THE NATIONAL BAR PERSPECTIVES ON THE ESTABLISHMENT OF A NATIONAL ANTI-CORRUPTION COURT FOR LIBERIA
MONDAY, JUNE 29, 2026

Presentation by:
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Presented to the Members of the Liberian Senate Standing Committee on Judiciary, Human Rights, Claims and Petitions, on the Proposed **"War and Economic Crimes Court"** and **"National Anti-Corruption Court"** for Liberia
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Mr. Chairman and Members of the Senate Standing Committee on on Judiciary, Human Rights, Claims and Petitions,
Honorable Members of the House of Representatives,
Dr. Cllr. Jallah A. Barbu, Executive Director of the Office for the Establishment of the War and Economic Crimes Court for Liberia,
Distinguished Colleagues of the Bar,
Members of the Judiciary,
Representatives of Civil Society Organizations,
Development Partners, Members of the Fourth Estate;
Distinguished Ladies and Gentlemen.

On behalf of the National Bar, I extend our sincere appreciation for the opportunity to present our perspective on the Draft Bill for the Establishment of a National Anti-Corruption Court for Liberia.

Mr. Chairman and Members of the Senate Committee, the fight against corruption is fundamentally a fight for constitutional governance, the rule of law, public accountability, and the protection of the rights and welfare of the Liberian people. Corruption erodes public confidence in institutions, undermines economic development, weakens democratic governance, and deprives citizens of essential public services. The establishment of effective legal and institutional mechanisms to combat corruption is therefore not merely a policy choice but a constitutional and national imperative.

The National Bar recognizes that the draft bill represents a significant milestone in Liberia's continuing efforts to strengthen accountability and improve the administration of justice. The bill follows broader national efforts to establish specialized judicial mechanisms to address corruption and other serious crimes. The Executive has recently transmitted the draft National Anti-Corruption Court bill to the Legislature as part of its governance and accountability agenda. As the premier professional body representing the legal profession, the National Bar approaches this draft legislation from the standpoint of constitutionalism, judicial independence, due process, institutional effectiveness, and the protection of fundamental rights. Our interest is not merely whether Liberia should strengthen its anti-corruption framework—which we unequivocally support—but whether the proposed court is designed in a manner that is constitutionally sound, operationally efficient, adequately resourced, and capable of delivering impartial justice.

That said, key provisions of the draft bill require commendation and we must highlight them in passing as follows:

a) A Dedicated Court within the Judiciary

The establishment of the NACC as a specialized court within the judicial branch, with appeals to the Supreme Court of Liberia, is constitutionally sound and institutionally appropriate. Specialization is the single most important predictor of anti-corruption court effectiveness in the African context. It enables the development of expertise among judges and prosecutors, reduces the risk of case delay through institutional priority-setting, and sends a clear signal that corruption will be treated as a distinct and serious category of criminal conduct. The comparative record, from the Sierra Leone Anti-Corruption Commission Court to the Kenyan Anti-Corruption and Economic Crimes Division, confirms this choice.

b) An Independent Prosecutor with Real Powers

The creation of an Office of the National Anti-Corruption Prosecutor, appointed by the President with Senate consent and removable only for cause, addresses the most consequential structural weakness of the current LACC model: the inability to prosecute without referral to the Attorney General. The NAP's powers, including the authority to subpoena documents, freeze assets subject to judicial authorization, enter plea agreements, and initiate contempt proceedings, are appropriately comprehensive. The fixed term with removal-for-cause protection provides meaningful tenure security. These features are commended and must be preserved in any amended version of the Bill.

c) Mandatory Non-Discretionary Funding

Section 7.1 of the Bill establishes that NACC funding shall be 'mandatory and non-discretionary,' appropriated as a dedicated budget line in the national budget, and protected from reduction or withholding except by act of the Legislature in a national fiscal emergency. This is the strongest institutional protection in the Bill. It directly addresses the fiscal vulnerability that has historically enabled governments to starve accountability institutions into ineffectiveness. It is consistent with UNCAC Article 36's requirement that specialized anti-corruption bodies be provided with the material resources necessary for their functions. This provision should be retained without modification.

