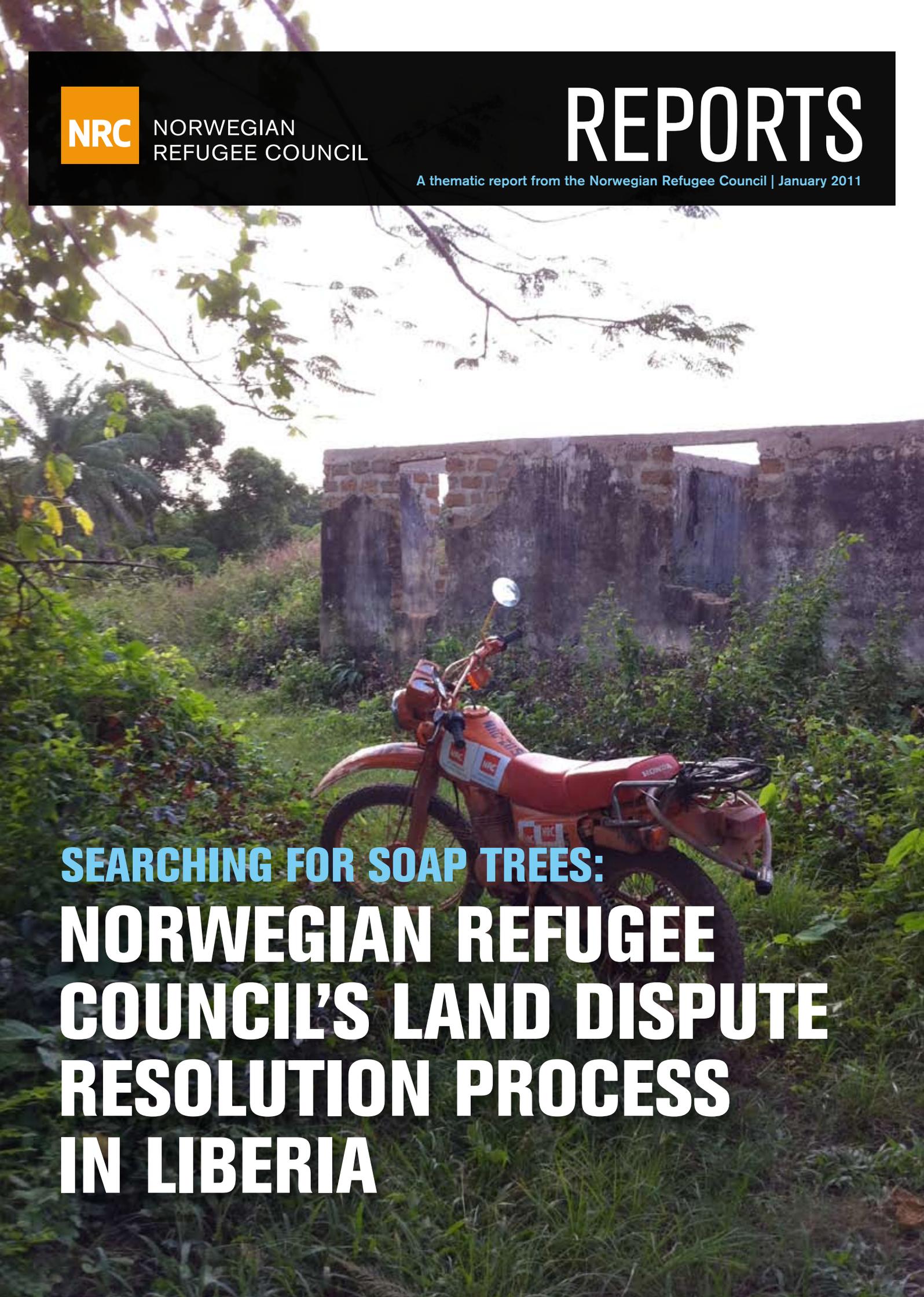




NORWEGIAN  
REFUGEE COUNCIL

# REPORTS

A thematic report from the Norwegian Refugee Council | January 2011



**SEARCHING FOR SOAP TREES:  
NORWEGIAN REFUGEE  
COUNCIL'S LAND DISPUTE  
RESOLUTION PROCESS  
IN LIBERIA**

# **THE NORWEGIAN REFUGEE COUNCIL**

The Norwegian Refugee Council (NRC) is an independent, humanitarian non-governmental organisation which provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide. To learn more about the NRC and its programmes, please visit our website: [www.nrc.no](http://www.nrc.no)

## **THE NRC IN LIBERIA**

The 1989–2003 civil conflict in Liberia killed 200,000 people, displaced one million and destroyed the country's infrastructure and economy. Since the Accra Peace Agreement in 2003 more than 100,000 former combatants have been demobilised and virtually all internally displaced persons and refugees have returned to their homes or have been resettled. Despite progress in reconstruction and development, the security situation is fragile and serious humanitarian needs persist as returnees work to rebuild their lives. The NRC has been working in Liberia since 2003, providing protection and assistance to support the return and reintegration of refugees and internally displaced persons.

## **THE AUTHOR**

Gregory Norton is a lawyer and land specialist, with nine years of professional experience in the UK. He has worked for UNHCR in Sri Lanka and for NRC in Somalia (where he wrote Land, Property and Housing in Somalia, published by UN-Habitat and NRC) and Afghanistan. He has a masters in international relations from the Australian National University and a diploma in international human rights law from the University of London.

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# **FOREWORD**

This report is the third in a series of reports published by the NRC about housing, land and property rights, land tenure and land-related conflict in Liberia. Since 2006, the NRC Information, Counseling and Legal Assistance (ICLA) project has assisted individuals and communities in Liberia to resolve land disputes resulting from the 1989–2003 civil conflict. Supporting local stakeholders and institutions to prevent, manage and resolve land conflict is a critical component of the NRC’s work in Liberia. The intention of this series of reports is to provide original research and analysis that supports the efforts of the Government of Liberia and civil society organisations to protect and promote housing, land and property rights in Liberia.



Source: Norwegian Refugee Council; UN DPKO.

# **INTRODUCTION**

This report is a study of the Norwegian Refugee Council's mediation process for resolving land disputes in Liberia. It seeks to document the process and to examine the wider context in which it is carried out, whilst also commenting on general implications for those implementing such projects elsewhere. It should therefore be of interest both to a Liberian audience (in terms of government and civil society actors in the land and dispute resolution sectors) and to those involved in such activities in other countries. With the wider audience in mind, the report begins with some brief background information on relevant aspects of Liberian society, recent history, land law and dispute resolution systems. It then examines the various stages of the process and its related project activities and concludes by evaluating the overall process.

The report is based on five weeks of fieldwork and research in Liberia, carried out during August and September 2010. The author interviewed a broad cross-section of NRC staff, parties involved in past and current mediations, local officials, legal professionals and staff from other NGOs carrying out similar activities. He also observed sample activities from all stages of the dispute resolution process, including related training sessions, and reviewed NRC case files, project documents and case database information, as well as carrying out a literature review of existing publications on land, law and dispute resolution in Liberia and related background data. It should be noted that it is sometimes not possible to obtain detailed or conclusive information on some subjects, because of the limited data available from state institutions which are still recovering from the prolonged Liberian conflict.

This report would not have been possible without the enthusiastic and comprehensive help provided by the staff of NRC's Liberia programme and the cooperation of those Liberians who agreed to be interviewed, for which the author is very grateful. In particular he would like to thank NRC's tireless and expert drivers and Emmanuel T.K Doe, who provided fieldwork assistance. The author also benefited considerably from detailed discussions with Gregory Kitt, Juliette Syn (who also suggested the title<sup>1</sup>), Joseph Jackson, Laurie Cooper and Lisa Webley. As ever, responsibility for any errors, omissions or misunderstandings remains with the author; the contents of this report do not necessarily represent the policy of the Norwegian Refugee Council.

<sup>1</sup> The "soap tree" is a common Liberian shrub which is difficult to eradicate once it has been planted and is therefore often used as a boundary marker.

# PART A: BACKGROUND

## SOME BASIC INFORMATION<sup>2</sup>

Total population: **3,750,000**  
Population aged 15-49: **1,684,000**  
Annual population growth rate (2005-2010): **2.9%**  
Life expectancy at birth: **44 years**  
Infant mortality rate (per 1,000 live births): **157**  
Total fertility rate (per woman): **6.8**  
Gross national income, ppp, per capita: **\$260**  
Adult literacy rate, male: **59.6%**  
Adult literacy rate, female: **49.2%**  
Number of people categorised by FAO as undernourished: **1,300,000**

The state of Liberia was established in 1847, by freed slaves who had been repatriated to West Africa from the United States. The descendants of these settlers are known as “Americo-Liberians” or “Congo people”. Despite comprising only around three percent of the population, this group has dominated the economy and society of Liberia since the state was established; its political vehicle, the True Whig Party, held power without interruption from 1870 until 1980, when Master Sergeant Samuel Doe led a coup d’état. For much of this period, the Americo-Liberian élite ruled the Liberian “hinterland” (as it was known) from a narrow coastal strip through a system of chiefs similar to British colonial indirect rule; indigenous Liberians were exploited and almost completely excluded from economic or political power. There are generally reported to be sixteen “indigenous” ethnic groups in Liberia: Bassa, Belle, Dey, Gbandi, Gio, Gola, Grebo, Kissi, Kpelle, Krahn, Kru, Lorma, Mandingo, Mando, Mende and Vai.

Liberia is divided into fifteen counties (headed by county superintendents), which are in turn divided into administrative districts (headed by district commissioners). The structure of local government comprises, in descending order from the county level, paramount chief, clan chief (a “clan” is not necessarily an area occupied by one ethnic group), general town chief, town chief (a “town” may only comprise a few houses) and quarter chief. The chiefs are accountable to central government through the Ministry of Internal Affairs, and also perform basic dispute resolution through their “courts”, which are generally adversarial in nature.

<sup>2</sup> This information is drawn from various official UN publications, generally giving figures as of 2006/7.

