



# Reconstructing the Rule of Law

## Post-conflict Liberia

**JIMMY CARTER** was the 39th president of the United States. He founded The Carter Center to promote human rights worldwide and is recipient of the 2002 Nobel Peace Prize.

Civil wars mark the collapse of a state's ability to maintain social order through peaceful means. To prevent wars from recurring, new social, economic, and political arrangements must be found that are acceptable not only to the elites present at the peace table, but also to all members of society. Unless people at all levels can develop and embrace new social and political structures for maintaining order, no amount of peacekeeping or post-conflict reconstruction will ensure a lasting peace. An often overlooked yet critical element to achieving this aim is the prioritization of the restructuring and empowerment of community-based justice mechanisms that have been damaged or discredited by the war. Doing so gives ordinary people an active stake in the transition to a more just society and provides some means for people to protect themselves, their communities, and their country from injustices that can lead back to war.

Liberia today continues to face one of the greatest post-civil war peace-building challenges of our time. Liberians suffered unspeakably during the 14 years of internal fighting, which killed 250,000 and drove more than half of Liberia's 3.5 million people from their homes. The war touched every Liberian and almost every corner of the country and region in some way. It destroyed lives and livelihoods, along with physical and social infrastructure at all levels. The war laid bare the country's divisions and created new ones. President Ellen Johnson Sirleaf's government is working extraordi-

narily hard to rebuild the country and heal its wounds, with critical support from the international community. The task requires sustained drive, patience, and commitment, particularly in the face of setbacks such as rising food and energy prices that can quickly impact any economic progress, particularly among the poorest. As Liberia continues to make progress in its fragile transition from autocracy to a new order guaranteed by the rule of law, it is critical that the population be included in all steps of the process so that their enthusiasm for peace can be sustained.

### *Community Access to Justice*

Thirty years ago, in September 1978, the World Health Organization and its member states signed the Declaration of Alma-Ata, calling for primary health care to be the building block of health policy around the world. The UN General Assembly endorsed the declaration, recognizing that community-based approaches to primary health care delivery are essential if services are to reach and benefit ordinary people. Despite the successes of this approach, a comparable idea that access to justice should be rooted in community-based services has yet to be embraced in a similar manner. While the health establishment trusts trained local citizens to administer basic health care and preventive education within their communities, legal establishments have been much slower to explore ways that problem solving can be devolved to ordinary citizens. One important cause

of civil war is when poor or marginalized groups believe they have no legal recourse through which to protect their rights from more powerful elites. In countries recovering from war, this core problem will remain if reform of the legal system does not also include active ways to connect to the citizens' immediate needs, including regaining their trust. Peace-building, therefore, must find creative means to make the law quickly accessible and relevant to ordinary people so they can collectively begin to embrace a new social order and work to protect it.

Almost all peace agreements and post-conflict reconstruction plans contain commitments to establishing democratic systems based on the rule of law. Restoring the justice system is critical to security, economic development, infrastructure reconstruction, education, and good governance. However, more than half of the states that have emerged from conflict will at some time return to war. Successful post-conflict reconstruction requires political commitment, time, and a shared commitment to the basis of the peace agreement by all sectors of society. A country must honestly examine its failings and understand the causes of its war. From this, it can develop a new and sustainable political order, an essential part of which is implementation of the rule of law at every level of society.

***The Challenge for Liberia***

Liberia began political reconstruction in 2003, but the country still faces many challenges. In 2003, the Accra Peace Agreement ended what has been called Liberia's second civil war. At the same time, President Charles Taylor agreed to go into exile in Nigeria while the agreement allowed faction leaders to retain control of the government for two years while the international community provided security, humanitarian relief, and helped prepare the country for elections. The two-year transition, made possible by West African and UN peacekeepers, allowed Liberians to gain confidence in the election process, which was by far the most successful in Liberia's history. In 2005, voters chose Ellen Johnson Sirleaf as Africa's first elected female head of state.

President Sirleaf has rightly received praise for her efforts to build peace and fight poverty. She has encouraged all Liberians to make "a fundamental break with the past" and has assembled a high-quality cabinet to work on the twin challenges of delivering quick-impact assistance to the people and improving Liberia's economy. The presentation of Liberia's full Poverty Reduction Strategy in Berlin in June 2008 marked a significant milestone,

achieved in a very quick time. Annual GDP growth is projected at 9 to 10 percent for the next 5 years, and significant job creation is a very real possibility. Electrification and access to fresh water is gradually spreading throughout Monrovia, and for the first time in decades, the streets are clean. However, the continuing support of the international community, particularly the security presence of the United Nations Mission in Liberia (UNMIL), remains a critical partnership that will be needed for some time to come.

