Against the odds, Liberia is at peace. In the eight years since the Comprehensive Peace Accord (CPA) was signed, the Liberian government and the international community have made significant progress in peacebuilding, particularly in security sector reform with the restructuring of armed and police forces, the disarmament and demobilization of ex-combatants (DDR), and the steady (albeit slow) rebuilding of the criminal justice system. Nevertheless, each of these undertakings still faces many challenges. There are few trained lawyers and rural Liberians have virtually no access to the formal justice system. The reintegration and rehabilitation of adult former belligerents remains problematic with a chronic lack of employment opportunities and active militias in the regions luring many back to battle in neighbouring Guinea and Cote d’Ivoire or into the illegal exploitation of natural resources. The limited capacities of the judicial system means that the prosecutions called for by the Truth and Reconciliation Commission (TRC) are unlikely to occur any time soon. These caveats do not undermine the very real achievements that have been made so far in peacebuilding and transitional justice in Liberia, but they do urge a tempering of great expectations.

This chapter addresses the simultaneous peacebuilding and transitional justice activities undertaken in Liberia since 2003, when the civil war ended with a ratified peace agreement. It will argue that while genuine efforts have been made in both respects, Liberia’s peace remains fragile, and demands for expeditious justice are unlikely to be met in the near future.

There are a variety of mechanisms that aim to address the impact of human rights violations in a post-conflict society. Some, such as security sector reform, as well as disarmament, demobilization, and reintegration are deemed to fall under the rubric of peacebuilding, where others are considered as belonging to the realm of transitional justice, namely legal accountability, truth and reconciliation commissions, reparation and memorialization. Each of these has been tried in Liberia, and while major peacebuilding efforts are highlighted, much of the following explores Liberia’s approach to transitional justice to date and what this means for long-term peace and accountability.

Concurrent with institutional peacebuilding, the TRC attempted to provide Liberians with a forum for truth-telling regarding the heinous crimes that took place during the conflict. Beset with ongoing difficulties including a lack of unanimity among the commissioners, the TRC was innovative in several ways, including its documentation of testimonies from nearly 2,000 Liberian expatriates, its detailing of violations against women and children as well as economic crimes, along with its suggestions for customary forms of accountability & truth-telling. Most of the TRC’s recommendations have yet to be implemented, in part because of the political controversy around the call for lustration, but also because the state structure lacks the necessary capacity and resources. As a result, many Liberians are looking to customary justice mechanisms in their
pursuit for justice. Previous experience suggests that they should harbour modest hopes least they be disappointed.

PEACEBUILDING: ‘WE’VE COME SO FAR, BUT WE KNOW HOW FAR THERE IS TO GO’

When the Liberian war ended with the 2003 Accra Comprehensive Peace Agreement (CPA), the country was a failed state. The nation’s physical infrastructure, including courts and detention centres, was completely destroyed, there was no provision of public services, widespread corruption within the government, virtually no lawful economy, and no government control over the legitimate use of force. Most legal professionals had left the country. Indeed, the nation’s entire security system was in disarray. Recognising that the state apparatus was in tatters, the CPA requested the United Nations to deploy a peacekeeping force to support the transitional government with the implementation of the peace agreement. This peacekeeping force, the United Nations Mission in Liberia (UNMIL), was mandated to work with the government to develop and implement a DDR strategy.

UNMIL’s first attempt at DDR, which began two months after the CPA was signed, was an utter failure. Troops were ill-prepared, only one of three containment camps was ready, and there was no guarantee of camp security. In December 2003, after nine people were killed by riots that began when ex-combatants at a cantonment site near Monrovia did not receive immediate cash for their weapons, the programme was suspended. DDR resumed four months later after the program was overhauled. In addition to catering to former belligerents from all armed groups, the revamped program lowered entry requirements to 150 rounds of ammunition or a weapon. In exchange, ex-combatants received a DDR identification card, two cash payments of $150 (US) and were entitled to ‘reintegration programming’. Despite the shaky start, by November 2004 DDR was deemed officially complete with 101,496 combatants disarmed and demobilized, and an estimated 90,000 of these having participated in rehabilitation and reintegration.

At a glance, DDR in Liberia appears a success, but the high number of disarmed ex-combatants is evidence of one of the program’s significant failings. Prior to DDR, the International Crisis Group (ICG) estimated Liberia had between 48,000 and 58,000 ex-combatants. However, by the time the program ended, more than double ICG’s initial estimates of purported combatants had been processed. Most troubling was the modest number of arms collected — approximately 27,800 guns and six million rounds of ammunition, or an average of one gun per four ex-combatants. The large number of DDR participants was not due to UNMIL’s effectiveness, but because people cheated to access its benefits. Since the program only paid for one weapon or 150 rounds per person, opportunistic ex-combatants possessing multiple firearms

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3 Ibid. Jennings speculates that entry requirements might have been lowered to ensure the inclusion of ‘camp followers’; women who were bush wives or fighters or both.
4 Reintegration programming consisted of formal education, vocational or public works training, with the DDR program paying tuition for up to three years and giving participants in registered activities a monthly stipend (between $15-30 US/month).
7 Ibid, p. 209
applied repeatedly at various collection sites. Numerous non-combatants sought to enroll in DDR programs in order to receive assistance they felt they ought to be entitled to. Ultimately, widespread fraud and corruption meant that demands on the system exceeded its capacity. Nonetheless, as youth no longer terrorise the country with semi-automatic weapons, few dispute the efficacy of the demobilization of ex-combatants. Nonetheless, with countless young men idle and unemployed, congregating on the streets and in the drinking establishments of Monrovia, there is considerable doubt about the effectiveness of the rehabilitation, and particularly, the reintegration of former soldiers. The low number of weapons collected during the program leads skeptics to question whether Liberia was truly disarmed. Many Liberians thus question the fragility of their nation’s security.

