



Human Rights and Protection Section

**Quarterly Report**

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## Table of Contents

	Page
Introduction	1
Methodology	2
Liberia's Context	2
<i>Recent Developments</i>	2
<i>Liberia's Human Rights Obligations</i>	3
Institution Building: the Truth and Reconciliation Commission	4
Rule of Law and addressing impunity	5
<i>Trial by a competent court in accordance with international standards</i>	6
<i>Right to legal representation</i>	7
<i>Addressing sexual and gender based violence</i>	7
<i>Liberia's obligation to abolish the death penalty</i>	8
Detention Conditions	8
Economic Social and Cultural Rights	10
<i>Rights to an adequate standard of living, fair remuneration, regular payment of wages</i>	10
<i>Right to physical and mental health</i>	10
<i>Right to education</i>	11
Visit of Independent Expert	12
Conclusions and Recommendations	12

## Introduction

1. This is the first of a series of bi-monthly public human rights reports aimed at highlighting the main human rights challenges facing post-conflict Liberia, providing recommendations for addressing the challenges; and monitoring progress. The reports are also meant to draw attention to cases of human rights violations and abuses based on systematic verification and documentation.
2. The report represents a part of UNMIL Human Rights and Protection Section's (HRPS) mandated activities to monitor and report on human rights developments and concerns in Liberia, with the aim of finding sustainable solutions in accordance with international human rights laws. The mandate is based on Security Council Resolution 1509, which, *inter alia*, requires UNMIL:  
“(l) to contribute towards international efforts to protect and promote human rights in Liberia, with particular attention to vulnerable groups including refugees, returning refugees and internally displaced persons, women, children, and demobilized child soldiers, within UNMIL’s capabilities and under acceptable security conditions, in close cooperation with other United Nations agencies, related organizations, governmental organizations, and non-governmental organizations;  
(q) to assist the transitional government in conjunction with ECOWAS and other international partners in developing a strategy to consolidate governmental institutions; including a national legal framework and judicial and correctional institutions; and  
10. to .....cease all use of child soldiers..... (and) human rights violations and atrocities against the Liberia population, and stresses the need to bring to justice those responsible ....”
3. Although the report details human rights related developments in the period of August - September 2005, they should be seen in the broader context of the evolving human rights situation in the country and the emerging trends. In this respect, the following observations are relevant:
  - Liberia has recently made legal commitments to all the major international human rights instruments. Her commendable adoption of over 100 international human rights treaties must be, however, consolidated by their incorporation into domestic legislation and implementation.
  - Timely establishment of the Truth and Reconciliation Commission (TRC) in accordance with the TRC Act demonstrates a commitment of all parties to the Comprehensive Peace Agreement (CPA) and an important step in the promotion of transitional justice and national reconciliation.
  - While adoption of the Act on the Independent National Commission on Human Rights (INCHR), also provided for in the CPA, in March 2005 constituted an

important step forward, the Commission should be reconstituted in accordance with the Act without further delay.

- The high incidence of sexual and gender based violence, and the particularly low level of attention such cases receive from the authorities in comparison with other forms of crime, indicates the great challenges to be confronted in ensuring protection of women's rights in Liberia. The draft rape amendment law presents some important means to addressing this problem by broadening the definition of rape and making it a non-bailable offence. However, the draft legislation contains the death penalty clause that contradicts Liberia's international human rights obligations. In this light, the death penalty provision should be removed from the draft rape law as well as existing legislation.
- The high number of detainees held in violation of the Constitutional 48 hour time limit in police custody and other legal detention centres is an ongoing concern, as is the very poor standard of detention facilities and police holding cells.
- The State has failed to protect rights to health, education and an adequate standard of living. The Governance and Economic Management Assistance Programme (GEMAP) should assist Liberia in making significant strides to rid itself of corruption and official malfeasance, which will have a positive impact on the improvement of human rights enjoyment.
- The weak law enforcement system and judiciary, together with a lack of accountability for past and current crimes promote a culture of impunity.
- Case management systems must be established in the judicial system throughout Liberia, and judicial personnel assigned to courts outside Monrovia must be deployed as a matter of urgency to ensure pending cases are heard as expeditiously as possible. Resources such as copies of legal texts and sufficient stationary for record-keeping must also be provided.

