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Increasing Accountability for Rape in Liberia: The Need for a Forensic System to Increase the Success Rates of Prosecution

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INCREASING ACCOUNTABILITY FOR RAPE IN LIBERIA:
THE NEED FOR A FORENSIC SYSTEM TO INCREASE THE
SUCCESS RATES OF PROSECUTION

PELA BOKER WILSON*

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INTRODUCTION

Addressing Circuit Judges and multilateral stakeholders, Liberia's Chief Justice Francis S. Korkpor linked the unsuccessful prosecution of sexual and gender-based violence crimes to the lack of forensic evidence, a barrier resulting in many of those accused of rape being acquitted on technicalities for lack of evidence.¹

The lack of forensic facilities remains a serious impediment to creating accountability for rape in Liberia.² As lamented by the Chief

1. *South African Judges Support Peers in Liberia*, INT'L DEV. LAW ORG. (Apr. 27, 2017), <http://www.idlo.int/news/highlights/south-african-judges-support-peers-liberia> [<http://perma.cc/A4RS-W3L8>].

2. See U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS., ADDRESSING IMPUNITY FOR RAPE

Justice of the Supreme Court, individuals accused of rape are often acquitted due to the scantiness of nonscientific evidence.³ In a 2016 Report of the Office of the United Nations High Commission for Human Rights (UNOHCHR), the lack of a forensic system is identified as one of the key barriers to addressing rape in Liberia.⁴

Over a decade ago, legal and policy reforms were put in place to address a growing culture of rape and impunity that had emerged after the cessation of the Liberian Civil Crises.⁵ The increase in rape was attributed to the lack of accountability for sexual violence and grave crimes committed during the war and limited accountability in a crumbling post conflict judiciary.⁶ This prevalence was also reflective of gender inequalities and stereotypes in existence before the conflict.⁷ Accordingly, a National Sexual Offense Court, a New Rape Law, a Specialized Violence Unit, and other reform efforts were put in place to address rape.⁸ Notwithstanding the structural changes, cases entering the criminal justice system were and still are significantly at variance with conviction rates.⁹

Studies reveal that the low accountability for rape is sometimes due to constitutional jury requirements restricting the number of cases that can be heard in each term, institutional weaknesses by specialized agencies of government clothed with implementing anti-SGBV policies, and noncooperation by survivors and witnesses.¹⁰ Whilst the barriers to creating accountability for rape are various, this Article focuses on the need for forensic facilities and the use thereof, an issue common to all actors of the criminal justice system. The use of forensic evidence mutually effects conviction rates, acquittals,

IN LIBERIA 16 (2016) [hereinafter U.N. HUM. RTS.], <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20680&LangID=E> [<http://perma.cc/QRQ4-MHYL>].

3. See *South African Judges Support Peers in Liberia*, *supra* note 1.

4. See U.N. HUM. RTS., *supra* note 2, at 16.

5. See 17 LIBER. CODE L. REV. § 25 (1972); Act to Amend the New Penal Code Chapter 14, 26 LIBER. CODE L. REV. §§ 14.70–14.71 (2006); Act Establishing Criminal Court ‘E’, 17 LIBER. CODE L. REV. § 25.1 (2008).

6. See U.N. HUM. RTS., *supra* note 2, at 6.

7. See *id.* at 12.

8. See *id.* at 8–10.

9. See *id.* at 5 (“Rape is the second most commonly reported serious crime in Liberia. In 2014, according to statistics by [the Liberia Ministry of Gender and Social Child Protection (MOGCPS)], 708 cases of rape, including gang rape, were reported to law enforcement officials, health care providers, and nongovernmental organizations (NGOs); in 2015, this number rose to 803. Out of these 1,511 cases, only 836 reported by MOGCSP were registered by the police, and the police later sent only 259 cases to court. According to data which [UN Human Rights and Protection Services (HRPS)] collected from circuit courts, [twenty-four] individuals were convicted in 2014 and [thirty-four] in 2015 by the court of first instance. In addition, HRPS is concerned that countless additional cases are unreported due to numerous barriers faced by victims, as described in this report.”).

10. See *id.* at 14–15, 20–21.

trial standards, and assures public confidence in the criminal justice system.¹¹ In addition, a forensic system will be a cross-cutting solution to solving other grave crimes, and not just rape.¹²

When rape is reported in Liberia, medical officers at various One-Stop Centers carry out routine emergency examination and care.¹³ The police, also present at these Centers, conduct interviews with the survivors as a cursor to subsequent investigation.¹⁴ The findings of both the medical and police officers, and the testimonials and circumstances deduced therefrom, form the basis for much, if not all, of the Prosecution's case in chief.¹⁵ Although not a required evidentiary threshold, DNA and other physical nonbiological testing are absent.¹⁶ Accordingly, when testimonials and circumstantial evidence are wanting, the lack of forensic evidence gravely impacts accountability.¹⁷

Suffice to say, the need for a fully functioning forensic system has been identified by the Liberian government and international partners, but it has not been addressed.¹⁸ This Article argues that despite a robust framework put in place to create accountability for rape, Liberia needs a system of collecting and processing forensic evidence to increase the success rate of prosecutions that currently fail due to the inadequacy of non-forensic evidence.

This Article begins with an assessment of rape in Liberia, its prevalence, the culture of impunity that led to reforms in the legal system, and statistics demonstrating that perpetrators still enjoy a high level of impunity. Cognizant of the numerous barriers to prosecuting rape, Part II introduces forensic evidence as a cardinal tool to creating accountability for sex crimes. Part III looks at Liberia's obligations to protect its citizenry against all forms of sexual and gender-based violence under international and domestic law, and by extension, its commitment to put into place systems, institutions, and policies to address rape. Part IV concludes the entire Article with recommendations for an efficient and independent system of

11. See GOV'T OFF. FOR SCI., FORENSIC SCIENCE AND BEYOND: AUTHENTICITY, PROVENANCE AND ASSURANCE 16, 26, 32, 61 (2015), <http://www.statewatch.org/news/2017/oct/uk-chief-science-adviser-2015-report-forensics-case-studies.pdf> [<http://perma.cc/K2LH-MVB5>].

12. See *id.* at 118.

13. JOINT PROGRAMME OF THE GOV'T OF LIBER. & THE U.N., STANDARD OPERATING PROCEDURES FOR GBV SERVICES AT ONE-STOP CENTRE 3–4 (2013), <http://www.lr.undp.org/content/liberia/en/home/ourwork/library/gbvservices.html> [<http://perma.cc/PR2J-V2RB>].

14. See *id.* at 5.

15. See *id.* at 5–6.

16. See U.N. HUM. RTS., *supra* note 2, at 16.

17. See *id.*

18. See WORLD BANK INST., LIBERIA'S SPECIALIZED SEXUAL OFFENSES COURT: LESSONS, CHALLENGES AND OPPORTUNITIES 18 (2013), available at <https://www.scribd.com/document/305620527/Liberia-Gender-Case-Study> [<http://perma.cc/3LB3-4FLS>].

collecting, processing, and using forensic evidence in the fight against rape and other forms of sexual offenses.

I. ASSESSING RAPE IN LIBERIA

A. Rape Before and After the Civil Conflict

1. An Existing Patriarchal Society

The Liberian society has always been a male dominated one, with women marginalized economically, socially, and politically since the early 1900s.¹⁹ Rights of suffrage, for example, were granted only in 1947, some 100 years after the nation's independence.²⁰ Studies show that Liberia had social divisions, patriarchal structural inequalities, and ingrained patterns of violence against women even prior to the war.²¹ These stereotypes and inadequate legislation created an enabling environment where rape was committed and condoned.²² As the head of the Gender-Based Taskforce at the Ministry of Gender noted, “[b]efore the war we had the issue, but it was not known to us as gender-based violence. It was just the way of life.”²³ Suffice to say, Liberia's Penal Code of 1976 did not define rape for what it was.²⁴ The provisions lacked a framework providing for the elements, forms, or penalties for rape.²⁵

Given this huge gap in the law, it came as no surprise that when the civil war started in 1989, sexual and gender-based violence was common, and rape was used as a weapon of war.²⁶ The Liberian Conflict served only to exacerbate inequalities existing before the crisis.²⁷ During the war, Liberian women bore a disproportionate amount of suffering.²⁸ They were “brutally raped and kidnapped, forced to watch their husbands and children tortured and killed or forcibly conscripted into various warring factions.”²⁹ According to the Final

19. See TRUTH AND RECONCILIATION COMM'N OF LIBER., CONSOLIDATED FINAL REPORT VOL. II, at 44 (2009), https://reliefweb.int/sites/reliefweb.int/files/resources/3B6FC3916E4E18C6492575EF00259DB6-Full_Report_2.pdf [<http://perma.cc/2QVY-489W>].

20. *Id.*

21. See WORLD BANK INST., *supra* note 18, at 2.

22. See U.N. HUM. RTS., *supra* note 2, at 12.

23. See WORLD BANK INST., *supra* note 18, at 2.

24. See *id.* at 7.

25. See 26 LIBER. CODE L. REV. § 14.70 (1976) (prior to the Act to Amend the New Penal Code §§ 14.70–14.71 and to provide for Gang Rape in 2006).

26. See TRUTH AND RECONCILIATION COMM'N OF LIBER., *supra* note 19, at 44.

27. See WORLD BANK INST., *supra* note 18, at 2.

28. See TRUTH AND RECONCILIATION COMM'N OF LIBER., *supra* note 19, at 44.

29. *Id.* at 44–45.

