



LIBERIA

I. EXECUTIVE SUMMARY

1. Following its first Universal Periodic Review by the Human Rights Council in 2010, the Liberian government agreed to numerous recommendations relating to serious problems with pretrial detention problem. Since then, however, there has been disappointingly little action on the issue. As many prisoners remain unjustly detained without trial as before, in violation of express Liberian law, while the “fast track” court system, an important response to the problem, has failed due to lack of funding.

2. Human Rights Council delegates should address the serious violations of human rights resulting from prolonged pretrial detention during Liberia’s second Universal Periodic Review in 2015. To address Liberia’s pretrial detention crisis, The Advocates for Human Rights, Liberia Law Society and Liberia Prison Watch recommend that Liberia:

- (a) identify and immediately release detainees who have either been detained longer than the maximum sentence allowed for the crime for which they have been charged or have been detained without trial for more than two terms of court in violation of Liberian statutory law;
- (b) enforce the Liberian Constitution’s guarantee of the right to bail for detainees accused of all but the most serious crimes;
- (c) enforce the provisions of the Liberian Criminal Code allowing convicts who have made progress toward reform to obtain parole;
- (d) fully re-institute and expand the “fast track” court system permitting detainees to submit their cases to magistrate judges;
- (e) ensure that adequate records are kept regarding each detainee; provide adequate funding for court personnel and basic infrastructure improvements to the court system;
- (f) create and fund a national legal aid system, potentially including paralegal programs, to provide detainees who lack financial resources with access to independent legal advice and representation; and
- (g) educate judges, police, prosecutors, and detainees about detainees’ rights under the Liberian Constitution and Liberian statutory law.

II. PREVIOUS UNIVERSAL PERIODIC REVIEW AND LIBERIA’S RESPONSE

3. During Liberia’s 2010 Universal Periodic Review, Human Rights Council delegates from several countries raised concerns over lengthy pretrial detention in Liberia and the overcrowding

and conditions in Liberian prisons.¹ In its UPR presentation, Liberia noted a number of recent initiatives, including the establishment of the Magistrate Sitting Program (the “fast track” court system), the Task Force on Pre-Trial Detention, and “measures to implement existing Liberian laws on alternatives to incarceration.”² Liberia also stated that it was committing to allocating additional financial resources for the renovation and improvement of detention centers.³ Additionally, Liberia indicated that it was launching a 12-month training program for probation officers.⁴

4. Despite Liberia’s indication that these initiatives were underway to address pretrial detention and poor prison conditions, following the dialogue and review process a number of countries made recommendations relating to these issues that enjoyed Liberia’s support.⁵ These included recommendations to improve prison conditions; intensifying efforts to humanize the penitentiary system; giving human rights groups full access to detention facilities; and strengthening the criminal justice system.⁶

5. In addition, Liberia supported several specific recommendations relating to pretrial detention. These included recommendations to take measures to accelerate the reform of the judicial system to fight against abuses of preventive detention; prioritize the allocation of resources to the criminal justice system and provide extensive training for judges, prosecutors, defense counsel and investigators to ensure safe prosecutions and due process; developing the capacity of the justice sector to ensure that court cases are brought to trial in a reasonable time; and strengthening the judicial system to lower the high percentage of pretrial detainees.⁷

6. Finally, the Human Rights Council delegate from Ireland recommended that Liberia commit to bringing “to trial all defendants within a reasonable time, and that systems and procedures are put in place to ensure this.”⁸ After consideration, Liberia did not expressly reject this recommendation.⁹ Instead, the Liberian Government indicated that it has implemented and

¹ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia*, A/HRC/16/3 (4 January 2011).

² U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia*, para. 14, A/HRC/16/3 (4 January 2011).

³ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia*, para. 15, A/HRC/16/3 (4 January 2011).

⁴ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia*, para. 33, A/HRC/16/3 (4 January 2011).

⁵ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia*, A/HRC/16/3 (4 January 2011).

⁶ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia*, paras. 77.26, 77.27, 77.28, 77.41, 77.44 and 77.46, A/HRC/16/3 (4 January 2011).

⁷ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia*, paras. 77.40, 77.42, and 77.45, A/HRC/16/3 (4 January 2011).

⁸ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia*, para. 78.36, A/HRC/16/3 (4 January 2011).

⁹ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, para. 30, A/HRC/16/3/Add.1 (15 March 2011).

continues to implement a number of initiatives in order to address the problem of pretrial detention.¹⁰

III. LEGAL FRAMEWORK

7. Liberia’s existing domestic legal framework addresses the problem of pretrial detention. Unfortunately, however, these laws remain significantly unenforced, and this lack of enforcement contributes heavily to the prevalence of unjustified pretrial detention in the country and leaves Liberia in violation of its obligations under international law.

