

July 14, 2026

Cllr. Senator Augustine S. Chea
Chairperson
Senate Committee on Judiciary, Human Rights, Claims and Petitions
Liberian Senate
Capitol Building
Monrovia, Liberia

Dear Cllr. Chea:

We write as organizations committed to gender justice and women's rights to share observations and recommendations regarding the draft 'An Act Establishing a War and Economic Crimes Court for Liberia' (Draft Statute), developed by the Office for the Establishment of War and Economic Crimes Court for Liberia (OWECC-L).

As you will know, there were significant gendered dimensions to Liberia's civil wars. Sexual violence and other gender-based crimes were committed by all armed groups, and women and girls were disproportionately targeted, reflecting and reinforcing deeply patriarchal societal structures. Fighters deployed sexual and gender-based crimes to destroy families and communities, such as by targeting elderly persons, forcing sex between family members, and attacking pregnant women. Fueled by impunity for these crimes, gender-based violence remains a pervasive challenge in the country.

With multiple draft laws establishing a war crimes court now put forward—including by OWECC-L, members of civil society, and Senators—there is an opportunity to not only advance justice for civil wars-era crimes, but to do so in a gender-competent manner.

History and experience shows that securing justice for victims of sexual and gender-based crimes can be a major challenge. Applying a gender lens to the development of the court will contribute to credible and meaningful accountability for sexual and gender-based crimes and a process that centers the interests and rights of victims.

With a harmonization of the draft laws underway, we enclose commentary and recommendations on the Draft Statute, with a dedicated focus on gender-related aspects. Our analysis should not be seen as exhaustive, taking account of the short time frame announced for the harmonization process before the judicial recess.

We appreciate your consideration of this material and respectfully request the opportunity to deliver these recommendations orally to the Senate Judiciary Committee and any other relevant legislative committees or legislators. We look forward to hearing from you and may be reached at +1-917-687-8576 (WhatsApp).

Yours sincerely,



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**Advancing a Gender-Competent War Crimes Court for Liberia:
Commentary and Recommendations on
‘An Act Establishing a War and Economic Crimes Court for Liberia’**

I. MISSING CRIMES

The Draft Statute omits significant gendered harms that have been held by international and hybrid criminal tribunals to amount to crimes under international law. In particular it omits ‘reproductive violence’ and ‘forced marriage’. It also does not include the full suite of sexual and gendered crimes when committed as violations of international humanitarian law.

We recommend the following amendments to the Draft Statute to address these omissions:

A. Reproductive violence

Recommendation: Amend s. 3.9.1(l) to refer expressly to acts of ‘reproductive violence’ as crimes against humanity as follows:

Acts of rape, sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual or reproductive violence

Reproductive violence involves intentional acts or omissions that cause harm by interfering with reproductive autonomy, or violence directed at people because of their actual or perceived reproductive capacity. Forced pregnancy and enforced sterilization are the most well-recognized forms, as they are expressly prohibited in the International Criminal Court (ICC) Rome Statute — but there are a myriad of others, including preventing births, forced abortion and contraception, interference with breastfeeding, destruction of reproductive healthcare or infrastructure, and torture or other cruel, inhuman and degrading treatment targeting reproductive capacity. Reproductive violence often accompanies sexual violence, but not always: forcefully administering oral or injectable contraceptives, for example, involves no sexual violence.

Following ICC and other court jurisprudence, and reflective of its status under international law,¹ acts of reproductive violence should be recognised explicitly as crimes against humanity and violations of international humanitarian law to help ensure they are not overlooked by the court.

B. Forced marriage

Recommendation: Insert a new paragraph s. 3.9.1(p) *bis*, to add forced marriage as a standalone crime and amend s. 2 to include a definition of ‘forced marriage’ as follows:

Compelling a person to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment or an inability to give genuine consent, including because of age.²

¹ See *Prosecutor v. Dominic Ongwen*, Judgment on Appeal, Appeals Chamber, ¶¶ 18, 1053, 1055, 1063 (Dec. 15, 2022); The Draft Crimes Against Humanity Convention: Proposals on the Right to Reproductive Autonomy (Oct. 2025), https://cahtreatynow.org/wp-content/uploads/2025/10/CAH-Repro-Autonomy_Legal-Brief_Summary.pdf.

