

**Archie Williams**, of the City of Monrovia, Liberia Petitioner versus **Christiana Tah**, in her capacity as Minister of Justice & Attorney General, The **Independent National Human Rights Commission (INHRC)**, represented by its Chairman, R. Leroy Urey, and the **Government of Liberia (GOL)**, by and thru the Ministry of Justice, represented by its Minister Respondents

LRSC 12

PETITION FOR DECLARATORY JUDGMENT. PETITION GRANTED.  
Heard January 12, 2011. Decided January 21, 2011.

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

On November 30, 2010, Archie Williams, petitioner, believing that his constitutional rights had been abridged by the Final Report of the Truth and Reconciliation Commission (TRC) dated June 30, 2009, filed a petition in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, seeking a declaratory judgment on the constitutionality of the Act that established the TRC and the specific provision of the TRC Report that banned him and fortyeight other persons from holding public office, elective or appointed, for a period of thirty years. The petitioner named as respondents Christiana Tah, in her capacity as the Minister of Justice and Attorney General of the Republic of Liberia, and the Independent National Human Rights Commission (INHRC), recently established by an Act of the Legislature, represented by its Chairman, Counselor R. Leroy Urey. The petitioner states, as reason for naming Christiana Tah, the Minister of Justice and Attorney General as a respondent, that she is "the highest ranking public official in this jurisdiction who is responsible for conducting, prosecuting or defending all suits and proCeedings in the courts in which the Republic of Liberia or any officer thereof, as to such officer, is a party or may be interested; render services requiring legal skills to the President; institute legal proceedings necessary for law enforcement, and who is the principal officer or agent of the Republic of Liberia charged by the President of Liberia with implementing the Final Report of the [TRC]"

The petitioner states, as justification for naming the INHRC as a party respondent, that the INHRC is "an agency of the Government of the Republic of Liberia charged by the Act to Establish the [TRC which has] the responsibility to ensure that all the recommendations contained in the [Final] Report of the TRC are implemented."

In the petition, the petitioner contends that although "he was never served with notification, oral or written, from the TRC charging him with any crime," and that he denies "any knowledge of, or participation in any military, para-military, or command and control group for any warring faction at any time during the Liberian crisis since its inception," and that "not only . . . was [he] never charged with any crime or given the opportunity to defend himself, [and that] no witness was ever brought before petitioner to be confronted, offer direct testimony or [to] be cross-examined on any accusation that petitioner aided and abetted any one in designing, conceiving, directing, or implementing any act which violated the human rights, as internationally or locally recognized, of any Liberian or foreign national[s] on Liberian soil during the Liberian crisis or anywhere for that matter;" yet "the TRC released its [Final Report] in which, amongst others, it recommended and directed that petitioner, along with certain other Liberians, be barred from holding public office for thirty years, for what the Commission termed as petitioner's major role in the Liberian conflict," noting that "the pertinent part of the [Final] Reports states: "[T]he following and all other persons similarly situated shall be subject to public sanctions as herein described above in section 14.2 and are specifically barred from holding public office, elected or appointed, for a period of thirty years as of July 1, 2009."

Setting out further his reason for seeking a declaratory judgment from the Court, the petitioner states in counts 17 to 27 of his petition:

"17. Petitioner says as a law abiding citizen of the Republic of Liberia, he has privilege to public employment and other forms of employment opportunities in Liberia, and such privilege is constitutionally protected which may only be taken away as a result of a hearing judgment consistent with due process.

"18. Petitioner has a vested interest in his employment privilege and livelihood, and is afraid that co-respondent Tah, at the instruction of the President of Liberia, the 'Head of State' contemplated by the Act, to begin enforcing the 'recommendations' of the now defunct TRC, the effect of which would be the arbitrary and unconstitutional loss of petitioner's public employment privilege now and for the rest of his life as he may

be too old to return to public service after thirty years. Petitioner submits that the enforcement of the challenged part of the TRC's recommendations will infringe on petitioner's need to make a livelihood and his right to the pursuit of happiness."

"19. Article 20(a) of the Constitution of Liberia provides: 'No person shall be deprived of life, liberty, security of the person, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to trial by jury.'

