



**Joint alternative report by FIACAT and ACAT
Liberia on the implementation by Liberia of the
International Covenant on Civil and Political
Rights**

**Human Rights Committee
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Authors of the report

ACAT Liberia

Action by Christians for the Abolition of Torture (ACAT-Liberia) is a national non-governmental organization founded in May 2004. It is a national human right organisation that works to promote, defend and protect human rights by advocating for a reform in the criminal justice system (police, court and correction), the abolition of the death penalty, abolition of torture and the rehabilitation of its victims. ACAT-Liberia is a member of the International Federation of Action by Christians for the Abolition of Torture (FIACAT) based in France. FIACAT has associations in 30 countries on 4 continents around the globe. ACT-Liberia is also a member of the World Coalition against the Death Penalty, a coalition of over 140 institutions to give a global dimension to the fight against the death penalty.

FIACAT

The International Federation of Action by Christians for the Abolition of Torture, FIACAT, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.

FIACAT – representing its members in international and regional organisations

It enjoys Consultative Status with the United Nations (UN), Participative Status with the Council of Europe and Observer Status with the African Commission on Human and Peoples' Rights (ACHPR). FIACAT is also accredited to the International Organisation of *la Francophonie* (OIF).

By referring the concerns of its members working on the ground to international bodies, FIACAT's aim is to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legal systems.

To give added impact to these efforts, FIACAT is a founding member of several campaigning coalitions, in particular the World Coalition against the Death Penalty (WCADP), the International Coalition against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

FIACAT – building up the capacities of the ACAT network in thirty countries

FIACAT assists its member associations in organising themselves, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

It coordinates the network by promoting exchanges, proposing regional and international training events and joint campaigns, thus supporting the activities of the ACATs and providing them with exposure on the international scene.

World Coalition Against the Death Penalty (WCADP)

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Implementation of the International Covenant on civil and political rights

I. National Human Rights Institution (article 2)

2. Please describe the measures taken to ensure that the Independent National Commission on Human Rights conforms to the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including the principles of independence. Please provide information on the measures taken to ensure that the Commission has the human and financial resources to fulfil its mandate effectively, including specific information on the number and type of complaints received and how they were resolved.

1. The Independent National Commission on Human Rights (INCHR) was established by law in 2005 (by an Act of the Liberian National Legislature) as a legal entity and became functional on 28 October 2010 when it was fully constituted. Delay in the functionality of the Commission was a result of delays in the nomination and confirmation of commissioners by the President and the Senate. It was accredited with “A” status by the Global Alliance of National Human Rights Institutions (GANHRI) in March 2017. This means that the INCHR has become a voting member as set out in Article 24.1 of the GANHRI statutes. The Commission can now vote at GANHRI meetings and also stand for official positions in GANHRI’s governance structures. The INCHR is already a full member of the continental governing body for NHRIs, Network of African National Human Rights Institutions (NANHRI).

2. According to the INCHR Act, members of the Commission are appointed by the President of Liberia, with the consent of the Senate, among the persons on the list of persons recommended by an Independent Committee of experts (Composed of the Chief Justice of Liberia and in consultation with civil society organizations). They serve for a tenure of 5 years (6 years for the Chairperson). Members of the Board of Commissioners are allowed to serve for a period of two terms, provided the President nominates and the Senate confirms any member for a second term. A member who completes his/her second term is not allowed to serve the commission even if nominated by the President. The Commissioners can’t be removed by the president unless their tenure has elapsed, or for a motive set out in article XIX (1-2) in the Act that created the Commission, or for a breach of the laws of the country. In other words, the commissioners do not serve at the will and pleasure of the President unlike other appointees of government without a tenure position. This gives the latitude to the commissioners to discharge their functions without fear or duress from the President. The Commission presents regular reports to the three branches of the Liberian government (the Legislative, the Executive and the Judiciary) that creates a balance whereby no branch can exert unnecessary pressure or interfere with its functions.

