



**International  
Legal Assistance  
Consortium**



## **ILAC Report**

### **Liberia, December 2003**

ILAC is a global organisation, established and based in Sweden. ILAC is a consortium of NGOs throughout the world with experience in providing technical legal assistance in post-conflict situations. ILAC's more than 30 member organisations represent over 3 million judges, prosecutors, lawyers and academics.

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## TABLE OF ACRONYMS

<b>ADR</b>	<b>Alternative Dispute Resolution</b>
<b>AFELL</b>	<b>Association of Female Lawyers in Liberia</b>
<b>CLE</b>	<b>Continuing Legal Education</b>
<b>ECOWAS</b>	<b>Economic Community of West African States</b>
<b>GOL</b>	<b>Government of Liberia</b>
<b>ILAC</b>	<b>International Legal Assistance Consortium</b>
<b>LURD</b>	<b>Liberians United for Reconciliation and Democracy</b>
<b>MODEL</b>	<b>Movement for Democracy in Liberia</b>
<b>MOJ</b>	<b>Ministry of Justice</b>
<b>NGO</b>	<b>Non governmental organizations</b>
<b>NLBA</b>	<b>National Liberian Bar Association</b>
<b>NPFL</b>	<b>National Patriotic Front of Liberia</b>
<b>QIP</b>	<b>Quick Impact Project</b>
<b>SRSG</b>	<b>Special Representative to the Secretary General</b>
<b>UN</b>	<b>United Nations</b>
<b>UNOMIL</b>	<b>United Nations Observer Mission in Liberia</b>
<b>UNHCR</b>	<b>United Nations High Commissioner for Refugees</b>
<b>UNMIL</b>	<b>United Nations Mission in Liberia</b>
<b>US DOJ</b>	<b>United States Department of Justice</b>

# INTERNATIONAL LEGAL ASSISTANCE CONSORTIUM

## ASSESSMENT OF THE LIBERIAN JUDICIAL SYSTEM 19 November - 3 December 2003

### EXECUTIVE SUMMARY

At the request of the Head of the United Nations Mission in Liberia (UNMIL), Special Representative of the Secretary General (SRSG) Jacques Paul Klein, the International Legal Assistance Consortium (ILAC) conducted the first post-conflict assessment of the Liberian judicial system. This Report summarises ILAC's findings. In accordance with the terms of reference provided by the SRSG, this Report makes recommendations for the immediate re-establishment of two criminal courts in the capital, Monrovia, and for the short, medium and long term reconstruction of Liberia's legal system.

Liberia, Africa's oldest democracy, was founded in 1822 by US President Monroe as a safe haven for emancipated slaves. Independent since 1847, Liberia has a Constitution, the institutions of parliamentary democracy, and an adversarial legal system. The working language is English. Of the population of approximately 3.3 million, approximately 5 per cent are descendants of US and Caribbean slaves; 95 per cent are indigenous Africans.

Currently best known for its civil war and the role of its former president, Charles Taylor, in the war in Sierra Leone, Liberia had a skilled population and abundant natural resources. After 20 years of war, atrocities and torture, Liberia is now the world's poorest country. Average annual income is USD 140. Life expectancy is 41.

Governed by the minority Afro-American settlers, Liberia enjoyed relative stability until the early 1980s, when Samuel Doe launched a military coup, suspended the Constitution, and assumed full power. In 1989, the National Patriotic Front of Liberia (NPFL), led by Charles Taylor, rebelled against Doe's arbitrary rule, overran much of the country and in 1990, executed Doe. War intensified as rebels splintered and fought each other, the Liberian army, and peacekeepers sent by the Economic Community of West African States (ECOWAS).

In 1993, the UN Security Council established the United Nations Observer Mission in Liberia (UNOMIL). Following a 1995 peace agreement, Charles Taylor was elected as President in 1997. Taylor formed a new government and announced a policy of national unity and reconciliation.

Peace-building was hindered by the inability of the government and opposition parties to resolve their differences over key issues of governance. National reconciliation was undermined by systemic abuses of human rights, the exclusion and harassment of political opponents, and the absence of security sector reform. In 1999, a new rebel faction, Liberians United for Reconciliation and Democracy (LURD) entered Liberia through Guinea and attempted to overthrow Taylor's government. By 2002, conflict extended throughout Liberia. Battle lines shifted frequently and rural areas were denied access to vital humanitarian assistance.

In early 2003, a second rebel faction, Movement for Democracy in Liberia (MODEL) emerged. Again, the factions fought each other, Taylor's armed forces, and other militia. In June 2003, rebels launched two separate attacks on Monrovia. Approximately 600 were killed and

thousands were displaced. Food shortages, rapid inflation, massive looting, and outbreaks of cholera and dysentery followed.

On 8 July 2003, as fighting between government forces and warring factions intensified, the UN Secretary-General appointed Jacques Paul Klein as his Special Representative (SRSG) in Liberia. On 29 July, the Secretary-General outlined a three-phase deployment of international troops to Liberia, on 1 August the UN Security Council authorised the establishment of a multinational force in Liberia, and on 11 August Charles Taylor resigned and went into exile in Nigeria.

On 18 August, the Liberian parties signed a Comprehensive Peace Agreement in Accra, Ghana. By that Agreement, the parties requested the UN to deploy a force in Liberia and to assist in the implementation of the Agreement. On 19 September, the Security Council authorised the establishment of the United Nations Mission in Liberia (UNMIL). Comprising up to 15,000 UN military personnel, 1,115 civilian police officers and a large civilian component, UNMIL is the UN's largest peacekeeping mission.

Since UNMIL's establishment on 1 October 2003, significant progress has been made in the implementation of the Comprehensive Peace Agreement. Monrovia and surrounding areas are stabilising, disarmament has commenced, schools are reopening, and humanitarian assistance has reached rural areas.

UNMIL is committed to re-establishing the Liberian legal system as a matter of urgency. At the request of the SRSG, ILAC's assessment was designed to review the current status of the Liberian judicial system and to identify and prioritise reforms which may 'kick-start' that system in post-conflict Liberia. To do this, the ILAC team arrived in Monrovia less than seven weeks after UNMIL was established. It met with more than 150 Liberians, including members of the judiciary, lawyers, police, prison officers, legal academics, representatives of non-government organisations (NGOs), church leaders, human rights advocates, and ordinary Liberians.

Serious problems remain. Liberian society has collapsed, 150,000 are dead, 100,000 were displaced in Liberia, and a further 150,000 sought protection in neighbouring Sierra Leone, Guinea and Cote D'Ivoire. There is massive systemic corruption, the infrastructure is little more than a decaying shell, and under the terms of the amnesty granted to rebels by Comprehensive Peace Agreement, many of those who committed atrocities cannot be brought to justice.

There is an almost unanimous distrust of Liberia's courts and a corresponding collapse of the rule of law. Liberia's Constitution provides for an Anglo-American legal system, but in reality, there is no effective separation of powers, a limited understanding of the principles of transparency and accountability, little knowledge of contemporary notions of human rights, limited access to legal advice and defence counsel, and unconscionable delays. Taylor's government withheld salaries from judges, prosecutors, court staff, police, and prison officers for 2.5 years. Judgement, freedom, and even life itself, were often sold to the highest bidder.

But after 20 years of civil war, Liberians want change. Liberia has sufficient qualified and experienced jurists. Training in judicial and professional independence is a priority, criminal procedure requires a radical overhaul, prosecutors must be recruited, defence counsel must be made available to indigent defendants, and a detention centre must be built. Police and prison officers require comprehensive training in all aspects of their duties, and transparency and accountability must be integrated into all areas of government.

Liberia is likely to require significant long-term assistance from the international community, together with a sustained commitment to reform by the Liberian government and its people. It

must decide how to deal with those responsible for atrocities for which amnesty has not been granted. It must also consider whether to establish a South African-style Truth and Reconciliation Commission. These are hard questions, to which there are no easy answers.

Rapid improvement is possible. This Report recommends short-term, practical projects that are designed to “kick-start” the Liberian judicial system in 2004. These projects will have immediate, tangible and visible benefits in Monrovia and the surrounding counties and will provide a foundation for medium and long term projects. This is first step in the process of re-establishing the rule of law in Liberia, and in developing confidence, both Liberian and international, in Liberia’s legal system.

The Swedish Ministry of Foreign Affairs generously provided the funding for this mission.



## CHART OF ILAC RECOMMENDATIONS FOR THE RECONSTRUCTION OF LIBERIA'S LEGAL SYSTEM

Below is a list of recommendations to rebuild the Liberian Justice System. As requested by the DSRSG for Rule of Law and Operations, UNMIL, the recommendations are divided into four groups: Reestablishment of two criminal courts in Monrovia; Structure of the Judiciary; Law Reform and Training Programs. The recommendations are further prioritized into short term (1-3 months), medium term (4-6 months) and long term (more than 7 months). The majority of these recommendations are short-term, practical projects that are designed to "kick-start" the Liberian judicial system in 2004. These projects will have immediate, tangible and visible benefits in Monrovia and the surrounding counties and will provide a foundation for medium and long-term projects. This is a first step in the process of re-establishing the rule of law in Liberia, and in developing confidence, both Liberian and international, in Liberia's legal system. Detailed project proposals can be provided upon request.

### REESTABLISHMENT OF TWO CRIMINAL COURTS IN MONROVIA

#### Short Term 1-3 months

Capital works	Windows, floors, doors and locks, repaired or replaced. Electricity reconnected or generators provided.	UNMIL QIP funding
Furniture	Bar Table with 6 chairs (Trial Court)	Component of Court package
Equipment	Simple recording system including tape recorder with counting feature, simple speakers, 4 microphones, and lockable metal cabinet for storage	Component of Court package Preference for system similar to that provided in 1999
Legal resources	Constitution, Liberian Code, Liberian Law Reports, Rules for Procedure in Court, Code for Moral and Ethical Conduct of Lawyers (for each court). Secure storage mechanism.	Document source located in US; books can be reprinted. Assistant Minister of Justice to oversee codification of statutory law and editing and printing of Supreme Court decisions
Basic stationary kits	Note pad paper; photocopy paper; indictment paper; pens; paper clips; staples, etc. Supplies should be provided in weekly amounts.	Component of Court package
Liberian personnel for Trial Court, vetted for corruption	Judge, Associate for Judge, Prosecutor, Court Officer; sound recording officer, police liaison officer (balanced representation, including women)	International team of experts to assist with vetting procedures and training
Liberian personnel for Magisterial Court, vetted for corruption	Qualified Stipendiary Magistrate; two Associate Magistrates; court officer; police liaison officer; Prosecutor; sound recording officer (balanced representation, including women)	International team of experts to assist with vetting Procedures and training
Court Accountability Officer	Advise and assist court personnel on a daily basis with efficient and proper courtroom procedure Oversight of international criminal court programme. Bridge between short term and longer projects	International expert to stay 6 – 9 months, minimum
Basic training	Judges, Prosecutors, Magistrates, Defence lawyers, Court reporters, Court Officers in efficient Court room procedure, trial practice, etc.	International team, including Judge, Prosecutor, Defense lawyer, Court reporter and Court Officer to work directly with their Liberian counterparts, for a minimum period of 6 weeks.
Specific Training	Plain speaking and drafting; advocacy; human rights; gender justice; ethics, independence and anti-corruption.	International teams of experts for each area (including African expertise). Programmes to include a "train the trainer" component to continue training in the long term.
Effective investigative authority	Train experienced police officers, vetted for corruption	Liberian Police Commission together with UNMIL
Payment of all personnel involved in operation of two courts	To avoid corruption, personnel must be paid a salary	Government of Liberia/UNMIL
Operational detention facility	Existing prison can be refurbished for the short term	UNMIL QIP funding

## STRUCTURE OF JUDICIARY

### Short Term 1-3 months

Ascertain all outstanding matters at Circuit Courts and Supreme Court	Hear all outstanding matters	Court Accountability Officer together with Ministry of Justice
Commission on Salaries	Create Commission of experts to review the rates and pay and benefits for Government officials in Executive, Legislature and Judiciary and make recommendations for equitable rates of pay and benefits	Expert to work with Commission and assist with drafting legislation, where appropriate
Supreme Court	Start-up package to reestablish Supreme Court Include basic furniture and equipment, Library of Legal resources, Basic training	Provide basic package for immediate operation of Court (details can be provided). Expert to assist with initial program.
Review qualifications for all Judges, Stipendiary Magistrates and Justices of the Peace. Review gender and ethnic balance.	Form Committee to set qualifications and review current commissions and credentials. Make recommendations for replacements, where appropriate.	Experts to work with Good Governance Commission and assist with legislation, if appropriate.
Develop transparent filing and tracking system for court records	Review current system and make recommendations for improvements	Expert to help create system for Liberia, including a practice manual, and train court officer in new system.
Judicial Reform Commission	Carefully review Report of Judicial Reform Commission (2000) Create new Commission to implement suggestions, where appropriate	Expert to work with Supreme Court to establish Judicial Reform Commission and assist with drafting legislation, where appropriate

### Medium Term 4-6 months

Set up small claims court	Examine requirement for small claims.	Expert together with Ministry of Justice establish small claims courts. Assist with drafting legislation, if appropriate
Creation of independent Judicial Service Commission	Prosecute violations of Code of Conduct for Public Officials. Set qualifications standards for judicial positions; promulgate additional qualifications, where appropriate.	International team of experts to work with Good Governance Commission to create Judicial Service Commission (to be combined with creation of Code).

### Long term

Establish Public Defender system	System established first in Monrovia and then in outlying counties. Explore providing a travel allowance, for judicial officers, public defenders and prosecutors who travel to the counties	Project to allow expert to consult with judiciary, Bar, and Prosecution to establish guidelines as well as explore the possibility of a clinic at the law school.
Legal Aid Programme	Review legal aid program. Provide for reduced fees for low income clients	Expert to provide models of legal aid programmes in similar systems.
Review qualifications of lawyers practicing in the outlying counties	Explore incentive program to attract qualified candidates to outlying counties, such as scholarships to law school in return for two years of service in county	Expert to work with Judiciary, Bar, AFELL, Law School to create incentive program. Support Law School scholarships.
Ombudsman	Explore with GOL, the court system, Human Rights Commission and NGOs how to establish public Ombudsman system in Liberia. Pilot program in Monrovia with expansion to counties	Ombudsman specialist to work with GOL, Human Rights Commission, Ministry of Gender, AFELL, Bar, etc. to create Ombudsman program.

