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**Q&A: Justice for Civil Wars-Era Crimes in Liberia**

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Liberia's history has been punctuated by periods of profound social upheaval underscored by injustice and serious human rights violations. These dynamics in large part led to two devastating civil wars in the last 30 years. This question and answer document addresses the abuses committed during these wars and efforts to bring those responsible to justice, including through a proposed war crimes court.



Supporters of George Weah attend a meeting during their party's presidential campaign rally at Samuel Kanyon Doe Sports Complex in Monrovia, Liberia December 23, 2017.

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### **1. What international crimes were committed in Liberia during its civil wars?**

Liberia's civil wars (1989-1996 and 1999-2003) were characterized by widespread and systematic violations of international human rights and humanitarian law. Domestic and international human rights groups, foreign embassies, the media, and the Liberian Truth and Reconciliation Commission (TRC) identified summary executions, massacres, rape and other forms of sexual violence, mutilation and torture, and forced conscription and use of child combatants among the numerous abuses.

Crimes were committed by members of all the parties to the conflict, including the National Patriotic Front of Liberia (NPFL), Independent National Patriotic Front of Liberia (INPFL), United Liberation Movement of Liberia for Democracy (ULIMO), ULIMO-K, ULIMO-J, Armed Forces of Liberia (AFL), Liberian Peace Council (LPC), the government of Liberia (including various security forces), militias and the government-backed Anti-Terrorist Unit (ATU), Movement for Democracy in Liberia (Model), Lofa Defense Force, and Liberians United for Reconciliation and Democracy (LURD).

Liberian men, women, and children were gunned down in their homes, villages, marketplaces, and places of worship. In a few cases hundreds of civilians were massacred in a matter of hours. Girls and women were subjected to horrific sexual violence including rape, gang-rape, sexual slavery, torture, and outrages on personal dignity. Villages were destroyed and looted. Children were abducted from their homes and schools and pressed into service, often after witnessing the murder of their parents. The violence blighted the lives of tens of thousands of civilians and displaced almost half the population.

The Economic Community of West African States Monitoring Group (ECOMOG), a multinational military force deployed to Liberia in 1990, was implicated in the looting, harassment and arbitrary detention of civilians, as well as indiscriminate airstrikes against civilians and civilian structures.

## **2. Has anyone faced justice for these crimes?**

Liberia has not prosecuted a single person for the grave crimes committed during its two armed conflicts.

The few cases involving civil wars-era crimes have all occurred outside Liberia before United States and European courts. Authorities have been pursuing cases under the principle of universal jurisdiction, which allows national courts to try international crimes committed abroad by non-nationals against other non-nationals. They have also brought cases for crimes related to immigration, such as lying on immigration forms about involvement in abuses in Liberia.

In 2008, a United States federal court convicted Chuckie Taylor, former head of the ATU and son of former Liberian president Charles Taylor, of torture. US courts also convicted the former ULIMO leader, Mohammed Jabbateh, and the NPFL spokesman, Jucontee Thomas Smith Woewiyu, for fraud and perjury related to their failure to disclose to US immigration authorities their involvement in alleged wartime crimes. Moses Thomas also faces a civil lawsuit in the US, where victims filed a complaint against him for allegedly ordering extrajudicial killings, torture, war crimes, and crimes against humanity.

In 2014, Belgium authorities arrested Martina Johnson, former commander of the NPFL, for her alleged role in war crimes. In 2017, United Kingdom authorities indicted Agnes Reeves Taylor for her alleged role in torture in Liberia between December 1989 and January 1991. In 2018, French authorities arrested Kunti Kamara, a former ULIMO commander, in Paris for alleged war crimes committed in Liberia. On March 26, 2019, Swiss authorities announced the indictment of Alieu Kosiah, a former ULIMO commander, for international crimes. These cases have yet to proceed to trial.

