

LIBERIA

# Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia

Paul James-Allen, Aaron Weah, and Lizzie Goodfriend

May 2010



Cover: Six years after the Liberian conflict ended, two Liberian children look across a bridge in Monrovia, Liberia, that was destroyed during the conflict and remains unrepaired. Chris Herwig/UNMIL.

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### **About ICTJ**

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies.

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## ACRONYMS

AFELL	Association of Female Lawyers of Liberia
CPA	Comprehensive Peace Agreement
ECOWAS	Economic Community of West African States
ICGL	International Contact Group for Liberia
ICTJ	International Center for Transitional Justice
INCHR	Independent National Commission on Human Rights
INPFL	Independent National Patriotic Front of Liberia
ITAC	International Technical Advisory Committee
LACC	Liberia Anti-Corruption Commission
LCC	Liberian Council of Churches
LIMASA	Liberian Massacre and Survivors' Association
LURD	Liberians United for Reconciliation and Democracy
MODEL	Movement for Democracy in Liberia
NGOs	Non-governmental Organizations
NPFL	National Patriotic Front of Liberia
NRC	National Reconciliation Commission (Ghana)
TJWG	Transitional Justice Working Group
TRC	Truth and Reconciliation Commission
UN	United Nations
UNMIL	United Nations Mission in Liberia
U.S.	United States
WONGOSOL	Women's NGO Secretariat of Liberia



## Executive Summary

The Liberia Truth and Reconciliation Commission (TRC) released its final report in December 2009 after more than three years of operations. The report offers valuable insights into Liberia's turbulent history, including the gross human rights violations committed during the country's 14-year conflict. Between 1989 and 2003, Liberia's brutal conflict resulted in over 250,000 deaths and the displacement of one-third of the population. The report's recommendations cover a range of issues critical to Liberia's post-conflict recovery efforts, which include the need for criminal accountability, reparations, memorialization, and institutional reform.

Among the commission's recommendations are the establishment of an extraordinary tribunal and domestic criminal court to prosecute 124 and 58 individuals respectively for gross violations of human rights, violations of international humanitarian law, and egregious domestic crimes. It also recommends a reprieve from prosecution for 38 individuals who cooperated with the TRC but admitted to committing heinous crimes. The commission further recommends that 49 individuals, including President Ellen Johnson Sirleaf, be lustrated, or ceremonially purified, and banned from public office for 30 years.

In addition, the TRC recommends the establishment of traditional truth-seeking and reconciliation processes through a "Palava Hut" system, the establishment of a Reparations Trust Fund, the observance of a national memorial and unification day, and the protection and promotion of the rights of women and children. Other recommendations include further investigations into the activities of listed individuals with regard to economic crimes, the confiscation and seizure of private and public properties, repatriation of unlawfully acquired monies, and the building of a new culture and integrity in politics, as well as in the administration of justice.

The TRC process has proved controversial from the start. It was born out of a compromise at the peace negotiation table: Liberia's warring factions favored it as a way of avoiding prosecutions; criminal accountability was preferred by some in Liberia's civil society. The final report is innovative in several areas, especially in its attempts to detail violations against women and children, as well as in its documentation of economic crimes. But, while the TRC reached a broad swathe of the Liberian population, including diaspora communities mainly in the United States (U.S.), the report itself is fraught with weaknesses. Many of the challenges the TRC faced in its operation, namely limited technical capacity, poorly coordinated programming, and disharmony among its commissioners, are reflected in the commission's final report, which lacks evidentiary data, coherence between and within sections, specificity, and the unanimous support of all commissioners, two of whom refused to endorse it.

These factors have raised doubts about the viability of the TRC's more controversial recommendations on prosecutions and lustration, with questions about whether and how these can be implemented. Indeed, public reaction to the report has centered on the prosecutions and lustration recommendations.

The public debate has, moreover, overshadowed the many other important issues raised in the report and has failed to take into account the predominant needs of Liberia's victims and survivors—a critical consideration in efforts to advance the report's recommendations for advancing transitional justice.

Because of a lack of transparency and respect for due process in the TRC's procedures, the International Center for Transitional Justice (ICTJ) has serious reservations about how the recommendations on prosecutions and lustration were arrived at and thus questions their validity going forward. In addition, while the TRC report proposes a number of other important recommendations to ensure reparations, memorialization, and community reconciliation, these are often vague and require further clarification.

Despite the TRC's report's deficiencies, it remains essential that Liberia's government and its people—including Liberia's vibrant human rights community, as well as its key international partners—take steps to overcome its limitations. The report does deal with important questions around justice, accountability, and reconciliation that are critical to the country's future. If Liberia is to sustain its new-found democratic order, the nation will need to seriously engage with the numerous critical issues raised in the report and urgently put in place the necessary mechanisms to prevent a repeat of its turbulent history. The TRC's detractors should therefore not be allowed to obstruct the opportunity for addressing the salient issues contained in the report.

In this regard, the president's commitment to a review of the TRC report in her State of the Nation address in January 2010 and her March 2010 request for the Ministry of Justice and the Law Reform Commission to undertake this review are welcome first steps. Progress in addressing the report's recommendations, however, remain slow. In fact, there is real concern that those alleged perpetrators named in connection with criminal accountability will continue to exploit the report's shortcomings in order to head off any effort to address the recommendations. A potential constitutional challenge is also looming that could further frustrate efforts to implement the recommendations of the report.

This is a crucial moment in the history of the Liberian nation. A year and a half from its second post-war elections, and with the gradual reduction in the presence of the United Nations (UN) peacekeeping mission, it is imperative that the country engage in a truly consultative process to address the critical issues of accountability, justice, and national healing raised in the TRC report. These can no longer be ignored if Liberia is to finally overcome its brutal past. The Liberian government should continue to demonstrate the necessary political will to press ahead with measures to help overcome the limitations in the TRC's recommendations. If the anti-TRC forces are allowed to hijack the prospects of proper discussions on the report and how to make progress on the implementation of its recommendations, it will impede the country's hard-won peace and further entrench the culture of impunity that has characterized Liberia's political landscape since its founding in 1847. It would also once again delay vital measures to address the rights of victims, restore confidence in the country's public institutions, and reconcile its people.

It is against this background that this ICTJ report reviews the TRC process, examines its final report, and suggests a number of steps to be taken by the government, Liberia's civil society, and external partners. These suggestions are designed to respond to the opportunities presented by the TRC report and to address the shortcomings of its transitional justice recommendations. ICTJ offers these proposals as a general roadmap on what actors can do in the short-term to begin the process of moving forward with further transitional justice efforts.

# 1. Origins, Mandate and Operations of the Truth and Reconciliation Commission (TRC)

## Mandating the TRC

Liberia's 14-year civil conflict came to an end with the 2003 Comprehensive Peace Agreement (CPA) signed by three warring factions and 18 political parties in Accra, Ghana.<sup>1</sup> The conflict was marked by violent and wide-scale human rights violations and resulted in the deaths of over 250,000 Liberians and the displacement of one-third of the population. The CPA made provision for the dissolution of all fighting factions, called for an international peacekeeping force, and outlined a two-year transitional administration that would govern Liberia through to national elections in October 2005. The CPA signatories also committed themselves to "promoting full respect for international humanitarian law and human rights" and the establishment of "mechanisms which [would] facilitate genuine healing and reconciliation among Liberians."<sup>2</sup> Part Six of the agreement (articles XII and XIII) therefore dealt with human rights issues and mandated the creation of an Independent National Commission on Human Rights (INCHR) and a Truth and Reconciliation Commission (TRC), respectively.

The TRC was the result of a compromise at the peace talks between civil society actors on the one hand, who had initially proposed a war crimes tribunal, and representatives of warring factions on the other, who wanted to avoid prosecution.<sup>3</sup> A truth commission which would "provide a forum [to] address issues of impunity" was finally incorporated into the peace agreement, making the CPA the first peace agreement in Liberia's conflict to include an element of accountability.<sup>4</sup>

From the outset, the TRC encountered difficulties. In early 2004, Gyude Bryant, chairman of Liberia's transitional government, appointed nine commissioners prior to the passage of the act creating the commission. Since this appointment process lacked transparency, civil society and UN actors called for the process to be aborted and successfully pushed for a more participatory selection process to be initiated

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- 1 The signatories represented the three primary armed groups at the time—Liberians United for Reconciliation and Democracy (LURD), Movement for Democracy in Liberia (MODEL), and the Government of Liberia. There were many other fighting factions during the course of Liberia's conflict, including additional splinter factions and smaller self-defense forces in 2003. These three groups, however, were widely recognized as the principal instigators of ongoing fighting between the 1999-2003 period.
  - 2 Comprehensive Peace Agreement between the Government of Liberia, Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL), and Political Parties (Accra, Aug. 18, 2003), preamble [http://www.usip.org/files/file/resources/collections/peace\\_agreements/liberia\\_08182003.pdf](http://www.usip.org/files/file/resources/collections/peace_agreements/liberia_08182003.pdf). (Hereafter "CPA.")
  - 3 For a detailed discussion of the negotiation dynamics relating to issues of justice and accountability, see: Priscilla Hayner, "Negotiating Peace in Liberia: Preserving the possibility for Justice," (Humanitarian Dialogue Center: 2007), <http://www.ictj.org/static/Africa/Liberia/HaynerLiberia1207.eng.pdf>.
  - 4 There is some debate about the number of peace agreements that were reached over the course of Liberia's conflict, though figures cited usually range between 14 and 16. When also counting agreements that did not result in a written and signed document, some quote the number as reaching over 20. For an account of the 13 pre-CPA agreements that this paper has included in its tally, see: Sleah, Toe, and Weah, *Impunity Under Attack: The Evolution and Imperatives of the Liberian Truth Commission*, (Civic Initiative, 2008), 38-54.

once a TRC Act was established. Following a series of workshops and consultations in early 2005, a drafting committee crafted a TRC Act that was later approved by the interim legislature on June 10, 2005.<sup>5</sup>

The act mandates the TRC to investigate Liberia's turbulent history between 1979 and 2003. Its preamble stated "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."<sup>6</sup>

Although a majority of parties in the CPA negotiations perceived the TRC as an alternative to criminal prosecutions, many ordinary Liberians saw the TRC process as a precursor to criminal justice.<sup>7</sup> The prospect of prosecutions was outlined in the TRC Act which empowered the commission to make detailed recommendations on prosecutions.<sup>8</sup> However, the overall stated objective of the commission was to "promote national peace, security, unity and reconciliation."<sup>9</sup>

To meet its objectives, the TRC was given a broad mandate that focused on investigating gross human rights and international humanitarian law violations, root causes of the conflict, the particular experiences of women and children, and exploitations of natural or public resources to perpetuate the conflict.<sup>10</sup> The inclusion of economic crimes was considered very important in understanding the dynamics of the Liberian conflict.

The TRC Act's explicit reference to the need to recognize violations against women and children ensured that two of the more vulnerable segments of Liberian society were not overlooked during the TRC's process. Nonetheless, the wording of the act imposed limitations on the commission's examination of gendered experiences of the conflict since whenever gender-based violations are identified, the terms are linked directly to the experiences of women.<sup>11</sup> One of the consequences of this was the failure of the commission's report to link the issue of sexual violence against men and boys, such as castrations, to gender-based violations.<sup>12</sup>

The act further gave the commission the function and powers to collect statements, hold public hearings, and conduct research and investigations in order to create an accurate record of Liberia's history, identify those involved in committing violations, and help restore the human dignity of victims. The TRC was empowered to prepare a final report that would be "detailed on all aspects of the TRC's work, investigations, hearings, findings, and recommendations for prosecution."<sup>13</sup> It is worth noting that only the recommendations for prosecutions were explicitly required by the act to be detailed. The final report was also to "recommend for amnesty persons who made full disclosures of their wrongs and thereby expressed remorse for their acts and/or omissions... provided that amnesty or exoneration shall not apply to violations of international humanitarian law and crimes against humanity 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."<sup>14</sup>

Local and international observers widely recognized the act as comprehensive, though ambitious. Following its passage into law, Bryant, the outgoing transitional government chairman, appointed a new

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5 For a more detailed account leading to the establishment of the TRC between the time of the CPA and the appointment of its final Commissioners, see Sleh et. al., *Impunity Under Attack*, chaps 5-7; Hayner, "Negotiating Peace in Liberia."