"20. In a long line of decisions, this Court has defined 'due process' to be: (a) a hearing [which must] occur before a tribunal competent to pass on the subject matter in dispute; (b) the party-of-interest must have been duly served with process and must have submitted to the jurisdiction of the tribunal; and (c) the party-of-interest must have the opportunity to appear and present evidence in his/her own behalf. *Wolo v. Wolo*, 5 LLR 423, 427-429 (1937); *Howard v. Republic*, 8 LLR 135, 138 (1943); *Mulba v. Dennis*, 22 LLR 46, 49-50 (1973); *Ayad v. Dennis*, 23 LLR 173, 177 (1974); *Doe v. Sinkor Bakery*, 25 LLR 292, 295 (1976); *IBM v. Tulay*, 33 LLR 105, 112 (1985); *The Middle East Trading Company v. Chase Manhattan Bank*, 34 LLR 419, 429-430 (1987); *Express Printing House, Inc. v. Reeves*, 35 LLR 455, 464 (1988).

"21. Petitioner submits that the TRC's recommendations and directives barring him and certain other Liberian [citizens] from holding office, elected or appointed, for a period of thirty (30) years as of July 1, 2009, [are] not only a criminal sanction which cannot be imposed by an agency of the Executive Department of Government, such as the defunct TRC, but it is effectively a sentence without due process of law, in violation of the mandatory requirement of the Constitution.

"22. Article 21(a) of the Constitution of Liberia provides: 'No person shall be made subject to any law or punishment which was not in effect at the time of the commission of an offence, nor shall the Legislature enact any bill of attainder or *ex post facto* law.'

"23. Prior to the imposition of the 'recommended' thirty-year ban on the petitioner, no such punishment was ever passed into law for any offense, including any imaginable offense under the TRC Act with which petitioner could be charged, and the petitioner specifically denies committing any such act. Petitioner submits that the Legislature cannot enact any law requiring punishment of a thirty (30) year ban from public office, either elected or [appointed], for any act which is alleged to have occurred prior to the coming into effect of the law requiring such punishment. The 'recommendation' therefore violates Article 21(a) of the Constitution of Liberia.

"24. Article 61 of the Constitution of Liberia provides: "The President shall be immune from any suits, actions, proceedings, judicial or otherwise, and from arrest, detention, or other actions on account of any act done by him/her while President of Liberia pursuant to any provision of this Constitution or any other laws of the Republic, The President shall not, however, be immune from prosecution upon removal from office for the commission of any criminal act done while President."

"25. Section 48 of the Act to Establish the [TRC] provides: "The Head of State shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to the implementation of the Commission's recommendations. All recommendations shall be implemented. Where the implementation of any recommendation has not been complied with, the Legislature shall require the Head of State to show cause for such non-compliance." The 'Head of State' contemplated by the Act is the President of Liberia.

"26. [T]o show cause for non-compliance is a proceeding, judicial or otherwise, within the meaning [and] scope of Article 61 of the Constitution of Liberia. Petitioner contends that if the President of Liberia is subjected to a 'show cause' order, she may likely be forced to instruct co-respondent Tah to take such necessary action that would cause petitioner to lose his job and be deprived of his constitutional right to the pursuit of happiness.

"27. To the extent that section 48 of the Act creating the [TRC] contravenes Article 61 of the Constitution of Liberia, section 48 of the Act is unconstitutional."

Other counts of the petition assert that the TRC's recommendations and the Act establishing the TRC violate Article XIII of the Comprehensive Peace Agreement (CPA) which ushered in a Transitional Government for Liberia and restored peace to the country, and contravened the spirit and intent of the drafters of the CPA. The petition further alleges that the recommendations of the TRC violate the very Act that established the TRC, and that the recommendations are politically motivated and influenced by persons outside of the TRC.

The named respondents, having been summoned, each filed separate returns/answers to the petition. The respondents have not contested the allegations made by the petitioner that he was listed amongst the 49 persons named in the TRC Final Report as being banned from public office for thirty years. The respondents, however, challenge the petitioner's standing to seek a declaratory judgment on the constitutionality of the Act establishing the TRC and banning him from public office for thirty years, and naming of Christiana Tah and the INHRC as respondents, for reasons that: (a) the petitioner has not suffered disbarment from holding any public office; (b) [the] petitioner has sued the wrong persons, in that he should have named the Government of Liberia, as respondent, rather than Christiana Tah and the Independent National Human Rights Commission, both of whom are only agents of the Government, and as to the INHRC, it has not been privy to the recommendations; and (c) that the [Final] Report of the TRC contains only recommendations, and not law, and not being law, the recommendations are not binding on any person and therefore not enforceable by any court, especially since the Act that established the TRC was repugnant to the Constitution; that the TRC [Final Report] did not and could not deprive any person of his or her liberty, property, or privilege, which could only be done by a statute, law or judgment of a court of competent jurisdiction; that the INHRC was only to ensure the implementation of the recommendations and not to implement the recommendations; and that the petitioner has not pleaded that he has suffered or sustained any injury or been denied any right or damage he has suffered as a result of the recommendations. Same could therefore not be made the subject of a petition for declaratory judgment.

