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# 1 Introduction

## 1.1 The International Legal Assistance Consortium

Over the past decade the international community has played an increasingly important role in supporting countries emerging from conflict. Since the end of the Cold War, conflicts rarely occur between sovereign states, but rather between groups within states or between a state and one or more armed groups challenging state authority. A common characteristic of this type of internal conflict has been the collapse of public institutions and services, including the legal system. A central task when the conflict ends is therefore rebuilding basic state functions and establishing credible institutions under the rule of law, including a justice system that has the respect and confidence of all parts of the community. Support to rebuilding the justice sector has become a central feature of international efforts in post-conflict countries.

The International Legal Assistance Consortium (ILAC) was formed, in 2001, with the main objective of coordinating and facilitating technical legal assistance activities to countries in transition or emerging from conflict. The idea underpinning the organization is that efforts to rebuild judicial and justice systems are essential to restore order and build a peaceful future in countries that have undergone violent conflict, and that there is a need for neutral analysis and needs assessment, as well as an international coordinating mechanism, in order for legal assistance efforts to be effective.

ILAC was established as a non-profit non-governmental organization under Swedish law in 2002. In September the same year, the secretariat of the Consortium was set up in Stockholm. Today, ILAC has more than 45 member organizations, representing more than 3 million lawyers from all parts of the world.

A central passage of the Amended By-laws (2010) of the organization reads:

*“The objects of ILAC are to facilitate and assist domestic and international efforts to improve the efficacy and credibility of legal institutions, by focusing on situations of actual or potential conflict or transition; by providing objective assessments and recommendations; by serving as a source of information about organizations, experts, documents, and analyses; and by undertaking other activities related to these objects mission.”*

In this sense, ILAC has a broad and operative mandate, allowing for adaptability and resourcefulness in difficult environments.

## 1.2 Lessons Learned Study Liberia

ILAC became engaged in Liberia already in 2003 and the Liberia program is one of the first and largest missions that the organization has undertaken. ILAC was invited by the UN Special Representative of the Secretary General, Jacques Paul Klein, to conduct an assessment of the Liberian justice sector and provide recommendations as to how to go about restoring basic levels of functionality in the system as soon as possible.

The program has given ILAC a chance to test its approach and develop its tools over a period of seven years. It is fair to say that it has been a learning experience for all involved. After seven years, the Liberia program was phased out in 2010, due to a lack of funding. Ahead of this, ILAC felt a need to comprehensively document project results, and assess the program's strengths and its weaknesses and draw lessons for the future. This study was therefore commissioned to produce two key outputs/products:

- 1) A report documenting the Liberia project – i.e. the results of the project, the methodology used, and the contribution of ILAC to the strengthening of the justice sector in Liberia (*for external use*).
- 2) A lessons learned study – providing an assessment of the planning, inception and implementation of the Liberia program (based on relevant OECD/DAC evaluation criteria), and drawing lessons for the future work of ILAC, especially relating to the planning, monitoring and evaluation framework of the organization (*for internal use*).

The first part of the study, the documentation exercise, is presented in a separate report.

The documentation exercise has provided an important basis for this lessons learned study. The key objective of the lessons learned study is to draw lessons from the strategy and methods used in Liberia and identify ways to apply these lessons in the future work of ILAC. It has been conducted as an internal evaluation, aiming to achieve a generative learning process within the organization. Hopefully, this will enable the lessons from Liberia to be brought into the process of developing the organization and future programs. The study will hopefully also provide a valuable source of information and serve as an input to the continued development of the organization, especially in relation to the ongoing efforts to strengthen the planning, monitoring and evaluation framework within ILAC.

The questions that were posed to the study team are:

- 1) Which results have been achieved through the project– intended and planned results as well as unintended effects of the project? (*Outcome level*)
- 2) What seems to have worked and why (or why not)? To what extent did the Liberia project meet its objectives? How has ILAC been perceived by Liberian stakeholders? (*Effectiveness*)
- 3) Were ILAC’s analysis and hypothesis regarding the needs of the Liberian justice sector and the chosen interventions relevant and appropriate? Was the project realistic and designed to address key factors and promote sustained results in relation to strengthening the justice sector in Liberia? (*Relevance & Sustainability*)
- 4) Have ILAC’s efforts responded flexibly to changing circumstances over time? (*Adaptability*).
- 5) Were ILAC’s relationships with partners and people principled? What political considerations and independence/dependency factors have influenced ILAC’s decision? (*Values & Standards*)
- 6) Were the costs of the work justified by their results – taking into account alternatives? (*Efficiency*)
- 7) Which are the lessons to be drawn from the Liberia project and how can the planning, monitoring and evaluation framework of ILAC be strengthened based on these experiences?

### 1.3 Methodology

The study team has worked closely with ILAC staff in Stockholm and in Monrovia, to document the Liberia project and its results and to extract lessons from the Liberian experiences. The study team has gone through project documents, available reporting and correspondence. As the number and systematization of reports from the Liberia project has been limited, the team has relied heavily on interviews with key staff and stakeholders.

A field visit to Liberia was undertaken 20-28 October 2010. During the field visit, the team had a number of in-depth interviews with the ILAC Country Representative, Judge Mike Enwall. The team also met with a large number of national and international stakeholders and informants to discuss the ILAC Liberia project, its results and role in the last seven years of strengthening the rule of law in Liberia.

The entire project was undertaken with a conflict- and gender sensitive approach. In the Liberian context, this meant *inter alia* that a conflict- and power analysis was undertaken at the outset of the study period to understand the context in which the project has been implemented and sensitivities

surrounding the political discourse and relationships with stakeholders in Liberia. Consultants have aimed for the broadest possible participation by local and national stakeholders in identifying and analyzing results and lessons.

Due to the limited time available for the study, it has not been possible for the study team to include in-depth reviews of other ILAC programs for comparison. The findings in this report are therefore limited to experiences in Liberia.

#### 1.4 Acknowledgements

The study team would like to thank the staff of ILAC Head Office in Stockholm, as well as current and former field staff for their time and patience in explaining the Liberia program to us. A particular note of thanks to Judge Mike Enwall, who guided us through our field mission in Liberia and gave generously of his time to inform the study and make the field visit successful. We would also like to thank all Liberian and international partners and stakeholders who have agreed to meet with us to share information, insights and analysis.

A special thanks also goes to the team's quality assurer, Richard Zajac Sannerholm, who has shared his expertise on rule of law support in post conflict contexts, advised the team on methodology and approach, and provided invaluable comments and suggestions for this report.

The views expressed in this report, however, and any misunderstandings or mistakes, remain the responsibility of the study team.

## 2 Background

### 2.1 The Liberian Context

Liberia is a country with a long history of political violence – from American colonization in the early 19<sup>th</sup> century, through the elitist rule with numerous native uprisings (approximately 1870-1980), to the modern conflicts over power and outright civil war in the last three decades. The most recent and most violent periods are often referred to as the First and Second Liberian Wars (1989-1996 and 1999-2003 respectively).

At the heart of the conflict in Liberia lies historical grievance between the capital elites and the “hinterlands”, i.e. the Americo-Liberians that migrated from the United States and the native population. Liberia was founded in 1822 by US President Monroe as a safe haven for liberated slaves returning to Africa

from America. The proclamation of independence in 1846 and the constitution of the new country built entirely on the needs and aspirations of these returning slaves. But the area had been inhabited for centuries. The Liberian constitution was designed on the model of the American system, including the legislative, executive and judiciary powers. However, the right to vote or to run for representative assemblies were not entrusted the native population.

In the period 1870 to 1980, Liberia was largely governed as a one-party state. While the state control and services were generally weak outside of the capital, the borders of the country were kept relatively intact. The ruling elites exercised their power throughout the country by controlling the centre. Through legislation like the *Hinterland Act*, national authorities in Monrovia were mandated to arrest local leaders in far remote areas for crimes allegedly committed by one of the members of his/her clan. The *Hinterland Act* is still in force, but was revised in 2000; now the *Revised Rules and Regulations Governing the Hinterland of Liberia (2000)*. The act also formally governs the traditional justice system.

Economic growth increased rapidly in the middle of the 20<sup>th</sup> century as a result of high international demand for natural resources (mainly rubber, timber, iron and diamonds). Yet, the population did not generally benefit from the increased revenues. The economic crisis of the 1970s had a negative effect on the country and when Samuel Doe staged a bloody coup in 1980, he was supported by large parts of the population. Doe belonged to the Krahns, but was backed by many other Liberian clans, such as the Mandingos.

The continued economic downturn in general combined with an inability to reform state institutions quickly made the Samuel Doe presidency unpopular. In an attempt to strengthen his power base, Doe manipulated existing ethnic antagonisms and accused Ministers from the Gio and Mano clans to agitate the population in the Nimba region. As the security situation deteriorated, it was in these border areas that Charles Taylor could find a strong base of support in as he founded the National Patriotic Front of Liberia (NPFL) and set out an armed revolt against Doe. The rebel movement gained sympathy mainly from the Gios and the Manos and local militia that had been formed to protect these minorities allied with the NPFL. Financial support came from Liberian diaspora groups in USA and Europe (among them the current president of Liberia, Ellen Johnson Sirleaf).