Report of the National Truth and Reconciliation Commission of Liberia, while men accounted for nearly fifty percent of all reported violations, women covered thirty-three percent and were “uniquely targeted because of their gender throughout the conflict and its different phases.”³⁰ Of the sexual based violations reported, more than seventy percent were against women.³¹

2. *The Culture of Impunity*

Reference is made to an eight-year-old Liberian immigrant in the United States who in July 2009 had been gang raped in Arizona.³² According to the facts, the victim had been raped by four other Liberian refugees, ages nine through fourteen.³³ This case claimed a lot of international attention, especially in the wake of news that the parents of the victim had disowned her over the incident.³⁴ As Sara Kuipers Cummings noted in her article on strategies for confronting rape in Liberia, the veracity of the testimonials was indicative that sexual violence was far from an anomaly in Liberia’s post conflict context.³⁵

Like most post-atrocity nations, Liberia had a crumbling judicial system in the aftermath of the civil war.³⁶ Perpetrators of rape enjoyed impunity due to inadequate laws on the books and disintegrated institutions.³⁷ The 2016 United Nations Human Rights Report, *Addressing Impunity for Rape in Liberia*, disclosed that Liberia faced the challenge of having to overcome a legacy of impunity arising from fourteen years of civil conflict.³⁸ The Report reasoned that “[t]he complete lack of accountability for sexual violence committed during the war, coupled with limited accountability in the post-conflict period, have fostered and perpetuated SGBV and a culture of impunity.”³⁹ A government survey covering ten of fifteen counties in Liberia found that “92 percent of 1,600 women interviewed . . . had experienced some form of sexual violence, including rape.”⁴⁰

30. *Id.* at 45.

31. *Id.*

32. See Chris McGreal, *Rape of 8-Year-Old Girl Tears Arizona’s Liberian Immigrant Community Apart*, THE GUARDIAN (July 31, 2009), <https://www.theguardian.com/world/2009/jul/31/liberian-arizona-rape-immigration> [<http://perma.cc/CFR4-HYV2>].

33. *Id.*

34. *Id.*

35. See Sara Kuipers Cummings, Comment, *Liberia’s New War: Post-Conflict Strategies for Confronting Rape and Sexual Violence*, 43 ARIZ. ST. L.J. 223, 224 (2011).

36. See *id.* at 234–35.

37. See *id.* at 247.

38. U.N. HUM. RTS., *supra* note 2, at 5.

39. *Id.* at 6.

40. *Liberia: UN Makes Renewed Effort to Fight Rape in Liberia*, PEACE WOMEN (June 8,

The frequency of rape incidences and the threat it posed to stability compelled the government of Liberia, with immense support from the international community, to put into place robust legal frameworks creating accountability for rape and other sexual offenses.⁴¹

B. Reform Mechanisms: Increasing Accountability for Rape

Reform mechanisms put in place to address rape and other forms of sexual offenses after the cessation of the war were quite bold. This came as a welcome initiative to a society that was becoming known for the rape of women, teen girls, and babies.⁴²

1. Revised Legal Framework for Rape

a. The New Rape Law

The New Rape Law of Liberia was the first ever of its kind.⁴³ It came into effect in January of 2006 as an Amendment to Chapter 14 of the Liberian Penal Code.⁴⁴ It distinguishes rape from statutory and gang rape, defines the elements of rape, includes harsher penalties, provides for in-camera hearings, and sets standards for bail.⁴⁵ The Law is gender neutral, providing for male and female victims and perpetrators, puts the age of consent at eighteen years, and gives a broader definition of consent.⁴⁶ Consent is assumed if a person does so by choice and has the capacity and freedom to make that choice.⁴⁷

Under the New Rape Law of 2006, a person is guilty of rape if he or she:

- Intentionally penetrates any orifice on the person's body with his penis without the victim's consent;
- Intentionally penetrates the vagina or anus of the victim with a foreign object or other part of the actor's body (other than the penis) without the victim's consent; and

2010), <http://www.peacewomen.org/content/liberia-un-makes-renewed-effort-fight-rape-liberia> [<http://perma.cc/3LGM-QBBW>].

41. See WORLD BANK INST., *supra* note 18, at 7.

42. See, e.g., *id.* at 3.

43. See Cummings, *supra* note 35, at 236.

44. See An Act to Amend the New Penal Code Chapter 14, 26 LIBER. CODE L. REV. §§ 14.70–14.71 (2006).

45. See *id.*

46. See *id.*

47. *Id.*

- If the victim is less than eighteen years old and the actor is eighteen years of age or older (statutory rape).⁴⁸

The New Rape Law also summarizes other elements of the crime of rape as: the use of violence or causing the victim to fear immediate violence, detention of the victim, the victim is asleep or unconscious, physical disability that prevents the victim from consenting, the victim is prevented from consenting as a consequence of taking any induced substance that causes stupor, or the perpetrator impersonates someone known to the victim.⁴⁹

For the purposes of grading and sentencing, it is a felony of the first degree and the perpetrator can be sentenced to life imprisonment.⁵⁰ It can also be a second-degree felony, with a maximum sentence of ten years, under circumstances where the victim is more than eighteen years of age and the perpetrator did not use or threaten to use a deadly weapon against the victim.⁵¹

b. The National Sexual Offense Court

Established in 2008, the National Sexual Offense Court exercises exclusive and original jurisdiction over sexual offenses as a means of fast tracking cases and increasing accountability for sexual crimes.⁵² These crimes include rape, gang rape, aggravated involuntary sodomy, involuntary sodomy, voluntary sodomy, corruption of minors, sexual abuse of wards, and sexual assault and trafficking in persons (if it involves sexual servitude).⁵³ Unlike the other Criminal Assizes, it convenes in semi-annual sessions for a period of six months and holds pretrial conferences during this period.⁵⁴ As a subsidiary to the Court, Sexual Offences Divisions were also created by law in the respective counties to specifically hear sexual offenses arising in these respective counties.⁵⁵

To date, Sexual Offences Divisions have been commissioned in only two of Liberia's fifteen counties, as per the commissioning of

48. *Id.*

49. *Id.*

50. *See* An Act to Amend the New Penal Code Chapter 14, 26 LIBER. CODE L. REV. §§ 14.70–14.71 (2006).

51. *Id.*

52. *See* Act Establishing Criminal Court 'E', 17 LIBER. CODE L. REV. § 25.1 (2008); *see also* WORLD BANK INST., *supra* note 18, at 16.

53. *See* Act Establishing Criminal Court 'E', 17 LIBER. CODE L. REV. § 25.2 (2008).

54. *See id.* at § 25.6; *see also* *Brief Overview of the Liberian Judiciary*, REPUBLIC OF LIBER., <https://judiciary.gov.lr/brief-overview> [<http://perma.cc/LG4S-HX28>].

55. *See* Act Establishing Criminal Court 'E', 17 LIBER. CODE L. REV. § 25.1 (2008).

Judges for Criminal Court E—the Eighth Judicial Circuit, Nimba County, and the Ninth Judicial Circuit, Bong County.⁵⁶ As such, in counties where Sexual Divisions have not been commissioned, the Circuit Courts exercise jurisdiction over sexual offenses.⁵⁷ Given that such Circuits are not sex-offense specific, the Judges exercise a wide latitude over the dockets.⁵⁸ They may decide whether to bring up a rape case, murder, theft, or armed robbery.⁵⁹

c. The New Judiciary Law: The Role of Magistrates

The Act establishing the National Sexual Offense Court restricts the normal jurisdiction of the Magisterial Courts to hear matters preliminarily.⁶⁰ The Magistrate's role in cases of rape is limited to charging of an offense and issuing an arrest for persons charged.⁶¹ Every complaint involving a sexual offense must be transferred to the Sexual Offense Courts within seventy-two hours of the arrest of the accused.⁶²

d. The Children's Law

The Children's Law of 2011 incorporates fundamental human rights and additional provisions for the protection of children from sexual violence.⁶³ It mandates that the Ministry of Gender, Children Protection Services, and the Ministry of Health to “share the primary State responsibility for protecting children in vulnerable situations from sexual violence, exploitation and abuse.”⁶⁴ It also criminalizes the failure and neglect of parents or guardians to report instances of rape against children.⁶⁵

56. *President Weah Commissions Four Judges*, EXEC. MANSION (Mar. 12, 2020), https://www.emansion.gov.lr/2press.php?news_id=5130&related=7&pg=sp [https://perma.cc/2Y7Y-LX79].

57. *See* Act Establishing Criminal Court 'E', 17 LIBER. CODE L. REV. § 25.2 (2008).

58. *See Brief Overview of the Liberian Judiciary*, *supra* note 54.

59. *Cf. id.*

60. Act Establishing Criminal Court 'E', 17 LIBER. CODE L. REV. § 25.3(a) (2008); 17 LIBER. CODE L. REV. § 7.7 (1972) (The New Judiciary Law of Liberia; Territorial Powers of Magistrates; Criminal Powers, stating “Stipendiary Magistrates shall have power to act in accordance with the provisions of the Criminal Procedure Law to issue warrants for the seizure and arrest of any person violating the law at any place within their respective magisterial areas and within any contiguous areas in the same county in which no magisterial or justice of the peace court is established, *and to commit him to jail, release him on bond or discharge him from custody* if it appears that no offense has been committed by him.” (emphasis added)).