6 *An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia* (Monrovia, May 12, 2005), "Preamble," available at <https://www.trcofliberia.org/about/trc-mandate>. (Hereafter *TRC Act*.)

7 Interview with Raphael Abiem, Transitional Justice Adviser at the UNMIL Human Rights and Protection Section (Feb. 25, 2010).

8 For example, section 26 of the TRC Act relating to the powers and functions of the Commission states that the TRC can make recommendations on "the need to hold prosecution in particular cases as the TRC deems appropriate."

9 *TRC Act*, art. IV, sec. 4.

10 *Ibid.*

11 For example, *TRC Act*, art IV, sec. 4(e); art. VI, sec. 24; art. VII, sec. 26 (f).

12 For example, TRC of Liberia, *Final Report: Volume II: Consolidated Final Report* (TRC of Liberia: Monrovia, 2009) Vol. II, sec. 8.3. (Hereafter *Consolidated Final Report*.)

13 *TRC Act*, art. X, sec. 44.

14 *Ibid.*, sec. 45.

set of commissioners in October 2005, just before Liberia held national elections. The nine commissioners—four of whom were women, as required by the act—represented different segments of Liberian society. They were appointed from a shortlist of 15 names presented to the transitional government by an independent panel led by the Economic Community of West African States (ECOWAS).<sup>15</sup> The selection criteria emphasized that the final commission should “be balanced, representative of Liberian society, perceived as impartial in its collectivity, and of diverse professional and regional backgrounds.”<sup>16</sup> The panel also vetted candidates on professional and educational backgrounds.<sup>17</sup>

### Preparatory Period and Early Operations

In February 2006 Liberia’s newly-elected president Ellen Johnson Sirleaf inaugurated the commissioners, and their three-month preparatory phase, as outlined in the act, began. The TRC had a difficult start. The TRC commissioners were unable to develop a comprehensive staffing plan and organizational structure during the preparatory period. As a result, few technical staff were hired before the commission began operations. Similarly, the TRC did not complete a comprehensive work plan and budget to guide its work before officially launching operations. These problems severely impacted the TRC’s later operational activities, including the process leading to its final report.

The TRC officially launched operations on June 22, 2006. To its credit, it took on the ambitious task of conducting activities with Liberia’s diaspora population from the very beginning of its operations. The commission argued that diaspora members “continue to be engaged with developments on the homeland, supported, financed instrument for regime change; [thus] their voices must be heard and their issues and concerns must be addressed in fostering greater national reconciliation.”<sup>18</sup> This innovative aspect of the TRC’s work was conducted by the Minnesota Advocates for Human Rights, which acted as the TRC’s implementing partner and mirrored the TRC’s national activities with the diaspora population.<sup>19</sup>

Unfortunately, the commission’s early problems continued. Staffing challenges plagued the TRC throughout its lifespan, and problematic internal dynamics between commissioners often impeded coherent policy and program planning. In addition, the initial lack of a fully functional secretariat meant that the TRC’s activities were often haphazard. One example was in November 2006, when early statement-taking efforts ended after only a few months of work with many statement-takers protesting outside the TRC offices for pay allegedly still owed to them.<sup>20</sup>

The commission’s handling of external assistance also emerged as a major stumbling block. The TRC Act provided for an International Technical Advisory Committee (ITAC) to work with the commissioners in implementing their mandate. ITAC was to comprise three international experts who would have the status of commissioners, but not the power to vote on policy decisions.<sup>21</sup> After a few months of operations, however, tensions emerged between the commission and ITAC member Kenneth Attafuaah, the former Executive Secretary from the National Reconciliation Commission (NRC) in Ghana.<sup>22</sup> Despite attempts at reconciliation Attafuaah left the TRC in early 2007. A second ITAC member never took up the appointment and a third member, Henrietta Mensah-Bonsu, former NRC commissioner and currently Deputy Special Representative of the UN Mission in Liberia (UNMIL), only joined the TRC for a few

15 ECOWAS was a guarantor of Liberia’s CPA.

16 TRC Act, art. V, sec. 11.

17 Article V, sec. 11 of the TRC Act provides the basic framework by which to vet commissioners, but the selection committee, which is mandated in Sections 8 and 9 of the same article, developed more. See Sleeh et. al., *Impunity Under Attack*, 159-164.

18 TRC of Liberia, *Consolidated Final Report*, 6.

19 They later changed their name to Advocates for Human Rights. For information on the group’s Liberia TRC Diaspora project, see their website: [http://www.theadvocatesforhumanrights.org/About\\_the\\_Project.html](http://www.theadvocatesforhumanrights.org/About_the_Project.html). See also an article published by Advocates staff Laura Young and Roslayn Park, “Engaging Diasporas in Truth Commissions: Lessons from the Liberia Truth and Reconciliation Commission Diaspora Project” *International Journal of Transitional Justice* 3(3) (2009) 341-361, available at <http://ijtj.oxfordjournals.org/cgi/content/full/ijp021?ijkey=4rikZKuAJVD9S8X&keytype=ref>.

20 “TRC in Crisis? As Donors Stall Support,” *New Democrat*, Vol. 13, No. 177, November 27, 2006.

21 According to Sleeh, et. al., *Impunity Under Attack*, 177-8, ITAC was a compromise between those who wanted international commissioners to be part of the TRC and those who thought it should be an entirely Liberian-led process. In its ultimate formulation, ITAC members were to be appointed by ECOWAS, who appointed two members, and the Office of the High Commissioner for Human Rights (OHCHR), who appointed one member.

22 The NRC was a truth commission legislated in Ghana in 2002 to review human rights abuses committed by different state apparatus since the country’s independence in 1957.

months at the end of 2006 and early 2007. ITAC was effectively obsolete until the appointment of a new member, Jeremy Levitt, in September 2008.

The commission had a number of other challenges regarding international staff. By early 2007 an international consultant who had been hired to lead the public outreach unit had also departed. Difficulties managing partnerships with other international and national organizations also limited the TRC's ability to utilize external support. For example, two other international consultants had disputes with the TRC commissioners before completing their work.

These internal tensions and difficulties with external partnerships, coupled with an incomplete work plan and budget, led to a lack of confidence in the TRC by both national and international observers. This further delayed technical and financial support to the commission's work. Relations with civil society also worsened, as the commission's decision to depart from an earlier agreement to involve members of the Transitional Justice Working Group (TJWG) in statement-taking activities frustrated many working group members and "dampened their spirit to further support the efforts of the TRC."<sup>23</sup>

By March 2007, when the commission's executive secretary and program director, both recruits from Liberia's diaspora, arrived to take up their responsibilities, the International Contact Group for Liberia (ICGL) had urged the TRC to establish a joint ICGL/TRC Working Group that would help to develop a more coordinated work plan, budget, and set of policies to guide the TRC's work. The TRC agreed and between April and May 2007 entered an emergency two-month period, during which most activities were halted.

Full operations resumed in June 2007 with improved donor confidence, though the TRC had lost significant public credibility. Following renewed public outreach efforts, statement-taking activities, additional research and investigations, and projects targeting the participation of women, the TRC became ready to launch its public hearings process by 2008.

## Public Hearings: The Public Face of the TRC

The TRC's public hearings series started in the capital, Monrovia (Montserrado County), in January 2008 and lasted for over a year. Commissioners then began four months of county hearings that would take the TRC to Liberia's remaining 14 counties. Through these county hearings the TRC was able to reach a large number of Liberians and heard testimony from 607 witnesses, of whom 499 were conflict survivors.<sup>24</sup> These county hearings were not well publicized, however, and consequently received little media attention, which was mainly directed at disharmony among the commissioners.<sup>25</sup>

During the county hearings in March 2008, the TRC released seven public bulletins that outlined how it would deal with different aspects of its hearings process, including witness protection, protection from self-incrimination, closed or in-camera proceedings, the right to legal counsel, and compulsion of witnesses.<sup>26</sup> One of the bulletins also dealt with the process by which individuals could apply for an amnesty recommendation, and another described how the TRC would approach recommendations pertaining to reparations, amnesty, and prosecutions. Regarding the latter, the TRC bulletin stated that "prosecution and other justice mechanisms will be recommended for all individuals who, by commission or omission, committed acts, wrongs and crimes amounting to violations of human rights, including violations of

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23 The TJWG was the main civil society group that had actively participated in the establishment of the TRC. For details on the relationship between the TRC and the civil society see *Workshop Report: Mapping out follow-up to the Liberia TRC process: National conference on the role of civil society*, (Monrovia, February 2009), 10.

24 TRC of Liberia *Consolidated Final Report*, 198. The 607 witnesses included 206 women and 326 men. In addition, 33 alleged perpetrators came forward in county hearings.

25 For more in-depth discussion of the media's coverage of the TRC and its activities from March-May 2007, see a report by the Liberia Media Center titled, "Transitional Justice Reporting Audit: A Review of Media Coverage of the Transitional Justice Process in Liberia," (Monrovia, May 2007), available at [http://portal.unesco.org/ci/en/files/27444/12175919363transitional\\_justice\\_auditing\\_report\\_2.pdf/transitional\\_justice\\_auditing\\_report\\_2.pdf](http://portal.unesco.org/ci/en/files/27444/12175919363transitional_justice_auditing_report_2.pdf/transitional_justice_auditing_report_2.pdf); ICTJ, the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the Open Society Initiative for West Africa (OSIWA) sponsored this project.

26 The bulletins are listed on the TRC website at <https://www.trcofliberia.org/news-1/press-releases/>.

international humanitarian laws, international human rights law and crimes against humanity,” as well as those who “knowingly ignore or disregard the TRC process.”<sup>27</sup>

In June 2008 several commissioners traveled to the U.S. to conduct a week of hearings in the diaspora, before returning to Monrovia for thematic and institutional hearings that focused on key themes of the TRC’s mandate and the role of key actors in the conflict. The commissioners invited different experts to participate in hearings on topics such as the role and experiences of women during the conflict, the role and experiences of children, and economic crimes.

The TRC attracted a number of important figures, including President Ellen Johnson Sirleaf, who appeared at a closed hearing in February 2009.<sup>28</sup> In addition, many alleged perpetrators, including heads of warring factions, appeared before the commission’s public hearing process. Though some arrived voluntarily, a list of 198 alleged perpetrators and 139 other “persons of interest” released by the TRC on November 30, 2008 may have compelled many more alleged perpetrators to participate.<sup>29</sup> The publication of names in this manner was, however, problematic because not everyone listed had been contacted prior to the release of the list and there were concerns that the TRC’s public call was tantamount to an accusation against those persons named. Ongoing concerns about due process considerations in this matter had repercussions for the final TRC report, as discussed later.

Though the testimony of these figures grabbed public attention, analysts criticized the TRC for affording too much time on these individuals and not managing this process with more circumspection. The TRC’s credibility was dealt a further blow when witnesses accused three commissioners of active involvement in Liberia’s conflict.<sup>30</sup>

## Report-writing and Wrapping Up

The TRC’s mandate was set to expire in September 2008, including both the two-year operational period and three-month wrap-up and report-writing period provided for in its constitutive act. The commission was, however, entitled to seek an extension of “its tenure for an additional period of three months at a time” but only “up to four times.”<sup>31</sup> In September 2008, with many hearings still not concluded and report-writing yet to commence, the TRC requested an extension for a total of nine months (three three-month extensions at one time) in order to conclude its work by June 2009.<sup>32</sup> The nature of this request appeared to contravene the act’s requirement that an extension request could only be sought one stage at a time.

