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Veneers of governance

Lessons from Liberia's growing vulnerability

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Summary

Liberia is entering a period of enhanced vulnerability which may lead to a resurgence in crime. The country has been hailed as a post-conflict success story: the guns of war have been silent since 2003, political violence is rare and governments are appointed through the ballot box. However, since 2015, the country's governance indicators have steadily declined, and its lack of resilience to organised crime has diminished further. Therefore, it is urgent to analyse the current shortcomings of Liberia's political economy, which has long featured elements of embedded criminality. Liberia's trajectory highlights wider subregional implications and risks that are associated with post-war economies.

Key points

- The veneer of good governance that successfully conceals the hollowness of Liberia's state structures has long-term implications, and leaves states vulnerable to organised crime.
- The current system is characterised by widespread corruption in the context of enhanced state capacity and absent meaningful oversight mechanisms, occupying an illicit economy sweet spot.
- Liberia's post-war political economy depends on illicit activity.
- Stakeholders in Liberia have pointed to growing illicit markets in recent years, indicating that the country's vulnerability is at risk of being capitalised upon by criminal actors.
- There is an urgent need to assess the nature and extent of current shortcomings, refocus attention on systemic vulnerabilities, and work to build more robust systems to combat criminality.

Introduction

Complex truths regarding Liberia's governance and political life appear to be rooted in contradictions. Liberia is both a post-conflict success story and a cautionary tale of the limits of external intervention. International pressure helped to end the civil war in 2003, and with the help of a large United Nations (UN) peacekeeping mission until 2018, peace continues to be upheld.

Liberia is a post-conflict success story and a cautionary tale of the limits of external intervention

Donor assistance cleared Liberia of US\$6 billion in debt, stabilising its economy and allowing the nation to begin its recovery process. Yet, Liberia's story is also one of stubborn underdevelopment, corruption and unfulfilled democratic promises. The country ranks 175 out of 189 states on the Human Development Index,¹ it has deteriorated every year since 2015 on the Fragile States Index and remains one of the world's most fragile states,² and the Transparency International's Corruption Perceptions Index categorises it as 'corrupt', and shows worsening ranking since 2012.³ The 2021 Enhancing Africa's Ability to Counter Transnational Crime (ENACT) Organised Crime Index stated that 'ubiquitous corruption [in Liberia]...permeates state structures'.⁴

This creates a fertile environment for organised criminal activity, which flourished in Liberia during its war years. The good news is that post-war Liberia has relatively low levels of organised criminal activity.⁵ The bad news is that Liberia is deemed one of the least resilient states to organised crime, as measured by its ability to withstand and disrupt criminality through political, economic, legal and social mechanisms.⁶ Furthermore, the ENACT Organised Crime Index tracks an overall decrease in Liberia's resilience to organised crime between 2019 and 2021, in line with the majority of African States.⁷ Such low, and diminishing, resilience means that Liberia is at risk of sliding into the 'worst possible situation' – high criminality and low resilience.⁸

A range of stakeholders in Liberia have pointed to growing illicit markets in recent years, indicating that the country's vulnerability is at risk of being increasingly

capitalised upon by criminal actors.⁹ Such reporting is supported by the findings of the ENACT Organised Crime Index, which similarly tracked an increase in Liberia's criminality rankings in 2019 and 2020.¹⁰

While the Liberian context is unique, elements of the country's post-conflict rebuilding trajectory can serve as warnings to other states in the region. This is particularly true following the withdrawal of peacekeeping troops in 2019. There is an urgent need to assess the nature and extent of current shortcomings, to refocus attention on systemic vulnerabilities, and work to build more robust systems to combat criminality.

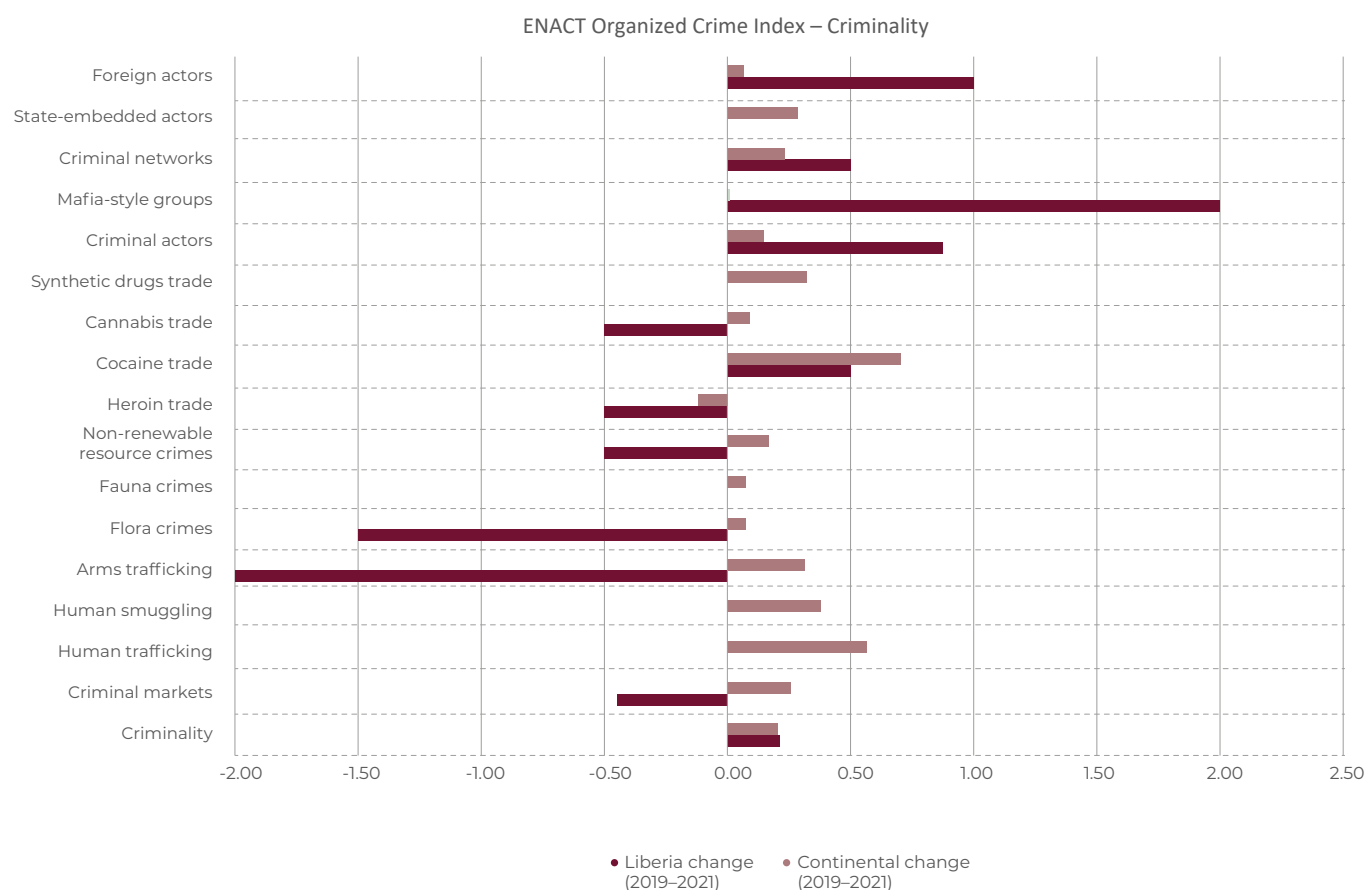
However, first, a particularly vexing complexity at the heart of Liberia's political economy needs to be understood. While the state is dependent on illicit activity, it is not a criminal enterprise in a traditional sense. External criminal elements have neither captured nor fully infiltrated the state, such as in classic kleptocracies or narco-states. Nor is political-economic life dominated by inherently illicit activity, such as drug trafficking, smuggling, international money laundering, cybercrime or nuclear proliferation. The predatory economies of the war years ended with the violence, in 2003.

Liberia's vulnerability is at risk of being increasingly capitalised on by criminal actors

What makes the Liberian political economy 'illicit' is what happens in plain sight. Legitimate activities – such as procurement processes, natural resource concessions or other money-making opportunities – are often made fraudulent through insider-dealing and off-the-books deals. Their true nature is concealed by laundering these ill-gotten opportunities through government processes.

To this end, documentation exists at every step of the way. For example, concessions have oversight mechanisms, management committees and boards of governors, meetings held with agendas and minutes, and formal procedures followed to the letter of the law, but not the spirit. The sheer volume of steps and paperwork further obfuscates what is happening beneath the surface. This gives deals a veneer of legitimacy, the patina of respectability, and the appearance of following the

Liberia's ENACT Index criminality score, 2019–2021



Source: ENACT Organised Crime Index

best technical practices established internationally. As a result, the very elements of state capacity that international donors have spent millions on supporting (the institutionalisation of formal procedures and processes) are wielded in service of fraudulent ends and for the benefit of private interests. This supports the façade of functional formal bureaucratic systems, while in reality, these formal mechanisms of government actually undermine government institutions and the rule of law.

Using bureaucratic systems and processes to openly obtain otherwise inaccessible funds has another advantage: plausible deniability. Any flaws in the process are explained away as technical errors or one-off situations; the typical challenges facing 'fragile' states in otherwise legitimate processes.