## **Methodology**

4. The information in this report has been collated from HRPS' daily, weekly and monthly situation reports, including those compiled by the section's twenty human rights monitors covering 12 of Liberia's 15 counties. This information was cross-checked with reports of other UNMIL components, especially the Legal and Judicial System Support Division, the Corrections Advisory Unit, CIVPOL and the Office of the Gender Adviser.

## **Liberia's Context**

### *Recent developments*

5. On 1 August 2003, the UN Security Council issued Resolution 1497 authorising the establishment of a peacekeeping force in Liberia. A Comprehensive Peace

Agreement (CPA) was signed in Accra, Ghana on 18 August leading to a power-sharing interim administration. The following day, the Security Council issued Resolution 1509 endorsing the peace accord and creating a new United Nations Mission in Liberia (UNMIL).

6. Disarmament and demobilisation of ex-combatants was completed in early 2005, with the final payment of Transitional Subsistence Allowance to former fighters. UNMIL continues to conduct regular search and seizure operations to destroy illicit weapons.
7. The Transitional Government has not adequately addressed corruption and impunity, arguably the two greatest contributing factors to the outbreak of war and the prevailing poverty and marginalization of the great majority of Liberians. Very few advances have been made in the renovation of critical national infrastructure such as electricity and water supply, education facilities and roads.
8. Although some progress had been achieved in the Liberian National Police (LNP) service through its partial reform, delays in the payments of civil servants and police officers have caused disquiet and encouraged corruption to continue.
9. The judicial system remains extremely weak due to myriad factors including lack of infrastructure, material resources, qualified personnel, adequate funding, and lack of a framework to address the gross human rights violations committed in the past. The Independent Expert on Protection and Promotion of Human Rights in Liberia noted in her report submitted on 6 January 2005 that the lack of access to justice and institutions to address violations of human rights and humanitarian law remained “a key challenge”. It is hoped for that this will begin to change with the establishment of the TRC and INCHR.
10. The impact of the civil war on women was most pronounced, with sexual and gender based violence a common feature of attacks against civilians. Women and girls were also forced to become sex slaves and servants to combatants, and at times also participated in the fighting.
11. With improved security, there has been an improvement in the enjoyment of civil and political rights by Liberian society, including freedom of the press and freedom of expression. Several civil society groups emerged and became active and women became more aware and demanding of their rights. Social taboos such as the situation of orphans, victims of rape and abuse, disabled, or mentally ill persons are gradually being discussed more openly.

#### *Liberia's Human Rights Obligations*

12. Over the past two years, Liberia has taken great strides in expanding the base of its human rights obligations by becoming party or signatory to all the major

international human rights treaties.<sup>1</sup> Liberia is also guided by the Universal Declaration of Human Rights.

13. Additionally, Liberia is party to the African Charter on Human and People's Rights, which covers a large number of individual and collectively-held rights. Chapter Three of the Constitution of Liberia also guarantees a number of rights, including the right to freedom from discrimination at Article 11 (b); the right to equal protection before the law at Article 11 (c); the right to be brought before a competent Court within 48 hours of arrest at Article 21 (f); and the guarantee of freedom from torture at Article 21 (e).
14. This strong legal commitment to human rights protection is commendable and marks a significant break with the country's history of systematic human rights violations and abuses. The next challenge is to implement these standards through legislative enactment and reform, judicial reform and institution building, accompanied by public awareness campaigns to ensure that national authorities, civil society and the public at large are aware of these rights and the avenues for enforcement. UNMIL is ready to provide the Government of Liberia with technical assistance to ensure that each instrument is ratified in accordance with the Liberian legal system and incorporated into domestic law.

### **Institution Building: The Truth and Reconciliation Commission**

15. Since early 2004, HRPS together with UNDP and other actors has been closely involved in the establishment of the Liberian Truth and Reconciliation Commission (TRC) which was required in the CPA. This support has included a five-county consultation process, assistance to two national drafting workshops, a nationwide community awareness campaign and an intense negotiation and lobbying process for the adoption of the ensuing legislation.

