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## Outfits: Narrowly tailored laws that harm instead of help ; a case study of Liberia's telecommunication laws

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Working Paper No. 2011/63

## **Outfits: Narrowly Tailored Laws that Harm Instead of Help**

A case study of Liberia's telecommunication laws

Rosalia de la Cruz Gitau\*

October 2011

### **Abstract**

The telecommunications sector in Africa presents many exciting prospects to international investors—indeed many billion dollar projects are already underway across the continent. Many of the continent's current problems can be traced to the exploitation it has experienced whilst 'doing business' with foreign entities in the past. Using Liberia as a case study, the author examines the legal framework governing telecommunications in Liberia. This study argues that Liberia's current telecommunications laws prejudicially favour foreign investors to the unnecessary detriment of local interests. This study seeks to bring much needed attention to the opacity that typifies telecommunications deals and proposes detailed licensing reforms that can be easily included in future telecommunications deals across the continent.

**Keywords:** telecommunications, competition, Liberia, universal access, CSR  
**JEL classification:** F0, H0, K0, O1

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## **1 Introduction**

Africa has nearly one billion inhabitants that have largely been isolated from consumerist culture. To the enterprising ear this translates into one billion new prospective cell phone users, internet-surfers and retail bank depositors. The opportunity to make a great deal of money in largely un-chartered territory has shown itself too attractive to resist, if recent trends in banking and telecommunications on the continent are any indicators. The telecommunications sector, in particular, presents many exciting prospects to international investors, and many billion-dollar projects are already underway across the continent. The legacy of international involvement in Africa—both politically and economically—has proven overwhelmingly detrimental. Many of the continent's current problems can be traced to the exploitation it has experienced whilst 'doing business' with the foreign entities in the past. As regards telecommunications, there are billions of dollars to be made—or lost. African governments must be vigilant in preventing yet another one of its resources from being taken at a bargain. Half of the sub-Saharan population lives below the poverty line (World Bank 2010).<sup>1</sup> Creating legal protections can help to prevent another economic pillaging.

This study will present the case of Liberia, and the development of its telecommunications sector, as an opportunity for pillage or profit. I argue that the legal framework of the telecommunications sector—both laws and enforcement—compromise the type of development the government needs to achieve in order to 'develop'. This argument will first require a background discussion of: (a) development, and its relationship to the law; (b) the advancement requirements of a country like Liberia to reach a stable level of development; and (c) an overview of how investment operates in Liberia—with an emphasis on the role that international donors play in the process. With this background in place, I will support my argument by demonstrating that current Liberian telecommunications laws offer a competitive advantage to international investors. Collectively, such a legal environment compromises the development requirements of a country like Liberia. This study will rely on reigning literature in law and development, the author's field research, research of major donor agencies, and reports of the Liberian telecommunications industry pertinent to the period covered by this study.

## **2 Background**

### **2.1 Liberia**

Liberia is a small West African country with a population of 3.8 million.<sup>2</sup> The average life expectancy is 45 years—if able to overcome one of the world's highest infant

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<sup>1</sup> World Bank, Beyond Economic Growth:  
[www.worldbank.org/depweb/english/beyond/global/chapter6.html](http://www.worldbank.org/depweb/english/beyond/global/chapter6.html).

<sup>2</sup> CIA Factbook Liberia (2011): <https://www.cia.gov/library/publications/the-world-factbook/geos/li.html>.

mortality rates)<sup>3</sup>. The average income is just US\$150 per annum)<sup>4</sup> and unemployment is a staggering 85 per cent.<sup>5</sup> Liberia did not always have low-income country status and was in fact classified as a middle-income country prior to 1980 (World Bank). Much of the deterioration is the result of the conflict over the country's vast resources and the subsequent mis-management of this wealth.

Dubbed the Great War, Liberia's civil conflict spanned more than two decades from 1979–2003 (Levitt 2005), and caused incalculable damage in its wake. Social, political and economic structures in Liberia were left in ruins; between 200,000 and 300,000 people were killed and upwards of one million persons were displaced (Loden 2007: 297). Human rights atrocities of grave depravity were abundant and some studies estimate that as many as 74 per cent of the women in Liberia are survivors of conflict-related sexual violence (IRIN 2004).<sup>6</sup> Suffice to say, the Great War devastated the social and economic landscape of this otherwise scenic West African state.

## 2.2 Law and development

To understand how Liberia's telecommunications laws are detrimental to the country's development prospects, we must first understand what is the relationship between law and development. To embark on such a complex inquiry first requires that we unpack the terms 'law' and 'development'.

### *Law*

Law represents different things to different people. To understand its substance and force, we have to unpack its meaning by asking four fundamental questions: (a) *where does the law come from?* (b) *what is the function of law, namely for whom does the law serve?* (c) *what is the force of law?* (d) *do laws actually affect behaviour?* Answering these questions will enable us to critique the rule of law project in Liberia vis-à-vis the telecommunications sector. From there, I will be better able to support this study's argument, namely, that as currently constructed, the legal framework controlling the telecommunications sector in Liberia may compromise the country's development.

### *Where does the law come from?*

To understand what a law is, we begin with the vast and ongoing debate about where a law comes from. In general, this debate is split into two camps; legal positivists and natural law theorists. Supporters of Natural Law argue that laws are manifestations of intrinsic rights of man. In his seminal work, *The Leviathan*, philosopher Thomas Hobbes outlines a system of natural laws that govern the order of man. These natural laws are normative, that is they prescribe what man *should* do in order to avoid a state of war. If such natural laws are followed, and enforced by a sovereign, Hobbes argues that this would save man from a destiny that would otherwise prove '...poor, nasty, brutish, and short...' (Hobbes 1998: 183)

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<sup>3</sup> UNICEF, Liberia at a Glance (2011): [www.unicef.org/infobycountry/liberia.html](http://www.unicef.org/infobycountry/liberia.html).

<sup>4</sup> World Bank Press Release (No. 2009/310/AFR).

<sup>5</sup> This data was established in 2003. Note that the unemployment rate does not include employment in informal sectors. World Food Programme (WFP): [www.wfp.org/countries/liberia](http://www.wfp.org/countries/liberia).

<sup>6</sup> IRIN in Refugee International Report (2004).

Legal Positivists, however, contend that laws are not representative of inherent rights, but rather are constructed—and that the *real* inquiry should be not in their substance but in their source. John Austin famously articulated that ‘...the existence of law is one thing; its merit and demerit another.’ (Austin 1995: 157) The preoccupation with the moral weight of laws is irrelevant to legal positivism. Whether a law is just or unjust, hence is not a real inquiry. Rather whether a law comes from a legitimate authority will dictate whether it is just or unjust. In his book, *General Theory of Law and State*, Hans Kelsen states that a law is:

...an order of human behaviour. An order is a system of rules. Law is not, as it is sometimes said, a rule. It is a set of rules having the kind of unity we understand by the system. It is impossible to grasp the nature of law if we limit our attention to the single isolated rule... every rule of law obligates human beings to observe a certain behaviour under certain circumstances... (Kelsen 1945: 3)

According to Kelsen, a law is a system of rules dictating how people *should* act in certain situations.

This study will use Kelsen’s definition of law for its discussion. The positivist perspective of Kelsen seems most appropriate for the Liberian context. As a former colony experiencing ongoing occupation, Liberian laws are products of exogenous construction. Moreover, whatever natural rights or morality-based laws incorporated in Liberia’s current legal order have all been determined in accordance with foreign (often Occidental) conceptions of nature and morality in mind. Unlike other countries with arguably more discursive legal origins, Liberia’s legal environment is almost entirely constructed from the outside. This is especially the case for those rules governing its economic sector.

*What is the function of law? For whom does the law serve?*

Following Kelsen’s definition of law, as rules that prescribe behaviour, we now look to the objectives of prescribing such behaviour. In the case of Liberia, a small exogenous elite has constructed the legal order to serve their ends. In his book, *The Discourse on the Origins of Inequality*, Rousseau describes how such elite-serving legal orders originally arose, stating as follows:

The first person who, having enclosed a plot of land, took it into his head to say this is mine and found people simple enough to believe him, was the true founder of civil society. What crimes, wars, murders, what miseries and horrors would the human race have been spared, had someone pulled up the stakes or filled in the ditch and cried out to his fellow men: Do not listen to this impostor. You are lost if you forget that the fruits of the earth belong to all and the earth to no one!

This passage demonstrates the power of rule-creation and how those who create such rules can do so to the detriment of the majority. Indeed, Rousseau’s political construction follows from the premise that laws are created by the few to serve their interests, and his subsequent political construction involves widening the sphere of law-making. Nietzsche takes an even more drastic pessimistic view of laws in his work, *The Genealogy of Morality*. Nietzsche goes as far as to say that laws are always created to serve the minority, in spite of direct democracy efforts advocated by the likes of

Rousseau. Liberian law—from colonialism to the present—was blatantly written to serve the interest of the foreign elite to the detriment of the indigenous majority population. Subsequent conflicts were fuelled by a keen interest in capturing the state in order to monopolize and perpetuate such rule-making.

In 1822, Liberia was founded by freed black-American slaves with the support of the US government. The creation of the Liberian state was conceived in the halls of the US Congress by a group called the American Colonial Society (ACS).<sup>7</sup> With funding and institutional support from the Americans, these freed black slaves arrived in what is now known as Liberia and forced their rule over the indigenous black population. The black slaves eventually took control of the government in 1847 upon the election of the colony's first black President, Joseph Robert Jenkins. The ACS played a pivotal role in the drafting of the Liberian Constitution, enacted in 1847.<sup>8</sup> This Constitution heavily restricted the social, economic and political liberties of indigenous Liberians. For example, indigenous Liberians were not permitted to vote unless they owned property—a restriction not placed on their American counterparts. Moreover, they were prohibited from holding public office, and their property ownership was restricted to the Hinterlands, which were less economically attractive lands located outside of the capital portcity, Monrovia.

The interests of the elite continued through Liberia's modern history, into the Taylor and Doe administrations. In an interview for PBS, former Assistant Secretary of State for African Affairs, Herman Cohen (1898-1993) discussed the savvy with which former President Samuel Doe (1879-1989) exploited the geo-politics of the Cold War to extract gains from the US government. The following exchange:

*Bright:* From the 1950s to today, what [changes] have we seen in [the relationships of Western governments to] Africa? Using Liberia as an example... [have the relationships changed] as a result of the Cold War?

*Cohen:* the Cold War kept impinging on that policy and made it very difficult to implement, so we were supporting certain governments that were clearly not going to use their assistance for development but use it for other reasons...the Cold War tilted us in favor of supporting [him] [President Doe] because we got reciprocal treatment...

