

Traditional Justice Mechanisms: The Liberian Case



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ACS	American Colonization Society
AFL	Armed Forces of Liberia
CPA	Comprehensive Peace Agreement
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
ICGL	International Contact Group on Liberia
IGNU	Interim Government of National Unity
INPFL	Independent National Patriotic Front of Liberia
NPFL	National Patriotic Front of Liberia
PRC	People's Redemption Council
TAC	Traditional Advisory Council
TJWG	Transitional Justice Working Group
TRC	Truth and Reconciliation Commission
UNDP	United Nations Development Programme
UNMIL	United Nations Mission in Liberia
USA	United States of America
USD	US dollar

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1. Introduction

Liberia, the West African country that ended two dictatorships within a decade and a half, is currently struggling to establish a durable peace and build a culture of democracy and peace while attempting to deal with issues of increasing poverty. This case study aims to show how the country is employing existing mechanisms of reconciliation and traditional justice to achieve these ambitious goals, or at least establish the basis for the achievement of these goals. The study will attempt to provide an analytical framework that would assist in appreciating the difficulties in building peace while ensuring justice and accountability.

In 1847, Liberia proclaimed its independence from the American Colonization Society (ACS), thus becoming the oldest independent republic in Africa and the second-oldest black republic in the world, Haiti being the first. Unlike Haiti, where slaves fought to abolish the slave system and establish their independence in 1802, Liberia was founded by freed slaves from the United States of America (USA) and the West Indies, who were repatriated to Africa in the early 19th century. For more than 130 years the settler class ruled the country from its inception, to the exclusion of the indigenous and varied ethnic groups which represented more than 90 per cent of the population.

The formation of the Liberian state was based on a number of assumptions and presumptions. The founders of the ACS which bought the land which is present-day Liberia and encouraged freed black American slaves to emigrate to Africa were motivated mainly by two major currents of thought. One was humanitarianism, which held that Africans could only regain their dignity if they were allowed to return to their place of origin, where they would not be subjected to racism and other forms of marginalization. The second was proselytization, a view supported by a number of African Americans at the time, who, among other things, postulated that the return of freed black slaves to Africa was necessary since those Africans who had encountered Western civilization, even as slaves, were obligated to return to 'heathen' Africa and 'civilize' the natives by

exposing them to Christendom. No wonder that in the Liberian constitution of 1847 the nation was said to be founded on 'Christian principles'.

1.1. The civil war (1989–2003)

1.1.1. The origins

The years of settler rule polarized the country into two major groups—the settlers versus the indigenous people. Throughout this period, political control belonged exclusively to the settler class. As in many parts of Africa, with political control came the benefits of personal enrichment, upward social mobility, and domination. As a consequence of this method of misrule, the majority of the population was impoverished and the state was conspicuously absent in the daily lives and lived experience of the majority of its citizens. The exclusion of the majority of the population from the political, economic and social progress of the nation is the root cause of the imbroglio.

The exclusion of the majority of the Liberian population from the political, economic and social progress of the nation is the root cause of the imbroglio.

The position was made worse by the oil shock of the mid-1970s, when Liberia's economy, which had witnessed a boom in the immediate post-World War II period, nosedived, creating additional points of tension in the body politic. The situation was not helped by an influx of young Liberian intellectuals, returning from the USA following the completion of their studies, who had been exposed to, and perhaps participated in, the civil rights movement that largely defined the political context of the USA during the 1960s. Once in Liberia, these young intellectuals, most of whom were of indigenous extraction, began to demand a multiparty democracy. At the time, the country was a virtual one-party state, ruled by the True Whig Party. It must also be remembered that during this period a number of West African countries were obtaining independence and that issues of self-rule, self-determination and democracy were the themes of the time.

The economic downturn, the return of young intellectuals from the USA who had been exposed to the struggle for civil rights and the clamour for independence in the region proved too much for the authorities to handle. Something had to give and the ruling party collapsed spectacularly in 1980 as a result of a coup d'état led by Master Sergeant Samuel K. Doe. The president of the republic was brutally murdered and many former government officials were executed following an unfair trail. Upon coming to power the new government, known as the People's Redemption Council (PRC), suspended the constitution, dissolved the national legislature, banned political activities, parties and protest movements, and ruled the country by military decree. Doe was a member of the Krahn ethnic group and during his reign he succeeded in ethnicizing—packing with his own ethnic group—the Armed Forces of Liberia (AFL), the official army, which essentially became a faction loyal to Doe during the early stages of the civil war (1989–90) (Sawyer 1987).

The PRC government also set up a commission to write a new constitution. A national referendum was held and the constitution was approved. The country held its first elections in October 1985, on the principle of 'one person, one vote'. The military dictatorship, however, rigged the elections and Samuel Doe proclaimed himself president. One month after the elections an attempt to remove Doe by force failed and the government used the opportunity to rain mayhem, destruction and death on the country, particularly in Nimba County (the northernmost part of the country) where those alleged to have been involved in the aborted attempt to overthrow the government, and specifically their leaders, had their homesteads. The dominant ethnic groups in Nimba include the Gio, Mano and Bassa. Those targeted were mostly the Gio and Mano. The conduct of the AFL during this period was captured in a report by the US-based Human Rights Watch (Human Rights Watch 1990) which documented the atrocities committed against the people and the residents of Nimba County. The AFL pursued a scorched earth policy and literally shot at 'anything that moved' while destroying towns, villages and hamlets. Thousands of Liberians fled to neighbouring countries, including Côte d'Ivoire.

