ILAC Rule of Law Assessment Report:

Still Looking for Justice

Customary Law, the Courts and Access to Justice in Liberia

Authors: Karolina Bonde and Rhodri Williams

ilac International Legal Assistance Consortium

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Table of Contents

List of Abbreviations

AFELL	The Association of Female Lawyers in Liberia
ABA ROLI	American Bar Association Rule of Law Initiative
CID	Criminal Investigation Division
CJA	Community Justice Advisors
DEN-L	Development Education Network-Liberia
ECOWAS	Economic Community of West African States
FIND	Foundation for International Dignity
ICCBA	International Criminal Court Bar Association
ILAC	International Legal Assistance Consortium
JAAPJI	James A.A. Pierre Judicial Institute
JPC	Catholic Justice and Peace Commission
LNBA	Liberian National Bar Association
LNP	Liberian National Police
MIA	Ministry of Internal Affairs
MOJ	Ministry of Justice
NATJL	National Association of Trial Judges of Liberia
PAPD	Pro-Poor Agenda for Prosperity and Development
PILPG	Public International Law and Policy Group
PSU	Police Support Unit
P4DP	Platform for Development and Peace
SGBV	Sexual and Gender-Based Violence
SIDA	Swedish International Development Cooperation Agency
UNMIL	United Nations Mission in Liberia

Executive Summary

The International Legal Assistance Consortium (ILAC) has examined the role of justice providers in Liberia, including customary authorities, civil society organisations, the police and the formal justice system.

These actors collectively play a key role in prevention and resolution of local conflicts that could trigger broader unrest. However, Liberia's legacy of conflict and inequality pose continuing challenges to the ability of justice providers to fulfil their preventive potential.

One of the key findings of this ILAC assessment is that sixteen years after the end of the conflict, access to justice remains fundamental to prevention of local conflicts that have the potential to reopen wider regional, tribal or sectarian rifts. Crucial work remains to be done in this area.

When assessing access to justice in Liberia, the relationship between formal and customary justice has to be understood. Liberia is a state with a dual legal system. Traditional chiefs and elders in rural areas enjoy jurisdiction over family law, land disputes and petty crimes. Formal courts cover these issues in all areas (albeit more accessibly in cities and towns) and enjoy exclusive jurisdiction over serious crimes, such as rape and murder.

While the formal justice institutions are better understood by and have received greater support from international partners, they remain dependent on customary justice to act as a de facto lowest instance. Customary authorities keep the peace in rural areas and absorb a daily caseload of minor grievances and disputes that, taken together, would otherwise swamp the formal courts. However, traditional authorities have neither capacity nor a legal mandate to address serious crimes of violence and are therefore, in turn,

dependent on the formal justice system to deal effectively with such crimes.

Due to decades of political and budgetary neglect, the formal justice system is currently perceived as not holding up its end of this bargain. Both judges and police assess "fees" for undertaking the most routine duties in relation to justice seekers. The police are often acknowledged to be accessible and to charge fees mainly in relation to specific costs (for instance, for fuel to come and arrest a suspect). Judges, on the other hand, are described as largely inaccessible and criticised for arbitrarily charging fees for e.g. issuing process or decisions. The most objectionable practices involve blanket denial of bail on recognizance, imposing unmerited expenses on individuals and their families on pain of prolonged pre-trial detention. Such practices distances formal justice from ordinary people and rural communities and heighten a perception of state predation rather than protection.

These "supply side" problems in the formal justice system are made worse by the lack of legal aid available to parties to cases outside of Liberia's urban areas. Private lawyers have generally been reluctant to work outside of Liberia's largest legal markets. At the same time, public defenders are few in number and as under-resourced as judges and police. Promising legal aid programmes have not scaled up to meet levels of need due to both resource and coordination issues. While a number of civil society organisations and international NGOs have supported legal awareness at the community level and assisted with alternative dispute resolution (ADR) programmes, needs still far outpace available resources in rural areas.

The local justice gap

Failings in the formal system currently pose negative repercussions for traditional communities in the countryside. They are aware of their legal obligation to transfer serious criminal cases to the formal system but have no guarantees that doing so will be feasible, nor that it will result in a just outcome. In cases of crimes of violence that threaten the fundamental harmony of communities, they frequently face the necessity of taking on extremely high costs – including

questionable fees and repeated transportation costs for witnesses – in order to pursue an unsure judicial outcome. Failing that, they face the strong likelihood that suspects will be released back into the community, after some months of pre-trial detention, due to the failure of the prosecution to proceed in a timely manner.