Responding to some pressure to loosen the hold of his military regime, in 1984, Doe re-established civilian rule, and permitted elections to be held. Largely declared fraudulent by international monitors, Doe won the rigged elections; only five parties were legally

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<sup>7</sup> Following the American civil war, there were xenophobic concerns over what to do with all the newly-freed blacks. Some worried about the political effects that this demographic shift could have; others harboured generally racist reluctance in having blacks integrate into American society. The solution that arose was to send them back. Granted, the slaves who would ultimately make the trans-Atlantic journey had never been to Africa, much less a tiny coast on the Western end of the continent. However, the idea garnered support among whites and enterprising blacks alike, with the latter group seeking an opportunity to become landowners. (Levitt 2005)

<sup>8</sup> The Constitution is reportedly a product of Harvard Professor, Simon Greenleaf (University of Liberia 2009 at [http://www.universityliberia.org/ul\\_history.htm](http://www.universityliberia.org/ul_history.htm)).

permitted to run<sup>9</sup> (Global Security Organization 2007).<sup>10</sup> That same year, the country's second constitution was being drafted and circulated; in 1986, it was passed. This new constitution provided that all Liberians were to be treated equally. Restrictions on indigenous voting, for example, were removed.

By amending the constitution and permitting multi-party civilian elections, Doe was able to maintain his power. Demilitarizing the government was appealing to donors; never mind that Doe simply changed hats from military general to civilian president and that the multi-party system was declared un-free and unfair (Massing 2005). Moreover, that equal rights were included in the new constitution assuaged the majority indigenous Liberians that were Doe's principal support-base. This group remained poor during the Doe regime, much as it did under the leadership of the Americo-Liberians. Comprising less than five per cent of the population, Americo-Liberians continue to possess over 90 per cent of the country's wealth.<sup>11</sup> Despite constitutional reform efforts and legal mechanisms to devolve away power from Doe, in practice Doe was an authoritarian leader in Liberia until his murder by a Charles Taylor splinter group in 1990.

The legacy of law-creation to serve the elite's end was again demonstrated by Taylor. Charles Taylor, the warlord-statesman banked on a disillusioned electorate to usher in his leadership—and won. Garnering 73 per cent of a national vote—deemed free and fair by international monitors—Charles Taylor stole an estimated US\$368 million during his short tenure in office.<sup>12</sup> In an effort to best turn the country into 'Charles Taylor Inc.',<sup>13</sup> Taylor passed the Strategic Commodities Act in 2000 making the President the sole person responsible for awarding concessions of the country's abundant natural resources.

The current situation again demonstrates a pattern of the elite creating laws to serve their own interests. The only difference is that the elites have changed somewhat. At the end of the conflict, the international community (led by the WB, IMF, and the UN) had largely occupied the role of governing the country. The WB handled the economic policy of the country, the IMF all budgetary and fiscal matters, and the UN ran the day-to-day administrative tasks of governing. Upon the election of current President Sirleaf-Johnson, a barrage of legislation, most notably in the economic sector was drafted and rubber-stamped by the legislature;<sup>14</sup> Liberia's telecommunications policy arose from this period.

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<sup>9</sup> Assistant Secretary of State for African Affairs, Chester Crocker, testified before Congress that the election was imperfect but a step towards democracy. (PBS: Global Connections, 'Liberia and the United States: A Complex Relationship' 2002).

<sup>10</sup> Global Security Organization at <http://www.globalsecurity.org/military/world/war/liberia-1985.htm>.

<sup>11</sup> In Ofuately-Kodjoe's article entitled, 'Regional Organization and the Resolution of Internal Conflict: the ECOWAS Intervention in Liberia', the author notes that there are 12 Americo-Liberian families that essentially own and control Liberia.

<sup>12</sup> UN Security Council Resolution 1760 (2007) permitted investigation into Charles Taylor's 'Hidden Wealth'. Charles Taylor is currently on trial at The Hague and the details of his personal wealth are being increasingly revealed. (Global Witness 2009).

<sup>13</sup> Liberia was popularly referred to as Charles Taylor, Inc. because Taylor unabashedly turned the country into a personal fund ('Charles Taylor Manipulates West African Values'. New York Times, 2 April 2006; Coalition for International Justice, 'Following Taylor's Money: A Path of War and Destruction').

<sup>14</sup> Economic laws passed during this period were as follows, inter alia: Public Procurement and Concessions Act 2005; National Forestry Reform Act 2006; Liberia Telecommunications Act 2007.



At the time of the author's field research for this study, the capacity of the Liberian judiciary was tantamount to bankruptcy. There was no money to buy paper on which to write the judgments, chairs, on which magistrates and parties involved could sit, not even legal texts to create a semblance of continuity in judgments rendered.<sup>15</sup> Dealing with the complexities of competition policy as it relates to interconnectivity, for example, is arguably still beyond the capacity of the Liberian courts.<sup>16</sup> Liberia is largely dependent on foreign-aid to function. As a result, the Government of Liberia ('GoL') can do little to resist the imposition of laws being created for them by the donors. The telecommunication law in Liberia will be discussed in greater detail later. For now, it is helpful to contextualize this piece of legislation within those laws which were created to serve the ends of the constructors. In addition to the source and objectives of the law, understanding the law requires a brief discussion of the *force* behind laws.

### *What is the force of law?*

The force of law relies on an authority. This authority, in turn, punishes or rewards individuals who deviate from, or follow, respectively, these rules. In democratic states, as envisaged by Rousseau, for example, the public elects officials who in turn represent the public's general will when doling out rewards or punishments. The force of law in such a system is hence the electorate's right to hire or fire their representatives. In the case of Liberia, however, violence has generally been the force behind the laws. In his book, *Liberian Politics: the Portrait by African American diplomat J. Milton Turner*, Hanes Walton discusses how land disputes in post-colonial Liberia were resolved.<sup>17</sup> Predating the arrival of the Americans, communal property was principally exercised in Liberia. The Americo-Liberians and the US systematized and privatized property upon arrival, thus disrupting the customary legal system. Walton discusses the instability that resulted from this judicialization:

'Violent protest tends to emerge when normal political channels have been blocked or closed off to certain segments of the population. Liberia was no exception and had a built-in foundation for such activities to emerge given its native population... The Grebos (an aboriginal tribe) had a longstanding dispute over ownership of land at Cape Palmas, dating back to 1857. Since no satisfactory solution had been effected during an eighteen-year period and the Americo-Liberians seemed content to treat the land as their own, the Grebos resolved to take the land back by force. They claimed to have never relinquished said lands (a fact seemingly supported by their custom of treating land as community property). At any rate, in September 1875, there appeared to be an all-out-war being waged by the Grebos.' (Walton 2002: 86). US Diplomat Turner would later

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GEMAP (Governance and Economic Management and Planning) is one of the most intrusive economic laws passed, whereby a foreign official is placed in revenue-generating government ministries to sign-off on every and all actions related to revenues and purchases.

<sup>15</sup> As of September 2007, there were two sets of Liberia's legal code, both owned by the American Bar Association, one of which was on loan to the Liberian Bar Association. However, a copy of the Financial Code which addresses all economic crimes was suspiciously missing and not even the Ministry of Finance could find an updated version.

<sup>16</sup> This is one of the issues included in the Liberian Telecommunication Act and is a common source of dispute in the telecommunications sector.

<sup>17</sup> Walton's archival work tracks the correspondences between US diplomats stationed in Liberia and the State Department.

request that the US send a warship to protect US property interests; the *USS Alaska* was subsequently sent and the Grebos were defeated (Walton 2002:87).

The use of violent force to facilitate obedience persisted through Liberia's leadership; Charles Taylor's rule epitomized this trend. Taylor became the executive of Liberia in the 1997 elections, which largely were declared free and fair by international monitors. Taylor ran on a campaign slogan that said: 'He killed my ma, He killed my pa, I will vote for him' (Left 2003). This statement was read as a threat to Liberians, such that if they did not vote for Taylor, he would resume his attack on the country.

The enforcement of laws remains undemocratic but varies slightly in post-conflict Liberia. At the drafting of the Accra Peace Accord,<sup>18</sup> for example, the parties involved would incite violence in order to gain advantage in the negotiations (Hayner 2007: 14). It is not surprising, hence, that those most responsible for the conflict have largely gone unpunished. As for the enforcement of laws in contemporary Liberia, Liberian state agencies understand that should they resist passing the laws encouraged by the donor-community, they risk losing the funds that prop up the Liberian economy.<sup>19</sup> The Liberian governing elite continues to skim off the top of even the donor funds. For example, former interim President (during Liberia's transition from 2003-2006) was charged with embezzlement for allegedly misappropriating US\$1 million during his short stint in office; he was subsequently arrested for failing to appear at his hearing (Colombant 2007). The Liberian elite cannot literally or politically afford a donor freeze.

Whilst the theoretical debate about the substance, purpose and force of law remains unsettled, in Liberia a small foreign elite has and continues to construct Liberian laws in order to serve their own interests. This behaviour is largely held responsible for the 14-year conflict and devastating conditions in which the country finds itself (Gitau 2008). When met with possible resistance, law makers have resorted to violence and threats against the public to enforce these laws. This is not new for authoritarian regimes, but it is compelling when the government has and continues to purport itself as a democracy. Democracy creates public expectations as regards the public's involvement in the law-making process. Law-making in contemporary Liberia occurs largely without the consent of the general public. It is especially important to keep in mind what the law is in the Liberian context when probing the laws written to exploit the country's resources.

#### *Do laws actually affect behaviour?*

Above, we discussed the power of laws. We discussed how despite the level of authoritarianism that the various governments exercised, they nevertheless proliferated laws to consolidate their power. One argument for the power of a law is the power to legitimize one's rule—even if entirely rhetorical. In his article 'Why the Judicial Annulment of the Constitution of 1999 is Imperative for the Survival of Nigeria's Democracy' Tunde Ogowewo discusses the legitimizing effect of laws. His research

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<sup>18</sup> This is the most recent peace agreement that ended the civil conflict in Liberia.

<sup>19</sup> According to the World Bank, per capita public spending in Liberia is one of the lowest in the world, at US\$68 in Fiscal Year 2009/2010, making Liberia highly dependent on foreign aid. World Bank Country Results Profile at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/LIBERIAEXTN/0,,contentMDK:22897948~menuPK:356213~pagePK:2865066~piPK:2865079~theSitePK:356194,00.html>

looks at *coups d'états* and their relationship with the judiciary. Ogowewo observed that authorities that entered office through *coups* would immediately remove the legislative and executive branches, but leave the judiciaries intact. Ogowewo contends that this was done to legitimize the regime; more surprisingly he found that the judiciary wilfully went along with the legislation, not for fear of corporal punishment, but rather to maintain financial and social benefits (Ogowewo 2000). Ogowewo's research indicates that regardless of how authoritarian a regime may be, they still rely on laws to legitimize and consolidate their power. This is one likely explanation for why in Liberia, despite the monopoly on violence and the willingness to use it to enforce laws, authorities still proliferate laws. The power that laws have stems, in part, from the word law itself which implies legitimacy in form, even if impetuous in content. The power of laws, in part, underpins the law and development movement and serves as an opportunity for those reformers keen to proliferate laws to help in Liberia's post-conflict development.