² Conjugal unions include both formal and informal bonds that convey the status of husband, wife, or spouse upon the participants. These unions are often legally or culturally recognized through ceremonies or legal documentation, but these formal elements are not required. See *Prosecutor v. Dominic Ongwen*, Judgment on Appeal, Appeals Chamber, ¶ 1024 (Dec. 15, 2022); and The Draft Crimes Against Humanity Convention: An Opportunity to Codify

Forced marriage was among significant harms committed in Liberia's conflicts. Referred to as 'bush wives', victims of forced marriage 'were forced to cook, clean, bear children, use drugs, and provide sex to the rebels'.³ The Special Court for Sierra Leone, Extraordinary Chambers in the Courts of Cambodia, and ICC have all convicted defendants of forced marriage under the crime against humanity of 'other inhumane acts'.⁴ However, in each case, defendants questioned the validity of recognizing forced marriage because it was not explicitly listed as a prohibited act under the crimes against humanity provision of the courts' respective statutes. The express inclusion of forced marriage would: (1) more directly reflect the nature of forced marriage during Liberia's armed conflicts; (2) ensure the Draft Statute is consistent with existing case law, and (3) avoid re-litigation of whether forced marriage is a crime.

C. 'Other inhumane acts' as crimes against humanity

Recommendation: Amend s. 3.9.1(o) to broaden its scope to encompass crimes against humanity.

S. 3.9.1(o) sets out a residual, or catch-all clause of 'other inhumane acts' in the context of the violations of the 'rules of war', or war crimes. There is no equivalent provision in the Draft Statute in relation to crimes against humanity. This omission is unduly restrictive and could hamper the Court's ability to address criminal conduct amounting to crimes against humanity that is not expressly listed in the Draft Statute. The inclusion of s. 3.9.1(o) in the Draft Statute acknowledges the need to ensure that perpetrators do not escape liability for war crimes of comparable gravity and nature to the enumerated acts simply because their specific conduct was not so enumerated. This same rationale applies to crimes against humanity. Further, gender-based crimes have historically been excluded from enumerated acts as discussed above, with courts and tribunals having had to rely on residual clauses to hold perpetrators accountable.

D. Sexual and reproductive violence as war crimes

Recommendation: Amend s. 3.9.2 and s. 3.9.3 to add a provision on sexual and gender-based crimes as violations of the Geneva Conventions and Additional Protocol II and other serious violations of international humanitarian law, *i.e.* war crimes, in addition to crimes against humanity, mirroring the language of s. 3.9.1(l) (as amended per above):

Acts of rape, sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual or reproductive violence.

The Draft Statute gives the WECC express jurisdiction over only two sexual and gender-based crimes – rape and enforced prostitution, as well as 'any indecent assault' – as 'serious violations of International Humanitarian Law'. We note that 'indecent assault' is neither defined in the Draft Statute nor is it used in Liberian criminal law.

the Crime of Forced Marriage (Oct. 2025),

https://cahtreatynow.org/wp-content/uploads/2025/09/CAH-Forced-Marriage_Summary.pdf.

³ See *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project*, THE ADVOCATES FOR HUMAN RIGHTS (Jan. 2009), p. 241,

<https://www.theadvocatesforhumanrights.org/Publications/A/Index?id=64>; Final Report of the Truth and Reconciliation Commission of Liberia, Volume I: Findings and Determinations, Truth and Reconciliation Commission of Liberia, p. 63,

<https://www.trcofliberia.org/resources/reports/final/trc-final-report-volume-1-full.pdf>.

⁴ The Draft Crimes Against Humanity Convention: An Opportunity to Codify the Crime of Forced Marriage (Oct. 2025), https://cahtreatynow.org/wp-content/uploads/2025/09/CAH-Forced-Marriage_Summary.pdf.

S. 3.9.2 and s. 3.9.3 are unjustifiably narrow given the scope of sexual and other gendered violence committed in the context of the armed conflicts in Liberia and it is inconsistent with established international law. Excluding the full range of sexual and gendered crimes from the jurisdiction of the proposed court when amounting to war crimes sets up an asymmetrical approach that is unfair to victims of these crimes and will result in an incomplete criminal justice outcome. It also ignores at least three decades of normative development, including by the *ad hoc* tribunals for the former Yugoslavia and Rwanda, the ICC, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.

II. REVISING SEXUAL AND GENDER-BASED CRIMES

A. *Enforced Sterilisation*

Recommendations: Delete s. 2.1.15(2), and amend s. 2.1.15(3) to specify that the defence of consent is not available in situations in which there is deception, force, threat of force, coercion or taking advantage of coercive circumstances.

The crime of enforced sterilisation is defined in the Draft Statute as the deprivation of biological reproductive capacity that is not medically justified and is carried out without consent (s. 2.1.15(1)).

