



Legal and Practical Challenges in Liberia to the  
Domestication  
of International Anti-Corruption Conventions

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## **I. EXECUTIVE SUMMARY**

The prevalence of corruption in Africa and the disastrous consequences it has had on the economies and social development of African countries are well-known and documented. Corruption is consistently and generally agreed to be a principal cause of the paradox of a very rich Africa that is plagued by poverty, diseases, and drought. Not surprisingly, almost every national government in Africa has professed some kind of commitment to fighting corruption, although the adequacy and effectiveness of national anti-corruption policies vary considerably from one African country to another.

Globally, a country's anti-corruption policies and activities are currently assessed in reference to a set of transparency and accountability standards contained in applicable international anti-corruption conventions. In the case of Liberia, the applicable anti-corruption conventions are the UN Convention Against Corruption (hereinafter referred to as "UNCAC") and the African Union Convention on Preventing and Combating Corruption (hereinafter referred to as "AUCPCC"), adopted in December and July 2003, respectively.

The UNCAC and the AUCPCC represent a new international consensus on the transnational nature of corruption, and the need for sustainable national and international fight against the scourge of corruption. The conventions therefore impose on each state party a treaty obligation to establish, within its own legal system, such laws, agencies, and policies necessary to effectively prevent, detect, and eradicate corruption in accordance with the principles of accountability, transparency and good governance.

This Country Review has been commissioned by Transparency International to ascertain both the status of Liberia's ratification of the AUCPCC and UNCAC and its compliance with their requirements.

Liberia has signed both the AUCPCC and the UNCAC, but is yet to ratify any of the conventions. Pursuant to Article 34(f) of the Liberian Constitution, each of the two conventions must be duly ratified by the National Legislature to become part and parcel of Liberia's domestic laws, and therefore enforceable in Liberian courts.

Besides delay in ratifying the two conventions, there is yet to be established in Liberia a national anti-corruption policy and/or anti-corruption strategy. Liberia therefore has to implement numerous legislative changes to domesticate and effectively implement the AUCPCC and UNCAC. Some of the required activities and changes are: (1) Ratification of the AUCPCC and UNCAC; (2) Adoption of an anti-corruption policy and strategy; (3) An Act to establish an independent anti-corruption agency or commission; (4) Promulgation of An Anti Corruption law that criminalizes and establish penalty for each of the acts of corruption and related practices enumerated in the AUCPCC and the UNCAC; and (5) A body of

laws and rules on accountability, integrity and transparency both in government and the private sector.

To its credit, the new government of President Ellen Johnson-Sirleaf has already taken some concrete steps to combat corruption. The Government has completed a draft national anti-corruption policy and is working toward ratifying the AUCPCC and UNCAC. It also recently dismissed three middle level political appointees at the Ministries of Commerce, Health, and Transportation for acts of corruption, and has vowed to continue the policy of a zero tolerance for corruption. However, the endemic level of corruption in Liberia indicates that there is going to be substantial obstacles to overcoming its depth of pervasiveness and diversity of manifestations, as well as the age-old culture of acceptance.

The first obstacle is the dearth of political will to support timely ratification of the conventions and faithful implementation of their requirements. A good number of the current legislators who are supposed to ratify the convention and enact the requisite anti-corruption legislation are not exactly individuals with impeccable character and anti-corruption credential. It would therefore require a mix of positive stimulus and other initiatives to have the legislators ratify the conventions and support the necessary national anti-corruption agenda. Further, there is yet no evidence to suggest that most of the new non-elected public officials are better than the legislators. Although supposedly selected by President Ellen Johnson-Sirleaf based on some integrity criteria, the fact remains that a not insignificant number of these officials are old politicians that worked in past corrupt governments. There is also the reality of working in an environment where a cabinet Minister, as per the recast 2005-2206 budget earns a **monthly gross salary of L\$2,500.00 (about US\$50.00)** and taxable allowance of US\$1,000.00. It has been reliably reported that in response to the unrealistically low salary structure and in order to attract competent professionals, President Sirleaf has concluded arrangements whereby the salaries of some officials of government are presently being subsidized by international organizations such as the World Bank and Soros Foundations. It should therefore be obvious that pending a comprehensive review and reform of the civil service and entire public sector, the problem of low remuneration will continue to be a challenge to the development and implementation of a realistic anti-corruption strategy.

Another obstacle to effective implementation of the conventions is the scarcity of financial resources required to fund most of the anti-corruption measures and programs, including (1) adequate remuneration of civil servants to make them less disposed to corruption, and (2) establishment/maintenance of an anti-corruption agency/commission. The ability of the Liberian Government to source and prioritize funding of anti-corruption programs vis-à-vis other competing demands for reconstruction of basic infrastructures will represent a major challenge for the next couple of years.

Notwithstanding the obstacles, there are opportunities and prospects that Liberia will shortly ratify the conventions and also begin efforts to design and implement an appropriate anti-corruption strategy. A major catalyst in the process is the abundance of strong public will in support for reforms as underpinned by a consistent and growing civil society advocacy for open, transparent and good governance. An additional and perhaps more important opportunity for implementation of the two conventions is the decision of the international community to remain engaged with Liberia for a minimum of three years through the Government Economic Management Assistance Program (GEMAP), which focuses on almost all of the integrity and transparency criteria established by the conventions. In this context, the singular importance of GEMAP is that it provides incentive(s) for each branch and/or official of government to cooperate in implementing the anti-corruption agenda because none would ordinarily risk been seen as the cause for Liberia's failure to meet its GEMAP obligations, especially when such failure will lead to international sanction on the country.

## **II. BACKGROUND DATA**

### **i. Status of Conventions Ratification**

Liberia is yet to ratify either the AUCPCC or the UNCAC, although it has signed both conventions<sup>11</sup>. Under Liberian laws, each convention must be separately ratified by an act of the National Legislature before they become part of the domestic laws of Liberia.

The first initiative for ratification of the conventions was undertaken in early 2005 by a consortium of eleven (11) civil society organizations called the Coalition Against Corruption (CAC). The campaign of the CAC principally consisted of soliciting the signatures of Liberians supporting ratification of the conventions, which were then used in support of a formal petition to the then National Traditional Government of Liberia for ratification of the Conventions. Although the CAC did not succeed in having the conventions ratified, it significantly raised awareness about the existence and content of the conventions. It is arguable that the efforts of the CAC contributed to the decision made by the NTGL in June of the same year-2005- to establish through an Executive order, a presidential task force that was mandated, inter alia, to work toward the ratification of the conventions.

Significantly, the New Government of President Sirleaf has made ratification of the Conventions one of the priorities to be achieved within the first 150 days of the Administration, ending in July 2006.

### **ii. Brief History**

Liberia was founded in 1822 by ex slaves repatriated from the United States of America by a philanthropic organization called the Society for the Colonization of Free people of Color of America (generally abbreviated as the “American Colonization Society”), with initial financial support from the State of Virginia followed by other states and then the US Government. Upon their arrival on the shores of West Africa, the freed slaves purchased, for a token consideration, a plot of land from the indigenous Africans who originally occupied the land now corresponding to Monrovia, the capital city of Liberia. On July 26, 1847, they proclaimed Liberia independent, making it the first Negro Republic in Africa.

The founders of Liberia (who were also known as the settlers) established a segregated state in which a small class of ruling elites suppressed the mass of the people and plundered the treasury and wealth of the nation. In 1877, the Settlers formed the True Whig party, which became the sole party in Liberia that continuously ruled the country from 1878 to 1980.

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<sup>11</sup>Liberia signed the AUCPCC- on July 6, 2004. Liberia signed the UNCAC on September 6, 2005 as part of 83 treaty actions. (see UN Press Release L/T/4391 available at [www.un.org/news/press/docs/2005lt4391.doc.html](http://www.un.org/news/press/docs/2005lt4391.doc.html)).

In response to worsening economic conditions, rampant corruption, and repressive political practices that characterized the Liberian state, a group of 17 enlisted men led by master Sergeant Samuel K. Doe on April 12, 1980 overthrew the True Whig Party Government of President William R. Tolbert in a bloody coup. The military junta promised to restore democracy and improve the living conditions of the people, but they succeeded only in repeating the corrupt and repressive practices of those they overthrew. This led to a 14-year civil war that started in 1990 and was still running in 2003 when the UNCAC and the AUCPCC were adopted.

iii. **Overview of Governance and Legal System**

Liberia is a republican democracy in which the head of state is the President. The power of Government is divided among three equal, separate and coordinate branches-the Legislature, the Executive and the Judiciary.<sup>2</sup>

The Legislature is the first branch of Government. It consists of two houses, namely the House of Representatives and the Senate. The Legislature exercises the legislative power of the Republic.<sup>3</sup> The Legislature also has the power to adopt the national budget, ratify treaties and conventions, and to confirm, in designated instances, the appointments of certain public officials.<sup>4</sup>

The Second branch is the Executive which is headed by the President. The President is the “Head of State, head of Government, and Commander in Chief of the Armed Forces of Liberia.”<sup>5</sup> The Executive enforces the laws and runs the administrative machinery of state. It consists of the Office of the President and several Ministries, agencies and bureaux manned by civil servants and political appointees reporting directly to the President. Most of the political appointees in the various ministries, agencies and bureaux serve at the pleasure of the President.

