

# Formal and informal justice in Liberia

Pewee Flomoku and Counsellor Lemuel Reeves

*How can we ensure that all Liberians will have access to justice they understand and believe in? We should ask each other how dedicated members of our formal and customary justice system can ensure all Liberians are afforded their rights under the Constitution.*

President Ellen Johnson Sirleaf, Access to Justice Conference, Gbarnga, Bong county, April 2010

In this article, Pewee Flomoku and Counsellor Lemuel Reeves from the Carter Center describe their organisation's experiences in promoting justice in post-war Liberia, in particular in linking traditional and formal justice systems.

The justice system that President Ellen Johnson Sirleaf inherited when she came to office in 2006 was in tatters. Particularly in rural areas, police and magistrates were largely unpaid and unregulated, and were often operating in their own interests.

A critical peacebuilding challenge for Liberia has been to build its citizens' trust in the justice system – to persuade them that it acts in people's interests. In recent years, much work and international support has gone into improving the formal justice system: training judges, magistrates, prosecutors and public defenders; renovating court buildings; and regularising salaries.

But the benefits of these reforms have so far been slow to trickle down to ordinary citizens, especially those beyond the capital, Monrovia. In the absence of strong oversight mechanisms, there are no guarantees that corrupt practices will change.

Rural Liberians pursue justice almost entirely through traditional means. A 2008 survey by Oxford University [see *Further Reading*] found that rural citizens took only

four per cent of criminal cases and three per cent of civil cases to the formal courts.

Chiefs, elders or spiritual leaders resolve disputes based on widely accepted cultural paradigms. But some traditional approaches are at odds with formal mechanisms, and can be highly controversial. A rape may traditionally be 'talked through' because it is seen as a problem between families and it is for the perpetrator and his family to make the victim and her family whole again; this can include payment, or sometimes even marrying the victim. The statutory system, by contrast, sees rape as a crime against the individual, which requires individual punishment.

When the newly elected government took power in 2006, the rule of law was so weak in most rural areas that an immediate priority for the Ministry of Justice (MOJ) was to educate citizens on how the law *should* be implemented, as well as to teach people about important reforms such as amendments to law governing rape and changes to the inheritance law to allow women in customary marriages to inherit property.

In partnership with the MOJ, the Carter Center initially worked with three rural community organisations to do this work. Over the course of one month rural citizens in eight of Liberia's 15 counties were asked about their experiences of the law; based on this research, messages for community dramas and radio were developed by the MOJ for civic education campaigns. This programme made a simple but significant contribution. It showed rural Liberians that the government recognised the daily realities of ordinary people and was trying to act in their interests by providing them with the knowledge needed to exercise their rights, even while formal justice mechanisms would take longer to reform.

Through cooperating with the MOJ and the Ministry of Internal Affairs (MIA), the Carter Center's programming has supported justice reform. We have also increasingly developed a significant 'bottom-up' complement to formal international post-conflict rule of law interventions. This has helped to provide information and services to marginalised rural populations, and build bridges between customary and formal justice systems and between rural citizens and the state.

### **Strengthening formal justice and improving access**

The Carter Center has provided capacity and technical support to the MOJ. We seconded a Liberian attorney to work with it and have been helping to place US law fellows within it. We also supported the creation of the Sexual and Gender Based Violent Crimes Unit. Our Liberian staff has collaborated with Liberian organisations to provide regular training for magistrates, city solicitors, county attorneys and the police.

**“ In the early phases of the work, civic educators were being approached regularly to solve disputes for citizens who trusted community NGOs more than the formal and customary systems”**

Progress has been made. In 2010 the MOJ finalised a code of conduct for prosecutors and fully complied with the UN Human Rights Council's Universal Periodic Review process. It sponsored legislation to strengthen the rights of prison detainees, created a position for a dedicated juvenile justice attorney, and is actively leading taskforces to reduce pre-trial detention, implement probation programmes and strengthen juvenile justice.

The Carter Center has provided small grants and training to local civil society organisations (CSOs) in eight counties (Maryland, Grand Kru, River Gee, Sinoe, Grand Gedeh, Bong, Nimba and Lofa). They use drama, community forums, radio programming and music to 'tell the story' of the rule of law to rural Liberians. Civic educators focus on existing and new laws, including those on inheritance, rape, domestic violence, *Sassywood* (trial by ordeal), land disputes and bond and court fees. The CSOs comprise traditional, religious and women's organisations. In 2010, roughly 56,000 people received direct civic education in 587 community visits.

In the early phases of the work, civic educators were being approached regularly to solve disputes for citizens who trusted community NGOs more than the formal and customary systems. In response, in 2007 the Carter Center and the Liberian Catholic Justice and Peace Commission (JPC) developed a Community Legal Advisor (CLA) programme that now provides 34 CLAs in six counties. CLAs are trained to guide local people through the formal, informal and traditional options for settling disputes. With support from USAID, they provide rural citizens with free information on their rights and the law; help people interact with government, courts and traditional authorities; mediate small-scale conflicts; and engage in advocacy around justice.