Concerns by the ICGL/TRC Working Group about the legality of the extension request therefore led the TRC to accelerate its report-writing schedule so as to produce a first volume by December 2008, which would fall within the deadline of the first of the three three-month extension. Observers, including ICTJ, raised concerns about the rush to produce the report in such a short time as it would jeopardize the quality of the report.

An immediate concern was that the TRC still needed to appoint external consultants to support the drafting of different thematic areas for the report. National consultants on both women’s and children’s

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27 See paras. 4 and 6 of “TRC Public Bulletin No. 04; Policy Paper on Reparation, Prosecution, and Amnesty,” available at <https://www.trcofliberia.org/news-1/press-releases/trc-public-bulletin-no-04-policy-paper-on-reparation-prosecution-amnesty-pursuant-to-its-mandate-the-trc-will-recommend-reparation-prosecution-and-amnesty-when-appropriate/>.

28 “Sirleaf ‘sorry’ she backed Taylor,” *BBC News*, Feb. 12, 2009, available at <http://news.bbc.co.uk/2/hi/americas/7887117.stm>.

29 The lists were published in a number of Liberian papers and can be found on the TRC website at <https://www.trcofliberia.org/news-1/press-releases/trc-releases-list-of-alleged-perpetrators-and-persons-of-interest-to-its-inquiry-process>; and <https://www.trcofliberia.org/news-1/press-releases/list-of-persons-of-interest-to-the-trc-inquiry-process-who-are-required-to-appear-before-the-trc-because-of-their-unique-experiences-and-knowledge-of-events-of-the-past-covering-the-period-1979-2013-2003>.

30 At different points in the public hearing process, Commissioners John Stewart, Pearl Brown Bull, and Sheik Kafumba Konneh were accused of having contributed to perpetuating the conflict: Stewart as a member of the Black Berets, a paramilitary unit that operated under the first interim government of the early 1990s; Bull as a member of the True Whig Party, responsible for oppression of the indigenous population pre-1980; and Konneh as a recruiter for the United Liberation Movement (ULIMO), which was one of the fighting factions from the early to mid-1990s.

31 TRC Act, art. IV, sec. 6.

32 There was a fourth possible extension, which the TRC did not use.

issues had already been employed by the TRC, and an international gender expert had joined the TRC in August 2008 with funding from the United Nations Development Fund for Women (UNIFEM). In addition to supporting other aspects of the TRC's gender programming, the expert was tasked with assisting in the preparation of a chapter of the TRC final report on women's issues.

Economic crimes experts were contracted to produce a report on economic crimes, and an international children's expert also was contracted in early 2009 to produce a chapter on the role of children in the conflict. Benetech, a California-based human rights organization that had assisted the TRC in the development and management of a database through which information collected from statement-taking was processed, would produce a chapter analyzing the statistical information from the database. Finally, Advocates for Human Rights would produce a report on the information gathered during the diaspora project.<sup>33</sup>

The bulk of the TRC's consolidated report was, however, written by an internal drafting committee comprised of commissioners, technical advisors, and TRC staff. To supplement the TRC's writing process, a general report-writing consultant was hired from November 2008 to March 2009 to assist in drafting Volume I and Volume II of the Report.

The TRC focused on report-writing for the first half of 2009, even though some hearings were still underway. A national consultation process took place simultaneously and culminated in a national conference on "The Way Forward" in early June. On the last day of its extension, June 30, 2009, the TRC presented an "unedited" version of its *Volume II: Final Consolidated Report* to the National Legislature. A press conference was held two days later, on July 2, 2009, at which the report was officially presented to the public, but it was immediately attacked by TRC detractors. The sections to receive the most attention were the lists naming individuals being recommended for prosecutions and/or debarment from public office for a period of 30 years.

## Responses to the Report

Since President Ellen Johnson Sirleaf was among those recommended for prosecution and/or debarment from public office, it was perhaps inevitable that this aspect of the report would capture most public attention. Following the report's release, two of the TRC's eight remaining commissioners, neither of whom had been involved in the drafting committee, publicly distanced themselves from the report and its recommendations.<sup>34</sup> One of the two, Pearl Brown Bull, argued in her statement, "I cannot concur with my fellow commissioners that 'Prosecution in a Court of Competent Jurisdiction and other forms of Public sanction will foster genuine reconciliation and combat impunity to promote justice, peace and security.'"<sup>35</sup>

A group representing the leadership of most former warring factions, some of whom were signatories to the CPA, held a press conference within a week of the report's release and called for the recommendations not to be implemented. In addition, they warned that the command structures of their former armed groups remained intact. Of those at the press conference, five were included in the list for prosecutions and two for debarment from public office.<sup>36</sup> The majority of this group, especially those who had been at the CPA talks, was surprised by the recommendation, having believed that they had negotiated reconciliation in place of criminal accountability.<sup>37</sup> A few lawmakers—including Senator Prince Johnson, who was

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33 The Benetech and Advocates for Human Rights reports were released shortly after the TRC's unedited report was released in July 2009. They can be found on the websites of the respective organizations at <http://www.hrdag.org/resources/publications/Benetech-TRC-descriptives-final.pdf>; and [http://liberiatic.mnadvocates.org/Final\\_Report.html](http://liberiatic.mnadvocates.org/Final_Report.html). These reports were later released by the TRC as appendices to the *Consolidated Final Report* in December 2009, as were the chapters on women, children, and economic crimes.

34 These were Pearl Brown Bull and Shiekh Kafumba Konneh. Bishop Arthur Kulah resigned from the TRC in November 2007 for personal reasons and was not replaced.

35 *Dissenting/Report Of Cllr. Pearl Brown Bull Commissioner, to the Final Report Volume 1, Consolidated Final Report Volume 11 of the Truth And Reconciliation Commission of Liberia*, issued June 30, 2009, on file with the ICTJ Liberia Office.

36 The group comprised the leadership of former warring factions and signatories to the CPA; Thomas Yaya-Nimely and Kai Farley (Movement for Democracy in Liberia, MODEL); Louis Brown, Roland Duo, Edwin Snowe, Jackson Doe, and Saah Gbolie (ex-Government of Liberia/National Patriotic Front of Liberia, ex-GOL/NPFL); George Dweh (Liberians United for Reconciliation and Democracy, LURD), and Prince Johnson (Independent National Patriotic Front of Liberia, INPFL). Having fought against each other for years during Liberia's conflict, many were surprised to see these actors presenting a united front against the TRC report.

37 See Hayner, "Negotiating Peace in Liberia."



himself listed for prosecution—also held press conferences at which they presented their concerns about the TRC’s recommendations on prosecutions and debarment.

In the face of these attacks, various actors from national civil society came out in strong support of the report in July 2009. These included a coalition of 36 organizations, many of which were members of the TJWG.<sup>38</sup> Not all of civil society, however, was as strongly supportive—for instance, the Liberia Council of Churches stated, “We believe that there are some good things in this report we wholeheartedly endorse. And yet, there are some much more difficult to accept.”<sup>39</sup>

At the international level, response to the TRC report was minimal. Where international organizations delivered public responses regarding the TRC’s “unedited” version, the majority, including ICTJ, the Carter Center, ICGL, and UNMIL, stated that Liberians would now have to engage with the recommendations and make decisions on how to move them forward.<sup>40</sup>

As public debate ensued, Liberia’s National Legislature handed the report over to the Lower House Standing Committee on Peace and National Reconciliation for review, but the committee declared that it could not review an “unedited” report. Further government action in relation to the report was effectively halted when, in September 2009, the House of Representatives and the Senate issued a joint resolution putting a hold on any government implementation of the report’s recommendations during legislative recess until mid-January 2010.<sup>41</sup> It was during this period that the TRC released the “edited” version of its final report on December 2, 2009.<sup>42</sup>

Encouragingly, the government’s official response to the TRC report was fairly positive, despite the president having been cited for debarment. On the two occasions she officially discussed its content, first at the Independence Day address on July 26, 2009, and again when she delivered her State of the Nation address on January 25, 2010, she signaled her commitment to implementing those recommendations that were within the TRC’s mandate and conformed to Liberia’s constitution. During her address to the nation, the president noted, “While one may not agree with all of the findings and recommendations resulting from the report, there is no doubt that it dissects and analyzes our problems and makes meaningful recommendations for the healing, reconciliation, restoration of peace, prosperity and progress of our nation.”<sup>43</sup>

Nonetheless, attacks against the TRC and its final report gained momentum in early 2010. First, a group of individuals mounted a legal challenge in which they argued the report was unconstitutional for contravening Article 3 of the 1986 Constitution of Liberia, which loosely discusses separation of powers between the executive, legislature, and judiciary.<sup>44</sup> The president had also raised concerns about consti-

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38 See “Civil Society Organizations of Liberia Press Statement in Response to the release of the Final consolidated Report of the Liberia Truth and Reconciliation Commission,” (issued at the Monrovia City Hall, July 20, 2009), on file with the ICTJ Liberia Office.

39 “A statement of the Liberia Council of Churches on the occasion of the publication of the Final Consolidated Unedited Report of the Truth and Reconciliation Commission,” (Aug. 21 2009), available at [http://www.liberiancouncilofchurches.orgfiles/LCC\\_TRC\\_Statement\\_August2009.doc](http://www.liberiancouncilofchurches.orgfiles/LCC_TRC_Statement_August2009.doc).

40 *Liberia: TRC Report Important But Not Last Step*, ICTJ Press Release, (July 3, 2009), quoted Acting President Alex Boraine as saying, “It is now up to the government, the political leaders and civil society to use the recommendations constructively to meet the needs of victims for peace, justice, security, and reconciliation.” The release is available at <http://www.ictj.org/en/news/press/release/2787.html>. Similarly, on July 14, 2009, the Carter Center released a statement that noted, “The TRC has now made its recommendations and it is now for legislature and the courts to begin their work in the spirit of Liberia’s continued and enduring commitment to peace.” The release is on the Carter Center’s website at <http://www.cartercenter.org/news/pr/liberia-trc-rpt-071409.html>. Speaking on behalf of Liberia’s international diplomatic partners, the ICGL also noted in a July 13, 2009, statement that “it is up to Liberians to decide how to implement the recommendations of the TRC in accordance with Liberian law.” The full text can be found at <http://www.theliberianjournal.com/index.php?st=news&bst=details&rid=1154&comesOfTheHome=1>. The 19th progress report of the Secretary-General on the United Nations Mission in Liberia called for Liberians to “determine for themselves how best to implement those recommendations,” (S/2009/411, August 10, 2009), par. 73.

41 “TRC Report on Ice - Legislature Tables it for Time, Incompleteness,” *The Analyst*, Aug. 28, 2009.

42 The edited version differed from its unedited predecessor in several ways. See footnote 47 for more details.

43 *Annual Message to the Fifth Session of the 52ND National Legislature of the Republic of Liberia*, a speech given by President Ellen Johnson Sirleaf in Monrovia, Montserrado County, on January 25, 2010. The full text of the address is available at [http://emansion.gov.lr/doc/2010\\_ANNUAL\\_MESSAGE\\_Final\\_as\\_completed\\_on\\_4\\_February\\_2010.pdf](http://emansion.gov.lr/doc/2010_ANNUAL_MESSAGE_Final_as_completed_on_4_February_2010.pdf). See also *Special Message by Her Excellency, Mrs. Ellen Johnson Sirleaf, President of the Republic of Liberia, On the Occasion of the 162nd Independence Anniversary of the Republic of Liberia*, a speech given by President Ellen Johnson Sirleaf in Gbarnga, Bong County, on July 26, 2009. A full text of the speech is available at [http://emansion.gov.lr/doc/7\\_26\\_09\\_President26Remarks.pdf](http://emansion.gov.lr/doc/7_26_09_President26Remarks.pdf).