The Judicial power of the Republic is vested in the Liberia Supreme Court and such subordinate courts as the Legislature may establish from time to time.<sup>6</sup> The Judiciary is headed by the Supreme Court which is the final arbiter of constitutional issues and exercises final appellate jurisdiction in all cases decided by the court system. The Liberian Supreme Court is comprised of five Justices, one of whom is designated as Chief Justice. All justices of the Supreme Court and judges of lower courts are appointed by the President with the advice and consent of the Legislature. Once appointed, the Justices and judges hold office

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<sup>2</sup>Article 3 of the Constitution of the Republic of Liberia

<sup>3</sup> Article 29 of the Constitution of the Republic of Liberia.

<sup>4</sup> S.34 of the Constitution of Liberia

<sup>5</sup> Article 50 of the Liberian Constitution

<sup>6</sup> Article 65 of the Liberian Constitution



during good behavior, and may be removed upon impeachment and conviction based by the legislature based on proved misconduct.

While the three branches of the Liberian government are in theory equal, the Executive Branch has traditionally dominated the other branches principally through its disproportionate influence over the process of budgetary appropriations and disbursement. Executive dominance of the other branches of Government is also worsened by the domination of the Executive by the President. Presidential dominance of government in Liberia is traced to cultural and institutional factors underpinned by the African chieftaincy concept.

The first institutional underpinning for the President's dominance is his/her legal role as head of State and Commander in Chief of the Armed Forces. As the Commander-In-Chief, the President wields enormous power over the Armed Forces of Liberia which membership is predominantly illiterate and therefore lacks a proper understanding of the distinction between the State and the Head of State. Additionally, the limited state of civil service rules and policies in Liberia have led to the massive politicization of the service whereby the president has influenced or made appointments to key civil service positions below the directorial level. As a result of the President's power over the security forces as well as over employment and dismissal in the public sector, he/she almost single-handedly decides who gets every public contract, permit, license, etc. This, in the past, led to poor governance, inefficient management, and limited accountability in the public sector, which caused and/or contributed to many acts of corruption, including, abuse of functions, trading in influences, and bribery. Such situation was aggravated during the years of civil war when most of the interim governments were created based on a peace formula whereby appointments in Government were based on warring faction membership and loyalty, thus leading to the level of massive corruption that necessitated the establishment of the Governance Economic management Assistance Program (GEMAP).

iv. **Governance Economic management Assistance Program (GEMAP)**

Based on continuing report and evidence of systemic corruption, flagrant theft, and other misuse of public resources, the international community led by the US Government, The UN, EU, and other multilateral organizations demanded the imposition on Liberia of an international governance program to be called Economic Governance Action Program (EGAP) under which a corps of non-Liberian professional would man key institutions of government, including the Judiciary. The concept of sharing governance with the international community was initially resisted by the then Liberian Government with the support of some segment of civil society on many grounds such as the provisions of Article 68 of the Liberian constitution requiring that only Liberia citizens may hold judicial offices in Liberia. Following negotiations, the Government and its international development partners agreed to a modified version of EGAP which became known as the Governance Economic Management Assistance Program

(GEMAP). The GEMAP Agreement was signed by the parties on September 9, 2005, and is now in full operation.

GEMAP is built on six interlocking pillars. They are: (1) Financial management and Accountability, (2) Improving Budgeting and Expenditure Management, (3) Improving procurement practices and Granting of Concessions, (4) Establishing Effective processes to control corruption (5) Supporting key institutions, and (6) Capacity building. Pursuant to the financial management and accountability component of GEMAP, international financial experts with binding co-signatory authority have been and are being recruited to work in key revenue-generating agencies of government. Further, GEMAP mandates, under the pillar for establishing effective processes to control corruption, **“the establishment of an effective and independent Anti-Corruption Commission, as well as technical support from the sub-region to assist in investigation of serious fraud, corruption and economic crimes.”**<sup>7</sup> During the entire period of GEMAP, effective decisions regarding procurement, disclosure/transparency and general management of public resources will be made not by the Liberian Government alone, but by both the government and the international experts recruited under GEMAP as well as by a high-level committee chaired by the President of Liberia and comprising a number of Liberian cabinet minister, and representatives from the International community and Liberian civil society. Presently, internationally-recruited experts are in place at the Ministry of Finance; Central Bank of Liberia; Bureau of Budget; the Ministry of Lands, Mines and Energy; Liberia Petroleum Refining Company; National Port of Authority; and the Forestry Development Authority, although some civil society organizations have criticized the limited transparency and apparent lack of due diligence in the recruitment of the experts.

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<sup>7</sup> S. iv of GEMAP, p.4 of the GEMAP Agreement.

### **III LEGISLATIVE CHANGES NEEDED TO IMPLEMENT THE CONVENTIONS**

Every state party to the AUCPCC and the UNCAC has a treaty obligation to domesticate provisions of each convention through ratification and the establishment of legislative and/or administrative measures required to promote effective prevention, detection, prosecution and eradication of corruption in accordance with international best practices. Having signed the AUCPCC and UNCAC, Liberia is a state party to the conventions and has specific international obligations to implement each convention through the enactment of appropriate legislation.

A broad outline of the legislative changes required of Liberia and all other state parties under the conventions are provided in Articles 5 of the AUCPCC and Articles 5 and 6 of UNCAC. These legislative changes can be placed into five (5) broad categories:

1. Legislation to ratify each of the conventions;
2. The promulgation of an anti-corruption policy/strategy
3. Legislation to establish an independent anti-corruption agency
4. Anti-corruption legislation to criminalize all acts of corruption and related offenses contained in the conventions; and
5. Legislation and/or administrative measures on accountability, transparency, integrity and good governance.

Having condoned, encouraged or promoted corruption for many years, the Liberia government has never established or implemented any meaningful anti-corruption policy or legal regime. Consequently, there is very limited anti-corruption infrastructure and legal regime in Liberia that can be built upon. This means that in order to meet the requirements of the conventions, Liberia will have to implement substantially all of the five broad categories of legislation listed above in addition to other related administrative measures.

For ease of understanding, the discussion of each needed legislative change will follow a three-part pattern of (1) stating the convention obligation or requirement, (2) analyzing the current level of national compliance with the stated obligation/requirement, and (3) describing the specific legislative and administrative change(s) needed to achieve full compliance with the conventions.

#### **i. Legislation to Ratify the Conventions**

Both the AUCPCC and UNCAC contain provision in respect of the time and manner by which states are to sign, ratify, and deposit the instrument of ratification.<sup>8</sup> There are also provisions on the deposit of instruments of ratification in each convention.<sup>9</sup> More specifically, the UNCAC provides that each state party shall take all necessary measures, “in accordance with the fundamental

<sup>8</sup> Article 23 of the AUCPCC. Article 67 of UNCAC

principles of its domestic law, to ensure the implementation of its obligations under this Convention.”<sup>10</sup>

Ratification means the act of accepting and confirming that which was done on one's behalf by another, usually an agent. In constitutional and international law, ratification refers to the action of an appropriate body of a national government to confirm a treaty negotiated and signed by authorized officers of the state.

Pursuant to the fundamental laws of Liberia, a treaty ordinarily must be ratified to become binding on, and enforceable in, Liberia. Liberian law further provides that the power to ratify treaties belongs to the Legislature.<sup>11</sup> Article 57 of the Liberian Constitution empowers the President “to conclude treaties, conventions and similar international agreements with the concurrence of a majority of each House of the Legislature. Hence, a treaty negotiated and signed by the President of Liberia or his designee requires a subsequent act of ratification by the Legislature before it becomes a binding international obligation on Liberia.

The mere signing of the AUCPCC and the UNCAC by the Liberian Government is therefore legally inadequate to make the conventions binding on Liberia and/or enforceable in Liberian courts. To fulfill an essential component of Liberia's treaty obligation, each of the conventions has to be ratified by the National Legislature. The process of ratification is initiated by submitting the relevant convention to the Senate with request for their approval. A request for ratification of an agreement or convention is usually done by the President, irrespective of whether he/she personally signs the agreement or convention. In the event that the Senate ratifies a treaty and, pursuant to Article 57 of the Constitution, receives the concurrence of the House of Representative, the resultant ratification legislation is sent to the President for his/her approval and subsequent publication in hand bill by the Foreign Ministry. The publication of the Act ratifying each convention completes the process of domesticating the convention, and in so doing creates, in respect of such convention, binding and enforceable obligations and rights.