## LAW REFORM

### Short Term (1-3 months)

Review Liberian Constitution	Separation of Powers; Checks and balances Requirements for Presidency: 6 year term, 10 year residency; Appointment of Judiciary	Experts working with Good Governance Commission to make recommendations and assist with drafting legislation, where appropriate
Review Rules and Regulations of Hinterland of Liberia	Review for consistency with Constitution and International Human Rights Standards. Revise law where appropriate. Produce simple plain language text of Regulations, translated into local dialects and pictures. Disseminate throughout Liberia.	African experts in customary law to work with Liberian experts and assist with drafting legislation, where appropriate. Assist with development of programs to educate Chiefs and public regarding jurisdiction and Regulations governing Traditional Courts.
Code of Conduct for Public Officials	Closely examine current practices and review models from other systems. Develop Code, produce easy to read manual for wide dissemination.	Experts from countries that have a similar code, which is operational and respected, to assist in drafting Code and legislation, where appropriate.
Review International Legal Instruments	Closely examine Liberian laws, including the Constitution, Codes, etc. to assess whether they comport with international legal instruments, ratified by Liberia as well as minimum human rights standards	Expert to work Liberian group to review laws and assist with drafting legislation, if appropriate. Justice and Peace Commission potential partner.
Optional Protocol to the International Covenant on Civil and Political Rights	Examine Optional Protocol and the advantages to Liberia will signing it.	Expert to provide specific information on Optional Protocol and assist with drafting legislation, if appropriate.
Anti-Corruption Commission	Create Anti-Corruption Commission to create Anti-Corruption Code. Commission to have power to investigate and prosecute violations.	Experts to assist with immediate creation of Anti-Corruption Commission and assist with drafting legislation.
International Human Rights Commission	Create far reaching program to sensitise Liberians and investigate human rights violations.	Experts to assist with immediate creation of Human Rights Commission and assist with drafting legislation

### Medium Term (4-6 months)

Create Judicial Service Commission	Review qualifications; Investigate Judicial misconduct and make recommendations for prosecution	Experts, including members from African to work with Good Governance Commission
Supreme Court Reporter	Edit, print, bind and distribute Supreme Court reports	Expert to work Supreme Court and train reporter
ADR	Explore with Judiciary, the Legislature, NGOs and UN personnel how an ADR program could be established	ADR specialist to consult and assist in preparing legislation to establish and fund an ADR system
Regulation of legal practice in Liberia	Work with Bar regarding regulation of legal practice	Experts from similar common law jurisdictions in Africa should advise regarding models
Practice Application	Application made to Bar instead of Ministry of Finance with dues paid to Bar. Bar to review application. Review practice of law firm application.	Experts to help create model and draft legislation
Gender Justice	Review issues of Gender Justice. Closely examine Liberian laws regarding Gender Justice and make recommendations	Working with AFELL and Ministry of Gender, gender expert to assess Liberian laws and assist with drafting legislation, if appropriate
Ministry of Gender and Development	Support Gender desk in each Ministry. Closely examine Liberian laws regarding Gender and make recommendations where appropriate. Print, in simple language and pictures, and widely distribute women's rights and laws affecting women.	Gender expert to work with Liberian Ministry of Gender and Development and assist in developing programs to sensitise the other Ministries as well as educate all women. Assist with drafting legislation, if appropriate.
Customary Law	Support local groups with workshops and dissemination of information regarding gender issues and laws, including FGM.	Support local programs such as distribution of pamphlets; plays, radio programmes. Assist in creating alternative source of income for Zors, other than FGM.
Juvenile Protection Laws	Review Liberian laws, international legal instruments and human rights standards regarding Juveniles.	Support local programs to develop Juvenile Protection Laws. Assist with drafting legislation, if appropriate.

### Long Term

Jury Selection Methods	Create position of Jury Commissioner, responsible for jury selection methods.	Expert to help define and create and assist with drafting legislation, where appropriate.
Review use of jury in certain cases	e.g. annulment and divorce cases	
Sexual Assault	Closely examine law, including definition and defences.	Expert to review and assist in drafting legislation, if appropriate.
Create text book on Liberian Law: Practice ad Procedure	Include information on Constitution, powers and limitations, human rights, anti-corruption. Simplified version could be used in high school civics classes.	International experts to work with Liberian Commission, e.g. Commission on Good Governance. Trial handbook from similar system could be used as model.
Law Journal	Encourage critical review of court decisions	Support Bar and Law School to publish Law Journal
Reinstate Counsellor Exam	Review requirement that character recommendation need come only from a Supreme Court Justice.	Expert from similar Common Law countries. Assist with drafting legislation, if appropriate.

## TRAINING

### Short Term (1-3 months)

Disseminate information of Rights of the Individual protected under Liberian Constitution	Review rights protected under Constitution. Create a simple distilled version that can be translated in to local dialects and pictures. Review US DOJ booklet.	Expert to help distill information and support local organizations with dissemination projects and workshops.
Disseminate information on Gender Justice and women's rights	Review women's rights under Constitution, Peace Agreement and international human rights. Program to sensitise members of judiciary, police, traditional courts and public to gender justice issues.	Expert to work with AFELL and local groups to create program regarding Gender Justice and women's rights in Liberia. Provide support for dissemination of information; including printing, plays, radio
Disseminate information on the new law regarding women's inheritance rights	Program to educate members of Judiciary, Traditional Courts and public regarding implications of new law. Oversight for implementation of inheritance rights.	Support AFELL and local groups with dissemination of law regarding women's inheritance rights; including printing, plays, and radio.
Obtain, copy and distribute copies of Liberian Law Reports, The Liberian Code and the Constitution	This information should be available to the Judiciary, the Bar and Law School libraries. A security mechanism, such as a locking bar, should be for each library.	Work with Assistant Minister of Justice to support printing, dissemination of and security for Liberian law resources.
Reestablish Law School	Provide basic structural repairs. Basic furniture, equipment and books required for classes to begin.	UNMIL QIP funding for structural repairs. Law School start- up package (details can be provided)

### Medium Term (4-6 months)

Basic Court Room procedure	Workshop and creation of manual for all lawyers	Expert team to host workshop.
Plain Speaking and Drafting (court room)	Mandatory workshop for all members of Judiciary and Bar	Experts can hold plain speaking and drafting workshops.
Court Recorder	Training in use of equipment.	Provision of equipment and training for efficiency
Human Rights	All Judges, Prosecutors, Magistrates, Justices of the Peace, Defence, Traditional Court Chiefs, Law Students, and Police should participate	Working with Good Governance Commission experts to create Human Rights workshops
Gender Justice	All Judges, Prosecutors, Magistrates, Justices of the Peace, Defence, Traditional Court Chiefs, Law Students, and Police should participate	Working with Good Governance Commission experts to create Human Rights workshops
Ethics, Independence, Anti-Corruption	All Judges, Prosecutors, Magistrates, Justices of the Peace, Defence, Traditional Court Chiefs, Law Students, and Police should participate	Working with Good Governance Commission experts to create Human Rights workshops
Legislative and legal Drafting	All Ministries, members of Bar and Judiciary to attend workshop in effective legislative and legal drafting.	Experts together with Good Governance Commission to hold legal drafting workshops

### Long Term

Continuing Legal Education	Long-term CLE programs for Judges, Magistrates, Justices of the Peace, Traditional Courts, Prosecutors, etc.	Experts from Bar Associations in similar systems could help create CLE program. Other Bars could partner with LBNA and AFELL to provide exposure and support.
Law School Partnership Programs	Set up partnership programs with various law schools for: Clinics, law student associations, Law Review, Moot Court. Librarians and Professors to have individual partners.	Experts from individual US law schools can help create individual partner programs.
Clerk Programs	Creation of judicial clerkship program for students	Expert to work with Supreme Court, Circuit Courts and Law School to develop Law Clerk Program
Inter-Tribal Conflict Prevention	Mediation program to address inter-tribal conflicts at earliest stages.	Expert to work with local groups to support rural and traditional approach conflict prevention.
Capacity Building Liberian Bar	Train a full time Executive Director of the Bar Association	Expert to train Executive Director on how to run an effective Bar Association; program to take place outside Liberia to increase exposure to other systems

# INTERNATIONAL LEGAL ASSISTANCE CONSORTIUM ASSESSMENT OF THE LIBERIAN JUDICIAL SYSTEM

## I. INTRODUCTION

### A. Background

At the request of the Special Representative of the Secretary General (SRSG) Ambassador Jacques Paul Klein, Head of the United Nations Mission in Liberia (UNMIL), the International Legal Assistance Consortium (ILAC)<sup>1</sup> conducted an assessment of the Liberian legal system. This Report summarises ILAC's findings. It makes recommendations for the immediate re-establishment of two criminal courts in Monrovia, and for short, medium and long-term reconstruction of Liberia's legal system.

Between 19 November and 3 December 2003, a seven-person team<sup>2</sup> visited the Liberian capital, Monrovia, and rural areas of Liberia, to conduct the assessment. That assessment was designed to review the current status of the Liberian legal system and to identify and prioritise reforms that may enable that system to function effectively in post-conflict Liberia. To do this, the team met with more than 150 Liberians, including members of the judiciary, lawyers, police, prison officers, legal academics, representatives of non-government organisations (NGOs), church leaders, human rights advocates and ordinary Liberians.<sup>3</sup> The team also reviewed numerous documents and reports, including the Constitution of Liberia, the Peace Accord, and the Rules of the Supreme Court.<sup>4</sup>

As a result of 20 years of civil war and massive systemic corruption, Liberian society has collapsed. 150,000 Liberian citizens are dead, 100,000 were displaced in Liberia, and a further 150,000 sought protection in neighbouring Sierra Leone, Guinea and Cote D'Ivoire. Now listed as the world's poorest country, Liberia has a per capita income of USD160 per annum, notwithstanding that it had a skilled and educated population and abundant natural resources.

Since its establishment in October 2003, UNMIL has begun to stabilize Monrovia and the surrounding rural areas. Reconstruction of the legal system is required urgently; but no legal system operates in a vacuum. Consequently, this Report identifies several overarching issues that continue to inform the Liberian system. These include the absence of any separation of powers; the absence of principles of transparency and accountability; the withholding of remuneration of public employees and the implications of this for those attempting to access the justice system; the disparity of access to education; the absence of a basic understanding of human rights and gender issues; challenging security conditions; and the limited integration of traditional law and custom with the Anglo-American legal system. It is essential that international donors recognise the complexity of these issues, otherwise international assistance is unlikely to engender sustainable legal reform.

Liberia is likely to require significant long-term assistance from the international community. This Report, however, recommends several short-term, practical projects that are designed to

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<sup>1</sup> ILAC is a global consortium of NGOs involved in providing technical legal assistance in post-conflict situations around the world.

<sup>2</sup> The team comprised Richard Oma Ahonarougho, Chairman of the Human Rights Committee of the International Bar Association, Nigeria; Rodger Chongwe, former President of the African Bar Association and former Minister of Justice of Zambia, Zambia; Judge Michael Enwall, of the American Bar Association, USA; Fiona E. Gray, of the International Association of Prosecutors, Australia; Agneta Johansson, ILAC Executive Assistant, Sweden; Catherine MacKenzie of the Bar Council of England and Wales, UK; and Shelby Quast, Director-General of ILAC USA, USA, who also compiled this report.

<sup>3</sup> Appendix A is a list of Liberians met with by the team.

<sup>4</sup> Appendix B is a list of documents on which the team relied.

“kick-start” the Liberian judicial system in 2004. They will have immediate, identifiable and visible benefits in Monrovia. This is the first step in the process of reestablishing the rule of law in Liberia, and in developing confidence, both Liberian and international, in the Liberian legal system.

ILAC is grateful to UNMIL, particularly to SRSG Jacques Paul Klein, to Deputy SRSG for Rule of Law and Operations, Souren Seraydarin, and to UNMIL Senior Legal Specialist, Dr Alfred Kofi A. Fofie, all of who provided generous assistance throughout the assessment mission. The atmosphere at UNMIL reflects that of a mission that is intent on supporting the Liberians in developing a sustainable and peaceful system that will thrive well after UNMIL takes its leave.

ILAC also wishes to thank the many Liberians who provided information about the operation of their legal system and who offered frank opinions about the need for reform. By listening to Liberians who worked in the justice system in periods of instability as well as to those who were affected by a tainted system and by working with Liberians who are committed to reconstructing the justice system in post-conflict Liberia, ILAC hopes to contribute to the maintenance of peace and the development of a stable legal system in Liberia. Lessons learned from previous post-conflict environments have proven that local ownership is key to sustainable international assistance. The Liberian people are of course the driving force behind any reform efforts and carry the main responsibility for development of their legal system; it is clear that Liberians must be at the helm of each step of the process.

ILAC acknowledges the previous international assistance programs that took place in Liberia a few short years ago. The Liberians are again requesting much of what was asked for, and provided by the international donor community, in 1999. Whilst it is strikingly evident that the materials and training are again needed, a crucial component of any international assistance must be training in the effective use and maintenance of the tools provided. Where appropriate, ILAC has built such safeguards and accountability mechanisms into its recommendations.

The Swedish Ministry of Foreign Affairs generously provided the funding for this mission.

## **B. History of Liberia**

Liberia, located on the west coast of Africa, is bordered by the Cote D'Ivoire to the South, Guinea to the North East and Sierra Leone to the East. The Atlantic Ocean forms the western border. Liberia, Africa's oldest republic, was granted independence in 1847. It was founded by emancipated slaves from the United States of America.

Prior to the abolition of slavery by the English Parliament in 1833 and in response to pressure from abolitionists, President Monroe of the USA repatriated those descendants of African slaves who were willing to return to Africa. The freed American slaves brought with them to their new country the common law, institutions of parliamentary democracy, and the English language. Integration of these institutions with the pre-existing local law and custom was not particularly successful in Liberia.

In 1847 the United States of America granted the settlers their independence. However only 5% of the country's nearly 3.3 million people comprise the slaves' descendants. The vast majority of the population, being 95%, is made up of indigenous Africans.

Governed by the minority Afro-American settlers, Liberia enjoyed relative stability until the early 1980s, when Samuel Doe launched a military coup, suspended the Constitution, and assumed full power. In 1989, the National Patriotic Front of Liberia (NPFL), led by Charles Taylor, rebelled against Doe's arbitrary rule, overran much of the country and in 1990, executed Doe. War intensified as rebels splintered and fought each other, the Liberian army, and peacekeepers sent by the Economic Community of West African States (ECOWAS).

In 1993, the UN Security Council established the United Nations Observer Mission in Liberia (UNOMIL). Following a 1995 peace agreement, Charles Taylor was elected as President in 1997. Taylor formed a new government and announced a policy of national unity and reconciliation.

