

*Full Length Research Paper*

## Liberia'S TRC: The road to rule of law or a dead end?

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Received 27 January, 2017; Accepted 5 July, 2017

After two civil wars Liberia's warring sides signed a peace agreement in 2003 providing for, among other things, the creation of a truth and reconciliation commission (TRC) to help it on the path to reconciliation. After public hearings in all fifteen counties in Liberia and extensive input from Liberians out of the country, Liberia's TRC concluded its proceedings in 2009 with recommendations for improvement of the rule of law by prosecution of war crimes and human rights abuses and lustration of many smaller offenders, including the current president of Liberia. This paper reviews the efforts of the Liberian TRC to improve the rule of law against the backdrop of the bigger question of whether TRCs assist states in making that transition or make it more difficult. Field research from 2011 in Liberia as well as various surveys of Liberian opinion as indexes relating to corruption and rule of law are utilized along with the TRC report and recommendations. This paper concludes that although Liberia has made some improvements in the rule of law since 2003, the TRC has not been instrumental in bringing about an improvement, partially due to a lack of political will in Liberia but also due to its failure to bring about a change in the conflict between the Americo-Liberian elites in Liberia and the indigenous population that led to the civil war and to the lack of accountability caused by the failure to follow the recommendations of the TRC.

**Key words:** Truth and reconciliation commissions, rule of law, civil wars, Liberia, transitional justice.

### INTRODUCTION

As civil wars have dominated the post-World War II period, states have turned to a variety of methods of transitional justice to heal the wounds left after a cease fire or peace accord has been reached. Truth and Reconciliation Commissions (TRC) have become increasingly common in these post-conflict states and are often portrayed to provide for truth, reconciliation and improvement in the rule of law. This study looks at one of those TRCs, the one in Liberia from 2005 to 2009 and assesses the impact of that TRC on improvements in rule of law. This paper

concludes that although Liberia has improved in rule of law since 2005, because of the lack of implementation of the recommendations of the TRC, it has not been effective in fostering the growth of the rule of law.

Liberia was chosen for this study because it experienced two vicious civil wars from 1989 to 1997 and 1997 to 2003 and then undertook a TRC rather than a war crimes tribunal or amnesty to address the reasons that led to the war. Per the United Nations, almost 150,000 people died in the two wars and over 850,000 Liberians were

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displaced, many into surrounding states (un.org/unamil). A large portion of the displaced population fled from the countryside into the capital city of Monrovia, overwhelming the infrastructure there and triggering widespread malnutrition as agricultural output plummeted in the rural communities. The effects of the war continue today as malnutrition, economic deprivation, illiteracy and poor health continues to plague Liberia (<http://confinder.richmond.edu/admin/docs/Liberia.pdf>).

On 18, August, 2003, the Accra Comprehensive Peace Treaty was signed between the warring parties. For Liberia, the problem of how to make the transition from war and human rights abuses to more stable political systems with political rights, civil liberties and human rights protections was a critical question. States like Liberia are hamstrung by the lack of governmental institutions capable of making this transition, can control the violence and provide civil liberties, political and human rights protections to citizens. In the past twenty years, the concept of transitional justice has been increasingly used to explain how this transition can be accomplished and a variety of tools of transitional justice, including war crimes trials, amnesties, memorials, pardons and truth and reconciliation commissions (TRCs) have been utilized. The choice of method of transitional justice is critical for states. The wrong choice will not only impede accountability and redress, but can sometimes also result in the return to violence and human rights abuses. The failure to provide transitional justice can also be as damaging to post-conflict states, leaving them unable to escape the effects of the conflict.

## LITERATURE REVIEW

Much of the original discussion regarding TRCs and transitional justice focused on their relationship to the promotion of democracy. Because there are so many aspects to democracy that may not be addressed using a TRC, the focus of studies on transitional justice has recently turned to another concept, that of the rule of law. Rule of law has the advantage of being an aspect of democracy that is tied to directly to the focus of TRCs, the reduction of conflict by creating an atmosphere of impartiality and fair treatment for all people and particularly for victims of the human rights abuses by the state. Rule of law acts as a constraint on the power of government and on the power of the majority against the minority by making all people be treated equally before the law. The relationship between rule of law and democracy was noted by Finn (2004) as "...the rule of law is a mechanism for democratizing power by disciplining power". He also notes that rule of law can help the process of governing by insuring clear and transparent actions by government and guarding against corruption by government. The rule of law supports the growth of democracy; it is impossible to have a fully consolidated democracy in a state where most the population still fears and distrusts the government,

police and judicial system. The rule of law leads to a growth of trust by making government actions transparent to the public. This leaves transitional justice to find methods to rebuild trust by rebuilding the rule of law, insuring that all citizens are treating equally and fairly (12).

The focus of the literature on the connection between TRCs and improvements in rule of law is whether TRCs help to promote the rule of law and if so how do they promote it. In other words, what is it about TRCs that leads to improvement in the rule of law? The literature, like that of democracy, is split between empiricists and theorists, with the theorists generally arguing there is a relationship between TRCs and rule of law, while the only comprehensive empirical studies, conducted by Olsen, Payne, and Reiter and Wiebelhaus-Brahm arguing there is one, but it is negative.