The cases have been spurred by civil society efforts, including collaboration between the Monrovia-based Global Justice and Research Project and the Geneva-based Civitas Maxima, and by the San Francisco-based Center for Justice and Accountability.

In addition, the UN-backed Special Court for Sierra Leone tried and convicted Charles Taylor in 2012 for grave crimes committed in Sierra Leone and sentenced him to 50 years in prison.

## **3. Why is justice for Liberia's past atrocity crimes important?**

Fair, credible criminal trials of the worst crimes are vital to building respect for the rule of law and a durable peace in Liberia. International law mandates trials for international crimes including war crimes, crimes against humanity, and torture. Liberia is a state party to major international treaties including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment, the Rome Statute of the International Criminal Court, and the Geneva Conventions of 1949 and their Additional Protocols, which obligate Liberia to uphold certain minimum standards and ensure that serious violations of human rights and war crimes are appropriately investigated and prosecuted.

Justice is also crucial because victims, their families, and their communities are entitled to know what has happened, and to see those responsible held to account. Liberia's history has been marked by political crises that have led to serious bloodletting marked by impunity including the 1930s Fernando Po Crisis, the 1979 Rice Riots, the 1980 killing of President William Tolbert and public execution of 13 cabinet ministers, the 1983 Nimba Raid, the 1985 Quiwonkpa invasion, and abuses committed over the course of the two civil wars between 1989 and 2003.

While holding those responsible for grave crimes during Liberia's recent wars to account cannot address all of the underlying divisions in society, accountability can help to bring facts to light, bolster the rule of law, and increase the prospect of deterring further abuse.

#### **4. Why is accountability an issue now, 15 years after the civil wars?**

Justice for war crimes and other abuses is frequently stalled due to lack of will, politics, and incapacity, but its importance for building respect for the rule of law, respecting victims' rights, and contributing to durable peace never ebbs. In some countries, justice only became possible many years after the crimes were committed. In parts of the Americas, including Guatemala, Argentina, and Chile, criminal accountability for international crimes only advanced decades after the abuses were committed. Liberian President George Weah has a unique opportunity to show global leadership and gain international respect by acting to end impunity for civil wars-era crimes in Liberia.

#### **5. How do justice and efforts to achieve social healing intersect?**

In many post-conflict societies, social healing has involved a combination of measures such as memorialization, reparations, youth and women's empowerment, demobilization of former combatants, and accountability measures such as war crimes courts. Liberia's Truth and Reconciliation Commission Act (2005) mandates the Truth and Reconciliation Commission to consider a wide range of measures including prosecuting those who organized and committed crimes. The act also prohibits amnesties for violations of international humanitarian law and crimes against humanity, which means that certain crimes will not be legally absolved. All of these measures combined are intended to contribute to durable peace and social healing.

#### ***Accountability Options***

#### **6. What options are available for accountability in Liberia?**

Criminal accountability should be pursued as close as possible to where the crimes were committed to have the greatest impact within the communities most affected by the crimes. Domestic prosecutions of past atrocities are not always possible, however, because of a lack of capacity or political will. This has led to trials for atrocity crimes in international courts, hybrid international-national courts, and other countries.

### **7. What did Liberia's Truth and Reconciliation Commission recommend for addressing war crimes and other international crimes committed during the conflicts?**

The Liberian national legislature created a Truth and Reconciliation Commission in 2005 with a mandate to promote peace and dispel misconceptions about past violence in Liberia, including whether the violence was systematic or isolated in nature; to understand the factors that led to violence; and to make recommendations about prosecutions, including who should be prosecuted and for what. The commission was not envisioned as a substitute for a war crimes tribunal or other prosecutions.

The commission collected statements from 20,000 people and heard direct testimony from over 800 Liberians in-country and from the diaspora. In 2009, it released its final report, concluding that all warring factions were implicated in serious abuses. It recommended creating a war crimes court, the Extraordinary Criminal Court for Liberia (ECCL), to try people for the atrocities detailed during its public hearings, including massacres, mutilations, sexual violence, and the recruitment and use of child soldiers. Under the TRC Act, the commission also offered a proposed statute for creating the court.