3. The Commission receives a budgetary allotment from the government of Liberia. There have been slight increases in its budgetary allotment from 2014/2015 fiscal year to 2016/2017 fiscal year. In 2014/2015 fiscal year, the total amount received by the Commission was of 842, 997.00 USD. In 2015/2016 fiscal year, the Commission was allotted a budget of 992, 736.00 USD out of which it

received a total of 980,895.00 USD. In 2016/2017 fiscal year, there was 23.5% increment in the budgetary allotment of the Commission, increasing from 992,736 to 1, 226, 866 USD. The budgetary allotments represented 0.16% of the national budget in 2015/2016 fiscal year and 0.22% of the national budget in 2016/2017 fiscal year. The budget usually allows the commission to mostly pay the benefits of the commissioners and set up a secretariat that runs the daily operations of the entity. However, it is important to note that the Commission is under-funded, as budgetary allotment can only enable it to handle administrative and operational costs. Such situation affects the capacity of the Commission, despite its independence, to function optimally.

The FIACAT and the ACAT Liberia invite the Human Rights Committee to recommend to the Liberian government to:

- ***Ensure that the Independent National Commission on Human Rights is provided with the human and financial resources necessary for its functioning.***

II. Truth and Reconciliation Commission and past human rights violations (Article 2)

3. Please provide information on the follow-up given to the final report and recommendations of the Truth and Reconciliation Commission, including the measures taken by the Independent National Commission on Human Rights to implement the recommendations. 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.

4. Generally, very little has been done to follow up on the final report and recommendations of the Truth and Reconciliation Commission (TRC). The only thing that has been done is the implementation of the recommendations on conducting peace and reconciliation activities around the country to reconcile the people, a process which has not been successful due to multiple factors including, but not limited to, poor planning; funding constraints and the political will of the presidents and officials of government. The peace and reconciliation activities that have been carried out by the Commission are the Palava Hut Discussions, the Construction of memorial sites, conducting of study on peace and reconciliation and meetings. The Palava Hut was established in 2013 with funding from UN Peace Building Office and it was intended, in line with the recommendation of the TRC, to offer to anyone who has committed a wrong or crime, whether knowingly or unknowingly, against an individual or the state, to admit the wrongful act and seek pardon from the people of Liberia through the Palava Hut. It was implemented in collaboration Civil Society, National Traditional Council, Inter-Religious Council, and youth and women groups, with support from UNMIL and UNDP and the Peace Building Office. Similarly, the construction of memorials in each county is intended to honour victims of the Liberian civil war killed and buried in mass graves and are the symbol of the respect for survivors.

5. Unfortunately, not a single person to date has been prosecuted in line with the recommendations of the TRC. All those recommended for prosecution continue to walk the street with impunity. The government has reneged on fully implementing the TRC recommendations against public outcry. Some of those who are recommended for prosecution and other recourse including the former President Ellen Johnson-Sirleaf, the Senator Prince Y. Johnson (former rebel leader) and Sekou Konneh (former rebel leader) are in top government positions, and unable to muster the political will to implement the recommendations of the TRC that the majority of Liberians wish to see implemented.

The FIACAT and the ACAT Liberia invite the Human Rights Committee to recommend to the Liberian government to:

- ***Enhance the measures taken to implement the recommendations made by the Truth and Reconciliation Commission, in particular by prosecuting the people listed in Annex III of its report.***
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III. State of emergency and counter-terrorism measures (Article 4)

4. Regarding the state of emergency declared in August 2014 and lifted in November 2014, please

a) provide information regarding the legal process for instituting a state of emergency under domestic law,

6. According to Article 86a and b, Chapter IX, the President has the power to declare a state of emergency. It states “*The President may, in consultation with the Speaker of the House of Representative and the President Pro Tempore of the Senate, proclaim and declare and the existence of a state of emergency in the Republic or any part thereof*”.

