



## **Quarterly Report on the Human Rights Situation in Liberia**

**August - October 2006**

Human Rights and Protection Section

February 2007

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## **Executive summary**

1. This report covers the major human rights issues and developments monitored by the UNMIL Human Rights and Protection Section between August and October 2006. The report pays particular attention to the fact that the Rape Amendment Act is not yet adequately implemented by the national authorities charged with the investigation, prosecution and trial of suspects, despite clear legislative provisions. The very small number of cases indicted and tried to date is an indicator that far more needs to be done to ensure that the various institutions of justice coordinate to address rape as a crime and as a human rights violation.
2. Cases continued to be reported of possible excessive use of force by police officers and police custody beyond the 48 hour constitutional limit. Private security guards working on rubber plantations failed to observe the limits of their authority. Some instances of mob justice and vigilante action occurred as a worrying response to the incapacity of the police to protect the community from crime.
3. There have been ongoing concerns regarding the inability of the judiciary to uphold human rights standards, constitutional guarantees and legal procedure. Particularly serious is the lack of awareness regarding the implementation of Liberia's international legal obligations. A case in point is the imposition of the death penalty by a Circuit Court.
4. Conditions in prisons and detention facilities remained very poor, with some facilities experiencing serious over-crowding. The strained food supplies and unacceptably poor hygiene posed a significant risk to people in State custody. Disturbances in several Counties were reportedly in part a response to lengthy pre-trial detention and bad conditions.
5. No progress was observed in the administration of juvenile justice. Cases involving juveniles were often not handled in accordance with the law, while juvenile delinquency measures could not be implemented due to the absence of suitable institutions.
6. Women and girls in some areas of Liberia were be at risk of female genital mutilation, including forced submission to the practice. Trial by ordeal remained a serious threat to the establishment of the rule of law and the enjoyment of fundamental rights.
7. Children living in orphanages remained vulnerable to neglect and some orphanages listed for closure by the Ministry of Health and Social Welfare were refusing to comply with this order. Unfortunately, orphanages remained an attractive option to parents and guardians who lacked financial means to provide for their children.

8. Previously noted human rights concerns on rubber plantations appear to be improving, particularly on Guthrie plantation. However, the security situation in Firestone plantation has deteriorated and may exacerbate the human rights concerns noted in relation to the exercise of police powers by the private security guards there.

### **Methodology**

9. Information for this report was collated from monitoring conducted by 25 Human Rights Officers (HROs) of the Human Rights and Protection Section, who cover all of Liberia's 15 Counties. This information was then cross-checked with reports prepared by other UNMIL components, in particular the Legal and Judicial System Support Division (LJSSD) and the Corrections Advisory Unit (CAU). The draft report was sent to the Chief Justice of the Supreme Court, the Ministry of Justice and the Ministry of Internal Affairs of the Government of Liberia for their comments prior to its public release. The report was also shared with the Office of the High Commissioner for Human Rights (OHCHR) prior to release. Responses received from all partners were examined and, where appropriate, incorporated in this report.

### **Mandate of the Human Rights and Protection Section (HRPS)**

10. UNMIL was established by UN Security Council Resolution 1509 (2003) of 19 September 2003. In accordance with paragraph three of the Security Council Resolution, the mandate of HRPS is:

(l) to contribute towards international efforts to protect and promote human rights in Liberia, with particular attention to vulnerable groups including refugees, returning refugees and internally displaced persons, women, children, and demobilised child soldiers, within UNMIL's capabilities and under acceptable security conditions, in close cooperation with other United Nations agencies, related organisations, governmental organisations, and non-governmental organisations;

(m) to ensure an adequate human rights presence, capacity and expertise within UNMIL to carry out human rights promotion, protection and monitoring activities.<sup>1</sup>

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<sup>1</sup> HRPS does not have a mandate to investigate allegations of human rights abuses committed by UNMIL staff. All cases of serious misconduct by UN personnel, including all complaints involving sexual exploitation and abuse, are investigated by an independent mechanism, the Office of Internal Oversight Services (OIOS). OIOS has complete freedom of action and reports directly to UN Headquarters in New York. Therefore, cases involving alleged abuses by UN personnel are not covered in this report.

## **Political and Human Rights Developments and Trends**

### **Progress in strengthening Liberia's legal framework**

11. On 15 September, the Legislature passed the Act ratifying the United Nations Convention against Corruption and the Act ratifying the African Union Convention on Preventing and Combating Corruption. Both instruments refer to the impact of corruption on human rights enjoyment. In addition, on 15 August, a symposium of national and international partners was held in Monrovia to discuss the establishment of a future Law Reform Commission for Liberia.
  
12. On 4 October, President Ellen Johnson Sirleaf signed the National Forestry Reform Law. The passage of the legislation is in compliance with UN Security Council Resolution 1689 (2006) and marked a significant achievement in protecting Liberia's natural resources to ensure they benefit all Liberians, including future generations. The Law guarantees State regulation of the use of national resources and protects wildlife and the environmental conditions of people living in forested areas. Labour rights and traditional land usage rights are also upheld. It establishes a strong regulatory system for the grant and monitoring of a range of forestry contracts and for the enforcement of the Act's provisions, including anti-corruption measures. To avoid a repeat of the historical exploitation of the forests by rival warlords, the Law prohibits the use of armed security guards in the forestry areas and stipulates that certain categories of people, including people convicted of a felony in the previous five years, perpetrators of human rights violations and members of the Government, are ineligible to apply for forestry licences. The Law establishes a Forest Management Advisory Committee, to include representatives of civil society, labour groups and professional foresters to advise the Forestry Development Authority.

### **Government efforts to improve fiscal management acknowledged by IMF**

13. On 2 October, the International Monetary Fund (IMF) released a statement announcing three important decisions of the IMF Executive Board with regards to Liberia. First, the IMF will begin the de-escalation of the remedial measures applied against Liberia. Second, the declaration of non-cooperation in place against Liberia since 30 March 1990 will be lifted. Third, within 12 months' time the Board will consider lifting the suspension of Liberia's voting and other rights, depending on continuing satisfactory performance regarding economic policies and payments to the IMF during that period. The First Deputy Managing Director of the IMF, Mr. John Lipsky, noted in a statement that the Government had made a commitment to strengthening its cooperation with the IMF and that these actions "could pave the way for Liberia to benefit from debt relief under the Highly Indebted Poor Country Initiative and the Multilateral Debt Relief Initiative".

## **TRC outreach**

14. During the reporting period, County teams representing the Truth and Reconciliation Commission (TRC) were deployed across Liberia to commence the statement-taking process and increase community awareness of the TRC mandate. Statement-taking in the Counties has been progressing smoothly.

## **Education policy and human rights**

15. In October, the Ministry of Education (MOE) ordered that the maximum total fee paid by students at Government elementary schools during the 2006 – 2007 school year must not exceed L\$200.<sup>2</sup> This was a positive step towards meeting conditions essential for universal primary education. In addition, the MOE included peace and human rights education as official subjects in its revised national curriculum, and had, with the support of UNMIL, UNDP, UNESCO and UNHCR, started training teachers in all parts of Liberia to teach these subjects. A number of NGOs were also supporting initiatives to teach human rights in schools. However, many schools still lack basic furniture and teaching materials.

## **Human Rights Monitoring**

16. The case briefings and analysis contained in this quarterly report cover the major human rights issues identified between August and October 2006. The report gives particular focus to the human rights concerns surrounding the incidence of sexual and gender-based violence, especially rape. An examination of the manner in which rape cases were handled by the national authorities sheds light on the various institutional weaknesses afflicting the criminal justice system. This notwithstanding, the high incidence of rape, particularly rape of children, merits specific discussion. Despite the very serious impact of rape on the physical and mental health of victims, the Rape Amendment Act was still not adequately implemented. Many victims do report cases to the police, the Courts or the traditional leaders<sup>3</sup>. Nonetheless, the State authorities that have the mandate to address this serious crime frequently let down the victims because of the lack of resources, capacity and commitment to dispense with cases.

## **Rape as a Human Rights Violation**

17. Rape has many human rights dimensions. The act of rape is a crime that violates the victim's right to physical integrity and freedom from harm. If the authorities responsible for the prevention, investigation, prosecution and trial of rape cases do not act in accordance with the relevant international and national laws, this

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<sup>2</sup> Equivalent to approximately US\$4

<sup>3</sup> UNMIL has supported a number of Government campaigns to increase awareness of the dangers of rape and to encourage victims and witnesses to report cases to the authorities.

result in many human rights violations.<sup>4</sup> Article 26 of the International Covenant on Civil and Political Rights provides that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. However, failure to prosecute rape cases effectively, could also amount to institutional discrimination against women and girl children.<sup>5</sup> This section of the report examines the main human rights concerns surrounding rape in Liberia and identifies the institutional gaps that hinder the implementation of the law. Addressing cases properly would require that all institutions of justice, including the police, prosecutors, Courts and the supporting medical services coordinate to ensure that rape cases are investigated and tried promptly and in accordance with the law and human rights standards.

18. It is worth noting at the onset that UNMIL faced significant difficulties in collecting accurate data on rape cases reported, investigated, indicted and tried. When available, police and Court records were contradictory and confusing. A number of reported cases were not properly recorded by the authorities and thus have not passed through the law enforcement and judicial system. The Committee on the Elimination of Discrimination against Women<sup>6</sup> has recommended that States include in their periodic reports “statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence”.<sup>7</sup>

#### *The Rape Amendment Act*

19. In January 2006, the Rape Amendment Act came into force in Liberia. The culmination of many months of collaborative effort by legislators, civil society and UNMIL, this legislation established a clearer definition of rape, provided strict penalties for rape of minors or gang-rape and narrowed the potential for suspects to be released on bail.

The legislation defines rape as follows:

Section 14.70.1. Offence: A person who has sexual intercourse with another person (male or female) has committed rape if:

- (a) (i) He intentionally penetrates the vagina, anus, mouth or any other opening of another person (male or female) with his penis, without the victim’s consent; or

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<sup>4</sup> It is notable that the Human Rights Committee stated in its General Comment No.28 on Article 3 (the equality of rights between men and women) that “the Committee needs to be provided information [by States parties] on national laws and practice with regards to domestic and other types of violence against women, including rape”.

<sup>5</sup> As acknowledged in the United Nations General Assembly Declaration on the Elimination of Violence against Women (GA Resolution 48/104 of 20 December 1993)

<sup>6</sup> The Committee on the Elimination of Discrimination against Women is the international body that receives reports by States Parties to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Liberia has signed CEDAW but has not yet submitted its initial treaty report.

<sup>7</sup> CEDAW General Recommendation No.12: Violence against women.



(ii) He/She intentionally penetrates the vagina or anus of another person with a foreign object or with any other part of the body (other than the penis) without the victim's consent.

[or]

(b) The victim is less than eighteen years old, provided the actor is eighteen years of age or older.