While some DDR recipients describe the program as “free benefits for the willing”, other deserving individuals were not able to avail themselves due to disability, inability to travel or otherwise disinclined from registering. The DDR process largely failed to address the needs of many of girls and women who were formally associated with the fighting forces because it did not consider their particular war-time experiences. While the total number of female Liberian ex-combatants is unknown, 22,080 women and 2,517 girls officially participated in DDR. It was typically easier for girls to access these programs, since former child soldiers could enter without submitting a weapon or ammunition. The adult program denied access to women not bearing arms; however, many women involved in the war were not exclusively fighters, but also ‘bush wives’ or ‘camp followers’, as such they did not all carry or own weapons. According to Specht, it is common in post-conflict situations that civilian non-combatants (many of whom are victims) perceive programs such as DDR as rewarding belligerents for perpetuating war, but the need for incentives to induce combatants to lay down arms is clear. Frequent, participants in training programs received their monthly stipend late, and often noted that by the time the received it, a portion had been taken by the school principal or program fund administrator. See Jennings, ‘The Struggle to Satisfy’, p. 210.


the majority of young women (aged 18-24) did not participate in DDR.\textsuperscript{15} Since individuals who did not formally enrol in DDR were ineligible for skills training or formal education reintegration packages, many women were affected and thus had limited prospects for employment.\textsuperscript{15}

Women were further disadvantaged in the aftermath of the war since the majority had suffered gender-based violence.\textsuperscript{16} Frequently, girls and women remained in relationships with the men who had sexually assaulted them, and at war’s end when asked about their experiences many found it difficult to ascertain whether their relationships were voluntary or forced.\textsuperscript{17} Numerous young women were unable to receive special care. While former child combatants were assisted by child protection agencies under UNICEF, girls over the age of 18 who were victims of gender-based violence did not receive protective assistance under adult DDR programs.\textsuperscript{18}

There were no formal links between DDR and transitional justice processes in Liberia. By the time the Truth and Reconciliation Commission officially began its work in 2008, DDR was long over. According to Jaye and the International Center for Transitional Justice, it was preferable to sequence DDR and transitional justice, with DDR implemented first.\textsuperscript{19}

In the aftermath of the CPA, the transitional government’s primary concern was to prevent a return to conflict, which meant that immediate attention went to improving the fledgling state’s security over pursuing transitional justice.\textsuperscript{20} In addition to DDR, security sector reform sought to address the legacy of corruption and human rights violations that were endemic in the police (LNP), the army (AFL) and the Special Security Services (SSS) that protect the President. The goal is to vet and train Liberia’s various security forces into respected, reliable and autonomous institutions that will outlast the UN’s presence. The Liberia National Police (LNP) will become the Liberia’s primary security provider, whereas the Armed Forces of Liberia (AFL) will be a smaller organization providing external defense.\textsuperscript{21} The challenges are many; the country has little experience with effective and accountable policing. Charles Taylor’s regime co-opted the country’s fragmented police forces to serve its political ends. Consequently, it is not surprising that many Liberians remain skeptical of the LNP’s capacity to ensure security.

Nevertheless, since 2004, members of UN Police (UNPOL) have worked alongside the LNP, trying to restore law and order, while struggling to restructure, retrain and re-equip the Liberian police service. While it was mandated but not funded to do so UNMIL has trained over 3,500 new police officers along with the Liberian government.\textsuperscript{22} Some police forces have been

\textsuperscript{15}Ibid, p. 82.
\textsuperscript{17}Specht, \textit{Red Shoes}, p. 106.
\textsuperscript{20}Jaye, \textit{Transitional Justice and DDR}.
deployed in rural areas, but outside of the capital policing remains inadequate and UNPOL continues to be the country’s most visible and reliable police force. In large part, the LNP’s limited effectiveness is due to resource constraints; the force faces challenges in infrastructure, logistics (including basics like office supplies and gas) and budgetary constraints, not simply because the national government is strapped but because many UNMIL donors have delayed and reneged on promised assistance.

The CPA mandated the U.S. to reform the AFL and dissolved the old army while vetting and retraining a new one using two private security agencies. Recruitment and training has been prolonged because of a rigorous vetting process to prevent former corrupt and abusive members of the forces to enlist anew. As of 2011, Liberia’s army numbers approximately 2000 soldiers, compared with the 9,400 UNMIL military troops and 1,300 police that remain stationed throughout the country. Neither the LNP nor the AFL has reached their 20% target for women, although there has been some progress. In the year after the first all-female UN contingent (comprised of 103 Indian police women) was stationed in Liberia in 2007, the number of female applicants to the LNP tripled. According to UNMIL, as of early 2011 more than 400 women have been recruited and trained for duty in the police force.

The nation’s security improved immeasurably in the first several years under UNMIL. Even in the politically charged year of the first post-conflict elections, in a 2006 survey of 800 Liberians, 90% stated that UNMIL had done a good or very good job at implementing the CPA. UNMIL, the U.S., and international consultants are also active in reforming Liberia’s judicial system. Through the Legal and Judicial System Support Division established in 2003, UNMIL’s mandate “is to develop and implement pragmatic solutions for the myriad problems and challenges facing Liberia’s justice system with the ultimate aim of re-establishing the supremacy of the rule of law in post-conflict Liberia.” This is a tall order for an institution that was shattered by the war—even prior to the civil conflict, it lacked credibility. For the most part, judicial reform was overlooked in favour of immediate security and DDR and it took a full five years after the CPA for Liberia to develop a strategy for the rule of law.