### *Development*

Having unpacked the meaning of law, we will similarly deconstruct the notion of development. Like the law, there are competing conceptions of what constitutes development. There is the issue of relativity: what is measured as 'development' in Zimbabwe<sup>20</sup> may not be considered development in Norway. Moreover, there is the issue of what to use as the standard of development, namely, against what standard do we measure whether a country has developed? And furthermore, the pragmatic difficulty of measuring development, namely, how do we overcome the problem of evidence-gathering endemic in 'under-developed' and 'developing' countries. Lastly, how do we effectuate development?

### *Theories of development*

Development, as it is commonly used, implies improvement of one's current condition. However, there are various aspects of one's condition that may require improvement—and the pursuit of one improvement may undermine the pursuit of another. For example, increasing workers' productivity may harm social structures like the family; legislation to attract foreign investment could adversely affect local political participation in the private sector and hence weaken the public's political influence. The decision to prioritize one development objective over another requires tailoring to local needs.

Traditionally, development has been measured by economic factors. A growth in GNP, a rise in personal incomes, and an increase in national savings rates and personal incomes, are often used to determine whether a country is developing or not (Sen 2001: 3). This process ignores human factors, such as infant mortality, illiteracy rates, and life expectancy, which tend to characterize underdeveloped states. In his book, *Development as Freedom*, Amartya Sen stresses the use of the latter measures for development. Sen articulates development as: '...the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their real agency...'.

He argues that development requires the removal of sources of 'unfreedoms' such as poverty, tyranny, poor economic opportunities, and social deprivation, for example (Sen

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<sup>20</sup> The 2010 UNDP HDI placed Norway at the top and Zimbabwe at the bottom of its annual list of human development at <http://hdr.undp.org/en/statistics/>.

2001: 3). Sen contends that though the economic indicators noted above can facilitate the expansion of freedoms, these freedoms depend on other factors such as social and economic arrangements as well as political and civil rights and should not be trickle-down by-products of economic development objectives.

Complementing Sen's definition of development as freedoms, economist William Easterly describes the process of incorporating more human factors into the development model to achieve overall development. In his book, *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics*, Easterly looks beyond economic indicators to gauge development. Easterly's theory of 'complementarities' looks at levels of education, civic culture, and politics, and contends that ultimately these factors lead to the creation of certain institutions which beget economic outcomes. Easterly uses his 16 years of experience working for the World Bank to deliver insightful information and amusing anecdotes of how World Bank programmes fell short of achieving development. As principal implementers of the policies derived from the Washington Consensus,<sup>21</sup> the World Bank spent billions of dollars in developing countries trying to realize the economic indicators noted above. Easterly notes how such programmes ignored the significant role of personal incentives and often resulted in wasted resources, where "...capital is spent on useless dams, educated citizens become lobbyists and kids use the condoms as water balloons..." (Easterly 2002). What Sen and Easterly both point out, respectively, is that the traditional notion of development is not to be taken as truth, and, furthermore, may not be tenable. Indeed, if we look at the recent research conducted by Zambian economist Dambisa Moyo, in her book, *Dead Aid*, she points out the economic development objectives have largely been failures. Her research focuses on the African continent where US\$1 trillion has been spent on aid and development to little discernible advancements in the economic conditions of the continent, per Washington consensus economic measures (Moyo 2009).

In addition to competing technical definitions of what constitutes development, there are also cultural notions to consider when characterizing the term. As previously noted, development implies improvement—indeed, a progression to a better life. What constitutes 'a good life' is loaded with culturally-specific undertones. For example, the Washington Consensus indicators, advocated by the Bretton Woods, loosely equate 'the good life' with the American life. Whilst there are undoubtedly positive aspects of the American life, it is impossible to decide that it is categorically better than the Senegalese life, for example, and hence that the former should replace the latter.

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<sup>21</sup> Fiscal policy discipline; redirection of public spending from subsidies ('especially indiscriminate subsidies') toward broadbased provision of key pro-growth, pro-poor services like primary education, primary health care and infrastructure investment; tax reform—broadening the tax base and adopting moderate marginal tax rates; Interest rates that are market determined and positive (but moderate) in real terms; competitive exchange rates; trade liberalization—liberalization of imports, with particular emphasis on elimination of quantitative restrictions (licensing etc.); any trade protection to be provided by low and relatively uniform tariffs; liberalization of inward foreign direct investment; privatization of state enterprises; deregulation—abolition of regulations that impede market entry or restrict competition, except for those justified on safety, environmental and consumer protection grounds, and prudent oversight of financial institutions; and legal security for property rights.

### *Development in Liberia: what is the objective?*

In our attempt to understand development, it was noted that development has competing claims. There is the traditional position of economic development, where technical economic indicators are measured to gauge progress. Conversely, there are the approaches advocated by Easterly and Sen that expand the notion of development to include social and political life. Furthermore, Gal's work discusses the distinct development needs of small countries, like that of Liberia, and demonstrates how their needs differ from those of larger countries. The scope of this study does not attempt to articulate what Liberia's development priorities are. However, there are certain characteristics about the social and political history of Liberia that might not be accounted for in a strictly economic development framework. Specifically, I refer to the marginalization of the vast majority of the Liberian electorate from participating in political and social life as a result of colonialization by Americo-Liberians, and US collaboration with the creation of the colony and its involvement during the Cold War. Moreover, there are the post-conflict concerns that warrant immediate attention, such as employment of ex-combatants and civilians, and access to food, clean water, shelter, and basic sanitation amenities. Such pressing concerns may not have the patience to wait for trickling-down fruits born from macroeconomic development plans. To enhance the public participation in government, and meet the immediate needs of the majority of Liberians, what constitutes development in Liberia will have to account for the specificities of the country's current conditions. I do not dispute that steps are not currently being taken to tailor development to fit Liberia. However, I do contend that the Liberian Telecommunications Act—as an instance of Liberian law—potentially undermines such development, or at the very least could better support local economic, political, and social development in Liberia. The development of an efficient telecommunications sector in Liberia not only stands to profit businesses, but to benefit Liberian people in a more direct way as well. To break away from Liberia's legacy of exogenous law creation and enforcement, it is critical that the interests of the private do not smother the interests of the public in the drafting and enforcement of the LTA. Only in so doing will Liberia be better equipped to meet its unique development needs.

The next section provides an overview of the law and development movement. It is important to keep in mind the competing notions of development when analysing the successes and/or failures of the law and development movement. As regards the case of the Liberian telecommunications sector, the telecommunications policy reflects the triumph of its constructors over average Liberians. As such, it imposes a Western conception of development that I contend will realize the same outcome as the ill-fated condom distribution programmes that Easterly describes.

### *The law and development movement*

The law and development movement dates back to the 1960s. Various American institutions such as USAID and the Ford Foundation instigated the movement to attempt to reform the judicial systems and substantive laws of Africa, Asia and Latin America in an effort to spur development in those regions. A principal assumption underpinning this movement was that law could spur development. Note that economic development remained a sought after development objective. The intellectual foundation of the movement was grounded in Weber's Modernisation theory which assumed that 'evolutionary progress would ultimately result in legal ideas and institutions similar to

those in the West' (Tamanaha: 473, in Schmidbauer 2006: 3). From this theory, three fundamental assumptions were made:

- (1) Law is central to the development process and that legal rules could be used as an instrument for changing society and its behaviour towards the Western model;
- (2) The state played a central role for controlling and changing a society. As a result, lawyers and judges were seen to be performing the role of social engineers;
- (3) Target countries would adopt American legal culture without any complications. (Schmidbauer 2006: 4).

By the 1970s the movement was declared a failure. As Schmidbauer cites in his article, 'Law and Development: Dawn of a New Era?' there were 'many and various' reasons for the failure (Schmidbauer 2006: 4). Schmidbauer cites three general categories of said reasons. First, the assumption that American legal culture would be easily adopted proved fallacious. America's 'legal liberalism' did not end up fitting into the legal culture of the target countries. For example, the policy-making roles played by lawyers and judges in the US did not generally correspond with the roles of adjudicators in the developing states (Schmidbauer 2006: 5). The second principal reason for the failure of the law and development programme was due to an absence of buy-in by local actors. Schmidbauer notes that there was a lack of substantial participation of lawyers and relevant actors in the countries affected by the proposed reforms (Schmidbauer 2006: 5). The third principal explanation for the failure of the movement is argued to be the lack of a theoretical framework governing the process. As Schmidbauer notes, the American lawyers involved in implementing the programmes were '...doers not theorists...' (Schmidbauer 2006: 5). This preference for action rather than empirical data is said to have largely accounted for the failure. Despite the failure of the law and development programme, it has nevertheless experienced a resurrection.

The law and development movement alleges to have remedied past errors of research and implementation. Driven largely by economists, proponents of the revival are equipped with economics and econometrics models to assert their theoretical validity; likewise, the approach is alleged to be more bottom-up, in order to account for cultural obstacles to the legal movement. There is a great deal of optimism for the return of the law and development movement. For example, since 1990, the World Bank (the principal actor in the law and development movement) has spent US\$2.9 billion on over 300 law reform projects around the world (Trubeck 2006). However, the revival is not without its critics. In his article, 'What can the Rule of Law Variable Tell us about Rule of Law Reforms?' Kevin Davis cautions us to curb our enthusiasm. Davis investigates the indicators used to measure the success of law and development programmes proliferated by the movement's economists; specifically, he focuses on the legal data used to measure aspects of the legal system. Davis points out that the research on which current optimism relies, suffers severe methodological flaws. For example, whilst examining the legal data for the World Bank's annual 'Doing Business' report<sup>22</sup> he finds that 'mislabelling' distorts the Report's data. For example, as regards the 'Enforcing

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<sup>22</sup> The World Bank's annual 'Doing Business' Report is considered an industry standard in measuring the law and development movement.

Contracts' indicator of the report,<sup>23</sup> Davis notes that the label is misleading since it implies a much broader category than the report actually quantifies. While the category seems to broadly include the enforcement of contracts in general, what is actually measured is just the enforcement of one specific type of contract, namely loan contracts (Schmidbauer 2006: 15). It is important to keep in mind that despite their differences in implementation, these two phases of the law and development movement share the intellectual origin of the Modernisation movement, which identifies development as mimicking life in the Occident. Davis' scrutiny of the data used to support the law and development movement is important and requires serious contemplation. However, scepticism does not appear to have heeded many followers in practice. As Davis himself points out,<sup>24</sup> the explosion of rule of law programmes indicates otherwise.

