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Negotiating justice: legal pluralism and gender-based violence in Liberia

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The plural legal system in post-conflict Liberia expresses tensions between modern and customary institutions. This article seeks to understand how Liberians navigate choices in the plural-legal system to address Gender Based Violence cases. By asking how and why people make the choices they do, we highlight how Liberians solve tensions between institutions, by creating flexible categories that allow them to pursue a course of action that does not compromise their ability to access social networks and resources.

Keywords: Liberia, Gender Based Violence, Legal Pluralism, Post-Conflict Reconstruction, West Africa

Introduction

During the civil wars in Liberia (1990-97 and 1999-2003), much of the institutional structure of the country was destroyed. Like most other state institutions, the statutory legal system basically ceased to function as the country disintegrated into what we may call the ‘nationalisation of local conflict’.¹ However, the system of customary law that had been codified by the Rules and Regulation Governing the Hinterland of 1912 remained largely intact. This system of law was enacted in local communities across the country and continued to exist as a functioning justice system in Liberia.

As the civil war ended in 2003, the international community stepped into war-torn Liberia with the aim of creating the conditions for peace and reconciliation through the (re)building of a functioning liberal Liberian state. Drawing its mandate from UN Security Council Resolution 1509, the United Nations Mission in Liberia (UNMIL) assumed responsibility for the stabilisation of the country and is still heavily present there today. One of the main objectives of UNMIL was, and still is, to restore the rule of law in Liberia. This goal is particularly challenging as legal, historical, social, cultural and ethnic trajectories complicate this effort.

The attempts to rebuild the justice system in Liberia are well documented in a series of reports and articles published by Isser and colleagues.² 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 laws as the basis for its post-conflict peace building programmes.³ However, as documented by several researchers, customary justice practices in Liberia are, in most cases, the popular preference of ordinary people for a number of reasons.⁴ Thus, as long as these preferences are prevalent amongst Liberians, attempts to re-construct the justice system, or engaging in other reform initiatives that are disconnected from people's experiences, preferences and perceptions, are destined to fail.⁵

In this article, we are not examining the attempts to restore the rule of law in Liberia in general, nor are we studying the attempts to harmonise the statutory and customary legal systems. What we want to achieve is to highlight the difficult choices and the constraints people meet when seeking justice in Liberia. Through a study focused on how people chose to address cases of Gender-Based Violence (GBV) in the plural legal system of Liberia, we analyse why people make the choice they do, and how they perceive the outcomes of such processes.

Such a focus is important for several reasons: Firstly, among the various civil and criminal issues plaguing post-war Liberia, GBV is one of the most prominent.⁶ Secondly, a number of historical and contemporary realities are expressed through the issue of GBV in Liberia. Among these are the traditional gender roles that codify the domestic subordination of women in Liberia,⁷ and the widespread practices of GBV that emerged because of the civil wars.⁸ This article seeks to achieve a better understanding of how people negotiate and navigate the available legal choices to address GBV cases. Through data gathered during fieldwork in and around the city of Ganta in Nimba County in November and December 2015, we show that the choices people make are not only a consequence of access to the statutory system (e.g. distance to the nearest court and the monetary costs with regard to accessing it), but are also affected by a series of contextual rationalisations. These can be classified through categories emerging from the data, and include the type of GBV cases people are confronted with; a separation between domestic and other types of GBV; a perception of the seriousness of the offence; categorisation based on the age of the victim; and whether the offender is a member of the community or a 'stranger'. These divisions are not established in the history of tradition. They are flexible and changing, and as we will show, outcomes of social processes. In the absence of a viable justice sector, including an effective and legitimate police force, people must negotiate and navigate a number of social pressures and community concerns that may impact on their livelihood opportunities as they seek redress as victims of GBV offenses.

In the following sections of the article, we will present a concise introduction to Liberia, the plural legal system, and to the city of Ganta. We will then present some theoretical considerations concerning how people in post-conflict settings negotiate the daily livelihood struggles and justice in the context of a weak state. These conceptual and theoretical discussions will constitute the backbone of our presentation and analysis of the data, followed by a concluding section that highlights the main findings of the research, and their implication for theory and state-building practices in Liberia and beyond.

Our fieldwork in Ganta was built on a mixed-methods approach where we conducted a targeted survey in two of the 28 administrative communities in Ganta city and in two villages within the eight mile Ganta city limit, combined with qualitative interviews in the same areas. Both the two sites in Ganta city and the two villages were randomly selected. In each place, we first conducted a mapping exercise that was used as a basis to randomly draw households and individuals (above 18 years) as respondents. We interviewed 100 people in the urban sites and 100 people in the two rural villages. In each place, we have almost an equal representation of each gender. Our survey respondents were mainly from the Mano ethnic group (159 respondents), 22 came from the Gio ethnic group, while the remaining 19 respondents came from a number of other Liberian ethnic groups (see Table 1), and most of the Mano and Gio respondents had some primary and secondary education (see Table 2). The survey included 28 questions divided into four parts: part one focused on demography and background; part two fleshed-out where people would prefer to seek justice for various offenses; part three focused on personal experiences of respondents with the two legal systems; and part four was dedicated to and GBV in the Plural System. In this process, we have asked respondents to indicate and explain what they consider as GBV. This allowed us to include the various categories of GBV offences as described by the people we interviewed, and follow up on these categories during in depth interviews.