Many Liberians believe that the peaceful future of their nation depends on a functional legal system. “We will never be able to have peace and justice if we don’t fully overhaul the justice system. This is vital,” says a leading Monrovian cleric. “Much has been done, but we still have a long way to go. Even for investors, without judicial reform, they’re reluctant to come. All people need to feel that there is a system they can appeal to for redress. Until this happens Liberia

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23 75% AFL’s new candidates were rejected, compared to the 10% that were turned down by the LNP.
The lack of an effective judicial system fuels impunity, and contributes to the insecurity that Liberians continue to feel despite officially being at peace for eight years. Additionally, Liberia’s dual legal system of formal and customary laws creates complications as well as opportunities for those seeking reform and redress. This dual system was first outlined in the 1943 Rules and Regulations Governing the Hinterland of Liberia (‘Rules of the Hinterland’); formal laws governed settlers and missionaries (mostly located in more urban areas), while the majority indigenous African population (nearly all rural dwellers) were governed by customary laws. Locally elected chiefs have their own courts which preside over matters of customary law, including civil matters pertaining to marital status and debt, while criminal matters are supposed to be overseen by formal courts, although petty theft is often addressed by the customary system. Customary disputes are typically resolved in non-punitive, reconciliatory ways, although there are exceptions. There is no clear formula that determines when a case is pursued by the customary or formal systems. Individuals can avail themselves of both systems, which means that some people become judicial opportunists; the loser in one can take her case to the other. However, where there is a conflict between formal and customary law, the formal system prevails.

The oversight of the customary and formal legal systems is disjointed. The Hinterland Regulations (and customary courts) are under the jurisdiction of the Ministry of Internal Affairs and thus are not part of the national court system under the justice ministry. Liberia may have a dual judicial system, but that does not mean two separate ministries should oversee it.

Although customary law is widely practiced in Liberia it is not well understood by most international legal experts, and to date nearly all of Liberia’s judicial reform has focused on the formal system. Despite a shared international and domestic commitment to reform and reconstruction, Liberia’s formal justice system remains greatly constrained by limited capacities. What little infrastructure there is resides in Monrovia; some counties have not had functioning courts since before the wars. Only 10 of approximately 300 magistrates have a law degree although this is a requirement for the position and anywhere between 50 to 75 per cent of Justices of the Peace are illiterate. While prosecution staff is mostly in place, in most courts there are no defense lawyers. Prisons are overcrowded, and more than 90 percent of inmates have yet to be tried. Juveniles are particularly vulnerable to extended pre-trial detention since there is only

30 Interview with Reverend Benjamin Lartey, Secretary General, Liberia Council of Churches, 23 February 2011, in Monrovia.
31 Johanna Herman and Olga Martin-Ortega, ‘Narrow gaps in justice: Rule of law programming in Liberia,’ in Chandra Sriram et al. (eds.) Peacebuilding and Rule of Law in Africa: Just Peace? (London: Routledge, 2010).
32 Where the Liberian Penal Code has been violated, the customary system does not have legitimate jurisdiction, but that does not prevent chiefs, particularly in rural areas, from taking on such cases and meting out punishment in the form of ‘trial by ordeal.’ Some of the customary ways of resolving conflict, including punitive processes, are addressed later.
33 In case of abuse, the customary system is accountable to the Ministry of Justice as well as the Supreme Court.
one juvenile court in the country. These limitations are the backdrop to the Liberian Truth and Reconciliation Commission, its call for legal prosecution and censure, and some of the arguments favouring a reconsideration of traditional justice mechanisms.

**Origins of the much-hyped and much-maligned TRC**

A common transitional justice mechanism is the truth commission. The Liberian Truth and Reconciliation Commission (TRC) does not have the cachet of previous commissions undertaken in South Africa or Chile, but since its inception it has maintained a high profile domestically, and most Liberians can expound at length on its work.

According to Ntsebeza, Truth Commissions are only credible and socially significant “when their mandates and composition were determined on the basis of a broad consultative process.”

Many members of civil society groups were present at the peace negotiations leading up to the 2003 CPA, and while few held sway among the belligerents, all sought some form of accountability mechanism in the peace settlement. The mediators, on the other hand, were most concerned with persuading warring factions to lay down their weapons. In the words of a senior advisor to UNMIL, “The signatories, even as they participated, were somnambulating. They were there, but there was no criticism of what was going on; the mightiest minds were there, including the then Minister of Justice, the ex-Chief Justice. But really, who were they to stand up to the three warring parties?”

During the talks, belligerents gave no consideration to criminal prosecutions or trials, with parties claiming that they would rather fight than agree to a criminal tribunal; instead they pressed for a truth commission. “In the parlance that developed between negotiators, ‘truth commission’ was considered shorthand for ‘amnesty’, or, at any rate, for ‘not a tribunal’.”

Even so, guarantees for amnesty were not included in the agreement to establish a truth commission. Some observers noted that the warlords seemed impervious to the threat of prosecution, and that they assumed that amnesty was part of the peace agreement.

After the CPA was ratified, initial attempts by the interim government to establish a truth commission failed. Subsequently, several civil society groups, along with UNMIL, the United Nations Development Program (UNDP) and the Economic Community of West African States (ECOWAS) carried out public consultations, which led to the 2005 Act to Establish the Truth and Reconciliation Commission of Liberia (TRC Act). When TRC Act was finally passed, not only was the TRC forbidden from granting amnesty, it was granted the authority to recommend prosecutions and censure. Nonetheless, while Charles Taylor was indicted for war crimes that he

36 Jaye, *Transitional Justice and DDR.*
38 Interview with a senior transitional justice advisor to UNMIL, 18 February 2011, Monrovia.
allegedly committed in Sierra Leone, many of his former associates continued to hold influential positions in business and government, as did most many other perpetrators of the conflict.\textsuperscript{43}

The goal of the Commission was to “deal with the root causes of the crises in Liberia, including human rights violations” and to “recommend measures to be taken for the rehabilitation of victims” (TRC Act). The Commission’s inquiry ran from 1979 to October 2003, when the transitional government was inaugurated.\textsuperscript{44} Under Liberian law, officials of national organizations are required to be Liberian citizens, which meant that none of the nine Commissioners had any experience with truth commissions or similar organizations.\textsuperscript{45}

