

RESEARCH ARTICLE

Prospects for Accessing Justice for Sexual Violence in Liberia's Hybrid System

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This paper explores the prospects of complementary rather than competitive dispute resolution and justice systems in Liberia. It specifically considers women's access to justice in relation to sexual and gender-based violence (SGBV), which remains prevalent in the post-conflict period, and in the context of a highly hybridised justice system. While the formal system has made great progress in reforming laws and institutions but is vastly under-resourced. Informal and traditional systems are widely considered more accessible and affordable. They are, however, also susceptible to corruption and co-option, and the state's oversight and curtailment of specific conflict resolution and punishment practices is considered to have rendered these systems less effective. Significantly, some cultural and traditional practices are themselves considered to facilitate and promote SGBV. These factors make complementary systems an imperative while working to address the deficiencies of both systems.

Introduction

In post-conflict Liberia robust laws and policies have been introduced promoting gender equality, partly in response to the extensive violence women endured during the country's thirteen-year conflict. This trend is juxtaposed, however, by widespread perception that Liberia's legislative, law enforcement and judicial systems do not operate in the interest of the majority of the population, which has consolidated or even increased reliance on informal and traditional justice mechanisms (Isser, Lubkemann, and N'Tow 2009; Flomoku and Reeves 2012).

This paper examines the challenges and opportunities presented by Liberia's hybrid justice system in relation to addressing

sexual and gender-based violence (SGBV) (Alexander-Scott, Bell, and Holden 2016). In this context, our notion of hybridity is one in which both formal and traditional or customary institutions are evident but the lines between these are blurred. The concern here is how norms, solidarities and networks in the non-formal sector become embedded in official security, policing and justice institutions (Bagayoko, Hutchful, and Luckham 2016), and how justice is or is not served in this in-between. The paper specifically seeks to answer the question: In the context of Liberia's hybrid security and justice system, what are the prospects for complementary rather than competitive provision of justice for victims of SGBV?

In addition, the fieldwork explored two key issues arising from the central question: 'how to draw upon informal social solidarities in order to build more effective

and responsive state security institutions—without them becoming too enmeshed in dysfunctional patronage networks [and] how to maximise the ability of state security institutions to ‘work with the grain’ of traditional and other informal institutions so as to make their security policies and programmes more effective and legitimate on the ground—without reinforcing local oppressions or unleashing destructive power struggles’ (Bagayoko, Hutchful, and Luckham 2016: 5).

These questions were explored through periodic fieldwork in Liberia between June 2015 and October 2016. The research methodology included structured and unstructured interviews and participant observation, including of the development of the 2015–2020 UN Joint Programme on SGBV, and several traditional elders’ and rural women leaders’ meetings; and process mapping of the progress of various draft legislations and mechanisms related to gender, including the Domestic Violence Bill. Stakeholder interviews were undertaken with a range of individuals, based on their experience of (working in), and supporting the activities of formal and traditional justice systems. This included police officers; members of the judiciary; government ministry officials; traditional authorities, including chiefs and elders; members of civilian policing mechanisms; national and local women’s civil society group representatives; local and international NGO staff; and UN staff. Interviews with headquarters’ policy actors took place in Monrovia, with additional fieldwork undertaken in four counties, Lofa, Nimba, Bong and Bomi where, with the support of four research assistants, individual interviews were carried out with 168 individuals in eight communities and three focus group discussions held with a cross-section of local government, law enforcement, women’s leaders, civil society, elders, chiefs, community youth and some SGBV survivors.

The following discussion demonstrates that in the Liberian context formal and customary can be complementary, but in order to do this in a way that promotes, rather than impinges on the rights of vulnerable groups

such as women and girls subject to SGBV, a range of issues must be addressed, including increasing awareness-raising on the respective roles and responsibilities of each sector; promoting the customary and traditional sectors’ roles in mediating non-criminal family issues that are not catered for in the formal sector; providing inclusive community education on women’s and men’s rights and mechanisms for tackling SGBV; and increasing opportunities for engagement and collaboration between law enforcement officials and traditional authorities, among others.

The next section summarises some of the empirical literature on hybrid security and justice and SGBV in Liberia, upon which this article builds. It highlights the historically subordinate position of women, which impinges on their access to justice in both the formal and informal spheres. This provides the backdrop for section 3, which maps out the on-the-ground reality of hybrid security and justice in Liberia as it relates to SGBV, based on the fieldwork. Section 4 then discusses the relative strengths and weaknesses of the formal and informal systems, based on interviews and focus group discussions, the findings of which are broadly in keeping with the literature. This is followed by a section on the increasing influence of other informal actors, namely the international community, in promoting and even directing hybridity within the framework of alternative dispute resolution (ADR) mechanisms, a key finding from the research. Section 6 concludes the article with a discussion of the prospects for a complementary hybrid security and justice system that benefits women and girls, given both these relative strengths and weaknesses and the intractability of the systems from one another. It also suggests recommendations for the way forward.

Hybridity, gender and SGBV:

The literature

Hybridism in Liberia

Most, if not all, modern African states have pluralistic justice and security systems, shaped by colonial intervention and post-colonial compromise. As such, Liberia is not

unique. Its peculiar history, however, stemming from Americo-Liberian colonisation and settlement,¹ has resulted in a three-fold system, of a formal justice system, modelled on that of the USA, a customary legal system mostly worked through Chiefs (or customary) courts, 'created by regulation and statute' and a 'traditional' indigenous system' (USIP 2008).

