

Gender Based Violence and Access to Justice: the case of Ganta, Liberia

Shai A. Divon, T. Debey Sayndee and
Morten Bøås



Publisher: Norwegian Institute of International Affairs
Copyright: © Norwegian Institute of International Affairs 2016

Any views expressed in this publication are those of the authors. They should not be interpreted as reflecting the views of the Norwegian Institute of International Affairs. The text may not be printed in part or in full without the permission of the authors.

Visiting address: C.J. Hambros plass 2d
Address: P.O. Box 8159 Dep.
NO-0033 Oslo, Norway
Internet: www.nupi.no
E-mail: post@nupi.no
Fax: [+ 47] 22 99 40 50
Tel: [+ 47] 22 99 40 00

Gender Based Violence and Access to Justice: the case of Ganta, Liberia

Shai A. Divon (Norwegian University of Life Sciences), T. Debey Sayndee (University of Liberia) and Morten Bøås (NUPI)

Published by Norwegian Institute of International Affairs

Introduction

Liberia has a unique history as it was first established as a safe haven for freed slaves repatriated from the United States.¹ These freed slaves established the Republic of Liberia in 1847 and they became known as the Americo-Liberians. The problem, however, was that they were just as much strangers in Liberia as they had been in the United States. Given a land to govern, they built their system of rule on the only political and administrative system with which they were familiar: the system of the plantations in the deep south of the United States. The main difference of course was that this time they were the ‘masters’ and the people who already dwelled in what now became Liberia, the ‘servants’.²

The Republic of Liberia was established on a constitution based on the American model. According to the Liberian constitution, all men are born equally free and independent and have certain natural, inherent and inalienable rights. However, ‘all men’ did not mean all men who inhabited the area to which the constitution laid claim; on the contrary, the constitution strongly delineated between the repatriates and the majority population. The members of the so-called ‘native tribes’ were not eligible for election or voting. A firm division between these two groups was therefore institutionalised, laying the foundation for entrenched alienation between the different ethnic groups in Liberia, and between these groups and the new upper class constituted by the Americo-Liberians. Liberia was therefore one of the first countries in the world where an indirect system of rule was codified and protected by the constitution of the country. Thus, in practice what was established was a dual legal system where statutory law based on the Anglo-American Common Law model governed the formal state,³ while a codified customary law (e.g. the Rules and Regulation Governing the Hinterland of 1912), became the legal system of governance for the majority non-Americo-Liberian population of Liberia.⁴

¹ The number of repatriates was relatively small, between 1822 and 1861 about 12,000 colonists landed in Liberia. Of these, 4,500 were freeborn (all the first five presidents had been born in freedom) and about 7,000 were born in slavery. In addition, about 6,000 Africans were freed from slave ships and resettled in Liberia; in one 18-month period in 1860 more than 4,000 were settled along the coast.

² See M. Bøås (1997) ‘Liberia the hell-bound heart? Regime breakdown and the deconstruction of society’, *Alternatives*, 22 (3): 353-380.

³ J. Graef (2015) *Practicing Post-Liberal Peacebuilding: Legal Empowerment and Emergent Hybridity in Liberia*, New York: Palgrave Macmillan, p. 75.

⁴ J. Levitt (2005) *The Evolution of Deadly Conflict in Liberia: From ‘Paternalitarianism’ to State Collapse*, Durham: Carolina Academic Press, pp 138-140.

During the two civil wars in Liberia (1990-97 and 1999-2003), the statutory legal system basically ceased to function as the country disintegrated into what we may call the ‘nationalisation of local conflict.’⁵ Thus, what people were left with was the customary legal system that was enacted in the local communities across the country.

As the civil-war subsided in 2003, the international community stepped into war-torn Liberia with the aim of contributing to peace, reconciliation and the rebuilding of a functioning Liberian state. Drawing its mandate from the UN Security Council Resolution 1509, the United Nations Mission in Liberia (UNMIL) assumed responsibility for the stabilisation of the country and is still present there today. One of the main challenges of this mission was, and still is, to help re-establish the rule of law in Liberia. This objective is particularly challenging as legal, historical, social, cultural, and ethnic realities complicates this matter.