Mani (2008) notes that context is also critical in establishing the rule of law, including "...the past, the political context, and the society and local culture". Regarding the context, the one most obviously related to TRCs is that of the past. Justice cannot occur if there is not an operational justice system, public trust is needed to obtain public cooperation and support, and accountability shows that everyone is equal before the law and impunity will not be allowed (155). The past actions in each country dictate how the past abuses are dealt with or were not dealt with.

Mani argues that transitional justice methods, if they are going to reinforce the rule of law, need to be within the country, be conducted in domestic institutions and not be internationalized.<sup>1</sup> TRCs typically meet these three criteria: they are always in the country, are conducted domestically and have limited amounts, if any, of international involvement other than funding and occasionally international commissioners. Post-conflict states have tried a variety of transitional justice methods but primarily have utilized war crimes tribunals, amnesties and TRCs.

Many theorists argue that they create a sense of justice in situations where, because of the massive number of victims and offenders, prosecution is not a realistic possibility. This sense of justice is a necessary, although not sufficient, for the rule of law to grow. In some ways, the idea that a TRC, which does not adjudicate guilt or innocence or punish offenders, leads to justice is a challenging concept. Dimitrijević (2006) argues that by presenting all the evidence at a TRC without censoring or limiting the "truth" being discussed, a universal sense of morality and justice can be established. To him a TRC must do two things: clearly delineate the violations of the past regime and secondly, affirm the commitment of the new regime to adhering to values of justice, equality dignity and concern for minority rights and interests (368-382).

Dimitrijević (2006) also argues that dealing with the past in the concept of truth telling mechanisms such as a TRC

<sup>1</sup> Ibid.

is critical to improvement of the rule of law in post-conflict societies. He looks at the dichotomy often established by these societies between forgetting the past and getting on with life versus establishing the truth of the past and summoning up hard feelings and feelings of injustice. Looking at the mass human rights abuses of the twentieth century he argues that the actions of states leave an “ethics of evil” that required a new moral foundation for a state, not just the removal of elites or changing of institutions. Otherwise no change in attitudes about the rights of all people will occur. He argues that the role of TRCs should be less about their ability to bring about reconciliation or forgiveness and more about their ability to foster justice. One of the problems with reconciliation and forgiveness is that they are more functions of individuals than of a country. No study of TRCs to date has been able to show categorically that reconciliation on the individual, family or group level has occurred. But the connection with justice can be shown and the relationship between truth and justice is a justification for the use of TRCs.

The connection between TRCs and the growth of the rule of law is not clear. Authors such as Allen (1999) argue that although TRCs are thought to spur the rule of law by breaking with the past of human rights abuses and impunity, they lack the due process rights of criminal trials and the ability to punish human rights violations. This can, instead of encouraging the rule of law, lead to a lack of accountability and impunity. He notes that this concern is exacerbated when a TRC is simply a substitute for any type of criminal prosecution or is done in private, rather than with public hearings and reports of its activities. According to Allen, some of this conflict is inherent in the role that TRCs play in simultaneously promoting both justice and reconciliation, different concepts that have different effects. Per Allen:

...sensitivity to injustice can perhaps be restored over time by confronting the specific circumstances of injustice. This is one of the reasons that the role of the TRC in producing a detailed record of suffering and of perpetrator’s statements is so significant. Reflection on past injustices is an important basis for a democracy that aims to respect justice and the rule of law...although memory of past injustices does not necessarily enhance a sensitivity to the injustices borne by others, reflecting on the conceptual and psychological import of the evils involved in specific cases may alert us to the presence and likely effect of injustices (315-353).

Allen postulates that TRCs can support the growth of the rule of law bringing past injustices out in the open, making society sensitive to injustice, rather than accepting it. Support for the rule of law can only function when society values individual rights to equal treatment under the law, something that can be supported through educational functions of TRC public hearings and reports.

Orentlicher (1991) is another critic of TRCs and the rule of law. She argues that the failure to prosecute major crimes not only may violate international law, but that “Societies recently scourged by lawlessness need look no farther than their own past to discover the costs of impunity” (2537). The failure to prosecute offenders results in a society that does not trust the judicial system because other methods of transitional justice, including TRCs and amnesties deliver the wrong message, that of no consequences for crime on a massive scale. To Orentlicher, “A complete failure of enforcement vitiates the authority of law itself, sapping its power to deter proscribed conduct” (2542). While prosecution of all offenses may not be necessary, the failure to prosecute the worst offenses provides a justification for the lack of trust by the citizenry and a lack of concern for the consequences of their actions by the police, judiciary and military.

This paper looks at the conflict over the ability of TRCs to lead to reconciliation as opposed to impunity raised by Manni and Dimitrijević on one hand and Allen and Orentlicher on the other in the context of one state, Liberia, and its efforts to improve the rule of law. Because Liberia had a TRC and no amnesty or war crimes trials it is possible to see the impact of a TRC on a state after a major conflict. This paper concludes that in the case of Liberia, the TRC did not affect an improvement in the rule of law.