The NPFL, however, was divided and one of Taylor's closest men, Prince Johnson, left the movement to create the Independent National Patriotic Front of Liberia (INPFL) together with a group of core fighters. Johnson managed to oust and kill Samuel Doe in 1990, despite heavy presence of

regional peacekeepers from the Economic Community of West African States (ECOWAS) Monitoring Group (ECOMOG). Johnson proclaimed himself president but shortly thereafter lost his dominating position as Taylor managed to turn various ethnic groups against him. Taylor soon obtained the support of large parts of the country and was backed by the Governments of Libya, Burkina Faso and Côte d'Ivoire.

In 1997, Taylor was elected president despite having committed widespread atrocities against the civilian population during the war. It is likely that a large number of votes were cast on the basis of fear for reprisals. New rebel groups were formed after the elections and the ECOMOG found itself in the middle of an active conflict with major challenges to maintain its neutrality. The Mandingo-based rebel group Liberians United for Reconciliation and Democracy (LURD) attacked Taylor from Guinea in 1999 and in 2003 the Movement for Democracy in Liberia (MODEL) was founded by ex-Doe-supporters backed-up from the Côte d'Ivoire. The conflict further fuelled ethnic tensions, primarily in border areas such as Nimba and Lofa.<sup>1</sup>

Fourteen years of violent conflicts in Liberia came to an end in August 2003, with the signing of the Comprehensive Peace Agreement (CPA) in Accra, Ghana. Hundreds of thousands Liberians had been killed, and virtually all Liberians had been severely affected by the conflict. At the time of the signing of the CPA, Liberia could best be described as a failed state.

The main parties to the conflict finally signed the Comprehensive Peace Agreement in 2003: Taylor (as president of the Government of Liberia), LURD and MODEL. The negotiations had also involved civil society groups and political parties. A transitional government was formed as a compromise for power sharing until elections could be arranged. Although LURD and MODEL were seen as victors of the war, they both had difficulties to use this to their advantage in the political process, as their support came mainly from minority ethnic groups (i.e. Mandingo and Krahn).

Taylor went into exile and lived in Nigeria until 2006 when President Johnson Sirleaf requested his extradition. Under heavy international pressure, Nigeria agreed to extradite Taylor. In Liberia, Taylor was taken into custody by UNMIL and flown to Sierra Leone, and then to The Hague, to face charges of war crimes and crimes against humanity before the UN-sanctioned Special Court for Sierra Leone.

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<sup>1</sup> See for example Adebajo, Adekeye, *Liberia: A Warlords Peace*, in Stephen John Stedman, Donald Rothchild, and Elisabeth M Cousens (eds.) *Ending Civil War: The Implementation of Peace Agreements*, Boulder Co: Lynne Rienner (2000).

The main warring parties throughout the history of the conflicts of Liberia have typically represented different elites competing for political power. To gain popular support, they have all manipulated and furthered already existing ethnic antagonisms to their own advantage, often resulting in atrocious conflicts at the local level. The conflicting parties have used different state functions as mechanisms to gain and maintain power. The general population has naturally developed a relationship to the state institutions as perpetrators rather than protectors of their security and guarantors of justice. Decades of authoritarian rule and civil war have resulted in deep mistrust among the population and suspicion towards the security and justice system. The formation of a transparent, security and justice system is a crucial part of leaving the past behind and building a lasting peace in Liberia.

The CPA reconfirmed the ceasefire and requested ECOWAS to deploy a ceasefire monitoring force to separate the former warring parties. The CPA established the National Transitional Government of Liberia (NTGL), and the National Transitional Legislative Assembly (NTLA). 21 ministerial posts were divided among the three parties (5 each), political parties and civil society organizations (6 posts).

The CPA did not provide a mandate for broad rule of law reform. On the contrary, the agreement specifically stipulated that the judicial structure should remain unchanged (see CPA Article XXVII(1)).

The first post-war elections were held in 2005. The candidate of the Unity Party, Ellen Johnson Sirleaf, won the presidential election in a run-off (59%-40%) against football star George Weah of the Congress for Democratic Change (CDC). George Weah had won the first round of voting and disputed the results of the second round. Johnson Sirleaf was declared the winner of the election in November 2005 and she took office in January 2006. She had previously served as Minister of Finance under President William Tolbert from 1979 to the Samuel Doe coup in 1980. George Weah is expected to be a serious contender for the presidency in the upcoming election in 2011.

It is important to note that the many of the root causes of the conflicts in Liberia are still not resolved. The grievances of large groups of Liberians remain. Social and ethnic tensions that might result in renewed violence are only a serious crisis or a manipulative leader with the wrong intentions away. Political conflicts are currently solved through negotiations, appointments and exchange of political favors. Corruption is still widespread and it is a very difficult environment in which to promote political reforms.



## 2.2 Rule of Law in Liberia

At the time of the signing of the peace accords in 2003, the justice system and legal institutions in Liberia had broken down completely. However, in the words of one informant of this study: *“it is important to note that the legal system in Liberia has never been up to international standards.”* An International Crisis Group (ICG) report from 2006 held that: *“Even before the conflict, the justice system suffered from an historical lack of independence from the executive and failed to operate as an impartial forum since access to it was dependent on economic or social capital.”*<sup>2</sup> During the wars, the system went from weak to virtually non-existent. The 2003 ILAC assessment study concluded that: *“There is an almost unanimous distrust of the legal system and a corresponding collapse of the rule of law.”*

Like the American constitution, Liberia’s constitution of 1986 provides for a separation of powers between the Executive, the Legislature and the Judiciary. The President appoints a Chief Justice as well as the four associate justices to serve on the bench of the Supreme Court. The Chief Justice is mandated to independently govern the Judiciary. In practice however, ties between the executive and the judiciary are still held by most commentators to be strong.

In September 2007, the Government of Liberia established through legislation the Governance Commission (GC). The GC was mandated to conduct an analysis of the Judiciary. The analysis was critical to the Judiciary’s ability to guarantee independence and prevent manipulation. Appointments were in practice often made through informal networks of loyalty. The Commission therefore recommended the Government to install a Commission for Law Reform and launch a process that could address the issue of constitutional reform in a broad and inclusive manner.

A Law Reform Commission was established in 2009. The Commission published a report in 2010, but there has not yet been any significant concrete progress in the area of law reform in Liberia. There is still a conflict within the legal community in Liberia on the general direction of legal reforms – a continued reliance on the American legal traditions, or moving towards greater convergence with the legal systems of neighboring African countries.

The courts of first instance in the formal Liberian justice system are the magisterial courts. There are some 350 magistrate judges operating in courts across Liberia. Out of these 350, only about ten magistrates have formal legal training. This situation has not changed since the ILAC 2003 assessment, but some measures have been taken to support these magistrates and strengthen the quality of legal proceedings in the magistrate courts, such as the

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<sup>2</sup> International Crisis Group Liberia: *Resurrecting the Justice System* (2006)

Magistrates Benchbook and shorter training courses. The idea is also that the newly established judicial training institute should train candidates to be magistrates through a one-year program. The training will naturally not be the equivalent to a law degree, but it will go a long way to strengthening the quality of the justice system in rural Liberia. The first 63 magistrates will graduate from the judicial institute in March 2011.

In areas where no magisterial courts exist, there are Justices of the Peace Courts. Justices of the Peace are not employees of the state, not required to be lawyers and they have jurisdiction in a limited number of criminal and civil law cases. They are generally paid through fines paid by litigants in their courts.<sup>3</sup>

The Courts of Appeal, and the lowest court of record, are Circuit Courts and Specialized Courts. There are 18 Circuit Courts and five Specialized Courts in Liberia. All appeals are heard *de novo*. Decisions of the Circuit Courts and Specialized Courts can be appealed to the Supreme Court. The Supreme Court decides cases on the basis of the records from the lower courts.

Proceedings in Liberian Courts are still painfully slow. Because of the endemic lack of reliable statistical data, it is not possible to determine how big the backlog is. By what came out of the interviews with the Circuit Court judges that the study team had a chance to interview, however, it seems that a judge hears an average of 1-2 jury cases per 42-day court term. This is about the same as was reported by the ILAC 2003 Assessment. A Swedish Security Sector Reforms (SSR) needs analysis from 2009 reported that some 60% of staff resources in Liberian courts were spent on documentation, still mostly done by hand or by typing on antique typewriters. According to the judges who have had the experience of working with the Court Reporters through the ILAC pilot project (see chapter 3.2 below), the project has the potential to triple or even quadruple the number of cases that can be heard in one term.

Liberia's Solicitor General is administratively operating as apart of the Ministry of Justice. Public City and County Solicitors exist at the local level. Much like other parts of the Liberian justice sector, the Solicitor General's office is working with a huge backlog. A 2009 assessment study of the needs in the area of Security Sector Reforms in Liberia showed that about 90% of all prisoners in public jails and prisons had not yet had their case heard in a court. ILAC has worked closely with the Solicitor General's office to address the training needs identified in the 2003 Assessment Report. With support from

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<sup>3</sup> Liberia Judiciary Law, paras 8.3(a) and (b). See also Herman, Johanna and Marin-Ortega, Olga: *Narrowing the Gaps in Justice: Rule of Law Programming in Liberia*, in Chandra Lekhana Sriram, Olga Martin-Ortega and Johanna Herman, *Peacebuilding and Rule of Law in Africa: Just Peace*, London/New York: Routledge (2011)

ILAC and other international partners, the Solicitor General has established quarterly training sessions for Prosecutors around the country.