Peace-building was hindered by the inability of the government and opposition parties to resolve their differences over key issues of governance. National reconciliation was undermined by systemic abuses of human rights, the exclusion and harassment of political opponents, and the absence of security sector reform. In 1999, a new rebel faction, Liberians United for Reconciliation and Democracy (LURD) entered Liberia through Guinea and attempted to overthrow Taylor's government. By 2002, conflict extended throughout Liberia. Battle lines shifted frequently and rural areas were denied access to vital humanitarian assistance.

In early 2003, a second rebel faction, Movement for Democracy in Liberia (MODEL) emerged. Again, the factions fought each other, Taylor's armed forces, and other militia. In June 2003, rebels launched two separate attacks on Monrovia. Approximately 600 were killed and thousands were displaced. Food shortages, rapid inflation, massive looting, and outbreaks of cholera and dysentery followed.

On 8 July 2003, as fighting between government forces and warring factions intensified, the UN Secretary-General appointed Jacques Paul Klein as his Special Representative in Liberia. On 29 July, the Secretary-General outlined a three-phase deployment of international troops to Liberia, on 1 August the UN Security Council authorised the establishment of a multinational force in Liberia, and on 11 August Charles Taylor resigned and went into exile in Nigeria.

On 18 August 2003 the Government of Liberia (GOL), LURD, and the MODEL signed the Comprehensive Peace Agreement in Accra, Ghana. By that Agreement, the parties requested

the UN to deploy a force in Liberia and to assist in the implementation of the Agreement. On 19 September, the UN Security Council determined that "... *the situation in Liberia continues to constitute a threat to international peace and security in the region, to stability in the West African sub region and to the peace process for Liberia*" and authorised the establishment of the United Nations Mission in Liberia (UNMIL). Comprising up to 15,000 UN military personnel, 1,115 civilian police officers and a large civilian component, UNMIL is the UN's largest peace-keeping mission. UNMIL is currently mandated to remain in Liberia until a permanent government is elected in national elections, scheduled to be held in 2005.<sup>5</sup>

### **C. General Observations**

#### ***Destruction of Infrastructure***

Approximately 20 years of civil war have caused almost total destruction of Liberia's infrastructure. Monrovia has had no power or running water since the early 1980s. There is no postal or telephone service, few buildings are intact, roads are in a state of disrepair and Monrovia's one remaining hospital is operated by Medicine Sans Frontiers. Conditions in rural areas are reported to be worse.<sup>6</sup> There have been outbreaks of cholera and dysentery, and many rural areas depend on international NGOs for food.

In mid 2003, at the height of the conflict, buildings in Monrovia were looted extensively, windows were broken, and records destroyed. Computers, office equipment, carpets, furniture, books, doors and even lavatories have been stolen from public buildings. Consequently, while there is a statutory framework within which the Liberian legal system can operate, the infrastructure on which it depends is nothing more than a decaying shell.

#### ***Corruption***

There is an almost unanimously distrust of the legal system and a corresponding collapse of the rule of law.

The government of Charles Taylor withheld salaries from judges, court staff, police, prison officers and civil servants for approximately 2.5 years. Corruption is rife. The team was told that judges were often "paid" by means other than regular salaries, and that judgment was often given to the highest bidder, or was based on secret instructions from the Executive. Similarly, the police officers were often "paid" by those who required police protection for their dubious activities, or by those charged with offences that wished to be released from police custody. In the absence of functioning court and police systems, some Liberians took action with their own hands while others simply distanced themselves from the entire system.

Corruption is likely to continue until it is rebuked at all levels. Additionally, an adequate salary, paid regularly to all who work in the justice system is a necessary first step. Transparency of an operational judicial process will be key to building public confidence. Many people interviewed stressed that to further instill public confidence in the Judiciary, judicial officers should be selected based on academic qualifications, experience and credibility. All candidates should be vetted for corruption and those tainted by ills of the past should not be considered for judicial offices.

#### ***Strategic Planning and Donor Coordination***

Lack of donor coordination is a frequently heard complaint in post conflict environments. To help avoid this in Liberia it will be key to have a Liberian Commission or Ministry take responsibility for providing a strategic long-term vision for rule of law as well as coordinate the

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<sup>5</sup> Security Council Resolution 1509 (2003), S/Res/1509 (2003).

<sup>6</sup> The team visited Kakata in Margibi County but due to security concerns was prevented from assessing other outlying counties.



international assistance accordingly<sup>7</sup>. It is recommended that an international partner, supporting such an agency, help with the initial coordination and oversight of international assistance.

### **Gender Issues**

In the process of rebuilding Liberia, there is an opportunity to reform laws and traditions that restricted women's human rights even before the conflict began. There exists an opportunity to not only address gender justice issues but end patterns of discrimination that have gone on for centuries.

The Peace Agreement calls for equal representation. The Golden Tulip Declaration on Liberian Women Attending the Peace Talks in Accra reports that women constitute 51.2% of the Liberian population. Women want to participate as delegates, as members of the Vetting Committee, in the Transitional Government and the process of rehabilitation, reconstruction and redevelopment of Liberia; representation should come from all of the counties. UN Resolution 1509, establishing UNMIL, reaffirms "*the importance of gender perspective in peacekeeping operations and post-conflict peace building in accordance with UN Resolution 1325.*"<sup>8</sup>

Traditional and community based approaches can be a complementary, if not alternative form of Justice. However, it is essential that traditional Justice mechanisms are consistent with international human rights minimum standards and protection of rights. The civil war may have curtailed many traditional practices, including Female Genital Mutilation ('FGM'), but with peace will likely come a reemergence of such practices.<sup>9</sup>

There is a current window for all Liberians, including members of Traditional Courts, to be informed of their rights under the Peace Agreement and Liberian Constitution, as well as international human rights. Law enforcement officials, Judges, prosecutors, attorneys, and police should be sensitized in gender justice and all forms of violence against women. Whilst there are many qualified women in Monrovia, access to Justice for all women should be ensured through legal literacy programs, support services and legal aid programmes.

### **Available Talent**

There is a wealth of Liberian legal talent both in and out of Liberia. The war has certainly taken its toll and corruption within the judicial system was rife, but there seems to exist a general sense of optimism that things can be changed for the better. The team met with many well-educated, competent Liberians, both men and women, and is convinced that there exist implementing partners for the programs recommended in this report.

### **Transitional Government**

Liberia is a unitary State. There is a central government, which is located in the capital of the country: Monrovia. The 15 counties are served by an independent and autonomous local government system.

Liberia is currently operating under the Comprehensive Peace Agreement signed by the GOL, LURD, and MODEL and Political Parties on 18 August 2003 ('the Peace Agreement'). Under the Peace Agreement 18 seats are allocated to various political parties in the National

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<sup>7</sup> The Commission on Good Governance is a possibility.

<sup>8</sup> S/Res/1509 (2003).

<sup>9</sup> See *Women, War, Peace, The Independent Experts' Assessment*, by Elisabeth Rehn & Ellen Johnson Sirleaf (2002), and *Liberia: Report on Genital Mutilation (FGM) or Female Genital Cutting (FGC)*, US Department of State (2001).

Transitional Legislative Assembly, with the system being a unicameral system temporarily; and the Cabinet (the Executive) is comprised of six Ministers from each of the political parties.

## **II. JUDICIAL SYSTEM**

### **A. History**

The preamble to the Independence Constitution of 1847 stated that the objective of the Constitution was

*“to secure the existence of the body politic, to protect it, and furnish the individuals who compose it, with the power of enjoying in safety and tranquility, their natural rights and the blessings of life.... their safety, prosperity and happiness.”*

The Constitution created a Supreme Court, similar to the Supreme Court of the United States of America, with appellate jurisdiction not only as to law but also as to fact. It also created a bicameral legislative body – the Senate (upper house) and the House of Representatives (lower house). The Executive, as in the United States of America, was to be separate from the Legislature.

The Executive Power was vested in a President elected by registered voters and was to serve for a term of 4 years. A Vice President, who was to be his running mate in the presidential election, assisted the President.

Master Sergeant Samuel Doe abrogated the 1847 Constitution after his coup of 1980. It was replaced on 6 January 1986.

The Constitution of 1986 provides for a separation of powers between the Executive, the Legislature and the Judiciary. It retains a bicameral legislature as before, but increases the term of office of the President from four to six years. It also limits the period a person can serve as President to two terms of six years each. Representatives of both houses of Parliament are each elected for a six-year term. The Constitution additionally requires that a person eligible to hold the office of President or Vice President reside in Liberia ten years prior to election.

The Constitution also creates a Supreme Court for Liberia, which it vests with ultimate judicial power. The judicial power also vests in the subordinate courts. All courts are empowered to apply both statutory and customary laws. The Supreme Court Justices, as well as lower court Judges, are selected by the President and can be removed from office for cause.

### **B. Structure of Existing Judicial System**

#### ***Constitutional Structure***

The Constitution provides that the judicial power of the Liberia is to be vested in a Supreme Court, and such inferior courts as the legislature may establish. The Supreme Court is to be composed of a Chief Justice and four Associate Justices. Supreme Court Justices, and Judges, are all to be appointed by the President with the consent of the Senate.

Liberia has a unitary form of government. At the judicial level, all of the formal courts are part of the national system, and are supervised by the Supreme Court of Liberia. There is, however, a system of customary law recognized in the Constitution, and fully operational. This system consists of a trial "court" which is a town chief, then several levels of appeals "courts", culminating with the County Supervisor. Following exhaustion of appeals in this system, the litigants may then proceed through the formal court structure.

The law governing the court system is the *Judiciary Law* of 1972. While we did not see a copy of this law in Liberia we were informed that it has been codified, and is in accord with the Constitution. The law governing the traditional court system is included in the *Revised Rules and Regulations Governing the Hinterland of Liberia* of 2000.

The Constitution provides that the Legislature has the power to establish inferior courts from time to time. This would seemingly include the power to create new judicial positions.

While on paper there is a developed structure for the Judiciary, we were informed that the Constitution is simply not implemented.

### ***Judicial Council***

Liberia does not currently have a Judicial Council or corresponding body. However, the Supreme Court of Liberia established a Judicial Reform Commission. It recommended in its report, dated May 2000:

*“the Constitutional procedure be maintained, but in order to ensure that lawyers of competence, integrity and unimpeachable character hold judicial office, the President of Liberia should appoint a Judicial Service Commission, vested with the power and authority to review credentials, records and background of lawyers being considered by the President of Liberia for judicial offices and make recommendations for consideration by the President of Liberia.”*

It was further recommended that the President consider appointing not less than seven persons to the Judicial Service Commission, including: the President of the Liberian National Bar Association; a senior retired or active Judge or a Justice of the Supreme Court; two eminent persons from the community who are either personally involved in or represent institutions, such as the Chamber of Commerce or Liberian Bankers Association, which are regularly involved with judicial proceeding; and two or three members of the Government, including the Minister of Justice.

The recommendation is in line with the practice in most African states, which are members of the Commonwealth. These states have the English common law as the basis of their legal system, as did the United States of America. However, in light of the recent corruption in the Liberian Judicial system, it may be prudent to form a Commission made up entirely of experts that are not members of the Government.

## **C. Court Structure**

### ***First instance courts (courts not of record)***

There are supposed to be 79 Magisterial Courts, spread throughout Monrovia and the counties. Each court has a Stipendiary Magistrate, with two Associate Magistrates.<sup>10</sup>

Where no Magisterial Court exists, a Justice of the Peace will be the judicial officer in a Justice of the Peace Court. It appears from discussions that these courts do not feature significantly in the legal system at present. With the exception of Margibi County, we were unable to travel to the outer counties, where they are more likely to exist, for security reasons.

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<sup>10</sup> The Stipendiary Magistrate is supposed to be a qualified lawyer, whilst the Associate magistrates are not required to be qualified.

Each Justice of the Peace Court and each Magisterial Court has its own geographic jurisdiction.

### ***Justice of the Peace Courts***

Subject matter jurisdiction for Justice of the Peace Courts is found *Judiciary Law* Title 17 s8(3)(a).<sup>11</sup>

In Civil matters there is a statutory limitation on the value of property sought to be recovered; debt matters have a limitation of L\$2000, equivalent to roughly US\$25. Any amounts above this must be dealt with in the specialist Debt Court.

In criminal cases the court has jurisdiction over petit larceny, and offences /violations which are less than a misdemeanour.

Additionally, if the court is in a city, town or Commonwealth District, then they have jurisdiction regarding matters arising out of the *Sanitary Act* (19.12.30) and City Ordinances.

It should be noted that Justices of the Peace are not employed by the state, and are not required to be lawyers. They earn money by the generation of fees and fines paid by litigants in their court.

It was suggested by the Supreme Court designates that Justices of the Peace should be paid salaries. The old system that allows for payment from moneys that are collected from their courts should be stopped. There existed previously programmes and seminars for Justices of the Peace run by the Law School, the Supreme Court and the Bar Association; it was suggested to us that these be should be re-established and re-invigorated.

### ***Magisterial Courts***

With the exception of the specialist courts, Magisterial Courts have civil and criminal jurisdiction.

In Civil matters there is a statutory limitation on the value of property that can be dealt with. There was a proposal to have the right to a trial by jury in such matters limited to property valued at L\$20,001 or more, thereby increasing the statutory limitation of the value of property dealt with in the Magisterial Courts.<sup>12</sup> As in the Justice of the Peace Courts debt matters of less than L\$2000 are dealt with in the Magisterial Court.

In Criminal matters the Constitution provides that every person arrested must be brought before a court within 48 hours.<sup>13</sup> If a Grand Jury is sitting, all indictable offences are to be referred immediately to them. If not, the matter is dealt with by way of a preliminary hearing (unless waived), with a commitment to the circuit court for trial.

As with Justices of the Peace, the Magisterial Courts have jurisdiction for matters under the *Sanitary Act* (19.12.30) and City Ordinances if they are located in a city, town or Commonwealth area.

### ***Appellate Jurisdiction for Courts of first instance***

There is a right of appeal from all of the decisions made under the Traditional Courts system to the Justice of Peace Courts or Magisterial Courts.

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<sup>11</sup> A copy of this has been requested from Dr Fofie

<sup>12</sup> See Report of Judicial Commission (May 2000) at p. 23.

<sup>13</sup> Article 21

All matters are appellable, with a hearing de novo, to the Circuit Court. We were unable to ascertain any statistics regarding what kind of workload this entails. The exception to this is a debt matter where the value is less than L\$2000, which is appellable to the Debt Court. The hearing is also de novo.

If the value of the debt is over L\$2000 the Debt Court has original jurisdiction.