20. Thus any sexual penetration by an adult of a person below 18 years of age is first-degree rape punishable by a minimum penalty of ten years and a maximum penalty of life imprisonment. Gang-rape (rape committed by two or more people) and rape committed with a particularly serious level of violence or with the threat of violence are also first-degree rape. Second-degree rape (i.e. all other forms) is punishable by seven years imprisonment.
21. The Act provides that all trials should be heard *in camera*. Although the text does not stipulate that every Courtroom hearing, such as bail applications, initial appearance, preliminary hearing etc., should be heard in private, it may be interpreted as requiring that all hearings that would raise substantive details of the case or details that would identify the victim should be heard away from public view. Legal interpretation principles require that legislation is interpreted to protect fundamental rights rather than defeat them. If the public were not prevented from attending such a hearing, it would frustrate the purpose of the Article, which is to ensure confidentiality of all rape cases before the Courts. This provision is a positive legal development.
22. The overwhelming majority of reported cases involve juvenile victims, often very young. In at least two cases covered in this report<sup>8</sup> the suspect admitted having sex with the girl but claimed he was not the first to do so. These cases may indicate that children are at risk of abuse by multiple perpetrators. It is noticeable that very few cases involving adult women were reported or prosecuted. This may be due to a number of factors, including the relatively higher publicity given to cases of rape of juveniles. It is possible that women, particularly those who witnesses or suffered sexual and gender-based violence during the war, may feel more discouraged from attempting to pursue the case through the formal justice system or may have a greater fear of stigma as a result of the attack becoming known.

*Failure to investigate allegations in accordance with the law*

23. On a number of occasions, LNP officers did not adequately investigate rape allegations. This could be attributed to the prevalence of misunderstanding of the seriousness of the crime and/or to the obstacles posed by lack of personnel and logistical resources.

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<sup>8</sup> See paragraph 31 of this report; both cases are from Lofa County.

- A two year old girl was allegedly digitally raped by a 55 year old man in Grand Bassa County on 27 July. The victim reportedly required treatment at the Government Hospital. Initially, a community leader had tried to mediate a settlement of the case, but the parents refused. The man was arrested on 29 August, but the LNP released him several hours later on the grounds that there was not enough evidence citing the absence of a medical certificate. HROs and a Catholic Justice and Peace Commission (JPC) monitor explained to the LNP officers that it was beyond the LNP's authority to release a suspect in such a serious case on these grounds and that the case should be forwarded to the Court for a review of the necessary evidence and the issuance of an order for production of the medical report. When LNP declined to accept this advice, HROs and the JPC monitor alerted the County Attorney, who instructed the City Solicitor to arrange the suspect's re-arrest. The man was re-arrested on 31 August and remanded in pre-trial detention. Following a preliminary hearing, the case was forwarded to the Circuit Court. However, the suspect escaped from detention on 17 October.<sup>9</sup>
- LNP officers in Bong County faced considerable challenges in the investigation of rape cases due to the very limited human resources available. Between August and October, the CID unit had only four officers and the Women and Children Protection Unit was frequently closed as the officer in charge attended classes at Cuttington University.
- In two rape cases reported in Lofa County, the suspect ran away before police could arrest him.

*Rape by people in positions of authority*

24. Sexual assaults by police officers and other people in positions of authority should be treated with the utmost seriousness. The legislation directly aims to protect people in detention from sexual abuse by providing that there is a presumption of lack of consent where "the victim was detained at the time of the relevant act".<sup>10</sup>
- An LNP officer in Bomi County was arrested and transferred to Monrovia after he reportedly had sexual intercourse with a 17 year old female detainee on 25 October in return for releasing her and her two male co-suspects, detained on suspicion of committing the infraction of loitering.<sup>11</sup> Because the girl was below 18 years of age, this act would amount to first-degree rape under the terms of s.14.70 1.(b) of the Rape Amendment Act.

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<sup>9</sup> See paragraph 52 of this report.

<sup>10</sup> Rape Amendment Act: Section 14.70 3 (b) (ii) (c)

<sup>11</sup> The Penal Law states at s.17.6 that a person commits the infraction of loitering if "he loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity." Section 50.1 (c) of the Penal Law provides that an infraction "means an offense for which a sentence of imprisonment is not authorized. An infraction is not a crime and conviction of an infraction shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense". It thus appears that the arrest and custody of the victim and the two boys was not reasonable in the circumstances.

*Failure to provide adequate medical and forensic services to victims of rape*

25. Rape has a very serious impact on the physical and mental health of victims, who may be exposed to sexually-transmitted infections such as HIV/AIDS, unwanted pregnancy and suffer long-term damage to their reproductive health. Adequate medical treatment as soon as possible after the rape is essential for the health of the survivor and to obtain evidence that may be used in a subsequent investigation and trial. However, it was observed that outside the capital many clinics and hospitals lacked the equipment and expertise necessary to perform these examinations and provide treatment. Where the victim is below 18 years of age, the State has a particular duty to ensure access to health care.<sup>12</sup>
- A 15 year old girl was allegedly raped in Maryland County on 28 July. The victim sought medical treatment the following day at the Pleebo Community Clinic. Although the medical report described significant injuries, the only treatment provided was a course of folic acid and aspirin. The suspect was remanded in pre-trial detention but the case was not indicted during the August Term of Court.
  - In July, an 11 year old girl was allegedly raped by a man in Gbarpolu County. When she sought medical attention from a man known as a “medical practitioner” in her community, she was allegedly raped a second time by this person.
  - Doctors were present at Phebe Hospital, Bong County, to examine and treat victims of rape, however Doctors advised HROs that rape victims were often brought to the hospital after some time has elapsed. This made it difficult to record evidence that could indicate that rape took place. Protection agencies reported that some doctors were reluctant to provide detailed medical reports, as they did not want to appear in court to provide evidence.
  - In Grand Cape Mount County, LNP faced problems in obtaining medical reports in cases of violent crime, including rape. There is one clinic in Robertsport and one in Sembehun<sup>13</sup> about 10 km from Robertsport. The staff of both clinics were reportedly unwilling to provide medical reports for use as evidence in the court, on the grounds that this would violate medical ethics since they were not doctors. However, in light of the lack of any alternatives, even a basic report of the victim’s condition and observation of any bruising or other injuries could be valuable evidence in a later trial.

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<sup>12</sup> Convention on the Rights of the Child, Article 24 provides: “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her access to such health care services.”

<sup>13</sup> The Robertsport clinic is Government-owned but currently funded by the Association of Cape Mountainians in the Americas, while the Sembehun clinic is operated by an NGO, Africa Humanitarian Action.

26. It should also be noted that there are no rehabilitation programmes for convicted sex-offenders in Liberia. Without the benefit of counselling, some convicted rapists could become repeat offenders upon their release from prison.

*Possible inappropriate release of suspects on bail*

27. The Constitution guarantees the right to apply for bail.<sup>14</sup> Therefore, suspects accused of rape still have the possibility of being released to await trial. However, the law narrows the scope for this right to bail by stating that “for the purposes of bail” rape shall be deemed a capital offence as per the so-called “capital offenses” under section 13.1 of the Criminal Procedure Law. In at least one case included in this report, the Magistrate mistakenly believed that this meant that rape was subject to capital punishment.<sup>15</sup> What is actually meant by this provision is that the suspect is entitled to bail unless “the proof is evident or the presumption great that he is guilty of the offense”.<sup>16</sup> Monitoring indicates that Courts may have released suspects even where this standard was met.
- The Monrovia City Magistrate released a man from pre-trial detention at the Monrovia Central Prison three days before he was due to appear in Court on 7 August. The suspect had only been in pre-trial detention for approximately one week, well inside the statutory time limits for pre-trial detention.
  - On 28 September, the Bondiway Associate Magistrate released on bail a 23 year old man suspected of raping a 13 year old girl. Following HROs’ intervention, the suspect was rearrested and remanded in pre-trial detention.
  - A five year old girl was allegedly raped by a 60 year old man in Lofa County on 9 September. The man was arrested by LNP after the case was reported on 11 September, whereupon he was remanded in pre-trial detention by the Associate Magistrate. Two weeks later, the Associate Magistrate released the accused from detention, prompting speculation among residents that a bribe of L\$600 had been paid to secure the release. However, the Associate Magistrate told HRO that he had released the accused because there was no food supply provided to the accused and no transport to take him to the Circuit Court in Voinjama. HRO contacted UNPOL, who transported the suspect to Voinjama. LNP advised that they then took the suspect to the Voinjama Magistrates’ Court so that the documentation could be prepared for transfer of the case to the Circuit Court. There were no records of the suspect in either the Magistrates’ Court or the Circuit Court and the Magistrate claimed not to remember the case. There was also no record of the suspect at the Prison.

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<sup>14</sup> Constitution of the republic of Liberia, Article 21 (d) (i): “All accused persons shall be bailable upon their personal recognizance or by sufficient sureties, depending upon the gravity of the charge, unless charged for capital offenses or grave offenses as defined by law.”

<sup>15</sup> See paragraph 32 of this report.

<sup>16</sup> Criminal Procedure Law: s.13.1.1; Rape Amendment Act s.14.70.4 (b)

- In Bong County, a number of suspected rapists were released on bail, apparently because the police cells were already full and the detention centre was not operational.<sup>17</sup> In one case, two men were arrested for the alleged rape of a 13 year old girl in 2005 and again on 21 August this year. It was alleged that the minor was offered L\$20<sup>18</sup> by one of the suspects in return for sex. Both men were later released, apparently due to the overcrowding of the cells. In a separate case, a 19 year old man suspected of raping a 17 year old girl was also released on bond after a Justice of the Peace from Sinje, Grand Cape Mount County, agreed to act as guarantor. It is notable that during this period, other detainees charged with far less serious offences than rape, such as theft, attempted theft, illegal possession of ammunition and disorderly conduct were held in the cells while men suspected of first-degree rape, which should be treated as the highest form of offence for the purposes of granting bail, were released.

#### *Imposition of illegal fees on victims*

28. UNMIL is not aware of any Liberian law that requires victims of crime to pay Court fees, legal fees, witness fees or any other costs for their case to be prosecuted. However, fees were sometimes requested by various authorities, with the result that victims who were unable to pay the money were denied their right to due process and protection of the law.<sup>19</sup>
- The Lofa County Circuit Court was due to hear a rape case on 10 August but the hearing did not proceed. The County Attorney had allegedly requested L\$300 from the mother of the three year old girl victim in order to purchase stationery to prepare the indictment. The County Attorney denied requesting the money and stated that he had advised the victim's mother to pay L\$150 to each of the two witnesses. When asked by HRO, he was unable to give any explanation as to why the hearing had not taken place.
  - At the beginning of August, two suspects were arrested for the alleged rape of an eleven year old girl in Gbarpolu County.<sup>20</sup> The Tubmanburg Magistrate allegedly requested money from the victim's parents to hire a lawyer to represent them. Unable to afford the fees, the victim and her parents returned to Gbarpolu. One of the two accused subsequently escaped from the Tubmanburg detention facility.

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<sup>17</sup> Following the 7 July 2006 riot at Gbarnga Central Prison.

<sup>18</sup> L\$20 is equivalent to less than US 50 cents.

<sup>19</sup> International Covenant on Civil and Political Rights, Art.2 guarantees the right of remedy in the case of a violation of any of the freedoms contained in that instrument; Art.26 guarantees the equality of all people before the law without any discrimination; Convention on the Elimination of all Forms of Discrimination against Women, Art.15.

<sup>20</sup> See paragraph 53 of this report.

