

Countries at the Crossroads

Countries at the Crossroads 2012: Liberia

Introduction

After a quarter-century of instability and war, capped by the dramatic forced resignation and exile in 2003 of former warlord and president Charles Taylor, Liberian political and civic leaders began to chart a new course for peace and reconciliation. The outcome of their deliberations was the Accra Comprehensive Peace Agreement (CPA), which provided for a power-sharing interim arrangement, to be followed by internationally supervised elections out of which would emerge a legitimate government of Liberia.

At the time of the peace talks, the country remained gripped by a 14-year contest for power between Liberian armed and political factions that had left the state on the brink of collapse. In December 1989, National Patriotic Front of Liberia (NPFL) insurgency leader Charles Taylor challenged the government of President Samuel Doe, launching an attack on government posts from across the border with Cote d'Ivoire. In late 1990, a faction of the NPFL led by Prince Johnson killed Doe and a coalition of civilian political parties known as the Interim Government of National Unity was installed with the assistance of the Economic Community of West African States (ECOWAS) and the tacit support of Johnson's forces. A decade later, and despite being voted into office in 1997, Taylor remained utterly uninterested in national reconciliation. Instead, the government devolved into a warlord-style regime battling other armed factions.

The CPA established an interim period of two years, although a number of critical issues were left unresolved. There was a rush to elections, a course desired by some Liberian politicians and an international community anxious to set Liberia right and reassign resources elsewhere. All of this occurred before Liberians had the opportunity to engage in a national conversation about how to address two fundamental issues: the unresolved historical question of national self-identity, citizenship, and shared community; and the perversions of the 1989-2003 civil war, which among other effects exacerbated ethnic and other factional grievances.

Liberia has struggled since its founding in the 19th century by the American Colonization Society on behalf of freed American slaves, with balancing its American and African national identity. Some Liberians viewed the 1980 coup d'état, which transferred power away from American-descended Liberians after decades of dominance, as an opportunity to build an African nationality modified by Western influences. However, the post-1980 military leadership under Samuel Doe failed to create desired change and the country degenerated into civil war. The unresolved national identity issue was thus combined with a brutal conflict that resulted in 250,000 deaths, and characterized by the widespread use of child soldiers, extensive ethnic score settling, and massive human rights violations. In short, this left a society shaken to its very core.

Still unable or unwilling to address these foundational issues, Liberia held elections in 2005. The economist Ellen Johnson Sirleaf won with almost 60 percent of the vote, thus becoming the first elected female president in Liberian and, indeed, African

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history. Under extremely challenging circumstances, she set forth a governance agenda that emphasized peace and security, economic revitalization, the rule of law, infrastructure development, and basic social services. After achieving a measure of economic recovery and advances in debt forgiveness, anticorruption, security sector reform, and consolidation of authority throughout the country, Sirleaf was re-elected in November 2011.

Liberia emerged from this successful second post-conflict election with continuing challenges. There were a number of watershed moments associated with the run up to the election, including the rejection of pre-election constitutional amendment referenda meant to amend four provisions of the Liberian constitution; and political violence emanating from dissatisfaction by the major opposition party, Congress for Democratic Change (CDC), that led to one death and property damage throughout Monrovia. The intensity of the electoral season reflected political alienation and deep social grievances, including among the youth, which constitutes 70 per cent of the population.

These challenges combine with a mixed economic situation of impressive economic growth but a number of ongoing obstacles to progress. There remains a troubling trade deficit and a host of countervailing structural factors, including a large youth population lacking in skills; a physical infrastructure that has yet to recover from the ravages of war; deficiencies in land tenure and property rights; and high popular expectations for a “peace dividend.”¹

The administration’s poverty reduction strategy program focuses on economic revitalization, consolidation of peace and security, strengthening governance and the rule of law, infrastructure rehabilitation and delivery of basic social services. The opposition charges that the Sirleaf administration should have done more in its first term to fight corruption, particularly among public officials. Continuing rates of high unemployment, especially among the youth, remain a contentious issue, as does the economic orthodoxy that prioritizes rent-seeking development over the development of a manufacturing sector. Furthermore, capacity constraints seem to dog the implementation of the first poverty reduction strategy at a time when government is forging ahead with a second. Liberia’s economic plans lie mainly in extractive sectors and expansion of commercial agriculture, both of which call for improvements to the transport infrastructure and may perhaps become sources of new jobs.

The government’s new national vision project, “Liberia Rising 2030,” is designed to establish a vision and an implementation plan for where Liberia should be by 2030.² As the government spearheads national consultations to validate the project, it will likely encounter a population that has become increasingly vocal, including political partisans, hotel workers, students, the disabled, the much vaunted youth, marketers, farmers, and women. The outcome will depend largely on the sustainability of a project with long-term implications for the transformation of the socio-political and economic systems of Liberia. In addition, the question of effective succession will loom large mid-way into Sirleaf’s second term as this will be a succession not only of the executive office but also of a vision.

Meanwhile, a framework for rapid institutional transformation is needed before the departure of the United Nations Mission in Liberia (UNMIL), the exact date of which

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was unknown at the end of the year but had already begun. UNMIL's departure—imminent or gradual—could accelerate the pressure on the government to create sustainable institutions. Security is key to this process, but should not be understood in terms of military capabilities; improvement in economic wellbeing, and a resolution of the alienation that precludes genuine reconciliation would position the country for more balanced and equitable growth and development.³

Accountability and Public Voice

Liberia's political structure as outlined in the 1986 constitution is an American-style presidential system. The transitional Comprehensive Peace Agreement included amendments to electoral clauses that enabled the 2005 general elections, despite their not being based strictly on the constitution. As the nation prepared for its second post-conflict election in 2011 further adjustments were deemed necessary given the results of the 2008 census but also in response to political imperatives. The question of simple majority in election of public officials other than the president and vice president was raised in relation to two different circumstances. First, the constitution's absolute majority requirement was said to pose hardship, especially in terms of cost of elections, on the government, which could disturb the holding of elections on time. As a result, there was the creation of a proposition calling for simple majority. Second, while cost is a factor, some argued that simple majority could produce an unpopular candidate in the face of a crowded field from which a candidate earning as low as ten percent could represent the other ninety percent. The residency requirement to qualify to contest the presidency raised a similar issue; the original argument that only people who are most familiar with the country should be eligible to contest was countered by a different argument saying that knowing the country did not depend on how long a person had lived there but the activities engaged in and ties to the country.