## THE CIVIL WAR

The Liberian civil war occurred in two phases (1989-1996 and 1999-2003) and claimed the lives of more than 200,000 people. Some analysts emphasise economic motivations for the war, suggesting that faction leaders sought to seize control of territory and/or the state to obtain opportunities for private enrichment, especially by the exploitation of natural resources through foreign companies and transnational smuggling networks<sup>3</sup>. Others have focused on inter-generational conflict and the social marginalisation of youth as contributory factors to the outbreak of war. One scholar argues that many young people viewed local customary systems of land tenure and marriage payments as “instruments of chiefly exploitation” and that land grabbing and the exploitation of labour through marriage were powerful sources of conflict in rural Liberia<sup>4</sup>. However, others argue that youth joined armed groups “based on the security predicament that they believed that they and their families were facing”, in terms of the local conflicts which were breaking out<sup>5</sup>. Some have argued that the roots of the conflict lie in the “neo-patrimonial” nature of the Liberian state as created by the Americo-Liberian élite, which used patronage and the distribution of land and other benefits to ensure loyalty to the state<sup>6</sup>. A Liberian commentator has similarly characterised the pre-civil war Liberian state as “an over-centralized and predatory order that turned increasingly repressive as pressures for inclusion intensified over the years”<sup>7</sup>. He also focuses on the political discourse of “autochthony” (a claim that a certain ethnic group is historically linked to a particular area), which underlies many disputes over land and other matters between the Lorma and the Mandingo in Lofa County<sup>8</sup>. (The mostly Muslim Mandingo group originated in Guinea, although they migrated to what is now Liberia several centuries ago; they retain links to Guinea and are perceived by some Liberians as still being “foreigners” who lack loyalty to Liberia and refuse to assimilate their cultural practices<sup>9</sup>). Traditionally, newcomers to an area who sought to settle permanently and obtain access to land were required to enter into a subordinate “stranger-father” relationship with a local authority figure, who was then nominally responsible for ensuring that the newcomer conformed to local culture.

## PROTECTION AND VULNERABILITY

The 2007 Liberia Demographic and Health Survey<sup>10</sup> provides important statistical information to support a protection analysis and to inform any discussion of potential methods of awareness raising<sup>11</sup>. It indicates that almost two-thirds of women aged 15-49 are married (42% formally married and 22% living with a man) and 16 percent of married women are in polygynous unions. Men are considerably more likely than women to be educated: 42 percent of women aged 15-49 have never been to school, compared with only 18 percent of men. The literacy test (reading more than one simple sentence) contained in the survey revealed that 41 percent of adult women are literate, as against 71 percent of men, with a far wider gap (17% and 62%) above age 45. Almost half of women (45%) and 23 percent of men have no access to mass media (radio, TV or newspapers). Women are more likely than men to be divorced, separated or widowed (around ten percent of all woman between 15 and 49). It also notes that 35 percent of households have either foster or orphan children; only 48 percent of children under 18 live with both of their biological parents. Only 4 percent of Liberian children under five have birth certificates. The average household size is five but 11 percent of households have nine or more members; more than three in ten households are female-headed and this proportion is higher in urban than rural areas. More than 80 percent of Liberian adults are Christian and 10-12 percent are Muslim.

3 See for example Reno (1998), which coined the influential “warlord politics” term.

4 Richards (2005).

5 Boás and Hatley (2008).

6 Boás (2005).

7 Sawyer (2004). Sawyer was President of the Interim Government of National Unity in Liberia from 1990 to 1994.

8 Boás (2009).

9 See Konneh (1996). Mandingos also formed part of the LURD and ULIMO armed factions during the civil war, who accused the Lorma of supporting Charles Taylor’s NPFL.

10 Government of Liberia (2008).

11 For an important qualitative assessment of the post-war social situation and community issues in Liberia, see World Bank (2005).

## **DISPLACEMENT AND POPULATION MOVEMENTS**

Around 326,000 internally displaced people (IDPs) returned home or obtained other durable solutions between November 2004 and December 2006<sup>12</sup>; UNHCR also assisted around 58,000 refugees to repatriate voluntarily between October 2004 and March 2006<sup>13</sup>. UNHCR acknowledged in 2007 that there is a residual caseload of IDPs in former camps and an undetermined number of people in situations of urban displacement<sup>14</sup>; some of the latter are occupying public and private buildings in Monrovia as squatters. UNHCR's current guidance on international protection needs for Liberian asylum seekers indicates that it would now not object to forced returns<sup>15</sup>; the UNHCR website currently states that it is preparing to declare a formal cessation of the circumstances giving rise to refugee status for Liberians. There are around 60,000 Liberian refugees in the West African region; if they return to Liberia, UNHCR reportedly believes that the majority would be likely to move to Monrovia or other urban centres. An ICRC opinion survey on the impact of armed conflict in 2009 indicated that around 90 percent of Liberians had been forced to leave their homes and live elsewhere; 37 percent said that it was their greatest fear in a situation of armed conflict<sup>16</sup>.

12 IDMC (2007).

13 UNHCR (2006).

14 UNHCR (2007).

15 UNHCR (2006).

16 ICRC (2009).

# THE LIBERIAN LEGAL SYSTEM IN RELATION TO LAND

The key document on this subject remains the detailed study carried out by John Bruce and other World Bank consultants in 2008<sup>17</sup>. It summarises the position as follows:

“The land law of Liberia is pluralistic, and consists of:

- (a) a civil law of land, consisting of a common law of land derived from American common law at the creation of the colony and developed subsequently by judicial decision, and statutes supplementing that common law; and
- (b) a customary law of land based on the practices of traditional communities and recognized by the Constitution as governing land not brought under the common law.

Although the application of these different laws to different areas of land is a common situation in former colonial Africa, the legal interface and interactions between these systems in Liberia is particularly vague and unsatisfactory and requires reconsideration and reform. Other countries in the common law tradition in Africa have pursued strategies of integration of customary rules into the common law by statute or judicial decision, but this process has hardly occurred in Liberia<sup>18</sup>.

The study also lists the main problems contributing to insecurity of land tenure in Liberia:

- “The legal distinction between public land and tribal lands lacks clarity, resulting in tensions between government, which has long asserted ownership of and the right to alienate [dispose of] large areas of land occupied by traditional communities, and those communities, who regard this land as their own.
- Fleeing citizens have left their property abandoned which in turn is occupied by squatters who can claim rights to the property through the law of adverse possession.
- The old deed registration<sup>19</sup> system which existed before the war did not adequately record land transactions, making it very difficult to track land sales. The war has resulted in missing deeds, deed records and databases, resulting in high risk in the land market and in an epidemic of fraudulent land deed and other documents, allowing sales of the same piece of land to several people.
- As a result of problems with the deed system, the court dockets are crowded with land disputes which have to be dealt with and cleared.
- The delineation of administrative units in the counties can be described as chaotic. Today there is often overlap and jurisdictional ambiguity between the state-supported customary units (clan and paramount chieftaincies) with the townships and cities that are subject to the statutory system. In such cases, the key question is who is the relevant authority.
- Decision making authority over land is fragmented among a half dozen state agencies, without an effective coordinating institution.
- Key land administration agencies have lost human and technical capital, and debilitated and need to be rebuilt”.

<sup>17</sup> World Bank (2008).

<sup>18</sup> For an excellent and detailed study of the complexities of Liberian statutory and customary law in relation to communal land tenure (and to ownership of forest land), see Alden Wily (2007).

<sup>19</sup> A deed registration system involves the registering of individual documentary transactions in land, which then take priority over non-registered land documents. A title registration system involves the registration of land rights and leads to “indefeasible” registered titles (i.e. the registered title is the sole record and proof of ownership and cannot be defeated by other documents or evidence). There was a pilot title registration programme in Liberia in the 1970s which did not proceed any further, although Bruce concludes that the underlying legislation was generally sound.

The process of obtaining an individual title to public (“state”) land is complex and extremely time-consuming and in practice has proved to be beyond the ability of many rural Liberians. However, as in many other African countries, the process was widely manipulated by the political elite (especially Americo-Liberian families) to obtain substantial landholdings at the expense of indigenous smallholders. Individuals can apply to local chiefs to obtain a “tribal certificate”, endorsed by the District Commission, County Land Commissioner and County Superintendent, which can then be used to apply for a public land sale deed. The application procedure for a public land sale deed is equally lengthy and bureaucratic, since each sale deed ultimately has to be signed by the President of Liberia<sup>20</sup>. A tribal certificate is thus merely a procedural document and does not constitute evidence of ownership or create any property rights, although many Liberians wrongly believe that it is in fact a “deed” and do not go on to apply for a proper land sale deed<sup>21</sup>.

In 2003, a significant new inheritance law was passed, which gives greater recognition to women’s property rights and provides for a wife to receive one third of her husband’s estate on his death, with the remainder passing to his children<sup>22</sup>. Property owned by a woman prior to marriage remains her own and it is a punishable offence for a man to seek to control it. The law also importantly provides that customary marriages (which are very common in Liberia) are to be treated in the same way as statutory “church” marriages, which makes a certificate of customary marriage into a potentially important property document for women. However, in practice denial of women’s inheritance rights remains widespread, especially by male relatives of the dead husband, who may even require the widow to re-marry to a brother of the deceased<sup>23</sup>.

<sup>20</sup> President Johnson-Sirleaf has declared a moratorium on signature of any further public land sale deeds and it is not clear when this will be lifted

<sup>21</sup> NRC’s project database indicates that a “complete tribal certificate” (i.e. fully signed but not yet used to obtain a public land sale deed) is the most common title document held by a dispute party (roughly a third of all cases).

<sup>22</sup> For a more detailed explanation of the 2003 law and its implication for women’s and girls’ property rights, see IDLO (2010).

<sup>23</sup> This is known as “levirate” marriage, a practice common in the developing world because it ensures that the assets and labour power available from the previous marriage remain within the wider family.