### *Private settlement of rape cases*

29. Liberia has a Common Law system. It is a well-established principle of Common Law that the State has the responsibility to prosecute crimes on behalf of society. In Liberia, this principle is reflected in a range of national laws.<sup>21</sup> Private settlement of criminal cases by the parties outside the law does not in anyway diminish the State's responsibility to prosecute. It is therefore of great concern that some prosecutors reportedly facilitated or encouraged the private settlement of rape cases.
- On 29 July, a twenty year old man accused of raping a thirteen year old girl was released by the Voinjama Magistrates' Court, Lofa County, after spending only five days in pre-trial detention. The County Attorney stated that the parents of the victim wrote him a letter asking for the case to be withdrawn as the accused is related to the victim. The Magistrates' Court released the man at the County Attorney's request. The County Attorney claimed that there was no possibility to proceed with the case because the witnesses might not come forward to support the prosecution.
  - The City Solicitor assigned to the Bondiway Magistrates' Court, Margibi County, drafted an agreement between the parents of the victim and suspect to settle a rape case outside legal procedures. The City Solicitor then co-signed the agreement on 19 July.

### *Delayed indictments and failure to indict*

30. Despite the prevalence of the offence, relatively few cases of rape were indicted during the August Term of Court. Monitoring indicated the following:
- While 87 people were in pre-trial detention at the Monrovia Central Prison on rape charges by the end of October, only 10 rape cases were indicted in the Montserrado County Circuit Court during the August Term of Court.
  - Although 14 people were in pre-trial detention at Kakata Central Prison on rape charges by the end of October, no indictments for rape were filed in the Margibi County Circuit Court during the August Term.

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<sup>21</sup> Chapter 22.2 of the Executive Law provides that the Minister of Justice will have responsibility to, *inter alia*, prosecute all suits and proceedings in the Courts in which the Republic of Liberia is interested. Article 1.1 of the Penal Law states "The general purposes of this title are to establish a system of prohibitions and penalties to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which governmental protection of this kind is appropriate". Chapter Three of the Judiciary Law establishes Circuit Courts in 14 Counties and provides for their original and appellate jurisdiction.

- Despite the fact that at least nine cases of rape were pending in Bomi County between the closure of the May and the end of the August Terms of Court, only one case was indicted in the Circuit Court.
  - Although at least nine cases of rape were reported between August and October, no rape cases were indicted in the Lofa County Circuit Court during the August Term of Court.
  - Five rape cases were indicted in the Grand Cape Mount Circuit Court.
  - Four of the five indictments filed in Bong County during the August Term were rape cases. This was in contrast to 12 pending rape cases: seven cases reported during the August Term of Court and five cases awaiting indictment since the May Term of Court.
  - In Grand Bassa County, the Grand Jury approved an indictment in one case during the August Term of Court. However, the alleged victim later submitted a letter to the Clerk of the Court requesting that the case be withdrawn.<sup>22</sup>
  - In Maryland County, three rape cases were indicted and three were rejected and marked *ignoramus*.<sup>23</sup>
  - No rape cases were indicted in Grand Kru County due to the failure of the Court to open for the August Term. Barclayville LNP sent two cases to the Magistrates' Court for preliminary hearings and one of these was subsequently forwarded to the Circuit Court for indictment in the November Term.
  - No rape cases were indicted in Sinoe, River Gee, River Cess, Grand Gedeh, Gbarpolu or Nimba Counties during the August Term of Court.
31. Existing restrictions on indictments (i.e. that an indictment must be granted by the Grand Jury during the Term of Court)<sup>24</sup> appeared to limit Court efficiency and the successful prosecution of rape cases. Section 18.2 of the Criminal Procedure Law provides that suspects who have been held in pre-trial detention without being indicted by the end of the following Term of Court may be released.<sup>25</sup> Although

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<sup>22</sup> See paragraph 31 of this report.

<sup>23</sup> As per the Criminal Procedure Law, s.15.12; i.e. the Grand Jury declined to issue an indictment.

<sup>24</sup> Criminal Procedure Law s.14.3.2 "An indictment shall be signed by the foreman of the grand jury and by the prosecuting attorney." Section 15.1 "...An indictment cannot be found without the concurrence of at least twelve grand jurors". Section 15.12 "Every indictment found shall be endorsed as a "true bill" and signed by the foreman and returned to the judge in open court."

<sup>25</sup> Criminal Procedure Law s.18.2: "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 offense or his appearance in court in response to a summons or notice to appear charging him with such an offense."

release under Section 18.2 does not prevent indictment and trial at a later date,<sup>26</sup> monitoring indicated that once pre-trial detainees have been released, they were unlikely to be indicted. Cases appeared to be considered closed, even where there was evidence to proceed.

- Although only one case was indicted in Bomi County, medical evidence was submitted to the Court in relation to four other cases. In mid-August, the County Attorney informed HROs that if he did not indict the remaining cases during the August Term of Court, then he would submit motions of *nolle prosequi* under Section 18.2 of the Criminal Procedure Law. However, it is the County Attorney's duty to ensure that an indictment is prepared where the evidence supports the charge.
- During the August Term, the indictment prepared in one case was not presented to the Bomi County Grand Jury because the suspect had escaped from detention. However, the voluntary absence of the suspect does not appear to be a legal bar to the issuance of an indictment.
- The alleged rape of an eight year old girl by a 45 year old Imam, reported to the Robertsport Magistrates' Court on 10 December 2005, had still not been indicted by the end of the August Term of Court. The Magistrates' Court conducted a preliminary hearing and on 12 December transferred the case for prosecution in the Criminal Court A at the Temple of Justice in Monrovia. The Grand Cape Mount County Circuit Court was not operating at that time. The suspect was released from pre-trial detention in December; he later returned to Grand Cape Mount County.
- The Grand Jury of Grand Bassa County approved an indictment in the case of a woman allegedly gang-raped in June by four males, including two juveniles. The two juvenile suspects were released into their parents' custody by the end of June. Personnel at the LAC Magistrates' Court claimed repeatedly that the victim was not interested in pursuing the case and that this was the reason for the delay in the preliminary hearing. The two adult suspects detained at Buchanan Central Prison claimed that the juveniles' parents had paid US\$150 to secure their release, whereas the two detained adults had not been able to pay the US\$200 allegedly demanded for their release. The victim testified before the Grand Jury on 21 September. However, she subsequently sent a letter to the Circuit Court Clerk stating that "the Private Prosecutrix [*sic*] and defendants had met and found a common ground to release defendants from detention". HROs had earlier observed that the woman had been under pressure from the community, in particular the parents of the juvenile suspects, to abandon the case.
- A 13 year old girl was allegedly raped by two men in Margibi County on 7 August. The two suspects were arrested and detained. The suspects were remanded in pre-trial detention but had not been indicted by the end of the August Term of Court.

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<sup>26</sup> Criminal Procedure Law, s.18.3 provides that "dismissal of an indictment or complaint... at any time before the jury is empanelled and sworn or, if the case is to be tried by the court, before the court has begun to hear evidence, shall not constitute a bar ... to a subsequent prosecution."



- On 10 August, a nine year old girl was allegedly raped in Voinjama, Lofa County. Police arrested the 29 year old suspect two days later. The suspect was remanded in pre-trial detention. Although the medical report supported the charge, the case was not indicted during the August Term of Court.
- A 25 year old man was arrested for the alleged rape of a 13 year old girl on 7 October in Voinjama, Lofa County. The suspect allegedly threatened to kill the girl if she reported the crime to anyone. The medical report indicated that penetration took place but the suspect, who was remanded in pre-trial detention, was not indicted during the August Term of Court.

*Failure of Magistrates to conduct preliminary hearings in accordance with the law*

32. Monitoring indicated that the majority of reported cases do not proceed beyond the level of the Magistrates' Court. This may be due to a number of factors, including the problems outlined in the preceding paragraphs of this report. Specific concerns have also been noted in relation to the manner in which Magistrates' Courts handled rape cases during August, September and October, as noted below.
- On 10 August, HROs monitored the preliminary hearing of a case of first degree rape in the Pleebo Magistrates' Court, Maryland County. The 20 year old suspect was charged with rape of a fifteen year old girl, allegedly committed on 1 August. The Pleebo Magistrate stated that due to the absence of a Defence Counsel, the Court was unable to provide the defendant with an attorney at this time, but that he would be afforded this right at the Circuit Court. However, under international law binding on Liberia and national legislation, the accused has the right to legal representation at all stages of criminal proceedings.<sup>27</sup> The Magistrate wrongly stated that first-degree rape is a capital offence.<sup>28</sup> The Magistrate also incorrectly declared that because the victim was a minor, the case should have been brought before the Juvenile Court.<sup>29</sup> Finally, the Magistrate stated that the accused had no right to bail.<sup>30</sup> However, the Magistrate did hold the proceedings in camera, thereby respecting the privacy of the victim and the spirit of the Rape Amendment Act.<sup>31</sup> The suspect was remanded in pre-trial detention and the case was referred to the Circuit Court for indictment proceedings.

<sup>27</sup> International Covenant on Civil and Political Rights, Art.14.3 (b); Constitution of the Republic of Liberia, Art.21 (i); Criminal Procedure Law, s.2.2.1

<sup>28</sup> Early draft versions of the new law did include capital punishment as the maximum penalty. However, these were removed prior to the adoption of the law, as this would have violated Liberia's commitments under the Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty.

<sup>29</sup> The Juvenile Court hears cases involving juvenile suspects and delinquents, not victims.

<sup>30</sup> Although bail is more restricted in the case of a rape charge than in minor charges, suspects may still request that the Court consider releasing them on bail, in accordance with the right to bail guaranteed by Art. 21 (d) (i). The court must then take into account all the circumstances of the case at that point, including any humanitarian grounds for granting bail.

<sup>31</sup> Rape Amendment Act, s.5

- In Nimba County, the Ganta Stipendiary Magistrate ignored medical evidence that indicated rape had taken place and dismissed charges in two cases involving child victims. In the first case, a 13 year old girl was allegedly raped in late September. Although the medical report indicated that there was evidence consistent with rape, the Magistrate dismissed the charge. In the second case, a seven year old child was allegedly raped on 2 October. The medical report and testimony of the examining doctor indicated the existence of serious wounds consistent with rape. However, the Magistrate dismissed the case. The Magistrate later informed HRO that she dismissed both cases on the grounds that there was no substantial evidence to support the charge. Although she acknowledged the contents of the reports in both cases, she advised that neither report stated that rape took place. Generally, medical reports submitted to Courts in Liberia contain details only of the condition of the victims and do not include a finding as to whether rape actually took place, as this is a matter for the Courts to determine.
  
- The Bondiway Magistrates' Court did not forward the charge sheet in a rape case involving a one year old baby to the Margibi County Circuit Court until almost one month after the alleged rape took place. The baby girl was allegedly raped by her 15 year old cousin and his 19 year old friend on 10 September, but the charge sheet was not forwarded until 5 October. The adult suspect was still at large at the end of October.

*Failure of Circuit Courts to try rape cases in accordance with the law*

33. Some rape cases were listed for trial in Circuit Courts during the August Term of Court. In summary, the results were as follows:
- In Montserrado County, of the 16 rape cases listed for trial, only one was heard and one was withdrawn during the August Term of Court.
  
  - In Bomi County, the two rape cases listed for trial resulted in acquittals.
  
  - Of the five rape cases listed for trial in Grand Cape Mount County, only one was heard.
  
