and granting compensation, the Truth Commission cannot be regarded as an adequate substitute for the judicial process”.<sup>22</sup>

Similarly, in the case of El Salvador, the Inter-American Commission considered that:

“[D]espite the important contribution that the Truth Commission made in establishing the facts surrounding the most serious violations, and in promoting national reconciliation, the role that it played, although highly relevant, cannot be considered as a suitable substitute for proper judicial procedures as a method for arriving at the truth. The value of truth commissions is that they are created, not with the presumption that there will be no trials, but to constitute a step towards knowing the truth and, ultimately, making justice prevail. Nor can the institution of a Truth Commission be accepted as a substitute for the State’s obligation, which cannot be delegated, to investigate violations committed within its jurisdiction, and to identify those responsible, punish them, and ensure adequate compensation for the victim..., all within the overriding need to combat impunity”.<sup>23</sup>

Truth commissions should uphold the right of victims of past human rights violations to obtain truth, justice and reparation in compliance with international law. To this end, truth commissions should: clarify as far as possible the facts about past human rights violations; feed the evidence they gather into ongoing and new investigations and criminal judicial proceedings; formulate effective recommendations for providing full reparation to all the

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<sup>21</sup> Inter-American Commission on Human Rights, Report No. 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 (Argentina), 2 October 1992, para. 42-52, at para. 50.

<sup>22</sup> Inter-American Commission on Human Rights, Report No. 36/96, case 10.843 (Chile), 15 October 1996, para. 75. The Inter-American Commission then expressly stated (*ibid.*, para. 77):

“The Government’s recognition of responsibility, its partial investigation of the facts and its subsequent payment of compensation are not enough, in themselves, to fulfil its obligations under the Convention. According to the provisions of Article 1.1, the State has the obligation to investigate all violations that have been committed within its jurisdiction, for the purpose of identifying the persons responsible, imposing appropriate punishment on them, and ensuring adequate reparations for the victims”.

<sup>23</sup> Inter-American Commission on Human Rights, Report No. 136/99, case 10.488, Ignacio Ellacuría *et al.* (El Salvador), 22 December 1999, para. 229-230.

victims and their relatives; and ensure that the national authorities act upon their findings and recommendations.

### **C. Truth commissions and the right to truth**

The right to truth has both an individual and a collective dimension. Victims of gross human rights violations and their families, as well as other members of society, have the right to know the whole truth about past human rights violations. The Inter-American Commission on Human Rights found:

“The right to know the truth is a collective right that ensures society access to information that is essential for the workings of democratic systems, and it is also a private right for relatives of the victims, which affords a form of compensation...”<sup>24</sup>

The right to truth requires states to provide information on: the causes of the events that have led to a person having become a victim; the reasons, circumstances and conditions of the human rights violations; the progress and results of the investigation; the identity of perpetrators (both subordinates and their superiors); and, in the event of death or enforced disappearance, the fate and whereabouts of the victims. Both in its individual and collective dimensions, the right to truth is an inalienable right, which stands alone. It should be considered as a non-derogable right and should not be subject to limitations.<sup>25</sup>

With respect to the individual dimension of the right to truth, international humanitarian law expressly guarantees the right of family members to know the fate of their missing relatives.<sup>26</sup> The right to know the fate and whereabouts of “disappeared” relatives, both in times of peace and in times of armed conflict, has been confirmed in the jurisprudence of international and regional human rights bodies,<sup>27</sup> as well as of national courts.<sup>28</sup> The UN

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<sup>24</sup> Inter-American Commission on Human Rights, Report no. 136/99, Case 10.488 (El Salvador), 22 December 1999, para. 224.

<sup>25</sup> Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2006/91, 8 February 2006, para. 38 and Conclusions.

<sup>26</sup> Article 32, Additional Protocol I to the 1949 Geneva Conventions.

<sup>27</sup> Human Rights Committee, *Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros v. Uruguay*, (Communication No. 107/1981), Un Doc. CCPR/C/19/D/107/1981, 21 July 1983, para. 14; European Court of Human Rights, *Cyprus v. Turkey* (application no. 25781/94), Judgment of 10 May 2001, *Reports of Judgments and Decisions*, 2001-IV, para. 157; Inter-American Court of Human Rights, *Ernest Rafael Castillo Páez v. Peru* (petition no. 10.733), Judgment, 3 November 1997, para. 90; Inter-American Court of Human Rights, *Efraín Bámaca Velásquez v. Guatemala* (petition no. 11.129), Judgment, 25 November 2000, para. 200-201.

<sup>28</sup> Human Rights Chamber for Bosnia and Herzegovina, *The ‘Srebrenica Cases’ (49 applications) v. The Republika Srpska* (case no. CH/01/8365 et al.), Decision on admissibility and merits, 7 March 2003, para. 174-178, <<http://www.hrc.ba/database>> [Database of the Human Rights Chamber’s Decisions] accessed 6 December 2004.

Commission on Human Rights recently stressed the need to recognize “the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families, within the framework of each State’s domestic legal system, to know the truth regarding such violations, including the identity of the perpetrators and the causes, facts and circumstances in which such violations took place”.<sup>29</sup> Principle 4 of the updated Set of principles to combat impunity states:

“Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victim’s fate”.

According to principle 24 of the Basic principles on the right to a remedy and reparation:

“Victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations”.

In addition to this individual dimension, the right to truth has a collective dimension. Principle 2 of the updated Set of principles to combat impunity states:

“Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations”.

By providing a full account of past violations and abuses and identifying their reasons, truth commissions are one of the main tools for the state to ensure the right to truth. Principle 5 of the updated Set of principles to combat impunity recommends:

“States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law”.

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<sup>29</sup> Commission on Human Rights, Resolution 2005/66, Right to the truth, 20 April 2005.



Of all the three aspects of the struggle against impunity (truth, justice and reparation), truth commissions seem particularly effective at fulfilling the right to truth. On this point, the Sierra Leone Truth and Reconciliation Commission maintained: “It is with [the right to truth] that truth and reconciliation commissions excel. Indeed, they can generally respond to the needs of truth-seeking better than the alternatives, such as criminal prosecutions”. The Sierra Leonean Commission considered it had much to contribute also in the area of the right to reparation, as many of its recommendations “are intended to give effect to the ‘right to reparation’.” However, it recognised that the third element of the struggle against impunity, the right to justice, might be more effectively addressed by other institutions. It stated: “Just as the Commission may address the ‘right to truth’ component of the struggle against impunity better than the Special Court for Sierra Leone, the contrary may be the case with respect to the ‘right to justice’ component”.<sup>30</sup>

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<sup>30</sup> Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, 2004, Vol. 1, p. 44-45, para. 77, 80 and 81.

## II. Mandate of the Commission

The objective of the Liberia Truth and Reconciliation Commission is to “promote national peace, security, unity and reconciliation”. To this purpose, the Commission is mandated to investigate gross human rights violations and violations of international humanitarian law as well as abuses that occurred during the period from January 1979 (considered to mark the beginning of a period of political instability and armed conflict) to 14 October 2003 (day of the inauguration of the National Transitional Government). As a “forum that will address issues of impunity”, the Commission will have to determine “those responsible for the commission of the violations and abuses and their motives as well as their impact on victims”. The Commission will also have to determine whether the abuses committed were isolated incidents or part of a systematic pattern and establish their “antecedents, circumstances, factors and context”. At the end of its work, the Commission will have to compile a report that “includes a comprehensive account of the activities of the Commission, and its findings” (article IV, section 4, (a), (b) and (f)).

### A. Subject-matter mandate: types of violations to be investigated

The Liberia TRC is mandated to investigate “gross human rights violations and violations of international humanitarian law as well as abuses”. These violations include, but are not limited to, massacres, rape, murder, extra-judicial killings and “economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflict” (article IV, section 4(a)).<sup>31</sup>

A truth commission’s mandate should be generic enough to enable it to identify the most effective specific focus for its work as its investigations progress.<sup>32</sup> Amnesty International encourages the TRC to adopt a broad approach to the types of violations to be investigated, beyond human rights violations that might constitute crimes under either national or international law. **The Commission should investigate all cases of past human rights violations and abuses, whether committed by government forces or by armed groups. The investigations should concern violations of both civil and political and economic, social and cultural rights.**

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<sup>31</sup> Article II defines human rights violations as “(1) violations of international human rights standards, including, but not limited to acts of torture, killing, abduction and severe ill-treatment of any person; (2) violations of international humanitarian law, including, but not limited to crimes against humanity and war crimes.” Article II further specifies that violations of international humanitarian law include violations of the four Geneva Conventions of 12 August 1949 and of their Additional Protocols.

<sup>32</sup> See also: Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Truth Commissions*, Un Doc. HR/PUB/06/1, 2006, p. 8-9.

The experience of other truth commissions shows that a mandate limited to certain human rights violations can hamper a commission's effectiveness:

☞ The 1990 Chilean Commission for Truth and Reconciliation was charged with gathering information to establish the truth behind cases of "disappearances", executions, and deaths as a result of torture, as well as deaths as a result of violent acts by private individuals on political pretexts. Cases of torture not resulting in death were not investigated. A second truth commission, the National Commission on Political Imprisonment and Torture, had to be established more than a decade later, in 2003, to investigate human rights violations not covered by the mandate of the 1990 Commission.

☞ The mandate of the Equity and Reconciliation Commission in Morocco was also limited - to enforced disappearances and arbitrary detention. The Commission itself had to interpret its mandate in a very broad way to be able to deal with cases of torture and extra-judicial executions.

☞ A broad mandate enabled the Truth and Reconciliation Commission of South Africa to play a vital role in identifying the systematic nature of the violations committed by the state and the abuses committed by opposition groups and provided a focused basis for its recommendations. However, even this broad mandate was criticized because it did not include some of the violations perpetrated by the apartheid regime (in particular forced removals).

☞ Taking into account the example of the South African commission, the Sierra Leone Truth and Reconciliation Commission (whose establishing legislation referred to "violations and abuses" without further qualification) decided that its mandate was not confined to violations of human rights that might constitute crimes, under either national or international law, nor limited to violations committed by states or governments.

The Liberian TRC will potentially face a huge number of cases. While the desire for an expeditious process inevitably imposes limits on the scope and duration of the Commission's work, Amnesty International considers that restricting investigations to a limited number of cases of singular importance would fail to account for the reality of the massive and systematic violations of human rights in the period under consideration. The right to a complete and faithful account of what took place cannot be restricted to a limited number of cases selected because of the prominence of the victim or because of the effect the abuses had at a national or international level. **Amnesty International recommends that all properly documented violations of human rights placed before the Commission should be investigated and clarified.**

The TRC is mandated to examine not only the events that are the subject of its inquiry, but also their underlying causes. In particular, it will have to determine whether the violations and abuses committed were isolated incidents or part of a systemic pattern and establish their "antecedents, circumstances, factors and context" (article IV, section 4(a)). **Amnesty International recommends that the Commission includes in its investigations a critical analysis of institutional structures, policies and practices, the failure of institutions and other mechanisms to provide protection, and other factors. In particular, the**

**Commission should address the question of the involvement of foreign countries and non-state actors in fuelling the armed conflict.**

## **B. Temporal mandate: period of time under investigation**

The Liberia TRC will investigate facts that occurred between January 1979 and 14 October 2003. Considering that narrow limits in the period of time under a truth commission's investigation can hamper the effectiveness of its work, Amnesty International welcomes this broad temporal mandate.

The organization also welcomes the possibility of extending the Commission's mandate to "any other period preceding 1979" (article IV, section 4(a)). **However, to keep its workload manageable, the Commission should give priority to the period from January 1979 to October 2003.**

While it may be necessary to study events before 1979 to establish the causes and context of the violations committed between 1979 and 2003, a more complete study on violations of human rights and abuses committed during this earlier period should either be deferred until completion of the Commission's investigation of the period from January 1979 to October 2003 or referred to another body.

## **C. Period of operation**

The TRC was established on 20 February 2006. After a preparatory period of three months, the Commission is to carry out its operational work during a two-year-period (June 2006 to June 2008). It will have a further three months to wrap up its activities and produce a report on its activities and findings – which should be ready by September 2008 (article IV, section 5). The Commission may request the National Legislature to extend its tenure for an additional period of three months. The request, which must demonstrate a good cause for extension, cannot be repeated for more than four times (article IV, section 6). If it were given the full series of extensions, the Commission would end its work in September 2009.

Although it is important to indicate a time limit for truth commissions to end their operations and report on their findings, it is equally important to make that time limit a realistic one. Laying down a particularly short time limit for reporting makes the work of truth commissions more vulnerable to changes in political climate. It could also make witnesses more hesitant to come forward as they may have doubts about the process being able to reach its final conclusion. At the same time, an extended period of operation risks losing the

public's attention and political momentum.<sup>33</sup> To some extent, the problem of length of time can be addressed by frequent public reporting and interim recommendations.

Amnesty International welcomes the relatively long mandate of the TRC, which should allow it to complete its tasks. **Considering the length and complexity of its investigation, the organization recommends that the Commission publishes regular and frequent interim reports outlining progress made and obstacles encountered.** This would help establish and maintain effective communication with the Liberian authorities, civil society organizations and the general public.

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<sup>33</sup> Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Truth Commissions*, Un Doc. HR/PUB/06/1, 2006, p. 8.

### III. Functions and powers of the Commission

Amnesty International has repeatedly expressed serious concerns about the shortcomings of the justice system in Liberia.<sup>34</sup> The Liberian judiciary is affected by a striking lack of qualified personnel. In May 2006 only 18 of the 52 serving judges and none of the magistrates held law degrees; only one judge was specifically assigned to hear juvenile cases. The number of public defence lawyers is insufficient to meet the needs of the vast majority of detainees, who cannot afford a lawyer, resulting in a systematic pattern of unfair trials. Because of a low level of professionalism, accountability and resources, the Liberian police are unable to carry out effective investigations. The conditions of detention in prisons and police facilities fall well below international standards.

The rebuilding of the justice system in Liberia will require years of sustained effort by the Liberian government, the United Nations Mission in Liberia (UNMIL) and international donors. In the meantime, the TRC would be the only established mechanism at the national (or international) level able to contribute effectively to ending impunity for international crimes committed during the armed conflict in Liberia. As such, it would have to fill, at least in part, the vacuum left by the shortcomings of the national justice system.

To be able to fulfil its objectives and successfully carry out its work, the Commission needs broad powers with respect to the investigation of human rights violations and the preservation of evidence. In this respect, Amnesty International welcomes the broad formulation of article VII of the TRC Act, which states that “the TRC shall enjoy and exercise such functions and powers as are relevant for the realization of its mandates” (section 26) and of article VIII, which states that “the TRC shall exercise powers generally in any matter, manner and form and for any purpose related to the fulfilment of the objects expressed in this Act” (section 27).

The TRC Act also provides that the work and functions of the TRC shall be regarded “as a matter of national priority”. The Commission shall have at its disposal the full authority, capacity and resources of the government of Liberia (article VI, sections 20 and 21). In particular, it shall exercise executive authority and be responsible for the overall supervision and implementation of its mandate and execution of its functions (article IX, section 32). On the day of the Commission’s inauguration, the members of the TRC urged the President to appoint a “TRC Liaison Officer” to ensure full implementation of article VI, section 21 of the TRC Act.<sup>35</sup> Amnesty International supports this call.

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<sup>34</sup> For two recent reports, see: Amnesty International, *Liberia: Violence, discrimination and impunity* (AI Index: AFR 34/003/2005), September 2005; *Liberia: One year after Accra – Immense human rights challenges remain* (AI Index: AFR 34/012/2005), August 2004.

<sup>35</sup> “No fear, no favour”, *The Analyst* newspaper, 21 February 2006.

## **A. Investigating human rights violations and abuses**

One of the primary functions of the TRC will be the investigation of gross violations and abuses of human rights (article VII, section 26(a)). The investigation shall lead, where possible, to the identification of persons, authorities, institutions and organizations involved in the violations and shall determine whether such violations were the result of deliberate planning on the part of the state, authority, or political organization, movement or group of individuals (article VII, section 26 (b) and (c)).