1.1.2. The effects

On 24 December 1989, the National Patriotic Front of Liberia (NPFL), which was headed by Charles Taylor, launched the civil war. Taylor was a former official in the Doe government who had fled the country for the USA when the government suspected him of embezzlement. Once he was in the USA, the government of Liberia tried to seek his extradition. Taylor hired Ramsey Clarke, a former US attorney general during the administration of President Jimmy Carter, as his lawyer, and Clarke argued successfully in the US courts that Taylor would not be given a free and fair trial in Liberia if he were to be extradited.

The NPFL was largely composed of Gio and Mano who had been the victims of Doe's onslaught in 1985 and had fled to neighbouring Guinea and Côte d'Ivoire as refugees. The population was further divided by the formation of armed groups composed of or dominated by one or two ethnic groups, the economic meltdown during the Doe years, the widespread human rights abuses such as the imprisoning of political and student leaders, the muzzling of the media and the unpopularity of the dictatorship. A virulent form of ethnic hatred was introduced, pitting the Gio and Mano against the Krahn and the Mandingo, who were viewed as supportive of Doe. When the civil war began only one warring faction, the NPFL, existed. Within four months, the NPFL broke up into two factions with the formation of the Independent National Patriotic Front of Liberia (INPFL), led by Prince Johnson, a Gio. Most of his followers were his ethnic kin. The NPFL-driven war targeted the Krahn and Mandingo ethnic groups—the Krahn because the then president, Samuel Doe, was a Krahn, while in the perception of the NPFL and the INPFL the Mandingo were collaborators with the Doe regime. As the war continued, more warring factions emerged. By the time it ended at least a dozen war groups had been created, mostly along ethnic lines.

By the end of the war in 2003, more than 250,000 Liberians had lost their lives, 1 million had fled to neighbouring countries (Sierra Leone, Guinea and Côte d'Ivoire) as refugees and an additional 1 million were internally displaced. The population of the capital, Monrovia, increased from about 300,000 before the civil war to more than 1.3 million, as the capital was the main 'safe haven' in the country. The country's natural resources (timber, gold, diamonds, cocoa and coffee, and rubber) were exploited without restraint and the income derived was used to fuel the conflict. The Liberian war years contributed new terms to the semantics of international relations, including such coinages as 'blood diamonds' and 'conflict timber'.

1.1.3. Ending the war

From the very beginning of the war, various actors, national and international, sought to bring it to an end. Already in early 1990 the NPFL, various Liberian political parties, church organizations and a number of civil society organizations met in Banjul under the auspices of the Economic Community of West African States (ECOWAS). The Liberian Government, headed by Samuel K. Doe, was not in attendance and was not invited. At the time of the conference, Doe's government was under siege, battling two different groups—the NPFL and the INPFL. The INPFL itself was not represented at the conference as it had claimed at the time that it was not interested in capturing state power but rather wanted Doe removed and was seeking to prevent a Taylor ascendancy. The chairman of ECOWAS, Dawda Jawara, impressed upon the participants that the war in Liberia could spill over into the region. According to Jawara, nationals from Gambia (Samba Sanyang, who was accused of plotting to overthrow the Gambian Government) and Sierra Leone (Foday Sankoh, who was accused of attempts to overthrown the government of that country) were involved in the Liberian war effort. Sanyang was an outspoken ally of the NPFL and Taylor even became its chief. It was anticipated that both would use Liberia as a beachhead to launch attacks in their respective countries.

The Banjul Conference led to the establishment of an interim government of national unity (IGNU) and the deployment of an ECOWAS Monitoring Group (ECOMOG) in Liberia. The NPFL repudiated the agreement and pledged to continue to fight. The other main warring faction, the INPFL, accepted the accord and facilitated the deployment of the peacekeepers. It succeeded in killing Doe, still the official president. The IGNU, however, was unable to fulfil its mandate because the NPFL persisted in pursuing the war and because the Western countries, principally the USA, failed to support the regional intervention by ECOMOG. The interim government resigned after a myriad peace conferences. A new government was installed, with the mandate to end the war and hold elections by 1997. Taylor and his NPFL won the 1997 elections, and Taylor became president.

By then Liberia had become the epicentre for instability in the whole Mano River Basin, which includes Liberia, Sierra Leone, Guinea and Côte d'Ivoire—with the Sierra Leone civil war as the most direct and dramatic spin-off.

In 2003, following more than 30 peace conferences and as many peace agreements, the parties to the conflict met in Accra, Ghana. After more than three months of intensive and sometimes acrimonious deliberations, the Comprehensive Peace Agreement (CPA) was crafted. It was signed in August 2003 and contained three fundamental elements—the cessation of hostilities, the deployment of international peacekeepers and the holding of free and fair elections. ECOMOG forces were deployed immediately, in August, and within a few days President Taylor resigned and went into exile in Nigeria.

With these troops on the ground to monitor the ceasefire agreement, the belligerent forces remained in their respective positions and the violence ebbed. Later that year, in October 2003, a United Nations peacekeeping force, the United Nations Mission in Liberia (UNMIL) was installed. A national transitional government was inaugurated and posts were allocated along factional lines, with political parties and civil society being represented to a certain extent. A similar procedure was used to compose the National Transitional Legislative Assembly. In October 2005 presidential and legislative elections were held. Ellen Johnson Sirleaf was elected president, the first female elected president in Africa. The elections were judged by the generality of the Liberian people as the freest and fairest yet in the country's history. Candidates could freely travel across the country to campaign and the level of personal security was significantly improved.

