

**AN ACT TO ESTABLISH THE TRUTH AND RECONCILIATION
COMMISSION (TRC) OF LIBERIA**

**ENACTED BY THE NATIONAL TRANSITIONAL LEGISLATIVE ASSEMBLY
ON MAY 12, 2005**

**Approved by
The Chairman of the National Transitional Government of Liberia on _____, 2005**

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PREAMBLE

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

AND

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

AND

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

AND

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

AND

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

AND

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

AND

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

AND

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

AND

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

AND

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

AND

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

AND

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

NOW THEREFORE,

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

Article I TITLE OF ACT

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

Article II DEFINITIONS

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

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

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

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

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

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

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

Article III ESTABLISHMENT

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

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

Article IV MANDATE OF THE COMMISSION

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

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

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

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

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

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

Article V COMPOSITION

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

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

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

Section 9.

- a. The Selection Panel shall be coordinated by the ECOWAS Representative, who shall preside over the Selection Panel as head, and coordinate the process of selecting representatives as stipulated in section 8. The Selection Panel shall vet nominees pursuant to the criteria set forth in section 11 of this Act and shall conduct a process of public scrutiny based on individual nominations and other petitions from the general public, institutions, and organisations.
- b. Recognizing that the Chairman of the NTGL appointed commissioners before the enactment of legislation establishing the Commission and acknowledging the role they have played in the TRC consultative process, affirming the need for the TRC process to be credible and legitimate and accepted by the nation, the Commissioners appointed by the Chairman of the NTGL before the enactment of the TRC Act, will be vetted pursuant to the criteria set forth in Section 11 of this Act.

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

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

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

ECOWAS shall nominate two individuals for membership in the Committee and the United Nations High Commissioner for Human Rights shall nominate one individual for membership in the Committee. All advisors shall be individuals of international distinction and repute.

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

Section 11. Members of the TRC shall be persons in good health, of credibility, high integrity and honour; not known or perceived as human rights violators or members of groups involved in human rights violations; and without prior conviction for a crime. As a whole, the Commission shall be balanced, representative of Liberian society, perceived as impartial in its collectivity, and of diverse professional and regional backgrounds. Upon appointment, commissioners shall renounce their membership of political parties.

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

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

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

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

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

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

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

Section 19. Meetings and quorum of meetings

- a. A meeting of the Commission shall be held at a time and place determined by the Chairperson of the Commission or, in the absence or inability of such Chairperson, by the Vice-Chairperson of the Commission or, in the absence or inability of both, the Acting Chairperson of the Commission.

- b. The Commission shall have the power to determine the procedures for its meetings, including the manner in which decisions shall be taken.
- c. The Commission shall cause a record to be kept of its proceedings.
- d. The quorum for the first meeting of the Commission shall be two persons less than the total number of the members of the Commission. Thereafter the Commission shall determine the quorum for any of its further meetings.

Article VI GENERAL POLICY

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

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

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

Section 23. If at anytime during the course of the work of the TRC it appears that a commissioner has or may have financial or other interests which may cause or give rise to a conflict of interest in the performance of his or her functions on the TRC, a full disclosure of said interest shall be made by such commissioner, on the record, and he/she shall recuse him/herself from further participation in that particular matter. Failure to disclose shall be grounds for removal.

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

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

Article VII
FUNCTIONS AND POWERS

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

- a. Facilitating, and where necessary, initiating or coordinating enquiries into, and investigating:
 - i. Gross violations and abuses of human rights, privileges, powers and authority in Liberia including violations, which were part of a systematic pattern of abuse;
 - ii. The nature, causes and extent of gross violations and abuses of human rights, including the root causes, circumstances, factors, context, motives and perspectives which led to such violations;
- b. Identifying where possible persons, authorities, institutions and organizations involved in the violations
- c. Determining whether such violations were the result of deliberate planning on the part of the state, authority, or political organization, movement or group of individuals; and
- d. Ensuring accountability, political or otherwise, for any such violation.
- e. Gathering information and receive evidence from any person or persons, including persons claiming to be victims of such violations or the representatives of such victims, individuals, groups of individuals, perpetrators, witnesses and institutions through the taking of statements and through evidence gathered through the conduct of both public and confidential hearings upon request of witnesses, informants, petitioners, either as victims or perpetrators, subject to the exclusive discretion and authority of the TRC;
- f. Helping restore the human dignity of victims and promote reconciliation by providing an opportunity for victims, witnesses, and others to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, in an environment conducive to constructive interchange between victims and perpetrators, giving special attention to the issues of sexual and gender based violence, and most especially to the experiences of children and women during armed conflicts in Liberia;
- g. Recommending amnesty under terms and conditions established by the TRC upon application of individual persons making full disclosures of their wrongs and thereby expressing remorse for their acts and/or omissions, whether as an accomplice or a perpetrator, provided that amnesty or exoneration shall not apply to violations of international humanitarian law and crimes against humanity in conformity with international laws and standards;

