



LIBERIA:

A BRIEF GUIDE TO THE TRUTH AND RECONCILIATION COMMISSION

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Liberia

“The TRC is important because 15 years of war destroyed the country, 10 per cent of the population died, the economy collapsed, it turned Liberia into a failed and criminalized state. So, there is a need for a mechanism to develop a collective memory of the war in order to understand what happened, how it happened and who it happened to. The TRC process can play this role. It will investigate human rights abuses during the war and help the government put in place a policy process that can banish wars forever.”

Ezekiel Pajibo, of the Center for Democratic Empowerment (CEDE)



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Liberians returning home to a destroyed village near Kly Junction.

Introduction

This guide describes the mandate and functions of the Truth and Reconciliation Commission (TRC) of Liberia and outlines Amnesty International's main recommendations to the Liberian government and to the TRC itself. The main aim of the guide is to promote awareness of the TRC process and of Amnesty International's recommendations among Liberian non-governmental organizations (NGOs), media and the general public.

Amnesty International believes that the TRC can play an important role in addressing the human rights violations and abuses committed in Liberia since 1979. It can do this by providing a full account of these abuses; contributing to their investigation and eventual prosecution; preventing their repetition; and ensuring that victims and their families are granted full reparation.

An important part of the process is that NGOs, the media and members of the public monitor the activities of the TRC and debate its results. Amnesty International hopes that the information contained in this guide will be useful to those who decide to engage with the TRC process.

This guide is based on *Liberia: Truth, Justice and Reparation – Memorandum on the Truth and Reconciliation Commission Act* (AI Index: AFR 34/005/2006) published by Amnesty International in June 2006, which contains a more detailed analysis. Amnesty International has also published *Liberia: Submission to the Truth and Reconciliation Commission* (AI Index: AFR 34/006/2006).



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Bullet-riddled billboard near Mesurado bridge, Monrovia. The bridge was the scene of particularly heavy fighting in June and July 2003.

1

Truth commissions and human rights

A. What other countries have had truth commissions?

The Liberian TRC is one of at least 34 truth commissions which have been established in 28 different countries of the world since the mid-1970s. Some of these commissions are officially named “Truth and Reconciliation Commission”, like the one in Liberia, while others have different official names. Truth commissions is the term commonly used to refer to all of them.

In Africa, eight countries other than Liberia have established truth

commissions. South Africa has had three truth commissions, including the Truth and Reconciliation Commission established in 1995. Other African countries which have established such commissions are: Uganda (1974), Chad (1991), Nigeria (1999), Ghana (2002), Sierra Leone (2002), Democratic Republic of Congo (2003), and Morocco (2004). At the time of writing, negotiations are ongoing to establish a truth commission in Burundi.

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

Kofi Annan, UN Secretary-General, 11 March 2003

B. What is a truth commission?

Truth commissions are fact-finding bodies that investigate patterns of human rights violations and abuses committed over the past and set out the results of their investigations in a final report containing findings of fact and recommendations.

Truth commissions established in different countries have different characteristics, but all of them share certain key common features. Truth commissions are:

- » **Official bodies:** They are established by national authorities.
- » **Temporary bodies:** They have a limited period of operation, at the end of which they close their activities.
- » **Non-judicial bodies:** They are not courts or tribunals and they cannot put individuals on trial, decide on guilt or innocence, or impose sentences.

“The Liberian government needs to make sure that the work of the TRC remains unhindered and is fully supported. The TRC needs to pay attention to the fact that peace and reconciliation can not really be considered without looking at the issue of justice. Members of the TRC should be courageous enough to make recommendations for prosecution for suspected war criminals and those who have committed crimes against humanity without compromise.”

Aloysius Toe, of the Foundation for Human Rights and Democracy (FOHRD)

“The TRC need to come up with good recommendations, especially recommendations that will lead to reconciliation through judicial and community process.”

Koffi Woods, Minister of Labour

C. What is the role of a truth commission?

Where there have been gross violations of human rights, states must ensure that the truth is told, that justice is done and that reparation is provided to all the victims. In this sense, truth, justice and reparation are three aspects of the fight against impunity.