61. Act Establishing Criminal Court 'E', 17 LIBER. CODE L. REV. § 25.3(a) (2008).

62. *Id.*

63. *See* U.N. HUM. RTS., *supra* note 2, at 9.

64. *Id.*

65. *See id.*

e. The Domestic Violence Act

After many failed attempts to have the National Legislature pass a draft 2016 Domestic Violence Act, President Ellen Johnson Sirleaf passed an Executive Order on the Bill in January 2018.⁶⁶ The proposed Act criminalized female genital mutilation, spousal rape, and other forms of sexual violence perpetrated by any close relative of the victim.⁶⁷ In July of 2019, the Liberian Senate concurred with the House of Representatives in passing the Domestic Violence Act, without the provision on female genital mutilation.⁶⁸ It was later passed into law by President George Manneh Weah in August 2019.⁶⁹

2. Policy Framework

Over time, Liberia also adopted several national policies aimed at addressing rape and other forms of sexual and gender-based violence.⁷⁰

These frameworks include:

- The National Action Plan for the Implementation of United Nations Security Council Resolution 1325 (2009);⁷¹
- The National Sexual and Reproductive Health Policy (2010), “providing for access to quality health services for survivors of sexual violence and the establishment of a reporting mechanism to facilitate intra-governmental coordination in the management of SGBV cases”;⁷²
- The National Plan of Action for the Prevention and Management of Gender Based Violence in Liberia (2011–2015);⁷³

66. Hanibal Goitom, *Liberia: Temporary Ban on Domestic Violence, Including Female Genital Mutilation*, LIBR. OF CONG. (Jan. 13, 2018), <http://www.loc.gov/law/foreign-news/article/liberia-temporary-ban-on-domestic-violence-including-female-genital-mutilation> [<http://perma.cc/NZN8-XAWJ>].

67. See *Liberia: The Law and FGM*, Orchid Project 3 (2018), https://www.orchidproject.org/wp-content/uploads/2019/05/liberia_law_report_v1_september_2018.pdf [<https://perma.cc/8HR9-NGGQ>]; see also Office of the President, Exec. Order No. 92 On Domestic Violence (Jan. 19, 2018) (Liber.), <https://www.emansion.gov.lr/doc/sc.pdf> [<http://perma.cc/U74M-4NKG>].

68. *President Weah Signs Domestic Violence Bill into Law*, EXEC. MANSION (Aug. 14, 2019), https://www.emansion.gov.lr/2press.php?news_id=4977&related=7&pg=sp [<http://perma.cc/4CXU-PF5E>].

69. *Id.*

70. See U.N. HUM. RTS., *supra* note 2, at 10.

71. *Id.*

72. *Id.*

73. *Id.*

- The National Gender Policy (2012);⁷⁴
- The Reconciliation Roadmap (2012), “incorporating recommendations of the Truth and Reconciliation Commission to enhance women’s psychosocial recovery and economic empowerment as a form of redress for sexual violence”;⁷⁵
- The Agenda for Transformation (2012), “which includes provisions to address gender-based violence and empower women in multiple sectors and to enhance the protection of children from violence and abuse.”⁷⁶

3. *Institutional Mechanisms*

a. *Sexual and Gender-Based Violence Unit*

The Sexual and Gender-Based Violence Unit (SGBV) was established in February 2009 as a special unit of the Ministry of Justice.⁷⁷ Its main objective is to prosecute sexual and gender-based violence crimes, “provide a victim-centered approach to those affected by sexual violence, and assist victims in dealing with the criminal justice system.”⁷⁸ The SGBV Unit makes it easier for survivors to access medical services, protection, temporary shelter, and psychosocial services at various “One-Stop” Centers.⁷⁹

b. *One-Stop Victim Referral Centers*

One-Stop Centers provide essential services in the victim referral pathway such as psychosocial support and medical services.⁸⁰ The Centers are all located in hospitals with an aim to allow discreet access.⁸¹ As the name depicts, victims meet Women and Children Protection Officers (specialized police) and psychosocial counselors.⁸²

74. *Id.*

75. *Id.*

76. See U.N. HUM. RTS., *supra* note 2, at 10.

77. GOV'T OF LIBER. & U.N. FAM. PLAN. ASS'N, STRENGTHENING OF PROSECUTION OF SGBV OFFENCES THROUGH SUPPORT TO THE SEXUAL AND GENDER BASED VIOLENCE CRIMES UNIT 36 (2009).

78. *Id.* at 37.

79. See JOINT PROGRAMME OF THE GOV'T OF LIBER. & THE U.N., *supra* note 13, at 2–6.

80. See U.N. HUM. RTS., *supra* note 2, at 21.

81. *Id.*

82. See JOINT PROGRAMME OF THE GOV'T OF LIBER. & THE U.N., *supra* note 13, at 5.

C. Evaluating the Effect of the New Reform Policies on Rape

1. Rape Statistics After the Reform

Notwithstanding the various reformative efforts put in place to deter and increase accountability for rape, statistics show that there is still a huge gap between reported cases and conviction rates.⁸³ In 2014, six years after the establishment of the Sexual Offense Court, 708 cases of rape were reported, and in 2015, this number rose to 803.⁸⁴ Out of these 1,511 cases, 836 were registered by the police and 259 cases were sent to court.⁸⁵ Of the cases sent to court, only twenty-four individuals were convicted in 2014 and thirty-four in 2015 by the court of first instance.⁸⁶

When lockdown measures were put in place during the peak of the COVID-19 Pandemic in Liberia to reinforce the public's adherence to health protocols, individuals in domestic relationships, amongst others, used the opportunity to prey on vulnerable individuals.⁸⁷ According to statistics from the Liberia Bureau of Corrections—Ministry of Justice, between January and July of 2020, a total of 602 cases of sexual and gender-based violence were reported.⁸⁸ These cases included 450 incidents of statutory rape, 100 cases of rape, 55 cases of gang-related rape, and 10 cases involving sodomy.⁸⁹

In September of 2020, President-elect George Manneh Weah declared rape a national emergency in Liberia.⁹⁰ This announcement came “after anti-rape campaigners staged a three-day protest” in Monrovia in response to the raping of a three-year-old girl by a nineteen-year-old boy, who allegedly performed female genital mutilation on the victim before raping her.⁹¹

83. See U.N. HUM. RTS., *supra* note 2, at 15.

84. *Id.* at 5.

85. *Id.*

86. *Id.*

87. See Rodney Sieh, *Liberia: More Than 600 Cases of Rape, Sodomy, Abuses During COVID-19 State of Emergency*, FRONT PAGE AFR. (July 13, 2020), <https://frontpageafricaonline.com/front-slider/liberia-more-than-600-cases-of-rape-sodomy-abuses-during-covid-19-state-of-emergency> [<http://perma.cc/WFH3-2L5A>].

88. *Id.*

89. *Id.*

90. *Liberia Declares Rape a National Emergency After Spike in Cases*, AL JAZEERA (Sept. 12, 2020), <https://www.aljazeera.com/news/2020/09/12/liberia-declares-rape-a-national-emergency-after-spike-in-cases> [<http://perma.cc/TC9N-MNVR>].

91. Leah Rodriguez, *Why Liberia Just Declared Rape a National Emergency*, GLOB. CITIZEN (Sept. 14, 2020), <https://www.globalcitizen.org/en/content/liberia-declares-rape-national-emergency> [<http://perma.cc/92AZ-PCGL>].

On June 20, 2020, an Officer of the Liberia National Police allegedly raped a fifteen-year-old girl at a police substation in Monrovia after the victim was placed in police protective custody in response to an attempted rape incident against the same individual.⁹² The fifteen-year-old recounted that whilst in police custody later the same night, the alleged perpetrator—an on-duty night officer—forcibly had sex with her.⁹³

These alarming and horrific stories, and the ever-increasing rape encounters, suggest that the perpetrators of rape still enjoy a high level of impunity and that the act of rape is far from an anomaly in Liberia.⁹⁴

2. *Evaluating the Evidentiary Threshold for Prosecuting Rape*

When an alleged rape occurs under the Liberian legal framework, medical officers at various One-Stop Centers conduct routine emergency examination, evaluation, and response.⁹⁵ The police, also present at these One-Stop Centers, conduct interviews with the survivors in the presence of parents or social workers, a cursor to subsequent crime scene and witness investigation.⁹⁶ The findings of physical medical examinations, police investigations, testimonials, and circumstantial evidence form the basis for most of the Prosecution's case in chief.⁹⁷ Forensic tests such as DNA and other physical nonbiological testing, cardinal to a rape crime scene, are not available to the Prosecution.⁹⁸ As a result, the State carries an even

92. See Sieh, *supra* note 87.

93. See *id.* The survivor recounted that whilst in police custody that night, the accused Officer, named Wesley, “put on a [pornographic] movie on his phone [showing] a dog having sex with a woman.” *Id.* She told him to remove the movie because her mother “never allows [her] to watch such movies.” *Id.* The officer then cut off the phone and asked the victim to sit on his lap. *Id.* She recollected that when she refused to sit on his lap, he held her by both hands and forced her to sit on his lap. *Id.* Later, he took off his pants and her clothes, bent her over the office desk, and forcefully had sex with her, all the while threatening to hurt her if she screamed. *Id.*

94. See Sieh, *supra* note 87.

95. See JOINT PROGRAMME OF THE GOV'T OF LIBER. & THE U.N., *supra* note 13, at 3.

96. *Id.* at 5.

97. *Id.* at 6.