Formal national courts have never been a part of the social fabric in rural Liberia. Traditional justice systems have developed over time and are widely used in Liberia still today. Trust in national authorities and formal courts is generally very low. A recent study by the United States Institute of Peace (USIP) showed that out of a total of 1,877 criminal cases “*only 2 percent were taken to a formal court; 45 percent to an informal forum; and 53 percent to no forum at all.*” The statistics for civil cases are similar, “*of a total of 3,181 civil cases, only 3 percent were taken to a formal court; 38 percent to an informal forum; and 59 percent to no forum at all.*”<sup>4</sup> As noted in the 2003 Assessment, Traditional Courts are recognized in the constitution and other legislation in Liberia. While the legal frameworks clearly state that national laws shall apply also in traditional courts, the use of practices contrary to human rights principles seem to be widely used. In theory it is possible to appeal cases from traditional justice to formal justice systems. In practice, however, there are very few cases of appeal. The disconnect between the formal and the traditional systems is striking. The opportunity pointed out in the 2003 Assessment, to ease the pressure on formal courts by building on the traditional system as a mechanism for local dispute resolution, regulated and monitored by the state, does not seem to have been meaningfully utilized.

Many donors and international organizations have considered Rule of Law support in Liberia difficult. It has been difficult to find entry points and the legal community has been seen as closed and protective. The community of qualified lawyers in Liberia is very small, only a few hundred individuals. The legal profession is still largely reserved for the elites in the country. Political influence over the justice sector is strong. Much of the international support has been focused on the police, rather than the Judiciary, prosecutors and attorneys. Although the police sector is in great need of reform, a too narrow focus always risks creating imbalances. The police has traditionally been used as a tool of oppression in Liberia and the level of trust in communities is generally low. A functioning judicial system based in the rule of law is crucial to help regain trust in the security and justice intuitions and build peaceful development.

Despite difficulties, ILAC has managed to find entry points and allies within the judiciary and other parts of the Liberian justice system. Liberia has strong historical ties to the United States, and the Liberian legal system builds heavily

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<sup>4</sup> Isser, Deborah H; Lubkemann, Stephen C; N’Tow, Saah; *Looking for Justice – Liberian Experiences with and Perceptions of Local Justice Options*, United States Institute of Peace (2009). The study refers to a survey conducted by the Centre for the Study of African Economies at Oxford University.

on the US system. In light of these contextual characteristics, the active engagement of ILAC USA and the placement of an American judge as country representative have been very useful.

### 3 ILAC in Liberia

#### 3.1 ILAC's Liberia Program

##### 3.1.1 *The Assessment Mission 2003*

ILAC's Liberia Project started almost immediately after the end of hostilities in 2003. The organization was invited by the UN Special Representative of the Secretary General, Jacques Paul Klein, to conduct a post-conflict assessment of the Liberian judicial system and provide recommendations as to how to go about restoring basic levels of functionality in the system as soon as possible. The assessment was funded by Swedish Ministry for Foreign Affairs (MFA) and had a total budget of 400 359 SEK. The assessment was conducted in November/December 2003, some three months after the signing of the Comprehensive Peace Agreement (CPA), in Accra, Ghana. A seven-member team of experts visited Monrovia for a period of two weeks, meeting with over 150 Liberians. Meetings including "*members of the judiciary, lawyers, police, prison officers, legal academics, representatives of non-governmental organizations (NGOs), church leaders, human rights advocates, and ordinary Liberians. The team also reviewed numerous documents and reports, including the Constitution of Liberia, the Peace Accord, and the Rules of the Supreme Court.*" (Assessment Report, 2003, p. 1)

ILAC provided recommendations on how to "kick-start" the reform effort that was needed in the country after the armed conflict, aiming to reestablish the rule of law in the country and to build confidence in the legal system. Recommendations were divided into four groups: 1) Reestablishment of two criminal courts in Monrovia; 2) Structure of the Judiciary; 3) Law reform; and 4) Training programs. Proposals were sequenced in short-term (1-3 months), medium-term (4-6 months), and long-term (more than 7 months).

The needs in the Liberian justice sector were enormous and in hindsight, many of the recommendations given in the report, and the timing proposed, were overly ambitious. The needs identified, however, and the analysis of the Liberian judiciary and justice system has proved to be highly relevant. Many of the problematic areas pointed to in the report are still being dealt with today, seven years later.

### *3.1.2 A Rocky Start for the Liberia Project*

In 2004, the Swedish Government agreed to provide ILAC with funding for a first project period – totaling 5 million SEK. In 2005, ILAC established an office in Monrovia, headed by the former Zambian Minister of Justice, Rodger Chongwe, and staffed by a locally employed administrator. Rodger Chongwe had been a member of the ILAC assessment team already in 2003 and had vast experience from law reform issues in the region. Roger Chongwe worked on a part time basis and traveled back and forward between Liberia and his home in Zambia.

The Director General of ILAC USA, Shelby Quast, also continued to visit Liberia regularly, nurturing and developing contacts that had been established during the Assessment Mission and subsequent visits.

A central feature of the original project was to develop the Liberian judiciary by seconding judges from Ghana, in cooperation with the Supreme Court of Ghana and the World Bank. This component of the program ran into problems from the outset. First, the Chief Justice declared that some 70 Liberian judges would have to retire to make room for the seconded judges from Ghana. The retirement scheme would cost approximately 10 000 USD per judge, to be paid directly to the Chief Justice from the project budget. As ILAC refused, the project got stuck. The transitional government, under President Gyude Bryant, suddenly changed its mind regarding the project when it was made clear that financial support would be channeled through ILAC, rather than directly to Liberian institutions. Presidential approval of the project was withdrawn.

After the 2005 election, and the inauguration of President Ellen Johnson Sirleaf, attempts to start up the secondment project resumed. ILAC's relationship with the new government was generally very constructive. The relationship with the new Chief Justice, however, was not without friction. The Chief Justice was generally skeptical about bringing foreign judges to Liberia and wanted instead that resources be used exclusively for training of domestic Liberian judges. Much time and resources were spent on negotiations to try to get the secondments projects going. In the end, however, ILAC had to conclude that this part of the project would not be possible to implement, and that it would be better to focus the resources and attention of the organization on other initiatives.

There were also plans to establish a twinning project with the Bar Associations of Liberia, Ghana, and Norway. For a number of reasons, seemingly primarily as a result of lacking interest by some of the parties and drastically different organizational cultures, this twinning initiative never came to fruition.

It should be noted that ILAC was not the only organization that experienced problems and stalling tactics while attempting to support rule of law reform in Liberia. Many donors were hesitant to act on comprehensive legal and judicial reform during the first two years following the signing of the CPA because of the lack of concerted political will from the Transitional National Government.<sup>5</sup> A national strategy for rule of law reform came into place more than five years after the CPA.<sup>6</sup>

Interestingly, however, in parallel with attempts to convince the judiciary to start up the secondments project, and to sort out the technical details of the twinning project, ILAC's relationship with the government developed into a partnership where ILAC was increasingly called upon to provide advise and technical assistance. Throughout this period ILAC was also involved in the general legal reform discourse. During these first years, ILAC also developed a close working relationship with key stakeholder in the Liberian justice sector that would prove very valuable later on. This will be described further below.

### *3.1.3 Funding for the Liberia Project*

The World Bank (WB) had been a key partner in the inception of the project. The WB had pledged to provide 650 000 US dollars for the project. One third of this pledge was disbursed to ILAC in September 2006. However, in the wake of the political problems surrounding the project start-up in Liberia, it was revealed that the funding decision at the World Bank in Washington had been made without sufficient internal consultation and authorization. ILAC suddenly found itself caught in an internal conflict within the World Bank over mandates and authorization. In October/November 2007, it was decided that it was best to return the disbursed amount and forsake the full grant. Funding thus had to be found elsewhere.

The grant from the Swedish MFA lasted from 2005 until June 2008. It covered mainly the costs associated with the office in Monrovia and ILAC's presence there. Throughout this period, there was an ongoing dialogue with the Swedish MFA on the need to diversify funding. As a first step in this process, ILAC sought funding for its continued work in Liberia from the Swedish International Development Cooperation Agency (Sida). ILAC approached Sida in 2007, explaining what had been done so far and the plans for the future. A formal program plan and application for funding was submitted.

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<sup>5</sup> See Hayner, Priscila, *Negotiating Peace in Liberia: Preserving the Possibility for Justice*, Center for Humanitarian Dialogue and International Center for Transitional Justice (2007)

<sup>6</sup> See Herman and Martin-Ortega (2011).

At that time, however, Sida was in the process of developing a proposal for a new Swedish strategy for development cooperation with Liberia. As this new strategy would come to guide all funding-decisions relating to Liberia, it was communicated to ILAC that no decision could be taken before the strategy had been finalized.

In dialogue with the Ministry for Foreign Affairs, it was agreed that ILAC could utilize un-earmarked funds from the annual MFA grant as bridge funding. A part of the grant would be used to finance continued ILAC presence and activities in Liberia, while waiting for the country strategy to be finalized, and for a subsequent decision at Sida in relation to ILAC's application.