### ***Specialised Courts (not of record)***

There are a number of specialised courts that are not courts of record. They are: revenue, traffic, and Juvenile courts<sup>14</sup>. The revenue and traffic courts only sit in Montserrado County, with Magistrates and Justices of the Peace having concurrent jurisdiction in the other Counties. Only the Juvenile court sits in the counties; these courts are not fully functioning in Liberia.

The Constitution in Article 34(e) allows for Claims Courts. These courts are currently not functioning in Liberia; if operational these courts could increase access to the Justice system by Liberians who are indigent and are unable to secure the services of a lawyer. In other parts of Africa where Small Claims Courts operate, the claims involve small amounts of money that are below the jurisdiction of the existing courts and/or to secure settlement of minor civil disputes. These courts are intended to be accessible, free from complicated procedure and inexpensive. They are manned by volunteers some of who are retired court administrators, lawyers as part of their pro bono services and paralegals. These volunteers sit on a part time basis, in a community hall or school, after class or working hours. Recording of evidence is usually minimal, and the decision often is given on the spot.

### ***Courts of Record: Circuit Courts and Specialised Courts***

#### ***Circuit Courts***

There are 5 Circuit Courts in Montserrado County. They are: Criminal Courts A-D and a civil court.<sup>15</sup> There are also 12 Circuit Courts located in the counties. In counties outside of Montserrado the Circuit Courts hear both civil and criminal matters, with the criminal docket having priority.

The Circuit Courts are the appellate court for decisions from the Justice of the Peace and Magisterial Courts. Appeals are heard de novo. Decisions from the Circuit Court can be appealed to the Supreme Court.

The Circuit Courts have a geographic jurisdiction that encompasses matters occurring in the county in which they are based.

With the exception of the Supreme Court's original jurisdiction, and the operation of the specialised courts, it appears that Circuit Courts have no subject matter jurisdictional limitations.

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<sup>14</sup> AFELL, in conjunction with UNICEF and UNHCR, undertook a program of Advocacy for the protection of Children in Conflict with the Law. This program included training law enforcement officers and Juvenile Court staff in the rights of the child.

<sup>15</sup> Court A tries capital offences (murder, sedition and treason) and has the Grand Jury hearings. Court B has matters allocated from court A. Court C deals with theft and related matters. Court D deals with armed robbery and related matters.

### **Specialised Courts of Record**

The following are specialised courts of record: debt (appeals for amounts less than L\$2000, original jurisdiction for amounts over L\$2000); taxation; probate; labour (after all administrative avenues have been exhausted); and provisional monthly. All decisions are appellable to the Supreme Court.

### **Supreme Court**

The Supreme Court is “*the final arbiter of Constitutional issues, and shall exercise 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.*”<sup>16</sup>

The Rules for Procedure in Courts indicate that appeals are dealt with by way of written materials and oral argument only, rather than the calling of any additional evidence.<sup>17</sup> There appears to be no monetary or other restriction imposed by law upon the basis of the appeal.

The Court sits for only two terms per year, with the Justices sitting only 4 hours per day.<sup>18</sup>

There is no appeal from the Supreme Court to another body. There is no monetary limit or other restriction imposed by law on the number of third tier appeals.

The Supreme Court has the power to determine the ultimate Constitutionality of legislation. See Article 66 of the Constitution.

### **Traditional Courts**

Most Liberians living in counties have access to a system of traditional courts. However, these courts appear not to function as national courts, provisions in the Constitution notwithstanding.

There is no transparency in the procedure currently applied by these courts. Yet, the courts are recognized under Article 34 (e) of the Constitution. This provision empowers the Legislature:

- “*to constitute courts inferior to the Supreme Court, including circuit courts, claims courts and such other courts with such prescribed jurisdictional powers as may be deemed necessary for the proper administration of Justice throughout the Republic.*”
- The powers of these courts are recognized under Article 23 (b) of the Constitution by providing that *the legislature shall enact laws to govern the devolution of estates and establish rights of inheritance and descent for spouses of both statutory and customary marriages so as to give adequate protection to surviving spouses and children of such marriages.*

The Revised Rules and Regulations Governing the Hinterland of Liberia (“Regulations”) is published each year. Under these Regulations, the President is authorized to modify and enlarge the provisions of the Regulation or to introduce new Regulations. “*These new Regulations shall be submitted to the Legislature annually for their approval, and shall be effective as law after the approval of the Legislature.*”<sup>19</sup> Based on their content and interviews

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<sup>16</sup> The Supreme Court has original jurisdiction in matters involving Ambassadors, Ministers, or cases where Liberia is a party. See Article 66 of the Constitution.

<sup>17</sup> See Rules for Procedure in Courts, at p672-75

<sup>18</sup> See Rules for Procedure in Courts, at p65, which states that the Supreme Court sits between 9-11 a.m., and 3-5 p.m.

<sup>19</sup> Revised Rules and Regulations Governing The Hinterland of Liberia, Jan. 7, 2000, Amendments.

with local Town Chiefs, it is unlikely that these Regulations have been thoroughly reviewed for consistency with the Liberian Constitution and international human rights laws. If such reviews have occurred, the findings have not been disseminated or enforced. For examples, we were informed that the Supreme Court had found trial by ordeal to be unconstitutional; but we learned that it is still practiced in Traditional Courts throughout Liberia.

The Regulations set out the structure for the traditional court system. They require that each Chief shall maintain a public courthouse and all cases must be tried in public. The Regulations also call for the establishment of -

1. Courts of general jurisdiction consisting of: the Provincial Circuit Court of Assize; the Administrative Court of Provincial Commissioner; and the Administrative Court of District Commissioner.
2. Courts of limited jurisdiction consisting of: the Joint Court of District Commissioner and the Paramount Chief, and the Court of Paramount Chief.

The Regulations state that the Criminal Code of Liberia shall apply, except where specially modified by the Regulations. The Regulations provide that the order of precedence for the traditional courts (in order of ascendancy) is: Town Chief Court; an appeal from that court lies to the Clan Chief Court; an appeal from that court lies to the Court of the Paramount Chief; an appeal from that court lies to the court of the District Commissioner; from the District Commissioner's Court to the Court of the Provincial Commissioner; and an appeal from that Court lies to the Provincial Circuit Court of Assize.

All Civil cases shall be tried in the court of the District Commissioner; from there an appeal shall be taken to the Provincial Commissioner, etc.

All suits between a civilized person and a native shall be entered and heard in the joint court of the District Commissioner and the Paramount Chief. All appeals arising from the judgment of the District Commissioner shall be heard in the court of the Provincial Commissioner, while appeals from the judgment of County Commissioners shall lie in the Court of the County Superintendent (the Interior Department).

Nevertheless, as has been stated earlier, these courts do not currently operate as part of the national court system. Yet, these traditional courts could provide a useful forum for resolution of conflicts among Liberians in a rural setting. If the Traditional Courts are to continue the Regulations must be thoroughly reviewed for consistency with the Constitution and international human rights standards, and amended where necessary. The Regulations as well as the Traditional Court's jurisdiction should be transparent to both those who operate the Courts as well as those who come before them. The State must formally include Traditional Courts in the national system, and take an active role in monitoring the proper operation and implementation of the Regulations in all the Traditional Courts.

#### **D. Judges at Each Level or Instance**

##### ***Courts Not of Record***

The Constitution makes no provision for the appointment or qualifications for Magistrates, Traffic Court Judges, Justices of the Peace, or District Court Judges.

Some people told us that all Magistrates must be lawyers, but others told us that in the outlying counties, many are not. Associate Magistrates are not required to be lawyers. It is presumed that Traffic Court Judges need not be lawyers. We have no information as to the District Court

Judges. The Chief Justice of the Supreme Court appoints all of these Judges. We are not aware of the criteria for appointment to these positions, though we were informed that reasons other than credentials often were used. The status of Justices of the Peace is not clear, but we believe that they are not appointed by the Chief Justice, though they are courts within the judicial branch of government.

### ***Circuit Courts and Other Courts of Record***

The Constitution provides that Circuit Court Judges and Judges of other courts of record must be citizens of Liberia of good moral character and either a Counsellor of the Supreme Court Bar or an Attorney at Law with 3 years of experience. These Judges are appointed by the President, with the consent of the Senate.<sup>20</sup>

We have no information as to any screening process required for these Judges. We believe that the Chief Justice recommends them to the Senate. We have been advised that the distinction between an Attorney at Law and a Counsellor of the Supreme Court Bar is that the former are not qualified to practice before the Supreme Court.

In order to qualify as a Counsellor, one must have practiced for at least 3 years and be of good moral character as attested by two Justices of the Supreme Court. Additionally, there is a Supreme Court Bar Examination that a candidate for Counsellor must pass. We did not see the exam but were informed that it was not too onerous.

### ***Supreme Court***

The Constitution provides that Supreme Court Justices must be citizens of Liberia of good moral character, and must be a Counsellor of the Supreme Court Bar who has practiced for at least 5 years. The President of Liberia, with the consent of the Senate, appoints the Justices.<sup>21</sup>

Pursuant to the Accra Peace Accord, the current nominees have all been nominated by the National Bar Association of Liberia and presented to the Legislature for confirmation. We have no information regarding any screening process used by the Bar Association in selecting these nominees nor the information available to the Legislature in passing on them.<sup>22</sup>

### ***Generally***

#### *Diversity*

The Peace Agreement mandates that there shall be a national and regional balance in appointments without compromising quality and integrity. Women make up 51.2% of the population and current appointments do not reflect a gender balance. We were unable to ascertain the regional balance in the current appointments.

#### *Training*

It is apparent that there has been no on-going training program for Judges at any level, though in the past there have been some training programs, including a US DOJ Democracy and Governance/Rule of Law Program. In 2000, due to Liberia's political climate, US training programs in Liberia fell to sanctions under the Brooke Amendment, which stopped all but

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<sup>20</sup> Constitution of the Republic of Liberia, Art. 68.

<sup>21</sup> Constitution of the Republic of Liberia, Art. 68.

<sup>22</sup> The current nominees are:

- i. Counselor Henry Reed Cooper
- ii. Counselor Francis Korkpor
- iii. Counselor John L. Greeaves
- iv. Counselor Ishmael P. Campbell
- v. Counselor Felicia V. Coleman

- Chief Justice - designate
- Associate Justice - designate
- Associate Justice - designate
- Associate Justice - designate
- Associate Justice - designate



humanitarian aid to Liberia. All of the parties we spoke to requested on going training programs, not just single sessions.

#### *Assignment of Cases*

We have little information as to assignment of cases to a court or judicial officer. The one exception regards the Circuit Courts in Montserrado County where cases are allocated as follows: Court A tries capital offences (murder, sedition and treason) and has the Grand Jury hearings; Court B has matters allocated from court A; Court C deals with theft and related matters; and Court D deals with armed robbery and related matters.

#### *Tenure*

The Constitution provides that Judges of the Supreme Court and all Courts of Record hold office "during good behavior" but must retire at age 70. They may be impeached by the Legislature for "misconduct", gross breach of duty, inability to perform the functions of the office, or conviction for treason or any other "high crime." We were informed that the Executive, under the Taylor government was quite active in influencing and removing judges. The Supreme Court bench has been replaced numerous times over the last few years, mostly due to the lack of independence of the Judiciary from the Executive or Legislature

The Constitution is silent as to tenure or removal of Judges of courts not of record, but we were told that they serve at the pleasure of the Chief Justice of the Supreme Court. We were informed that Magistrates are commissioned for a 2-year period. We have no information when these commissions and credentials were last reviewed.

We are unaware that there is any probationary period for Judges. All are full-time professionals with the exception of deputy magistrates, who appear to be part-time.

#### *Security*

There is a Marshall of the Supreme Court, who is responsible for security. The Report of the Judicial Reform Commission of 2000 indicates that "traditionally" there has been a Deputy Marshall appointed for each county. We did not verify that this in fact is the case, though in the court we observed, there was a crier, who may have been a Deputy Marshall. We believe that the level of security provided by one Marshall or Deputy Marshall is marginal. When prisoners are in court, they are in the custody of a sheriff or police officer.

#### *Impartiality*

In the Judicial Cannons for the Moral and Ethical Conduct of Judges, which is published by authority of the Chief Justice and Associate Justices of the Supreme Court of Liberia there is a quotation that is attributed to His Honour Chief Justice Arthur F. Vanderbilt of New Jersey. It is prefaced by a sub-heading: **Essentials of definition of a true Judge.**

Three essentials stand out in any definition of a true Judge; they are impartiality, independence, and immunity

*"Of these, impartiality is the most important; independence and immunity are the means of achieving impartiality. Judges should be free from every tie, which may sway their judgment. They should be answerable to no one and immune from liability for judicial acts, to the end that Justice may be administered without favor."*<sup>23</sup>

Judges are unable to administer Justice with impartiality, if each time they deliver a decision that is against the Executive, they know that they will lose favor with the Executive. One of the

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<sup>23</sup> Rules for the Procedure in Courts, Code for the Moral and Ethical Conduct of Lawyers, and Judicial Canons for the Moral and Ethical Conduct of Judges.

impediments to the independence and neutrality of a Justice is the manner in which a Justice is appointed to the bench, as discussed above.

At times, the political party of the President holds majorities in both Houses of Parliament. This was the case when Charles Taylor became president in 1996. The impact is exemplified below:

- In October 1999, during the opening of the Supreme Court term, the acting Chief Justice openly criticized the government for failing to fund the Judiciary;
- At the same forum the President of the Liberian National Bar Association criticized the Executive for refusing to enforce judgments of the courts;
- The Supreme Court invoked its contempt power in response to unconstitutional behaviour by the Executive directed against the courts; and
- In March 2000 the Chief Justice openly warned the Legislative and Executive Branches that any attempts at extra-judicial obstruction of the judicial process (including assaults and torture of judicial personnel) would be swiftly responded to by the judiciary.

There is no body or organization operating in Liberia to which members of the Judiciary are members. Their colleagues in African Commonwealth countries, belong to the Commonwealth Judges and Magistrates Association. This is an organization whose membership covers all the fifty-one countries that are members of the Commonwealth of Nations. Through dissemination of its literature and legal journals Judges and Magistrates across the Commonwealth are able to share their experiences and hone their skills.

#### *Ethics*

The Supreme Court promulgated the current Judicial Canons for the Moral and Ethical Conduct of Judges in 1998. The Code for the Moral and Ethical Conduct of Lawyers and the Judicial Canons prohibit ex-parte communications to prevent both actual bias and corruption, and the perception of it. However, in recent years, it is clear that such communications have been frequent.