98. See *William v. R.L.* [2014] (referring to the undisputed facts of the case in his opinion, Chief Justice Francis Korkpor said, “At approximately 7:00 P.M. on November 30, 2007, thirteen-year-old Meideh Angel Togbah was found hanging by rope in the bathroom of the Old Road, Sinkor residence of the Appellants. The Appellants subsequently rushed her to the John F. Kennedy Memorial Hospital (JFK Hospital), where she was pronounced dead upon arrival. A medical report issued by Dr. Williamina Jallah OB/GYN of the JFK Hospital on November 30, 2007 states, among other things, that Meideh Angel Togbah's hymen was not intact; that bruises were seen on the left and right side of the neck and under the chin; that there was slight bruising around the

bigger burden of establishing guilt when nonscientific evidence proves to be inadequate and circumstantial evidence is wanting.

In instances where a survivor fails or refuses to avail him or herself to proceed with the trial, the State is sometimes compelled to dismiss matters through *nolle prosequi* motions.⁹⁹ When triers of fact are doubtful of the sufficiency of evidence that meet the legal evidentiary threshold, the Prosecution is unable to appeal to their minds using scientific evidence.¹⁰⁰

3. Challenges to Creating Accountability for Rape

The barriers to creating accountability for rape in Liberia include factors affecting reporting, issues relating to investigation and evidence gathering, legal and procedural issues, and institutional weaknesses.¹⁰¹ In Liberia, victims sometimes do not come forward to report rape due to several reasons.¹⁰² These include, social pressure to settle rape outside of the formal justice system, the “undue influence of traditional actors” in most rural areas who adapt restorative and reconciliatory response to rape, and cultural and patriarchal attitudes suggesting that rape is not a big deal.¹⁰³ In homes where the survivors are children and the perpetrator is a bread winner, rape is discussed at the family level for fear that the household would lose its income if the provider is sent to jail.¹⁰⁴ In other instances, survivors do come forward but fail to follow the cases up to trial once the perpetrator has been arrested and placed behind bars.¹⁰⁵

Other issues include legal frameworks such as constitutional jury requirements restricting the number of cases that can be heard per Court Term,¹⁰⁶ under-resourcing of the judiciary, lack of coordination between the specialized agencies of government clothed with implementing anti-SGBV policies, and the lack of adequate support to the Prosecution.¹⁰⁷

rectal area[;] and that there was evidence of past sexual intercourse or trauma to the vagina and neck. The medical report, however, failed to state how these conditions occurred or by whom.”).

99. See U.N. HUM. RTS., *supra* note 2, at 16.

100. *Id.*

101. *Id.* at 4.

102. *Id.* at 12.

103. *Id.*

104. *Id.* at 13.

105. See U.N. HUM. RTS., *supra* note 2, at 16.

106. See CONST. OF LIBER. (1986), art. 20 (providing for the holding of jury trials for serious offenses, and that based on this requirement, the number of cases that can held in each term is limited).

107. See U.N. HUM. RTS., *supra* note 2, at 20–22.

Notwithstanding the various factors highlighted above, one issue common to all actors of the criminal justice system is the need for forensic lab facilities.¹⁰⁸ This is because the use of forensics and DNA evidence mutually effect conviction rates, acquittals, trial standards, and public confidence in the criminal justice system.¹⁰⁹

During a training seminar for judges held in Liberia in April of 2017, *South African Judges Support Peers in Liberia*, the Chief Justice of Liberia went on record as saying, “a key barrier to the prosecution of sexual and gender-based violence crimes is the lack of forensic evidence in most cases, resulting in many of those accused of rape being acquitted on technicalities for lack of evidence.”¹¹⁰ While it is true that the government of Liberia and its international partners have made enormous contributions to fighting rape, not much has been done to provide forensic lab facilities.¹¹¹ If rape should be tackled in Liberia, reform efforts must be holistic.

II. FORENSIC EVIDENCE: ADDRESSING THE INADEQUACY OF NONSCIENTIFIC EVIDENCE

A. *What Is Forensic Evidence*

Forensic evidence is evidence that can be used in court based on science.¹¹² It is obtained by scientific methods such as ballistics, blood tests, and DNA.¹¹³ It can be used in court to establish the guilt or innocence of possible suspects, link crimes that are thought to be related to one another, or simply link one offender to several different crimes or crime scenes.¹¹⁴ This linking of crimes helps the police authorities to narrow the range of possible suspects, establish crime patterns, identify suspects, and prosecute defendants of rape.¹¹⁵

1. *Forms of Forensic Evidence*

a. *DNA Evidence*

“DNA is the material found in [human] cells that determines characteristics such as eye, hair, and skin color.”¹¹⁶ Everyone has a

108. *See id.* at 16 (noting the lack of forensic lab facilities in Liberia).

109. *See* GOV'T OFF. FOR SCI., *supra* note 11, at 26, 61.

110. *See South African Judges Support Peers in Liberia*, *supra* note 1.

111. *See* U.N. HUM. RTS., *supra* note 2, at 16 (noting the lack of forensic lab facilities in Liberia).

112. *Forensic Evidence*, BLACK'S LAW DICTIONARY (11th ed. 2019).

113. *Id.*

114. *See* GOV'T OFF. FOR SCI., *supra* note 11, at 19, 84, 131.

115. *Id.* at 24.

116. *The Importance of DNA in Sexual Assault Cases*, RAINN, <https://www.rainn.org/articles/importance-dna-sexual-assault-cases> [<https://perma.cc/CJ23-WV38>].

unique DNA that is different, except for identical twins.¹¹⁷ As such, DNA “can be collected from blood, saliva, sweat, urine, skin tissue, and semen.”¹¹⁸ Given this peculiarity, it is important that victims of sexual assault avoid bathing, cleaning, or even urinating until a forensic exam has been conducted.¹¹⁹ In rape cases, DNA evidence can be collected from the body and clothes of the victim, anyone else who was at the crime scene, witnesses, or anyone who has had consensual sex with the victim within seventy-two hours.¹²⁰

b. Procedures for Testing DNA

When testing DNA, there are several general procedures involved¹²¹:

- “[T]he isolation of the DNA from an evidence sample containing DNA of an unknown origin,” and later, “the isolation of DNA from a sample . . . from a known individual”;¹²²
- “[T]he processing of the DNA so that test results may be obtained”;¹²³
- “[T]he determination of the . . . DNA test results (or types), from specific regions of the DNA”;¹²⁴ and
- “[T]he comparison and interpretation of the [DNA] test results from the unknown and known samples to determine whether the known individual [is or] is not the source” of the unknown DNA sample.¹²⁵

c. Types of Samples for DNA Testing

There are about six basic types of DNA samples and they are¹²⁶:

- Unknown Samples—These are biological samples collected from crime scenes and may include “liquid blood

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. See *DNA Evidence: Basics of Identifying, Gathering and Transporting*, NAT'L INST. OF JUST. (Aug. 8, 2012), <https://www.nij.gov/topics/forensics/evidence/dna/basics/Pages/analyzing.aspx> [<https://perma.cc/CG6X-9F6S>].

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. See *DNA Evidence: Basics of Identifying, Gathering and Transporting*, *supra* note 121.

or bloodstains, liquid saliva or saliva stains,” “liquid semen or dried semen stains” deposited on any surface, genital, vagina or cervical “samples collected on swabs or gauze,” rectal or anal swabs, penile swabs, pieces of tissue, “plucked and shed hairs,” skin cells on drinking containers or clothing, liquid urine and slides containing tissue and semen;¹²⁷

- Samples from Unidentified Bodies—They include “blood, buccal swabs, hairs, bone, teeth, fingernails, tissue from internal organs [like the brain], muscle, and skin”;¹²⁸
- Samples from Known Individuals—They are “blood, oral [or] buccal swabs,” and “plucked hairs” like pubic hair;¹²⁹
- Samples in the Absence of Conventional Samples: These samples are required when “individuals are unavailable or . . . reluctant to provide samples,” specimen are taken from clothing where biological fluids may be present.¹³⁰ These may include, a “women’s panty crotches” or blood or other semen stained items, clothing that comes in “close contact with the body where skin cells may have rubbed off,” beddings, fingernail clippings, cigarette butts, condoms, nasal secretions, gums or slides from previous surgery or autopsy;¹³¹
- Samples from Relatives: Children inherit half of their DNA from each parent.¹³² Accordingly, it is possible to use “reference samples collected from close relatives” like biological father, mother, full siblings or the individual’s children “to identify or confirm the identity of bodies that have not been identified through other means.”¹³³ They can also be collected from close relatives to compare crime scene samples in situations where there are missing bodies, blood stains or tissue sample from a possible crime scene.¹³⁴ This is then “tested to demonstrate a biological relationship to known individuals”;¹³⁵ and

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. See *DNA Evidence: Basics of Identifying, Gathering and Transporting*, *supra* note 121.

