Liberia’s Compliance with the International Covenant on Civil and Political Rights Report of Civil Society Organizations in Reply to the List of Issues Regarding Impunity for Past Human Rights Violations (arts. 2, 6, 7 and 14) for the 123rd Session of the Human Rights Committee 2 July – 27 July 2018

Submitted June 2018

I. Introduction

1. This report focuses on Liberia’s obligations under the International Covenant on Civil and Political Rights (the “Covenant”). Specifically, it addresses the failure of the Government of Liberia to undertake fair and credible prosecutions of international crimes committed in Liberia during armed conflicts between 1989 and 2003, and to end impunity for civil war-era crimes.

2. The Liberian, African, and international civil society organizations participating in this report include:

   a. Liberian organizations:

      1) Accountability Lab Liberia
      2) Africa Center for Law
      3) Association of Female Lawyers of Liberia
      4) Better Future Foundation
      5) Campaigners for Change
      6) Catholic Justice and Peace Commission
      7) Center for Social Justice and Human Development (CSJHDEV)
      8) Civil Society Human Rights Advocacy Platform of Liberia
      9) Coalition for Justice in Liberia
     10) Defends for Children Liberia
     11) ECOWAS Women in Liberia
     12) The Emancipation Movement of Liberia Inc. (EMOL)
     13) Flomo Theatre Inc.
     14) Foundation for Human Rights and Democracy
     15) Foundation for International Dignity
     16) Fubbi Foundation for Development and Sustainability
     17) Global Justice and Research Project
     18) Holistic Education Advocating Leadership (HEAL)
     19) Human Rights and Protection Forum
     20) Human Rights Monitor Liberia United Methodist Church
     21) Independent Human Rights Investigators
     22) International Disable Women (IDS)
     23) IsraAID - Liberia
     24) Justice is Peace
     25) Liberia - America Friendship Organization
26) Liberia Human Rights Campaign
27) Liberia Judicial and Prisons Monitors
28) Liberia Massacre Survivors Association
29) Liberia Working Group
30) Liberian Diaspora Initiatives (LIDIN)
31) Liberian Human Rights and Welfare Organization
32) Liberians United for Justice and Accountability
33) Love 113
34) The Movement to Establish, Peace, Justice and Unity in Liberia (MEPJUL)
35) National Civil Society Council of Liberia
36) National Economic and Social Development Action Committee
37) National Health Workers Union of Liberia
38) National Human Rights Monitor
39) National Street Children Activists Network
40) National Student Movement for the Establishment of Economic & War Crimes Court in Liberia
41) National Teachers Association of Liberia
42) Operation We Care for Liberia
43) Patriot Crusaders
44) Prison Fellowship of Liberia
45) Regional Watch for Human Rights
46) Research for Documentation on Human Rights
47) Rights and Rice Foundation
48) Rural Human Rights Activists Program
49) Tambason's Global Human Services Inc.
50) Transitional Justice Working Group
51) United Liberians Association of Alberta
52) Universal Human Rights
53) Voice of the Voiceless
54) Women Empowerment Foundation of Liberia
55) Women of Liberia Peacebuilding Network
56) Women Solidarity

b. African civil society organizations outside Liberia and international civil society organizations:

1) Advocates for Human Rights
2) Africa Center for International Law and Accountability (Ghana)
3) Africa Legal Aid
4) African Centre for Justice and Peace Studies
5) Amnesty International
6) Center for Accountability and Rule of Law (Sierra Leone)
7) Center for Democratic Development (Ghana)
8) Center for Justice and Accountability
9) Children’s Education Society (Tanzania)
II. List of Issues, Para. 3: Truth and Reconciliation Commission and Past Human Rights Violations (arts. 2, 6, 7 and 14)

3. In the List of issues in relation to the initial report of Liberia, the Human Rights Committee (“Committee”) requested that the Government of Liberia provide information regarding the follow-up to the final report and recommendations of the Truth and Reconciliation Commission (“TRC”). Specifically, the Committee requested that the Government of Liberia:

   Please provide information on the follow-up to annex III, which contains a complete list of persons recommended for prosecution for gross human rights violations and war crimes, including the number of individuals prosecuted and for which crimes, the number of convictions secured, the sentences imposed and the reparation granted to victims.¹

4. Widespread and systematic abuses of international human rights and violations of international humanitarian law characterized Liberia’s brutal armed conflicts from 1989-2003, the period of the TRC’s mandate. These abuses included summary executions; large-scale massacres; rape and other forms of sexual violence; mutilation and torture; and forced conscription and use of child combatants.