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<sup>1</sup> These instruments include:

- International Covenant on Economic, Social and Cultural Rights.
- International Covenant on Civil and Political Rights.
- Optional Protocol to the International Covenant on Civil and Political Rights.
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.
- International Convention on the Elimination of All Forms of Racial Discrimination.
- Convention on the Elimination of All Forms of Discrimination against Women.
- Convention on the Rights of the Child.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Rome Statute of the International Criminal Court.

16. Since the publication of the Act in the Government handbills on 22 June 2005, HRPS and its partners, including ECOWAS, the NTGL and the Transitional Justice Working Group, have been working to support the transparent and effective process to appoint commissioners.
17. The selection panel was inaugurated on 14 July. In accordance with Section 9 of the Act, the panel was led by ECOWAS and composed of five representatives of civil society and political parties and one from the United Nations. On 23 September, the panel submitted to the NTGL Chairman a list of names for his consideration. The TRC will be composed of nine commissioners, including at least four women, in accordance with Section 7 of the Act.<sup>2</sup>
18. The next steps will be the establishment of the TRC in fact as well as in law. Following the appointment of commissioners by the NTGL Chairman, HRPS will continue to support the TRC by assisting in the development of key documents, such as an action plan and operational budget. In partnership with other international community partners, HRPS is also ready to support the capacity-building and orientation of commissioners and staff. Donor support will be critical for the success of the TRC, and the TRC commissioners will have to work with credibility and integrity to attract that support.

### **Rule of Law and addressing impunity**

19. The extremely weak rule of law and entrenched reign of impunity is the single greatest human rights challenge facing Liberia. Despite the official reopening of Circuit Courts on 8 August, most courts outside Monrovia continue to be barely functional, in the absence of key personnel including Judges, prosecutors and defence attorneys. All Magistrates except one and all Justices of the Peace lack legal education and there have been many noted incidences in which Magistrates and Justices of the Peace have misinterpreted or misapplied the law.
20. Rape and sexual assault against women and children, although occurring at a disturbingly high rate, do not receive the due process they require in investigation, prosecution and sentencing. Conditions in detention facilities are appalling, and offer very little hope for rehabilitation of offenders.
21. The misapplication of laws relating to juvenile offenders entails both violations of the child's rights and of the victim's rights to be protected from crime. Cases involving rape and other serious forms of assault committed by juveniles are particularly difficult to resolve in accordance with the law and human rights standards. The problems facing the juvenile justice sector are exacerbated by the fact that there is only one Juvenile Court in Liberia located in Monrovia and the fact that there is no juvenile rehabilitation facility in the country.

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<sup>2</sup> On 20 October 2005, Chairman Bryant appointed the nine TRC Commissioners in accordance with the TRC Act from the list of candidates presented to him by the Selection Panel.

22. A Case Flow Management Committee was collaboratively advocated for by UNMIL's Legal and Judicial System Support Division, HRPS and the Corrections' Advisory Unit. Based in Monrovia, the Committee proved to be a useful mechanism for easing prison and police cell over-crowdedness and observing the 48 hour constitutional limit in pre-trial detention. In order to ensure that cases are heard in a timely manner and in accordance with the procedural time limits, case management mechanisms must be established in all the Courts of Liberia, not merely those of the capital.
23. It must be stressed, however, that the Case Flow Management Committee does not constitute a substitute to the due process of the law. This Committee is simply a formal jail delivery review in accordance with Sections 18.1 and 18.2 of the criminal procedural law.

*Trial by a competent court in accordance with international standards*

24. The very poor performance of the Liberian judicial system continues to result in violations of the State's human rights obligations, and fails to provide lawful remedies for violations and abuses. Access to justice remains far beyond the reach of the vast majority of Liberians. The following are some examples:
  - The **Lofa County Circuit Court** opened on 22 August. However to date, not a single case has been heard as the presiding Judge, county attorney and defence counsel all left Voinjama for Monrovia following the opening ceremony. The Circuit Court Judge returned on 22 September but has informed HROs that he will not hear cases until the next Court term, due to begin on 14 November. No proceedings have taken place in the Nimba Circuit Court since the August term commenced, although the petty and grand juries have been empanelled.
  - The **Maryland Circuit Court** was 'informally' inaugurated only on 1 September. A delegation of the Supreme Court is expected to arrive in Harper at the beginning of October for the official inauguration and induction of judicial authorities. Consequently, the Circuit Judge has not yet heard cases. The Maryland county attorney is ill, preventing criminal trials. No criminal trials were heard in Grand Bassa County Circuit Court during August.
  - The **Sinoe Circuit Court** is scheduled to recommence hearing cases on 14 November. At present, no cases can be tried due to the absence of the county attorney and defense counsel. All eight cases pending trial are serious offences, including two murder charges, two cases of aggravated assault and one case of incest. One of the suspects charged with murder was released on bail by the Magistrates' Court, although this is a non-bailable offence under Liberian law.
  - In **Grand Kru County**, the Circuit Court Judge failed to appear for duty in Barclayville on 8 August as had been previously announced. A number of pre-