The embedding of the customary legal system within the formal has been apparent since Liberia's founding in 1847. In 1869, the Liberian Legislature established the Interior Department (today's Ministry of Internal Affairs, or MIA), as an agency of the Executive. Among the department's duties were 'to settle matters purely native, consistent with native customary law and native institutions [and] formulate regulations for the smooth administration of the natives' (USIP 2008: 12), provided those laws were not repugnant to the Liberian constitution. This mandating of a constituent body of the Executive to hold judicial hearings and make judicial decisions so long as it involved the 'natives' and did not infringe upon the constitution perpetrated a truly hybrid legal system, even as the formal system remained solely the purview of the judiciary (USIP 2008: 12).

While these developments related mostly to the evolution of the customary legal system, closely related to this is the traditional or indigenous justice sector. This comprises 'a broad range of actors who have no legally or socially recognized roles in formal, state-backed customary, or even community-based customary justice institutions [who] become involved in, and are perceived to be able and likely to influence, the resolution of cases ranging from the most trivial to the most serious' (Isser et al. 2009: 23–25). Such actors include village elders, who advise and regulate the town chief's decisions, as well as family heads, women leaders, youth leaders, secret society leaders, religious leaders (mostly pastors and imams), and heads of social institutions (savings clubs, markets, unions, etc.). Within this group 'Poro' (male) and 'Sande' (female) secret society leaders (Zoes) are particularly influential for maintaining law and

order (Leeson and Coyne 2012). Sande is a politically influential women's association originally found within the Mende-speaking peoples of Liberia, Sierra Leone and Guinea that initiates girls into womanhood through the Sande (Bush) School, 'confers fertility, instils notions of morality and maintains an interest in the well-being of its members throughout their lives' (Ministry of Gender and Development 2011: 3). In addition, Sande champions women's social and political interests and promotes their solidarity. The majority of Liberia's ethnic groups initiate girls into Sande (Ministry of Gender and Development 2011).

While differences in the dispensation of both customary legal and traditional justice abound between Liberia's 15 main ethnic groups, three common threads that straddle both may be identified: palava hut, kola nut and sassywood (Pajibo 2008: 16–23). They are applied to a range of civil and criminal cases and are important for gendered conflicts, including SGBV. For instance, the palava hut process, which is of near universal importance in the Liberian context, is typically convened by elders and aims to settle a range of disputes, including extramarital affairs, divorce cases, land disputes and debt (including non-support of children) (Pajibo 2008; UN Women 2012). Kola nut is mostly employed in breaches of the civil law, including adultery, in which case a form of a 'fine', known locally as 'damage', is paid. For example, if a man complains that his wife has cheated on him and wants redress from the assumed lover, the local leaders, chiefs and elders are convened. If the accused party is deemed guilty, he is made to pay restitution, in the form of cash or some other item, such as a chicken or goat, to the aggrieved husband. Sassywood is a 'trial by ordeal' system fundamentally based on supernatural beliefs and takes a variety of forms from objectively harmless to deadly. In its mildest version, suspects may be asked to perform an everyday act, such as picking up a light object from the ground, which they will not be able to do if they are guilty. More dangerous forms include compelling the accused person to

drink poisonous beverages, come in contact with heated metal, or put their hands in fire or hot oil – acts that are expected to have no impact on them if they are innocent. Sometimes people, invariably women, subjected to sassywood are accused of witchcraft, subjecting them to severe trials even unto death (Pajibo 2008; Rawls 2011; Leeson and Coyne 2012). Sassywood has been outlawed by the Liberian Government but still is administered clandestinely.

Both the palava hut and kola nut mechanisms are primarily the domain of men (Pajibo 2008; UN Women 2012). This has significant implications for how rape and other forms of sexual violence is dealt with. For instance, despite being recognised in the statutory system as a serious criminal justice issue, rape, in traditional contexts, is often 'talked through' in 'Palava Hut' settings with (cash or kind) settlements made between families and is considered more of a social than a criminal problem. It can include female elders and clan chiefs and resolution through provision of goods in kind (manual labour or food), monetary payment or nothing at all (Dunne 2011; Flomoku and Reeves, 2012). Such traditional practices could, however, be considered as mechanisms to control and manage women, and serve to subvert their agency and autonomy on a daily basis. In these contexts, therefore, it is critical to understand how societal and cultural factors, which are mostly mediated by customary and traditional governance mechanisms, affect the landscape. This is considered in further detail in the next sub-section.

Sexual Violence in Liberia

SGBV represents a critical entry point into a study on hybrid security and justice in Liberia for several reasons. First among these is the high prevalence of SGBV in Liberia, which was first documented during the conflict, the second phase of which coincided with the passage of UN Security Council Resolution 1325 (2000) on women, peace and security. In a 2005 WHO study, 77.4 per cent of respondents reported that they had

experienced rape during the conflict. The study further cited an IRC study, which estimated that two-thirds of women were subjected to violence (including sexual assault, mass rape, sexual slavery and exploitation) during displacement.

Despite sustained post-conflict engagement by national and international actors to develop and implement measures to protect women and girls from gender-based violence (such as the National Action Plan on resolution 1325 (Luppino and Webbe 2011)), prevalence remains high, but persecution and conviction rates remain low. According to OHCHR and UNMIL (2016), rape is the second most commonly reported serious crime in Liberia with 708 cases reported to a variety of officials in 2014, rising to 803 in 2015. Yet only about half of these cases were registered by the police, and just over a quarter sent to court. According to UNMIL data in 2014 only 24 individuals were convicted while the figure barely rose, to 34, the following year.