## OPTIONS FOR DISPUTE RESOLUTION IN LIBERIA

A wide variety of possible options for dispute resolution exist in Liberia. These have been most recently examined in a key study of “local justice options” in Liberia by researchers at the United States Institute of Peace<sup>24</sup>. The study notes that “the core of the customary justice system involves a hierarchy that begins with the senior members of a household or a family” and extends (through rights of successive appeal) all the way up the local government structure of chiefs and officials enumerated above. Disputes may also be decided by individuals who do not fall within this system but have some degree of social or cultural authority: the study reports that the poro and sande secret societies have a prominent role (and growing influence) in the local administration of justice in rural Liberia and that pastors, imams and ethnic chiefs are also sometimes called on as a first level of dispute resolution. The report also comments that disputes are often taken to those with no legally or socially recognised roles in dispute resolution (including NGOs), and in particular to “a wide range of state officials who have no legal role in the statutory system, including national legislators, deputy ministers, immigration officers, city mayors, and diplomatic bodyguards”. However, the survey component of the research indicated that the majority of all disputes (and two-thirds of property disputes) are not in fact taken to a third party for resolution but are resolved between the parties on their own. The high degree of legal pluralism in Liberia reflects the relatively weak authority of the state but should not necessarily be seen as adversely affecting access to justice for Liberians. Some commentators have argued that the possibility of “forum shopping” (i.e. choosing between several different options for dispute resolution) in fact enables parties to pursue a rational strategy of selecting an appropriate remedy for their dispute, with alternative venues acting as forms of “appeal” from an initial unacceptable adjudication<sup>25</sup>. They suggest that legal pluralism can operate to reduce violence if dispute parties do not feel constrained by “rigid, uncompromising legal structures of questionable legitimacy”, which ultimately operates to reinforce the authority of state and traditional structures.

The USIP study reached four key conclusions, which are discussed below:

- **Liberians are overwhelmingly dissatisfied with the formal justice system, particularly at the local level.** The study comments: “affordability, accessibility, and timeliness are three of the most consistent demands that Liberians have when it comes to the provision of justice. Our research reveals that the formal justice system is seen almost universally by Liberians as falling abysmally short of their expectations in all three of these important service categories.... Many Liberians not only view the formal system as failing to deliver justice, but they regard the formal justice system as one of the most effective mechanisms through which powerful and wealthy social actors are able to perpetrate injustice in service to their own interests. The cases we traced reveal a deliberate use of opportunistic forum shopping, in which litigants choose the formal system primarily if they believe it will give them an unfair advantage over their opponent”. Those interviewed for this report made similar criticisms of the formal justice system but it should also be noted that NGOs such as the Carter Center are reporting successful community legal assistance projects, drawing on currently influential philosophies of “legal empowerment”.

<sup>24</sup> USIP (2009).

<sup>25</sup> See Unruh (2009) for a more detailed discussion of post-conflict legal pluralism.

- **Even if the formal justice system were able to deliver affordable, timely, and impartial results, it would still not be the forum of choice for many rural Liberians.** The study comments: “the core principles of justice that underlie Liberia’s formal system, which is based on individual rights, adversarialism, and punitive sanctions, differ considerably from those valued by most Liberians. One of the consistent complaints levied by Liberians against the formal court system is that it is overly narrow in how it defines the problems it resolves and thus fails to get at the root issues that underlie the dispute. This concern rests on a culturally grounded and deeply held assumption that incorrect or injurious behavior is usually rooted in damaged and acrimonious social relations. In order to be seen as adequate, justice must work to repair those relations, which are the ultimate and more fundamental causal determinant, rather than merely treat the behavioral expressions that are viewed as its symptoms”. Certainly many interviewees for this report suggested that there was often a “deeper” social or familial animosity which lay below the surface of land disputes and to some extent explained the dynamics of the conflict. However, it is debatable how far the customary system of chief’s courts does in fact work to repair social relations, since some interviewees complained of bias, arbitrary decision-making and unjust “fines” of labour or money<sup>26</sup>.
- **For the most part, the customary justice system is able to provide the kind of justice most rural Liberians are looking for.** The study comments: “the process of customary dispute resolution resembles nonbinding arbitration in that a decision rendered is appealable, with additional elements of mediation, and there is a strong effort to bring both parties to a consensus resolution... Customary forms of redress are aimed at addressing the root causes of the dispute and not just the narrow matter at hand. Compensation or repair of the harm to the victim is important but generally subordinate to social reconciliation”. As noted above, this is a rather more favourable view of the redress provided by chiefs’ courts than was expressed by people interviewed for this report, who also did not refer to chiefs as carrying out any particularly facilitative mediation activities.
- **State policies aimed at regulating and limiting the customary justice system in order to comply with human rights and international standards are having unintended adverse consequences.** This refers (amongst other things) to the use of traditional ordeal practices (generally known as “sassywood”<sup>27</sup>) to determine legal or moral guilt, mostly in criminal cases; sassywood has been banned by the Liberian Supreme Court. The study comments that “the vast majority of Liberians we interviewed believe strongly that at least some forms of trial by ordeal (TBO) should be allowed, and raised very serious concerns that the ban on its use is causing significant societal problems – most particularly the inability to control crime and a rise in witchcraft”. The study suggests that sassywood is also used in land disputes, but this was not supported by the interviews carried out for this report, which indicated that it was and is only used in the case of crimes such as theft (and also in relation to suspicions of adultery).

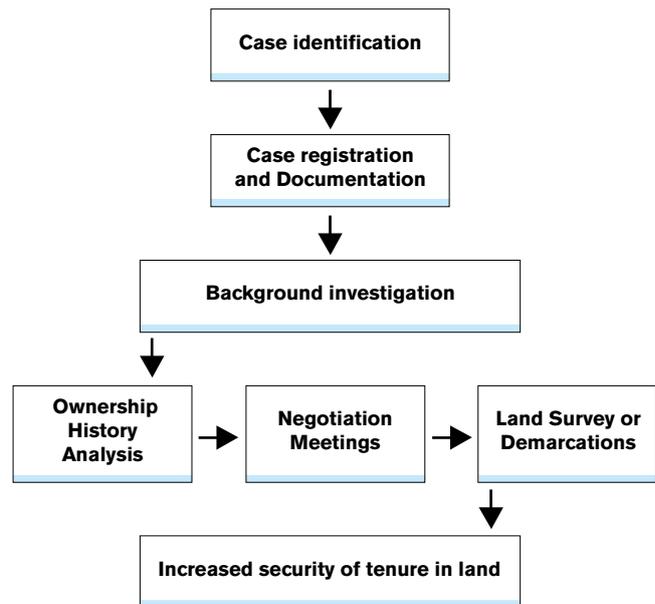
<sup>26</sup> As noted earlier, Richards (2005) quotes claims by ex-combatants that the civil war was “caused by poverty and injustice” in terms of the fines imposed by chiefs on young men. See also World Bank (2005), the post-war social assessment led by Richards.

<sup>27</sup> As the study explains, some Liberians would differentiate between ‘sassywood’, “which involves a prima facie harmful process, such as ingesting poison or application of a hot cutlass (it is believed that only the guilty will actually experience pain or suffer harm), and ‘cowfur’, which involves a prima facie non-harmful process, such as ingesting dirt or taking an oath (it is believed that this will cause the guilty or one who lies to suffer some harm within a certain period of time)”.

# PART B: THE NRC DISPUTE RESOLUTION PROCESS

## INTRODUCTION

The key stages of NRC’s dispute resolution process are set out in the diagram at the right. The process is usually described in NRC documentation as “facilitated negotiation”, perhaps because of the other procedural elements which are not related to mediation. However, the heart of the process remains the facilitation, by a neutral third party and on a confidential basis, of discussion and settlement between two parties, and so this report will generally refer to it as mediation. The mediation component originated in an alternative dispute resolution project established by the American Bar Association in Liberia in 2006 and its procedures are closely based on the training materials produced by the ABA project staff.



The project factsheet states that NRC has been active in Liberia since 2003, “providing protection and assistance to support the return and reintegration of refugees and internally displaced persons”<sup>28</sup>. This includes vocational education activities and (more recently) a gender-based violence (GBV) programme. Between 2004 and 2009 NRC implemented a project known as County Information Management and Monitoring, involving community protection monitors, which produced a considerable amount of information on protection incidents including land disputes. This information was one of NRC’s main considerations in selecting the counties for the launch of its Information, Counselling and Legal Assistance (ICLA) project in 2006. Land dispute resolution is one of the three pillars of the ICLA project in Liberia; the second pillar involves “building the capacity of individuals, communities and institutions” to resolve land disputes through training on land and property acquisition (known as “LPA training”) and mediation skills. The third pillar covers advocacy for “systemic solutions to insecure tenure” with “the key local and national institutions involved in the administration and governance of land”, including the new Land Commission, which has been tasked by the government with reviewing and reforming the law, policies and institutions related to land<sup>29</sup>. The GBV project has worked with the ICLA project to produce some innovative training materials on women’s property rights.

**Commentary:** *If an NGO carries out a range of different project activities within a country, there is often scope for useful information-sharing, cooperation and synergy between the projects. For example, GBV survivors may also have related land problems and those receiving vocational and life skills training might also benefit from understanding how land is acquired; both groups might find mediation training useful for general conflict resolution purposes. It can sometimes be challenging to extract the relevant data and analysis from a large caseload of individual disputes to support and inform national-level advocacy.*

<sup>28</sup> NRC (2010a).

<sup>29</sup> This body (and the commissioners who comprise it) should not be confused with “land commissioners”, who are government officials at the county level responsible for the administration of public land.