Ironically, Liberia's progress has meant that many of the international NGOs providing basic services, such as health care, are leaving the country as the emergency funding period ends, requiring the government to take over functions for which it does not yet have funds or personnel. Furthermore, progress is measured from an extraordinarily low base and does not hide the daily reality of a country recovering from near total destruction. The proposed FY 2008/9 national budget of US\$270 million has more than doubled in two years but is still woefully inadequate for a population of 3.5 million. For the time being, most Liberians wake up every day to attempt "the impossible with the available," as a Monrovia taxi slogan says, and most remain entrenched in deepest poverty.

***The Reform Agenda***

The ravages of war and Liberia's history of "internal colonialism" have undermined public confidence in the political and justice systems at every level. The former US slaves who settled Liberia created Africa's first independent republic in 1847 and subsequently controlled the state with the help of indigenous leaders, extracting resources and labor from rural areas while returning only a fraction of the benefits. Control of the state by Monrovia-based settler elites and their indigenous supporters led to the systemic



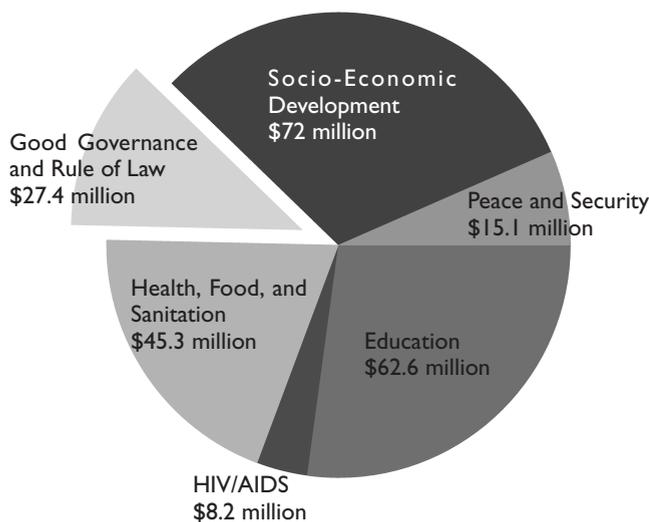
**Opposite:** A village elder learns about her new rights from members of the Carter Center-sponsored Modia Drama Club. **Above:** A woman from the village of Galai, Liberia, celebrates following a dramatic presentation on the country's new laws.

marginalization and sustained poverty of the rural population, which led, in turn, to Samuel Doe's 1980 military coup, the Charles Taylor presidency, and the successive rounds of war. Neither President Doe nor President Taylor sought to seriously reform the patronage-based political system, but rather co-opted it for their own benefit.

A central pillar of President Sirleaf's reform agenda is to improve governance and the rule of law, including decentralizing power from the historically powerful presidency. Indeed, the Accra Peace Agreement recognized poor governance as a structural cause of the conflict and created a Governance Reform Commission to address the problem. The Commission has now been made permanent with a broad mandate to report to government on all facets of governance reform, including legal, administrative, and structural aspects. Led by former transitional President Dr. Amos Sawyer, the Commission has issued important discussion documents on legal reform, created a code of conduct for the civil service, and completed a comprehensive review of land tenure issues. (As in many post-conflict countries, the issue of land ownership is a highly charged one, with many observers believing that unresolved land disputes represent the greatest threat to stability.) There are few quick fixes, and as the Commission's careful work continues, the daily problems remain and citizens continue to do their best to find local remedies to local problems, waiting for guidance and support from the state.

## Allocating Aid

### Required Resources for UN Projects, 2008-2012



The United Nations is currently shifting its focus in Liberia from humanitarian aid to development projects. As a result, the UN plans to allocate most of its resources in the areas of "socio-economic development" and education. Approximately 12 percent of the estimated \$230 million the UN hopes to mobilize will focus on "good governance and rule of law."

United Nations Development Assistance Framework for Liberia

Even when new policy directives are established, the problems of implementation in a resource-starved environment are enormous. The case of violence against women illustrates this. When President Sirleaf took office, rates of gender-based violence were epidemic. Reliable data is hard to find, but in 2007, a reproductive health survey run in Lofa County by the US Centers for Disease Control and Prevention (CDC) found that nearly 60 percent of the women interviewed reported at least one sexually violent incident during the most recent conflict, and more than 60 percent reported having been exposed to intimate partner violence at some point in their lives. Almost half the women reported more than four instances in which they were compelled to have sex for favors. Although violence against women existed in the past, it appears to have increased significantly during the war and rates are still believed to be high. One UNMIL colonel said a whole generation of young men has been raised during the war without any idea of "how to get a date without a gun."