In response to the respondents' assertion that the petitioner should have named the Government of Liberia as respondent, rather than Christiana Tah and the INHRC, the petitioner filed a motion to join the Government of Liberia as a party to the suit. The Government of Liberia, having been served with the motion, and the Government of Liberia and the other named respondents not having interposed objections to the motion to join, the Government of Liberia became a party to the suit and filed an answer in response to the petition. In its returns, the Government of Liberia noted that section 14.3 of the TRC Report went beyond mere recommendations, but instead purported to actually ban the petitioner and 48 others from holding public office. Accordingly, the Government of Liberia agreed with the petitioner that in light of the mandatory command of the Act establishing the TRC that the President implement the TRC recommendations, and the allegations of the petitioner that he was never been accorded his due process right before the TRC which purported to ban him from holding public office, that the Supreme Court will determine whether the provisions of the TRC Act making the implementation of the TRC recommendations mandatory is constitutional.

On December 11, 2010, the case was called for hearing and arguments were entertained by the trial court judge, including the petitioner's request that as the matter contained constitutional issues, same be certified to the Supreme Court for determination of the constitutional issues. On December 22, 2010, the trial judge delivered a ruling in which, as requested, he certified the case to the Supreme Court for disposition of the constitutional issues raised in the petition and traversed in the returns and answer.

At the call of the case for hearing before this Honorable Court on January 6, 2011, it was brought to the attention of the Court that a communication had been filed with the Supreme Court informing the Court that counsel for the INHRC and its Chairman, who also had represented that Institution in the lower court, were out of the country, and hence the INHRC had requested a continuance of the case pending their arrival in the country. On further information that the Chairman of the INHRC had in fact returned to the country, the case was reassigned to January 12, 2011, to allow representation by the INHRC as to whether it had joined with the Government of Liberia. When the case was resumed for hearing on

Wednesday, January 12, 2011, the Chairman of the INHRC confirmed that it had joined the Government, and that both the Government and it would be represented by the same counsel and subscribed to the brief filed with the Court by the Government of Liberia.

In the brief filed by the Government of Liberia, and subscribed to by all of the respondents, the challenge to the capacity of the petitioner to bring the action was no longer an issue for determination by the Court. The Court would nevertheless emphasize that, as later discussed in this opinion, the petitioner does have standing to seek redress, having been named in the TRC Final Report as one of the persons banned from public office for thirty (30) years. Moreover, the petitioner having had the Government of Liberia joined as a party to the proceedings, the issue of the wrong party being brought to court, no objections having been advanced by the parties, and the Government of Liberia having accepted to be joined and having filed an answer, has rendered the issue moot. Accordingly, this Court finds one issue that is determinative of the case. Whether section 48 of the Act establishing the TRC, which makes it mandatory that the President implements the recommendations of the TRC, is unconstitutional, as applied to section 14.3 of the TRC Final Report which bans the petitioner and other persons for thirty (30) years from holding public office? It is only this section, and not any other sections of the TRC Act that this Court is called upon to deal with, and which the Court deems appropriate to address.

Section 48 of the Act which established the TRC provides: "The Head of State [meaning the President of Liberia] shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, *as to the implementation of the Commission's recommendations. All recommendations shall be implemented. Where the implementation of any recommendation has not been complied with, the Legislature shall require the Head of State to show cause for such non-compliance*" [*emphasis supplied*]. There is no doubt in our minds that the Act makes it mandatory that the President implements the recommendations of the TRC, and that a failure to implement the recommendations could have consequences for that office.