The efforts to rebuild the justice system in Liberia are well documented in a series of publications and articles published by Isser and others.⁶ One of the most challenging tasks of these efforts is the intention to harmonise the statutory and customary legal systems, and especially the tensions arising from the tendency of the international community to prefer modern statutory law as the basis for its post-conflict peace building programmes.⁷ However, as documented by several researchers, customary justice practices in Liberia are, in most cases, the popular preference of ordinary people for a plurality of reasons.⁸ Thus, as long as these preferences are prevalent amongst Liberians, attempts to re-construct the justice system that are disconnected from people experiences, preferences, and perceptions, are destined to fail.⁹

⁵ See for example M. Bøås (2003) ‘The Liberian civil war: new war/old war?’ *Global Society*, 19 (1): 73-88;

and M. Bøås (2015) *The Politics of Conflict Economies: Miners, Merchants and Warriors in the African Borderland*, London: Routledge.

⁶ S.C Lubkemann, D. Isser, and P. Chapman, P. (2011) ‘Neither state nor custom – just naked power: the consequences of ideals-oriented rule of law policy-making in Liberia’, *The Journal of Legal Pluralism and Unofficial Law*, 43 (63): 73-109; S.C. Lubkemann, D. Isser and P.A.Z. Banks III (2011) ‘Unintended consequences: constraint of customary justice in post-conflict Liberia’, in D. Isser (ed.) *Customary Justice and the Rule of Law in Post Conflict Societies*, Washington DC: United States Institute for Peace, pp. 193-238; D. Isser, S.C Lubkemann and S. N’Tow (2009) *Looking for Justice: Liberian Experience with the Perceptions of Local Justice Options*. Washington DC: United States Institute for Peace; J. Graef (2015). S. Abramowitz and H. Moran (2012) ‘International human rights, gender-based violence, and local discourse of abuse in post-conflict Liberia: a problem of “culture”?’ *African Studies Review*, 55 (1): 119-146.

⁷ S.C. Lubkemann, D. Isser and P. Chapman (2011: 73).

⁸ *Ibid.* p. 85.

⁹ M. Bøås and K. Stig (2010) ‘Security sector reform in Liberia: an uneven partnership without local ownership’, *Journal of Intervention and Statebuilding*, 4 (3): 285-303.

Amongst the various civil and criminal issues plaguing post-war Liberia, Sexual and Gender Based Violence (GBV) is one of the most prominent. A number of historical and contemporary realities are expressed through the issues of GBV in Liberia. Among these are the traditional gender roles that codify the domestic subordination of the women in Liberian society,¹⁰ and the widespread practices of GBV that emerged as a consequence of the 'nationalisation of local conflict' that the civil war in such a weak state brought about.¹¹

Against this background, the Mapping Gender-based Violence and Access to Justice: Re-traditionalisation in Liberia (GENTRA) project was established to address the knowledge gap between assumptions about how GBV is best attended, and the actual preferences of Liberians. The focus of GENTRA is not on GBV cases as such, but rather on how people chose to address GBV in the plural legal system of Liberia, why people make these choices, how the different legal systems address GBV cases, and how people perceive the outcomes of these processes. Through this focus, GENTRA is mapping GBV and access to justice in Liberia, while creating a local database and capacity to help inform policymakers on GBV issues. The GENTRA-project is funded by the Norwegian Research Council and is a collaborative effort between the Norwegian Institute of International Affairs (NUPI) and the Kofi Annan Institute for Conflict Transformation at the University of Liberia. In this Working Paper we will document and analyse how people make these choice in and around the town of Ganta in Nimba County.

¹⁰ Traditional gender roles and rules surrounding those stand in contrast to the statutory Domestic Relation Law.

M. Bøås and A. Hatløy (2008) 'Getting in, getting out: militia membership and prospects for re-integration in post-war Liberia', *Journal of Modern African Studies*, 46 (1): 33-55.

GENTRA – the case of Ganta in Nimba County

Located on the border with Guinea, Ganta is a bustling trading centre situated approximately 240 km to the north-east of the capital Monrovia. The relatively good tarmac road between Monrovia and Ganta reduces the travel time between the cities to 3.5 hours, making Ganta one of the most accessible towns in Liberia. Ganta city limits cover eight square miles, placing an approximate 62,000 inhabitants within this reach, including the population of a number of rural villages. These facts present a number of unique challenges to the Liberian state apparatus. As a central trading centre, border crossing town, and a bustling city, Ganta is an attractive location for people seeking work, and therefore also has a large number of ex-combatants working in various capacities, including as motorcycle taxi-drivers.¹² The semi-rural town of Ganta is divided into 28 communities, mostly consisting of the Mano ethnic group, with an important presence of the Gio and the Mandingo groups.¹³ As an important transition point for people and goods, Ganta is a lively city by day and night, and therefore also hosts a noticeable presence of local sex workers.