This was an important step in acknowledging that Liberia's victims deserve justice. However, nearly 10 years later the Liberian government has not established a war crimes court.

#### ***Proposed Extraordinary Criminal Court for Liberia***

### **8. What would an Extraordinary Criminal Court for Liberia do?**

The commission proposed that the Extraordinary Criminal Court for Liberia would have the authority to try individuals accused of gross violations of human rights, serious humanitarian law violations, and certain domestic crimes. The proposed court would be mandated to investigate crimes committed between January 1979 and October 14, 2003, covering the two civil wars.

International humanitarian law provides protections during armed conflict to civilians and people no longer participating in hostilities, such as captured fighters, and restricts the means and methods of warfare.

Individuals who willfully commit serious violations of international humanitarian law are responsible for war crimes. War crimes include intentionally killing civilians or captured fighters, torture, rape, pillage, taking hostages, and using child soldiers. While fighting for a rebel group may be a violation of domestic law, it is not a war crime.

The proposed court would also include economic crimes in its mandate. This relates to alleged links between pillage and plunder of natural resources and the civil war.

The proposal provides a strong basis for moving forward in pursuing accountability in Liberia. Nonetheless, a number of adjustments would need to be made to the court and its mandate to ensure it aligns with international standards and practice.

### **9. Who would be subject to trial by the Extraordinary Criminal Court for Liberia?**

The commission recommended criminal prosecution for leaders of warring factions that were determined to be responsible for atrocity crimes, as well as other “most notorious perpetrators” of abuses the commission identified. For those accused of lesser abuses, it recommended domestic criminal prosecution in existing courts or non-criminal accountability measures, including public sanctions and participation in the National Palava Hut Commission, aimed at promoting reconciliation. Amnesty is permissible for lower-level abuses that do not amount to violations of international law.

Although the commission identified certain people who should or should not be prosecuted, the court would need to operate independently and impartially. It should not proceed with cases simply on the basis of the TRC’s findings. Its investigators would need to conduct their own investigations and the prosecutor would need to make decisions on which cases to pursue based on the evidence. The war crimes court also would need to respect international fair trial standards, including the presumption of innocence.

Around the world, war crimes courts have been established with mandates limited to certain conflicts, time periods, and levels of those accused of these crimes. They typically only have jurisdiction over the most serious crimes or the most serious offenders. It is not feasible to try every person implicated in a crime.

### **10. How would the Extraordinary Criminal Court for Liberia be established?**

Hybrid war crimes courts, such as the proposed ECCL, are sometimes created by domestic law and sometimes by a treaty between an international entity – such as the United Nations – and a state. Trials of international crimes tend to be complex and politically sensitive, and establishing a new court is a significant endeavor, which can involve substantial costs. However, the court is created, the Liberian government should not be expected to undertake this process without international support.

International partners have been willing to assist countries in setting up a war crimes court where political will exists for its creation. Governments and international organizations have also developed expertise over the past three decades in addressing challenges that often arise within war crimes courts. Such expertise includes protection and support for witnesses and victims, security for judges and staff, assuring fair process, and educating the local population about the court.

International engagement and support on domestic efforts to bring accountability for grave crimes can also be helpful in strengthening the capacity of local judicial actors and national justice institutions.

### **11. Who would serve on the Extraordinary Criminal Court for Liberia?**

The TRC's proposed statute provides that the court would be an "internationalized domestic criminal court," which would involve international and national participation, expertise, and support. While supportive of the general approach, Human Rights Watch has recommended revising several elements of the proposal to ensure prosecutions of past crimes in accordance with international standards.

This would not be the first time international and domestic experience has been combined for a war crimes court. Other examples of these types of courts, known as hybrid courts, include the Special Court for Sierra Leone, the State Court of Bosnia and Herzegovina, the Extraordinary African Chambers in Senegal, and the Special Criminal Court in the Central African Republic.