It should be noted that the Government of Liberia has declared the ratification of the conventions as one of the things it would like to achieve before the Country next Independence day, which is July 26, 2006. The agency of the Liberian Government responsible to lead the efforts for ratification of the conventions is the Governance Reforms Commission (GRC), which is headed by a leading Liberian academic and a one time Interim president of Liberia, Dr. Amos C. Sawyer. In a recent meeting held with civil society organizations during the second week of June 2006, the GRC disclosed that fruitful meetings have been held with the leadership of the Liberian Senate relative to ratification of the

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<sup>10</sup> Article 65 of the UNCAC

<sup>11</sup> Article 34 (f) of the Liberian Constitution states that the Legislature shall have the power “to approve treaties, conventions and such other international agreements negotiated or signed on behalf of the Republic.”

conventions, and that the Government will shortly be submitting the conventions to the Senate within two weeks.

ii **Promulgation of an Anti-corruption Policy**

The AUCPCC and the UNCAC separately stressed the need for an over-arching policy that animates and directs the various measures comprising a nation's anti-corruption strategy. The UNCAC mandates each state party to develop and implement "effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability."<sup>12</sup> Similarly, the AUCPCC calls for broad policies and principle that will guide the fight against corruption in terms of its goals and the tolerable bounds within which it has to be pursued consistent with democracy and the rule of law.<sup>13</sup>

Corruption is endemic in Liberia. It is practiced or perpetrated openly and systematically in diverse forms, by diverse people and in diverse settings both in the public and private sectors. On almost a daily basis, traffic police officers are openly demanding and receiving unauthorized payments from motorists, while other public employees at various agencies are also demanding official payments for nearly every service-issuing of driver licenses, birth certificates, passports, and even for receiving payment of government taxes! There is a substantial body of evidence on the widespread practice by judicial officers, including judges to solicit and receive unofficial payments in connection to their judicial functions. The Liberian Judiciary is consequently not held in high esteem by members of the public who have the perception that justice in Liberian courts is sold to the highest bidder. The Legislature is also not exempt to charges of corruption, as there are many reports of demand and receipt of payments for confirmation of presidential nominees; ratification of concession agreements, and even approval of the national budget!

One can not therefore overemphasized the need for a comprehensive anti-corruption policy that is (1) informed by the inputs of a cross section of civil society and government agencies and functionaries, (2) identifies the ascertained causes and manifestations of corruption, and (3) articulates the legislative and administrative measures more likely to be effective in effectively combating corruption in Liberia. A national anti-corruption policy for Liberia could achieve or seek to achieve the followings:

1. Identify and state the range of administrative and legislative measures that will need to be

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<sup>12</sup> Article 5 of UNCAC.

<sup>13</sup> Articles 2 and 3 of the AUCPCC

- undertaken to effectively combat corruption and promote a sustainable system of accountability and public integrity;
2. Evaluate the relative benefit of having an independent anti-corruption agency and whether such agency should be structured on a single or multi-agency model;
  3. Define the independence, powers, and sustainable funding program for and of the anti-corruption agency;
  4. Engaging and empowering civil society to appreciate, contribute to, and support the fight against corruption; and
  5. Define the timing and sequencing of the various anti-corruption measures in a manner that recognizes resource constraints, need for quick impacts, and the necessity for some measures to be in place prior to the commencement of others.

It is a credit to the new Liberian Government led by President Sirleaf that a draft National anti-corruption Policy has been drafted and scheduled for adoption and publication by end June 2006. The draft national anti-corruption policy of Liberia was formulated by the GRC based on the outcome of a broad consultation process that involved a cross section of people representing government ministries and agencies, state-owned enterprises and public corporations, the foreign (Lebanese) dominated business community, and civil society organizations.

The Government's achievement in drafting the National Anti-Corruption Policy is highly commendable. It represents the first recorded effort to comply with the mandate of the Liberian Constitution for "appropriate legislation and executive orders to eliminate Such abuse of power as the misuse of government resources, nepotism and all other corrupt practices."<sup>14</sup> The content of the Policy is comprehensive and reflects a high level of political will that is very much needed at this time. Hence, if reasonably publicized and genuinely implemented, the policy will be critical to the on-going fight of the Government against corruption.

In addition to an anti-corruption policy, Liberia also needs an anti-corruption strategy, which would be developed based on the policy. The draft policy provides clear outline of the content of the content of the strategy. According to the draft policy, the national anti-corruption strategy of Liberia will be predicated upon two distinct but interrelated categories of measures that (1) seek to develop a national integrity system underpinned by "pillars of integrity" which constitute the core institutions through which corruption is fought on many fronts, and (2) establish an accountable and effective institutional arrangement through which reports and cases of corruption are vigorously investigated and prosecuted. The policy names government reforms, introduction of code of conduct and

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<sup>14</sup>Article 5 of the Liberian Constitution. See also Article 3(5) of the AUCPCC



declaration of assets for public servants, review of the civil service structure, conditions of service, and compensation; and the establishment of an anti-corruption institution as some of the key elements of the anti-corruption strategy. The Policy also covers key measures that will be taken in developing the national anti-corruption strategy, including prioritizing and sequencing the development of a national corruption strategy. The Policy further emphasized that the national anti-corruption strategy of Liberia will be a “living” document that will be a subject of regular review and updates based on determined need and experiences.

### iii **Establishment of an Anti-corruption Agency**

The AUCPCC<sup>15</sup> and the UNCAC<sup>16</sup> separately impose on each state party an obligation to establish, maintain and support an anti-corruption agency or a body of anti-corruption agencies dedicated to preventing, investigating, detecting and eradication of corruption. Both conventions require that a competent national anti-corruption agency must have at least the all of the following characteristics and powers:

1. Functional autonomy and operational independence to enable it carry out its work of investigating and prosecuting acts of corruption free of undue influences.
2. Have adequate staff members that are trained, equipped and motivated
3. Disseminate information about corruption and encourage the participation of civil society in the fight against corruption.

Given that the mandate of an anti-corruption agency necessarily includes monitoring and investigating every act of corruption committed by public officials, including lawmakers, judges and even the president, it is indispensable to the effective discharge of its mandate that the agency be properly insulated from the constraining influences of these public officials.

Further arguments for the independence of an anti-corruption agency include effective use of resources, and proper coordination of anti-corruption activities with other authorities both within and outside of the Country. This latter rationale is aptly reflected in the AUCPCC, which requires, inter alia, that (1) the independent anti-corruption agency be designated at the time a state deposits its instrument of ratification, and (2) that said agency shall communicate directly with other national authorities, with power to make and receive requests for international assistance and cooperation.<sup>17</sup>

Liberia has no anti-corruption agency possessing the nature, power and independence prescribed by the AUCPCC or the UNCAC. In order for Liberia to

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<sup>15</sup> Article 5 of the AUCPCC

<sup>16</sup> Article 6 of the UNCAC

<sup>17</sup> Article 20 of the AUCPCC

meet the requirements set for an independent anti-corruption agency or a body of anti-corruption agencies, legislation has to be enacted to provide for the establishment of a National Anti-Corruption Agency or Commission with the mandate, power and resources that correspond to or exceeds those set forth in either convention.

Admittedly, Liberia presently has an anti-corruption body called “The Executive Task Force on Corruption, which was established on January 25, 2005, but was later reconstituted through another executive order<sup>18</sup> issued on June 1, 2005 by Charles Gyude Bryant, then Chairman of the National Transitional Government. The Task Force has a broad mandate that includes:

1. To investigate and prevent all forms of corruption, especially in the public sector;
2. To draft anti-corruption strategies necessary to achieve the common goal of zero tolerance for corruption;
3. To draft an act for the establishment of an anti corruption agency; and
4. To ensure the ratification of all ECOWAS/UN protocols/Conventions against corruption.

It is significant that the establishment of the Task Force is not based on either of the Conventions.<sup>19</sup> As a matter of fact, the mandate of the Task Force clearly indicates that it is a transitional body that is to pave the way for “the establishment of an Anti-Corruption Agency with the Republic of Liberia, as well as ensure ratification of all ECOWAS/UN Protocols/Conventions against Corruption.”. The Task Force is a mere presidential commission, not a legislated body that has the concurrent consent of the Executive and Legislative branches. Appointment to the task force was and is not subject to confirmation by the Legislature. It is chaired by a member of the President Cabinet who reports to the President, and there is no tenure protection for members.

The structure and staffing of the Task Force therefore clearly disqualify it from being the competent anti-corruption agency required by the conventions. Generally, most acts of corruption occurred in the Executive branch headed by the President. An anti-corruption agency that is solely constituted by the president, chaired and staffed by some of the president’s men and women, and reporting to the president is woefully far from an independent agency capable of effectively combating corruption by the President or his appointees. Little wonder therefore that despite the many cases of corruptions in the LNTG, the Executive Task Force of Liberia failed to prosecute one case of corruption or indict one accused public official from the time it was established.

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<sup>18</sup> Executive order # 6

<sup>19</sup>The preamble of the enabling Executive Order traced the establishment of the Task Force to provisions of Part VIII, Article XV (c) of the CPA requiring “transparency and accountability in all Government institutions, and Article XVII (2) (b) which also provides “that no public officials will use their positions to benefit from any contract financed from public funds.”