This is economic gaslighting. The system works precisely because of these flaws. Institutional weakness, which allows and encourages manipulation of formal processes, graft, insider dealings and selective justice, is not a

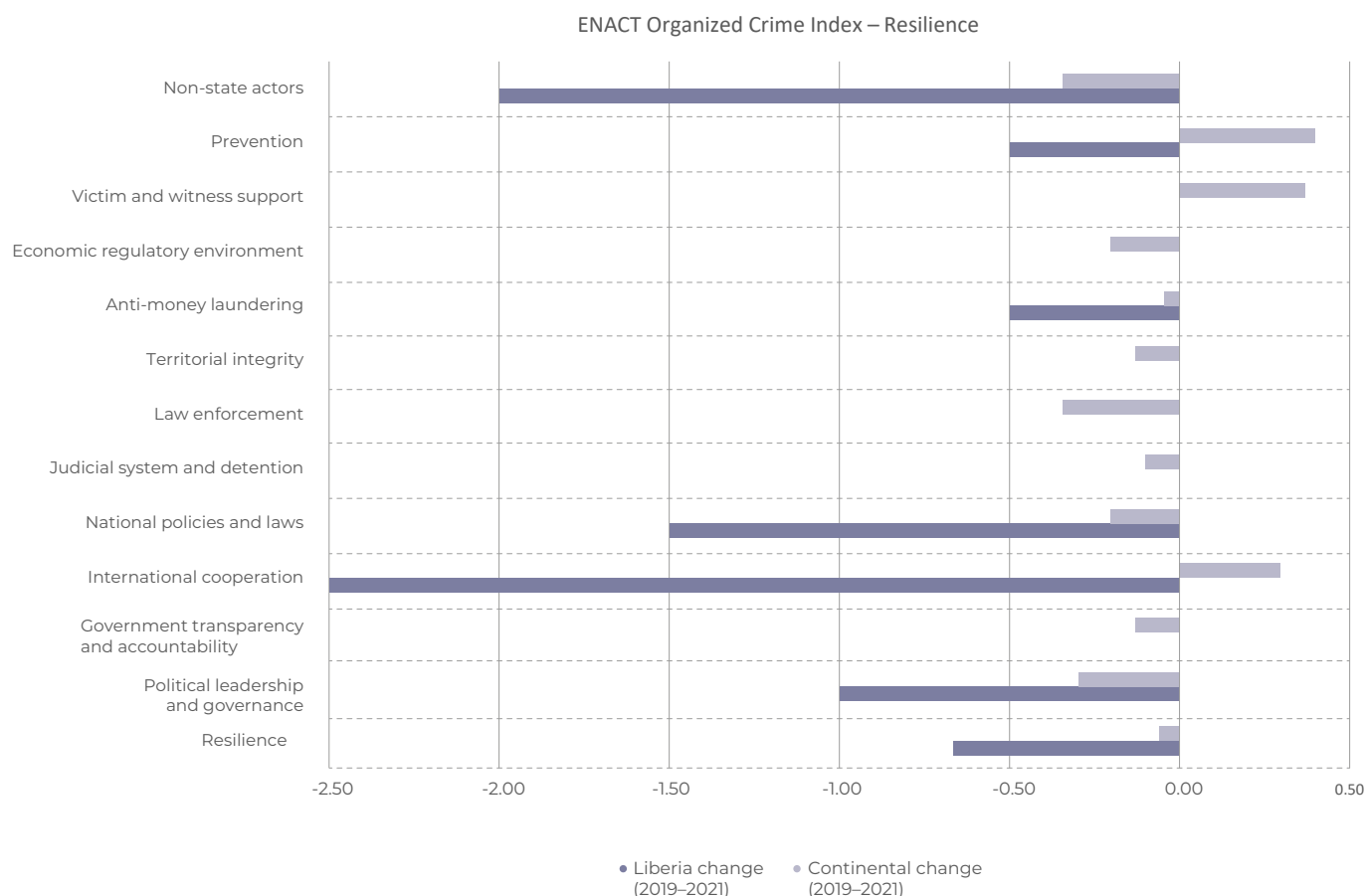
bug but rather a feature of the system. One former government official went as far as to say that it was the system.¹¹

Often fraud is hardly visible to outsiders and incontrovertible 'smoking gun' evidence is scarce

Only in extraordinary circumstances does the veil part, allowing outsiders to see documentary evidence of this mirage. This can happen when the deals break down, as in the case studies provided in this paper. Instances of fraud tend to be viewed in isolation and are difficult to understand without insider knowledge and the broader context. Often the fraud is hardly visible to outsiders and incontrovertible 'smoking gun' evidence is scarce given the nature of the schemes.

This is particularly true when politics are running smoothly. It is during political ruptures (disagreements

Liberia's ENACT Index resilience score, 2019–2021



Source: ENACT Organised Crime Index

among the elite) when otherwise opaque politics become clear, allowing outsiders a better sense of the truth. Occasionally this is driven by whistle-blowers previously privy to behind-the-scenes activity.

Instances of fraud tend to be viewed in isolation and are difficult to understand without insider knowledge

Generally, such disagreements and overt political jockeying centre on who has access to state power, since nearly all money flows via government channels. Such activity can also come to light through declassified documents and external investigations. These can leverage legal requirements or technical capabilities to, for example, obtain communications, documentation

and testimony regarding these otherwise opaque dynamics.¹²

This paper intends to provide the context for fraudulent practices in Liberia by detailing case studies of deals that typify the 'fused' illicit economy. It traces the evolution of this system and provides targeted examples of government mechanisms being used for private ends. This establishes a record of activity that highlights a broader pattern of behaviour. Emphasis is placed on the post-war era (from 2003 onwards), with particular attention given to the most recent developments where fraudulent activity appears to be accelerating.

Data sources include analysis of open-source material made public by local and international media, academic researchers, non-governmental organisations and investigative bodies. The paper draws on the authors' years of professional experience in Liberia, including

as Inspector General of the Liberia National Police, Commissioner of Liberia's National Bureau of Concessions and as a member of the UN Panel of Experts on Liberia. These experiences inform the paper's analysis, claims and conclusions. In keeping with the authors' commitments made in those positions, no confidential information is made public. Data and analysis were corroborated through high-level interviews; respondents have not been quoted given the sensitive nature of the discussions. The paper went through a thorough peer-review process before publication.

The evolution of Liberia's 'fused' political economy

Liberia's elite-dominated post-war political economy originates from its elite-dominated history going back to its founding in 1847. Samuel Doe's military dictatorship (1980–1990) was a new form of elite oligopoly which morphed into an internationalised war economy¹³ during years of violent conflict and state collapse (1990–1997).

From 1997 to 2003, Liberia took on the characteristics of a criminalised state. This period saw the country become increasingly isolated internationally, as it was enmeshed in illicit global trade networks of arms and commodities and beset by regional violence and internal war. This paper briefly describes this history for essential context, highlighting the role of international actors and intervention in developing the current system. Liberia's history is a reminder that despite ongoing challenges, the country has made considerable progress.

Since peace has held since 2003, the rationale for ignoring corruption has weakened

The post-2003 peacetime period saw Liberia's political economy become fused to illicit activity in its current form, characterised by non-violent political activity and the manipulation of government processes to conceal untoward activity. In the years following the war, this

behaviour was framed as a necessary compromise to keep the peace and pursue a post-conflict state building agenda. In other words, a blind eye was turned toward corruption, as material benefits were exchanged for loyalty and support to enact reforms, pass budgets and codify legislation.¹⁴ Since peace has held since 2003, the rationale for ignoring corruption has weakened. Corruption, unconnected from larger political goals, has become increasingly brazen.

While Liberia's political life has been tumultuous, two key economic threads have remained largely consistent throughout the post-war period. First, controlling the levers of state power has been a prime vehicle for accessing funds and accumulating wealth. Second, those funds are largely tied to government coffers, natural resources and – given Liberia's subordinate position in the global economy – depend on connections to international assistance and markets. Yet, there is a new and different feature of the post-war period: members of the elite can use enhanced state capabilities, supported by international donors, to conceal untoward activity that flows through government channels.

Deep roots of elite dominance: 1847–1980

By definition, members of an elite have outsized control of a political economy, but Liberia's elite is an extreme example. The roots of Liberia's elite lie in its history as a settler colony, and later founding by black Americans (so-called 'Americo' Liberians).¹⁵ The settler families established themselves as the dominant class and ruled, uncontested, as a one-party oligopoly under the banner of the True Whig Party until 1980. During this era, Liberia's 'modern' state formation process was defined by the development of a deep and vast personalised patronage system, run through the presidency, that perpetuated caste-based inequality, with the Americo Liberians considered superior to members of Liberia's 15-plus tribes.¹⁶ Corruption was rampant and commerce was controlled by a small number of politically connected family-run companies. Liberian leaders relied heavily upon extractive industries, namely Firestone rubber plantations and iron ore, as well as links to international finance.¹⁷

Violent takeover of state-centred patronage networks and state collapse: 1980–1990

On 12 April 1980 Samuel Doe staged a bloody coup and ended 133 years of Americo dominance. Despite being the first indigenous Liberian ruler, he did not attempt to dismantle the existing system, but simply repurposed it for his personal benefit,¹⁸ stealing ownership of entire groups of companies.¹⁹ In addition, Doe adopted and distorted his predecessors' system in service of increasingly violent politics that favoured his ethnic group (Krahn), home region (Grand Gedeh County) and preferred institution (the Armed Forces of Liberia) over all others.²⁰ He relied on political finance connected to natural resources and international corporations, as well as military and developmental aid budgets provided by international partners, principally the United States.²¹

Violence during Doe's 10-year military dictatorship was extreme and sparked multiple coup attempts. A rebellion from Côte d'Ivoire on Christmas Eve 1989 was ultimately successful, led by Charles Taylor with an army of about 150 men with shotguns.²² Doe was murdered on 9 September 1990 and the Liberian state collapsed that same day. For the next seven years, Liberia had two warring 'governments' that both claimed legitimacy. The remnants of Doe's government sat in the capital Monrovia, internationally recognised and supported by the Economic Community of West African States (ECOWAS). Its rival – occasionally called Greater Liberia or Taylorland – encompassed the rest of Liberia and was run by Taylor from the city of Gbarnga.²³

Manipulation of formal processes and the primacy of international capital to maintain political dominance: 1990–2003

This period is notable for extreme violence and Taylor's deft political manoeuvring. He obtained finance through the sale of natural resources on international markets and when he later became Head of State, fraudulently used government processes to conceal illegal activity.²⁴

Economically, Taylor's force was the only self-sustaining Liberian entity, and he was relatively affluent with access to perhaps over US\$100 million per year.²⁵ By contrast,

the puppet government in Monrovia had an annual budget of US\$20 million.²⁶ Taylor's economic edge came from his ability to access international capital through the extraction and sale of Liberia's natural resources. He brokered deals with international logging companies, diamond and iron ore mining firms, rubber exporters and others to take advantage of the resources in territories he controlled. This was leveraged through his associations with regional patronage networks which connected him to leaders and markets in Côte d'Ivoire, Burkina Faso and beyond. Access to international capital was the means to maintain violent political dominance,²⁷ even if 'payments' to soldiers sometimes consisted of little beyond a licence to prey on communities, including taking advantage of local natural resources.²⁸

Access to international capital was the means to maintain violent political dominance

When Taylor eventually took power by winning the 1997 election, his reliance on international financial connections became even more important as his political challenges increased. Ultimately, Taylor had few avenues to generate revenue. In part due to Liberia's ongoing involvement in regional turmoil, Taylor was unable to win international support from Liberia's traditional patron, the US, or other partners or international financial institutions. As a result, there were no budget support packages, military assistance programmes, or infusions of development funds. At the same time, Taylor's formal position as Head of State forced him to reckon with Liberia's government debts. He also became responsible for recurring obligations, such as salaries, government allotments and public service provisions, not to mention funding the security services and various militia enmeshed in regional conflicts. Overall, taking the reins of government actually increased financial burdens, and Taylor's only economic support came from his established commercial connections.