CLAs give individuals and communities the opportunity to see the law working in practice. They help to set standards for local justice provision, encouraging other justice providers, customary and statutory, to improve and to become more accountable. In 2010, CLAs opened 1,704 new cases and closed 1,562 – 72 per cent successfully – following review by Carter Center legal staff. In all, as of July 2011 over 4,400 cases had been opened since 2008.

### **Strengthening community institutions**

Most Liberians still rely on traditional justice. But its structures have been weakened over time and by the war. A lack of resources and unclear mandates have undermined the ability of chiefs and elders to resolve local disputes. Some traditional practices are inconsistent with national laws and international standards. Trial by ordeal, in which guilt is determined or confession elicited through sometimes harmful practices informed by traditional beliefs, is one example. Certain approaches to rape, as mentioned earlier, are another.

Where there are conflicts between traditional practices and the law, the Carter Center's approach is to explain the law and the reasoning behind it, and to facilitate a respectful discussion on the pros and cons of each approach. This enables problem solving and mutual understanding. Rural leaders often ask: if you take away our way of determining guilt and innocence, what will you replace it with? This is a very challenging question, where the idea of evidence-based due process is largely alien and the necessary tools, such as police and courts, may be inaccessible due to distance, cost, or mistrust. County Dispute Resolution Monitors have developed guidelines to work with chiefs when approaches to the law are in conflict (see BOX 6).

The Carter Center is helping to build the dispute resolution capacity of traditional leaders, women and youths at the national, county and district levels in a manner consistent with Liberian law. It has used dialogue and training to



Carter Center civic education partners visit remote communities to 'tell the story' of the rule of law, Liberia // © Deborah Hakes

introduce traditional leaders to new laws and dispute resolution approaches that promote inclusion. It also provides modest financial support.

The approach has been extremely effective in energising the country's first line of justice providers so as to strengthen community and inter-communal problem-solving and healing, even as rural citizens wrestle with the challenges of land disputes, changing gender roles, and the legacy of the war. For example, following an outbreak of mass violence in Voinjama, Lofa County in February 2010 between youths of Lorma and Mandingo ethnicity, the National Traditional Council was able to bring together Mandingo and Lorma elders from the area and reach agreement on how to restore peace. In Bong County in December 2010, a village elder used the mediation skills he had learned through Carter Center training to resolve a 50-year-old land dispute between the Zaye, Queekon and Tonnie communities. In this case, which concerned approximately 500 acres of land, each party claimed that the other was ignoring an agreed traditional boundary and was growing crops on land they did not own. Following mediation, the disputants worked together to demarcate a new boundary, and agreed to share a common agricultural space.

### **Linking formal and informal justice**

To help bring rural perspectives to policy reform processes, the Carter Center has facilitated meetings between CSO partners and justice officials, including the Minister of

Justice. It has also helped analyse the legal framework governing rural areas and suggested reforms.

A national Access to Justice Conference in April 2010, co-hosted by the MOJ, MIA and the judiciary, examined the dual customary and statutory justice systems within which tribal courts under the executive branch coexist with the formal courts of the judiciary. This difficult but critical discussion is on-going within the Law Reform Commission and in the Committee on the Role of Non-Lawyers.

The Carter Center's experience suggests a number of recommendations for policymakers in Liberia and other post-conflict environments.

First, focus on community-based legal empowerment, including educating local people about their legal rights and options and capacitating existing community structures. Community justice can be a locally legitimate and cost effective means of providing marginalised citizens with ownership of and access to justice. It is more effective to work with home-grown dispute resolution mechanisms accepted by communities than to create new ones. Timeliness is also an important factor. Building and embedding formal justice is a long-term endeavour, while societal divisions and fragility in the aftermath of war makes fast and functional conflict management a priority. Working toward accessible local justice can provide a tangible 'peace dividend' to neglected populations.

BOX 6

**Guidelines for Carter Center legal staff holding dialogue on customary practices in conflict with Statutory Law**

1. Don't be judgmental about others' beliefs
2. Inform people of the law
3. Explain the purpose and intent of the law to clearly identify why a particular customary practice might be in violation; discuss workable alternatives
4. Engage respectfully one-to-one to reinforce training
5. If asked to be involved in any way in illegal activity, politely decline and explain what the law says on this matter
6. In some witchcraft incidents, a defendant is being accused of a crime. Talk with the local leader about alternative ways of determining the defendant's innocence or guilt
7. Consult colleagues if you have any questions

Second, support dialogue processes between the formal and traditional justice sectors to build synergies and a shared understanding of an agreed legal framework. Existing justice practices need to be harmonised with the country's governance reform programme and international commitments. Most importantly, justice processes that are accepted and employed by local populations must be developed.

Third, promote civil society participation in and oversight of local judicial reform processes. The CLAs' work shows

that civil society groups are often trusted more than statutory or customary justice providers. CSOs are an important resource for policymakers fighting local level corruption. Civil society and community involvement will also help to build people's trust in governance more broadly and to reduce the sense of exclusion that has been a root cause of conflict.

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