The Commission will have the power to gather “any information it considers relevant”, including the power “to compel the production of such information as and when necessary” (article VIII, section 27(a)). Amnesty International particularly welcomes this provision. As a matter of principle, all truth commissions should have authority to obtain all the information they need for their investigation. This would include the power to compel attendance and co-operation of witnesses, including state officials, and to order production of documents, including government and other records. Truth commissions should also have the power to impose penalties for non-compliance with such orders. For these reasons, Amnesty International welcomes the other provisions in the TRC Act that grant the Commission quasi-judicial investigative powers. These include:

- the power to request reports, records, documents, or any other information, both from any source in Liberia, including governmental authorities and from relevant authorities and government officials of foreign countries (article VIII, section 27(a) and (e));
- the power to take statements by any person, group of person or institution, including victims and witnesses in foreign countries (article VII, section 26(e) and article VIII, section 27(e));
- the power to investigate and interview any individual, group or members of organizations or institutions, in public or private at the Commission’s discretion, including children (article VIII, section 27(c)); this includes the power to compel attendance of any person before the Commission or any of its staff (article VIII, section 27(d));
- the power to publish a warrant, subpoena, or citation after diligent efforts have been exhausted to no avail in making a personal service (article VIII, section 27(d)).
- the power to visit any establishment or place without giving prior notice and to enter upon any land or premises (article VIII, section 27(b)).
- the power to administer oaths during investigation for the taking and making of statements; the falsity of which is punishable for perjury (article VIII, section 27(c)).

The Commission being a non-judicial body, the TRC Act establishes that it will be assisted by a Special Magistrate, able to issue the legal documents required under Liberian

law to exercise these powers (including warrants of search and seizure, subpoenas, citations to procure information and testimonies) (article VIII, section 27(b)).<sup>36</sup>

Despite these broad powers, information collected by Amnesty International shows that the Liberian authorities' policy on passing information to the Commission is still unclear, even with regard to information collected during the vetting process of the armed and security forces. **The Liberian government should ensure that all information that the TRC considers to be relevant is provided to it, including archives, other records and testimony of government officials.**

## **B. Ensuring accountability for human rights violations and the prohibition of amnesty under international law**

“Our country cannot continue to evade justice and the protection of human rights throughout our land, especially of the kind that restores our historical place among civilized nations. Our government will ensure that those culpable of the commission of crimes against humanity will face up to their crimes no matter when, where or how”.

President Ellen Johnson Sirleaf, Speech for the inauguration of the Truth and Reconciliation Commission, 20 February 2006<sup>37</sup>

Article XIII of the Comprehensive Peace Agreement provides that the TRC should “address issues of impunity”. Despite this very clear mandate, the TRC Act presents some ambiguities with respect to the question of criminal and civil responsibility for past human rights violations. One of the main functions of the Commission is to “ensure accountability for gross violations and abuses of human rights”. However, the TRC Act does not expressly state that accountability needs to be intended in the legal sense, i.e. including a determination of individual criminal and civil responsibility. The TRC Act states only that accountability may be “political or otherwise” (article VII, section 26(d)).

Article VII, section 26(g) of the TRC Act provides the Commission with the power of recommending amnesty “under terms and conditions established by the TRC upon application of individual persons making full disclosures of their wrongs and thereby expressing remorse for their acts and/or omissions, whether as an accomplice or a perpetrator”. However, the same provision, in conformity with international law, clarifies that that amnesties or

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<sup>36</sup> The Special Magistrate shall be appointed and commissioned by the Head of State, with the advice and consent of the National Legislature, from a short-list of at least three lawyers recommended by the TRC itself. He or she will be assisted by a “minimum staff”.

<sup>37</sup> Quoted in “‘We Cannot Afford to Evade Justice’, Says President Sirleaf As She Vows That Violators of Human Rights Will Face Justice”, *The Inquirer* newspaper, 21 February 2006.



exoneration shall not apply to “violations of international humanitarian law and crimes against humanity”. Amnesty International welcomes this exclusion as far as it goes. However, article VII does not exclude amnesties for genocide and other serious human rights violations that are crimes under international law regardless of whether they are committed during an armed conflict, such as torture, extrajudicial executions and enforced disappearances. All states have an obligation to prosecute and punish perpetrators of crimes such as genocide, crimes against humanity, war crimes and other serious violations of international law. Amnesties for these crimes are prohibited under international law, as they deny the right of victims to justice.<sup>38</sup> Amnesty International has consistently opposed, without exception, amnesties, pardons and similar measures of impunity that prevent the emergence of truth, a final judicial determination of guilt and innocence and full reparation to victims and their families.

☞ The South African Truth and Reconciliation Commission granted amnesties to perpetrators of serious human rights violations in exchange for public confessions. However, that process was conditional and specific. The implementation of the amnesty provisions was coupled with important steps to achieve accountability. These included: extensive investigations and cross-examinations of the applicants, in some cases; public hearings with testimonies from victims of human rights violations; and the naming of those responsible for the gravest crimes. Open proceedings allowed victims of human rights violations and their relatives to attend and oppose the applications. The option of future criminal proceedings against perpetrators remained possible where suspected perpetrators had failed to co-operate with the Commission or had been denied amnesty.<sup>39</sup> Although the amnesty process allowed the South African TRC to make important factual discoveries, it has generally been considered unacceptable in international law.<sup>40</sup>

Liberia demonstrated its commitment to end impunity by ratifying the Rome Statute of the International Criminal Court on 22 September 2004. During its visits to Liberia in May 2005 and May 2006, Amnesty International consistently noted a clear message articulated by Liberian civil society groups regarding the need to end impunity for the crimes committed during the conflict, as well as a strong recognition that failure to hold the perpetrators of past crimes to account had resulted in continuing abuses and had frustrated previous attempts to achieve peace. **The Commission should reaffirm Liberia’s obligation under international law to combat impunity. This obligation includes investigating crimes such as genocide, crimes against humanity, war crimes and other crimes under international law and, where there is sufficient admissible evidence, prosecuting suspected perpetrators in**

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<sup>38</sup> See: Amnesty International, *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law* (AI Index: AFR 51/012/2003), October 2003.

<sup>39</sup> For additional information see: *South Africa: Truth and Justice: Unfinished Business in South Africa* (AI Index: AFR 53/001/2003), February 2003.

<sup>40</sup> See for example: Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, pursuant to Security Council Resolution 1564 of 18 September 2004, 25 January 2005, par. 618; available at <[http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)>.

**trials that meet international standards of fairness, without the death penalty or other cruel, inhuman or degrading punishment. As required by the TRC Act and by international law, the Commission should not recommend amnesties or similar measures of impunity with respect to crimes under international law.**

### **C. Promoting community and national reconciliation?**

“The focus of the TRC will be on the truth more than on reconciliation. Forgiveness is a very personal individual process. The Commission cannot compel anyone to forgive. What Liberia needs to focus on is finding a way to live together as one people in one country. The TRC can help us to learn to live together – it is a step in the right direction”.

Cllr. Jerome Verdier, Chairman of the TRC, interview with Amnesty International, May 2006

The Liberian TRC Act lists one among of the objectives of the Commission as providing “an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to create a clear picture of the past to facilitate genuine healing and reconciliation” (article IV, section 4(b)). In particular, the TRC is given the function of “helping restore the human dignity of victims and promote reconciliation by providing an opportunity for victims, witnesses, and others to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, in an environment conducive to constructive interchange between victims and perpetrators, giving special attention to the issues of sexual and gender based violence, and most especially to the experiences of children and women during armed conflicts in Liberia” (article VII, section 26(f)). The Act also allows the Commission, “where it deems it necessary”, to seek assistance from traditional and religious leaders “to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation” (article VII, section 26(q)).

Some truth commissions, most notably the Truth and Reconciliation Commission in South Africa, have designed their activities, in particular public hearings, to provide victims and perpetrators with a forum for public and private acts of reconciliation. Individual reconciliation between victims and perpetrators was seen as conducive to collective, political reconciliation. Undoubtedly, the establishment of the facts is a precondition for, and can help to promote, individual and collective reconciliation. However, reconciliation, both at the individual and at the collective level, cannot be imposed by either a truth commission or any other official body or procedure. “While some countries have constructed a truth commission around the notion of advancing reconciliation – or have seen such a commission as a tool that would naturally do this – it should not be assumed that such an inquiry will directly result in reconciliation either in the community or in the national or political sphere... Reconciliation is

usually a very long and slow process, and the work of a truth commission may be only a part of what is required.”<sup>41</sup>

**If the Liberia TRC decides to adopt specific procedures to promote individual reconciliation, such as traditional mechanisms of conflict-resolution, it is essential that they fully respect the rights and dignity of both victims and alleged perpetrators. In particular, victims and their families should not be forced to meet alleged perpetrators or to engage in any act of reconciliation. On the other hand, reconciliation procedures should not be at the expenses of fair trial: they should not involve specific punishment or humiliation of alleged perpetrators.**

#### **D. Establishing an historical record**

“This commission is our hope – to define the past on our behalf in terms that are seen and believed to be fair and balanced, and bring forth a unifying narrative on which our nation’s rebuilding and renewal processes can be more securely anchored”.  
President Ellen Johnson Sirleaf, Speech for the inauguration of the Truth and Reconciliation Commission, 20 February 2006<sup>42</sup>

Principle 3 of the updated Set of principles to combat impunity sets out the duty to preserve memory:

“A people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments”.

Many aspects of the Liberian Commission’s mandate refer to the establishment of an impartial and complete account of the historical past of Liberia. Thus, the Commission will have to investigate “the antecedents of the crises which gave rise to and impacted on the violent conflict in Liberia”; and conduct “a critical review of Liberia’s historical past, with the

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<sup>41</sup> Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Truth Commissions*, UN Doc. HR/PUB/06/1, 2006, p. 2.

<sup>42</sup> Quoted in “Liberia’s Truth and Reconciliation Commission inaugurated; SRSB Doss announces \$500,000 donation from UNDP”, UNMIL Press release, UN Doc. UNMIL/PIO/PR/25, 21 February 2006.

view to establishing and giving recognition to historical truths in order to address falsehoods and misconceptions of the past relating to the nation's socio-economic and political development" (article IV, section 4, (c) and (d)). The TRC will facilitate, initiate or coordinate inquiries into "the nature, causes and extent of gross violations and abuses of human rights, including the root causes, circumstances, factors, context, motives and perspectives which led to such violations" (article VII, section 26(a)). It will have the function of "creating an independent, accurate and objective record of the past" (article VII, section 26 (i)). In this sense, the work of the Commission will contribute to fulfil the right to truth not only in its individual dimension, but also in its collective dimension, in fulfilling Liberian society's right to be informed about its own history.

This function will be carried out mainly through the Commission's report, as its recommendations will have to be "reflective of the truth, to re-unify and reconcile contending groups and/or the peoples of Liberia" (article VII, section 26(i)). Although substantial, the Commission's historical record will not be complete, as new information will continue to come to light after it presents its report. However, the report will serve as an invaluable source for further and continuing historical studies. Additionally, the Commission may also organize other activities targeted at the establishment of an historical record of human rights violation in Liberia.

☛ The Equity and Reconciliation Commission in Morocco organised seminars and conferences on subjects linked to the history of human rights violations in the country, to facilitate a debate among the society.

## **IV. Establishment and functioning of the Commission**

### **A. A competent membership**

The membership of truth commissions is particularly important, indeed vital, for their effective functioning. As the actions and personal qualities of the commissioners frequently set the tone for the activities of the commission as a whole, truth commissions require particularly strong, independent and effective members. It is of primary importance that the candidates with the highest competence in human rights and of proven independence and impartiality be appointed. Principle 7 of the updated Set of principles to combat impunity states that truth commissions “must be established through procedures that ensure their independence, impartiality and competence.” In particular:

“(a) They shall be constituted in accordance with criteria making clear to the public the competence and impartiality of their members, including expertise within their membership in the field of human rights and, if relevant, of humanitarian law. They shall also be constituted in accordance with conditions ensuring their independence, in particular by the irremovability of their members during their terms of office except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations;

(b) Their members shall enjoy whatever privileges and immunities are necessary for their protection, including in the period following their mission, especially in respect of any defamation proceedings or other civil or criminal action brought against them on the basis of facts or opinion contained in the commissions’ reports;

(c) In determining membership, concerted efforts should be made to ensure adequate representation of women as well as of other appropriate groups whose members have been especially vulnerable to human rights violations.”

If a truth commission is to be accepted as credible and capable of achieving its vital objectives, including the thorough investigation and documentation of past gross human rights violations, the commissioners must be selected by a process that inspires public confidence and ensures that the commissioners have been chosen on the basis of their demonstrated experience and qualification in the field and proven commitment to uphold human rights. Civil society should participate in the selection and appointment process as far as possible. The UN Commission on Human Rights encouraged states “to involve, as appropriate, all those concerned, including civil society, victims, human rights defenders and persons belonging to minorities and vulnerable groups, in all efforts to combat impunity, including judicial processes and the design of truth and reconciliation commissions and other

commissions of inquiry, the selection of commissioners and the drafting of relevant legislation, with efforts to ensure that men and women participate on an equal basis”.<sup>43</sup>

☞ In 1995 Amnesty International expressed concerns that the legislation establishing the South African Truth and Reconciliation Commission, which gave the President the authority to appoint the members of the Commission in consultation only with the Cabinet, did not provide a sufficiently transparent appointment process.<sup>44</sup>

Pursuant to article V, section 7 of the TRC Act, the Liberian TRC is composed of nine commissioners, including four women, appointed by the Liberian Head of State.

The Chairman of the National Transitional Government of Liberia (NTGL), Charles Gyude Bryant, had announced the appointment of the members of the future Truth and Reconciliation Commission already in late January 2004, -- without consultation with civil society and before legislation setting out the Commission’s mandate, composition and powers had been drafted and enacted into law. Amnesty International expressed concerns about the manner of these appointments.<sup>45</sup> The emergence of one of those appointed as a high profile figure within the LURD, which led to calls for his resignation, appeared to confirm the initial fears of a politicised commission. The TRC Act “recognized” the January 2004 appointments. However, it established that a Selection Panel would vet the commissioners already appointed through a “process of public scrutiny based on individual nominations and other petitions from the general public, institutions, and organisations”. (article V, sections 8 and 9)<sup>46</sup>.

General Abdusalami Abubakar, Economic Community of West African States (ECOWAS) mediator in the Liberian peace process, inaugurated the TRC Selection Panel on 14 July 2005. In September 2005, Amnesty International wrote to Ansumana E. Ceesay, Special Representative of the ECOWAS Executive Secretary in Liberia and Chairman of the TRC Selection Panel, to urge the Panel to ensure that the vetting process of the Commission members complied with international human rights standards. In that letter, Amnesty International recommended additional criteria for the selection and vetting of the Commission members, including proven expertise, knowledge and experience in the promotion and protection of human rights and expertise in dealing with victims of serious crimes, such as traumatized victims, victims of sexual violence and child victims. Amnesty International also

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<sup>43</sup> Commission on Human Rights, Resolution 2005/81, Impunity, 21 April 2005, para.16.

<sup>44</sup> Memorandum to the Select Committee on Justice: Comments and Recommendations by Amnesty International on Promotion of National Unity and Reconciliation Bill, 13 January 1995, unpublished; South Africa: Amnesty International supports call for public role in Truth Commission appointment (AI Index: AFR 53/10/95), July 1995.

<sup>45</sup> Amnesty International, *Liberia: One year after Accra – immense human rights challenges remain* (AI Index AFR 34/012/2004), August 2004, p. 21.

<sup>46</sup> Pursuant to the TRC Act, the Selection Panel was composed of seven national and international members: three representatives of Liberian civil society organisations; two representatives of political parties; one representative of the United Nations; and one representative of the Economic Community of West African States (ECOWAS), chairing. (article V, section 8).

recommended that civil society be allowed full and active participation in the vetting process.<sup>47</sup>

The Selection Panel for the Commission screened more than 150 candidates nominated by the Liberian public and provided a shortlist of 15 names to Chairman Bryant on 23 September 2005. New commissioners were appointed as a result of this process. President Ellen Johnson Sirleaf inaugurated the Commission on 20 February 2006. The members of the Commission are: Cllr. Jerome Verdier, Chairman; Dolopie Dedeh, Co-Chairman; Cllr. Pearl-Brown Bull; bishop Arthur F. Kulah; Rev. Gerald Coleman; Sheik Kafumba F. Konneh; John H.T. Stewart; Massa Washington and Omu Syllah.

The model adopted in the TRC Act is one of a national truth commission assisted by an international committee of experts.<sup>48</sup> An International Technical Advisory Committee (ITAC), composed of three advisors (two nominated by ECOWAS and one by the UN High Commissioner for Human Rights) will work directly with the Commission in the fulfilment of its mandate. The international advisors, chosen among individuals of “international distinction and repute”, are entitled to full rights and privileges as commissioners, including disclosure rights, but cannot vote during the Commission’s meetings (article V, section 10). According to information obtained by Amnesty International, the three international experts, two Ghanaians and a Nigerian, had been appointed by June 2006. However, their names had still not been made public as of 21 June 2006.