8. Liberia’s 1986 Constitution is the source of Liberia’s “supreme and fundamental law.”¹¹ It enumerates a series of “Fundamental Rights” applicable to all Liberians. Several of these rights bear directly on the issue of pretrial detention.

9. Perhaps most importantly, the constitution provides that “[n]o person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment . . . and in accordance with due process of law.”¹² It also commands that justice be done without “denial or delay.”¹³

10. To that end, the constitution mandates that every person detained or arrested be formally charged and presented before a court of competent jurisdiction within forty-eight hours.¹⁴ If the court determines that there is a “prima facie case against the accused,” then the constitution requires it to “issue a formal writ of arrest setting out the charge or charges.”¹⁵ The court must also “provide for a speedy trial.”¹⁶ The constitution expressly grants detainees who are denied these rights the right to the writ of habeas corpus.¹⁷

11. The constitution not only grants Liberians rights aimed at securing speedy access to justice, but also establishes a way to reduce the population of pretrial detainees through the use of bail. Specifically, the constitution provides that, except in cases of capital or “grave” offenses, “[a]ll accused persons shall be bailable upon their own personal recognizance.”¹⁸

12. Liberian statutory law also reinforces the constitution’s guarantee of swift access to justice. Section 18.2 of Liberia’s criminal code provides that unless the state shows good cause for delay,

¹⁰ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, para. 31, A/HRC/16/3/Add.1 (15 March 2011).

¹¹ Constitution of the Republic of Liberia, 1986, art. 2.

¹² Constitution of the Republic of Liberia, 1986, art. 20(a).

¹³ Constitution of the Republic of Liberia, 1986, art. 21(d)(ii)(b); *see also* Constitution of the Republic of Liberia, 1986, art. 21 (h) (providing for the right of accused persons to have “a speedy, public and impartial trial by jury”).

¹⁴ Constitution of the Republic of Liberia, 1986, art. 21(f).

¹⁵ Constitution of the Republic of Liberia, 1986, art. 21(f).

¹⁶ Constitution of the Republic of Liberia, 1986, art. 21(f).

¹⁷ Constitution of the Republic of Liberia, 1986, art. 21(g) (providing that “any person arrested or detained and not presented to court within the period specified may in consequence exercise this right [of habeas corpus]”).

¹⁸ Constitution of the Republic of Liberia, 1986, art. 21(d)(i).

courts must dismiss charges against defendants who are not indicted and tried within two terms of court.¹⁹ Although this law is also significantly unenforced, it has on occasion actually worked to reduce pretrial detentions. In October 2013, for example, Liberian media reported that the Ministry of Justice released 200 inmates at the Monrovia Central Prison after a review of their records showed that they had been held without indictment or trial for more than two court terms in violation of Section 18.2.²⁰ Even taking this incident as a hopeful sign of future enforcement, however, prolonged pretrial detention in Liberia remains widespread and the law mostly ignored.

13. By failing to enforce its domestic law against prolonged pre-trial detention, Liberia is in violation of international law. Lengthy pretrial detention most directly violates Articles 9 and 14 of the International Covenant on Civil and Political Rights, which has been ratified by Liberia.²¹ Articles 9 and 14 of the Covenant declare that no one shall be “subject to arbitrary arrest or detention,”²² that those arrested “shall be brought promptly before a judge... and shall be entitled to trial within a reasonable time or to release,”²³ and that everyone is entitled to trial without “undue delay.”²⁴ The African Charter on Human and Peoples’ Rights—which also has been ratified by Liberia—provides similar assurances.²⁵ Articles 6 and 7 provide that “no one may be arbitrarily arrested or detained”²⁶ and that “[e]very individual shall have the right to have his cause heard... [which includes] the right to be tried within a reasonable time by an impartial court or tribunal.”²⁷

IV. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

a. Scope of the Problem of Pretrial Detention in Liberia

¹⁹ Liberian circuit courts currently sit for up to four terms per year of 42 days each. See LTC Walter Narramore, *Access to Justice and the Interaction Between the Formal and Tribal Legal Systems in Liberia*, LTC Walter Narramore, United States Military Academy 4 (2013), available at [http://www.usma.edu/law/SiteAssets/SitePages/Point%20to%20Point/Access%20to%20Justice%20and%20the%20Interaction%20between%20the%20Formal%20and%20Tribal%20Legal%20Systems%20in%20Liberia%20\(Narramore\).docx](http://www.usma.edu/law/SiteAssets/SitePages/Point%20to%20Point/Access%20to%20Justice%20and%20the%20Interaction%20between%20the%20Formal%20and%20Tribal%20Legal%20Systems%20in%20Liberia%20(Narramore).docx).