SGBV is considered to be grossly underreported but despite this and low conviction rates, SGBV cases still account for nearly a quarter of Liberia's nationwide prison population – 23 per cent of 2,066, compared to 22 per cent for armed robbery (UNMIL 2015). According to the MOGCSP Gender-Based Violence Annual Statistical Report of 2015 various factors are responsible for the low trial and conviction rates including 'legal and institutional weaknesses, social mores and attitudes, corruption, lack of will or diligence on the part of Government officials, and logistical constraints.' The report further notes that 'These combined factors have led to a widespread culture of impunity for SGBV, particularly for rape, putting women and children at continued serious risk of sexual violence' (OHCHR and UNMIL, 2016: 4).

The impact of community perceptions, especially men's attitudes towards women and girls, was highlighted in the research undertaken for this study. Respondents pointed to this as the main issue dictating women's lack of access to justice across sectors, noting variously that 'women are

considered as slave for men'; 'women are considered the property of men'; and 'men have no respect for women. An SGBV survivor summarised this problematic succinctly, noting 'justice is based on culture which considers women to be men's property.'² Another noted that cultural practices sanctioned men's abuse of women as a way of showing love (i.e. 'if a man doesn't beat you he doesn't love you'). As such there is little expectation that perpetrators will face serious consequences, despite the criminalisation of rape (GoL/UNCT 2015). Thus, even for a woman to 'carry a case' to the police, she would have to ask her husband.

In addition to rape,³ other forms of SGBV are also pervasive in Liberia. This includes female genital cutting/mutilation (FGC/M), domestic abuse and, for males, abduction and forcible initiation into secret societies, which are equally underreported and under-addressed. Further, some of these examples are forms of violence that emanate directly from cultural and traditional practices (UNMIL 2015).

In Liberia, much of the population is largely governed by traditional authority and social relationships. Thus, community perceptions, especially men's perceptions of women and girls, contribute to the pervasiveness of SGBV, with traditional power structures and beliefs enabling SGBV. As an UNMIL Gender Officer put it, 'the traditional justice system does not favour women and girls'.⁴ Perpetrators are often known to communities, sometimes they are even community leaders, and/or financially stable and, through corruption, are able to pervert the course of justice. The traditional justice system intended to dispense justice to the community instead serves to prevent women and girls from that justice and instead leads to the 'prevalence of compromise', as a consultant for the Ministry of Internal Affairs observed, especially when survivors and their families are fearful of social stigmatisation.⁵

A lack of economic opportunity, stemming from limited access to education and information about the availability of services combined with 'cultural' factors makes

girls and women more vulnerable to abuse. Further, the majority of respondents (74.3 per cent) in community dialogues during consultations for a new UN Joint Programme on SGBV cited poverty as a key driver, noting it was especially prevalent in areas of high economic activity which served as pull factor areas for sexual exploitation and abuse (Government of Liberia and UN Country Team 2015).

In December 2005 a 'Rape Law' made rape illegal for the first time in Liberia. It forbids bail and carries a maximum sentence of life imprisonment. Other related legislation includes the Children's Act, which was passed in 2011, and prohibits FGM/C, all forms of violence and harmful practices against children (defined as under the age of 18). A draft Domestic Violence Act is with the Legislature, and defines domestic violence as: 'any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to a woman, man, or child, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life between parties in an existing or former domestic relationship'. Reforms to the justice sector include the establishment of Criminal Court E in 2008, specifically for adjudicating SGBV cases, in order to create a speedy trial for rape and other sexual offences. Court E is based in Monrovia, but circuit courts in the counties also have jurisdiction over capital offenses, including SGBV. Criminal Court E is presided over by one female judge (although provisions for a second were made in 2016). The Sexual and Gender Based Violent Crimes Unit was established in 2009, with funding from the UN Peacebuilding Fund, based in the Ministry of Justice to provide rapid investigative and prosecutorial response to complaints of rape, gang rape, sexual assaults, sexual abuse, sexual exploitation and incest particularly those committed against children. Alongside legislative and judicial reform has been police reform, including the establishment of various structures, particularly the Women and Children Protection

Section (WACPS), the Gender Affairs Section, the Community Policing Section (CPS) and the Professional Standards Division (PSD) (Bowah and Salahub 2011). In terms of achieving gender justice in a context of parallel and overlapping informal and formal systems two opposing views dominate. The first asserts that the formal system presents the best chance for achieving justice, the strengths of which include the formal justice system's ability (at least in theory) to set the same standard for all citizens, ensuring equal justice to all under the law, maintaining order and upholding principles, such as human rights standards, without prejudice. Indeed, much of the legislative and policy reform outlined above is in line with this approach. At the other end of the spectrum are arguments that 'gender justice... is not alien to customary law as it is practised in many communities across Africa' (Ozoemena and Hansungule 2009: 1–2). Proponents further note that change from within as opposed to externally imposed is likely to be more acceptable to rural citizens particularly. They further query whether legislation is appropriate for regulating social relations, particularly in a customary law system where distinctive forms of traditional practices, such as public insults or witchcraft exist, and where traditional systems govern the majority of people's lives in reality (Ozoemena and Hansungule 2009).