Judicial Canon 28 provides that:

*“a Judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is assigned, or is resident, he need not resign his Judgeship on that account but he should of course, refrain from any judicial act in such a controversy.”*

The Judicial Canons further provide that complaints against Judges may be made to the Judicial Inquiry Commission. This Commission is comprised of: an Associate Justice of the Supreme Court; two Judges of a Court of Record; the President of the Liberian National Bar Association; and the Chairman of the Grievance and Ethics Committee of the Supreme Court. There appears to be no written procedure for processing of complaints by this Commission. Likewise, the Judicial Canons make no provision for sanctions that may be imposed.

For a complaint against a Justice of the Supreme Court, the Commission is comprised of the Chief Justice and two Associate Justices appointed by the Chief Justice. There appears to be no avenue for a complaint against a Chief Justice.

## **E. Prosecutors**

Prosecutors in Liberia are employed by the Ministry of Justice (MOJ). The MOJ reportedly employs 50 lawyers, who are responsible for the conduct of criminal prosecutions in the Magisterial, Circuit and Supreme Courts in Liberia. Despite requests, the team was unable to see a list of current prosecutors. It is doubtful that the MOJ currently employs 50 lawyers.

As with the majority of public servants, the Prosecutors were unpaid for the last two years of the Taylor Government. In addition, they are underpaid compared to private lawyers, and this disparity is reflected in the quality of law school graduates who are attracted to become prosecutors.

There have been no trials in Liberia since at least 14 October 2003. The docket from the November 2003 term of the Circuit Court 'C' in Monrovia indicates that there are 6 outstanding trial matters in that court. A similar docket from the Circuit Court at Kakata indicates 34 outstanding trial matters. Information regarding the other courts has been requested.

### ***Magisterial Courts***

Each of the Magisterial Courts should have at least one City Solicitor employed by the MOJ. Depending upon the Magistrate, there may be up to three located in any one court.

The City Solicitors are supposed to be qualified lawyers. However, due to the present situation, we have been advised that some prosecutors in Monrovia are not formally qualified.<sup>24</sup> We have also been advised that the vast majority of City Solicitors in the counties are not qualified. It is unclear when commissions and credentials were last reviewed, and whether any records still exist.

There are other jurisdictions where not all Prosecutors are required to have formal qualifications. For example, in New South Wales (Australia), the Police Prosecutors who appear in the equivalent of non-felony charges in the Magistrate's Court are not formally qualified. They are police officers that are extensively trained in criminal law, practice, procedure and ethics.

### ***Circuit Courts***

There is one County Attorney in each of the counties, with Montserrado County having an additional four Assistant County Attorneys. A County Attorney is supposed to be a qualified lawyer. According to the Deputy Minister for Justice (Litigation) all of those in Montserrado are qualified lawyers, and virtually none are in the other counties.

Given the all-pervasive corruption present in the Liberian Justice system, it is recommended that all prosecutors be licensed lawyers with formal qualifications. At the very least, such lawyers have an ethical code by which they are bound.

### ***Caseload***

The Deputy Minister for Justice (Litigation) advised that there were 8-10 fresh criminal matters per week. The charges included: disorderly conduct; assault; aggravated assault; criminal mischief; murder; arson; rape; and armed robbery. Certainly this is not a huge intake of work by the standards of most prosecuting authorities. However, in the context of the resources, level of training and prosecutorial expertise in Liberia, the workload impact is far greater.

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<sup>24</sup> Mr Varfie Francis Williams, Deputy Minister for Justice (Litigation) and a Prosecutor advised that not all of the prosecutors are qualified lawyers, even in Monrovia.

### ***Training***

The last training delivered to Prosecutors was in April 2000. The Solicitor-General indicated that training was needed as a matter of priority. Certainly from the responses to questions about jury challenges from an experienced prosecutor who attended the meeting, this would seem to be the case.

The training needs to center on the substantive law, as well as the important issues of ethics, anti corruption, humanitarian law and gender issues. Training is also required in case screening, and practice management.

### ***Progress of Matters***

We were advised that once the defendant had been charged, he would be brought before the Magistrate's court and read his rights. We were able to observe this process at the Monrovia Magisterial Court on 27 November 2003.<sup>25</sup>

The Court, Prosecution and Defence would receive a copy of the charge sheet, usually from the Police Liaison Officer assigned to the Court.<sup>26</sup> Though we received conflicting information, apparently any statements obtained during the course of the investigation would also be attached to the charge sheet.

Due to the use of a manual typewriter to record all of the proceedings in court, the progress of what was a simple mention, which would take about 10 minutes in most jurisdictions, took about 45 minutes. The tortoise like pace of the proceedings, with counsel talking at about one short sentence per minute, is one of the major hurdles to be overcome if any court in Liberia is to work in an efficient manner.

It ought to be noted that whilst all of the courts were substantially looted, the one item apparently left behind by looters were the typewriters. This gives some indication of their efficiency, both actual and perceived.

### ***Backlog***

As stated above, from information received to date from one county court and one city court, there appears to be 40 outstanding trial matters. Information has been requested from the MOJ, via UNMIL, regarding the outstanding trial matters for the other courts.

We have been advised that an average trial would take the full court term of 42 days to complete. In the experience of the litigators on the team, this seemed an extraordinarily long period of time. After observations at the Magisterial Court, this comes now as no surprise. Clearly this needs to be redressed and rapidly.

### ***Use of External Lawyers***

It is not unusual in common law countries for some external prosecutors to be used by a prosecuting authority.<sup>27</sup> However, in a Justice system with as many difficulties as that in Liberia, all prosecution by one authority is preferred.

AFELL reported that, with the permission of the MOJ, they undertake pro bono prosecutions of rape and sexual assault matters. The handing over of such matters to private prosecutors and the non-payment of official prosecutors, raises the inference that authorities are not serious and the prosecution does not have the necessary skill to prosecute such matters.

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<sup>25</sup> See Appendix C

<sup>26</sup> See Appendix D

<sup>27</sup> For example the United Kingdom and most jurisdictions in Australia will use external prosecutors on a as needed basis.

We note that Rule 33 of the Rules for Procedure in Courts allows a City Solicitor in the Magisterial or Traffic Courts to have a private lawyer assist him. We have also been advised that a private citizen who has been the victim of crime can pay a private lawyer to “assist” the Prosecutor. This process must be stopped, since it both increases the potential for corruption and impinged upon the Prosecutor’s role.

### ***Perception of Professionalism***

One former circuit Judge stated, that whilst some of the prosecutors were of a sufficient standard, the majority of them were simply not up to the task in most cases.<sup>28</sup> They were under prepared and inexperienced. This led to a large number of cases being dismissed. By contrast, the defence were often well prepared and of a high standard.

### ***Conviction Rate***

We were advised that the conviction rate was approximately 40%, with 20% not guilty and the remaining being hung juries.<sup>29</sup> In addition to being advised of corrupt Judges, we were also informed that juries had been involved in the rampant corruption, often receiving gratuities from lawyers.

### ***Guidelines/Discretion***

There are no guidelines developed by the MOJ regarding Prosecutors and how they are to carry out their duties. There is one rule contained in the Code for the Moral and Ethical Conduct of Lawyers. It states that:

*“The primary duty of the lawyer engaged in public prosecution is not to convict, but to see that Justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible and utterly unprofessional.”*<sup>30</sup>

The other, general rules regarding the conduct of lawyers are equally applicable to Prosecutors. There are additional areas which could also be usefully covered by prosecutorial guidelines, such as: how discretion is exercised; use of indemnified and informer witnesses; jury selection; and appropriate cross-examination and addresses.

There appears to be no specific complaints mechanism regarding a Prosecutor’s conduct, or disciplinary procedure.

## **F. Public Defenders**

The Constitution provides for appointed counsel for the indigent criminally accused. We were told that there are lawyers on salary, paid by the Supreme Court, at least in Montserrado County. The pay is extremely low (L\$500 per month, equivalent to roughly US\$6.25), though these lawyers may also practice privately. We were informed that this effort is at best a token effort; when there is representation, members of the Bar with whom we spoke were derisive of the quality of representation by these lawyers. In outlying counties, there are apparently no lawyers on salary; lawyers from Monrovia are appointed on a case-by-case basis to represent these defendants. We are skeptical that this happens frequently. Like most others in the Judiciary, the Government of Liberia did not pay these lawyers for nearly 2.5 years.

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<sup>28</sup> Mrs. Morris JPC.

<sup>29</sup> Deputy Minister for Justice (Litigation).

<sup>30</sup> *Rules for the Procedure in Courts, Code for the Moral and Ethical Conduct of Lawyers and Judicial Canons for the Moral and Ethical Conduct of Judges*, in Chapter headed: “The Lawyer’s Duty to his Client” Rule 7.

## **G. The Police**

A Prosecution service is heavily reliant upon the professionalism and effectiveness of the investigating authority, which prepares the brief of evidence upon which the prosecution is based. If the briefs are continually deficient, then the Prosecution will necessarily fail.

Any criminal Justice system requires fairness not only in the treatment of the accused, but also fairness for the victims of crime and the state that prosecutes such matters. With out a proper and effective investigating authority, the system is simply not fair.

We understand that new Liberian Police Commissioner, along with UNMIL Police Commissioner, have made considerable progress in this regard. Whilst we understand the enormity of the task ahead, we would ask that immediate attention be given to providing some very basic equipment, such as arrest kits and cameras.

Similarly, we understand that there are defendants who have been charged with arson. We were informed that there is no expertise in relation to fire behaviour/arson that can be used in relation to such matters.

## **III. COURT ADMINISTRATION AT EACH INSTANCE**

### **A. Management**

The Chief Justice of the Supreme Court has general administrative powers over all courts. In addition, there is a Court Administrator at the Temple of Justice in Monrovia who has administrative responsibilities to all of the courts in the building, but whose exact duties are unclear. When we attempted to see him, he was unavailable because he had been unable to get transportation to work that day. Likewise, the Clerk of the Supreme Court supervises all of the clerks for the lower courts.

There is no central clerk's office that we could discern. All of the files are kept by the clerks in each individual court. Because of the extensive looting of the Temple of Justice, many of these files have been lost.

### **B. Facilities**

We visited courts in Monrovia and Kakata. There appear to be sufficient courtrooms for public hearings. However, in Monrovia, they have been absolutely decimated by recent looting. As they currently exist, they are not fit for human habitation or conducting judicial business. Security is impossible because of wholesale absence of windows and doors. In fact, it appears that hearings in the circuit courts are conducted only in chambers.

### **C. Equipment**

The recent looting of the courts was devastatingly thorough. As far as we could tell, the entirety of equipment in these courts consists of an antique typewriter in each court, and an occasional chair and desk. There are no telephones, let alone computers. There is no access to the Internet for any courts.

#### **D. Legal Resources**

We spent a great deal of time while in Monrovia trying to secure copies of the Revised Code of Liberia and Liberian Law Reports. We were unable to do so. No court had copies of either. Most lawyers do not have this material. The ministries do not have this material. The Louis Arthur Grimes School of Law has at least volumes one through 28 of the Liberian Law Reports, but is missing volumes 29 through 39

#### **E. Dissemination of legal opinions**

There currently appears to be no effective means of disseminating new legal opinions or rulings to either the bar or the general public.

#### **F. Efficiency**

There was no information available regarding case filing and tracking systems, and we believe there is none. There was no statistical information available regarding the speed and volume of case processing.

While there was no specific information available regarding the average time for processing a case, it would appear that that number would be horrifying. We were told that the average felony case can usually be tried in not more than 42 days. The reason for this stultifying pace is that there is no modern procedure for making a record. Rather, it is made by the painful process of a person sitting at an ancient typewriter, attempting to take a verbatim simultaneous record as each participant in the proceeding speaks. They speak very slowly.

#### **G. Budget and Salaries**

We have little information about any budgeting process, other than that the Judiciary is at the mercy of the Legislature in getting its financial needs met. That simply has not happened.

Salaries for Judges and their staff are abominable. We were informed that a Circuit Court Judge is entitled to receive a salary of L\$3750 Liberian every two months. This translates into approximately US\$40 per month. October was the first month that any salary had been paid for a period of nearly two years. Judges and their staffs have been working without pay for that period of time. One Circuit Court Judge told us that he had been sawing wood in his spare time in order to feed his family.

We were told of instances where cases could not be heard because there was no paper available to keep a record. A Magistrate reported purchasing basic office supplies, paper, pens, envelopes, etc., with his salary so that court could operate.

#### **H. Transcripts of courtroom proceedings**

Transcripts are not always prepared in courts that are not of record. Those courts include: the Justice of the Peace Courts; Magisterial Courts (although it appears from observation that they are often prepared); Traffic courts; and revenue courts.

At present, clerks use manual typewriters to laboriously type out what is being said by counsel and the judicial officer. Although we were advised that the record was verbatim, it appears that some paraphrasing occurs. The transcripts are therefore not reliable, which constitutes a problem since the transcript may form part of the appeal brief to the Supreme Court

As appeal hearings from the lower courts are conducted de novo, it is unclear whether the transcripts are used in those hearings to cross-examine witnesses. It also appears that the transcript may form part of the appeal brief to the Supreme Court.

## **I. Decisions**

The US DOJ undertook a programme to index and copy the last 30 years of judgments. Liberian Law Report is now available through to Volume 39. We were able to ascertain that Volume 40 covering the judgments from 2000 – 2002 has been compiled by a Liberian group in the US and is ready for print.

Due to numerous changes on the bench and the rampant corruption, many court decisions contradict precedent and are of a dubious nature. While these judgments have been compiled they are not readily available in hard copy or on line. The DOJ had 100 copies printed and disseminated but very few remain publicly available in Liberia.

## **IV. JUDICIAL POWERS**

### **A. Jurisdiction**

With the exception of traditional courts and presidential pardons, the judiciary has exclusive jurisdiction over all cases concerning: civil rights and liberties; criminal matters; civil matters; administrative appeals and challenges; and family matters.

### **B. Reversal of Court Decision**

On paper, with the exception of a pardon by the President, judicial decisions cannot be reversed outside of the judicial appellate system.<sup>31</sup>

The Executive has advised us that in practice there was a great deal of interference in the judicial system, in addition to interference in the execution of judgments.

### **C. Judicial Procedure**

There exist published uniform rules of criminal and civil procedure.<sup>32</sup>

### **D. Immunity**

Article 73 of the Constitution states that no judicial official shall be summoned, arrested, detained or prosecuted, or tried civilly or criminally on account of judicial statements or acts done in the course of a trial, whether in court or in chambers, with the exception of treason or other felonies, misdemeanor or breach of the peace. Again, we were informed that there was a great deal of interference by both the Executive and Legislature during the last government. Judicial officials were not encouraged to contravene such interference. Immunity was a constitutional protection that was not always observed.