5. The TRC report concluded that all warring factions were implicated in serious abuses. The TRC specifically recommended the establishment of the Extraordinary Criminal Court for Liberia, a hybrid international-national chamber to try individuals accused of war crimes, crimes against humanity, and other serious violations of international humanitarian law.

6. As noted in Liberia’s Common core document forming part of the reports of states parties, submitted to the Human Rights Committee:

   The TRC’s final report, published in 2009, documented thousands of cases of atrocities and identified groups and individuals responsible for gross violations of

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international humanitarian law, international human rights law, and domestic law. The report recommended, among other things, that those most responsible for these violations be subjected to criminal prosecution and/or be barred from holding political office. The Commission also recommended that reparations be paid to victims.\(^2\)

7. Although the Government of Liberia has taken some steps to implement some of the TRC recommendations through the Strategic Roadmap for National Healing, Peacebuilding, and Reconciliation launched in 2012, the focus of the Roadmap is “in particular on those recommendations that are most compatible with restorative justice,” as opposed to criminal accountability.\(^3\)

8. International law mandates prosecuting serious crimes that violate international law such as war crimes, crimes against humanity, and genocide, and this duty to prosecute lies primarily with domestic authorities.\(^4\) Moreover, Liberia has assumed obligations to prosecute serious crimes and implement the right to a remedy for victims of such crimes through ratification and accession to multiple international instruments.\(^5\)

9. Liberia has, to date, however, taken no steps toward holding to account before courts of law those responsible for atrocities committed during its two civil wars, nor has it implemented legislation necessary to provide victims of these abuses with an effective remedy. The Government of Liberia has not commented on this in either its Common core document or its Initial State report to the Committee.

10. The few cases related to justice for these crimes have all occurred outside Liberia, primarily in Europe and the United States.\(^6\)

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\(^3\) Human Rights Committee, *Common core document forming part of the reports of states parties: Liberia, supra* note 2, sec. 20.


\(^6\) These cases include: the 2009 conviction of Charles “Chucky” Taylor, the son of former Liberian President Charles Taylor, in the US for torture; the 2017 conviction of former rebel commander Mohammed “Jungle Jabbah” Jabbateh for immigration fraud in the United States in relation to his involvement in civil war abuses in Liberia; the trial of former National Patriotic Front (NPFL) Defense Minister Tom Woewiyu in the United States for immigration fraud related to human rights abuses in Liberia; the indictment of NPFL Commander Martina Johnson in Belgium for atrocity crimes in Liberia; the indictment of United Liberation Movement (ULIMO) Commander Alieu Kosiah in Switzerland for crimes against humanity and torture; and the indictment of Agnes Reeves Taylor in
11. In recent months, Liberian citizens have increasingly raised their voices to call for justice for civil war era crimes. More than 4,000 individuals have signed a petition to the Liberian congress prepared by eight Liberian civil society organizations, calling for justice for past crimes. A coalition of civil society groups and individuals also marched in the streets of Monrovia on May 8 and May 22, 2018, calling for accountability and demanding the creation of a war crimes court. On January 22, 2018, a coalition of 20 Liberian and international non-governmental organizations, including a number of the groups in this briefing, also wrote to President George Weah after he took office, calling on him to revisit the issue of justice for past crimes. Fifteen years since the end of armed conflict in Liberia, the call for war crimes prosecutions continues to be a topic of debate in the national legislature and the public.

12. Several prominent leaders have also come forward to support renewed calls for justice for civil war-era crimes. These include Leymah Gbowee, who won the 2011 Nobel Peace Prize along with former President Ellen Johnson Sirleaf, who recently spoke in support of renewed calls for a war crimes court in Liberia, stating: “There is no way that we can overlook peoples’ quest for justice; it is a legitimate quest.” Catholic Bishop Andrew Karnley issued a statement reiterating his support of the TRC recommendations for the establishment of a war crimes court to pave the way for reconciliation in Liberia, stating: “I strongly believe that those who bear the greatest responsibility for gross abuses of human rights in Liberia during the war should face trial.” The Liberian Council of Churches also came forward and called on President Weah to fully implement the TRC recommendations, including those calling for accountability.