²⁰ Peter N. Toby, *Liberia: Vigorous Action Needed for Overcrowded Prison*, ALLAFRICA (Oct. 18, 2013), <http://allafrica.com/stories/201310161040.html>.

²¹ International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1967, 999 U.N.T.S. 171 (signed by Liberia Apr. 18, 1967).

²² International Covenant on Civil and Political Rights, art. 9., *opened for signature* Dec. 19, 1967, 999 U.N.T.S. 171.

²³ International Covenant on Civil and Political Rights, art. 9., *opened for signature* Dec. 19, 1967, 999 U.N.T.S. 171.

²⁴ International Covenant on Civil and Political Rights, art. 14., *opened for signature* Dec. 19, 1967, 999 U.N.T.S. 171.

²⁵ African [Banjul] Charter on Human and Peoples’ Rights, *adopted* June 27, 1981, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986).

²⁶ African [Banjul] Charter on Human and Peoples’ Rights, art. 6, *adopted* June 27, 1981, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986).

²⁷ African [Banjul] Charter on Human and Peoples’ Rights, art. 7, *adopted* June 27, 1981, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986).

14. The problem of pretrial detention in Liberia is devastating in scope. Pretrial detainees make up a staggering share of Liberia’s prison population – an estimated 83% of all detainees²⁸. As a result, pretrial detainees can spend up to four years in prison awaiting trial.²⁹ Some detainees spend more time waiting for trial than the maximum sentence for their alleged crimes.³⁰

15. Lengthy pretrial detention carries tremendous personal costs for detainees and their families. Crowded in dark, dirty cells, without adequate food, sanitation or health care, some detainees suffer permanent damage to their physical or mental health.³¹ As the director of a Liberian NGO who works with detainees explained, “People are rejected by society when they are arrested, regardless of whether they are innocent.”³² Prolonged pretrial detention also has a devastating impact on families as “the families of the prisoners become vulnerable.”³³ As one NGO staff member who works in the prisons put it, “[W]e have seen cases where children, even wives, of prisoners get into trouble and are [also] imprisoned.”³⁴

16. Multiple factors have caused Liberia’s pretrial detention problem. Much of the circuit courts’ infrastructure was destroyed during the Liberian conflict, such that “trials and everything move at a glacial pace.”³⁵ The judiciary is inadequately funded and courts often lack the financial and infrastructure resources, including personnel, necessary to decide cases or keep track of Liberia’s large number of detainees.³⁶ Judicial inefficiency, corruption, insufficient transport and court facilities, and poorly trained attorneys and judges further contribute to trial delays.³⁷ In addition, there is problematic lack of coordination between the police and the court system.³⁸ Additionally, many Liberians remain uneducated about legal rights and legal procedure, and “there are many misconceptions about the law among police and even lawyers.”³⁹

17. One foreign diplomat who works on justice system issues in Liberia stated that “there are lots of problems, but prisons may be the most acute, including pretrial detentions.”⁴⁰ Similarly, a

²⁸U.S. Dep’t of State, Country Report on Human Rights Practices for 2013, Liberia at 6. *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>. See also Human Rights Watch, *Country Summary: Liberia*, January 2014 at 2.

²⁹ U.S. Dep’t of State, Country Report on Human Rights Practices for 2013, Liberia at 7. *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>.

³⁰ Bonnie Allen, *Pre-trial detainees in Liberia get fast track to freedom*, Deutsche Welle (Aug. 18, 2011), *available at* <http://www.dw.de/pre-trial-detainees-in-liberia-get-fast-track-to-freedom/a-15318920>.

³¹ Amnesty International, *Good Intentions are Not Enough: The Struggle to Reform Liberia’s Prisons* (September 2011) at 2.

³² Interview with staff member of an NGO that works in the prisons in Liberia (Jan. 26, 2013).

³³ Interview with staff member of an NGO that works in the prisons in Liberia (Jan. 26, 2013).

³⁴ Interview with staff member of an NGO that works in the prisons in Liberia (Jan. 26, 2013).

³⁵ Interview with justice sector staff member, U.S. Department of State (Jan. 24, 2013).

³⁶ *Liberia: Resurrecting the Justice System*, Report of the International Crisis Group at 3, 5 (Apr. 6, 2006).

³⁷ U.S. Dep’t of State, Country Report on Human Rights Practices for 2013, Liberia at 7, *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>.

³⁸ Human Rights Watch, *Country Report: Liberia* (January 2014) at 2.