In the process of preparing the country strategy, a Sida delegation visited Monrovia and met with ILAC representative, Judge Enwall, and a number of local stakeholders. Sida submitted a draft *Strategy for Swedish Development Cooperation with Liberia*, July 2008-June 2013, in May 2008. The Swedish Government formally adopted the strategy in November 2008.

The Strategy points to two central focus areas for Swedish support to the development in Liberia: 1) *Democratic Governance and Human Rights*; and 2) *Agricultural Development and Private Sector Development, including Regional and International Trade*. Within the first of these focus areas, Swedish support should be focused at capacity building within government institutions, in particular the justice sector, and support to decentralization efforts.

Discussions with Sida on possible support for ILAC's Liberia project continued throughout 2008-2010. During this time, there were a number of staff rotations in the Africa Department of the Agency. ILAC found itself in a situation where it had to start over several times in its dialogue with Sida. ILAC met with Sida as late as March 2010, to explain the progress made in Liberia since the first application was submitted. While the response at the meeting was positive, no formal decision in relation to ILAC's request for funding has been made.

Sida staff has explained to the study team that they have been generally positive towards ILAC's Liberia program. Despite this positivity, Sida has not come to a decision to fund the program. There seem to be a number of contributing factors for this. Some of these factors are: the then ongoing process of renewing the Swedish country strategy for cooperation with Liberia; the delays caused by the rotation of staff; and the dynamic between Sida's Head Office in Stockholm and the Agency's field staff in Monrovia. Another likely contributing factor is the difference in organizational cultures

between the Swedish Ministry for Foreign Affairs and ILAC on the one hand, and Sida and its typical partner organization on the other.

Against the background of our discussions with Sida, the team sees no reason that ILAC should not come back to Sida with a renewed application for funding for a continued Liberia program.

#### *3.1.4 ILAC's Approach and Adaptation to Circumstances*

During 2006, the Director General of ILAC USA, Shelby Quast, had increasingly been called on as advisor on issues relating to *law reform* and *gender justice*, particularly to the Minister of Justice, Ms. Frances Johnson and the Minister of Gender and Development, Ms Vabah Gayflor, as well as the Chief Advisor to the President, Mr. Natty Davies. Among the “products” that came from this advisory role was a compilation of needs and requests for international assistance for law reform, that was presented at a donor conference in Washington DC in February 2007. The support of Ms. Quast and ILAC representative Roger Chongwe was also instrumental in the integration of legal reform aspects in the interim Poverty Reduction Strategy Report.

ILAC also got involved in a process to promote the establishment of a paralegal system in Liberia, to address the lack of trained legal professionals in Liberia. A study trip was organized in 2007 for Liberian organizations to see how paralegals were used in South Africa. The primary Liberian civil society partner in this effort was the Association of Female Lawyers of Liberia (AFELL). The work was also undertaken in conjunction with an International Commission of Jurists (ICJ) project. However, there was an inherent reluctance within the legal community in Liberia towards the concept of paralegals. This reaction from legal professionals is not uncommon. Paralegals are often seen as threatening the position of the legal profession – doing the job of lawyers at lower cost or entirely *pro bono*. While some progress was made in that regard, ILAC and national partners did not manage to fully break through this barrier.

In later years, ILAC has come to focus on cooperation and partnerships with the actors in the formal justice system, i.e. the Judiciary, the Solicitor General and the Bar Association, rather than popular civil society organizations. This is partly a result of the professional background and experiences of ILAC staff in Liberia, but also of the fact that there is a limit to what one person as country representative can do. As resources have to be prioritized, it is the impression of the study team that ILAC has chosen to focus on areas where there has been greatest potential for progress. It is not certain, however, that this will be the case in other similar cases in the future. In some contexts, ILAC could just as



well play an equally important role as a mentor, advisor and facilitator to legal/rights-based NGOs, dealing with paralegals and community legal aid.

In working with national partners on gaining acceptance for the secondments of Ghanaian judges and a paralegal program, and in advising Liberian ministries and institutions, however, the presence of Roger Chongwe and Shelby Quast helped build a foundation for ILAC's continued work in Liberia. They initiated and maintained highly valuable partnerships with national and international stakeholders that would be absolutely essential for the achievements in the period 2007-2010.

In 2007, ILAC decided that the Liberia project would benefit from a permanent presence in Monrovia. The experienced Swedish lawyer and politician, Lise Bergh, was available and matched the key requirements for the position. Unfortunately, she was simultaneously offered a position as Secretary General of the Swedish Chapter of Amnesty International, and felt she had to accept that offer. She agreed, however, to go to Liberia for a period of three months, giving ILAC time to find a more permanent solution. Lise Bergh arrived in Monrovia for an introductory week in January 2007, during which she was introduced to the context and key individuals. Shelby Quast traveled from the US to facilitate introductions and share her experiences.

Lise Bergh returned in March 2007 and stayed as ILAC's country representative until the end of May. As she arrived in Monrovia, the ILAC project was in a phase of revitalization. The idea was that the sub-projects that Rodger Chongwe and Shelby Quast had spent previous years preparing was to get off the ground during the first half of 2007. The training of County Prosecutors had just been initiated after the provision of funds through ILAC. The trainings were implemented in a very fruitful cooperation with the Solicitor General, Tiawan Gongloe, a personal relationship that had been built over years. Another component that was to be revitalized was the cooperation with the judiciary. During the first half of 2007, however, ILAC was still affected by the previous dispute with the Chief Justice over the planned secondments of Ghanaian judges. A third sub-project was the twinning project between the Bar Associations of Liberia, Norway and Ghana. As noted above, this project, for various reasons, did not materialize.

The advisory and to some extent mentoring role of ILAC in Liberia was developed even further after the placement of a permanent international ILAC representative at the Monrovia office. In addition to these three concrete projects outlined above, Lise Bergh was also heavily involved in ILAC's Partners for Gender Justice program, and supported the work of Shelby Quast

in advising the Liberian Ministry of Justice and the Ministry of Gender and Development.

The search for a representative to replace Lise Bergh settled on the retired American judge, Mike Enwall, who had been one of the members of the Assessment team back in 2003. Judge Enwall arrived in Monrovia in August 2007. ILAC's presence was still focused on managing project funds for the various sub-projects, particularly the projects to be funded through the World Bank grant. The first months of his time in Monrovia were therefore spent preparing for this, establishing contacts with key institutions and individuals within these institutions. A number of key individuals had been identified and introductions were facilitated and doors opened by the relationships built by ILAC staff over the years.

As it became clear that there would be no project funds beyond the grant provided by the Swedish Ministry for Foreign Affairs, Judge Enwall had already developed close working relationships and established himself as a mentor and advisor to key individuals within the Liberian judiciary and other legal professionals. In dialogue with the head office in Stockholm, it was decided that Judge Enwall should stay in Monrovia, through the funding provided by the Swedish MFA, and continue to provide advise and technical assistance in the various ongoing reform efforts.

#### *3.1.5 Summary of impressions*

Rather than employing a conventional programmatic approach, the ILAC Liberia project has maintained a facilitating role, in accordance with the mandate of the organization, while at the same time filling gaps and addressing so called "aid orphans" that has not been addressed in other projects designed for specific pre-defined purposes. As ILAC has not pushed its own agenda – no predefined program to follow or stack of funds to spend – it has been seen as a non-threatening honest broker.

ILAC staff, Rodger Chongwe, Shelby Quast, Lise Bergh, and most recently Judge Mike Enwall, have supported Liberian ministries and institutions with professional advice and mentoring, drafting of documents, guidelines and training manuals, training of judges, lawyers and prosecutors as well as provided equipment and training for court reporters. Specific projects are described in further detail under "Milestones" below.

This report argues that the ILAC's Liberia project, as it developed over time, represents an approach to post-conflict rule of law support that can be highly effective and a much needed supplement to conventional actors. ILAC's *proactive presence* has proved capable of finding ways to make progress even in

situations where the political will and institutional capacity for change is low. It essentially builds on knowledge and understanding of, and sensitivity to the local context and a willingness and ability to identify and engage with change agents.

### 3.2 Milestones in ILAC's Support to the Liberian Justice Sector

In addition to the continuous advice, facilitation and technical assistance, ILAC has initiated and supported a number of distinct projects in Liberia, often in cooperation with likeminded international and national organizations. Four of the key milestone projects are briefly outlined below.

#### 3.2.1 JAAP Judicial Institute

One of the major problems facing the post-war Liberian judiciary was the lack of legally trained magistrates. Liberian law requires a law degree for the position of magistrate, but this is generally not respected. The regulation could not be respected, as there are simply not enough trained lawyers in Liberia. The figure regularly quoted is that less than 10 of the some 370 magistrates in Liberian communities have formal legal training. The recruitment procedures for magistrates, developed throughout the years of conflict, have been tainted by corruption and political bargaining. Matters were made worse by the fact that magistrates were not paid for years in the early 2000s, resulting in widespread "*highest bidder justice*".

Realizing that respect for the formal legal system must start with functioning and credible local courts, ILAC set out to address the need for training for judges at all levels. The ground had been prepared through ILAC's dialogue with the Chief Justice and others within the Judiciary, starting already in 2005/2006. The general idea was to build a judicial training institute after the model of such institutes in other countries, particularly building on the tradition of judicial institutes in the US. In 2007, a study trip to the United States was organized, allowing two judges from the Liberian Judiciary and the head of the Liberian bar Association a chance to examine the American system and the benefits of continuous professional training for judges. The study trip was very well received and deepened the relationship with key individuals who have since become strong forces for reform in Liberia.