Incidentally, the Task Force is not the first anti-corruption body to be established in Liberia. A predecessor body known as the National Force for the Eradication of Corruption (NFEC) was established also by an executive order issued and signed by President William R. Tolbert on August 26, 1975. The Force was located in the Office of the President headed by a Director who and his Deputy were appointed by the President with the advice and consent of the Senate.<sup>20</sup> Given the non independence of the NFEC which reported directly to President Tolbert, it also had no significant, sustainable impact.

The failure of both the 1975 National Force for the Eradication of Corruption (NFEC) and the 2005 Executive task Force on Corruption can fairly be attributed to the lack of independence by both bodies. It is therefore a matter of utmost urgency that Liberia establishes an independent national anti-Corruption Agency within the framework and with the attributes established by Articles 5 of the AUCPCC and Article 6 of the UNCAC. Learning from the failures of prior similar agencies, it is important that such anti-corruption agency be established, structured, staffed and supported in a manner that assures its independence. The pillars of such independence should embody (1) the chartering of the agency pursuant to a legislation duly enacted by the National Legislature and approved by the President; and (2) a selection and appointment process for staffing the commission, which involves nominations from the civil society, vetting by another committee, the submission of a shortlist to the President who then shall appoint with the advice and consent of the Senate. Once appointed, the officers should have security of tenure, provided that each officer may be removed by impeachment for cause. Preferably, the exact details of the autonomy and independence of the agency and its officers cross countries experiences.

The general outline of the work program for the establishment of the desired Anti-Corruption Agency of Liberia could be as follows: (1) A full review of the AUCPCC and UNCAC and other relevant international protocols by a committee of Liberians assisted by a panel of experts; (2) a study of the causes and varying manifestations of corruption in the Liberian Society, and/or, where the Draft national Anti-Corruption Policy/Strategy has already being adopted, a review of the Policy/Strategy; (3) Drafting of the bill to establish an Anti-Corruption Agency; (4) publication of the bill for public discussion and inputs, (5) Submission to, and approval by, the national Legislature of the bill.; (6) signing of the resultant bill by the President; and (7) publication of the Act into handbills by the Foreign Ministry.

The Task Force indicates that a team of Liberian lawyers has already completed drafting the bill for the establishment of the agency. This Country Review does

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<sup>20</sup> The functions of the task Force included (a) to seek out and discover in Liberia by all legal means corruption whether in the public or private sector, (b) to be vigilant in protecting the public against all forms of corruption, and (c) to make available and report directly to the president for attention of the Ministry of Justice all information, facts, data, articles and other relevant materials collected on acts of corruption and suspicious cases requiring police probe and prosecution.

not include a review of the draft agency law because the lawyers said to be drafting the law are not willing to release it until they are paid. Hopefully, the GRC will make contact with these lawyers and make them a part of a broader drafting team that may include other Liberians and, if possible, international experts. The retention of the old drafting team serves a dual purpose of minimizing unwanted negativity while assuring continuity; the participation of international experts brings to the drafting process the benefit of expert assistance and other national experiences.

#### iv **Anti-corruption Legislation**

Both the AUCPCC<sup>21</sup> and the UNCAC,<sup>22</sup> have extensive provisions requiring each state party to adopt such measures as may be necessary under its legal system to establish as criminal offenses and provide appropriate penalties for the acts of corruption and related offenses defined in the conventions. The various acts of corruption required to be established and prosecuted as criminal offenses include the followings:

1. Bribery of national public officials<sup>23</sup>; 2. Bribery of foreign public officials and officials of public international organizations<sup>24</sup>; 3. Embezzlement and misappropriation of public property by public official<sup>25</sup>; 4. Abuse of Functions<sup>26</sup>; 5. Trading in Influence<sup>27</sup>; 6. Bribery in the Private Sector<sup>28</sup> 7. Illicit enrichment<sup>29</sup>; 8. Use, Concealment, or retention of criminal proceeds<sup>30</sup>; 9. Participation and attempted commission<sup>31</sup> 10. Embezzlement in the private sector<sup>32</sup> 11. Laundering of proceeds of crime<sup>33</sup>; 12. Obstruction of justice<sup>34</sup>

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<sup>21</sup> Articles 5 and 6 of the AUCPCC

<sup>23</sup> Article 4 (a-b); Article 15 (a-b)

<sup>24</sup> Article 16 (a-b) of the UNCAC.

<sup>25</sup> Article 4(d) of the AUCPCC and Article 17 Of the UNCAC

<sup>26</sup> Article 4(c) of the AUCPCC; Article 19 of the UNCAC

<sup>27</sup> Article 4(f) of the AUCPCC; Article 18 of the UNCAC

<sup>28</sup> Article 4(e) of the AUCPCC; Article 21 of the UNCAC

<sup>29</sup> Article 4(g) of the AUCPCC; Article 20 of the UNCAC

<sup>31</sup> Article 4(l) of the AUCPCC and Article 27 of the UNCAC

<sup>32</sup> Article 4 (d) of the AUCPCC; Article 22 of the UNCAC

<sup>33</sup> Article 6 of the AUCPCC; Article 23 of the UNCAC

<sup>34</sup> Article 25 of the UNCAC).

## 1. **CRIMINALIZATION**

A fundamental requirement of each of the two international conventions is that state parties enact legislation, consistent with their domestic laws, to establish as crimes the diverse acts of corruptions listed above, including bribery, illicit enrichment, embezzlement, and laundering of proceeds of crime. Criminalization- the designation of a conduct as a crime or offence and providing the punishment therefore- is achieved in almost every legal system by the passing and publication of law that clearly describes the proscribed conduct and states in advance the penalty for engaging in said conduct. Under Liberian law, a conduct can only be criminalized by legislation. This requires amending Penal Code<sup>35</sup> to provide for those conducts that are not yet provided for.

Chapter 12 of the Penal Code of Liberia established as “offences against Government Integrity” the following conduct: (1) bribery, which includes unlawful rewarding of public servants, unlawful compensation for assistance in government matters, and trading in public office and political endorsement. The Chapter also established the offence of obstruction of justice, Abuse of office, etc. Section 12.50 of the Penal Code provides that a persons has committed a second degree felony “if he knowingly offers, gives or agrees to give to another, or solicits, accepts or agrees to accepts from another, a thing of value as consideration for (a) the recipient’s official action as a public servant; or (b) the recipient’s violation of a known duty as a public servant.” The Code also broadly defines receiving or giving of unlawful compensation, trading in public office, and abuse of office.

Further, a recent amendment to the Penal Code established money laundering as a crime, and contains specific provisions against facilitation of the crime and the procedures for recovery of laundered funds and related assets.

Unfortunately, the Penal Code of Liberia is not comprehensive enough to comply with the provisions of either the AUCPCC, UNAC or, more specifically, the reality of corruption in Liberia. For example, the code does not criminalize Illicit enrichment or the making of false and malicious reports against innocent persons.<sup>36</sup> As discussed later in this report under declaration of assets, the history of unexplainable and untraceable rise in wealth of public officials in Liberia and other African countries necessitate the criminalization of any rise in wealth of a public official, which is not reasonably supported by the official’s source of income or otherwise justified on any other legal basis. In this regard, it should be noted that while illicit enrichment is treated as a non-mandatory offence under the UNCAC, Article 4(g) of the AUCPCC lists it as one of the mandatory offenses that each state is required to criminalize pursuant to Article 5 of the said AUCPCC. Further, regarding the offense of malicious report against

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<sup>35</sup> An Act Adopting a New Penal Law and Repealing Sections 31.3 and 32.1 of the Criminal Procedure.

<sup>36</sup> Article 5(7) of the AUCPCC

innocent persons, it should be noted that while the offence is not recognized by the UNCAC, it speaks to situation in Africa, particular Liberia, where there appears to be a pattern of behavior by people to make unfounded corruption charges against others. Of course, in criminalizing such conduct care must be taken not to discourage free speech.

It is not enough that the various conducts are established as offenses. To satisfy the applicable requirements of the conventions, the necessary legislation (1) meets the scope and content requirements of the conventions, and (2) provides appropriate penalties that are adequate to serve as deterrence. Liberia therefore needs to adopt a comprehensive anti-corruption legislation establishing as criminal offences all the acts of corruption and related practices identified and contained in both the AUCPCC and UNCAC and others known from national experiences. The preferred and most effective approach to complying with the criminalization requirements of the conventions is to enact a comprehensive Anti-Corruption statute dedicated solely to establishing the various offences of corruption, and providing the penalties therefor. Such Exclusive Anti-Corruption Act could combine the offenses in Chapter 12 (offenses against Government Integrity) and Chapter 15, Subchapter F (Economic Sabotage)<sup>37</sup> of the Penal Law plus all the acts of corruption that are yet to be established as offenses under Liberia law.

## 2. **AMENDMENT OF CRIMINAL PROCEDURE**

Pursuant to the required scope and content of the recommended exclusive anti-corruption act, it is essential that the Criminal Procedure law of Liberia is amended contemporaneous with or subsequent to the passing of the anti-corruption act. The updating of the Criminal Procedure is necessary to support the new criminal statute in respect of such factors as (a) the statute of limitation; and (b) rules of evidence regarding admissibility of evidence and burden of proof.