In late September 2015, Ganta experienced a case of mob violence illustrating the difficulties of the Liberian state to effectively project power through its security apparatus. The riots in Ganta were conducted by motorcycle taxi drivers as a response to the murder of a young man in a suspected case of ritual killing. This murder was the last in a series of three such killings in Ganta. Angered by the inability of the Ganta police to bring the perpetrators to justice, the motorcycle gang conducted their own ‘investigation’ and turned their anger against a local wealthy businessman as they suspected his involvement in the killings. This resulted in a mob ransacking Ganta’s police station, the destruction of the only existing police vehicle, the looting and burning of a number of properties owned by the businessman and his family, and the murder of at least two people.

This outbreak of violence is one example of over 30 cases of such spontaneous eruptions in Liberia during the past few years. These cases

¹² Interviews with Ganta police, district commissioner, Ganta mayor, and UNMIL police officials.

¹³ In total Liberia is comprised by 16 ethnic groups in addition to the Americo-Liberians. These are Bassa, Belle, Dey, Gbandi, Gio, Gola, Grebo, Kissi, Kpelle, Krahn, Kru, Loma, Mandingo, Mano, Mende and Vai.

illustrate the difficulty of the Liberian state to project coercive and disciplinary power in instances where rioters decide to take justice into their own hands, and the subsequent inability to bring perpetrators to justice and create effective deterrence. The latest case in Ganta comes as the UNMIL mission is slowly drawing back its forces and reducing its manpower in Liberia.¹⁴

Organised mobs on rampage, such as in the case above, are reminders of the violence and uncertainty that existed during the civil war. When such instances occur, they exacerbate the lack of trust expressed by Liberians in the ability of the state to ensure their security and safety. It is against this backdrop that GENTRA has been applied in Ganta during the month of December 2015.

¹⁴ In accordance with Security Council Resolution 2239 (2015) which calls for a substantial reduction of UNMIL force by 30 June 2016.

GBV and Legal Pluralism in Ganta

GENTRA was implemented in Ganta through the combination of a survey, semi-structured interviews, and focus group discussions designed to tease out how various groups of people navigate the plural legal system, how they make decisions, and what are the general outcomes of these processes. Various key informants, including state officials, traditional and community leaders, victims of GBV, perpetrators of GBV, as well as members of the general public participated in this research.

The most general finding from our research is consistent with the observations made by previous studies over the years,¹⁵ namely, that there is a clear and overwhelming preference of Liberians to turn to customary legal solutions as a default. This preference was expressed both by ordinary citizens and state officials in Ganta; including the police and court officials for certain GBV related offenses. In the following pages we will present a more nuanced analysis of the data collected as well as some initial policy implications relevant for Ganta and other similar locations in Liberia.

GBV offenses –categories and preferences

GBV is a term that is generally interpreted differently by various people. The United Nations' Office of the High Commissioner for Human Rights committee on the Elimination and Discrimination against Women explains GBV as '...a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men'.¹⁶ The local interpretations of this definition is both contextual and cultural, and offers a complex picture of both what is considered GBV, and what are the appropriate ways of dealing with it.

The most distinct differentiation offered by most respondents across gender and societal roles is the distinction between domestic GBV and other kinds of GBV. When GBV offences are committed in a domestic setting, the overwhelming majority of respondents indicated that they will carry the issue to a customary conflict resolution mechanism. Men in general prefer using the customary legal options when it comes to any domestic GBV case. This includes cases of violence, neglect of responsibilities, sexual harassment, and sexual violence against members of the household, and sometimes by extended family members. The exceptions

¹⁵ See the references given in footnote 6.

¹⁶ Convention on the Elimination of all forms of Discriminating against Women, General Recommendations No. 19.

to this preference are cases when the victim is a 'child', and the committed crime is rape. The category 'child' is, however, a problematic one, as many male respondents did not relate to the legal definition of statutory rape which criminalises sexual contact with a woman under the age of eighteen. The category 'child' is rather loosely defined by men, including elders who oversee customary conflict resolution mechanisms and who by referring to old customs and traditions, refers to a 'child' as a female who is not mature for sexual relations, without specifying any specific age as such. While women also prefer addressing domestic GBV through the customary system, they express mixed preference when it comes to sexual violence against them, and clear preference of seeking the statutory legal system when sexual crimes are committed against children. On any other domestic GBV case, women prefer seeking redress through the customary system.