### 2.3 Rule of law

In 1989, Professor Tribe, one of the US' premier scholars of constitution law wrote '...the rule of law... has precious few sophisticated defenders these days'... (Tribe 1989 in Ohnesorge 2007: 1). Little did Tribe anticipate that law and development would experience an intellectual revival and one of its instruments, i.e. the rule of law, would become standard practice.

In his article entitled 'The Rule of Law', John Ohnesorge outlines competing notions of the practice and how the practice has developed over time. He concedes that the rule of law has no one agreed definition, but rather that rule of law programmes '...typically address the formal characteristics of the materials of the legal system, emphasizing the value of rules rather than discretionary standards, and calling for clarity, specificity, and publicity'... (Ohnesorge 2007: 4). Ohnesorge uses Hayek's definition to articulate his description. Hayek defines the rule of law as follows:

[The rule of law means], stripped of all technicalities, the government in all actions is bound by rules fixed and announced before-hand-rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge. (Hayek in Ohnesorge 2007: 4)

In his oft-cited work, *The Rule of Law Revival*, Thomas Carothers outlines the rule of law explosion and cautions that political reluctance threatens its success (Carothers 1998). As Carother notes: 'One cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles... the concept is suddenly everywhere—a venerable part of Western political philosophy enjoying a new run as a rising imperative of the era of globalization.' (Carothers 1998).

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<sup>23</sup> The World Bank's annual 'Doing Business' Report ranks countries according to the ease or difficulty it is to do business there. The report uses the various steps usually required to set up a business, such as title to land, judiciary protection, and access to credit- and examines how easy or arduous it is to realize these steps. The enforcement of contracts is one step in facilitating business in a given country and as such is used as an indicator in the report.

<sup>24</sup> Davis, K. 'The Relationship Between Law and Development: Optimists versus Skeptics'. 2008.

The ubiquity of these programmes is evident in the amount of spending and the proliferation of the programmes. Over the past two decades, billions of dollars have been used in Latin America, sub-Saharan Africa, Central and Eastern Europe, and Asia to institute such programmes (Carothers 1998)

### *Application of the rule of law in Liberia*

Liberia is no exception to the panacea of the rule of law movement. Since the UN intervened in Liberia, the UN and its agencies have administered an extensive rule of law programme across the country. Nearly every international NGO has a rule of law programme buried within its panoply of public health, child-soldier, and good governance agendas. Former US President Jimmy Carter's Carter Center plays a major role implementing Liberia's rule of law programme through the Carter Center. President Carter wrote a piece for the Harvard International Review entitled 'Reconstructing the Rule of Law: Post-Conflict Liberia' in 2008 attributing the Liberian conflict to a breakdown in rule of law, and supporting the merits of instituting such programmes to remedy post-conflict Liberia. Part of the rule of law programmes in Liberia involves re-examining the legal framework of the extractive industry sector.

The cause of the Liberian conflict is largely attributed to a contest to control the state and, more importantly, its resources (Gitau 2008). Liberia is rich in natural resources, such as timber and rubber. However, focusing exclusively on strengthening rule of law in the extractive industries is unlikely to strengthen the rule of law governing state resources. There is a great deal of money to be made where the government is required to broker deals; indeed, any business deal that requires the interface of government permission and private actors will generate revenue.<sup>25</sup> Rule of law efforts to date are weakened by their narrow focus on regulating, primarily, extractive natural resource industries.

With a population of only 3.5 million, Liberia has enough resources to elevate Liberians to a reasonable standard of life. Though not a natural resource *per se*, Liberia's telecommunication sector is nevertheless capable of turning out huge profits that could enrich the people. Charles Taylor recognized this economic potential; part of his fortune was made from his monopoly of telecommunications services through his company Lone Star Communications.<sup>26</sup> Moreover, the process that government plays in the telecommunications sector parallels its role in more traditional extractive industries, as this role relates to the distribution of permits, concessions and licenses. For example, the government is charged with doling out concessions for the use of the telecommunications spectrum, and licenses for service provisions. Most importantly, the government accepts bids for the construction of telecommunications infrastructure; this is a significant profit-making aspect of the sector. Rule of law programmes are widely and broadly applied in Liberia and should be further broadened to include the telecommunications sector. The proliferation of legislation since the end of the conflict indicates the popularity of rule of law programmes. However, there are limitations to

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<sup>25</sup> Liberia's principal revenue generating industries are rubber, timber, shipping licensing, and telecommunications. Although not natural extractive resources, *per se*, the issuance of shipping licenses and concessions for telecommunications services are major revenue sources.

<sup>26</sup> The Coalition for International Justice wrote a forensic accounting report of Charles Taylor's finances. The report estimates that Taylor profited US\$1 billion from his company Lone Star Communications. (CIJ 2005).



rule of law programmes—not only in practice, but in theory. The next section explores the critiques of rule of law, asking the question do rule of law programmes actually work?

*Does rule of law actually work?*

### *Theoretical critiques*

The rule of law movement functions on an assumption of rationality. In his seminal work, ‘New Institutional Economics and Third World Development’, Douglass North advocates for institutional creation as a means of realizing economic development. North begins his discussion with a critique of the traditional neo-classical framework of instrumental rationality. With instrumental rationality, ‘institutions are unnecessary; ideas and ideologies do not matter; and efficient markets—both economic and political—characterize economies’ (North 1995: 17). North contends that although neo-classicalist may be right in theory, they suffer a fundamental flaw in practice, namely, that transactions are not costless (North 1995: 18). As a result, carefully crafted institutions must be created to facilitate information flows among actors, thereby reducing transaction costs. ‘Institutions...’ North declares, ‘are the rules of the game’ (North 1995: 23). North’s model advocates that governments play a role in the economic development of a country—an outcome distinct from a strict neo-classical school of thought which frowns on government involvement. The role of government in North’s case is as a law maker. The laws proliferated in rule of law programmes are the ‘rules of the game’ to which North famously refers. However, the research done in the school of Behavioural Law and Economics (BLE) has demonstrated that there are behavioural components to humans that frustrate the rational choice model.

The BLE movement looks at certain human actions that deviate consistently from what the rational choice model would otherwise predict. Rather than discount such deviation as irrational (per the rational choice framework) BLE takes a closer look to explain why certain patterns of deviation arise. In general, BLE has found that misperception and misinformation accounts for a number of common deviations (Bar-Gill 2008)<sup>27</sup>. As regards laws, Becker’s Nobel Prize winning work on deterrence has been contested by BLE. Becker assumes that the decision to commit an offense, or not, depends on two factors: (1) the probability of apprehension and (2) the magnitude of the sanction. He argues that in order to achieve optimal deterrence, we should maximize the magnitude of the sanction. BLE contests Becker’s finding on empirical grounds—namely that we do not, in practice, see maximum fines imposed for minor offenses like littering, for example. On theoretical grounds, studies have indicated that humans tend to misperceive the risk of apprehension: that is, they tend to underestimate the likelihood of getting caught. North’s model takes into account the information gaps inherent in the rational choice framework, but fails to look at the misperception that those affected by laws make in terms of decision-making as to how they should or should not act. That the rule of law movement rests on a precarious theoretical foundation undermines the likelihood that it will deliver the results its proponents promise.

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<sup>27</sup> Reference to Professor Oren Bar-Gill are of the lectures he delivered in his course on Behavioural Law and Economics at NYU in the spring of 2008.

### *Practical critiques*

Despite the questionable assumption upon which the rule of law rests, we cannot deny the powers of law, however spurious. Ogowewo's findings as previously discussed demonstrate that contests for power are contests for law creation. Whether or not the subsequent laws *actually* affect behaviour, is questionable, as demonstrated by the theoretical weakness of the rule of law. However, there appears to be a general perception that whoever writes the rules of the games exerts control over the game.

Carothers goes beyond merely describing the rule of law phenomenon. He discusses factors that rule of law programmes overlook, that, in turn, compromise the success of such programmes. The underlying premise of these development programmes is that creating a legal framework—equipped with clear laws and enforcement authority—will aid in the economic, social and political development of recipient countries.

Carothers distinguishes rule of law from rule *by* law, to demonstrate that the mere institutionalization of a legal order will not necessarily render development. Whereas in rule of law systems, laws apply *equally to everyone*, in rule *by* law programmes, 'the laws exists not to limit the state but to serve its power' (Carothers 1998: 97). In the latter model of legal orders, the government often stands outside of the realm of enforcement and instead enforces the laws against the citizens. Carothers's rule by law category is reminiscent of the Rousseau and Nietzschean theoretical assertions previously discussed—where the elite create laws to serve their interests and are not subject to them. Carothers stresses rule of law practitioners to be wary of basing the success of a rule of law programme merely on technical aspects (i.e. proliferation of laws and institutions), but to ensure that there is public participation in the process in order to avoid a rule *by* law scenario. As Carothers notes: 'Citizens must be brought into the process if conceptions of law and justice are to be truly transformed.' (Carothers 1998: 96).

In addition to the practical obstacles that may arise should practitioners ignore public participation, there are also cultural obstacles to be overcome. North himself admits that culture plays an important role in the successful implementation of rule of law projects. He cautions against exporting boiler plate models of one set of laws modelled for a particular country, to another country. North states that: '...societies that adopt formal rules of another society...will have very different performance characteristics than the original country because both the informal norms and the enforcement characteristics will be different.' (North 1995: 25).

Moreover, there is an entire literature critiquing development programmes, in general, for failing to account for local buy-in. In their book *Africa Works: Disorder as Political Instrument* (1999), Chabal and Daloz propose an alternative methodology to effectuate better buy-in. Chabal and Daloz propose that rather than adopting the traditional position—where an implementer stands within his own culture and postulates about another culture to determine whether something is amiss—implementers need to immerse themselves in the political life of the target country. Only then will the implementer have a sense of not only the informal but the formal orders as well, and be better equipped to prescribe solutions. This more empathetic understanding is implied to render more successful project outcomes.

As regards Liberia's telecommunication sectors, there was little 'immersion' on the part of the law's advocates and implementers to conform to Chabal and Daloz' methodology. The practical obstacle of cultural dissonance is characterized by the rule of law programme in Liberia as it relates to the telecommunications sector. The next section discusses Liberia's telecommunications sectors. First, I will give an overview of how the Liberian Telecommunications Act was realized. Second, I will outline telecommunication's legal framework. Last, I will demonstrate how this framework compromises local Liberian economic development.