Consequently, four constitutional amendments presented to the electorate in the form of referendums sought to amend portions of the Constitution suspended by the Elections Reform Bill. The Elections Reform Bill, which was passed by the National Transitional Legislative Assembly in December 2004, had suspended the 10-year residency requirement for president and vice president. The referendum would re-activate that provision, but would reduce the residency requirement to five years. Additionally, it would raise retirement age of judges from 70 to 75 years, shift voting in general elections from October to November (to avoid the rainy season), and have voting for public officials by simple instead of absolute majority.

Following a period of intense campaigning during which the Administration urged an affirmative vote for the proposed amendments, while most opposition parties as well as civic organizations strongly dissented, the National Elections Commission (NEC) reported on August 31 that the electorate had rejected all four amendments. Following litigation, the Supreme Court ruled on September 20 that the NEC had not properly calculated the results and that the amendment replacing the absolute majority requirement and runoff elections for non-presidential elections with a simple majority requirement had in fact been ratified.

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The 2011 general election was held on October 11, 2011, with the presidential runoff on November 8, 2011. The presidency, all seats in the House of Representatives, and half of the Senate were up for election. The NEC conducted the election.

The results of the legislative elections and first-round presidential election were released on October 25, 2011. In the legislative elections, the Unity Party maintained a plurality in both the House and the Senate, though no party secured a majority in either chamber. Only two of the 14 incumbent senators seeking to retain their seats won reelection, while only 25 of the 59 House incumbents running were reelected.

In the first round of the presidential election, incumbent President Ellen Johnson Sirleaf of the Unity Party led the presidential field of 16 candidates with 43.9 percent of the vote, followed by CDC candidate Winston Tubman with 32.7 percent. As no candidate received an absolute majority, Sirleaf and Tubman stood in a run-off election held on November 8, 2011. Tubman alleged that the first round had been rigged in Sirleaf's favor and called on his supporters to boycott the run-off. In the wake of these developments, there was a turnout of only 38 percent of the electorate as compared to the 71.8 percent turnout in the first round. The NEC declared Sirleaf the winner of the run-off on November 15, 2011 with 90.7 percent of the vote to Tubman's 9.3 percent.⁴

Since the end of the civil war in 2003, elections have been held regularly, including special elections called to fill vacancies occasioned by death of legislators. Elections are deemed generally free and fair in practice, with fairly effective implementation of electoral laws and honest tabulation of ballots, free from systemic fraud and intimidation. This has been the verdict of national and international elections observers. Secretary of State Hilary Clinton congratulated President Johnson Sirleaf on her re-election stating, "These historic elections are important milestones on Liberia's path towards democratic reconciliation. The United States congratulates President Sirleaf on her reelection and we will continue to work with her and all elected officials to advance democracy, and promote peace and prosperity." Mrs. Clinton continued, "We applaud the Economic Community of West African States (ECOWAS), the African Union and others for sending observers to monitor the elections, as well as the UN Mission in Liberia for promoting security during the electoral process." European Union Commission President Mr. Jose Manuel Barroso, speaking on behalf of the Commission, said he was "impressed with the manner in which the elections were conducted" and therefore pledged the Commission's continued support to Liberia. The UN Security Council commended the Liberian people for conducting "peaceful and orderly elections." The US Ambassador to Liberia, Linda Thomas Greenfield, observed that there were teams of US observers along with The Carter Center, as well as ECOWAS, AU and Liberian observers, and asserted the elections were "free, fair and transparent without doubts."⁵

Campaign opportunities for all parties are not equal for reasons having to do with a culture of incumbent advantages and lax implementation of campaign finance laws. In 2011, government officials at various levels covertly denied opposition parties access to public facilities/spaces for campaigning. Rotation of power among a range of different political parties representing competing interests and policy options may be the case at the legislative level. In the 2011 elections a large number of legislators failed to win reelection, including some prominent senators such as Gloria Scott of Maryland County,

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Blamo Nelson of Grand Kru County, Daniel Natehn of Gbarpolu County, Nathaniel Innis of Grand Bassa County, and Nathaniel Williams of River Gee County. At the level of the presidency, however, power rotation has not yet happened. In her first election campaign, and upon winning a first term, President Johnson Sirleaf had declared that she would not be seeking a second elected term.

The centralization of the country continues to limit citizens' participation at local levels. The government is actively considering decentralization measures. Recently, the Governance Commission proposed the election of county superintendents. Decentralization has also commenced at ministerial levels. For example, the Ministry of Education has set up county education and supervision boards to regulate schools in each county. More significantly, the president recently launched the National Decentralization Program in Salala, Bong County.

Article 83 (d) of the constitution is designed to prevent undue influence of economically privileged interests in campaign finance, but enforcement is lacking in both will and capacity. Though the government announced measures to ensure state resources were not to be used to the ruling party's advantage, there were reports of slippage, including the use of government vehicles by candidates for campaign purposes.⁶

The constitution guarantees checks and balances among the executive, legislative, and judicial branches of government, but the executive has traditionally been dominant. Though Johnson Sirleaf appears to exercise power prudently, the potential for sustaining the imbalance may persist absent transformational change in the polity, such as more explicit constitutional changes to limit the executive's power.

The issue of political domination is not acute in Liberia because of the historical structure of power in the country; however, while political power may have shifted from a minority to a majority, economic oligarchies are not yet a thing of the past, especially given the rent-seeking nature of the economy.

A merit-based civil service is formally in place but the political climate affects it significantly. For example, the government has deemed it necessary to submit legislation for a code of conduct for all public servants. The draft legislation has languished for more than two years in the legislature. Members of the legislative and judicial branches in particular have rejected the idea of a code of conduct mainly because of the requirement to declare their assets along with those of their spouses and minor children. Thus, on January 5, 2012, the president issued Executive Order #38 instituting an "Administrative Code of Conduct" commanding all members of the executive branch to strictly adhere to it, though there is scant evidence of compliance to date.⁷

Civic groups and nongovernmental organizations (NGOs) are able to testify, comment on, and influence pending government policy and legislation. Civil society groups and humanitarian organizations are free from legal impediments from the state and other onerous registration requirements. Donors and funders, domestic and foreign, seem free from state pressure, although they are required to operate within the confines of Liberian laws.