d) Civil Society and Victim Standing

Sections 5.2 and 5.3 create a structured framework for civil society organization participation in NACC proceedings, including amicus curiae status, public interest litigation rights, and participation in asset recovery hearings. The Bill also recognizes victims of corruption as entitled to restitution, asset recovery, and reparations for collective harm from systemic corruption. These provisions are consistent with UNCAC Articles 13, 31, and 57, and represent a progressive normative advance that places this Bill at the frontier of anti-corruption practice in West Africa. They should be preserved and strengthened through implementing rules.

However, our observations and recommendations will focus on several critical issues, including:

(a) The Constitutionality of Section 5 on the Presumption of Innocence; Due process guarantees and fair trial standards;
(b) The Constitutionality of Section 4.2(c) on the Imprisonment & Disbarment of a judge without Impeachment;
(c) The Denial of Bail Without Judicial Discretion (Section 8.3);
(d) Prosecutorial Independence (Sections 6.3.3 and 6.5.1)
(e) The Prohibition on Affirmative Defenses (Section 3.2);
(e) The Instruction to Disregard Strict Construction of Criminal Statutes (Section 6.1)

The National Bar firmly believes that specialized courts can contribute meaningfully to improving the efficiency and effectiveness of justice where they are carefully designed, properly resourced, and fully integrated within the constitutional framework. However, no anti-corruption institution can succeed solely because of its creation. Its success will ultimately depend upon the independence of its judges, the professionalism of prosecutors, adherence to due process, adequate resources, political neutrality, and unwavering respect for the rule of law.

Our recommendations today are therefore intended not to obstruct reform, but to strengthen this important legislative initiative so that it commands public confidence, withstands constitutional scrutiny, and serves the long-term interests of justice in Liberia.

1. **The Constitutionality of Section 5 on the Presumption of Innocence; Due Process Guarantees and Fair Trial Standards:**

Section 5 of the bill declares that the presumption of innocence 'as construed under liberally statutory provisions is inapplicable to this title,' and places on the accused the burden of countering a 'reasonable basis to believe' that corruption was committed. Section 5 specifically states: **"The presumption of innocence as construed under liberally statutory provisions is inapplicable to this title; where there is a reasonable basis to believe that an act of corruption was engaged into by an accused, the burden shall be on the accused to counter that belief"**.

We find it all the more difficult to reconcile section of the bill with Article 21(h) of the 1986 Constitution of Liberia, particularly when Article 21(h) is read together with the broader constitutional guarantees of due process and the right to a fair trial.

A careful reading of Section 5 presents two major effects: (i) it expressly excludes the presumption of innocence for persons prosecuted under the Act, and (ii) it shifts the burden of proof from the prosecution to the accused once there is a "reasonable basis" to suspect corruption. In criminal law, this is commonly called "a reverse burden" or "burden-shifting provision".

On the other hand, Article 21(h) of the Constitution of Liberia states that: "No person shall be compelled to be a witness against himself nor shall any person be deprived of life, liberty, or property without due process of law." Although Article 21(h) does not explicitly mention the phrase "presumption of innocence," it protects two closely related constitutional rights: **(a)** the privilege against **self-incrimination,** and **(b) due process of law**.

Due process in criminal proceedings generally requires that the State bears the burden of proving guilt, the accused is not required to prove innocence, and conviction occurs only after proof according to the applicable criminal standard. In our considered opinion, section 5 of the bill conflicts with Article 21(h) of the Constitution of Liberia and is therefore unconstitutional because the burden shifting may undermine due process and places undue pressure on the accused to testify against the constitutional prohibition that **"No person shall be compelled to be a witness against himself ...."**

In criminal law, the prosecution must establish every essential element of a criminal offence charged in the indictment. Section 5 instead provides that once there is a "reasonable basis" to believe corruption occurred, the accused must "counter that belief." This effectively requires the accused to disprove the allegation. A court could conclude that this reverses a fundamental aspect of criminal due process.