### **3 The Liberian telecommunications sector**

The telecommunications sector in Liberia is governed by the Liberian Telecommunication Act of 2007. An independent regulatory agency, the Liberian Telecommunications Authority (LTA), was also established in 2007 to oversee the sector and implement the Act. These legal tools were part of a proliferation of laws that were created following Liberia's conflict in order to govern the country's revenue-generating industries.<sup>28</sup> The World Bank played a major role in the creation of the legal framework governing Liberian telecoms. In earlier sections the creation of laws in Liberia was discussed, and how these laws have arguably run counter to the development demands of the majority of Liberians. The laws governing Liberian telecoms are, unfortunately, no different. The new telecommunications laws delegitimize the informal economy and, as a result, directly compromise the development goals of Liberia.<sup>29</sup> Moreover, the laws do not *and cannot* remedy the monopolistic tendencies of the country's telecommunications sector, despite the threat that such a tendency poses to national stability. As such, the legal framework governing telecoms demonstrates, once again, a conscious decision to ignore the articulated interests of the vast majority of the Liberians and instead serve the small elite and the outsiders who write the laws to suit their ends.

#### **3.1 Overview of the Liberian telecommunications sector**

The telecommunications sector in Liberia is limited but has a great deal of potential for growth. The regularly updated CIA Factbook (2009) describes the sector as follows:

*'general assessment:* the limited services available are found almost exclusively in the capital Monrovia; coverage extended to a number of other towns and rural areas by four mobile-cellular network operators

*domestic:* fixed line service stagnant and extremely limited; mobile-cellular subscription base growing and teledensity approaching 20 per 100 persons.'

Following the conflict, there was genuine concern that, because the telecommunications sector was a significant revenue-generating industry, it posed a threat to Liberia's

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<sup>28</sup> Public Procurement and Concessions Act, 2005; National Forestry Reform Act, 2006; Liberia Telecommunications Act, 2007.

<sup>29</sup> Economist Dambisa Moyo calls this process the 'micro-macro paradox', where a '...short-term efficacious intervention may have few discernible, sustainable long-term benefits. Worse still it can intentionally undermine whatever fragile chance for sustainable development may already be in play...' (Moyo 2009: 44).

stability. Historically, conflicts in Liberia have arisen because of contests for control of the state's revenue-generating sector. Charles Taylor's telecommunications monopoly, Lone Star Communications generated US\$38 million per year, of which US\$12 million was Taylor's share (CIJ 2005:11). Taylor was able to profit handsomely from the sector, despite the sector's derelict state, and the fact that Lone Star only provided one service, among the panoply of services available in telecommunications. There is still much room for improvement in the laying of fixed lines to facilitate higher teledensity and increase access to internet services. For the Liberian telecommunications sector to enhance their services, additional fixed lines will have to be installed throughout the country. Such infrastructure projects are the principal money makers in the telecoms sector. As such, they incentivize conflicts for control of the state.

### *Profit potential*

### *Financial gains*

Despite the tumultuous past of Liberian telecommunications, and the increased number of competitors in the sector following the war, there is room to make sizeable profits. Telecommunications is the transmission of signals over a distance for the purpose of communication. Telecommunications is, hence, more than providing services to the national population in the form of mobile phone communication. It involves the sale of spectrum allocation, and infrastructure building of landline and subterranean cables which facilitate the internet. To give an idea about how much is at risk, we can look to telecommunications deals currently being made around Africa. In October 2008, Britain's Vodacom took control of South Africa's leading mobile operator, in a deal worth £1.4 billion (approximately US\$2.5 billion at the time); Mubadala, part of the Abu Dhabi sovereign wealth fund, bought a license to operate mobile, fixed line and broadband services in Nigeria for US\$400 million in 2007; and the private equity funded project SEACOM<sup>30</sup> was contracted for US\$700 million and has already listed US\$300 million in business returns on the investment—despite not being fully constructed. As Matt Glynn, head of technology, media and communications for emerging markets for DLA Piper stated, as regards African telecommunications: 'Africa is huge for us...whether or not there's a sub-prime crisis in the US has little bearing on whether people need to use their phones over here.' (Chellel 2009).

The meeting point of high demand and low supply has created opportunities for wealth creation in the telecommunications industry in Africa.<sup>31</sup> In addition to Glynn's comments, I spoke with a senior executive at France Telecommunication who reported that Africa is similarly the subject of a new strategy plan for one of the world's largest telecommunications operators. As of 2007, the number of mobile phone subscribers tripled in developing countries over the preceding five years according to UNCTAD (Information Economy Report 2007).<sup>32</sup> Furthermore, Africa recently reached 400 million mobile subscribers, making its market larger than that of North America

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<sup>30</sup> SEACOM is a project which will build a high-speed subterranean cable line with landing sites in South Africa, Mozambique, Tanzania and Kenya. ([www.seacom.mu](http://www.seacom.mu))

<sup>31</sup> Annual International Telecommunications Union report reports that the bottom ten countries in the world as regards telecommunications development are all located in Africa. Conversely, Africa has the highest growth rate in the sector of all emerging markets in the world. (ITU Report 2008)

<sup>32</sup> [http://www.itu.int/ITU-D/ict/publications/idi/2009/material/IDI2009\\_w5.pdf](http://www.itu.int/ITU-D/ict/publications/idi/2009/material/IDI2009_w5.pdf).

(Essoungou 2011). France Telecommunications is still looking to double its revenue in Africa, focusing on accessing rural customers on the continent.<sup>33</sup> This goal of doubling the customer base follows the pursuit of a similar posture in 2007, which resulted in the win of two major bids in Kenya and Ghana—two major urbanizing countries in East and West Africa.<sup>34</sup>

The potential for windfall profits in telecommunications, coupled with the legacy of corruption and conflict in telecommunications, should invite added scrutiny in the drafting of telecommunications law by Liberian policy makers. However, attention to telecommunications law, to date, seems to be largely from the outside. The World Bank, for example, addressed Liberia's telecommunications sector and was instrumental in advising the development of the legal framework for the industry. In theory, the view of the role that the government *should* play in the telecommunications sector is split between whether the government should play a large or a small role, or alternatively, no role at all. In practice, most governments do regulate the sector—albeit to varying degrees. Nevertheless, the World Bank has, and continues to, push for privatization of the income-generating sectors in developing countries (Levy 1996), telecommunications in Liberia included. The WB supports the notion that government should play a role—in the short term only and to the extent that it facilitates competition in the sector.<sup>35</sup> In Liberia, the WB has expressly sought as much privatization of the sector as possible (Seeton 2009). The telecommunications sector has a great deal of potential to profit, not only companies, but Liberian individuals as well. However, dictating where that profit will go depends on the regulators, whose job is confounded by the inherent proclivity of the organization of the telecommunications sector itself.

The telecommunication sector lends itself to the creation of monopolies. As noted, the Liberian telecommunications framework needs a significant facelift before a resident of Monrovia can chat and e-mail freely with a relative living in the rural areas. Telecommunications infrastructure is a one-time and costly upfront investment; the firm that lays the infrastructure has every incentive to monopolize and block competitors from free-riding on its investment. Pursuant to Michal Gal's research, small markets like Liberia may further encourage monopolies or oligarchies given that the country's telecommunications demand (at least in the short-term) is limited to 3.8 million people.<sup>36</sup> The profit to be made similarly incentivizes companies to explore illicit means of attaining government bids. Given the potential for profit and perversions inherent to the telecommunications sector, it is important that the GoL safeguard against these risks and play a significant role in curbing such detrimental tendencies. Fully privatizing the industry cannot prevent or thwart anti-competitive behaviour. To the contrary, removing government involvement is likely to exacerbate the problem.

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<sup>33</sup> Financial Times, 'France Telecommunications Targets Rural Africa' 9 Nov 2010 at <http://www.ft.com/cms/s/0/ea15780c-ec26-11df-9e11-00144feab49a.html#axzz1Nt7VuHhF>

<sup>34</sup> Note that the bid won in Kenya was to acquire 51 per cent of TelKom, the country's incumbent nationally-owned server; this privatization cost France Telecommunications US\$390 million (Mullen 2007)

<sup>35</sup> The World Bank's "Telecommunications Regulation Toolkit" advocates liberalization of the sector that does not preclude regulation- in the short term. The WB notes that in the short term, regulators can facilitate a competitive environment. Deregulation as the ultimate goal is not ruled out. (WB Telecommunications Regulation Toolkit 2009).

<sup>36</sup> Gal's research looks at competition laws in small countries, and the unique obstacles that said states face in implementing anti-trust regimes that are modeled on larger countries. (Gal 2006).

In addition to the anti-competitive incentives inherent to telecoms, additional risks to the profit potential of Liberia are risks to investment. However, it is important to distinguish between perceived risk and actual risk. The international intervention in Liberia has been significant. Not only was there a large peace-keeping contingency deployed in the country, but the day-to-day operations of the state are coordinated in concert with the international community to a great extent—given aid dependence *inter alia*. The United Nations Mission in Liberia (UNMIL), which is in charge of the peace keeping, has a renewed mandate through the 2011 elections. However, even UNMIL aside, the international presence will remain in Liberia for some time. Renewed conflict that would destabilize investment is unlikely as long as there exists such an international presence. Moreover, as previously noted, the rule of law programme in Liberia is driven and administered by the international community, and is extensive in Liberia. Foreign investors have sympathetic channels through which they can appeal should an investment dispute arise. That said, I contend that the perceived risk of doing business in Liberia is greater than the actual risk. Taking the aforementioned risks into account, suffice to say that the Liberian telecommunications sector has the potential to render profits. If such profits are reaped in a responsible and accountable manner, the lives of the country's 3.5 million people would be substantially improved.

### *Social gains*

The Liberian telecommunications sector is undoubtedly profitable and will increase the revenue of the Liberian government. Assuming corruption does not skim too much off the top, these added revenues should be helpful to the government in providing the Liberian public with great political, economic and social freedoms, not previously afforded under previous leaderships that co-opted the state. Moreover, in theory, jobs will be created for Liberians that would otherwise not have been employed. This development of the formal economy lends benefits to Liberians, albeit in a trickled-down manner.

The development of telecommunications similarly lends itself to more populist benefits as well. Rural inhabitants can better sell their wares and services to market. Phones have the capacity to facilitate banking transaction; in Kenya mobile phones are increasingly equipped with banking capabilities, thus allowing bank transfers in a simple and inexpensive way. Once again, this is helpful to the majority of Liberians living outside of Monrovia. Furthermore, mobile phones enable citizens to mobilize themselves and demand political attention. The overthrow of president Estrada of the Philippines is largely attributed to text messages that were sent out, which, in turn, mobilized thousands of protesters that overthrew the government; as President Gloria Arroyo (Estrada's replacement) noted: 'In the Philippines, text messaging has replaced political organization.' (New Statesman 2001). The development of the telecommunications sector in Liberia would not only develop Liberians' economic life, but similarly develop their social and political life as well.