The situation worsened in 2001 when the US posture changed from unhelpful to actively hostile. Through the UN and its allies, the US imposed strong sanctions on Taylor's government, ostensibly in response to Liberia's involvement in the Sierra Leone war. The deeper

motivation was to force Taylor out of power. The pressure had been building for some time and as Taylor became increasingly isolated, illicit commerce – in this case principally from the diamond and timber trade deemed illegal by UN sanctions – became even more crucial for political survival.²⁹

A busy street, Waterside Market area, Monrovia, Liberia, 2014



Source: Mark Fischer/Flickr

Foreshadowing the ways in which government channels were later used to obfuscate illicit dealings, the formal mechanisms of government were turned to illicit commerce. To facilitate the main source of revenue – the diamond and timber trade – the Ministry of Mines and Energy and the Forestry Development Authority (FDA) facilitated schemes to hide trade or make it appear legal.

The Bureau of Maritime Affairs, which at the time oversaw the largest ship registry in the world, moved

money obtained legitimately from the registry to separate non-standard government accounts that were used to buy weapons in contravention of the UN arms embargo. Illegal armaments were also allegedly financed via payments laundered through government accounts, where The Ministry of Finance worked in tandem with extractive companies to make it appear that these were legitimate taxes and fees.

These government entities, and others, tried and failed to obscure the illicit dealings.³⁰ Their failure was due to multiple reasons, but the major contributing factors were that scrutiny had become too intense in the context of violent regional upheaval and there was no diplomatic cover from international partners.

Additionally, in a significant change from the current system, Taylor's government lacked international credibility. The formal institutions and processes were perceived as too weak and beholden to elite manipulation to create a convincing paper trail. Essentially, Liberia's institutions could not offer any protection. This was perceived by many as a lesson to be better prepared to disguise illicit activity.

Corruption in the context of post-war institutional state-building: 2003-2017

Liberia's civil war ended in 2003 and Ellen Johnson-Sirleaf's administration took power to much fanfare in 2006. Previously the Liberian Minister of Finance and a collaborator with the UN and World Bank, she campaigned on this experience and pledged to use international support to build a professional government that would be accountable to the Liberian people.³¹ In partnership with the international community – led by the US – she aimed to fundamentally revamp Liberia's government institutions. This partly represented the donor community's standard requirements of a post-conflict state, but it was also a response to Liberia's long history of institutional weakness and manipulation.

Despite immense challenges, major changes were made quickly. Sirleaf took over an economy that had contracted by 90% between the mid-1980s and the mid-1990s and successfully worked to have creditors cancel Liberia's US\$5 billion debt, a necessary first step given that the Liberian government's budget was a mere US\$80 million.³²

The security sector was fundamentally reformed. The US led the recruitment, vetting and training of a new army,³³ duplicative security services were eliminated or merged with existing services and a new Police Act was passed.³⁴ There was a total overhaul of the extractive industries, which had been drivers of conflict. The FDA was restructured and new forestry laws, regulations and processes were established in accordance with current international best practices for timber. The diamond trade underwent a similar transition, with the government implementing systems to adhere to the Kimberly Process Certification Scheme as well as other checks. As a result, timber and diamond sanctions ended in 2006 and 2007 respectively.

The Ministry of Finance implemented performance management systems and the tax code and revenue generation systems were overhauled. A professionally managed pool fund was set up to manage extensive donor operations in the health sector, which helped lead to a 50% decrease in infant mortality. Integrity institutions were established: the Public Procurement and Concessions Commission (PPCC), Liberia Anti-Corruption Commission (LACC), General Auditing Commission (GAC), Liberia Revenue Authority (LRA), and the Liberia Extractive Industries Transparency Initiative (LEITI). Others were given newly enhanced mandates, such as the Internal Audit Agency (IAA) and Governance Commission (GC). Parastatal agencies were reined in, revamped and put under professional management, including the National Oil Company of Liberia and the Bureau of Maritime Affairs. Most of these reforms required passage of legislative acts of government and were all technically supported with donor funds and assistance. In essentially every sector, and on every issue, effort was made to establish government controls and institute rules, regulations and policies to enhance state capacity.

Sirleaf successfully worked to have creditors cancel Liberia's US\$5 billion debt

During this time of impressive progress, corruption also flourished. In the years following the war, this behaviour was framed as a necessary compromise to keep the peace and pursue a post-conflict state-building

agenda. In other words, a blind eye was turned towards corruption and material benefits were exchanged for loyalty.³⁵ The rationale was that stability required appeasing the various warring factions and politically important individuals, yet the system was cash poor,³⁶ so material reward largely came from small-scale business opportunities and government appointments. The implicit elite deal was that corruption would be tolerated if peace prevailed. By the same token, some issues, such as transitional justice and war crimes were kept off the table altogether to appease former warlords who became members of the legislature.³⁷

During this time of impressive progress, corruption also flourished

As time went on, corruption bled ever more into daily political life, particularly in relation to dealing with the legislature. It soon became clear that, unlike in previous administrations, the presidency was not to be feared given Sirleaf's choice to not use political violence. Her passive stance was tenable due to the considerable international support she enjoyed and the large UN peacekeeping missions in Liberia and neighbouring Sierra Leone and Côte d'Ivoire, which constituted a regional security blanket.

The implicit elite deal was that corruption would be tolerated if peace prevailed

International support also included sanctions that remained on Taylor and his associates who were still considered a threat.³⁸ Combined with her general move to abide by the rule of law and respect the constitutional role of the legislature, this meant that political competitors – particularly lawmakers – could hold nearly every agenda item hostage. They began to make material demands to pass budgets, enact laws and reforms, allocate funds and pass budgets and confirm political appointees, among many other things. Increasingly, from about 2009 to 2017, next to nothing

was accomplished without some material transaction. In other words, a monetised quid pro quo became the norm.³⁹

Creative work was done to conceal these payments, particularly from international donors on whom Sirleaf still heavily relied, as well repurposing government processes to hide these unseemly activities. According to a former high-level official of government, this was occasionally done through formal budgeting processes:

'They pad the budget. The legislature will put stuff in the budgets or nothing will get passed. After all the public hearings and the public XYZ, there would be meetings [at hotels], with the Finance Minister and the Speaker and they would pass the real budget. It's like pork barrel politics, but it's informal, transactional, not like the United States or other places with systems. It's the same, but it's more crass when you give money.'⁴⁰

Forest worker, southwestern Liberia, 2012



Source: PROFOR/Flickr

Laundering money through the formal budget is essentially invisible to outside eyes, but evidence of similar practices can be more directly obtained, such as processes around natural resource concessions. The two cases detailed next – one related to a large-scale forestry scheme and another related to an iron ore mine – illustrate how this worked in practice. Each indicates lessons that appear to have been learnt by those currently in power to improve these tactics.

The case of Private Use Permits (PUPs)

Forestry has been linked to off-the-books political finance in Liberia since the Doe government.⁴¹ It became a principal source of funding during the 1990s and early 2000s, leading to UN sanctions on timber export. After the war, reforming the forestry sector was a top priority for the Liberian government and donors who together focused considerable effort on drafting and enacting new forestry legislation, rules and regulations. The result was a comprehensive overhaul and by 2007, Liberia's forestry sector was held up as a model of post-conflict resource management.⁴² However, by 2011, a logging mechanism amid the reform legislation, the Private Use Permit (PUP), was exploited as a loophole to obtain large-scale logging contracts. The UN Panel of Experts on Liberia reported that it was 'an alternative, largely unregulated route to substantial concession holdings, bypassing a formal concessions process.'⁴³ It was also linked to powerful and politically connected individuals in a presidential election year.

'They pad the budget. The legislature will put stuff in the budgets or nothing will get passed'

The PUP mechanism was created with good intentions. PUPs were one of five legal ways outlined in the reform legislation that Liberian timber could be logged and sold.⁴⁴ As the name suggests, it was intended for private landowners to sell trees on their private forested land, for instance if they were clearing a small plot for a house or had a couple of hectares they wanted to log. It was an afterthought of a category, as the main emphasis was on mechanisms for large-scale revenue-generating commercial logging activities. The other four legal logging mechanisms were for larger plots of land (upwards of 400 000 hectares), commercial logging activities and logging done on non-private, community-owned land. Each had to abide by specific rules, regulations and a chain of custody requirements. For the larger concession agreements, there were specific bidding processes and even legislative approval.

The PUPs were also supposed to have their own procedures, rules and regulations, but none were created. Nobody paid attention to this obscure logging pathway; it neither promised to bring in revenue to government nor was there demand from private citizens. For the first three years that the new forestry laws were in place (2006–2008) there were no applications for PUPs at all. Two applications were received in 2009 which the Managing Director of the FDA reluctantly agreed to issue after establishing an ad hoc process.⁴⁵ There was a minor uptick of applications in 2010 and an explosion in 2011. By October 2011, the FDA had issued upwards of 65 PUPs covering 2 327 352 hectares of land, 24% of Liberia's total land area [...] with 89% issued in 2011 alone.⁴⁶ In addition, the allocation was even more focused. The UN Panel of Experts on Liberia investigation stated that what was 'particularly worrisome is the massive allotment on 6 October 2011 when the [FDA] issued 17 permits for 1 114 246 hectares, accounting for 44% of the total land allocated in private use permits.'⁴⁷ This single-day allocation accounts for 'more than six times the amount of land that had been allocated under private use permits on any other day – under circumstances and with intentions that remain of concern to the Panel.'⁴⁸ The Panel of Experts, Liberian non-governmental organisations and activists and international watchdog groups all came to the same conclusion: each permit appeared illegal, many for multiple reasons.