trial detainees are awaiting the arrival of the Circuit Court Judge. Towards the end of September, the county attorney returned to Barclayville following an absence of almost two months. In addition, almost all the Magistrates Courts lack prosecutors and defense counsel.

- In **Grand Bassa County**, in early August, all personnel of the LAC Magistrates' Court vacated the Court for one week, for reasons unknown. At the end of September, the Stipendiary Magistrates working in Harper and Pleebo Courts returned to Maryland after an absence of two months. It appears they were collecting their overdue salaries. Their absence paralyzed the already precarious judicial activity.

25. The Government must ensure that the judges, magistrates and other personnel assigned to courts outside Monrovia are deployed as a matter of urgency. Resources such as copies of legal texts and sufficient stationary for record-keeping must also be provided to ensure that hearings can begin without further delay.

#### *Right to legal representation*

26. The right of accused persons to legal representation is key to the protection of all human rights, including rights related to the treatment of suspects in the law enforcement and judicial system. Lawyers have a duty to ensure that the suspect's case is handled in a speedy manner, in accordance with the law and fair trial principles, that allegations of ill-treatment are brought to the Court's attention and that the suspect receives an adequate opportunity to rebut the charges against him/her.
27. Publicly-appointed defense counsel are either absent from, or not appointed to, a number of Circuit Courts, including Grand Bassa, River Cess, Bomi and Sinoe Counties. Private lawyers, who charge fees for their services, are located mainly in Monrovia but available only to a minority of accused persons who can afford the costs.
28. There is no public defence counsel appointed in Nimba County. There is a private lawyer in Ganta city but fees of around US\$100 per case make this an unrealistic option for the majority of defendants.
29. In Grand Bassa County, a 14 year old male juvenile accused of aggravated assault was remanded in pre-trial detention on 31 August by the LAC Magistrates' Court, in the absence of a defence lawyer. Although the Magistrate inquired as to whether the boy had representation, he did not check that the child understood the question and there was clearly no lawyer present. The magistrate however apparently proceeded on the assumption that legal advice was available.

#### *Addressing sexual and gender based violence*

30. HRPS welcomes the efforts of the National Transitional Government of Liberia (NTGL), UNMIL Rule of Law Task Group components (HRPS, LJSSD and OGA) and civil society, particularly the Association of Female Lawyers of Liberia (AFELL), in preparing a draft Act to amend the current legal definition and penalties for the crime of rape and other forms of sexual assault. Sexual violence against women and children is a deplorable yet pervasive feature of Liberian society and one that has far-reaching implications for gender equality, respect for the rule of law and sustainable peace and development.
31. The Act covers rape of both males and females, which is positive. Article 14.70 paragraph (b) indicates that the age of consent is 18 years, in compliance with Article 1 of the Convention on the Rights of the Child.
32. The Act includes some very welcome measures, including stiffer penalties for offenders and the stipulations that persons suspected of having committed rape cannot be released on bail. The seriousness with which the draft Act treats rape and other forms of sexual violence should send a message to law enforcement and judicial personnel that such cases must be handled in accordance with international human rights standards, and appropriately investigated and prosecuted. The provision that all cases will be heard in a closed hearing is excellent and should improve the chances of securing complete and accurate testimony from victims.
33. HRPS is particularly pleased by the inclusion of gang rape as a distinct criminal offence. Gang rape was perpetrated as a form of terror during the war years and cases continue to be reported. However, although this offence is extremely serious, the death penalty violates the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aimed at the abolition of the death penalty, to which Liberia acceded in September. The Act thus needs to be harmonised with Liberia's treaty obligations.