- h. Preparing a comprehensive report which sets out its activities and findings based on factual and objective information and evidence collected or received by it or placed at its disposal; and
- i. Creating an independent, accurate and objective record of the past and make recommendations reflective of the truth, to re-unify and reconcile contending groups and/or the peoples of Liberia;
- j. Making recommendations to the Head of State with regard to:
 - (i) Reparations and rehabilitation of victims and perpetrators in need of specialized psycho-social and other rehabilitative services;
 - (ii) Legal, institutional and other reforms;
 - (iii) The need for continuing investigations and inquiries into particular matters, at the discretion of the TRC; and
 - (iv) The need to hold prosecutions in particular cases as the TRC deems appropriate;
- k. Taking action, doing any and all acts, including but not limited to instituting the necessary enquiries referred to in this act, gather the information and receive the evidence referred to above, make findings and determinations on all matters brought before it, in furtherance of its mandates, the object of this Act, record allegations and complaints of gross violations of human rights and abuses as is required by its mandate; and
- l. Subject to other provisions of this Act, the TRC shall adopt its own rules, code of conduct and operating guidelines and procedures, schedules, work plans and other policies necessary for the accomplishment of its mandate including the conduct of research and investigations, holding of public and confidential hearings, making final determination of matters before it, recommending amnesty, making recommendations and publishing its report;
- m. At the discretion of the TRC, any person, group of persons or organizations or institutions shall be permitted to provide information as informants, witnesses, perpetrators or victims to the TRC on a confidential or non-confidential basis and the TRC shall not be compelled by any authority to disclose any such information given to it in confidence.
- n. The TRC shall take into account the security and other interests of victims and witnesses when appearing for hearing, design witness protection mechanisms on a case by case basis as well as special programs for children and women both as perpetrators and victims under burdens of trauma, stigmatization, neglect, shame, ostracization, threats, etc. and others in difficult circumstances who may wish to recount their stories either in privacy or public, subject to the discretion of the TRC.

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

- p. Hearings of the Commission
 - (i) The hearings of the Commission shall be open to the public, provided the Commission, in any proceedings before it, is satisfied that:
 - (a) It would be in the interests of justice; or
 - (b) That there would not be a likelihood that harm may ensue to any person as a result of proceedings being open,The Commission may direct that proceedings be held in camera and that the public or any particular individual or individuals shall not be present at proceedings or any part thereof if the security of perpetrators, victims or witnesses is deemed to be threatened. Provided that the Commission shall permit any victim who has an interest in the proceedings concerned to be present.
 - (ii) An application for proceedings to be held in camera may be brought by victims, perpetrators or witnesses and such application shall be considered and passed upon as the Commission deems fit.
 - (iii) Where the Commission under this sub-section, on any grounds referred to in that sub-section, directs that the public or any part thereof shall not be present at any proceedings or part thereof, the Commission may direct that:
 - (a) No information relating to the proceedings or any part thereof held in camera shall be made public in any manner;
 - (b) No person may in any manner make public any information, which may reveal the identity of any witnesses in the proceedings;
 - (c) Give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness;Provided that the Commission may authorize the publication of such information as it considers would be just and equitable.

- q. The Commission may where it deems it necessary seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation

- r. When dealing with victims, the Commission shall be guided by the following principles:
 - (i) Victims shall be treated with compassion and respect for their dignity; they shall be treated equally, without regard to race, ethnicity, religion, language, sex, or nationality; and, procedures dealing with victims shall be expeditious and fair;

- (ii) Appropriate measures shall be taken to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety and that of their families or witnesses testifying on their behalf; and,
- (iii) The TRC shall take sufficient measures to allow victims to communicate in the language of their choice.