  - In Bong County, five rape cases were listed for trial during the August Term. Of these, only one led to a conviction. One case was dismissed for lack of evidence and the remaining three cases did not proceed due to the absence of the accused men, who had escaped from custody.
  
  - In Grand Bassa County, three rape cases were listed for trial but none was heard.
  
  - In Maryland County, eight rape cases were listed for trial but none was heard.

- In River Gee County, one case of rape was listed for trial but subsequently removed from the docket for lack of evidence.<sup>32</sup>
  - In Grand Kru County, one case of attempted rape was listed for trial but could not proceed due to the non-operation of the Circuit Court.
  - No rape cases were listed or tried in Margibi, Gbarpolu, Lofa, Nimba, River Cess, Grand Gedeh, or Sinoe Counties.
34. Of the cases that were brought to trial during the reporting period, significant violations of legal procedure and the Rape Amendment Act were noted in several cases. In some instances, these breaches amounted to violations of the due process rights of the victim or the suspect or both. These concerns are documented in the case briefings below.
- A Township Commissioner and an Imam from the same town in Grand Cape Mount County were arrested and charged with the alleged rape of an eleven year old girl in February. The trials of the two men were listed for separate hearing and by the end of October only the Township Commissioner had been tried. He was acquitted and released from custody on 11 October. The County Attorney advised HROs that although it was established that the man had actually had sex with the girl and was thus apparently guilty of first-degree rape, he was acquitted by the Jury. This was a serious error of law that should have given rise to an appeal to the Supreme Court. Following the acquittal, the victim's parents advised that they would not return for the second trial, because they did not have the financial means to stay in Robertsport for that length of time and because they had lost faith in the judicial system.
  - Two cases that were on the Bomi County Circuit Court list since the May Term ended in a dismissal and a withdrawal. In the former, the case was apparently dropped by the authorities because it had been pending for a long (unknown) period of time. In the latter case, the hearing was abandoned at the request of the alleged victim's family. The sole rape case indicted in Bomi County during the August Term of Court did not proceed because the accused escaped from the Tubmanburg detention facility before the hearing. Escape from lawful custody is itself a criminal offence.<sup>33</sup> UNMIL HRPS is unaware of any requirement under Liberian legislation for the indictment process or trial to be suspended where an accused person has voluntarily and illegally absented himself from the proceedings.
  - On 19 September, the Bong County Circuit Court dismissed a rape case on the grounds that there was insufficient evidence to prosecute. The County Attorney had submitted a medical report as evidence but this was inconclusive. The victim had

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<sup>32</sup> The 10 year old victim claimed to have been raped in a dream. It was not clear why the authorities pursued the case to the level of the Circuit Court without further evidence. There were no psycho-social counselling services available in River Gee County to assess the child and determine why she dreamed she was raped.

<sup>33</sup> Penal Law, s.12.7

named a witness but that person was out of the area and could not be located. On 3 October, the same suspect was arrested and charged with the alleged rape of a twelve year old boy. The suspect was charged with aggravated sodomy<sup>34</sup> instead of rape. The Deputy CID Commander claimed that this was the only applicable charge. However, the definition of rape under the Rape Amendment Act does not distinguish between illegal penetration of males and females and rape carries a heavier penalty than aggravated sodomy. The accused was among a group of four detainees who escaped from Gbarnga Central Police Station on 16 October.<sup>35</sup>

- Of the three rape cases listed for trial in the Grand Bassa County Circuit Court, one involved the alleged rape of a 16 year old girl by a Plantation Protection Department (PPD) officer employed on the LAC rubber plantation.<sup>36</sup> The County Attorney had given various reasons for the delay in seeking a hearing of the case after the Circuit Court Judge dismissed the charges during the May Term, including that the case was forwarded to the Solicitor-General and that it was before the Supreme Court. It was reported that the officer was dismissed from the LAC plantation because he could not provide documentation clearing him of the charges and that he was subsequently hired in Firestone plantation.

## Law Enforcement

35. Between August and October, serious LNP lapses were observed, including the lack of human rights knowledge amongst individual officers, very limited State provision of resources and infrastructure, and the lack of an adequate and independent oversight mechanism which could ensure that all allegations of police misconduct are handled in accordance with national law and international policing best practice. The shortage of police officers due to the restructuring process is an additional, albeit temporary, impediment.
36. Violations allegedly committed by Plantation Protection Department (PPD) personnel are also included in this section of the report. Although PPD staff are

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<sup>34</sup> Penal Law, s.14.73

<sup>35</sup> See paragraph 53 of this report.

<sup>36</sup> This case was first reported in the UNMIL Human Rights Report for May – July 2006: In Grand Bassa County, the preliminary hearing in the case of a LAC Plant Protection Department (PPD) officer charged with the statutory rape of a 16 year old girl continued on 9 May in open Court. The Rape Amendment Act provides that all rape cases must be heard *in camera* i.e in private, away from public view. The Magistrate subsequently granted the City Solicitor's motion to exclude the public from the hearing. The defendant admitted to having sex with the victim. Although the Rape Amendment Act provides that sex with a person under eighteen years of age is a first-degree felony regardless of consent, the Magistrate instructed the victim to bring additional witnesses to support her case. The following day, the County Attorney took over prosecution of the matter from the City Solicitor and filed a motion to have the case transferred to the Circuit Court. The Magistrate agreed to the transfer and ordered the accused to be remanded in pre-trial detention. However, the accused was released on 3 July, although a previous bail application had been dismissed after resistance by the County Attorney and the new application did not contain substantive reasons in support of the release. The Judge incorrectly argued that he was obliged to order release on bail due to the absence of the County Attorney from the bail hearing.

private security guards contracted to work on some of the larger rubber plantations and are not State officials, they do exercise some police powers, such as arrest. This limited authority is granted to the PPD in accordance with the provisions of concession agreements between plantation management and the Government. Because PPD staff exercise some police powers, usually in areas where they are far stronger in number and resources than the local LNP branch and because they do so with State authorisation, abuses of human rights committed by the PPD arguably amount to human rights violations.<sup>37</sup> The Government is therefore responsible for ensuring that such violations do not occur and for addressing all reported cases, including prosecution as appropriate.

*Violation of the 48 hours constitutional limit on police custody*

37. In a positive development, in August, the Solicitor-General issued two memoranda providing administrative instructions designed to enhance criminal investigations and reduce the number of people in lengthy pre-trial detention. The memorandum of 2 August instructed County Attorneys and City Solicitors to seek arrest warrants only after the police have conducted an investigation, found probable cause and prepared the charge sheet. The memorandum noted that many people had been detained based on complaints that were not supported by police investigation and that frequently these cases do not proceed to trial because there is no police record of the complainant's case. The memorandum of 4 August instructed County Attorneys, Prison Superintendents and the LNP to detain people in accordance with the law. This included that Prison Superintendents should only receive detainees with an order from the competent Court and that police must ensure that suspects are only held for the maximum 48 hour period before being brought before the Court.
38. Police arrest and custody of suspects is the first stage in the criminal justice process; custody should not be used as a form of punishment, or as a substitute for the application of judicial procedures. When suspects are held in police custody for an excessive period, they are more vulnerable to abuses of their rights, including the right to freedom from torture.<sup>38</sup> In addition, the judicial process is delayed, with a direct impact on the right of the victim to seek redress. The importance of ensuring that Courts were notified of cases promptly was recognised by the drafters of the 1986 Constitution, who included at Section 21 (f) a guarantee that "Every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight hours".
39. People in police custody were at risk of being held beyond this constitutional limit. Whether this breach resulted from a lack of transport or manpower, the non-

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<sup>37</sup> Alternatively, such acts by PPD personnel (being non-State actors) would amount to human rights abuses.

<sup>38</sup> Convention against Torture and Other Cruel, Degrading or Inhuman Treatment or Punishment; International Covenant on Civil and Political Rights, Art.7; Constitution of the Republic of Liberia, Art.21 (e)

operation of the nearest Court, or intentional disregard for the law, steps must be taken to address this recurring problem. Under the terms of concession agreements, PPD personnel must hand suspects over to the custody of LNP immediately. LNP officers are required to ensure that people are not held beyond 48 hours. In both Firestone and Liberia Agriculture Company (LAC) rubber plantations, LNP and PPD personnel used the same cell to hold people in their custody.

- On 19 September, 17 suspects were found detained in the Firestone LNP/PPD holding cell, Margibi County, which has capacity for only eight people. Three of the suspects had been held beyond 48 hours. Just five days later, HROs found four other suspects held in the same cell beyond the 48 hours limit. The men had been in custody since 21 September.
- A man was held in the PPD holding cell, LAC plantation, between Friday 6 October and Tuesday 10 October because the sole LNP officer assigned to the plantation left for Firestone plantation on 7 October without interviewing and sending the suspect to court in accordance with the 48 hour constitutional guarantee.

*Possible excessive use of force by LNP officers*

40. While police officers are entitled to use reasonable force to defend themselves or to arrest a suspect who resists arrest, this force must be no more than is required in the circumstances and must never be used as punishment or to extract information.<sup>39</sup> The cases below contain examples of excessive use of force that may amount to torture or other serious mistreatment, prohibited by the Constitution and by Liberia's commitments under the International Covenant on Civil and Political Rights and the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment.<sup>40</sup>

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<sup>39</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the eight UN Congress on the Prevention of Crime and the Treatment of Offenders, August 1990, Art. 5: "Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."

<sup>40</sup> Convention against Torture and other Cruel Inhuman or degrading Treatment or Punishment, Art.1: "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

- In Grand Kru County, a man was allegedly assaulted by the Barclayville police whilst in custody. The alleged victim claimed that he was arrested and held in custody on 28 July and that the following morning he was taken from his cell by the LNP Commander and one other officer and then whipped repeatedly by both men. He was released in early August after his family reportedly negotiated a settlement of the case with the police. HRO visited the complainant and observed that he had a number of serious injuries and was bed-ridden. The LNP Commander subsequently left Barclayville and had not returned by the end of October.
  - A man in Bong County alleged that he and his wife were assaulted by five LNP officers whilst in custody at Ganta Parking police station on 17 September. The officer in command at Ganta Parking Station on the night in question denied these allegations but reported that two LNP officers had to use force to arrest the man. The LNP denied the force was excessive.
  - An LNP officer allegedly assaulted a six months pregnant woman on 20 September in Lofa County. The victim required additional medical treatment in Monrovia. On 2 October, the LNP General Commander for Lofa County told HRO that he was awaiting instructions from LNP Headquarters in Monrovia before arresting the officer but that the officer had been suspended from duty. By the time instructions were sent from HQ to arrest the officer, he had already left the area.
41. LNP officers are also responsible for the prevention of any violence committed by people in custody against other detainees. Where police officers did not take adequate steps to prevent and end any violent incidents occurring in the police holding cells, they may have contravened the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.
- On 29 September, inmates of the Tubmanburg detention facility, Bomi County, repeatedly assaulted a new detainee and stripped him of his clothes. The assault and shouting could be heard outside the police building, where HROs were standing with an LNP officer. However, the LNP failed to take any steps to end the assault until requested to do so by HROs. One of the inmates told HROs that they had established their own rules in the cell and that the LNP officers were aware of this. LNP officers stated that due to the overcrowding of the holding cells they were powerless to prevent this behaviour.