### **Creation of the TRC**

Liberia is one of the few third world countries which was not directly colonized by a first world country. Prior to the American intervention in Liberia in 1822 Liberia was settled by a variety of ethnic groups from the surrounding areas, including groups from modern day Guinea, Sierra Leone and Côte d’Ivoire. This diverse settlement is reflected in modern day Liberian demographics: there are at least twenty-eight ethnic groups (Vinck et al., 2011). About 2.5% of the population is Americo-Liberian, or descendants of American slaves brought to Liberia from the United States.

The importation of free blacks from the United States set up a two-tiered system of political and social rights within the new country of Liberia that continues today and causes ongoing ethnic conflicts. Immigrants felt themselves superior to the indigenous population and the same segregation methods used against blacks in the United States were used to keep the Liberian indigenous populations as a lower class. This power continued throughout the history of Liberia, with the Americo-Liberians staying in power through their control of the political process, schools and jobs. Only Americo-Liberians were accepted into the True Whig Party, the ruling party of Liberia from 1878 to the coup in 1980. Non Americo-Liberians were not allowed to work in government or in the military until the 1970s and were not

even recognized as citizens until 1904. Education, infrastructure and services were not extended into the non-coastal areas of Liberia, where most indigenous Liberians lived, until well into the twentieth century and there remains today a distinct imbalance between the inland areas and the coastal areas. This continual marginalization of the vast majority of the population by a tiny minority created problems for Liberia that persist today. All Liberian presidents were Americo-Liberian until Samuel K. Doe became president in 1980 after a coup d'état. Moses Blah, who completed Charles Taylor's 2003 presidential term, was the second indigenous president (Dennis and Dennis, 2008).

After the Peace Agreement was signed in 2003, President Johnson-Sirleaf was elected president as the first elected post-war president and the first female African president. She, along with almost all other candidates, was an Americo-Liberian. Although President Johnson-Sirleaf has both Americo-Liberian and indigenous parents, she was part of the ruling Americo-Liberian class, serving as a minister of the True Whig Party and fleeing Liberia in 1980 when Doe took office (Sesay, 2009). This makes it difficult for groups other than Americo-Liberians to develop trust regarding the president's ability to reconcile groups in Liberia. This lack of trust affects the ability of the state to improve rule of law and the continued marginalization of the indigenous population of Liberia. The continued presence of the tiny minority of Americo-Liberians in all parts of Liberian politics and business continues to exacerbate the conflicts that led to two civil wars.

The same problems caused by the inequality between the groups in the nineteenth century continue to this day in Liberia. In the effort to rebuild trust in government and to lessen the effect of ethnic conflicts, 2005 Liberia turned to a Truth and Reconciliation Commission. Countries, like Liberia, that are recovering from a civil war face a variety of constraints on the creation or resumption of the rule of law. If a TRC is chosen as the sole or primary method of transitional justice the conduct of a TRC is critical because it can allow a state to establish a new moral foundation, to move away from the old institutions, and address conflicts in a state in an inclusive, objective way. As noted above, the Comprehensive Peace Agreement called for the establishment of a TRC and the TRC, once established, set out improvements in the rule of law as one of its key goals (TRC Final Report-Liberia-Section 1.1). While the need to establish the rule of law may have been clear to the commissioners of the TRC and the international community, the methods to establish it were less clear. As discussed earlier, there is a disagreement as to whether TRCs promote the rule of law or instead promote impunity by their failure to prosecute perpetrators of human rights abuses. Liberians clearly wanted accountability, whether it was prosecutions, lustration or some other form of accountability but the question is whether the TRC in Liberia helped to improve the rule of

law, had no effect on it or decreased it.

When the Liberian TRC began in 2006 there was cautious optimism that it was the right choice of transitional justice methods, balancing the need for peace against the need for justice by avoiding the return to war that might occur if war crimes trials were held. It was felt that the TRC would succeed in providing the truth of the events of the civil war if the schedule of hearings was met. The final report integrated many different viewpoints and had profound recommendations for justice and reform. The Independent Commission for Human Rights was created and carried out the recommendations of the TRC and it was hoped the government would have the political will and skill to carry out the recommendations.

### **Due process and the TRC**

The TRC appeared to meet the best practices for due process rights and to adhere to Long's requirements: it conducted hearings in all counties and overseas, widely disseminated the final report and did not offer amnesty to perpetrators of human rights. The events of the TRC were published in a website to the world and to Liberians with access to the internet, and the TRC was correctly designed to allow a full discussion of the problems that led to the civil wars and to promote reconciliation of Liberian society. However, there were some warning signs before the TRC ended. Two commissioners refused to sign the final report and several of the commissioners experienced death threats after the release of the final report. One of the commissioners, Pearl Brown Bull, refused to sign the report or to endorse its recommendations because she disagreed that prosecution for war crimes would help Liberia to reconcile and move forward. Pearl Brown Bull was an Americo-Liberian and a member of the dominant True Whig party, while the other dissenter was the only Muslim member of the commission and was accused during commission hearings of being a recruiter for the United Liberation Movement, one of the groups involved in the civil wars. Accusations regarding them and a third commissioner occurred during the hearings and impacted the credibility of the TRC proceedings (Allen, 1999).