44 *Constitution of the Republic of Liberia* (1986), art. 3.

tutional issues pertaining to the TRC recommendations in her January address, and subsequently called upon the Ministry of Justice and Law Reform Commission to address this in their review of the legal implications of the TRC recommendations.

A second and significant problem occurred in February 2010: despite the fact the president had called on the legislature to speedily confirm her nominees, the senate rejected all of them to the INCHR, the human rights mechanism mandated under the TRC Act to ensure implementation of TRC recommendations. Official implementation of the TRC's recommendations was effectively blocked, although a new vetting process was initiated.<sup>45</sup>

On March 10, 2010, in a letter reporting on the status of implementation of TRC recommendations to the National Legislature, the president again called for cooperation to speedily identify, appoint, and confirm INCHR commissioners. President Sirleaf further indicated that the Ministry of Justice and Law Reform Commission had been asked to review the legal implications of implementing the TRC recommendations and to amend the INCHR Act where necessary to allow it to address them. She described the TRC Report as a "rich" and "comprehensive" document that "will go down in history as an important document essential for achieving justice, reconciliation, and continued economic, social, and political rehabilitation of Liberia."<sup>46</sup>

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45 ICTJ understands that some of those senators who were on the list voted against the nominees in an effort to avoid any work on the TRC's recommendations. There was also a problem of absenteeism in the senate, thus preventing it establishing a necessary quorum. Failure to accept the nominees means a continued delay in the constitution of this important body, which was legislated in March 2005, several months before the TRC Act was passed.

46 "Ellen Reports to the Legislature on the TRC Report Implementation" *The Inquirer*. Vol. 20 No.38. March 17, 2010.

## 2. The Final Report: Merits and Limitations

The commission's final report comprises three published volumes and one unpublished volume. The first focuses primarily on legal analysis and was released in December 2008. The second is frequently referred to as the main consolidated report. It was released in its edited form in December 2009, and provides an overview of the commission and its work, a historical review of root causes to the conflict, substantive sections on the nature and pattern of the violations and the impact of the conflict on women, children, and other groups, statistical interpretations of information collected from statements, as well as determinations and recommendations for the way forward.<sup>47</sup> The third volume contains 13 appendices, including the chapters on women, children, economic crimes, statistical analysis, and the diaspora project. At the time of writing, the fourth volume remained unpublished due to a lack of time and financial resources.<sup>48</sup> It is supposed to include transcripts of the TRC-conducted workshops and public hearings.

### Merits of the Report

The report provides important historical information about Liberia's socioeconomic, cultural, and political past, and how certain practices gave rise to the conflict. Similarly, it offers the first comprehensive publicly-available mapping of human rights violations, as provided in the various statistical tables and figures that show where and when different violations occurred, as well as insights into the degree and demographics of affected populations.<sup>49</sup> Detailing these patterns is an important step in understanding the full extent of the nature and impact of the conflict, which can, in turn, provide valuable information on how to respond to the needs arising from it.

The report also offers in-depth information on the experiences of women. It also gives considerable weight to the plight of children as well as Liberia's diaspora communities. Though the main consolidated report, Volume Two, lacks any quotes from victims, the specific appendices in Volume Three on these issues provide a platform for victims' voices from various communities to be heard and their needs to be articulated. These appendices are not without their own limitations, however, which will be discussed later.

The report is the first of any truth commission to extensively explore economic crimes as a key factor in fueling conflict. Its recommendations likewise encompass a broad range of issues that are vital to thereconstruction of the country, including additional transitional justice efforts, further institutional reforms, and nation-building programs.

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<sup>47</sup> The edited version differed from its unedited predecessor in several ways. There were some changes to the lists of individuals recommended for prosecution or debarment; additional details were included on reparations policies; and more statistical tables were added. The majority of the content, however, remained the same.

<sup>48</sup> The TRC Chairman indicated this in a press conference on December 8, 2009.

<sup>49</sup> In 2005 UNDP sponsored a conflict mapping project in Liberia which used over 13,000 statements collected throughout the country to detail the nature and pattern of human rights violations that had occurred during Liberia's conflict. This report, however, is not available publicly. A copy is on file with the ICTJ Liberia Office.

The TRC's final report also provides a mechanism through which issues critical to Liberia's recovery and democratic process are placed on the national agenda. In any society recovering from a history characterized by widespread patterns of abuse, responding to the needs of victims and addressing demands for accountability are critical in order to develop faith in the new government, build a culture of respect for human rights, and consolidate confidence in the rule of law.

The report provides real opportunities for a vibrant national debate addressing questions on prosecutions, lustration, reparations, memorialization, and other transitional justice mechanisms. Moving these debates forward requires resources and political will, but questions about whether to pursue these measures can no longer be ignored.

### Limitations of the Report

The TRC report raises issues of critical importance to Liberia's fledgling democracy. However, any effort to advance those issues must first acknowledge the report's limitations. These include the use of data, drafting and policy inconsistencies, and poorly formulated recommendations.

The report lacks evidentiary data to support many of its claims and there are inadequate references to substantiate the information on which the conclusions are based. For example, the report states that the TRC staff used more than 500 primary sources—including testimonies of witnesses at the public hearings and interviews from investigations—to prepare the report. But the absence of any explicit reference to these sources throughout the narrative makes it difficult to substantiate the validity of the report's factual accounts. Facts and allegations should, therefore, have been sourced and referenced.

Additionally, the lack of consistency between different sections of the report has led some observers to question its reliability. Factual information, such as the number of statements collected, is not always reliably referenced and recommendations often appear contradictory.<sup>50</sup> For example, the appendix on children states that, because children under the age of 18 do not have any criminal responsibility for their actions, they cannot be held accountable for crimes committed under international human rights or international humanitarian law and thus “there can be no amnesty extended to children.”<sup>51</sup> Yet in the appendix on women, the report recommends that “all child soldiers should be given conditional amnesty with the condition being mandatory rehabilitation.”<sup>52</sup>

These contradictions also extend to sections dealing with related thematic content. This can best be illustrated by the report's treatment of women and children. Though the TRC made a concerted effort to recognize the experiences of women throughout its process, the final report's findings are patchy and uneven. For example, key recommendations to the government of Liberia pertaining to women in Section 18.5 focus on the need to provide medical services to women, particularly those who have survived sexual violence. However, this is not linked to later recommendations contained in the appendix on women, which focuses on the provision of free health services to women but also identifies critical recommendations on family reunification and education as further means to provide reparations.

Though the appendices do provide more detailed information regarding the historical background, roles, experiences, and needs of women and children than the main consolidated volume, limitations in some areas of the TRC's statement-taking and data-coding processes curtailed its ability to make comprehensive findings about the experiences of women and children. In defining “sexual abuse” for its statistical analysis, the TRC used a broad definition that included everything from genital touching to forced nudity. Since all forms of sexual violence, aside from rape, have been amalgamated, the resulting statistical reports fail to detail the range of sexual-based violations that women and girls, as well as men and boys, experi-

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50 In some instances the report states that 22,000 statements were taken and coded; elsewhere it claims 20,560 statements were taken but only 17,416 coded, see pages 77 and 1866 respectively of the *Consolidated Final Report*.

51 TRC of Liberia, *Final Report Volume III*, “Title II: Children and the TRC Children Agenda,” (June 30, 2009), 105. (Hereafter *Final Report: Volume III, Title II*.)

52 TRC of Liberia, *Final Report Volume III* “Title I: Women and the Conflict,” (June 30, 2009), 90. (Hereafter *Final Report: Volume III, Title I*.)

enced at different ages, in different regions of the country, or during different periods of the conflict. The report does, however, disaggregate “rape,” “multiple rapes,” and “gang rape.. While this dissection is helpful in understanding the types of rapes perpetrated, the report neglects an analysis of this data that would enable an overall clearer picture of how many women and men suffered from these violations.

The TRC report acknowledges its failure to capture the extent of sexual-based violence against women, which it noted was underreported during the commission’s process. It also acknowledges that the TRC Act anticipated the potential challenges in securing statements from victims of sexual violence and thus the commission repeatedly sought mechanisms to try to capture women’s experiences.<sup>53</sup> Nonetheless, the TRC was ultimately unable to reach the majority of victims of sexual violence, leaving their experiences largely unrecorded. The report also acknowledged that the commission failed to collect adequate information on the experiences of female combatants. This, in turn, has limited the report’s ability to make findings that accurately reflect the multiplicity of roles played by women during the conflict beyond those of victims.

The lack of coherence between the report’s sections is not restricted to the way it dealt with cross-cutting thematic issues, however. Overall, the report lacks important linkages between its inquiry, findings, and recommendations. The report also includes an additional section on “determinations” which is not coherently connected to the other sections. Generally, findings in truth commission reports are used to generate recommendations. Findings are specific conclusions that commissions draw from information collected during periods of inquiry. Recommendations are then meant to address the specific problems or shortcomings that findings identify. The Liberia TRC has, however, added the category of “determinations” without clearly defining how information in this section is different from the findings. Additionally, there is a considerable weak link between the historical narrative of the report and many of the subsequent findings, determinations and recommendations.

One example of such problems is the way the report deals with the role of external actors in the Liberian conflict. In the historical narrative, for instance, in describing Liberians United for Reconciliation and Democracy (LURD), the rebel group formed in 1999, the report states it was “a rebel group that had the support of Sierra Leone, Guinea, and the U.S.”<sup>54</sup> The findings, however, do not mention Sierra Leone or Guinea as having played a role in the conflict. Instead, the report finds that Côte d’Ivoire, Libya, and Burkina Faso, and the United States (U.S.) were involved. In the recommendations section, the only state that is mentioned is the U.S. Without explicit linkages between inquiry, findings and determinations, and recommendations, many of the recommendations seem ungrounded.

The viability of a recommendation not only pertains to evidentiary support and linkages to findings, but also whether it can be carried out given available resources and capacities. In best practices, every truth commission recommendation should be directed to a specific implementing agent and contain sufficient specificity, direction, and guidance. Few, if any, of the recommendations meet all of these basic criteria. Many are quite vague and not directed towards actors more specific than “the Government of Liberia” and the “international community.”<sup>55</sup>

The lack of detail will make it difficult to implement many of the recommendations. For example, the recommendations on reparations fail to identify either preliminary beneficiaries or the criteria by which different categories of beneficiaries should be identified. This is not for want of information about victims of the conflict: the Liberia TRC recorded more violations than any other truth commission before it. According to the TRC report, 86,647 victims and 163,615 total violations were identified in statements given to the commission.<sup>56</sup>

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53 TRC of Liberia, *Consolidated Final Report*, 45.

54 *Ibid.*, 167.

55 Sections 18 and 22 of the *Consolidated Final Report* provide recommendations that are directed at “the Government of Liberia” and the “international community” respectively.

56 TRC of Liberia, *Consolidated Final Report*, 185.

Despite this potential wealth of information, it appears that little or none of this unique data has been utilized to assist in making recommendations about how to provide reparations for those who suffered during the conflict. In countries such as South Africa, Sierra Leone, and Timor-Leste, where truth commissions have recommended reparations programs, the reports provided detailed recommendations and guidelines for beneficiaries, policy proposals for their implementation, and an initial list of victims. The truth commission reports from these countries also contained cross-referencing of complicity and responsibility for reparations.<sup>57</sup> In these contexts the state had a basis to implement this aspect of reparations if it wanted to, whether judicially, diplomatically or through economic measures, like taxation and other sources of income.