*Possible excessive use of force by PPD personnel*

42. Between August and October, HROs observed nine people in custody at the Firestone PPD holding cells, Margibi County, presenting injuries consistent with possible excessive use of force. All nine males reported that they had been assaulted by PPD officers during or after arrest. By the end of October, no police investigation had been made in relation to any of these cases. The cases include the following:

- On 22 August, HROs discovered three people in custody in the LNP/PPD holding cell with injuries to their faces, legs and feet. Following HROs intervention, the three suspects were sent to the hospital for treatment.
- On 31 August, HROs observed that a man in Firestone LNP/PPD holding cell had injuries to his back and skull, allegedly as a result of excessive force by PPD officers upon arrest. After HROs' intervention, the man was admitted to hospital, where he was diagnosed as having a fractured skull.
- Three of eight suspects arrested on 27 September were found in the LNP/PPD holding cell the following day with injuries to their legs, feet and hands. They were admitted to the Firestone clinic for treatment.
- A 17 year old boy was found in the LNP/PPD holding cell on 16 October with injuries to his back.

*Mob justice, vigilante action and “community police”*

43. On 4 September, the Minister of Justice issued a press statement acknowledging the “vulnerability of our national security” and the “Government’s constitutional obligation to defend and protect lives and property in the country”.<sup>41</sup> The statement called on local communities to establish community watch teams but warned against mob justice. Although the challenges faced by the Government in the assertion of State authority are very great, the police and judicial systems must be strengthened in order to prevent illegal vigilante actions such as the ones described below.
- A man accused of threatening people in River Cess County in August reported that, on the orders of the Clan Chief, he had been tied in “tabay” (tied so tightly that the rope cuts into the skin) beaten and had chilli pepper rubbed onto his skin. He escaped and was later arrested by LNP when making a complaint to the Magistrates’ Court. By the end of October, no police investigation had been undertaken into this allegation of aggravated assault and LNP informed HRO that the victim and his attackers had come to a private settlement of the case.
  - A detainee at Buchanan Central Prison, Grand Bassa County, complained that he had been beaten by a mob of approximately 20 men before he was handed over to LNP officers. He further claimed to have spent three days in the police cell without treatment for his injuries. Prison staff confirmed that the man was first detained by LNP and that when he was brought to the detention centre he had significant bruises.

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<sup>41</sup> Press Statement by H.E. Cllr. Frances Johnson-Morris Minister of Justice and Attorney General of the Republic of Liberia, 4 September 2006.



- On 13 October, a group of young men and women attacked the Zwedru LNP station, Grand Gedeh County, and looted nearby shops. Two vehicles were also damaged. It appears that the attack was provoked by false reports that suspects in a recent murder case were being held at the station. The group reportedly intended to abduct the suspects. Two suspects were in fact detained by Ivorian authorities in Cote d'Ivoire. On 14 October, LNP officers arrested 26 people for their alleged involvement in the mob attack. Six were later sentenced to 14 days imprisonment each for disorderly conduct.
  - On 28 August, two girls drowned in a canoe accident in Sinoe County. Following the recovery of one of the girl's body several days later, a local witchdoctor accused three elderly women of causing the accident by witchcraft, apparently because the body showed signs of decomposition and of having been eaten by fish. The homes of these three women were immediately vandalised and only the intervention of UNPOL and LNP prevented serious injury to the women. The witchdoctor and other people involved in the violence were arrested and the case forwarded to the Circuit Court for hearing during the November Term of Court.
44. In those cases where people have been seriously assaulted after being accused of witchcraft or ritualistic killing, the authorities at times faced difficulties in investigating and prosecuting those responsible for the beatings, including in cases where there was no evidence to indicate that the victims participated in any illegal practices.
- Three men suspected of practising witchcraft in Pleebo District, Maryland County, were beaten by villagers in early October to force a confession. They were charged by LNP with poisoning through witchcraft but were taken to hospital for treatment of their injuries. The men were released from police custody because there was no vehicle to take them to Harper. Although the Pleebo Magistrate indicated that he would issue arrest warrants for the villagers suspected of attacking the three men, by the end of October no further action had been taken by the authorities to investigate and prosecute those responsible.
45. So-called "community police"<sup>42</sup> are a voluntary body of residents, established in some areas ostensibly to support the work of the LNP (e.g. by supplying information on suspicious activities observed in the neighbourhood). They are not armed and they are not intended to carry out police duties. In River Gee County, members of the "community police" were often appointed by District Commissioners, with little or no input from the LNP, and appeared to act as a private security force of the relevant Commissioner. The very small number of LNP officers in River Gee County, only three, made it even more difficult to control the activities of this group.

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<sup>42</sup> This report uses the name adopted by these groups. UNMIL notes that "community police" is distinct from "community-policing" which is a legitimate policing technique conducted by modern police forces in a number of countries.

- On 2 September, the Nyenawliken District Commissioner, River Gee County, ordered the community police to arrest a businessman for tax evasion. This is a criminal matter beyond the authority of a District Commissioner. The victim's shop was looted by the members of the community police and he was seriously assaulted. His son, who tried to intervene, was also seriously assaulted and was hung upside down over a bridge. The six community police members and the District Commissioner were arrested by the Fishtown LNP, who forwarded the case to the Magistrates' Court despite pressure from the District Superintendent to release the men. The case was tried in the Magistrates' Court, as by the time all parties were present in Fishtown to attend the hearing, the Circuit Court had already finished the August Term. It is not clear why the Court did not issue summonses to order the presence of all parties during the August Term. Due to the sensitive nature of the case, involving a Government officer, it was reportedly deemed more appropriate to proceed immediately with the trial in the Magistrates' Court rather than wait for the November Term of Court. However, given that the case did include a prominent accused, it was all the more important that the case should proceed strictly in accordance with the law. On 11 September, the Magistrate found the District Commissioner guilty of abusing the powers of his office to harm the two victims and ordered him to pay a fine of US\$35, while the six community police members were ordered to pay fines of US\$15 each, as well as reimburse the victims for their medical expenses and the stolen goods. A prison sentence was apparently not imposed because there is no detention centre in River Gee County.

## **The Judiciary**

46. In any democracy, the judiciary plays a key role in the promotion and protection of human rights. By upholding the rule of law and due process, Judges, Magistrates, prosecutors, defence lawyers and Court administrators ensure that those fundamental rights essential for human dignity are protected against any unlawful threat. At this stage of the peace-building process, the Liberian judiciary is not able to protect fundamental human rights.<sup>43</sup> Corruption remains a serious challenge to the rule of law, while large numbers of detainees are held in pre-trial detention for lengthy periods without trial.

### *Failure to ensure due process*

47. Without adequate and on-going training and legal texts, many Magistrates and Judges were apparently unaware of the relevant legislation and their responsibilities to uphold the law and human rights standards.
- On 17 September, the Grand Bassa County Circuit Court sentenced a man convicted of murder to death. The death penalty had been requested by the County Attorney. Liberia has signed the Optional Protocol to the International Covenant on Civil and

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<sup>43</sup> For more detailed coverage of the problems within the judicial system, see the UNMIL Report on the Human Rights Situation in Liberia May – July 2006

Political Rights, aimed at the abolition of the death penalty. In accordance with principles of international law, all State officials are thus prevented from doing anything that would frustrate the object and purpose of that instrument. When HROs raised the matter with the Judge, he responded that the death penalty was still valid under Liberian law. The Defence Counsel has reportedly submitted an appeal to the Supreme Court. The convicted man escaped from Buchanan Central Prison on 17 October.<sup>44</sup>

- In Bomi County, a prisoner was held for five days beyond the date of his release, 20 August, because the Magistrate ordered that he should only be released upon payment of L\$1400 compensation for the stolen item.
- On 3 October, the Maryland County Circuit Court convicted a man of obstruction of justice without any evidence to support the charge.<sup>45</sup> The victim, a security guard employed by an NGO, was arrested and fined L\$300 by the Court after he informed the Court Sheriff that two NGO staff members were away from the office and denied him entry to the premises in the absence of a warrant. The man was sentenced to five days' imprisonment when he failed to pay the fine and was only released on 5 October following the intervention of HROs.

#### *Corruption and human rights*

48. Corruption in the judicial sector has an immense impact on the enjoyment of fundamental freedoms. Poor salaries and the absence of any regular oversight and accountability mechanism for the judiciary may have encouraged corruption.
- The case of a woman charged with misappropriation of property was first heard in the Sinje Magistrate's Court, Grand Cape Mount County. The woman, who is alleged to have sold goods worth L\$88,000<sup>46</sup> on behalf of the complainant and then kept the proceeds for herself, gave US\$100 to the Magistrate to be passed on to the complainant as proof of her intention to return the money. The case was referred to the Circuit Court but the Magistrate apparently did not inform the complainant or the Court that he had accepted this money on behalf of the complainant. Prior to the trial, the HRO and County Attorney travelled to Sinje where they inquired with the Magistrate regarding the US\$100. The Magistrate admitted receiving the money and stated that he would not hand it over to the complainant until he had been paid his salary. This action by the Magistrate may amount to the offence of criminal misappropriation of entrusted property.<sup>47</sup> The woman was convicted in the Circuit

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<sup>44</sup> See paragraph 52 of this report.

<sup>45</sup> Penal Law, subchapter 12 C "Obstruction of Justice" covers tampering with witnesses and informants in proceedings (s.12.40), tampering in criminal investigations (s.12.41), tampering with physical evidence (s.12.42) and harassment of and communication with jurors (s.12.43). It is not clear which of these provisions the Court applied in this case.

<sup>46</sup> L\$88,000 is equivalent to approximately US\$1,600

<sup>47</sup> Penal Law, s.15.56: "A person is guilty of a misdemeanour of the first degree if he disposes of, uses or transfers any interest in property which has been entrusted to him as a fiduciary, or in his capacity as a public servant or an officer of a financial institution, in a manner that he knows is not authorized and that

Court and sentenced to five years' imprisonment, with the possibility of earlier release upon payment of the stolen money.

- It was reported that detainees in the holding cell of the LAC Magistrates' Court had paid money in an attempt to secure their release. One man held since 6 October claimed to have paid L\$2000 to the Stipendiary Magistrate. A second man, detained since 21 October, claimed to have paid L\$1260 to the LNP officer deployed to LAC and L\$500 to the Stipendiary Magistrate.

#### *Failure to try cases promptly*

- In Grand Bassa County, a man was detained in the LAC Magistrates' Court between 20 September and 18 October awaiting preliminary hearing. Section 12.3 of the Criminal procedure Law provides that a preliminary hearing shall be held "within a reasonable time"<sup>48</sup>. In this case, the Stipendiary Magistrate and the City Solicitor stated that the hearing had not taken place because the alleged victim was still in hospital. However, inquiries at the hospital revealed that the man was released on 25 September. When the complainant failed to turn up for the hearing listed for 18 October, the City Solicitor filed a motion of *nolle prosequi* to dismiss the case and the accused was released.
- Two suspects detained in Maryland County on 17 March were released on 10 October after serving more than 260 days in pre-trial detention without charge<sup>49</sup>. Upon application by the Defence Counsel, a third man arrested on 24 March and detained without charge was also released. Although the County Attorney post was vacant for much of the year, fair trial standards require the Court to follow basic case management procedures and consider releasing detainees who have not been indicted after the second term of court, as per s.18.2 of the Criminal Procedure Law<sup>50</sup>.
- A man charged with negligent homicide was released from pre-trial detention at Kakata Central Prison, Margibi County, after being held for 16 months without trial. A 72 year old man was released after serving five months pre-trial detention on a charge of murder through lightning (i.e. a form of witchcraft) without indictment.

