



Womens crossborder focus group discussion

Accessing justice for sexual and gender-based violence crimes in Liberia's hybrid system

Background

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. What potentially sets it apart, however, is its peculiar history, stemming from Americo-Liberian colonisation and settlement that 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 Chief's (or customary) courts, 'created by regulation and statute' (United States Institute for Peace 2008: 7) and a 'traditional' indigenous system

(ibid). The latter two are referred to as the 'informal system' for the purposes of this policy brief.

Despite a long-established formal system, there is a widespread perception that Liberia's legislative and judicial system does not work in the interest of the majority of the population. This has consolidated or even increased reliance on informal and traditional justice mechanisms (Isser, Lubkemann, and N'Tow 2009; Flomoku and Reeves 2012), with a 2008 Oxford University study estimating that rural Liberians took only four per cent of criminal cases and three per cent of civil cases to the formal courts. This has become a source of concern with regard to access to justice for vulnerable groups, including women, youth and poor

people, given that traditional justice mechanisms are often considered to be controlled by mostly male elders. Nevertheless, given the hybrid nature of Liberia's justice system, there is increasing interest in understanding how Liberia's justice sector, and the average Liberian citizen's access to justice, may be enhanced by embracing the hybridism in the system.

This policy brief presents some findings from a study that considered the challenges and opportunities presented by a hybrid justice system in relation to addressing sexual and gender-based violence (SGBV), which remains among the most frequently committed crimes in Liberia. SGBV cases account for nearly a quarter of Liberia's nationwide prison population – 23 per cent of 2,066 individuals, compared to 22 per cent for armed robbery (UNMIL 2015) but still estimated as only a fraction of perpetrators. The rape of minors is a depressingly increasing trend. Data from four hospitals in Montserrado County in 2013 shows that of services provided to 814 survivors of rape, 772 were children (Sarker 2013).

For the purpose of this brief SGBV is defined as a form of discrimination, and violence that is 'directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty' (CEDAW 1992). Community perceptions, especially men's perceptions of females contribute to the pervasiveness of SGBV. 'Culture' prevents women

and girls from accessing justice, because issues such as early marriage, offensive touching, wife beating, rape and incest 'are treated as private, and mostly handled the family way' (GoL/UNCT 2015: 3–4), such that even when it happens people get away with it. As such there is little expectation that perpetrators will face serious consequences, despite the criminalisation of rape (GoL/UNCT 2015).

Research methods

This policy brief is informed by periodic research undertaken in Liberia between June 2015 and September 2016. This included participant observation in the development of the 2015-2020 UN Joint Programme on SGBV, and several traditional elders' and rural women leaders' meetings; process mapping of the progress of various draft legislation related to gender, including the domestic violence bill; and stakeholder interviews, including with representatives of the ministry of justice, gender, internal affairs, the Liberia National Police, the UN (UNMIL and UNWomen), and NGOs. Additionally, fieldwork was undertaken in 4 counties outside Monrovia: Lofa, Nimba, Bong and Bomi, where 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.



Key findings

Policymakers highlighted a variety of efforts that have been made to improve access to justice for SGBV survivors/victims in the formal sector. These include:

- **Legislation**, including the Rape Law, passed in December 2005, making rape illegal for the first time in Liberia; the Children's Act, passed in 2011, prohibiting FGM/C, all forms of violence and harmful practices against children (defined as under the age of 18); and the draft Domestic Violence Act, passed by the House of Representatives in July 2016, after removing provisions for banning FGM/C but pending concurrence in the Senate.
- **Justice sector reform**, including the establishment of Criminal Court E in 2008, specifically for adjudicating on SGBV cases, in order to create a speedy trial for rape and other sexual offences; and establishment of the Sexual and Gender Based Violent Crimes Unit in 2009, based in the Ministry of Justice to provide rapid investigative and prosecutorial response.
- **Police reform** since 2003, including the establishment of the Women and Children Protection Section (WACPS), the Gender Affairs Section, the Community Policing Section (CPS) and the Professional Standards Division (PSD)
- **Policy development and implementation**, led by the Ministry of Gender, Children and Social Protection (MOGCSP), including successive National Action Plans for the Prevention and management of Gender-Based Violence in Liberia; a National framework for Standard Operating Procedures for Prevention and Response to Sexual Gender Based Violence in Liberia, developed in 2009; and successive Government of Liberia-United Nations Joint Programmes on SGBV.

In the context of these reforms, interviewees – including law enforcement, traditional leaders, local government, community members – overwhelmingly expressed an awareness that as a criminal matter, the formal legal system was the space within which justice for SGBV crimes particularly rape, and any other matter relating to threat to life, should be pursued. The majority also expressed a strong preference for the formal legal system in such cases. Concurrently, however, they expressed that the formal system was largely limited in terms of capacity; accessibility; and costs, among others. Inasmuch as rape was widely considered an issue for the formal system, these constraints meant that survivors and their families often sought recourse within the informal systems.

However, women respondents particularly, noted that some of the negative features affecting accessing justice in the formal system also affected the informal system, especially their corruption when the alleged perpetrator was a 'big person' in the community, or had the funds to influence the outcome. Nevertheless, they also indicated that at least in the informal system community relations were maintained and more often than not the imposition of fines meant that survivors and their families could get some type of compensation for the crime, whereas in the formal system the only form of punishment was imprisonment and often due to prolonged pre-trial detention compelling their subsequent release, or the afore-mentioned compromising of cases, meaning alleged perpetrators were often released without serving proper sentences. Table 1 provides a summary of the advantages and disadvantages of both systems.