1.1.4. Post-election challenges and opportunities

Liberia's actual political landscape is very fluid as new political formations emerge. Currently, it is difficult to point to an entrenched political class, as alliances are constantly being formed, broken and re-established. The government is a 'government of inclusion' according to President Johnson Sirleaf. Leaders of various political parties, some of whom were presidential aspirants in the 2005 elections, and selected leaders from the various warring factions and civil society organizations have been appointed to ministerial positions in the government, including the judiciary. The national legislature is a hodgepodge of the various political tendencies in the country. Former warlords who are publicly known to have committed heinous crimes during the war years have been elected to the assembly. No single party has a majority, so that opportunities for compromise and political horse-trading abound.

As a result of the war years and the previous years of misrule by the military dictatorship, the people of Liberia have been impoverished. The United Nations Development Programme (UNDP) in its assessment report points out that more than 70 per cent of Liberians live on less than 1 US dollar (USD) a day and over 50 per cent live on less than 0.5 USD a day (UNDP 2006). More than 80 per cent of Liberians do not have access to safe drinking water and an equal number have no access to electricity. The unemployment rate in the country is 85 per cent. The 15 per cent who are said to be employed—mostly civil servants—contend that their take-home pay (50 USD) is not enough to 'take them home' (pay for their travel to work and back). The young, a demographic majority, have the highest unemployment rate and the lowest level of education. Liberia's prospects of

economic recovery remain dismal and the likelihood of it succeeding in entrenching its nascent democracy and safeguarding its fragile peace appears low.

2. Transitional justice in the Liberian context

The process of transitional justice in Liberia is probably beholden to two significant events which occurred during the negotiation to end the 14-year-long civil war. The first and perhaps most important was the issuing of an indictment against President Charles Taylor of Liberia by the Special Court in Sierra Leone. The second, and related, element may have been the recognition on the part of the parties to the Liberian conflict that a similar fate awaited them if they did not include in the peace accord a provision that would absolve them of war crimes or violations of human rights that they may have committed during the war years. These parties thought that by establishing a Truth and Reconciliation Commission (TRC) they could avoid being held accountable for such breaches. In this they were mistaken. Civil society actively engaged the process to ensure that heinous crimes do not go unpunished. The TRC was seen by civil society as a useful vehicle for coming to terms with the past while ensuring some form of accountability for the conduct of the war years (Pajibo 2007).

Civil society organizations—specifically the Transitional Justice Working Group (TJWG), which comprised about 20 human rights, pro-democracy and peace-building organizations—seized the opportunity to inform the process of drafting the law and establishing the TRC. Of the utmost importance to the TJWG was ensuring that the perpetrators of war crimes and crimes against humanity were held accountable. Moreover, the group felt that economic crimes should be part of the draft law establishing the TRC. (For a more detailed discussion on the role of civil society in the drafting and passage of the TRC Act see Pajibo 2004.)

2.1. The Truth and Reconciliation Commission

The Liberian Truth and Reconciliation Commission was seen by civil society as a useful vehicle for coming to terms with the past while ensuring some form of accountability for the conduct of the war years. It could contribute to ending the culture of impunity by naming individuals and institutions responsible for massive violations of human. Without accountability, reconciliation in Liberia will be a difficult endeavour.

The 2003 Comprehensive Peace Agreement, brokered by regional leaders and the international community, called for the establishment of the TRC. Article XIII of the CPA provides for the establishment of such a commission to 'provide a forum that will address issues of impunity, as well as an opportunity for both 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'.

The act to establish the TRC was published in the *Official Gazette* in June 2005 and the TRC was officially inaugurated in June 2006. Among the objectives of the TRC are to promote 'national peace, security, unity and reconciliation' by

> Investigating gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extra-judicial killings and economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflicts, during the period January 1979 to October 14, 2003; determining whether these were isolated incidents or part of a systematic pattern; establishing the antecedents, circumstances factors and context of such violations and abuses; and determining those responsible for the commission of the violations and abuses and their motives as well as their impact on victims (Act to Establish the Truth and Reconciliation Commission 2005).

The TRC Act has provisions on amnesty and reparation and mandates the TRC to recommend the prosecution of those alleged to have committed war crimes and/or crimes against humanity, once it has established that there is a case. A unique feature of the Liberian TRC is the stipulation that economic crimes are to be investigated, since one of the important features of the Liberian war years is the exploitation of the country's resources to fuel the conflict, especially in relation to diamonds and timber.

The act also has provisions for traditional mechanisms of conflict resolution to be used. Article VII, section 26q states that 'The Commission may where it deems it necessary seek assistance from traditional and religious leaders to facilitate its public sessions in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation'.

More than a year since the inception of the TRC, no noticeable progress has been made. Its members have been offered training of different kinds, and have taken 5,000 statements, but apart from this its work remains stymied. The major problems facing the TRC include the lack of funding, of adequate and competent staff and of technical support. While the international community was very instrumental in promoting the concept of a TRC in Liberia, it has been less forthcoming in the provision of funding for it to carry out its work.

The Liberian Government has not demonstrated sufficiently that the TRC is a priority. So far it has committed itself to covering the salaries of the members of the commission and other low-budget activities. With no funding for its major programmes, including the establishment of eight regional offices across the country, the collecting of 30,000 statements and the holding of public hearings as well as conducting investigations and research, the commission remains hamstrung.