Truth commissions can help in the fight against impunity, and can help to achieve truth, justice and reparation. In particular:

- ▶ **Truth:** Truth commissions should clarify the facts about past human rights violations and abuses.
- ▶ **Justice:** Truth commissions should collect and preserve evidence and feed it into criminal investigations and judicial proceedings against alleged perpetrators.

- ▶ **Reparation:** Truth commissions should formulate effective recommendations to the authorities for providing full reparation to all the victims of past violations and abuses and their families.

Although truth commissions can play an important role in the fight against impunity, they cannot do this alone. Their work can only complement, not substitute for, that of the courts, the legislature or the government. Truth, justice and reparation must be the aim of a long-term action plan, developed and led at the national level, which involves all powers of the state (legislative, executive and judiciary) and all sectors of society.

D. What is the relationship between truth commissions and the courts?

Truth commissions are not judicial bodies and cannot determine guilt or innocence. Where a truth commission receives allegations that certain individuals have committed gross human rights abuses, those people must be presumed innocent until proved guilty according to law in a fair trial before a competent criminal court.

The work of a truth commission should assist current or future criminal proceedings. If a truth commission obtains information indicating that identified individuals may have been responsible for human rights abuses, that information should be passed to the relevant authorities for investigation, with a view to bringing those individuals to justice.

However, truth commissions do not substitute for civil, administrative or criminal courts. In particular:

- » Any recommendation made for monetary compensation or other forms of reparation should never prevent victims also seeking compensation through the courts.
- » Proceedings before a truth commission do not preclude action in the courts to bring perpetrators to justice. In particular, truth commissions must not grant amnesties or similar measures of impunity for crimes such as genocide, crimes against humanity, war crimes and other gross human rights violations. Such amnesties would deny the right of victims to justice and are prohibited under international law.

2 The Truth and Reconciliation Commission of Liberia

A. What is the Truth and Reconciliation Commission of Liberia?

The Truth and Reconciliation Commission of Liberia is a body composed of nine members – five men and four women. The TRC is assisted by an International Technical Advisory Committee (ITAC) composed of three advisors.

The establishment of the TRC was agreed as part of the Accra Comprehensive Peace Agreement in August 2003. The National Transitional Legislative Assembly of Liberia then approved the Act to Establish the Truth and Reconciliation Commission of Liberia (TRC Act) on 10 June 2005. Article

XIII of the Comprehensive Peace Agreement provides the broad rationale of the TRC, while the TRC Act contains detailed provisions on its mandate, composition, functions and powers.

The TRC was inaugurated by President Ellen Johnson-Sirleaf on 20 February 2006 and started its operational work at the end of June 2006. It will work for two years, then spend a further three months wrapping up its activities and producing a final report – which should be ready by September 2008.

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

President Ellen Johnson-Sirleaf, Speech for the inauguration of the Truth and Reconciliation Commission, 20 February 2006



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Sierra Leonean peacekeepers at a checkpoint in Liberia.

B. What has the TRC been established for?

The TRC has been established to investigate gross human rights violations and abuses and violations of international humanitarian law that occurred in Liberia between January 1979 and 14 October 2003. These include massacres, rapes, unlawful killings and economic crimes. It is to determine those believed to be responsible for these violations and their motives. It is also to analyse the

circumstances, context, preceding events and other relevant factors relating to the violations, whether they were the result of deliberate planning, and their impact on victims. The TRC's functions also include ensuring accountability for human rights violations, promoting community and national reconciliation and establishing a historical record.

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

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

“The success of the Liberia TRC depends on the commitment of the international community. The international community has to support the TRC with necessary physical, financial and technical resources.”

Reverend Christopher Toe, Manor River Union Peace Forum

C. How will the TRC work?

To carry out its investigations, the TRC has the power to gather any relevant information. This includes the power to request any documents, records or other information from any source, including from state authorities, and to interview any person, including state officials. It has the power, if necessary, to compel the production of such information.

The TRC can gather information by taking written or oral statements and by conducting hearings. As a general rule, the hearings will be open to the public; however, the TRC may decide to hold confidential hearings in special circumstances, for example if the security of victims, witnesses or alleged perpetrators is considered to be at risk.

At the end of its work, the TRC is to compile and submit to the National Legislature a comprehensive report including an account of its activities and its findings. The TRC will also formulate recommendations to the President with regard to: reparation to victims; legal, institutional and other reforms; further investigations and inquiries; and any other necessary action to be taken in furtherance of its findings.