Other researchers advocate a more middle ground approach. For instance, Clark and Stephens (2011), tapping into the notion of hybridity, posit that both state and local customary institutions are capable of delivering justice. They note that it is evident that formal justice systems and customary systems neither exclusively focus on only one model of justice nor suffice as a single means for the achievement of justice. They further argue that in the contemporary reality of most developing countries, no one system – state or non-state – can deliver justice. Instead of idealising one system over another, a more realistic strategy is to focus on overcoming the specific injustices of both state and non-state systems. Other researchers such

as Chopra and Isser (2011; 2012) point to the importance of promoting social change a precursor for addressing inequality, especially as gender inequality is a function of the underlying socio-economic, cultural and political context. The conclusions arising from the research and discussion below are couched within these latter framings. Against this backdrop, the next section maps the hybridity of the justice and security sector as it relates to SGBV, based on fieldwork.

Mapping Formal-Customary-Informal Relationships

As section 2.1 discussed customary mechanisms, rather than an alternative to the state, may be considered as the avenue through which the state is able to manage its population effectively. In fact, the state has devised a range of structures, regulations and guidelines to manage the relationship between itself and traditional justice systems. In the first instance the research sought to get to grips with how this relationship plays out in relation to addressing SGBV. The interlinkages, which work both in favour of and against survivors and victims, were highlighted time and again in interviews, and are demonstrated pictorially in **Figure 1** below.

There are several issues to note in relation to **Figure 1**. This includes there are seeming overlaps in and confusion over the relative roles and responsibilities of the formal and traditional/customary sectors, without clear delineation or sufficient information about the limitations of each. During interviews and focus group discussions traditional authorities and their constituents expressed that they had a significant role to play, even in capital offenses such as rape or even murder (for instance in the context of ritual killing and witchcraft, especially as the formal system claimed no jurisdiction regarding the latter). They were concerned that areas they were not allowed to engage with were going unaddressed.⁶

There was also some confusion about roles and responsibilities within the formal sector; for instance, the investigative role of the police relative to the prosecutorial court system in bringing perpetrators to justice.

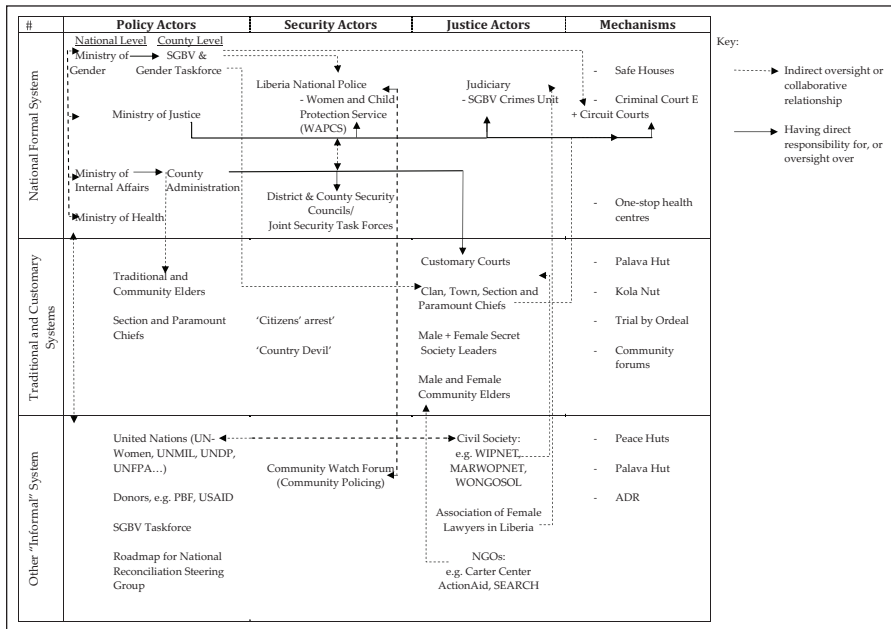


Figure 1: Mapping formal, customary, traditional and informal actors in SGBV prevention.

The following quote from a female WAPCS police officer interviewed demonstrates this clearly: 'women should come to us [i.e. the police] to help seek justice not the court because the court is expensive and cannot give justice.'⁷ She further noted that *only if* she could not handle a [rape] case would she refer it to court.

Also, while most respondents were aware of the formal system's jurisdiction over rape and threat-to-life issues, this was not universal and other issues, such as domestic violence – determined to be a 'family problem' – were not considered relevant to the formal sector.⁸ Even formal sector actors such as public defenders and gender ministry staff recognised that such issues were unlikely to be taken to the formal court system, the pending domestic violence bill notwithstanding. This was especially the case if the violence was within a traditional marriage setting, which interviewees considered should be handled by the traditional system.⁹

Related to this was the concern with a range of other issues that are further considered by communities as SGBV cases (even though they are not considered as such in the conventional sense), including barrenness,

non-maintenance/lack of child support, abandonment and adultery, which for the most part are not formally legislated against and as such find a natural home in the informal sector. This muddies the water because while Liberian communities and their policymakers widely concur that issues such as rape should remain the purview of the formal system, the familial/relational context is considered paramount, and it is likely that communities will continue to prefer to settle such 'family' issues using traditional mechanisms, which prioritise restorative justice, or as one respondent put it, 'make sure people are friendly again'.¹⁰

Further, with regard to seeking care and justice for survivors there is an interconnected community and legal referral pathway that includes family members, female elders/leaders, Sande society and other women's group leaders, chiefs, hospitals, SGBV coordinators, NGOs, health centres and hospitals, police WAPCS, safe homes and the judicial system. Interviews with Gender ministry staff uniformly highlighted their collaboration with Sande and other women's groups in addressing cases and did not consider this to be problematic.¹¹

This corresponds to Dunne (2011), who elaborates on a parallel community referral pathway including female elders, chiefs and so on. In interviews it was also apparent that respondents did not see it as problematic to move back and forth between the different systems in an effort to get more swift and/or appropriate support and justice. While this more nebulous pathway is potentially positive, in that it provides multiple opportunities for support, recourse and redress, it also results in some confusion as to what the actual pathway was, and provides greater incentive to settle matters 'in-house', especially as people may give up trying to get cases to court because of the seemingly numerous steps involved.