The immunity does not expressly relate to matters, other than trial matters, although it is presumably applied to other types of proceedings before the courts, such as bail, sentence and preliminary hearings.

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<sup>31</sup> See Articles 59 and 76

<sup>32</sup> With the exception of traditional courts



## **V. JURY SYSTEM**

The Constitution provides that a person accused of a crime is entitled to a speedy and public trial by jury, and that only the accused can waive his or her right to a jury. Civil litigants are also entitled to a jury, even, apparently, in divorce cases.

The right to trial by jury in at least felony level criminal cases seems to be absolute, and cannot be changed absent the declaration of a state of emergency by the president. In civil cases, the right to trial by jury appears to be a creature of statute.

There is no centralized department or officer within the judiciary responsible for ensuring that adequate jurors appear to conduct trials that are set. The system for selecting jurors is apparently that the Judge who will need jurors for an upcoming trial sends out a letter to Mayors of towns in the county, along with letters to various Ministries, at least in Montserrado County. The Judge is then provided with the names of prospective jurors by these officials, and the Sheriff of the County is responsible for bringing them to court.

There are rules relating to the summoning of jurors in the Civil Procedure Law, but they are clearly not followed. There are also rules relating to the number of times a person can serve as a juror during a court term. We have been advised that these rules were also not followed, with the result that some people were "professional" jurors. This practice enabled corruption of the jury to occur more readily.

The system has recently been plagued by the fact that not enough jurors have responded to the summons, so trials have to be adjourned for lack of jurors.

The reason given for the failure of jurors to appear has been that they too have not been paid for the last two years, and even when they had been paid, the amount is a pittance, even by Liberian standards. Why previous jurors would be given a new summons is not clear, but it appears that there is almost a professional jury pool, which repeatedly sit on cases.

We were also informed that jurors were often included in the corruption, accepting bribes to decide cases a certain way, or setting the damages so high that the defendant could not appeal based on the fact that a bond of 1.5 times the fine was required to file for appeal.

## **VI. SUGGESTED EXPANSION OF THE JUDICIARY**

### **A. Court Accountability Officer**

Given the past failures of training and other assistance that has occurred during the civil war, it is critical that future expenditures not be wasted. A Court Accountability Officer could assist with the efficient operation of the court, supporting all parties to the proceedings in court administration. This person would initially be an international expert to help make the transition from the current structure to the new system. Ideally the Court Accountability Officer would train Liberian counterparts, who could then take over the role and train future Officers.

### **B. Ombudsman**

Ordinary Liberians have little respect for the Judiciary as it has functioned in the last several years. Yet trust that there will be a reasonable degree of competence and fairness in the court system is critical to the success of democracy.

Since it is doubtful that ordinary citizens have any clear idea of what their rights are, or how the

court process works, the establishment of ombudsmen throughout the country might help to develop this trust. Such ombudsmen would establish offices to which citizens could come for practical, not necessarily legal, advice on how to deal with legal problems. They could assist people in how to present themselves in court, how to deal with government agencies, including the prosecution, how and perhaps when to secure the services of a lawyer, etc.

The ombudsmen could have an additional function, which would be to serve as a rich source of information on how the system is perceived to be working at a grass-roots level. This information could be gathered for use by appropriate government agencies, including the Commission of Human Rights.

### **C. Alternative Dispute Resolution**

There has apparently been no effort to establish Alternative Dispute Resolution (ADR) as a viable part of the judicial system in Liberia. The local courts seem to function to some extent in this manner at least in some cases. However, beyond that, this notion is foreign to the legal system.

ADR would seem extraordinarily appropriate for this country for two reasons: firstly, the trial system is extremely cumbersome and slow; and secondly, lawyers are expensive and the people are poor. Further, should ADR succeed, it should take some of the financial pressure off of the judiciary, because fewer cases would have to be processed through the court system. Certainly in the civil area, mandatory ADR should be considered.<sup>33</sup>

There is no developed ADR forum or mechanism running parallel with the established national courts in Liberia. With the huge backlog of cases in the civil courts, ADR would offer an answer to that problem.

The only analogue to ADR we came across were the traditional courts, discussed below. It appears that where the traditional courts operate they provide relief to large numbers of Liberians. It is proposed that these traditional courts should be developed under a long-term development plan in order for them to be coordinated with the ordinary courts.

In most English-speaking African countries that practice common law, use is made of assessors of facts when a court is hearing evidence. In Liberia, because the jury system provided for in the national Constitution, the courts do not utilize lay assessors. Assessors are not legally qualified persons, they are selected for their known expertise in a field or discipline in which the court is being called upon to adjudicate.

## **VII. LIBERIAN NATIONAL BAR**

### **A. Regulation**

The Liberian National Bar Association ('LNBA') is an integrated bar – *i.e.*, a lawyer must be a member of the LNBA to practice law. Upon graduation from Law School, a Liberian lawyer automatically becomes a member of the LNBA.

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<sup>33</sup> One team member suggested that ADR, in the form of restorative Justice, should be considered even in at least some select situations in criminal cases. It was argued that since this is what seems to happen within the traditional court system to some extent now, Liberians should be accustomed to something like this process, and may indeed welcome it over the more formal criminal process. However, other team members strongly disagreed with any type of criminal case being resolved through ADR.

Local Bar Associations also exist within each county local bar associations. We were informed that lawyers must be members of the bar in their home county, although we were also told that this requirement is not currently enforced. Most lawyers are members of the Bar Association of Montserrado County, where the majority of private firms are located.

There are also several voluntary bars, including AFELL and the Environmental Bar Association. Members of the voluntary Bars are also members of the LNBA.

It is not clear who regulates the LNBA in Liberia. In similar common law jurisdictions like in South Africa, Nigeria, Ghana, Sierra Leone, the Gambia and Zambia, the Bar Association of these countries regulates the legal practice. The Bar in each of these countries examines and approves a lawyer's annual application for a practicing certificate. At times for good cause, or because of failure to produce an Accountant's Certificate, the Bar may refuse renewal of the practicing certificate.

## **B. Structure and Governance**

The LNBA is governed internally by its officers: President; Vice President; General Secretary, and General Treasurer.<sup>34</sup> The officers are elected by the membership. The LNBA consists mainly of private lawyers and counselors.

The Bar has ad-hoc committees, blue ribbon panels and special committees to address particular needs. For example, a special committee was formed to write the Code of Ethics.

The LNBA is a cohesive and respected group within Liberia. The LNBA participated in the Peace Agreement and was asked to submit a list of qualified candidates to sit on the Supreme Court bench. The Bar, through its officers, has a history of speaking out against Constitutional violations, even when it put them and their families at risk.

We were also informed, however, that many members of the Bar have participated in corrupt court practices, such as paying gratuities to the Judge and jurors. The Code of Moral and Professional Ethics provides for a Ethics and Grievance Committee of the National Bar Association to be appointed by the Chief Justice of the Supreme Court. It does not appear that such a Committee currently exists.

## **C. Independence**

The LNBA's relationship with the Ministry of Justice has at times been rather strained. Based on past events, the LNBA seems to be outspoken against the Executive and Legislature when it believes they have acted unconstitutionally. When the Vice-President of the LNBA and the President of the Montserrado County Bar Association were arrested for speaking out against the Executive for failing to enforce judicial decisions of the Court, the members of the Bar went on strike and refused to go to court until the parties were released. The LNBA also spoke out against the Ministry of Justice for not funding the Judiciary.

The LNBA has a seemingly close relationship with the Judiciary. All members of the Judiciary come from the LNBA. We were informed that there is deference shown on both sides, at least publicly.

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<sup>34</sup> The current officers are: Counsellor Marcus R. Jones, President; Counsellor Ishameal P. Campbell, Vice President; Counsellor Amymusu K. Jones, General Secretary; and Attorney Patricia Mae Clark, General Treasurer.

Like many other office buildings in Monrovia, the LNBA was looted. Along with the basic infrastructure, equipment, furniture and legal resources were all either destroyed or are missing. The LNBA does not seem to receive any funding from any government entities.

The LNBA does not currently publish a Law Journal. It would be in such a journal that members of the Bar and the Bar itself could take a professional position on the court's decisions. We were informed that the Law Journal was suspended because critical review of judicial decisions was not encouraged under the Taylor Government.

#### **D. Relations with Public and Media**

During the discussion with leaders of the Bar, the media was not mentioned. However, in reports that came into possession of the team the role of the Bar in the defence of the judiciary was widely published in the press on the occasion when the statement was made.<sup>35</sup> However it would appear the relationship between the Bar and the media is not formalized.

It seems that like so many other groups, the media is not free from the invasive corruption. The ILAC team was present when the media covered a meeting between AFELL and the Government of Liberia at the at the Solicitor-General's office. AFELL submitted a statement to the Solicitor-General regarding violence against women and violation of Human Rights. Both Liberian papers present required a fee from AFELL to print the statement.

Neither did we see any evidence of the Bar's activism in offering critical comments on new pieces of legislation proposed or pending before the legislature. Liberia has been undergoing internal civil strife during the past fourteen years. During much of this time, the legislature has remained closed. When however the legislature has been in session the Bar has not hesitated in criticizing it when found wanting. For example, in March 2000 the President of the Bar openly criticized the legislature for failing to appropriate adequate funding to the judiciary.<sup>36</sup>

The Bar Association has not been silent where political leaders have trampled upon rights of Liberians. The Bar is also known for its political activism. It participated in the peace talks that resulted into a comprehensive peace agreement between and among the warring groups in the Liberian civil war.

#### **E. Bar Related Organizations**

##### ***AFELL***

A very active Bar-related organization is the Association of Female Lawyers in Liberia. AFELL is an independent, well- respected group of Attorneys and Counsellors. AFELL's mission is to "*advocate for the basic human rights of the downtrodden masses and to promote specifically the advancement of women, children and indigent persons.*" AFELL's programs focus on Inheritance Rights, Juvenile Justice System, Constitution of Juvenile Courts, Legal Aid Clinic and Reconciliation and Peace-Building Initiatives. AFELL was also present at the Peace talks.

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<sup>35</sup> During the opening of the October 1999 Supreme Court term, the Acting President of the bar openly criticized the executive branch for not enforcing the decision of the judicial branch – See report "*Strengthening Democracy and the Rule of Law in Liberia*" by William Wagner at p. 6.

<sup>36</sup> At the opening of 2000 Supreme Court term, the President of the National Bar pledged that the bar would immediately and unequivocally support the judiciary in any case involving extra judicial conduct against the judicial branch – See report "*Strengthening Democracy and the Rule of Law in Liberia*" by William Wagner at p. 7.

AFELL's current membership is 29 in addition to a Board of 5 and an Executive Committee of 7. There are 25 trained and experienced lawyers, who provide voluntary services on a rotational basis. AFELL's membership is open to both men and women who share the goals and objectives promoted in the AFELL mission statement.

### ***Young Lawyers Association***

We did not see evidence of a young lawyers association or any sort of mentoring program. Other Common Law countries have found informal mentoring of young lawyers by more experienced lawyers, particularly those of high ethical and moral standards, to be an effective role for the Bar.

### **F. Pro Bono requirement**

It does not appear that the members of the LNBA have a pro-bono requirement to provide assistance to indigent members of Liberian society.

### **G. Existing Assistance Programs**

There is no existing assistance programme for the LNBA or for the lawyers in Liberia. There are no national donors to the Association. The last training given to all lawyers by US DOJ was in 1999.

### **H. Admission to the Bar**

The LNBA is the professional body for lawyers in Liberia. To become a lawyer, an applicant must be a graduate of law school or, alternatively, completed an apprenticeship programme, which ceased prior to 1972. LNBA grants automatic membership to all law school graduates; young lawyers are not required to spend time as clerks or apprentices prior to admission to the Bar.

All lawyers must have a license to practice. In Liberia, the application for a practicing certificate is made directly to the Minister of Finance.<sup>37</sup> The LNBA is not involved in reviewing the qualifications of its members. In addition, it is not necessary for a lawyer employed in a law firm to apply individually for his/her own practicing certificate. The firm applies in its name and this covers all members of that firm.

Judges and other members of the Judiciary are selected from the pool of LNBA members. The quality of the Judiciary is directly affected by the qualifications of candidates for the Bar. The lack of standards and credentials required for the practice of law in Liberia were, at best, taken advantage of during the Taylor government. It was suggested that the LNBA leadership could take a more active role in defining the credentials required for membership in the Bar.

We were informed that all licensed lawyers must be citizens of Liberia. The Liberian Constitution states "*only persons who are Negroes or of Negro descent shall qualify by birth or naturalization to be citizens of Liberia.*"<sup>38</sup> Ownership of property is also limited to Liberian citizens.<sup>39</sup> There is a large and active Lebanese business community residing in Monrovia that is prevented from becoming citizens, owning property or practicing law.

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<sup>37</sup> Licenses are renewable with the Ministry of Finance annually, prior to the second Monday in March.

<sup>38</sup> Article 27(b)

<sup>39</sup> Article 22

## **I. Ethics**

A written code of ethics for lawyers, titled Code for Moral and Professional Ethics was promulgated by the Supreme Court of Liberia in 1998. It appears to be mandatory and is not subject to change by the Bar Association. The Code says that it is to be enforced by an Ethics and Grievance Committee of the National Bar Association apparently appointed by the Chief Justice of the Supreme Court of Liberia.

The Code appears to include most of the substantive provisions of the Model Rules of Professional Conduct of the United States, though certainly in a different form. It provides a privilege for communications between the client and lawyer and requires candor before the tribunal. The Code prohibits conflicts of interest, ex-parte communications with Judges, and commingling of client funds.

Interestingly, it also prohibits charging less than a minimum fee in litigation matters, unless the client is indigent. The Code also specifically prohibits bribing Judges, but only in the case of securing bond for a criminal client. Malpractice insurance or other financial protections for the client in the event of lawyer negligence, apparently are not required.

The Chief Justice is to appoint an Ethics and Grievance Committee in each country composed of three lawyers. The Grievance Committee may proceed by way of complaint made to it or on its own motion. The Committee receives and investigates complaints, and rules on the complaints. An appeal from the decision of the committee may be taken to the Supreme Court of Liberia. The only sanctions appear to be suspension and disbarment.

Given the current circumstances in Liberia, it is impossible to assess the actual ethical behavior of lawyers in Liberia. At least in part because of the lack of pay for the judiciary, bribing of Judges appears to have been rampant for the last several years.