## FINDING CASES

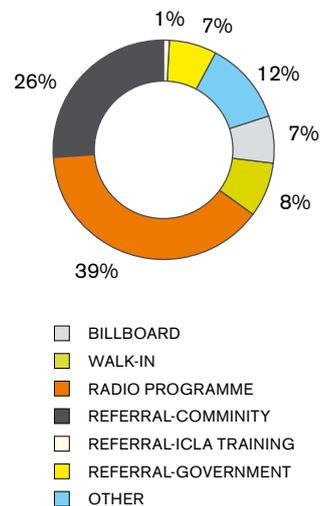
The ICLA project assists IDP and refugee returnees, IDPs still in displacement and a small proportion of the host community. The charts to the right show the current make-up of its open caseload, in terms of gender, ethnicity, displacement status of parties and land type involved. It is interesting to note that the majority of disputes are in fact “intra-tribal” (i.e. within one ethnic group) rather than “inter-tribal”, which seems to contradict some of the more pessimistic predictions of communal land conflicts. In practice almost all of the Liberian population was displaced at some time during the civil war, especially in the five counties where the ICLA project works (Montserrado, Margibi, Nimba, Bong and Lofa). NRC staff record but do not verify the displacement status of mediation parties; there are no national guidelines as to when internal displacement has ended or on whether/when earlier returnees no longer qualify for reintegration assistance<sup>30</sup>. The cases dealt with by NRC do not necessarily have a direct nexus with conflict-related displacement; some problems would probably have occurred regardless of the civil war (such as confusion as to the exact location of boundaries of communal land) but the war of course had highly deleterious effects on the infrastructure of land administration through (for example) the destruction of land records. Staff perceive that returnees are especially vulnerable to land conflicts because of the possibility of encroachment on or secondary occupation of their land whilst in displacement. They also emphasise the importance of awareness raising about women’s property rights (especially in relation to inheritance and the 2003 law) on the basis that many rural women in particular are not aware that such rights even exist.

**Commentary:** *In situations where displacement had been less widespread or there were particular protection concerns about certain classes of displaced, a closer focus on displacement status would be required. If there were a need to prioritise particular kinds of cases, it would usually be appropriate to concentrate on those with a close connection to conflict and displacement, to assist in obtaining a specific durable solution, or on those involving extremely vulnerable individuals.*

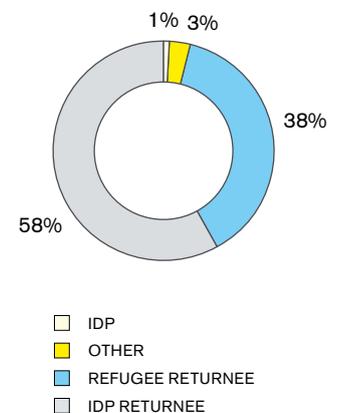
Staff find cases through a variety of means. NRC broadcasts land-related drama serials, advice programmes and short musical “spots” on local community radio and on UNMIL radio, which is widely listened to across the country. There are also billboards on main roads and on the outskirts of larger towns, encouraging people to bring their “land palavas” to NRC. People often approach NRC staff whilst they are carrying out casework in the field, since they use distinctive orange motorbikes, or after training sessions; usually staff are allocated an area to cover. Others hear about NRC from the parties involved in cases which NRC has helped to resolve, or are referred to NRC by local officials or other agencies (such as the community legal advisers involved in the Carter Center’s project with the Justice for Peace Commission).

<sup>30</sup> There is no widely accepted documentary evidence for IDP or refugee returnee status in Liberia, unlike (for example) the UNHCR “voluntary return form” used in major voluntary repatriations elsewhere. Some might have documents from their time in refugee camps elsewhere or to show that they received WFP rations as “government recognised” IDPs.

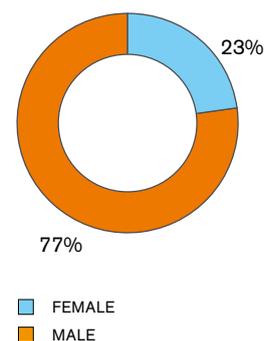
MODE OF IDENTIFICATION/  
OPEN CASES (n=1167)



CLIENT STATUS/  
OPEN CASES (n=1167)



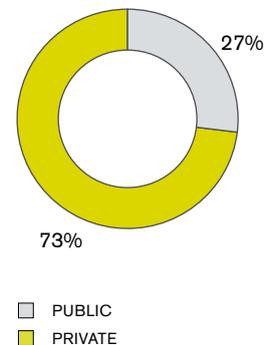
CLIENT GENDER/  
OPEN CASES (n=1167)



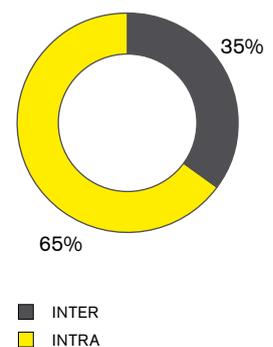
NRC staff in turn make referrals to the GBV project (if they become aware of cases) and to other agencies, sometimes through the coordination forum of the county development committee. Some NRC offices are now carrying out community awareness “mobile team” visits to areas where disputes are known to be especially common; these usually involve public sessions (often during market days) and meetings with local authority figures (including religious leaders, “women heads” and youth representatives) and also give people the opportunity to approach staff individually during their overnight stay in the area. NRC records indicate that radio programmes and community referrals are the two largest sources of cases. The project has recently begun recording GPS locations for the disputed land in each case and uploading them to Ushahidi, an online “crowd-sourcing” platform which allows people to visualise incident data on a satellite map image<sup>31</sup>. This would enable project managers to assess the geographical distribution of casework and (if necessary) to refocus activity into less well-served areas or make cost/benefit decisions about cases in isolated areas.

**Commentary:** Good project planning should also include a detailed protection analysis of potentially vulnerable groups and possible risks. This analysis and general protection awareness should permeate and guide project activity and any related advocacy strategy. If the relevant data are available, it is beneficial (and more cost-effective) to focus awareness-raising efforts on the specific groups targeted by the project, by (for example) concentrating on areas of high return, known ex-combatant reintegration or frequent community disputes. It is also important to consider how best to reach particular demographic targets; as noted in Part A, older women (who are likely to be a vulnerable group, especially if widowed) may not have access to mass media but could perhaps be reached by community visits. It can be helpful to agree a simple referral policy with other agencies and government bodies active in the same areas or sectors, which could be documented in a brief document (ideally one laminated sheet) containing “who does what where” (“3W”) information, for use by field staff. Similarly, a basic introductory leaflet which explains project activities and gives contact details for the nearest office can also be widely distributed to other agency’s field staff, local officials and others who are likely make referrals.

**TYPE OF LAND/  
OPEN CASES (n=1167)**



**INTER/INTRA TRIBAL DISPUTE/  
OPEN CASES (n=1167)**



<sup>31</sup> See [www.ushahidi.com](http://www.ushahidi.com) for more details. The name comes from the Swahili word for “testimony” and the website came into existence during the post-election violence in Kenya in early 2008, as a way of enabling “citizen journalists” to map reported incidents.

## CASE MANAGEMENT AND FACT-FINDING

When someone approaches NRC with a relevant case, staff will record key information about the parties and the dispute on a case management form. This includes details of both parties' marital status, number of dependents, displacement history, ethnicity, education, religion, and previous exposure to related training by NRC or other NGOs; it also asks whether violence has been threatened<sup>32</sup> and whether the matter has also been taken into the formal legal system or other dispute resolution venue (such as a chief's "court"). (If a case is also in the formal system, NRC will generally not proceed until it has been temporarily or permanently withdrawn, to avoid any contempt of court issues or "forum shopping" by one party). The case management form categorises dispute types as "secondary occupation", "encroachment", "client claims access", "client claims compensation", "inheritance" or "forced eviction"<sup>33</sup>. Most cases in practice involve some form of encroachment (which seems to overlap with the secondary occupation category); "double sales" of the same piece of land to two different parties are also common, partly due to the rapid increase in land prices in urban and peri-urban areas. Staff describe how the process works (including the possibility of a survey) and make clear that it is entirely free; they also explain that NRC will act as a neutral mediator and facilitator and that all information disclosed will be kept confidential<sup>34</sup>. Staff usually emphasise that they are not the police and that they are not there to judge the parties or to say that one is wrong or right. This is because many Liberians' only past experience in such matters has been of adversarial (and often arbitrary) chief's courts or intrusive (and usually threatening) governmental investigations. Staff will then approach the potential second party, again usually in an indirect manner ("are you aware of a dispute affecting your land?" rather than "a complaint has been made against you"), explain NRC's process and role, and discuss the matter with them. If the second party agrees to mediation, the case is registered in the database.

**Commentary:** Depending on levels of literacy among the local population, it may be helpful to prepare a form of *summary document to be given to and discussed with the parties. This could explain the nature and purpose of the mediation process and its various stages and set out the obligations and responsibilities of the mediator and the parties, including perhaps some time limits. This might help to avoid misunderstandings or subsequent disagreements and, if signed by the parties, may reduce delays, forum shopping or last-minute withdrawals from the process, though its legal enforceability would no doubt be limited. It is important to record as much relevant personal and case related information as possible, both in the case file and on the project database, provided that proper confidentiality safeguards are in place. In Liberia and in several other countries where NRC is involved in similar work, the project database has become an important source of data for research into land disputes; similarly, careful analysis of trends or correlations in the data can alert project managers to interesting patterns, developments or issues. To ensure that such information is robust and reliable, project staff and database assistants need to be properly trained on how to collect, input and extract accurate data; this requires all staff to understand the exact definition and relevance of the words used on the case forms (e.g. who is counted as a "dependent" and why do we ask this?). It also requires careful initial design of the forms and the database and comprehensive periodic reviews to ensure that case categories and other descriptive information are meaningful and useful; there is an understandable tendency for structural procedures of this type to be created in something of a hurry to enable a project to get off the ground and they are often then added to or amended in a rather haphazard way.*

<sup>32</sup> Staff indicate that there is little evidence of violence being used to delay resolution of the dispute in the civil system by creating a criminal case which would have to be adjudicated first. In the author's experience, this is a reasonably common tactic in more lawless countries such as Afghanistan.

<sup>33</sup> Unfortunately data on these categories have only begun to be recorded in the project database relatively recently and so the numbers and distribution of each case type are not yet statistically significant.

<sup>34</sup> NRC's mediation training makes clear that a mediator's obligations of confidentiality do not extend to keeping silent about the possible commission of a crime, although the author did not observe any specific examples of this point being explained to mediation parties.