The PUPs were supposed to have their own procedures, rules and regulations, but none were created

Sirleaf responded by establishing a Special Independent Investigating Body (SIIB) to look into the allegations. The SIIB found such extensive procedural errors and fraud that it recommended that the government void all PUPs issued by the FDA altogether.⁴⁹ Sirleaf then issued an Executive Order referring to 'massive fraud, misrepresentations, abuses and violations of the National Forestry Reform Law in the issuance of [PUPs]'.⁵⁰ This order halted the issuance of new PUPs and prohibited logging in current PUP holdings until further legal review. The permits were eventually annulled, six employees were fired including the Managing Director

of the FDA, and the Liberian government referred the case for criminal investigation.

Despite this apparent success of formal accountability processes, nobody was ever truly held to account except relatively low-level FDA employees, who never faced jail time or serious consequences. This obscured the larger currents at play. According to the UN Panel of Experts on Liberia, 'Documents obtained from the FDA, the various companies that obtained PUPs, and the Liberia Business Registry show that the majority of the permits were issued to one related group of companies: Atlantic Resources Limited, Forest Venture, Nature Orient Timber Corporation, and Gbarpolu Resources. These companies shared overlapping employees, management, company addresses, and even letterhead.'⁵¹

Despite this apparent success of formal accountability processes, nobody was ever truly held to account

The UN Panel of Experts on Liberia further reported that two prominent figures were connected to ownership of this family of companies. They were Medina Wesseh who 'formerly served as the Director of the Cabinet and also as the Chair of President Johnson-Sirleaf's re-election campaign in 2011'⁵² and Liberian businessman John W. Gbedze who was linked in 'previous UN Panel of Experts reports for his connection to logging during Taylor's tenure as president'.⁵³ The SIIB report recommended that Gbedze 'be barred from engaging in commercial forestry activities in Liberia, and be further investigated and prosecuted by the Ministry of Justice for fraud'.⁵⁴ He never was. The SIIB did not mention Wesseh, who stated that she relinquished her shares before the time in question and has maintained that her activities were above board.⁵⁵

All emphasis was on the technical aspects of the FDA's issuance of the fraudulent contracts. The SIIB laid the blame wholly at the FDA's doorstep: 'the level of abuse of power and public trust that characterised the transactional relationship that evolved among various actors in the forestry sector, was led and sanctioned by FDA.'⁵⁶ However, the FDA is essentially an implementing

body. It has a Board of Directors which oversees its activities and sets policies.

The FDA Board was chaired by the Minister of Agriculture with representation from other ministries, the private sector and civil society. It is these Board members that are required to evaluate and approve all contracts, including the PUPs. Indeed, an ad hoc process was implemented in which the contracts were brought to the Board and then signed by the Minister of Agriculture (or a representative of the Minister) and the FDA Managing Director. In the aftermath of the scandal, the FDA Board was dissolved, but there was no investigation into why or how the Board approved the PUPs in the first place.

The case of Sable Mining

According to the United States Department of Treasury (USDT), Varney Sherman, one of Liberia's most prominent lawyers, a sitting Senator and Chair of the Liberian Senate Judiciary Committee, was hired in 2010 by the British mining company Sable Mining. The USDT claimed the hiring was 'an effort to obtain one of Liberia's last remaining mining assets, the Wologizi iron ore concession. Sherman advised the company that, to obtain the contract, they first had to get Liberia's procurement and concessions law changed by bribing senior officials.'⁵⁷ The USDT further alleged that 'Sherman advised the company that, in order to obtain the contract, they first had to get Liberia's procurement and concessions law changed by bribing senior officials.'⁵⁸ The result was a 'US\$950 000 bribery scheme.'⁵⁹ Other Liberians implicated were: Richard Tolbert (Commissioner, National Investment Commission), Morris Saytumah (Minister of State for Finance, Economic, and Legal Affairs), Ernest C.B. Jones (Deputy Minister for Operations, Ministry of Lands, Mines and Energy), Eugene Shannon (Minister, Ministry of Lands, Mines and Energy), Willie Belleh (Chair, PPCC) and Alex Tyler (Speaker of the House of Representatives).

The Liberian government indicted these officials and began a high-profile prosecution in 2016. According to prosecution documents and Global Witness the facts of the case are as follows. Sable Mining wanted a concession to mine the Wologizi iron ore deposits, but they declined to go through a formal bidding process

that they thought they might lose. To that end, a plan was put in place to amend the PPCC Act to include a loophole through which Sable Mining could be granted the mining rights on a non-competitively bid basis. To do this, money passed from Sable Mining to Sherman's law firm and was then passed to consultants, facilitators and some of those involved in the technical and legislative process to amend the law. A spreadsheet of the Sable Mining account at Sherman's law firm is purported to list many of these payments as well as others, including a US\$225 000 disbursement for Liberia's ruling Unity Party; Sherman soon after became Unity Party Secretary-General.⁶⁰

The case suggests that once an 'end' has been determined, a bureaucratic 'means' can be created to achieve that end

While Sherman and others dispute this evidence, an amended PPCC Act – with changes that would benefit Sable Mining – was prepared in early August 2010. According to documents cited by the prosecution, an email from Willie Belleh, Chairman of the PPCC, to Sherman on 6 August 2010 said: 'We finally got the Revised PPCC Act completed. The Minister of Justice and I met with the President last night and reviewed areas of concern to her. She approved. The document has been forwarded to the National Legislature. It is expected to be fast-tracked.'⁶¹ Sherman responded, 'This is good news.'⁶² The PPCC amendment moved quickly through the Liberian legislature and was signed into law on 16 September 2010.⁶³ There have been no allegations that the Minister of Justice or President Sirleaf was aware of the alleged bribery at the time.

Lessons from the Private Use Permit and Sable Mining scandals: a pattern emerges

The main takeaway from these two scandals is that if the procedural steps are followed and the technically correct documentation is manufactured – even if it is contrary to the spirit of the law – then there will essentially be no consequences. Regarding the PUPs,

the only government employee the SIIB recommended for prosecution was FDA Managing Director Moses Wogbeh,⁶⁴ although four lower-level functionaries were also tried. They were convicted, but none served jail time. Wogbeh was sentenced to 10 years with a fine of US\$6 million,⁶⁵ but through an on-appeal process he has not served his sentence or been forced to pay.⁶⁶ For his part, Wogbeh has argued he that did not break the law and was instead following the correct procedures. He told the BBC that: '[Issuing PUPs is] not a breakdown in the law [...] Everything that has been done has been done in keeping with the law. We have all the supporting documents. We go by the law.'⁶⁷

His justification reveals the true issue. The FDA followed an ad hoc bureaucratic process and documented every step through cumbersome and complex procedures. The scheme was tripped up largely because no rules and regulations had ever been created to guide the PUP process. Thus, those involved manufactured a process with a bureaucratic structure and the appearance of legal authority that was actually unfounded. This is the main reason why the scheme faced the scrutiny it did, despite it being egregious on multiple levels. The lesson to those in positions of power was that it was crucially important that laws, rules, regulations and procedures were on paper. Once there, the procedures could be manipulated or undermined.

Those involved manufactured a process with a structure and the appearance of legal authority that was actually unfounded

The Sable Mining case followed a similar pattern, even if the company ultimately did not obtain the desired concession. Neither Sable Mining as a company nor its staff were found guilty of any wrongdoing; executives denied the charges⁶⁸ which they claimed were politically motivated.⁶⁹ Sable Mining activities faced a somewhat similar inquiry in Guinea regarding alleged payments for election-related political purposes in 2010,⁷⁰ but no charges were ever pursued there.⁷¹ All the Liberians who were alleged to have been involved were acquitted by court in 2019.⁷² They always maintained their innocence of all charges.⁷³

However, focusing on alleged behaviour misses two broader points. First, Sable Mining appeared on paper, from a technical and procedural perspective, to be following all the government processes and fully adhering to rules and regulations. It took years of deep research and a major government prosecution to obtain private communications and documentation, which allegedly show the truth behind the bureaucratic façade. Second, and most importantly, emphasis on individual behaviour fails to recognise how it fits into a pattern of political activity in Liberia. The case suggests that once an 'end' has been determined, a bureaucratic 'means' can be created to achieve that end.⁷⁴

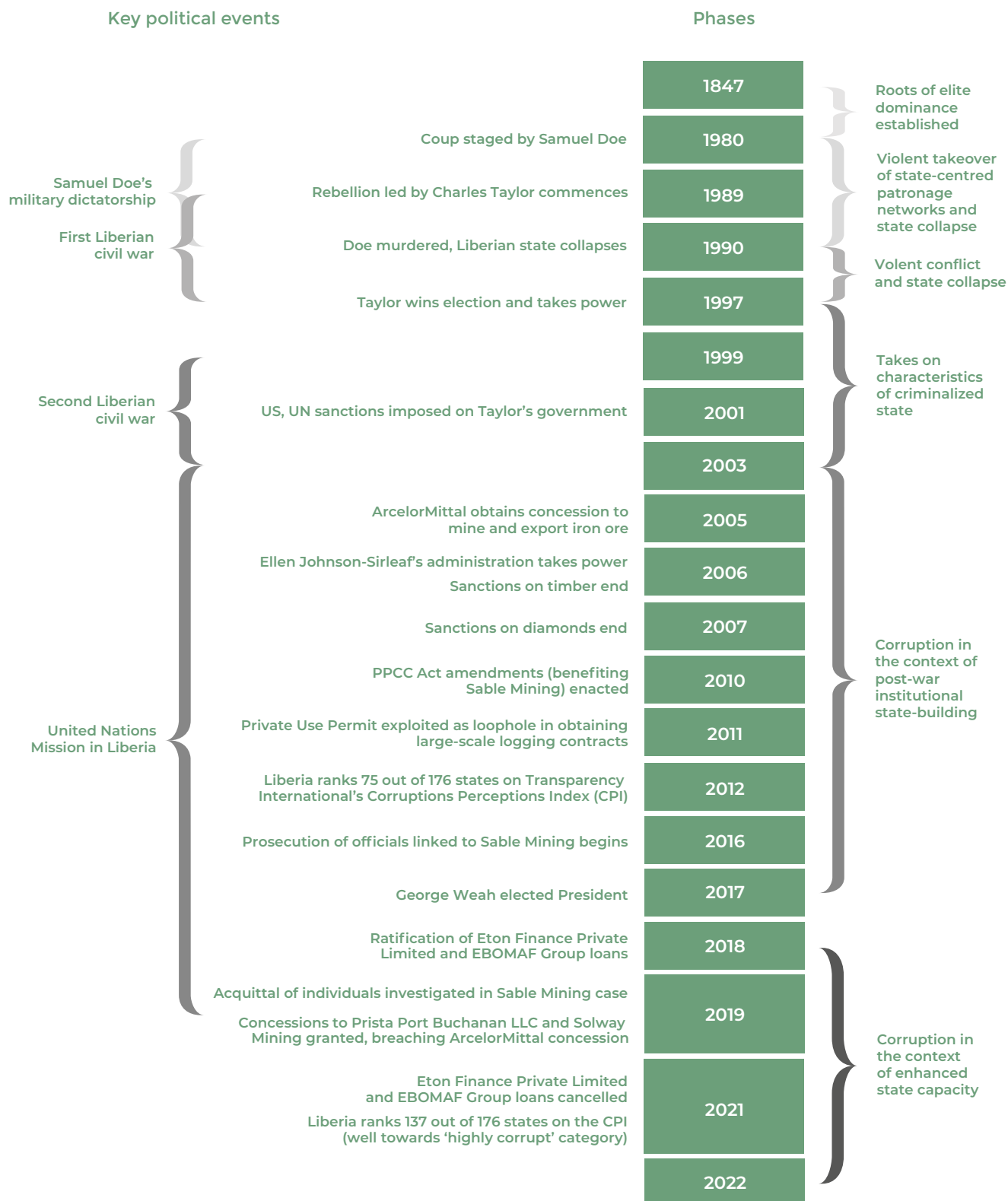
Corruption in the context of enhanced state capacity: 2018 – present