In other cases, the inefficiencies of the formal justice system are abused by individuals in customary communities that take local disputes to the police rather than settle them via traditional justice. In such cases of "forum-shopping", the police arrive to arrest alleged suspects (or allegedly their family members if they cannot be found) and place them in detention, where they can remain for months if they are unable to pay bail. These scenarios are costly to all parties (in terms of fees paid to the police and justice officials) and result in productive members of the community becoming economic burdens for their families as long as they remain detained. These practices undermine the legitimacy of traditional authorities and may further contribute to distrust of the formal system.

As a result of this formal justice bottleneck, several observer's claim that traditional communities increasingly resort to self-help. In such cases, serious crimes are allegedly dealt with by local communities in a manner incompatible with Liberian law and applicable human rights standards. While all communities interviewed denied such practices and were clearly aware of their obligation to refer serious criminal cases, they also consistently complained about the disproportionate financial and other burdens that doing so placed on them.

Frustrations with formal justice are also evident in more urbanised areas such as the district capitals, where physical access to courts is not an issue but where fees and uncertainty remain as barriers to effective justice. The results in these contexts are often more visible, with frustration boiling over into "mob violence", or attacks on persons believed to be complicit in crimes and their property, as well as on police stations and courts.

The lack of a clear line between formal and customary jurisdictions frequently places traditional authorities in a situation of technical

illegality. These issues can arise when they deal with crimes that both their own communities and formal authorities expect them to deal with as a matter of course. The prevalence of sexual and gender-based violence in post-war Liberia has underscored this problem. In a context of lingering uncertainty about whether customary authorities can address "minor" sexual violence cases, the responses of both customary and formal actors to rape remain controversial in that they have led to miscarriages of justice without having had a visible impact on rates of sexual abuse.

Refocusing on justice

In a country with a strong centralised tradition like Liberia, local actors tend to look to the capital for solutions to access to justice problems. The ILAC team observed the need for greater and more consistent focus on access to justice issues at the central level. Although rule of law has been a consistent government priority, the budget for the judiciary has fallen in real terms since 2013, even as UNMIL withdrew and available donor funding receded.

Meanwhile, crucial reform efforts have remained under discussion for a long time without leading to legislative and policy reforms. Numerous proposals from a seminal 2010 conference on expanded access to justice have languished or been incompletely implemented. Even when new laws have been introduced, such as the recently implemented laws relating to community forestry management, local self-government and land rights, communities often remain unaware of how they would be affected by them. Where such laws strengthen local communities by recognising, clarifying and reinforcing their roles, they will have little impact without significant awareness-raising and mobilisation.

Meanwhile, political controversies such as that surrounding the April 2019 impeachment of Supreme Court Associate Justice Kabineh Jan'eh may further strengthen perceptions that the judiciary has lost the measure of independence it achieved since the conflict. The ILAC team heard concerns expressed about this case and its potential effect on trust in the judiciary by many international and national observers.

Inconsistencies in national policy on the rule of law have been heightened by the past tendency of international partners to vary between different approaches to rule of law support. Long-term, strategic investments in the Liberian justice system have been supported alongside high profile but incompletely thought-out projects meant to spur maximum change in a short timeframe.

In line with Sustainable Development Goal 16.3, which places access to justice at the heart of sustainable development at the global level, support to access to justice in Liberia should be strategic, long-term, and closely tied to broader development targets, and particularly those set out in the country's 2018-2023 Pro-Poor Agenda for Prosperity and Development (PAPD).

Introduction

This report examines Liberia's "dual legal system", which incorporates both a formal judiciary operating primarily in the country's cities and towns, and customary authorities dealing with minor disputes in the rural interior.[1] The aim is to examine the interplay of these two systems in order to identify both obstacles to access to justice for ordinary Liberians and opportunities to overcome them.

The report aims to draw renewed attention to previous ground-breaking work on customary justice and access to justice in Liberia.[2] These efforts were largely eclipsed by subsequent policies focused on building security and justice infrastructure but remain all the more relevant in light of Liberia's current circumstances. The report finds that the formal and customary systems remain highly interdependent, and that failings in the formal system currently present the most important obstacle to access to justice. Women are particularly impacted by these shortcomings of this system, although some progress has been made in protecting gender equality. The report also highlights the crucial preventive role that justice occupies within Liberia. Access to justice is vital for sustaining stability and preventing further recurrence of conflict.

Despite the devastation caused by Liberia's 1989-1997 and 1999-2003 civil wars, the country has seen a slow but steady consolidation of its security and justice sectors in the fifteen years since the Comprehensive Peace Agreement (CPA) that ended the fighting. Much of the credit for this stabilisation has gone to the UN Mission

[1] The assessment was conducted between December 2018 and August 2019 with experts from four ILAC member organisations: Anna Gilsbach, German Bar Association; Timothy Meyer, American Bar Association; Vera Ngassa, International Criminal Court Bar Association; and Hussein Sengu, Public International Law and Policy Group. ILAC was assisted by Johnny K M Ndebe, Expert Consultant, as well as Parley Liberia, which conducted a survey of formal justice sector actors in Bong and Lofa Counties in March 2019. The assessment was made possible by core funding provided by the Swedish International Development Cooperation Agency (Sida). The geographic scope of this report includes the capital, Monrovia, as well as rural areas impacted by the past conflict in the "hinterland" counties of Lofa, Bong and Nimba.