133. *Id.*

134. *Id.*

135. *Id.*

- Samples from a Child or Fetus—“Aborted fetal tissue can [also] be analyzed for determining paternity” in sexual assault or incest cases where conception occurred.¹³⁶

d. Fingerprint Evidence

Fingerprints, or latent prints, are the most common type of forensic science evidence.¹³⁷ Latent prints can be used in criminal investigations as crucial pieces of evidence that can link a suspect to a crime.¹³⁸ They are collected from crime scenes to reveal or extract fingerprints from surfaces and objects using chemical or physical methods.¹³⁹ The fingerprints are then “photographed, marked for distinguishing features” and “used to search an [existing] automated fingerprint identification system (AFIS).”¹⁴⁰

Countries using fingerprint evidence have an organized and searchable AFIS structure that maintains the database of the “fingerprints of individuals who are arrested or incarcerated.”¹⁴¹ These databases “contain rolled fingerprints from each finger (‘tenprints’) and fingerprints from the whole hand with all the fingers extended in parallel (‘slaps’).”¹⁴² “If an individual whose fingerprints are [already] in an AFIS encounters the criminal justice system again,” an identity is established and linked to a criminal record or crime under investigation.¹⁴³

AFISs are also used as repositories of latent fingerprints that remain unidentified, or unsolved latent files.¹⁴⁴ As new fingerprints are added to an AFIS, they are also matched against unsolved latent files in the hope of making a match.¹⁴⁵

2. Procedures for the Management of Forensic Evidence

There are basically five steps involved in the management of Forensic Evidence, including¹⁴⁶:

136. *Id.*

137. See *Overview of Impression and Pattern Evidence*, NAT’L INST. OF JUST. (Aug. 8, 2019), <https://nij.ojp.gov/topics/articles/overview-impression-and-pattern-evidence> [<https://perma.cc/W63R-7XL7>].

138. *Id.*

139. See *Fingerprints: An Overview*, NAT’L INST. OF JUST. (Mar. 27, 2013), <https://nij.ojp.gov/topics/articles/fingerprints-overview> [<https://perma.cc/3SDQ-VRHA>].

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Fingerprints: An Overview*, *supra* note 139.

146. See *DNA Evidence: Basics of Identifying, Gathering and Transporting*, *supra* note 121.

a. The Gathering of DNA Evidence

“[A]ny tangible object that can connect an offender to a crime scene” is physical evidence.¹⁴⁷ Biological evidence containing DNA, although not always visible to the naked eye, is a form of physical evidence.¹⁴⁸ “All biological evidence found at crime scenes can be subject to DNA testing,” although samples such as feces and vomit are not routinely accepted by laboratories.¹⁴⁹

b. The Integrity of the Crime Scene

The protection of the crime scene is a component of the protection of the evidence gathered.¹⁵⁰ The preservation and safeguarding of evidence is essential to the successful solution of a crime because any level of contamination can be challenged by the defense.¹⁵¹ Hence, when documenting evidence found, investigators should include vivid descriptions of the crime scene, such as whether it was wet or dry or if there were blood splatters.¹⁵²

c. The Chain of Custody

The chain of evidence is the record of all individuals or units that have had possession of the evidence.¹⁵³ Like the crime scene, it is also critical to maintain the integrity of the chain of custody because it could come under challenge by the defense.¹⁵⁴ When laboratory analysis reveals that the DNA is contaminated, it is “necessary to identify persons who have handled that evidence.”¹⁵⁵ Hence, “the fewer people [that handle] the evidence, the better,” as this presents a lesser risk of contamination and a shorter chain of custody.¹⁵⁶

d. Transportation and Storage of DNA Evidence

Basically, the first responding officer is the one “called upon to transport evidence from the crime scene.”¹⁵⁷ He has a responsibility

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *See id.*

152. *See DNA Evidence: Basics of Identifying, Gathering and Transporting, supra* note 121.

153. *Id.*

154. *See id.*

155. *Id.*

156. *Id.*

157. *Id.*

to “ensure that the chain of custody is maintained” and “should be aware that [factors such as] sunlight and warmer conditions may degrade [the] DNA.”¹⁵⁸ For best preservation, DNA evidence should be “store[d] in a cold environment.”¹⁵⁹ Probative biological samples that are “stored dry or frozen, regardless of age, [can still] be considered for DNA analysis.”¹⁶⁰ “Nuclear DNA from blood and semen stains more than [twenty] years old” can still be analyzed successfully.¹⁶¹

B. Effect of Forensic Evidence on Rape Prosecution

“DNA analysis has been instrumental in securing convictions in hundreds of crimes.”¹⁶² “Analyzing DNA [evidence] allows forensic scientists to compare the profile of the perpetrator against a large database” of other thousands of profiles run by government security agencies.¹⁶³ Today, these databases “have become significant resources for criminal investigation[s] and prosecution[s]” around the world.¹⁶⁴ “According to the nongovernmental organization Forensic Genetics Policy Initiative, [sixty] countries currently operate national forensic DNA databases,” whilst thirty-four countries are being “expanded or established.”¹⁶⁵ There have also been varying views on the risk and benefits of forensic DNA databases.¹⁶⁶ While academic literature on forensic genetic reports recognizes the value of this system as a powerful law enforcement tool, literature in the field of social and legal sciences speaks to “ethical and social risks of forensic DNA databases,” such as potential threats to individual freedoms.¹⁶⁷ The sections below examine some of the benefits of DNA evidence to creating accountability for rape.

1. Increased Accountability for Rape

DNA evidence increases the likelihood of holding perpetrators accountable by adding a lot of weight to the prosecution’s case.¹⁶⁸ In

158. See *DNA Evidence: Basics of Identifying, Gathering and Transporting*, *supra* note 121.

159. *Id.*

160. *Id.*

161. *Id.*

162. See S. Panneerchelvam & M.N. Norazmi, *Forensic DNA Profiling and Database*, MALAYS. J. MED. SCI., July 2003, at 20, 25.

163. *The Importance of DNA in Sexual Assault Cases*, *supra* note 116.

164. Helen Machado & Susana Silva, *Public Perspectives on Risks and Benefits of Forensic DNA Databases: An Approach to the Influence of Professional Group, Education, and Age*, BULLETIN SCI. TECH. & SOC’Y, Nov. 2015, at 1.

165. *Id.*

166. *Id.*

167. *Id.*

168. *The Importance of DNA in Sexual Assault Cases*, *supra* note 116.

Liberia, like most countries, “cases of sexual violence rely on first hand [sic] accounts” and other circumstantial evidence that leaves much room for interpretation.¹⁶⁹ DNA helps to “build a stronger case against the perpetrator” because of its degree of accuracy.¹⁷⁰ If the state charges a perpetrator, “DNA evidence will likely carry weight in court” because of its degree of accuracy.¹⁷¹

2. The Use of DNA as a Deterrence Factor

DNA evidence also deters future sexual assaults from occurring.¹⁷² “Perpetrators of violence [have the tendency] to be serial criminals, and sexual violence tends to be a serial crime.”¹⁷³ As such, when a rape occurs and DNA testing is conducted, “the chances of taking the perpetrator off the street[] and preventing any future instances of sexual violence” is increased.¹⁷⁴ This is because the DNA sample is added to the database and can easily “connect the perpetrator to a crime in the future.”¹⁷⁵

3. Effects on Plea Bargaining, Victims, and Trial Periods

Due to many factors, including forensic evidence, a State may decide to proceed with its original charge against a defendant, proceed with a different charge, or in some cases, charge for a lower offense.¹⁷⁶ This takes place in the form of plea negotiations.¹⁷⁷ When defendants of rape are confronted with DNA results that implicate them, there is an increased likelihood that they will enter a guilty plea.¹⁷⁸ When plea negotiations take place, the Prosecution and the accused “work out an appropriate and mutually satisfactory agreement or resolution to the criminal charges.”¹⁷⁹ This arrangement “guarantees a [c]onviction and a [s]entence [o]utcome,” facilitates an earlier solution to the matter at bar, “provides an acknowledgement”

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. See *The Importance of DNA in Sexual Assault Cases*, *supra* note 116.

175. *Id.*

176. See *Understanding Plea Negotiations*, GOV'T OF S. AUSTL., OFF. OF THE DIR. OF PUB. PROSECUTIONS, <https://www.dpp.sa.gov.au/was/witnesses/understanding-plea-negotiations/#WhatIs> [<https://perma.cc/D5UT-CHDJ>].

177. *Id.*

178. See Stephanie A. Parks, *Compelled DNA Testing in Rape Cases: Illustrating the Necessity of an Exception to the Self-Incrimination Clause*, 7 WM. & MARY J. WOMEN & L. 499, 510 (2000).

179. See *Understanding Plea Negotiations*, *supra* note 176.

by the defendant that the crime was committed, “saves the [j]ustice [s]ystem valuable time and costs,” relieves the victim “of the need to give evidence in a [t]rial,” and sometimes results in reduced charges and sentences for the defendant.¹⁸⁰

In most developed countries where the issue of rape is basically establishing consent, and not necessarily that sex took place, “it is often felt that . . . courts are too ready to accept a guilty plea for a lesser charge to remove the requirement of proving consent.”¹⁸¹ It is considered “little consolation for the victims . . . who have suffered such a terrible ordeal,” and the offenders are “sentenced to a much lesser jail term.”¹⁸² In the United Kingdom for example, there has been some condemnation by campaigners that “reducing rape to a less serious offense was a ‘kick in the teeth’ for victims.”¹⁸³ However, the truth is that plea negotiations do not always result in a defendant securing a lesser charge or sentence.¹⁸⁴ When these negotiations take place, “agreements as to charge or charges and plea must be consistent with the requirements of justice.”¹⁸⁵ When the defense advances a plea proposal or the prosecution counter proposes the defense, it “must take into account all the circumstances of the case and other relevant considerations.”¹⁸⁶ These include “the views of the victim[s] or others significantly affected” and the possibility that “if the charges are varied as proposed,” it would be “appropriate for the criminal conduct involved.”¹⁸⁷ Plea bargaining is also convenient for victims who do not want to face the ordeal of a trial.¹⁸⁸

4. *The Use of DNA as an Exoneration Tool*

In addition to enhancing prosecution, DNA evidence can also be used to exonerate individuals.¹⁸⁹ This normally happens when individuals are convicted on eyewitness accounts “without any physical evidence tying them to the crime.”¹⁹⁰ Because of this use, opponents

180. *Id.*

181. See *What Is Plea Bargaining and When Does It Come into Play*, IN BRIEF, <https://www.inbrief.co.uk/court-proceedings/plea-bargaining> [<https://perma.cc/L25F-HQYH>].