When the issue of GBV in general is set outside domestic settings, the preferences become even more nuanced. Firstly we need to distinguish between offenders who are defined as strangers or foreigners, and offenders who are considered in one form or another, members of the community. The word 'community' assumes different meanings in Liberia. A community spans across a variety of social organisations and formal and informal administrative spaces, including inhabitants of defined geographical areas, members of tribes, clans, ethnic groups, as well as members of religious congregations, schools, and secret societies. There are also communal relationships across these categories as well as customary mechanisms for conflict resolution across them.

When it comes to GBV offenses committed by strangers or foreigners, both men and women agree that cases should be taken immediately to the statutory system. This preference is related to an underlying rationale which will be specified below. When it comes to members of the 'community' the variability of preferences relate both to the contextual definition of 'community' and across communities, to the types of GBV offenses discussed, and to the gender of the respondent. In general, when offenders are considered members of a community, with the exclusion of rape, men and women prefer seeking justice through the customary legal system. When it comes to rape in general, women prefer seeking justice through the statutory legal system, while men have a more nuanced view of rape. Not all men consider sexual harassment as an offense, and non-consensual sexual relations between adults as rape, especially in cases when they view the women as contributing to 'confusion' through her behaviour or dress. The majority of male respondents explained that when non-consensual sexual relations between adults takes place, especially in the instances where only force (as opposed to violence) and trickery (getting the victim drunk for example) are used, the cases should be handled through the customary legal system. Most

men agree that when ‘damaging’ violence is used,¹⁷ or when the victim is a child, the cases should be referred to the statutory legal system and not be handled through the customary courts. Sexual harassment is usually considered by men as playful jokes that are to be dismissed altogether. Women would often seemingly tolerate individual cases of harassment, mainly because they are accustomed to such behaviours by men, but would report them to the community if offenses are repeated against them.

Another category of GBV offenses that takes place in schools is known as the ‘sex for grades’ phenomena. This type of GBV is widely present and known to men, women, schoolchildren, teachers and school principals. Formally, school principals are against these kinds of practices, but aware of their existence in the schools they manage. While they openly discourage such actions, some also confess to avoiding the issue in practice, and only take measures when matters are actively brought directly to their attention. However, only in cases where a tangible proof can be submitted against offending teachers, will principals take more concrete action as for example through immediate dismissal of the offender. Such cases are usually brought up by parents and students directly to the principal, where the school becomes a form of a ‘community’, and the principal will equal a community ‘elder’. Nevertheless, such cases can also be brought up through approaching the village elders or the head of a religious community. Sex for grades as a GBV offense is thus usually handled through a customary mechanism, and not taken through the statutory system.

Defining ‘customary’ justice in contrast to statutory justice

When we refer to customary justice in Liberia today, we mainly refer to cultural principles, rather than practices. This is because cultural justice practices vary significantly across history and throughout geographical spaces. For instance, in the past, and perhaps also in isolated present cases, customary justice in practice was carried through trial-by-ordeal such as ‘sassywood’ or another sort of ordeal associated with customs or secret societies. In modern Liberia, customary justice assumes other forms; it is contextual, differentiated, and nuanced across offenses. Nevertheless, the principles of the customary system remain the same, namely, to initiate a restorative process aiming at ensuring community cohesion and preventing future animosity or practices that disturb peace and harmony in a community. These principles reflect the way the majority of Liberian society is organised outside the main urban hubs. Most people belong to various forms of ‘communities’ with closely knitted relationships to other members of that ‘community’ characterised by sharing physical, social, cultural, religious and mental spaces, and where

¹⁷ The examples given for this category are long term ‘damages’ including, physical, mental and medical damages that require immediate and long term follow ups, usually involving expenses.

authority is drawn from achieving the status of ‘elder’ (which can mean in contexts parents, age, or various forms of leadership such as school principal, cultural positions, religious leadership, belonging to a ruling lineage etc.).

These processes are in obvious contradiction with the statutory legal system, where various criminal and civilian conflicts are dealt with through an adversarial process. This kind of process creates accusatorial dynamics through argumentative procedures that usually end with a clear winner and loser. As such, the statutory system may bring a tangible resolution to a case, but exacerbates animosity between people once a sentence has been made.

The inability of the statutory system, by its nature, to restore social relationships is a fact that most Liberians are well aware of. Turning to the statutory system is therefore considered an option when people seek redress through punishment or when future peaceful relationships are not a priority. In addition, the statutory legal system and its various technologies of power are seen by most respondents as exploitative, concerned with the extraction of money, and where those who have access to resources prevail.