During March–May 2007 a series of discussions, spearheaded by the donor community—specifically the International Contact Group on Liberia (ICGL), which comprises the European Union (EU), UNMIL, the USA and the governments of Ghana and Nigeria—took place. The ICGL had expressed concern about the management of the TRC and the transparency of its financial conduct. According to Jerome Verdier, the chairman of the

Liberian TRC and a prominent human rights lawyer, the management problem has to do with the appointment of international technical advisers and oversight of the TRC. With regard to financial transparency, Verdier notes that international funding for the TRC is channelled via the UNDP, which virtually acts as the procurement office of the TRC. To date, no direct funding from the international community has been made to the TRC except for a donation of 200,000 USD from the Open Society Initiative of West Africa (OSIWA). According to Verdier, the EU funding is administered by the European Commission office in Liberia and the bulk of it is allocated for technical experts from EU member countries who will work with the TRC (Verdier 2007).

The TRC is to begin public hearings on 8 January 2008. Verdier has said that the hearings would provide a venue for victims and alleged perpetrators to recount their experiences for the public record as a gesture toward reconciliation. According to Verdier, the TRC will pay particular attention to violence involving women and children during the conflict. It has a two-year mandate to complete its truth-seeking work.

Liberia's TRC process has been embraced by local civil society organizations, including the TJWG, because it creates an opportunity to document the war years and establish a collective memory of the war so as to help the country in its future public policy processes. Moreover, the TRC is the existing framework in the country that could contribute to ending the culture of impunity by naming individuals and institutions responsible for the commission of massive violations of human rights in order to have them held accountable. Without accountability, reconciliation in Liberia will be a difficult endeavour.

Local civil society organizations have embraced Liberia's TRC process because it creates an opportunity to document the war years and establish a collective memory of the war so as to help the country in its future public policy processes.

In addition to the setting up of the TRC, some prominent Liberians, including Catholic Archbishop Michael Francis, a leading human rights advocate, have called for the setting up of an international criminal court for Liberia. This call was revived in March 2006 when the Liberian Government requested Nigeria to surrender Charles Taylor to the Special Court for Sierra Leone. The surrender of Taylor gave new impetus to the debate about the setting up of an international criminal court on Liberia as it convinced most Liberians for the first time that justice is after all possible within the Liberian context as well (Transitional Justice Working Group 2004). On 30 March 2006, the Nigerian authorities turned Taylor over to the government of Liberia, and he was immediately surrendered to the Special Court for Sierra Leone. When Liberians witnessed the ceremony and saw Taylor, handcuffed and turned over to the Special Court for Sierra Leone by an official of the Liberian Ministry of Justice, some sectors of society, particularly supporters and family members of Taylor, began to call for an international criminal court for Liberia. They reasoned that, since Taylor had been arrested for war crimes and crimes against humanity, other Liberian warlords, including

some who were now government officials and were alleged to have committed these crimes as well, should be similarly charged. However, mainstream thinking in Liberia has held that the TRC is an adequate mechanism for dealing with the crimes of the past and that it has the authority to recommend prosecution if it is established that crimes against humanity and or war crimes were committed during the period 1979–2003, which the TRC was set up to investigate.

The TRC has established a Traditional Advisory Council (TAC), which is coordinated by a member of the TRC, Bishop Arthur Kulah, a former bishop of the Methodist Church. It has not yet clearly established its terms of reference, work plan or strategy for employing traditional justice mechanisms in the work of the TRC. The membership of the TAC is drawn from the 15 political subdivisions of the country. Apart from the fact that its membership reflects geographical distribution, no published criteria for suitability for membership are available. The establishment and composition of the TAC seem to indicate that it has been treated as a routine exercise, not carefully thought through. In the view of the present writer, in the absence of published criteria and a suitable process for vetting members, the TAC is simply intended to placate the public and give the appearance of involvement by traditional leaders. No doubt they will play a role, mostly in the performance of rituals that are believed to be important insofar as reconciliation efforts are concerned.

The TRC is the existing framework that could contribute to ending the culture of impunity by naming individuals and institutions responsible for massive violations of human rights in order to have them held accountable.

What relevance these rituals would have is open to question since the massive dislocation of the population during the war years means that rituals may well not resonate with some elements within the most densely-populated communities—particularly in the urban setting. Liberians have not demonstrated sufficiently that they will return to their former abodes; instead they seem likely to remain where they are since their previous homes have been destroyed, and there is a lack of social services in most parts of the country, especially the rural areas. The war years may have inadvertently driven forward the urbanization of the country, and this calls into question the relevance of conducting some forms of rituals in highly diversified communities, as is common in urban settings.

According to the act establishing the TRC, 'The Commission may where it deems it necessary seek assistance from traditional and religious leaders to facilitate its public sessions in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation'..

No doubt traditional leaders will play a role, mostly in the performance of rituals that are believed to be important insofar as reconciliation efforts are concerned. What relevance these rituals will have is open to question since the massive dislocation of the population during the war years means that rituals may well not resonate with some elements within the most densely-populated communities—particularly in the urban setting.

2.2. Access to justice and traditional justice mechanisms

Historically, Liberia's judiciary has denied justice to the vast majority of the population. The state has been conspicuous by its absence in the daily lives of the overwhelming majority of its citizens, particularly with regard to access to justice. Military dictatorship and the civil war exacerbated this. In the absence of statutory mechanisms for seeking justice, the majority of Liberians have sought traditional justice mechanisms as the vehicle for redress and the settling of scores.