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he knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted."

<sup>48</sup> Criminal Procedure Law, s.12.3: "If the defendant requests a preliminary examination, the magistrate or justice of the peace shall hear the evidence within a reasonable time. ..The magistrate or justice of the peace shall issue such process as may be necessary for the summoning if witnesses for the Republic. All witnesses shall be examined in the presence of the defendant and may be cross-examined..."

<sup>49</sup> One of these suspects was a Nigerian citizen. Article 2 of the International Covenant on Civil and Political rights guarantees non-discrimination in the enjoyment of the rights set forth in that Covenant. General comment No.15 of the Human Rights Committee confirms that these rights (except those related specifically to citizenship) extend to non-citizens within the territory.

<sup>50</sup> This section does not require an application by the County Attorney or Defence Counsel; the Court can act on its own motion to review pre-trial detention and release the detainee as it deems appropriate.

- By the end of October, an elderly woman had been held for five months in the Greenville detention facility, Sinoe County, awaiting trial for the alleged ritualistic killing of a baby. No incriminating evidence had been brought to the attention of the accused and there was no Defence Counsel assigned to Sinoe County. The County Attorney confirmed that the woman would be tried in the November Term of Court, should a Defence Counsel be appointed to Sinoe County by that time<sup>51</sup>.

### Human Rights in Prisons and Detention Facilities

49. The maximum operational capacity of each of these facilities was determined at the time of construction. However, some of these maximum operational capacities were exceeded between August and October. The capacity and dates of peak inmate numbers in relation to each detention facility are given below:

Detention centre	Maximum operational capacity	Highest number of inmates August - October	Date of inmate peak
Monrovia Central Prison	180	550	Week ending 29 October
Kakata Central Prison	60	73	Week ending 17 September
Gbarnga Central Prison	40	52	Week ending 5 August
Buchanan Central Prison	60	42	Week ending 15 October
Saniquillie Central Prison <sup>52</sup>	N/A	38	Week ending 24 September
Voinjama Central Prison	60	23	Week ending 24 September
Zwedru LNP holding cells <sup>53</sup>	N/A	22	Week ending 29 October
Harper Central Prison	114	23	Week ending 17 September
Tubmanburg holding cells	10 <sup>54</sup>	19 <sup>55</sup>	Week ending 13 August

These statistics are compiled from the CAU reports for the period of August - October 2006.

#### *Risks to health due to poor hygiene and failure to provide adequate nutrition or medical treatment*

<sup>51</sup> The only private lawyer available for hire in Sinoe County is over 80 years of age and suffering ill-health which prevents him litigating cases.

<sup>52</sup> Saniquillie Central Prison is currently located in a former warehouse that was not intended for this purpose, thus there is no official maximum operational capacity.

<sup>53</sup> In Zwedru and Tubmanburg, detainees and convicted prisoners are held in the LNP station cells. The Zwedru Central Prison is under renovation.

<sup>54</sup> This figure is based on HROs' estimates, since the Tubmanburg detention facility is not a formal prison.

<sup>55</sup> This figure includes only Court detainees and not people in police custody held in the same cells.

50. The international human rights standards binding on Liberia require the Government to hold people deprived of their liberty in conditions that will protect and maintain their inherent human dignity. The Human Rights Committee has determined that respect for the human dignity of people in detention is a “fundamental and universally applicable rule”.<sup>56</sup> Good health, dependent on hygiene conditions and the provision of nutritious and adequate food, is essential to uphold human dignity. A number of serious concerns were observed in relation to health risks in detention facilities during August and October.
- The Greenville detention facility, Sinoe County, was in extremely poor condition.<sup>57</sup> The detention facility, located beneath the Greenville Administrative Building, was found to be dark and with very little ventilation. Neither of the cells had toilet facilities. The Prison Superintendent and inmates complained repeatedly about the shortage of food. The Superintendent also faced difficulties in obtaining medical treatment of inmates, due to lack of any budgetary provision to pay the L\$25 registration fee charged by the hospital<sup>58</sup>. An elderly woman held in the facility since May was in very poor health as result of injuries she sustained during a trial by ordeal prior to her arrest. She appeared very malnourished and due to the lack of beds, was forced to sleep on the damp floor.
  - On 31 August HROs observed that there were 21 inmates at the Tubmanburg detention facility, Bomi County, which is designed to hold only around 10 inmates. All of these inmates were held in pre-trial detention. Some detainees complained that they were required to pay for medicines and other supplies necessary to treat injuries or illness due to the lack of essential supplies at the Tubmanburg hospital. Inmates slept on the bare cement floor of two cells, both of which were poorly lit and ventilated. They were allowed out once in the day and once again at night to use the bathroom, since there were no toilets in the cells.
  - The reliance of the Government on WFP to provide food to people in pre-trial detention and the lack of careful State monitoring of how that food is distributed, was a serious problem. Prison staff often failed to keep accurate records of supplies. Food allocated on the basis of the number of detainees at times had to be used to feed a higher than expected number of detainees in prolonged pre-trial detention or be shared with police suspects where prison inmates and police suspects shared detention cells. In Bong County, food intended for detainees and prisoners had to be shared between all people held in the Gbarnga LNP station.
  - On 18 September, HROs found a 42 year old man unconscious on the floor of the Ganta Parking police station holding cell, Bong County. His fellow inmates claimed that he was unconscious for one and a half hours for passing out from hunger, after reportedly not eating for five days. UNPOL revived the man and provided him with food and water. Three days later, HROs and UNPOL arranged medical treatment for

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<sup>56</sup> General Comment No.21 on Article 10 (Humane treatment of persons deprived of their liberty)

<sup>57</sup> The construction of a new facility, funded by UNHCR, began in November.

<sup>58</sup> As of the first week of November, this fee is longer imposed for prisoners and detainees.

the suspect at the BanBatt Level II hospital in relation to a swollen leg and body pains. The suspect, who was thought to be mentally-ill, later escaped from the police station and was still at large by the end of October.

- The new detention facility in Robertsport, Grand Cape Mount County, is in good structural condition but did not meet minimum detention standards by the end of October. No records were kept of detainees and there was only one employed prison guard, supported by four volunteers. The cell lacked any kind of toilet facility or furniture. Food supply was initiated in mid-October.
- The Voinjama Central Prison, Lofa County, experienced problems with water supply during October as there was no hand pump for the borehole. Prison wardens and inmates collected water from a swamp approximately 100m away. This water was not treated for any water-borne disease.

*Human rights concerns in holding cells attached to Magistrates' and Justices of the Peace Courts*

51. Holding cells attached to Magistrates' Courts were intended for the temporary detention of people appearing before the Court. They are not adequate to hold suspects for lengthy periods of time. All pre-trial detainees and convicted prisoners must be immediately transferred to County Prisons. However, monitoring indicated that in a number of areas holding cells attached to Magistrates' Courts were used as detention facilities, in part due to the inefficient operation of the Magistrates' Court and the lack of transport to take detainees to the County Prison. There was no food supply for such facilities and their size was usually inadequate for more than one or two detainees at a time. Reports were also received that some Justices of the Peace had constructed their own holding cells without any legal authority to do so.
- The Wee District Justice of the Peace in Grand Bassa County has constructed what he called an 'overnight' cell for his court. While a Justice of the Peace has authority to order the pre-trial detention,<sup>59</sup> this detention must be at an official facility; Justices of the Peace have no powers under the Judiciary Law to build their own holding cells. Detention in an unauthorised place of detention violates international human rights standards<sup>60</sup> and renders a detainee vulnerable to further possible violations, such as secret detention, torture and prolonged detention without trial or review.
  - The Owensgrove Magistrate's Court holding cell, Grand Bassa County, was unfit for human habitation. During a visit on 3 October, HROs noted that although the holding cell was of an adequate size, the lightning and ventilation were very poor, with only three slim openings near the ceiling. The cell was filthy and dirt was all over the room

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<sup>59</sup> Judiciary Law, s.8.8

<sup>60</sup> International Covenant on Civil and Political Rights, Art.9 (1): "Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

as there was not even a bucket for use as a toilet. Since the warden assigned to the holding cell allegedly abandoned his post after only a few weeks of deployment, the Owensgrove Commissioner has employed a village resident with no training or experience to act as jailor, earning L\$100 per month. The previously appointed warden has reportedly been reassigned to Bondiway Prison, Margibi County, but was still living in Buchanan at the end of October.

- On 31 October, UNMIL personnel visited the two holding cells of the LAC Magistrates' Court, Grand Bassa County, and observed that four men had been held for 22 days in a tiny room that should accommodate only one person. In the second cell, seven men were held in a space large enough for only five. One of the detainees claimed that he had been interviewed by PPD personnel but not by LNP. All Court staff members were absent. According to the City Solicitor, the two Associate Magistrates had not conducted a single hearing since his deployment there in September, while the Stipendiary Magistrate was frequently absent.<sup>61</sup>

#### *Disturbances and escapes*

52. Disturbances by detainees took place in several Counties. While there is no justification for violent uprisings in detention facilities, it appeared that the disturbances were motivated at least in part by frustration at lengthy pre-trial detention, a lack of information about the status of their cases and the cramped conditions of the prisons. A human rights approach to prison security involves strengthening prison security by ensuring that detainees are aware of the developments in their case, that cases are processed by the Courts in a reasonable time and that conditions inside the detention cell are humane and in line with minimum international standards. This practice was not fully followed in the detention facilities that suffered uprisings during the reporting period. Staffing numbers may also have been inadequate.
- On 4 October, the 16 detainees then held at the Tubmanburg detention facility, Bomi County, created disturbances, apparently in protest at lengthy pre-trial detention and the very poor conditions of the holding cells.
  - On 17 October, inmates at Buchanan Central Prison, Grand Bassa County, became violent, throwing plates, cups and faeces at the sole prison guard on duty. During the night, they broke the doors and 31 of the 37 inmates escaped before the UNMIL Formed Police Unit could arrive. By the end of October, 22 of the escapees had not been rearrested, while the other detainees were being held at the Buchanan LNP station.
53. These escapes by people in custody or detention frustrate the criminal justice process and undermine the rule of law. Victims are denied their right to due process of the law. The below cases illustrate that escapes from detention

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<sup>61</sup> Information gathered during a monitoring visit on 8 November 2006.



facilities and holding cells were a result not only of poor infrastructure but also of inadequate supervision.

- At least five people escaped from the Gbarnga Central LNP station, Bong County. The escapees included a man charged with rape for the second time in three months and a prisoner recently convicted of rape and sentenced to ten years imprisonment. The LNP holding cell was in disrepair, with a hole in the bars.<sup>62</sup>
- Also in Bong County, a suspect managed to escape due to confusion over which authority was responsible for holding him in custody between court appearances. The man attended court on 19 August and was subsequently sent to Gbarnga LNP Station to be detained, due to unavailability of the prison at that time. The City Solicitor contended that the suspect was sent to the police station by the Clerk of the Court, who reportedly left him in the hands of the Station Commander with instructions to return him to court on 21 August. The Station Commander, on the other hand, stated that he did not accept the suspect because the cells were already full and that the suspect was returned to court. At some point, the suspect managed to escape.
- On 18 September, a rape suspect escaped from the Tubmanburg holding cells, Bomi County, just before the trial was due to begin. The man had been released from the cell to meet with his Defence Counsel before the hearing but was not returned to the cell after the meeting. He apparently managed to walk out of the cell block, which is located inside a police station, without either the LNP or the prison guards noticing. This was the second rape suspect to escape from Tubmanburg detention facility in September.