182. *Id.*

183. See Rachel Williams, *Fewer Rape Convictions Because Plea Bargains Prevail, Report Suggests*, THE GUARDIAN (Mar. 20, 2010), <https://www.theguardian.com/society/2010/mar/20/rape-convictions-lady-stern-cps> [<https://perma.cc/EJ7L-HRDQ>].

184. *Understanding Plea Negotiations*, *supra* note 176.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. See *DNA as an Exoneration Tool*, FINDLAW, <https://criminal.findlaw.com/criminal-procedure/dna-as-an-exoneration-tool.html> [<http://perma.cc/7K2H-RQVZ>].

190. *Id.*

of the death penalty have also pushed for the regular use of DNA evidence.¹⁹¹ People who favor capital punishment also agreed that individuals convicted of a capital offense must be allowed to use all evidence.¹⁹² In December of 2009, for example, James Bain, a man from Florida, was exonerated after thirty-five years in prison.¹⁹³ At the age of nineteen, he was convicted of kidnapping and raping a nine-year-old boy in 1974 and was serving a life sentence.¹⁹⁴

III. LIBERIA'S REGIONAL AND INTERNATIONAL OBLIGATION TO EFFECTIVELY ADDRESS RAPE

Suffice to say, the absence or inadequacies of appropriate measures, such as forensic facilities to address rape in Liberia, violate the country's obligations under both domestic and international law. As a state party to several international instruments, and consistent with its own laws, it is imperative that Liberia puts into place holistic measures that will give survivors of rape the redress and closure they are entitled to.¹⁹⁵ This can only be done by ensuring increased accountability for rape, deterring would-be perpetrators, and ultimately, increasing confidence in the criminal justice system. Liberia's existing obligations to protect against rape and other forms of sexual violence are reflected in several instruments,¹⁹⁶ as seen in the sections below.

A. *International Instruments*

1. *Convention on the Elimination of All Forms of Discrimination Against Women (1984)*

On July 17, 1984, Liberia acceded to the Covenant on the Elimination of All Forms of Violence Against Women (CEDAW) without reservation.¹⁹⁷ The Liberian government also signed its Optional

191. *Id.*

192. *Id.*

193. See Rich Phillips, *Florida man exonerated, freed from prison after 35 years*, CNN (Dec. 17, 2009, 11:56 AM), <http://www.cnn.com/2009/CRIME/12/16/florida.dna.exoneration/index.html> [<https://perma.cc/23RL-EEM7>].

194. *Id.*

195. See U.N. HUM. RTS., *supra* note 2, at 7–8.

196. See *infra* Sections III.A–B.

197. See U.N. TREATY COLLECTION, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: STATES PARTIES, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8.en.pdf> [<https://perma.cc/8CBX-8QB2>]; see also Conv. on the Elimination of All Forms of Discrimination against Women arts. 2–3, *opened for signature* March 1, 1980, 1249 U.N.T.S. 13.

Protocol on September 22, 2004,¹⁹⁸ and ratified the Vienna Convention on the Law of Treaties on May 23, 1969.¹⁹⁹ Given these obligations, Liberia is bound by the provisions of CEDAW and other legal instruments, which the country has signed or acceded to as a State Party.²⁰⁰

The CEDAW Convention of 1981 “seeks to end discrimination against women,” although it does not “explicitly address the issue of violence against women.”²⁰¹ Later in 1992, the CEDAW Committee adopted Recommendation No. 19,²⁰² declaring that “violence against women is a form of discrimination against women[,] thereby bringing domestic violence under the purview of CEDAW” and requiring that State parties “eliminate violence against women in every sphere.”²⁰³ Articles 2 and 3 provide that “laws on domestic violence and rape must give ‘adequate protection to all women’ and ‘respect their integrity and dignity.’”²⁰⁴ No doubt, an adequate protection requirement in matters of rape would include an efficient system where perpetrators of rape would be brought to justice, and the dignity and integrity of survivors would be restored. That Liberia has over the years initiated law reforms and policies, but failed to establish a forensic facility, is a violation of its obligation under CEDAW. This is because the unsuccessful prosecution of sexual and gender-based violence crimes has been linked to a lack of forensic evidence, where those accused have been acquitted on mere technicalities due to the insufficiency of nonscientific evidence.²⁰⁵

2. *The United Nations Security Council Resolution 1325*

Liberia is a member of the United Nations and has been since November 2, 1945.²⁰⁶ In 2000, the United Nations Security Council

198. See U.N. TREATY COLLECTION, OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN STATE PARTIES, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en [https://perma.cc/36M9-AKWY].

199. See U.N. TREATY COLLECTION, VIENNA CONVENTION ON THE LAW OF TREATIES: STATE PARTIES, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en [https://perma.cc/A4Q6-XC45].

200. See Vienna Conv. on the Law of Treaties art. 26, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331. Article 26 of the VCTL provides that, “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” *Id.*

201. See SUSAN DELLER ROSS, *WOMEN’S HUMAN RIGHTS: THE INTERNATIONAL AND COMPARATIVE LAW CASEBOOK* 436 (2008).

202. *Id.*

203. *Id.* at 438–39.

204. *Id.* at 438.

205. See *South African Judges Support Peers in Liberia*, *supra* note 1.

206. U.N., MEMBER STATES (LIBERIA), available at <http://www.un.org/en/member-states> [http://perma.cc/FZP2-BTJ9].

passed Resolution 1325, in which it formally acknowledged “the changing nature of warfare” where “civilians are increasingly targeted, and women continue to be excluded from participation in peace processes.”²⁰⁷ It addresses how women and girls are differentially affected by conflict and war, and “the critical role that women can and already do play in peacebuilding efforts.”²⁰⁸

Resolution 1325 has four basic pillars for which Liberia, as a member state of the United Nations, has an obligation to uphold.²⁰⁹ These pillars are *Participation, Protection, Prevention, and Relief and Recovery*.²¹⁰ Of the four pillars, Protection and Prevention are significant to Liberia’s responsibility to efficiently address the issue of rape. The Resolution specifically calls for “the protection of women and girls from sexual and gender-based violence, including in emergency and humanitarian situations, such as in refugee camps.”²¹¹ It also calls for “improving intervention strategies in the prevention of violence against women,” including “those responsible for violations of international law,”²¹² “strengthening . . . rights under national law,” and “supporting local women’s peace initiatives and conflict resolution processes.”²¹³

3. *Beijing Declaration and Platform for Action (1995)*

As a Member State of the United Nations, Liberia is also subject to the Beijing Declaration and Platform for Action.²¹⁴ On September 15, 1995, the United Nations, at the end of the Fourth World Conference on Women, adopted to promulgate a set of principles concerning the equality of men and women.²¹⁵ A significant character of the platform that is relevant to the need under discussion is its reinforcement and call for implementation of CEDAW and its General Recommendation No. 19.²¹⁶ As earlier provided, Articles 2 and 3 of Recommendation No. 19 provide that laws on domestic

207. *An Explanation of the Landmark Resolution on Women, Peace and Security*, U.N. INST. OF PEACE, https://www.usip.org/gender_peacebuilding/about_UNSCR_1325 [<https://perma.cc/KV5Y-4YPX>].

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. See *An Explanation of the Landmark Resolution on Women, Peace and Security*, *supra* note 207.

214. See Fourth World Conf. on Women, *Beijing Declaration and Platform of Action*, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995).

215. *Id.*

216. *Id.* ¶ 124(f).

violence and rape must give adequate protection to all women and respect their integrity and dignity.²¹⁷ This provision easily translates into an efficient system where perpetrators of rape would be brought to justice and the dignity and integrity of victims of sexual assault would be restored. The Platform also provides in 125(j) that Member States are to “[f]ormulate and implement, at all appropriate levels, plans of action to eliminate violence against women.”²¹⁸ Pursuant to the foregoing, the Beijing Declaration and Platform for Action creates an obligation on Liberia, as a United Nations Member State, to adequately address violence against women.

4. *The Sustainable Development Goals*

Liberia is also committed to the Sustainable Development Goals 2030.²¹⁹ These goals are a global “call to action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity.”²²⁰ They work in partnership and pragmatism to ensure that appropriate choices are made to improve lives in a sustainable way for future generations.²²¹ As the lead United Nations development agency, the United Nations Development Program (UNDP) is uniquely placed to implement the goals through its interventions in 170 countries.²²² Accordingly, the UNDP “supported the government [of Liberia] to develop a Roadmap for the domestication of the 2030 Agenda” in Liberia’s “next national development plan.”²²³ Under Target No.5 of the SDGs, States have a responsibility to “[e]liminate all forms of violence against all women and girls in the public and private spheres, including trafficking . . . and other types of exploitation.”²²⁴ Pursuant to this agenda, Liberia has a responsibility to ensure that adequate mechanisms are in place to address sexual violations such as rape.

217. *See supra* notes 201–04 and accompanying text; *see also* Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 19*, U.N. Doc. A/47/38 (1992).