As the TRC began work, whatever fears perpetrators may have had likely faded. The TRC lacked stature and resources. Few of its nine commissioners were publicly known, and in a society that venerates its elders, many were surprised at the choice of 35 year-old human rights lawyer, Jerome Verdier, as chairman. Although several commissioners were lawyers, Amnesty International claimed that the TRC “did not have the necessary expertise to make sophisticated legal evaluations”, citing the lack of in-house legal team.\textsuperscript{46}

The problems of the Liberian TRC were not unique: truth commissions often promise to achieve more than the allocated time and resources allow. Liberian law gave the TRC “a full smorgasbord of goals: ‘national peace, unity, and reconciliation’, ‘genuine healing’”\textsuperscript{47} as well as a broad mandate to investigate decades of events, but it did not provide the means, time or expertise so the Commission could achieve its aims. Over time, the Commission did not improve its weak reputation. “The Liberian way of doing things took over,” says one observer. “Infighting, mistrust across the board, among committee members, between they and the government, they and the UN, they and members of the international community. It was a multi-headed weapon shooting in all directions including onto itself.”\textsuperscript{48} To this day, several members remain at odds, and are not on speaking terms.

Initially, the TRC sought to collect statements from one percent of the country’s population, or approximately 35,000 people. By the end of 2007, despite serious capacity constraints, the Commission had collected and processed over 17,000 statements. This is a significant achievement in its own right; in South Africa, a country with 14 times the population of Liberia, approximately 21,000 statements were taken for its TRC.\textsuperscript{49} With the assistance of a team of volunteers, the Liberian TRC also gathered statements from more than 1,600 members of the

\textsuperscript{43} Jonny Steinberg, ‘Liberia’s Experiment with Transitional Justice,’ \textit{African Affairs}, Vol. 109, No. 434 (2009), pp. 135-144.

\textsuperscript{44} Article IV of the TRC Act notes the TRC could look at “any period preceding 1979.” Liberia was colonized in 1847 by a small number of former American slaves who ruled the country to the detriment of most of the nation’s aboriginal population until 1979.


\textsuperscript{47} Steinberg, ‘A Truth Commission goes Abroad,’ p. 39.

\textsuperscript{48} Interview with a senior transitional justice advisor to UNMIL, 18 February 2011, in Monrovia.

Liberian diaspora, residing in Ghana, the U.K. and the U.S. This was the first time a TRC had systematically considered and included a diaspora population in its work. A number of these individuals had valuable information about the political situation prior to the civil wars. For instance, many former members of the Tolbert government (the last Americo-Liberian regime) now reside in the United States. They were able to testify about events that led to the 1980 coup by Samuel Doe, as well as the rise of Charles Taylor as a former Tolbert government minister. The diaspora’s role in the conflict was also revealed through these testimonies.

In spite of its innovations, the Liberian TRC remained fraught with challenges and in-fighting, so much so that two of the nine commissioners refused to endorse the Final Report. While no one denies that the Liberian TRC was a worthwhile undertaking, few have unilaterally positive assessments of its final report. A more generous appraisal notes how the TRC has shaped the political landscape, “The issues and recommendations coming out of the TRC will continue to dominate the national agenda. Still, there are real problems around the report and its findings. We hold dearly to the issues of due process and transparency and these were sorely lacking.” While ostensibly upholding the Constitution, the Commission essentially worked as a law unto itself, offering no explanations as to how it came to its conclusions and recommendations. During the process, many victims were disappointed that they were not able to interact as much as they wanted with alleged perpetrators. “One concern that we had was that perpetrators were supposed to be given the chance to interact with their victims, and there was only one county where that took place,” says Rev. Benjamin Lartey. “The hearings were more of an environment where people made scholarly presentations. Victims didn’t have a chance to meet perpetrators. And all the accused came and said ‘they’re lying, who said I did that‘.” The fact that many accused appeared to be less than forthcoming and remorseful undermined the integrity of the proceedings to victims.

In all, many observers provide cautious endorsement of the TRC, contending it was a worthwhile albeit flawed body.

“In the history of Liberia, this is as much as has ever been said about Liberia and Liberians. Despite my misgivings, and the fact that it wasn’t written by Confucius, it is still better than anything stated before. I don’t like it when people expect a South African like report; the capacities just were not there. When the best were not available, we settled with the best available. Therefore, we need to

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50 Commissioners created the LTRC Diaspora Project, which partnered with The Advocates for Human Rights (The Advocates), an American human rights organization based in Minneapolis, MN (see Young and Park 2009).
51 Laura Young and Rosalyn Park, ‘Engaging Diasporas in Truth Commissions: Lessons from the Liberian Truth and Reconciliation Commission Diaspora Project,’ International Journal of Transitional Justice, Vol. 3 (2009), pp. 341-361. Other truth commissions, such as those in Haiti, East Timor and Sierra Leone, have sought the input of diaspora communities, less comprehensively.
52 Ibid, p. 353.
54 Interview with Aaron Weah, Program Associate, International Center for Transitional Justice (ICTJ), 23 February 2011, Monrovia.
55 Interview with Reverend Benjamin Lartey, Secretary General, Liberia Council of Churches, 23 February 2011, in Monrovia.
be careful about saying what is the success and failure of the TRC; it is analogous to the capacity of the nation."  

Not all reviews are as forgiving or as diplomatic. Steinberg writes, “The substance of the Final Report is something of a mess. Its recommendations stand little chance of surviving judicial review for they do not stand up to the flimsiest definition of the rule of law.”  

It is to the TRC’s recommendations for prosecution that we now turn.