The process mapping further highlighted the increasing importance of the national and international development sector, which in **Figure 1** I have labelled the 'informal' sector, a catch-all for actors not in the previous three categories, ranging from national civil society and non-governmental organisations to international donors and organisations which, as noted above, have been significantly pushing ADR mechanisms. They variously engage with the highest levels of government to the lowest grassroots level, and their relatively greater resources ensure that their influence on policy and programming is felt throughout the hybrid system and is discussed further in Section 5.

Several factors were cited as facilitating the interlinkages highlighted above. Most of these – such as bad road networks outside of county capitals (and even within), which often made it difficult for survivors and victims' families to maintain the effort of seeking formal justice, turning instead to more proximate dispute resolution mechanisms – relate to the relative strengths and weaknesses of the traditional and formal sectors, to which we now turn. Though functionally separate, it should be noted that given their overlaps, customary and traditional security orders are often considered together for analysis and discussion purposes.

Formal vs. Traditional: Strengths and Limitations in Providing Access to Justice for SGBV

This section delves further into the relative strengths and weaknesses of the formal, customary legal and traditional sectors in addressing SGBV. These findings are based on interviews and focus group discussions and broadly confirmed in the literature.

Formal System

Among formal, traditional and informal sector respondents both in the capital Monrovia and rural areas, a common perception is that the formal system presents the best chance for achieving justice, the strengths of which include the formal justice system's ability (at least in theory) to set the same standard for all citizens, ensuring equal justice for all under the law, maintaining order and upholding universal principles, such as human rights, without prejudice. Formal sector respondents such as the police and public defenders asserted that the formal system provided an opportunity for 'fair justice' and 'appropriate punishment', in direct contrast to the traditional sector in which compromise was common.¹² In this context, 'compromise' must be understood as settling a case in a manner that is (or appears) more favourable to the guilty party than the aggrieved.

Despite this, interview respondents identified numerous shortcomings and constraints related to the formal sector. Primarily interviewees in urban areas reported that the laudable legal developments outlined in section 2 have not been effectively implemented, and are constrained by funding, capacity and government will.¹³ For instance, although Criminal Court E is dedicated to prosecuting SGBV crimes, it is also slow, until recently only having one sitting judge. As mentioned above, the Circuit courts in the counties are also designated to try SGBV cases; however, they only sit four times a year, sometimes not completing a single case in a 43-day sitting, resulting in an excessive backlog.¹⁴

Further, the Government's budget to address SGBV related crimes is low, with

up to 80 per cent of funding provided by donors.¹⁵ While it constitutes a significant issue for the Ministries of Gender and Justice, there are numerous other competing priorities and the same cannot be said for other Ministries – this lends to the perception nationally that this is not an important issue. An additional problem is that the current system of administration and governance is overly centralised, with inputs and service delivery at county, district and local levels relying on the centre. The decentralisation process in Liberia is on-going but slow. All of these issues are exacerbated by poor technical and administrative capacity at all levels.

Another major disadvantage of the formal system relates to its inaccessibility. Respondents were asked what they considered to be the main obstacles preventing women's access to justice in the formal system. Almost uniformly they cited distance, lack of communications and limited transport.¹⁶ Again this corresponded with other research. A USIP (2008) study, among others (e.g. UNMIL 2012) found that there is widespread dissatisfaction with the formal courts over inaccessibility. Courts are often far from where people live, court dates are frequently postponed, ensuring cases are prosecuted often requires money, and legal aid is limited. The issue of transportation and access is exacerbated by the physical distance between communities and law enforcement stations, which are sometimes located many days' journey from communities. In addition to distance the terrain is unforgiving, and locals are not trusting of law enforcement officers, particularly those from far away.

As a result, engaging with the formal sector is also costly: access to rule of law is regarded a prerogative of those with financial resources due to law enforcement's reliance on the public to provide the money needed to transport police officers to enable them to conduct investigations, as well as transporting themselves to court sessions. Interviewees noted that generally to file a case a complainant needed about LD400 (about US\$4) and a further LD\$ 1000 (US\$ 10)

to transport police to investigate the case, although neither of these figures are formal charges. In summary, as a female WACPS Officer put it, 'If a woman does not have money she cannot access justice'.¹⁷

This issue is also related to corruption. Interviewees across the board acknowledged this as a significant constraint, alongside the seeming impunity afforded to perpetrators.¹⁸ These findings correspond with other research. For instance, during national consultations on justice mechanisms, participants identified corruption in the formal legal system as a primary obstacle to justice, focusing on the lack of transparency in the fees charged to litigants, as much as on the ability of wealthier or more powerful parties to influence the judge (Rawls 2011).

A related issue highlighted in interviews and focus group discussions is the perception among communities that the formal system is unjust because it advocates for perpetrators.¹⁹ This perception relates to the fact that in the judicial system, someone who is patently guilty still has an advocate, in many cases the Public Defender. This legal practice does not make sense to citizens, particularly as perpetrators often go free after spending a limited time in jail. (This could be for reasons that follow rule of law – for instance lack of evidence, pre-trial detention limits being exceeded, etc. but from survivors' and communities' perspectives this is further evidence of the laxity of the formal system).