A second concern regarding the hearings arose when two lists of names of perpetrators and persons of interest were released while the TRC was proceeding. According to Freeman (2006), the publication of names of individuals who were found to be individually responsible for war crimes or crimes against humanity creates a tension between the rights of the individual being named and the rights of the victims and the public, particularly since a TRC is not a judicial hearing and no due process rights are afforded to the individuals.

There was a third concern regarding the Liberian TRC's final report and due process. Taylor and Dukalskis (2012) identified potential concerns with final reports in TRCs. Although their observations relate to the improvement

of democracy, not rule of law, they are still relevant since the same relationships between TRCs and democracy relate to TRCs and rule of law. There is a need for openness and transparency in TRCs. As noted by Taylor and Dukalskis "Breaking with a past of confidential decisions and inaccessible governance, truth commissions can bring the public into their proceeding" (674-675). For this openness to work a state must have public hearings and a public report that is widely disseminated and accessible. Public hearings encourage democracy, according to Taylor and Dukalskis, in four ways: it exposes the actions of the previous regime who were not aware of them or would not acknowledge them, validates civil society groups campaigning against the previous regime, it allows diverse groups to have a single version of the truth, and it serves as a record for the education of future generations. That same openness and publicness of the report are necessary to increase the trust in and accountability for institutions that is necessary for improvements in rule of law.

Although the Liberian TRC had open, public hearings, the disconnection between those hearings and the recommendations regarding prosecution and lustration reduced its value. The issue of due process was raised, successfully, regarding the lustration issue because offenders were not given notice they would be subject to lustration by the commission and had limited opportunity, due to that lack of notice, to contest the allegations against them.

Also, for the commission's actions to effect change people need to be aware of the findings and recommendations of the TRC. It is impossible to expose actions, validate civil society, have a single version of the truth and educate people if the findings and recommendations are kept from the public. Several observers of the TRC proceedings have commented on the problem with the dissemination of the final report. It can only have an effect if there is knowledge of its existence and at least a general understanding of its findings (Gibson, 2004). In a survey of Liberian citizens conducted by the Human Rights Center (HRC) at the University of California, Berkley School of Law 45% of Liberians surveyed indicated they had no knowledge of the TRC and 46% said they had little knowledge of it. Only 8% said they had an average or higher knowledge of it. This is very disturbing given the fact the TRC concluded two years prior to the survey and a public report was issued and widely disseminated. 73% of those surveyed indicated, however, that they had heard of the TRC, leading to the conclusion that most Liberians had heard about it but 92% of them knew little or nothing about it other than its existence. In comparison to the 92% who knew about the SC-SL trial of Charles Taylor, however, this number seems low. Additionally, although 76% said that truth in general was important to them, only 44% said that truth about the war was now known to them, seven years after the end of the war. 42% said they had heard

about the TRC recommendations but only 39% believed that the TRC helped peace and 38% agreed it helped with unity. The county with the highest percentage of people who knew about the TRC was, not surprisingly, the capital of Liberia, Monrovia, where 90% of the people were aware of it and 74% of the people knew at least a little or an average amount or higher about it, as opposed to 54% in the country generally. They also had a greater belief in the connection between the TRC and peace and unity than the rest of the country (Berkeley Human Rights Center-Talking Peace Liberia, 2011: 20).

Svärd (2013) notes that access to information about the TRC in Liberia was made difficult due to conditions existing in the country. Among other things, there was no legal framework for access to information, a high level of illiteracy in the populace, a lack of access to methods of communication such as the internet, newspapers and television, a lack of archives and libraries, and a lack of knowledge and funding for archiving and preserving documentation. According to Svärd the TRC report was mainly disseminated to the public by non-governmental organizations, not the government. The lack of literacy affects the ability to read the TRC report, but more critically to read the more common method of accessing the report, the newspaper accounts of the TRC. For the rest of the country, radio and word of mouth are the main methods of communication, reducing access to information about the TRC.

This lack of knowledge of and faith in the TRC process is disturbing, particularly the difference between Monrovia and the rest of the country. Hearings for the TRC were held throughout the country in an effort to involve the entire citizenry which was apparently unsuccessful. Video of many of the TRC hearings is available online and a written report was submitted to the National Assembly and publicly released (TRC Final Report, Vol. 1, 1617). Despite these efforts, awareness and understanding of the TRC is still sorely lacking in Liberia.

### **Problems with TRC Recommendations and Implementation**

All TRCs experience difficulty in implementing recommendations, often due to the lack of funds, lack of efficient institutions and the lack of political will to carry out the recommendations. Liberia had, and still has, these problems. However, while the proceedings of the TRC were conventional, some of the recommendations in the final report were anything but conventional. Recommendations regarding lustration, war crimes trials and for an alternative dispute resolution program called *Palava Hut* were the most controversial and problematic.

The most controversial recommendation of the TRC was that one that recommended lustration of 49 people, including the sitting president of Liberia along with other prominent Liberians (TRC Final Report, Vol. 1, 1617).