Article 21(h) provides that no person shall be compelled to be a witness against himself. Although Section 5 does not literally require testimony, it creates substantial practical pressure on the accused to produce evidence or testify in order to rebut the State's case, although the state has not produced any evidence against the accused. Courts in many constitutional systems distinguish between: (i) **legal compulsion,** and (ii) **practical compulsion** created by a statutory reverse burden.

If the accused's silence effectively results in conviction because the burden has shifted, a court could find that the statute indirectly undermines the constitutional privilege against self-incrimination. **Section 5 rejection of the presumption of innocence is particularly problematic** because the first sentence states that "The presumption of innocence...is inapplicable..." This is broader than merely creating a rebuttable presumption regarding a particular fact. It purports to eliminate a foundational criminal law principle altogether.

Although the Constitution of Liberia does not expressly use the words "presumption of innocence" in Article 21(h), courts often regard that principle as an integral component of constitutional due process and fair criminal proceedings. The National Bar specifically notes that many jurisdictions permit **limited evidential presumptions**, especially in corruption, customs, narcotics, or money-laundering cases. Some statutes may require an accused to explain the lawful origin of unexplained wealth after the prosecution first proves certain foundational facts.

However, courts often distinguish between an **evidential burden**, requiring the accused to raise some evidence, and a **legal burden**, requiring the accused to prove innocence or disprove guilt. The latter is much more likely to be found unconstitutional, particularly if it applies to the core elements of a criminal offence contemplated by section 5 of the bill.

To all intents and purposes, Section 5 appears to impose the latter and a constitutional challenge to Section 5 may be sustained on the basis that it abolishes the presumption of innocence, shifts the legal burden of proof from the prosecution to the accused, places pressure on an accused person to provide incriminating evidence, and therefore infringes the due process and self-incrimination protections guaranteed by Article 21(h).

The comparators that use burden-shifting do so narrowly and specifically. The Sierra Leone Anti-Corruption Act shifts the burden only on the specific question of whether a public official can explain assets disproportionate to lawful income, a targeted evidentiary presumption that has survived constitutional scrutiny precisely because it is limited in scope. That is the model Liberia should follow: a targeted unexplained wealth presumption, constitutionally framed, not a wholesale reversal of the presumption of innocence across all corruption proceedings.

Unless interpreted very narrowly by the courts, **Section 5 is vulnerable to being found inconsistent with Article 21(h)**because it appears to alter fundamental protections ordinarily associated with criminal due process. A court would likely examine whether the burden imposed is merely evidential or whether it effectively requires the accused to prove innocence. The wording of section 5 of the bill—particularly the statement that "the presumption of innocence...is inapplicable"—leans toward the latter, making the constitutional objection especially strong.

2. **The Constitutionality of Section 4.2(c) on the Imprisonment & Disbarment of a Judge without Impeachment**

The National Bar is fully aware of the anexiety of all well-meaning Liberian and our international partners to fight and, if possible, eradicate corruption, but this must be done with caustion to constitutional safeguards and the respect for the rule of law. The Bar is troubled by subsection 4.2(c) of the bill, which seeks to bypass the constitutionally required impeachment proceedings for the removal and imprisonmnent of a sitting judge in the following language:

> *"**Judicial corruption:** A judge who has been found to have committed judicial corruption is guilty of felony of the first degree and he or she shall be imprisoned for a period not exceeding fifteen years but not less than ten years, without the right to any impeachment proceedings, and until a determination of any appeal by the Supreme Court is made in his or her favor, he or she shall be imprisoned and barred forever from holding any public office".*

The above-quoted provision of the bill is inconsistent with Article 71 of the 1986 Constitution of Liberia to the extent that it seeks to bypass impeachment before removing or disabling a judge from office. Article 71 of the Constitution states tha: *"The Chief Justice and the Associate Justices of the Supreme Court and the judges of subordinate courts of record shall hold office during good behavior. They may be removed upon impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the functions of their office, or conviction in a court of law for treason, bribery or other infamous crimes".*