Even when survivors and their families report cases, they can take such a long time to get to trial that they give up eventually. As a senior UN Women staff member put it, the process is 'complicated and tiresome and frustrates women'.²⁰ Dunne (2011: 16) identified 27 different steps to get through in Liberia's judicial system before a perpetrator may be convicted. The Ministry of Gender's official referral pathway includes: hospital, police, counsellor, and court. While this works somewhat in urban areas, where information and services are available, following the pathway proves extremely difficult in rural areas, not least because supporting services

are limited. Further, testing kits, mechanisms for preserving evidence, counselling and victim support services, etc. are inadequate in most cases. Safe houses exist to house survivors and support them through the court process but they face several constraints. For example, safe houses are almost exclusively donor-funded, thus once a funding period ends, funding may not be renewed.

These constraints have created an overall perception among citizens that there are few, if any, mechanisms for successfully accessing formal justice. While respondents overall acknowledged the primacy of the formal sector as the arena for seeking justice, given these limitations they considered customary and traditional mechanisms to be faster, and more affordable and accessible.²¹ This was in keeping with a 2008 survey by Oxford University, which found that rural Liberians took only four per cent of criminal cases and three per cent of civil cases to the formal courts.

This has great implications for women's access to justice, particularly given the complex gendered relationships within these systems. While the preference is relative to the limitations of the formal sector, it is also couched in the reality of a hybridised system that means many aspects of Liberian citizens' everyday lives are governed by the customary sector. These aspects are discussed in the next section, which also elaborates on the limitations of this sector.

Customary Legal and Traditional Systems

Given the various limitations of the formal sector outlined above, interviewees, especially in rural areas cited a preference for customary justice as it was less costly (usually free), and more accessible being more proximate than formal services to the majority of the population. They further pointed to its user-friendly nature. Also, respondents considered that in contrast to the formal system, Chiefs, elders and spiritual leaders in the customary legal and traditional sectors resolve disputes based on widely accepted cultural paradigms, focusing on restorative justice and social reconciliation.²² These perspectives

were broadly confirmed as advantages, with respondents noting further that they maintained family relations, and were guided by (and maintained respect for) traditional law, norms and customs. Again, these findings were much in keeping with prevailing research (Flomoku and Reeves 2012; Hawes et al 2013).

Given the policy and legislative reforms of recent years, the majority of women interviewees were of the view that at least in theory the formal system should offer the greatest opportunity for justice but agreed that in the traditional system community relations were maintained and some justice was served. However, their views were more nuanced as they noted that they also appreciated the sector as the imposition of fines in the customary system meant that survivors and their families could get some compensation for the crime.²³ In contrast, the formal system only offers imprisonment as a form of punishment, but more often than not alleged perpetrators were released without serving a sentence (i.e. prior to conviction), especially if their pre-trial detention exceeded legal limits. Also, the traditional system is considered to better address a range of cases that *communities* consider to be SGBV, including wife abandonment and persistent non-support, including of children, as well as a range of social disputes formal courts do not consider, such as public insults and witchcraft. While this may relate to communities' understanding of what SGBV means it is important to note that these were cited in direct response to requests for examples of SGBV in their communities.

These observations by no means indicate that the customary/traditional system is universally preferred. As mentioned in the introduction, a rape may traditionally be talked through in a palava hut setting because it is seen as a problem between families and it is for the perpetrator and his family to make the victim and her family whole again; this can include payment, or sometimes even marrying the victim. Early marriage, offensive touching, wife beating, rape and incest are also 'treated as private, and mostly

handled the family way' (GoL/UNCT 2015: 3–4), which leads to the 'prevalence of compromise', as a consultant for the MIA noted,²⁴ especially when survivors and their families are fearful of social stigmatisation. This led numerous interviewees to assert that 'traditional practices are not fair', and result in 'unfair justice for women'.²⁵

Some of these assertions relate to the state's co-optation and corruption of traditional justice processes. Women respondents particularly, noted that some of the negative features affecting accessing justice in the formal system also affected the traditional system, especially their corruption when the alleged perpetrator was a 'big person' in the community, or had the funds to influence the outcome.²⁶ UNMIL (2012), Isser et al (2009) and Pajibo (2008) further note that selecting local leaders (especially paramount and town chiefs) on a nepotistic basis has resulted in the appointment of chiefs with 'limited knowledge and training in the customs of the people over whom they have judicial supervision' (UNMIL 2012: 27). Additionally, differing (unclear) processes e.g. verbal or written summons, records-keeping, and lack of infrastructure all add to this complex picture. Customary courts are also acutely understaffed. This is exacerbated by a lack of resources, resulting in their charging litigants burdensome fees to defray the courts' operating costs (UNMIL 2012). While some chiefs are on the government's (i.e. MIA's) payroll, this is not universally the case, and some have to use their own money to ensure that tribal courts sit. This can make them susceptible to bribery.