## **B. Independence and impartiality**

<p>“We will follow every lead and pursue the truth without fear or favour. We will be faithful to our mandate, and remain independent and impartial in its pursuit”.</p> <p>Cllr. Jerome Verdier, Chairman of the TRC<sup>49</sup></p>
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Amnesty International welcomes the provisions in the TRC Act designed to ensure the independence and impartiality of the members of the Commission. The TRC Act guarantees the Commission full independence “free of undue influence and political manipulations from any source, governmental or otherwise” (article VI, section 20). It also considers as an offence obstructing or otherwise interfering with the work of the Commission or any of its members or officers to be an offence.<sup>50</sup>

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<sup>47</sup> Amnesty International, Letter to the TRC Selection Panel, 6 September 2005, reproduced in Annex C.

<sup>48</sup> Although nothing in the TRC Act expressly stated that the commissioners should be Liberian nationals, all the nine commissioners appointed are Liberians.

<sup>49</sup> Quoted in “No fear, no favour”, *The Analyst* newspaper, 21 February 2006.

<sup>50</sup> “Any person who wilfully obstructs or otherwise interferes with the work of the TRC or any of its members or officers in the discharge of their functions under this Act, commits an offence and shall be

This prohibition on interference with the work of the Commission is coupled with corresponding instructions to the Commission as a body, its individual commissioners and every member of its staff to be independent from any party, government or faction, and to work without political or other bias, prejudice or motive (article VI, section 22 and article IX, section 39(a) and (d)). Members of the Commission will serve in a full-time capacity, to the exclusion of any other duty or obligation arising out of any other occupation or office, unless they are specifically authorized by the Commission (article IX, section 39(d)).

To protect the Commission's independence, the commissioners and the members of its staff are granted immunity from civil or criminal sanctions by virtue of statements made or actions taken "in rightful pursuit" of their work for or with the TRC (article VI, section 22). Members of the Commission may be removed from their position (for reasons such as misbehaviour, incapacity and incompetence), only by impeachment (article V, section 14).

Members and staff of the Commission are prohibited from divulging confidential or other information obtained by the TRC and from using this information for personal interest. Upon taking office, they take an oath or make an affirmation in this regard (article VI, section 25 and article IX, sections 39(d) and 41). Any conflict of interest should be disclosed and the commissioner should all exclude himself or herself from further participation in that matter. A failure to disclose is ground for removal (article VI, section 23 and article IX, section 39 (b) and (c)).<sup>51</sup>

### **C. Organizing the Commission's work: setting up the National Secretariat, the regional offices, staff recruitment and training**

Truth commissions require a sufficient number of experienced, trained and skilled staff. In particular, a truth commission should have impartial, expert legal counsel. It should have the support of adequate technical and administrative staff, and, where necessary, its own investigators. It should be able to obtain advice from consultants providing technical expertise in disciplines such as law, medicine, forensic science, psychology or other areas relevant to its investigations. This includes having the power to seek help from the international community of experts in these areas.

The work of the TRC will be supported by a National Secretariat, headed by an Executive Secretary and tasked with providing technical, professional, administrative and clerical assistance to the Commission. The TRC staff working in the National Secretariat are required to have professional background in areas such as "finance, investigation, law,

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liable on conviction to a fine not less than US\$300.00 and not more than US\$500.00 or its Liberian dollar equivalent for the first offence to include a term of imprisonment not less than six months or both fine and imprisonment depending on the gravity of the offence" (Article VIII, Section 28).

<sup>51</sup> The TRC Act also governs the commissioners' terms of employment, and adequate remuneration, resignation and vacancies (Article V, Sections 12, 15 and 16).



women, children and vulnerable groups, psychosocial and trauma counselling, amnesty, reparation, statement taking” (article IX, section 33). No one with a known record of human rights violations can be employed by the TRC. Women must be fully represented and included in the staff at all levels of the work of the Commission (article VI, section 24). The TRC may also and request the secondment of public officials and hire foreign staff (article IX, section 35).

**Members of staff and experts engaged as consultants should be insulated from political influence and independent of the institutions and agencies under investigation. This would also apply to seconded public officials who normally work for other public bodies. To this purpose, staff and consultants should be screened on the basis of similar criteria as those used for the Commissioners under article V, section 11 of the TRC Act.**

**All members and staff of the TRC should receive comprehensive training in human rights, according to the principles established in Amnesty International’s *12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials*.<sup>52</sup>**

☞ During the first six months of its operations, the Sierra Leone Truth and Reconciliation Commission suffered an administrative crisis, created in part by a poor process of recruitment for the secretariat staff. Following a personnel audit, the staff initially recruited left. Most of the Commission’s permanent staff arrived only several months after its establishment, when it was completing its statement-taking program. As a result, the Commission “effectively [lost] the first six months of its existence”.<sup>53</sup>

It is important to ensure that there is adequate administrative provision for crucial areas of the Commission’s work such as victim and witness protection and communications. The TRC Act allows the Commission to organize the National Secretariat in sections or units, as it may deem desirable and relevant to its work (article IX, sections 33 and 34). If the Commission decides to organize the National Secretariat in sections or units, it should establish a victims and witnesses protection unit and an outreach unit. (see: Public information and education campaign, p. 31 and A victim-centred approach, p. 35).

**As a matter of principle, truth commissions should be accessible to people throughout the country. The Commission should carry out investigations in all areas of Liberia, with the staff and facilities necessary to reach all victims and their families. Commissioners should travel around the country and organize hearings in all regions to ensure direct access to victims and their families and raise awareness of the Commission’s function and work. Special methods should be used to encourage participation of women and other groups, such as children, young people and the elderly.**

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<sup>52</sup> Amnesty International’s *12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials*, AI Index: ACT/30/01/98, February 1998.

<sup>53</sup> Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, 2004, Vol. 1, p. 9.

In addition, the establishment of regional offices may be necessary to guarantee to all victims and witnesses the opportunity to submit information, give statements and participate in the hearings. If regional offices are established, their number and location must take into account the specific patterns of human rights violations in the different regions of the country and its territorial extension. Where it would be a hardship or dangerous to travel to a fixed regional office, mobile offices should be used to reach rural areas.

The TRC will have a National Office in Monrovia. It can also establish county or regional sub-offices, branches or units in other parts of Liberia or even outside Liberia (article III, section 3). According to information collected by Amnesty International, the Commission is planning to set up eight regional offices throughout the country during the first three months after 22 June 2006. Additionally, each of the 15 Liberian counties would be covered by a county coordinator. The Commission is also planning to set up an office in the United States of America (the exact location of which has yet to be decided) to reach out to the Liberian diaspora.

☞ In Peru, over 800 people working for the Truth and Reconciliation Commission travelled around the 24 departments which make up the country in search of firsthand testimonies. Almost 17,000 testimonies were received by the central office in Lima and the four regional offices.

☞ The 2001 Commission for Reception, Truth and Reconciliation in Timor-Leste was composed of both national commissioners and regional commissioners in several regional offices.

☞ In Morocco, the Equity and Reconciliation Commission set up one regional office in Laayoune (Western Sahara's chief town) to facilitate receipt of applications from victims and family members from that area. The decision to close the office after an initial period of three months was criticized by Sahrawi victims and civil society organisations.

## **D. Public information and education campaign**

Between 2004 and 2006, the Transitional Justice Working Group has been undertaking awareness-raising activities throughout Liberia, including a series of meetings in four counties (Montserrado, Bong, Bomi and Nimba), to obtain the views of the general population on the TRC and other transitional justice issues. It identified the need for an extensive campaign to raise public awareness: "*People don't know what the issues are... they don't know what a truth and reconciliation commission is.*"<sup>54</sup>

During the three-months preparatory period between March and June 2006, the Commissioners themselves and members of the Transitional Justice Working Group have

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<sup>54</sup> Amnesty International, *Liberia: One year after Accra – immense human rights challenges remain* (AI Index AFR 34/012/2004), August 2004, p. 21.

been carrying out some awareness-raising workshops in different Liberian counties. However, much still remains to be done, especially outside the capital Monrovia.

According to information collected by Amnesty International, the Commission is also planning an ambitious awareness-raising program over a two to three months initial period, including door-to-door activities, media activities with the radio and newspapers and a website, as well as outreach to the Liberian diaspora. UNMIL agreed to accord to the Commission one hour a week on UNMIL radio to publicize its activities.

A comprehensive outreach policy is essential to the Commission's impact. **The Commission should establish contact with representatives of non-governmental organizations, other relevant non-state institutions and the media, to publicize its work and obtain relevant information.**<sup>55</sup> **The establishment of the Commission and the matters it will look into should be notified to the public by all appropriate media. This notice should include an invitation to submit information to the Commission and guidance for doing so. Special attention should be paid to notifying victims of human rights violations, or those who otherwise may have an interest. An outreach unit should be specifically mandated with all issues concerning communication with journalists and with the general public, including civil society.**

Radio, television, songs, drama and posters should be used to publicize the Commission's work. The Commission should also set up a website to help explain its functions and powers and provide updates to Liberians and other people interested outside Liberia. The public proceedings of the Commission should be broadcast on national television and radios – or town hall screenings may be organized. Information material on the role of the TRC and its working methods, as well as the TRC Act, should be translated to all local languages and distributed widely.

## **E. Ensuring sufficient resources**

Accounting for the past and building the rule of law are long-term processes. They require dedicated resources and long-term and targeted development assistance.

The TRC Act permits the work of the Commission to be financed from different sources, including the government of Liberia, individual Liberians and non-Liberians, foreign governments, international financial institutions, the United Nations and its specialized agencies, as well as international non-governmental organizations. The financing can assume the form of direct technical assistance, grants, donations or loans (article IX, section 36). Approximately US\$ 2,000,000 was budgeted for the first three-months preparatory phase

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<sup>55</sup> Discussions that Amnesty International held with the Press Union of Liberia in May 2006 indicated full support for the TRC process: "beginning with publicizing activities and all the way until the end of publishing recommendations". Amnesty International interview with George Barpeen, Jr. President of the Press Union of Liberia, 2 June 2006.

(March to June 2006). As at May 2006, the Commission had received \$120,000 of the US\$ 300,000 promised by the Liberian government. The United Nations Development Program (UNDP) has pledged to donate US\$ 500,000.<sup>56</sup> The TRC also received a donation of office equipment from the Institutional Support Program of the European Union (EU). The EU said it would also support the Commission with technical, managerial and operational assistance.<sup>57</sup> The Danish government also pledged to donate US\$300,000. Ten to twelve million US\$ have been budgeted for the substantive work phase of the Commission, during approximately two years. Although exact amounts have not been revealed, funding has been promised by the United States of America and other bilateral donors. **All interested donors should ensure that the Commission has the confidence it needs to start the work in a timely manner.**

Amnesty International welcomes the provisions in the Liberia TRC Act aimed at ensuring compliance with internationally accepted standards of financial reporting and accountability.<sup>58</sup>

☞ The Truth and Reconciliation Commission in Sierra Leone had difficulties in raising funds. Internal mismanagement led to problems in the establishment and early functioning of the Commission, creating a crisis of credibility that exacerbated the funding crisis.<sup>59</sup>

Although it is important that the TRC should have sufficient resources, the Commission is only a part of what is needed to establish the facts about past human rights violations, bring those alleged to be responsible to justice and provide full reparation to the victims and their families. It is thus equally important that the TRC does not divert resources away from the establishment of a functioning justice system, including courts to try those alleged to be responsible for crimes under international law. Crimes under international law are crimes against the entire international community. All members of the international community have the duty to ensure that every state is able to establish truth, effect justice and provide reparation. **Donors should design a viable and sustainable funding mechanism to provide adequate resources for restoring the rule of law and establishing an effective and lasting justice system in Liberia.**

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<sup>56</sup> "Liberia's Truth and Reconciliation Commission inaugurated; SRSG Doss announces \$500,000 donation from UNDP", UNMIL Press release, UN Doc. UNMIL/PIO/PR/25, 21 February 2006.

<sup>57</sup> "Liberia: President Johnson-Sirleaf pitches for more support from the US", *The Liberian Times* newspaper, 23 February 2006.

<sup>58</sup> "The TRC shall adopt a system of sound financial management policies in conformity with internationally accepted principles and accounting practices, to ensure prudent and efficient management of funds; be transparent, maintain books of accounts, open such books to inspections by donors and partners, conduct periodic audits and publish quarterly financial statements in at least two regular dailies in Liberia." (Article IX, Section 37).

<sup>59</sup> Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, 2004, Vol. 1, p. 9.

## V. The Commission's operations and procedures

As a matter of principle, all aspects of the work of a truth commission should be made public. So far as possible, the media and public should be given access to the proceedings and to the evidence on which the commission bases its findings. However, the openness of the investigation and of the information it obtains needs to be balanced against the confidentiality of personal information. The media and public may be excluded from all or part of the proceedings, the identities of victims and witnesses may be withheld, and material may be omitted from the commission's report if the commission considers that such measures are necessary to protect the rights of individual victims or witnesses or that publicity would otherwise prejudice the public interest.

The Liberia TRC can gather information by taking written or oral statements and by conducting hearings. It has the power to conduct both public and confidential hearings. As a general rule, the hearings will be opened to the public. However, the Commission may decide to hold a hearing *in camera* (i.e., to make it confidential) or to prevent one or more individuals to be present if the interests of justice so require; if an open hearing would cause harm to any person; or if the security of alleged perpetrators, victims or witnesses is deemed to be threatened. In this case, it may also decide to keep confidential any information relating to the proceedings. The Commission must, however, permit any victim who has an interest in the proceedings concerned to be present (article VII, section 26(p)).<sup>60</sup>

The TRC may also decide, at its own discretion, to keep confidential the information given by any person, group of persons or organizations or institutions as informants, witnesses, alleged perpetrators or victims (article VII, section 26(m)). **Amnesty International recommends that the Commission should adopt a policy that it will not provide confidentiality to any person giving information about their involvement in crimes under international law.**

In order to carry out the objectives of its mandate, the Commission may frame necessary rules and procedures consistent with the TRC Act (article IX, section 42). In particular, the Act provides that the Commission will "adopt its own rules, code of conduct and operating guidelines and procedures, schedules, work plans and other policies necessary for the accomplishment of its mandate including the conduct of research and investigations, holding of public and confidential hearings, making final determination of matters before it, recommending amnesty, making recommendations and publishing its report" (article VII, section 26(1)). These rules and procedures may be drafted in consultation with other entities of the state (article IX, section 42).

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<sup>60</sup> To facilitate the attendance of victims, suspected perpetrators, witnesses, or any other persons needed, the TRC may provide reasonable financial allowances (article VIII, section 27 (d)).

## **A. A victim-centered approach**

The UN Commission on Human Rights has urged governments to “encourage victims to participate in judicial as well as truth and reconciliation processes, including by taking appropriate measures to ensure the protection of, and support and assistance to, victims as well as witnesses, such as contact points and child-and-gender-sensitive procedures, paying special attention to crimes of sexual violence”.<sup>61</sup>

The Liberia TRC is mandated to provide opportunities for the victims of human rights violations and abuses, in particular women, children and vulnerable groups, to relate their experiences (article 4, section 4(e)). The Commission’s success will be measured also against its approach to the victims and their families - the way in which it will provide an opportunity for them to tell their stories. Most truth commissions provide the first opportunity for victims to come forward and present their testimony.

☞ Under the *apartheid* regime in South Africa victims of human rights violations and their relatives had faced years of denial from officials that the violations had taken place. The public hearings of the Human Rights Violations Committee, one of the three sub-committees of the South Africa Truth and Reconciliation Commission, enabled some 2,000 victims and their family members to describe what happened to them and to tell the committee what they hoped would come out of its work on their case. The hearings were held in major urban centres, small towns and rural areas and were attended by members of local communities. Often highly emotionally charged, the hearings were broadcast nationally on television and radio and widely reported in the print media. The South African Commission regarded these hearings as vital to achieve one of its statutory objectives: “restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims”. The hearings “revealed the extent of gross violations of human rights and made it impossible for South Africans ever again to deny that such violations had indeed taken place”.

International standards on the treatment of victims of crimes under international law and other serious crimes focus on three key responsibilities: to treat victims with humanity; to provide effective protection mechanisms; to ensure effective support. In addition, states have specific responsibilities in relation to child victims and victims of sexual violence.