Customary vs. Statutory – practices and choices

Before we can use the information above to explain why and how people navigate the plural legal system when it comes to addressing GBV related offenses, we would like to outline some concrete impediments affecting how and why choices are made. While we observed these challenges directly during this research, it is important to emphasise that they were also observed, brought up and emphasised by almost all the participating respondents, officials and ordinary civilians alike, as facts that affect their decision-making processes.

Statutory system – infrastructure issues and implications

The police and the magistrate court are the two main arms of the Liberian government involved in the statutory legal processes in Ganta. The current police station in Ganta was built in 2006 through a Quick Impact Project financed by UNMIL. Ganta’s police consist of approximately 40 (unarmed) police officers which were trained by UNMIL to constitute as a service for society through the principles of Community Policing. While trained to serve the community, and while possessing the willingness and motivation to do so, the police in Ganta faces severe difficulties.

In terms of infrastructure, the small, unwelcoming and crowded police station is shrouded in a constant smell of urine emanating from the attached jail. The police, whose responsibilities cover the eight square miles city limits, have no means of transportation, as the last functioning car was destroyed by the mob during the last riots (see above). The lack of transportation affects the ability of the police to respond efficiently

and effectively to the needs of the community, including response to crime, ability to mobilise to arrest offenders, and the ability to transport offenders to/from court/jail/prison.¹⁸ In most cases when such needs arise, the police would mobilise if the plaintiff would carry their costs of transportation.

With no means of transportation and inadequate infrastructure, the ability of the police in Ganta to serve the community or constitute a force in time of need is seriously impeded. These facts have important effects on how the police operate and how it is perceived by the population. Subsequently, these effects lead people to make certain choices based on the effectiveness of the justice systems available to them, namely to prefer the customary conflict resolution mechanisms over the statutory system.

Ganta also hosts a magistrate court presided by three Judges. Like the police, the court has no means of transportation, subsequently rendering the task of serving court orders or transporting offenders, difficult and expensive with costs transferred to the plaintiff. In addition, while Ganta has a local BAR association and a few registered lawyers, none reside permanently in the city. When the need arises, a lawyer needs to be brought from Monrovia, his expenses fully paid by the plaintiff. These issues not only slow down the work of the court, but also increase the plaintiff expenses, should him or her chose to pursue a case. It is important to emphasise that the magistrate court in Ganta only has jurisdiction over misdemeanour offenses and infractions, and all other cases are referred to the Circuit Court in *Sanniquellie*, the county capital. These facts lead to a number of consequences, including a huge back-log of cases in the courts, the dismissal of cases before they get to trial due to technicalities relating to the lack of access to legal advice, and expensive costs inflicted to the plaintiff due to lack of infrastructure and the availability of legal advice.

These conditions have several tangible implications: firstly, a person who wishes to use the services of the police or the court is met by an immediate bureaucratic requirement of payment, followed by a series of subsequent payments, if, for example, the police or court requires transportation.¹⁹ Once a case is referred to the statutory system, it enters a formal process of litigation that requires following certain procedures and fulfilling certain requirements, some necessitate access to knowledge and advice of third parties. Due to lack of personal and infrastructure, a case referred to the statutory system will almost by necessity enter the back-log; resolution is therefore not immediate and may take substantial time, if available at all. In many instances, to sustain a case

¹⁸ As indicated by respondents, even when the police had a functioning car, fill the car with fuel was a costly and controversial issue.

¹⁹ Various fees associated with bureaucratic process such as rate of arrest, transport rates, warrant serving rates etc.

in the statutory system the plaintiff will be required to invest time and money. As such, the statutory system favours by default people with knowledge and means. This last observation is aggravated by a perception expressed by most respondents, claiming that in order to get a case through the statutory legal system, money is required not only for formal bureaucratic and procedural purposes, but also as ‘incentives’ to various officials, whether it is to get a case through the system or to influence the outcome of the case.²⁰

Customary system – tradition and peer pressure

In contrast to the statutory system, approaching the customary legal system would not require, in most cases,²¹ the plaintiff to invest money. The procedure in the customary system would involve summoning the parties (possibly involving other family members such as parents), hearing the complaint and the responses, and summoning witnesses if needed. The process will end when a party is found ‘guilty’ and asked to apologise and make reparations to the injured party. The reparations vary through the different communities and according to different offenses. They usually involve an admission of guilt and apology, a sacrificial ceremony, and the payments of a fine which is paid to the community and/or to the plaintiff. In most cases, community leaders would not deal with cases of rape if brought to them, that is, non-domestic rape of a child or an adult. The reasons for that will be discussed further below.