The lustration provision caused a major backlash against the TRC by people named for lustration, particularly Johnson-Sirleaf who was the sitting president at the time of the release of the report. The TRC has been criticized for not having sufficient due process protections for people recommended for lustration. As noted in an International Transition Justice (ITJ) Report in 2010, only nine of the people recommended for lustration were mentioned any place else in the TRC report, making the basis of the recommendation impossible to determine. The ITJ report notes they had serious concerns with how the recommendation was made and questioned its validity for the future (Allen, 1999, 14). This recommendation was later found to be unconstitutional by the Liberian Supreme Court which found that lustration of the named people violated their due process rights because they were not given notice that lustration would occur, no witnesses were called to testify to the facts to establish the need for lustration and people being recommended for lustration were not given an opportunity to produce their own information on the charges (Raddatz, 2013: 187).

A second controversial recommendation concerned the prosecution of over two hundred people and entities, including a current member of the Liberian Senate, Prince Johnson. The ITJ report notes that over half of this group were not named specifically in the report and there is little evidence to support the recommendation for prosecution. Even where people were named in the report specifically, details regarding the crimes and their participation in them were lacking (Allen, 1999: 16). This recommendation has not been implemented to this date either and a war crimes tribunal like the one in neighboring Sierra Leone was rejected. The only Liberians to be tried for war crimes were Charles Taylor, Martina Johnson and Alieu Kosiah, all of whom were tried in foreign countries (Fortin, 2015). Additionally, Charles Taylor's son, Chucky Taylor, was convicted in the United States under the United States Torture Act for acts committed in Liberia (United States v. Roy Belfast, 2010). Despite the lack of prosecution Liberia has not chosen to issue a blanket amnesty for offenses during the war, however its failure to prosecute offenders equals a *de facto* amnesty at this point.

Some of the recommendations have been followed through on, particularly recommendation 15.0 calling for the creation of the Palava Hut program and recommendation 18.17 calling for the creation of the Independent National Human Rights Commission (INHCR). However, although both were created neither has been effective due to the lack of funding and political will to carry out the programs. Other highly sought after recommendations for economic or educational provisions for victims of the war, such as recommendation 17.1 calling for counseling and health services for victims and 17.3 calling for education for all Liberians but particularly for female survivors of the war have not begun (TRC Final Report, Vol. 2). The failure to carry out most of the recommendations certainly affects trust by the people of

the government's will to reform policies that allowed the civil wars to flourish. It has also left in place the political culture and class differences that were large contributors to the former civil wars.

### Results-Rule of Law Post Civil War

To determine the level of rule of law in Liberia two indices of rule of law are used. The first is the CIRI Human Right Index, which looks at data from 1981 to 2011 regarding rule of law. This index looks at five sets of factors that lead to rule of law-physical integrity rights, empowerment rights, women's economic, women's political rights and the independence of the judiciary (CIRI Short Variable Description). Physical integrity rights receive a possible high score of eight, empowerment rights have a possible high score of fourteen, women's rights have a possible total score of six and independence of the judiciary has a possible high score of two points (CIRI Human Rights Database Project, 2013).

According to CIRI (2013) the rule of law in Liberia has improved since the end of the civil war although most increases occurred before the 2005 election. In 2003, the year the second civil war ended, Liberia had a CIRI score of 12. In 2004 the score increased to 21 out of 30 and it has remained static since then (Figure 1). The biggest change from 2003 to 2004 was in physical integrity rights, which includes torture, extrajudicial killings, political imprisonment and disappearances. This is not surprising since the end of the civil war brought a lessening of many of these problems, particularly given the presence of a huge international force of approximately 15,000. There were also improvements in the empowerment index, which includes respect for civil liberties such as freedom of speech, freedom of association, freedom of movement and freedom of religion. These improvements were more closely related to the actions of the government. Civil liberties have remained relatively high or have increased since 2004 but the physical integrity index has shown a decrease since then from 2004 to 2010. The independence of the judiciary, a critical feature of rule of law, has not improved per CIRI since the civil war. The judiciary remains weak and ineffective as a check on the legislative and executive branches, partially due to infrastructure restraints. Liberia remains a country with very limited ability to provide justice for its citizens due to the lack of attorneys, judges, police officers, training for any of these professions and a basic lack of courts, jails and equipment. All of this has an impact on the rule of law.