Justice in the Liberian context attempts to redress perceived or actual wrongdoing by penalizing the wrongdoer and rewarding the victim, psychologically or physically. The psychological reward may be in the form of punishment—banishment or death—of the wrongdoer in the case of murder. Physical reparation comes in the form of the wrongdoer performing prescribed labour for the victim, such as assistance in farm work.

In pre-settler Liberia, dispute resolution mechanisms included

- the *palava* hut process,
- the sharing of the kola nut, and
- '*sassywood*' or trial by ordeal.

The first two are largely non-punitive and could be said to be reconciliatory processes, while trial by ordeal is designed to establish guilt and thereby penalize the alleged perpetrator. The *palava* hut process is of more universal importance in the Liberian context and therefore greater applicability even in very diverse communities. The emphasis in this case study is therefore on the *palava* hut process. To be sure, the current practice that informs these processes has been largely corrupted and co-opted over the years, especially since the early 1940s when the state intervened in the selection of traditional leaders. The period since then has also undermined these processes as communities were forcibly removed from their traditional lands to allow multinational companies to exploit mineral deposits, as happened in several parts of Liberia, including Nimba, Bong and Gborpolo counties. In other circumstances, as in Margibi and Bomi counties, entire communities were dispossessed of their lands for the establishment of rubber plantations, thus undermining the traditional forms of existence and by extension the associated practices. As a result, these processes no longer enjoy the legitimacy, obeisance and respect they did in pre-settler Liberia. What is more, the establishment of a dual justice system in the country has undermined the legitimacy and popular appeal of these processes.

2.2.1. Sharing the kola nut

A local proverb says 'He who brings kola nut brings life'. Sharing a kola nut is a dispute resolution mechanism that is largely based on forgiveness. As a way of atoning for a wrong, the perpetrator would provide kola nuts, cane juice (a local liquor) or a chicken

or goat to the aggrieved party. In most instances the aggrieved party will, as a result of social coercion, accept the kola nuts. This method of dispute resolution has given rise to a rather popular saying in Liberia, known as 'let bygones be bygones'. It is mostly employed in breaches of the civil law, including adultery, in which case a form of a 'fine', known locally as 'damage', is paid. For example, if a man, usually a polygamist, complains that his wife has cheated on him and wants redress, the local leaders, chiefs and elders are convened. If the perpetrator is deemed guilty, he is made to pay restitution, in the form of cash or some other item, such as a chicken or goat, to the aggrieved husband.

Given the woeful inadequacy of the Liberian judicial system, Liberians will continue to avail themselves of this practice for the foreseeable future. Its accessibility and its biases towards patriarchy ensure that it is sustainable. The government is not taking action against the practice and it is thus legal.

Sharing the kola nut may well survive Liberia's judicial reform agenda, as taking legal action on civil matters involves paying lawyers' fees. A method that does not involve lawyers and fees may prove difficult to dislodge.

> The 'sharing of the kola nut' is a largely non-punitive dispute resolution mechanism and could be said to be a reconciliatory process. It may well survive Liberia's judicial reform agenda and Liberians will continue to avail themselves of this practice for the foreseeable future.

2.2.2. Sassywood*, or trial by ordeal*

In several local settings cases of theft of property, death or witchcraft/sorcery are settled by 'trial by ordeal', known locally as *sassywood*. The alleged perpetrator is made to imbibe a mixture or brew made from indigenous plants. If he or she regurgitates the brew, this constitutes a not guilty verdict. Failure to do so demonstrates guilt and the person will be banished from the village (in the case of murder), scorned, shamed and (in the case of theft of property) made to make restitution. Another *sassywood* method involves the use of a red-hot metal that is brought into contact with the alleged perpetrator's person (in most cases the leg). If the alleged perpetrator withdraws from the heat, he or she is ruled guilty. If you were not guilty, then you would not get burned.

In some instances a straw is tied around the neck of the alleged perpetrator and, following an incantation by the 'judge', the straw may tighten around the person's neck in an attempt to strangle him or her. If this happens the person is deemed guilty. If the straw does not tighten he or she is set free.

The practice of *sassywood*, although widespread and commonly invoked, has been made illegal by the state. The current government has vowed to prosecute anyone who engages in it. However, the government will find it difficult, if not impossible, to curb the practice. It may well continue to function underground and/or under cover of

The practice of *sassywood* has been made illegal but the government will find it difficult, if not impossible, to curb it. It may well continue to function underground and/or under cover of darkness. The practice is accessible and a sizeable sector of the population believes in it.

darkness. The practice is accessible and a sizeable sector of the population believes in it. What is more, it appears to be an adequate response to the desire among the population for instant justice, and this makes it an appealing method for the dispensation of justice.

2.2.3. The palava *hut process—a mediatory and dialogic process*

This is a dispute resolution mechanism. It is convened by elders, mostly men above 45 years of age, and aims to settle matters such as extramarital affairs, divorce cases, land disputes and debt. In some communities cases of theft and murder may also be decided by this process.

Liberia has 16 distinct ethnic groups which are classified into two linguistic groups, the Mende and the Kwa. The Mende-speaking groups are mostly located in western, northern and central Liberia while the Kwa-speaking groups are found in the east and south of the country. While the two groups share a number of similarities in terms of conflict/crime resolution and reconciliation, they also differ in certain respects.