The Declaration of basic principles of Justice for victims of crime and abuse of power states that victims “should be treated with compassion and respect for their dignity” and that:

“[T]he responsiveness of judicial and administrative processes to the needs of victims shall be facilitated by taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as

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<sup>61</sup> Commission on Human Rights, Resolution 2005/81, Impunity, 21 April 2005, para. 12.

well as that of their families and witnesses on their behalf, from intimidation and retaliation.”<sup>62</sup>

Principle 10 of the Basic principles on the right to a remedy and reparation states:

“Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.”

***Ensuring victims are treated with humanity.*** Amnesty International welcomes the inclusion in the TRC Act of broad provisions to ensure that victims are treated with humanity:

“When dealing with victims, the Commission shall be guided by the following principles: (i) Victims shall be treated with compassion and respect for their dignity; they shall be treated equally, without regard to race, ethnicity, religion, language, sex, or nationality; and, procedures dealing with victims shall be expeditious and fair; (ii) Appropriate measures shall be taken to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety and that of their families or witnesses testifying on their behalf; and, (iii) The TRC shall take sufficient measures to allow victims to communicate in the language of their choice.” (article VII, section 26 (r)).

**In order to implement this provision fully and ensure that victims are not re-traumatized, all representatives of the TRC who come into contact with victims, including commissioners, TRC staff and others, should be comprehensively trained in dealing with victims of serious crimes, including victims of sexual violence and violence against children.** This training may be organized with the collaboration and assistance of women’s organizations and UNICEF.

***Ensuring victims and witnesses are provided with effective protection.*** Amnesty International welcomes the provisions in the TRC Act designed to ensure the protection of victims and witnesses who may be at risk as a result of their participation in the TRC process. Article VII, section 26 (n) of the Act states:

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<sup>62</sup> Declaration of basic principles of justice for victims of crime and abuse of power, adopted by the UN General Assembly in Resolution 40/34 of 29 November 1985, Principle 4 and Principle 6(d).

“The TRC shall take into account the security and other interests of victims and witnesses when appearing for hearing, design witness protection mechanisms on a case by case basis as well as special programs for children and women both as perpetrators and victims under burdens of trauma, stigmatization, neglect, shame, ostracization, threats, etc. and others in difficult circumstances who may wish to recount their stories either in privacy or public, subject to the discretion of the TRC”.

**The Commission should devise and implement a victims and witnesses protection program. Protection measures should be available for all witnesses, victims and their families, staff and others associated with the investigation. In determining which protection measures to take, the Commission should take into account the views of the victims and witnesses on which measures they require and whether the protection measures are proportionate to the seriousness of the risk. The Commissioners should be responsible for overseeing the implementation of all protection measures and a procedure should be established whereby a victim who is not satisfied with protection measures may apply to the Commissioners to address the issue.**

The TRC Chairman stated to Amnesty International that the Commission would guarantee protection to victims and witnesses by concealing the identity of those who request it, as well as all children. Where disclosure of evidence and information may lead to endangering the security of a victim, witness or family member, the Commission would decide whether to keep such evidence or information confidential. Under the TRC Act, the Commission may hold hearings in camera if the security of victims and witnesses is deemed to be threatened; in which case the name or any other information which could lead to the identification of a victim, witness or other person at risk may then be removed from the public records of the proceedings (article VII, section 26(e) and (p)). The Commission also has the power to decide whether to disclose in its report the identities of any person who made a statement or gave evidence (article IX, section 40).

Amnesty International welcomes the possibility of concealing the identity of victims and witnesses who request it, in order to protect them from reprisals and to prevent stigmatization from their local communities.

☞ After publication of the report of the Haitian National Commission of Truth and Justice, some of those who testified before the Commission (many of whom, reportedly with their consent, were named in the main body of the report) reportedly received threats from former military and paramilitary personnel, still living in the same areas as the victims or their families and still occupying positions of power.

However, protection measures should not be restricted to concealing the identities of victims and witnesses who request it. They may include seeking restraining orders against anyone who poses a threat to the victim or witness or to their family, organizing police protection, safeguarding the whereabouts of the victim or witness and their family from disclosure and providing them with medical and psychological treatment and support. In some



cases, such protection measures will need to be long-term and can require relocation and new identities for the victim or witness and their families.

**The TRC should have the power to require the relevant authorities to suspend from duty officials allegedly involved in the human rights violations under investigation, or to transfer them to other duties where they would have no power over victims or witnesses, without prejudice pending completion of the investigations, if there is reason to believe that they may interfere with victims or witnesses or otherwise interfere with the investigation. The Liberian government should make an explicit undertaking that it will ensure compliance with TRC requests to that effect.**

A victims and witnesses protection program will need sufficient resources to succeed. Other bodies that have established a victims and witnesses protection program may be consulted in developing and implementing such a program. **Amnesty International recommends UNICEF to assist the Commission, providing technical advice on designing a program of protection and support for victims and witnesses, especially women and children.**

At the time of Amnesty International's mission in Liberia in May 2006, the police and the UNMIL peace-keeping force had not yet been formally approached to provide assistance in devising and implementing a victims and witnesses protection program.

**UNMIL should provide assistance to the Commission in devising and implementing a victims and witnesses protection program. More generally, Amnesty International recommends UNMIL to support the TRC process providing full assistance within their capacity. This would include: working closely with civil society to develop and carry out outreach activities aimed at ensuring that the mandate and purpose of the Commission are well known to the Liberian population, especially in the rural areas; assist in investigating past abuses and submit the information to the Commission; and assist with logistics, especially in the rural areas.**

*Ensuring victims are provided with effective support to participate in the TRC process.* **Victims and their families must be provided with adequate support to participate in the TRC process. All the victims and their families should be allowed and actively encouraged to register their cases officially. Victims, their families, lawyers and NGOs working in their behalf should be kept informed of hearings and all other information relating to the investigation of their case, to which they should have access and be allowed to present evidence.**

Victims and witnesses should have access to psychological advice and support throughout the process. Support persons are important to guide victims through what may be a complex and potentially traumatizing process and to monitor the victim or witness through the process to identify whether they require any specific assistance or protection measures. **The TRC should be able to provide special measures to assist victims and witnesses,**

**especially those that are traumatized, children, elderly or victims of sexual violence, in participating and giving testimony or presenting views and concerns.**

***Special measures for child victims and victims of sexual violence.*** It is essential that special measures are available to ensure the proper treatment of child victims and victims of sexual violence and to ensure that they are provided with adequate protection and support services.<sup>63</sup> Amnesty International welcomes that this is expressly provided for in the TRC Act. According to article IV, section 4(e), the Commission will have to adopt specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender-based violations, as well as to the issue of child soldiers. In particular, special mechanisms should be employed to “handle women and children victims and perpetrators, not only to protect their dignity and safety but also to avoid re-traumatization” (article VI, section 24).

Under article VII, section 26 (o):

“The TRC shall employ specialists in children and women’s rights and shall ensure that special measures or mechanisms are employed that will enable women and children to provide testimony to the TRC, while at the same time protecting their safety and not endangering or delaying their social reintegration or psychological recovery”.

According to information collected by Amnesty International during its missions, the TRC has given serious attention to the involvement of children in its work, including seeking the advice and collaboration of children protection advisers. In particular, the Commission reportedly plans to provide protection to children who testify before it by treating all their statements as confidential information.

However, other aspects of the protection required by women and children seem to have been given less attention. Women’s groups working with women victims of rape and other sexual and gender-based violence during the armed conflict expressed concern to Amnesty International about the safety of women still living in the community with perpetrators. They felt that a victims and witnesses protection strategy was not well conveyed and assumed that women would not participate in the TRC process as they would be too frightened to do so. “They will need to have some assurances of protection and it is only then that they will participate. The situation in Liberia is such that perpetrators and their victims live in the same communities - in some instances they are married to them.”<sup>64</sup> **Specific outreach activities should ensure that women and children are aware of the TRC**

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<sup>63</sup> See: UN Economic and Social Council, Guidelines on justice in matters involving child victims and witnesses of crime, Resolution 2005/20 of 22 July 2005.

<sup>64</sup> Amnesty International interview with a staff member of Concerned Christian Community, 29 May 2006.

**process and encouraged to participate. This should include specific information about the victims and witnesses protection program.**

***A special unit for victims and witnesses protection and support. Amnesty International recommends that a special unit for protection and support of victims and witnesses should be established within the TRC.***

As indicated in article VII, section 26(o) of the TRC Act, the unit should include staff with expertise in dealing with child victims and victims of sexual violence, together with mental health specialists and counsellors to respond to the needs of traumatized victims.

This unit's first tasks should be to develop policies and guidelines for protection and support and to provide comprehensive training to the Commission's members and staff. After the beginning of the Commission's operations it should monitor and evaluate the on-going work with respect to the treatment of victims. The unit should be responsible for assessing and making recommendations to the commissioners as to whether hearings should be held in camera. The unit should also be responsible for organizing long-term support measures such as relocation where required, by establishing effective channels of collaboration with national authorities.

## **B. A fair procedure**

A truth commission is not a court. To fulfil their mandates, truth commissions need a more flexible procedure and more flexible rules about admissibility and evaluation of evidence. As a consequence, the standards of procedural fairness before a truth commission will be different in some respects from those required under international law in a criminal trial.

Amnesty International believes that witnesses, alleged perpetrators and other individuals involved should be guaranteed the following rights, among others, at all stages of the procedure before the Commission:

- The right not to be discriminated against;
- The right to a fair and public hearing by a competent, independent and impartial body;
- The right to remain silent and the right not to be compelled to testify against themselves or to confess guilt;
- The right not to be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
- The right to have the free assistance of an interpreter if they cannot understand or speak the language used;
- The right to be informed promptly and in detail of any allegations made against them;

- The right to defend themselves and the right to have legal assistance;
- The right to be presumed innocent until proved guilty according to law;
- If adversely affected by a truth commission's decision, the right to seek judicial review;
- In the case of juveniles below 18 years of age, the procedure should take account of their age and the desirability of promoting their rehabilitation.

The following rights are of particular importance before truth commissions.

***The right to remain silent and the right not to be compelled to testify against oneself or to confess guilt.*** An internationally recognized legal principle of fair trial is that no person should be compelled to confess guilt or to testify against themselves. This overrides any powers to compel witnesses and can therefore sometimes conflict with a commission's task of seeking the truth. Both truth commissions and commissions of inquiry, have sought to resolve this conflict by offering persons compelled to testify "use immunity", or a guarantee that the evidence they disclose will not be used against them in any later criminal proceedings. Unlike amnesties, "use immunities" do not extinguish criminal responsibility.

While excluding amnesty measures for violations of international humanitarian law and crimes against humanity, the TRC Act allows a form of "use immunity". According to article VIII, section 30:

"The TRC shall grant immunity to all persons or groups of persons, organizations or institutions from prosecution or tort actions on account of statements made or evidence given before the TRC in advancement of the public interest objective inherent in the functions and objects of the TRC and pursuant to the successful execution of its mandate, and which therefore, shall not be used in any court of law against the person making the statement".

The type of "use immunity" in the Liberian TRC Act appears to be particularly broad, because it covers not only criminal, but also civil proceedings (tort actions). There is a serious risk that the more complete the statements of alleged perpetrators before the Commission, the more difficult it would be in the future to prosecute them or to obtain reparation in a civil suit, because such alleged perpetrators would be able to argue that the evidence against them was obtained as a result of the statement and thus a denial of their right to silence and not to confess guilt. However, the formulation of article VIII, section 30 seems to give to the Commission some discretion about granting "use immunity", on the basis of whether the information provided actually advances the public interest objective of the TRC and the successful execution of its mandate. **The Commission should exclude granting "use immunity".**

Amnesty International opposes "use immunity", as any other measure which would prejudice a future process of bringing alleged perpetrators to justice. Protection against self-incrimination should not lead to amnesties or immunities. Moreover, in the case of crimes

under international law, national authorities do not have the legal power to grant such immunity. In any instance where there is a conflict between seeking full disclosure and the prohibition of amnesties or other similar measures of impunity, precedence should be given to fighting impunity. However, Amnesty International would not object if a truth commission makes undertakings to witnesses, in advance, that if they are later brought to justice, the commission will recommend that the court take account of their full disclosure as a mitigating factor when determining sentence.

***The right to defend oneself and the right to have legal assistance.*** Amnesty International considers the right to be represented by a lawyer to be an essential safeguard for alleged perpetrators, as well as for victims and witnesses. **Any witnesses, alleged perpetrators or others who may be implicated should be guaranteed their right to legal counsel and a right to reply. In the case of alleged perpetrators, the Commission should advise them of the possible consequences of their statements and that they may, if they wish, be assisted by legal counsel. Witnesses also should be permitted legal counsel if they are likely to be harmed by the inquiry (for example, if their testimony could expose them to criminal charges or civil liability).**

☞ The legislation establishing the Commission for Reception, Truth and Reconciliation (CRTR) in Timor-Leste provided both for persons invited or required to appear before the CRTR to be represented by a lawyer and for a lawyer to be appointed by the CRTR if the person could not afford to pay a lawyer themselves.

Provision is made in the TRC Act for persons who are called upon or required to appear before the TRC to be represented by a lawyer.<sup>65</sup> However, the TRC Act does not specify whether a public defence service will be provided to those persons alleged to have committed human rights violations who appear before the Commission and who cannot afford to pay for a lawyer. At the same time, all victims should have the opportunity to be represented by legal counsel. Amnesty International is deeply concerned that the Commission reportedly does not plan as a priority the establishment of a public defence service for victims, witnesses and alleged perpetrators appearing before it.

**The Commission should provide legal assistance to suspected perpetrators before the Commission who cannot afford to pay for a lawyer, as well as to victims or relatives of victims who have difficulties in making a submission, whether because of lack of resources, expertise or distance.**

The public defence service in Liberia at the moment is seriously insufficient. Without additional capacity, the burden represented by the TRC would be untenable. **The Commission should avoid placing extra pressure on the existing public defence service.**

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<sup>65</sup> In order to expedite proceedings, the Commission may place reasonable limitations with regard to the time allowed for cross-examination of witnesses or any address to the Commission (Article VIII, Section 31).

To this purpose, lawyers from other countries, including ECOWAS or African Union common law countries, as well as members of the Liberian diaspora, who would normally be unable to work as defenders in Liberia, could be used to represent suspected perpetrators and victims before the TRC. Although permitting foreign lawyers to appear in Liberian proceedings may well be an innovation, it is a practice to do so in many other countries. Until there are sufficient properly trained Liberian lawyers with the experience required to carry out all of the representational work before the Commission, allowing lawyers from other countries to appear would advance the cause of truth and permit the Commission to complete its work in time.

***The right to be presumed innocent until proved guilty according to law.*** One of the main objectives of a truth commission is establishing the facts about past human rights violations. This implies, at least to some extent, determining responsibility: identifying the groups and individuals responsible for the violations and abuses. The Liberian TRC Act provides that investigation may lead, where possible, to the identification of “persons, authorities, institutions and organizations involved in the violations” and may determine “whether such violations were the result of deliberate planning on the part of the state, authority, or political organization, movement or group of individuals” (article VII, section 26 (b) and (c)). **Amnesty International recommends that the Commission identifies not only the direct perpetrators, but also those who planned or ordered the abuses, thereby establishing chain-of-command responsibility.**<sup>66</sup>

☞ The statute of the Equity and Reconciliation Commission in Morocco expressly excluded the identification of perpetrators of human rights violations, as well as criminal prosecutions. While acknowledging the efforts made in the field of data collection and compensation in relation to enforced disappearances, the UN Human Rights Committee expressed its concern that “those responsible for disappearance have still not been identified, tried and punished”.<sup>67</sup>

While the identification of perpetrators of human rights violations is an important part of the obligation to respect, protect and fulfil the victims’ right to truth, justice and reparation, a truth commission is not a judicial body and cannot determine guilt or innocence. Persons alleged of having committed human rights violation before a truth commission have the right to be presumed innocent until proven guilty according to law in a fair criminal trial.

**The Liberia TRC should compile a list of those allegedly responsible for the human rights violations documented and annex such a list to its report in a separate confidential appendix. The names should be handed over to the national prosecution authorities so that, where there is sufficient evidence, those concerned can be prosecuted. The Commission should decide in advance, at the outset of its work, a clear policy defining the criteria for compiling the list of alleged perpetrators, including standards of**

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<sup>66</sup> Updated Set of principles to combat impunity, Principle 8 (c).