**Formal accountability: Prosecution and lustration**

While the exact numbers remain contested, up to 200,000 people were killed (1 in every 17 civilians) and nearly a million displaced during the Liberian civil wars. Up to 21,000 child soldiers were forcibly conscripted to torture, sexually assault and kill; between 60 and 70 percent of women experienced sexual violence, and at least 25 massacres in which a minimum of 100 people were killed are known. Nearly a decade later, fully 78% of the population consider themselves to be victims of the war. For these reasons, many argue that the truth-telling mechanism of the TRC alone is insufficient and that perpetrators need to be held legally accountable for their actions.

The most controversial part of the Liberian TRC report is where the Commission calls for the establishment of an Extraordinary Criminal Tribunal and names individuals, corporations and institutions recommended for prosecution or, for further investigation. More than 100 people are named for prosecution of gross human rights violations. An additional 49 individuals are recommended for public sanctions in the form of lustration, preventing them from holding public office for 30 years, for having aided, abetted and otherwise supported perpetrators of the conflict. Number 11 on the list is current President Ellen Johnson Sirleaf.

Most troubling, the report does not outline the criteria it used to determine who should be prosecuted or sanctioned, which means that these recommendations come across as somewhat arbitrary. Many individuals are referred to nowhere else in the report, and as such it is difficult to ascertain what evidence exists to warrant their prosecution and censure. According to a transitional justice expert, “There is a disconnect between the due process and transparency the TRC was mandated to uphold. It is not sufficient to say, we are going to prosecute and sanction, because we are the TRC and we say so.”

The TRC’s methodology was flawed. For example, the TRC allowed unlimited anonymous testimony, which was subsequently used to build cases against those accused –

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56 Interview with a senior transitional justice advisor to UNMIL.
58 There is no consensus on the total numbers of casualties and displaced persons from the Liberian civil wars. Record keeping during the war was virtually impossible, and various belligerents inflated or diminished numbers for political gain.
63 Interview with Aaron Weah, Program Associate, International Center for Transitional Justice (ICTJ), 23 February 2011, Monrovia.
although how this was done is undocumented. Former Commissioner Sheikh Kafumba Konneh, argues that the report is unconstitutional, stating, “The Liberian Supreme Court holds that the language of a statute that is used to describe a crime committed must carry enough information that will give the accused the opportunity to know why he or she is being charged. The Constitution also says that the accused person must be confronted by witnesses and accusers.”64 Both Konneh and fellow dissenting commissioner Pearl Brown Bull note that individuals who are named for prosecution and censure have no means to defend themselves against the report’s claims, something that all accused should be afforded. “If we want our country to develop, to not have a repeat of past conflict, we must protect the rights of people, alleged criminals included.”65

In a recent landmark decision, the Supreme Court of Liberia ruled part of the TRC Act and the TRC final report to be “unconstitutional and unenforceable”, meaning that individuals cited for lustration cannot be prevented from holding office.66 Archie Williams, a businessman named on the list, brought the case, claiming that although “he was never served with notification written or oral, from the TRC charging him with any crime” and that no witness was ever brought forward to testify as to his alleged wrongdoings, “the TRC released its [Final Report] in which, amongst others, it recommended and directed that petitioner, along with certain other Liberians, be barred from holding public office for thirty years, for what the Commission termed as petitioners major role in the Liberian conflict.”67 In its ruling, the Supreme Court said the TRC’s claim making it mandatory for the President to implement its recommendations is unconstitutional because any such implementation by the President would be in violation of Williams’ constitutional right to due process. The Court’s decision notes that TRC’s recommendation to ban a number of people from holding public office, including President Johnson Sirleaf, without first upholding their right to due process in keeping with law, is a clear violation of the Liberian Constitution.

There is no doubt that some people on the TRC’s ‘most wanted’ list have committed war crimes, and Liberians unquestionably want the war’s perpetrators to be held accountable for their actions. However, Liberians also want a strong legal system that holds the right people accountable for their actions. “If structures are to work, and people are to work and live together, we need accountability. Those who did wrong should be accountable for their wrongdoings, but good accountability depends on being specific. In terms of prosecution, this means that a person has to found guilty through due process.”68 At this time, it would be difficult to assure a Liberian accused of any crime, let alone gross human rights violations, that they would be afforded due process.

Despite the inroads that have been made in judicial reform, Liberia’s domestic judicial system remains severely constrained. According to Campbell-Nelson, the legal system will not

64 Interview with Sheikh Kafumba Konneh, Muslim clergyman, peace activist, and dissenting TRC commissioner, 17 February 2011, Monrovia.
65 Interview with Councillor Pearl Brown Bull, lawyer, peace activist and former dissenting TRC Commissioner, 16 February 2011, Monrovia.
66 Archie Williams vs. Christiana Tah (Minister of Justice and Attorney General), the Independent Human Rights Commission, and the Government of Liberia, 21 January 2011. Article 48 of the TRC Act mandates the TRC to recommend to the President the implementation of recommendations coming from the TRC, while Section 14.3 of the TRC report lists and recommends a number of Liberians be banned from holding public office for 30 years.
68 Interview with Lindora Howard Diawara, Coordinator, Women in Peacebuilding Network (WIPNET), 20 February 2011, Monrovia.
have the capacity to try alleged perpetrators for at least a decade.\textsuperscript{69} Thus even before the TRC
tabled its final report, some Liberian human rights activists thought it premature to contemplate
legal prosecutions.\textsuperscript{70} As part of its statement-taking, the TRC included questions on the theme of
reconciliation. In 10 out of Liberia’s 15 counties, the majority of those questioned wanted to
“forgive and forget” and in the remaining counties almost half shared this opinion.\textsuperscript{71} As a result,
some peace activists found the rush to prosecute to be counterintuitive, “The draft report, using
these figures, noted that people wanted to move on with reconciliation. This was left out of the
final report. What were the reasons for suppressing this? Even the issue of reconciliation and
healing was downplayed in the final report.”\textsuperscript{72} For those who believe that victims want to see
justice in the form of prosecutions, recall that nearly all Liberians see themselves as victims of the
war. At this time, only a small proportion of Liberians believe victims will be helped by trials and
the punishment of perpetrators.\textsuperscript{73}