In specific cases where individuals are directly identified as perpetrators, this should be done within a framework that espouses due process.<sup>58</sup> Where the TRC did get specific about complicity and naming of individuals in its recommendations, it did so for those who it recommended either for prosecutions or public sanction. However, there is little information in the main narrative, findings, or determinations that clearly link these individuals to the crimes for which the TRC recommends they be prosecuted or sanctioned. Less than half of the 227 names of individuals and institutions that appear on the lists for prosecutions are mentioned anywhere else in the report.<sup>59</sup> Only nine of the 49 individuals listed for public sanction appear previously. Where these names are mentioned, in most cases there is little or no supporting information that explains the case for prosecution or sanction. Legal scholars clearly state that when truth commissions name individuals for responsibility in contributing to or committing violations, “the precise nature of the evidence against each named individual in respect of each attributed crime should be made explicit in the final report.”<sup>60</sup>

This lack of due process, coupled with the lack of supporting information linking those on these lists with the violations or crimes they allegedly perpetrated, is exacerbated by the fact that the lists are presented without any explanation of the criteria and methodology the TRC used to create them. In the absence of objective criteria, it is impossible to judge whether or not the inclusion or exclusion of certain names has been politicized. Additionally, procedural fairness considerations require the TRC to provide advance notice to those it intended to name, as well as give them the right to reply to this intention prior to the publication of the report. It is unclear to what extent, if at all, the TRC followed these due process considerations in publicly naming the individuals concerned.<sup>61</sup> For these reasons, the lists should only be used as potential reference, but not the basis, from which to carry forward future prosecutorial or vetting efforts.

Implementation of the recommendations is also hampered by the lack of timelines or prioritization plans, which could have served as important elements in facilitating the process of implementation. Not all the recommendations can be implemented simultaneously, even if there were sufficient resources to do so, given the overwhelming amount of work that actors in Liberia are already undertaking. Timelines and prioritization would help actors to know where to begin. In the Sierra Leone truth commission report, for example, recommendations were presented in five prioritized categories.<sup>62</sup>

A further weakness of the recommendations is that they are not well-contextualized or linked to ongoing reconstruction efforts. For example, many of the recommendations regarding health and educational infrastructure are already addressed in Liberia’s Poverty Reduction Strategy (PRS).<sup>63</sup> Because the recommendations are not tied to ongoing reconstruction or fundraising efforts, it will not be easy to immediately integrate them into structures and initiatives already in place, which could ease implementation.

57 For detailed reading of the reparations recommendations in the respective reports please refer to [www.etan.org/news/2006/cavr.htm](http://www.etan.org/news/2006/cavr.htm) for East Timor; [www.unicef.org/emerg/files/SierraLeone-TRCReport.pdf](http://www.unicef.org/emerg/files/SierraLeone-TRCReport.pdf) for Sierra Leone; and [www.info.gov.za/otherdocs/2003/trc/rep.pdf](http://www.info.gov.za/otherdocs/2003/trc/rep.pdf) for South Africa.

58 ICTJ Briefing, *Essential Best Practices for Truth Commissions*, (ICTJ Africa Program, December 2009): [http://www.ictj.org/static/Publications/ICTJ\\_SDN\\_briefing\\_AUPD-TJRC\\_pb2009.pdf](http://www.ictj.org/static/Publications/ICTJ_SDN_briefing_AUPD-TJRC_pb2009.pdf).

59 The TRC recommendations include lists of 26 individuals and 19 institutions or state actors to be tried for economic crimes; 58 persons to be tried for egregious violations of domestic law through domestic prosecutions; and 124 to appear before an extraordinary criminal court. See sections 16, 13, and 12, respectively, of the *Consolidated Final Report*.

60 Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge University Press: New York, 2006), 283.

61 *Ibid.*, chapt. 7.

62 For detailed reading of the recommendations of the Sierra Leone TRC, refer to *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission, Vol. II* (Truth and Reconciliation Commission, Sierra Leone, 2004).

63 “Liberia Poverty Reduction Strategy,” available at <http://www.liftiliberia.gov.lr/doc/prs.pdf>.

In summary, the TRC report contains many limitations that expose it to challenges. But these weaknesses do not negate the fact that the report and the issues its recommendations raise constitute a significant, government-sanctioned basis from which further work to address the causes and legacies of Liberia's conflict can be taken forward. The issue of accountability for past crimes that the TRC was designed to address is one that continues to be important for Liberia's recovery and reconstruction process.

### Questions of Constitutionality

One of the main challenges to the TRC report relates to questions about the constitutionality of both the TRC Act and its recommendations. Ultimately, the key question regarding constitutionality has to do with the purported binding effect of the TRC's recommendations. Article 48 of the TRC Act states that "all recommendations shall be implemented," but there is a legal argument to be made that the recommendations of a truth commission should never be binding on a government as such a requirement is counter to the separation of powers doctrine.

Regardless, this should not be seen as invalidating the entire act either legally or politically. According to Article 2 of the Constitution, "any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with [the constitution] shall, to the extent of the inconsistency, be void and of no legal effect." Even if the TRC recommendations cannot bind the government as matter of law, they should still be placed on the political agenda of the nation for the reasons discussed below.

Constitutional challenges against truth commissions are not unusual. Previous truth commissions, notably in Indonesia and South Africa, faced constitutional challenges during their tenure. In Indonesia in September 2004, a group of six civil society organizations asked the Constitutional Court to declare the amnesty provision of the act establishing the TRC unconstitutional.<sup>64</sup> In South Africa, both the statute and the report were challenged by different interest groups and political parties after the release of the preliminary report.<sup>65</sup>

To date, two main actions have been taken to challenge the constitutionality of the Liberian TRC. First, in January 2010, Senator Isaac Nyenabo sponsored a bill calling for amendments to certain provisions of the 2005 TRC Act.<sup>66</sup> In a radio interview, Nyenabo claimed his bill was intended to make implementation of some of the TRC recommendations easier by addressing the act's constitutional weaknesses in order to preempt court challenges.<sup>67</sup> A few weeks later, what he supposedly sought to prevent occurred when a group of individuals, whose names have been recommended for prosecutions by the TRC report, initiated a court case. They filed a class action against the TRC in the civil court demanding a declaratory judgment rendering the act and the final report unconstitutional.<sup>68</sup>

The litigation challenges the validity of the report on the grounds that the TRC arrived at some of its recommendations without respecting the fundamental principles of due process, particularly the presumption of innocence. It calls on the court to declare the TRC report unconstitutional because some of its findings, determinations, and recommendations have "given rise to confusion, fear, uncertainty and apprehension in the Liberia public and around the world," which creates a "likelihood of this disrupting the constitutional system."<sup>69</sup> As of April 2010, the court had not set the case down for hearing.

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64 "ICTJ written submission: Legality of Truth and Reconciliation Commission," (Amicus Brief to the Indonesian Constitutional Court, July 2006), available at <http://www.ictj.org/static/Asia/Indonesia/testimony.eng.pdf>.

65 "Legal Challenges," vol. 1, chapt. 7 of the *Final Report of the Truth and Reconciliation Commission of South Africa* (presented to President Nelson Mandela on October 29, 1998); and "Legal Challenges," vol. 6, sec. 1, chapt. 4 of the *Report of the Amnesty Committee of the Truth and Reconciliation Commission of South Africa Report* (March 21, 2003).

66 For detailed reading of the constitutional challenges please refer to "A Bill to amend certain provision of the Act that established the Truth and Reconciliation Commission (TRC) of Liberia," (Jan. 14, 2010). Senator Nyenabo is one of the 49 individuals recommended for public sanctions in the TRC report.

67 The interview was aired on an UNMIL radio program, run in collaboration with ICTJ, called "Let's Face It: *Bah-tunee*," on January 22, 2010.

68 For detailed reading of the Petition please refer to *Jucontee Thomas Woewiyu et al Vs The Truth and Reconciliation Commission through its Chairman, Jerome J Verdier*, Class Action: Petition for Declaratory Judgment, (Feb. 1, 2010).

69 *Ibid.*

### 3. Addressing the Report: Avenues for Progress

Given the need to ensure that Liberia breaks with its past culture of impunity, there is a need for continued transitional justice initiatives, including reparations, memorialization, further truth-telling efforts, and criminal accountability. ICTJ is therefore proposing ways in which the country can address the shortcomings of the TRC's transitional justice recommendations while capitalizing on the opportunities they present and the national momentum the report has built to address these issues.

The TRC report highlights general recommendations in the areas of administration of justice, building a new political culture, dealing with corruption, decentralizing governance, and developing a national vision on changing of minds and attitudes. These recommendations suffer from the same weaknesses detailed in the previous section.<sup>70</sup> The following suggestions are intended to provide general guidance over what actors can do in the short term to begin the process of moving forward with further transitional justice initiatives.

#### **Criminal Accountability: Internationalized and Domestic Prosecutions**

The TRC recommended two prosecutorial measures: the establishment of an extraordinary criminal tribunal and a domestic criminal court to try 124 and 58 individuals, respectively, for gross violations of human rights, violations of international humanitarian law, and egregious domestic crimes.<sup>71</sup> In line with the TRC report, these crimes include the conscription of children into armed forces and the perpetration of sexual violence. In addition, there is a list of 26 individuals and 19 corporations, institutions, and state actors recommended for prosecutions for allegedly committing economic crimes.<sup>72</sup> In the TRC's appendix on women, prosecutions are recommended for "warlords and heads of fighting factions" but the recommendation for amnesty for those who made full disclosures creates the possibility that those who were guilty of sexual-based violations may escape prosecution in direct contravention of UN Security Council Resolution 1820 on women, peace and security.<sup>73</sup>

A proposed draft of the rules of procedure for the extraordinary tribunal is outlined in the report.<sup>74</sup> They are not comprehensive enough to ensure the independence and competency of the tribunal, and fail to meet all international fair trial standards.<sup>75</sup> Also, given that the lists of those suggested to be tried are problematic, they should not themselves form the basis for any cases that may be taken forward. A further shortcoming of the TRC's rules of procedure for the extraordinary tribunal is the definitions of rape included in the draft statute. While the statute maintains international standards in its definitions of gross

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70 TRC of Liberia, *Consolidated Final Report*, secs. 18-21.

71 *Ibid.*, secs. 12-13.

72 *Ibid.*, sec. 16.

73 TRC of Liberia, *Final Report: Volume III, Title I*, 90.

74 TRC of Liberia, *Consolidated Final Report*, "Annex 2," 426-459.

75 For a more in-depth analysis of this recommended statute, see *Justice for Liberia*, (Human Rights Watch, Dec. 10, 2009), 10, available at <http://www.hrw.org/en/news/2009/12/11/liberia-trc>.



violations of human rights and serious humanitarian law violations, the same standards are not applied to the egregious domestic crimes, which fall within the tribunal's jurisdictions.<sup>76</sup>

Any attempt to pursue criminal accountability measures needs to bear in mind that Liberia's justice sector is still weak and susceptible to manipulation. A study conducted in 2009 revealed that "the formal justice system is seen almost universally by Liberians as falling abysmally short of their expectations."<sup>77</sup> The likelihood that Liberia's justice system can therefore implement the TRC's recommendations on prosecution for past crimes in an impartial and competent manner and in tandem with due process in the near future is limited.

Despite these immediate limitations, prosecutions for those responsible for perpetrating violations of human rights and humanitarian law can be important in helping states recover from massive human rights violations in several fundamental ways. Though traditionally understood as providing both deterrence and retribution, prosecutions also "convey to the citizen a disapproval of violations and a support for certain democratic values" that contribute to building the rule of law and restoring confidence in the government.<sup>78</sup> The value of criminal accountability in the post-conflict recovery process, even if this cannot happen in the short term, should not be overlooked.