Among the Kwa-speaking people, who include the Bassa, Belle, Grebo, Krahn and Kru/Krao, the *palava* hut process seeks a confession of the wrongful act, an apology for the wrong that has been done, and forgiveness from the victim. Family members of both the perpetrator and the victim meet with the contesting parties. Usually, the offending party or a member of his/her family initiates the process. The meeting is presided over by an elder or a selected local leader. The victim is then usually the first to speak and be questioned. The perpetrator is asked to respond to the claims that are made. Once hearings have taken place and the truth has been established, certain rituals are performed. If the case is of a non-violent or civil nature, the offending party has to provide a number of items such as cane juice, cooking oil (palm oil), a goat or chicken, rice, and/or a piece of cloth (*lappa*, a wrap-around used by women in Liberia that can also be made into a shirt or a blouse). Some of the liquor is used to 'pour a libation', acknowledging and invoking the ancestral spirits and thereby ensuring that the contending parties will be true to their word and are committed to ensuring that the resolution is respected and upheld. Otherwise they will be visited with the wrath of their ancestors in some form or other—a fear factor. After the libation is poured, and the elders drink the rest of the cane juice, the food items are cooked by the women of both families and a meal is held for the two families, including the contesting parties and other members of the community who may be invited or may have witnessed the offence being committed. The elders often offer advice and warnings to the perpetrator, intimating that a repetition of the offence will bring sterner measures. If the victim accepts the apology of the offender, he or she

is praised by the elders and is told that the ancestors are pleased with the decision he or she has made. If the case concerns a theft, restitution by the offender is demanded, in which case the value of whatever was stolen has to be returned. If the offending party is unable to make restitution, the family will be required to do so. If the offender is an able-bodied person, he or she may be required to perform labour services such as farm work for the victim.

The *palava* hut process is a dispute resolution mechanism accompanied by cleansing rituals that has been used by the Kwa-speaking people in Liberia in the case of tribal warfare between two ethnic groups. It embodies the key dimensions of truth telling, accountability, reconciliation and reparation.

In the case of a violent offence such as murder the following process may be employed.

Those who were witnesses to the offence or discover the corpse inform the local elders or authorities. It is forbidden for women or children to see the corpse, so, if the corpse was exposed, it has to be covered up or is hastily buried. The elders call the members of the families of both the victim and the perpetrator to a meeting. The perpetrator is held in preventive custody to prevent any member of the victim's family seeking revenge. The elders urge both parties to observe a period of grieving. This may be a technique to lower tempers a little so that family members will be more rational once the actual discussion of the matter takes place.

During the period of grieving, special rituals are performed to ensure that the dead person is acceptable in the ancestral realm. In many cases an animal, preferably a goat, is slaughtered and the blood is poured on the grave. The carcass is presented to the bereaved family for a meal during the period of bereavement.

Once the meeting of the two families is convened, almost always, the perpetrator is accused of the death. It does not matter what the circumstances were when the death occurred. The Kwa-speaking people believe that, no matter what a person may have done, that person does not deserve to be killed. The meeting is held to hear the circumstances and not to condone the killing. The elders then decide a penalty, which comes in several forms as fines. Usually the perpetrator and/or his family are asked to provide a cow, a black goat, a black chicken, 100 pounds of rice and three gallons of cooking oil (palm oil). These are used to appease the ancestral spirit by means of an elaborate ritual so as to cleanse the perpetrator of the evil he or she has committed. The closing ritual includes the preparation of a meal from the various items used in the cleansing ritual and all join in, especially the two families involved. The meal must be totally consumed on the same day with nothing left over.

Once this cleansing ceremony is complete, the perpetrator is made to make restitution in the following ways. A public apology is made to the victim and his/her family and a white plate is presented to the victim's family as an indication of guilt and atonement as well as a plea for forgiveness. Following the acceptance of the apology, the perpetrator

is banished from the community for a period of not more than three years. However, if the murder appeared to be a particularly gruesome or premeditated one, the period of banishment is not less than seven years. (The length of time is measured by the farming cycle.) The period of banishment is intended to ensure that the aggrieved family will have ample time to deal with the death of their loved one, and the urge for revenge will be reduced.

The aggrieved family are then allowed a period of mourning. During this time, a number of rituals are undertaken, such as the shaving of the hair of both men and women—a cleansing ceremony. Women are to wear black clothes or dark clothes for a period of one year. Men do not have to wear such clothing unless the victim was a close relative (i.e. parent, wife of biological child), in which case they may have to wear some black clothing for a shorter period of time.

Among the Kwa-speaking people rape is a serious crime but one which is dealt with in absolute secret. The idea is to prevent the identity of the victim becoming known, although this is seldom possible as many villages are close-knit communities where almost everyone knows everyone else. Perhaps another unspoken reason for the level of secrecy is the taboo around discussion of anything that has to do with sex. Once the meeting is convened to discuss a case of rape, the perpetrator is not allowed to be present: he is already deemed guilty of the offence. The perpetrator is represented instead by a member of his family, usually the most senior member, a father or grandfather or the next-oldest male member of his clan. The representative of the rapist approaches the father of the victim, carrying a palm branch, prostrates himself before the father of the victim and holds his feet—a gesture of apology and a request for forgiveness. He remains in this position until the victim's father or representative takes the palm branch from his hand. If the branch is taken, the victim's father lightly slaps the branch on the back of the prostrated person, rests his right hand on his back and acknowledges his apology and his request for forgiveness. Once this happens, he is allowed to stand, at which time he apologizes profusely for the sins of his son or the member of his clan who has perpetrated this heinous crime and asks for forgiveness.