Lessons on how to wield the tools of government appear to have been internalised. Liberia's current political economy is characterised by bureaucratic processes that obscure how formal government structures are used for personal gain. Though robust on paper, the bureaucratic systems and practices established by President Sirleaf's post-war government never obtained practical strength or became fully independent. More recently, these fledgling institutions have been gradually and systematically hollowed out. Independent oversight mechanisms and integrity agencies have been undermined, co-opted and hobbled (as this paper details in the case of President George Weah's efforts to eliminate tenure for leaders of Liberia's accountability institutions). The result is an opaque and weak system by design, with few avenues for accountability.

Widespread corruption in the context of enhanced state capacity and absent meaningful oversight mechanisms has become a new and particularly concerning feature of the current system. This situation occupies an illicit economy sweet spot, although it is not 'illicit' in a conventional sense.

In this context, an illicit economy 1) has limited diplomatic risk due to not relying on violence or overtly 'criminalised' illicit activities of concern to high-profile major global players (i.e. drug trafficking, war economies, cybercrime or nuclear proliferation); 2) is easily overlooked as fraudulent government processes formally conceal illicit activities; and 3) is lucrative for those involved.

Key political events and the phases of Liberia's political economy



How this situation arises highlights institutional failings and sheds light on the cracks of formal governance.

Worrying trends: post-war gains are slowing and reversing

This trend merges dangerously with indications that Liberia's still substantial post-war gains are slowing and, in some cases, reversing. Troubling patterns that began in the final years of Sirleaf's administration are accelerating and becoming entrenched. Liberia ranks stubbornly among the lowest on the Human Development Index (175/189 states)⁷⁵ and the World Bank's Ease of Doing Business Index (175/190 states).⁷⁶ The Fragile States Index ranks Liberia as one of the most fragile states (31/179 states); its position has worsened every year since 2015.⁷⁷ By 2019, Liberia's inflation had reached its post-war peak at 23.56%,⁷⁸ and the following year its gross domestic product (GDP) growth also dropped to its lowest point since the end of the war at -2.87%.⁷⁹ Additionally, there has been an overall shortage of currency in circulation.⁸⁰ In 2019, the International Monetary Fund (IMF) noted that expenditure controls have deteriorated, leading to a rapid increase in arrears that threatens fiscal sustainability.⁸¹

Independent oversight mechanisms and integrity agencies have been undermined, co-opted and hobbled

While most Liberians feel the economic decline, they do not believe that their pain is shared by the political elite. An analyst for the US Congress observed that: 'Optimism surrounding the 2018 inauguration of President George Weah [...] has waned as his administration has become embroiled in a series of corruption scandals'.⁸² Corruption was not uncommon earlier in the post-war period, especially payments made to the Liberian legislature. However, after 17 years of peace, there remains little resonance to the rationale that such activity is necessary to maintain stability and advance a state-building agenda, however flawed this argument might have been

originally. Corruption, unconnected from larger political goals, has become increasingly brazen.

The Fragile States Index ranks Liberia as one of the most fragile states; its position has worsened every year since 2015

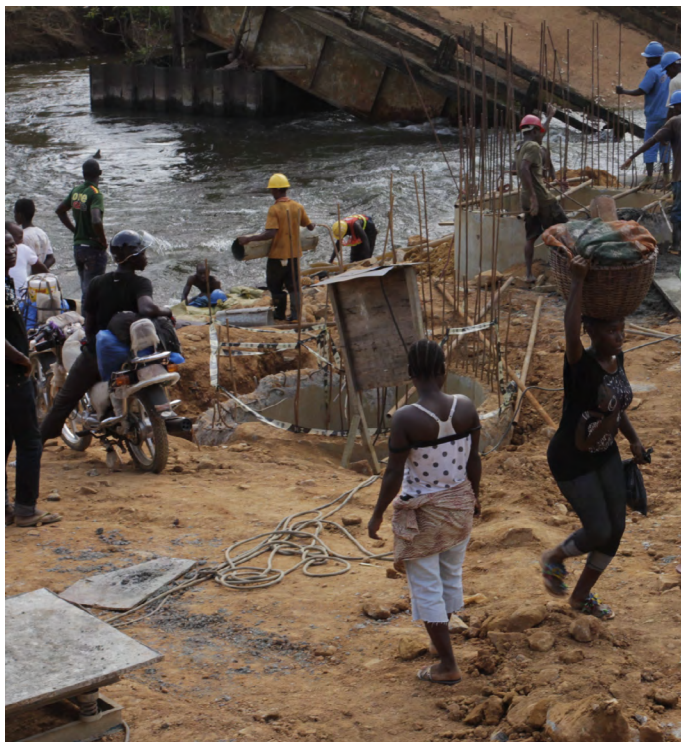
As at 2021, Transparency International's Corruption Perceptions Index ranks Liberia 137 out of 180 states, well towards the 'highly corrupt' side of their scale, a dramatic drop since 2012 when its perception of corruption ranked 75 out of 176 states.⁸³

Framing the cases: rapid government processes in context

This context provides a concerning backdrop for the three case studies presented in this paper. One details the Liberian government's failed attempt in 2018 to secure US\$1 billion in infrastructure loans from two private entities that allegedly have connections to political contributions made to Weah in the 2017 election. The second covers the Liberian government's attempts, which began in 2019 and are still ongoing, to grant concessions to two companies on land area that overlapped with ArcelorMittal's pre-existing concession area. Both cases highlight selective use of government mechanisms and the absence of due diligence and oversight. The third, and perhaps the most worrying, case details the current administration's systematic efforts to undermine accountability by eliminating tenure of officeholders of integrity institutions.

In these examples, contracts and deals sailed through formal procedures, an experience that is fundamentally at odds with the vast majority of business operations in Liberia, especially contracts awarded through government processes. This is evident when assessing the World Bank's Ease of Doing Business Index, which provides context for the speed and complexity of general business and contracting procedures. Liberia ranks near the bottom of the global list at 175 out of 190 states, below the sub-Saharan Africa average of 140.⁸⁴ Of the 48 sub-Saharan African countries ranked, Liberia is the tenth worst.⁸⁵

Efforts to re-start logging operations, 2012



Source: PROFOR/Flickr

Rankings on specific metrics paint an even starker picture. Regarding the 'ease of dealing with construction permits', Liberia ranks worst among all sub-Saharan African countries – and 185 out of 190 overall.⁸⁶ Similarly, Liberia takes the lowest spot among all sub-Saharan African countries for 'what it takes to comply with formalities to build a warehouse in each economy in the region: the number of procedures, the time and the cost' and 'time in days in takes to get electricity'.⁸⁷ Liberia scores second-worst on 'what it takes to enforce a contract through the courts in economies in Sub-Saharan Africa' with 1 300 days, far beyond the regional average of 655.⁸⁸

Liberia has the fourth-most procedures to register property, is considered the fourth-most difficult country in the region for 'ease of trading across borders' and has the fifth-longest in time to export in terms of documentary compliance.⁸⁹ In some areas, Liberia ranks higher, such as being the third-fastest in the region for 'time in days to deal with construction permits'.⁹⁰ Still, the overall picture of Liberia is one of significant procedural hurdles, delays and multi-step procedures that are far from speedy. The case studies illustrate how such normally slow and cumbersome processes can move rapidly when they benefit elite interests.

The case of the Eton and EBOMAF loan deals

One of George Weah's campaign promises in 2017 was to rapidly upgrade Liberia's poor infrastructure, especially by building roads across the country. Within the first six months of his presidency, Weah announced that he had sourced nearly US\$1 billion in loans from two private entities – Eton Finance Private Limited and the EBOMAF Group – to construct 770 km of roads, seven football stadiums and a vocational training centre.⁹¹ These loans were rapidly approved even though there was no due diligence of the entities, little oversight of the process, unfavourable repayment terms for the Liberian government and – less overtly – potential connections to political contributions made during the 2017 election. The private entities never disbursed funds and the deals appear defunct, yet the case is suggestive of the broader trends.

The overall picture of Liberia is one of significant procedural hurdles and delays

The Eton Finance Private Limited loan was for US\$536 million,⁹² despite the company having no track record of debt financing, road construction or any business activity at all.⁹³ The company was registered in Singapore in 2005 with its primary activities listed as 'Other Investment Holding Company' and 'General Wholesale Trade'.⁹⁴ In 2016, the company dissolved itself and was 'struck off' Singapore's Accounting and Corporate Regulatory Authority with the justification that the 'company has not commenced trading since the date of incorporation'.⁹⁵ A Liberian newspaper investigation revealed that 'several weeks before the Liberia loan arrangement, Eton Finance Private Limited re-applied to the Accounting and Corporate Regulatory Authority' with the same name, shareholders and directors.⁹⁶

However, Singapore law states that once a company is 'struck off' it cannot do business internationally without a court order, and there is no indication that a court order was requested or given. On 16 March 2018, a company with an identical name was incorporated in Hong Kong with the same beneficiary ownership. 'Evidence points to the fact that [the Hong Kong incorporated] Eton

Finance Private Limited was established purposefully for this loan agreement.⁹⁷ Another investigation revealed that the company has not had a physical presence at its listed business address for at least the past 10 years.⁹⁸ It is notable that the loan was backed by a sovereign guarantee from the Central Bank of Liberia.