In this light, ICTJ proposes the following next steps for consideration by various actors:

- *Initiate a new impartial professional investigation.* It is important to be mindful, however, of the increased difficulty to investigate as time elapses. There are also resource implications in pursuing such an initiative, including who will lead the investigations. Analysts have voiced serious doubts also about the necessary political will to support such an endeavor. Liberia's human rights community, with the support of international partners, should urge the government to initiate a new process of investigations. If the INCHR functions properly and necessary amendments are made to its founding act, it could also lead the support for such a process.
- *Develop indicators by which to assess when the justice system is sufficiently equipped to guarantee fair trials for alleged perpetrators.* This is best done by the Ministry of Justice and should be situated within other efforts to benchmark the development of the justice sector.
- *Empower those victims and victims' groups who are able to file petitions for prosecutions of specific human rights and international humanitarian laws violations in the domestic court system to do so.* Liberia's legal framework already permits victims to petition for prosecutions. A precedent was set in 2008 when two widows filed a petition for the indictment of Benjamin Yeaten, a former commander under Charles Taylor, for the alleged murder of their husbands during the conflict. This is best led by civil society, including Liberia's human rights lawyers and victim support groups.
- *Assess the feasibility of making use of the legal systems of foreign countries, using universal jurisdiction or other statutes to prosecute individuals or corporations for conflict-related human rights violations or economic crimes.*<sup>79</sup> There is precedence for this in the 2006 and 2007 case against Charles "Chuckie" Taylor Junior, who was tried and convicted in the U.S. for crimes he had committed while he was head of Liberia's Anti-Terrorist Unit, and the 2010 case against George Boley, also arrested by the U.S. Such opportunities could be explored in partnership with relevant authorities and state-initiated mutual legal assistance measures under the relevant conventions. The use of universal jurisdiction is far from being straightforward, and it has many loopholes, pitfalls, and resource

76 According to the TRC drafted definition, a man can only be held accountable for rape if he is not married to the female victim. This formulation not only excludes marital rape and rape within forced marriages, but also rape committed against a man. See *Consolidated Final Report*, "Annex 2."

77 For more detail on the state of Liberia justice system read Deborah H Isser, et al, "Looking for Justice: Liberian experiences with and perceptions of local justice options," (Washington D.C.: Peaceworks, USIP, October 2009), 3.

78 *Rule of Law Tools for Post-Conflict States*, "Prosecutions Initiatives," (New York and Geneva: OHCHR, United Nations, 2006), 4.

79 Universal jurisdiction or universality principle is a "principle" in international law whereby states claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country.

implications. Additionally, it is only available in certain countries.<sup>80</sup> Nonetheless, invoking universal jurisdiction may be a way to initiate a global campaign against impunity concerning the grave crimes committed in Liberia. Still, domestic accountability should be given priority whenever possible, notably because it brings justice closer to victims. This recommendation can be best led by national and international human rights organizations and supported by future governments and Liberia's international partners.

### **Public Sanctions: Barring Human Rights Abusers from Public Office**

The TRC report calls for public sanctions of 49 individuals, including the current president and other figures described as “political leaders and financiers of different former warring factions.” The report defines public sanctions as a “form of justice mechanism punitive in nature but short of prosecution,” and says that they “may take the form of lustrations, debarment from holding public offices, restitution, public apologies, written or oral; community service, compensation of victims, etc and other forms of social responsibilities that may be imposed.” The TRC specifically recommends that the 49 listed individuals be “barred from holding public office, elected or appointed, for a period of thirty (30) years as of July 1, 2009.”<sup>81</sup>

This recommendation has already come under attack on constitutional grounds. Article 52 of the Liberia Constitution affords all Liberians the right to run for office, provided they meet certain demographic requirements.<sup>82</sup>

Also, it is unlikely that there will be political appetite to consider a lustration process as recommended, given that the president is also named and has already declared her intention to run for the presidency again in 2011.

However, the recommendation to bar from future office those with appalling human rights records is a valuable accountability measure that has been employed in a number of other contexts to help restore confidence in public institutions.<sup>83</sup> Processes that lead to lustrations are a necessary component of institutional reform that “aim at excluding from public service persons with serious integrity deficits in order to (re-)establish civic trust and (re-)legitimize public institutions.”<sup>84</sup> Liberia has already embarked on a process of vetting and lustrations along human rights-related grounds for its police and army.

Any future vetting process would have to be transparent in determining who ought to be vetted, when such a process should take place, and how long it should take, bearing in mind possible conflicts with the next national elections. On this latter point, it is important that a vetting exercise not be perceived as a “witch hunt.” Probably the most critical element in any vetting process is who should have the authority to decide and on the basis of which criteria; this is quite tricky but very important for the legitimacy of the process. It may therefore be difficult to conduct a purely Liberian vetting process because of questions about sufficient neutrality, impartiality, and independence of a national process.

To pursue the potential for human rights lustrations, and to ensure that those in political office are of high integrity even in the absence of official vetting mechanisms, ICTJ suggests the following actions:

- *Amend Liberia's Electoral Act to include conflict-related human rights- and economic crimes-based criteria against which those running for office are vetted.* There are already some discussions about amending this act for more technical considerations, and this effort should fit into those broader reform plans. This would require the empowerment of Liberia's National Electoral Commission (NEC) to screen

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80 Over 125 states have domestic legislation that gives them jurisdiction over at least one crime under international law. For more information, see <http://www.amnesty.org/en/international-justice/issues/universal-jurisdiction>

81 TRC of Liberia, *Consolidated Final Report*, sec. 14.3.

82 *Constitution of the Republic of Liberia* (1986), art. 52.

83 For detailed reading of vetting in different countries see *Justice as Prevention: Vetting Public Employees in Transitional Societies*, eds. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007).

84 *Rule of Law Tools for Post-Conflict States*, “Vetting: An operational framework,” (New York and Geneva: OHCHR, United Nations, 2006), 4.

all candidates seeking to stand for election. This is best instigated by a combined effort of the NEC, INCHR, and Law Reform Commission.

- *Produce a public document that clearly indicates the criteria by which the Legislature approves those nominated for appointed positions, which includes conflict-related human rights and economic crimes criteria.* This will have to be produced by the legislature itself, and is best prepared in collaboration with civil society and the INCHR.
- *Conduct human rights, civic and political education, and outreach efforts with the electorate.* Civil society should undertake a robust public awareness campaign to encourage the public to better scrutinize the human rights background of prospective candidates seeking to hold public office. As with all outreach efforts, particular strategies to engage women must be included. This can be supported and supplemented by the NEC and other elections-related international nongovernmental organizations (NGOs), such as the International Foundation for Electoral Systems (IFES), the National Democratic Institute (NDI), and the International Republican Institute (IRI).
- *Identify those suspected of involvement in conflict-related human rights violations and economic crimes, determine the conflict-of-interest situations these persons may encounter in any positions for which they are nominated, and conduct advocacy campaigns against their candidature.* This type of activity is best led by civil society organizations, including those in the traditional transitional justice and human rights realm, such as Liberian NGOs campaigning for transparency and accountability in government in general. Such efforts should take into consideration the need for protective measures for potential informants. These efforts can be supported by the Liberia Anti-Corruption Commission and INCHR.

### **Additional Means of Accountability and Truth-telling: The National “Palava Hut” Program**

Appendix XII of the TRC report provides a list of 7,600 names that the commission, under Section 14 of its main consolidated report, recommends should submit themselves to a “justice and accountability mechanism with traditional orientation to foster national healing and reconciliation at the community and grass root levels creating the opportunity for dialogue and peace building.”<sup>85</sup> According to the recommendation, all “perpetrators, their associates, warlords, financiers, organizers, activists; whether named or not in the TRC report but who have committed some wrong,” are to submit to the “Palava Hut” process. The process has the potential to make a substantial positive contribution, but would need to be carefully designed and managed.<sup>86</sup>

Additional recommendations on informal truth-telling can be found in the appendices that deal with women and children. In the appendix on children, the TRC states, “Every community should provide children the opportunity to participate in “Palava Hut” processes, under the guidance of Child Welfare Committees to ensure that children are protected in these processes and that they are conducted in a child-friendly fashion.”<sup>87</sup> The appendix on women further recommends that “community forums, palava hut forms, and other broader national and regional mechanisms be set in place for more truth-telling to take place, which will lead to community reconciliation.”<sup>88</sup> However, particular consideration will need to be given to how victims of sexual-based violence will interact with this process. Given the stigma often associated with this type of abuse and the need to ensure support for these victims, any program would need to ensure gender-sensitivity.

There is not a singular “Palava Hut” framework that cuts across all of Liberia’s ethnic communities. Although it is believed to be practiced by the two major ethnic and language groups (the Kwa and Mende),

85 TRC of Liberia, *Consolidated Final Report*, 365.

86 “Palava” is a word used by most Liberians to mean “dispute” or “argument;” “Palava Hut,” as adopted by the TRC, generally refers to a town or village gathering place, often a thatched hut, where disputes are settled and issues resolved, usually through the mediation of a respected member of the community. For more on the meaning of “Palava Hut” in Liberia, see <http://www.elwamausa.org/archives/2009/12/palava-hut.html>.

87 TRC of Liberia, *Final Report: Volume III, Title II*, 106.

88 TRC of Liberia, *Final Report: Volume III, Title I*, 90.

there are variations in the enactment of the process. This lack of homogeneity could create difficulties in harmonizing one overarching national program. Similarly, efforts to use the “Palava Hut” process to address abuses that may have taken place across ethnic and geographical boundaries may prove problematic. Traditionally, the “Palava Hut” is only a place to resolve intra-community conflict. It has not been a forum to address serious crimes, including both sexual violence and violent crimes. Given the nature of the crimes for which the national “Palava Hut” program is being recommended, this will inhibit its ability to respond to conflict-related violations, unless the traditional jurisdiction of the “Palava Hut” is amended for this process, which may meet with resistance from traditional leaders.

In addition, Liberia operates on a dual justice system—the “formal justice sector” based on statutory law, and the “informal justice sector,” based on customary law. The “Palava Hut” has traditionally been seen as falling within the latter, but any state-led national enterprise will need to conform to Liberia’s legal statute. Though there are efforts underway to harmonize statutory and customary law, reconciling the two in the implementation of a national “Palava Hut” program will require careful thought, collaboration, and consultation with a number of relevant actors. Traditional practices of this nature are also not always in accordance with international human rights standards. Though the practice of “trials by ordeal” has officially been outlawed, in Liberia the “Palava Hut” process has been known to end in some instances through this practice, wherein accused persons are required to undergo some kind of physical test, the result of which adjudicates their guilt or innocence. Designers of a national “Palava Hut” program will therefore have to ensure that the nature through which it is conducted conforms to human rights standards. Of particular concern would be the need to ensure that vulnerable categories of people, including women and children, have equal access to these practices and are protected in them.

Regardless of these challenges, an alternative accountability mechanism could assist in meeting demands for accountability in the Liberian context. According to a study conducted in 2009, the informal justice sector is more popular and better trusted by many Liberians than the current court system, especially those citizens living in rural communities.<sup>89</sup> In addition to being a form of accountability, the “Palava Hut” is also seen as a means to achieve reconciliation. According to the TRC report, Liberian women who engaged with the TRC process “suggested a variety of traditional mechanisms through which reconciliation and dispute resolution could be encouraged, including ‘palava huts.’”<sup>90</sup> Though the “Palava Hut” is not practiced uniformly throughout the country, it could “be employed as another form of conflict resolution—either as a reconciliation ritual or as a process of addressing some of the violations the TRC might uncover.”<sup>91</sup> However it is ultimately defined, all community-based measures should not replace the need to address criminal accountability and provide reparations for victims.

In order to better overcome the various challenges described above, ICTJ proposes the following:

- *Define the scope, jurisdiction, and powers of the “Palava Hut” process.* This is best done through a collaboration of the Ministries of Justice and Internal Affairs, the Judiciary, the INCHR, and the National Traditional Council. This should build on initiatives already underway.<sup>92</sup>
- *Identify and clarify potential tensions between the “Palava Hut” program and the statutory justice system.* These efforts should be informed by the December 2009 findings of the Legal Working Group established to investigate issues related to the connection between customary and statutory law in Liberia and to build on the discussions of the conference on Enhancing Access to Justice.<sup>93</sup>

89 For more detail on the state of Liberia justice system see Isser, et al, “Looking for Justice: Liberian experiences with and perceptions of local justice options,” 3.