The establishment of the James A.A. Pierre Judicial Institute (JAAPJI) in 2008 is without a doubt one of the most important achievements so far in the process of rebuilding Liberia's justice system. It has even been referred to by one central informant as "*the only developmental achievement in the Liberian justice system since the war.*" Everything else, the informant held, had been recovery efforts.

The Steering Committee of the Institute has become the main coordinating body for all programmes within the judiciary. The Committee comprises local stakeholders as well as members of the international community. Since the start of the Institute, Judge Enwall has been a member of the Steering Committee, offering his experience and advice to the development of the organization.

A key activity of the JAAPJI is the one-year Magistrates Professional Training Program. The first group of aspiring magistrates started the one-year program in March 2010. 63 new magistrates are expected to graduate early 2011.

### *3.2.2 Magistrates Bench-book*

One of the key products that have come out of ILAC and Judge Enwall's technical assistance is the Magistrates Bench-book – a practical guidance to magistrates across the country on criminal proceedings. The bench-book was conceived in close dialogue with Justices of the Liberian Supreme Court, drafted by Judge Enwall together with colleagues at the American Bar Association (ABA) and the Carter Center, and then revised through a consultative process involving practicing magistrates from all parts of Liberia. It contains a summary of the laws and overview of legal procedures that relate to the magistrate's jurisdiction. The Bench-book has now been adopted as a formal training manual and guidance for magistrates in Liberia.

The Bench-book has been distributed to most active magistrates. In connection with the distribution of the Bench-book, all magistrates have gone through a short training session on the contents of the book. Judge Enwall has participated as an advisor and instructor throughout this process.

### *3.2.3 Continuing Legal Education (CLE)*

Another key activity of ILAC in Liberia has been the promotion of a culture of Continuing Legal Education (CLE) for judges through the Judicial Institute, but also for prosecutors in cooperation with the Ministry of Justice and the Solicitor General, and for public defenders and lawyers through the Liberian Bar Association (LBA).

Since early 2007, ILAC has funded and arranged quarterly training sessions for prosecutors from across Liberia. This work has been done in close cooperation and partnership with the Carter Center and the ABA. Throughout the years, a conscious effort has been made to transfer course management, lecturing and instruction to Liberians and today, local professionals give most presentations and lectures.

Since 2009, ILAC has also worked closely with the LBA to achieve quarterly training sessions also for public defenders. The program has been very appreciated by the LBA. The idea behind extending the training programs to cover all the key actors in Liberian courts is to achieve a balance in the capacity and proficiency between the key actors in Liberian courts. After the first years of training of prosecutors and judges, voices were raised that public defenders and other lawyers were falling behind.

#### *3.2.4 Court Reporters*

*In the Assessment Report, 2003, ILAC noted: “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.”*

In dialogue with local counterparts, ILAC initiated a project to address the problem of the slow recording of court proceedings. As a pilot case, group of four court reporters were recruited through a competitive process. They were provided technical equipment to orally record proceedings, and computers that transforms the recording into printable text. The court reporters were also extensively trained in using the equipment. Training included a study visit to the United States. Only three of the original four recruits made it through the training program. These three are currently active in Liberian Circuit Courts.

The pilot project has been successfully implemented and it has clearly shown that there are significant gains to be made in judicial proceedings – both in terms of reliability and efficiency. For those who have had a chance to witness and experience the difference in the courtrooms the difference has been difficult to believe, some even referring to the new court reporters as “a miracle”. The study team was able to attend a court proceeding where one of the court reporters worked. The pace of the proceedings was radically different from the description from 2003. The team was also able compare a transcript from the typewriter system with that of the new system and the difference was visible even from just a quick sample. The justices of the Supreme Court interviewed for this project were very excited about the project, as they decide cases of appeal simply on the basis of written records from the lower courts. No case recorded through the new system had yet reached the Supreme Court, but the Justices had seen sample transcripts and were amazed at the difference.

The potentially major positive effect suggested from the pilot, however, is the increased effectiveness of the court proceeding itself. The Circuit Court Judge interviewed by the team stated that he would now probable handle 5-6 full trials in the 42-day term, representing a personal record. He would normally, at most handle 1-2 trials in the same period. The 2003 Assessment Report stated: “*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.*”

The Court Reporters Project, if continued beyond the current pilot phase, holds the potential to revolutionize the court processes in Liberia. The total need to cover all Liberian circuit courts, and other courts of record, would be 15-20 court reporters. A rough estimate puts the total cost of equipping and training court reporters for all of these courts, thus covering the entire country, at approximately 750 000 USD. This, in the view of the study team, is very low hanging fruit for any donor wanting to make a difference in the Liberian justice sector.

## 4 Assessment of the Liberia Program

In the following, ILAC’s Liberia project is assessed against the criteria determined and questions posed in the Terms of Reference for the study: i.e. *identifying results* and assessing project *effectiveness, relevance, sustainability, values & standards*, as well as *efficiency*. The task to identify lessons learned will be dealt with in the next chapter.

### 4.1 Results

*Which results have been achieved through the project– intended and planned results as well as unintended effects of the project? (Results)*

The team has found ILAC’s approach to justice sector support in Liberia, as it has developed over the project period, exceptionally well adapted to the situation in the country and the needs within the judiciary/justice sector. At least since 2007, ILAC has had a permanent representative in Monrovia. Judge Mike Enwall from the United States has been in Liberia for most of this period.

The approach has entailed a *proactive presence* of an experienced American judge in Monrovia, offering mentorship and advice, encouragement and moral support, as well as training and tailored technical assistance to identified change agents in the Liberian justice sector.

One of the unique features of the ILAC approach has been its flexibility. ILAC has not been tied to a set of predetermined activities, or pressed to spend a project budget on the right side of a fiscal year. The Liberia project has, since 2007, had an unwavering focus on identifying local individuals who are likely to be agents for change in their respective organizations and help them initiate change processes. As noted above, partnerships have focused primarily on actors of the formal justice sector.

The choice of partners, both local Liberian partners and other international actors, has reflected this ambition. A number of international actors with similar philosophies, such as the Carter Center, the American Bar Association, German GTZ, the PAE (Pacific Architects and Engineers), and ILAC have worked closely together.

ILAC's proactive presence has enabled the organization, to be actively involved in a number of important projects. The four main projects in which ILAC has played a significant, often leading role, are: 1) the Magistrates Bench-book, finally providing a practical legal guiding material for the countries magistrates who often lack legal schooling; 2) the establishment of Liberia's first Judicial Training Institute, providing Continuing Legal Education (CLE) for Liberian judges; 3) the training and equipping of three Court Reporters in a pilot project to increase effectiveness of the court process; and 4) supporting CLE among prosecutors through quarterly training sessions in cooperation with the Ministry of Justice and the Solicitor General, and for public defenders through a cooperation with the Liberian Bar Association.

These were all tangible results of ILAC's activities. However, they were planned during the program period, as the opportunity arose, rather than predetermined components of a long-term program plan. Activities were chosen based on continuous assessments of where ILAC could best contribute to necessary change processes.

#### 4.2 Effectiveness

*What seems to have worked and why (or why not)? To what extent did the Liberia project meet its objectives? How has ILAC been perceived by Liberian stakeholders? (Effectiveness)*

Effectiveness is traditionally measured by whether project outcome- and impact indicators are met. For this lessons learned study, there are no indicators to go by. However, following ILAC's broad mandate, and based on

the observations of the study team, it can be concluded that the Liberia program has been fully in line with the aims and objectives of the organization. ILAC has been a proactive, adaptive and operative partner, and the tangible outcomes of the projects pursued have been well received and responded to real capacity-deficits in the Liberian justice sector.

In this sense, ILAC's approach seems to have been effective. However, the approach that has been developed over the project period has, to a large degree, been shaped by events. It was not a preconceived strategy, beyond ILAC's general ambition to remain flexible to changing realities. Against this background, the level of achievement of objectives is not easily determined.

From interviews and existing documentation, dating back to the 2003 Assessment report, it is possible to establish a theory of change that has underpinned ILAC's activities and partnerships in Liberia. This theory is based on the idea that *change and reform can be built gradually and from the bottom, through mentoring, support, and engagement with key individuals in Liberian institutions and organizations*. Instead of rushing its own agenda, ILAC has been patient and sensitive to the dynamics of the Liberian system.

ILAC has not been the most active partner in international donor coordination forums. The primary explanation given for this is that the part-time presence before 2007, and one-person staff in Monrovia since August that year, has not been enough to enable participation at every coordination meeting. Another reason has likely been that the UNMIL-led donor coordination group for the justice sector in Monrovia has not been very effective, even by UNMIL's own account. The group has focused mainly on reporting on activities that donors and organizations have already undertaken, rather than on strategic joint planning. It has also tended, in accordance with its mandate, to focus on the political level while ILAC has operated mainly on the technical level.