The Eton Finance Private Limited loan was for US\$536 million, despite the company having no track record of debt

The Groupe EBOMAF loan was for US\$420.81 million.⁹⁹ Unlike Eton, Burkina Faso-based construction company Groupe EBOMAF had a track record of construction projects across West Africa (in Benin, Burkina Faso, Côte d'Ivoire, Guinea and Togo). It also had a revenue of €1 billion in 2020.¹⁰⁰ Funds for the EBOMAF deal were to be generated by the Liberian government issuing an external debt security (i.e. Eurobonds) through EBOMAF that would finance the project when sold, with funds provided in tranches through the sale of the bonds.¹⁰¹

Laws regulating deals of this kind were ignored or bypassed. Liberia's Public Financial Management Act mandates that all loans must be approved through a Debt Management Committee meeting to ensure responsible borrowing. There is no indication that such a meeting ever took place.¹⁰² Since the loan deals are with private companies (as opposed to international financial institutions), the PPCC Act seems to require that these loans be considered concessions. As such, the concessions are to pass through the PPCC concession mechanism.

However, that process was bypassed and both deals proceeded as single-sourced bids without public justification or the technical assessment and vetting process that is typical for concessions. Instead, these deals originated in the Office of the President, and then went through an ad hoc process of approval at the highest level of the Ministries of Public Works, Finance and Justice, before being submitted to the legislature.

The process moved at lightning speed, from legislative debate to signature into law in just 10 days. The Eton loan deal was discussed and voted on by the

Liberian House in a single day – 5 June 2018 – passing unanimously by all 22 members of a joint legislative committee. The agreement was sent to the upper chamber for ratification the same day.¹⁰³ At the joint hearing, the Minister of Justice testified that 'all the internal procedures, including approvals, consents and authorisations required by the Constitution and laws of Liberia for the negotiation and signing of the loan financing agreement have been taken, fulfilled and observed.'¹⁰⁴ Three days later, the Senate Pro Tempore stated: 'The Liberian Senate, on Friday, 8 June 2018, through a unanimous vote of its plenary, ratified Loan Financing Agreement between the government of Liberia and ETON Finance PTE LTD [...] On today, Monday, 11 June 2018, the Liberian Senate also ratified the Pre-Financing Agreement between EBOMAF S.A. and the government of Liberia.'¹⁰⁵

A government press release dated 14 June 2018 boasted that the Vice-President Howard Taylor had signed two major road construction loan agreements barely a day after the Liberian legislature had ratified it, and President Weah signed the deal into law the same day.¹⁰⁶

Loans were approved despite objections from international financial institutions, partners and civil society

The loans were approved despite objections from international financial institutions, partners and civil society¹⁰⁷ and potentially in breach of IMF Article IV regarding sovereign debt obligations.¹⁰⁸ Some of the terms themselves were convoluted and potentially unfavourable to the government given the interest rates and repayment schedules.¹⁰⁹ One analysis estimated that 'by 2026, more than 70% of the national budget will be dedicated to compensation and payment of loans.'¹¹⁰ A United Nations Development Programme (UNDP) report noted that the Eton loan alone was 'equal to Liberia's entire current budget' and dryly concluded, 'there is a lack of transparency and disclosure from the government regarding this loan.'¹¹¹

Nevertheless, the government was enthusiastic. The Senate leader said: 'The Executive branch of government, through the Ministries of Public Works, Finance and

Development Planning, Justice and the Central Bank of Liberia, convincingly illustrated to the Senate [...] the ability of the lenders to provide the funds, the preparedness of our government to provide acceptable guarantees, the capability of the Republic of Liberia to pay back the loans on time.¹¹² The Minister of Finance responded to critics directly: 'Now, let me say also that there have been legitimate concerns about either the viability of Eton, the legitimacy of Eton – we've received all of those queries and we have conducted our due diligence and we are still in the process of conducting our due diligence. Due diligence is not a one-off event – it is a sequence of things that you can do.'¹¹³ Yet, he concluded that 'we can assure our citizens that the agreements are credible.'¹¹⁴ Minister of State Nathaniel McGill was more bullish: 'This is one of the best loan agreements the country ever had.'¹¹⁵

Weah's use of the plane, which began before the loan deal surfaced, appears to be a violation of Liberian law

The two loan deals are allegedly linked beyond the timing and their shaky foundations. The Eton deal was purportedly arranged by Weah's economic adviser, Emmanuel Shaw. Shaw has a controversial past, having been involved in fraudulent activity as Doe's Minister of Finance¹¹⁶ and then later serving Taylor in the same capacity, receiving sanctions from the UN for his behaviour.¹¹⁷ Journalists in Liberia have demonstrated Shaw's connections with Ghanaian businessman, Ibrahim Mahama, the brother of the former President John Mahama. Ibrahim Mahama 'is said to be one of the brains behind the scenes of the [Eton] loan arrangement along with businessman Emmanuel Shaw.'¹¹⁸ In one account, Mahama is said to have introduced Weah to EBOMAF's President and CEO, Mamadou Bonkougou.¹¹⁹ In others, Shaw is alleged to have made the introduction,¹²⁰ perhaps during the 2017 presidential election.¹²¹

Both Mamadou Bonkougou and EBOMAF have been linked to in-kind and monetary contributions to presidential campaigns across West Africa. The in-kind contributions are often linked to loaning aircraft for

presidential use through the company Liza Transport International, a subsidiary of the EBOMAF Group according to the latter's website.¹²²

Liza Transport International's fleet includes executive-style airplanes and helicopters, which Bonkougou has provided to heads of state, including Alpha Condé (Guinea), Faure Gnassingbé (Togo), Patrice Talon (Benin), Roch Marc Christian Kaboré (Burkina Faso), Alassane Ouattara (Côte d'Ivoire) and Félix Tshisekedi (Democratic Republic of the Congo), as well as Assimi Goïta (who led a coup in Mali and then became Vice-President in the country's transitional government) and many other top ministers of West African governments. The aircraft loans were all made in countries where EBOMAF operated or intended to do business, and at least sometimes during election years. Bonkougou is also 'known to have financed several presidential campaigns in the region.'¹²³ Not all of these relationships ended happily. In 2018, Bonkougou was 'embroiled in a legal dispute with the former Prime Minister of Benin, Lionel Zinsou, whom he has accused of refusing to repay loans for his failed attempt to win the presidency in 2016.'¹²⁴

Bonkougou, through Liza Transport International, has previously stated that the planes are rented at going rates and are not given as gifts,¹²⁵ yet he also said that he let Weah use the plane for free, which Weah corroborated.¹²⁶ According to a presidential press release, Weah said: 'The airplane issue is causing problem. We don't have a bus; how will we buy a US\$30 million plane? Where do they get this kind of news from? It is not possible for us to buy a plane for US\$30 million; we are just coming to office. The airplane they are talking about is for my friend, who is the manager of a big company in Burkina Faso. He told me to use it anytime I want to travel because he has seen me use planes owned by Ivory Coast and others. He wants me use a plane that is not labelled to boost my moral, too.'¹²⁷

Weah's use of the plane, which began before the loan deal surfaced, appears to be a violation of Liberian law. It goes against the 2014 Code of Conduct of 2014, which proscribes certain behaviours among public officials and government employees, such as receiving gifts and favours and otherwise engaging in activities that could be considered conflicts of interest.¹²⁸

Since the loans were ratified in 2018, neither company disbursed any financing to the Liberian government

and no construction is underway or planned. In 2020, the Minister of Finance stated that he presumed the loans were cancelled since neither company disbursed funds to the government by the dates specified in the agreements.¹²⁹ Liberian Senator Nyonblee Karnga-Lawrence advocated to formally cancel the loan agreements since without doing so she worried that Liberia still 'has a commitment to repay loans in the periods specified in the two loan agreements.'¹³⁰ In July 2021, the Senate instructed the Ministries of Public Works, Finance, and Justice to cancel the concession agreements.¹³¹

The case of ArcelorMittal, Prista Port and Solway Mining

In 2005, Dutch steel producer ArcelorMittal, the second-largest in the world, obtained a concession to mine and export Liberia's iron ore.¹³² The deal was signed by Liberia's post-war interim government and was criticised for not adequately benefiting Liberia.¹³³ There were also allegations of corruption, and the Dutch anti-corruption police was concerned enough to investigate the circumstances of the contract's award.¹³⁴ When Ellen Johnson-Sirleaf took office in 2006, she prioritised renegotiation of the deal (along with other previously signed natural resource concessions). A renegotiated deal with signed into law on 27 April 2007 granting the company a 25-year Mineral Development Agreement concession to mine in Nimba County and transport ore to the Port of Buchanan in Grand Bassa County for shipment.¹³⁵ Since then, ArcelorMittal has been among the largest companies operating in Liberia and one of the government's largest sources of tax revenue.¹³⁶

In 2019, the Liberian government appears to have courted two companies – Prista Port Buchanan LLC and Solway Mining – to operate in areas that overlap with ArcelorMittal's pre-existing concession area. Given ArcelorMittal's relatively long history in Liberia as one of the first large-scale post-conflict mining concessions in the country, the concession's boundaries are well known and delineated on government cadastral maps. As there are no provisions or technical standards regarding granting overlapping concessions, doing so appears to

break the rules. Furthermore, there is no indication that Prista Port and Solway Mining won their concessions through an open bidding process, as set out in the PPCC Act.

President Ellen Johnson-Sirleaf at Africa Progress Panel, 2013



Source: Africa Progress Panel/Flickr

Prista Port Buchanan LLC obtained a concession to manage the Port of Buchanan, Grand Bassa County for 25 years with a total expected investment of around US\$277 million. The agreement was finalised on 14 August 2019, Weah signed it on 12 September 2019, and it was ratified by the Senate on 30 September 2019. In accordance with Liberian customs, a handbill of any new legislation must be printed by the government to become law, even if it has been signed by all the relevant parties. However, no printed handbill of the Prista Port concession yet exists.