## Juvenile Justice

54. Between August and October, only one dedicated Juvenile Court was operational, located in Monrovia. There are no separate detention or rehabilitation facilities for either juvenile offenders or juvenile delinquents.<sup>63</sup> The lack of dedicated judicial institutions and personnel entailed that the principle embodied in Article 3(1) of the Convention on the Rights of the Child could not be upheld: that “in all actions concerning children...the best interests of the child shall be a primary consideration”. The cases below illustrate some of the difficulties observed in the area of juvenile justice.
- A 12 year old girl spent 16 days in pre-trial detention at the Monrovia Central Prison, Montserrado County. The Monrovia Juvenile Judge ordered her pre-trial detention on a charge of aggravated assault. The girl claimed that the charge resulted from self-defence. An open cut was visible on the girls’ forehead. The girl was released from

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<sup>62</sup> UNMIL completed repairs to the cell and the Gbarnga Central Prison, which was damaged during the detainees’ riot on 7 August. However, further renovations are required for the police station, which lacks separate cells for female suspects and juveniles.

<sup>63</sup> As defined under Judiciary Law, Juvenile Court Procedural Code s.11.11(b)

custody on 12 August. The case did not proceed to trial and the parents of the girl agreed to pay the medical expenses incurred by the victim.

- In Nimba County, a 16 year old boy was detained on 7 July and released on 10 August apparently without due process; no record was kept of the reason for his release or the determination of the theft charges against him.
- Three juveniles aged between 14 and 16 were in pre-trial detention at Voinjama Central Prison, Lofa County, since early June on allegations of rape and theft of property. By the end of October, no further action had been taken to finalise their cases.
- A 14 year old boy allegedly killed a 70 year old man in Bong County over a land dispute. The juvenile was sent to the police station by the Circuit Court on 15 August with a commitment order that stated he would appear before the court on 16 August. Although he was not brought to the Court on that date, the boy was later released on guarantee. Since there is no specialised Juvenile Court in Bong County, this very serious case will be tried in the Magistrates' Court.

## **Harmful Traditional Practices**

### *Female Genital Mutilation*

55. Female Genital Mutilation (FGM), also known as female circumcision, is practiced by some Liberian ethnic groups. As in many sub-Saharan countries where incidence of FGM is reported, the practice appears to be grounded on long-standing traditions linked to initiation into adulthood. However, while many traditions are of benefit and should be cherished by the community, FGM is an extremely painful procedure that can have serious and enduring consequences for the health of the girls and women subjected to it. Article 24 of the Convention on the Rights of the Child, ratified by Liberia, provides that “States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”.<sup>64</sup> Furthermore, Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women obliges States parties, including Liberia, to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”.<sup>65</sup> Liberia has not yet met these goals, as illustrated by the cases below:

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<sup>64</sup> In its General Comment No.4, the Committee on the Rights of the Child stated that States parties to the Convention on the Rights of the Child must “protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation”. The Committee on the Elimination of Discrimination against Women provided in General Recommendation No.14 “That States parties take appropriate and effective measures with a view to eradicating the practice of female circumcision”.

<sup>65</sup> In its General Recommendation No. 14, the Committee on the Elimination of Discrimination against Women recommended States parties “take appropriate and effective measures with a view to eradicating the practice of female circumcision.” General Comment 28 of the Committee advised that “in State parties

- It was reported that around 20 girls and women were subjected to FGM on Bushrod Island in Monrovia in August. At least one woman was allegedly made to undergo the procedure after she witnessed the procedure being conducted on other women at a closed location in her neighbourhood. Also in Monsterrado County, an unknown number of girl children were reportedly subjected to FGM at Kpala community. It was reported that more than 15 children were staying at a location in the village, under the supervision of the Community Zoe. The Clan Chief argued that this was a traditional practice and claimed that the children were sent by their parents for initiation.
  
- On 15 September, HROs facilitated the release of a 13 year old girl who had been abducted by members of the Sande Society in Grand Cape Mount County and subjected to FGM against her will. Three weeks previously, the girl was beaten and abducted after she had expressed her refusal to be initiated by the Society. Her father reported the case to the Acting Superintendent and County Inspector and, on 4 September, the County Inspector sent a letter to the District Commissioner of Tewor District and the Town Chief of Nkojah in which he prohibited the girl's initiation and ordered her immediate release. Nevertheless, when HROs visited Nkojah Town on 14 September together with the district magistrate, the Zoe of the Society admitted that the initiation had taken place and refused to release her. The girl was only released the following day, when HROs returned together with LNP, UNPOL and UN military. The girl was taken to Tubmanburg hospital for medical treatment. The girl was crying and obviously in shock and pain. Her father has expressed his intention to seek a police investigation of the aggravated assault of his daughter. The girl spent five days in hospital but the hospital did not provide her with a medical report. The doctor responsible for treating cases of gender-based violence claimed that the hospital would only provide an expert opinion upon request of a Court.

### *Trial by ordeal*

56. As previously reported,<sup>66</sup> reliance on trial by ordeal is a serious violation of a number of Liberia's international human rights commitments. These include the right to a fair trial, the right to freedom from torture and other inhuman or degrading treatment or punishment, the right to physical integrity, the right to life and the right to non-discrimination.<sup>67</sup> Trial by ordeal, albeit of a limited nature, is permitted by the Revised Rules and Regulations Governing the Hinterland of

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where the practice of genital mutilation exists information on its extent and on measures to eliminate it should be provided".

<sup>66</sup> See UNMIL Report on the Human Rights Situation in Liberia May – July 2006, paragraph 53

<sup>67</sup> Liberia has signed or ratified the following core human rights treaties, whose provisions prohibit practices amounting to trial by ordeal: the International Covenant on Civil and Political Rights and its Second Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

Liberia.<sup>68</sup> Consequently, the victims of this procedure faced the risk of very serious injury or death. In the absence of adequately functioning and accessible criminal and civil courts, particularly in isolated areas, trial by ordeal filled a regulatory vacuum in the community and became a tool for financial or political gain. The practice perpetuates fear of witchcraft and suspicion in communities that lack education facilities, health care and development.

- The leaders of Vorgbor Town, Grand Cape Mount County engaged an herbalist to conduct a trial by ordeal to determine who was responsible for the town's lack of development. The Town Chief stated that in 1984 the town embarked on a project to build a mosque and raised L\$15,000. However, L\$5000 cash was destroyed by termites and the balance of the money was mismanaged. He further claimed that all other efforts to build the mosque have been unsuccessful and that the reason for this must be witchcraft. The trial by ordeal took several weeks, during which time, people identified as witches were forced to sit on the ground in the sun and rain. No evidence was brought that any of the 14 adults and three children were responsible for the alleged misfortunes afflicting the town. In fact, there were strong indications that the herbalist's 'identification' process was motivated by personal reasons. One of the women identified as a witch was the herbalist's ex-wife, who stated "maybe leaving him has made me a witch". The herbalist reportedly charged L\$15,505 to conduct the trial and levied a further fine of L\$500 on each person identified as a witch. In light of the illegality of this practice, which breaches human rights and constitutional guarantees, as well as the Penal Code, the County Attorney later successfully sought an arrest warrant for the herbalist, who has not been located by the end of October.
- In August, 21 people were allegedly abducted by Zoes and Bodios of River Cess County in order to use traditional means, thought to be trial by ordeal by sassywood, to investigate the disappearance of a 52 year old man allegedly orchestrated by members of the illegal Leopard Society.<sup>69</sup> One man later escaped but his whereabouts were unknown by the end of October. The River Cess County Attorney made a number of recommendations to the County Superintendent as to how the fundamental rights of the 21 people should be protected but no reply was received from the County administration. It was later reported that the 20 remaining abductees were released in October, but this had not been confirmed by the end of October due to the very poor conditions of the roads in that area, preventing further monitoring.
- In early September, a complaint of poisoning by witchcraft was brought against a woman in the Clan Chief Court of Tooeh Town, Nimba County. The complainant, the woman's stepson, sought a trial by ordeal. It appears that the real motivation behind the trial by ordeal was in fact the desire of the complainant to claim his stepmother's rubber plantation. The woman denied the allegations and refused to drink the

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<sup>68</sup> The Revised Rules and Regulations Governing the Hinterland of Liberia, Article 73: Trial by native ordeal shall not be allowed in cases where the bark sassywood which is generally made or concoction or preparation, with mineral or vegetables and administered internally *sic*;...ordeals however, of a minor nature and which do not endanger the life of the individual shall be allowed and is hereby authorized *sic*.

<sup>69</sup> Article 68, Revised Rules and Regulations Governing the Hinterland of Liberia

sassywood. When HROs met with the Clan Chief on 21 September, he admitted beginning the trial by ordeal but denied attempting to force the victim to consume sassywood. After a community meeting led by HROs with the attendance of the District Commissioner on 22 September, it was agreed that the trial by ordeal would not proceed.

- On 16 August, eight people accused of witchcraft in Nyinebo-Webbo District, River Gee County were brought by the District Superintendent to the County Superintendent after spending several days in the illegal custody of villagers. The suspects, including four children aged seven to 12, claimed to have been abused whilst in the custody of their neighbours. HROs observed injuries to the detainees' backs and hands. All eight apparently confessed to being involved in witchcraft.<sup>70</sup> Initially, all the suspects were held at the LNP station but the children were later transferred to a safe house. An investigation conducted by the County Superintendent in accordance with the Revised Rules and Regulations of the Hinterland,<sup>71</sup> found no evidence that the eight people were guilty of a crime and they were allowed to return to their village. However, no police investigation had been launched by the end of October into the assault and illegal detention perpetrated against the eight people by their neighbours.

#### *Other crimes in the context of secret societies and practices*

- In River Cess County, eight men identifying themselves as “announcers for the devil”<sup>72</sup> broke into the home of an eight-month pregnant 16 year old girl, assaulted her and stole a number of items. The men were subsequently arrested and held in police custody for five days, being three days in excess of the 48 hour limit. Following HRO’s intervention, the charge sheet was forwarded to the Magistrates’ Court and a preliminary hearing was listed for 27 September. However, the victim did not appear and there was no defence counsel present. The men were released on bail pending the assignment of a defence counsel to the County.

### **Child Rights in Orphanages**

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<sup>70</sup> The Human Rights Committee stated in General Comment No.20 on Article 7 of the ICCPR (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) that “the law must prohibit the use of...statements or confessions obtained through torture or other prohibited treatment.”

<sup>71</sup> Article 50 of the Revised Rules and Regulations establishes the powers of County Superintendents in relation to disputes on traditional matters within the scope of the law. It is not clear from the facts of this case whether the Superintendent was in fact acting within the parameters of this power: Article 50 (b) “[The County Superintendent] shall have appellate jurisdiction over appeals from courts of County Commissioners, and the joint court of paramount Chiefs and County Commissioners.”