At present, the first party (i.e. the person who bring the case to NRC) is recorded in case documentation as “the client”. This is to some extent a reflection of the nature of ICLA activities in other countries where NRC operates, which often involves a more traditional model of delivering legal assistance to (and protecting the interests of) a designated “client”. (The client-centred model is also reflected in the project targets and donor reports, which do not generally cover second parties). This sometimes leads to a certain amount of uncertainty about the exact scope of NRC’s duty to the second party, especially if that person is in fact more vulnerable than the first party and/or the first party becomes uncooperative. At times, NRC staff have to use a fair amount of persuasion to induce the second party to take part in the process; this is sometimes due to innate suspicion of interference by third parties or is caused by concern that the process will show that they are in the wrong or have behaved badly. Again, repeated assurances of NRC’s non-judgemental neutrality and emphasis on the non-adversarial nature of the process are sometimes required, especially because some parties believe that they will gain advantage by “having an NGO on their side”. Staff also make clear that other options for dispute resolution remain open to the parties. These issues have become slightly less common as knowledge of NRC’s work and understanding of their role have spread more widely among the community, but staff believe that general and ongoing awareness-raising is essential.

**Commentary:** *It can be difficult to explain the underlying concepts of mediation to a community which has little prior knowledge or experience of it, especially when the prevailing dispute resolution culture of the country is adversarial in nature. It is also sometimes quite challenging for agencies involved in mediation work to completely eliminate the conceptual framework and “mental furniture” of an adversarial system, particularly if the agency is also involved in other activities which take place within the formal legal system.*

NRC staff will then conduct what they describe as “background investigations”, which involve discussing the dispute with community figures who may have useful information (for example elders who can attest to the boundaries of a piece of land granted by them). They will generally also look at and evaluate any land documents which the parties possess and are willing to produce; this may involve checking the authenticity of the documents. Staff described a detailed range of possible “material errors” and forgeries in documents, such as altered dates (since the older of two document usually takes precedence), signatories to tribal certificates who were not actually chiefs at the relevant date, different penmanship on successive pages of a deed, probate judges who were not in post at the time of alleged probating<sup>35</sup> and so on. In some cases, checks are also made at the various document archives in Monrovia, though the results are often inconclusive due to gaps in registration caused by the civil war or deliberate removal of certain entries to cover up fraud<sup>36</sup>. The results of these investigations are not made known to the other party and NRC staff do not give direct advice to either party as to the legal status of their documents, although they will describe the general provisions of Liberian law on the subject in “private sessions” with each party, and would also explain the basics of customary land management if relevant<sup>37</sup>. It is not entirely clear how such explanations affect the decision of the relevant party as to whether to settle the dispute and on what terms, although it seems likely to be a relevant factor in their internal deliberations. NRC staff do not usually give general (i.e. unrelated to a specific dispute) advice on land and property matters whilst working in the community.

<sup>35</sup> Liberia’s deed registration system requires that land deeds are “probated” by (i.e registered with) a judge in the locality of the land. This is in practice an administrative formality, although in theory there is a notice period during which a third party who wishes to contest the transaction could register a “caveat” to prevent the deed being probated.

<sup>36</sup> It should perhaps be noted that NRC staff do not generally carry out detailed “due diligence” on a title in the same way as a Liberian lawyer would aim to do, in terms of checking the chain of title deeds (and any relevant “letters of administration” where previous owners have died) all the way back to the original grant of land by the Republic of Liberia. In any event, this is not usually possible due to the destruction of land records during the war.

<sup>37</sup> As explained in Part A, customary land practices may vary from place and there is relatively little information on them, and so this would have to be a very basic explanation.

**Commentary:** *The gathering of relevant facts and provision of “legal counselling” (in general terms) to the parties in this way are activities which would tend to place this type of process in the category of “evaluative” mediation, rather than purely “facilitative” mediation. Land disputes by their very nature contain a certain amount of technical legal content and relevant factual background and each party needs to be aware of the general situation in order to reach an informed personal decision as to settlement. However, care must be taken to ensure that these activities do not interfere with the mediator’s ability to fulfil a neutral facilitative role which enables the parties to agree a resolution by themselves. Providing general legal information also requires that the project staff themselves have an appropriate level of legal knowledge and/or training, which is not always straightforward if the law itself is difficult to research or not clear. In addition, there may be restrictions under national law in some countries on legal advice being provided by staff who are not registered lawyers. On the other hand, wider awareness of general legal issues may assist in preventing matters from eventually escalating into a dispute which requires mediation, although it might also increase “land-grabbing” by the unscrupulous. Although staff are simply summarising the land law of Liberia as it stands, there may still be a concern that this contributes towards the agenda for formalisation of title.*

The NRC mediator may need to facilitate a number of meetings between the parties in order to examine points at issue, discuss the potential for settlement and generally move the process forward towards a final settlement conference. In some cases merely bringing the parties together can be an achievement in itself, given the depth of animosity (and sometimes armed violence) which may have existed between the parties in the past. Staff stress the importance of entering the community in an appropriate manner, in terms of showing respect for local culture and engaging with all relevant stakeholders (such as women’s groups and “youth sections”); this is often easier for those staff who come from the same ethnic group as the community in question, although they may also need to demonstrate their impartiality. It is particularly relevant to the larger disputes handled by NRC, which may involve conflicts between entire communities, most often over boundaries between their respective communal landholdings. Cases such as these often come to NRC as individual disputes between particular occupiers along the boundary line but the underlying problem later becomes clear. Staff comment that the majority of their cases have some kind of “deeper cause”, in terms of a social/familial conflict or issue which lies behind the surface dispute, and they are generally skilled at perceiving this problem and encouraging the parties to resolve it. NRC tries to recruit staff members with a good background in community projects and/or counselling, and many have previously worked on protection or GBV related projects. Most project staff have worked for NRC for some time, and it is likely that this good retention rate contributes to the generally high level of skills and project knowledge shown by staff during fieldwork.

NRC staff will generally seek to engage and involve as many local authority figures as possible in these community-related cases, to add weight to the process and to ensure that any eventual settlement is known by and acceptable to all relevant parties. It also helps to preserve community knowledge of the settlement for the future and to prevent people from trying to unpick the settlement at a later stage. However, they try to ensure that such figures limit their participation to emphasising the importance of peace and reconciliation and do not “take over” the process or become directly involved in settlement negotiations. There is also a class of “joint effort” cases where NRC will work jointly with the authorities to settle a dispute and (in doing so) to build their capacity; typically, NRC staff will deal with background work and facilitative activities (such as transportation). “Absentee” third parties can have an effect on the progress of casework: often parties will feel the need to consult or obtain the approval of a family member who lives in Monrovia (or even the United States) and is deferred to because of their greater education, influence (for example those who work for UNMIL) or wealth<sup>38</sup>. These people may have been involved in funding the cost of previous legal proceedings and often may tend to favour use of the formal court system, which could deliver a complete victory for one party, over the compromise settlements produced by mediation. This factor was cited by staff as one of the main causes of delay in progressing cases, along with second parties who are frequently absent for work or other reasons (which may be a tactic in itself). Where possible, staff seek to involve these third parties in the process as well, though without endowing them with veto power. It is sometimes advisable to confirm with the parties that they do have authority from their families to agree a settlement before a date for a mediation session is set.

<sup>38</sup> As in many post-conflict contexts, the numerous Liberian diaspora (mostly located in America) has considerable influence back in Liberia, not least because of their remittances. IFAD (2007) estimates that in 2006 \$163 million (equivalent to 25.8% of Liberia's GDP) was remitted to Liberia.

## THE MEDIATION

### Introductory phase

The mediation is usually also attended by a number of family members and by local authority figures such as the town chief. Staff generally encourage the presence of family if this makes the parties feel more comfortable, but sometimes an individual relative proves to be obstructive to the process (for example a son urging his father not to settle) and may have to be excluded. Similarly, community members are usually welcome but may be disruptive if they perceive that “their” (i.e. the community’s) land is being lost into private ownership. There can occasionally be awkward situations if a particular authority figure is also a material witness (e.g. as a signatory to a tribal certificate) and accusations are made about their role in the dispute. The mediator will try to select a spot which is reasonably quiet, though there is no particular attempt to exclude spectators (which is generally impractical anyway), on the basis that transparency is beneficial. The venue may sometimes be in a neutral location, especially if the matter involves a dispute between communities, or at an NRC or local government office. Seating is arranged in a way that minimises any adversarial implications; for particularly complicated or difficult cases there may be more than one NRC mediator, which enables different approaches and also allows one mediator to take notes more easily. Prayers may also be said, if suggested by one of the participants. The mediator begins the meeting by thanking everyone for attending and explaining briefly about NRC’s mandate and general activities. He/she emphasises NRC’s neutral and facilitative role in the proceedings, explaining that this is not a court (which in Liberian English can refer either to the formal legal system or to adjudication by a chief) and that “we are not here to find someone guilty or say that they are wrong”. (Despite this emphasis, the parties do sometimes seem to see the process as involving or acknowledging moral blame, which may give emotional satisfaction; parties interviewed for this report talked of the other party being “found guilty” or “accepting that he wronged us”).

The mediator (and any chiefs who are invited to make introductory remarks) will often stress the importance of resolving long-running land disputes to avoid storing up trouble for future generations (especially as NRC will not always be around to help) and will encourage the community to think of themselves as a family who should agree together. In many cases the parties are in fact related or have some personal connection with each other. It is common for people to refer to the disastrous effects of the Liberian civil war and its related community conflicts or to notorious land disputes elsewhere in the area which have escalated into armed violence and even murders. The mediator will then invite the parties to suggest and agree some ground rules about the conduct of the mediation; these generally include respecting the views of others, treating people with appropriate courtesy (e.g. the use of the parties’ chosen names, rather than “this man”) and allowing the mediator to choose who speaks.