In a letter of the Minister of State Nathaniel McGill, the CEO of ArcelorMittal Liberia objected 'to a concession agreement entered into by the National Port of Authority (representing the Government of Liberia) and Prista Port Buchanan LLC on grounds that it includes and overlaps a majority of the current concession area of ArcelorMittal Liberia in Buchanan, Grand Bassa County'.¹³⁷ He stated that the concession 'awards the iron ore port

and most of the associated facilities currently held by ArcelorMittal Liberia to Prista Port.¹³⁸ He continued by saying that 'representatives of the Prista Port approached ArcelorMittal in London and asserted that their concession would come into effect and that their company would eventually replace ArcelorMittal Liberia (AML) as the concessionaire. We reject this assertion by Prista Port and maintain that no valid concession can ever be granted that overlaps AML's concession area.'¹³⁹ ArcelorMittal threatened to pull further investment if the government continued on this path.¹⁴⁰

The Liberian government courted two companies to operate in areas that overlap with ArcelorMittal's pre-existing concession area

The Prista Port concession agreement includes language about the 'existence of encumbrances of various nature and extent in the Concession Area.'¹⁴¹ In a letter to the Liberian legislature, Prista Port 'clearly acknowledges' that ArcelorMittal had an encumbrance.¹⁴² Ivaylo Getsov, Prista Port Buchanan Director, said he understood this to mean that 'the Concession Agreement clearly prescribes inter alia that Prista does NOT have exclusive rights on it.'¹⁴³ Nevertheless, he called ArcelorMittal's claims of overlapping concessions 'groundless' and said, 'Our concession in no manner infringes upon ArcelorMittal's Mineral Development Agreement (MDA) dated August 17, 2005.'¹⁴⁴ The Ministry of Lands, Mines and Energy made the argument that under ArcelorMittal's deal, 'the MDA states that all infrastructure, assets and facilities of the Yekepa-Buchanan rail and the Buchanan Iron Ore Port do not constitute part of ArcelorMittal's concession', and therefore the port and associated assets are the government's to do with as they see fit.¹⁴⁵ This is a plausible but untested interpretation of Liberian law regarding concessions.

The Liberian government seemed unsure of what to do next and so stalled and equivocated. The handbill was not printed despite Prista's urging.¹⁴⁶ In December 2019, after the deal had been signed by Weah and ratified by the Senate, Radio France Internationale reported that the Office of the President 'said that it held talks with

Prista Oil Holding but that it did not finalise a deal.'¹⁴⁷

Prista, taken aback since they were under the impression that not only had it been concluded, but that it had Weah's support, orchestrated high-level appeals on their behalf. Cherie Blair, the wife of former United Kingdom Prime Minister Tony Blair and the founder of the legal firm representing Prista, wrote to Weah urging that he acknowledge the deal his government made and intervene to remove this 'inexplicable and seemingly arbitrary obstruction.'¹⁴⁸ Likewise, a Bulgarian member of the European Parliament advocated for the company – as its owners are Bulgarian – to the EU representative in Liberia.¹⁴⁹

In November 2019, Prista's owner Plamen Bobokov,¹⁵⁰ voiced his frustration about the delayed process in letters to the IMF and the Millennium Challenge Corporation in Liberia. Bobokov wrote: 'the issuing of the Handbill, allowing us and the Government's representatives to start the 90-day transition/handover period has been withheld so far, due to unexplainable reasons. What is more surprising with the delay is that the Concession Agreement stipulates payment to the Government of an amount of US\$7 million on or around the Handover date, and additional US\$3 million after one year. We consider that such signature bonus is large, but we also understand our obligation to support Liberia in a difficult situation.'¹⁵¹

Bobokov then accused the Liberian government of illegal activity. He stated that he and his company 'were very surprised and discontent [sic] by the information that a member of the Executive – the Chairman of the National Investment Commission, Mr Molewuleh Gray – is trying to deceive foreign investors to participate in the criminal activity of breaching the Constitution and Laws of the Republic of Liberia, by disclosing sensitive financial information of our business model attempting to solicit a deal which was already concluded [...] we intend to commence a litigation process against the Government of Liberia in ICSID (International Center for Solution of Investment Disputes), Washington, DC, for breach of warranty of authority.'¹⁵² He implied Gray attempted to 'solicit' further funds to move the process forward. As at August 2021, the ICSID case database did not list any concluded or ongoing cases involving Prista Port.¹⁵³

There have been no formal statements on whether or not the dispute has been resolved, but recent events

suggest that the Liberian government has abandoned Prista in favour of ArcelorMittal. In January 2021, George Weah announced that he expected ArcelorMittal to agree to invest a further US\$800 million in their concession area, tripling iron ore exports.¹⁵⁴ In March 2021, mining industry media reported ArcelorMittal was set to make this investment¹⁵⁵ and in June 2021 this was also reported by the Liberian media.¹⁵⁶

Recent events suggest that the Liberian government has abandoned Prista in favour of ArcelorMittal

The case of Solway Mining Incorporated is less clear, perhaps owing to the trouble caused by the Prista Port concession. However, just like the Prista Port situation, it appears that the Liberian government encouraged Solway to operate on land within ArcelorMittal's concession area. On 2 January 2019, Solway Mining applied for an iron ore mineral exploration licence in Nimba County. The licence was granted by the Ministry of Lands, Mines and Energy and became operational on 13 October 2019.¹⁵⁷

On 26 June 2020, ArcelorMittal sent a letter to Solway stating that they had 'unlawfully entered upon and engaged in exploration activities in an area overlapping the concession area in Nimba County granted by the Government of Liberia (the "Government") to AML pursuant to the Mineral Development Agreement dated August 17, 2005'.¹⁵⁸ An official at the Ministry of Internal Affairs confirmed that ArcelorMittal demanded the Ministry of Lands, Mines and Energy to revoke Solway's licence because of the alleged overlap. They refused on the grounds that Solway's operations do not in fact overlap with ArcelorMittal's.¹⁵⁹

The following month, in July, the Minister of Lands, Mines and Energy travelled with Solway employees to Nimba County and introduced the company to the residents and traditional chiefs. This kind of introduction is a common – even expected – step before commencing operations. It is often done to ease strained relations between a company and affected communities. When the Liberian government facilitates such an introduction, it is interpreted as an endorsement of the company and

its activities. Solway did in fact run into some trouble in Nimba County. Their plan to sell logs on the land of their iron ore exploration licence provoked two lawsuits by local community forest management bodies,¹⁶⁰ and wider concerns over the company's adherence to Liberia's forestry laws.¹⁶¹ The Managing Director of the FDA even criticised the Ministry of Lands, Mines and Energy's handling of the case.¹⁶²

Solway Mining is incorporated in Liberia and owned by a series of companies that fall under the overall ownership of Estonia businessman Aleksandr Bronstein,¹⁶³ through his Malta-based family trust, Solway Holding LTD.¹⁶⁴ Exploration licences given to companies such as Solway Mining, are not required to adhere to PPCC or other regulations regarding concessions. However, once the company declares an area for development, it triggers additional layers of oversight. To date, Solway has 'not gone through legislative oversight or approval'.¹⁶⁵

Undermining accountability: the case of eliminating tenure for Liberia's integrity institutions personnel

Perhaps the most worrying current trend is the current government's efforts to undermine accountability institutions.¹⁶⁶ Just after assuming office in 2018, George Weah tried, and ultimately failed, to eliminate one of the bedrock reforms of Liberia's post-conflict era, by pushing for a bill to remove tenure from all positions in the executive branch of government. This would have eliminated tenure of leaders of Liberia's most politically sensitive integrity institutions such as the PPCC, LACC, LEITI, LRA, Financial Integrity Unit (FIU) and IAA.

The only entities recommended to keep tenure were the Central Bank of Liberia, the National Elections Commission and the GAC.¹⁶⁷ The ease and speed with which the bill passed the Liberian House before being rejected in the Senate reveals the government's priorities. It also shows the perceived roadblocks that such institutions present for full control over Liberia's political economy.

On 30 October 2018, George Weah submitted one of his first bills to the legislature, entitled 'An Act Prohibiting the Tenure of Public Officials within the Executive Branch of Government'. Having tenure means that

individuals appointed by the President cannot be fired during their fixed term appointment, although they can be removed from their positions by the boards that directly oversee their duties. Having tenure is understood to be international best practice, especially for integrity institutions, because it provides these individuals with some insulation to make judgements based on the rule of law and not under political pressures. One of the most effective ways to undermine independent oversight mechanisms – including integrity institutions – is to eliminate the tenure of officials leading these institutions, and then place loyalists in top positions.

Just after assuming office, George Weah tried to eliminate one of the bedrock reforms of Liberia's post-conflict era

Ellen Johnson-Sirleaf's government had passed multiple reforms that limited the powers of the President and established tenure for certain positions, especially those at integrity institutions. These reforms removed political pressure on individuals tasked with oversight of Liberia's finances, procurement, and natural resources. Weah's act was essentially a repeal of past reforms and this motive was not hidden. Weah and the bill's many supporters said that such tenured individuals were obstructing action on the President's agenda. The new bill would ensure that 'the President shall have and exercise all the powers necessary and convenient for the effective administration of the Executive Branch and all the institutions under its control, and to this end, all appointed officials thereof shall hold office at the will and pleasure of the President.'¹⁶⁸

Despite much hushed debate in the Liberian House, the bill passed. When it came to be debated in the Senate, the Senate leader pressed for its approval¹⁶⁹ despite intense scrutiny from civil society. One individual said 'that bill is against the tenants of good governance. It is against the intent and spirit of the constitution.'¹⁷⁰ Another stated that 'cancelation of the tenures of these institutions could return the country to its dark days and destroy the gains made thus far.'¹⁷¹ After contentious debate, the Senate ultimately rejected the bill in May 2019.

Weah has been eager to remove tenured officeholders, sometimes unlawfully.¹⁷² The PPCC, Central Bank of Liberia, National Elections Commission and other institutions¹⁷³ have seen questionable leadership changes, but the most egregious case concerns LEITI. Shortly after Weah assumed office, he fired the head of the LEITI Secretariat, Konah Karmo, despite his legal tenure, and replaced him with a loyalist, Gabriel Nyenkan.¹⁷⁴ The transition was far from smooth. Nyenkan, 'along with group of his supporters and armed police officers marched on the compound to effect his takeover of the entity.'¹⁷⁵ This is not the only instance of tenured office holders being harassed and attacked.¹⁷⁶

Nyenkan had no prior experience in extractive industries, transparency or oversight, and was not selected through a competitive recruitment process per the LEITI guidelines. Instead, he was previously a political ally of Weah's and a House member from Montserrado County, who lost his seat in the same election that appointed Weah as President. On the other hand, Karmo was chosen by LEITI's Multi-Stakeholders Steering Group, following a competitive recruitment process, as is typical for tenure appointments at integrity institutions. He had extensive relevant prior experience having worked in LEITI for years, rising through the technical ranks from a Project Accountant to Deputy Head of the Secretariat before his appointment as the Head of Secretariat.¹⁷⁷

Weah's act was essentially a repeal of past reforms and this motive was not hidden

There have been other instances of Weah illegally appointing individuals to political positions, even according to his own Minister of Justice.¹⁷⁸ Weah has also appointed former combatants to his inner circle security detail,¹⁷⁹ raising more concerns over violence creeping back into politics and the appointment of unvetted individuals. This is seemingly within his legal rights, but is contrary to the established past practice of ensuring that only certain vetted individuals can join Liberia's security services.