13. Remarks by UN Deputy Secretary-General Amina Mohammed at the Liberian National Peace and Reconciliation conference on March 22, 2018 echoed this call from civil society to implement the TRC Recommendations: “It is also critical to implement the recommendations of the Truth and Reconciliation Commission, and for the legislature to pass key bills that will support local inclusion and reconciliation. These would be timely measures that would assure Liberians that there is strong resolve to see a conclusion to this process.”

14. To quote one victim, Suzana Vaye, a widow who was profiled in the Liberian Observer: “The TRC is not enough; I want the war crimes court to be established here to hold perpetrators who inflicted pains on us accountable for what they did. We do not want recurrence of what happened in this country.”

III. Suggested Recommendations

A. Recommendations for the Government of Liberia

**Prosecutions of those most responsible for serious crimes in violation of international law**

15. The TRC took an important step in acknowledging that Liberia’s victims deserve justice and by proposing the establishment of the Extraordinary Criminal Court for Liberia to try individuals accused of war crimes, crimes against humanity, and other serious violations of international humanitarian law. The organizations listed in this report believe that proposal offers a valuable basis from which to move forward. In the attached appendix, we offer more detailed observations on additions and changes that would be needed to the draft statute to foster fair, credible prosecutions for serious crimes in Liberia.

16. In summary, the following key elements should be incorporated in order to achieve trials that would be fair, meaningful, and credible:

   a. Composition of judicial benches that will have sufficient independence and expertise by including international judges;
   b. No bars on prosecution on the basis of their cooperation with the TRC;
   c. Inclusion of crimes and modes of liability in line with international standards;

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d. Fair trial protections;
e. Witness protection and support;
f. Involvement of victims in proceedings; and
g. Outreach and communications.

17. In addition to our recommendations on the TRC draft statute, the following steps should be taken without delay for the Liberian government to help ensure implementation of the TRC’s recommendations for prosecutions for serious crimes in Liberia:

a. Establish an independent committee comprised of government officials, a member of the Independent National Commission of Human Rights, and civil society actors from various sectors that is mandated to advise the government on justice and the rule of law. The committee would be chaired by a special presidential advisor and be mandated to establish a roadmap on the way forward for ensuring justice for war crimes and for strengthening the rule of law;
b. Request from international partners adequate support and funding for programs designed to improve Liberia’s judicial and criminal justice system to ensure victims’ access to justice and the right of the accused to a fair trial;
c. Support efforts by third countries to bring universal jurisdiction cases for civil war-era crimes, including by fully cooperating with foreign authorities who request authorization to come to Liberia to investigate international crimes; and
d. Guarantee protection for human rights defenders inside Liberia against attacks and intimidation, and ensure that those who intimidate or attack human rights defenders are brought to justice.\textsuperscript{17}

18. We also recommend that the Liberian Congress hold hearings on the issue of prosecutions of past crimes with a view to developing legislation to foster fair, credible trials of past serious crimes.

IV. Suggested Questions for the Government of Liberia’s Delegation

19. We believe the following questions should be posed to Liberia’s delegation by the Committee:

a. What are the current challenges to implementation of the TRC recommendations on prosecution for serious crimes in violation of international law—war crimes, crimes against humanity, and torture—committed during the civil wars?
b. What is the status of implementation of the TRC’s recommendation on establishing a hybrid accountability mechanism, the Extraordinary Criminal Court in Liberia, to try individuals accused of war crimes, crimes against humanity, and other serious violations of international humanitarian law?
c. What efforts has the government made to address the concerns raised in recent peaceful demonstrations by civil society organizations calling for a war crimes court, including the

\textsuperscript{17}These recommendations were submitted directly to the office of President George Weah following his inauguration by Human Rights Watch. See Letter from Human Rights Watch to President of Liberia George Weah (Feb. 12, 2018), https://www.hrw.org/news/2018/02/12/hrw-letter-president-liberia-george-weah.
petition submitted to the Liberian legislature on May 8, 2018 and the letter to President Weah on behalf of 20 human rights organizations on January 22, 2018?

**APPENDIX**

The TRC called for the establishment of the Extraordinary Criminal Court for Liberia (ECCL), an "internationalized domestic criminal court" that would be empowered to try individuals accused of war crimes, crimes against humanity, and other serious violations of international humanitarian law, such as recruitment of child soldiers as well as certain domestic crimes, including economic crimes. The TRC proposes a draft statute for the ECCL in Annex 2 of its final report. Under the proposal, eight judges will serve in two chambers: three in the trial chamber and five in the appeals chamber.