However, the Draft Statute permits a defence of consent that does not sufficiently take account of the context in which this crime is committed. Specifically, s. 2.1.15(3) provides for a defence of consent unless consent is obtained by deception or the person is incapable of giving genuine consent. As the crime against humanity and war crime of enforced sterilisation are committed in situations that are inherently threatening or coercive, it is very unlikely that a person could give genuine consent. As such, the Draft Statute should further restrict its availability as a defence. This is the approach taken, for example, by the ICC Rules of Procedure and Evidence Rule 70(a):

Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent.

B. *Persecution on the grounds of gender as a crime against humanity*

Recommendations: Amend the definition in s. 3.9.1(n) so it is consistent with the definition of the crime under s. 2.1.28, adding 'gender' as a persecutory ground and replacing 'ill treatment' with 'deprivation of fundamental rights'.

- As drafted, the crime of persecution in s. 3.9.1(n) does not match its definition under s. 2.1.28. The crime lists only four grounds of persecution as a crime against humanity — political, racial, ethnic or religious — while the definition in s. 2.1.28 includes 'gender'.
- The reference to 'ill treatment' rather than 'deprivation of fundamental rights' is also inconsistent with the definition of the crime and considerably narrows the scope of the crime. Further, 'ill treatment' is language from the Convention against Torture (CAT) and its use here risks that this crime will be interpreted to require ill treatment as understood under CAT, rather than the broader violation of 'fundamental rights'.

III. DEFINITIONS

A. ‘Victim’

Recommendation: Add a definition of ‘victim’ in the Draft Statute, which links victims and the consequent rights that accrue to them to the harm suffered, with language along the lines of that provided in the ICC Rules of Procedure and Evidence:

- *‘natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court’; and*
- *‘may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.’⁵*

This addition will help to ensure victims or survivors are not excluded by overly restrictive approaches to defining victims. Notably, linking the definition of ‘victim’ to the harm suffered ensures that children born of sexual violence, and surviving dependent children of victims who are killed, are recognized as victims in their own right.⁶

B. ‘Gender’ (s. 2.1.18)

Recommendation: Remove s. 2.1.18. Gender should remain undefined, or if a definition is included, it should be explicitly in line with current international human rights and international criminal law.

The Draft Statute does not define any other protected classes (such as political or racial) for the crime of persecution. Defining ‘gender’ alone risks implying that gender persecution is secondary to, or not equivalent with, the other categories of persecution. Further, the definition that is currently included risks narrowing the crime of gender persecution (s. 2.1.28) by collapsing the concept of gender into biological sex, thereby possibly excluding those targeted for transgressing or being perceived to transgress gender roles. Gender should be clearly understood in line with current international human rights and international criminal law.⁷

IV. VICTIMS

Victims and survivors of Liberia’s civil wars have suffered immense harm and trauma. The WECC should put the rights of victims at the forefront of its work, ensure that they are treated with dignity and respect, and benefit from protection, support, participation, and remedies. The Draft Statute envisions a Victims and Witnesses Unit to provide protection and support, which is discussed in the Registry section below. However, provisions for victims participation and reparations are also needed.

⁵ International Criminal Court Rules of Procedure and Evidence, Rule 85.

⁶ See The Draft Crimes Against Humanity Convention, Proposals to Center Victims and Survivors (Dec. 2025), https://cahtreatynow.org/wp-content/uploads/2025/12/CAH-Victims-Survivors_Short-Form.pdf.

⁷ For further analysis on defining ‘gender’ and the risks of replicating the ICC’s Rome Statute ‘gender’ definition, on which the Draft Statute appears to draw, see Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions, et al., Re: Comments to the Draft Crimes Against Humanity Convention (Nov. 30, 2018), <https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/LetterGender.pdf>. See also ICC, Office of the Prosecutor, ‘Policy on Gender-Based Crimes Crimes involving sexual, reproductive and other gender-based violence’ (Dec. 2023), <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>, p. 10.

A. Victims' participation

Recommendation: Add a section that victims shall have the opportunity to present their views and concerns to the court.

Grounded in international human rights standards on access to justice and remedy, victim participation in international criminal law proceedings is increasingly practiced. For example, the Rome Statute for the ICC has a mechanism that allows victims to present their views and concerns at relevant stages in proceedings, separate from being witnesses, as do several hybrid courts.⁸ Precise modalities for such participation can be developed through follow-up consultations with relevant experts and stakeholders.

B. Reparations

Recommendation: Add a section that victims are entitled to reparations that are prompt, full and effective, including through administrative or other reparation programs, for any physical, mental, moral, material, legal or other harm.

The Draft Statute makes no mention of reparations. However, international criminal law and international human rights law provide that victims and survivors have rights to obtain prompt full and effective reparation and to have reparation awards enforced.⁹ This approach follows UN standards and experiences of best practices in international institutions and is important to achieve meaningful redress for victims.