The state supports an environment conducive to media freedom, including through constitutional or other legal protections for freedom of expression. Article 15 (a) to (e) of the constitution guarantees: "Every person shall have the right to freedom of expression ...the right encompasses the right to hold opinions without interference and

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the right to knowledge. It includes freedom of speech and of press ...there shall be no limitation on the public right to be informed about the government and its functionaries...access to state owned media shall not be denied because of any disagreement with or dislike of the ideas expressed...this freedom may be limited only by judicial action ...”⁸

A characteristic of post-war Liberia is unfettered free speech in radio, newspapers, TV, and the internet. Radio stations provide air time for the public to express their concerns freely in programs dubbed “what’s on your mind,” “talk with the president,” etc. Newspapers and television stations also freely publish information about specific members and the operations of various branches of the government without incidents of harassment or arrest, and when such publications are found to be defaming, the publishers are given due process in courts. There have not been reports of government interference with internet facilities or email hacking. However, one pre-election incident seems to counter the government’s commitment to free speech and the use of state media. The Liberian government suspended the Director General of the state-owned Liberia Broadcasting System over the broadcasting of a press conference in which the leader of the main opposition party, the CDC, was alleged to have verbally assaulted the president.

Libel is not common, although there were some instances in the run-up to and during the elections. After a reporting error on the part of the National Elections Commission (NEC), the CDC issued a letter claiming that it had won the first round of the presidential elections. The letter sparked claims of fraud by the NEC, which argued that despite the reporting error, the Unity Party was clearly leading the other contestants. In the wake of the misunderstanding, CDC rejected the results and threatened to boycott the run-off elections. It branded NEC chairman James Fromayan as playing a partisan role in the ruling Unity Party. Other contestants also alleged fraud as some claimed their votes were stolen and given to incumbent President Johnson Sirleaf.

Intimidation and wanton attacks of the opposition became issues during the election period as well. The major opposition to the Unity Party-led government, Winston Tubman’s CDC, alleged that the government was denying it the right to freely protest what CDC termed an unfair electoral process in favor of the Unity Party. Despite the government’s refusal to grant a permit to demonstrate, the CDC decided it would still go ahead with its demonstration, which resulted in what is now known as “bloody Monday,” when one demonstrator was killed by police.⁹ The government claims it was providing protection.

Censorship is not the norm, but there has been a climate of hate speech during elections and some evidence of violence following such speech, against which the government has taken controversial action. The Press Union of Liberia and some opposition described as government intimidation and censorship a case in which the government filed a complaint against three media houses, Power FM/TV, Love FM/TV and Kings FM/Clar TV stations, at Criminal Court for broadcasting “hate messages.” The court said later that it was convinced the defendant institutions did in fact engage in the act but that it would not close them down because it wanted to uphold press freedom.

Even if the government desired to do so, it lacks the capacity and know-how to hinder access to the Internet as an information source. This media is a key tool available to the opposition. Liberians in other countries have communicated countless e-mail

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messages in support for or against the ruling party, sometimes alleging bad governance. The government has not taken any known action to shut down opposition on this score nor has it engaged in acts that suggest it was censoring such communication. Liberia got its fiber optic cable only last November via French Telecom; however, institutions and businesses increasingly have access to Internet and coverage is expected to increase rapidly.

There is state funding of media through the Liberia Broadcasting System/ELBC; the Ministry of Information, Culture, and Tourism (MICAT); and other government press outlets. There is also widespread perception of government sympathy for some press dailies that claim to be independent, such as *The Daily Observer* and *The Analyst*. Others have claimed that the state bribes media institutions. Such allegations were rife during the recent election season, particularly given a change of tone by some news organs traditionally critical of the government such as the *Front Page Africa* newspaper. It is unclear whether they were self-censoring given the poisonous election rhetoric and their sense of civic duty to help keep the peace or whether they were indeed bribed to do so.

Civil Liberties

Chapter II, articles 11-26 of the 1986 constitution guarantee protection from state terror, unjustified imprisonment, and torture. There is little evidence of state involvement in such actions during the reporting period. Exceptions include an incident that took place on November 7, 2011 involving state security—the Liberian National Police and soldiers of the United Nations Mission in Liberia—in which at least one person was killed and several others wounded, as well as a second situation involving students who engaged in public demonstrations to demand pay from government-sponsored vacation job. President Johnson-Sirleaf has said that the students who were arrested will be prosecuted accordingly.

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Prison conditions are not respectful of the human dignity of inmates, even if the government aspires to reform. Prisons suffer from severe overcrowding; grossly inadequate health services; insufficient food and drinking water; lack of adequate light, ventilation and time outdoors; poor hygiene and sanitation; and lack of basic necessities such as clean bedding and toiletries.¹¹ The government has revealed plans to move the central prison to another area in Montserrado County. Recently, groundbreaking ceremonies were held for the construction of the proposed modern prison facility. Additionally, the government has engaged in the construction and operation of regional security hubs in various parts of the country, though a “Palace of Correction” was established in Zwedru, Grand Gedeh County in the 1970s. The first is being experimented with in Gbarnga, Bong County in Central Liberia. It promises to provide facilities for security institutions and to be more humane for prisoners.

Though attacks on activists is not characteristic of the regime, some law enforcers have crossed the line in confrontation situations, such as when students from the William V.S. Tubman School, a high school in Sinkor, demonstrated in support of their teachers in March 2011.¹² A more acute instance of police excess was the November 7, 2011

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confrontation between CDC supporters and state security. As a result of this event, Police IG Marc Amblard was fired.¹³

In an ongoing controversy following the first round of elections, the CDC called for a boycott of the second round and ordered its partisans to a rally deemed illegal by the government, as the NEC had ended campaigning the day before the rally. The president issued a directive to the police to refrain from using lethal force to control the crowds. However, under what the government described as difficult circumstances, including the crowd's refusal to leave and amid threats of violence, the police fired nine to ten live rounds, killing 25-year-old Mamadee Kromah and injuring dozens others, two of them seriously.¹⁴

There is effective protection against arbitrary arrest, including of political opponents and other peaceful activists. There has been some concern over activists protesting in non-peaceful ways. This sentiment has been reflected by the press and was expressed in the Browne Commission Report, written by a government-organized Special Independent Commission, led by Sister Mary Laurene Browne, a Catholic nun. In particular, the report suggests that there has been some violent behavior encouraged by CDC supporters.