Article 71 of the Constitution of Liberia establishes two key principles and that is (i) **judges hold office during good behavior, and (ii) they may be removed upon impeachment and conviction by the Legislature** based on proved misconduct, gross breach of duty, inability to perform the functions of office, or conviction in a court of law for treason, bribery, or other infamous crimes. The wordings are important because the Constitution specifically identifies **impeachment and conviction by the Legislature** as the mechanism for removing judges from office.

Howevr, subsection 4.2(c) of the bill provides that a judge convicted of judicial corruption commits a first-degree felony, must be imprisoned for 10–15 years, **has no right to impeachment proceedings,** remains imprisoned pending appeal unless the Supreme Court reverses the conviction; and is permanently barred from holding public office.

The critical phrase is **"without the right to any impeachment proceedings." This provision of the bill conflicts with Article 71 of the Constitution**, and the conflict arises because Article 71 appears to make impeachment the constitutional process for removing judges from office. However, expressly eliminates impeachment, substitutes ordinary criminal proceedings as the sole mechanism, and authorizes consequences that effectively remove the judge from judicial office without legislative impeachment.

A principal constitutional question is can an ordinary statute abolish a constitutional procedure? Under ordinary principles of constitutional law, **no**. A statute cannot override or eliminate a procedure expressly required by the Constitution. It is also important to notice that Article 71 already addresses criminal convictions. It says judges may be removed by impeachment where there has been: "**conviction in a court of law for treason, bribery or other infamous crimes.**"

This language suggests a two-step process and that is the judge is convicted in court, and the Legislature impeaches and removes the judge. The criminal conviction does not appear to replace impeachment; rather, it provides one of the constitutional grounds upon which impeachment may proceed.

Further, Article 71 does not appear to grant judges immunity from criminal prosecution. A judge convicted of bribery or judicial corruption could be prosecuted, convicted, sentenced to imprisonment, while the constitutional question concerns removal from office, which Article 71 assigns to impeachment. Thus, imprisonment itself is not necessarily unconstitutional; eliminating impeachment is the problematic feature.

Additionally, the provision permanently barring the judge from holding public office raises a separate constitutional issue. The Constitution itself specifies qualifications and disqualifications for various public offices. If the Constitution does not authorize a blanket statutory lifetime disqualification for all public offices, a court could question whether the Legislature may impose one by ordinary legislation. That issue would require analysis of other constitutional provisions in addition to Article 71.

A proponent of the bill might argue tht Article 71 allows removal based on "conviction in a court of law for treason, bribery or other infamous crimes"; therefore, once a judge has been criminally convicted, impeachment becomes unnecessary. However, this reading faces a textual deficit because Article 71 says judges "may be removed upon impeachment and conviction by the Legislature based on..."

The phrase "upon impeachment and conviction by the Legislature" modifies all of the listed grounds, including conviction in court for treason, bribery, or other infamous crimes. This suggests that a criminal conviction supplies the factual basis for removal, but the constitutional act of removal still occurs through impeachment.

Therefore, the parts of the bill creating the offense of judicial corruption and prescribing criminal penalties are not necessarily inconsistent with Article 71, but the clause stating that a judge has "no right to any impeachment proceedings" appears to be directly inconsistent with Article 71, because the Constitution identifies impeachment by the Legislature as the process for removing judges from office.

3. **The Denial of Bail Without Judicial Discretion (Section 8.3)**

Section 8.3 of the bill provides that persons charged with grand corruption, judicial corruption, or police corruption 'shall not be entitled, as a matter of law, to be admitted to bail.' Article 21(d) of the Constitution provides that all accused persons shall be bailable, with the limited exception of capital offenses and offenses punishable by life imprisonment where the proof is evident or the presumption great. No corruption offense in this Bill is a capital offense or carries life imprisonment. The mandatory no-bail provision is therefore unconstitutional and may be subject to constitutional challenge.