## **F. Education**

Liberia has one Law School, located in Monrovia at the University of Liberia: Louis Arthur Grimes Law School, established in 1954. The law programme is a post-graduate degree with an entrance exam, though we were informed that many students are accepted to the Law School for reasons other than merit.

Prior to 1972 there was also an apprenticeship programme, which consisted of on-the-job training with a qualified lawyer. One previous Circuit Court Judge indicated that this was not necessarily a bad method of training, and some of the lawyers trained under that method were of good quality

We were informed that both the quality of the Law School curriculum and its faculty could be improved. While the curriculum covers many of the basic courses, it could be expanded to include for example international law, human rights, and international business transactions. We were informed that the credentials required for both acceptance and teaching have declined from what they once were. We met with numerous experienced lawyers who appeared to be well trained. It was suggested that the Law School take this opportunity to rebuild, and return to or even exceed its earlier high standards.

The Law School and University were looted and much of the school infrastructure was destroyed. Windows and doors were either broken or removed. The desks and chairs are missing and the equipment that wasn't looted was destroyed, along with the electronic connection boxes.

Over the years a large selection of books has been donated to the Law School Library, but much of what remains on the shelves is outdated. There are not enough copies of first-year course books to go around; when the school was operational, students were required to share books. Although they were supplied in 1999, the majority of Liberian Law Reports, the Liberian Code and Copies of the Constitution are now missing.

The Law School Dean, Mr. David Jallah, has indicated that the Law School would like to re-open in January. This will take the concerted effort of the Liberians, UNMIL and the community of international donors.

## **VIII. PRIVATE LAWYERS**

Lawyers are divided between Attorneys at Law and Counsellors of the Supreme Court Bar. The former may appear in all courts, except the Supreme Court. Only Counsellors are permitted to appear in the Supreme Court. The requirements to be admitted to practise as a Counsellor are: (i) to be practicing Attorney of three years standing; (ii) be of good moral character; (iii) to have two Supreme Court Justices attest to that good character; and (iv) to pass an exam. It appears from discussions with lawyers that no such exam is held at present.

### **A. Number of Lawyers**

It is currently not possible to calculate with any degree of certainty the number of lawyers currently practicing in Liberia. A previous assessment indicated that there were in excess of 250 lawyers in Liberia.<sup>40</sup> The Supreme Court did keep records of lawyers but these records were apparently destroyed in the looting that occurred in June/July 2003. One private lawyer interviewed also advised that some qualified lawyers had ceased practicing due to frustration at the level of corruption in the legal system.<sup>41</sup>

Liberia is divided into 15 counties. The capital city, Monrovia, is located in Montserrado County. Liberia is a centralised country, with Monrovia being the economic and political centre of the country. Buchanan, which is also located on the coast, is the second most important city commercially. The vast majority of private lawyers are located in Monrovia, with a few also practicing in Buchanan. This reflects where the majority of commercial work is available.

Geographically, the counties are underserved by qualified lawyers. We were advised that apart from the few judicial officers and prosecutors, no lawyers reside in the counties. There are no incentives or inducements given to attract judicial officers or prosecutors to the counties. Public defenders, paid by the MOJ, appear, on an ad hoc basis.

As a group, the indigent are underrepresented. The indigent are supposedly represented in criminal matters by public defenders, who are appointed by the Supreme Court and receive a salary from the MOJ. But as with most public servants, the public defenders were not paid during the last two years of the Taylor regime. The indigent are not given representation in civil matters, including divorce proceedings, which may also proceed by way of a jury trial.

Women and juveniles are represented through the AFELL. AFELL operates an advice clinic being run each week, and conducts some prosecutions for rape on an ad hoc basis.

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<sup>40</sup> Assessment of Liberian Justice Sector, The Hon J Williams Jnr 3 April 1998

<sup>41</sup> Mr. B Howard

## **B. Continuing Legal Education ('CLE')**

There are no mandatory requirements for CLE. However, all of the lawyers spoken with indicated a willingness to undertake additional training.

Previous assessments have identified training requirements. Training has been delivered to all of the court of records and Judges in the last three years, covering the function and responsibilities of the judiciary in a democratic society, the Liberian Code, ethics and principles of basic procedure.<sup>42</sup>

Both LNBA and AFELL have identified training needs in the past. External donor agencies, such as the US DOJ have assisted in the writing and delivering of training. The training appears to have been well attended. Almost every lawyer spoken with requested training and identified it as a pressing need. Interestingly, very few referred to earlier training given.

In the longer term, it would of course be preferable for at least some training to be delivered in the counties.

## **C. Ethnic and Gender Diversity**

There are no details regarding the diversity of lawyers in Liberia, although the Peace Agreement refers to equal representation. An effort should be made from the beginning to provide for equal representation, gender and ethnic, at all levels of the judiciary. UN Resolution 1509, establishing UNMIL, "*reaffirms the importance of a gender perspective in peacekeeping operations and post-conflict peace-building in accordance with resolution 1325 (2000), recalls the need to address violence against women and girls as a tool of warfare, and encourages UNMIL as well as the Liberian parties to actively address these issue.*"<sup>43</sup>

## **D. Freedom to Carry Out Duties**

Although no one interviewed directly spoke of threats, examples were given of Executive interference in judicial functions. Examples included instructions being handed down directly from the President to a senior judicial officer, who would then instruct more junior judicial officers in what they were to do.

Given that the country has been embroiled in a bloody civil war for 14 years, the culture of compliance with the Executive may not require threats as overt as elsewhere.

## **E. Access to the Information Necessary to Carry Out Duties**

Due to recent looting, once again there is a dearth of copies of statutes, rules, case law and secondary materials such as textbooks. Copies of the most recent Liberian Law Reports are in particularly short supply.

## **F. Immunity**

Rule 4 of the Code for the Moral and Ethical Conduct of Lawyers indicates that a lawyer occupying a public office that grants immunity is not indemnified if he takes up a client in private practice. The Rule specifically refers to the lawyer submitting himself to the jurisdiction of any court.

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<sup>42</sup> See Strengthening Democracy and the Rule of Law in Liberia, US DOJ W Wagner.

<sup>43</sup> UN Resolution 1509 (2003), ¶ 11.



## **G. Adequate Access to Clients**

We inspected the holding cells in the main police station in Monrovia. There is no gaol operating at present in the capital, resulting in all prisoners (including one female being held with over 60 males) being incarcerated together in three small cells. We did not see any areas where a lawyer could have a conference in private with a client. It would be difficult for a lawyer to obtain adequate or proper instructions from a client under such circumstances. This is particularly so if a co-accused was also being held in the cells.

## **H. Qualifications**

See discussion above regarding the difference between Attorneys and Counsellors

AFELL, although with a small membership of only 25, is a highly organized and effective group. Its membership is not limited to women. It appears to also be highly respected amongst other legal professionals. They have achieved some significant goals, even recently. They cater to the interests of women and children.

AFELL has provided a pro bono Legal Aid Clinic for women and children. With the consent of the MOJ, AFELL has conducted pro bono prosecution work for the MOJ in relation to rape and sexual assault matters. Recently they have undertaken a successful program resulting in legislative amendments giving property rights to women in traditional marriages.

Again, we were informed that many of the Judges and attorneys in private practice were actively involved in corrupt practices. All levels of practice will require training in anti-corruption and the ethical practice of law.

## **I. Practice Management**

Lawyers are permitted to form private law firms. There are currently 24 law firms in Liberia, the majority of which have more than one Attorney and/or Counsellor. We were informed that most of the qualified Attorneys and Counsellors are in private practice because it is much more lucrative. We were also informed that because private attorneys had more money, it was often used to gain favour with the Judge and/or jury.

We noted that many of the law firms were not looted. If there are any legal resources still remaining in Liberia, they likely are at the firms.

## **J. Other Legal Professions**

### ***Law Reform – legal drafters***

Law reform has not been on the agenda of successive Liberian governments. There is a shortage of legal draftsmen. As the government and the people of Liberia prepare their country for the future, it is imperative that lawyers trained in legislative drafting should be available. To assist government in drafting a raft of new laws to meet the challenges of the twenty-first century.

### ***In-house lawyers***

Graduates of the law school also work as in house counsel in Liberia. The Central Bank of Liberia employs both Attorneys and Counsellors who hold the positions of In-house Counsel, Legal Counsel, and Referee Lawyer. The Ministry of Finance also employs four Attorneys and one Counsellor.

All such employees are required to have a practising certificate allowing them to practise as either Attorneys or Counsellors to appear before the courts. They are required to apply for their annual practising certificates to enable them to practise. This application is made to the Ministry of Finance. Membership in the LNBA is automatic upon graduation from law school.

### **Notaries Public**

Notaries public exist in Liberia, but their role is confined to authenticating documents for use outside the country. Notaries Public are mostly distinguished senior lawyers.

## **IX. DETENTION FACILITIES**

The prison in Monrovia is not currently functioning. Consequently prisoners are kept in abominable, inhumane and overcrowded conditions at the central gaol in Monrovia. Men and women are kept in the same cell, and there is no division between those that have been charged and those awaiting trial. The police do not provide food to those in the holding cells. In Kakata County, we were informed that the complainant is responsible for feeding the accused. In Monrovia, we were informed that the family of the accused was responsible for his/her food. Once charged, the prisoner is supposed to be fed once daily. The current situation requires the family of the prisoner to provide food; although it appeared that many of those in the cells had not eaten on a regular basis. In Kakata County we encountered two men held in what appeared to be an abandoned prison. One man reported that he had been held for one month and 4 days. He was from Monrovia and did not think his family knew where he was; they were not providing food. The prisoner claimed he had not yet seen an attorney. Before the courts mentioned above are operational, this situation has to change.

We visited the unused prison in Monrovia. While certainly not a corrections model, it would seem to be a facility that could provide temporary relief. Indeed, a lot of money would have to be spent to get it into condition to be used on any long-term basis. However, there are cells with doors. Padlocks would make them secure. Even a little money spent to clean this facility and make it minimally usable would be a great improvement over current conditions. Given the complete lack of any alternative, this would seem to be a necessary and prudent expense.

## **X. ANTI-CORRUPTION**

A Governance Reform Commission has been created under Article XVI of the Accra Peace Agreement. Paragraph 2(c) gives the Reform Commission the mandate to ensure transparency and accountability in governance in all government institutions and activities, including acting as the **Public Ombudsman**.

Article 90 (b) of the Constitution provides that

*“No person holding public office shall demand and receive any other perquisites, emoluments or benefits, directly or indirectly, on account of any duty required by Government.”*

In addition, Article 90 (c) of the Constitution states that:

*“The legislature shall, in pursuance of the above provision, prescribe a Code of Conduct for all public officials and employees, stipulating that acts which constitute conflict of interest or are against public policy, and penalties for violation thereof.”*

The problem of corruption within the legal system was brought up at nearly every meeting. The majority of Liberians the team spoke with felt that corruption has been pervasive and that there is an immediate requirement for a special group to focus on anti-corruption. This group should

have the power to investigate as well as prosecute corrupt acts. In discussions with the Director of Human Rights in the Ministry of Justice, the team was informed that legislation has already been drafted for the creation of the Integrity Commission.

## **XI. INDEPENDENT HUMAN RIGHTS COMMISSION**

Under Article XII paragraph 2(2a) of the Accra Peace Agreement it is provided that:

*“The parties agree on the need for the establishment of an Independent National Human Rights Commission.”*

The Commission is being created to monitor compliance with basic rights guaranteed in the Accra Peace Agreement, as well as promote human rights education throughout the various sectors of the Liberian society, including schools, the media, the police and the military.

This salient fundamental rights in Chapter III. In Article 10 of the Constitution the Government is Commission is supposed to work with the existing Human Rights NGOs in Liberia. The Constitution of Liberia sets out under an obligation to ensure the publication and dissemination of this Constitution throughout the Republic, and the teaching of its principles and provisions in all institutions of learning in Liberia.

## **XII. INTERNATIONAL LEGAL INSTRUMENTS**

Of the 15 major international legal instruments related to human rights and adopted by intergovernmental bodies of the United Nations system, the government of Liberia has ratified and acceded to the following five: Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (UN/1949); Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (UN/1956); Discrimination in Education (UNESCO/1960); Civil and Political Rights (UN/1966); and Economic, Social and Cultural Rights (UN/1966). Liberia has ratified the Convention on the Rights of the Child (UN/1990) and the Convention on the Elimination of All Forms of Discrimination Against Women (UN/1981). Liberia has signed, but not ratified the Rome Statute of the Criminal Court.

## **XIII. NATIONAL COMMISSION FOR TRUTH AND RECONCILIATION**

Under the Comprehensive Peace Agreement signed by the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and Political Parties on the 18<sup>th</sup> August 2003, it was agreed to create a National Commission for Truth and Reconciliation.

The National Commission for Truth and Reconciliation is to operate along similar lines as the one created in South Africa after the fall of the apartheid regime in that country.

Speaking to a wide spectrum of Liberians, one got the impression that the creation of a Truth and Reconciliation Commission was only added by the peace makers in Accra in order to get the then-Government of Liberia to agree to overtures for peace at the conference. Fighting would have continued if the carrot of such a Commission (as opposed to an International Criminal Tribunal) had not been dangled.

No one we spoke to told us that the antagonists – the government and the rebel forces and their leaders – were prepared to confess their crimes to their victims. Neither did we hear from any of the people we interviewed that any victim of violation of human rights was ready and prepared to forgive. To the question whether reconciliation in the absence of truth was

possible, one got the answer that since it was part of the peace plan, we have to have the Truth and Reconciliation Commission. Otherwise these people might go back to the bush and fight.

Mrs. Ellen Johnson Sirleaf, Chair of the newly created Governance Reform Commission, was pointed in her answer to the creation of the Truth and Reconciliation Commission. She participated in the peace talks in Accra. Nonetheless she thought that without contrition by the perpetrators of gross human rights violations there could be no reconciliation. Liberia's former political leaders further compounded the matter in that, apart from violation of rights, there has been naked robbery and theft of the Liberian treasury.

In addition the United Nations International Criminal Tribunal based in Free Town Sierra Leone has already indicted Mr. Charles Taylor for war crimes, notwithstanding the Truth and Reconciliation Commission created under the Peace Plan in Accra Ghana. Undoubtedly, there will be great need for initiatives to reconcile the people of Liberia, and a role for some kind of reconciliation process should be examined carefully.