Given the typical difficulty to investigate, detect and prove an act of corruption, an effective anti-corruption campaign requires a longer statute of limitation, especially linked to **discovery** of the act of corruption and not necessarily its occurrence. In recognition of this fact, Article 29 of UNCAC requires each state to establish, where appropriate, a long statute of limitations period in which to commence proceedings for any offence established in accordance with this convention. The existing criminal statute of limitation of Liberia may not be adequate or cases of corruption. Under Section 4.1 of the Criminal Procedure Law of Liberia, prosecution for a capital offense may be commenced at any time. However, Section 4, 2 states the following limitation in respect of non-capital offences: (a) A prosecution for a felony may be commenced within five years; (b) the prosecution for a misdemeanor may be commenced within three years; and

<sup>37</sup> The Economic Sabotage laws deal with fraud on the internal revenue of Liberia (Sect. 15.80), misuses of public money or property (sect. 18.81), and banker receiving unauthorized deposits of public money, or individual unauthorizedly making deposit of public money

(c) the prosecution for any other offence, violation or infraction may be commenced within one year. Section 4.4 specifically provides that “prosecution for any offence based on misconduct in office by a public official or employee may be commenced, even though the period in Section 4.2 has expired, at anytime while the defendant is in public office or employment or within two years thereafter; **but in no event shall this provision extend the period of limitations otherwise applicable by more than five years.**”

In terms of rules of evidence, Section 21 of the Liberian Criminal procedure provides that the rules applicable in criminal proceedings are: (a) the rules of evidence set forth in the criminal procedure law; (b) the applicable rules of evidence in civil actions as set forth in the Civil procedure law when the rules set forth in the Criminal Procedure Law are inapplicable; and (c) “the principles of the common law of evidence as they may be interpreted by the Courts of the Republic of Liberia”. The only rules of evidence in the Criminal procedure law are those regarding the limitations on use of evidence of prior conviction (Sect.21.2); privileges against self-incrimination (Sect. 21.3); and Admissions, statements and confessions made by Defendant to Government officers (Sect. 21.4).

An amendment of the criminal procedures is therefore necessary to provide express evidentiary rules to protect the identity/safety of witnesses through such means as the use of video or similar communications technology, in compliance with Article 5(5) of the AUCPCC and Article 32(b) of UNCAC. Such amendment could also provide for the quantum of evidence required to be produced by the Prosecution to shift the burden of proof to the Defendant in a case of illicit enrichment.

v. **Legislation on Accountability, Transparency, Integrity and Good Governance**

The AUCPCC and the UNCAC are based on the inter-locking components of prevention, prosecution, recovery, and eradication, which are also predicated on a set of accountability, integrity and transparency standards required to be implemented by each state party.

The main components of a requisite accountability and transparency regime are:

1. Code of conduct for public officials, including declaration of assets<sup>38</sup>
2. Hiring, compensation, and honorable performance by public employees<sup>39</sup>
3. Transparent Public procurement and management of public finances<sup>40</sup>
4. Effective Monitoring of campaign Finances<sup>41</sup>

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<sup>38</sup> Article 7(1 &2) of the AUCPCC and Article 8 of the UNCAC;

<sup>39</sup> Article 7(4) of the AUCPCC and Article 7 of UNCAC;

<sup>40</sup> Article 7(4) of the AUCPCC and Article 9 of the UNCAC;

5. Effective regulation of the private sector to combat acts of corruption by private individuals and legal persons<sup>42</sup>
6. Effective Prosecution and Rule of law
7. Comprehensive Financial Regulation to prevent and detect money laundering<sup>43</sup>
8. An enabling environment for effective participation of civil society<sup>44</sup>

### **CODE OF CONDUCT AND DECLARATION OF ASSETS**

A Liberian pop song entitled “I want to be president Too” has been on the chart of leading music over one year since it was released in about 2005. The song’s connection with the people is not on account of its ambitious title; its appeal lies in the message of the song writer that his desire to become president is principally to get rich overnight just as many Liberian politicians.

The low perception of public service as nothing but a conduit for ill-gotten wealth is one deeply held by many Liberians. The belief continues to be vindicated by the continuing string of Liberian politicians who entered public life in Liberia with little or nothing, but rapidly acquired wealth while in public employment. In this regards, it is important to note that a substantial percentage of all the private wealth in Liberia is held by current or former government officials. It is also reported that at sometime during the rule of the True Whig party, the combined wealth of a few government officials was more than the budget of the country, and that some of these officials occasionally loaned the government to meet some of its needs. In one recent case, the current Speaker of the Liberian House of Representatives was able to built a luxurious mansions credibly valued at US\$1.0 million after less than two year as head of the national oil company called Liberia petroleum Refining Company (LPRC), although he had no visible assets when he ascended to the office. Incidentally, the possible argument that these officials acquired their wealth from remuneration received from Government is not available because it is widely known that government wages are hardly enough to meet the needs of the earner. The sources of the sudden wealth of most of the officials therefore remain a baffling mystery.

In order to enhance detection of illicit enrichment and also as an a preventive anti-corruption measure, the AUCPCC<sup>45</sup> and the UNCAC<sup>46</sup> require that states

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<sup>41</sup> Article 10 of the AUCPCC and Article 7(f) of the UNCAC;

<sup>42</sup> Article 11 of the AUCPCC and Article 12 of the UNCAC

<sup>43</sup> Article 6 of the AUCPCC and Article 14 of the UNCAC.

<sup>44</sup> Articles 5(6-8), 9, and 12(1) of the AUCPCC and Articles 10 and 13 of the UNCAC

<sup>45</sup> Article 7(1 &2) of the AUCPCC



implement a policy requiring each designated public official to declare his assets at the time of ascending to office. The declaration of assets facilitates easy investigation and prosecution of sudden rise in wealth, which is simply called illicit enrichment. When an official has declared his assets, any change in his assets can be measured arithmetically simply by finding the difference between his declared assets and the total current assets, which is then compared to his known sources of income.

A comprehensive code of conduct for Liberian civil servant has been drafted by the Governance Reform Commission<sup>47</sup> with assistance from Liberia's international development partners. Section 8.1 of the draft Code states that a civil servant involved in making decisions affecting contracting, tendering or procurement, and issuing of licenses of various types "shall sign performance or financial bonds and shall in addition declare his or her assets prior to taking office", and thereafter after every two years or on promotion, transfer, resignation or retirement. Section 8.3 also provides that "any statement in such declaration found be false upon verification shall lead to summary dismissal or rejection of application for appointment", unless that person establishes satisfactorily "that he did not know all the particular properties or other assets owned by the spouse or the children." All such declaration shall be lodged with the Auditor General.

The provisions of the draft Code and its applicability "to all public officials and employees of the three branches and parastatals of the Government of Liberia" are fairly sufficient to satisfy the requirements of the conventions. The draft Code however needs to be enacted in compliance with Article 90(c) of the Liberian Constitution, which mandates the Legislature to "prescribe a Code of Conduct for all public officials and employees, stipulating the acts which constitute conflict of interest or are against public policy, and the penalties thereof."

It should be noted that pending the enactment of the above-mentioned draft Code, the National Elections Commission (NEC) of Liberia requested and had all candidates in the 2005 Legislative and Presidential elections declare their assets as pursuant to guidelines established by the Commission under the new electoral law of Liberia. The declarations made by candidates during the 2005 elections are available at offices on the Commission and at [www.necliberia.org](http://www.necliberia.org). President Sirleaf is continuing with the pre-Code declaration of assets policy by requiring all her political appointees to declare their assets before taking office. Measured against the many declarations of assets appearing in the local dailies, it seems that the mandate of the President is being heeded by public officials. Unlike the case of declarations

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<sup>46</sup> Article 8 of the UNCAC

<sup>47</sup> The Commission was a creation of the Executive Order. Its mandate, which expired with the expiration of the Accord, was recently extended by Executive Order # 2 issued by President Sirleaf.

made by political candidates to NEC, there are no published stipulated guidelines regarding the format and place to lodge the declarations of assets made by newly nominated/appointed public officials. An additional weakness is the apparent lack of an intent and mechanism for random investigation of the veracity of the declarations.

## **CIVIL SERVICE REFORM**

The role of civil servants in the working of every government and the successful implementation of any anti-corruption campaign can not be overemphasized. In recognition of the important role of civil servants, the AUCPCC<sup>48</sup> and the UNCAC<sup>49</sup> require states to adopt measures to ensure honorable performance by civil servants. The Draft Code of Conduct for Liberian Public servants also stressed the need for “a public servant to be a person of high moral character and integrity.” The challenge is to identify, adopt and faithfully implement those measures that are necessary to ensure that public employees honorably discharge their responsibilities with requisite efficiency and integrity.