Effectiveness is a key element of reparations. In some instances, reparation measures have not addressed the harm victims have suffered, and ineffective reparations can also inflict additional harms, such as by creating tensions between victims who have received and victims who have been excluded from reparations. Reparations should also include measures aimed at non-repetition of harms by addressing underlying factors that significantly contributed to the commission of crimes, including gender-based crimes. Means to fund reparations should be subsequently developed drawing from relevant best practice.

V. JUDICIAL COMPOSITION

A. International and domestic judges (s. 4.2)

Recommendation: Amend s. 4.2.3 and s. 4.2.4 to provide that international judges shall form a majority on each bench, both at the trial and appeals levels.

The Draft Statute provides that each trial and appeals chamber be composed of judges appointed by the United Nations and the Liberian president under s. 4.2. Unlike the first proposal for a war crimes court contained in the report of the Truth and Reconciliation Commission,¹⁰ or the

⁸ See ICC Rome Statute, Article 68(3); ICC, Victims, <https://www.icc-cpi.int/about/victims>. See also, for example, Kosovo Specialist Chambers and Specialist Prosecutor's Office, Participating Victims, <https://www.scp-ks.org/en/victims/participating-victims>.

⁹ See The Draft Crimes Against Humanity Convention: Proposals to Center Victims and Survivors (Dec. 2025), https://cahtreatynow.org/wp-content/uploads/2025/12/CAH-Victims-Survivors_Short-Form.pdf; African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003), <https://achpr.au.int/en/node/879>.

¹⁰ Final Report of the Truth and Reconciliation Commission of Liberia, Volume II: Consolidated Final Report, TRUTH AND RECONCILIATION COMMISSION OF LIBERIA, pp. 426-459, https://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf.

proposal by members of Liberian civil society, the Draft Statute mandates that Liberian judges constitute a majority on each bench under s. 4.2.3 and s. 4.2.4.

Liberia's armed conflicts were characterized by severe divides along regional, ethnic and economic lines, which predate the conflicts and persist. Moreover, the Liberian judiciary has long been regarded as 'historically weak and unreliable' and people 'have had little faith in judicial institutions to protect their interests or fundamental rights.'¹¹

Cases involving serious crimes can be politically charged. Past experience in hybrid international-national courts such as the Special Court for Sierra Leone underscores that having domestic and international judges serve together in panels with a majority of judges appointed by the international community can play an important role in insulating the bench from domestic political pressures.¹² This promotes the actual and perceived independence and impartiality of the bench, thereby helping to foster meaningful accountability for sexual and gender-based harms, alongside other crimes.

B. Gender representation and gender expertise

Recommendations: Amend sections 4.2.3 through 4.3.2 to:

1. Require that each chamber constituted includes judges with gender expertise;
2. Aim for gender parity on each bench and provide that no chamber shall be composed of one gender; and
3. Include dedicated gender expertise among judicial qualifications.

The existing language regarding representation in the chambers and judicial qualifications does not include any reference to the need for relevant expertise in gender justice, or take account of those who do not identify as a particular gender. Given the complexity of sexual and gender-based crimes and the extent of their perpetration in Liberia's conflicts, gender expertise is an essential need for each bench. Further, gender representation may be more effectively advanced by stating simply that no chamber shall be composed solely of one gender.

VI. REGISTRY

A. Staffing and outreach (s. 5.4)

Recommendations: Amend s. 5.4 to: require staff to have gender expertise, aim for gender parity, and mandate the Registry conducts outreach to communities.

The Registry staff plays a critical role in the effective functioning of war crimes courts and ensuring the court operates in a gender-competent manner. We thus recommend specifying the above requirements in the Draft Statute rather than relying on the Registrar's discretion.

¹¹ *Id.*, pp. 15-16. For more recent analysis, see Freedom in the World 2026: Liberia, FREEDOM HOUSE, <https://freedomhouse.org/country/liberia/freedom-world/2026#PR>.

¹² Ending the Era of Injustice: Advancing Prosecutions for Serious Crimes Committee in South Sudan's New War, HUMAN RIGHTS WATCH (Dec. 10, 2014), https://www.hrw.org/sites/default/files/reports/southsudan1214_ForUpload_0.pdf, p. 32.

B. Victims and Witnesses Unit (VWU) (s. 5.5)

Recommendations: Amend s. 5.5 to require that the VWU:

1. Include specialists with expertise in sexual and gender-based crimes, as well as relevant contextual and cultural factors in Liberia (e.g. gender relations, status of women and children);
2. Aim for gender parity amongst all levels of VWU staff; and
3. Provide that protective and security measures, counselling and assistance are accessible to persons with disabilities.