The solution is a rebuttable presumption against bail for serious corruption offenses, with the court required to assess flight risk, risk of interference with witnesses, and gravity of offense before making a discretionary determination. This approach is used in Ghana, Sierra Leone, and Kenya, and has survived constitutional challenge in all three jurisdictions.

4. **Prosecutorial Independence (Sections 6.3.3 and 6.5.1)**

The Bill creates an independent prosecutor in Section 6.1 and then immediately undermines that independence in Sections 6.3.3 and 6.5.1. Section 6.3.3 requires the NAP to submit quarterly reports to the Minister of Justice. Section 6.5.1 states that all NAP actions are 'subject to judicial oversight by the Minister of Justice to prevent the abuse of prosecutorial discretion.' The Minister of Justice is a political appointee of the Executive. Placing an independent prosecutor under ministerial oversight creates a direct pathway for the Executive to monitor, influence, and ultimately direct prosecutorial priorities. The NAP should report to the Legislature through an appropriate oversight committee, not to a member of the Cabinet.

5. **The Prohibition on Affirmative Defenses (Section 3.2)**

Section 3.2(a) provides that affirmative defenses 'shall not be admissible' in corruption trials. Articles 20 and 21(i) of the Constitution guarantee due process and the right to a fair hearing. The right to present a defense is foundational to both guarantees. A statutory provision that categorically bars a defendant from introducing exculpatory evidence is a denial of due process that no legitimate court system can sustain. This provision must be deleted and replaced with a standard burden-allocation framework for affirmative defenses.

6. **The Instruction to Disregard Strict Construction of Criminal Statutes (Section 6.1): Unconstitutional**

Section 6.1 instructs courts that the rule requiring strict construction of criminal provisions in favor of the accused does not apply to this Act, and that provisions shall instead be construed to further 'general purposes.' Strict construction of penal statutes in favor of the accused is not merely a rule of statutory interpretation; it is a constitutional principle embedded in Article 21(a)'s guarantee that no person shall be convicted except by a law that clearly defines the offense. An instruction to construe criminal provisions broadly, against the accused, in favor of the prosecution, directly violates this guarantee.

7. Seven Entire Domains Are Missing from the Bill

The Bill defines numerous corruption offenses in its definitions chapter but fails to enumerate specific criminal offenses with defined elements in Part II. Beyond this structural gap, the following substantive domains are entirely absent from a Bill that purports to be Liberia's comprehensive anti-corruption law:

- Asset declaration regime for public officials. The is required by Article 8(5) of the **United Nations Convention Against Corruption** (UNCAC) and Article 7 of the **African Union Convention on Preventing and Combating Corruption** (AUCPCC).
- Illicit enrichment as a standalone criminal offense (mandatory under the AUCPCC Article 8, to which Liberia is a party).
- Money laundering as a criminal offense (required by UNCAC Article 23 and the **Financial Action Task Force (FATF),** an intergovernmental watchdog that sets global standards to prevent money laundering, terrorist financing, and other threats to the international financial system).
- Whistleblower and informant protection (required by AUCPCC Article 10).
- Asset forfeiture and recovery framework (required by UNCAC Chapter V).
- Private sector corruption offenses (required by UNCAC Articles 21 and 22).

The following recommendations address the constitutional violations and treaty compliance failures identified in this Brief. They are organized by urgency. Immediate recommendations must be resolved before the Bill is committed to final reading. #

#	Issue	Required Action	Urgency
1	Section 5: Presumption of innocence reversed	Delete Section 5 entirely. Replace with a provision preserving the presumption of innocence and the prosecution's burden of proof beyond reasonable doubt in all criminal proceedings. Add a limited, targeted evidentiary presumption applicable only to unexplained wealth proceedings, with a constitutional savings clause.	**IMMEDIATE**