Article 89(A) of the Liberian Constitution established an autonomous Commission known as Civil Service Commission. The Article further mandates the National legislature to enact law for the governance of the Civil Service Commission. Pursuant to the Constitutional mandate, the Liberian Legislature promulgated An Act Adopting a new Public Employment Law<sup>50</sup>. The Act adopting a new Public Employment law and establishing a Civil Service Commission (hereinafter referred to as the Civil Service Commission Act) was reportedly passed into law on July 30, 1987. Unfortunately, not many has seen or heard of the Act. The civil service rules and procedures of Liberia are therefore based on pre-constitutional legislation and are implemented by the old Civil Service Agency established in 1973 prior to the 1986 Constitution.

It is therefore an imperative that a Civil Service Commission for Liberia be established and a code of Civil Service rules and procedures adopted to promote efficiency and integrity in the public sector, in accordance with the requirements of the AUCPCC and the UNCAC, as well as the Liberian Constitution. Consistent with Article 35 of the Liberian Constitution which prohibits a bill from embracing more than one subject, it is important that the law establishing the Commission and the law containing the rules to govern civil servants be separately enacted. In any case, the statute governing conditions of service of civil servant must impose obligations on both the public servants and the

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<sup>48</sup>Article 7(4) of the AUCPCC

<sup>49</sup>Article 7 of the UNCAC

<sup>50</sup> The full title of the Act is “An Act Adopting A new Public employment Law and Repealing Chapter 66 of the Act of Legislature Creating a Civil Service Agency, Approved July 19, 1973, and Establishing A Civil Service Commission as Consistent with Chapter 10 Article 89(A) of the Constitution of Liberia which came into force on January 6, 1986.”



Government, and also specifically address the following issues: (1) Classification of civil service jobs; (2) Recruitment, hiring and promotion in the civil service through testing and based on objective criteria; (3) Relatively adequate system of remuneration for civil servants; and (4) appropriate protection of employment, position, tenure, subject to continuing compliance with the rules and procedures. Further, the legislation must seek to encourage and ensure the necessary executive political will for due implementation of the civil service rules and procedures, relating to appointment and dismissal. This is particularly important in light of historical experiences where every Liberian president has sought to appoint and dismiss civil service for political reasons.<sup>51</sup>

## **PUBLIC PROCUREMENT AND MANAGEMENT OF PUBLIC FINANCES**

The award, negotiation and execution of public contracts, concessions, including general public procurement are activities generally susceptible to many acts of corruption. The AUCPCC<sup>52</sup> and the UNCAC<sup>53</sup> therefore mandates that each state adopt concrete measures to ensure transparent Public procurement and management of public finances.

Liberia, perhaps more than any other country, needs utmost transparency in public procurement and award of contracts because a substantial number of the cases of corruption in Liberia are traced to contracts and procurement. The scale of reported corruption relating to public contract and concession is such that pursuant to GEMAP and a separate resolution of the UN Security Council, the Liberian Government has cancelled all timber concessions awarded by previous governments on ground that they were affected by fraud and diverse acts of corruptions. Additionally, all public contracts signed by the past recent interim government have been subject to review by a team of experts.<sup>54</sup> Although implemented without direct reference to the conventions, the cancellations are consistent with the requirements of the UNCAC that corruption be considered a relevant factor in legal proceedings to annul or rescind a contract or withdraw a concession.<sup>55</sup>

Significantly, almost all the necessary legislative changes for transparency in public procurement have been implemented. Pursuant to efforts initiated under

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<sup>51</sup> Recently, President Ellen Johnson-Sirleaf ordered the staff of the Liberian Ministry of Finance dismissed because she said they were all political appointees. In about the same time, she made political appointments to several civil service jobs, including Director of Passport at the Foreign Ministry, and the Chief of Security at the National Port Authority.

<sup>52</sup> Article 5(4)

<sup>53</sup> Article 9 of the UNCAC

<sup>54</sup> Improving Procurement and Concession Processes and practices, Section 3, GEMAP, p12.

<sup>55</sup> Article 3(5) of the AUCPCC; Article 34 and 35 of the UNCAC

the Accra Peace Accord,<sup>56</sup> a legislation<sup>57</sup> was enacted and became January 1, 2006 creating the Public Procurement and Concession Commission<sup>58</sup> and establishing detailed procedures on transparency in public procurement and processing of concessions. The new public procurement law applies to all procurement of goods, work and services, financed in whole or in part from public funds.

The Public Procurement Act specifically states that its objectives include promoting integrity, fairness, accountability and public confidence in the procurement process, including providing equal access to all eligible and qualified providers of goods and services. True to its objectives, the Act has detailed provisions on competition, avoidance of conflict of interest, and other pertinent requirements of the AUCPCCs and UNCAC. Efforts are also underway, within the framework of GEMAP, to establish and maintain an e-procurement system requiring mandatory listing, open competitive bidding and publication of results of public tenders on a website to be maintained by the government.

Regarding accountability and transparency in public management, a number of administrative measures have also been introduced with international assistance and within the GEMAP framework. Government's revenue has now been centralized at the Central Bank of Liberia which Chief Administrator is an international expert recruited under GEMAP. Both the collection and disbursement of revenues are and will continue to be undertaken under international oversight and with the active participation international experts.

Liberia is therefore in substantial compliance with the requirements on transparency in public procurement and management of public finance. Moving ahead, the major focus should be on strengthening and auditing both the internal control and compliance culture in the entire system of public procurement and management of public finance. A significant progress has been made in this direction by a recent amendment of the Act of the Office of General Auditing. Under the amended act, the Auditor General of Liberia is now directly accountable to and reports to the National Legislature. This amendment is fairly consistent with Article 89 of the Liberian Constitution, which provides for the establishment of an independent General Auditing Commission as one of three constitutional autonomous commission; the other two being (1) the Civil Service Commission, and (2) the Elections Commission.

## **EFFECTIVE MONITORING OF CAMPAIGN FINANCES**

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<sup>57</sup> An Act Creating the Public Procurement and Concessions Commission, approved September 8, 2005 and published by the Ministry of Foreign Affairs on September 21, 2005.

<sup>58</sup> The Commission shall implement the Public Procurement and Concession Act through the exercise of oversight responsibility for all public procurement and concession. It shall comprise of commissioners appointed by the President with the advice and consent of the Senate.

One critical legislation required in the domestication of the conventions consists of measures to effectively monitor campaign finances. Transparency in the sources and application of campaign finances protects the integrity of the political process.

The use of illegal and corrupt practices to win elected offices is commonplace in Liberia and many other African countries compared to other regions of the world. This fact is reflected in the varying focus that the AUCPCC and the UNCAC have on campaign finances. The AUCPCC dedicate a complete Article on funding of Political parties.<sup>59</sup> The UNCAC, on the other hand provides in Article 7(f) that states take measures to enhance transparency in the in the funding of candidature for elected public office and the funding of political parties.

Liberia has comprehensive election laws<sup>60</sup>, adopted in 1986, and amended in 2004. The New Elections Act, as amended, is implemented by the National Elections Commission (NEC), which is one of three autonomous public commissions established by Article 89 of the Liberian Constitution. Members of the Commission are appointed by the President with the advice and consent of the Senate for a definite tenure, subject to removal through impeachment for cause.

The New Elections Act is based on the provisions of Chapter VIII, (Articles 77-84) of the Liberian Constitution. Articles 82 and 84 of the Constitution constitute the pillars of Liberia's political finance laws; they are substantially reproduced in the New Elections Act. Under Article 82, corporate and business organizations and labor unions are excluded from contributing funds to a political party; no political party or organization may hold or possess any assets outside of Liberia; and the Elections Commission is has power to examine into and order certified audits of financial transactions of parties and candidates. Article 83(d) of the Constitution provides the format, content and schedule by which each political party or candidate shall publish and submit to the Commission detailed statements of assets and liabilities.

Notwithstanding the detailed reporting requirements of Articles 82 and 83 of the Constitution and the implementing provisions of the New Elections Act relative to sources, applications, and accounting for campaign finances, it seems that NEC has not been able to develop an effective means to ascertain the veracity of declarations and financial statements filed by candidates. During the recent national elections of 2005, CENTAL and three other civil society organizations working under the banner Campaign Monitoring Committee (CMC) published a

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<sup>59</sup> Article 10 of the AUCPCC, entitled Funding of Political parties, provides that each state adopt measures to : (a) :proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and (b) Incorporate the principle of transparency into the funding of political parties."

<sup>60</sup> The new Elections Act of 1986

number reports, which among other things, found (1) acquisition of funds by candidates and/or parties from questionable sources; (2) misuse of state resources to finance the campaign of some candidates; (3) vote buying, (4) inadequate and incompetent disclosure; (5) non timely reporting, and (6) lack of coordinated approach between NEC, the Ministry of Justice and other relevant agencies of government to address abuses of campaign finance laws.

Hence, one key measure needed for effective monitoring of campaign finances in Liberia is to make appropriate use of the power given the Commission by Article 82(c) of the Constitution relative to ordering “certified audits of the financial transactions of political parties and independent candidates and their organizations.” Another recommended measure relates to building the capacity of NEC to enable it verify financial declarations of candidate in time before major stages in the electoral process.