The parties will also agree on whether the proceedings need to be conducted in or translated into a local language for the benefit of one or both of the parties; usually a trustworthy member of the community is able to act as an interpreter. Staff explained that the establishment of ground rules is an important part of setting the tone for the session and ensuring that the tone of discussion does not become adversarial or aggressive, especially when one party is “weaker” than the other in terms of social position or general power relations. They indicated that ground rules were particularly relevant if one party was a woman or a “stranger” (i.e. someone not from the local ethnic majority group, which often applies to Mandingos) and there was therefore a possibility that the other party would not treat them fairly or respectfully. In such situations they would also emphasise to the parties that all Liberians have the legal right to live and own property anywhere in the country, regardless of gender or ethnicity<sup>39</sup>; indeed, it is not uncommon for the parties themselves to own land elsewhere. However, using a rights-based discourse can sometimes be problematic in Liberia, as “human rights” are widely perceived as the reason why children do not obey their parents and prisoners are released from jail without trial<sup>40</sup>. Women’s rights are also a sensitive issue in the more socially conservative rural areas of Liberia, though attitudes are slowly changing, and so NRC staff try to avoid appearing too partisan on the subject. Staff may occasionally encourage a stranger to make use of the “stranger-father” custom mentioned in Part A or remind elders of their obligation to be receptive to strangers.

**Commentary:** *Dealing with power imbalances between the parties is one of the most challenging aspects of mediation and staff are required to tread a fine line between ensuring procedural fairness and a mutually acceptable outcome on the one hand and retaining a neutral and facilitative position. (There is a separate branch of mediation known as “transformative mediation”, which focuses more closely on personal empowerment and the potential ability of mediation interaction to change the way the parties perceive and relate to each other, but that falls outside the scope of this report). Mediations often occur in politicised or sensitive social situations, and such cases require mediators to carry out a comprehensive analysis of the interests and objectives of all relevant stakeholders and the power relations and interactions between them<sup>41</sup>. They also require delicate handling of the wider context by project managers and an awareness of the overall advocacy framework within which the project is situated.*

<sup>39</sup> See for example articles 13 and 22 of the Liberian constitution. The latter provides that only Liberian citizens can own land in Liberia; article 27 states that “only persons who are Negroes or of Negro descent shall qualify by birth or by naturalization to be citizens of Liberia”. Liberia has signed almost all the usual international human rights instruments and many of these have also been “domesticated” into Liberian law, although in practice they are rarely relied on in court.

<sup>40</sup> See USIP (2009) for detailed background on this issue.

<sup>41</sup> FAO (2006), a guide to “land tenure alternative conflict management”, provides a useful set of tools for such an exercise and suggests various ways to empower weaker parties, some of which already fall within the current scope of the NRC mediation process.

### Establishing the facts

The mediator begins by inviting the first party to explain his/her understanding of the facts of the case; this is generally followed by questions from the second party (and sometimes from others) to clarify particular points. The mediator will often require that such queries are routed through him/her first, for clarity and to defuse any antagonistic or leading questions; this technique was also said by staff to make parties feel more confident about responding and to prevent people from feeling compelled to answer. The second party then gives his explanation of the case and is questioned in the same way, and third parties with relevant knowledge may also make statements. This process seems to have a number of purposes: it serves to put the relevant facts “on the table” and to enable all parties to feel that they have been heard and that their views are respected. It also to some extent indicates and tests the strength of both parties’ positions and enables other community members to express their views on the subject, since the “cross-examination” phase can be relatively prolonged. Relevant documents are usually referred to but not publicly examined; in general, the mediator will have already seen them in earlier private meetings, although some parties (for reasons of their own) will insist on holding on to them until the last minute. There is no public declaration of an obligation on the parties to tell the truth at the mediation, although staff commented that they would sometimes mention obliquely and in general terms at the private sessions beforehand that untrue statements would adversely affect the process. It was not clear how and to what extent this “evidential” phase of the mediation influenced the parties’ willingness to settle or their choice of particular settlement amounts. Staff suggested that the parties often had a particular settlement in mind before they came to the mediation session (presumably based at least partly on their view as to the factual/legal strength of their case), but it is possible that a party might only come to understand the actual position (or a significant weakness in their case) during this part of the process. The same might also apply to the parties’ view as to the moral strength or justice of their position.

**Commentary:** *It is important that this part of the process is carefully handled to ensure that it establishes the relevant factual background and clarifies the points at issue, but does not become an overly judicial exercise in hearing evidence and then finding certain facts “proved”. The mediator may well be the person who has the clearest understanding of the facts and the ability to analyse and apply the law to the situation, but this must not colour their approach or induce them to lead the parties in a particular direction<sup>42</sup>. Conversely, ensuring “equality of arms” between competing parties for procedural fairness may also be a concern, if one party is significantly less able than the other (due to lack of education or relevant skills) to present a clear case or carry out effective cross-examination. However, staff noted that the adversarial nature of most Liberian dispute resolution has given the majority of the population fairly good basic skills in this area, though there could be a risk that NGO capacity building training inadvertently gives one party an unfair advantage.*

<sup>42</sup> This is particularly tempting for international staff who have a background in legal problem-solving, as the author can attest.

### Reaching and documenting agreement

The mediator then sums up briefly, repeating the key messages from the start of the session, and encourages the parties to formulate and consider a range of possible solutions to their dispute in a spirit of compromise which may require both parties to give up something. Often the parties then go into “private session” with family members and third parties to discuss their position, and the mediator visits each group. He/she would not get involved in suggesting a particular level or type of settlement, although they might note in a general way that excessive or unrealistic demands often prevent agreement being reached. The parties reconvene to indicate whether they have proposals for resolving the dispute – in practice the mediator will be aware of their respective positions and so there is no negotiating advantage to be gained from hearing the other party’s proposal first. This procedure may be repeated several times and of course may not result in a mutually acceptable agreement, although the mediations observed by the author were settled relatively promptly. The agreement is documented by writing it into a pre-printed NRC “memorandum of understanding”, which also contains general obligations on the parties to implement the settlement fully, prevent any reoccurrence of the dispute and refrain from litigating the matter elsewhere. The memorandum is read aloud for those who cannot read and then signed by both parties (and their spouses) and also by various witnesses (usually the chiefs and other authorities who have been present). Staff suggest that parties rarely litigate the same dispute in other venues if a properly drafted memorandum has already covered all the relevant issues.

**Commentary:** *Liberian legal practitioners interviewed for this report indicate that the memorandum ought to be capable of enforcement in the courts, on the basis that it is a contractual document which records a voluntary agreement between the parties. It is unlikely that the parties (or NRC) would ever go to court to compel performance of obligations under the memorandum or to seek damages for breach of it but it would be important that such a memorandum is recognised by the courts as representing a binding settlement of the dispute from which the parties cannot withdraw. In order for the courts to give effect to a contract, it must accurately and clearly reflect the intentions of the parties, and so it is desirable that the content of the parties’ obligation is as specific and unambiguous as possible. This may require the mediator to help the parties in tightening up the exact wording of what they have agreed, which can be quite challenging if translation into local languages is required.*

There may be one or more subsequent meetings between the parties, for the signature of any further documents required by the settlement (such as a deed) or for an agreed survey or demarcation (see below). In Liberia, “deeds” (i.e. transfers of land) are usually prepared by surveyors rather than lawyers, partly because there is a standard, government-approved, form of deed which simply requires the relevant details to be inserted, along with a description of the location and boundaries of the land which is known as the “metes and bounds” (see the glossary for a more detailed explanation). If a new deed has been produced, NRC staff will give the relevant party a briefing on the importance of carrying out the required registration formalities so that the deed is legally valid and enforceable, although NRC does not assist the party with payment of the various (legal and informal) fees involved. As noted in Part A, the registration process is fairly complicated and bureaucratic and this complexity and the cost deter many Liberians from completing the registration procedure. In addition, some people wrongly believe that mere possession of a land deed is sufficient. NRC staff do not routinely follow up cases to check whether new deeds are registered and so no specific data are available on this issue<sup>43</sup>.

<sup>43</sup> However, the project database indicates that around 20% of dispute parties who present a deed as their document of title to the land in question have “incomplete” [i.e. unregistered] deeds.

**Commentary:** *It is clearly vital for formal security of tenure purposes that any land deed is properly registered, although in situations of widespread non-compliance with formal legal requirements a parallel “extra-legal” system of informal land documents often emerges. It is therefore essential that parties receive information and counselling about the registration process in language that they can understand, and it is also important to understand the obstacles to registration and to analyse and assess the capacity of the registration system. There is little point in encouraging and assisting project beneficiaries to submit large numbers of registration applications, if the system cannot in fact process them. It may sometimes be necessary to consider carefully targeted capacity building assistance, which can be as simple as helping to ensure that document ledgers are properly indexed.*

The precise details of the settlement of course vary from case to case, but some broad patterns emerge from the fieldwork and research carried out for this report. The majority of boundary dispute cases are settled by the parties agreeing to accept the boundary produced by a survey demarcating the straight line between two designated points; the location of these points may be stated in the title documents of one party or be based on agreed local landmarks. In “double sale” cases, the first buyer often ends up retaining the land but may have to give up part of it or pay an agreed extra sum which is still less than the attempted second sale price. In secondary occupation cases, the person who has built a structure or planted “live crops” generally has to pay for the land or be bought out by the true landowner. It is relatively rare for settlements to deal expressly with rights other than ownership over land (such as, for example, a right of way), although a person might be permitted to enter land for cultivation purposes.

**Commentary:** *The range of possible property rights in relation to a particular piece of land in the developing world is often conceptualised as being like a bundle of sticks: one person may have the legal ownership of the land; another may lease or share-crop part of it; a local trader may have a mortgage or informal security on the land to secure the price of seeds or other inputs sold to the farmer on credit; pastoralists may graze their stock on it or use a watering hole there; women may customarily collect firewood from it; local subsistence farmers may be permitted to glean any remaining grain after harvest. As noted in Part A, formal recognition of customary land interests is somewhat under-developed in Liberian law in comparison to other African countries. However, those involved in resolving land disputes should be alert to the possibility of rights in land other than formal ownership, even if these are not directly protected by statutory law, and it may sometimes be appropriate to document them in any settlement agreement.*

### Surveying and demarcation

In most cases, a survey or demarcation<sup>44</sup> conducted by NRC is one of the final stages in the dispute resolution process, and staff suggest that the survey often plays a key role in ensuring a durable settlement. It may be required in order to establish or publicly document a particular boundary, to delineate a specific landholding, or to produce a diagram which will be attached to a transfer deed for private land. (Since President Johnson-Sirleaf has declared a moratorium on the signature of any further public land sale deeds, NRC's policy is not to produce survey drawings for such deeds). Staff encourage the parties to plant soap trees (which are very difficult to eradicate) along the boundaries so that they can be readily identified; in urban settings, "corner stones" (actually concrete blocks with the parties' initials on them) are often put in place. NRC has service agreements with government-approved land surveyors for each of the areas in which it operates and has also provided them with modern surveying equipment and some additional training for their field staff. Liberian law requires that all neighbours and other relevant parties are served with notices of an intended survey and NRC also arranges for details of the survey to be broadcast on community radio and advertised in local newspapers. NRC requires the parties to be present for the survey and they are also asked to provide any necessary labour for clearing the areas of land over which the survey lines are being measured, which also acts as a demonstration of their commitment to the process. The surveyor and his staff take "field notes" which are used to create the final survey drawing. As a matter of policy, NRC does not conduct a survey on an individual landholding which exceeds 200 acres in size. This is partly because it would involve an excessive amount of time and resources but also on the basis that a landowner of that size can afford their own survey and that potentially bringing so much land into private ownership at one time could actually increase conflict.