[2] US Institute of Peace (USIP), "Looking for Justice: Liberian experiences with and perceptions of local justice options" *Peaceworks No 63* (2009), Justin Sandefur and Bilal Siddiqi, "Delivering Justice to the Poor: Theory and Experimental Evidence from Liberia" (2013), "Record of Proceeding, National Conference on Enhancing Access to Justice" (April 15 2010).

in Liberia (UNMIL) which provided direct security throughout the country and supported extensive reconstruction of security and justice institutions.

The departure of UNMIL in March 2018 was accompanied by fears of a security vacuum and the risk of heightened instability. However, by this time the country had both overcome a devastating regional Ebola outbreak in 2014 and seen a peaceful democratic transition from the country's first post-war President, Ellen Johnson Sirleaf to former football star George Weah in 2017. In the event, the departure of UNMIL was not accompanied by widespread violence or instability and hope emerged that the country's justice actors would be capable of shouldering Liberia's justice challenges on their own.

One year after UNMIL's departure, the scale of Liberia's justice challenges is becoming clearer. Although corruption and poverty have long been endemic, recent scandals combined with persistent high inflation have fuelled a sense of economic crisis. According to a Transparency International Survey, Liberians were second most likely in Africa to be forced to pay a bribe to access public services in 2019, and nearly half perceived rising corruption.[3] Liberia also ranked 97th out of 126 countries on the World Justice Project Rule of Law Index in 2019, with high corruption found in both the judiciary and the police.[4] As a result of its economic woes, the country is now months in arrears paying civil servants, including judges.[5] Meanwhile, the country's politics have been shaken by the first post-war re-emergence of mass demonstrations and political violence.[6]

In retrospect, while support from UNMIL undoubtedly put Liberia in a position to better address its own justice needs, it also obscured chronic and ongoing structural weaknesses of the Liberian justice system. These weaknesses are now reasserting themselves in

[3] Transparency International and Afrobarometer, "Global Corruption Barometer – Africa 2019" (July 2019), 8 and 15.
[4] World Justice Project, "The World Justice Project Rule of Law Index 2019" (2019), 97.
[5] "Graft fears as Liberia civil servants go unpaid", *Agence France Presse* (14 August 2019).
[6] "Liberia's Foreign Partners Condemn 'Creeping Lawlessness'", *Daily Observer* (21 August 2019).

manners that undermine trust in the state and place at risk many of the country's hard-won security gains.

The most serious challenge to access to justice is the ongoing failure to provide the basic resources needed for local judicial and police actors to be able to carry out their jobs and provide services. This has led to the imposition of predatory fees for undertaking the most routine duties. These issues are exacerbated by the lack of adequate countrywide legal aid services. These dysfunctions lead to miscarriages of formal justice such as the release of suspects in serious crimes to their communities without investigation or punishment, prolonged pretrial detention and arbitrarily denied bail, and destructive forms of forum shopping. Frustrations over the situation have resulted in communities allegedly using abusive forms of punishment against serious crimes suspects and a rise in vigilante violence in towns.

It is clear that Liberians from all parts of the country are dissatisfied with the formal justice system and its inability to resolve disputes in a transparent and efficient matter. The media image of customary justice in Liberia frequently focuses on persistent abusive practices such as harmful forms of trial by ordeal and discrimination against women. As a result, international donors are hesitant to engage with customary justice, despite being aware of the disproportionate role it plays in securing access to justice in rural areas. In a time of dwindling donor resources and increased security concerns, there is a clear prevention rationale for supporting engagement with local justice institutions.

Customary justice has proven to be resilient and effective. Where formal courts drive away justice seekers by imposing the full cost of justice on them, customary chiefs and elders provide an affordable, legitimate and accessible form of justice that has flourished during one of the most difficult periods of Liberia's history. Its role in keeping the peace should be acknowledged and supported. While it remains crucial to increase the capacity and legal knowledge of customary actors, ensuring a well-functioning formal sector is also crucial; each half of Liberia's dual system is dependent on the functioning of the other in order to be able to play its own role.

The following sections in this report analyse these issues in more detail, laying the basis for recommendations on how they can be resolved in a manner most likely to be effective in the Liberian context. The next Chapter of this report provides an overview of the evolution and key characteristics of Liberian customary justice system, including how rules are made, how they are applied and how customary leadership is selected. This is followed by a discussion of the problematic relationship between customary and formal justice – and the shortcomings of each system – that shapes the experience of justice seekers in much of the country.

