

**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 123<sup>rd</sup> 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)

- 10) Civitas Maxima
- 11) Coalition for Justice and Accountability (Sierra Leone)
- 12) Human Rights Center, University of California, Berkeley - School of Law
- 13) Human Rights Watch
- 14) Institute for Security Studies
- 15) Kenya Human Rights Commission
- 16) Kenya Section of the International Commission for Jurists
- 17) No Peace Without Justice
- 18) Parliamentarians for Global Action
- 19) Southern African Centre for the Constructive Resolution of Disputes (Zambia)
- 20) TRIAL International

## **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.<sup>1</sup>

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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<sup>1</sup>Human Rights Committee, *List of issues in relation to the initial report of Liberia*, (August 21, 2017), U.N. Doc. CCPR/C/LBR/Q/1, sec. 3.

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.<sup>2</sup>

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.<sup>3</sup>
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.<sup>4</sup> 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.<sup>5</sup>
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.<sup>6</sup>

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<sup>2</sup>Human Rights Committee, *Common core document forming part of the reports of states parties: Liberia*, (Aug. 5, 2016), U.N. Doc. HRI/CORE/LBR/2016; *id.* sec. 17.

<sup>3</sup>Human Rights Committee, *Common core document forming part of the reports of states parties: Liberia*, *supra* note 2, sec. 20.

<sup>4</sup>*See* Human Rights Commission, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Updated Principles)*, (Feb. 8, 2005), E/CN.4/2005/102/Add.1, preamble and principle 19; UN General Assembly, International Covenant on Civil and Political Rights (hereinafter “ICCPR”), 1966, Art. 2(3). *See also* UN General Assembly Resolution 60/147, preamble and parts VII and VIII, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

<sup>5</sup>This includes: ICCPR, *supra* 4, at Art. 2; United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Art. 14; United Nations Convention on the Rights of the Child, 1989, Art. 39; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, 1977, Art. 91; and the African Charter on Human and Peoples’ Rights, 1981, Art. 7. Liberia is also a member of the International Criminal Court, which provides for the prosecution of genocide, war crimes and crimes against humanity by the ICC when national courts are unable or unwilling, since 2004. Rome Statute of the International Criminal Court, 1998, preamble and art. 17.

<sup>6</sup>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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>
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.”<sup>10</sup> 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.”<sup>11</sup> The Liberian Council of Churches also came forward and called on President Weah to fully implement the TRC recommendations, including those calling for accountability.<sup>12</sup>

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the United Kingdom for her alleged role in NPFL abuses in Liberia. A civil suit for torture and extrajudicial killing was also filed in the U.S. against former Armed Forces of Liberia commander Moses Thomas on behalf of victims of the Lutheran Church Massacre in Liberia. See Press Release, Human Rights Watch, Liberia: Make Justice a Priority, (Feb. 12, 2018), <https://www.hrw.org/news/2018/02/12/liberia-make-justice-priority>; see also Cristian González Cabrera and Nushin Sarkarti, “Using U.S. Courts to Promote Accountability for the 1990 Liberian Church Massacre and Beyond,” *Just Security*, Feb. 26, 2018, <https://www.justsecurity.org/52970/u-s-courts-promote-accountability-1990-liberian-church-massacre/>.

<sup>7</sup> See Bridgett Milton, *Liberia: War Crimes Petition Resubmitted*, The New Dawn (May 11, 2018), [allafrica.com/stories/201805110582.html](http://allafrica.com/stories/201805110582.html); Lennart Dodoo, *Liberians Pressure Government, Legislature for Establishment of War Crime Court*, Front Page Africa, May 9, 2018, [frontpageafricaonline.com/news/liberians-pressure-government-legislature-for-establishment-of-war-crime-court/](http://frontpageafricaonline.com/news/liberians-pressure-government-legislature-for-establishment-of-war-crime-court/); *Planned Rally to Petition Lawmakers for War, Economics Crimes Court in Liberia*, News Public Trust, Apr. 24, 2018, <http://newspublictrust.com/2018/04/24/planned-rally-to-petition-lawmakers-for-war-economics-crimes-court-in-liberia/>.

<sup>8</sup> Letter from Twenty Human Rights Organizations to his Excellency President George Weah (Jan. 22, 2018), <https://cja.org/letter-george-weah/>; see also 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>.

<sup>9</sup> James Harding Giahvue, *Nearly 10 Years on the TRC Report Still Dominates Liberian Politics*, Front Page Africa June 11, 2018, <http://frontpageafricaonline.com/news/nearly-10-years-on-the-trc-report-still-dominates-liberian-politics/>.

<sup>10</sup> Voice of America, “Daybreak Africa,” accessed May 14, 2018, <https://www.voanews.com/a/4369939.html> at 19:46.

<sup>11</sup> Willie N. Tokpa, *Liberia: Catholic Church Bishop Calls for Prosecution of Warlords*, Front Page Africa May 8, 2018, <https://frontpageafricaonline.com/news/liberia-catholic-church-bishop-calls-for-prosecution-of-warlords/>.

<sup>12</sup> Preston Gayflor, *Liberia Council of Churches Calls on President Weah to Implement TRC Recommendations*, Front Page Africa, Feb. 26, 2018, <https://frontpageafricaonline.com/news/2016news/liberia-council-of-churches-calls-on-president-weah-to-implement-trc-recommendations/>.

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.”<sup>13</sup>
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.”<sup>14</sup> According to Hassan Bility, executive director of the Monrovia-based Global Justice and Research Project: “Justice must be one of the cardinal points of the President’s new agenda. There must be justice for war crimes; otherwise there will be no lasting peace in Liberia.”<sup>15</sup>

### 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.<sup>16</sup>
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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<sup>13</sup>Press Release, Secretariat. Confidence-Building, Broader Inclusion Needed to Cement Hard-Won Gains in Liberia, Deputy Secretary-General Tells Peace, Reconciliation Summit, UN Doc. DSG/SM/1147 (Mar. 22, 2018), <https://www.un.org/press/en/2018/dsgsm1147.doc.htm>.

<sup>14</sup>Joaquin M. Sendolo, *Female Victim Pleads for War Crimes Court*, *Liberian Daily Observer*, May 21, 2018, <https://www.liberianobserver.com/news/victim-pleads-for-war-crimes-court/>.

<sup>15</sup>Press Release, The Center for Justice and Accountability, 20 Human Rights Groups Urge President Weah to Prosecute War Crimes (Jan. 21, 2018), <https://cja.org/10394-2/>.

<sup>16</sup>Many of these elements are discussed in greater detail in Human Rights Watch, *Justice for Liberia. The Truth and Reconciliation Commission’s Recommendation for an Internationalized Domestic War Crimes Court*, Dec. 10, 2009, <https://www.hrw.org/news/2009/12/10/justice-liberia>.

- 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.<sup>17</sup>

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

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<sup>17</sup>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.