A frequent bone of contention is the "commencement point" for the survey, since the metes and bounds method requires the surveyor to follow or record particular compass bearings and distances in order to cover all four sides of the plot. A number of NRC surveys fail or have to be re-done because the parties cannot agree the commencement point or disagree with some other component of the surveying methodology<sup>45</sup>. There is a tendency for mediation parties to settle their dispute by agreeing to abide by the results of an NRC survey, as though a survey is somehow a panacea for land disputes. However, it is not always clear that they understand the technical basis of the survey (e.g. where the commencement point will be and which metes and bounds statement will be used) and its implications for them, or what is involved in the surveying process. In some cases, this decision therefore simply serves to delay the arguments until the surveying process; in others, the implications only become clear when the survey is in progress and one party realises that they may "lose" a certain area of land because the true acreage figure is smaller than the one in their tribal certificate.

**Commentary:** *As surveys are a relatively new concept for many rural Liberians, it is important for the mediation process to include a clear briefing on how they work and what they involve. In addition, the mediator may need to probe whether the parties are genuinely committed to the survey process or simply want to see where it may lead (literally and metaphorically).*

<sup>44</sup> NRC staff use the word demarcation to refer to a survey which delineates only one boundary.

<sup>45</sup> Exact figures were not available but it would be useful to monitor this trend as there is a cost involved.

One notable feature of the mediations observed during fieldwork for this report was that none of the parties or the mediator used any kind of visual representation of the land in question to assist the discussion. There were frequent mentions of “this land” and “that land” but relatively few attempts to describe the exact outline, size and location of the parcel in question. In an analogous Western context, it would be fairly common-place for someone to draw a rough sketch of the shape of the overall landholding or the disputed area or to show where they thought the boundaries lay in relation to adjoining owners; this could then be scribbled on or amended by others. Of course there are few reliable maps of the correct scale in Liberia, especially for rural areas, and it is common to identify boundaries by relevant natural features (such as soap trees) rather than formal survey but this does suggest that Liberians do not necessarily conceptualise their landholdings in a neatly “bounded”, cadastral fashion. This may in turn reflect a distinctively “African” view of land as being a community resource where boundaries are less relevant, or the fact that rural landholdings in Liberia are often fairly large because of the comparatively abundant supply of land. However, the trend towards gradual formalisation of title in Liberia will (rightly or wrongly) require rural farmers to engage with a land administration system which is in some degree cadastral and may involve adapting to new ways of conceptualising land. It is also very important that mediation parties have a proper understanding of exactly which areas are in dispute and how a particular settlement affects their landholding, since it was not always entirely obvious (to an outside and admittedly Western observer) that this was the case.

**Commentary:** *It is often valuable to make a site visit so that all parties (and the mediator) have a clear visual idea of the locations and boundaries under discussion. With substantial landholdings, it may be useful for a “descriptive” survey to be carried out which can at least produce indicative acreage figures and “metes and bounds” details for the land in question. This is particularly relevant in the Liberian context, where the elders involved in allocating land often had a very limited ability to assess acreage accurately<sup>46</sup> and survey details are frequently lacking. In the absence of suitable maps, or if mediation parties are not comfortable with drawing sketches, it may be worth using simple non-representational props such as plastic circles for the parties in boundary or encroachment disputes to show how and where they think their land overlaps with adjoining properties.*

<sup>46</sup> Staff sometimes explain to parties that an acre is about the same size as a football pitch.

### Training related to the dispute resolution process

NRC's five day mediation training for beneficiaries is based fairly closely on the ABA-designed mediation training which is given to NRC's own project staff, although it also contains additional material assembled by NRC trainers as well as a session on land and property acquisition ("LPA"). It aims to give chiefs and local government officials sufficient mediation skills (through role plays and other methods) to facilitate their own basic mediations and also has the effect of sensitising them about NRC's dispute resolution work and generally creating a more permissive environment for mediation activities. "Difficult" mediation parties are occasionally invited to mediation training to give them a different view of how problems can be solved. Staff also suggested widening the target audience to include other local stakeholders such as "women heads", youth leaders and community elders. Participants interviewed during the fieldwork for this report indicated that the training was very beneficial and useful and expressed their intention to put it into action in their local communities. NRC has not done any detailed follow-up checks on the extent to which this is in fact occurring, although the author observed an example of a previously violent communal land dispute where community representatives had been inspired by the training to move towards reconciliation and resolution. There is also a specific LPA training module, also aimed at chiefs and local government officials, which is presented over two days and again appears to be very popular with its recipients.

**Commentary:** *There can sometimes be a tendency for beneficiary training to become overly orientated towards the delivery of a list of "bullet-point" items of knowledge, with limited opportunity for the attendees to develop or test relevant skills or participate in applying the principles learnt to particular situations. This can be especially problematic if some of the attendees have limited literacy and may not be able to record in writing what they have learned. It is often beneficial to use some visual materials (like those developed for the joint ICCLA/GBV training on women's property rights) to engage such audiences more fully. There may also be a risk that trainings with technical knowledge content (such as the LPA session) may give a few unscrupulous local authority figures (who already have money, literacy and political influence) the wherewithal to manipulate systems in their favour; "elite capture" of this kind has historically been very common both in Liberia and elsewhere in Africa. This is in general a risk worth taking, but it may be worth coupling such trainings with a broader programme of mass public awareness raising on general legal issues.*

# PART C: CONCLUSIONS

## THE CARTER CENTER'S RULE OF LAW PROGRAM: ANOTHER WAY?

The Carter Center funds, capacity builds and monitors a “community legal advisers program” through the Justice and Peace Center (JPC). There are five or six of these advisers (effectively paralegals, also known as monitors) in each of eight counties and they also form mobile teams to go to remoter locations. They give people a choice of options including mediation, court (advising on correct one), chiefs (for non-criminal matters) or family involvement; this is supported by community awareness so that people understand more clearly what the choices involve. Their mediation practices are similar to NRC procedures: they visit each party and (with their agreement) bring them together and facilitate discussion, as well as fact-finding, with a strong emphasis on neutrality and confidentiality. Their mediation training is also based on the ABA training materials; it is backed up by frequent refreshers (every quarter or so), as is their other training on legal matters and soft skills. The bulk of their caseload is domestic violence (or “persistent non-support” of families by men), along with civil matters (e.g. debt); rapes and sexual violence would be referred to the county attorney. They provide some general advice, though mostly at the awareness raising stage; there is a separate group of awareness raisers who receive a small grant and are involved in general information dissemination. There are also “leaders of promise” who are intended ultimately to take over some of the program’s work when the Carter Center exits Liberia.

The Carter Center’s Liberian lawyers are involved in the Center’s partnerships with the Ministry of Justice (which include training for government-employed lawyers and judges) and the Ministry of Internal Affairs (which includes training for traditional leaders). They are also involved in various attempts to “harmonise” the statutory and customary systems – these include public consultations, exchanges with other African countries, seeking alternatives to harmful traditional practices (such as sassywood) and enabling lawyers to appear in chiefs’ courts (to ensure the rights of both parties are protected). They have developed many information products (flyers, bumper stickers, posters, banners, short skits on the radio etc), with a general agenda of legal empowerment and mass awareness. Their legal training (to JPC and others) covers a wide range from public finance and tax law to labour law, police/custody law and environmental law, and is reportedly very popular. They try to deal with the rights-based agenda in a nuanced manner, with emphasis on balancing responsibilities and on respect for adults.

This section will consider the fundamental question of whether and why the NRC mediation process “works”. The process is certainly successful in terms of meeting and generally exceeding project targets for case resolution: in 2009, 54% percent of all cases closed were “resolved” (i.e. the process came to an end with a settlement agreed by the parties). The process is also popular with project beneficiaries, once they come to understand how it works. Staff suggest that low cost, transparency and speed are among the main reasons why people choose NRC’s services over the other options available, though they may also have heard about an NRC success through coverage in the newspapers or on the radio. Bringing a dispute to a local chief or to a government official (such as a land commissioner) often involves a number of “fees” and a chief traditionally has the power to fine one party, in cash or labour.

Lawyers and the formal court system also require frequent payments and are notoriously slow. The possibility of a free survey, which would otherwise cost a significant amount in private surveyors' fees, seems to be a considerable attraction, especially as a survey is often perceived as the gateway to formal (private) title. However, this does raise a question as to sustainability of the process if and when NRC departs Liberia and the true costs fall on the parties. There are various community-based alternatives to formal private surveying which are collectively known as "participatory mapping" and have been used in countries like Sudan and Kenya; the Liberian government and agencies working within the land sector may wish to evaluate these, map any existing analogous practices in Liberia and implement a pilot project<sup>47</sup>. On the whole, the mediation process also appears to have a positive and beneficial effect in terms of dealing with important human security issues (such as ensuring access to land for livelihoods and reducing conflict) and meeting general "access to justice" standards of procedural fairness and comprehensibility. It is more difficult to assess the wider effects of the process on land tenure patterns, in terms of its general (and understandable) focus on the statutory land administration framework and formal titles, rather than customary tenure and informal land management practices. As this report has noted several times, programming of this type requires a close and constant focus on protection principles and vulnerability concerns; it also involves (and necessitates) a number of decisions as to an agency's positioning in and policies towards the land sector. A recent and very useful FAO publication on "land tenure alternative conflict management" provides structured guidance on these and other issues which require consideration, along with conceptual frameworks for conflict analysis<sup>48</sup>.