Accessibility to telecommunications services is an issue that stands between the economic, social and political development of the majority of Liberians. However, although the LTA accounts for Universal Access, it does not require such a policy. The language of the Act, indeed, is very weak despite the significant hurdles that rural

inhabitants face in terms of becoming involved in the governing of their country.<sup>37</sup> Also, costs of the hardware, such as the mobile phones themselves, can be burdensome to many Liberians who do not have the capital to purchase a phone. Although this is a commonly known reality, again, there is no provision in the LTA that accounts for subsidization of these costs.<sup>38</sup> The Liberian Telecommunications sector is a national resource not only in the profits it can offer to private businesses, but similarly in the tools it can provide the average Liberian with, thus facilitating social, economic and/or political empowerment.

### 3.2 Existing legal framework in Liberian telecom

In 2007 the Liberian Telecommunications Act was passed by an act of parliament. Its enforcement agency, the LTA, is an independent government agency<sup>39</sup>, staffed by president appointed commissioners.<sup>40</sup> It is charged with regulating the telecommunications sector and its services<sup>41</sup> and implementing the Telecommunications Act.<sup>42</sup> The LTA is the first point of contact for the initiation of bids.<sup>43</sup>

The LTA is required, *inter alia*, to provide research, devise plans<sup>44</sup> and designs<sup>45</sup> for the functioning of the industry, regulate<sup>46</sup> and monitor<sup>47</sup> compliance of private operators, advise the Ministry of Post and Telecommunications<sup>48</sup>, and maintain records of licenses<sup>49</sup> as well as publish notices of any changes it makes within its mandate.<sup>50</sup> The LTA has the power to subpoena information,<sup>51</sup> investigate complaints,<sup>52</sup> issue licenses,<sup>53</sup>

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<sup>37</sup> Universal Access attained through market forces is promoted in the objectives of the act. ‘The objective of the Act are to...promote affordable telecommunications access in all parts and regions of Liberia, relying on market forces and private sector investment when feasible and Government initiatives where appropriate.’ Part I (3). The government is permitted to pursue Universal Access as well, subject to consultation with service providers, Part V (23).

<sup>38</sup> The Act does permit the GoL to set up a fund to ‘subsidize...the net costs of providing universal service...’ however, it is unclear whether this fund would provide for hardware. Moreover, the fund is subject to the approval of a Universal Access Policy, which, as mentioned, is subject to consultation of service providers. Part V (23)(1).

<sup>39</sup> Act. Part III, Sec. 8(2)

<sup>40</sup> Act. Part III, Sec. 9(1)

<sup>41</sup> Act. Part III Sec.8(2)

<sup>42</sup> Act. Part III, Sec.11(1)(b)

<sup>43</sup> LTA Correspondence 2007

<sup>44</sup> Act. Part III(11)(1)(g): define network termination points, if required;

Act. Part III(11)(1)(h) prescribe procedures for the approval of telecommunications equipment for attachment to telecommunications networks in Liberia, using the least onerous method available

<sup>45</sup> Act. Part III(11)(1)(c): design and implement the processes for licenses that are issued;

Act. Part III(11)(1) (i) establish a radio spectrum plan and manage the radio spectrum allocated to the telecommunications sector;

Act. Part III(11)(1) (k) establish and manage a numbering plan and allocate numbers to service providers;

<sup>46</sup> Act. III(11)(1) (j) regulate interconnection between telecommunication networks of different service providers;

<sup>47</sup> Act. III(11)(1)(d): monitor and enforce compliance by licensees with the conditions of their licenses;

<sup>48</sup> Act. Part III, Sec.11(1)(a)

<sup>49</sup> Act. Part III, Sec. 11(1)(p)

<sup>50</sup> Act. Part III, Sec.11(1)(s)

<sup>51</sup> Act. Part III, Sec.11(1)(t); All operator must are required to provide information to the LTA that the Authority reasonably requires.

issue binding orders<sup>54</sup> and rules,<sup>55</sup> and amend, modify, suspend and revoke licenses.<sup>56</sup> The LTA is also in charge of managing the radio spectrum of the country,<sup>57</sup> resolving disputes among service providers and between services providers and their customers,<sup>58</sup> and preventing anti-competitive practices.<sup>59</sup> Note that the LTA's powers and responsibilities are not confined to the explicit text. Rather the Act provides a catch-all clause which permits the Authority to 'take all other actions as are reasonably required to carry out the Telecommunications Act, and all related regulations, rules and orders, and to perform such other responsibilities, functions and powers conferred in the LTA under any other law'.<sup>60</sup> This discretionary clause has fostered various problems to be further discussed. The objectives of the act stress privatization and attracting foreign investment on the one hand, and affording access to Liberians on the other.<sup>61</sup> In our earlier discussion on development, I noted how certain development objectives can undermine others; I used the example of how increasing worker productivity thereby increasing economic gains, could harm social networks and social development. Deciding which goal will trump the other is the decision of those in charge of government. When a government is captured by narrow interests, it is the majority of people that suffers—as has been the Liberian experience from inception of the state to the present day. Upon a closer inspection of the Liberian Telecommunications Act, certain provisions undermine the realization of development objectives that would improve the lives of the majority of Liberians, but yet confront the interests of foreign investors. The proceeding section discusses three provisions that specifically threaten the interests of the majority of Liberians, and as such, warrant greater scrutiny by the GoL and the international community. If sustained peace is to be realized, the pathology of marginalizing the majority of Liberians must be reconsidered.

### 3.3 Problematic provisions

Liberia's telecommunication law does not demonstrate an understanding of the Liberian context, nor an interest in creating laws that will benefit the average Liberian. First, the telecommunications law delegitimizes the informal economy and, as a result, directly compromises the development goals of Liberia. Second, the laws do not *and cannot* remedy the monopolistic tendencies of the country's telecommunications sector, despite the threat that such an arrangement poses to national stability. Indeed, overall enforcement of the act by the national government is unlikely, which further obscures

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<sup>52</sup> Act. Part III, Sec.11(1)(u); the LTA may investigate complaints on its own initiative.

<sup>53</sup> Act. Part III, Sec.11(1)(c)

<sup>54</sup> Act. Part III, Sec.11(1)(r)

<sup>55</sup> Act, Part III, Sec.11(1)(q); (v) in exercising the LTA's powers and performing its duties under the Telecommunications Act, a regulation, rule, or order determine any question of law or fact, and the LTA's determination on a question of fact is binding and conclusive;

<sup>56</sup> Act. Part III(11)(1)(e)

<sup>57</sup> Act. Part III, Sec.11(1)(i)

<sup>58</sup> Act. Part III, Sec.11(1)(l)

<sup>59</sup> Act. Part III, Sec.11(1)(m); institute and maintain appropriate measures for the purpose of preventing service providers from engaging in or continuing anti-competitive practices, including the identification of telecommunication markets, determining dominance and abuse of dominance in identified telecommunication markets and responding to anti-competitive agreement;

<sup>60</sup> Act. Part III, Sec.11(1)(w)

<sup>61</sup> The Objectives of the act are located in Appendix 1



Liberians' involvement in their laws. Third, the catch all provision provides unnecessary discretion that can all too easily be abused, as witnessed by the experience of West Africa Telecommunications (WAT).

*Liberia's telecommunication law delegitimizes the informal economy.*

The Liberian Telecommunications Act delegitimizes the existing telecommunications sector, and, as a result, threatens economic development in Liberia. In his seminal work, *The Mystery of Capital: Why Capitalism Trumps in the West and Fails Everywhere Else*, Hernando de Soto rose to global prominence by articulating why the Occidental world is so wealthy as compared to underdeveloped states, like Liberia. De Soto begins with the premise that capitalism is a good wealth-generating economic model, and that in order to reap the accordant gains from this model, an individual must have capital. In summation, to gain capital, you have to have capital. And therein lies the problem in most underdeveloped states where capital accumulation is largely in the informal sectors, rather than in more formalized systems such as property ownership. To evidence his claim, de Soto points to the fact that in wealthy Occidental states, like the US, the most abundant source of wealth generating capital is found in the equity of individuals' homes: 'the single most important source of funds for new businesses in the United States is a mortgage on the entrepreneur's house,' (de Soto 2000: 6).<sup>62</sup> Following de Soto's findings, rule of law programmes focused a great deal on the formalization of the informal economy. What proponents of de Soto's theory arguably did not take into account (or did, and reasoned that the gains would outweigh the costs) was that in formalizing aspects of the economy, parts of the informal economy would either be eliminated or illegalized. Such is the case in Liberia after the creation of the 2007 Telecommunications Act. The Act requires telecommunication licensing for service providers; this licensing scheme formalizes the telecommunications sector, which can, on the one hand be beneficial to the sector, especially for international investors. On the other hand, however, the licensing scheme renders illegitimate existing and indigenous telecommunications services, that are similarly beneficial to the Liberian economy. The Act's licensing provision is as follows:

*Act Part IV, Sec. 15: Requirement to hold license*

(1) No person shall:

- (a) provide a telecommunications service<sup>63</sup> to the public for direct or indirect compensation;
- or
- (b) own or operate a telecommunications network used to provide a telecommunications service to the public for direct or indirect compensation, except under and in accordance with a license or an exemption order issued by the LTA.

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<sup>62</sup> It is important to note that there are, naturally, limits to de Soto's thesis as evidenced by the housing bubble and the subsequent collapse of global finance. Excessive borrowing against inflated values of home ownership is largely blamed for the Occidental world's current financial dilemma.

<sup>63</sup> The Liberian Telecommunications Act defines telecommunications service as: any provision of the voice and data transmission; SIM cards and Pre-paid accessories; equipments and facilities to customers; or any form of transmission of signs, signals, text, images or other intelligence by means of a telecommunications network, but does not include a broadcasting service.

(2) For the purposes of this Act, the provision of telecommunications services to the public includes the provision or offering of such a service to any segment of the public, including the resale of telecommunications services obtained from another person, even if only one person is provided or offered such a service.

The Act requires licenses for all providers and does not include a *de minimis* threshold beneath which a formal license is not required. In creating such a scheme, the LTA delegitimizes a major part of the national telecommunications sector and compromises the economic development of the country in two ways: (i) the Act thwarts entrepreneurialism, (ii) the Act creates unemployment amongst a critical demographic. The following is an instance of a typical small-scale telecommunications service provider, currently working in the Liberian informal economy that is threatened by the Act.

*Case: the small-scale telecommunications business owner*

Johnathan S. is a small-scale entrepreneur. When I first met him, he drove a taxi for foreigners, who paid him in dollars. After generating enough capital, he purchased some second-hand computers, a printer/scanner/fax-machine, and several mobile phones, and opened an internet café. These small businesses are very popular in Liberia and are peppered throughout the city. They provide the average Liberians affordable access to the internet and telephone services. Among other services offered, Mr. S. also offers Skype and other VoIP-like services, which offer free international telephone calls through the internet. Mr. S., and other small-scale entrepreneurs like him, does not have a license from the LTA, and is unlikely to get one. Technically, Mr S., and others who own similarly small-scale internet cafes, are in violation of the Liberian Telecommunications Authority.