Table 1: Number of respondents according to gender and ethnic group

| | Mano | Gio | Other |
|--------|------|-----|-------|
| Male | 84 | 10 | 4 |
| Female | 75 | 12 | 15 |
| N | 159 | 22 | 19 |

Table 2: Respondents according to ethnicity and education

| | Mano | Gio | Other |
|----------------------------|------|-----|-------|
| Some primary | 27 | 2 | 4 |
| Completed primary | 21 | 2 | 6 |
| Some secondary | 43 | 10 | 1 |
| Completed secondary | 25 | 5 | 2 |
| Some higher education | 10 | 1 | 0 |
| Completed higher education | 6 | 1 | 2 |
| DK | 2 | 0 | 0 |
| N/A | 25 | 1 | 4 |
| N | 159 | 22 | 19 |

For the qualitative part of the study, we implemented 26 semi-structured interviews with community leaders (elders, school principals, religious leaders, local NGO

leaders, local advocacy groups), state officials (district commissioners, chiefs, the mayor of Ganta, the police, magistrate, administrators), and with victims and perpetrators of GBV offenses (10 interviews). All of our informants indicated they had personal experience with GBV, either through knowing victims or perpetrators, being victims themselves, or being perpetrators. The key informants were purposefully selected as community leaders in Ganta and the surveyed areas. The victims and perpetrators of GBV were identified through the survey, or emerged through group interviews, semi-structured interviews, and focus group discussions. Three focus groups were conducted: with village elders and leaders (12 participants); with senior students in school (10 participants, gender-balanced); and with women leaders sensitised by an NGO (seven participants). We also organised one group interview with the council of one of the two selected villages. What we present in the following is therefore drawn both from the survey data and from the qualitative interviews.

Liberia, legal pluralism and the city of Ganta

During the civil wars, Liberia became known through international media reporting as a place of chaos and destruction. Fragmented by militias that seemingly fought each other for no better reason than plunder and theft, the country was presented as a primary example of ‘new wars’ of greed and banditry.⁹ There is little doubt that economic gains played a role for the main actors in the war and for the formation of the many militias involved. However, the reasons behind the formation of militias during the Liberian civil war are also deeply entrenched in history. Even prior to the war, Liberia was characterised by corruption, political and economic violence, identity crises, generational and other group clashes, and widespread poverty.¹⁰

Liberia consists of 16 major ethnic groups, each holding its own traditions, customs, religious philosophy, languages and dialects. However, in order to understand the background for the civil war and the militia fragmentation that followed, we must also consider the groups of freed slaves repatriated from the United States between 1822 and 1861 to this part of the West African coastline. Collectively known as the Americo-Liberians, these groups founded the independent Republic of Liberia in 1847, with the intention to create a safe haven for freed slaves. 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 based on the only political and administrative system that was generally familiar to them: the American system, and in particular, the system of the plantations in the deep south of the United States. The main difference was that in Liberia they were the ‘masters’ and the original population became the ‘servants’.¹¹ Thus, the Americo-Liberians embarked on a political strategy of division between themselves as a civilised, educated class, and the original inhabitants, seen as a native underclass to be contained through a particular legal system and by any means of suppression available through the new state.

The Republic of Liberia was consequently established based on a constitution founded 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 the inhabitants in the area to which the constitution laid claim. On the contrary, the constitution strongly delineated between the Americo-Liberians and the majority population (the so-called ‘native tribes’). The members of the ‘native tribes’ were not eligible for election or voting. The firm divisions between these two groups was accordingly institutionalised by the constitution of 1847, and laid the foundation for entrenched alienation between the different ethnic groups of Liberia, as well as between these groups and the new national Americo-Liberian elite. Liberia became 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, a plural legal system was established where statutory law based on the Anglo-American Common Law model governed the formal state,¹² 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 that consisted of the so-called ‘native tribes’.¹³

In 1870, the Americo-Liberian established the True Whig Party (TWP), which ruled the country for the next 110 years. Thus, Liberia became, *de facto*, a one-party state. Military support from the United States facilitated its existence and the rule of the Americo-Liberians through the TWP, but also the administrative boundaries that were established and the system of indirect rule that followed helped maintain this system of governance.¹⁴ The TWP ruled the Liberian hinterlands through district commissioners, who in turn ruled through local chiefs. This system cemented the differences between the many ethnic groups of Liberia. Prior to the establishment of these administrative boundaries, the separation between different ethnic groups in Liberia had a relatively flexible character. This also suggests that ethnicity should not necessarily be seen as a monolithic factor in the Liberian civil wars and its aftermath, but as continuous processes of social construction. The different armed factions that participated in the civil wars were mostly built around ethnic groups. Nevertheless, these should not be seen as objective entities, but as social formations created by, first, the administrative practices of the state, and then later, entrenched further through the dynamics of a war fought on the ruins of a dysfunctional neopatrimonial state.¹⁵ This short historical background must be taken into consideration, if we are to understand both the trajectory of Liberia’s plural legal system, as well as how it is seen by the masses in contemporary Liberia. While far from perfect, this plural legal system has historically, as well as contemporarily, been the only option through which at least a measure of justice and social predictability could be sought for the majority of the population.