*Liberia's obligation to abolish the death penalty*

34. On 16 September Liberia acceded (both signed and ratified) to the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty. Therefore, Liberia would be in breach of its international legal obligations if it establishes a death penalty for any offence, including rape. Thus Liberian Courts are restrained from imposing the death penalty since 16 September.<sup>3</sup>

**Detention Conditions**

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<sup>3</sup> Article 1 of the Protocol states as follows:

“No one within the jurisdiction of a state party to the present protocol shall be executed. Each state party shall take all necessary measures to abolish the death penalty within its jurisdiction.”

35. Illegal and lengthy pre-trial detention, related to the poor operation of the judicial system is a constant area of concern. Approximately 97% of persons in police custody or pre-trial detention are being held beyond the relevant lawful time limit of 48 hours.
36. Detention conditions across Liberia are well below the minimum human rights standards. Very poor hygiene, including lack of bathing water, soap and toilet facilities, inadequate light and ventilation, over-crowding and lack of access to legal counsel and recreation are common concerns. In September 2004, 28 detainees in the Liberia National Police (LNP) headquarters cells were hospitalised for illnesses related to poor hygiene and malnourishment. Despite this, the Government has made no efforts towards meeting its obligation to feed prisoners and provide adequate hygiene conditions while the majority of provisions are supplied by NGO's and UN agencies.
37. Although these violations are due in part to the lack of budgetary allocation to improve prison conditions, they also stem from the lack of awareness and accountability for corrections staff. Recently a training programme for correctional staff was put on hold because of the Government's inability to create posts of new employees for the Bureau of Prisons. Until such time as new staff are hired, trained and equipped in a manner that promotes safe and secure custody of individuals, practices of beating, flogging, neglect and inciting prisoner disturbances will continue. Recent examples of such incidents are:
- In early August ten prisoners broke their cell grill door at the Tubmanburg police depot when police officers and jail attendants refused to open the door for a detainee who was suffering from suspected cholera-related diarrhoea. The State is obligated to provide medical treatment to all persons in its custody.
  - A detainee held on murder charges in the basement of the administration building in Greenville did not receive medical attention for more than one week, despite a request made by the HRO to the relevant authorities. Food has also been irregular and inadequate, with no food for periods of more than 24 hours, and provision of uncooked rice, which is inedible.
  - On 15 August, an inmate of the Sanniquellie Central Prison endured 25 lashes, administered by another inmate who calls himself the 'Commander in Chief for Prisoners.' This person allegedly received his illegal authority from the Officer in Charge of the prison and had assaulted the victim because he had refused to obey the OIC's orders. This assault amounts to torture or cruel, inhuman or degrading treatment, prohibited by the Convention against Torture.
  - Separation of pre-trial from sentenced prisoners, males from females and juveniles from adults is not only a minimum human rights standard, it is also a

critical security tool for any corrections facility. Regrettably, this is routinely violated in holding cells and correctional facilities across Liberia. In Grand Bassa County HROs found seven persons, including a juvenile, detained in a single cell designed to accommodate three at the LAC police station. HRPS appreciates that police officers, who have very limited space, often try to make special arrangements for women detainees. However, it is a State responsibility to establish separate facilities to allow systematic separation of the different categories of detainee.

### **Economic Social and Cultural Rights**

38. Health and education are among the most important human rights. Less than 10% of Liberians have access to health care. HIV/AIDS is estimated to have afflicted 11% of the population. Education of more than 70% of students was affected, interrupted or terminated by the conflict. National leaders are obligated to develop national primary health care systems, revive the education system with trained teachers, and rehabilitate schools and provide modern training materials.

#### *Rights to an adequate standard of living, fair remuneration, regular payment of wages*

39. The Government of Liberia is required under the International Covenant on Economic Social and Cultural Rights (ICESCR) to establish progressively the economic and social conditions to provide an adequate standard of living for its citizens. Protection of this guarantee entails that wages must take due account of workers' needs for adequate living conditions, that the remuneration is fair and reasonable and that it is paid at regular intervals. Low wages of members of the security forces encourages corruption and extortion. Some specific cases of violations are listed below:

- The Head Park Warden of Sinoe National Park has confirmed that the 45 rangers working in the park have not received wages for the last three to six months.
- On 4 August HROs for Nimba County visited the Liberian Mining Corporation (LIMINCO), a Government consortium engaged in the business of iron ore extraction in Yekepa. For approximately 20 months, the 85 employees have not received their salaries. LIMINCO and the Government are in violation of human rights standards pertaining to the right to fair wages and the right to adequate living conditions, as contained in the relevant ILO Conventions and the ICESCR.