90 TRC of Liberia, *Final Report: Volume III, Title I*, 58.

91 *Ibid.*

92 From April 15 to 17, 2010, a conference was organized in Gbarnga, Bong County, Liberia by the National Steering Committee on Access to Justice. The aim of the conference was for stakeholders to review the dual justice systems with the view of exploring ways of both working together and harmoniously.

93 These findings, adopted on December 10, 2009, are on file with the ICTJ Liberia Office. According to the document, the Legal Working Group was made up of prominent legal scholars from relevant government institutions, the Bar Association, civil society and the Law School. The group met four times to explore key issues, including constitutional questions of separation of powers, due process and equality, and the legal framework governing Liberia’s dual justice system. They also met with traditional leaders in three counties to discuss perceptions, concerns, and options for reforming the dual justice system.

- *Create local opportunities for alternative truth-telling and community reconciliation, alongside the “Palava Hut” forum.* Communities, especially faith-based groups and community-based organizations, should design programs that will encourage victims and alleged perpetrators to talk about their experiences in order to enhance the healing and reconciliation process. Traditional cultural practices around performance and oral story-telling could provide the format for such a forum. A number of community reconciliation projects, such as those led by the Norwegian Refugee Council (NRC), the Carter Center, Interpeace, and the Women in Peacebuilding Network (WIPNET), already exist. The experiences of these and other community peacebuilding projects should be built on to include components that address lingering disputes or disharmony resulting from the conflict.

## Providing Reparations to Victims

The TRC report recommends a reparations program of \$US 500 million over a period of 30 years. It states that “within the first 5 years (July 1, 2009-July 30, 2014) all direct victim support programs must be implemented including memorials, victim support, and the process of prosecution.”<sup>94</sup> The reparations recommendations include a wide range of mental health, physical health, economic, educational, and infrastructural services to both individual and community victims of the conflict.<sup>95</sup> Annex 3 of the report provides a resolution that is recommended for use in establishing a reparations trust fund to support the reparations program. The appendix on women further details reparations options for women and states in its findings that women identified their development needs as “absolute priorities” in any potential reparations scheme.<sup>96</sup> The children’s appendix states, “Any reparations scheme to be devised by the government of Liberia needs to take the post-conflict needs of all children into account” and should “target entire communities and children as a group rather than single out individual children.”<sup>97</sup>

These recommendations risk raising expectations of the widespread provision of reparations but provide no detail about who should receive reparations, or in what form and at what time. Managing expectations of any reparations program is a formidable challenge. Similarly, identifying beneficiaries for large-scale reparations programs, particularly in a context like Liberia where all parts of the country were affected by conflict, poses a major challenge to those implementing reparations programs. In the absence of an organized movement by victims’ organizations to call for reparations, there may be little impetus for the government to move on such programs. Additionally, large, administrative reparations programs of the kind recommended by the TRC require significant resources, and funding a reparations program amidst Liberia’s other reconstruction and development priorities may seem daunting.

In light of these challenges, it may be tempting to argue that ongoing development programs will automatically address the reparations needs of victims and communities. However, reparations are an important acknowledgement of human rights violations and differ from development programs in fundamental ways. Primarily, they include a component of acknowledgement for the harm suffered by the beneficiaries and recognition that the state has a responsibility to redress these specific wrongs. The government of Liberia has a duty to provide reparations to victims of the most egregious abuses during the conflict under UN General Assembly Resolution 60/147, which stipulates that “a State shall provide reparation to victims for acts or omissions which can be attributed to the State.” It further declares, “States should endeavor to establish national programs for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”<sup>98</sup>

It is important to note that “the fundamental obligation of a massive reparations scheme is not so much to return the individual to his or her *status quo ante*, but to recognize the seriousness of the violation of the equal rights of fellow citizens and to signal that the successor regime is committed to respecting

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94 TRC of Liberia, *Consolidated Final Report*, 378.

95 See the *Consolidated Final Report*, section 17 on reparations, as well as sections 18.5 and the reparations recommendations included in *Final Report: Volume III, Title I* and *Final Report: Volume III, Title II*.

96 TRC of Liberia, *Final Report: Volume III, Title I*, 86 and 58.

97 TRC of Liberia, *Final Report: Volume III, Title II*, 107.

98 U.N. General Assembly, 60th Session, *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*, (A/RES/60/147, 2005), sec. IX, par. 15, available at <http://www2.ohchr.org/english/law/remedy.htm>.

those rights.”<sup>99</sup> Reparations programs contribute to restoring faith in new governments by fostering “trust among persons and particularly between citizens and State institutions—trust that stems from commitment to the same general norms and values and can exist even among strangers.”<sup>100</sup>

Given the inherent challenges of implementing reparations in Liberia, ICTJ proposes the following in order to move the process forward:

- *Develop a state-sponsored comprehensive reparations policy.* Such a policy should identify the criteria and processes for selecting and verifying beneficiaries, potential sources of funding, types of benefits (including individual, community, and symbolic reparations), and the agency to be responsible for the implementation of such a policy and program. Any reparations policy must be conscious of responding to the particular needs of women, children, and other vulnerable groups both in accessing reparations programs and in the types of reparations they might need. This is best led by an Executive-level task force established to coordinate future transitional justice efforts.
- *Conduct a more rigorous assessment of the needs and desires of victims.* Although the TRC’s statement-taking process collected considerable information on victims and violations, this information has not been adequately articulated in the main TRC report. This information would be a useful entry point to engage in a more rigorous process that articulates the views and voices of victims and subsequently informs the designing of a comprehensive reparations program. Special attention should be paid to the participation of women and children in this process. Previous efforts to conduct such assessments, including those led in 2009 by the Transitional Justice Working Group and the Women’s NGO Secretariat of Liberia, should form part of this process.<sup>101</sup> This is best led by human rights organizations.
- *Mobilize and empower victims and victims groups to advocate for their rights.* Supporting victims to mobilize for their rights will not only create political pressure for reparations; it can also serve as a healing process for victim communities, and as a way of engaging in civic activities. This is best led by civil society and victim support groups.
- *Initiate victim civil class actions and litigations in foreign jurisdictions against corporate entities suspected to have aided and abetted in the commission of, and/or benefited from, war-related economic crimes.* It is important to note that such efforts can be both lengthy and costly; the action guided by the Khulumani Support Group, in which group of victims of South Africa’s former apartheid regime sued major corporations who had been complicit in human rights violations during that period, is a good example to learn from.<sup>102</sup> This is best led by civil society and victim support groups and could be supported by public interest lawyers, nationally and internationally, as well as international human rights organizations.
- *Explore additional avenues for funding from international sources.* In other contexts, international partners such as the United Nations Peacebuilding Fund and the World Bank have supplemented reparations programs.<sup>103</sup> Both of these entities are engaged in Liberia, and there may be others that could contribute to a reparations trust fund.

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99 *Rule of Law Tools for Post-Conflict States, “Reparations Programmes,”* (New York and Geneva: OHCHR, United Nations, 2008), 30.

100 *Ibid.*

101 Both of these assessments were conducted with financial and technical assistance from ICTJ and other international partners. The reports of both are on file with ICTJ’s Liberia office.

102 In November 2002, Khulumani sued 23 multinational corporations in US courts, seeking civil damages for the role these corporations played in aiding and abetting human rights violations committed in apartheid South Africa. ICTJ contributed legal assistance in the case. In October 2007 apartheid victims and human rights organizations achieved a major victory: in a surprise landmark ruling, a U.S. court allowed them to bring their claims for compensation. This far-reaching judgment was a watershed moment in legal history since it opened the door for victims of state repression worldwide to hold accountable under the U.S. Alien Tort Statute those who directly and indirectly support violations of human rights. In September 2009, the South Africa government reversed its 2003 decision to oppose the case.

103 In 2007, the UN Peacebuilding Fund provided 3 million United States Dollars for reparations programs in Sierra Leone. The World Bank supported a reparations program in Aceh, Indonesia.

## Remembering and Memorializing the Past

The TRC recommendations on memorialization fall under Section 17 of the report, which deals with reparations. The TRC has recommended establishing a national remembrance day for the dead, building memorials in all of Liberia's 64 political districts and at every massacre site, conducting traditional cleansing ceremonies, building shrines and holy places, rehabilitating desecrated traditional, cultural and religious institutions, undertaking befitting reburial of two former presidents, issuing death certificates to the war dead, and making public apologies to the people of Liberia and the governments and people of other countries whose citizens died as a result of the conflict.<sup>104</sup> The appendix on children recommends that annual events be held to “commemorate the victims of the war...in particular its children,” and the appendix on women states that “women’s experiences, contributions, struggles for change, and campaigns for peace in Liberia must be mainstreamed into the memorialization practice.”<sup>105</sup>

In some ways these recommendations seem at first glance to be the easiest to implement as many of them require limited resources and have not yet proven contentious. Where they do require resources, however—for example, undertaking a survey to identify the “war dead” (something not contained in the TRC report)—it may prove difficult to prioritize memorial plans amidst Liberia’s other pressing reconstruction initiatives. Though people may initially be in agreement about the value of memorializing the past, questions about who, how, and where to remember the conflict can prove quite political and highly divisive. Memorials that value certain controversial individuals, who may be seen as a liberator by some and as an oppressor by others, can lead to tensions. This can also apply to memorials that ascribe more or specific suffering to different ethnic, cultural, or religious groups. Furthermore, memorials can be of little meaning if they are not constructed in consultation with the communities they commemorate and do not respond to their particular needs. Similarly, physical monuments and other memorials can quickly fall into disrepair if concerns about maintenance and sustainability are not taken into consideration in the early planning stages.

These potential difficulties do not, however, negate the value of using memorialization processes to promote sustainable peace. Appropriately carried out, memorialization projects can educate Liberian citizens on the need to avoid recurrence, can provide a symbolic break with the country’s troubled past, and can become spaces for public dialogue on peace and democracy.<sup>106</sup>

Based on these principles, ICTJ offers the following as potential steps to undertake a program on remembering the past:

- *Design a comprehensive memorialization strategy and policy.* This requires careful determination of policy objectives and messages, avoiding any symbolism that could offend victims or reactivate anger and hate. Memorialization activities to be considered may include the naming of public places, the creation of educational exhibits, performance, and the reconversion of places of atrocity into spaces of reflection and dialogue. It should include measures on how the government can support local as well as state-wide initiatives. The strategy adopted should also ensure that some specific memorials are devoted to particularly symbolic places where crimes were committed against children (e.g. schools) and that all memorials offer child-friendly spaces or explanations. It should also pay particular attention to the representation of the roles of women. This is best led by an executive-level task force established to coordinate future transitional justice efforts and relevant government ministries. Liberian artists and artisans, writers, communicators, and other creative minds should be engaged in this process. Efforts should be made at every stage to ensure the participation of women and children in this process.

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<sup>104</sup> Presidents William Tolbert and Samuel K. Doe were both killed violently by rebel groups, Tolbert in Doe’s 1980 military coup, and Doe in 1990, allegedly by Prince Johnson, leader at the time of the Independent National Patriotic Front of Liberia (INPFL), one of the warring factions during the civil conflict; for more on recommendations, see *Consolidated Final Report*, 379-380.

<sup>105</sup> TRC of Liberia, *Final Report: Volume III, Title II*, 109; and *Final Report: Volume III, Title II*, 88.

<sup>106</sup> Louis Bickford, et al, “Memorialization and Democracy: State Policy and Civic Action,” (Report of an international conference held from June 20-22, 2007, in Santiago, Chile), 6, available at <http://www.ictj.org/images/content/9/8/981.pdf>.