The formal system is also considered to have eroded the authority of the customary justice system. State policies and practice, such as the outlawing of Sassywood, are considered to have weakened the traditional system and undermined the ability of chiefs and elders to resolve local disputes. During a stakeholder focus group discussion in Nimba, participants cited a case where a six-month old baby was raped and ultimately died. The perpetrator was apprehended by the community and 'foot-cuffed' in a room

for four days while the police were summoned. However, given the distance from the village from the nearest town, and the road condition, it took four days for the police to arrive and even though he was arrested the case was ultimately compromised. Traditional leaders lamented that the most they could do was apprehend the suspect, who once turned over the police would likely be released in a few days, which serves as no deterrent, whereas in days gone by they would have been able to mete out more appropriate punishment, including 'jebekutu', where a perpetrator is taken to the 'bush' and dealt with appropriately (e.g. beaten and tied to a tree for days subjected to the elements).²⁷ Isser et al (2009) further report chiefs being embarrassed by the limitations on their roles and also that as a result of these limitations, people perceive justice is less likely because the formal system has yet to provide a viable alternative.

The preceding highlights that in a hybrid security governance context, such as Liberia, addressing SGBV can be particularly challenging, especially where recourse to the formal system is problematic, yet (male-dominated) 'traditional' structures and mechanisms that are being engaged are the same that perpetrate, or appear to condone the perpetration of, violence against women and girls, with incidences of additional abuse suffered in the process of trying to access justice. The implications of this are discussed in the final section but before turning to this we consider the engagement of donors and the non-governmental sector with both the formal and traditional sectors in efforts to tackle SGBV.

The 'New' Informal Sector

Figure 1 highlighted the increasing importance of the 'other' informal sector, including civil society organisations—primarily national and international NGOs, and (other) members of the international community, including the UN, and bilateral and multilateral donors. This section elaborates on these, which are a particular feature of Liberia's hybrid justice system, providing

support not only to the formal, customary and traditional sectors but also through programming help to create hybridised systems. A prime example of this is women's Peace Huts, an ADR mechanism modelled on the traditional 'Palava Hut' system. An initiative that originated with the Women in Peacebuilding Network (WIPNET), a civil society organisation spearheaded by the Liberian Nobel Peace Prize Laureate Leymah Gbowee. Peace Huts are considered 'community-led peace building groups', where women meet regularly to 'share information about problems and issues... and plan actions to further investigate, publicize, or resolve the issues' (Moser, 2007: 6). At first, the Peace Huts focused on counselling women who had experienced grief and trauma as well as supporting ex-child soldiers after the civil war. The Peace Huts also serve as a refuge, as women experiencing domestic violence can 'run to the Peace Huts' for safety (Moser 2007: 6). In 2006, Peace Hut women began hearing cases, including rape. According to Luppino and Webbe (2011: 119), in 2011, 17 existing peace huts 'mediated a combined 163 cases. Of those cases, 66 were SGBV related, while 97 cases accounted for other forms of violence such as murder, battery, neglect, etc.' The women additionally help resolve cases involving pregnancy and abandonment and counsel survivors of domestic violence or rape.

Peace Huts are examples of informal spaces in which women's leadership and conflict resolution skills are embraced that have captured popular imagination from their inception, and have received extensive external support, including from UN agencies and a host of international NGOs. There have also been significant efforts to coordinate activities with the formal sector: for instance, with support from UN Women, the Peace Huts have worked with the Liberia national Police (LNP) to help address SGBV. One initiative involved the distribution of mobile phones to the Liberian National Police to participating women, to help prevent crimes and violence against women in March 2012. In addition to the cell-phone distribution, a free hotline to

the police was established with private sector support to facilitate calls (UN Women, 2012).

While an arguably laudable initiative, something of a 'peace hut craze' has seen a multiplicity of different UN agencies and NGOs vying to support in a scattered, ad-hoc way. For example there are peace and palava hut programmes for men, for women, for youth, for communities, etc. However, this has detracted from the overarching problems facing the justice system and little has been done to address problems within the traditional system itself, which continues to exclude women and pursue justice in problematic, sometimes dangerous ways. Moreover, there has been little consideration of how the international appropriation of a central customary justice practice has affected, or could affect, community and cultural dynamics.

This particular example highlights the potentials and pitfalls of efforts, both organic and overt, to improve the complementarity within Liberia's hybrid security and justice sectors with regard to SGBV. In particular, the support of international development actors in promoting initiatives such as peace huts, or development of alternative focal points in the referral pathway, is positive, in that it advocates a community-focused approach. This can, however, privilege alternative or competing informal interests over existing customary structures and traditional authorities. This can lead to serious adverse outcomes by risking the alienation of traditional actors, whom remain cultural gatekeepers and community opinion formers, problematic as their perspectives may be (or, especially so).

These are just a few of the issues that need to be considered when attempting to harness the reality of hybridisation to promote access to justice for SGBV. The next section discusses this in greater detail, drawing conclusions from the research and providing some recommendations going forward.

Conclusion

The preceding discussion highlights both the reality of the intertwined (or hybrid) nature of the Liberian security and justice

sectors and the reality of relative advantages and disadvantages of the formal and traditional/customary sectors in relation to women's access for justice for SGBV. This makes the paper's framing question – what the prospects are for complementary rather than competitive provision of justice for victims of SGBV – somewhat difficult to answer. The research highlighted several pertinent issues. The first is that the notion of compromise is a reality in both sectors – whether to maintain family unity in the case of the traditional sector or because of corruption in the formal sector (which is also increasingly an issue in the traditional sector). These perspectives were repeatedly emphasised by female interviewees, who as a consequence by and large expressed a preference for the formal system, save for its inaccessibility, cost, corruption and, importantly, the fear of ostracism if cases are reported to the police. This indicates that while hybridity is a reality, more resources need to be channelled into the formal sector, which interviewees considered to more universally uphold international human rights standards.