7. During a state of emergency, the President may suspend or affect certain rights, freedoms and guarantees contained in the Constitution and exercise such emergency powers as may be necessary and appropriate to take care of the emergency, subject, however, to the limitation contained in Chapter IX Article 87a and b of the Constitution. These two sections of Article 87 make it clear that the President cannot take advantage of the State of Emergency to abrogate or suspend the Constitution, the legislature or the Judiciary: “*Emergency powers do not include the power to suspend or abrogate the Constitution, dissolve the Legislature, or suspend or dismiss the Judiciary; and no constitutional amendment shall be promulgated during a state of emergency*”.

b) identify any Covenant rights that were suspended during the emergency and the measures taken to ensure that such suspensions were strictly required by the exigencies of the situation,

8. Some of the Covenant rights which were suspended during the emergency include:

- The right to liberty and security of a person: many people were harassed, threatened and abused during the state of emergency;
- The right to compensation of the victims of unlawful arrest or detention: many people who were unlawfully arrested and detained did not receive any benefit;

- The right to liberty of movement and freedom to choose a residence: people were deprived their right to choose where to live;
- The right to leave any country including one's own: people were denied the right to leave their homes, counties and country
- The right to enter his own country: people were similarly denied the right to enter their own country, Liberia.

c) explain how the state of emergency complied with article 4 of the Covenant,

9. The state of emergency was declared because of the public health emergency arising from the Ebola outbreak that seriously threatened the life of the nation and its people. This situation had required measures to curtail the disease and prevent deepening crisis and mass casualties. However, there were incidents of violations that did not conform to Liberia's obligation under international law, such as the killing of harmless civilians.

d) the measures undertaken to document all violations of human rights under the Covenant related to the emergency situation, and

e) information regarding all investigations into such violations, including information regarding the five soldiers found at fault for violations during the 20 August 2014 protest, the number of prosecutions and the convictions secured, the nature of the sentences imposed and any reparation provided to victims.

10. It is not very clear whether there were established procedures by the government and civil society to strictly monitor and document cases of violations during the state of emergency. Nonetheless, some major incidents like the West Point violence were followed and documented by the Independent National Commission on Human Rights and civil society. The West point shooting incident occurred on August 20, 2014, and led to the death of one person (Shaki Kamara) and the serious injury of two persons (one of whom was shot in the stomach while the other was reported to have been injured by barbed wires). A full investigation was launched and conducted into this incident and a full report with recommendations was made by the INCHR. Among other things, the report found the security forces liable for the shooting and negligence that led to the death of Shaki Kamara, whose life could have been saved if he was attended properly and in a timely manner, according to a medical expert. Additionally, the INCHR recommended the dismissal and prosecution of security personnel found liable for the shooting, compensation to the victims, public apologies by the Township Commissioners and others and the psychosocial rehabilitation of the people of West Point, particularly the youths. There were loud calls from civil society for justice that contributed to the government ensuring that those that were involved were prosecuted.

Please elaborate on the definition of terrorism under article 14 (54) of the Penal Code and provide information regarding cases brought on charges of terrorism and their outcome, including the sentences imposed.

Please also provide information on the legal safeguards in place for persons suspected of, or charged with, committing an act of terrorism or a terrorism-related crime.

11. The amendment to the Penal Code of 1976 considers terrorism as a first-degree felony and a capital offence. Section 14.54 states “*TERRORISM- A person has committed a felony of the first degree, a capital offense, if he unlawfully, deliberately or intentionally, attempts to discharge, or discharges firearm, grenade, bombs, missiles, explosives, or lethal devices which are likely to cause bodily injury, or place such person or group of persons in a building, outdoors, or in the open air space or are in vehicle or any means of water transport whether or not such explosive device or means causes bodily injury or death to another person or group of person.*” First-degree felony is a serious crime that usually carries harsh punishment. The crime of terrorism is non-bailable and carries a penalty up to death by hanging. There has been no known terrorism case arrested and prosecuted in Liberia since the law was passed in 2008.