The fourth Chapter tracks international rule of law policy in Liberia, describing dramatic shifts between "bottom up" approaches focused on reforming existing institutions to expand access to justice and "top down" approaches in which justice has frequently played a secondary role to security concerns. The report ends with conclusions on how more constructive interactions between customary and formal justice can contribute to expanded access to justice and greater stability in the country, including specific recommendations to key justice actors.

Customary Justice in Liberia

Although Liberia was one of very few African states never to be colonised by European powers, the American and other freed slaves that settled the country from its founding in 1847 set up a political system that allowed control of the entire country while only serving the elite - a form of indirect rule over the "uncivilised" indigenous population nearly indistinguishable from colonialism.

In 1869, the Ministry of Internal Affairs (MIA) was established with authority to govern all aspects of the "hinterland" beyond the settled coastal areas, including the ability to exercise judicial power over the indigenous population "with due regard to native customary law and native institutions".[7] This gave rise to Liberia's dual legal system, with the hinterland ruled by customary law and with institutions subject to executive branch oversight. The settler elite were subject to statutory law and courts of the judiciary.[8]

Since the early 20th century, the Supreme Court periodically affirmed the role of customary courts under the executive branch, but also issued contradictory rulings declaring judiciary authority exercised by any office outside the judiciary as "utterly inadmissible".[9] Finally, in 1972, MIA authority over the hinterland was legislatively confirmed in the Administrative Procedure Act. Customary justice remains under the executive branch, at least nominally overseen by the hierarchy of District Commissioners and County Superintendents that serve under the MIA.

In contemporary Liberia, each of its 16 ethnic groups has its own customary justice mechanism which is largely undocumented and uncodified. What they do have in common, however, is that dispute resolution is led by chiefs and elders who are part of the community

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[7] *An Act of Legislature,* January 23, 1869, as cited in *Gray v Beverly* (1 LLR:500;1907). The Ministry of Internal Affairs was initially referred to as the "Interior Ministry".

[8] Stephen C. Lubkermann, Deborah H. Isser, and Philip A. Z. Banks III "Unintended Consequences: Constraint of Customary Justice in Post-Conflict Liberia" in Deborah Isser's *Customary Justice and the Rule of Law in War Torn Societies* (2011)*,* 196.

[9] Julian Graef, *Practicing Justice in Liberia: A Brief History* (2015), 78. The settler elite comprised Americo-Liberians along with other freed slaves, frequently referred to as "Congos".

and try to resolve disputes at the point of origin, with the aim of preserving community peace and harmony.[10]

Resilience of customary justice

Customary justice appears to have an enduring appeal in the communities we visited within Bong, Nimba and Lofa county, with an almost overwhelming number of cases handled by chiefs and elders working essentially full time on dispute resolution. This finding is in line with earlier reports on access to justice in Liberia and indicates the ongoing resilience of customary justice in the face of the country's difficult post-conflict conditions.[11]

Community leaders deal with a wide range of issues with the typical weekly "caseload" described as including at least one case per day involving domestic violence, fighting (assault), and child custody or abuse, as well as more sporadic cases of minor theft, disputes over market stall spaces, inheritance disputes, debt repayment, and property or boundary conflicts.[12]

The broad range of disputes addressed, including both minor criminal, civil and domestic matters, reflects the fact that customary approaches generally do not clearly distinguish judicial from other government functions.[13] Moreover, because the binding nature of customary decisions results from community acceptance and peer pressure rather than outside force, no state interventions are required in such cases except where they affect third parties outside the community.

The persistent popularity of customary justice in local disputes may to some extent reflect the slow pace of economic and social change in the countryside. Communities are largely dependent on

[10] African Security Sector Network, "Traditional Justice Mechanisms in Liberia" (2017), 2.
[11] USIP (2009), Sandefur and Siddiqi (2013).
[12] Interview, traditional community leadership, Zota District, Bong County, 06 April 2019. More serious crimes of violence also arose but were to be referred to the authorities, not dealt with locally.
[13] INPROL, "Customary Justice: An Introduction to Basic Concepts, Strengths, and Weaknesses" (2016).

subsistence farming in the bush, with families allocated plots of land for use to feed themselves and cultivate crops for sale at the market.[14]

These circumstances lead to a degree of mutual social and economic dependence that is clearly reflected in customary rules meant to encourage cooperation, address the root causes of conflict and restore harmony where it has been threatened. For example, one of the communities visited had a complex set of rules around the institution of "coo", involving collective labour at individual families' bush farms during labour intensive periods. In cases of crimes of violence, one of the most severe responses was to exclude offenders from either participating in or benefiting from the coo, effectively excluding them from the life of the community and threatening their livelihood until they made full amends.[15]