### **EFFECTIVE REGULATION OF THE PRIVATE SECTOR**

There is a mutually re-enforcing relationship between much-publicized corruption in the public sector and the often unreported corruption the private sector. In good number of cases the reported cases of corruption involve private individuals and businesses who solicit undue advantage in contracting with government, offer bribes to get a permit, and help launder the criminal proceeds. Indeed, there is a supply and demand sides to corruption, and both must be addressed simultaneously in an effective fight against corruption. Accordingly, the AUCPCC and the UNCAC provide that each state adopt measures to combat acts of corruption by private individuals and businesses.<sup>61</sup>

Given the limited effort or lack of effort made to combat corruption in the public sector, it is not surprising that Liberia does not have any effective regime of legal and administrative measures to deal with corruption in the private. There are mounting reports and document evidence that the recently ended Liberian civil war and the general instability in the West African sub region were in fact caused and exacerbated by a network of corrupt relationship between private individuals and governments/government officials. Others have also traced the violence to public international officials who allegedly fuel these conflicts to benefit from continuing aid work. Yet, neither the foregoing accounts nor other previous evidence of private sector corruption has led to any prosecution in Liberia of a person accused of corruption in the private sector or of bribing a public official.

The UNCAC require criminalizing and prosecuting bribery in the private sector<sup>62</sup>; bribery of officials of public international organizations<sup>63</sup> and embezzlement in the

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<sup>61</sup> Article 11 of the AUCPCC; Article 12 of the UNCAC.

<sup>62</sup> Article 21 of the UNCAC

<sup>63</sup> Article 16 of the UNCAC

private sector.<sup>64</sup> It is therefore important that a national campaign to combat corruption be holistic in scope and simultaneously address corruption in both the public sector and the private sector.

An effective fight against corruption in the private sector must be underpinned by a comprehensive disclosure regime characterized by the followings: (1) a robust Know-Your-Customer regulation enforced by the Central Bank of Liberia; (2) vigorous enforcement of the filing requirements of the tax laws; and (3) amendment of the business incorporation and/or registration law to provide for disclosure of beneficial owners of corporate entities. An additional effective measure of fighting corruption in the private sector is disgorgement of any undue gains made and benefits obtained. Such disgorgement may be obtained through several means, including cancellation of public contracts won through acts of corruption. In this regards, the GEMAP requirement to review all recent contracts provides a good beginning. Criminal and administrative sanctions should also be instituted against such private persons and business in accordance with Article 16 of the UNCAC.

Some of the specific measures needed to combat private sector corruption include:

1. The establishment and maintenance of competent accounting and auditing Boards and adequate accounting standards, including encouraging voluntary code of conduct and business ethic;
2. To require publication of annual audited financial accounts of all business of designated worth. This should be a condition to renewal of business registration;
3. To regulate, and in particular cases, restrict the professional activities of former public officials or their employment by the private sector after their resignation or retirement, where such activities or employment relate to the functions held or supervised by them during their public employment.
4. To require that private sector entities develop and implement appropriate policies on internal controls, code of conduct, conflict of interest and other system necessary for the promotion and use of good commercial practices among businesses and in the contractual relations of business with the state.
5. Enhance the regulation of the process of business incorporation and mergers, with focus on the natural persons involved in the incorporation and management of those businesses.

### **EFFECTIVE LAW ENFORCEMENT/JUDICIAL REFORM**

No well designed anti-corruption program can be effective without being supported by consistent and vigorous enforcement.

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<sup>64</sup> Article 22 of the UNCAC

The two international conventions therefore require dedicated efforts towards investigating, detecting and prosecuting all acts of corruption. Included in the prosecution component of the anti-corruption fight is the requirement that each state search, identifies, trace freeze or seize the instrumentalities and proceeds of corruption.

The Liberian Judiciary and law enforcement system have substantial weaknesses. Due to low wages and nonattractive conditions of service, many capable lawyers are not willing to accept employment in the system. Hence, there is a lack of judges, prosecutors, investigators and other professionals needed by any modern criminal justice system. There is also the lack of logistics; most of the courts are using outdated typewriters, and have no access to the internet. These problems are worsened by high level of corruption among the few who take up judicial appointments.

It speaks to the weakness of the system and the existing anti-corruption environment that many persons who are accused of corruption in Liberia are yet to be prosecuted. In fact, most end up going back in government with higher responsibility, thus giving the false impression that their deeds are but honorable. Some have used this fact to argue that the ineffective prosecution of corruption cases along with the resulting culture of impunity is probably the most dominant factor contributing to the prevalence of corruption in the society. Systematic and speedy prosecution of corruption cases is there indispensable to any meaningful efforts by the Liberian Government to combat corruption.

It will require a comprehensive reform of the judiciary to address the institutional, logistical, cultural, and ethical constraints that currently hinder effective prosecution of corruption cases. Such judicial reforms should address the adequate financial support of the judiciary in terms of remuneration and logistical support.

The Government must however implement interim measures pending the necessary long-term reforms of the Judiciary. Such interim measures could comprise of administrative actions, including prompt dismissal of persons found to be involved in corruption as a result of proper investigation. Here, President Sirleaf's dismissal of three officials of the Ministries of Commerce, Health, and Transportation should be seen as a positive step in the right direction.

### **EFFECTIVE PARTICIPATION OF CIVIL SOCIETY AND MEDIA**

Civil society, which encompasses the rights groups, the press, religious groups and other non-governmental institutions have a crucial role to play in both the designing and implementation of an anti-corruption strategy. They have intimate knowledge of the various manifestations of corruption and evidence of reported and unreported corruption cases. They also have the proper motive and reason to



fight corruption since most acts of corruption work only to worsen their economic and social development.

Article 12 of the AUCPCC and Article 13 of the UNCAC require states to ensure and provide for the participation of civil society in the fight against corruption. Some of the measures require to comply with this requirement are (1) ensuring public access to information, especially those relating to the operations and finances of government; (2) Conduct public sensitization on the offences of corruption and their consequences; and (3) encourage and facilitate the reporting of acts of corruption by members of the public without fears of retaliatory dismissal or other attacks.

Liberia has a fairly vibrant civil society movement that is actively engaged in holding the government and individual public officials to account. Government's support of the activities of civil society is also fairly increasing. For example, four of the five justices of the Liberian Supreme Court were persons nominated by the Liberia National Bar based on request of President Sirleaf. Appointment to and membership on the newly established Truth and Reconciliation Commission and other bodies reflect growing participation of civil society. Bolstering this trend is the decision of GEMAP to carve a place for civil society; civil society is presently represented on the Economic Governance Steering Committee (EGSC) which the highest decision is making body within GEMAP. The representation of civil society on the EGSC allows access to information that was once privy only to persons in the public sector.

Notwithstanding current progress, there is a need for an organized governmental policy and support for the effective participation of civil society in the fight against corruption. Thankfully, the Draft National Anti-Corruption Policy contains a statement of policy that the government will build and sustain a partnership with civil society in the design and implementation of the national anti-corruption strategy. It is hoped that this policy position will not only be maintained in the final policy, but will also be faithfully implemented. The Government should also implement a public awareness and sensitization campaign about corruption, which is driven by and targeted to members of the public through use of schools, religious institutions, and traditional or cultural institutions.

In addition to the support of the Government, it is also recommended that international donors and NGOs assist to build the capacity of Liberian civil society organizations through training, funding, and provisions of needed logistics to enable them effectively contribute to the national anti-corruption agenda and monitor/promote compliance with the international conventions against corruption.

#### IV OBSTACLES TO AND OPPORTUNITIES FOR IMPLEMENTATION OF THE CONVENTIONS

##### A. OBSTACLES

There are major obstacles to adopting and implementing the various legislative changes required for due compliance with the AUCPCC and the UNCAC and to effectively combat corruption.

##### i. Dearth of Political Will

The first challenge is the ability to engender, mobilize and sustain the requisite political will among the legislators for ratification of the conventions and subsequent enactment of the required legislative changes. Like many Liberian politicians, members of the current legislature are not exactly individuals of impeccable anti-corruption credential such as to be readily inclined to a well-meaning fight against corruption. Some of the legislators raised their campaign funds from dubious sources that are still being questioned and/or investigated. Others are known subjects of active criminal investigation. It would therefore be quite a challenge to convince such public officials to vote for anti-corruption measures that may imperil them or limit their immunities from criminal prosecution. This especially true when one considers the requirement of the UNCAC for each state to maintain “appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility....of effectively investigating, prosecuting and adjudicating offenses established in accordance with this Convention.”<sup>65</sup>

President Ellen Johnson Sirleaf has named integrity and clean corruption record as one of the three qualifying criteria for appointment in her cabinet. This is a positive indication of the relative will and capacity of executive appointees to be committed to an effective fight against corruption. The jury is still out regarding whether the President declared zero tolerance for corruption will be supported by her cabinet. Already, she has started to dismiss some of the officials for corruption. Earlier, the confirmation of the current Deputy Minister of Finance, Mr. Francis Karpeh was held by allegations of corruptions<sup>66</sup>. Under the banner headline, “**Where’s is the Saudi Prince’s US\$2.0M, Report defies facts**”, the new Democrat, in its March 20, 2006 (Vol. 13, No. 38) edition accused the new and current Managing Director of the Liberia Petroleum Refining Company (which was earlier headed by the present Speaker of the House of Representative) of corruption during his immediate past service as head of a Trust Fund established to manage and use a US\$2.0 million gift from Saudi Prince Alwaleed Bin Talal Bin Abdulaziz Alsaud. Additionally, a good number of those presently in the Ellen’s Government are old politicians who worked in the past corrupt governments of the True Whig Party and successor military and

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<sup>65</sup> Article 30 (2) of the UNCAC

<sup>66</sup> “President Nominee’s fate In Balance”, new Democrat, Vol. 13, No. 15, February 3, 2006.



quasi military governments. It is therefore fair to say that the jury is still out as to the anti-corruption credential of the current executive appointees who have a key role to play in the campaign to combat corruption.