Against the background of ILAC's role and ambition, however, it would be wise in future projects to ensure sufficient resources at the local office to enable participation in all relevant coordination groups. Staying informed about the initiatives and programs of other organizations and donors, even if these activities do not directly affect the projects that ILAC itself is involved in, is important to be able to utilize synergies, ensure complementarity and avoid duplication of efforts. More specifically, for the role that ILAC came to play in Liberia, being active in relevant coordination groups is essential in order to fill gaps and identify and address "aid orphans". Moreover, there is a



growing set of tools and instruments on justice and rule of law indicators that could be of use as potentially identifying entry-points for new programming.<sup>7</sup>

Most international and local counterparts have had a positive view of ILAC. It is symptomatic, however, that ILAC has not been very well known outside the circle of organizations and institutions with which ILAC works closely. The results of ILAC's work on the other hand, i.e. the Magistrates Bench-book, the Judicial Institute, and the new Court Reporters, are very well known among actors involved in one way or another. These results are generally held as the major milestones in the area of legal and judicial reconstruction and reform in Liberia since 2003.

The fact that ILAC itself is not so well known, while the results of the organizations work is quoted as the main achievements in the justice sector since the CPA, is indicative of the focus of the organization on making a difference in the Liberian justice sector rather than promoting its own name.

#### 4.3 Relevance and Sustainability

*Were ILAC's analysis and hypothesis regarding the needs of the Liberian justice sector and the chosen interventions relevant and appropriate? Was the project realistic and designed to address key factors and promote sustained results in relation to strengthening the justice sector in Liberia? (Relevance & Sustainability)*

ILAC's activities in Liberia over the project period has built primarily on the comprehensive Assessment of the Liberian Judicial System that ILAC conducted on request from the UN in 2003. The focus of ILAC throughout the project period has been to continuously assess and evaluate the status of the Liberian justice system and adjusting interventions accordingly.

As the project strategy and approach evolved, the primary driver behind the choice of intervention seems to have been *opportunity*. Much effort has been put on identifying individuals within Liberian institutions that have been willing and able to achieve change in their respective organizations.

The 2003 Assessment Report contained a number of important and valid findings and recommendations. In hindsight, the sequencing of recommendations seems overly optimistic. Many, if not most, of the proposed actions have not been addressed even today, seven years later. It is clear,

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<sup>7</sup> See Parson, Jim; Kutateladze, Besik; and Thornton, Monica; Bang, April; and Yaya, Aminou; *Justice Indicators for Post-conflict Settings: A Review*, Hague Review on the Rule of Law; 2:203-217, 2010. The authors identify roughly 50 instruments for assessing different aspects of the rule of law, with a subset of 31 tools addressing law enforcement, judicial systems, corrections and informal justice mechanisms.

however, that the Report provided a valuable baseline for efforts to strengthen the Liberian Judiciary.

ILAC's approach, especially since 2007, promoting reform and change processes through a proactive presence continuously engaging with key individuals to find ways forward, seems well suited and appropriate for the complex and rapidly changing political environment of post-conflict Liberia. The underlying assumptions – that it is necessary to allow time and space to get to know a particular context and identify change agents, and that individuals are key to any organizational change process – is highly relevant.

However, project design has largely been improvised. Interventions have been built around the individuals and opportunities identified. There is ample room, and arguably a need, to formalizing this strategy in order to be able to multiply the positive experiences from Liberia in other contexts. Decisions have been made on an *ad hoc* basis through informal dialogue between the representative in Monrovia and ILAC head office in Stockholm.

Considerations behind decisions have rarely been documented. Reports have rarely been produced from activities or field visits. The lack of formal strategy and documentation weakens the organization's institutional memory as well as its ability to learn from experiences.

To take the role of ILAC as a mentor, adviser and facilitator further, there is a need to continuously develop strategies for capacity building. This would help ILAC reach sustainability of its presence, and avoid being seen as a temporary short-term advisor. ILAC's role as a mentor and advisor should not substitute the role of national actors and organizations. ILAC's role should be to supplement and continuously transfer knowledge and skills for long-term capacity development in the respective institutional environments where the organization is active.

Measuring *sustainability* in complex and rapidly changing environments such as that in Liberia is difficult. Any change achieved will remain fragile until the reform process has come much further. However, in the ILAC projects observed the study team has found measures designed to promote sustainability. The Judicial Institute, for example, is placed squarely within the structure of the Judiciary and is staffed largely by Liberian staff (there is still one seconded staff from the American Bar Association). The Magistrates Bench-book is there, printed and distributed to Liberian courtrooms. The capacity to hold CLE-training has been built within the Solicitor General's office and the Liberian Bar Association in order for these institution to be able to continue the work once ILAC is no longer in the country. The Court Reporters project has the potential of achieving great long-term impact in

effectiveness and efficiency of court proceedings. However, the ILAC project was only a pilot, covering three Court Reporters. There is currently no plan for a continuation (to train and equip the remaining estimated 15-20 needed court reporters for the entire country).

#### 4.4 Adaptability

*Have ILAC's efforts responded flexibly to changing circumstances over time?  
(Adaptability)*

As outlined above, ILAC's approach in Liberia changed over time, with a significant shift in 2007, as budgeted project funds did not come through. This realignment turned out to have many positive effects.

Developments on the ground in Liberia and the political dynamics in the country call for constant reevaluation of strategies and project design. The flexible approach taken by ILAC has therefore been very successful as it has been possible to let the context and national priorities steer interventions instead of pushing planned initiatives on partners.

The flexibility has also, in the view of the study team, enabled ILAC to play a more constructive role than many other international actors, for example the United Nations. The UN is bound to work directly with the political level of government, involving a different incentive structure and a set of complicated political sensitivities. Instead of having to resign at the first sign of reluctance from the political level, ILAC has been able to identify individuals within institutions who have been able to work as internal change agents. These change agents have been able to deliver political approval for reform initiatives from within.

This type of *back channeling* proved very useful, for example, in the establishment of the JAAP Judicial Training Institute and the approval of the Court Reporters project. At the same time, the approach is not uncontroversial. It is easy to be perceived as pushing an agenda when circumventing or influencing the political level. It is therefore important to carefully balance effectiveness and making progress on the one hand, and national ownership and lead of change processes, in accordance with international best practices on good donorship such as Paris Declaration, Accra Agenda, and the draft Principles for Good International Engagement in Fragile States, on the other. The relevance of activities has to be viewed from the perspective of how well they align with national development strategies and plans.

## 4.5 Values and Standards

*Were ILAC's relationships with partners and people principled? What political considerations and independence/dependency factors have influenced ILAC's decision? (Values & Standards)*

Even though not established in a formal steering document, a pattern can be identified in ILAC's choice of partners. In the choice of international partners, an analysis of shared values and approaches to justice sector support have been determining factors. Particular emphasis has been placed on flexibility and the ambition to work closely with local actors identified as change agents. Local actors and individuals to work with have been chosen on the basis of an analysis of the potential to act as change agents in their respective institutional environments. The study team would argue that the *theory of partnerships* to a large degree builds on the organizational culture of ILAC. ILAC is an *organization of professionals, profoundly rooted in a set of clear values* (human rights and the rule of law). At the same time, and perhaps due to the background of its membership (practitioners in their respective legal systems), ILAC represents a sense of *pragmatism and 'getting the job done'*.

Anyone working with legal and judicial reform issues in Liberia are heavily influenced and affected by the political context. As described above, however, ILAC has been able to focus on the technical reform efforts and found ways to work around political difficulties and reluctance to change. One of ILAC's strengths in this regard has been the consistency of ILAC engagement since 2003. Building relationships and getting to know the dynamics between actors in a complex political environment takes time and patience. Another important factor has been the lack of agenda by ILAC. The organization has not been perceived as threatening to anyone.

For future programming, however, it is suggested that ILAC should institutionalize a system for assessing its presence in view of 'conflict sensitivity' and how programme objectives and implementation has the potential to raise or lower tensions between different groups and actors in post-conflict settings, in line with the 'do no harm' principle and other existing best practices and guidelines.<sup>8</sup>

## 4.6 Efficiency

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<sup>8</sup> See for example the OECD/DAC Principles for Good International Engagement in Fragile States and Situations (2007); the OECD/DAC Guidance on Evaluating Conflict Prevention and Peacebuilding Activities (2008); and the UNDO Guideline for Planning, Monitoring and Evaluation in Conflict Prevention and Recovery Settings.

*Were the costs of the work justified by their results – taking into account alternatives? (Efficiency)*

The total cost of the ILAC Liberia project has been 10 671 809 SEK, funded entirely by the Swedish Ministry for Foreign Affairs. This being said, many of the activities have been implemented jointly with other organizations, thus involving funding from other donors.

It is always costly to have an international representative in country. The cost goes up further if there is a need for a specific professional profile to get the job done. It is the unequivocal opinion of the study team, that ILAC would not have been able to achieve the impressive results without a person on the ground. We are equally convinced that the professional profiles, personalities, and commitment of ILAC staff involved in the Liberia project, particularly Judge Mike Enwall, were among the most important contributing factors to the success achieved. This is an important lesson for future programming.

Specific project costs have been surprisingly low. Administrative superstructures have been kept at a minimum and projects have built on existing institutions and organizations. Since projects and trainings have been organized together with other international partners and with local institutions and organizations, ILAC has contributed mainly with the time of Judge Enwall. In that sense, once the right person has been paid for to represent the organization in country, mentoring and technical assistance can be a highly effective and cost-effective modality for support. This further reinforces the need to recruit the right staff for such positions.

Specific funding components of ILAC support to training activities are reported to have been in the range from 5-10 000 USD to cover training materials, travel and facilities.