Another example involved the serious offences of spoiling and stealing crops. Because of the long distances and physical exertions of working in the bush, exceptions exist for 'hand to mouth' stealing which is not considered theft as long as it is limited to what is needed for immediate consumption. As soon as produce is wrapped and taken away, this is an indication of theft since it is presumed that it will be sold.[16]

The appeal of customary justice is sometimes portrayed as a result of "push factors" such as corruption that make the formal system relatively less accessible. However, this analysis misses key "pull factors". Customary law is not only more directly accessible but also more in line with traditional values and expectations.[17] Where traditional dispute resolution aims at social harmony, proceedings in

[14] The persistence of these subsistence patterns is indicated by the origins of the villages visited, almost all of which started as bush farms that attracted permanent residents.
[15] Interview, traditional community leadership, Zota District, Bong County, 06 April 2019. These plots may be far from the village, requiring long daily trips on foot to clear brush and tend to crops. Violence committed in the bush seems to be seen with particular seriousness, perhaps because the risk of impunity is higher when crimes are committed out of sight.
[16] Interview, traditional community leadership, Zorzor District, Lofa County, 06 April 2019.
[17] By providing outcomes aimed at preserving social harmony, customary dispute resolution remains more attractive than punitive formal approaches. Panel Reform International, "Access to justice in sub - Saharan Africa the role of traditional and informal justice systems" (2002), 1 and OHCHR, "Human Rights and Traditional Justice systems in Africa" (2016), 26.

formal courts are seen as individualistic pursuit of self-interest. It is widely believed that only the rich, or "first class persons" will receive justice in the formal system. These factors explain one of the key findings in a seminal 2009 report that indicated that even if all the failings of the formal system were to be overcome, ordinary people would still prefer the customary system.[18]

Liberian customary rules have remained adapted to the needs and expectations of communities. By responding to deeply held understandings of injustice, they can provide a path to justice that deals with the root issues of the underlying dispute, fostering reconciliation and reparation of damaged social relations. According to numerous interlocutors, these restorative values have been the key to the resilience and enduring appeal of the customary system in the face of the trauma resulting from Liberia's civil wars.

Key aspects of customary justice

Customary justice seeks to preserve social harmony and repair it when it is disturbed. It responds to customary concepts of "violence", defined as acts by which an individual publicly places themselves above the law, ignoring or disrespecting the rights of others. The "public" nature of such crimes can be expressed via their impact on the community rather than their literal visibility. Public violence included any wrongful act against others that affected the harmony of the community, a category ranging from domestic violence in the home to placing a lock on a communal well.[19]

Redress, including punishment, tends to have a dual purpose within the Liberian customary system. It should lead to social reconciliation, but it should also deter the perpetrator from committing the same crime again. For that reason, public shame and public administration of punishment is not uncommon. A perpetrator should not only apologise but also repair the harm committed. Thus, if a person steals something, they should return the item together with the cost the victim incurred.

[18] USIP (2009).
[19] Interview, traditional community leadership, Zota District, Bong County, 06 April 2019.

Responses to domestic violence provided a good illustration of collective social sanctioning in practice. In one community, women collectively protest cases of domestic violence by placing mats in the courtyard of the abuser. By custom, he is then required to bring food and water for drinking and bathing for all the women. The women stay there until the man provides redress, including apology ("he must kneel down and publicly apologise to his wife"), and reparations either directly to the victim ("he should buy her clothing or textiles, something that will appease her mind and make her regain her pride") or to the community as a whole, typically by cooking a meal for everyone. [20]

Earlier in Liberia's history, traditional authorities would have ruled over serious crimes as well as applying punitive remedies.[21] Typically in such cases the perpetrator would be taken to the "bush devil", the head of the local male secret society or "Poro", who would apply physical discipline.[22] By removing jurisdiction over serious crimes from the traditional authorities, the state left them free, in theory, to focus exclusively on crimes that could be repaired based on restorative approaches.[23] Customary leaders we spoke with presented referral of serious crimes as a matter of both practical and legal necessity, but noted that the success of this approach depended on the formal system being capable of effectively processing serious crime cases.

An equivalent of the right to appeal exists within the customary system in Liberia. However, it functions mainly as a means of establishing the appropriate level of authority needed to respond to

[20] Interview, traditional community leadership, Zota District, Bong County, 06 April 2019.
[21] In discussing domestic violence, one chief stated that "if the man resists, before you would carry him somewhere to bear the consequences." Interview, traditional community leadership Zota District, Bong County, 06 April 2019.
[22] In the most serious cases, the death penalty would have been used. One community could point to a distant hill where serious criminals were hanged through the 1950s. Interview traditional community leadership, Zorzor District, Lofa County, 06 April 2019.
[23] Today, force is only openly used as necessary in order to restrain suspects while waiting for the police to arrive. Due to the remote location of some villages and difficult road conditions, detention periods can sometimes last days. As villages rarely have dedicated prison facilities, detention usually involves methods such as fettering suspects to tree stumps ("footcuff"). Interview, traditional community leadership, Zorzor District, Lofa County, 06 April 2019.

a particular dispute in advance of the process of hearing the case.[24] If it is undertaken correctly, the resulting decision should be acceptable to all parties. However, in relatively unusual cases where no satisfactory outcome can be reached, the case can be taken up a chief higher up in the hierarchy.