A *recommendation* is as "an advice, proposal, suggestion, counsel which has no binding effect and its implementation is left solely to the discretion of the party to whom it is made." BLACK'S LAW DICTIONARY, 1144 (5th ed). In the instant case, however, the TRC Act makes it mandatory that the President implements the "recommendations" of the TRC, and if she fails to do so, she must appear before the Legislature to justify why any of the recommendations have not been complied with. This prompts the question: If any of the TRC's "recommendations" contravene one or more provisions of the Constitution or any existing law, is the President under a duty to implement the "recommendations," knowing that to do so would be in violation of the Constitution or an existing law?

The Constitution of Liberia (1986), and our statutes and decided cases of this Court, emphasize that the Constitution is the supreme law of the land. Article 2 of the 1986 Constitution provides:

"This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. . . . All laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional."

This provision has *been* affirmed by this Court in several opinions.

In *Kuyete v. Wordsworth and Sirleaf*, 28 LLR 163, 169 (1979), this Court held that "constitutional provision has supremacy over legislative enactment in conflict with such provision."

*In re the Application of Harper S. Bailey*, 36 LLR 803, 815 (1990), this Court held that "legislation which violates the Constitution is without legal force."

Notwithstanding the Supreme Court has power to declare null and void any laws in violation of the Constitution, *in re the Petition of Benjamin J Cox*, 36 LLR 837, 849 (1990),



and the Court has determined that whenever a statute is in violation of the Constitution, the Court must so find and give effect to the Constitution, *The Management of B.A.O. v. Mulbah and Sikeley*, 35 LLR 584, 594 (1988), this Court has shown a reluctance in declaring a statute unconstitutional, except where there is compelling reason for the declaration. In accord: *Monrovia Breweries, Inc. v. Karpel*, 37 LLR 288, 302 (1993); *Farbat et al. v. Gemayel and Reeves*, 34 LLR 24, 37 (1986); *Weasua Transport Company Ltd. v. The Ministry of Labour*, 40 LLR 225, 237-8 (2000).

In the case at bar, the petitioner argues that section 48 of the TRC Act should be declared unconstitutional insofar as it compels the President to implement the "recommendations" of the TRC, stating that any such implementation by the President would be in violation of the petitioner's constitutional right since he was adjudged guilty by the TRC of the commission of various crimes, local and international, and a mandatory penalty imposed by the TRC without having been accorded his due process right, guaranteed by Articles 20(a) and 21(h) of the Constitution.

Section 14.3, the part of the TRC Report attached by the petition, reads:

"List of Persons Subject to/Recommended for Public Sanction: The below comprising of the most prominent political leaders and financiers of different warring factions and armed groups, by their conduct, leadership, finances, and support, actions or inaction, are responsible for the commission of gross human rights violations, international humanitarian law violations, international human rights law, war crimes, and egregious domestic law violations. This list is by no means exhaustive but represents the most prominent individuals identified by the TRC worthy of public sanctions because of their roles during the years of war and instability in Liberia. The following and all other persons similarly situated shall be subject to public sanctions as herein described above in section 14.2 and are specifically barred from holding public office, elected or appointed, for a period of thirty (30) years as of July 1, 2009."

In arguments before this Court, counsel for petitioner indicated that the petitioner was never informed of the commission of any crime or of charges against him in connection with the commission of a crime or a number of crimes as proffered in

section 14.3; that no person had complained that the petitioner had committed any crime and what crime he is alleged to have committed; that he was never allowed to confront any of his accusers, if there were any, or to cross-examine any witness(es) alleging that petitioner committed a crime; that petitioner was never given the opportunity to produce witness(es) in his defense to refute any allegations that he had committed any crime; and that he was never given the opportunity to secure counsel and challenge all allegations of the commission of a crime. The Government of Liberia, for its part, when questioned, indicated that it had reviewed the records submitted to it by the TRC and that it had found no indications in the records that the petitioner had committed the several offenses indicated in section 14.3 of the TRC Final Report.

Article 20(a) of the Liberian Constitution (1986) provides:

"No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to a trial by jury."

Article 21(h) of the Liberian Constitution (1986) provides:

"No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petty offences unless upon indictment by a Grand Jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall with appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy."