Ganta, Nimba County, Liberia

Located on the border with Guinea, Ganta is a bustling trading centre situated approximately 240 kilometres to the northeast of the capital Monrovia. The relatively good tarmac road between Monrovia and Ganta reduces the travel time between the two cities to about three and a half hours, making Ganta one of the most accessible towns of the Liberian hinterland. 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 and its international partners: As a central trading centre, border-crossing town, and a bustling city, Ganta is an attractive location for people seeking work, and therefore has a large number of ex-combatants working in various capacities, including as motorcycle taxi-drivers. The semi-rural town of Ganta is divided into 28 communities, mostly consisting of the Mano ethnic group, with an important minority presence of the Gio and Mandingo ethnic groups. As an essential transition point for people and goods, Ganta is a lively city by day and night.

Ganta hosts a police station and a magistrate court as the two main arms of the Liberian government involved in statutory legal processes. 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, trained by UNMIL to constitute as a service for society through the principles of Community Policing. The magistrate court in Ganta is presided by three Judges. A local BAR association listing a number of registered lawyers is also present in the city, though none of the listed lawyers resides permanently in Ganta. When the need arises, lawyers are brought from Monrovia, expenses fully paid by the plaintiffs. 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 the Nimba county capital, Sanniquellie.

The customary legal system in Ganta is vested in complex community arrangements, where customary justice is enacted through community leaders. The term 'community', however, refers to a variety of social arrangements, both modern and customary, that exist in parallel, and are organised around formal and informal social and administrative groups, schools, religious congregations, secret societies, user groups etc. We will return to and elaborate this point and the subsequent choices people make when addressing GBV cases later in the article.

Our current study in Ganta was implemented shortly after a serious outbreak of mob-violence took place. The episode occurred in September 2015, and was conducted by a group of motorcycle taxi-drivers (largely ex-combatants) as a response to the murder of one of their fellow drivers. The murder, suspected to be a case of ritual killing, was believed to be ordered by a wealthy local businessman. 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 their suspect, his family, his property, and against Ganta's police station.

This outbreak of violence is one example of over 30 cases of such spontaneous eruptions in Liberia during the past few years. These cases 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 number of personnel in Liberia.¹⁶ Such episodes are reminders of the violence and uncertainty that existed during the civil war. They exemplify the weakness of the state security apparatuses, and subsequently influence decisions people make when deciding which legal system would best address their cases.

Negotiating/navigating justice in Ganta

The current customary justice system can be described broadly as a reference to cultural principles rather than a set of clearly defined customary procedures. This is obvious in Ganta where customary legal practices vary significantly across the different communities that live there. The customary justice referred to is therefore an umbrella term that includes a set of mechanisms providing an alternative to the formal statutory justice system for different segments of the population. While the word 'customary' implies practices associated with the indigenous institutions of a society, often pre-dating the creation of the formal state, contemporary customary justice practices are better described as complex systems of hybrid governance. The category 'customary justice systems' is therefore a reference to a variety of conflict resolution mechanisms that draw their legitimacy from the constitution which permits the existence and operation of customary courts in the hinterland.¹⁷ While these mechanisms are still characterised today by the term 'customary justice systems', they are modern institutions that are often removed from the various indigenous legal practices that prevailed in Liberian history. Their modern shape and form is a product of a variety of cultural, ethnic and religious principles, coupled with the unique history of Liberia, Liberian state institutions, and modern communal organisation. These systems fall under the formally recognised category of 'customary justice' in Liberia as 'informal' justice systems allowed through the Liberian constitution. Thus, our approach to hybrid governance is broader than the usual categories of crisis management due to difficult post-war recovery that this literature commonly alludes to. Contemporary customary justice in Liberia is not only an outcome of the absence of the state, but also very much a product of the state. It is informal, but still part of the state. It is about problem-solving; it is about a pathway to some sort of justice that most can access. It is therefore modern and traditional at the same time, and provide answers to immediate problems as well as being about the politics of people and place as it also has an affiliation to traditional communities and respective institutions.¹⁸

The main governing principle of the various practices that form the 'customary justice' in Liberia remains the same, and is based on initiating a restorative process aiming at ensuring community cohesion and preventing future animosity or practices that disturb peace and harmony in a community. In the uncertain post-conflict 'world' of Liberia, people's security as well as livelihood options depends on their position within different communities and the figures of authority in them. This is because one must have access to social and economic networks to survive and potentially thrive, and thereby access to 'Big Men' is essential, allowing people to enter into clientelistic relationships.¹⁹ This is a necessity of life in current Liberia, and customary practices are significant in this regard. However, when viewed through the optics of the modern state and its acclaimed principles of equity, equality and human rights, various customary justice systems seem to contradict the formal modern state enterprise. Observed through these lenses, many customary justice systems discriminate against minorities, women, the poor, and provide preferential treatment to elites or kin.