218. *See* Fourth World Conf. on Women, *supra* note 214, ¶ 125(j).

219. *See Sustainable Development Goals*, U.N. DEV. PROGRAMME LIBER., <http://www.lr.undp.org/content/liberia/en/home/sustainable-development-goals.html> [<https://perma.cc/2F8D-9F4P>].

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Goal 5 Targets*, U.N. DEV. PROGRAMME, <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-5-gender-equality/targets.html> [<https://perma.cc/2Y6T-CMRU>].

B. Regional Instruments

1. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)

On December 14, 2007, Liberia also ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.²²⁵ Articles 4(2)(b) and (c) of the Protocol create an obligation on state parties to “(b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment, and eradication of all forms of violence against women,” and “(c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence.”²²⁶ Against this background and as a signatory to the ACHPR, Liberia should uphold its regional obligation to take appropriate actions to prevent, eliminate, punish, and eradicate violence and rape against women through the creation of effective institutions, policies, and laws that will create accountability.²²⁷

2. African Commission on Human and Peoples' Rights, Resolution on the Right to Remedy and Reparation for Women and Girls Victims of Sexual Violence (2007)

As a member of the African Union and party to the African Charter on Human and Peoples' Rights, Liberia is also subject to the Commission on Human and Peoples' Rights Resolution on the Right to Remedy and Reparation for Women and Girls Victims of Sexual Violence (2007).²²⁸ Under this Resolution, Liberia and other member states are urged to “[c]riminalize all forms of sexual violence [and] ensure that the perpetrators and accomplices of such crimes are

225. See AFR. COMM'N ON HUM. & PEOPLE'S RTS., RATIFICATION TABLE: PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA, <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf> [<https://perma.cc/MS8J-EBHW>].

226. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa art. 4(2)(b)–(c), July 11, 2003, African Union Assembly Decision on the Draft Protocol to the African Charter on Human and Peoples' Rights Relating to Women, Assembly/AU/Dec.19(III) (July 11, 2003), https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf [<https://perma.cc/C4ZA-7HUV>].

227. See *id.*

228. Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, Nov. 28, 2003, African Commission on Human and Peoples' Rights, ACHPR/Res.111(XXXII)07 (Nov. 28, 2003), <http://www.achpr.org/sessions/42nd/resolutions/111> [<http://perma.cc/FN7S-V2N3>].

held accountable by the relevant justice system.”²²⁹ Given this provision, it is undeniable that Liberia has a duty to put in place a forensic system that will aid the prosecution of rape cases. That Liberia has failed in this regard is evidence that all is not being done to ensure accountability for sexual violence.

IV. RECOMMENDATIONS FOR AN EFFECTIVE FORENSIC SYSTEM

A. Learning from the Experiences of the South African Judicial System

Whilst a case is made for establishing forensic lab facilities in Liberia to increase the success rates of rape prosecutions that often fail due to the inadequacy of nonscientific evidence, it is expedient that Liberia gains from the experiences of sisterly African countries that have been in the long fight against rape and other serious crimes.²³⁰

According to a 2016–2017 South African Crimes statistic, “[t]he police reported a total of 39,828 rapes . . . down from 41,503” in 2015–2016.²³¹ “An average of 109.1 rapes were recorded each day” and reflected a decreased rate of rape from 75.5% to 71.3% per 100,000 people.²³² Much of this development is owed to South Africa’s The Criminal Law (Forensic Procedures) Amendment Act 37 of 2013.²³³

1. The South African Criminal Law (Forensics Procedures) Amendment Act 2013

The South African Forensic Amendment Act would prove an important guide to the creation of Forensic Lab Facilities in Liberia because of its regulation mechanism.²³⁴ Before this Act came into existence, the DNA database in South Africa was, through default, evolved under the governance of the Criminal Procedure Act of 1977, a tool found to be inadequate for regulating the use and retention of DNA profiles on a National Database.²³⁵ Some of the provisions of the Act that may be relevant to the Liberian scenario are:

229. *Id.*

230. *See infra* Sections IV.A.1–2.

231. *See FACTSHEET: South Africa’s Crime Statistics for 2016/2017*, AFR. CHECK (Oct. 24, 2017), <https://africacheck.org/factsheets/south-africas-crime-statistics-201617> [http://perma.cc/B8TZ-BX96].

232. *Id.*

233. *See* Criminal Law (Forensic Procedures) Amendment Act of 2013 (Act No.37/2013) (S. Afr.).

234. *Id.*

235. *FACTSHEET: South Africa’s Crime Statistics for 2016/2017*, *supra* note 231.

- The Act ensures that the DNA Database is expanded and managed in a regulated and appropriate manner, “establishe[s] and regulate[s] the administration and maintenance of the . . . DNA Database of South Africa” and “provide[s] for the use of forensic DNA profiles” in criminal investigations.²³⁶ It functions not just as a tool for gathering inculpatory evidence, but also, exculpatory evidence to eliminate suspects and safeguard against wrongful convictions or other miscarriages of justice.²³⁷
- It mandates specially trained police officers to obtain DNA samples of certain categories of suspects at the time of arrest.²³⁸ These offenses include suspects for treason, rape, murder, etc.²³⁹
- DNA profiles are stored in the Database by using markers from the non-coded regions of a person’s DNA to ensure that the only distinguishing feature for the sample is gender.²⁴⁰ In that form, the profile is the same as a fingerprint, its retention does not impact on the privacy of the individual in any way.²⁴¹
- Provisions of the Act retain and consider a balance between the rights of the individual and respect for privacy.²⁴² While the aim is to combat and prevent crime in South Africa, it ensures minimal impact on the civil rights of its citizens.²⁴³
- It calls for an Oversight Board which monitors the implementation of the legislation and monitors the collection, storage of samples and performance of the Forensic Science Laboratory and the National Forensic DNA Database.²⁴⁴ The Board also ensures compliance with ethical and privacy issues and minimum quality standards.²⁴⁵ It establishes the effectiveness of the Act in the fight against crimes with the aim of making changes, where required, to maximize the efficiency of the database as a criminal intelligence tool.²⁴⁶

236. Criminal Law (Forensic Procedures) Amendment Act Preamble.

237. *Id.* sec. 15f.

238. *See id.* sec. 35A.

239. *Id.* secs. 36D–36E.

240. *See id.* sec. 15G(5).

241. *See id.*

242. *See* Criminal Law (Forensic Procedures) Amendment Act sec. 15G(5).

243. *See id.*

244. *Id.* secs. 15V, 15Z.

245. *Id.*

246. *Id.*

- First on-scene crime police investigators and key personnel are trained in how to identify, collect, and preserve DNA evidence at crime scenes so that critical evidence can be collected and fewer cases are put at risk of being jeopardized due to mishandling.²⁴⁷
- Officers of the court are also educated in how DNA evidence technology works to corroborate a case for or against a suspect, thereby decreasing delays in court.²⁴⁸

2. *Effect of the Use of Forensic Evidence on Rape Crimes in South Africa*

In September 2017, South Africa's Western Cape High Court gave a thirty-four-year-old serial rapist, Sikhangele Mki, "[fifteen] life terms and an additional 120 years, to run concurrently."²⁴⁹ Mki pleaded guilty to eighty-four charges, which included thirty counts of rape, twenty-seven kidnappings, twelve robberies with aggravated circumstances, and four assaults.²⁵⁰ He "committed the crimes between 2011 and 2015."²⁵¹ Nine of his victims were under sixteen, and the youngest was eleven.²⁵² "The breakthrough in the investigation [occurred] when Mki served [eleven] months for assault" in 2014.²⁵³ Based on the DNA Act, "police collect[ed] the DNA samples of convicted offenders and r[an] them through" the database, and he was linked to the rapes.²⁵⁴

B. Legislation and Setting Standards for a Forensic System

Given the various issues that the Liberian criminal justice system has had over the years with addressing impunity for rape, and adopting the experiences of the South African criminal system,²⁵⁵ an effective and functioning forensic system for Liberia should include the following:

247. *See id.* sec. 15T.

248. *See* Criminal Law (Forensic Procedures) Amendment Act sec. 15R.

249. *See* Catherine Rice, *Monster Serial Rapist Mki Gets 15 Life Terms, Extra 20 Years*, IOL NEWS (Sept. 14, 2017), <https://www.iol.co.za/capetimes/news/monster-serial-rapist-mki-gets-15-life-terms-extra-20-years-11218652> [<https://perma.cc/X8CL-K4U5>].

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *See, e.g.,* Rice, *supra* note 249.

1. *A National Forensic Act*

A proposal is made for the legislation of a National Forensic Act. The Act will provide for the creation of a Forensic Science Laboratory, and it will establish and regulate the administration of a National Forensic Database. The regulations will provide for:

- Mandatory training of police officers coming into contact with rape victims and crime scenes on how to identify, collect, and preserve DNA. Whilst this process could be opened to the entire police, the immediate goal will be to target officers of the Women and Children Protection Section (WACPs), who are already trained and mandated to deal with cases of sexual and gender-based violence.²⁵⁶
- Training of medical officers at the various One-Stop Referral Centers on how to identify, collect, and preserve DNA. These officers are usually the first point of contact for the victims of rape.²⁵⁷
- To avoid unnecessary delay and educate the actors of the Court, such as the judges, prosecutors, and defense lawyers, so that they understand how DNA technology can be used and contribute to the trial.
- As a way of gaining the trust and support of the public, conduct outreach, give guidance, and shape perceptions about obtaining and using DNA in the criminal justice system.
- It will ensure that the privacy and rights of individuals are maintained in keeping with the laws of the Republic of Liberia.
- It will provide for the creation of a Sex Offender Database in which all defendants convicted of rape and other forms of sexual violence will be kept.
- Provide for obtaining mandatory DNA samples from individuals arrested and convicted for felonies. This should also extend to retrospectively obtaining the DNA of convicted felons serving time. This acts as a deterrent

256. *New Women and Children Protection Section for Liberia's Police*, UNICEF LIBER. (Sept. 2, 2005), https://www.unicef.org/media/media_28159.html [<https://perma.cc/3B2J-78K4>].