Half of the country's 1,524 prisoners were held in 2011 at Monrovia Central Prison, which has been operating at more than twice its capacity due to large number of pretrial detainees (where some detainees are held in excess of the maximum length of sentence that could be imposed for the alleged crime). In 2010, 85 percent of prisoners were pretrial detainees. 858 of these detainees were released as a result of a Fast Track Court action to reduce prison overcrowding. A few others were let go after the Justice Ministry decided that there was insufficient evidence for prosecution. The problem of pretrial detention seems rooted in judicial inefficiency, corruption, a lack of transport and court facilities, and questionable behavior and qualifications of judicial officials, as well as the inadequacy of professional prosecuting attorneys.

The state's ability to protect citizens against armed robbery carried out by private or non-state actors has been inadequate. The lack of effective protection seems rooted in a combination of inadequate institutional capacity and corruption of some law enforcement members. Concerns associated with former combatants seem on the decline, though such concerns again came to the fore in the wake of the political crisis in neighboring Ivory Coast in late 2010 and into 2011.¹⁵

Citizens have access to petition and redress, though such measures are not always effective. There is a government-sanctioned independent human rights commission, and NGOs dedicated to legal defense or human rights establishments include the Catholic Justice and Peace Commission (JPC), the Association of Female Lawyers of Liberia (AFELL), Center for Law and Human Rights, Foundation for International Dignity (FIND), and Liberia Democratic Institute (LDI).

Gender equity is enshrined in law. Women can inherit land and property and receive equal pay for equal work, though historic and war-related discrimination lingers. The government partners with NGOs to address such discrimination, including through educational workshops and micro-credit lending programs. Rape remains widespread, however. The Sexual Pathway Referral program, a combined government/NGO effort, improves access to medical assistance and counseling for victims. Gender-based societal

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discrimination persists in other areas as well. For example, the government has yet to put in place measures such as legislation, law enforcement and education to combat discriminatory customs and practices that infringe on women's personal autonomy and security. A January 4, 2012 report of death of 17 year-old Lotopoe Yeamah in Nimba County due to Female Genital Mutilation (FGM) underscores the problem.¹⁶ FGM is common in the northern region of Liberia with all ethnic groups, and remains a legal and traditional practice. The Ministry of Gender and Development is generally responsible for promoting women's rights. The current legislature reflects the male domination of the government: the senate, which comprises thirty members, has twenty-six male and only four female members from the counties of Bong (1), Margibi (1) and Montserrado (2); the House of Representatives, which comprises seventy-three members, has sixty-seven males and only five females from the counties of Lofa (1), Montserrado (1), Bong (1), Gbarpolu (1) and Grand Bassa (1). A seat in the House of Representatives is still vacant due to the death of an elected representative. The cabinet reflects the greatest percentage of women representation in the government: there are at least six women serving in the top seventeen ministerial posts.

The constitution prohibits discrimination based on ethnicity, sex, creed, place of origin, disability, or political opinion. Enforcement problems abound, notably the persistence of gender inequality. One measure that has been employed is a quota system in the legislature through political parties. The quota system has, as yet, not yielded the desired result and even the NEC has not succeeded in enforcing it. The constitution enshrines racial distinction, as only black people may become citizens. In addition, only Liberian citizens may own property. Although dual citizenship is not allowed, many Liberians who are now American citizens have found ways to circumvent this restriction on property ownership.

The law upholds the rights of ethnic, religious, and other distinct groups. However, there is discrepancy between the law and practice. No laws mandate handicapped accessibility to public buildings, however, and persons with disabilities continue to face societal discrimination, particularly in rural areas. The National Commission on Disabilities and the Health Ministry were responsible for protecting the rights of persons with disabilities. NGOs provide some services to the disabled. The law prohibits sexual harassment, although the practice remains a major problem especially in schools and work places. Government billboards warn against workplace harassment.

“Voluntary sodomy” is a first-degree misdemeanor, with imprisonment for a period of not more than one year, although this charge is rarely brought. Until recently the issue of homosexuality had yet to acquire political saliency. In January 2012, however, the issue gained public attention as demonstrations for and against homosexuality were held at the main campus of the University of Liberia. The US government's policy “to combat the criminalization of homosexuality overseas” may in part have been a catalyst for this interest. President Obama signed a memorandum outlining the policy on Dec. 6, 2011.¹⁷

Approximately 85 percent of Liberians are Christians, 15 percent Muslim, and the remainder adherents to African Traditional Religions (ATR).¹⁸ The laws uphold freedom of conscience and belief, but historically Christians have been heavily advantaged. Since the end of the civil war, Liberian Muslims have foresworn their traditional social

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passivity and begun to assert themselves on the socio-political plane. Following the inauguration of President Johnson Sirleaf for a second term, some Muslims publicly lamented the fact that imams were given no role comparable to their Christian compatriots at public ceremonies. When the president announced senior members of her new cabinet, a public debate ensued over Mandingo/Muslim representation. Many Muslims are strongly demanding recognition from Sirleaf. Sirleaf's government has a majority of new/renewed ministers from the Grand Cape Mount and Lofa counties, which border Sierra Leone and include some Muslims citizens.

The recent pronouncement by the Minister of Education that it would remove the teaching of the Bible from public school curriculum has met with stiff resistance from a large section of the population and has sparked great debate in both official and non-official circles.¹⁹ When the question of teaching the Koran was raised, there were serious objections by vocal Christians. The government has not taken a stand on this issue.²⁰

Generally, Christian prelates are recruited as chaplains in most government agencies, especially the legislative and executive branches. The judiciary however, particularly the Supreme Court, has both a Christian and a Muslim chaplain who interchangeably perform religious duties at official programs. This may reflect the fact that there is a sitting Muslim justice on the court. The court has maintained the constitution's mandate for non-state religion. Although there is an imbalance in the employment of Christian and Muslim chaplains, the government does not interfere in the internal organizational activities of faith-related organizations.

The government generally respects the freedoms of association and assembly. The state permits demonstrations and public protests provided the appropriate state authorities are forewarned. There have been recent instances where requests for demonstration have been delayed or denied, particularly in the time leading up to the 2011 run-off presidential contest. In August 2010, however, the LNP forcibly dispersed and arrested seven residents of the Ducor Hotel area as they attempted to march on the capitol building to petition their representatives regarding a government eviction order. The arrestees were released and no further action was taken.²¹ Even so, there are spontaneous demonstrations in the capital, such as the pro-gay and anti-gay melee at the University of Liberia main campus early in January 2012.²²

Trade union activities are respected. The Ministry of Labor regulates labor matters, including trade unions. The election and removal of trade union officials is the prerogative of the members.