<sup>67</sup> Human Rights Committee, Concluding observations: Morocco, UN Doc. CCPR/CO/82/MAR, 1 December 2004, para. 12.

**proof. Those included in the list should be given, as a minimum, the possibility to respond to the allegations. The Commission should also decide the modalities to ensure that the list of alleged perpetrators is known to prosecution authorities but is not available to the general public.**<sup>68</sup>

Some past truth commissions have decided to “name and shame” publicly alleged perpetrators. However, this approach violates the right to be presumed innocent, may endanger the safety of both alleged perpetrators and witnesses and eventually be counter-productive to the interests of justice.

☞ The Haitian National Commission of Truth and Justice drafted a confidential list of alleged perpetrators. However, the list ended up being leaked to an Haitian newspaper. At that time, Amnesty International expressed its concern that the publication of the list not only might lead those named to go into hiding or flee Haiti to evade prosecution, but could also encourage reprisals against them.<sup>69</sup>

☞ The Commission of Truth of El Salvador initially decided to name, where appropriate, those alleged responsible for past crimes in its report, because “it is not possible to tell the whole truth omitting names... Not to mention names would reinforce the very cloak of impunity which the parties charged the Commission with removing”. However, this decision caused considerable controversy and the government tried to delay the publication of the report until after the next elections. The then Salvadoran president maintained that he could not guarantee the safety of witnesses if the report was published with the names.

☞ The handover of the 1998 five-volume report of the Truth and Reconciliation Commission of South Africa was nearly derailed by court challenges to the Commission’s findings from both the African National Congress (unsuccessfully) and former President F. W. de Klerk, whose litigation resulted in the removal of a section of the report which had named him as a perpetrator of human rights violations. The publication of a further two volumes, containing findings based on the evidence emerged after 1998 and a final list of victims and recommendations for reparations, was delayed as a result of an interim court order obtained by the Inkatha Freedom Party (IFP). The order constrained the South African Commission from submitting “the final report” to the president and arranging for its printing and publication, pending a ruling on a prior application by the IFP for an order compelling the TRC to amend its findings against them.<sup>70</sup>

***The right to seek judicial review.*** Those adversely affected by a truth commission’s decision have the right to seek judicial review.

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<sup>68</sup> See also: Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Truth Commissions*, Un Doc. HR/PUB/06/1, 2006, p. 21-22.

<sup>69</sup> *Haiti: Still crying out for justice* (AI Index: AMR 36/02/98), July 1998, p. 9-10.

<sup>70</sup> See: *South Africa: Truth and justice: unfinished business in South Africa* (AI Index: AFR 53/001/2003), February 2003.

Article VIII, Section 27(b) of the TRC Act seems to imply that the Supreme Court of Liberia can hear appeals from the decisions or actions of the TRC. These appeals do not operate as a stay of any proceedings of the TRC.<sup>71</sup>

### **C. Collection of evidence and statement- taking**

The TRC announced the beginning of its investigation in early June 2006.<sup>72</sup>

In collecting information, the Commission should seek the cooperation of the widest possible range of sectors of society, paying special attention to information and testimonies provided by victims of human rights violations and their families (both inside and outside the country), national and international human rights organizations and previous research projects. It should pursue all available sources of information, including: statements from victims, witnesses and alleged perpetrators; material evidence from sources such as government records, medical records or reports, and police investigation files; court files; media reports; and information from NGOs, families of victims, and lawyers.

As a first step in gathering evidence, the Commission should invite people to testify or submit written statements. All interested parties should have an opportunity to submit evidence. Evidence can be submitted to the inquiry in writing, at least initially. The Commission should consider written submissions from, or arrange special interviews with, witnesses who are unable to attend because they are abroad, because they are afraid, or for other valid reasons. It should be flexible about the manner of questioning witnesses and adapt its method to the circumstances of the case and the individual interviewees, so as to gather an optimal amount of evidence.

The Commission should conduct on-site investigations, visits, interviews and hearings, as appropriate. In addition to its own inquiries, the Commission should review other proceedings that could provide relevant information. In particular, it should review evidence collected as a result of the vetting process of the armed and security forces, earlier police investigations and the findings of any relevant inquiry to determine if they were conducted thoroughly and impartially.

Truth commissions are not bound by such strict rules of evidence as a court, and can consider reliable evidence of any kind, including, for example, hearsay (secondary) evidence.

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<sup>71</sup> Article VIII, section 27(b) of the Act provides: "...contempt of the TRC itself shall be held before the Supreme Court of Liberia in manner and form as contempt of the Supreme Court is conducted, provided that appeals from the decisions, actions of the TRC does not operate as a stay of any proceedings of the TRC." The Act also provides in article VI, section 20: "...all matters of the TRC appearing before the Supreme Court of Liberia shall be advanced for hearing and determination to the top of the Supreme Court's docket".

<sup>72</sup> "Liberia: Truth Commission now at work", IRIN, 5 June 2006, available at: <<http://www.alertnet.org/thenews/newsdesk/IRIN/30483aa7a2e72437b72a6753ad079166.htm>>.



All information received, especially if provided by any individuals or groups which might attempt to use the TRC as an instrument for their own purposes, should be evaluated with caution. The Commission will need to assess all information and evidence it receives to determine its relevance, veracity, reliability and probative value. The reliability of hearsay evidence, in particular, must be considered carefully and must normally be corroborated before it can be accepted as fact. Legal counsels should assist the Commission by bringing relevant evidence to its attention and ensuring that evidence produced by the Commission is admissible in later criminal proceedings.

The Commission should be able to count on the services of experts in the field of psychology, pathology, forensic anthropology, and ballistics. In particular, forensic expertise should be on hand at short notice so that effective investigation and recording of, for example, injuries caused by torture or sexual violence, or post mortem investigations, can be done efficiently, increasing the likelihood of bringing perpetrators to justice. The methodology to be employed in exhumations, autopsies and analyses of bone remains should conform to the United Nations Principles relating to the effective prevention and investigation of extralegal, arbitrary or summary executions.<sup>73</sup> Where the investigation is dealing with unlawful killing, the Commission should have the authority to prevent burial or other disposal of the body or bodies until an adequate post-mortem examination has been carried out.

Recognizing the importance of gathering and preserving evidence “early on while it is still possible”, in 2003 the UN Secretary-General recommended the establishment of a crime investigation capacity within UNMIL to help investigate serious violations of international humanitarian law or other serious crimes and to provide evidence to Liberian or other authorities, including the prosecutors of the Special Court for Sierra Leone.<sup>74</sup> It was intended that this information would “facilitate future action against impunity”.<sup>75</sup>

UNDP, in collaboration with the UN Office of the High Commissioner for Human Rights, carried out a “Mapping the Conflict Project” to provide the Commission with a baseline of information to build upon. The project catalogued human rights violations perpetrated by all armed groups that fought in the conflict and resulted in the creation of a database containing over 13,500 testimonies and video and photographic evidence.<sup>76</sup>

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<sup>73</sup> United Nations Principles relating to the effective prevention and investigation of extralegal, arbitrary or summary executions, endorsed by the General Assembly in December 1989 and approved by the Economic and Social Council in 24 May 1990.

<sup>74</sup> Report of the Secretary-General to the Security Council on Liberia, UN Doc. S/2003/875, 11 September 2003, para.64.

<sup>75</sup> First Report of the Secretary-General on the United Nations Mission in Liberia, 15 December 2003, UN Doc. S/2003/1175.

<sup>76</sup> UNDP in Liberia, official website <<http://www.lr.undp.org/hr.htm>>, last visited 9 March 2006.

## VI. Building the future

### A. Reporting, recommendations and dissemination

The final report is the most visible outcome of the work of a truth commission. The TRC is required to prepare a “comprehensive report which sets out its activities and findings based on factual and objective information and evidence collected or received by it or placed at its disposal” (article VII, section 26 (h)). The report must provide details of all aspects of the Commission’s work, including investigations, hearings, findings and recommendations for prosecution (article X, section 44). It must be submitted to the National Legislature at the end of the Commission’s tenure (article X, section 43).

**The results of the Commission’s investigations and its recommendations should be officially proclaimed, published and widely disseminated without undue delay. The final report should set out:<sup>77</sup>**

- **the Commission’s mandate and terms of reference;**
- **its procedures and methods for evaluating evidence, as well as the law upon which it relied;**
- **the background to the investigation, including relevant social, political and economic conditions and information on whether the Commission received the necessary cooperation by the government and other public institutions;**
- **its findings of fact and a list of documents and other evidence upon which such findings are based;**
- **its conclusions based upon applicable law and findings of fact, including a critical analysis of institutional structures, policies and practices, the failure of institutions and other mechanisms to provide protection, and other factors such as the involvement of foreign countries and non-state actors in fuelling the armed conflict;**
- **a list of victims (except those whose identities are withheld for protection);**
- **and its recommendations.**

According to the preamble of the TRC Act, the Commission’s recommendations are intended to promote peace, justice and reconciliation. The Act gives the TRC the power to make recommendations to the head of state with regard to: “reparations and rehabilitation of

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<sup>77</sup> As a response to the need to present a comprehensive and detailed account of their work, recent truth commissions tend to write longer reports. While the 1985 Investigative Commission on the Situation of “Disappeared” Persons and its Causes in Uruguay produced a 13-page report, the 1995 TRC in South Africa produced a report in six volumes.

victims and perpetrators in need of specialized psycho-social and other rehabilitative services”; the enactment of specific legal, institutional and other reforms; any necessary government actions to be taken in furtherance of its findings, such as continuing investigations or inquiries into particular matters and prosecutions in particular cases (article VII, section 26(j) and article X, section 45).

The TRC Act provides that “all recommendations shall be implemented”. The head of state shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to their implementation. Where the implementation of any recommendation has not been complied with, the Legislature is directed to require the head of state to show cause for such non-compliance (article X, section 48).

The TRC Act provides that key findings of the report will be published simultaneously with its presentation in at least three local daily newspapers in pursuit of the objectives of transparency and public interest (article X, section 43). In addition, Amnesty International recommends that a summary of the final report should be made public and communicated widely through radio, town hall meetings, distribution of books and education materials to schools, etc. The Commission’s findings should be presented to the nation in a television and/or radio broadcast. The full report should be made available in free copies distributed to schools, local administrations and on the internet. Translations into local languages, as well as popular versions, child-friendly versions and summaries should also be organised.

The Commission on Human Rights has encouraged states to “disseminate, implement, and monitor implementation of, the recommendations of non-judicial mechanisms such as truth and reconciliation commissions...”.<sup>78</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, has stated that “Governments have a responsibility to facilitate access to information which is already in the public domain such as the reports and recommendations of truth and reconciliation commissions”.<sup>79</sup>

☛ The Sierra Leone Truth and Reconciliation Commission recommended that the contents of its report should to be incorporated into education programs. It also produced three special versions of the report for additional dissemination: a video version; a pictorial version; and a child-friendly version, written with the assistance of children and produced in collaboration with UNICEF. It encouraged the production of popular versions and summaries in different local languages, the organization of dissemination committees at the national and local levels and the use of the report to promote dialogue and debate in workshops and other events around the country.

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<sup>78</sup> Commission on Human Rights, Resolution 2005/66, Right to the truth, 20 April 2005, para. 3.

<sup>79</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted pursuant to Commission on Human rights resolution 1997/26, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 16.

## **B. Providing full reparation to the victims and their families**

Victims of gross violations of international human rights law and serious violations of international humanitarian law have the right to be provided with full and effective reparation in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (see: *The five forms of reparation*, p. 49). Reparation should be proportional to the gravity of the violations and the harm suffered.<sup>80</sup> It should be provided even if the perpetrator has not been identified.

The proper establishment and functioning of a truth commission is in itself a form of reparation. By officially acknowledging that a pattern of human rights violations occurred in the past and taking measures to investigate the facts and disclose the truth, the state provides victims and their families with an initial form of satisfaction. In addition, truth commissions usually recommend a range of reparation measures in their final reports.

Some past truth commissions focused their recommendations on monetary compensation. Other truth commissions have devised broad reparation programs, including rehabilitation, satisfaction and guarantees of non-repetition as well as compensation:

☞ The Commission of Truth in El Salvador recommended that a fund be set up to provide financial compensation for the victims of past human rights abuses. The Commission recommended that the state contribute to the fund but, given the amount of resources needed, it called on the international community to provide additional funds. It also suggested that a minimum of one per cent of any international aid to El Salvador should be earmarked for the fund and that the fund should be managed by a directorate of three members, one named by the government of El Salvador, one by the Secretary General of the UN and a third by mutual agreement of the two parties.

☞ After the publication of the report of the National Commission for Truth and Reconciliation in Chile, legislation established the Corporation for Reparation and Reconciliation (Law 19.123 of 8 February 1992) and designed mechanisms for granting initial sums of compensation and regular pensions to relatives of victims officially recognized by the state in either the Commission report or subsequent Corporation investigations. It further guaranteed the right to free medical assistance for families and educational grants until the age of 35 for children of the victims named in the investigations. In 1991 the Health Ministry had established a Program for Reparation and Integrated Health Provision (*Programa de Reparación y Atención Integral en Salud, PRAIS*), to provide medical assistance to relatives of those “disappeared” and extra-judicially executed as well as to those who suffered the traumas of detention and torture.

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<sup>80</sup> Basic principles on the right to a remedy and reparation, principles 15, 18.

### **The five forms of reparation**

#### *Basic principles on the right to a remedy and reparation, principles 19 to 23*

“19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. Rehabilitation should include medical and psychological care as well as legal and social services.

22. Satisfaction should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

☞ The Peruvian Truth and Reconciliation Commission put forward a Comprehensive Plan for Reparations. This included symbolic reparations, such as the holding of commemorative events and the closing down or renovating for new purposes former detention centres and other places associated with human rights violations. The plan also included reparations in the field of health and education, such as free mental and physical health treatment for victims, a grants program for those who were forced to give up their studies and adult education programs for the communities most affected by the violence.<sup>81</sup>

☞ In its 1998 report, the South African Truth and Reconciliation Commission made extensive recommendations for reparations to victims, including both monetary compensation and various forms of symbolic reparations, ranging from the building of monuments and renaming streets and community facilities, to expunging criminal records for acts committed with political motives. Though there has been progress on many of the non-monetary recommendations, the proposed financial compensation remained largely outstanding in February 2003.<sup>82</sup>

☞ The Truth and Reconciliation Commission in Sierra Leone recommended the implementation of a Reparations program, to be co-ordinated by the National Commission for Social Action. The program comprised measures responding to the needs of victims in the areas of health, pensions, education, skill training and micro credit, community reparations and symbolic reparations.

☞ The Equity and Reconciliation Commission in Morocco was required to organize compensation of material and moral damages suffered by the victims of enforced disappearances and arbitrary detention and their families. The Commission organised consultations with victims, civil society associations and human rights NGOs about the nature of reparations they requested. It finally recommended both financial compensation and other forms of reparation (including medical rehabilitation, reintegration into administrative positions, restitution of property, collective satisfaction in the form of memorials and apologies by the Prime Minister).

In Liberia, the Act establishing the TRC provides that it should recommend “measures to be taken for the rehabilitation of victims of human rights violations in the spirit of national reconciliation and healing” (article 4, section 4 (e)). It also provides for monetary compensation: the Commissions should create a trust fund for the benefit of victims and survivors of the conflict; appoint trustees and determine beneficiaries as part of the outcome of its proceedings, findings and recommendations at the end of its tenure (article IX, section 38). At any time prior to the end of its tenure, the Commission may, upon proper inquiry and investigation, declare as missing those persons and others who were victims of mass murders

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<sup>81</sup> See: *Peru: The Truth and Reconciliation Commission – a first step towards a country without injustice* (AI Index: AMR 46/003/2004), August 2004.

<sup>82</sup> See: *South Africa: Truth and Justice: Unfinished Business in South Africa* (AI Index: AFR 53/001/2003), February 2003, p. 8-10.

and massacres, and recommend to the appropriate agency of government the issuance of certificates in testimony thereof “as a form of immediate relief, consolation and reparation to survivors and relatives of victims” (article VIII, section 29).