We offer the following key elements to be incorporated into prosecutions of past crimes in Liberia in order to achieve trials that would be fair, meaningful, and credible:

1. **Composition of judicial benches with sufficient independence and expertise by including international judges**

   The TRC’s draft statute proposes that each trial and appeals chamber be composed of judges appointed by international actors and the Liberian president, with a majority of judges in each chamber appointed by international actors. Cases involving serious crimes tend to be politically charged and involve highly specialized legal and procedural questions relating to emerging issues in international law. In such a charged environment, it is essential that the bench is seen as scrupulously unbiased and possesses relevant expertise. The Liberian justice system is historically weak and will need the infusion of international participation alongside Liberian judges to try atrocity crimes. The proposed framework is valuable to ensure the bench's actual and perceived independence, impartiality, and expertise.

2. **No bar on prosecution**

   The TRC recommends that certain persons not be prosecuted on the basis of their cooperation with the TRC. However, the prohibition on amnesties for serious crimes is a hallmark of modern international criminal law, and is needed to ensure justice can be delivered. Cooperation with the TRC process should not be a bar to prosecution, although it may be a basis for mitigation in sentencing.

3. **Inclusion of crimes and modes of liability in line with international standards**

   Especially given scarce judicial resources, trials of past crimes should focus on the most serious offenses—war crimes, crimes against humanity, and torture. In addition, internationally accepted definitions of such crimes, such as those available in the Rome Statute of the International Criminal Court, should be utilized. Two listed crimes in the TRC draft statute raise concerns:
Terrorism: The proposed definition is very broad and extends beyond the emerging definition in international law, which is itself controversial and undefined. We believe that the crime of terrorism would be better left out of the mandate of a war crimes chamber.

Child soldiers: The crime of using, conscripting, or enlisting child soldiers should apply to both international and non-international armed conflicts. In the TRC proposed statute, this crime only applies to "international armed conflicts."

Forms of individual criminal liability, including command responsibility, which can be essential to addressing culpability of those who may bear responsibility at the highest levels, should draw from international standards, but do not do so in the draft statute. Modes of liability utilized by the ICC’s Rome Statute would be a good source of law from which to draw.

4. Fair trial protections

All fair trial guarantees enshrined in article 14 of the International Covenant on Civil and Political Rights should be expressly provided regarding prosecutions for serious crimes, but are not fully covered in the draft statute. These are:

- A fair and public hearing before a competent, independent and impartial tribunal;
- A presumption of innocence;
- Adequate time and facilities to prepare a defense;
- Not be compelled to testify against oneself or to confess guilt;
- Have a lawyer of the accused’s own choosing;
- Be protected from torture or cruel, inhuman or degrading treatment; and
- Have a conviction be reviewed by a higher tribunal.

In addition, trials in absentia should not be permitted as they compromise the ability of an accused person to exercise key rights under article 14 of the ICCPR, including the right to defend themselves.

5. Witness protection and support

Witnesses and victims can face serious risks, including threats to their personal safety and that of their families, and may be in need of psychological and social support before, during, and after testifying. By calling for the enactment of a witness protection statute, the TRC is in keeping with the important developments in international criminal practice to ensure witness protection and support. Key elements that experience has shown should be ensured to achieve adequate witness protection and support:

- Pre-trial and post-trial risk assessments for each witness;
- In-court protective measures based on individual risk assessments;
- Safe transportation and accommodation during court attendance;
- Access to psychosocial support, including counseling;
- Post-trial follow-up and threat monitoring; and
- Considerations of relocations for the most at-risk witnesses.
6. Greater victim participation in criminal accountability for serious crimes

Although the role of victims is often limited in common law legal systems, we believe the Ministry of Justice should consider how to integrate victims into proceedings. Accountability efforts will have greater resonance with the local population if those who were most affected by the crimes are involved in the proceedings.

7. Outreach and communications

An effective outreach and communications strategy is crucial if trials are to have resonance with the local population, including by managing possible frustration due to a lack of understanding of the legal process. Plans to develop a strategy to inform local communities most affected by the crimes across the country about investigations and prosecutions of atrocity crimes should be incorporated into initiatives to ensure perpetrators of past crimes are fairly tried.