International participation can help ensure that the court is impartial, independent, effective, and fair, and has the necessary expertise to try complex international crimes.

Under the commission's draft statute for the court, judges would serve in two chambers on the court, a trial chamber and an appeals chamber, which would review the decisions of the trial chamber. The Liberian president would appoint three of the judges, with the UN secretary-general, the president of the European Union, and the chairman of the Commission of the African Union appointing the other five.

Three judges would serve in the trial chamber. The judges would only convict if they determined based on the evidence that the prosecution had proven that the accused is guilty beyond a reasonable doubt. Five judges would serve in the appeals chamber. In each chamber, international judges would be in the majority, which can help to insulate the chamber from actual or perceived domestic political interference or bias.

The Liberian president would appoint the prosecutor, in consultation with the UN secretary-general, and the prosecutor's office is to include Liberian and international staff. The court's chief administrator, the registrar, is to be a foreign national, appointed by the judges.

### **12. Would there be a witness protection program?**

The commission recommended the immediate enactment of a comprehensive Witness Protection Statute to protect the court's witnesses from reprisals or retribution. Liberia has no working witness protection program, but if a war crimes court were to be set up, it would be needed. Witness protection protocols have been set up alongside each international criminal and hybrid court so far. Several of these courts, including the Special Court for Sierra Leone, have published best practice recommendations for protecting and supporting witnesses, and Liberia could adopt similar protocols.

### **13. How should information about the war crimes court be disseminated?**

Civil society, including community-based organizations, could play a critical role in disseminating facts and information about the court through community radio and other means to reduce misinformation and ethnic-based rumors.

However, it would also be important for the war crimes court to conduct its own outreach on its work as it is best placed to ensure the information is accurate. The Special Court for Sierra Leone stands out among hybrid courts for its active and dynamic outreach program. Liberia should draw from this experience in developing programming to ensure that accountability efforts are accessible and meaningful to all Liberians.

### ***Prospects for Justice for Past Crimes in Liberia***

### **14. What is President Weah's position on prosecutions for past crimes?**

Long before his election in 2018, and in his capacity as UNICEF goodwill ambassador, President Weah called for creating a court to try crimes committed during Liberia's civil wars. At a conference in 2004, Weah said, "Those who armed the children and committed heinous crimes against them should be brought to book." Such a court, Weah said, should identify, locate, arrest, and prosecute the "warlords" who were responsible for crimes against humanity. Before he became president, Weah's political party, the Coalition for Democratic Change, backed the prosecution of people responsible for grave crimes.

Since taking office in January 2018, President Weah has not taken any action toward ensuring justice for past war crimes or creating a war crimes court. On November 15, he noted, however, "We all have different minds and views on this issue. Some are calling for a war crimes court; others are calling for reconciliation. What we need to do is to find out what we need as a people."

### **15. What has the international community said about judicial accountability for past crimes in Liberia?**

After Liberia appeared before the UN Human Rights Committee in July 2018, the committee expressed "concern that none of the alleged perpetrators of gross human rights violations and war crimes mentioned in the TRC report has been brought to justice." It said that the Liberian government should establish a process to bring about accountability for past war crimes. Liberia will need to report back on the issue of impunity and accountability for civil wars-era crimes by 2020.

The Office of the UN High Commissioner for Human Rights Country Representative for Liberia, Dr. Uchenna Emelonye, told a national justice conference in Monrovia on November 9, 2018, that "a postwar society that does not promote justice and accountability does not properly heal without scars." Emelonye emphasized that it is "the position of the Office of the High Commissioner for Human Rights that all actors, led by the government, must ensure accountability for past crimes."

In November, the US House of Representatives passed H. Res. 1055 to reaffirm strong US-Liberia ties and call for full implementation of the commission's recommendations, which include the war crimes court.