Rule of Law

There is general judicial independence under the laws of Liberia. Nonetheless, there have been instances when the judiciary came under the spotlight by both internal and external observers on account of being plagued with bribery and other forms of corruption. The Supreme Court has taken action to ensure that jurors are punished for taking bribes. In a criminal trial that was later determined to have been tainted with jury tampering, the trial court, for example, conducted an exhaustive investigation that resulted in the incarceration of some members of the jury and a magisterial (court) officer.

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Judges are heavily insulated under the law from interference, particularly in regard to tenure of service and stability in compensation. Salaries may increase but cannot be cut. Over the period under review, judges at all levels of the judicial system have generally exercised full judicial powers without interference by the executive or the legislative branches. Judges enjoy tenure of service, with the exception of magistrates, who may be removed by the president for cause. Judges therefore are immune from the will of the president and, to a large extent, the legislature, which can remove a judge only through impeachment for gross misconduct.

Compliance with judicial decisions has improved significantly, especially in recent years. One incident was reported in 2011 when the Ministry of Justice allegedly refused to enforce a court order to release an accused inmate held beyond the statutory limit without trial, arguing that the ministry had earlier obtained a Supreme Court “stay order” and therefore could not honor the trial court’s order, particularly because the inmate was accused of murder, a non-bailable offense. The inmate was incarcerated at the Monrovia Central Prison but the court decided to release him pending a further court decision. The defendant argued that the prosecutor was refusing his release on political grounds since he was a senatorial candidate running against the candidate of the ruling party. The case started sometime in March 2010 with allegations that the police in Harper poorly handled the entire arrest and detention process.²³

The judiciary has over the past six years recruited judges at the circuit level who have undergone full legal education and obtained a law degree. There is no circuit judge who has not obtained a law degree. However, there are still magistrates who are either in law school or not pursuing any legal education despite efforts to provide some form of training in a paralegal judicial institute under the Supreme Court’s direction. Additionally, there has been a series of trainings through workshops and seminars to upgrade the practical knowledge of judges and magistrates and this has improved performance of the judiciary. The judiciary is generally manned by trained judges from the level of the circuit court as well as specialized courts, but the training of those in magisterial courts still leaves much to be desired.

In general, there is a presumption of innocence until proven guilty by a fair and impartial trial. The statutory laws of Liberia provide for an adversarial system, which allows an accused individual to confront his accuser. There is also a customary legal system, which is somewhat fuzzy in its application since there is no written customary law. Nonetheless, the Ministry of Internal Affairs, which is responsible for customary and traditional matters and thus regulates the interior administration, maintains various agencies that are responsible for specific customary issues. These agencies generally rely on past practices and procedures but often revert to the “Hinterland Regulations of Liberia,” a set of laws that was repealed in 1956.²⁴ The ministry asserts that it does not authorize nor sanction the official use of the regulations but officers of the ministry, especially those at the lower levels who conduct the day-to-day customary matters, continue to use it.

There is due process as citizens are given fair and public trials. Such trials are not always conducted in a timely fashion, however, and pre-trial detention is on the rise. As a result of prolonged pre-trial detentions, serious avoidable setbacks have ensued: defense lawyers regularly invoke the law and succeed in the release of accused, including, in

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some instances, hardened criminals who could have been found guilty had they gone to trial.

Litigants have the right to counsel under the law. In reality, however, access to counsel is limited due to the high legal fees most lawyers charge and the inability of parties to pay. Additionally, depending on the location, lawyers may not be available at all thus causing litigants to represent themselves or to be represented by individuals who are neither lawyers nor sufficiently experienced. The state provides public defenders when the defendant is declared indigent. Access to counsel therefore remains a problem though there has been a slight improvement since the reactivation of the defense counsel program that has provided several defendants with government-paid lawyers. Most of these lawyers, especially at the circuit and Supreme Court levels, are law school graduates with appreciable practical experience.

Prosecutors, especially chief prosecutors, are political appointees and as such are usually subject to the directives of political leaders. As a result, the prosecution of alleged criminals has not been as robust as it should be. Nonetheless, prosecution seems to have taken a positive direction. Recent developments indicate that the government is increasingly inclined to uphold the principle of fair and impartial trial rather than to quickly find the defendant guilty of committing a crime.

Political influence on prosecutors has also been revealed in instances where public officials should rightly be prosecuted. Prosecution is rare and usually concludes with a dismissal for failure to proceed or a loss of the case. The public therefore considers prosecution of public officials to be somewhat of a charade. The Ministry of Justice, however, has robustly resisted the approval by courts of bail bonds when it determines that the bond is insufficient, although sometimes the ministry is seen as attempting to deny the accused the right to bail. For example, during the 2011 election period, an opposition member was arrested for a business matter, yet the ministry pursued and demanded his incarceration on grounds that his bond was insufficient. Although defense lawyers and analysts argued that the bond was sufficient, the court rejected this argument and upheld the prosecutor's request to detain the defendant. It would appear, however, that the court subsequently reasoned that the bond was sufficient as the accused is currently out of jail. In another case of pre-trial detention, Albert Bropleh, a former Board Chairman of the Liberia Telecommunications Commission, was removed from office on embezzlement charges. Bropleh was reportedly denied bond and a court order, and remained without trial for the next eight months.²⁵

Maintenance of security in Liberia is largely the prerogative of UNMIL forces, especially the police, who while technically their own force tend to follow the directions of UNMIL. Training is conducted by UNMIL, or at least arranged by UNMIL in and out of Liberia. A Nigerian military general, Major General Suraj A. Abdurrahman, served as chief of staff but is now commanding officer of the Liberian army, although there are plans to identify a Liberian to succeed him. Otherwise, civilian control over the military and paramilitary forces is effective, likely due to a combination of control and influence exerted by the government, UNMIL and other international security partners over the security forces.

While retired security personnel, including members of the military, have directly engaged in the country's political processes including vying for elected office, the

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security, military, and paramilitary forces do not generally interfere with the political process. When intervention does occur, it is predicated upon orders of the civilian authority to ensure a secured environment and to enhance civility in political and related activities. Security personnel's role does not preclude their voting rights as citizens.