As illustrated in Figure 1, a positive change in rule of law occurred before the TRC and is therefore not attributable to the actions of the TRC. In fact, the rule of law scores declined during the period of the TRC, from a high in 2005 of 21 points, to a low in 2009 of 18 points. The reduction occurred in the area of physical integrity and empowerment rights, factors that had improved prior to the

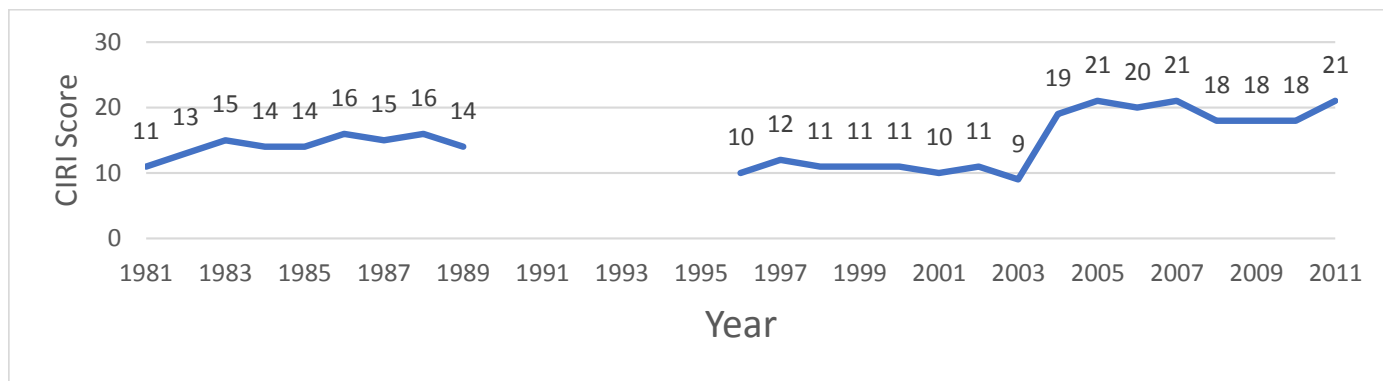


Figure 1. Rule of Law in Liberia-1981-2011. Source: CIRI .

Table 1. World Justice Project 2012-2015 for Liberia

Factor	2012-2013	2014	2015	Change
Constraints on Govt. Powers	0.53	0.53	0.54	0.01
Absence of Corruption	0.31	0.34	0.28	-0.03
Open Government	0.39	0.36	0.48	0.09
Fundamental Rights	0.52	0.57	0.58	0.06
Order and Security	0.56	0.54	0.57	0.01
Regulatory Enf.	0.23	0.33	0.37	0.14
Civil Justice	0.33	0.39	0.44	0.11
Criminal Justice	0.41	0.33	0.32	-0.09

Source: WJP [http://worldjusticeproject.org/historical-data\\_](http://worldjusticeproject.org/historical-data_)

TRC, showing a deterioration in these factors while the TRC was being conducted (CIRI). Both improved in 2010 and 2011 and the scores improved after the TRC to a total of 21 points out of 30.

Because CIRI does not have data after 2011 the World Justice Project database has been used to look at the years from 2012 to 2015. Unfortunately, the two databases are not identical and WJP data is not available before 2012. However, they look at similar thing including constraints on government powers, corruption, order and security, fundamental rights, openness of government, regulatory enforcement, civil justice, criminal justice and informal justice (WJP). Each factor consists of several variables which lead to a possible composite score of 0.0 to 1.0. Below is Table 1 which shows the 2012 to 2015 scores for Liberia for each of the factors.

The WJP data are more hopeful than the CIRI data, showing improvements from 2012-2013 to 2015 in all but two categories: absence of corruption and criminal justice. The biggest improvement was in regulatory enforcement followed by improvements in civil justice. These are hopeful signs, as was the fairly peaceful 2011 re-election of President Johnson-Sirleaf. However, the scores are still

quite low for Liberia, particularly in corruption, regulatory enforcement and criminal justice, all of which were things that targets of the TRC. In 2012-2013 Liberia was ranked 13<sup>th</sup> in the Sub-Saharan Africa region out of 18 countries and 82<sup>nd</sup> out of 97 countries in the world. In 2015 Liberia was ranked 83<sup>rd</sup> out of 102 countries in rule of law, a very low ranking, although it had moved up from 13<sup>th</sup> to 11<sup>th</sup> out of 18 countries in Sub-Saharan Africa. In 2012-2013 Liberia ranked last in all Sub-Saharan African countries in civil justice regulatory enforcement although it improved in both of those factors by 2015 (WJP). The information from the WJP shows Liberia has continuing problems with rule of law, like the information from CIRI, but the improvements in rankings relative to the rest of Sub-Saharan Africa and in the areas of regulatory enforcement and civil justice show the efforts of Liberia since the TRC may be starting to show progress.

A different measure of corruption comes from Transparency International's Corruption Perception Index measures corruption before and after the TRC, with data from 2007 to 2015. Liberia has improved its corruption scores since the civil war. In 2007 before the TRC Liberia was 160<sup>th</sup> in the world in corruption. In 2009, after the

completion of the TRC, Liberia was ranked 97<sup>th</sup> in the world and they continued to improve to 95<sup>th</sup> by 2011. After the 2011 election, they improved to 81<sup>st</sup> in the world and they are 83<sup>rd</sup> in 2015 (Transparency International, 1995). Transparency International's ranking are based on surveys taken of corporations and financial institutions, so while Liberians may believe you must bribe a judge to get a positive result, the financial community has a better opinion of corruption in Liberia. It may be that the belief in corruption is so entrenched with Liberians that it will take longer to change that belief.