#### *Right to physical and mental health*

40. Enjoyment of the right to the highest attainable standard of physical and mental health is severely challenged by the lack of State support and infrastructure. The Government is bound by Article 12 of the ICSECR to ensure progressively that

all persons living in Liberia enjoy the highest attainable standard of health. The rights of women and children to specific measures aimed at their own health needs are also included in the Convention on the Elimination of all forms of Discrimination against Women and the Convention on the Rights of the Child. Some cases are cited below:

- Yekepa hospital, a part of LIMINCO, is the only hospital available to the approximately 10,000 citizens of Yekepa. The Director advised HRO that the facility survives mainly due to donations from international NGOs, as for the past five years the hospital has not received any Government support or supplies.
  
- On 27 April, HRPS, in collaboration with the Ministry of Justice, Cap Anamur German Emergency Doctors and JFK Hospital staff, rescued 18 people, including two children, from the Holy Ghost Mental Home, Monrovia. The group had been kept in captivity and subjected to cruel, inhuman or degrading treatment by the owner. All 18 people were admitted to the E.S. Grant Mental Health Hospital, which is operated by German Emergency Doctors. Some had first to be treated by the Benson clinic, including one man who had received deep wounds in his wrists from the chains used to shackle him. All patients had been held in cramped dirty rooms, with inadequate light and ventilation. On 15 August, HROs discovered that the owner had reopened the Holy Ghost Mental Home. On 6 September, HRPS sent a letter to the Ministry of Justice requesting that the facility be closed down and the owner prosecuted. On 22 September, the Circuit Court ordered that the owner halt all activities, release and turn over to the Ministry of Justice all inmates immediately and appear before the Court. Subsequently UNMIL, LNP and Court officers organized a second transfer of 19 patients including two children, one of whom was in an extremely weak and malnourished condition to the E.S. Mental Health Hospital and Benson Clinic. This case highlights the urgent need for the Government to establish a regulatory framework of all private facilities purporting to offer medical treatment.

#### *Right to education*

41. The enjoyment of the right to education is particularly important in the development of every child's subsequent capacity for achievement of his/her full potential.
  - On 19 September, HRO for Sinoe County was informed by the Head Park Warden Ranger that the building used by FDA was formerly the only school in Jalays Town. FDA had negotiated with local community leaders to take over the school building as their temporary headquarters during the development implementation phase of the Sinoe National Park plan of action. However, it now appears that there is no intention of vacating the school building. Alternative accommodation must be found for the FDA office and the school building restored to its appropriate use.

### **Visit of Independent Expert**

42. The Independent Expert on promotion and protection of Human Rights in Liberia, Dr. Charlotte Abaka, visited Liberia from 25 September - 6 October 2005. It was her third visit in this capacity.

### **Conclusions and Recommendations**

43. Based on the findings of this report, improvement of the human rights situation would require that a number of key measures be taken in place. These include the following:
- The Case Flow Management mechanism started in Monrovia should be extended to all parts of the country.
  - The Government must ensure that the judges, magistrates and other personnel assigned to courts outside Monrovia are deployed as a matter of urgency and resources provided without further delay.
  - Removal of provision of death penalty in the draft rape law.
  - Abrogation of the death penalty from Liberian Constitution.
  - International human rights norms accepted by Liberia's subscription in September 2004 and September 2005 to international human rights treaties must be followed through with a rapid process of ratification of these treaties.
  - The Government of Liberia and the international community must immediately step in to strengthen the TRC and provide it with the resources it requires to carry out its mandate.
  - The INCHR must be reconstituted in accordance with the March 2005 Act without further delay.
  - The Partnership between the Liberian civil society organizations and the international community should be strengthened and be viewed as a strategic alliance in the fight against impunity and corruption.