Table 1: Summary of advantages and disadvantages of the formal and informal systems

Formal System		Informal system	
Advantages	Disadvantages	Advantages	Disadvantages
Equal rights/‘fair’	Inaccessible/distant	Accessible	Women’s/youths’ rights are not equal
	Costly/ ‘pay for justice’	Affordable	Can be costly (subject to bribery)
	Poorly-resourced police and judiciary system		
	Justice delayed: short court terms/sessions; rape cases not prioritised	Timely	
	Subject to compromise	Victim’s voice is heard	Subject to compromise
Appropriate punishment for serious crimes	Retributive justice/ narrow focus	Restorative justice	Perpetrators not deservedly punished
	Inadequate laws and poor implementation of existing laws		Traditional mechanisms have been disempowered

In terms of further issues that rendered both systems problematic, respondents highlighted the following:

- Seeming **overlaps** in and confusion over the relative roles and responsibilities of the formal and informal sector, without clear delineation or sufficient information about the limitations of each. Traditional authorities and their constituents felt 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, witchcraft, especially as in the latter the formal system claimed no jurisdiction). They were concerned that areas they were not allowed to engage with were going unaddressed. 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.

- 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, were not considered relevant to the formal sector. Related was the concern with a **range of other issues** that are further considered

by communities as SGBV cases 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 context, 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’.

- There are ample opportunities in both systems for **compromising** cases, resulting from women’s inferior position in society and the perpetration of crimes by senior or prominent members in society, including teachers, religious leaders, and government officials.

- There is an inter-connected community and legal referral pathway for seeking care and justice for survivors 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 women and children protection

section, safe homes and the judicial system. While this was positive in that it provided multiple opportunities for support, recourse and redress, it also resulted in some confusion as to what the actual pathway was, and people would give up trying to get cases to court because of the seemingly numerous steps involved. Also, they 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 justice, inadvertently compromising cases themselves.

Another significant issue with the informal system is that the traditional structures that characterise it are perceived as not just enabling SGBV but perpetrating it. Specific cultural practices, such as female genital mutilation/cutting (FGM/C) also means there is a general acceptance of SGBV. Other commonly cited forms of SGBV by respondents, such as domestic violence, or the kidnap of children for FGM/C as well as other issues such as 'forcible initiation into secret societies, trial by ordeal, allegations of witchcraft, and ritualistic killings, which disproportionately affect women, children, elderly persons, persons with disabilities, and other vulnerable persons' (UNMIL 2015: 3), were largely considered a 'family' or 'community' issue, to be dealt with at community (i.e. the informal justice) level. These traditional justice-seeking mechanisms included bringing the complaint to a (mostly female) elder, including Sande leaders and Zoes (female secret society leaders); 'talking through' a problem, i.e. the hearing of the case by a clan or town chief, often in a 'palava hut' setting; and/or 'Kola nut' or fining perpetrators – including monetary payment or manual labour (see related policy brief, 'Justice Mechanisms in Liberia', for a fuller discussion of these mechanisms).

Policy implications

The research concurs with the perspective that formal and customary systems are, or need to be complementary, but in order to do this in a way that promotes, rather than impinges on the rights of vulnerable groups, the following are recommended:

- **Increased collaboration between law enforcement officials and traditional authorities through purposeful interaction.**

Law enforcement officials acknowledged the invaluable role played by communities, including traditional authorities and community watch forum members in providing information for investigations. This would be facilitated by regular meetings, common training activities and community outreach by law enforcement officials.

- **Awareness-raising on the respective roles and responsibilities of each sector.**

This should include information-sharing on relevant legislation, such as the proposed Domestic Violence Bill, and the appropriate avenues for redress in their context. At the same time, the informal sector's roles in mediating genuine family issues that are not catered for in the formal sector could be promoted, accompanied by mediation training skills and awareness raising, but with a clear focus on the delineation of roles.

- **Training for traditional women leaders in the referral pathway.**

This recognises that access to justice is also intimately linked with health and psychosocial support for survivors, in which the informal



Focus group for community members in Bomi County



Focus group for community members

sector can and does play an important part. Women respondents reported seeking support for SGBV case first from Sande leaders, who could be trained as focal points or counsellors, and should be empowered to know the elements of referral pathway, which includes hospital, police, counsellor and court. 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.

- **Inclusive community education on women's and men's rights and to tackle SGBV.** This includes working with traditional and religious leaders

as community gatekeepers to transform communities and make them agents of change; partnering and engaging with men's groups to redefine masculinities and make them partners of change; and working with children in schools. These initiatives should be accompanied by empowerment and vocational skills programmes for women, as lack of education and poverty were frequently cited as reasons why girls and women were particularly susceptible to SGBV.

Freida M'Cormack
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INTERNATIONAL DEVELOPMENT RESEARCH CENTER

PO Box 8500, Ottawa, ON
Canada K1G 3H9
Phone: +1 613-236-6163
Fax: +1 613-238-7230



AFRICAN SECURITY SECTOR NETWORK (ASSN)

27 Kofi Annan Avenue, North Legon,
P. O. Box AF 2457, Adenta, Accra, Ghana
Tel: +233 (0) 263 011 499/500/501/503
website: africansecuritynetwork.org
email: info@africansecurity.org