The family of the rapist then make restitution in the form of a 'fine'. In most rape cases, the fine may include a he-goat, a black rooster, 50 pounds of rice and three gallons of palm oil. Among the Bassa people, Liberia's second-largest ethnic group, the fine is only a white chicken and a white kola nut. Interestingly, no alcohol is requested or presented in these cases, perhaps suggesting the solemnity of the ceremony. The family of the rapist are also responsible for ensuring that any medical needs are taken care of. Such medical attention is administered only by women.

In the case of tribal warfare between two ethnic groups, which happened from time to time in pre-colonial Liberia, another third party, who is consider neutral by the conflicting parties, is invited to intervene. Complaints are heard and inquiries are made. The group that initiated the war is usually blamed, since they are told that other methods of resolving these matters were not exhausted. Compromises also feature in

these mediation efforts. The objective is a win–win scenario. However, the group which carries the most blame is responsible for providing the means by which the agreement is sealed. The party that is responsible for the war is made to give away a beautiful unmarried woman from their group to the other group, to be married to the chief warrior of the second group. This is interpreted as meaning that no more war will be fought since the children of the second ethnic group may be the descendants of the woman who was given in marriage to it. In war, you are not allowed to spill the blood of your own group.

Among the Mende-speakers in Liberia, who include most of those located in central and north-west Liberia, the process is slightly different. The role of the family is not central to the reconciliation process. Instead, local chiefs, traditional leaders often referred to as *zoes* and considered to be the custodians of traditions and customs, lead the process. Depending on the nature of the offence, hearings can be public, in which case they take place in the '*palava* hut', usually a round mud structure with a thatched roof located in the middle of the compound of the elder in whose place the hearing is being held; or the hearing may be heard in camera, in which case it takes place in the '*zoe* bush'. In this case, only the initiated members of the particular ethnic group are allowed to participate. Others, such as the perpetrator or his chief, may be invited depending on their role in the offence in question, if they are not from the same village or ethnic group.

The process involves the statement of the case by the victim followed by the establishment of extenuating circumstances. The admission of guilt by the guilty party is central to the process. Once this is accomplished, restitution is required in the form of a 'fine'. The fine may be paid in cash or in kind, including cattle or agricultural produce such as rice, palm oil or liquor.

If the offence is of a violent nature, such as rape or murder, a cleansing ceremony will be required. This ceremony almost always includes the slaughter of an animal followed by an elaborate ritual in which the victim or his/her representative and the perpetrator are symbolically washed with the blood of the animal by splashing blood on both. The perpetrator and the victim or selected representative may also be required to have a herbal bath and to drink a brew which may be herbal or alcoholic. The purpose of the cleansing process is to exorcise evil, restore the integrity of the victim and the perpetrator, and remove any defilement that may have come to the town or village because the ancestral spirits, who do not tolerate such offences, are offended. It is believed that only those who have been visited by the evil spirit would commit violent crimes. Depending on the nature of the violence, the animal in question may be a fowl or a goat in cases of rape or a cow in the case of a murder.

A closer examination of certain offences may be helpful. Murder is the most abominable offence among the Mende-speaking people of Liberia. In the event of a murder occurring, the perpetrator is arrested, detained and shackled to ensure that he or she does not escape. A piece of log to which a rounded piece of metal is attached is placed around the person's ankle and the person is kept under sentry guard. Only men are allowed to

establish whether a murder as taken place. Once the investigators have their evidence, such as the body, the *zoe* and his council are informed. The venue of the investigation is moved away from public glare into the *zoe* bush where a council composed of the *zoe*, the town chief and the elders (all of whom are always men) is held.

The primary concern of the meeting is to establish whether the crime was premeditated or involuntary. If it was premeditated, the perpetrator is heavily fined (by the payment of several cows) and banished from the town or village. If it was involuntary or accidental, a plea for forgiveness is entered and the *zoe* and his council urge the victim family to accept the plea. In this particular case an oath is required. An animal is killed, preferably a sheep, which is part of the fine paid by the perpetrator. Certain internal organs of the slaughtered animal are extracted, such as the liver, heart and tongue. A concoction is made of these and the *zoe* holds this above the head of the perpetrator as he or she vows never to commit such an offence again. The family of the victim is then required to accept the apology and offer forgiveness, following the prompting of the *zoe* and the council members. The *zoe* then holds up the concoction and the family of the victim vows not to take revenge. Once this is concluded the cleansing ceremony ensues. First the perpetrator is cleansed, the spirits are appeased and the town or village is cleansed by pouring blood from the slaughtered animal onto the ground while the *zoe* recites an incantation inviting the ancestral spirit to drive out the evil spirit that has visited them, and to look kindly on all the villagers and prevent such a misfortune from happening to them again. This is followed by a big meal which the families of both the victim and the perpetrator share. The sharing of food is important in sealing the reconciliation process.

In cases of rape, women play the role of counsellors and nurses for the victim. The leader here is the female *zoe*. To resolve the matter, the conflicting parties are requested to attend a meeting under the *palava* hut and an investigation is undertaken. Once a breach is established, the perpetrator is fined either in kind or in cash. In some instances, the rapist is made to marry his victim. The community then undertakes a cleansing ritual focusing primarily on the victim.

3. The strengths and weaknesses of the *palava* hut process

The universality of the *palava* hut process in the Liberian context suggests that it could be employed as another form of conflict resolution—either as a reconciliation ritual or as a process of addressing some of the violations the TRC might uncover, including issues such as rape, which was widespread during the war years, and land disputes.