- *Support ongoing community initiatives on remembering the past.* Many communities are already engaging in local efforts to remember and memorialize their particular experiences of the conflict. Some of these initiatives do not take place in forms traditionally seen as commemorative (sculpture, architecture, text) but through theater, religious ceremonies, demonstrations, storytelling, and other performances. These should be supported by governmental and international actors as part of the broader memorialization strategy discussed above.
- *Create linkages between memorial efforts and community reconstruction and development.* Given the severe poverty of many communities in Liberia, the question that any memorial effort must answer is whether memorial process can lead to long-term development and support in the community. Such questions are legitimate and to address them, consideration and encouragement should be given to incorporating community aspirations in memorialization initiatives. Government and NGO development agencies should collaborate with transitional justice organizations and community-based organizations in this consideration.



## 4. The Role of Liberia and its Partners in Addressing the TRC Report

The task of responding to the need for accountability and reconciliation is first and foremost the responsibility of the Government of Liberia. There are many concrete ways in which various actors can respond to the recommendations and opportunities identified above. This section maps out the roles of actors needed to ensure the issues raised by the recommendations of the TRC receive requisite consideration and are taken forward where possible.

### **The Independent National Commission of Human Rights (INCHR)**

Both the INCHR and the TRC are products of Liberia's peace agreement. While the TRC was backward looking in its dealings with human rights violations, the INCHR will be forward looking, focusing on the protection and promotion of human rights.

The act creating the INCHR, first published in March 2005, prior to the promulgation of the TRC Act, did not make mention of the TRC.<sup>107</sup> However, the TRC Act identifies the INCHR as the principal institution charged with the responsibility to ensure and monitor the implementation of TRC recommendations. After a lengthy review process, the INCHR Act was amended and enacted in June 2009.

As noted earlier, in February 2010 Liberia's senate rejected the six individuals nominated by the president to serve as INCHR commissioners. At the time of writing, an interim secretariat was operating at minimal capacity. Once fully constituted, the INCHR will be poised to take on its role of protecting and promoting human rights in Liberia. This should include, but is not limited to, following up on the TRC recommendations.

In this vein, there are a number of activities and actions that the INCHR should consider taking once it is operational:

- *Review TRC-related issues.* Work with all stakeholders including civil society and potential international partners to develop a detailed review of the issues that have been raised in the TRC recommendations. Such issues will include prosecutions, reparations, memorialization, vetting, lustrations, and institutional reforms. This review should aim to identify those issues that can be taken forward and those that are not immediately actionable, establish a sequenced time table for action, delegate responsibilities across governmental sectors, and create benchmarks against which progress should be assessed.

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<sup>107</sup> For a description of the mandate of the INCHR see *The Act Creating the Independent National Commission for Human Rights*, (Monrovia, 2005 amended 2009).

- *Consider incorporating a TRC follow-up position into its secretariat staffing structure.* The person who is hired for this role can lead in the review process, support archiving efforts for TRC material, liaise with actors on the relevant issues, develop a clear coordinating mechanism for all these actors, and monitor progress.
- *Support the executive branch of government in developing a government white paper in response to the TRC report.* Such support should be in line with the INCHR findings of the review of the TRC issues as stated above.
- *Issue a statement on its intentions and role with regard to the TRC report recommendations.* This is so as to manage expectations and make clear its functions. There is some confusion as to whether the INCHR is meant to actually *implement* the TRC's recommendations, which is not something the INCHR would be equipped to do, nor is it something that the INCHR is mandated to undertake.

### The National Executive

The president has already tasked the Ministry of Justice and the Law Reform Commission to highlight both the legal implications of the TRC recommendations as well as which recommendations which require new or amended legislation. Where the recommendations of the TRC are feasible, the Executive will have the primary responsibility of taking up its implementation. Article 48 of the TRC Act requires the Head of State to report to the National Legislature within three months of receipt of the report and on a quarterly basis thereafter on the progress of enacting the recommendations. Where implementation has not occurred, Article 48 requests the Legislature to require the Head of State to show “cause for non-compliance.” Though the current president is named in the report, she is not prohibited from responding comprehensively to it, an initiative which could advance the process. This information can be provided in the form of a government response to the TRC report and in so doing the executive should consider the following actions:

- *Develop an executive-level task force to provide both political and strategic executive support to other governmental initiatives on the TRC-related issues.* This would include the development of policy and action plans for reparations, memory, and accountability. It should be recalled that on the inauguration of TRC commissioners in February 2006, the president committed to appointing a special presidential advisor to the TRC.
- *Publish a policy/white paper that will address its response to the report and recommendations.* This will include highlighting what it is capable of accomplishing within the remaining tenure of the administration and what should be deferred for future action. This should be informed by the legal review described above and can feed into the review to be undertaken by the INCHR.
- *Enable, resource, and support the INCHR in responsibly undertaking its obligations to the TRC regarding follow-up.*
- *Where necessary, amend the INCHR Act to enable it to better address the TRC recommendations.* This action should not impede progress on appointing the commissioners and constituting the commission as the president—in her January 25, 2010, address and her letter to the National Legislature of March 10, 2010—has already called on the Ministry of Justice to work with the Law Reform Commission in amending the INCHR Act.
- *Encourage collaboration between relevant Ministries and the INCHR in reviewing and moving forward with appropriate TRC recommendations.* This should at least include the Ministry of Justice regarding accountability concerns, the Ministry of Internal Affairs regarding national reconciliation efforts, and other line ministries affected by the TRC recommendations.

## The National Legislature

The TRC Act required the TRC to present a copy of its final report to the National Legislature though the act is not clear about what the legislature is meant to do with the report in the immediate wake of its submission. Its role in this regard has been the subject of significant debate. The legislature has interpreted the TRC Act to mean that it is required to review the report and its recommendations and approve or endorse the document. Accordingly, the legislature referred the report to a joint committee, which later passed a joint resolution putting all actions on the TRC report on hold.

The TRC Act only requires the National Legislature to receive quarterly reports on the progress of implementation from the head of state. In addition, the National Legislature will have the responsibility of promulgating laws and appropriating resources for state-sponsored initiatives, including any follow-up from the TRC process. Being the pivotal law-making body, the National Legislature should therefore consider the following actions regarding its role:

- *Assign oversight to relevant committees.* This would involve committees such as the Peace and National Reconciliation Committee (which was originally tasked with reviewing the TRC report) to organize the legislature's involvement in TRC follow-up.
- *Work with those involved in TRC follow-up activities.* This would include the INCHR, the executive-level task force referred to earlier, and civil society, which would discuss, draft, and enact legislation needed to enable initiatives that emanate from the TRC follow-up.
- *Allocate necessary budgetary commitments for the design and implementation of those measures that need resources.* This would include sufficiently resourcing the INCHR.

## Other National Institutions

Additional national institutions and independent government bodies have been created or will be created to deal with some of the issues raised in the TRC's recommendations. These institutions include the Governance Commission, the Liberia Anti-Corruption Commission (LACC), the Land Commission, the NEC and the Law Reform Commission. These commissions and other relevant bodies should:

- *Incorporate action on relevant TRC recommendations in their own workplans and strategy documents.* For example, the Land Commission will be reviewing the land tenure system, an effort that has been recommended by the TRC. As noted earlier, the NEC can take the lead in considerations of electoral law reform. The LACC is already tasked with addressing issues of corruption highlighted in the TRC report.
- *Work with the INCHR to coordinate their various efforts.*

## Civil Society and Community-based Organizations

Liberia's civil society groups have played a pivotal role in the TRC process and other peacebuilding, reform, and transitional justice initiatives. As the TRC process has been ongoing, several community groups have already initiated their own local efforts to respond to the atrocities in Liberia's past. There are at least three communities in Montserrado and Bong counties that have already undertaken community memorial projects. Liberia's civil society is specifically called upon by the TRC Act to ensure and monitor the implementation of the TRC's recommendations.

Many groups, including those under the auspices of the Liberian Council of Churches (LCC), the Transitional Justice Working Group (TJWG), the Women NGOs Secretariat of Liberia (WONGOSOL), the Association of Female Lawyers of Liberia (AFELL), and the Liberian Massacre and Survivors' Association (LIMASA),<sup>108</sup> have met on various occasions to discuss and review the TRC's final report. The LCC has

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<sup>108</sup> This group was initially established under the name: Lutheran Church Massacre Survivors Association (LUMASA). It was as LUMASA that they began their review of the TRC report, but they have since decided to rename themselves in order to be better

already issued an assessment of the TRC report and its recommendations. Given its important role in promoting peace in Liberia and its deep engagement with the Liberia TRC, civil society organizations should:

- *Conduct advocacy at the level of the national government to begin implementation of transitional justice initiatives such as further accountability measures, reparations, memorialization, and institutional reform.* Again, this is something that is already being done. For example, LIMASA petitioned the National Legislature in early 2010 to include reparations on its agenda for the new year.<sup>109</sup>
- *Coordinate and collaborate with the INCHR and other actors where appropriate.* This would be to ensure that the government's response to the recommendations, including any future implementation plans, is in line with the needs of Liberian civil society and ordinary citizens.
- *Initiate nongovernmental alternatives or community-led initiatives on some of the issues and next steps, particularly those relating to community reconciliation efforts.*
- *Monitor and reporting on all TRC follow-up activities.*

*Other non-traditional transitional justice groups in civil society, such as child protection groups, development-oriented groups and NGOs focused on broader governance issues, to engage with and respond to the contents of the TRC report.* The report raises a number of socioeconomic issues as well as wider issues pertaining to child rights. It would be imperative for the above-mentioned groups to provide their assessment and recommendations on the way forward on the critical questions of social justice raised in the report.

### **Liberia's International Partners**

As moral guarantors of Liberia's peace process, the TRC Act calls on the ICGL, ECOWAS, and the UN to support the implementation of its recommendations. Given their commitment to building peace in Liberia, the UN family, donor governments, and ECOWAS should continue to render their technical and financial support to the various initiatives and policy options highlighted in this paper. Such support may include high-level advocacy for future prosecutorial work and the provision of funds for reparations programs. The support should be consistent with ongoing reform processes, international standards, and the spirit of achieving accountability, justice, and lasting peace in the country. Similarly, NGOs should continue to support Liberian efforts to build a more just and accountable society.

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reflective of victims of the conflict more generally. They may change their name again, as further considerations into a more apt name were ongoing at the time of writing.

109 For more details, see a letter addressed to Honorable Alex Tyler, Speaker of the House of Representatives, dated January 4, 2010, and signed by Moses Wuntu, General Secretary, and J. Ernest Hamburg, National Coordinator of LIMASA. The letter is on file at the ICTJ Liberia Office.

## 5. Conclusion

The TRC process and its report form an important part of Liberia's efforts to account for its past and move towards a future in which the violations that characterized the conflict are not repeated. The problematic nature of the report's recommendations is the product of a process that was itself flawed. Very few of the transitional justice recommendations can be implemented immediately in their current form, but the issues that they highlight are important components of Liberia's peacebuilding efforts. These transitional justice processes, if properly pursued, can pave the way to comprehensively address the culture of impunity and respond to the needs of Liberia's victims.

To date, the debate about the TRC's recommendations has focused almost exclusively on whether or not to take forward the recommendations on criminal accountability and lustration. While criminal accountability is an important element in addressing the past, Liberia should also take advantage of other opportunities for transitional justice in order to build a new and democratic society, founded on respect for human rights. Going forward, the debate on how and when to implement future transitional justice initiatives must situate itself within the framework of this guiding question: how best can all actors meet the needs of Liberia's victims for accountability and redress?

The answer to this question must be found through a consultative process that involves all of Liberia's stakeholders and for which the country's alleged perpetrators simply cannot be allowed to dictate the terms. It will primarily be the responsibility of civil society actors to drive this process, and international actors—particularly members of the ICGL, ECOWAS, and the UN, who are the moral guarantors of the CPA—will need to offer political, technical, and financial assistance if the initiative is to succeed. Space must be created for the most disempowered groups at every stage of implementation in order to establish and maintain participation and credibility; any envisaged outcomes must be based on a clear understanding of their particular needs. Ultimately, the plan will require the firm and determined leadership of the government of Liberia itself, involving all levels of the nation's administration.

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