## **ii. Pervasive Culture of Corruption**

A second challenge to successful implementation of the two international anti-corruption conventions is overcoming the existing pervasive culture and acceptance of corruption in Liberia.

Corruption is endemic in Liberia; it permeates every segment of the society. There is corruption in the communities, the churches, schools, businesses and in civil society organizations. There are persistent media reports about different types of corruption at academic institutions,<sup>67</sup> embezzlement and other dishonest practices in churches, and leadership squabbles resulting from alleged abuses of offices in community based organizations.<sup>68</sup> There is also widespread corruption in the rural villages and towns where (1) sale and purchase of votes is a norm; (2) the chiefs regularly compromise the interest of their people for personal benefits received from either the national government or private bushiness/individuals, and (3) the elders or village elders demand gifts (commonly called “cold water”) to grant use of any public property. Certainly, corruption by private individuals and businesses is at a scale comparable to that attributable to the public sector since a great deal of corruption in the public sector invariably involves private persons. Thus, the focus on corruption in the public sector, it seems, is but only a segment of a wide cancer that is eating off the Liberian society from all directions.

Complicating the high prevalence of corruption is the fact that a good number of Liberians do not know that most of what they consider as acceptable practices in fact constitute acts of corruptions that have disastrous consequences on society. To many Liberians corruption is nothing more than embezzlement and/or misappropriation of entrusted funds and property by senior officials of Government. Any funds, advantage, privilege obtained by a public official is not seen as corruption if it had not first been received and kept as public property. Hence unofficial payments (kickbacks) demanded by police officers in the office and traffic , by custom officers, and tax collectors for receipt of government taxes and duties, and by other government functionaries for processing of passports, licenses , etc are not acts of corruption.

The depth of corruption, the long acceptance of many acts of corruption, and the general lack of knowledge as to corrupt acts/practices and their consequences mean that substantial efforts and resources will be required to effectively combat corruption in Liberia. Such resources are needed to make sure that the fight

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<sup>67</sup> Recently, the University of Liberia announced that about 1,000 of its recent graduates obtained their degrees through fraud apparently involving professors and other support staff.

<sup>68</sup> There is an ongoing leadership struggles in the Liberia marketing Association comprising of generally illiterate market men and women. Similar fights are raging in other organizations.

against corruption is not limited to urban areas and/or on public officials, but to every part of the country, targeted at every institution and sector of society. This will necessarily require massive and sustained educational campaign.

### iii. **Financial Constraints**

Of all the possible challenges to implementing the international anti-corruption conventions, the lack of adequate financial resources is going to be more critical to the ultimate success of an anti-corruption campaign in Liberia.

Most of the anti-corruption measures mandated by the conventions involve significant financial cost. Some of the measures requiring financial cost are as follows:

1. The establishment, maintenance and support of an anti-corruption agency, including logistics and training of staff;<sup>69</sup>
2. Adequate remuneration and equitable pay scale as well as training of public employees, taking into account the level of economic development of the Country<sup>70</sup>,
3. Promote and support civil society participation in the fight against corruption through public education programs that provide information about acts of corruption and the work of the national anti-corruption body or bodies<sup>71</sup>;
4. Prosecution of offences and Witnesses protection program;<sup>72</sup>

Although the above-enumerated requirements of the conventions are costly, the reality is that the Liberian economy is yet to recover from devastating effects of long years of war. Liberian timber and diamond, major earner of revenues, are presently under UN sanctions for alleged use and misuse by the then Liberia Government in fueling conflicts in the region. There is also the huge cost of reconstructing basic infrastructures such as health care delivery system, electricity, water and telecommunications.

Given the limited revenue base of the Government vis-à-vis its long shopping list of competing needs, there is bound to be difficulty in prioritizing the funding some or all of the legislative and administrative measures required by the conventions. This indicates, as one possibility, the possibility that the reform of the civil service and the remuneration system may be delayed or constrained to a level short of what ought to be. In such event, salaries of civil servants may remain inadequate to meet basic personal needs, thus leaving civil servants still disposed to the temptation of corruption. This will be true even for those public officials returning

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<sup>69</sup> Article 5(3) of the AUCPCC; Article 6 of the UNCAC

<sup>70</sup> Article 7 (c-d) of the UNCAC

<sup>71</sup> Article 11(2) and Article 12 of the AUCPCC; Article 1 of the UNCAC

<sup>72</sup> Article 5 (5) of the AUCPCC; Articles 17(a) and 19(a).

from the Diaspora who would find that, in the absence of corruption, the so-called lucrative jobs earn you nothing more than a US\$1,000.00 on the average.

There is also the danger that emphasis on one facet of the anti-corruption agenda (e.g. addressing the remuneration of civil servants and judicial officers) may create a huge wage bill that leaves little financial resources for other activities (training, public sensitization, and effective law enforcement). How the Government sources funding and prioritize its spending will be a continuing challenge for a good part of the next five or so years.

## **B. OPPORTUNITIES**

Notwithstanding the obstacles, there also available opportunities that should facilitate ratification and implementation of the conventions. They include:

### **i. Public Will**

There is considerable consensus among Liberians that the lack of basic infrastructure, social services, and their unacceptably low living standards are all due mainly to corruption and outright plunder of the country's wealth and treasury. The people therefore voted into office a new national leadership on a reform agenda, and are demanding that corruption and other forms of bad governance be eradicated in order to improve their lives. This new public awareness and support buttressed by consistent civil society organizations represent a critical support for the success of the process to ratify and domesticate the international conventions against corruption.

### **ii. GEMAP and other post conflict realities**

Also important is the existence of GEMAP and the following post-conflict realities:

1. Civil society organizations advocacy, activities and programs and overwhelming public support to curb and eradicate corruption;
2. The new commitment of the President to combat corruption under a zero tolerance policy. In Liberia, like other African countries, the President wields enormous power. His single commitment to a national program is by itself almost enough to assure a fair success. It is hoped that this can happen here.
3. The role of the international community to remain engaged with Liberia for at least three years during which they would be actively involved in the area of transparent economic management and good governance and
4. The growing international consensus on the need to fight and eradicate corruption, which is reflected in bilateral national agreements and business practices of multinational corporations, and lending institutions.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

Liberia has signed the AUCPCC and the UNCAC, but is yet to ratify either Convention. There are some significant obstacles to implementing the conventions in Liberia. Some of the major obstacles are the scarcity of political culture and will, the general difficulty of reversing age-old practices, and the scarcity of financial and other material resources to establish, maintain and implement the comprehensive regime of laws and administrative measures needed to effectively combat and eradicate corruption. There are also opportunities represented by massive public will for much needed reforms coupled with the partnership between the international community and Liberia through GEMAP

Based on the above-mentioned challenges and opportunities, the following are recommended measures for effective implementation of the AUCPCC and UNCAC as well as the implementation of an appropriate national anti-corruption strategy in Liberia:

1. In light of the convergence between the goals of GEMAP and the two international anti corruption conventions, it is recommended that the campaign to ratify the conventions be pursued within the GEMAP framework such as to provide extra stimulus and thereby expedite the process;
2. Liberia should establish and maintain at least two anti-corruption bodies; one for implementing preventive measures, and the other for investigating and prosecution corruption cases as well as recovering proceeds of corruption. The existing Governance Reform Commission (GRC) could be involved in the preventive work while another dedicated agency could be charged with the mandate to investigate and prosecute. The need for more than one anti-corruption agency is aimed at avoiding the mandate of one agency being over-inclusive that it undermines effectiveness;
3. That an independent legislation be enacted, amending the Penal code to establish as criminal offenses all the acts of corruption along with appropriately stiff penalties to serve as deterrence;
4. That a reform of (1) the civil service; (2) the judiciary; and (3) the Public Account Auditing system be initiated, pursued and completed as a matter of urgency;
5. That freedoms of information whistle blowers protection act be expeditiously enacted to promote the effective participation of civil society in the fight against corruption; and

4.

6. That all other recommendations contained in the body of this Country Review be considered for due implementation.