This can obviously be the case, but when people are forced to focus on the immediate and the tactical, they '...often make choices under some level of coercion

[...] in any society [and] this does not remove their agency and their ability to evaluate alternative strategies'.²⁰ Our analysis is therefore premised on the assumption that people have agency, and are not merely victims of circumstances and structures that they do not understand and did not create. In order to elaborate this argument, this article draws upon Alcinda Honwana's distinction between 'tactical' and 'strategic' agency.²¹ The first being narrow and opportunistic, 'exercised to cope with concrete, immediate conditions of their lives in order to maximise the circumstances created by their environment'.²² The latter is based on a position of power that enables certain degrees of control over the self and the decisions taken. It is an agency of a longer timeframe, where events and actions can be planned and are not only 'determined by random factors they could neither predict nor control'.²³

'Strategic' agency is also, unfortunately, not a position easily reached for most Liberians. However, the 'tactical' nature of daily life has important implications not only for what kind of 'resources' and 'repertoires' are available, but also how their availability is approached and defined. Resources are therefore 'the material base of action, including organizational skills, the ability to mobilize violence, access to funding and finance, knowledge, and networks and alliances'.²⁴ On the basis of the ability to tap into such pools of resources, actors can employ various sets of 'repertoires' to 'further their interests and to give meaning to their actions'.²⁵ Our point here, is simply that the choices people make concerning justice, seeking justice, and concerning the pathways they attempt to use for this purpose, are also influenced by the very 'world' they live in. If this is a 'world' of uncertainty, where difficult livelihood options must be negotiated from a number of vantage positions, this will unavoidably influence how they will approach such questions, and by extension, what particular types of hybrid 'governance' are created through such processes. Our point is therefore that even if the type of customary justice prevalent in contemporary Liberia is the outcome of a 'tactical agency' born out of the particular circumstance of post-war Liberia, it is also impacted upon by the 'resources' people has available that also includes their current interpretations of the customary traditions that are available to them. Any agency 'tactical' or 'strategic' will depend on a combination of factors that frames the possibilities of action.²⁶

For example, the modern manifestation of customary justice in Liberia that has been coupled with an international post-conflict process of Justice Sector Reform (JSR), aiming to harmonise between statutory and customary justice,²⁷ has allowed for the inclusion of a variety of conflict resolution mechanisms under the title 'customary'. As such, we find in Ganta, for example, the town magistrate, clearly a representative of the statutory legal system, also initiating and presiding over alternative dispute mechanisms, which he himself defines as customary. Similarly, the police in Ganta fulfil a mediation role in an attempt to achieve resolutions of issues brought to their attention without the need to refer them to the formal statutory legal system. As indicated by police officers in Ganta, they view their role as peacemakers and draw on customary justice principals to restore peaceful relations in a community when the situation permits it. Additional customary justice systems in Ganta include the more traditional construction around village elders, but also leaders of various other communal organisations. A 'community' in this context assumes various forms

characterised by sharing physical, kin, social, cultural, religious, formal and informal administrative spaces, and where the leadership draws authority from achieving the customary status of ‘elder’, or an official status designated by the state. An ‘elder’ is a term used to describe power vested in a person based on the context of the relevant communal organisation and may include in contemporary Ganta: parents, status achieved by age, school principals, religious leaders, cultural figures, state bureaucrats, and individuals empowered through education and training (for example, by various NGOs or international organisations). State officials include holders of formal positions such as magistrates, police officers, school principals, mayor, district commissioner etc. These communal constructions and leaderships are contemporary manifestations of an intimate societal organisation that developed its own institutions to address various conflicts between people who shared spaces in daily life.²⁸

The principal of restoring peace and cohesion through the processes of the ‘customary legal systems’ are often contradicted by the statutory legal system, where various criminal and civilian conflicts are dealt with by way of an adversarial process.²⁹ 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 issued. The inability of the statutory system, by its nature, to restore social relationships and the costs this may have for social networks that people depend upon is a fact that most Liberians are well aware of. Turning to the statutory system is therefore considered as an option when people believe that redress can only be achieved through punishment or when future possible needed relationships are not the main priority.

Gender, culture, crime and choices concerning the legal systems

When attempting to identify which elements influence the choices people make in the case of GBV, a number of categories emerge. It is a complex contextual interplay between these categories that leads individuals to choose a legal option in a GBV case. Before we outline the categories that influence choices, it is important to differentiate between two types: a crosscutting category; and a set of contextual categories. The crosscutting category can be labelled as Gendered Preferences, and affects choices across the contextual categories. In the following section, we will present and explain these categories as they materialised through the data collected in this study.

Crosscutting category: gendered preferences

Across the various contextual categories informing choices of legal solutions for GBV cases, we find a difference between the rationale expressed by men and women. As indicated by the survey data there is a preference among women for the statutory system.

Table 3: Gender and preferences concerning legal solutions for GBV cases (in percent)

| | Male | Female |
|-------------|------|--------|
| Customary | 44 | 38 |
| Statutory | 46 | 52 |
| Either | 7 | 6 |
| Do not know | 3 | 4 |
| N | 98 | 102 |

However, when we elaborated on this question in the qualitative interviews, where respondents were also asked to specify what their options were, what choices they make, and why they make them, interesting and important reasons and motivations emerged.

While there are nuanced preferences of women and men in each contextual category, we found that more women than men would have preferred to use the statutory legal system if the system had been functioning as intended by the state and if they had had access to viable livelihood strategies options. As the Chief of the Elders in Ganta explained: ‘The traditional justice is fast. Faster than the court. In addition, traditional justice is not about the money, we want to settle things in the community. To settle them on the spot. No lawyer fees or other fees’.³⁰ The statutory system in Ganta suffers from a range of dysfunctionalities that lead women, in the current reality, to prefer turning to the customary system.³¹ In addition, gendered roles in Liberian society create a reality where men, in most cases, are the principal breadwinners. As a High School Principal and elder in Ganta argued, ‘when a man beats his wife, the woman come and asks what to do, we say what her options are, but do not decide for her. Women do not want to go to the police because once you do it becomes a different matter and then he will be put in prison and that costs money’.³² As such, women often cannot afford the statutory procedures, nor would they be better off, in most cases and as they perceive it, even if the outcome of a statutory procedure rules in their favour.