## METHODOLOGY

This paper focuses on the Liberian TRC and whether the conduct of that TRC helped and is continuing to foster the growth of the rule of law in Liberia. It consists of a case study of the Liberian TRC from 2005 to 2009.<sup>2</sup> Most countries who conduct TRCs also do other forms of transitional justice including amnesties. Liberia was chosen as a case study because it conducted a comprehensive TRC with extensive due process and procedural protections, including a written report that was widely disseminated, hearings in all fifteen counties in Liberia and hearings overseas of the Diaspora population.<sup>3</sup> Steinberg (2010) Liberia did not issue amnesties for violations of international law and crimes against humanity as part of the Peace Agreement and except for Charles Taylor, who was tried by the Special Court-Sierra Leone (SC-SL), has not conducted war crimes trials. Thus, the TRC was the only major method of transitional justice used.

The Liberian TRC was provided for in the Accra Peace Agreement signed in 2003. That agreement specified that,

A Truth and Reconciliation Commission shall be established to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation (Article XIII, Comprehensive Peace Agreement-Liberia and LURD, MODEL and political parties).

While the Peace Agreement did not specifically link improvements in the rule of law through to the TRC, the TRC itself defined its role in its final report to include the improvement of the rule of law and combatting impunity (see for example Section 1.1, Mandate in the Final Report of the TRC).

The sources of data for this paper are the TRC final report issued in 2011, the Cingranelli, Richards Human Rights Index (CIRI) which shows changes over time in the level of rule in law in a state, information from the Corruption Perception Index regarding corruption, World Justice Project data to provide information regarding the rule of law from 2012 and 2015 (this period is not covered in the CIRI index) and information from the Berkeley Human Rights Center report and surveys regarding citizen views of the TRC and rule of law in Liberia. This author also conducted field research in Liberia in 2011.

There are some limitations to the data; ideally all data would have been available before and after the TRC to obtain a clear vision of Liberia before, during and after the conflict. Unfortunately, only CIRI data are available before and after the TRC. CIRI data are limited to 2011, five years before this paper so WJP data are used to bridge the gap between 2012 and 2015. The two databases are not comparable but cover many of the same issues and the differences and similarities will be discussed.

## RESULTS AND DISCUSSION

For most of its history Liberia was a single party autocracy, ruled by the tiny minority of Americo-Liberians. Since 1980 various groups have rebelled against the rule of this group, with the first non-Americo-Liberian taking office through a coup d'état and staying in power not through democratic means but through a variety of extrajudicial means. Liberia has, since the end of the second civil war, conducted two elections which are generally considered to be fair and free and has elected a president, Ellen Johnson-Sirleaf, who took office through the democratic process and continues to rule democratically after the second election. Their next, and most pivotal election, is in 2017 and with the current president term limited it will be interesting to see if her Unity Party is voted out of office and whether there will be violent protests or the rule of law during the election. Liberia is a multi-party state and the president's party, the Unity Party currently holds only a plurality in the legislature, not a majority (African Election Database). Since the end of the second civil war Liberia has improved its rule of law and at least in terms of freedom from torture, disappearance and the political violence is a much safer, more legal place to live. The ability of the state to conduct two free and fair elections and control the protests and boycott of the runoff election by the losing party in the 2011 election without the resort to significant repression and violence signals the growth of the rule of law.

The Liberian TRC was formed to help to further encourage improvements in the rule of law and to address concerns regarding impunity and the conflict between groups that led to two disastrous civil wars. It did provide a forum for a national discussion of the events of the two wars and its recommendations for lustration and prosecution offered the hope of accountability for the abuses that occurred. The failure of the TRC to follow through on recommendations for war crimes trials and lustration (and in fact the finding by the Liberian Supreme Court that lustration was unconstitutional) has worked against the improvement of the rule of law in Liberia. Despite fairly strong due process protections and the lack of a general amnesty in the TRC, Liberia is currently making little progress. While the TRC is certainly not the only factor in the improvement of the rule of law, it is large one and it has so far been ineffective. Liberians perceive a high level of impunity and lack of accountability in their country but researchers like Transparency International see an improvement in corruption. The fact that Liberia's CPI scores have improved relative to the rest of the world is encouraging but the perception of Liberians is unchanged. This perception is probably exacerbated by the lack of follow through on the TRC recommendations for accountability; Liberians see perpetrators of war crimes not only walking around free but also in a few cases being involved in running the Liberian government.

It will also be difficult to move forward without making changes in the political culture that favors the

<sup>2</sup> Actual proceedings were from 2006 to 2009.

<sup>3</sup> Counties are the equivalent of the states in the United States.



Americo-Liberian class over the rest of Liberians. Less than 50% of Liberians believe in amnesty for human rights violations, but to date there has been a *de facto* amnesty due to the failure to prosecute and only a few officials have been held accountable for the abuses from the war. Most importantly, the power relationship between the Americo-Liberians and the rest of the population in Liberia has not changed; although President Johnson-Sirleaf is of mixed heritage she was a long-time member of the True Whig Party and is identified with the interests of Americo-Liberians, not the rest of the population. Since this power relationship was a major factor in the two civil wars, the inability to address it is concerning for Liberia's future.