Even the most ardent supporter of prosecutions, Jerome Verdier, publically acknowledges
that the deficiencies of Liberia’s formal legal system are so profound that the TRC’s
recommendations for legal accountability cannot be pursued domestically, at least for the time
being. “The judiciary in Africa is unreliable, corrupt and by no means transparent,” he said.
“Because of inherent mistrust of the judicial institutions in Liberia, justice is not the first interest
of victims of war and conflicts.”\textsuperscript{74} In the absence of a well-functioning Liberian legal system,
Verdier is pinning his hopes on the International Criminal Court (ICC) as an “appropriate strategy
for delivering justice to local populations.”\textsuperscript{75} So far, the ICC has not indicated any interest in
undertaking the prosecution of alleged Liberian war criminals. In the meantime, Liberians are
hoping that customary justice will give them what formal justice has not.

Customary accountability and conflict resolution: The Palava Hut

Even if the legal system were fully reformed, the sheer number of people who are alleged
to have committed crimes would overwhelm the criminal courts and prevent them from hearing
any other cases for years to come. For this reason, many Liberians are warming to the idea of
using existing customary justice mechanisms to provide resolution for ‘lesser’ war crimes.\textsuperscript{76} Up

\textsuperscript{70} Hayner, Negotiating Peace in Liberia.
\textsuperscript{72} Interview with Reverend Benjamin Lartey, Secretary General, Liberia Council of Churches, 23 February 2011, in Monrovia.
\textsuperscript{73} Patrick Vink et al. \textit{Talking Peace}, p. 67. The report states, “Holding trials to punish perpetrators of violence was proposed by less than 10% of the respondents as an acceptable measure to address the needs of victims (p.69).”
\textsuperscript{75} Ibid.
\textsuperscript{76} By this I mean crimes committed by rank and file combatants during the course of the civil war. While most of the Liberians I spoke to hoped to see the uncontested key perpetrators of war crimes and crimes against humanity formally prosecuted and tried, they were more optimistic about their chances of seeing
until and throughout the war, the customary system had proved to be more durable than the formal system in providing Liberians with a forum in which to resolve their disputes. Although the social upheaval of the war has diminished the role of chiefs and elders somewhat, customary mechanisms are widely perceived as having some legitimacy.

With its focus on consensus building and reconciliation, several members of the TRC were particularly predisposed to customary justice. “In our travels for the TRC, I became convinced that the Liberian people were ready for peace,” says former TRC commissioner Sheikh Kafumba Konneh. “In some areas, perpetrators and victims live together and eat together. In places where there has been experimentation regarding transitional justice, victims have publically forgiven perpetrators.”

Most Liberians residing outside of the capital have had little recourse to the formal legal system and sought redress through customary dispute mechanisms, including the Palava Hut process and sassywood. The Palava Hut process (hereafter Palava Hut) is perceived as a non-punitive and reconciliatory process, while the aim of sassywood is to establish guilt and punish the wrongdoer through ‘trial by ordeal’. The practice involves variations of a ritual where alleged wrongdoers are exposed to extreme pain. A person’s guilt depends on their reaction; if there is little injury or if they recover well, the accused is considered innocent. Although still common in rural areas, the use of sassywood is illegal. Palava Hut is convened by the elders of a community, nearly always men who are over the age of 45. They typically settle land disputes, divorce, debt and extramarital affairs, although occasionally they are called upon to decide on cases of theft and murder. There is no one way to practice Palava Hut in Liberia, although it is widely practiced by the Kwa and the Mende ethnic and linguistic groups.

Among the Kwa, the process “seeks a confession of the wrongful act, an apology for the wrong that has been done and forgiveness from the victim”. Often, the family of the perpetrator will initiate the process, and the family is involved throughout the process. Cleansing rituals are held, with elders offering advice and warnings to the wrongdoer. Sometimes, especially in cases of theft, the offender or his family is required to make restitution to the victim. In cases of murder, the perpetrator must make public restitution through a public apology and may be banished from the community, to give the family time to grieve for the death of their loved one.

The family is less important in the Mende practice of Palava Hut. Local chiefs and leaders lead the process, which may take place publicly in a palava hut, a round structure with a thatched roof, or privately in a sequestered area where only initiates may participate. The aim is an admission of guilt by the perpetrator, after which “restitution is required in the form of a fine”. In cases of violence, the wrongdoer must submit to a cleansing ceremony, which usually includes the sacrifice of an animal. In cases of murder, the process is held privately, with the elders determining whether the crime was premeditated or accidental. The cleansing process is integral, after which families of the victims and perpetrator share a meal as a means to seal reconciliation.
It is important to note that while the customary legal system is entrenched in Liberia, and Palava Hut is common among some tribes, it is not universally used throughout Liberia. Nonetheless, the concept has gained tremendous traction among civil society groups, who propose it as a means to resolve the harm caused by the country’s civil wars, either as a way to further uncover some of the either to address issues brought up by the TRC or to achieve reconciliation. One human rights activist comments, “The policy of the TRC was to make it victim-oriented. Some came with a sense of arrogance and no remorse. Others came and tried to show remorse, and while they didn’t alone for their sins, at least they spoke with their victims. My impression was Liberia had much more testimony than Sierra Leone, but there wasn’t much confrontation between victims and perpetrators. You need some interaction between the two. When you have an opportunity to talk to that person who has done you harm, it doesn’t heal, but it sets the process to heal. When that meeting takes place, confidence and trust building can start.”

The TRC was initially seen as the forum where victims could achieve some form of reconciliation. Prior to the TRC’s hearings, between 50-70% of the population claimed to want to meet with the perpetrator who caused their suffering, but few actually had the opportunity to do so. Nonetheless, this suggests that there remains widespread support for reconciliation initiatives.