³⁹ Interview with justice sector staff member, U.S. Department of State (Jan. 24, 2013).

⁴⁰ Interview with justice sector staff member, U.S. Department of State (Jan. 24, 2013).

pastor who works prison populations with reported that “pretrial detention is a big problem.”⁴¹ “[E]veryone recognizes the problem but there is no will to change.”⁴²

b. Incarceration for Non-criminal Offenses

18. Detainees are also often incarcerated for offenses that are not even crimes. For example, “people are being arrested for alcohol incapacitation, a significant number jailed, but there is no such crime.”⁴³ Similarly, many citizens “are in jail for not paying a bill, allegedly held in contempt,” and observed that “there are a lot of arrests that are unfounded.”⁴⁴ Others interviewed by The Advocates for Human Rights reported frequent “arbitrary arrests.”⁴⁵ As one human rights defender stated, “[p]eople are jailed for very minor offenses and sit for years without trial because they don’t have money to give the court to take up their cases.”⁴⁶

c. Inhumane Conditions of Detention

19. The tragedy of prolonged pretrial detention is magnified even more by conditions of detention that violate basic human rights. Severe overcrowding is common in prisons in Liberia.⁴⁷ According one NGO that serves detainees in Liberia’s prisons, “The Monrovia Central Prison was built to accommodate 350 inmates. It has 1000 prisoners now, 80% to 90% of whom are in pretrial detention.”⁴⁸ Prison cells lack adequate light and ventilation. Many detainees are not even able leave their dark, cramped cells for even one hour a day for exercise and fresh air; Amnesty International has reported that convicted prisoners are allowed time outside more frequently than pretrial detainees.⁴⁹

20. Prisons are “so dirty they present a health hazard.”⁵⁰ Poor hygiene and sanitation in prisons is particularly serious. Prison cells lack toilets, and—because there are too few prison staff members to escort prisoners to the common latrine—many prisoners are forced to defecate in buckets or bottles. One international organization described the stench from raw sewage at the Monrovia Central Prison as “overwhelming.”⁵¹ The lack of basic necessities toilet paper and soap within Liberia’s prison has also caused the widespread presence of scabies, ringworm, and

⁴¹ Interview with staff member of an NGO that works in the prisons in Liberia (Jan. 26, 2013).

⁴² Interview with justice sector staff member, U.S. Department of State (Jan. 24, 2013).

⁴³ Interview with justice sector staff member, U.S. Department of State (Jan. 24, 2013).

⁴⁴ Interview with justice sector staff member, U.S. Department of State (Jan. 24, 2013).

⁴⁵ Interview with staff member of an NGO that works in the prisons in Liberia (Jan. 26, 2013).

⁴⁶ Interview with aid workers affiliated with human rights NGO in Liberia (Jan. 22, 2013).

⁴⁷ Amnesty International, *Good Intentions are Not Enough: The Struggle to Reform Liberia’s Prisons* (September 2011) at 2.

⁴⁸ Interview with justice sector staff member, U.S. Department of State (Jan. 24, 2013).

⁴⁹ Amnesty International, *Good Intentions are Not Enough: The Struggle to Reform Liberia’s Prisons* (September 2011) at 8.

⁵⁰ Interview with staff member of an NGO that works in the prisons in Liberia (Jan. 26, 2013).

⁵¹ Amnesty International, *Good Intentions are Not Enough: The Struggle to Reform Liberia’s Prisons* (September 2011) at 9.

other skin conditions in the prison population.⁵² Further, health services for prisoners are grossly inadequate.

d. Developments Since the First UPR of Liberia

21. During its previous 2010 Universal Periodic Review, the Liberian Government indicated that it has implemented and continues to implement a number of initiatives in order to combat the problem of pretrial detention such as the Magistrate Sitting Program and the Task Force on Pre-Trial Detention.⁵³ While these programs enjoyed initial support, including funding from various NGO groups, and resulted in the release of a number of pretrial detainees, the programs have not succeeded in reducing the overall number of pretrial detainees.⁵⁴ This is because the number of detainees released cannot keep pace with the number of incoming detainees.⁵⁵ As a result, by the end of 2013 most international organizations that had been supporting the programs cut funding because of the programs' failure to reduce the overall number of pretrial detainees.⁵⁶

22. Additional examples of initiatives undertaken to address pretrial detention issues include the creation of a public outreach strategy; projects to assess and enhance staff profiling and record keeping resources; training of officers and implementation of a probation program; and ongoing review and work towards reforms pertaining to jury law, criminal procedure and subject matter jurisdiction.⁵⁷ However, there is little evidence that any of these initiatives have been undertaken in any significant manner or that they have had any impact in addressing the large number of pretrial detainees. While Liberia has indicated that it has just recently begun piloting a parole and probation system in Monrovia, it remains to be seen whether this program will have a positive impact or not.⁵⁸

23. Very recently, the Ebola crisis facing Liberia led Liberian Chief Justice Francis S. Korkpor to announce discussions concerning plans to release of some pretrial detention prisoners in order to relieve congestion in the Monrovia Central Prison and other prisons for public health reasons.⁵⁹ It is far too early to know if this initiative will provide any lasting change than other

⁵² Amnesty International, *Good Intentions are Not Enough: The Struggle to Reform Liberia's Prisons* (September 2011) at 9.