**Throughout the process, the Commission should collect views from victims about what forms of reparation they require to rebuild their lives. In addition to the measures of rehabilitation, compensation and satisfaction mentioned in the TRC Act, commissioners should consider recommending a broad range of other reparations for victims. These include measures that would prevent repetition of past violations, reforming laws, administrative procedures and practice; strengthening the justice system; and promoting human rights education. Any recommendation made for reparation should never be seen as a substitute for bringing those responsible to justice or preclude victims also seeking compensation through the courts.**

### **C. Preserving evidence for future prosecutions**

The work of a truth commission should assist and should not prejudice current or future criminal proceedings. If a truth commission obtains information indicating that identified individuals may have been responsible for committing, ordering, encouraging or permitting violations of human rights, that information should be passed to the relevant judicial or law enforcement bodies for investigation without delay, with a view to bringing those individuals to justice. Principle 8(e) of the updated Set of principles to combat impunity states:

“Commissions of inquiry shall endeavour to safeguard evidence for later use in the administration of justice”.

In carrying out their inquiry, truth commissions should bear in mind the rules and conditions for the admissibility of evidence in the criminal process and should ensure that they produce admissible evidence for later criminal proceedings.

☞ The Chilean Truth and Reconciliation Commission had no formal powers to recommend prosecutions but transmitted its findings and new evidence on some 220 cases within its mandate to the courts for judicial investigation. The Chilean President, Patricio Aylwin, had previously written to the then President of the Supreme Court urging him to instruct the courts to reopen the investigations.<sup>83</sup>

☞ The 1996 Truth and Justice Commission in Ecuador was mandated to investigate unresolved cases of human rights violations and file its findings and recommendations before the relevant judicial authorities.

☞ The deliberations of the Investigative Commission in Uruguay were held in secret, and the names of the military officers involved were not included in the report, but were later

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<sup>83</sup> See: *Chile: Transition at the crossroads: Human rights violations under Pinochet rule remain the crux* (AI Index AMR 22/01/96), March 1996.

turned over to the courts, together with thousands of pages of testimony and affidavits on which the Commission had based its conclusions.

☞ The Truth and Reconciliation Commission in Peru decided to transfer information on fully documented cases to the courts, including the identity of those allegedly responsible for violations. At the end of its mandate, it forwarded 43 cases in which the alleged perpetrators could be identified to the national Ombudsman's Office and the Public Prosecutor's Office. In its final report, the Peruvian TRC commented:

“Neither reconciliation nor pardon equate with impunity. Impunity is another name for injustice. That's why the TRC understands 'justice' as the foundation of reconciliation, its precondition and effect, its point of departure and arrival. The exercise of justice is indispensable to realize reconciliation”.<sup>84</sup>

Four months after the publication of the Commission's report, an Office of the Specialist Prosecutor for Human Rights, Enforced Disappearances, Extrajudicial Executions and the Exhumation of Secret Graves was set up in Lima, together with ten other specialist prosecutors' offices, in order to move forward in the area of truth and justice.

☞ The 1998 report of the Truth and Reconciliation Commission of South Africa also recommended the prosecution of individuals who were denied or did not seek amnesty, where strong evidence had been found of their responsibility for gross human rights violations. The government established a unit in the office of the National Director of Public Prosecutions charged with the responsibility to investigate these cases.

☞ The Commission for Reception, Truth and Reconciliation in Timor-Leste was mandated to refer cases, where appropriate, to the Office of the General Prosecutor for prosecution. Amnesty International welcomed the provision in the legislation for serious crimes cases to be referred to the General Prosecutor's office, but seriously doubted whether the capacity existed to process these cases effectively or in a timely fashion.<sup>85</sup>

The Liberia TRC has the power to make recommendations to the head of state with regard to the need to hold prosecutions “in particular cases as the TRC deems appropriate” (article VII, section 26(j)). At the time of writing, it still remains unclear how the Commission will enforce this power and how its findings and recommendations will feed into future judicial investigations. **Pursuant to article VII, section 26(j) of the TRC Act, the TRC should forward relevant information regarding crimes to prosecution authorities for investigation and prosecution.**

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<sup>84</sup> Peru Truth and Reconciliation Commission, *Final Report*, Volume IX, ‘The Foundations of Reconciliation’, p. 27 (Amnesty International's translation from the Spanish original).

<sup>85</sup> ASA/57/001/2001, p. 58.



## D. Archives

The UN Commission on Human Rights has declared that “states should preserve archives and other evidence concerning gross violations of human rights and serious violations of international humanitarian law to facilitate knowledge of such violations, to investigate allegations and to provide victims with access to an effective remedy in accordance with international law”.<sup>86</sup> In particular, truth commissions should establish at the outset of their work the conditions that will govern access to their documents, including conditions aimed at preventing disclosure of confidential information while facilitating public access to their archives.<sup>87</sup>

The archives of the Liberia TRC will also be an important legacy of its work. The TRC Act provides that archives of the Commission shall remain in the public domain, except those records or documents it considers to be “confidential”, which shall remain classified for 20 years following its retirement (article X, section 47). Amnesty International is concerned that the set time of 20 years may not be sufficiently long to protect victims and witnesses from possible retaliation and may deter them from cooperation with the Commission.

## E. Designating a successor body

The legislation establishing truth commissions, or the commissions themselves in their recommendations, usually provide for a successor body to monitor the implementation of the commission’s recommendations, continue investigations, preserve the archives, etc. These functions may be carried out by an *ad hoc* body, or by existing bodies, such as national human rights institutions.

☞ The Chilean Truth and Reconciliation Commission recommended the establishment of a successor body. The Corporation for Reparation and Reconciliation (*Corporación de Reparación y Reconciliación*) was charged with continuing investigations of the 641 cases the Commission had been unable to resolve, and receiving and investigating those cases which had not been presented during the Commission’s one-year period of operation. It was further mandated to coordinate and promote preventive action to improve the regulation and protection of human rights and the consolidation of a culture respecting human rights. The Corporation promoted human rights education and seminars and publications on issues of human rights protection and the functioning of the judicial system.<sup>88</sup>

☞ Implementing one of the recommendations of the Haitian National Commission of Truth and Justice, a Proceedings and Follow Up Office (*Bureau de poursuites et suivi*) was set up to oversee the implementation of the Commission’s recommendations. The Office was

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<sup>86</sup> Commission on Human Rights, Resolution 2005/66, Right to the truth, 20 April 2005.

<sup>87</sup> Updated Set of principles to combat impunity, Principle 8(f).

<sup>88</sup> *Chile: Transition at the crossroads: Human rights violations under Pinochet rule remain the crux* (AI Index AMR 22/01/96), March 1996, p. 31.

responsible for studying compensation claims and establishing appropriate means of reparation. It also reportedly organized training programs to help victims present complaints to the courts.

After the end of the mandate of the Peruvian Truth and Reconciliation Commission, the national Ombudsman's office took charge of the archiving of documentation gathered by the Commission and inaugurated an Information Centre for the Historical and Collective Memory and Human Rights, where the information collected by the Commission would be available for public consultation. At the same time, a High-Level Cross-Sector Commission was set up to take charge of the state's action and policy on matters relating to peace, reparations and reconciliation and to follow up on the Commission's recommendations.

In Liberia, the Independent National Human Rights Commission (INHRC) will have the responsibility to ensure that all the recommendations contained in the report of the TRC are implemented.<sup>89</sup> It will also ensure that "civil society organisations and moral guarantors of the CPA shall be seized of the responsibility to monitor, and campaign for the scrupulous implementation of all recommendations contained in the report" (article X, section 46). The INHRC may also set up a resource centre on the Liberian conflict and transitional justice.

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<sup>89</sup> At the time of writing the Independent National Human Rights Commission is in the process of being set up. By the end of June 2006 nine commissioners should be appointed and the official work of the commission will have begun. The work of this commission is intended to be for a five-year period.

## **Conclusion and recommendations**

Amnesty International's research and experience with regard to transition processes and truth commissions reveals that the total or partial concealment of the truth and half-way steps to establish justice leave open wounds in the social fabric and revive conflicts which were earlier thought to be over. The Liberia Truth and Reconciliation Commission should unearth and reveal the whole truth – or as much as is possible to find - in matters relating to violations of international human rights law and international humanitarian law in Liberia in the period under examination. It should ensure that perpetrators of punishable crimes are prosecuted and that victims and their families receive adequate reparation. Amnesty International considers that this would lay the foundation for building a strong and lasting reconciliation in the country over the years to come.

The Liberian authorities will be judged according to what they accomplish, as measured against international human rights law and standards. Crucial to this assessment will be the degree to which the authorities facilitate and cooperate with the work of the Commission, and the extent to which they act upon the findings of the Commission and implement its recommendations.

Amnesty International urges the government of Liberia to ensure that the TRC is granted all necessary powers and resources for it to fulfil the objective so desired by Liberian society: that of making public knowledge of the full truth of what has taken place and bringing those responsible to justice. Only in this way can the systematic violations of human rights in Liberia will be consigned to a closed chapter of the country's history.

### **Recommendations to the Liberian government**

The Liberian government should:

- 1. Grant the Commission the government's full authority, capacity and resources, ensuring full implementation of article VI, sections 20 and 21 of the TRC Act.**
- 2. Ensure that all information that the TRC considers to be relevant is provided to it, including archives, other records and testimony of government officials.**
- 3. Make an explicit undertaking that it will ensure compliance with TRC requests to suspend from duty officials involved in the matters under investigation, if there is reason to believe that they may interfere with victims or witnesses or otherwise interfere with the investigation.**

### **Recommendations to the Truth and Reconciliation Commission of Liberia**

The Truth and Reconciliation Commission of Liberia should:

- 1. Investigate all cases of past human rights violations and abuses, whether committed by governmental forces or by armed groups. The investigations should concern violations of both civil and political and economic, social and cultural rights.**
- 2. Investigate and clarify all properly documented violations of human rights placed before it.**
- 3. Include in its investigations a critical analysis of institutional structures, policies and practices, the failure of institutions and other mechanisms to provide protection, and other factors. In particular, the Commission should address the question of the involvement of foreign countries and non-state actors in fuelling the armed conflict.**
- 4. Give priority to the investigation of events that occurred during the period from January 1979 to October 2003.**
- 5. Publish regular and frequent interim reports outlining progress made and obstacles encountered.**
- 6. Reaffirm Liberia's obligation under international law to combat impunity. This obligation includes investigating crimes such as genocide, crimes against humanity, war crimes and other crimes under international law and, where there is sufficient admissible evidence, prosecuting suspected perpetrators in trials that meet international standards of fairness, without the death penalty or other cruel, inhuman or degrading punishment. As required by the Act and by international law, the Commission should not recommend amnesties or similar measures of impunity with respect to crimes under international law.**
- 7. Ensure that any specific procedure adopted to promote individual reconciliation fully respect the rights and dignity of both victims and alleged perpetrators. In particular, victims and their families should not be forced to meet alleged perpetrators or to engage in any act of reconciliation. On the other hand, reconciliation procedures should not be at the expenses of fair trial: they should not involve specific punishment or humiliation of alleged perpetrators.**
- 8. Ensure that members of staff and experts engaged as consultants are insulated from political influence and independent of the institutions and agencies under investigation. This would also apply to seconded public officials who normally work for other public bodies. To this purpose, staff and consultants should be screened on the basis of similar criteria as those used for the Commissioners under article V, section 11 of the TRC Act.**
- 9. Ensure that all its members and staff receive comprehensive training in human rights, according to the principles established in Amnesty International's *12-Point***

*Guide for Good Practice in the Training and Education for Human Rights of Government Officials.*

10. Carry out investigations in all areas of the country, with the staff and facilities necessary to reach all victims and their families. Commissioners should travel around the country and organise hearings in all regions to ensure direct access to victims and their families and raise awareness of the Commission's function and work. Special methods should be used to encourage participation of women and other groups, such as children, young people and the elderly.
11. Establish contact with representatives of non-governmental organizations, other relevant non-state institutions and the media, to publicize its work and obtain relevant information. The establishment of the Commission and the matters it will look into should be notified to the public by all appropriate media. This notice should include an invitation to submit information to the Commission and guidance for doing so. Special attention should be paid to notifying victims of human rights violations, or those who otherwise may have an interest. In order to ensure this, it may be necessary to establish a specialised outreach unit to ensure adequate communication with journalists and with the general public, including civil society.
12. Adopt a policy that it will not provide confidentiality to any person giving information about their involvement in crimes under international law.
13. Ensure that all representatives of the TRC who come into contact with victims, including Commissioners, TRC staff and others, are comprehensively trained in dealing with victims of serious crimes, including victims of sexual violence and violence against children.
14. Devise and implement a victims and witnesses protection program. Protection measures should be available for all witnesses, victims and their families, staff and others associated with the investigation. In determining which protection measures to take, the Commission should take into account the views of the victims and witnesses on which measures they require and whether the protection measures are proportionate to the seriousness of the risk. The Commissioners should be responsible for overseeing the implementation of all protection measures and a procedure should be established whereby a victim who is not satisfied with protection measures may apply to the Commissioners to address the issue.
15. Provide victims and their families with adequate support to participate in the TRC process. All the victims and their families should be allowed and actively encouraged to register their cases officially. Victims, their families, lawyers and NGOs working in their behalf should be kept informed of hearings and all other information relating to the investigation of their case, to which they should have access and be allowed to present evidence.

16. Provide special measures to assist victims and witnesses, especially those that are traumatized, children, elderly or victims of sexual violence in participating and giving testimony or presenting views and concerns.
17. Organize specific outreach activities to ensure that women and children are aware of the TRC process and encouraged to participate. This should include specific information about the victims and witnesses protection program.
18. Establish a special unit for protection and support of victims and witnesses.
19. Exclude granting “use immunity”.
20. Guarantee any witnesses, alleged perpetrators or others who may be implicated legal counsel and a right to reply. In the case of alleged perpetrators, the commission should advise them of the possible consequences of their statements and that they may, if they wish, be assisted by legal counsel. Witnesses also should be permitted legal counsel if they are likely to be harmed by the inquiry.
21. Provide legal assistance to suspected perpetrators before the Commission who cannot afford to pay for a lawyer, as well as to victims or relatives of victims who have difficulties in making a submission - whether because of lack of resources, expertise or distance. At the same time, the Commission should avoid placing extra pressure on the existing public defence service.
22. Identify not only the direct perpetrators, but also those who planned or ordered the abuses, thereby establishing chain-of-command responsibility.
23. Compile a list of those allegedly responsible for the human rights violations documented and annex such a list to its report in a separate confidential appendix. The names should be handed over to the national prosecution authorities so that, where there is sufficient evidence, those concerned can be prosecuted. The Commission should decide in advance, at the outset of its work, a clear policy defining the criteria for compiling the list of alleged perpetrators, including standards of proof. Those included in the list should be given, as a minimum, the possibility to respond to the allegations. The Commission should also decide the ways to ensure that the list of alleged perpetrators is known to prosecution authorities but is not available to the general public.
24. The results of the Commission’s investigations and its recommendations should be officially proclaimed, published and widely disseminated without undue delay. The final report should set out: the Commission’s mandate and terms of reference; its procedures and methods of evaluating evidence, as well as the law upon which it relied; the background to the investigation, including relevant social, political and economic conditions and information on whether the Commission received the necessary cooperation by the government and other public institutions; its findings of fact and a list of documents and other evidence upon which such findings are based; its conclusions based upon applicable law and findings of fact, including a

critical analysis of institutional structures, policies and practices, the failure of institutions and other mechanisms to provide protection, and other factors such as the involvement of foreign countries and non-state actors in fuelling the armed conflict; a list of victims (except those whose identities are withheld for protection); and its recommendations.

25. Throughout the process, collect views from victims about what forms of reparation they require to rebuild their lives. In addition to the measures of rehabilitation, compensation and satisfaction mentioned in the TRC Act, Commissioners should consider recommending a broad range of other reparations for victims. These include measures that would prevent repetition of past violations, reforming laws, administrative procedures and practice; strengthening the justice system; promoting human rights education. Any recommendation made for reparation should never be seen as a substitute for bringing those responsible to justice nor should they preclude victims also seeking compensation through the courts.
26. Pursuant to article VII, section 26(j) of the TRC Act, forward relevant information regarding crimes to prosecution authorities for investigation and prosecution

### **Recommendations to donors and international organizations**

All donors should:

1. Ensure that the Commission has the confidence it needs to start the work in a timely manner.
2. Design a viable and sustainable funding mechanism to provide adequate resources for restoring the rule of law and establishing an effective and lasting justice system in Liberia.

UNICEF should assist the Commission providing technical advice on designing a program of protection and support for victims and witnesses, especially women and children.