The FIACAT and the ACAT Liberia invite the Human Rights Committee to recommend to the Liberian government to:

- ***Further ensure that all victims of human rights violations under the state of emergency obtain adequate redress and that the authors of such acts appropriately prosecuted and condemned;***
- ***Ensure that persons suspected of or charged with committing an act of terrorism or a terrorism-related crime benefit from adequate safeguards.***

IV. Non-discrimination (articles 2 and 26)

7. Please explain all measures being taken to combat hate speech and violence against lesbian, gay, bisexual, transgender and intersex persons, including defenders and activists.

12. There is no concrete measure that has been taken in Liberia to combat hate speech and violence against lesbian, gay, bisexual, transgender and intersex person. People of the LGBTI communities continue to be discriminated against and stigmatized in many sectors of the Liberian society. Most Liberians view LGBTI as contrary to the norms and values of the Liberian society. They believe that provisions of the laws that prohibit same-sex marriage are the right thing and should be withheld, as they help promote and protect the “good culture” of the land.

The FIACAT and the ACAT Liberia invite the Human Rights Committee to recommend to the Liberian government to:

- ***Take the necessary steps to combat hate speech and violence against lesbian, gay, bisexual, transgender and intersex persons.***

V. Right to life (article 6)

14. Please comment on how the reintroduction of the death penalty in the Criminal Procedure Law is compatible with the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and article 6 of the Covenant. Please indicate (a) the crimes for which the death penalty may be imposed under domestic law, (b) whether the death penalty can be imposed on juveniles and pregnant women, (c) the number of

death sentences handed down since 2008 and for what crimes, and (d) the number of persons currently under sentence of death. Please explain any plans to reinstitute de jure abolition of the death penalty.

13. Liberia signed and acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights in 2005. Liberia is the only country in the world that has reintroduced the death penalty (in 2008) after having ratified the Second Optional Protocol (in 2005). As a country that has acceded to this protocol, Liberia needs to repeal in its criminal laws the clauses that sanction the death penalty and adopt a new clause that abolishes capital punishment. Unfortunately, there has not been the political will to translate this into reality. The reintroduction of the death penalty is in total contradiction with the Second Optional Protocol to the International Covenant on Civil and Political Rights. This protocol calls for State parties to place a moratorium on the application of the death penalty and work towards its abolition.

14. The death penalty, according to the new Penal Code of 2008, may be imposed for the following three classified crimes:

1. Armed robbery
2. Terrorism
3. Hijacking

15. The death penalty may also be imposed for the crimes of rape and other bodily injuries if they led to death or were committed with other aggravating circumstances. These crimes are classified as first-degree felonies and capital offences. They are non-bailable as well.

16. The law did not specify whether the death penalty can be imposed on a pregnant woman or a juvenile.

17. It is estimated that around 20 death sentences have been passed since the penalty resurfaced in 2008¹. The total number of convicts currently on death sentence is estimated at seven (7). Two persons (Hans and Mardea) were acquitted by the Supreme Court in 2014 of the charges of murder, thereby reducing the number of persons from nine to seven. Though the former President approved the law reinstating the death penalty, she has not signed any death warrant and by that, no one has been executed as a result of the conviction since the law was reintroduced in 2008.

The FIACAT, the WCADP and the ACAT Liberia invite the Human Rights Committee to recommend to the Liberian government to:

- ***Repeal the July 2008 law that allows the death penalty, in line with Liberia's obligations under the Second Optional Protocol to the ICCPR.***
- ***Amend legislation that provides for the application of the death penalty, in light of the obligations undertaken under the Second Optional Protocol to the International Covenant on Civil and Political Rights.***

VI. Treatment of persons deprived of their liberty (article 10)

¹ Five (5) people were sentenced to death in Liberia in 2016 according to Amnesty International.