The Court Reporter pilot cost approximately 175 000 USD – for training and equipping of three court reporters (four court reporters were originally part of the pilot, so the cost cannot be squarely divided between the three participants). A cost of over 50 000 USD per individual is quite high. However, considering the potential impact of each of these professionals in the courts, the project cost must be considered very low. It is likely that the cost per individual would be reduced if the project were to continue.

## 5 Lessons Learned

In addition to the questions raised above, the study set out to draw lessons from the Liberia program and assess how ILAC's framework for planning, monitoring and evaluation could be strengthened based on the experiences from Liberia? (*Question 7 of the Terms of Reference*)

### 5.1 General lessons

In the following, a number of lessons from the Liberia program are highlighted. While some of the lessons to be drawn from the Liberia experience are context specific, it is the hope of the study team that many of them will be helpful in ILAC's continued organizational development and future programming.

Some of the context specific factors that have influenced the Liberia program, and that should therefore be considered in assessing the general value of the lessons below, are: 1) the fact that the Liberian legal system is modeled on that of the United States, and the close historical ties between the two countries, made an American Judge uniquely suited to take on the role as senior advisor to the Liberian Judiciary; 2) as noted elsewhere in this report, many of the historical grievances and political struggles that have caused and fueled conflict in Liberia remain unresolved; 3) even though the number of lawyers in Liberia is low, there is a strong and protective professional community, largely uninterested in or even opposed to reforms that would alter status quo; 4) the primary driver of success in the Liberia program has been the strong commitment of a number of key individuals – local and international.

Lessons learned in relation to strengthening planning, monitoring and evaluation framework is outlined in the next section.

#### *General*

1. It is clear from the study of ILAC in Liberia, that ILAC can play an important role and have a unique added value in post conflict reconstruction of a justice system, beyond an initial assessment and channeling of program funds. By establishing a presence of one or more senior legal professional with relevant experience, to act as a facilitator, mentor and advisor to national stakeholders, ILAC has contributed effectively to a constructive change process in Liberia.
2. ILAC's commitment in a post-conflict country can thus entail one or more of three distinct roles: i) Professional status- and needs assessment in a post conflict justice system; ii) Establish a local presence for facilitation of change processes, mentoring and advice; and iii) Channeling and coordinating project funds to partner organizations and participating in implementation of projects.

### *Assessment and start-up*

3. The Assessment of the Liberian Judiciary in 2003 was one of the first assessments that the ILAC undertook. Already at that time, through putting together a highly qualified team of experienced lawyers of different disciplines, ILAC put together a highly relevant report with useful, although overly optimistic, recommendations. Over the years, ILAC has developed and refined its methods for diagnostic studies and needs assessments even further. The inclusion of more development-oriented expertise in assessment teams might further strengthen alignment with existing development strategies and priorities as well as the ability to connect findings with existing funding and partnership opportunities.
4. For future programming, ILAC should consider the long-term purpose of assessments to be undertaken. If the purpose is to stay on and establish a presence in a post conflict setting, a baseline assessment, with more delineated focus on areas where ILAC sees a potential role might be more useful. Comprehensive assessments, such as the one conducted by ILAC in Liberia, tend to be very broad and addressed at the donor community at large. At times, two separate assessment reports, one for each of these purposes, might be needed.
5. In situations where ILAC stays active beyond the assessment and planning phase in a post-conflict reconstruction of a justice sector, a system of periodic comprehensive reviews and/or progress reports should be considered.
6. A framework for more systematic risk assessment and mitigation should be developed. This could take the form of a simple checklist of common risks to project implementation in post conflict situations as well as measures for risk mitigation. Risks seem to have been handled in a responsible manner throughout the Liberia program period; for example, local partners have been vetted for involvement in human rights violations during the conflict. However, this has been done on an ad hoc basis and without an organization-wide policy or guideline to fall back on, creating a heavy dependence on individual staff members.

### *Implementation of country projects/programs*

7. The *proactive presence* approach could be conceptualized based on the experiences from Liberia, as well as experiences from other countries. A central challenge is to build a formalized framework without losing

flexibility in program implementation. The framework needs to balance *structure* and *flexibility*.

8. Time should be allowed to build relationships on the ground before starting to implement programs and projects. The long presence of ILAC before 2007, through Shelby Quast, Rodger Chongwe and Lise Bergh, as well as Judge Enwall's first months in Liberia, waiting for a program to start, were very important to build a thorough understanding of the local context and to establish networks that would later enable progress.
9. The ability and flexibility to continuously reevaluate the local context and needs and to remain sensitive to local priorities rather than a pre-set organizational agenda has proved to be an important strength of ILAC in Liberia.
10. To strengthen rule of law in the long-term, national capacity must be built. ILAC should strive to maximize the capacity development and skills transfer aspects of its activities.

#### *Staff requirements and recruiting*

11. The professional and personal profiles of the country representatives have been key to success in Liberia. The determining characteristics of this staff profile have been: Senior judge/lawyer from a similar legal tradition; strong interpersonal skills; understanding of the dynamics in post-conflict settings; language proficiency; previous experience from the country in question. Considering ILAC's role as facilitator and advisor, particular weight should be placed on interpersonal and diplomatic skills and experiences.
12. There is considerable room for the individual recruited as ILAC country representative to shape and reshape ILAC's role in a country depending on his/her own interests, professional background and experiences, especially in the loosely formulated initial phase of a country presence. This was, for example, one contributing factor in the various shifts of focus of ILAC in Liberia over the program period. This should be acknowledged and considered when recruiting field staff.
13. If ILAC wishes to replicate its role and presence in Liberia, care should be taken to minimize the dependency on one or a few individuals, and ensure that programming is evidence-based, rather than based on personal experiences, skills and commitment.



14. The recruitment of ILAC country representatives should be undertaken with consideration taken to the need to quickly gain credibility and legitimacy in the local environment and to sustain it over time. For this, ILAC should also analyze what adequate system needs to be in place to support the country representative effectively.
15. Clear requirements in terms of qualifications and experiences for each position within the organization would facilitate recruitment and the assessment of pre-mission training and preparation needs for ILAC staff. Training and preparation modules could be developed and cooperation with existing training institutions established. A number of Swedish and international institutions offer mission specific or thematic training ahead of field missions in post-conflict environments.
16. There is a need to develop clear and precise *terms of reference* for all staff employed by ILAC. The terms of reference should include expectations and deliverables in the specific country where the representative is placed, as well as formal reporting requirements. It is important, however, that the flexibility that has been so successful in Liberia is kept. It is possible to combine structure and documentation with flexibility and sensitivity to the local environment and a changing political context.
17. A best practice manual for ILAC country representatives could be developed, based on positive experiences from Liberia, as well as from other field missions such as Haiti. Such guidelines should be treated as a living document, continuously updated through internal self-evaluation and learning exercises.

#### *Management and oversight*

18. A more systematic program strategy and structure would enable more effective program management and better follow-up of activities. It would also contribute to the institutionalization of continuous learning and reduce dependence on key individuals.
19. There appears to be a need for a clearer and a more formalized linkage between ILAC's head office and organizational strategy and the field office and local strategy. An important aspect of this would be to have clear and precise *terms of reference* for staff, procedures for decision-making and routines for continuous monitoring of achievements.
20. The ILAC program in Liberia could have benefited from having a slightly larger staff and office (*while the ambition not to grow for the sake of growth is commendable*). One junior international staff, to support senior

representative, could have covered routine meetings and enabled the hiring of local staff to support the expansion of the cadre of qualified Liberians and strengthen sustainability.

#### *Broadening the donor base*

21. A program is very vulnerable when it depends heavily, or completely, on a single donor. ILAC offers a unique added value in its support to post-conflict countries, such as Liberia. In order to clearly and effectively demonstrate and communicate this added value, contacts with and information to donors and potential donors must become more systematic.
22. The experiences with Swedish Sida, shows that ILAC can become more strategic in its fund-raising efforts. Building close relationships with a wider circle of donors, so that any unclarity can be sorted out effectively, is essential. A key to good donor relations is to learn what each individual donor wants in terms of documentation at each stage of the project cycle – planning, monitoring and follow-up – and to deliver accordingly.

#### 5.2 Strengthening planning, monitoring and evaluation

Flexibility has been key in developing the *proactive presence* model. The method, developed to a degree as a result of adaptation to circumstances on the ground, has proved to be very successful. A key challenge for ILAC is to institutionalize the positive lessons from Liberia and copy them in future programming, under a more structured and systematic framework but with maintained flexibility.

The study of the Liberia program confirmed the need to continue efforts to strengthen ILAC's capacity for strategic planning, management, monitoring and evaluation. While Judge Enwall has been stationed in Monrovia for over three years, he has not had a clear steering document, mission specific guideline or substantive terms of reference for his employment. There has been no requirement relating to reporting and no formal reporting channel. Reporting from the field, as well as guidance and advice from the Head Office in Stockholm, has been handled through informal phone conversations and e-mails.

This is not to say that management in Stockholm has been unaware of what has happened in Monrovia, nor have the consultants found any indication that the program has been mismanaged. However, the lack of systematic strategic planning, monitoring and reporting leaves the program vulnerable as it is so heavily dependent on key individuals, and hinders systematic learning from experiences at an institutional level. It also makes it difficult to communicate and explain program success and demonstrate impact to donors and external stakeholders.