Article VIII

OTHER POWERS

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

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

The Special Magistrate shall:

- i. Have a minimum staff and shall issue or cause to be issued a warrant of search and seizure, warrant of arrest for contempt, subpoenas, and citations to procure information and testimonies in furtherance of the work of the TRC to visit any establishment or place without giving prior notice, and to enter upon any land or premises for any purpose which is material to the fulfillment of the TRC's mandate and in particular, for the purpose of obtaining testimonies which may be vital to the work of the TRC.
- ii. Shall Conduct hearings for contempt of the Special Magistrate, whilst
Contempt of the TRC itself shall be held before the Supreme Court of Liberia in manner and form as contempt of the Supreme Court is conducted, provided that appeals from the decisions, actions of the TRC does not operate as a stay of any proceedings of the TRC.
- c. Investigate and interview any individual, group or members of organizations or institutions in public or private at the TRC's discretion, including children, in furtherance of its mandate; administer oaths during investigation for the taking and making of statements the falsity of which is punishable for perjury;

- d. Compel attendance of any person before the TRC or any of its staff -for the purpose of assisting the TRC in the conduct of its work and may publish a warrant, subpoena, or citation after diligent efforts have been exhausted to no avail in making a personal service; reasonable financial allowances, at the discretion of the TRC, shall be made to facilitate the attendance of victims, perpetrators, witnesses, petitioners, informants or other persons needed by the TRC in pursuit of its work; to call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the TRC;
- e. Request information from the relevant authorities of foreign countries and to gather information from victims, witnesses, government officials and others in foreign countries;

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

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

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

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

Article IX ADMINISTRATION

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

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

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

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

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

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

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

Section 39. Independence of the Commission

a. The Commission, its commissioners and every member of staff shall function without political or other bias or interference and shall, unless this act expressly otherwise provides, be independent and separate from any party, government, administration, or any other functionary or body by directly or indirectly representing the interests of such entity.

b. If at any stage during the course of the proceedings or any meeting of the Commission it appears that a commissioner has or may have a financial or personal interest which may cause a conflict of interest, in the performance of his or her functions, such commissioner shall forthwith disclose the nature of his or her interest and absent him or herself from that meeting so as to enable the remaining commissioners to decide whether such commissioner should be precluded from participating in the meeting by reason of that interest;

c. If a commissioner fails to disclose any conflict of interest as contemplated by this section, then as soon as such non-disclosure is discovered, it should be reviewed and where decisions have been taken which are affected or tainted by such non-disclosure, the decisions should be varied or set aside without the participation of the commissioner concerned.

d. Every Commission member shall:

(i) Notwithstanding any personal opinion, preference or former party affiliation, serve impartially and independently and perform his or her duties in good faith and without fear, favour, bias or prejudice;

(ii) Serve in a full time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office; provided that the Commission may exempt a commissioner from the provisions of this paragraph;

(iii) No commissioner shall:

(a) By his or her membership of the Commission, association, statement, conduct or in any other manner or way jeopardise his or her independence or in any other manner harm the credibility, impartiality or integrity of the Commission;

(b) Make private use of or profit from any confidential information gained as a result of his or her membership of the Commission;

(c) Divulge any such information to any other person except in the course of the performance of his or her functions as such a commissioner.

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

Section 41. Confidentiality

a. Every commissioner and every member of the staff of the Commission shall, with regard to any matter dealt with by him or her, or information which comes to his or her knowledge in the exercise, performance or carrying out of his or her powers, functions or duties as such a commissioner or member, preserve and assist in the preservation of those matters which are confidential in terms of the provision of this Act or which have been declared confidential by the Commission.

b. Every commissioner and every member of the staff of the Commission shall upon taking office, take an oath or make an affirmation in the form specified by the Commission;

- c. For the purposes of this section the oath or affirmation shall be in the following form:

“I,, hereby declare under oath/solemnly affirm that I understand and shall honour the obligations of confidentiality imposed upon me by any provision of the TRC ACT and shall not act in contravention thereof”.

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

Article X REPORTING AND RECOMMENDATIONS

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

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

Section 45. The TRC shall further recommend for amnesty persons who so qualify under terms and conditions referred to Section 26(g) and reparations for victims, specific actions of government to be taken in furtherance of its findings, the enactment of specific legislations and legal and governmental reform measures to address specific concerns identified by the TRC and affecting relevant governmental authorities or functionaries.

Section 46. The Independent National Human Rights Commission shall be seized with the responsibility to ensure that all the recommendations contained in the Report of the TRC are implemented and that civil society organisations and moral guarantors of the CPA shall be seized of the responsibility to monitor, and campaign for the scrupulous implementation of all recommendations contained in the report.

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

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

ANY LAW TO THE CONTRARY NOTWITHSTANDING