Selection of customary leadership

The customary system in Liberia is led by chiefs. There is a clearly defined hierarchy within the customary system that begins with the head of a household as the most basic unit of authority, followed by chiefs at the quarter, town, and clan levels.[25] Next are paramount chiefs, followed by the administrative representatives of the State, the district commissioners and county superintendents operating under the Ministry of Internal Affairs (MIA).[26]

The dual legal system in Liberia dictates that chiefs are both downwardly accountable to their communities and upwardly accountable to the state, via the MIA.[27] According to the Constitution, chiefs at all levels are meant to be elected. This rule has not been implemented since the start of the conflict. Instead, high level chiefs have frequently been appointed by State representatives while lower level chiefs tend to be selected in various manners by their own communities.

There is a long de facto tradition by which local positions of customary authority are either hereditary or granted to influential persons in the community. While these practices encourage accountability to the community, they may also perpetuate existing power imbalances. This dynamic is most clear in relation to women and youth, who have traditionally not enjoyed standing to participate

[24] In this sense, the process of establishing the right level of adjudicatory authority is based on the principle of subsidiarity. The hearing should be held by authorities as close to the setting of the incident as possible, but they should enjoy authority in relation to all the parties and sufficient gravitas for all of them to be inclined to accept the decision.
[25] Janel B. Galvanek, "Pragmatism and Mistrust: The Interaction of Dispute Resolution Mechanism in Liberia" *Berghof Foundation* (2016), 18.
[26] Niels Nagelhus Schia and Benjamin de Carvalho, "Peacebuilding in Liberia and the Case for a Perspective from Below" *NUPI Working Paper 778* (2010), 7-8.
[27] Lubkemann, et.al. (2011), 212.

in customary proceedings. Women chiefs are still the exception and youth remain largely barred from formal leadership positions

One form of local selection of chiefs is via decision by the local council of elders. Chiefs rarely administer customary justice on their own but rely on other traditional actors. Most important are the elders, who assist with justice matters by acting as a deliberative body and the repository of the history and rules of the community.[28] The elders in some communities act to select new chiefs. Whoever is appointed traditionally cannot refuse: "even if you are living abroad, you must come back and at least serve long enough to work out a long-term replacement." In some cases they also have the power to dismiss a poorly performing chief.[29]

Elders may also act as both a sounding board and a counterweight to chiefs in decision-making processes. The authority of the chief is limited by the need to "rely on the Elders for cultural information – how people are related, how they came together." However, while the elders are primarily responsible for tradition, the chief is responsible for state law by virtue of their place in the Ministry of Internal Affairs hierarchy. This entails a responsibility to "consult elders on decisions but also push back without embarrassing them if what they recommend is against state law." In one example, the chief had successfully convinced the elders to climb down in a dispute with youths in the village, and the elders "apologized in way that didn't lose face by buying palm wine for the chief to thank him for successful resolution."[30]

The leadership in one community stated that this system was better than elections, which they believed could be manipulated, resulting in chiefs who might have divided loyalties. There was a general sense that it would be desirable to hold the customary system outside

[28] Interview, traditional community leadership, Bain-Garr District, Nimba County, 07 April 2019.
[29] In the words of the chief: "The elders give kola nut to the town crier, tell him to announce that the chief is no longer legitimate. Then no one will respect your authority, you get problems if you don't just go and let the elders select new chief." Interview, traditional community leadership, Joquelleh District, Bong County, 07 April 2019.
[30] Interview, traditional community leadership, Bain-Garr District, Nimba County, 07 April 2019.

the tensions and temptations of party politics.[31] Liberia has a history of strong national level political mobilisation based on local affiliation and loyalties that will present a challenge for efforts to depoliticise elections of chiefs going forward.[32]

If such politicisation occurred, this would present clear threats to the integrity of the customary system. One observer described past cases in which high level chiefs were appointed without having cultural knowledge and local support, noting that communities engaged in passive resistance and selected "secret chiefs" from among their own number to lead them instead.[33] However, we also heard voices in favour of elections of traditional chiefs, not least from the younger generation.[34] This may reflect a sense that youth continue to have an insufficient role in traditional proceedings and that re-imposing a system in which each adult community member enjoys an equal vote, regardless of status, could act as a corrective.