Earlier the competing notions of development were discussed, and how the types of economic development policies in Liberia run counter to the types of development goals most pressing to the state and its people. Liberia currently has 85 per cent unemployment (WFP 2009)<sup>64</sup> and the brunt of this unemployment is among male youths between the ages of 18-35. This is the precise demographic that had been, and is recruited to, pick up arms for cash, and participate in the type of protracted conflicts that Liberians are keen to avoid.<sup>65</sup> Those who are most frequently seen setting up the small communication cafes and peddling mobile phone services on corners throughout the city are precisely these men that fall within this critical demographic. If the Act is enforced, this group may once again find themselves out of work and thus receptive to hire-for-fire type employment.

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<sup>64</sup> As previously noted, this figure is likely exaggerated since this statistic was derived using formal sector employment only. As is the case in many developing/underdeveloped countries in the world, employment in the informal sector is often more significant than employment in the formal sector.

<sup>65</sup> In January 2009, Secretary General of the UN, Ban Ki-Moon noted the connection between conflict and unemployment in Sierra Leone, stating: 'Youth unemployment remains the most acute concern... Urgent action is therefore required to create employment opportunities with a view to reducing the lingering effects of the marginalization of the country's young people, who constitute the largest segment of the population...'. Liberia and Sierra Leone are indistinguishable in this regard. Both had protracted conflict inspired by enterprising leaders after natural resources; the rank and file that fought the wars were unemployed youth.

To be fair, the likelihood of enforcement of the Act is low at the moment. As previously mentioned, the GoL is short of resources; trying to prevent every small-scale entrepreneur from selling services would be a huge cost. However, foreign companies that invest in Liberia and are moving aggressively into African telecoms, might have an interest and the requisite influence to weed out their small-time competitors. Such actors already possess a great deal of bargaining power when negotiating with their government counterparts.<sup>66</sup> In Liberia this disparity is manifold because of the pressure that the GoL receives from the international donors to make deals in order to repay their debts.<sup>67</sup> The telecommunications licensing scheme only further empowers large foreign companies who, in turn, can pressure the governments to enforce the Act and eliminate their small-time competitors. The laws do not and cannot remedy the monopolistic tendencies of the country's telecommunications sector.

In a report tracking Charles Taylor's resources, the Coalition for International Justice noted that Charles Taylor's monopoly over telecommunications allowed him to amass a sizeable fortune which was, in part, spent on protracting his war (Coalition for International Justice 2005). As noted, the telecommunications sector already has a tendency towards anti-competitive behaviour; this tendency is made further likely by Liberia's small market size (Gal 2006). If Liberia's telecommunications law was acutely tailored to the needs of the country, anti-competitive measures would be prioritized. This is not the case.

The telecommunications law prohibits anti-competitive behaviour, to be sure. However, it does not couch it in terms of the conflict nor the resource limits endemic in the post-conflict states. GoL agencies are, in general, starved of resources; the LTA, in particular, is no exception. The administrative investment required to execute as intricate and complicated a licensing scheme as required by the Act is completely unrealistic; identifying and prosecuting anti-competitive behaviour even more so. Anti-trust violations go unnoticed and unpunished in countries with much more resources at their disposal. Granted, anti-trust violations of telecommunications operators functioning in Liberia, may be smaller and hence less expensive to identify and punish. However, given that the court is barely functioning right now, there is unlikely to be judicial enforcement of the Act, or even judicial review of the LTA decisions regarding investigations of suspicious telecommunications activity. Courts are famished for resources, making enforcement of the Liberian Telecommunications Act unlikely. A law without enforcement is not a law at all according to Kelsen's definition, as previously discussed. However, that the Liberian Telecommunications Act is not a 'law' is only true for the subjects of it. International private companies doing deals with the GoL in telecommunications have alternative mechanisms of dispute resolution that would not be available to a small Liberian company; such international companies can hence enact the Act to protect their investments. What this means is that the Liberian Telecommunications Act, in effect, is a *rule by law*<sup>68</sup> mechanism vis-à-vis its anti-competition clauses insofar as the companies most likely to violate this provision (large capital-intensive companies) will not necessarily be subject to its enforcement since

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<sup>66</sup> In 2006, the GoL renegotiated the terms of one particularly grossly inequitable contract for the extraction of steel with Mittal Steel. (Global Witness, 'Heavy Mittal' 2006)

<sup>67</sup> The GoL qualifies for debt cancellation for the IMF loans accrued by previous governments, however, in order to actualize this debt relief, they have to fulfill a series of conditions. The GoL recently purchased US\$1.2 billion of its own debt at a discount. US\$1.7 billion in debt remain. (Google News 16 April 2009)

<sup>68</sup> From Carothers' rule of law and rule by law distinction (Carothers 1998).

they have alternative dispute resolution mechanisms to which they can appeal. Conversely, small Liberian companies that seek to invoke the Act's anti-competitive provisions against large, predominantly international companies, are unlikely to see the act enforced, since they are more likely to litigate in national courts. Again, this demonstrates how the Liberian Telecommunications Act thwarts local entrepreneurialism, since its provisions are unenforceable by local companies, which are most likely to seek national judicial relief, but can be enforced against such companies.

*The catch-all provision provides unnecessary discretion that can all too easily be abused, as witnessed by the experience of West Africa Telecommunications (WAT).*

The catch-all provision that permits the Liberian Telecommunications Authority to take all reasonable steps in the fulfilment of its mandate is too broad and has lent itself to disputes. The WB recently sent a team to assess the Liberian Telecommunications sector. The team concluded that an 'independent managing audit' of the LTA be undertaken in order to gauge the 'strengths and weaknesses' of the agency (Seeton 2009). The assessment was conducted in response to allegations of poor management by the LTA over the sector. The following is an anecdote of my experience with Liberia's telecommunication sector.

#### *Case: West Africa telecommunications*

On a visit to the Ministry of Post and Telecommunications in the summer of 2007 a representative of the Ministry voiced his surprise when I informed him that West Africa Telecommunications (WAT), a French company, had acquired a spectrum license for \$US\$6 million the week before. That a senior level official at the Ministry was unaware of one of the first and largest bids by a Western investor in Liberia's telecommunications industry demonstrates the informality of the telecommunications bidding process. The establishment of LTA is supposed to clarify bidding procedures. However, WAT's experience since winning their bid in the summer of 2007 again illustrates that this may not be the case in reality.

In July 2007 WAT was granted a spectrum license. The government is said to have dragged its feet in fulfilling its end of the licensing agreement. By November 2007, a dispute arose between the LTA and WAT, with the latter's license being revoked by the former. The LTA accused WAT of operating outside of its license stipulations and WAT accused the government of breach of contract. WAT ultimately took the government to Liberian court. I corresponded with an LTA Commissioner, and as of 18 April 2008, he insists that WAT went beyond its permitted license. The matter has been resolved to some extent following a 2009 ruling from the Supreme Court of Liberia (Liberia's highest court) in favour of WAT.

WAT was one of the first major international bids in telecommunications that Liberia had had since the end of the war. That the deal has proceeded so tumultuously signals to other international investors that there are administrative or political misgivings with the GoL and investments should proceed cautiously.

In addition to WAT's allegations of the LTA, allegations of impropriety have plagued the LTA. One Commissioner was noted to be in violation of the Act establishing the LTA: in contravention of Part III, Sec. 10(3) prohibiting conflicts of interests. He owned a telecommunications operator. Moreover, one of the LTA's Commissioners, Albert

Bropleh has come under some serious allegations of corruption.<sup>69</sup> In response to these various problems, the WB team was dispatched to assess the LTA. As mentioned, the team concluded that what was needed was an ‘independent management audit’ of the LTA. Specifically, this recommendation called for the creation of an external, independent person—i.e. not politically appointed—becoming charged with running the day-to-day administrative tasks of the agency (Seeton 2009). The creation of an independent entity with no public oversight will further remove Liberians from having a say in what happens with their country’s resources. This is not the optimal solution to overseeing the industry and ensuring that the gains reaped are adequately redistributed to Liberians in pursuance of their development goals. Rather than create an external and unaccountable institution, the LTA and its partners could, for example, limit the ‘catch-all clause’, or create an oversight committee within the government. Similarly, it could solicit key Liberian Civil Society groups to act as watchdogs over the industry in particular. Again, I do not contend one solution over a variety of proposals. However, given the conditions specific to Liberia, removing the public from the governing of its telecommunications sector seems unaligned with the development interests of the average Liberian.

#### 4 Conclusion

Liberians in theory and in fact have distinct desires as to how to manoeuvre the development of their telecommunications sector to serve their distinct development needs. This study has demonstrated that throughout the modern history of the Liberian state, outcomes beneficial to Liberians were compromised to serve the interests of whichever outside force was in power at the time. The process of law creation vis-à-vis the Telecommunications Act betrays institutional biases towards the status quo; the end of conflict presents a unique opportunity to change the status quo. It is important that the parties involved in drafting the country’s new laws are aware of this biased legacy and make efforts to preclude recurrence.

Many of the Act’s provisions seem to perpetuate the cycle of legal drafting and enforcement that has plagued Liberia since the inception of the state. However, there are various provisions, such as including Universal Access, that demonstrate a move toward the kind of development that is, arguably, more reflective of Liberian needs. Interest convergence is key: balancing the interests of attracting foreign investment yet not thwarting local entrepreneurialism is ideal and should be further pursued.

The licensing scheme of the Telecommunications Act disengages the public from participating in the telecommunications sector. Small-scale telecommunications providers are on every corner in the capital city and the agent responsible for drafting the Liberian Telecommunications Act either chose to ignore this substantial demographic or expressly sought to target them—the absence of a *de minimis* threshold demonstrates this. If Liberians are to develop beyond their current conditions, efforts must be made to identify what is lacking, and to develop from there. The World Bank can play a fundamental role in such developments. Tailoring the Liberian

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<sup>69</sup> Commissioner Bropleh has been accused of taking money from the LTA’s fund for personal use, misreporting job-related expenditures, and abusing procurement privileges, among other things.

Telecommunications Law to better outfit what average Liberians lack is a straightforward endeavour that could render significant benefits.