Even though the security apparatuses and agencies are undergoing training and are frequently accorded increased compensation, frequent unethical behavior for pecuniary gains seems to be systemic, especially on the part of traffic controllers. Traffic controllers frequently demand drivers' licenses along with small bribes before allowing the drivers to go. Higher-ranking security officers have also committed acts that evince a lack of accountability. For example, a former director of police, Col. Muna Sieh-Browne, is currently engaged by the Liberia Anti-Corruption Commission on allegations of diverting state funds to her personal use.²⁶

Observing human rights is paramount in the day-to-day work of members of the security establishment who mostly function from offices. In contrast, many field officers, especially the police, have ignored requirements related to human rights and have engaged in unwarranted acts. There remains a lack of clarity regarding the death of a protester at the November 7, 2011 CDC demonstration, although the committee investigating the death recommended to the president that the director of police be dismissed, and the president has acted on the recommendation. The Independent Commission on Human Rights of Liberia has also blamed the police for using unnecessary force. Despite occasional violations of human rights, the government has insisted on respect for human rights and has called for the end of abuse in all sectors. This is evident in the establishment of a commission constituted by the president to probe the November 7 riot. Improved police training has also been recognized as critical and is ongoing.

The state respects the right of people to own property individually as well as jointly and collectively. To this extent, it has been difficult for the state to reclaim some of its own property that is occupied by squatter who in some cases, as demonstrated by a recent class action suit, have established incredibly large communities. More than that, the state recently commenced giving the full grant of title to individuals who have occupied state-sponsored low-income houses and have paid off the established amounts.

The law provides for the enforcement of contracts and property rights and remedies are available to persons damaged by contracts or injury to their property rights. This is one of the few laws that has been fully enforced in almost all instances, assuming there may have been few instances where decisions might have strayed from this path of the law.

There are no actual incidences of land seizure, especially seizure of private land. What has transpired is the government's grant of concession agreements to mostly foreign companies in areas occupied or claimed by indigenous groups, usually outside major cities. The government insists that it is the actual owner, and not communities or ethnic groups. There are, however, counter claims that between 2006 and 2011 the government granted a third of Liberian land to private investors for logging, mining, and agro-industrial enterprises, and thus deprived upwards of a million indigenous people rights to their ancestral land. The president has publicly acknowledged that the government may have committed some procedural errors in granting concession

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agreements. Along with the Land Commission and with the guidance of the Law Reform Commission and the Governance Commission, concession granting procedures are being re-examined.

Anticorruption and Transparency

Bureaucratic regulations and bottlenecks remain real challenges in most government agencies despite efforts by some ministries to ameliorate these issues. The government has launched the Integrated Financial Management Information System (IFMIS) to enhance revenue collections via one-stop shop tax/levy paying procedures and has boosted government revenue generation. It would seem also that this has caused some reduction in bribery.

While the central government may not be strictly involved in economic or profit-making activity, some of their institutions certainly are. The Liberia Water and Sewer Corporation (LWSC), the Liberia Petroleum Refining Corporation (LPRC), and the Liberia Telecommunications Corporation (LTC), for example, are all engaged in business enterprise, although they are not taxable.

Reform is well on course in the area of effective internal audit systems and revenue collection. Revenue collections generally have improved over the years. As a matter of efficiency, the revenue function is being detached from the Ministry of Finance so as to ensure that the agency responsible for generating revenues is not the same agency that exercises spending power over those revenues. The government is currently concluding plans for the merger of the Ministry of Planning and Economic Affairs and the Ministry of Finance as one ministry, and removing the revenue-generation function from the new ministry. The revenue generation program may be handled by a new agency currently being established as the “Liberia Revenue Authority.”²⁷

The separation of public and private interest has until recently proven to be difficult. The president signed Executive Order No. 38 instituting a code of conduct for members of the executive branch. It is also understood that the legislature is in the process of undertaking a debate on whether the code of conduct should be applied to all members of the government, including the other two branches, so that they may all be increasingly aimed at fighting corruption in public office.

Although there are some structural guidelines for combating corruption, these are grossly inadequate, and there is limited adherence and confidence in the systems that have been developed. The General Auditing Commission (GAC) and the Anti-Corruption Commission (ACC) are the major governmental institutions established to fight corruption. The GAC was established to check on adherence to systems and accountability, and the ACC was created after the government enacted an anti-corruption act and the president pronounced a policy of zero-tolerance of corruption. Each of these commissions faces difficulty in obtaining recognition of their contributions to accountability from those in government. For example, there is serious unwillingness to accept the asset declaration requirement at very senior levels of the three branches of the government. The major contention has been the declaration of the assets of spouses and children of public officials. The ACC also faces limited prosecution authority, which has led some to demand that the commission be empowered to prosecute on its own, rather

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than having the Ministry of Justice prosecute on its behalf. Worthy of note is the fact that there seems to be a significant overlap of the roles of these two institutions as to prosecutorial powers.

Along with the General Auditing and the Anti-Corruption Commissions, the Ministry of Finance maintains an audit department that reviews taxes filed. There is no system of mandatory filing of individual tax returns. There is also the Liberia Extractive Industries Transparency Initiatives (LEITI), which is charged with following extractive industries activities to ensure transparency in reporting and meeting of their stated obligations.

Prosecution of allegations of corruption by government officials is scant, and has sparked public debate about the issue. In the run-up to recent elections, there were frequent charges of corruption levied against the government by the opposition. The president's response to the charges was to note that corruption in Liberia is systemic, rather than an issue facing only government officials. She has, however, acknowledged the importance of her government's leadership role in anti-corruption efforts, and has indicated that she plans to begin prosecutions where appropriate following the full installation of her new government.

There is robust and extensive media coverage given to allegations of corruption. Civil society groups have pointed at specific corrupt acts in public offices and have charged that the government has ignored them on numerous occasions. For example, recent pronouncements by the National Democratic Institute charge that there is rampant unaddressed corruption in Liberia's public sector. The government has committed to upholding the whistleblower protection act. However, there is not widespread public confidence in this law, and it has not been utilized as expected except that the media has operated on the basis of press freedom to speak on corruption issues in various sectors. The law provides redress for victims, but few victims of corruption seek this course because of the difficulty of proving acts of corruption and the apparent lack of confidence in the laws' ability to protect corruption victims or anti-corruption advocates.