Sections 3 and 5 also demonstrated that numerous opportunities for interaction exist among various actors concerned with addressing SGBV. Indeed, respondents all discussed frequent engagement across sectors – for instance WACPS Officers noted that they often engaged with traditional women's groups, including the Sande Society to support SGBV survivors, while the various NGO representatives noted that they regularly organised joint workshops and promoted engagement between the formal and traditional sectors as part of their programmes. What appeared lacking was focused engagement. Some practical initiatives therefore could include training traditional women leaders as focal points or counsellors in the SGBV referral pathway, especially as women respondents reported seeking support for SGBV cases first from Sande leaders. This could also provide an avenue for addressing harmful traditional practices, such as FGM/C as these are the same leaders that must be engaged to address the practice.

Relatedly, it is important to work both with male and female traditional and religious leaders as community gatekeepers, and partnering and engaging with men's groups to redefine masculinities.

In practical terms collaboration could be fostered in other areas as well. For instance, improving coordination between government agencies and international, national and community NGOs, and of common reporting and record keeping, especially of gender disaggregated data, which would help provide reliable data on the scale and scope of the problem with a view to developing mitigation measures.

An issue apparent in interviews was the lack of knowledge in both the traditional and even in the formal sector of the roles and responsibilities within the formal sector – for instance the WAPCS police officer above who considered adjudication of rape cases to be part of her role. One measure to address this would be to enhance community-based legal expertise, including educating community members about their legal rights and options and capacitating existing community structures to provide legal advice and improved understanding of formal sector processes. Further, supporting dialogue processes between the formal and traditional justice sectors would help build synergies and a shared understanding of agreed legal frameworks. This could be a role for the informal/non-governmental sector. Indeed, as Section 5 highlighted, many existing initiatives are donor- and international NGO-driven, which has adverse implications for immediate applicability and long-term ownership, legitimacy and sustainability. As a result it is critical to engage civil society and foster national ownership of relevant processes.

Interviewees also cautioned against considering SGBV in isolation. They noted that women faced obstacles in many arenas in accessing justice, for instance non-payment of child maintenance. It was also noted that SGBV is not limited to rape, and that other issues, such as domestic violence must also be considered.

Finally, initiatives must acknowledge the overarching importance of changing social norms both in the formal and traditional sectors, upholding the rights and protection of women and girls as a priority, given the largely male-dominated hierarchies in both. It should be a whole-of-community exercise, engaging women, men, boys and girls, and traditional authorities. In order for this engagement to be truly community-focused, however, it needs to be sure to be inclusive of traditional authorities. There is also a need to empower women to be active participants in local governance and political systems, and the potential of the ongoing deconcentration/decentralisation process in ensuring access to basic service delivery, especially health and education, as well as the security and justice sectors.

Notes

- ¹ Liberia was founded in 1817 by the descendants of former American Slaves. Funded by the American Colonization Society (ACS), the settlers declared their independence in 1847. These Americo-Liberians upheld a system of racial segregation, which placed themselves above the indigenous Liberians, believing that they could become civilised only through conversion to Christianity and education.
- ² Interview, SGBV survivor, September 2016.
- ³ Rape tends to rank first in Liberia among sexual offenses reported/registered. For instance 682 rape cases were filed to the Gender Ministry's database in 2014, compared to 407 cases of physical assault and domestic violence.
- ⁴ Interview, UNMIL Gender Officer, 29 January 2016.
- ⁵ Interview, Ministry of Internal Affairs Consultant, 1 February 2016.
- ⁶ Focus group discussion in Nimba and Bomi Counties with community members and county officials, September 2016.
- ⁷ Interview, Women and Children Protection Section (WACPS) Officer, 18 September 2016.
- ⁸ Interviews with community members, traditional leaders and justice and security officials, Bong, Nimba and Bomi Counties, September 2016.
- ⁹ Interviews with community members, traditional leaders and justice and security officials, Bong, Nimba and Bomi Counties, September 2016.
- ¹⁰ Interview, women's group member, September 2016.
- ¹¹ Interviews, Gender Ministry Officers, Bong, Nimba and Bomi Counties, September 2016.
- ¹² Interviews, justice and security actors, Bong, Nimba and Bomi Counties, September 2016.
- ¹³ Interviews, justice and security actors, Monrovia, January–April 2016.
- ¹⁴ Interview, UNMIL Rule of Law Officer, 28 February 2016.
- ¹⁵ Interview, UN Women staff member, 28 January 2016.
- ¹⁶ Interviews, Bong, Nimba and Bomi Counties, September 2016.
- ¹⁷ Interview, WACPS Officer, 18 September 2016.
- ¹⁸ Interviews, Bong, Nimba and Bomi Counties, September 2016.
- ¹⁹ Interviews, Bong, Nimba and Bomi Counties, September 2016.
- ²⁰ Interview, UN Women staff member, 28 January 2016.
- ²¹ Interviews, Bong, Nimba and Bomi Counties, September 2016.
- ²² Interviews, Bong, Nimba and Bomi Counties, September 2016.
- ²³ Interviews, Bong, Nimba and Bomi Counties, September 2016.
- ²⁴ Interview, Ministry of Internal Affairs Consultant, 1 February 2016.
- ²⁵ Interviews, Bong, Nimba and Bomi Counties, September 2016.
- ²⁶ Interviews, Bong, Nimba and Bomi Counties, September 2016.

²⁷ Focus group discussion, Nimba County, September 2016.

Competing Interests

The author has no competing interests to declare.

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