Men on the other hand prefer using the customary legal options for addressing GBV cases as a default. This preference is somewhat altered by contextual categories and if the respondent does not assume the role of an offender. But in cases where men view themselves as offenders, they prefer to turn to the customary system for resolution. It is important to remember in this discussion that in a typical GBV scenario, men are usually the offenders while women are usually the victims. As such, the offenders have a distinct preference to turn to the customary legal system where they will meet more understanding and flexibility, and where any punishment is relatively light compared to the statutory system.

In sum, we find that both men and women prefer the customary legal solutions as their first option for resolution of GBV cases for different reasons. This default preference is, however, modified by contextual categories as presented below.

Contextual categories: setting; type of offence; sexual maturity; and offender's communal affiliation

When men and women contemplate their legal options for a resolution of a GBV case in Ganta, interplay occur between several considerations in every context. We identified four main categories that influence the choice of a legal system for GBV cases in Ganta: *setting, type of offence, sexual maturity, and offender's communal affiliation*. Each of these contextual categories relate to each other and to the crosscutting gendered preferences as discussed above. In this section, we will outline each category and the rationale for choice preference. Nevertheless, it is important to remember that a preference in a category interacts with preferences in other categories and a context. The final choice is made through these interactions.

Setting

Setting refers to GBV offenses committed in domestic or non-domestic situations, and is the most significant category influencing contextual choices. The domestic setting is related to several Liberian institutions, crosscutting the basic social organisation of the family (in and across households), and the embeddedness of families in wider community settings. The most basic domestic setting of GBV discussed here are cases between husband and wife. However, the term also covers violations in relations to offspring, in-laws and other cross-generational interactions such as grandparents, aunts, uncles, nephews etc. The importance of the *setting* lies in the influence of this category on what is considered a crime.

Marriage in Liberian society, as in many other societies in the world, institutionalises both a relationship and gender roles. These roles are based on gendered division of labour and subordination of the women, and include duties to the household, the husband, and to the head of the household.³³ Duties include bearing and raising children, work in the household, prepare food, care for other member's family members such as parents, etc. as well as not refusing sexual interaction with the husband.

As such, both male and female respondents do not relate to certain sexual and disciplinary behaviours within a household as offences and as matters that should be addressed by the statutory system.³⁴ Men often do not see forcing sex and disciplining wives as GBV offences: 'For us rape is not between married adults. We also do not accept all the legal rapes. An adult woman can create confusion in a man like fornication. It is not rape for us; we will try to solve it in the community'.³⁵ Women, however, will in most cases not tolerate such behaviours if conducted repeatedly. Thus, when domestic violence, physical or sexual, occurs in a domestic setting between husband and wife, both male and female respondents indicate that they will turn to the customary mechanisms for solutions.

As mentioned above, in many cases the domestic setting extends to cover other family members beyond a husband and wife. When sexual GBV offenses are committed within a domestic setting against children, all respondents indicated that they would

refer the matter to the statutory system. We will discuss this variation of preferences further below when we address the *sexual maturity* category.

Within a community, men also prefer using the customary system for non-domestic GBV offences. The rationale for this relates to what men consider as an offence, as well as the relative lighter punitive outcome of a customary procedure. Women on the other hand express mixed opinions about the choice of legal system for a GBV offence within a community outside a domestic setting. Most women expressed very little tolerance to GBV offences committed against them outside the household, and would like to see a perpetrator punished: 'For me a rape cannot be handled here [traditional court]. We must go to court. If someone rapes me or my child; I will carry you to court even if you can be my husband'.³⁶ Men in the town council meeting in Nieingbin village intervened against this statement to say that women need to compromise. Thus, women would, in most cases, turn to the customary system for a resolution, not because they prefer the customary system, but because of the dysfunctionalities of the statutory system and peer pressure within a community to resolve issues within.³⁷ This leads us to conclude that when it comes to most GBV offences against women conducted in a non-domestic setting within a community; women would have liked to turn to the statutory legal system, but chose to turn to customary solutions instead. But as indicated in the discussions below, these preferences are further modified by the *type of offence*, informed by *sexual maturity* of the victim, and the *offender's communal affiliation*.

Type of offence

While the *setting* informs what is perceived as a crime and the initial choice of legal system, the *type of offence* committed can influence personal preferences, that is, may modify the preference informed by the *setting* to break with social institutions. In addition to modifying personal preferences, there is a general agreement amongst men and women in Ganta that certain types of offences are to be referred to the statutory system by default, such as rape of a child. Nevertheless, this default is also nuanced by further categories such as *sexual maturity*.

Respondents classified GBV offences as: rape, violence, harassment, neglect, and sex for grades. With the exclusion of rape, most respondents indicated that the default preference of legal system to address the various GBV offences listed above is the customary system.