Preventing violence against women has become an immediate government priority. One of its first acts in 2005 was to pass a law that enhanced the penalties for rape, and the government is now working to combat sexual abuse by publicizing the new law, threatening increased prosecution, and proactively encouraging victims to come forward. As in all countries, such cases are difficult to prosecute, and this is particularly true in a weak and rebuilding legal system. Strengthening mechanisms to handle sex crimes is clearly critical, but the deterrence effect of prosecutions alone cannot be relied upon to significantly reduce the scale of gender violence, particularly when the problem is so widespread and the police and legal resources are so limited.

In rural areas, the twin problems of implementing reform and upholding the rule of law are particularly acute. There currently exists a confusion of overlapping laws and regulations and unclear lines of authority. Most court officials have little formal training, and few enjoy reputations of integrity. In addition, basic resources, such as copies of the law, typewriters, and even paper and pencils, are often unavailable. Similar capacity challenges face the local police. Efforts are underway to re-train or replace local legal officers and to rebuild courts and jails throughout the country, but these will take time to have a significant impact on the population's general suspicion of local formal justice mechanisms. Even under the most optimistic projections, the current system of magisterial courts will likely only have the capacity to adjudicate a fraction of disputes in rural areas. In the short and long term, therefore, this leaves the important question of what kinds of justice, in practice, are available to people below the level of the magistrate courts, and what kinds of local dispute resolution approaches might be best encouraged.

Reconstituting common rules of social order, therefore, is a critical element in ending violent conduct in society. Such a process requires legal deterrents, but, to be successful, also requires education, acceptance of new norms, and voluntary changes to old behaviors. This process will take time, will be made up of multiple incremental steps, and will not succeed

without action and cooperation from all sections of society. Developing the rule of law will require both reform of the formal justice sector and a focus on grassroots approaches.

### *An Integrated Approach*

At the Government of Liberia's request, The Carter Center is currently working to help address both of these types of challenges—strengthening the justice sector and improving access to justice—in practical ways. In 2006, the Minister of Justice vividly described a range of problems facing her ministry, including a lack of staff, research resources, and basic law training for county prosecutors. The Minister requested assistance in capacity support, training, and communication of the ministry's role in protecting peoples' rights. This led The Carter Center to launch a series of activities supporting the ministry. Currently, the Center is working both to help build capacity at the ministerial level and, through local community partners, to educate ordinary citizens, local officials, and, increasingly, traditional chiefs on the rule of law.

As such, discussion within communities and government as well as local support will be key to the success of these new laws.

As the Ministry of Justice's civic education has expanded, however, Liberians have begun to seek out civic educators to help resolve their individual problems. In the southeast, where this work was initially focused, the Catholic Justice and Peace Commission (JPC) responded to the volume of requests by developing its own community legal advisors who now offer advice, referrals, advocacy, and mediation services upon request, while encouraging victims to report all serious cases, such as rape, to the police. As these community legal advisors are becoming better known, the number of cases they handle is steadily increasing. The project's impact will be carefully evaluated over time.

The JPC's work has developed from the needs of the people in southeastern Liberia but also has borrowed experiences from an established Sierra Leonean rural paralegal program called Timap for Justice. As with the JPC, Timap's paralegals are trained local lay people with access to lawyers

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Early responses to this work showed that rural citizens largely did not trust the courts to help poor people attain justice. Respondents also significantly lacked knowledge of the laws and of where jurisdiction lies. Women, in particular, did not feel they had protection from either formal or customary mechanisms, and there was general concern that traditional customary practices were being abused, including the use of trial by ordeal. People complained of being forcibly inducted into traditional secret societies. The breakdown of local authority during the war exposed a significant generation gap, with young people not recognizing traditional authority, which they saw as having failed to keep the peace or even as a cause of the war.