This has been a foundational principle of the US-led restructuring of the Armed Forces of Liberia, as well as efforts to reform the Liberia National Police. The

issue of tenure also remains. In October 2020, Weah again forwarded a bill to the House to strip tenure from a number of entities. These included the Bureau of Maritime,¹⁸⁰ which generates significant income for the government and was previously a primary institution used to obtain political finance.

Street sellers in Waterside Market, downtown Monrovia, 2014



Source: Morgana Wingard/United Nations Development Programme

Conclusion

Politics in Liberia are transactional and often material. While this is well known to Liberians, it is less obvious to outsiders. From a distance, the political economy looks similar to many other 'fragile' states: Liberia is a low-income developing state with weak governance institutions, widespread corruption and a small tax base, and relies heavily on international assistance and a few extractive industries. Pull back the curtain and a different view is revealed, where all the proceeding elements are accurate, but also beside the point.

The Liberian saying, 'nothing for nothing' – used to describe mundane everyday interactions and high politics¹⁸¹ – reveals the nature of the country's transactional political system. Elite deals are sealed by exchanges based on material rewards, making corruption both a matter of personal gain and a component of political business as usual.

In this context, governance institutions and nominal legal processes are infiltrated by informal patronage networks and repurposed to suit the goals of the political elite. Similarly, democratic institutions and practices, such as elections and mechanisms for oversight and accountability, are also manipulated. Formal systems of government function as intended when they benefit (or at least does not harm) the interests of the ruling elite, yet when they do not, they can be manipulated, circumvented or ignored altogether.

Liberia is among the states deemed least resilient to organised crime

This indicates the new and particularly worrying development of Liberia's current political economy. Elements of the bureaucratic and technocratic state of Liberia have been strengthened in the post-war period, but that has not come at the expense of weakened patronage networks or the ability to wield power outside of channels established by the rule of law.

Indeed, this paper reveals how the international community's efforts to strengthen fragile institutions of government have provided pathways for corruption and methods to hide this corruption. Highlighting these challenges provides a roadmap for deeper analysis and a set of conceptual tools that researchers, policymakers and activists can use to better understand the current challenges and how best to respond to them.

Liberia is at risk of sliding into the 'worst possible situation' of high criminality and low resilience

Liberia's vulnerability to increased criminal activity is a concerning factor. Liberia is among the states deemed least resilient to organised crime, alongside its neighbours Sierra Leone, Guinea and Côte d'Ivoire.¹⁸² Liberia is at risk of sliding into the 'worst possible situation' of high criminality and low resilience, a category already occupied by Côte d'Ivoire. Furthermore,

the ENACT Organised Crime Index has recorded a decrease in Liberia's resilience to transnational organised crime between 2019 and 2021, and an increase in the country's criminality scorings.¹⁸³

Meanwhile, the UN Mission in Liberia left in 2019, and the peacekeeping missions in Sierra Leone and Côte d'Ivoire have also ended, leaving security in the hands of the region's states. Yet, their ability is minimal in the face of a determined threat. At the same time, Liberia and its neighbours have been victims of their own success: given that Liberia and adjacent states have been largely peaceful, international attention and resources have been focused on other events. There is an urgent need to assess the nature and extent of current shortcomings, refocus attention on systemic vulnerabilities, and work to build more robust systems to combat criminality.

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Issue 22 | January 2022

Sandalwood trafficking in Kenya

Deforestation and the exploitation of local communities

Willis Okumu

Summary

Sandalwood trafficking in Kenya is a multi-million dollar trade that exploits local communities and leads to deforestation. The illegal trade in sandalwood has been sustained by a network of actors, from the community level to international markets. This has resulted in the devastation of community forests and has placed the sandalwood tree at risk of extinction. Meanwhile, middle- and upper-tier actors in this criminal network continue to enrich themselves. While the mandate to protect sandalwood in the wild belongs to the Kenya Forest Service, weaknesses in the Forest Conservation and Management Act No. 34 of 2016 have enabled the prosecution of sandalwood trafficking cases through the Wildlife Conservation and Management Act of 2013. The confusion that has emanated from lack of clarity on enforcement jurisdiction has emboldened sandalwood traffickers when presented in court. Further, lack of harmony in East African conservation laws has further facilitated the prosecution of Kenyan sandalwood smuggled into Uganda and Tanzania.

Key findings

- Sandalwood trafficking is an environmental crime that leads to a loss of biodiversity, which has a negative impact on the ability of communities to produce enough food to ensure their livelihoods.
- Women sworn to control the sandalwood trafficking network in Samburu County, first as harvesters at the community level and then as the traders coordinating linkages between local communities, police officers and other members of state agencies.
- Sandalwood trafficking in Kenya seems to rely on state officials who protect this organised crime network.
- A multi-agency approach to tackling sandalwood trafficking has had some success since 2020 and should be continued.
- Through the support of state and community agencies, sandalwood trees can be propagated in order to enable their sustainable harvesting and the commercialisation of the trade in northern Kenya.



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Constructing crime

Risks, vulnerabilities and opportunities in Africa's communications infrastructure

Edward Wanyonyi and Lucia Elmi

Summary

While Africa's growing communications infrastructure and increasing internet penetration offer significant developmental benefits, they offer parallel opportunities to organised crime, which exploits the continent's enhanced connectivity. These opportunities are set to grow with nascent research already indicating that the continent is an increasingly important source of both cyber-dependent and cyber-enabled crime. It is a crucial and already tardy moment to take stock of how these vulnerabilities manifest, and how they can best be addressed. If they remain ignored and unmitigated, organised crime will increasingly undermine progress and development, compromising the achievement of the very goals that enhanced infrastructure seeks to achieve.

Key findings

- The pace of communications infrastructure development and the increase in internet penetration, including e-commerce, in Africa is accelerating and Covid-19 has further enabled these trends.
- The telecommunications and digital sectors are vastly under-regulated, and many countries lack legislative frameworks to prosecute cyber criminals.
- Cyber criminals on the continent are keeping pace with ongoing digitisation, leveraging newly available technologies and demonstrating increasingly sophisticated techniques.
- Africa's financial services sector is particularly targeted by criminals exploiting the sector's reliance on communications infrastructure. Mobile money is particularly vulnerable to criminal interference and is widely used to launder criminal profits.
- The prevalence of counterfeit hardware and software, with inbuilt vulnerabilities to hacking, presents a key vulnerability in countries where the counterfeit market is significant.
- The nascent spread of Internet of Things (IoT) devices across Africa, which is predicted to accelerate, constitutes a significant and increasing vulnerability to organised crime.



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Issue 24 | September 2021

Whose conflict is it anyway?

Addressing conflicts of interest in South Africa's public sector

Richard Cheloi

Summary

Conflicts of interest are situations rather than actions, as such, they do not constitute corruption in and of themselves. However, if left unmanaged and unregulated, conflicts of interest have the potential to result in corruption. The various corruption scandals reported in the media on a daily basis are often manifestations of conflicts of interest which were mismanaged and unregulated. Against this background, this paper delves into the notion of conflict of interest and argues that similarly to corruption, conflicts of interest cannot be eradicated. Rather, these conflicts should be managed and regulated. An effective conflict of interest system is crucial in not only managing these conflicts but also as a preventative anti-corruption tool.

Key findings

- A key challenge is the lack of understanding by those involved of what constitutes a conflict of interest and how to address it.
- An efficient system to monitor possible conflicts of interest is required in the public sector. Even when legislation and regulations prohibit conflicts of interest, the systems necessary to monitor conflicts are missing and enforcement is weak.
- Adapting new technology, such as blockchain, can streamline and strengthen the management of conflict of interest situations in the public sector.
- Conflicts of interest cannot be eradicated but with clear policies on disclosure, monitoring and enforcement, they can be managed.



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Issue 23 | October 2021

West Africa's warning flares?

Rethinking the significance of cocaine seizures

Mark Shaw

Summary

Drug seizures are widely referred to in the media and academic reporting on drug trafficking and organised crime. Everyone knows their limitations. But what if seizures represent the exact opposite of what we generally think them to be? That is, not a reflection of state efficiency, but rather cracks in systems of political protection. If that is the case, they may appear more regularly as come times rather than others. A detailed study of West African cocaine seizures in the context of periods of political instability over a twenty-year period suggest this association is worth exploring.

Key findings

- Drug seizures in West Africa have been concentrated in two periods: 2003-2012 and more lately in the period from 2019, with a 'seizure drought' in between.
- At a regional level, increases in seizures correlated with periods of declining political stability while declines in seizures occur during periods of political stability.
- This relationship can also be seen in countries with cycles of conflict and instability, namely Guinea-Bissau and Mali. Notably, seizures occur in the period just before instability increases.
- As there is strong evidence of political protection over the drug trafficking economy in the region, increases in seizure may align with periods when political protection systems for trafficking weaken or crack. Seizures decline again when new systems of political protection are put in place.
- One outlier is Nigeria which has a very stable and low level of seizures. This is a reflection of a long-standing and lower-level system of criminal protection, partly the outcome of the fact that most illicit profits are generated outside the drug sector.
- This suggests that seizure data is important – but not for the reasons generally accepted – and when carefully examined can be read as a reflection of changes in the political economy. If so, they may serve as 'warning flares' of pending political instability.



About the authors

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About ENACT

ENACT builds knowledge and skills to enhance Africa's response to transnational organised crime. ENACT analyses how organised crime affects stability, governance, the rule of law and development in Africa, and works to mitigate its impact. ENACT is implemented by the ISS and INTERPOL, in affiliation with the Global Initiative Against Transnational Organized Crime.

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