UNMIL should support the TRC process providing full assistance within their capacity. In particular UNMIL should:

1. Provide assistance in devising and implementing a victims and witnesses protection program.
2. Work closely with civil society to develop and carry out outreach activities aimed at ensuring that the mandate and purpose of the Commission are well known to the Liberian population, especially in the rural areas.

- 3. Assist in investigating past abuses and submit the information to the Commission.**
- 4. Assist with logistics, especially in the rural areas.**



## **Annex A – Selected international standards and reference documents**

Declaration of basic principles of justice for victims of crime and abuse of power, adopted by the UN General Assembly in Resolution 40/34 of 29 November 1985.

Principles Relating to the Status of National Institutions (Paris Principles), adopted by General Assembly resolution 48/134 of 20 December 1993.

Set of principles for the protection and promotion of human rights through action to combat impunity (Set of principles to combat impunity), Annex II to the Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, UN Doc. E/CN.4/Sub.2/1997/20/Rev. 1, 2 October 1997.

The rule of law and transitional justice in conflict and post-conflict societies, report of the UN Secretary-General, UN Doc. S/2004/616, 23 August 2004.

Updated Set of principles for the protection and promotion of human rights through action to combat impunity (updated Set of principles to combat impunity), Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005.

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 (Basic principles on the right to a remedy and reparation), adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147.

UN Economic and Social Council, Guidelines on justice in matters involving child victims and witnesses of crime, Resolution 2005/20 of 22 July 2005.

Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2006/91, 8 February 2006.

Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Truth Commissions*, UN Doc. HR/PUB/06/1, 2006.

## **Annex B – An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia**

### **PREAMBLE**

Whereas in 1847, Liberia, was declared the first independent Republic in Africa as a beacon of hope, freedom, liberty and justice;

AND

Whereas the nation, since its independence, has been confronted with challenges and socio-economic and political conflicts, which polarized the nation and culminated into the violence of the late 70's leading to the military coup in 1980;

AND

Whereas the violence during the 1980s created even greater violence and armed conflict during the 1990s, decimating and displacing much of the population, internally and externally, ravaging the economy, polarizing the population further and thereby necessitating an intervention by the international community to restore peace and security to Liberia;

AND

Whereas the overwhelming aspiration of the people of Liberia for peace and security resulted in the convening of a number of peace conferences and the adoption of several peace agreements, which eventually culminated into the adoption of the Comprehensive Peace Agreement (CPA) as a sovereign state instrument in the City of Accra, Republic of Ghana on August 18, 2003, thus bringing to a formal end the civil strife and wars which have bedevilled the nation;

AND

Inspired by the principles of Chapter II, Article 5(a) of the 1986 Constitution of Liberia which provides that the national policies of the Republic shall *“aim at strengthening the national integration and unity of the people of Liberia, regardless of ethnic, regional or other differences, into one body politic; and the legislature shall enact laws promoting national unification and the encouragement of all citizens to participate in government;*

AND

Considering that the civil conflict was generally characterized by gross violations of human rights and the widespread commission of gruesome and heinous crimes against humanity in further violation of international humanitarian laws and standards;

AND

Convinced that national peace and security, unity and reconciliation are indispensable to the attainment of national development goals and objectives that ensure socio-economic growth, development and prosperity;

AND

Recognizing that introspection, national healing and reconciliation will be greatly enhanced by a process which seeks to establish the truth through a public dialogue which engages the nation about the nature, causes and effects of the civil conflicts and the impact it has had on the Liberian nation in order to make recommendations which will promote peace, justice and reconciliation;

AND

Recalling that Article XIII of the CPA provides for the establishment of a Truth and Reconciliation Commission to “*provide a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to get a clear picture of the past to facilitate genuine healing and reconciliation;*”

AND

Recognizing that prior to the enactment of this enabling TRC ACT the Chairman of the National Transitional Government of Liberia appointed a group of nine (9) commissioners;

AND

Recalling also that the CPA further mandates in Article XIII, that “*in the spirit of national reconciliation, the Commission shall deal with the root causes of the crises in Liberia, including human rights violations...[and] among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations ...*”.

AND

Reaffirming the commitment of the Liberian people to peace and justice, unity, national healing and reconciliation and the general principles of human and peoples rights as enshrined in the Constitution of the Republic of Liberia, the African Charter on Human and Peoples Rights, the Charter of the United Nations and the Universal Declaration of Human Rights and other international conventions and protocols relating to the rights and protections of women and children;

NOW THEREFORE,

*It is enacted by the National Transitional Legislative Assembly of the National Transitional Government of Liberia, in Legislature Assembled:*

## **Article I**

## TITLE OF ACT

Section 1. This Act shall be cited as “An Act to Establish the Truth and Reconciliation Commission of Liberia” or “The TRC Act of Liberia” for short.

## Article II

### DEFINITIONS

“**Chairman**” means the Chairman of the Commission designated pursuant to section 13 of this Act;

“**Commissioners**” means the (9) commissioners who are appointed by the Head of State, as described in section 7 and 8 of this Act;

“**Commission**” means the Truth and Reconciliation Commission of Liberia established in section 2 of this Act;

“**Selection Panel**” means the selection panel of seven individuals cited in section 8 of this Act;

“**Human Rights violations**” means: (1) violations of international human rights standards, including, but not limited to acts of torture, killing, abduction and severe ill-treatment of any person; (2) violations of international humanitarian law, including, but not limited to crimes against humanity and war crimes.

“**Violations of International Humanitarian law**” includes the Geneva Conventions of 12 August 1949 and its Additional Protocols.

Definitions of all other terms shall be guided by international human rights standards.

## Article III

### ESTABLISHMENT

Section 2. There is hereby established a body corporate to be known as the Truth and Reconciliation Commission (TRC) of Liberia.

Section 3. The National Office of the TRC shall be established in The City of Monrovia, with county or regional sub-offices, branches or units established in other parts of Liberia and elsewhere at the discretion of the TRC for the purpose of accomplishing its mandates and functions and in exercise of the powers granted by this Act.

#### **Article IV**

### **MANDATE OF THE COMMISSION**

Section 4. The objectives/purpose of the Commission shall be to promote national peace, security, unity and reconciliation by:

- a. Investigating gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extra-judicial killings and economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflicts, during the period January 1979 to October 14, 2003; determining whether these were isolated incidents or part of a systematic pattern; establishing the antecedents, circumstances factors and context of such violations and abuses; and determining those responsible for the commission of the violations and abuses and their motives as well as their impact on victims.

Notwithstanding the period specified herein, the Commission may, on an application by any person or group of persons, pursue the objectives set out in this Article IV (Mandate of the Commission) in respect of any other period preceding 1979.

- b. Providing a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to create a clear picture of the past to facilitate genuine healing and reconciliation;
- c. Investigating the antecedents of the crises which gave rise to and impacted on the violent conflict in Liberia;
- d. Conducting a critical review of Liberia's historical past, with the view to establishing and giving recognition to historical truths in order to address falsehoods and misconceptions of the past relating to the nation's socio-economic and political development.
- e. Adopting specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender based violations, as well as to the issue of child soldiers, providing opportunities for them to relate their experiences, addressing concerns and recommending measures to be taken for the rehabilitation of victims of human rights violations in the spirit of national reconciliation and healing.

- f. Compiling a report that includes a comprehensive account of the activities of the Commission, and its findings.

Section 5. The TRC shall be established within 3(three) months of the enactment into law of this legislation. Upon establishment, the Commission shall be given 3(three) months preparatory period within which to facilitate activities necessary for the commencement of its mandatory functions. The Commission shall have a two-year lifespan in which to carry out its operational work with a further 3 months to wrap up its activities and write its report on its activities and findings.

Section 6. The National Legislature may on request by the TRC, by resolution, extend its tenure for an additional period of three months at a time only for good cause(s) shown. In no case shall such a request for the extension be given for more than four times.

## **Article V**

### **COMPOSITION**

Section 7. The TRC shall comprise nine (9) commissioners, with not less than four (4) women making up its entire composition. The Head of State, subject to sections 8 and 9 hereof shall appoint members of the TRC.

Section 8. A Selection Panel shall be comprised of seven (7) individuals of integrity, repute and good standing in public life, and constituted as stipulated:

- a. Three representatives from civil society organizations
- b. Two representatives from political parties
- c. One representative from the United Nations Organization (UN)
- d. One representative from the Economic Community of West African States (ECOWAS)

Section 9.

- a. The Selection Panel shall be coordinated by the ECOWAS Representative, who shall preside over the Selection Panel as head, and coordinate the process of selecting representatives as stipulated in section 8. The Selection Panel shall vet

nominees pursuant to the criteria set forth in section 11 of this Act and shall conduct a process of public scrutiny based on individual nominations and other petitions from the general public, institutions, and organisations.

- b. Recognizing that the Chairman of the NTGL appointed commissioners before the enactment of legislation establishing the Commission and acknowledging the role they have played in the TRC consultative process, affirming the need for the TRC process to be credible and legitimate and accepted by the nation, the Commissioners appointed by the Chairman of the NTGL before the enactment of the TRC Act, will be vetted pursuant to the criteria set forth in Section 11 of this Act.

Where any one of the current Commissioners is found to have met the character criteria in section 11 of this Act, he/she will be automatically considered a confirmed member of the Commission. In the event that any one of the current Commissioners does not meet the character criteria set forth in this Act, leaving vacancies on the Commission, the Selection Panel shall solicit nominations for Commission members, review, vet and select from those nominations to produce a short-list of fifteen (15) vetted candidates to be presented to the Head of State for his selection and appointment to the commission.

Once the vetted commissioners are selected and appointed by the Head of State, they shall be subject to confirmation hearings before the National Legislature.

Section 10. An International Technical Advisory Committee (ITAC) of three persons shall be constituted to work directly with the Commissioners in the fulfillment of their mandate. These advisors shall have full disclosure rights in all matters regarding the Commission's activities and likewise be responsible as Commissioners for maintaining confidentiality according to Article IV, Section 25. Members of the International Technical Advisory Committee shall attend all meetings and forums of the Commission, provide advisory opinions on any and all issues considered by commission members, shall be entitled to full rights and privileges as commissioners, except that advisors shall not vote during such meetings. Members of this Committee shall be selected as follows: ECOWAS shall nominate two individuals for membership in the Committee and the United Nations High Commissioner for Human Rights shall nominate one individual for membership in the Committee. All advisors shall be individuals of international distinction and repute.

The Head of State shall formally appoint the individuals so nominated to the TRC in the capacities so described herein.

Section 11. Members of the TRC shall be persons in good health, of credibility, high integrity and honour; not known or perceived as human rights violators or members of groups involved in human rights violations; and without prior conviction for a crime. As a whole, the

Commission shall be balanced, representative of Liberian society, perceived as impartial in its collectivity, and of diverse professional and regional backgrounds. Upon appointment, commissioners shall renounce their membership of political parties.

Section 12. Members of the TRC shall be employed by the Government of Liberia and shall render services on a full-time basis and receive remuneration in an amount determined not to be less than that received by Justices of the Supreme Court of Liberia. Members of the International Technical Advisory Committee shall receive remuneration pursuant to international standards for persons carrying out similar mandates.

Section 13. Commissioners shall meet and shall designate from amongst themselves one of the Commissioners as the Chairperson, and another as the Vice-Chairperson of the Commission.

Section 14. Members of the TRC shall be removed for cause, such as misbehaviour, incapacity and incompetence, only by impeachment in the same manner provided for removal in the Constitution of Liberia of Justices of the Supreme Court of Liberia.

Section 15. A commissioner may at any time resign by tendering his or her resignation in writing to the Head of State provided that a 30-day notice is given.

Section 16. Vacancies on the TRC for any reason whatsoever shall be filled from the original pool of (15) fifteen short-listed candidates until the list is exhausted.

Section 17. If both the Chairperson and Vice-Chairperson are absent or unable to perform their duties, the other commissioners shall from among their number nominate an Acting Chairperson for the duration of such absence or incapacity.

Section 18. The persons appointed or employed by the Commission who are not officials of the state, shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods as the Commission may determine.

Section 19. Meetings and quorum of meetings



- a. A meeting of the Commission shall be held at a time and place determined by the Chairperson of the Commission or, in the absence or inability of such Chairperson, by the Vice-Chairperson of the Commission or, in the absence or inability of both, the Acting Chairperson of the Commission.
- b. The Commission shall have the power to determine the procedures for its meetings, including the manner in which decisions shall be taken.
- c. The Commission shall cause a record to be kept of its proceedings.
- d. The quorum for the first meeting of the Commission shall be two persons less than the total number of the members of the Commission. Thereafter the Commission shall determine the quorum for any of its further meetings.

## **Article VI**

### **GENERAL POLICY**

Section 20. The TRC shall enjoy full independence in pursuit of the scope of its mandate and in the exercise of its duties, functions and powers, granted by this Act, free of undue influence and political manipulations from any source, governmental or otherwise. Its work and functions shall be regarded as a matter of national priority; all matters of the TRC appearing before the Supreme Court of Liberia shall be advanced for hearing and determination to the top of the Supreme Court's docket at all times without the slightest delay as a matter of first priority.

Section 21. The full authority and capacity, and the resources of the Government of Liberia shall and is hereby placed at the disposal of the TRC in furtherance of its independence and to fulfil its mandate expeditiously and free of constraint.

Section 22. Members of the TRC, its agents, employees and staff, shall be independent and function without political or other biases, prejudice or other motives, free from any party, factional, governmental, or other interests, directly or indirectly, and shall be immune from civil or criminal sanctions by virtue of statements made, actions taken in rightful pursuit of their work for or with the TRC.

Section 23. If at anytime during the course of the work of the TRC it appears that a commissioner has or may have financial or other interests which may cause or give rise to a conflict of interest in the performance of his or her functions on the TRC, a full disclosure of

said interest shall be made by such commissioner, on the record, and he/she shall recuse him/herself from further participation in that particular matter. Failure to disclose shall be grounds for removal.

Section 24. The TRC shall consider and be sensitive to issues of human rights violations, gender and gender based violence thus ensuring that no one with a known record of human rights violations are employed by the TRC and that gender mainstreaming characterizes its work, operations and functions, ensuring therefore that women are fully represented and staffed at all levels of the work of the TRC and that special mechanisms are employed to handle women and children victims and perpetrators, not only to protect their dignity and safety but also to avoid re-traumatization.

Section 25. Owing to their fiduciary relationship and duty to the TRC, no member of the TRC or its employees or agents, shall divulge confidential or other information obtained by virtue of their affiliation or work with the TRC, or use said information for profits or gains other than for reasons related to the duty and functions of the TRC. The TRC, all its employees, or agents shall be sworn to or execute sworn statements to hold all matters relating to the work of the TRC and coming to their knowledge “confidential” the breach of which shall constitute a second degree felony, punishable under Liberian laws.