It is hard to assess the impact and effects of the project in a more empirical manner, as NRC has not yet conducted any comprehensive investigation of the extent to which its mediation interventions in Liberia have contributed to permanent conflict resolution and/or greater security of tenure for the parties. However, a monitoring officer has recently been appointed and a consultant from Yale University has prepared a detailed monitoring and evaluation protocol for the ICLA project, which would assist NRC to make a qualitative assessment of the general character and effects of its activities. It is often a considerable challenge to devise quantitative success indicators for rule of law and/or conflict resolution projects which are relevant and significant and go beyond the simple numerical statistics of clients assisted and cases resolved. In addition, there is the general issue of attribution, in terms of being able to show that particular effects in a complex post-conflict environment were indeed caused by or due to the programming. The Carter Center is implementing a randomised controlled trial of its JPC community legal advisors project by implementing the project in half of the communities involved in the USIP study's baseline assessment of attitudes to local justice, with the remainder acting as a control sample. According to the USIP study, "follow-up surveys will be conducted in both treatment and control communities after several months of exposure to measure differences in key outcomes such as the incidence, reporting, and resolution of disputes; reported satisfaction and trust in the justice system; household economic status and decisions; and the behavior of justice providers"<sup>49</sup>. In the context of peace programming, Mary Anderson (of "Do No Harm" fame) has suggested<sup>50</sup> that a 'peace practice effort' is only genuinely effective if (and to the extent that):

- "it causes participants to take up initiatives for peace work on their own;
- it contributes to the reform or building of institutions that address grievances that underlie the conflict;
- it enables people increasingly to resist violence or manipulation to violence;
- it increases the security of people and their perception of security".

47 For a detailed examination of participatory mapping practices, see IFAD (2009).

48 FAO (2006).

49 USIP (2009).

50 Anderson (2004).

It is also tricky to assess the social and cultural dynamics which are at work in the mediation process and which may explain why settlements are reached. Staff suggest that mediations are generally successful in achieving lasting settlements because the parties feel that they have ownership of the process and are involved in coming up with their own solution to the problem, which takes everyone's interests into account. Certainly the process seems to be more empowering and participative than adjudication through the courts, and it also provides a certain degree of social recognition or affirmation for the views and opinions of "weaker" parties who might otherwise be excluded. In addition, the neutral and objective establishment and evaluation of the factual background to the case (along with general but private information for the parties as to the legal status of title documents) seems likely to be beneficial to the parties and the process. There may be an element of catharsis in finally voicing and working through long-held grudges or anger in a supportive environment, assisted by the generally high level of inter-personal skills and community development experience among NRC mediators. Whilst these are to some extent universal phenomena, it is possible that the context of Liberia (and perhaps the West African region) is relatively specific, in terms of the social factors which encourage community cohesion and therefore reconciliation and conflict resolution, especially after the civil war. A World Bank "post-war rapid social assessment"<sup>51</sup> comments: "we found that Liberian communities continue to evince an enthusiasm for conciliation, and express skepticism about statutory and customary processes, claiming court judgments to be often clouded by factionalism and corruption". A classic anthropological account from the 1960s<sup>52</sup> described a mediation-style "moot" or "house palaver" procedure among the Kpelle tribe and argued that its success derived from some of the attributes discussed above but most of all from the therapeutic elements of the process. The author suggested that the procedure contained four key elements of successful group psychotherapy: support for expressions of emotion, a permissive environment for cathartic criticisms of socially disruptive behaviour, a gentle correction of inappropriate conduct or opinions by "reality testing" them against community views and the "group approval" available to those who come to a socially acceptable reconciliation.

Here one should also note Alexandre Corriveau-Bourque's perceptive remarks on certain cases in an earlier NRC thematic report on land encroachment<sup>53</sup>. He commented: "in each of these cases, an admitted 'confusion' by the encroacher, interpreted by the outside observer as 'ignorance', would provide the defendant with a platform of 'accidental guilt'. So while they still admit their error, which according to Isser et al. (2009)<sup>54</sup> is considered to be necessary in the informal resolution of a disputes, they are potentially in a better position to secure a favourable outcome". Staff acknowledged that the mediation process does to some extent permit stratagems of this kind, which is perhaps due to the implicit social pressures for an "acceptable" compromise settlement that gives both parties something. However, some also suggested that in some cases a party in a notionally "stronger" position (in terms of the strict legal position) might be prepared to settle if they felt conscious that what they had been doing was wrong, especially if the mediation occurred in front of influential people. (The national staff project officers in charge of each of the ICLA teams are generally people of considerable ability and authoritative presence, with significant local influence, and are therefore deployed to the most important cases; one might speculate as to the effect that sometimes has in encouraging recalcitrant parties to settle, which would need to be handled with care). Staff also noted that in areas where NRC has been active for some time and has been involved in high-profile cases which involved close liaison with the authorities, people may perceive NRC as working "in line with the government" (and to some extent with governmental authority or endorsement behind them).

51 World Bank (2005).

52 Gibbs (1963), described in World Bank (2005) as an "inspiration for the emergence of the Alternative Dispute Resolution movement in the United States".

53 NRC (2010b).

54 This is the USIP report referred to in Part A.

# GLOSSARY

<b>acre</b>	a unit of land area equal to 4,840 square yards (0.405 hectare)
<b>cadastre</b>	a register of property which generally shows the extent, value, and ownership of land by reference to surveyed plans; it is sometimes used for taxation purposes
<b>common law</b>	a system of law associated with Anglo-Saxon countries, which is predominantly constituted through precedents decided by judges in individual cases, as opposed to a “civil law” system (associated with European countries) which is governed by a written code of laws
<b>confusion</b>	a dispute that has not yet escalated into verbal or physical violence
<b>court</b>	a formal tribunal presided over by a judge or a customary forum for the adjudication of disputes by a chief
<b>deed registration</b>	the registering of individual documentary transactions in land which then take priority over non-registered land documents
<b>demarcation</b>	a survey procedure to delineate only one boundary of a property
<b>land tenure</b>	a system of access to and control over land and related resources
<b>legal pluralism</b>	a situation where a range of customary, statutory, and hybrid institutions (sometimes including Islamic bodies) and regulations with legal or practical authority over land co-exist in the same territory
<b>live crops</b>	shrubs or plants such as rubber trees which are seen by Liberians as establishing a long-term interest in land
<b>lot</b>	a quarter-acre area of land, generally used to describe a piece of urban land
<b>metes and bounds</b>	a system which uses physical features of the local geography, along with directions and distances, to define and describe the boundaries of a parcel of land, working around the parcel in sequence from and back to a commencement point. ‘Metes’ refers to a boundary defined by the measurement of a straight run, specified by a distance between the terminal points and the direction of a compass bearing; ‘bounds’ refers to a more general boundary description, such as along a certain watercourse or other identifiable physical feature
<b>palava</b>	a dispute that has reached the level of verbal abuse or physical violence
<b>peri-urban areas</b>	areas on the periphery of urban settlements, which are often a focus of land disputes, rapid urbanization, and the consequent growth of informal settlements

<b>property rights</b>	a set of social relations that define what an individual, a community, or the state can and cannot do with a certain commodity, and what needs to be respected by others; they are often conceptualized as a “bundle” of rights in relation to accessing a particular piece of land, which may include use rights, control rights, or transfer rights
<b>public land</b>	land vested in and owned by the state of Liberia, which may be transferred to individuals (at a statutory fixed price) by means of a public land sale deed
<b>security of tenure</b>	the right (which should be understood in terms of degrees) to hold and use (and perhaps ultimately transfer) a piece of land without outside interference and to reap the benefits that accrue from investing labour or capital in that land
<b>stranger</b>	an individual from an ethnic group which is not in the majority in a given area
<b>statute</b>	formal laws passed by the legislature (parliament) of a country
<b>title registration</b>	the registration of land rights which then creates an “indefeasible” registered title (the registered title is the sole record and proof of ownership and cannot be defeated by other documents or evidence)
<b>town</b>	a group of dwellings which may in fact be no larger than a (non-Liberian) village
<b>tribal certificate</b>	a document signed by various different chiefs and local authority figures which evidences a person's entitlement to (eventually) receive a piece of public land
<b>village</b>	a small number of dwellings, sometimes no more than one or two

# **ABBREVIATIONS USED**

<b>ABA</b>	American Bar Association
<b>FAO</b>	Food and Agriculture Organisation
<b>GBV</b>	Gender-Based Violence
<b>ICLA</b>	Information, Counselling and Legal Assistance
<b>IDLO</b>	International Development Law Organization
<b>IDMC</b>	Internal Displacement Monitoring Centre
<b>IDP</b>	Internal Displaced Person
<b>IFAD</b>	International Fund for Agricultural Development
<b>ICRC</b>	International Committee of the Red Cross
<b>JPC</b>	Justice and Peace Commission
<b>LPA</b>	Land and Property Acquisition (NRC training)
<b>LURD</b>	Liberians United for Reconciliation and Democracy (a Mandingo dominated faction)
<b>NGO</b>	Non-Governmental Organisation
<b>NPFL</b>	National Patriotic Front of Liberia (Charles Taylor's faction)
<b>NRC</b>	Norwegian Refugee Council
<b>ULIMO</b>	United Liberation Movement of Liberia for Democracy (a Krahn dominated faction)
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNMIL</b>	United Nations Mission in Liberia
<b>USIP</b>	United States Institute of Peace
<b>WFP</b>	World Food Programme

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PO Box 6758 St. Olavs plass, 0130 Oslo

Tel: + (47) 23 10 98 00

Fax: + (47) 23 10 98 01

Email: [nrc@nrc.no](mailto:nrc@nrc.no) [www.nrc.no](http://www.nrc.no)

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