The universality of the *palava* hut process in the Liberian context suggests that it could be employed as another form of conflict resolution—either as a reconciliation ritual or as a process of addressing some of the violations the TRC might uncover, including issues such as rape, which was widespread during the war years, as well as land disputes. In the case of rape, this may only apply to the victims as the TRC Act considers rape a war crime and

perpetrators will be recommended for prosecution. As a transitional justice tool, the *palava* hut process does embody the key dimensions of truth telling, accountability, reconciliation and reparation.

3.1. Strengths

- It is accessible to the majority of Liberians, especially rural dwellers.
- Those who preside over the process live among the people and are part of the milieu.
- Most Liberians who participate in this system hold it in high regard and see it as part and parcel of their cultural heritage, and therefore accept the need to preserve it.
- It is accorded some recognition by the state, since Liberia embraces a dual justice system—statutory (mostly applicable to the urban setting) and customary (mostly applicable in rural areas, although it has resonance in urban settings as well, especially in poorer communities).

3.2. Weaknesses

- Over the years (1944–2003) the state has co-opted and corrupted the process by selecting local leaders, especially the paramount chiefs and town chiefs, thereby compromising the integrity of the local leaders.
- Records have not been kept, thus making it difficult to establish the rationale for decisions taken in the past.
- The conditions of the war years have resulted in massive population movements. Liberia has been forcibly urbanized due to the civil war and different ethnic groups may find themselves in a particular geographic locale where ethnicity is blurred at best or irrelevant at worst.
- The process relies on oral history to transmit values and principles, and these may be modified depending on the interests of the powers that be.

3.3. Opportunities

- The prevailing conditions in the country, which is actively pursuing reform, make it possible to revisit these practices in order to place them on their historical, traditional and customary footing, thereby giving them the necessary relevance.
- Many people have no access to justice in the sense of statutory justice, and such access is not foreseeable in the near future.
- The majority of Liberians still believe in the system.
- The use of traditional justice mechanisms represents an opportunity to preserve cultural practices that are understood, understandable and acceptable by the majority of the people.
- The TRC has been created and can employ some of these methodologies to respond to issues that may arise as a result of its activities.

- There is an emerging national consensus that access to justice should reflect and respect international human rights and humanitarian law.

3.4. Threats

- The agenda for judicial reform in the country does not address or take into account the traditional mechanisms of justice.
- The agenda for modernization does not consider these processes as useful as since 1944 they have played a major role in dispensing one kind of justice for the poor (most rural dwellers) while another set of justice is preserved for the rich (specifically those in the urban setting).
- Attempts to make the state relevant in the lived experience of rural people tend to play down the traditional mechanisms of society.

The *palava* hut process may be salvageable once local people are placed in a position to determine who their own leaders are. However, the general tendency within the country to promote a culture for the respect of human rights and peace may not entirely coincide with these practices.

4. Conclusion

The Liberian nation is poised to recreate itself. The new political dispensation in which there is no entrenched ruling class offers enormous opportunities to reform, if not transform, the Liberian state. Although there are major challenges, including massive poverty, high unemployment and a virtually collapsed economy, the atmosphere for major policy and paradigm shifts is favourable and improving. Access to justice is an important area for such a paradigm shift to occur. Traditional justice mechanisms, while usually viewed in a rather romantic light, need to be seriously, rigorously interrogated so that a dual justice system—one for the rural poor and one for the urban elite—does not become entrenched. All Liberians have a right to a system of justice that guarantees equal access and is underpinned by constitutionality, the rule of law and due diligence. It is not possible to have two systems of justice as this would inevitably polarize citizens and residents and sow fresh seeds of discord, possibly even violence. This view is not an attempt to denigrate Liberia's culture and traditions but rather a perspective that challenges Liberians' traditional custodians of culture and traditions in order for a more just and responsive system to be enacted that will ensure justice for all.

References

Act to Establish the Truth and Reconciliation Commission of Liberia, Monrovia, June 2005

Comprehensive Peace Agreement between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, 18 August 2003

Human Rights Watch, *Liberia: Flight From Terror. Testimony of Abuses in Nimba County*, An Africa Watch Report (Human Rights Watch, 1 May 1990)

International Crisis Group (ICG), *Liberia: Resurrecting the Justice System*, Africa Report no. 107 (Brussels: ICG, 2006)

Pajibo, E., 'Transitional Justice in Liberia', *Journal of Peacebuilding and Development* (American University, Washington, DC), 2/1 (2004)

— 'Civil Society and Transitional Justice in Liberia: A Practitioner's Reflection from the Field', *International Journal of Transitional Justice*, 1/2 (2007)

Resource Center for Community Empowerment and Integrated Development, 'Traditional Forms of Reconciliation in Liberia', Monrovia, 2005 (unpublished)

Sawyer, A., 'Effective Immediately: Dictatorship in Liberia 1980–1986. A Personal Perspective', Bremen, 1987

— *The Emergence of Autocracy in Liberia: Tragedy and Challenge* (San Francisco, Calif.: Institute for Contemporary Studies, 1992)

Transitional Justice Working Group, *The Road to Peace In Liberia: Citizens' Views on Transitional Justice*, Monrovia, 2004

United Nations Development Programme (UNDP), *National Human Development Report* (Monrovia: UNDP, 2006)

Verdier, Jerome, Interview with the author, Gbarnga, Bong County, Liberia, March 2007