2	Section 6.1: Strict construction disregarded	Amend Section 6.1 to confine the fair-import construction rule to civil corruption provisions only. Add: 'All criminal provisions of this Act shall be strictly construed in favor of the accused consistent with Article 21(a) of the Constitution.'	**IMMEDIATE**
3	Section 8.3: Absolute bail denial unconstitutional	Replace with a rebuttable presumption against bail for grand, judicial, and police corruption, requiring the court to assess flight risk, witness interference risk, and offense gravity before exercising discretion to grant or refuse bail.	**IMMEDIATE**
4	Section 3.2: Affirmative defenses barred	Delete Section 3.2(a). Replace with a provision permitting all affirmative defenses recognized under Liberian criminal law, with the accused bearing the burden of establishing any such defense on a balance of probabilities.	**IMMEDIATE**
5	Sections 6.3.3 and 6.5.1: NAP reports to and overseen by Minister of Justice	Delete Section 6.5.1. Amend Section 6.3.3 to require quarterly reporting to the Legislature through the relevant oversight committee, not to the Minister of Justice.	**IMMEDIATE**
6	Section 4.2(b)-(d): Imprisonment pending appeal as pre-determination consequence	Remove provisions mandating imprisonment 'until a determination of any appeal is made in favor' of the accused. Imprisonment upon conviction is the sentence; bail pending appeal is a separate judicial determination. Retain the sentence; remove the pre-appeal punitive detention mandate.	**IMMEDIATE**
7	Section 4.2(c): Judge convicted 'without right to impeachment proceedings'	Delete this phrase. A criminal conviction and a legislative impeachment are independent constitutional processes. Replace with: 'A conviction under this section shall constitute grounds for impeachment proceedings under Article 43 of the Constitution, which may proceed concurrently with or subsequent to criminal proceedings.'	**IMMEDIATE**
8	No enumerated offense framework in Part II	Add a new Chapter enumerating specific offenses with defined elements: bribery (public and private); embezzlement; trading in influence; abuse of functions; illicit	**SHORT-TERM**

**Issue** **Required Action** **Urgency**

Enrichment; Money Laundering of Corruption Proceeds; and Obstruction of Justice in Corruption Proceedings.

9	No asset declaration regime	Enact a public officials' asset declaration framework, either as a chapter within this Act or as a standalone statute, covering all three branches of government, SOE directors, and judicial officers, with mandatory verification and public accessibility.	SHORT-TERM
10	No whistleblower protection	Add a chapter on witness and informant protection or enact a standalone Whistleblower Protection Act and cross-reference it in this Bill, providing protection from retaliation, confidentiality of identity, and a reward mechanism for successful disclosures.	SHORT-TERM
11	No asset forfeiture framework	Add a chapter specifying conviction-based forfeiture as a mandatory sentencing element, non-conviction-based civil forfeiture for assets of proven corrupt origin, judicially supervised interim freezing orders, and a National Anti-Corruption Recovery Fund.	SHORT-TERM
12	No rules of procedure for NACC	Require the NACC Chief Judge to promulgate Rules of Procedure and Evidence within 90 days of operationalization, specifying applicable evidentiary standards, timelines for pre-trial and trial phases, in camera hearing procedures, and the interface with existing Liberian procedural law.	SHORT-TERM
13	Drafting errors: cross-references to non-existent 'Section 5.1.2'; numbering errors in definitions; cover page spelling error	Replace all references to 'Section 5.1.2' with 'Chapter 4, Section 4.1.2.' Correct the unnumbered definition at Section 3.1(z) and the duplicate designation at Section 3.1(o). Correct 'MINISTRY OF FOREIGN AFIARS' to 'MINISTRY OF FOREIGN AFFAIRS' on the cover and title pages.	IMMEDIATE

The National Bar remains committed to working constructively with the Legislature, the Executive, the Judiciary, civil society, and all stakeholders to ensure that any law establishing a National Anti-Corruption Court reflects international best practices while remaining faithful to the Constitution and legal traditions of the Republic of Liberia.

Respectfully submitted:

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