## **Article VII**

### **FUNCTIONS AND POWERS**

Section 26. The TRC shall enjoy and exercise such functions and powers as are relevant for the realization of its mandates. Its functions and powers shall include, but not be limited to:

- a. Facilitating, and where necessary, initiating or coordinating enquiries into, and investigating:
  - i. Gross violations and abuses of human rights, privileges, powers and authority in Liberia including violations, which were part of a systematic pattern of abuse;
  - ii. The nature, causes and extent of gross violations and abuses of human rights, including the root causes, circumstances, factors, context, motives and perspectives which led to such violations;
- b. Identifying where possible persons, authorities, institutions and organizations involved in the violations

- c. Determining whether such violations were the result of deliberate planning on the part of the state, authority, or political organization, movement or group of individuals; and
- d. Ensuring accountability, political or otherwise, for any such violation.
- e. Gathering information and receive evidence from any person or persons, including persons claiming to be victims of such violations or the representatives of such victims, individuals, groups of individuals, perpetrators, witnesses and institutions through the taking of statements and through evidence gathered through the conduct of both public and confidential hearings upon request of witnesses, informants, petitioners, either as victims or perpetrators, subject to the exclusive discretion and authority of the TRC;
- f. Helping restore the human dignity of victims and promote reconciliation by providing an opportunity for victims, witnesses, and others to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, in an environment conducive to constructive interchange between victims and perpetrators, giving special attention to the issues of sexual and gender based violence, and most especially to the experiences of children and women during armed conflicts in Liberia;
- g. Recommending amnesty under terms and conditions established by the TRC upon application of individual persons making full disclosures of their wrongs and thereby expressing remorse for their acts and/or omissions, whether as an accomplice or a perpetrator, provided that amnesty or exoneration shall not apply to violations of international humanitarian law and crimes against humanity in conformity with international laws and standards;
- h. Preparing a comprehensive report which sets out its activities and findings based on factual and objective information and evidence collected or received by it or placed at its disposal; and
- i. Creating an independent, accurate and objective record of the past and make recommendations reflective of the truth, to re-unify and reconcile contending groups and/or the peoples of Liberia;
- j. Making recommendations to the Head of State with regard to:
  - (i) Reparations and rehabilitation of victims and perpetrators in need of specialized psycho-social and other rehabilitative services;
  - (ii) Legal, institutional and other reforms;
  - (iii) The need for continuing investigations and inquiries into particular matters, at the discretion of the TRC; and
  - (iv) The need to hold prosecutions in particular cases as the TRC deems appropriate;

- k. Taking action, doing any and all acts, including but not limited to instituting the necessary enquiries referred to in this act, gather the information and receive the evidence referred to above, make findings and determinations on all matters brought before it, in furtherance of its mandates, the object of this Act, record allegations and complaints of gross violations of human rights and abuses as is required by its mandate; and
  - l. Subject to other provisions of this Act, the TRC shall adopt its own rules, code of conduct and operating guidelines and procedures, schedules, work plans and other policies necessary for the accomplishment of its mandate including the conduct of research and investigations, holding of public and confidential hearings, making final determination of matters before it, recommending amnesty, making recommendations and publishing its report;
  - m. At the discretion of the TRC, any person, group of persons or organizations or institutions shall be permitted to provide information as informants, witnesses, perpetrators or victims to the TRC on a confidential or non-confidential basis and the TRC shall not be compelled by any authority to disclose any such information given to it in confidence.
  - n. The TRC shall take into account the security and other interests of victims and witnesses when appearing for hearing, design witness protection mechanisms on a case by case basis as well as special programs for children and women both as perpetrators and victims under burdens of trauma, stigmatization, neglect, shame, ostracization, threats, etc. and others in difficult circumstances who may wish to recount their stories either in privacy or public, subject to the discretion of the TRC.
  - o. The TRC shall employ specialists in children and women's rights and shall ensure that special measures or mechanisms are employed that will enable women and children to provide testimony to the TRC, while at the same time protecting their safety and not endangering or delaying their social reintegration or psychological recovery.
  - p. Hearings of the Commission
    - (i) The hearings of the Commission shall be open to the public, provided the Commission, in any proceedings before it, is satisfied that:
      - (a) It would be in the interests of justice; or
      - (b) That there would not be likelihood that harm may ensue to any person as a result of proceedings being open,
- The Commission may direct that proceedings be held in camera and that the public or any particular individual or individuals shall not be present at proceedings or any part thereof if the security of perpetrators, victims or witnesses is deemed to be threatened.

Provided that the Commission shall permit any victim who has an interest in the proceedings concerned to be present.

(ii) An application for proceedings to be held in camera may be brought by victims, perpetrators or witnesses and such application shall be considered and passed upon as the Commission deems fit.

(iii) Where the Commission under this sub-section, on any grounds referred to in that sub-section, directs that the public or any part thereof shall not be present at any proceedings or part thereof, the Commission may direct that:

(a) No information relating to the proceedings or any part thereof held in camera shall be made public in any manner;

(b) No person may in any manner make public any information, which may reveal the identity of any witnesses in the proceedings;

(c) Give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness;

Provided that the Commission may authorize the publication of such information as it considers would be just and equitable.

- q. The Commission may where it deems it necessary seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation
- r. When dealing with victims, the Commission shall be guided by the following principles:
- (i) Victims shall be treated with compassion and respect for their dignity; they shall be treated equally, without regard to race, ethnicity, religion, language, sex, or nationality; and, procedures dealing with victims shall be expeditious and fair;
  - (ii) Appropriate measures shall be taken to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety and that of their families or witnesses testifying on their behalf; and,
  - (iii) The TRC shall take sufficient measures to allow victims to communicate in the language of their choice.

## **Article VIII**

## OTHER POWERS

Section 27. The TRC shall exercise powers generally in any matter, manner and form and for any purpose related to the fulfillment of the objects expressed in this Act, and without limiting the generality thereof, it shall have powers to:

- a. Gather, by means it deems appropriate, any information it considers relevant, including the ability to request reports, assistance of foreign governments, non-resident Liberians, records, documents or any information from any source, including governmental authorities, and to compel the production of such information as and when necessary;
- b. Recommend at least three (3) lawyers from which the Head of State shall, with the advice and consent of the National Legislature, appoint and commission a Special Magistrate ranking as a Circuit Judge.

The Special Magistrate shall:

- i. Have a minimum staff and shall issue or cause to be issued a warrant of search and seizure, warrant of arrest for contempt, subpoenas, and citations to procure information and testimonies in furtherance of the work of the TRC to visit any establishment or place without giving prior notice, and to enter upon any land or premises for any purpose which is material to the fulfillment of the TRC's mandate and in particular, for the purpose of obtaining testimonies which may be vital to the work of the TRC.
- ii. Shall conduct hearings for contempt of the Special Magistrate, whilst contempt of the TRC itself shall be held before the Supreme Court of Liberia in manner and form as contempt of the Supreme Court is conducted, provided that appeals from the decisions, actions of the TRC does not operate as a stay of any proceedings of the TRC.
- c. Investigate and interview any individual, group or members of organizations or institutions in public or private at the TRC's discretion, including children, in furtherance of its mandate; administer oaths during investigation for the taking and making of statements the falsity of which is punishable for perjury;
- d. Compel attendance of any person before the TRC or any of its staff -for the purpose of assisting the TRC in the conduct of its work and may publish a warrant, subpoena, or citation after diligent efforts have been exhausted to no avail in making a personal service; reasonable financial allowances, at the discretion of the TRC, shall be made to facilitate the attendance of victims, perpetrators, witnesses, petitioners, informants or other persons needed by the TRC in pursuit of its work; to call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the TRC;

- e. Request information from the relevant authorities of foreign countries and to gather information from victims, witnesses, government officials and others in foreign countries;

Section 28. Any person who willfully obstructs or otherwise interferes with the work of the TRC or any of its members or officers in the discharge of their functions under this Act, commits an offence and shall be liable on conviction to a fine not less than US\$300.00 and not more than US\$500.00 or its Liberian dollar equivalent for the first offence to include a term of imprisonment not less than six months or both fine and imprisonment depending on the gravity of the offence.

Section 29. Upon proper inquiry and investigation, the TRC may at any time prior to the end of its tenure ad interim, declare missing persons and others who were victims of mass murders and massacres, dead and recommend to the appropriate agency of government for issuance of certificates in testimony thereof as a form of immediate relief, consolation and reparation to survivors and relatives of victims.

Section 30. The TRC shall grant immunity to all persons or groups of persons, organizations or institutions from prosecution or tort actions on account of statements made or evidence given before the TRC in advancement of the public interest objective inherent in the functions and objects of the TRC and pursuant to the successful execution of its mandate, and which therefore, shall not be used in any court of law against the person making the statement.

Section 31. Any person who has been subpoenaed or called upon to appear before the Commission may appoint a legal representative. The Commission may in order to expedite proceedings place reasonable limitations with regard to the time allowed for cross-examination of witnesses or any address to the Commission.

## **Article IX**

### **ADMINISTRATION**

Section 32. The TRC shall exercise executive authority and be responsible for the overall supervision and implementation of the TRC's mandate and execution of its functions.

Section 33. A National Secretariat shall be established to render technical, professional, administrative and clerical assistance to the TRC; it shall comprise such sections or units and staff of diverse professional background relevant to the work of the TRC in the areas of finance, investigation, law, women, children and vulnerable groups, psychosocial and trauma counselling, amnesty, reparation, statement taking and in as many other disciplines as the TRC may deem desirable.

Section 34. The National Secretariat shall be headed by an Executive Secretary who shall serve the TRC as Secretary and be responsible for the daily administrative and operational functioning of the TRC; the TRC shall ensure and accord due consideration and preference to the appointment of a competent woman as Executive Secretary and constitute as many ad-hoc committees as the TRC will deem fit and relevant to its work.

Section 35. The TRC may establish such offices and employ such staff, including foreign staff, on such terms and conditions, as it may deem necessary and appropriate for the conduct of its mandate under this Act, and in pursuant of which it may request secondment of public officials to assist in the professional and expeditious execution of its mandate.

Section 36. The work of the TRC shall be financed from sources, including but not limited to the government of Liberia, individual Liberians and non Liberians, foreign governments and international financial institutions and specialized agencies of the United Nations Organization and International Nongovernmental Organisations, either as direct technical assistance, grants, donations and/or loans.

Section 37. The TRC shall adopt a system of sound financial management policies in conformity with internationally accepted principles and accounting practices, to ensure prudent and efficient management of funds; be transparent, maintain books of accounts, open such books to inspections by donors and partners, conduct periodic audits and publish quarterly financial statements in at least two regular dailies in Liberia.

Section 38. The TRC shall create a trust fund for the benefit of victims and survivors of the crises; appoint trustees and determine beneficiaries as part of the outcome of the proceedings, findings and recommendations of the TRC at the end of its tenure.

Section 39. Independence of the Commission

- a. The Commission, its commissioners and every member of staff shall function without political or other bias or interference and shall, unless this act expressly otherwise



provides, be independent and separate from any party, government, administration, or any other functionary or body by directly or indirectly representing the interests of such entity.

- b. If at any stage during the course of the proceedings or any meeting of the Commission it appears that a commissioner has or may have a financial or personal interest which may cause a conflict of interest, in the performance of his or her functions, such commissioner shall forthwith disclose the nature of his or her interest and absent him or herself from that meeting so as to enable the remaining commissioners to decide whether such commissioner should be precluded from participating in the meeting by reason of that interest;
- c. If a commissioner fails to disclose any conflict of interest as contemplated by this section, then as soon as such non-disclosure is discovered, it should be reviewed and where decisions have been taken which are affected or tainted by such non-disclosure, the decisions should be varied or set aside without the participation of the commissioner concerned.
- d. Every Commission member shall:
  - (i) Notwithstanding any personal opinion, preference or former party affiliation, serve impartially and independently and perform his or her duties in good faith and without fear, favour, bias or prejudice;
  - (ii) Serve in a full time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office; provided that the Commission may exempt a commissioner from the provisions of this paragraph;
  - (iii) No commissioner shall:
    - (a) By his or her membership of the Commission, association, statement, conduct or in any other manner or way jeopardise his or her independence or in any other manner harm the credibility, impartiality or integrity of the Commission;
    - (b) Make private use of or profit from any confidential information gained as a result of his or her membership of the Commission;
    - (c) Divulge any such information to any other person except in the course of the performance of his or her functions as such a commissioner.

Section 40. Subject to the provisions of this act, the Commission shall with due regard to the purposes of this Act and the objectives and functions of the Commission, decide to what extent, if at all, the identity of any person who made a statement to the Commission or gave evidence at a hearing or any other inquiry or investigation carried out under the auspices of this Act may be disclosed in any report of the Commission.

Section 41. Confidentiality

- a. Every commissioner and every member of the staff of the Commission shall, with regard to any matter dealt with by him or her, or information which comes to his or her knowledge in the exercise, performance or carrying out of his or her powers, functions or duties as such a commissioner or member, preserve and assist in the preservation of those matters which are confidential in terms of the provision of this Act or which have been declared confidential by the Commission.
- b. Every commissioner and every member of the staff of the Commission shall upon taking office, take an oath or make an affirmation in the form specified by the Commission;
- c. For the purposes of this section the oath or affirmation shall be in the following form:  
*“I, ..., hereby declare under oath/solemnly affirm that I understand and shall honour the obligations of confidentiality imposed upon me by any provision of the TRC ACT and shall not act in contravention thereof”.*

Section 42. The Commission may, in order to carry out the objectives of its mandate, frame necessary rules and procedures consistent with this Act. While doing so, the Commission may consult other entities of the state.

## **Article X**

### **REPORTING AND RECOMMENDATIONS**

Section 43. The TRC shall submit a final report containing recommendations at the end of its tenure to the National Legislature and have key findings of the report published simultaneous with its presentation in at least three local dailies in pursuit of transparency and public interest objectives.

Section 44. The Report shall be detailed on all aspects of the TRC’s work, investigations, hearings, findings and recommendations for prosecution.

Section 45. The TRC shall further recommend for amnesty persons who so qualify under terms and conditions referred to Section 26(g) and reparations for victims, specific actions of government to be taken in furtherance of its findings, the enactment of specific legislations

and legal and governmental reform measures to address specific concerns identified by the TRC and affecting relevant governmental authorities or functionaries.

Section 46. The Independent National Human Rights Commission 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 organisations and moral guarantors of the CPA shall be seized of the responsibility to monitor, and campaign for the scrupulous implementation of all recommendations contained in the report.

Section 47. The archives of the TRC shall remain in the public domain except those records or documents classified by the TRC as “confidential” which shall remain classified for 20 years following the retirement of the TRC. This restriction extends to commissioners, staff and persons privy to such confidential and closed information by virtue of employment, assignment or their involvement with the TRC or otherwise.

Section 48. The Head of State shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to the implementation of the Commission’s recommendations. All recommendations shall be implemented. Where the implementation of any recommendation has not been complied with, the Legislature shall require the Head of State to show cause for such non-compliance.

ANY LAW TO THE CONTRARY NOTWITHSTANDING

## **Annex C – Amnesty International’s Letter to the TRC Selection Panel**

Ref.: TG AFR 34/05.01

His Excellency Ansumana E. Ceesay  
Chairman of the TRC Selection Panel  
Special Representative of the ECOWAS  
Executive Secretary in Liberia

6 September 2005

Your Excellency,

I am writing to you while the Selection Panel prepares to vet nominees for the Truth and Reconciliation Commission (TRC) to urge the Selection Panel to ensure that the vetting process of the TRC members complies with international human rights standards.

The membership of truth commissions is particularly important, indeed vital, in ensuring their effective functioning and in gaining international support. As the actions and personality of the commissioners frequently set the tone for the activities of the commission as a whole, truth commissions require independent and competent members. It is thus of primary importance that the highest calibre candidates be appointed.

Amnesty International welcomes the provisions of Article V (Section 11) of the TRC Act on the criteria for the selection of TRC members. These criteria aim at ensuring that “as a whole, the Commission shall be balanced, representative of Liberian society, perceived as impartial in its collectivity, and of diverse professional and regional background”. TRC members are required to be “in good health, of credibility, high integrity and honour” and to renounce their membership of political parties upon appointment.

### **Recommended additional criteria for the vetting of TRC members**

In addition to these criteria, Amnesty International urges the Selection Panel to ensure that TRC members are independent, impartial and competent and that:

- The Commission includes members with proven expertise, knowledge and experience in the promotion and protection of human rights, including expertise of international human rights and humanitarian law, as indicated in the Updated Set of principles for the protection and promotion of human rights through action to combat impunity (Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, UN Doc. E/CN.4/2002/102/Add.1., Principle 7).

- The Commission includes members experienced in dealing with victims of serious crimes, including traumatized victims, victims of sexual violence and children victims.
- The composition of the TRC reflects a pluralist representation of civil society. In particular, the TRC may include representatives of non-governmental organizations involved in the promotion and protection of human rights, victims' groups, women's groups, etc. According to the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, truth commissions should include "an adequate representation of women as well as of other appropriate groups whose members have been especially vulnerable to human rights violations" (ibid.).

### **Recommendations for full and active participation of civil society**

Article V (Section 9) of the TRC Act provides that the vetting process should be a "process of public scrutiny based on individual nominations and other petitions from the general public, institutions, and organisations". Amnesty International has received information that the Selection Panel has disseminated Calls for Nominations in various counties, asking the Liberian people to submit names of nominees. The organization urges the Selection Panel to continue its efforts to ensure that NGOs, victims' groups and other members of civil society fully and actively participate in the selection process.

The UN Commission on Human Rights recommended states "to involve, as appropriate, all those concerned, including civil society, victims, human rights defenders and persons belonging to minorities and vulnerable groups, in all efforts to combat impunity, including... the design of truth and reconciliation commissions... the selection of commissioners and the drafting of relevant legislation, with efforts to ensure that men and women participate on an equal basis". (Commission on Human Rights, Resolution 2005/81, Impunity, 21 April 2005, para.16.)

Amnesty International believes that, by ensuring that the TRC is established according to international human rights standards, the Selection Panel would send a strong and positive signal to the Liberian people and to the international community about the credibility of the TRC and facilitate its future work.

Yours sincerely,

Kolawole Olaniyan  
Director, Africa Program