The *OECD/DAC Guidance on Evaluating Conflict Prevention and Peacebuilding Activities (2008)* provides recommendations for policy makers, programme planners and managers to facilitate monitoring, follow-up and evaluation. Six points are highlighted in the document: 1) Establish relevant, clear and measurable objectives; 2) State an explicit theory of change and programme logic; 3) Complete and monitor a conflict analysis; 4) Develop and monitor relevant indicators; 5) Focus on strategy and policy coherence; 6) Conduct systematic, rigorous evaluation.<sup>9</sup>

Without clear and explicit objectives, it is difficult to accurately assess success at project level. However, in many post-conflict settings, a classical log-frame project-planning tool might not be sufficient for long-term planning, as the context in which projects are implemented is too unpredictable. An intervention strategy, with a clear *theory of change* and a *theory of partnerships*, based on a continuous conflict analysis that identifies gaps and opportunities, could effectively complement a log-frame. Planning monitoring and evaluation (PME) can be further strengthened by making the underlying assumptions and analyses forming these *theories of change* and *partnerships* explicit.

For a program like the one in Liberia, the study team would propose two levels of planning for engagement beyond the assessment phase: 1) an overarching program/project plan basing objectives on (i) principles and values that ILAC wants to promote in a certain context, (ii) a thorough analysis of political and conflict dynamics, and (iii) an explicit *theory of change* and *theory of relationships*; and 2) separate sub-project plans for the specific interventions under the overall program following a more standard project planning methodology.

For the overarching program/project plan, establishing an ILAC office, along the lines of the *proactive presence* model described above, would be an objective in its own right. This type of planning is likely to take place in the very early stages of ILAC engagement, and often in an immediate post-conflict phase. It is notoriously difficult to plan interventions in such environments and any program/project plan must leave considerable room for flexibility and adaptation.

In most cases, ILAC engagement will have started with an in-depth assessment mission, as was done in Liberia. The results of such a mission could form the basis for the development of a *theory of change* and *partnerships*. Based on these

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<sup>9</sup> OECD/DAC Guidance on Evaluating Conflict Prevention and Peacebuilding Activities (2008); see also for example the OECD/DAC Principles for Good International Engagement in Fragile States and Situations (2007); and the UNDO Guideline for Planning, Monitoring and Evaluation in Conflict Prevention and Recovery Settings .

theories a program/project logic can be developed, describing the causal link between ILAC's presence and desired relationships and change processes. Goals and indicators will by necessity be loosely formulated and qualitative rather than quantitative in nature.

The study team wants to underline the importance of carefully formulating the initial orientation phase as an objective in its own right. Allowing time for the country representative to get to know the context and identify and build relationships with relevant actors has been identified as a key factor of success in Liberia.

This lack in precision in the planning and results framework could be complemented by clear terms of reference for field office staff, including type-activities that would be expected. In the case of Liberia, such a ToR would include: establishing and maintaining contacts within the three central actors in Liberian court processes, i.e. the Judiciary, the Prosecutors office, and the Liberian Bar Association; providing advise and mentorship to these and other relevant institutions as per their respective request; and continuously analyzing the needs in the Liberian justice sector and reporting on these quarterly (or every 6 months).

A framework for continuous monitoring of program/project progress should be developed. Regular reporting and follow-up on reports received at Head Office, periodic reviews and evaluations are important tools. As noted above, longer-term engagement would also require a system of periodic and comprehensive reviews of the initial needs assessment in the country.

For specific sub-projects supported or implemented throughout the program/project period, standard program and project planning tools can be utilized. The overarching goals should, of course, align with the principles and values on which the *theory of change* and *theory of relationships* are built.

The PME-system design should be conscious of the need for simple ways of tracking the change processes, using baselines that are realistic, linked with indicators at outcome-level that are updated continuously.

Effective planning, monitoring and evaluation is also a central part of establishing and maintaining good relationships with governments and other institutional donors. In a best-case scenario, partnerships are forged with donors that would allow ILAC to move forward together with donor partners in mutual understanding of the context specific conflict dynamics and the hypotheses that underlie and shape priorities and interventions. Such partnerships would facilitate the entire process of program design,

implementation, monitoring and evaluation, contributing to both effectiveness and efficiency.

## 6 Concluding Remarks

The study team has concluded that the ILAC Liberia program has contributed greatly to some of the most important change processes within the Liberian justice sector in the last seven years. Appreciation of this support was expressed in a letter addressed to the Swedish Minister for International Development Cooperation, Gunilla Carlsson, from the President of Liberia, Mdm Ellen Johnson Sirleaf, in 2010.

The milestones highlighted in this report are: the JAAP Judicial Training Institute that was established in 2008; the Magistrates Benchbook project, providing a practical guide on criminal procedure as well as a basic training session to all magistrate judges across Liberia; the Court Reporters new equipment and training, with a potential to absolutely revolutionize Liberian court-room procedures; as well as the initiation of a culture of Continuing Legal Training (CLE) among Liberian prosecutors and lawyers. Apart from these success stories, ILAC staff has continuously provided mentoring and advice to judges and other professional lawyers and professional institutions, as well as to Government ministries. ILAC has been seen among its local and national counterparts as an independent friend without its own agenda. This is quite an achievement.

Many of the initial project ideas never came to fruition. Still, without the years in which ILAC staff struggled to get these projects off the ground, constantly negotiating and building trust and mutual respect with national and international partners, the progress made in the last three years, and the standing that ILAC currently holds with Liberian partners, would not have been possible. Some of the ideas that were launched as early as 2003, e.g. the Court Reporters project, did not come to real fruition until 2010.

The Liberia program has been a great learning experience for ILAC. The study team concludes that the proactive presence model, which was developed largely through the need to adapt to difficult and changing circumstances on the ground in Liberia, represents an opportunity to highlight and showcase the great potential of the organization.

Three distinct roles through which ILAC can add a unique value to international efforts in support of the reconstruction of justice systems in post-conflict countries emerges from the study. First, ILAC has repeatedly demonstrated its capacity to rapidly assemble highly qualified teams for status-

and needs assessments of the justice sector in post conflict countries. Secondly, experiences from Liberia clearly demonstrate the value of establishing an ILAC presence in focus countries, to act as a catalyst for change processes and provide support and advice to key partners and stakeholders. Thirdly, the ILAC Head Office and/or field presence could act as a channel and coordination mechanism for project funds to partner organizations. In cases where a field presence is established, resource persons can also contribute with their expertise by participating in the implementation of projects.

The factors that stick out as the major drivers of the success of ILAC in Liberia are the time that was given ILAC staff in Liberia to get to know the Liberian context and the central actors and institutions in the justice sector, the fact that the ILAC representatives were not bound by a predetermined agenda and had the flexibility to truly adapt to national needs and priorities, and the ability of ILAC to identify and attract the right people to the right positions at the right time and build on their individual strengths. This goes both for international staff and local partners. Some of these factors emerged more by chance than by design. The vast number of “lucky coincidences” in the Liberia program, however, indicates that there is something inherent in ILAC itself that has driven this development.

The study team hopes that this report will contribute to consolidating the lessons from the Liberia program and, thereby strengthening the organizations management systems and understanding of factors that drive or inhibit success in its operations. We also hope that the study will support the efforts to strengthen ILAC’s internal framework for planning, monitoring and evaluation ahead of future programming.

## ANNEX I - List of Informants

Agneta Johansson	ILAC HO
Christian Åhlund	ILAC HO
Annika Lindgren	ILAC HO
Mike Enwall	ILAC Liberia 2007-2010
Shelby Quast	ILAC USA
Rodger Chongwe	ILAC Liberia 2003-2007
Lise Bergh	Amnesty International (ILAC Liberia 2007)
Joerg Stippel	Head of GTZ (Germany), Liberia
Dr. Thomas Jaye	International Center for Transitional Justice (ICTJ), Liberia
Aaron Weah	International Center for Transitional Justice (ICTJ), Liberia
Jim Dube	International Senior Lawyers Project
Justice Kabineh Ja'neh	Supreme Court of Liberia
Justice Jamesetta Wolokolie	Supreme Court of Liberia
Jackson W. Speare, II	International Alert (Formerly at FIND, Foundation for International Dignity)
Chelsea Payne	Director, Carter Center Liberia
Lemuel Reeves	Carter Center Liberia
Pewee Flomoku	Carter Center Liberia
Sarah Jegede	American Bar Association Liberia
Cyril Jones	President of Liberian Bar Association
Mr. Andrew Tehmeh	Acting Minister of Gender and Development of Liberia
Deweh Gray	President of AFELL (Association for Female Lawyers Liberia)
Kyamundo Nyasulu	Head of Legal and Judicial Support, UNMIL
Marie Sue Tatten	UNDP RoL
Judge Boima Kontoe	Circuit Court Judge
Judge Kaba	Circuit Court Judge
Ambassador Per Örnéus	Swedish Ministry for Foreign Affairs
Ulrica Reuterwall	Swedish Ministry for Foreign Affairs
Anders Östman	Swedish International Development Cooperation Agency (Sida)
Henrik Mungenast	Swedish International Development Cooperation Agency (Sida)
Erik Wallin	Swedish International Development Cooperation Agency (Sida)
Anders Hellgren	Swedish International Development Cooperation Agency (Sida)
Katja Svensson	Folke Bernadotte Academy (FBA)