The TRC Act provides that all recommendations must be implemented. The President is required to report to the National Legislature about their implementation.

3 Amnesty International's recommendations

The Liberian government should ensure that all information that the TRC considers to be relevant is provided to it, including archives, other records and testimony of government officials.

A. Outreach, access and publicity

There should be a two-way relationship between the TRC and the people of Liberia: while the TRC should inform the people of Liberia about its work, it should also be accessible to them.

Throughout the period of its work, the TRC should maintain effective communication with all sectors of Liberian society, including the Liberian authorities, civil society organizations and the general public, in order to publicize its work and obtain relevant information. Amnesty International has called on the TRC to:

- » Promote its mandate and planned work in all appropriate media, including radio, television, songs, drama, posters, a website.
- » Publish regular and frequent interim reports outlining progress made and any problems encountered.
- » Establish an outreach unit specifically mandated to deal with all issues concerning

communication with journalists, civil society and the general public.

The TRC should be easily accessible to all the people of Liberia throughout the country. In particular, it should carry out investigations and organize hearings in all areas of Liberia, with the necessary staff and facilities to reach all victims and their families. The participation of women and other groups, such as children, young people and the elderly should be actively encouraged.

So far as possible, all aspects of the work of the TRC should be made public. The media and the public should be given access to the proceedings and to the evidence on which the TRC bases its findings. The principle of openness of the investigation and of the information obtained should be limited only by the need to protect the rights of individual victims or witnesses.

B. A victim-centred approach

The TRC is mandated to provide opportunities for the victims of human rights violations and abuses, in particular women, children and vulnerable groups, to relate their experiences. It should adopt a victim-centred approach, which will ensure that victims are treated with humanity; that they are provided with effective support; and that effective protection mechanisms are established for victims and witnesses.

Ensuring that victims are treated with humanity. The TRC Act expressly provides for victims to be treated with compassion, respect for their dignity, and equality. All representatives of the TRC (commissioners, staff and others) who come into contact with victims should be comprehensively trained in dealing with victims of serious crimes, including victims of sexual violence and violence against children.

Ensuring that victims are provided with effective support. Victims and their families and lawyers and NGOs working on their behalf should be actively encouraged to register their cases; they should be kept informed about the investigation, have access to hearings and be allowed to present evidence. The TRC should take special measures to help victims and witnesses to participate and give testimony, including providing psychological support. The TRC should take particular care to support victims who are traumatized, children, elderly and victims of sexual violence.

Establishing effective protection mechanisms for victims and witnesses. The TRC should develop and implement a victims and witnesses protection programme, in line with what is required under the TRC Act. Protection measures should be available to all who need them and proportionate to the seriousness of

Refugee women and girls in southern Guinea.

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the risk. They should not be restricted to concealing the identities of victims and witnesses who request it, but may include seeking judicial orders against anyone posing a threat to the victim or witness and their family, organizing police protection and so on. In some cases, protection measures may need to be long-term and may require relocation and new identities. The TRC should regularly review the protection measures decided and their implementation.

Amnesty International recommends that a special unit for protection and support of victims and witnesses should be established within the TRC. Amnesty International also calls on the UN Mission in Liberia and all UN specialized agencies to assist the TRC within their own areas of expertise by providing technical advice and assistance on designing and implementing protection mechanisms.

C. A fair procedure

Everyone who gives evidence to the TRC, whether they are victims, witnesses, alleged perpetrators or others, should be guaranteed certain rights. Some of these rights are particularly relevant to alleged perpetrators.

The rights that should be guaranteed at all stages of the TRC's procedures include:

- » The right not to be discriminated against;
- » The right to a fair and public hearing by a competent, independent and impartial body;
- » The right to remain silent and the right not to be compelled to testify against oneself or to confess guilt;
- » The right not to be subjected to any form of coercion, duress or threat, to torture or to any other cruel, inhuman or degrading treatment or punishment;
- » The right to have the free assistance of an interpreter for those who cannot understand or speak the language used;
- » The right to be informed promptly and in detail of any allegations made against them;
- » The right to defend themselves and the right to have legal assistance;
- » The right to be presumed innocent until proved guilty according to law in separate criminal proceedings;
- » If adversely affected by a truth commission's decision, the right to seek review in the courts.