Several laws, including the New Education Law, prohibit corruption and unethical practices in the educational system. However, the system is rife with all sorts of corrupt practices and graft. Recent studies suggest the extremity of the problem and the need for immediate remedy. Compensation or the low level of compensation may be a contributing factor to the use of bribes, and poor teacher education has added to the inadequacy of the educational system.

The government has over the period of six years since the end of the civil war led efforts to ensure public access to information. Nonetheless, it appears that the majority of the population, especially people outside the Monrovia metropolitan area, is unaware of the existence of or have not had the opportunity to access public information. The signing into law of the "Freedom of Information Act" creates a legal framework for open government. In the absence, however, of a government document classification system and other measures for operationalizing the act, it remains largely an aspiration.²⁸

The budget-making process has been comprehensive but not as transparent as it should be. The Ministry of Finance seems to dominate the process in the executive branch thereby determining what is "reasonably sufficient" for beneficiary agencies without actually including such beneficiary agencies in the final decision. This is a

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situation that may cause bottlenecks for implementing agencies under the budget when passed into law. On legislative review, the budget is generally scrutinized but the time frame for scrutiny seems to be manifestly inadequate. In particular, the budget is frequently submitted at a time of the year when the fiscal period already demands the completion and institution of a new budget.

The GAC conducts audits of expenditure accounting, but this issue has been a subject of controversy. There have been allegations of lack of adequate evidence in audit reports for corruption charges made by the GAC as well as that of the GAC overstepping its bounds in the conduct of its audit. The GAC on the other hand has charged many times that the government is significantly more corrupt than any previous government. These claims have resulted in a standoff between the administration and the GAC, leaving the entire review in limbo. The departing days of former auditor general John Morlu were turbulent for both the GAC and the administration, with Mr. Morlu threatening that he would “take the fight to the doors of the president,” while the president argued that she had simply exercised her prerogative in not renewing Mr. Morlu’s contract. Timeliness of published audit reports is difficult, despite the fact that audit reports are posted on the GAC’s website.²⁹

Government procurement has been decentralized through the creation of a regulatory procurement body, the Public Procurement and Concessions Commission (PPCC). The bidding process is open and transparent. Public institutions are bound to observe PPCC standards in awarding contracts and procuring goods and services. The General Services Agency, another institution predating the PPCC, has long been the government’s procurement institution. The tasks performed by the two institutions seem to overlap in some areas but there has not yet been any serious reason to warrant a review.

Foreign assistance is distributed to areas targeted by different governments’ development policies. For example, Japanese assistance goes largely to maternity health concerns. Companies such as Firestone and the Liberian Agriculture Company pay taxes to government, but these are used for particular projects. In addition, many companies now have corporate social responsibilities policies that encourage support for projects that benefit the inhabitants of the areas in which they work. There is a major issue either of miscommunication or conflict of interests over land rights involving the government, foreign direct investors, and indigenous peoples. An acute case is that of the Malaysian agro-industrial Sime Darby Plantations. Some have characterized the land acquisition process here as nothing short of a “land grab” that has displaced many citizens and will likely displace more.³⁰

Recommendations

- In light of the cultural sensitivity yet clear implications of rights violation regarding the traditional practice of Female Genital Mutilation/Cutting, the government should regulate the practice and commission a study with a view to abolition of FGM.

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- The prosecutorial functions between the Justice Ministry and the Anti-Corruption Commission should be clarified relative to individuals charged with corruption and other forms of economic crimes.
- Explicit measures should be taken, including the clear establishment of a documents classification system and other measures, to give practical effect to the Freedom of Information Act.

¹ Central Bank of Liberia, *Annual Report 2011*, (Monrovia: Central Bank of Liberia, 2012); Annual Message of the President of Liberia to the Legislature, 2011; Silas Kpanan' Ayoung Siakor and Rachael Knight, "A Nobel Laureate's Problem at Home", *New York Times*, January 20, 2012, http://www.nytimes.com/2012/01/21/opinion/in-liberia-a-nobel-laureates-problem.html?_r=1; International Crisis Group, *Liberia: How Sustainable is the Recovery? Africa Report No. 177*, August 19, 2011, <http://www.crisisgroup.org/en/regions/africa/west-africa/liberia/177-liberia-how-sustainable-is-the-recovery.aspx>; Center for International Conflict Resolution, "Smell No Taste: The Social Impact of Foreign Direct Investment in Liberia," (New York, NY: Columbia University, Jan. 2012) <http://www.cicr-columbia.org/wp-content/uploads/2012/01/Smell-No-Taste.pdf>; Global Witness, *Curse or Cure? How oil can Boost or Break Liberia's post-war Recovery* (London: Global Witness, 2011) http://www.globalwitness.org/curse_or_cure/curse_or_cure_dps.pdf; The News newspaper, vol. 23, No. 196 of February 22, 2012 quoted African Petroleum, a prospector for oil and gas in Liberian territory as confirming the discovery of "significant" offshore oil in Liberia. The discovery was made at the Block 1B-09 after 43 days of drilling, between Rivercess and Sinoe Counties. The oil is described by AP as "good quality oil" and that its "commercial quantity is being determined". The CEO of AP, Karl Thompson); IMF, Liberia, Selected Issues prepared by Chris Lane, et al, approved by the African Department, Nov. 22, 2010.

² See unpublished Concept Paper, "Liberia Rising 2030," (revised draft, October 14, 2010).

³ See Tom Nyenur, "UNMIL Drawdown Will Not Risk Liberia - UN Team Assures After Meeting Lawmakers," *Front Page Africa*, February 28, 2012, Acting SRSG Moustapha Soumare spoke of the drawdown of UNMIL operations in Liberia as a transition and a gradual process of handing some of the security responsibilities to the appropriate Liberian authorities.

⁴ See NEC website at www.necliberia.org.

⁵ See *The Analyst*, 11/25/11; *Daily Observer*, 11/23/11; *The News*, vol. 23 No. 132, 11/18/11; and *Front Page Africa*, vol. 8, no. 58, 11/18/11

⁶ For discussions on campaign finance, see Siahyonkron Nyanseor, "Campaign Money and Politics: Whose Buying Liberian Elections?" *The Perspective*, August 18, 2011, <http://www.theperspective.org/2011/0818201103.html>; "Liberian Political Parties Evade Accountability Law, LDI Says," *The Analyst*, February 2, 2011; "Liberia: Concerns over flouting campaign Finance Rules," *West Africa Democracy Radio News*, October 8, 2011.