In addition to strengthening the telecommunications law of Liberia to better reflect the needs of the Liberian people, it is similarly important to extract from the Liberia telecommunications example lessons as to how to improve the process of constructing laws and legal orders. The Liberian telecommunications law is but one instance within a much broader occurrence of self-perpetuating legal orders. At stake, however—for countries of similarly precarious political, economic and social orders—are security, stability and economic growth for the world's poorest people. As previously discussed, rule of law programmes flail and fail because they operate in a vacuum removed from the local context; among these contexts is the Nietzschean law-generation bias, acute in developing countries, namely that laws can and often are generated by and for those persons drafting them. Widening the pool of legislative drafters is an additional aim toward which to strive. Technology has made direct democracy cheaper and more feasible, mobile phones having already facilitated various social movements, as previously noted. More persons can participate in the drafting of key laws, especially those that have long-term economic impacts, such as telecommunications. Such an aim should be pursued to the extent possible.

Within the vein of better laws and a better law-making process, the Liberian telecommunications case should similarly highlight that special attention should be paid to all investment laws passed during an interim government period. As previously discussed, several of Liberia's investment laws were passed in the period following the war and preceding the installation of the Sirleaf-Johnson administration. Insofar as laws passed during this transitional period are least likely to reflect the wider interests of the population, interim governments—and the international community that supports them—should refrain from passing such laws, however seemingly innocuous, or, at the very least, limit the duration of their applicability.

## References

- Austin, J. (1995). *The Province of Jurisprudence Determined*. (First published 1832) W. Rumble (ed.), Cambridge: Cambridge University Press.
- Becker, G.S. (1968). 'Crime and Punishment: An Economic Approach', *The Journal of Political Economy*, 76(2): 169-217.
- Carothers, T. (1998). 'The Rule of Law Revival'. *Foreign Affairs*, 77(2).
- Carter, J. (2008). 'Reconstructing the rule of Law: Post-Conflict Liberia'. *Harvard International Review*.
- Chabal, P. and Daloz, J. (1999). 'Africa Works – Disorder as political instrument'. Oxford: James Currey Ltd.
- CIA Factbook, Liberia (2009), <https://www.cia.gov/library/publications/the-world-factbook/geos/li.html>.
- Coalition for International Justice (2005). 'Following Taylor' Money: A Path of War and Destruction'. [www.cij.org](http://www.cij.org).

- Davis, K. (2008). 'The Relationship between Law and Development: Optimists versus Skeptics'. *American Journal of Comparative Law*, 56(4).
- de Soto, Hernando. (2000). 'The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else'. New York: Basic Books.
- Easterly, W. (2002). *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics*, Cambridge: MIT Press.
- Essoungou, Andre-Michel (2011). 'A Social Media Boom Begins in Africa'. Africa Renewal, United Nations. at <http://www.un.org/ecosocdev/geninfo/afrec/vol24no4/social-media-boom.html>.
- Gal, M. (2006). 'The Effects of Smallness and Remoteness on Competition Law- the Case of New Zealand'. Law and Economics Research Paper Series, Working Paper 06-48.
- Gitau, R. (2008). 'God Willing, I Will be Back: Gauging the Truth and Reconciliation Commission's capacity to deter economic Crimes'. *African Security Review*, 17(4).
- Global Security Organization, <http://www.globalsecurity.org/military/world/war/liberia-1985.htm>.
- Global Witness (2009). 'Undue Diligence: How Banks do Business with Corrupt Regimes', [www.globalwitness.org](http://www.globalwitness.org).
- Global Witness (2006). 'Heavy Mittal: The State within a State: The Inequitable Mineral Development Agreement between the Government of Liberia and Mittal Steel Holdings', [www.globalwitness.org](http://www.globalwitness.org).
- Hayner, P. (2007). 'Negotiating peace in Liberia: preserving the possibility for justice'. International Center for Transitional Justice.
- Hobbes, T. (1998). *The Leviathan*, Buffalo: Prometheus Books.
- ITU (2008). 'ITU African Telecommunication/ICT Indicators 2008: At a Crossroads' 8th edition. Geneva: International Telecommunication Union.
- Kelsen, H.(c1945). *A. General Theory of Law and State*, Cambridge, MA: Harvard University Press.
- Levitt, J.I. (2005). 'The Evolution of Deadly Conflict in Liberia: From 'Paternalitarianism' to State Collapse'. Durham, NC: Carolina Academic Press.
- Levy, B. and Spiller, T.(1996). *Regulations, Institutions, and Commitment: Comparative Studies of Telecommunications*, Cambridge, MA: Cambridge University Press.
- Loden, A. (2007). 'Civil society and security sector reform in post-conflict Liberia: painting a moving train without brushes'. *The International Journal of Transitional Justice*, 1:297–307.
- Massing, M. (2005). 'How Liberia Held 'Free' Elections'. *The Nation*.
- Moyo, D. (2009). *Dead Aid: Why Aid is not Working and how there is a Better Way for Africa*, New York: Farrar, Strauss and Giroux.
- North, D. (1995). 'The New Institutional Economics and Third World Development'. In Harris J. et al. (eds.), *The New Institutional Economics and Third World Development*. London: Routledge.

- Ofuatey-Kodjoe, W. (1994). 'Regional Organization and the Resolution of Internal Conflict: The ECOWAS Intervention in Liberia'. *International Peacekeeping*, 11(3): 261-302.
- Ogowewo, T. (2000). 'Why the Judicial Annulment of the Constitution of 1999 is Imperative for the Survival of Nigeria's Democracy'. In Andenas, M. (ed.), *The Creation and Amendment of Constitutional Norms*, Oxford: British Institute of International and Comparative Law.
- Ohnesorge, J. (2007). 'The Rule of Law'. *Legal Studies Research Paper* 1051, Madison: University of Wisconsin.
- Oren Bar-Gill lectures (2008). Course on Behavioural Law and Economics at NYU.
- PBS: Global Connections (2002). 'Liberia and the United States: A Complex Relationship'.
- Rousseau, J.J. (1996). 'Discourse on the Origins of Inequality'. In Wootton, D. *Modern Political Thought: Readings from Machiavelli to Nietzsche*, Indianapolis: Hackett Publishing.
- Sen, A. (2001). *Development as Freedom*, Oxford: Oxford University Press.
- Schmidbauer, R. (2006). 'Law and Development: Dawn of a New Era?'. Manchester: University of Manchester.
- Trubek, David (2006). 'The Rule of Law in Development Assistance: Past, Present and Future'. In David Trubek and Alvaro Santos (eds.), *The New Law and Economic Development: A Critical Appraisal*, Cambridge: Cambridge University Press.
- UNFPA (2006). 'Sexual Violence Against Women and Girls in War and its Aftermath: Realities, Responses, and Required Resource'. Briefing Paper.
- UNCTAD Information Economy Report ( 2007-2008). Geneva:UNCTAD.
- Walton, H. (2002). *Liberian Politics: the Portrait by African American diplomat J. Milton Turner*, Lanham, MD: Lexington Books.
- 'Doing Business' Report (2008). Washington, DC: World Bank.
- 'Telecommunications Regulation Toolkit' (2009). Washington, DC: World Bank.
- World Food Program (WFP) (2011). [www.wfp.org/countries/liberia](http://www.wfp.org/countries/liberia).

## News articles

- Associated Press. (16 April 2009). 'Liberia Buys Back \$1.2 Billion in Debt'. World Bank. Google News.  
<http://www.google.com/hostednews/afp/article/ALeqM5jLbRArjyQUR-fJd2wbNHolFpsQ6A>
- CIPACO (Centre Sur les Politiques Internacionale de TIC) (1990). 'Liberia: Commissioner Bropleh in Huge Web/LTA Sinks in Corruption, Millions Squandered'. <http://www.cipaco.org/spip.php?article1990>.
- Chellel, K. (April 2009). 'Africa Special Report: The Art of conversation'. *The Lawyer*.
- Colombant, N. (December 2007). 'Liberia's former Leader Bryant is Arrested in Corruption Probe'. VOA.



Essoungou, Andre-Michel (December 2011). 'A Social Media Boom Begins in Africa'. *Africa Renewal Magazine*: Geneva: United Nations.  
<http://www.un.org/ecosocdev/geninfo/afrec/vol24no4/social-media-boom.html>.

France Telecom, (November 2007). News and Announcements. 'France Telecom wins Bud to Acquire 51% of Telekom Kenya'. Paris.Global Security Organization.  
(1995). 'Liberia: Election and Coup Attempt'.  
<http://www.globalsecurity.org/military/world/war/liberia-1985.htm>

IRIN (UN Office for the Coordination of Humanitarian Affairs) (2004). 'In-depth: Our Bodies - Their Battle Ground: Gender-based Violence in Conflict Zones'.  
<http://www.irinnews.org/IndepthMain.aspx?IndepthId=20&ReportId=62814>.

Left, S. (August 2003). 'War in Liberia'. *The Guardian*.

Mullen, J. (December 2007). 'France Telecom Looks to Africa for Growth'. *Wall Street Journal*.

Robinson, A. (February 2001). 'Text Messaging put the new Philippines President in Power but she can never work 'those little phones''. *New Statesman*

Seeton, T. (February 2009). 'World Bank: "Management Audit" Needed at Liberia's Telecom Authority'. *The Daily IJ* weblog.  
<http://inwent-ij-lab.org/Weblog/2009/02/23/world-bank-management-audit-needed-at-liberias-telecom-authority/>.

Seeton, T. (March 2009). 'Liberia: President Sirleaf Uncovers Excess Spending at LTA'. *The Daily IJ* weblog.  
<http://inwent-ij-lab.org/Weblog/2009/03/03/liberia-pres-sirleaf-uncovers-excess-spending-at-lta/>.

VOA News (February 2007). 'Former Liberian Leader Bryant Charged with Embezzlement'.

## **Appendix I**

The objectives of the Liberian Telecommunications Act are as follows:  
(see LTA, Part I, Sec. 3 (a-l))

- (a) facilitate the development of the telecommunications sector in order to promote social and economic development throughout Liberia
- (b) promote the efficient and reliable provision of telecommunications services relying as much as possible on market forces such as competition and private sector investment to achieve this objective
- (c) promote affordable telecommunications access in all parts and regions of Liberia, relying on market forces and private sector investment when feasible and Government initiatives where appropriate
- (d) ensure the national security policies applicable to both domestic and international activities, are adhered to including through regulations, rules or orders under this Act
- (e) establish a fair, objective and transparent regulatory regime for service providers, including the licensing of service providers
- (f) establish a framework for the control of anti-competitive conduct in the telecommunication sector, and otherwise protect the interests of subscribers and other customers of telecommunications services
- (g) ensure the safety of telecommunications networks and users of telecommunications services, and the privacy and proper use of customer information
- (h) promote the use of new and more efficient technologies and efficient management and use of radio spectrum and other scarce resources
- (i) encourage sustainable foreign and domestic investment in the telecommunication sector
- (j) establish measures to enforce the implementation of this Act and to prohibit certain types of conduct contrary to the orderly development and regulation of the telecommunications sector
- (k) encourage participation of Liberians in the ownership, control and management of communications companies and organizations
- (l) promote and safeguard national interests in the development and implementation policies