In the case of juveniles below 18 years of age, the procedure should take account of their age and the desirability of promoting their rehabilitation.

D. Facilitating future prosecutions

The TRC should pass on information regarding gross human rights violations and abuses to the relevant authorities for investigation and prosecution. It should compile a list of those thought to be responsible and include that list as a separate confidential appendix to its report. The names should be handed over to the national prosecution authorities so that, where there is sufficient evidence, those suspected of being responsible can be prosecuted. The TRC should decide in advance, at the outset of its work, a clear policy defining the criteria for compiling the list of alleged perpetrators. Those

whose names are to be included in the list should be given, as a minimum, the possibility to respond to the allegations before the list is finalized. The TRC should also take steps to ensure that the list of alleged perpetrators is known to prosecution authorities but is not available to the general public.

E. Reconciliation

One of the stated objectives of the TRC is to “facilitate genuine healing and reconciliation” between victims and perpetrators. The establishment of the facts is a precondition for, and can help to promote, individual and collective reconciliation. However, reconciliation cannot be imposed by a truth commission or by any other official body or procedure.

If the TRC decides to adopt specific procedures to promote individual reconciliation, such

procedures should respect the rights and dignity of both victims and alleged perpetrators. In particular, victims and their families should not be forced to meet alleged perpetrators or to engage in any act of reconciliation. Reconciliation procedures should not undermine the right of alleged perpetrators to a fair trial and should not involve punishment or humiliation of alleged perpetrators.

F. Report and recommendations

The results of the TRC investigations and its recommendations should be officially proclaimed, published in a final report and widely disseminated. The report should contain information on the TRC's mandate, its terms of reference and its findings. It should provide a critical analysis of institutional structures, policies and practices, and other factors which contributed to the human rights abuses investigated by the TRC. The report should include recommendations aimed at preventing repetition of past violations, such as reforming laws, administrative procedures and practice, strengthening the justice system and promoting human rights education. The report should also include information on whether the TRC received the necessary cooperation from the government and other public institutions.

G. Reparations

Throughout the process, the TRC should collect views from victims about what forms of reparation they require to rebuild their lives. Reparation should be proportional to the gravity of the violations and abuses and the harm suffered. Even if the perpetrator has not been identified, the state has a responsibility to ensure that it is provided. The TRC should consider recommending a broad range of forms of reparation for victims.

Reparations

Victims of gross violations of international human rights law and serious violations of international humanitarian law have the right to be provided with full and effective reparation. This takes five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. (See: 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, adopted by UN General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147.)

- » **Restitution** includes all the measures aimed at re-establishing the original situation before the human rights violation occurred. Examples include return to one's place of residence or the return of property.
- » **Compensation** is the payment of a sum of money for any economically assessable damage resulting from the human rights violation.
- » **Rehabilitation** aims to restore the individual's health and reputation after the human rights violation. It includes medical and psychological care as well as legal and social services.
- » **Satisfaction** may assume the form of a public apology, commemoration, tributes to the victims and so on.
- » **Guarantees of non-repetition** include measures contributing to the prevention of further violations, such as legislative reforms and human rights training for armed and security forces.

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights to be respected and protected.

Amnesty International's vision is of a world in which every person enjoys all the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

In pursuit of this vision, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of those whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International is a democratic, self-governing movement with more than 1.8 million members and supporters in over 150 countries and territories in every region of the world. It is funded largely by its worldwide membership and public donations.

Liberia's Truth and Reconciliation Commission has been established to promote national peace, security, unity and reconciliation after years of violent conflict.

Amnesty International believes that the Truth and Reconciliation Commission can play an important role in the transition to lasting peace by providing a full account of the human rights violations committed during the conflict, contributing to their investigation and eventual prosecution, preventing their repetition, and ensuring that victims and their relatives are granted full reparation.

This brief guide describes the mandate and functions of the Truth and Reconciliation Commission and outlines Amnesty International's main recommendations to the Liberian government and to the Commission. It aims to promote awareness of the Commission and of Amnesty International's recommendations among Liberian non-governmental organizations, the media and the general public.