Nevertheless, despite being an accepted and important social institution, a mechanism for restoring communal peace and harmony, and an expressed preference of most respondents, many women respondents indicated that they approach the customary system for resolution of GBV issues not necessarily due to the qualities listed above, but mainly because of the poor alternative. The reference to the paucity of alternatives revolves around two main issues: firstly, in relation to the need to have access to knowledge and means as resources that often determine the process and outcomes of a statutory procedure. This necessity, which relates to lack of infrastructure, lack of education, lack of economic means, and the livelihood strategies/corruption employed by officers of the court and members of the police, acts as an active deterrent for people weighting legal alternatives. Secondly, the social and economic status of (most) women in the Liberian society, coupled with the adversarial nature and punitive results of the statutory system, lead to consequences that may satisfy the victims need for retribution, but may, in cases of domestic GBV and economic neglect, undermine further the victims’ livelihood. To concretise this statement, we need to recognise that in a normal domestic setting in Liberia, the man is the principal breadwinner. If a

²⁰ This last point could be referred to as corruption, but some may claim that given the circumstances in Liberia this is simply a matter of livelihood strategy.

²¹ There are cases where plaintiff or accused may attempt, and even succeed, in influencing outcomes in the customary legal system through distributing monetary incentives.

woman decides to take a man to the statutory court system, the result may place him behind bars and/or inflict a fine upon him. In many cases, as explained to us by a magistrate in Ganta, inflicting a fine on a person who has no ability to pay it will eventually lead to imprisonment. In these cases, and as mentioned above, while a woman may satisfy her need for retribution by placing a victimiser behind bars, it will not resolve animosity, will not restore relationships, and may not lead to monetary redress. It is because of these likely outcomes that women would, in most cases, prefer to turn to the customary conflict resolution mechanisms, where social relations and communal responsibility, often lead to a resolution of cases where redress becomes tangible.

Through the interviews and focus group discussions conducted, it became evident that both state officials and community leaders advise victims of GBV offenses (with the exception of rape cases) to first seek redress through the customary system. In some communities, if a person chooses to reject such advice given by community leaders, he or she may face community alienation. The threat of alienation acts as a significant deterrent in a community; both as a mechanism that imposes resolution of issues within a community, as well as a mechanism that forces parties seeking a customary conflict resolution processes to accept the outcomes.

GBV offenses: deciding factors and legal systems

The underlying rationale for deciding which system to turn to for justice is determined by weighing the gravity of the outcome of the offense committed, against the level of redress currently offered by each system. As mentioned above, before the emancipated slaves colonised what is known as contemporary Liberia, and for many years after they settled, the various original ethnic groups of Liberia practised customary justice according to culture and tradition. Justice during those days was determined by village elders from ruling lineages, often organised in various secret societies who carried the matters to be decided to the 'poro bush'. In these contexts, various punishments were inflicted on offenders depending on the gravity of the crime. Some of these punishments would be severe and violent. Today, these practices are outlawed by the Liberian state and occur only in rare occasions. As such, the contemporary customary legal system has no means to inflict severe and violent punishment against offenders. The extent of redress offered by the customary legal system is structured around reforming relationships, educating about correct/acceptable behaviours, inflicting fines, and being alienated/expelled from the community. As such, they offer satisfactory conflict resolution mechanisms in cases where all parties have an interest in accepting a peaceful solution. However, in some cases where there are long-term consequences associated with an offense, such as an expensive or permanent injury to a victim (be it physical, mental, or social), the customary system does not offer a 'satisfactory' redress. In these cases, victims prefer seeking justice through the statutory system who

can inflict severe punishment against offenders, including removing them from the environment of the victim through imprisonment.

Rape for example, can lead to permanent physical disabilities, such as the inability to bear children. It can leave long-term mental injuries with the victim, and cause serious medical conditions, some life disabling. The disabilities that may come with 'severe' GBV offenses such as rape may require a long-term and sustained redress by an offender. Therefore, when it comes to such offenses, both victims and community leaders prefer initiating processes that lead to seeking justice through the statutory system. Such processes are initiated by approaching the police as well as the hospital in cases of rape or severe violence.