#### **16. Is a referendum in Liberia needed to decide whether to establish a war crimes court?**

No referendum is needed. In addition to international commitments undertaken by Liberia to ensure justice for international crimes, the TRC recommended establishing this court. Following this recommendation, both the head of state and the Independent National Human Rights Commission were tasked with carrying out the commission's recommendations.

Under article X of the TRC Act, "[a]ll 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."

Liberians held marches, most recently in November, to campaign for a war crimes court, and petitioned the legislature to carry out the commission's recommendations. A national justice conference held that month included numerous calls for suspects to be held to account.

Liberian, African, and international nongovernmental organizations have come together to campaign for justice for past crimes in Liberia and presented a submission to the UN Human Rights Committee in July on the need for trials of past crimes in Liberia.

The UN Human Rights Committee in July 2018 called for the Liberian government to report back within two years on its progress to ensure that those accused of human rights violations and war crimes are prosecuted.

#### **17. Will justice threaten stability in Liberia?**

Experience around the world has often shown that a lack of justice can fuel future abuses, as evidenced in South Sudan, Afghanistan, Central African Republic, Libya, and Democratic Republic of Congo. By contrast, fair, credible trials build respect for the rule of law, contributing to a durable peace.

As highlighted in a seminal 2004 UN report on the rule of law and transitional justice: "[E]xperience in the past decade has demonstrated clearly that the consolidation of peace and the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice."

In addition, prosecutions against people implicated in crimes in Liberia and arrests of leaders of warring parties linked to serious violations in the United States and Europe have not resulted in a recurrence of violence. When the Special Court for Sierra Leone convicted former president Charles Taylor, who led the NPFL, there was also no violence reported in Liberia.

**18. What immediate steps should the Liberian government take to bring justice for past crimes?**

President Weah and the Liberian legislature should request assistance from the United Nations for establishing a war crimes court, along with Liberia's other international partners, such as the European Union, African Union, United States, United Kingdom, Germany, and Sweden.

***Additional background on Liberia's TRC*****19. How was Liberia's Truth and Reconciliation Commission created and what was its mandate?**

The Truth and Reconciliation Commission was negotiated and agreed upon in the August 2003 Comprehensive Peace Agreement and subsequently enacted into law by the National Transitional Legislative Assembly in 2005. Former President Ellen Johnson Sirleaf officially inaugurated the commission in February 2006. It reported directly to a committee of legislators within the national legislature throughout its tenure. The TRC Act authorized the TRC to do the following:

- hold those allegedly responsible for crimes accountable;
- investigate gross human rights and international humanitarian law violations and abuses that occurred between January 1979 and October 2003;
- determine those responsible for committing the violations and abuses, and their motives and impact on victims;
- determine if the abuses were isolated incidents, part of a systematic pattern, or the result of deliberate planning on the part of the state, authority, political organizations, movement, or group of individuals; and
- investigate the root causes of the conflict, violations, and abuses to prevent reoccurrences, thus reconciling Liberian society.

**20. What did the TRC do?**

The TRC collected more than 20,000 statements from Liberians about human rights abuses between 1979 and 2003. Beginning in October 2006, statement-takers were deployed in all 15 counties, as well as in the diaspora in 8 US cities, the United Kingdom, and the Buduburam refugee settlement in Ghana. After examining the statements, the TRC held public hearings throughout Liberia and the US. These hearings focused on specific events, groups, or kinds of violations. Based on the statements and hearings, the commission compiled a final report. The final report included a complete account of the TRC's activities, its findings and determinations about the conflict in Liberia, and its recommendations. The TRC presented its final report to the national legislature on June 30, 2009. The final edited version of the report and appendices was publicly released in December 2009.

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This document was prepared by Human Rights Watch in collaboration with the Global Justice and Research Project, Civil Society Human Rights Advocacy Platform of Liberia, Advocates for Human Rights, the Secretariat for the Establishment of a War Crimes Court in Liberia, and the Center for Justice and Accountability.

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