The Minister of Internal Affairs, Hon. Varney Sirleaf stated that the current administration is committed to reinstating chieftaincy elections.[35] This is supported in the 2018 Local Government Act, which includes guarantees against politicisation of the process. "Paramount, Clan and General Town Chief shall be non-partisan and shall be elected in accordance with the Constitution. A candidate shall not present himself or herself as a political party candidate nor campaign on a political platform"[36] This is an encouraging development, but it will be crucial for the MIA to work in consultation with communities to identify risks associated with elections and develop policies to mitigate them.

[31] A number of actors stated that such concerns were heightened by an early 2019 controversy surrounding the dismissal of a high traditional authority in Bong County.
[32] Interview, Mats Utas, Professor of Anthropology, Uppsala University, 05 September 2019.
[33] Interview, NGO representative, 07 April 2019.
[34] The leadership of the Bong County Motorcycle Taxi Union, which is comprised primarily of young men, was strongly in favour of such elections. Interview, Bong County Motorcycle Taxi Union, 09 April 2019.
[35] Interview, Hon. Varney Sirleaf, Minister of Interior Affairs, 03 December 2018.
[36] Local Government Act 2018, 2.15x.

Participation and lawmaking

General concerns about the composition of traditional authority and the resulting potential for bias remain. Women and youth, in particular, have traditionally been seen as the subject of decision-making rather than as decisions makers. Women have always held positions of authority, not least as the heads of the Sande, or women's secret societies.[37] However, the Sande traditionally exercise authority only over women and girls, and were subject to decisions of male leaders.[38] Youth are more generally excluded from positions of authority and traditionally have not even been allowed to be in the presence of chiefs and elders when a case they are a party to has been under discussion.[39]

Customary leadership is still overwhelmingly dominated by older men, but there has also been an increase in the prevalence of women chiefs and elders. Traditional leaders explained that there had been a paradigm shift after former President Ellen Johnson Sirleaf was elected: "If a woman can be president, the sky is the limit."[40] Work to sensitise customary communities to Liberia's legislation and international obligations, by International NGOs like the Carter Center and Kvinna till Kvinna have worked together with national CSOs to help communities better understand their rights and obligations in relation to gender equality. The National Council of Chiefs and Elders named empowering women as a priority, starting with their own leadership.[41]

The participation of youth in law-making has also improved in some communities. When a new law is introduced, young people take an

[37] Women have traditionally benefited from a broader West African tradition of parallel men's and women's organisations. While this system was broken down during the colonial period, it does partially survive in the form of parallel secret societies, with the Poro for men and the Sande for women. The Sande are responsible for initiating women into adulthood and can become a vehicle for promoting women's interests. Mary H. Moran, "Collective Action and the "Representation" of African Women: A Liberian Case Study", *Feminist Studies*, Vol. 15, No. 3, (Autumn, 1989).
[38] Galvanek (2016), 21.
[39] Interview, NGO representative, 06 December 2018.
[40] Interview, Development and Education Network Liberia, Bong County, 08 April 2019.
[41] They were proud to announce that they had gone from having only men, in 2006, to now having equal representation of men and women in the council. Many women had nevertheless been appointed to deputy roles. Interview, National Council of Chiefs and Elders, 12 August 2019.

active part in town meetings and are welcome to provide their views on subjects such as legal reform. In one of the communities the current chief was selected by consensus of the elders precisely for the reason that she was seen to be engaging with young people to successfully prevent conflict.[42] Young people's potential and leadership is in many communities increasingly recognised and appreciated.

Many of the communities we visited were clearly making outreach efforts to include youth, along with women and other key stakeholders, groups in their leadership. In one community, for instance, the elders maintained that youth were still not fully free to communicate in community deliberations ("you need to earn it like being a lawyer"), but stated that they had begun grooming young people with leadership skills for future membership.[43]

In fact, all the communities we visited described major historical changes in their lawmaking processes. Where communities had previously only had the opportunity to hold meetings when there was a funeral (and work on the bush farms was accordingly forbidden for a day), some now scheduled regular bi-monthly sessions to review and update traditional law.[44] In addition, communities describe a far greater participatory element in the lawmaking process:

> Earlier, the Poro master (head of the male secret society) would set the law all should follow. Now we understand Western good practice, the whole town takes decisions. So for instance, we set a day to clean the whole town. … Law making is done by voting. Women and men sit down and vote on it by majority. Elders, youth, women chairman development chairman, all the leaders draft the decision under proposal and vote.[45]

One of the sources of strength of customary justice is the manner in which its rules governing the life of traditional communities are

[42] Interview, traditional community leadership, Zota District, Bong County, 06 April 2019.
[43] Interview, traditional community leadership, Bain-Garr district, Nimba County, 07 April 2019.
[44] Interview, traditional community leadership, Zorzor District, Lofa County, 06 April 2019.
[45] Interview, traditional community leadership, Bain-Garr district, Nimba County, 07 April 2019.

continually adaptable according to the circumstances. Where women still suffer the effects of inequality and sexual and gender-based violence, they are increasingly accepted in leadership roles in communities, and in turn use these opportunities to work to promote equality. Although youth are still structurally underrepresented in the leadership of communities, they are increasingly consulted in important decisions facing their communities.