18. Please provide current data on overcrowding in prisons, indicating the number of prisoners and official capacity, disaggregated by facility. Please indicate any additional measures taken to tackle this problem, including any plans to resume construction of the Cheesemanburg facility. Given the high rates and lengthy periods of pretrial detention, please provide information on (a) the development and implementation of non-custodial alternatives, including bail or release on parole, (b) the annual budget devoted to the Ministry of Justice for detention centres, (c) all measures taken to address inhumane and degrading prison conditions, and (d) whether the law for compassionate release of prisoners has been implemented. Please provide information on the annual number of deaths of persons in detention in the last five years, disaggregated by place of detention and cause of death, and indicate what investigations were conducted and their results. Please indicate what measures have been taken to ensure that minors are held in pretrial detention only as a last resort and are not detained with adults. Please provide information on the mechanisms for monitoring places of detention and indicate whether the results of any monitoring or investigations into abuse are made public.

A. Prison population

18. According to statistics provided by the Bureau of Corrections and Rehabilitation, in February 2015, the occupancy rate of Liberian prisons was at 142% (1,651 detainees for a maximum occupancy of 1,164), of which, about 70% of the prison population consisted of prisoners awaiting trial, accounting for 1,143 inmates for the entire territory.

19. The authorities have taken measures to improve prison conditions, particularly by constructing a new prison in Cheesemanburg to reduce the number of detainees in Monrovia Central Prison. Additionally, a number of prisons are being renovated throughout the country.

20. However, according to the monitoring report on prison facilities, detention centres and withholding cells across the country released by the Independent National Commission on Human Rights for 2016 in December 2016, there remain appalling conditions within these facilities around the country. The Commission specifically highlighted the issues of worsening overcrowding of prisons, prolonged pre-trial detention, poor living conditions and very poor facility structures. The report summarizes:

“As it stands, the prison population has more than tripled the acceptable capacity, especially at the Monrovia Central Prison (MCP). Living conditions in the prisons are damaging to the physical and mental well-being of inmates and in many cases constitute clear threats to health. Toilets are blocked and overflowing or simply nonexistent, and there is no running water. As a result, diseases are widespread. Conditions such as poor sanitation, lack of sufficient food and medicines fall short of UN standards for the treatment of prisoners. Prisons are in bad shape and the facilities are operating below the minimum standards required for prisons and prisoners management. The structures are not up to date and the sanitary conditions are appalling. In addition, the classification and treatment of prisoners remain a challenge. Moreover, prolonged-pretrial detention accounts for more than 55% of the inmates in Liberia. The majority has never had a day in court and some of them have been remanded for more than 2 years.”

21. As of December 2016, there was a total of 2,104 prisoners across the country. Of this number, there were only 621 inmates representing 29.5% were convicted and 1483 inmates accounting for 70.5% were pre-trial detainees. At the same time, 11 out of the 16 major prison facilities were overcrowded (had exceeded their normal capacities). The table below provides more details.

Prison population – December 2016

Source: Bureau of Correction and Rehabilitation Annual Report 2015 accessed from the INCHR 2016 Prison Monitoring Report 2016

LOCATIONS OF PRISON FACILITIES	CONVICTED/SENTENCED INMATES				PRE- TRIAL DETAINEES					
	ADULTS		JUVENILES		ADULTS		JUVENILES		Normal Capacity	Current Population
	M	F	M	F	M	F	M	F		
River Cess	0	0	0	0	15	1	0	0	35	16
Sinoe	5	0	0	0	26	5	0	0	40	36
Bomi	13	1	0	0	26	0	0	0	60	40
Grand Cape Mount	12	0	0	0	22	2	1	0	16	35
Montserrado	165	0	0	0	754	14	12	0	374	1,011
Bong	39	3	0	0	98	1	1	0	130	142
Margibi	30	0	0	0	60	3	3	0	60	96
Bondiway	1	1	0	0	22	0	1	0	16	25
Grand Bassa	26	0	0	0	61	2	0	0	45	79
Gbarpolu	7	0	0	0	20	0	0	0	25	27
Maryland	33	3	0	0	30	0	1	0	36	67
Nimba	59	2	0	0	116	6	2	0	74	185
River Gee	6	0	0	0	25	0	0	0	45	31
Lofa	28	2	0	0	42	0	0	0	40	72
Grand Gedeh	184	1	0	0	54	2	0	0	274	242
Grand Kru	0	0	0	0	0	0	0	0	0	0
Total	608	13	0	0	1371	36	21	0	0	2104