An area of contention is the continued use of witchcraft and, in particular, the harmful traditional practice of Sassywood, a form of trial by ordeal in which the accused must drink a poisonous brew to prove innocence. The government is working to eliminate any reference to witchcraft by court officials and announced a campaign to end Sassywood in 2007. Many traditional leaders at first saw this as a further effort by the government and the “human rights people” to take away their culture. They demanded to know how the government intended to replace their principle method of determining guilt or innocence, when, in practice, there is unlikely to be a formal system readily available to fill the gap. In addition, a 2003 law granting women property rights created a division between women who are delighted by this law and men who are unhappy with such a radical change.

for advice and support. As locals, they understand community dynamics and have the flexibility to work for community-wide solutions as well as serving individual needs. Such community-driven legal services are not new. They have emerged in various forms in Bangladesh, Botswana, Malawi, Mozambique, South Africa, and the Philippines, among others. In some cases, they are sanctioned by the courts and funded by the government as community-based extensions of government services, while in other scenarios, they are independent and raise funds through donors or small fees.

Although evaluation is difficult, the caseload of community legal organizations coupled with strong case-based anecdotal evidence suggests that these community-based organizations can provide local people with access to justice when the local formal systems are either not functioning or are still rebuilding. In Sierra Leone, Timap is widely accepted, but remains an independent organization. In Malawi, community legal services play a formal supporting role to public defenders, acting as an extension of social services and offering formal legal triage for cases. At their best, these programs represent powerful alternatives through which people can access their rights, challenge local abuses, and improve the overall quality of justice. It remains to be seen whether such programs will be adopted as part of the long-term judicial strategy in Liberia or whether they will be an important transitional fix. Certainly, they are not intended to replace existing justice mechanisms, but they can provide alternatives where people's trust in local justice—formal or

traditional—is low and can set a competitive example by operating in professional and transparent ways that invite comparison and improve overall performance.

***Strengthening Traditional Justice Mechanisms***

A further step in improving access to justice is to strengthen existing traditional justice mechanisms. In Liberia, the chieftaincy system and traditional spiritual practices remain at the foundation of society for people living or raised in the countryside. Though the legitimacy and authority of

help resolve local disputes, particularly over land. Although in its early stages, this degree of cooperation and dialogue between the state and the traditional people is potentially of great significance to healing historic wounds and building a more unified society.

***A Common Language of Law***

Overall, the combination of judicial sector improvements, civic education, modifications in the relationship between customary justice and the state, and the emergence of

community legal service programs can have an important and lasting impact on the quality of justice throughout Liberia. It is critical that existing and revised laws be communicated and understood in consistent ways, not only within the legal system, but within local government and schools, among customary leaders, by local legal service providers, and by the general public. Common messaging throughout society can become the basis to reinvent an agreed language of citizenship, and public dialogue on the intent of the law can allow for difficult issues between communities to be discussed openly without recourse to violence.

In Liberia and elsewhere, such an approach is not a substitute for effective policing and economic recovery, and it is ultimately the



**Emmanuel Kwenah, leader of the Bong Youth Association, greets villagers in rural Leleh, located near Gbarnga. The Carter Center has partnered with the community-based organization to educate Liberians in the rule of law.**

this patronage hierarchy diminished over time due to political interactions with settlers, urbanization, elections, and war, villages remain organized around chiefs whose authority is still recognized locally as well as by higher levels of government. Any strategy of change, therefore, must address both the capacity and concerns of the traditional leaders since they continue to be active at all levels, particularly in rural society.

The Carter Center has been working with the Ministry of Internal Affairs to begin a government-led process of engaging traditional leaders in discussions about leadership, peace, and the rule of law. Despite the initial hostility to challenges to Sassywood, the chairman of the National Traditional Council (NTC) has said publicly that he will collaborate with “justice people” to end harmful traditional practices and is willing to discuss means of regularizing other forms of traditional problem solving. Significantly, the NTC has said publicly that it accepts the 2003 law allowing women in traditional marriages to claim property rights, although, as in many other countries, the idea that a wife has a right to deny her husband sex is not yet understood. As the explanation and discussion of the new laws continue, traditional leaders increasingly are being asked by the government to

state’s responsibility to establish the laws and to uphold law and order. However, in countries emerging from war, it is common that the state lacks the capacity to uphold the law, and that citizens do not trust the authorities. In such environments, local communities always will find ways to resolve local conflicts and address their own justice needs. One danger is that these will not be compatible with the new political order, human rights, or the maintenance of peace. In this transitional phase, giving citizens the tools to know and understand the law, and moving quickly to strengthen and supplement existing institutions are important steps that are seldom given sufficient priority. Governments and donors tend to focus on physical and structural reform, without providing the people themselves with parallel support to solve problems and maintain the peace locally.

It is in the communities scattered throughout Liberia and other recovering post-conflict countries that peace will either take root or discontent will re-emerge. Giving communities in transition the tools to address their own problems provides them with the means to reestablish social order compatible with the new direction of the state at the local level, making this an essential element of preventing a return to war. ■

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