As a result, some see Palava Hut as an expedient and achievable form of justice at least in the short-term. In Rev. Lartey’s pragmatic view of justice: “We have to look at the short, medium, and long term. The government can’t do it all. It is too expensive to try to undertake prosecutions right now. This doesn’t mean that the church doesn’t believe in holding people accountable, but we cannot pursue the vigilante approach... We feel that many things stand in the way of actual prosecution. This is not a process that takes one or two days. Healing and reconciliation is something that we can do right now, supported by the government, and Palava Hut.”

This view is echoed by Joe Hindovei Pemagbi, “Accountability is more than just prosecution. The downside of prosecution is that prosecution isn’t necessarily going to heal the wounds; it is not going to build relationships and cohesion in communities. It will just satisfy a certain portion of people. How do we make sure that justice trickles down?”

A number of the TRC’s recommendations make direct reference to the use of Palava Hut. For instance, the TRC names 36 people as perpetrators of the war but recommends them for pardon from criminal prosecution, “without prejudice to the Palava Hut process” because they admitted to their crimes, expressed remorse and cooperated with the TRC. There are also arguments for limited accountability “Regarding perpetrator accountability, those who did wrong should be accountable for their wrongdoings. It’s easy to see the big guys, but there are others who need to be held accountable. The big guys should be held accountable for their actions because

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81 Interview with Joe Hindovei Pemagbi, Liberia Country Coordinator, Open Society Institute, 18 February 2011 in Monrovia.
83 Interview with Reverend Benjamin Lartey, Secretary General, Liberia Council of Churches, 23 February 2011, in Monrovia.
84 Interview with Joe Hindovei Pemagbi, Liberia Country Coordinator, Open Society Institute, 18 February 2011 in Monrovia.
they could have done differently. Others, less high up, should also have thought of other ways out.”

Those ‘less high up’ are mentioned later, in Appendix XII of the Final Report, where the TRC provides a list of 7,600 people who are recommended to submit to a “justice and accountability mechanism with traditional orientation to foster national healing and reconciliation at the community and grass roots levels creating the opportunity for dialogue and peacebuilding.”

Palava Hut is not without its drawbacks, first of which is its lack of universality. There is no guarantee that all Liberians will endorse the process as a means for reconciliation. Even among those communities who use it, Palava Hut is not uniformly practiced, leading some to question how the process would be harmonized into a single national program. Additionally, it has only been used to resolve intra-community conflict, and has not been used as a forum to address violent crimes including sexual assault. The nation may have elected the first African female president, but Liberia remains a very male-dominated society. The elders who administer the process are nearly always men, many of whom still subscribe to traditional practices where victims of sexual assault are blamed and shunned; the Women in Peacebuilding Network (WIPNET) has advocated the establishment of female led ‘peace huts’ that respect the spirit of Palava Hut while making it more beneficial to victims. However positive the peace huts are for women, their very existence underscores existent divisions in Liberian society.

Traditional or customary justice mechanisms are not a panacea, nor are they a guarantee for human rights, which leads even its most avid proponents to call for its systematic institutionalization. “I endorse the mechanism, but it should be contextualized; not everything should go to the Palava Hut,” says one human rights activist. “ Preconditions are required. Tribal disputes, such as differences between families, or specific violations, can work in Palava Hut. Gross violations, such as massacres, should not go the Palava Hut.” If Liberians are committed to implementing certain TRC recommendations through this process, system designers will have to define its scope, parameters and powers while acknowledging the tensions between traditional justice programs and the statutory judicial system.

For all its challenges, many Liberians trust Palava Hut and believe this form of customary justice could provide perpetrators with accountability while achieving some reconciliation. Former TRC Commissioner Pearl Brown Bull, whose teenaged son was murdered during the war states,

“The Palava Hut is the right situation for Liberia: It will condemn wrongdoings. It is the best way forward. We are a religious country. Everyone believes in the hereafter, and we all want to be on the right path for the hereafter. To get forgiveness, through cleansing, they really have to mean what they say. We do not

86 Interview with Lindora Howard Diawara, Coordinator, Women in Peacebuilding Network (WIPNET), 20 February 2011, Monrovia.
87 TRC Final Report, Sec. 15.0, p. 365.
89 Interview with Pindarous Allison, Program Coordinator, Transitional Justice Working Group, 16 February 2011, Monrovia.
90 James-Allen et al, Beyond the Truth and Reconciliation Commission, p. 22.
have capacities in jail, and why put people up for human rights violations when they can contribute to society.”

Here we see the hope and pragmatism of Liberians who have been victimized by the war. They acknowledge the inherent failings of the TRC but remain hopeful that high-profile and ordinary perpetrators alike will eventually account for their actions during the war, and make public amends.

**Reconciliation through reparations**

Many suggest Liberians’ war-weariness is partly what keeps the country at peace, but numerous Liberians are tiring of the unsuccessful pursuit of formal justice. Some are seeking to move beyond prosecutions altogether, “I’m focused on the long-term perspective, how the non-controversial recommendations will be implemented. I don’t want to be looking at prosecution and lustration right now, perhaps never.” In this respect, a number of Liberian peace and transitional justice activists believe the emphasis placed on the Liberian TRC’s ‘naming of names’ for prosecution and lustration is not only problematic, it serves as a detriment to other parts of the report. Beyond the TRC, there are other measures that can also work towards reconciling a nation so long divided.

The TRC’s recommendations for reparations and memorialization have been glossed over in favour of the drama surrounding prosecutions and censure. While not eschewing formal legal measures, pragmatic Liberians see these options as less likely to encounter political opposition while still reaching out to the victims of the conflict. “Prosecution and reparations are not in tension and these are not weak alternatives,” says Aaron Weah. “They are true victim-centered approaches. They are weak alternatives when they are used to buy silence, but if they evolve from society and victims’ groups, and have political buy-in, then these are not weak at all.”