This Court has held in a long line of cases that no person shall be adjudged guilty and deprived of any of the protections and rights provided by the Constitution unless he or she is accorded guaranteed constitutional and statutory due process of law. The protection of this nation and its entire citizenry, the good and the bad, the rich and the poor, the educated and the uneducated, the high and the low, of any and all ethnic backgrounds, and of any religious or political affiliation, rest upon the scrupulous adherence to and respect for this principle. And even when the forum is one as respected and as delicate as the TRC, and which is a significant outgrowth of the quest for peace and reconciliation of our people, it is held to the same standard and subjected to the same scrutiny and the same principle laid in the Constitution and which was, from the very birth of this nation, and remains today the bedrock of this nation. This Court espoused, as far back as 1937, in *Wolo v. Wolo*, 5 LLR 423 (1937), that the nation's institutions, whether legislative, executive or administrative, must adhere to the due process of law principle and that there can be no exceptions. In the *Wolo* case, a Harvard graduate had sought a divorce from his illiterate or uneducated wife, but rather than utilizing the avenue of the courts, as would have accorded his wife opportunity to exercise her due process right, he sought and obtained, by legislative fiat, a resolution divorcing him from his wife. Mr. Chief Justice Grimes, speaking for this Court, said of due process:

"It is a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. . . . It extends to every government proceeding which may interfere with personal and property rights, whether the proceeding be legislative, judicial, administrative, or executive. . . . It relates to that class of rights the protection of which is peculiarly within the province of the judicial branch of the government. . . . [It] means . . . that there must be a tribunal competent to pass on the subject matter, notice, actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel, or both, having been duly served with process or having otherwise submitted to the jurisdiction. . . . *In fine, to deprive even an official of office, be said official legislative, executive or judicial, or to deprive any person of his property or other right, without notice, an opportunity to appear and cross-examine witnesses adduced against him, to produce witnesses in his own behalf, and to be heard in person, by counsel or both, is to deprive such official of office, or person of his property or other rights, without 'due process of law', and is therefore unconstitutional*

[emphasis supplied]. 5 LLR 423, 427 (1937).

This Court has, in a series of cases thereafter, reiterated the definition and the standard attached to due process of law. *IBM v. Tulay*, 33 LLR 105, 112 (1985); *Wilson v. Firestone Plantations Company and the Board of General Appeals*, 34 LLR 134 (1986); *The Middle East Trading Company v. Chase Manhattan Bank*, 34 LLR 419, 429-430 (1986); *Express Printing House, Inc. v. Reeves*, 35 LLR 455, 464 (1988); *Mensab v. Wilson*, 37 LLR 656, 662 (1994); *Salala Rubber Corporation v. Garlamolu*, 39 LLR 609, 616-617 (1999); *Republic v. The leadership of the Liberian National Bar Association*, 40 LLR 635 (2001); *Snowe v. Some Members of the House of Representatives, led by Honourable Kettehkumehn Murray*, Supreme Court Opinion, October Term, 2006, decided January 29, 2007); *Liberia Telecommunications Authority v. West Africa Telecommunications, Inc.*, Supreme Court Opinion, March Term 2009, decided July 23, 2009.

The TRC can be held to no lesser standard, as respectful and formidable that institution may have been and may still be. The constitutional standard we expect of the Legislature and the Executive, and even of the Judiciary, must be the same standard that the TRC must comply with and conform to. We believe that was also the expectation of the drafters of the Comprehensive Peace Agreement, for as much as that document purported to suspend certain provisions of the Liberian Constitution, it left fully in tack all of the provisions of the Constitution relating to the rights and protection of the citizens of Liberia and those within our borders. No Act can be passed by the Legislature that instructs or directs the President of Liberia to implement judgments and decisions, under any pretext, which imposes criminal penalties that take away significantly the enjoyment of the constitutional rights accorded citizens, where the right to due process was denied the accused. That would set a bad precedent for the nation. It would threaten the new democracy of the nation, and it would expose the people to grave and significant abuse, including a withdrawal of fundamental rights held sacred to our nation. Thus, as reluctant as this Court has been in declaring statutes unconstitutional, including resorting to other bases or reasons to protect rights and guard against illegal infringements, while at the same time avoiding a declaration of unconstitutionality of a statute, we believe that this Court, as was decided in *Center for Law and Human Rights Education v. Monrovia City Corporation*, has a constitutional duty

and is compelled to make a declaration of unconstitutionality of a specific statutory provision, where the statute commands and makes implementation mandatory by the President, and thereby promotes an obvious violation of fundamental rights guaranteed by the Constitution. We, therefore, declare section 48 of the TRC Act, in so far as it makes mandatory the implementation of a TRC decision or recommendation, where a fundamental provision of the Constitution, such as the due process of law clause, has been violated, and where the implementation of the TRC decision or recommendation would result in an obvious further violation of the Constitution, unconstitutional.