'Customary justice' today

Today, the landscape of customary legal practices in Liberia incorporates a multitude of institutions and actors that participate in alternative dispute resolution mechanism. Here we can locate a hybridity consisting of tradition, customs, and modern practices mixed through a process of post conflict reconstruction by various actors, including local actors, UNMIL, various elements of the international community, and a variety of NGOs', all working sometimes together, but in many cases in parallel, to reform and reconstruct post-war Liberia.

In Ganta, various actors assert their position as 'elders' practicing 'customary justice'. These include the traditional community elders, various community leaders, town chiefs, clan chiefs, paramount chief, district commissioner, religious leaders, school principals, police officers, town magistrates, mayor, NGO trained 'paralegals', and local NGOs representatives and leaders. All these titleholders testify to have presided over alternative dispute resolution mechanisms, that is, mechanisms that do not carry cases through the statutory system. These resolution mechanisms are anchored in the customary principles of restoring community peace through understanding and compromise.

It seems that in Ganta today, any dispute resolution mechanism that does not follow the rules and procedures of that statutory system is referred to as customary justice. Thus the town magistrate professes to employ customary justice in an effort to lighten his back-log burden, by summoning parties and reaching an understanding without the need to carry the case through formal litigation. The same mechanisms are employed by the police through encouraging people to reconcile following police mediation without the need to process cases through the statutory system.

The plurality of actors involved in customary justice allows individuals from all layers of society to find a mechanism for addressing disputes. It also allows individuals to move in a hierarchy of customary dispute resolution mechanism if they feel that redress was not achieved, and

turn at any point to the statutory legal system for seeking redress if not satisfied with the customary system. But as mentioned above, in many cases, not accepting or ignoring a resolution achieved through the customary system, or choosing to carry matters to the statutory system when social norms dictate an expectation that they would be dealt with through the customary system, may lead to societal consequences.

Current problems

One of the main challenges to the Liberian state that is a consequence of the practice of seeking justice is the ability to enforce universal standards through state laws. While the customary legal system offers a number of solutions that restore and preserve peaceful co-existence, it could also lead to a continuation of highly bias gender relationships and customary tyrannies. In Liberian tradition, like in many other places in the world, gendered roles are a reality anchored in long standing practices, cultural, and social constructions. Attempts to modify these institutions are seen by many members of various Liberian communities as foreign interference. This opinion was widely expressed by many respondents in Ganta, both male and female.

This underlying fact influences and interacts with current livelihood strategies of Liberians. These practices create a reality where males are the principal breadwinners in most cases, and as such females become subordinated to the power of men. This pushes females victimised by domestic GBV to seek a solutions where they would continue to access the benefits provided by the males they depend on. This usually means a solution anchored in customary justice focused on restoring peaceful relationships rather than seeking to punish behaviour. As discussed above, this system is clearly preferred by men as the outcomes of a customary process are relatively light punitively in relation to the offense committed and statutory standards.²²

The solutions offered by the statutory system for GBV related offenses do not fit with the current livelihood realities faced by most Liberians. With the exclusion of rapes, most solutions offered by the statutory system to GBV cases will result in a situation that will aggravate the livelihood options of a victim, especially in domestic settings. Hypothetically, as indicated by respondents during the study, most females would have liked to use the statutory system in cases of GBV, if the system would have worked as intended, and if such a choice would not affect their ability to earn an income and take care of their children and household. That

²² The problems faced by sex workers in Ganta are also linked to the traditional gender roles in Liberian society. Many of the sex workers in Ganta are not 'professional' prostitutes, but rather young girls and women seeking a quick income in one of the few ways available to them. Since most women are not able to access work, especially work traditionally carried men such as driving taxis or construction work, many find no alternative but selling their bodies at night.

is to say that two main conditions need to be in place for women to turn to the statutory system for justice in GBV cases: firstly, the statutory system needs to function efficiently and effectively. It must have the proper physical and bureaucratic infrastructures to function, and must be easily accessible for the population in terms of rates and in terms of legal advice and procedures. Secondly, if women would have had more economic independence from men, most GBV cases would have been referred to the statutory system where a solution would not only discipline the perpetrator, but would also force him or her to cease his or her actions and deter future transgressions with a threat of real punishment. In other words, most women victims of GBV seem to carry pain and insult which is not satisfied by the customary resolution mechanisms, but which they are willing to accept under the current circumstances.