The statute creating the TRC mandates it to make recommendations regarding reparations (TRC Act, art. 4, sec. 26). The final report recommends a Reparations Trust Fund of $500 million (USD) over 30 years. According to the TRC, monies for the Fund are to be generated through the nationalization of a Monrovia office building that was initially built with tax money, as well as the nationalization of the JJ Roberts scholarship fund. The proceeds of the scholarship fund will be earmarked for educating “the children of Liberia.”

The most casual reader will find it difficult to imagine how the nationalization of a single building, which has since been taken over by the government for public use, could ever generate the hundreds of millions of dollars required to deliver the kinds of reparations the TRC envisions. Even members of the Independent Human Rights Commission, the Liberian body established to administer reparations, express doubts about where their funding will come from, and their ability to work autonomously. “If you want to remain independent you can’t be beholden financially, otherwise you are under government control,” says Commissioner Thomas Bureh. “We need to be independent, so we need external support.” The Commissioners do not acknowledge that external donors might also infringe on

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91 Interview with Pearl Brown Bull, lawyer, peacebuilding activist and former dissenting TRC Commissioner, 16 February 2011 in Monrovia.
93 LTRC Final Report, Sec. 17.2, pp. 378-79.
the Commissions’ autonomy, and although no donors have yet committed any kind of funding, they remain optimistic—some would say naïve—about the Commission’s financial prospects. “We’ve got to take people at their words that they are going to be supportive,” says Commissioner Boakai Dukuly.95

The reparations proposal is well-intentioned, but woefully incomplete, and subject to much disagreement. For example, within the first five years, that is to say until 2014, “all direct victim support programs must be implemented including memorials, victim support and the process of prosecution” 96 However, the Commission gives little clue as to who should receive reparations, although victims may be individuals or collectives, and women are highlighted as ‘absolute priorities’. As far as the form reparations should take, the TRC enumerates a range of health, educational economic and infrastructural services.97

“The whole idea of caring for victims is new to Liberia, which is why they are so important,” notes Aaron Weah. “During the war and the peace agreements, more attention was given to appeasing the perpetrators, the warlords and the combatants then in dealing with the victims.” Again, in intent, the TRC report seeks redress for victims, but in practice it fails them. Unlike the Ghanaian TRC report, which created a list of victims, the Liberian report provides no preliminary list of potential victims who could or should benefit from reparations. Additionally, and possibly more importantly, the reparations programs the TRC recommends require massive resources that Liberia simply does not possess. In the laundry list of Liberia’s urgent needs, it is unlikely that reparations will become the preferred project of an international community that is tiring of the nation’s ongoing demands.

Nonetheless, some believe reparations are a real means to demonstrate a government’s commitment respecting the rights and needs of the victims.

“All reparations, individual and collective, provide healing. This shows a link between peacebuilding and transitional justice – they are mutually reinforcing, and you cannot have one without the other in post-war Liberia. For instance, if the TRC recommendations consider identity, which they appear to, then there is an issue of memorialization…Any efforts along these lines will go towards stopping a return to war.”98

However, this view is rather optimistic. The reality is that widespread reparations in Liberia are as improbable as domestic prosecutions of alleged war criminals. Even if the means existed—which they certainly do not, there is no guarantee that the IHRC could administer the funds in an equitable fashion. In fact, any misappropriation or evidence of favouritism would only serve to exacerbate ongoing societal divisions.

A large majority of Liberians are willing to accept community-level measures, or symbolic measures as a form of compensation for their suffering.99 Many communities are pursing memorialization projects to help communities remember and honor those who died in massacres during the civil war. Some forms of memorialization are contentious, but nearly all Liberians can

95 Interview with Boakai Dukuly, Commissioner, Independent Human Rights Commission, 21 February 2011, Monrovia.
96 LTRC Final Report, Sec. 17.2, pp. 378-79.
97 James-Allen et al, Beyond the Truth and Reconciliation Commission, p. 23. See also the TRC Consolidated Final Report, sections 17 and 18.5 on reparations, as well as the recommendations in Vol. 3, Titles I and II of the Final Report.
99 Patrick Vink et al. Talking Peace, p. 67
embrace others. Indeed, memorialization efforts such as a national remembrance day, cleansing ceremonies, issuing death certificates to the war dead, and making public apologies to the people of Liberia appear to be quite feasible, as few require many resources.

While most Liberians express some disappointment about the country’s pace of peacebuilding and the transitional justice process to date, all claim to be hopeful about the future. “I am optimistic because when you see Liberia, you see resilience,” says peace activist Lindora Howard Diawara. “We don’t want to go back to war, we are committed to wanting peace. But peacebuilding is a process, it doesn’t just happen. We can see how far we’ve come since the war, and now we can see how far we need to go.”

However far Liberians must go, all remain committed to peace. Justice, though, remains elusive.

Until now, peacebuilding and transitional justice in Liberia has been an eight-year roller coaster ride of great expectations and dashed hopes. After 14 years of war, and as many breached peace agreements, Liberians were desperate for peace, but many were disappointed by DDR cash payouts that appeared to reward combatants for perpetuating war. Liberians then looked to security sector reform and the TRC for justice, only to feel let down by the emphasis on prosecutions that cannot be pursued within the country’s limited legal system. Some now see Palava Hut and the International Criminal Court (ICC) as providing the potential for some closure. So far, the ICC prosecutor has not indicated that he will pursue criminal prosecutions in Liberia, and the Palava Hut process, although widely supported, has yet to be tried and proven. Whatever transitional justice processes they embrace, it is improbable that all Liberians will get all that they want. Perhaps eventually they will get what they need.

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100 The TRC’s Final Report enumerates a number of possible memorialization measures in Section 17. I have highlighted those that are least contentious and most affordable.
101 Interview with Lindora Howard Diawara, Coordinator, Women in Peacebuilding Network (WIPNET), 20 February 2011, in Monrovia.