This Court is not unmindful of the sensitivity of the undertakings of the TRC, and the process that was involved in those undertakings. That makes it even more important that the TRC process adheres to every constitutional provision and mandate, especially in ensuring that all rights, including the rights of even those we believe to have committed offenses, are scrupulously guarded and protected. How can the system explain that a person who commits murder in peace time is entitled to a greater due process standard than one who commits the same murder in the course of a conflict? As much as this Court believes that persons who transgress the laws of the land must and should be exposed to punishment, it cannot subscribe to a process that deprives those persons of the right to defend themselves against accusations that could result in the withdrawal of significant parts of their fundamental rights. The TRC Act, in certain sections, recognizes that due process of law warrants respect and adherence to by the TRC.

Section 31 of the Act provides that "[A]ny person who has been subpoenaed or called upon to appear before the Commission may appoint a legal representative. The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed for cross-examination of witnesses or any address to the Commission." The section clearly demands that every person cited before the Commission, and which the Commission may deem it has evidence of criminal acts committed by such person, must be accorded due process of law. The section, consistent with the provisions of Article 20(a) and 21(h) of the Liberian Constitution (1986), and the Penal Law and the Criminal Procedure Law, does not vest in the TRC

the discretion of deciding whether the right will or should be accorded or enjoyed, or that the TRC has the authority to withdraw from the accused the entitlement to the exercise of the right. Rather, the Act directs that the due process right be respected. The only limitation imposed by the Act is that the TRC may decide on limiting the time accorded the party. Clearly then, where a deviation of the right results in a constitutional and legal violation, the statute cannot compel that the penalties imposed, growing out of such violations, be mandatorily implemented by the President, and such a mandate renders the specific provision of the statute unconstitutional, as it relates to the specific situation outlined by the petitioner.

There is no evidence in the TRC Final Report that the petitioner committed any of the offenses indicated in section 14.3 of the TRC Final Report. Can the Legislature, therefore, by section 48 of the TRC Act, compel the President of Liberia to implement the recommendation, which in effect is the penalty imposed by the TRC, on the petitioner for the commission of the alleged crimes? To do so would be in violation of the Liberian Constitution (1986). We hold that the Legislature may not, and that insofar as the section purports to compel the President to take such action, is unconstitutional.

This Court, in *Republic v. Tolbert*, 36 LLR 739, 759 (1990), held: "The President, in exercise of executive power and prerogatives, is authorized to perform any act that the needs of the nation demand, unless forbidden by the Constitution."

This Court is of the opinion that the implementation of section 14.3 of the TRC Final Report is unconstitutional. The TRC Final Report acknowledges that the list is not exhaustive, and therefore leaves the impression that although many persons may have committed the crimes listed in that section, only the select ones by the TRC should face prosecution. It is difficult to justify the basis for selecting some persons and not others, an act which could be characterized as discriminatory. What criteria did the TRC use in determining that it would make only certain persons, and not others, the focus of its decision? By what authority did the TRC create laws, not passed by the Legislature, when the Constitution mandates that only the Legislature has the authority to make laws, and to determine the punishment for the violations thereof?

The power of the Legislature to make laws and to determine the punishment for violations thereof is not delegable to any other branch of the Government, whether it be the Executive or the Judicial. The prescribing of crimes by the TRC, not enacted by the Legislature, are unconstitutional. The Liberian Constitution (1986) provides that the Legislature shall pass no *ex post facto* law. The Legislature, therefore, cannot direct or command the President to act upon or implement decisions or recommendations which are in violation of the Constitution or statutory laws. The section of the TRC Act giving such directive is unconstitutional.

Persons named in section 14.3 of the TRC Report are lumped together as having committed the same, and all of the offenses stated in the TRC Report. It is our opinion that the TRC should have named each person with specificity, regarding the particular crime(s) committed by such person. Did all of the named persons commit the same offense(s), as would warrant that the same penalty be meted out to all of them? How, for example, can it be justified that a financier who may have provided one thousand dollars be given the same penalty as one who committed murder or directed the commission of murder? This Court is of the opinion that had due process been accorded the petitioner, and others named in section 14.3 of the TRC Final Report, he and the others would have queried allegations that he and the others committed any/and or all of the offenses stated in section 14.3 of the Final Report. The characterization of all the offenses, without a statement as to who committed which particular offense, renders the decision/recommendation clearly in violation of the Constitution and other laws of the country, and any Act which mandatorily compels the President to implement the decision or recommendation is unconstitutional.