Policy implications

As indicated above, there are underlying challenges of equity and equality for women, coupled with the inability of Liberians to access the livelihood options and generate a sustainable income that provides safety and security. As long as these underlying conditions exist, they will continue to play a significant role in the way choices are made in relation to the plural legal system. The customary system serves various purposes in modern Liberia, and fills an important gap in relation to the ability of the formal state to govern through its institutions. As long as Liberia struggles to develop its physical and economic infrastructures, and as long as large segments of the population find the official institutions of the state inaccessible for the variety of reason discussed above, the customary solutions for GBV will persist even with inadequacies.

Nevertheless, the implementation of number of concrete changes in Ganta could improve the functioning of the statutory system and slowly modify the reputation of the police and courts.

In terms of infrastructure, there are a number of immediate improvements that can be introduced, provided that these are instituted with the arrangements that ensure sustainability. In order to improve the reputation of the courts and the police, they must have a sustained access to transportation. Sustained in this case means the ability to maintain vehicles and fuel them as needed, on the expense of the state and without hindrance. Transportations costs for accomplishing police and court work should not be outsourced to the plaintiffs nor the individuals serving these institutions. As a matter of fact, if the courts and the police would reduce, or in a perfect situation, cancel altogether, the requirement for any kind of fees from plaintiffs, people would turn more frequently to the statutory system for solutions. In addition, further support should be granted to Ganta to remove the backlog in the courts. This includes the presence of state appointed prosecutors and defenders in Ganta focusing on criminal cases that can help plaintiffs and accused to move a case through the system as fast as possible. The costs of these

should be inflicted on the state for criminal cases. These elements must be the starting point for building a reliable, effective and efficient statutory system, accessible to the ordinary civilians and ensuring quick redress. This will also significantly improve police community relations and also give positive perceptions of the state.

There is also room to consider the enlargement of the court in Ganta including the jurisdiction to preside over felonies and the construction of prison facilities. This last point implies a significant increase in infrastructure and support to the court in Ganta. This will reduce the need to transfer cases to the court in Sanniquellie, and by extension reduce costs and decrease the handling time of cases.

In addition, there is a need to rebuild the reputation of the police in Ganta both as a service and a force. The police must have the ability to quickly mobilise against mobs and criminals if the need arises and efficiently and effectively deal with such problems in a way that deters future transgressions. The inability of the police to mobilise or to effectively deal with mob violence, decreases the value of the police in the eye of the population to the point at ridicule.

Nonetheless, in the face of the current socio-economic realities in Liberia, the customary dispute resolution mechanisms will persist. An important step for the incorporation of these mechanisms into the state system and creating a better harmonisation and knowledge is to establish a registration system where customary courts document the cases they deal with and register the people involved. These records should be collected, analysed, and archived by the state. This will form a database allowing the Liberian state to better understand the extent of challenges in Liberian societies, who is involved in those challenges and how they are resolved. With the existence of such a database, policy options will become much clearer.



Norwegian Institute of International Affairs

Established in 1959, the Norwegian Institute of International Affairs [NUPI] is a leading independent research institute on international politics and areas of relevance to Norwegian foreign policy. Formally under the Ministry of Education and Research, NUPI nevertheless operates as an independent, non-political instance in all its professional activities. Research undertaken at NUPI ranges from short-term applied research to more long-term basic research.

About the Authors

Morten Bøås is Research Professor at NUPI. He has worked extensively in Liberia and West Africa. Bøås is the author of numerous works concerning African politics and conflict, and his last book is *The Politics of Conflict Economies: Miners, Merchants and Warriors in the African Borderland*, Routledge 2015.

Shai André Divon is a Postdoctoral Research Fellow with the Department of International Environment and Development Studies, Norwegian University of Life Sciences. He has extensive military and security background and a PhD in Development Politics. He is the co-author

NUPI

Norwegian Institute of International Affairs
C.J. Hambros plass 2D
PO Box 8159 Dep. NO-0033 Oslo, Norway
www.nupi.no | info@nupi.no

US Assistance in Africa: Exceptional Power
(Routledge, 2016, forthcoming).

T. Debey Sayndee is Associate Professor and Director of the Kofi Annan Institute for Conflict Transformation (KAICT), University of Liberia. Dr Sayndee has served as a consultant for the UN and Women's Campaign International, and in 2010-11 he was a visiting scholar in the University of Michigan's African Presidential Scholars Program. Dr. Sayndee is the author of numerous works including *African Truth Commissions and Transitional Justice* and the forthcoming edited collection *A History of Liberia's Future*.