## APPENDIX A

### Meetings in Liberia Nov. 19 – Dec. 1

Thursday, Nov. 20, 2003

#### Meeting at UNMIL

Mr. Souren Seraydarian, Deputy Special Representative to the Secretary General for  
Operations and Rule of Law, UNMIL  
Mark Kroeker, Police Commissioner, UNMIL  
Robert Gravelle, UN Senior Political Affairs Adviser, UNMIL  
Lotta Hagmann, Special Assistant to the DSRSG, UNMIL  
Dr. Alfred Kofi A. Fofie, Senior Legal Specialist, UNMIL

#### Temple of Justice meeting with Ad Hoc Justices of the Supreme Court

Counselor Ishmael Campbell, Supreme Court Associate Justice designate  
Attorney Peter W. Gbeneweleh, Acting Court Administrator of the Supreme Court  
Brigadier General Amos B. Kesseh Dickson, Sr., Marshall of the Supreme Court  
William B. Metzger, Sr., Ad-Hoc Chief Justice  
Timothy Z. Swope, Ad-Hoc Associate Justice of the Supreme Court  
Martha G. Bryant, Clerk of the Supreme Court

Friday, Nov. 21, 2003

#### Liberian National Bar Association (LNBA)

Counsellor Marcus Jones, President LNBA and Law Professor  
Counsellor Ishmael P. Campbell, V.P. LNBA and Associate Justice designate  
Counsellor Patricia Clark, Treasurer

#### Association of Female Lawyers of Liberia (AFELL)

Counsellor S. Izetta Wesley, President  
Counsellor Elizabeth J. Boyenneh, Consultant and Past President of AFELL

#### Supreme Court designates, Temple of Justice

Counsellor Henry Reed Cooper, Chief Justice designate  
Counsellor Francis Korkpor, Associate Justice designate  
Counsellor John L. Greeaves, Associate Justice designate  
Counsellor Ishmael P. Campbell, Associate Justice designate  
Counsellor Felici V. Coleman, Associate Justice designate

Sunday, Nov. 23, 2003

#### Sacred Heart Cathedral Church

Reverend Father Anthony Nnaman  
George T. Bongwi, Usher

Providence Baptist Church

#### Police Headquarters

Dr. Alfred Kofi A. Fofie,  
Christian Massaquor, Commissioner of Police designate  
Various Police personnel

**Monday, Nov. 24, 2003**

Omesinus Benwon, Assistant National Director, Justice of the Peace Commission  
Catholic Commission  
Coalition for Democracy and Human Rights

**Cathedral Catholic School**

Mr Timothy K. Kie, Principal  
Ms Stephanie Thomas, Vice Principal Academics  
Mr James Doyle, Assistant Registrar

Discussions with Human Rights teachers and students

**Ministry of Justice**

Counsellor Ishmael Pailey Campbell, Associate Justice of the Supreme Court of Liberia  
Counsellor Theophilus C. Gould, Solicitor General  
Counsellor A. Blamo Dixon, County Attorney for Montserrado County  
Mr A. Darius Dillon, Sr., Special Assistant to the Solicitor General  
Mr Elmo Siron, Human Rights Director

**Central Prison, Monrovia**

Mr James Dickerson, Superintendent of Prisons

**Meeting with Law School Dean and Faculty, Royal Hotel**

Counsellor David A. B. Jallah, Dean of Law, University of Liberia  
Counsellor Marcus Jones, Professor and former Dean of the Law School  
Counsellor Luvina V. Ash Thompson, Vice President for Resources/Mobilization, former  
Dean of the Law School, Probate Judge and founder of Ash-Thompson Memorial Academy  
Mr Christian Massaquoi, Police Commissioner designate

**Tuesday, Nov. 25, 2003**

**Sacred Heart Cathedral**

Archbishop Michael K. Francis

**Magistrate Court**

Jacques Paul Klein, SRSG, UNMIL  
Mr Seraydarian, DSRSG, UNMIL  
Lotta Hagmann, Special Assistant to DSRSG

**Louis Arthur Grimes Law School**

Counsellor David A. B. Jallah, Dean of Law, University of Liberia  
Counsellor Marcus Jones, President, Liberian National Bar Association, Professor  
Counsellor Luvina V. Ash Thompson, Vice President for Resources/Mobilization

**Justice and Peace Commission**

Counsellor Frances Johnson-Morris, Director

**UNMIL**

Souren Seraydarian, DSRSG UNMIL  
Mark Kroeker, UN Police Commissioner  
Jacques Paul Klein, SRSG UNMIL  
Lotta Hagmann, Special Assistant to DSRSG

**Wednesday, Nov. 26, 2003**

Commission for Good Governance  
Ms Ellen Sirleaf Johnson, Director

**Ministry of Justice**

Assistant Minister of Justice (Litigation)  
Elmo Siryon, Human Rights Specialist, Ministry of Justice

**Temple of Justice**

Judge J. Boima Kontoe, presiding Judge of the Criminal Court Assizes "A"

**Judicial Committee**

Francis Garlawola, Chair, Judicial Committee  
Rufus Neufville  
James C. Wratto  
Hon. Prince G. Toe

**UNDP**

Florence Butegwa, Regional Programme Director, Ghana, Nigeria, Liberia, Sierra Leone  
Elizabeth Odour-Noah, Deputy Special Representative to the Secretary General, UNDP

**Thursday, Nov. 27, 2003**

**Counsellor Benyan D. Howard**, Legal Consultants Inc., private attorney

**Magistrate Court, Monrovia**

Joseph S. Fayiah, Jr., Stipendiary Magistrate, Monrovia City Court  
Francis Weah, Clerk, Monrovia City Court  
Fofie V. Kamala, Sheriff, Monrovia City Court  
Attorney Morris A. Catssa, Special Assistant, Minister of Justice  
Counsellor James W. Zotaa, Jr.  
Attorney Francis W. Sio, Assistant County Attorney  
Attorney Richard Browne, City Solicitor, Ministry of Justice  
Attorney Gabriel G. Wleh, City Solicitor, Ministry of Justice

**Association of Female Lawyers of Liberia**

Counsellor Elizabeth Boyenneh, Consultant, AFELL

**Female Lawyers Press Conference with Solicitor General**

Attorney Vivian J. Cherue, Secretary AFELL  
Counsellor Wheatonia Dixon Barnes,  
Counsellor Elizabeth Boyenneh, Consultant, AFELL  
Counsellor Patricia Clarke, Chair of the Committee for the 16 Days Activism  
Counsellor Lois Bruthus, AFELL  
Ministry Officials  
Counselor Theophilus C. Gould, Solicitor General of Liberia  
Mr A. Darios Dillon, Sr. Special Assistant to the Solicitor General  
Mr Charles Martada, Director of Press, Ministry of Justice  
Press  
Chris Simpson, Integrated Radio Project Network (IRIN) of the UN  
Dargbeh Toby, DC 101 Radio, Monrovia  
Mrs Melissa Chea-Annan, Inquirer Newspaper, Monrovia  
William Dweh, Reporter – Liberia Broadcaster Corp.  
Atallean W. Gibson, Photographer, Natural Photographers Union

**Ministry of Justice**

Mr. Elmo Siron, Human Rights Specialist

**Liberia Female Law Enforcement Association**

Col. Asatu Bah-Kenneth, President, currently seconded to Ministry of Gender

**Friday, Nov. 28, 2003**

**Meeting with County Commanders in Kakata, Liberia**

Hon. Ernest V. Palmer, II, Superintendent  
Hon. J. Elton Yoko, Sr., Special Assistant  
Hon. Alfred S. Gibson, I, Administrative Assistant  
Hon. J. Larry Zoegar, Sr., County Consultant  
Hon. Tow M. Varnie, District Commissioner  
Hon. T. Eddie Gray, Associate Magistrate  
Hon. A. R. Marshall, Program Coordinator  
Hon. Watson Vorvor, Paramount Chief  
Hon. McHilary M. Snoh, City Mayor  
Hon. Kpa Garneo, Clan Chief  
Hon. Borbor Garmondeh, Clan Chief, Gibi District

**Police Station, Kakata**

Col. Tenrey G. Torplue, Immigration Commissioner, Margibi County  
Maj. Frederick D. Depory, Police Commander  
Col. Christopher E. Herring, CID  
Maj P. Kalieboh, EO, Deputy County Commander  
Col. Johnson Kallie, NFS, County Commander  
Col. Amos T. Nyonee, CID Commander  
D/Inspector Sa, K. Toe, STF Commander

**Magistrate Court, Kakata**

Jacob S. Foko, Stipendiary Magistrate, Kakata City  
Joseph K Freeman, Sr., Associate Magistrate  
Attorney Randall C. Saul, City Solicitor  
Capt. John. J. Dolo, Ministerial and Probation Officer  
John G. Larmah, Clerk

**Circuit Judge**

James G. Mooney, Resident Judge, 13<sup>th</sup> Judicial Circuit Court, Margibi County

**USAID**

Edward W. Birgells, Mission Director

**Police Commissioner**

Mr Christian Massaquor, Police Commissioner designate

Col. Stephen J.H. Zargo, Legal Consultant, Director of Police and Town Chief

**Saturday, Nov. 29, 2003**

**ZODWACA, ZorZor District Women Care, Inc.**

Women United for Progress  
Agnes F. Kortimai, Executive Director  
Helen Weefal, Education Coordinator  
Mary K. Samdiki, Health Promotion/Education Coordinator



Suula G. Yuriyuir, ZorZor District Women Asst. Coordinator  
Yah Quidor, member  
Varbah M. Kobio, Member  
Patricia N. Dama, Human Rights Coordinator  
Deddel Flomo, Member  
Assistant Prof. Lovela. Kortimai

**Radio Veritas**

Nat Davis, reporter

**UN Radio interview**

Judy Lessing, Director

**Sunday, Nov. 30, 2003**

**Temple of Emmanuel Church**

Moses Gaye, Associate Pastor

**Center for Peace Building and Democracy**

Riggs Logan, National Director  
Davestus James, Program Coordinator  
Henry Valhmu, Training Officer  
Dr Sei Parwon, Chairman of the Board of Directors

**Monday, Dec. 1, 2003**

**Liberian Red Cross**

H. Boweh Barduae, I, Assistant Secretary General  
Sally Miller, Federation Representative, International Federation of Red Cross and Red Crescent Societies, Monrovia, Liberia

**Minister of Gender**

Varbah Kazaku Gayflor, Minister of Gender and Development  
Estelle K Liberty, Deputy Minister, Administrator  
Levopu Kandakai  
Col. Asatu Bah-Kenneth

**Temple of Justice**

Brigadier General Amos B. Kesseh Dickson, Marshal Supreme Court

**UNMIL**

Mr Souren Seraydarian, DSRSG  
Lotta Hagmann, Special Assistant to the DSRSG  
Dr. Alfred Kofi A. Fofie

## **APPENDIX B**

### **ILAC Assessment Mission in Liberia Documents Reviewed**

- 1. Report of the Judicial Reform Commission, Established by Supreme Court of Monrovia**
- 2. Rules for Procedure in the Courts, Code of the Moral and Ethical Conduct of Lawyers and Judicial Cannons for the Moral and Ethical Conduct of Judges in the Republic of Liberia**
- 3. An Act Adopting a New Domestic Relations Law**
- 4. Public Health Law Statutes**
- 5. Constitution of Liberia (and various analyses of the constitution)**
- 6. Liberian Democracy Initiative, Civic Education, Understanding and Applying the Liberian Constitution**
- 7. An Act Adopting a new Penal Law and Repealing sections 31.3 & 32.1 of the Criminal Procedure Law**
- 8. Criminal Procedure Law**
- 9. Civil Procedure Law**
- 10. Exhibit: Writ of Arrest #1328**
- 11. Exhibit: Writ of Arrest #1348**
- 12. Criminal Justice Review, including an overview of the Criminal Justice System**
- 13. Liberian National Police Duty Manual**
- 14. The Liberian Judiciary Constraints and Strategic Plan presented to ILAC by William B. Metzger, Sr., Ad Hoc Chief Justice, Supreme Court of Liberia**
  - a. List of items needed to enhance effective operation of Ministries and Agencies of Government of Liberia**
  - b. Analysis of outstanding/arrear entitlement of circuit, relieving and specialized court judges, magistrates and senior administrative officers, covering July 1, 2000 up to and including October 31**
- 15. UN Documents**
  - a. UNMIL Legal and Judicial System Assessment, Sept. 15, 2003**
  - b. Resolution 1408**
  - c. Resolution 1509**

- d. Report of the Secretary General to the Security Council on Liberia
  - e. Remarks to the Fourth Committee by Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations
16. Peace Agreement Between the government of Liberia, The Liberians United for Reconciliation and Democracy, The Movement for Democracy in Liberia and the Political Parties, Accra, Ghana 18<sup>th</sup> August 2003
  17. UNIFEM Documents including Golden Tulip Declaration of Liberian Women Attending the Peace Talks in Accra, Ghana 15<sup>th</sup> March 2003
  18. Senate and House Endorsement of Bill No. 71 entitled “An Act to Govern The Devolution of Estate and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages.
  19. Concept Paper of The Association of Female Lawyers of Liberia (AFELL)
  20. Statement Released by AFELL to the Government of Liberia, Under the International Theme: Violence Against Women Violates Human Rights: Maintaining the Momentum 10 Years After Vienna
  21. ZODWOCA, ZorZor District Women Care, Inc. Brochure
  22. Louis Arthur Grimes School of Law, University of Liberia, Monrovia, Liberia
    - a. List of books
    - b. Supplies needed to reopen School of Law for first semester 2004
  23. Project Proposal, Conflict Prevention: The Attainment and Sustenance of Peace; A Rural/Traditional Approach, Submitted by: Center for Peace Building and Democracy, Inc.
  24. Micro Project Proposal: Disarmament, Demobilization and Resettlement of War Affected Youths and Child Soldiers. Implementing Agencies: Liberia Female Enforcement Association in Collaboration with the Liberia National Law Enforcement Association and the Don Bosco Home
  25. Humanitarian Appeal for Liberia, Revised Inter-Agency Appeal UN August 2003
  26. Violent Conflicts and Governance Challenges in West Africa: The Case of the Mano River Basin Area, Amos Sawyer 2003
  27. Good Governance – Legal and Judicial Reform (a questionnaire prepared by Philip Banks, former Minister of Justice)
  28. Strengthening Democracy and the Rule of Law in Liberia, US DOJ, Democracy & Governance/Rule of Law Program Liberia, Africa (Assessment)
  29. Assessment of Liberian Justice Sector, Office of Overseas Prosecutorial Development, Assistance & Training, US DOJ
  30. Revised Rules and Regulations, Governance of the Hinterland of Liberia, Jan. 7, 2000

- 31. Assessment Report, Gender Analyses of Post Conflict Liberia and Implementation of UNMIL's Mandate, Sherrill Whittington, Gender Specialist, UNMIL Technical Assessment Mission, September 15, 2003**
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