The provision of Section 48 of the TRC Act which compels the President to implement all recommendations of the TRC, in so far as it relates to the section 14.3 decision and ruling of the TRC is unconstitutional for any implementation of the TRC section 14.3 decision would not only deprive the petitioner of the constitutional guaranteed right to an appeal, but would infringe on the constitutional prerogatives of this Honorable Court. Article 20(b) is clear and unambiguous on the right to an appeal by and accused against whom a judgment or decision has been entered and it leaves no room for any doubts. It states: "The right of an appeal from a judgment, decree,

decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolate. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal." Liberian Constitution (1986), Art. 20(b). The Legislature, therefore, cannot pass an Act which deprives a party of his or her constitutional right to appeal the decision or ruling of any Body. This Court has decided in a long line of cases that while the Legislature can prescribe the procedure and requirements for and the process of appeal, as vested in that Body by Article 20(b) of the Constitution, it cannot take away the right of an aggrieved party, such as the petitioner, to appeal a ruling, and any Act which purports to take away that right, as section 48 of the TRC Act does by mandating that the President must implement all recommendations of the TRC. This removal of the right of appeal by an aggrieved party is clearly unconstitutional. The instant case is even more particularly crucial since the legislative body that passed the Act was itself not a constitutionally functional body, but existed by virtue of a document, the Comprehensive Peace Agreement, and a process, a selection of persons by the warring parties and political parties rather than elected legislators by the people as prescribed by the Constitution, that was extra-constitutional.

Even more critical to this Court is the apparent usurpation of this Court's power by a body of the Executive; for, if the President is to proceed to implement all of the recommendations of the TRC, as directed by the TRC Act, without according the aggrieved party, such as the petitioner, the right to appeal from the TRC decision, it would in effect make the TRC decision final and thereby make the TRC the final arbiter of disputes and decisions. That process would be tantamount to removing from the Supreme Court the constitutional authority vested in it as the final arbiter of all cases and matters arising within the Republic of Liberia. Like Article 20(b) which unambiguously grants to every aggrieved part the right of appeal, Article 66 of the Constitution makes the Supreme Court the final arbiter of all matters of a judicial nature. It states: *"The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create*



*any exceptions as would deprive the Supreme Court of any of the powers granted herein"* [emphasis supplied]. Liberian Constitution (1986), Art. 66. In our opinion, section 48 of the TRC Act would have the effect forbidden by the Constitution, for that provision clearly prohibits the Legislature from passing any Act that would deprive the Supreme Court of the powers granted it by the Constitution. To make the TRC Report and recommendations, as specifically relate to section 14.3 decisions contained in the Report, final such that the President must implement same, is to attempt to deprive the Supreme Court of the right of review granted by the Constitution.

We noted earlier in this opinion that while the Comprehensive Peace Agreement suspended certain provisions of the Constitution, the preservation of rights, including the right of appeal, *was never suspended or in any way tampered with*. Those rights remain fully protected and enforceable today, the same as they did during the time of the TRC proceedings. The right of appeal is sacred to our democracy and judicial process, and by virtue of the mandatory directive of the Constitution, can never be suspended or abolished by an Act of the Legislature. Hence the mandatory implementation provision of section 48 of the TRC Act, the net effect of which is that section 14.3 decision of the TRC banning certain persons from public office, elected and appointed, for thirty years, with no right of an appeal therefrom, is unconstitutional as it would make the TRC the final arbiter of the matters contained in the section 14.3 of the Report. The Legislature is vested with no such authority and can therefore exercise no such authority which exceeds the authority granted by the Constitution.

Wherefore and in view of the foregoing, it is the considered opinion of this Court that the portion of section 48 of the TRC Act directing mandatorily that the President implements all of the recommendations of the TRC is unconstitutional, of no legal effect and therefore unenforceable, and it is hereby so declared. Accordingly, the Act of the TRC in adjudging the petitioner guilty of certain criminal offenses and imposing a thirty year ban on him from holding any public office, elected or appointed, without according to the petitioner and all persons named in the TRC Report and subject to the ban, relying on section 48 of the TRC Act as the basis for the decision, is unconstitutional and of no legally enforceable effect. The petition is hereby granted.

*Petition granted.*