⁵³ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, para. 31, A/HRC/16/3/Add.1 (15 March 2011).

⁵⁴ U.S. Dep't of State, Country Report on Human Rights Practices for 2013, Liberia at 4; Amnesty Int'l, *Good Intentions are Not Enough: The Struggle to Reform Liberia's Prisons* at 5.

⁵⁵ U.S. Dep't of State, Country Report on Human Rights Practices for 2013, Liberia at 4; Amnesty Int'l, *Good Intentions are Not Enough: The Struggle to Reform Liberia's Prisons* at 5.

⁵⁶ U.S. Dep't of State, Country Report on Human Rights Practices for 2013, Liberia at 4.

⁵⁷ U.N. Human Rights Council Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Liberia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, para. 31, A/HRC/16/3/Add.1 (15 March 2011).

⁵⁸ U.S. Dep't of State, Country Report on Human Rights Practices for 2013, Liberia at 5.

⁵⁹ The New Republic Liberia (Monrovia), *Liberia: In the Wake of Ebola Outbreak - Prisons to Be Decongested* (August 6, 2014) available at <http://allafrica.com/stories/201408061649.html>.

measures promised by the government, especially since the problem appears to be as much on the inflow as the outflow side, with arbitrary arrests continuing in Liberia.

V. RECOMMENDATIONS

24. Given that Liberia already has statutory and constitutional laws addressing pretrial detention, Liberia could make much progress toward eliminating its pretrial detention problem if it increased awareness and enforcement of its existing laws. The Government of Liberia should:

- **Identify and immediately release detainees** who have either been detained longer than the maximum sentence allowed for the crime for which they have been charged or have been detained without trial for more than two terms of court in violation of Liberian statutory law;
- **Enforce the Liberian Constitution’s guarantee of the right to bail** for detainees accused of all but the most serious crimes, including making bail more accessible to detainees by lowering its costs and educating detainees, the legal community, and other stakeholders about its availability;
- **Enforce the provisions of the Liberian Criminal Code allowing convicts who have made progress toward reform to obtain parole**, which would help alleviate Liberia’s pretrial detention problem both by increasing awareness of Liberians’ rights under the law and by reducing overcrowding in Liberia’s prisons.
- **Educate judges, police, prosecutors, and detainees** about detainees’ rights under the Liberian Constitution and Liberian statutory law, such as by working with the international community and other appropriate stakeholders to develop concise, easily understandable summaries of the law;

25. Because a significant contributor to Liberia’s high rate of lengthy pretrial detention is the inability of the court system to cope with the number of detainees in need of hearings, trials, and other judicial process, the Government of Liberia should explore ways to alleviate the backlog in the court system, such as:

- **fully re-instituting and expanding the “fast track” court system** permitting detainees to submit their cases to magistrate judges, including by expanding the program beyond the Monrovia Central Prison and ensuring that the magistrate courts are exercising jurisdiction over all cases over which they have a statutory right to preside, which include first, second, and third degree misdemeanors;
- **providing adequate funding for sufficient court personnel and basic infrastructure improvements to the court system** based on the recognition that even modest infrastructure improvements, such as stenotype machines that would reduce the amount of time it takes to transcribe court proceedings, will help to ease congestion within the courts.

26. The Government of Liberia should ensure that adequate records are kept regarding each detainee. For each detainee, the record should include, at a minimum, a unique case number, the date the detainee was arrested, the crime he or she is charged with, the date and outcome of any hearings, including any parole hearing, and the facility where the person is detained. This information should be stored in a manner accessible to members of the legal community and to the public, such as in an on-line database.

27. Legal assistance is very important to safeguard the basic rights of detainees. **The Government of Liberia should create and fund**, with help from the international community as necessary, **a national legal aid system to provide detainees who lack financial resources with access to independent legal advice and representation.**

28. Further, **the Government of Liberia should formally explore implementation of a nationwide paralegal program** to help improve the legal system's functionality and increase trust in formal legal processes at the local level.