⁷ See Executive Order No. 38 on Executive Mansion website

⁸ See 1986 Constitution regarding state support of environment conducive to media freedom (Article 15: "This freedom may be limited only by judicial action in proceedings grounded in defamation or invasion of the rights of privacy and publicity in the commercial aspect of expression in deception, false advertising and copyright infringement").

⁹ *New Democrat*, November 9, 2011

¹⁰ Ellen Johnson Sirleaf, *Annual Message to the first Session of the 53rd National Legislature of the Republic of Liberia*, January 23, 2012, <http://www.liberianobserver.com/index.php/news/item/252-pres-sirleafs-annual-message-to-the-first-session-of-the-53rd-legislature-reflecting-the-past-claiming-the-future>, 9.

¹¹ Amnesty International, *Good Intentions are not Enough: The Struggle to Reform Liberia's Prisons*, September 2011, <http://amnesty.org/en/library/asset/AFR34/001/2011/en/b5b302eb-69bc-4f10-9993-9ef96fcd319a/af340012011en.pdf>.

¹² See "Students Demo Gets Bloody, Several Injured, Arrested," *Daily Observer*, March 23, 2011. The paper reported inter alia "As the angry students began to march toward the Executive Mansion in an

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apparent mood to reinforce their pressure on the government, the Rapid Response Unit of the Police moved in to block the way. It took its ugly turn when the students began to throw stones at the Police who tried to disperse them from the streets.”

¹³ The Carter Center, *National Elections in Liberia: Final Report* (Atlanta, The Carter Center, Fall 2011); Government of Liberia, *Special Independent Commission Investigating Pre-Election Violence Presents Official Supplemental Report to President Sirleaf*, March 8, 2012, http://www.emansion.gov.lr/press.php?news_id=2134.

¹⁴ Special Independent Commission of Inquiry, *Official Report of the November 7, 2011 Acts of Violence and Civil Disturbances Submitted to Her Excellency Ellen Johnson Sirleaf, President of the Republic of Liberia*, November 25, 2011. See also supplemental report published March 2012.

¹⁵ See “Police: 75 Arrested for War to Ivory Coast,” *New Democrat*, January 31, 2012; “Several Rubber Thieves Raided. Weapons Found,” *New Democrat*, February 16, 2012; “Criminal Hideout on RIA Highway,” *Daily Observer*, February 16, 2012. See also “Suspected Armed Robbers Enveloped, Over 175 Arrested,” *New Democrat*, December 12, 2011; “Hundreds Killed in Ivory Coast – Fleeing Liberian Mercenaries Implicated,” *New Democrat*, May 13, 2011.

¹⁶ “Girl, 17 Dies after Circumcision,” *Daily Observer*, January 4, 2012. See also Mae Azango, “Growing Pains: Sande Tradition of Genital Cutting Threaten Liberian Women’s Health,” *Front Page Africa*, March 13, 2012; Committee to Protect Journalists, “Liberia: Reporting on Genital Mutilation Draws Threats,” press release; *All Africa*, March 14, 2012; and “Liberian Reporter Gets Death, Mutilation Threats,” AP Johannesburg, March 14, 2012; “Sande Bush Fallout: World Outcry Over Death Threats Against Liberian Journalist,” *Front Page Africa*, March 15, 2012.

¹⁷ Robbie Corey-Boulet, “In Liberia, Rhetoric but no Action on U.S. Gay Rights Initiative.” *World Politics Review*, January 19, 2012; K.L. Yangian, “No U.S. \$1.8 million Backing: Says Ponpon. Vows to continue campaign for Gay Rights,” *Front Page Africa*, January 18, 2012.

¹⁸ Liberia Institute of Statistics and Geo-Information Services (LISGIS), *2008 National Population and Housing Census*, http://emansion.gov.lr/doc/Population_by_County.pdf.

¹⁹ “Decentralized Education Envisioned,” *New Democrat*, August 9, 2011.

²⁰ Throble Suah, “Liberia: Christians Gather One Million Signatures to Declare Liberian Christian State,” *The New Dawn*, February 16, 2012.

²¹ “Liberia: Vacate or be vacated – Ducor Residents Eviction Begins Today,” *All Africa*, August 17, 2010, <http://allafrica.com/stories/201008180570.html>.

²² “Gay Rights Activist in Hiding, But vow to Carry Crusade...” *Liberian Observer*, February 1, 2012; “No U.S. \$1.8 million Backing Say Ponpon. Vows to Continue Campaign for Gay Rights,” *Front Page Africa*, January 19, 2012.

²³ “Harper Police handling of the Ritualistic Case is Unprofessional,” *Daily Observer*, March 31, 2010; “SG Subordinates Court Order on Morias, Others Released,” *Daily Observer*, June 17, 2011.

²⁴ See Title 1, Aborigines Law, Liberian Code of Law of 1956.

²⁵ “Disgraced!” *Daily Observer*, July 14, 2011.

²⁶ *Daily Observer Newspaper*, February 24, 2012.

²⁷ The proposed LRA will replace the Revenue unit of the Ministry of Finance as a semi-autonomous agency. The draft bill has been completed, reviewed by the Law Reform Commission, a technical committee formed to steer the process, and the creation of the formation office is underway, contingent on the development of a full report on options available to the government as the most appropriate model. Source: Law Reform Commission of Liberia.

²⁸ See *An Act To Establish The Freedom of Information, Republic of Liberia. Approved September 16, 2010* (Monrovia, Liberia: Ministry of Foreign Affairs, October 6, 2010). See also: *Preparing to Implement the Freedom of Information Act (FOIA): A Preliminary Assessment for a Liberian Government Document Classification System, Phase One: Survey and Assessment*, (Contract for Consulting Services between Phoenix Communications Consultants, Inc. and Dr. Verlon Stone, November 12, 2011).

²⁹ See also *Daily Observer*, vol. 14, no. 417, March 28, 2011; “AG Morlu Writes Ellen For Politicizing His Re-Nomination,” *The Independent*, March 24, 2011.

³⁰ See “Liberia: Land Grab or Development Opportunity?” *All Africa*, February 20, 2012, <http://allafrica.com/stories/201202171018.html>.