257. *Overview of services available to victims of sexual exploitation and abuse in Liberia*, U.N., <https://www.un.org/en/pdfs/summaries/Liberia%20web%20summary.pdf> [<https://perma.cc/VAB2-3AJ2>].

for would-be perpetrators, and at the same time, address accountability.

- It will safeguard the rights of victims from whom samples are obtained.
- Call for the establishment of a National Forensic Oversight Board that will monitor the implementation of this legislation and the transparency and overall efficiency of the Forensic Science Laboratory and a National Forensic DNA Database.
- Call for an oversight board which monitors the implementation of the legislation, the collection and storage of samples, and the performance of the Forensic Science Laboratory and the National Forensic DNA Database. The Board also ensures compliance with ethical and privacy issues and minimum quality standards. Over time, it establishes the effectiveness of the Act in the fight against crime with the aim of making changes, where required, to maximize the efficiency of the database as a criminal intelligence tool.²⁵⁸

2. A National Forensic Database

The National Forensic Database will be a centralized database for storing the DNA profiles of individuals. Such a system will be used for searching and comparing DNA samples collected from rape victims or crime scenes. In order to have a successful system, the database must contain enough DNA profiles of known individuals to run a speculative search against DNA profiles—derived from the victim or crime scene sample—to identify possible suspects.²⁵⁹ As such, the DNA Act, as proposed, will permit the police to build up the database by entering known or suspect DNA profiles into the system. To find a match when a rape occurs, forensic analysts will compare the DNA profile obtained from the crime scene evidence with the profile of a known individual (suspect or victim).

Gaining from the experience of the South African System, the Database should include a Crime Scene Index, a Reference Index, and a Convicted Offender Index.²⁶⁰ These indexes are crucial for criminal intelligence because they play an important role in the resolution of

258. See Criminal Law (Forensic Procedures) Amendment Act of 2013 secs. 15V, 15Z (Act No.37/2013) (S. Afr.).

259. See, e.g., Rice, *supra* note 249.

260. See *id.*; see, e.g., *Combined DNA Index System (CODIS)*, FBI, <https://www.fbi.gov/services/laboratory/biometric-analysis/codis> [<https://perma.cc/8RPG-YWVB>].

crimes.²⁶¹ In instances where the perpetrator is unknown, the Crime Scene Index will ensure that a crime scene sample (hair, blood, or semen) is taken from the scene of a crime. Given the recidivistic nature of most sex crimes, a likelihood exists that the perpetrator of the crime being investigated may have already been convicted of a similar crime and may have his or her DNA profile in the national database.²⁶² This sample can then be matched against other profiles already stored in the system. This form of speculative searching permits the cross-comparison of DNA profiles developed from biological evidence found at crime scenes, which are known as crime scene-to-crime scene matches.²⁶³ The good news is, even if a perpetrator is not identified through the system, crimes may be linked to each other in this way and aid the prosecution by leading to the identification of a suspect.

C. Safeguards for the Proper Use of Forensic Evidence

While the benefits to the use of forensic evidence in the criminal justice system are quite notable, there has also been much concern about its potential to threaten the privacy rights of individuals and their families.²⁶⁴ Given these misgivings, I also recommend the following safeguards to be considered when establishing Liberia's National Forensic System:

1. Upholding Lawful and Fair Standards

That in keeping with United Nations Resolution 49/95—Guidelines for the Regulation of Computerized Personnel Data Files,²⁶⁵ forensic specialists collecting evidence from crime scenes or analyzing and interpreting data must operate independently from the police. This safeguard is especially required in countries like Liberia, where public trust in the police is low due to miscarriages of justice or corruption.²⁶⁶

261. See, e.g., Rice, *supra* note 249.

262. See *id.*

263. See *id.*

264. See *Establishing Best Practice for Forensic DNA Databases*, FORENSIC GENETICS POLICY INITIATIVE (2017), <http://dnapolicyinitiative.org> [<https://perma.cc/PKS7-KUT8>].

265. See G.A. Res. 44/132, Guidelines for the Regulation of Computerized Personal Data Files, at 1 (Dec. 15, 1989) (stating that “[i]nformation about persons should not be collected or processed in unfair or unlawful ways, nor should it be used for ends contrary to the purposes and principles of the Charter of the United Nations”).

266. See, e.g., “No Money, No Justice”: *Police Corruption and Abuse in Liberia*, HUM. RTS. WATCH (Aug. 22, 2013), <https://www.hrw.org/report/2013/08/22/no-money-no-justice/police-corruption-and-abuse-liberia> [<https://perma.cc/593M-HBT2>].

2. *Obtaining DNA from Volunteers*

When DNA is obtained from individuals (not defendants or convicts) who voluntarily give their samples in furtherance of an investigation, fully informed consent must be sought from the volunteer.²⁶⁷ The definition of fully informed consent must be provided for by the legislative act, and the volunteer should specifically say what purposes the sample will be used for. It should not be an open-ended agreement to the future use of the volunteer's DNA.²⁶⁸

This safeguard protects the privacy of volunteers and reduces the risk of a potential miscarriage of justice if their profile is wrongly matched with a crime scene DNA profile in the future.²⁶⁹ It also maintains public trust in the police use of DNA and encourages people to aid police with their investigations when it becomes relevant.²⁷⁰

The advantages of this approach are that it does not pose unnecessary risks to the privacy of volunteers or expose them to potential miscarriages of justice if their profile is wrongly matched with a crime scene DNA profile in the future. Thus, it helps to maintain public trust in police use of DNA and encourages people to agree to help the police with their investigations when it is directly relevant for them to provide their DNA.

3. *Obtaining DNA from Those Arrested*

Whilst a proposal is made for the automatic extraction of the DNA of suspects arrested for felonies, as well as those convicted, once a person is acquitted by a court, a matter is dismissed, or a

267. See Helena Machado & Susana Silva, *Informed Consent in Forensic DNA Databases: Volunteering, Constructions of Risk and Identity Categorization*, BIOSOCIETIES, Dec. 2009, at 1, 9, available at https://www.researchgate.net/publication/247478447_Informed_Consent_in_Forensic_DNA_Databases_Volunteering_Constructions_of_Risk_and_Identity_Categorization.

268. See *OECD Privacy Principles*, ORG. FOR ECON. CO-OPERATION & DEV. (OECD), <http://oecdprivacy.org/#principles> [<https://perma.cc/LP5W-PBWJ>] (stating the Collection Limitation Principle that “[t]here should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject”); see also WORLD MED. ASSEMBLY, DECLARATION OF HELSINKI: RECOMMENDATIONS GUIDING DOCTORS IN CLINICAL RESEARCH (1964), <http://www.wma.net/en/30publications/10policies/b3> [<https://perma.cc/8FX7-YXMU>] (representing a pillar of the ethical principles in research ethics). According to the Declaration of Helsinki, consent is only valid if it is properly informed and freely given (free of coercion, threats or persuasion). *Id.* To be informed, consent should not be a mere yes or no answer. *Id.* It is a process in which those seeking the consent of the volunteers should clarify and specify the purposes of the collection and how the data will be used. *Id.*

269. See *OECD Privacy Principles*, *supra* note 268.

270. See *id.*

conviction is overturned on appeal, that individual's profile should be automatically expunged from the police record and its biological source destroyed. This responsibility rests with law enforcement and should not be contingent on a written request of petition from the individual.²⁷¹

CONCLUSION

Over the last twelve years, the government of Liberia and its international donor partners have done much to address rape.²⁷² Unfortunately, despite these reform efforts, there is a wide disparity between reported cases and conviction rates, and shocking incidences of rape are occurring and increasing.²⁷³ Whilst the barriers to accountability are many, one gap that has been identified as beneficial to all actors of the criminal justice system is the need for a forensic system.

If rape must be adequately addressed, reform efforts must be more holistic. By establishing a forensic system, Liberia increases the success rate of rape prosecutions, as well as other felonious crimes for which forensics can be used to establish guilt or innocence. This success in turn increases public trust and confidence in the criminal justice system. By this standard, Liberia also meets its responsibility at the national, international, and regional levels to put in place adequate laws, policies, and mechanisms to adequately address rape and other forms of sexual and gender-based violence.

271. See *Marper v. United Kingdom*, 2008-V Eur. Ct. H.R. 167, 170–71 (2008). In the *Marper* Judgement, “The Grand Chamber of the European Court of Human Rights reached a unanimous judgment against the UK Government in 2008 for keeping innocent people’s DNA profiles and samples, in contravention of Article 8 of the European Conv. on Human Rights (the right to privacy).” *Establishing Best Practice for Forensic DNA Databases*, *supra* note 264, at 13. This is different from practices in some states within the United States and Brazil which allow collection of DNA on arrest with no automatic expungement process. *Id.*

272. See *supra* Part I.

273. See *supra* Section I.C.