B. Pretrial detention

22. Several provisions of the Liberian Constitution provide for a legal framework to limit the use and abuse of pre-trial detention and prison overcrowding, namely through the delivery of a speedy trial and through the application of a bail system². Building on article 11 of the Constitution, which enshrines fundamental principles of freedom and liberty of the individual, article 20a, outlines that “No 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 [...] in accordance with due process of law. Justice shall be done without sale, denial or delay...”. However, this right may be limited through pre-trial detention. The framework for pre-trial

² Constitution of the Republic of Liberia, 1986, art. 21(d)(i)

detention is put forth by provisions of the Constitution and the Criminal Procedure Law. The Liberian Criminal Procedure Law provides for a system of bail. Under article 13.1, any person prosecuted shall be given the possibility to give bail and be released if he or she is not prosecuted for a capital offence. It further states that any person in custody under charges of a capital offence, before conviction, is also entitled to bail unless the proof is evident or the existence of a great presumption that he or she is guilty of the offence. With regard to the time limits that apply to pre-trial detention, article 21f stipulates that:

Every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight hours. Should the court determine the existence of a prima facie case against the accused, it shall issue a formal writ of arrest setting out the charge or charges and shall provide for a speedy trial. There shall be no preventive detention.

23. Further, article 18.2 of the Liberian Criminal Procedure Law provides for the dismissal of charges should there be a failure to prosecute, specifying that:

Unless good cause is shown, a court shall dismiss a complaint against a defendant who is not indicted by the end of the next succeeding term after his arrest for an indictable offence [...]. Unless good cause is shown, a court shall dismiss an indictment if the defendant is not tried during the next succeeding term after the finding of the indictment. A court shall dismiss a complaint charging a defendant with an offence triable by a magistrate or justice of the peace if trial is not commenced within fifteen days after the arrest of the defendant [...].

24. Unfortunately, despite the existence of such legal guarantees, many detainees are unjustly held in prolonged and arbitrary pre-trial detention. The initial periods of pre-trial detention are rarely respected, particularly in cases involving minor offences. In fact, comparatively, trials and judgments for major offenders are often speedier, than for those who are charged with committing a minor crime.

25. In the prisons of Kakata, Monrovia and Tubmanburg, the rate of pre-trial detention was at 73% (777 detainees awaiting trial for 1 164 detainees). In Monrovia's only prison, the number of detainees in pre-trial detention was alarming, with about 84% of detainees held in pre-trial detention (678 detainees out of 807 total inmates). In Kakata prison the rate of pre-trial detention was at 68%, and for Tubmanburg prison 77% of detainees were held in pre-trial detention, 46 detainees out of a 60 total inmate population.

Prison statistics as of February 2015				
Prisons	Total number of detainees	Number of sentenced prisoners	Number of pre-trial detainees	Rate of pre-trial detention
Kakata	78	25	53	68%
Monrovia	807	129	678	84%
Tubmanburg	60	14	46	77%

26. Facing this issue, the Liberian government has introduced a Magistrates' Sitting Programme (MSP) to conduct fast-track hearings, which has made important strides in decreasing the rate of pre-trial detention, particularly within the Monrovia Central Prison, where more than half of the country's inmates are imprisoned. The MPS, which, unfortunately, is limited to only 8 magistrate courts in Monteserrado County, has been able to decrease the average national rate of pre-trial detention by 12% within a 6-year period from (87% in 2009 to 75% in 2016).

The FIACAT and the ACAT Liberia invite the Human Rights Committee to recommend to the Liberian government to:

- *Pursue and enhance the measures taken to improve prison conditions;*
- *Reduce prison overcrowding in particular by addressing the issue of abusive pre-trial detention throughout the country.*