Requiring gender expertise among the staff of the VWU will better ensure that victims and witnesses affected by sexual and gender-based crimes are properly engaged with by the unit, particularly to minimize any re-traumatization.

Victims and witnesses with disabilities, including those disabled by conflict-related violence, face particular barriers to accessing services of any kind. Reasonable accommodation and accessible formats to enable access and support to victims and witnesses with disability are needed.

VII. RULES AND PROCEDURE OF EVIDENCE

A. Conflict of laws (s. 7.1.1)

Recommendation: The Draft Statute should state explicitly that where Liberian rules of evidence conflict with the International Criminal Tribunal for Rwanda (ICTR) Rules of Procedure and Evidence (RPE) or other applicable international and regional standards (see recommendation below), the WECC will apply whichever rule affords the greater protection to complainants, victims and witnesses in cases involving sexual and gender-based crimes.

The Draft Statute provides that the ICTR RPE shall be applicable ‘*mutatis mutandis*’ to the WECC. The ICTR RPE includes Rule 96 on sexual violence evidence, which contains several protections: (i) bars corroboration requirements for complainants; (ii) restricts consent as a defence where violence, duress, detention or psychological oppression is present, and paragraph (iv), which excludes prior sexual conduct evidence.

In some respects, current Liberian law matches or may provide greater protection than the ICTR rules. For instance, corroboration is not required in Liberia and the 2006 amendments to the rape law are more progressive on situations presumptively negating consent than the ICTR RPE. At the same time, there is no equivalent of Rule 96(iv) in Liberian legislation.

RPE that require and facilitate safe participation are critical to successful, non-retraumatizing prosecutions of sexual and gender-based crimes. Given this, the best approach for the Draft Statute is to require the WECC to apply whichever rules will provide the greater protection.

B. Rights of persons with disabilities (s. 7.1.1)

Recommendation: Amend s. 7.1.1 to require that the Court’s RPE’s comply with the UN Convention on the Rights of Persons with Disabilities, including accessible testimony formats, supported decision-making, and reasonable accommodation.

Women with disabilities are always among the most isolated conflict victims and face the greatest barriers to participation as witnesses or complainants. Neither the ICTR RPE, nor other

international or hybrid tribunals' RPE is compliant with the Convention on the Rights of Persons with Disabilities.¹³ Given that persons with disabilities are likely to be significant among both victims and witnesses before the Court, current international standards relating to persons with disabilities should be integrated into the RPE for the WECC.

C. Amending Rules (s. 7.1.2)

Recommendation: The Draft Statute should expressly state that the judges should be guided by other regional and international standards when amending the rules under s. 7.1.2 in relation to sexual and gender-based crimes.

This amendment to the Draft Statute would allow judges to be guided by contemporary best practice standards when seeking to address gaps and insufficiencies in the WECC's Rules, including with regard to persons with disability as discussed above. In all instances, the WECC should apply rules of procedure and evidence that afford the greatest protection to the well-being, safety and dignity of complainants, witnesses and victims.

VIII. CONDITIONS OF DETENTION AND IMPRISONMENT

Recommendation: Amend s. 6.5.3(b) to require the State of enforcement to guarantee minimum rights protection of detainees under international standards, with attention to the particular needs and rights of pregnant and breastfeeding detainees.

S. 6.5.3 provides that terms of imprisonment as a penalty (s. 6.4) will be governed by the laws of the State of enforcement (s. 6.5.3(b)). There is no reference to minimum rights protections of detainees or international standards, such as UN Standard Minimum Rules and the Bangkok Rules on the detention of women.¹⁴

Protections should cover standards of treatment for pregnant or breastfeeding detainees, including: that there is a preference for non-custodial measures for pregnant women or children's sole or primary caretakers; hygiene needs are met for pregnant, breastfeeding, or menstruating women; specialized treatment programs for pregnant women and women with children; and close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants, and breastfeeding mothers.¹⁵

¹³ Convention on the Rights of Persons with Disabilities and Optional Protocol, 2515 UNTS 3, (Dec. 13, 2006, entry into force on May 3, 2008), <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

¹⁴ UN General Assembly, UNGA Res 70/175, UN Doc A/RES/70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (8 Jan. 2015), <https://docs.un.org/en/a/res/70/175>; UN General Assembly, UN GA Res 65/229, UN Doc A/RES/65/229, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (March 16, 2011), https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

¹⁵ UN General Assembly, UN GA Res 65/229, UN Doc A/RES/65/229, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (16 March 2011), UN GA Res 65/229, Rule 5, Rule 15, Rule 22, https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.