When it comes to rape, the main discussion relating to the preference of the statutory system over the customary revolved around what constitutes as rape. Once an offence is qualified as rape, both men and women will turn to the statutory system. Respondents classified several types of offences as rape: group rape, rape of a 'child', rape of an 'adult', violent rape, and 'non-violent' rape. Both men and women agree that group rape, rape of a 'child', and violent rape are offences that they will refer to the statutory legal system.³⁸ Nevertheless, men and women do not always concur on the definition 'child' as we will discuss in the *sexual maturity* category below. In addition, the differentiation between violent and non-violent rape is a subject of disagreement between men and women, namely what constitutes as violence in a

context. However, if a rape is eventually defined as violent, or as a rape of a ‘child’ then there is consensus between men and women that the statutory legal system should be the entity addressing the matter.

When it comes to the rape of an adult, not all men consider non-consensual sexual relations between adults as rape. Various community elders expressed this opinion both during interviews and in focus group discussions. Non-consensual sexual relations between adults may not be classified as rape, if the woman involved is an adult who exhibits certain behaviour that may lead to ‘confusion’. The examples given were related to teasing men, dress code, and socialising with men in certain settings. One elder described in a focus group discussion an instance where he had a non-consensual relationship with a woman after he got her drunk, and explained that such cases cannot be considered as rape, though might be morally questionable. Women in general disagree with men on the issue of non-consent, especially outside the domestic setting. While women might tolerate non-consensual sex in the domestic setting for reasons described above, they do not accept forced sex, and would like the matter addressed through the statutory setting. Nevertheless, in cases such as the one described above, women believe that it will be impossible to exhibit the needed proof in the statutory system, and therefore may choose to address the matter through the customary system. Some elder women held the opinion that a woman may not refuse her husband, and if she does repeatedly, forcing her is not rape. In addition, some elder women agree that when a woman exhibits behaviour they define as promiscuous, they have only themselves to blame for an outcome that involves non-consensual sex. The key differentiation to the issues discussed above is violence. If non-consensual relationship was forced through violent actions deemed ‘severe’, then the category rape is invoked.

Severe violence, with or without a sexual element, is defined by respondents as violence that leads to a visible outcome, and may result in the need to seek medical attention. This type of violence may also lead to long term or permanent physical disabilities. Most respondents indicate that such cases are rare, but when they occur the matter should be referred to the statutory legal system. Certain cases of severe and repeated violence within a domestic setting would also be referred to the statutory system. For all other cases of violence that occur within a communal setting (see offender’s communal affiliation below), the default preference is addressing the case through the customary system.

Harassment refers to offences committed against women that include verbal and physical gestures, such as pinching, grabbing or verbally harassing a woman in private or public spaces. Most women view such behaviour as GBV, while most men view this as playful and un-harmful behaviour. Despite the women’s view on harassment, they will not turn to the legal system unless offences against them are repeated. In cases where harassments are repeated, women prefer turning to the customary system. Men do not consider harassment as cases to be reported to the legal system as it is considered an acceptable form of playful behaviour. Nevertheless, if such cases should be handled by a legal system, men prefer to address them through the customary system.

Neglect refers to variety of complaints that both men and women hold against each other, mostly in a domestic setting, including not paying physical and mental attention to each other or to their children. However, in most cases neglect refers to complaints by women against husbands that do not provide for the household, as they should. In most cases, such complaints arise when a husband is engaged in a relationship with a woman other than his wife. Cases of neglect will be mostly referred to the customary legal system as a woman seeks a resolution where her husband agrees to fulfil his obligations. In cases where a woman feels that there is no hope for a domestic reconciliation as the husband refuses to provide, or prefers to provide for other women and perhaps even children, the matter will be referred to the statutory system in attempt to force a man to pay support.

Another common GBV offence in Ganta is the ‘sex for grades’ phenomena.³⁹ ‘Sex for grades’ occurs in school settings, and refers to an insinuation or request by a teacher made towards a student, where sexual favours are required to grant a grade. Through ‘sex for grades,’ an authoritative figure takes advantage of a position of relative power. Many of these cases in Liberia also involve taking advantage of children under the legal age of consent. As many students in all school levels in Ganta are legally adults, ‘sex for grades’ often becomes an offence that involves two adults rather than statutory rape. This leads to a dynamic where ‘sex for grades’ is not always viewed as rape or an abuse of power. While tolerated in many instances, there seems to be a common understanding that ‘sex for grades’ is not an appropriate behaviour.

A school in Ganta is often viewed as a communal organisation led by a principal.⁴⁰ The school principal becomes as such the ‘elder’ of a community and the authority to which both students and teachers turn to for resolution of school related matters. A ‘sex for grades’ offence is thus reported to the principal by a student or parents. As indicated through interviews, school principals prefer handling ‘sex for grades’ internally. The school principal thus becomes the ‘elder’ presiding over a customary conflict resolution mechanism. Principals participating in this research indicated that they are well aware of ‘sex for grades’ issues in their schools. While they discourage such actions, they only attempt to address matters if they are brought directly to their attention as a formal complaint. The problem for victims of ‘sex for grades’ lies in the burden of proof. Unless a tangible proof against a teacher is submitted, there is very little that can be done against the offender, both by the statutory system and by the school principal. Turning to the statutory system in such cases is seen by most as a waste of time and resources. The only other possible course of action then becomes to turn to the school principle that assumes the role of the elder in this case, and attempts to address the matter through customary principals.