There has been an improvement in the rule of law since the end of the second civil war in 2003, but there is no clear improvement in it since the TRC ended in 2009. Information about both CIRI and WJP show reasons to be optimistic about the rule of law in Liberia. The CIRI shows that physical integrity rights, in particular, have improved in Liberia and that overall political rights such as freedom of expression and religion are increasing. It may be simply too early to see the effect of the TRC and Liberia may experience greater chance in the future. It also may be that because the TRC in Liberia was so flawed that the TRC has decreased the chances for improvement by supporting impunity rather than accountability. For a TRC, such as the one in Liberia, to affect real change in a state it may need to have sound recommendations based on due process and widely discussed, that are followed through by the state to make a real difference in democracy and the rule of law.

## CONFLICT OF INTERESTS

The authors has not declared any conflict of interests.

## REFERENCES

- Allen J (1999). Balancing justice and social unity: Political theory and the idea of a Truth and Reconciliation Commission. *Uni. Toronto Law J.* 49(3):315-353.
- Berkeley Human Rights Center-Talking Peace-Liberia (2011). Retrieved from: [http://www.law.berkeley.edu/files/HRC/Publications\\_Talking-Peace\\_06-2011.pdf](http://www.law.berkeley.edu/files/HRC/Publications_Talking-Peace_06-2011.pdf) access date September 1, 2013.
- Vinck P, Pham PN, Kreutzer T (2011). Talking Peace: A Population-Based Survey on Attitudes about Security, Dispute Resolution, and Post-Conflict Reconstruction in Liberia. Human Rights Center, University of California, Berkeley. Retrieved from: <https://www.cia.gov/library/publications/the-world-factbook/geos/li.html>, accessed on October 1, 2016.
- CIRI (2013). Human Rights Data Project. Retrieved from: [http://www.humanrightsdata.org/documentation/ciri\\_variables\\_short\\_descriptions.pdf](http://www.humanrightsdata.org/documentation/ciri_variables_short_descriptions.pdf), accessed on August 2, 2013.
- Dennis B, Dennis A (2008). *Slaves to Racism: An Unbroken Chain from America to Liberia*. New York, New York, USA: Algora Publishing.
- Dimitrijević N (2006). Justice beyond Blame: Moral Justification of (The Idea of) A Truth Commission. *J. Conflict Resol.* 5(3):368-382.
- Finn JE (2004). The Rule of Law and Judicial Independence in Newly Democratic Regimes. *Good Soc.* 13(3):12-16.
- Fortin K (2015). Armed Groups and International Law: Protection of Civilians, Compliance and Accountability, retrieved from <https://armedgroups-internationalallaw.org/2015/01/16/second-war-crimmes-prosecution-from-Liberian-civil-war/>, accessed on May 27, 2016.
- Freeman M (2006). *Truth Commissions and procedural fairness*, Cambridge: Cambridge University Press.
- Gibson JL (2004). Does Truth Lead to Reconciliation? Testing the Causal Assumptions of the South African Truth and Reconciliation Process. *Am. J. Polit. Sci.* 48(2):201-217. doi:10.2307/1519878.
- Mani R (2008). Exploring the Rule of Law in Theory and in Practice. In A. G. Hurwitz, & R. Huang (Eds.), *Civil war and the rule of law: Security, development, human rights*. Boulder, Colorado: Lynne Rienner Publishers.
- Orentlicher D (1991). Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime. *Yale Law J.* 100(8):2537.
- Raddatz R (2013). Tempering Great Expectations: Peacebuilding and Transitional Justice in Liberia. In C. L. Sriram (Ed.), *Transitional justice and peacebuilding on the ground: Victims and ex-combatants* Milton Park, Abingdon: Routledge. (pp. 178-199).
- Sesay A (2009). Post-war regimes and state reconstruction in Liberia and Sierra Leone. Dakar: Council for the Development of Social Science Research in Africa.
- Steinberg J (2010). Briefing: Liberia's Experiment with Transitional Justice. *Afr. Affairs.* 109(434):135-44.
- Svärd P (2013). Liberia's Truth and Reconciliation Commission: The Importance of Documentation in Postwar Education and Reconciliation, Kujenga Amani. Retrieved from: <http://forums.ssrc.org/kujenga-amani/2013/04/29/Liberias-truth-and-reconciliation-commission-the-importance-of-documentation-in-postwar-education-and-reconciliation/#.V0YFJr5SC-c>, accessed on May 25, 2016.
- Taylor LK, Alexander D (2012). Old Truths and new politics: Does truth commissions 'publicness' impact democratization?, *J. Peace Res.* 49(5):671-684.
- Transparency International (1995). CORRUPTION PERCEPTIONS INDEX. Retrieved from: <http://www.transparency.org/research/cpi/overview>, accessed on July 4, 2013.
- United States v. Roy M Belfast (2010). Retrieved from: <http://media.ca11.uscourts.gov/opinions/pub/files/200910461.pdf>, accessed on May 27, 2016.
- World Justice Project (2015). Retrieved from: <http://worldjusticeproject.org/rule-of-law-index> on September 25, 2016.