<sup>72</sup> In many Liberian villages, a traditional “devil” is a form of local spiritual authority. It is common for the devil’s representatives to order residents to stay indoors when the devil is passing through the village.

57. Human rights conditions observed in many of Liberia's orphanages did not meet standards included in international human rights conventions binding on Liberia.<sup>73</sup>
- In late August, more than 700 children were taken to or arrived at the Frauenshuh International Orphanage in Montserrado County. The orphanage, which does not have accreditation from the Ministry of Health and Social Welfare (MOHSW), is reportedly funded by the International Christian Fellowship Ministries based in the United States. Most of the children have relatives and were drawn from Mount Barclay IDP Camp, New Kru Town and other areas around Monrovia on the promise of education and food. Although the orphanage consists of a number of new buildings, it does not have the capacity to house the high number of children taken there. As a result, the orphanage was over-crowded and sanitary conditions quickly deteriorated. In addition, HROs were informed that the children were not allowed contact with their relatives after entering the orphanage.
  - On 28 August, the Deputy Minister of Health and Social Welfare advised the orphanage administration that she would take legal action if the children were not returned to their families and the orphanage closed by 4 September. The orphanage administration apparently made no efforts to comply with this instruction. Subsequently, the MOHSW, Ministry of Justice, Ministry of Gender and Development, Ministry of Education, UNMIL, UNICEF, UNHCR and other child protection agencies collaborated to develop strategies to return the children to their homes. In early October, more than 100 children were returned to their communities. However, the relocation exercise was subsequently obstructed by the orphanage's administrators, who apparently incited the children to refuse to leave, including by telling them that some children who had been removed from the orphanage had been abandoned on the side of the road.
  - In Bong County, three sets of parents were denied access to the children they had sent to a Gbarnga orphanage in July last year. The parents claim that when they tried to reclaim custody of their children in October 2006, they were denied access and told that they would have to pay US\$300 for each of the five children to reimburse the orphanage for its costs. The orphanage director denied this allegation but refused to provide information on the children to the joint monitoring team composed of UN, child protection agencies and County administration. The orphanage in question was one of four in this County recommended for closure by MOHSW. The children were released from the orphanage on 31 October. It was reported that the parents of the two girls intend to send the children for initiation, involving female genital mutilation.

## **Human Rights on Rubber Plantations**

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<sup>73</sup> For a detailed examination of this issue, see the UNMIL report "Human Rights in Liberia's Orphanages", November 2006.

58. The previously protracted dispute between management and workers of the Cavalla Rubber Plantation, Maryland County, improved between August and October. Under the management of the Rubber Planters Association, reforms led to an improvement of the relations between management and employees. By 17 August, management stated that all salaries in arrears had been paid. This was confirmed by several workers in different sections, including management, tappers and mechanics. Management established a pay schedule to allow employees to know exactly when they would receive their month's salary. Medical staff told HROs that a part-time doctor had been hired to prepare a needs-assessment regarding medical supplies. The hospital still needed major improvements in order to be able to provide essential medical care, including adequate beds, laboratory supplies and medicines. Nonetheless, many plantation workers expressed satisfaction with the developments.
59. On 15 August, the Government of Liberia, with the support of UNMIL, established State authority in the Guthrie Rubber Plantation, Bomi County. This achievement followed two years of documented human rights violations committed against the plantation residents by the former fighters living there, as well as criminal gain from the illegal exploitation of the rubber trees and other associated financial crimes such as tax avoidance. A police station was established inside the plantation and UNMIL military conducted regular patrols. An Interim Management Team, led by personnel from the Rubber Planters Association, was created by the Government to oversee the transition phase.
60. However, the security situation on Firestone Plantation, Margibi County, declined between August and October. The influx of illegal tappers from Guthrie plantation is thought to be at least partly responsible for the increasing crime reported in Firestone. Other contributing factors include the proximity of the plantation to the nation's capital, where a large population of ex-combatants is located, as well as the poor regulation of the rubber trade, which sees producers purchasing raw rubber without ensuring that it comes from a legitimate source. This practice may have encouraged illegal tapping and collection. An increase in reported attacks against PPD personnel on Firestone was noted, as was an increase in the reported number of alleged assaults committed by PPD personnel against suspects in their custody. The use by illegal tappers of acid as a weapon was a particularly serious concern, given the relative ease of access to chemical used in the rubber refining process and the devastating physical consequences of their use on victims. The increased level of violence may hinder the implementation of the Five Year Plan of Action to improve working and living conditions on the plantation, agreed between Firestone and the Government of Liberia earlier this year. In short, Firestone appeared to be more dangerous place to live and work.
- On 9 August, approximately 100 people, some armed with cutlasses, acid and other weapons, attacked a joint LNP and PPD patrol team. Two PPD officers and one LNP

officer were seriously wounded. Two of the wounded men were attacked with acid, while the third was stabbed.

- On 5 September, two PPD officers working on Firestone plantation were killed in an attack by a large number of suspected unauthorised tappers and collectors. Three other PPD officers were abducted by the group and seriously assaulted before being released. Sixteen people were arrested in connection with the attack.
- On 20 September, Firestone management reported to HROs that it had received leaflets purporting to be sent by a group referring to itself as “bad boys from Bomi County”. The leaflets stated that the group, said to number 500 “well-armed” people would be working on the plantation between September 2006 and March 2007 and was ready to react to any attempt by PPD to end their illegal activities.
- Despite the assertion of State authority in Guthrie Rubber Plantation, Bomi County, on 15 August, groups of ex-combatants have sporadically made threats against the Interim Management Team. Several incidents involving threats and attacks on vehicles carrying rubber out of the plantation have been carried out by ex-combatants. It was reported that, on 5 September, a vehicle belonging to the Weala Rubber Company was attacked and robbed by a group of ex-combatants. Fifteen people were arrested and immediately transported to Monrovia. On 7 September, LNP officers in Gbah town, near the plantation, attempted to arrest a suspect in the attack but were mobbed and threatened by a group of people who helped the suspect to escape.

### **Recommendations**

These recommendations are offered in support of the Government’s continuing efforts to strengthen human rights protection for all Liberians through the democratic rule of law.

- The Government of Liberia should take concrete steps to complete the ratification process in relation to all human rights treaties which it has already signed and to fulfil its reporting obligations. Civil society organisations should provide input and develop parallel reports. Harmonisation of domestic legislation with international human rights commitments is essential.
- The Government should ensure that the Rape Amendment Act is fully implemented. This would include taking steps to ensure that all allegations of rape are fully and independently investigated and that the suspected perpetrators are brought to justice in trials that meet international fair trial standards. A concerted and ongoing effort towards community education and sensitisation to sexual assault issues, including broader discrimination against women, should be undertaken in cooperation with nongovernmental organisations.



- The Government should maintain accurate and up-to-date statistics of rape cases reported, investigated and tried and their outcomes to assist in designing targeted strategies to strengthen the implementation of the Rape Amendment Act.
- Public awareness campaigns against rape should specifically address rape of all age groups.
- The Ministry of Health and Social Welfare should issue administrative directives to all Government and non-Government clinics and hospitals located in Liberia, requiring them to provide emergency care and prepare medical reports on the condition of all patients treated by them where it appears that rape or other violent crime took place and to provide these reports immediately upon the request of police or the Court, with full respect for confidentiality. Responsibility for payment of treatment and medical reports of alleged rape victims should be assumed by the Government, to enable victims to obtain treatment and the necessary reports free of charge.
- To ensure prompt trials in accordance with international fair trial standards, the Ministry of Justice and the Chief Justice should issue administrative instructions to the effect that rape cases, particularly those involving children, are to receive priority attention from prosecutors and the judiciary. The Ministry of Justice may wish to consider assigning a Circuit Court in Monrovia to hear cases of sexual and gender-based violence reported in Montserrado County, in view of the large population in this County. The Ministry of Justice should establish a standard design to be followed in the construction of new Courts or any substantial renovation of existing Courts, to provide facilities for rape cases to be heard *in camera*.
- Liberian human rights NGOs, particularly those advocating for improved promotion, protection and respect for women's and children's rights should assist individual victims or groups of victims of human rights violations relating to sexual and gender-based violence to submit complaints to the Committee on the Elimination of Discrimination against Women, in accordance with Article 2 of the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, signed by Liberia in September 2004.
- The Government must ensure that Judges, Magistrates and other personnel assigned to Courts outside Monrovia are *in situ* as a matter of principle and priority, and that they receive the necessary training to ensure that they uphold Liberian as well as international human rights law. This should include specialist training on sexual and gender-based violence.
- Courts, LNP stations and prisons should be equipped with adequate supplies of basic stationery and other equipment to allow proper management of files and record-keeping, to protect fair trial standards. Furthermore, case management systems for the prosecution and the Courts should be established to reduce delays and increase Court efficiency.

- The Chief Justice may wish to investigate all allegations of abuse of authority by members of the judiciary contained in this report and take disciplinary measures against anyone found to have abused their position. A permanent and independent judicial review mechanism should be created to receive and investigate allegations of judicial malfeasance and recommend disciplinary and preventative measures.
- The Government should ensure that allegations of corruption are fully and impartially investigated and that measures are taken against any officials found to be involved in corrupt practices.
- The Ministry of Justice should establish case management procedures covering the entire criminal justice system, ensuring that cases are handled in a prompt manner and that records are accurately maintained and accessible to parties, their representatives and monitors as appropriate.
- Upon its establishment, the future Law Reform Commission should identify a list of priority legislation for review, including the Criminal Procedure Law, the Penal Code and the Revised Rules and Regulations Governing the Hinterland of Liberia. Legislative review should ensure that amendments and fresh legislation uphold Liberia's international human rights obligations.
- The Government should review the juvenile justice system in order to ensure that it conforms, in law and in practice, to international standards including the Convention on the Rights of the Child and the United Nations Guidelines for the Prevention of Juvenile Delinquency.
- The Government should develop and implement a comprehensive programme to improve conditions in detention centres and prisons. This would include developing a budget which ensures adequate salaries for newly-trained corrections officers and provisions for the care and feeding of detainees.
- The Government should take immediate steps to ensure that allegations of excessive use of force and torture or ill-treatment by law enforcement officials are fully and impartially investigated. Anyone suspected of involvement in human rights violations should be brought to justice in a trial which upholds international fair trial standards.
- While upholding positive cultural values and practices, the Ministry of Justice should take immediate steps to outlaw harmful traditional practices including female genital mutilation and trial by ordeal which violate human rights standards. Investigation and prosecution of such allegations should take place against the backdrop of a comprehensive campaign to inform the community about the dangers of these practices.

- The Ministry of Justice should conduct a study on possible models of alternative dispute resolution and other measures to divert minor cases away from the formal criminal justice system but still guarantee the law and human rights standards.
- Initiatives by the Ministry of Health and Social Welfare to improve social support for children at risk of harm should be continued, to ensure that substandard orphanages are closed and that abandoned or neglected children have access to safe accommodation and, where necessary, legal and psycho-social support.
- The Government of Liberia and its international partners should continue to work towards the full implementation of the recommendations contained in the UNMIL rubber plantations report released in May 2006, and of the recommendations contained in the UNMIL – Government of Liberia Rule of Law Task Force Report, also released in May 2006.