Sexual maturity

This category is mostly related to sexual GBV offences and the categorisation of an offence as rape. We use the label *sexual maturity* here instead of ‘age of the victim’ because this category relates to an interpretation of the victim’s readiness for sexual relations rather than an actual numerical age. In the statutory law of Liberia, sexual maturity is defined by the age of consent – 18 years. However, in reality, people use

the designation ‘child’ and ‘adult’ to refer to sexual maturity rather than relating to the statutory definition of the age of consent. This understanding of sexual maturity is very often subjected to a normative interpretation by different people, which makes it impossible to assign an age span for a ‘child’ or to determine adulthood by a number. As one Chief explained to us, ‘legally today, 18 is an adult, but my culture is older and we judge maturity in a different way’.⁴¹ The allusion to the statutory age of consent for defining sexual maturity was therefore often rejected by both men and women interviewed during this research. Thus, a ‘child’ was used to refer to a female that is not ready for sexual relations, and ‘adult’ to a female who is mature for sexual relationship. Maturity is interpreted by a range of contextual and normative perceptions, including menstruation, physical development, mental development, and behaviour.

All respondents expressed no tolerance to sexual GBV offences against females defined as children, whether in domestic or non-domestic settings. When such offences are committed, the default choice is to carry the case to the statutory system. This preference is related to two issues: firstly, the recognition that sexual relations involving a child will most likely lead to long-term negative impacts on that child. These include mental disabilities, and a possible range of concrete physical impacts, such as: unwanted pregnancy, transmission of sexual diseases, injury that might affect reproductive capabilities, and stigma. All these issues may have long-term or permanent implications on the child’s life. Secondly, sexual abuse of a child is an unacceptable social behaviour in Liberian culture. As such, there are traditional social consequences inflicted on offenders who commit such crimes in a community that usually involve expulsion.

If the victim of a sexual GBV offence is defined as ‘adult’, then a set of other considerations influence the choice of legal system. In the absence of violence, the preferred legal system in such cases would be the statutory system when it comes to women’s choices and the customary system when it comes to men’s choices. The considerations in such cases were outlined in the section above on *type of offence*.

Offender’s communal affiliation

The relationship between the communal affiliation of the offender and the preference of a legal system is trivial. Nevertheless, it is worthwhile describing this category as it reflects the importance of communal structures in Liberia. These communal arrangements are the essence of the social structure, and communal relationships are at the main incentive to turn to the customary legal system for resolution of issues.

This category has two main distinctions for the offender’s affiliation: ‘stranger’ or community member. A ‘stranger’ is defined in various ways: as a non-Liberian, and especially non-African, but also just a person who comes from somewhere else.⁴² Thus, in the context of GBV in Ganta, a ‘stranger’ would be a person who has no relevant community affiliation, that is, a person that cannot be placed in a community in a way that is relevant or important for the community structures in and around Ganta. For example, a member of another ethnic group, originating and residing in another location which has no direct relevance for Ganta, who has no family members or

community affiliation in Ganta, etc. A ‘stranger’ would be a person that cannot be associated with communal and cross-communal relations in a context. If such a person commits a GBV offence, then the default preference of men and women would be to address the issue through the statutory legal system. As the District Commissioner explained:⁴³

We will handle it in the community. People have the right to carry people to court, but how can you look your other community member in the eye? This is valid for community people; they want to live in peace. But if it is a person not from the community, like a stranger, we will go directly to the police.

The main reason for this is related to the fact that there is no community coesion or social relations that needs to be maintained or restored in such instances. In addition, hand in relation to this statement, there is a need to ensure that such offenders pay a price, and since there are no communal institutions that can extract that price, the case is referred to the statutory system.

The other affiliation in this category is an offender that is associated with a community in Ganta in a context where communal or cross-communal relations are relevant. In such cases, if the GBV offence is not of a nature that will invoke the statutory preference (see the various categories above), the default preference would be to address the matter through the customary system. This preference follows the rationale of preserving community and cross-community cohesion where possible.

Conclusion - Navigating the plural legal system in Ganta

Due to the need to make decisions on how to address GBV cases, Liberian men and women developed methods to navigate their complex reality by creating flexible categories that allow them to define how to make sense of various institutional and social tensions. These categories are flexible enough to allow defining GBV in contexts so that people may choose to follow redress options and solution that protects what they perceive as their best interests in different social situations. These types of solutions are possible through a contemporary interpretation of legal pluralism. Such flexible interpretations of customary law, leads to various conflict resolution mechanisms allowing Liberians to build bridges to facilitate the navigation between the modern principles of equity, equality and human rights introduced through the post-conflict reconstruction efforts of the international community, the weakness of relevant state institutions, and the contextual cultural/religious/ethnic institutions guiding the lives of ordinary Liberians.

The outcome is the result of a complex reality where interactions between the social-political history, traditional culture, the civil wars, and the post-conflict reconstruction efforts, lead to new informal institutional arrangements. In many ways, the compromises that Liberians make while addressing GBV cases reflect an agency that works both tactically and strategically. It is tactically as it based on immediate calculations about what can be achieved. However, it is also based on a strategic reading of what is possible given the need to sustain community cohesion in a situation where the ability to be part of the community and the networks that this gives access to is key to both survival as well as hopefully future thriving. Thus, such an

agency will continuously evaluate circumstances based on a grounded overview of social and economic constraints one faces, rather than opting for solutions that adhere to modern state principles, but may compromise social economic networks. The most predominant consideration when navigating plural legal options in Liberia, is securing livelihood options and community relationships, even if this means compromising universal justice principles and the statutory law. Seen through the lenses of Honwana's distinction between 'tactical' and 'strategic' agency, the conceptual consequence is that 'strategic' agency in this case means to adhere to 'what works', which is to seek justice in a way that minimise the risk to the community networks that livelihood options depend upon.⁴⁴

These findings therefore have important ramifications for policy and research. Contemporary international interventions most often aim to facilitate the (re)building of a working liberal state. Intentions may be good, but most interventions so far have only produced very mixed results. One reason is that both policymakers and those that study such interventions rarely focus on how ordinary citizens of such states construct their realities. The consequence is precisely the kind of mismatch that we see in Liberia with regard to people's aspirations for justice and the justice that is *de facto* available to them. The latter only becomes known when people are given the voice to explain what social and economic constraints they have to take into consideration and the type of arrangements these constraints allow. In the case of Liberia and Ganta, these come in the form of carefully constructed categories of situation, offense, and offender, that may not be aligned with the principles of an effective modern statutory legal system, but enables the provision of a form of justice that at least does not jeopardise the social cohesion and community networks needed for economic survival. External stakeholders wanting to contribute to statebuilding in Liberia through rule of law programmes should bear this in mind, as they need to relate to how people actually practice justice and not be based on wishful thinking about how justice ideally should be implemented.

Notes

1. See Bøås, *The Liberian Civil War*; Bøås and Hatløy, *Getting in, Getting out*, 34-35.
2. See, Lubkemann, Isser and Chapman, *Neither State nor Custom*; Lubkemann, Isser and Banks III, *Unintended consequences*; Isser, Lubkemann and N'Tow, *Looking for Justice*; and Abramowitz and Moran, *International Human Rights*.
3. Lubkemann, Isser and Chapman, *Neither State nor Custom*, 73.
4. *Ibid.*, 85.
5. See also, Bøås and Stig, *Security Sector Reform in Liberia*; Bøås, *Making Plans for Liberia*.
6. Some figures quoted in a recent ODI report suggest that over 61 per cent of all Liberian women were victims of sexual GBV during the war, and that these types of offences persist in post-conflict Liberia. See also Jones et al., *The Fallout of Rape*, 2 and 4.
7. For example, how traditional gender roles and rules surrounding these, stand in contrast to provision of the statutory Domestic Relation Law. See also Olukoju, *Culture and Customs of Liberia*, 91-104.
8. Ellis, *The Mask of Anarchy*, 125; and Utas, *Sweet Battlefields*, 169-227.
9. See Kaldor, *New and Old Wars*.
10. See Bøås, *The Politics of Conflict Economies*; Ellis, *The Mask of Anarchy*; Reno, *Warlord Politics*; Sawyer, *Beyond Plunder*; and Utas, *Sweet Battlefields*.

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11. Bøås, Liberia – the Hellbound Heart?.
 12. Graef, *Practicing Post-Liberal Peacebuilding*, 75.
 13. Levitt, *The Evolution of Deadly Conflict*, 138-140.
 14. Ibid.
 15. Bøås, *The Politics of Conflict Economies*, 62.
 16. In accordance with Security Council Resolution 2239 (2015) which calls for a substantial reduction of UNMIL forces by 30 June 2016.
 17. Levitt, *The Evolution of Deadly Conflict*, 138-140.
 18. See also, Raeymaekers, *Violent Capitalism*, 25
 19. See also Bledsoe, No Success without Hardship.
 20. Bøås and Hatløy, Getting in, Getting out, 37.
 21. Honwana, *Child Soldiers*, 71; Honwana, Innocent & Guilty.
 22. Honwana, *Child Soldiers*, 71.
 23. Ibid.
 24. Ibid.
 25. Ibid.
 - 26 See, Bøås, *The Politics of Conflict Economies*; and Certeau, *The Practice of Everyday Life*.
 27. Graef, *Practicing Post-Liberal Peacebuilding*.
 28. Abramowitz and Moran, International Human Rights, 124.
 29. Isser, Lubkemann and N'Tow, *Looking for Justice*; and Medie, Fighting Gender Based Violence, 385.
 30. Interview, Ganta 01.12.15.
 31. Isser, Lubkemann and N'Tow, *Looking for Justice*; See also Medie, Fighting Gender Based Violence, 385.
 32. Interview, Ganta 01.12.15.
 33. In cases where the head of the household is not her husband.
 34. See also Medie, Fighting Gender Based Violence, 386.
 35. Interview with the Chief of the Mandingo community in Ganta, 03.12.15.
 36. Focus group Nieingbin village town council, Ganta, 04.12.15.
 37. See also Medie, Fighting Gender Based Violence, 386.
 38. See also Isser, Lubkemann and N'Tow, *Looking for Justice*, 6.
 39. Dahn, Sex and Bribery for Better Grade, 6.
 40. In some cases the school principal is also a pastor and a leader of a parish, thus forming another communal organisation to which the student and the offending teacher belong too.
 41. Interview with Chief, Ganta, 03.12.15.
 42. See also Bøås, *The Politics of Conflict Economies*.
 43. Interview, District Commissioner, Ganta, 07.12.15.
 44. See Honwana, *Child Soldiers*, 71.

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