Challenges for Access to Justice

In theory, customary justice in Liberia could interact seamlessly with formal justice, filtering out minor disputes while referring cases requiring a full legal intervention on to the courts. In reality, each system continues to struggle with significant issues affecting their own performance. These issues in turn serve to keep their counterpart systems from being able to develop the mutual confidence needed to support sustainable and efficient modes of cooperation.

This section discusses a series of challenges to access to justice that face justice seekers in both the customary and the formal system. While some relate to access itself, in a direct physical or financial sense, others relate to concerns about the quality of justice received. Because the quality issues are generally well-known, they become access issues in the sense that they discourage people from trying to use legal avenues that should be available to them.

Cumulatively, these factors act to severely obstruct access to justice in Liberia, not only for ordinary justice seekers but particularly for marginalised groups such as poor, rural dwellers, women and young people. While many issues remain for customary chiefs and elders to address within their system, the most severe and systemic obstacles are found on the formal justice side. Addressing them will require further reforms and a willingness to fundamentally review the formal system in order to understand why structures that appear functional on paper are unable to perform adequately in practice.

Mutual mistrust in the dual system

Expanding access to justice in Liberia requires several simultaneous efforts. Most obviously, both parts of Liberia's "dual system" must address obstacles within their own structures and procedures. To do this as effectively as possible, the two systems also need to find points of positive interaction. Calls for "integration" of the two systems may go too far in trying to harmonise procedures that are

inherently quite different and respond to different needs.[46] What is needed is a dialogue that recognises that each system has both much to learn from and much to teach the other – and that results in modalities for better practical coordination and cooperation going forward.

The main obstacle to such a cooperative approach is the historic lack of trust between customary and formal justice practitioners. Due to Liberia's quasi-colonial past, local communities remain suspicious of perceived state encroachment on local power. Well-meaning past efforts to promote a single justice system for all Liberians were taken as a threat precisely because their formula for placing "all Liberians on equal legal footing before the law and its institutions" involved entirely displacing customary justice.[47]

For the formal system, significant concerns remain about the potential for arbitrariness, discrimination and other human rights abuses by the customary system. There is also a tendency for formal actors to assume that law and justice issues can only be properly understood by trained professionals like themselves, and that laypersons exercising customary authority should not be encouraged to play more than a symbolic role in the justice system.

In theory, the formal court system in Liberia is well designed to provide national coverage while ensuring appropriate appellate review. The courts are organised at three levels, beginning with about 350 magisterial courts distributed throughout the country to hear first instance cases, including minor crimes. Cases involving ordinary and more serious crimes originate in the higher level Circuit Courts. There are 20 Circuit Courts nationwide, including one for civil matters and five specialised criminal courts in Montserrado County (home of the capital, Monrovia), and one circuit court in each of the remaining 14 counties.[48] The Supreme Court sits in Monrovia and exercises final appellate jurisdiction and constitutional review.

[46] The word "integration" also implies a one-way process in which the customary system is absorbed into the formal. Interview, Deborah Isser, World Bank, 25 March 2019.
[47] USIP (2009), 71.
[48] Five specialised courts for probate, debt, labour disputes, traffic violations and juvenile issues are also located in Montserrado County.

It is composed of the Chief Justice, who is charged with administering the judiciary, as well as four Associate Justices.

Where court systems are as formally structured as in Liberia, recognition of "non-state" customary justice processes can be controversial. There is a political risk that the state appears too weak to exercise all its functions, particularly where customary jurisdiction over some criminal matters is foreseen. From a legal perspective the state remains responsible in international law for human rights violations that result from non-state justice, whether or not it has authorised traditional authorities to act in its name.

In Liberia, this dilemma is partly resolved by the fact that traditional chiefs are nominal state actors through their inclusion in the hierarchy of local government officials under the Ministry of Internal Affairs (even if the motivation for doing so was originally to exert control over rural areas). This solution raises constitutional separation of powers issues, since chiefs under the executive branch frequently participate in "judicial" dispute resolution processes.[49] Various proposals have been put forward to resolve this constitutional dilemma.[50] Nevertheless, work remains to convince legal professionals to view customary authorities as peers, or at least as strategic partners working on a common justice project.

The potential for customary authorities to contain societal conflict and help prevent a return to violence was quickly recognised in the wake of the conflict. In 2003, an ILAC assessment recommended that the customary system be used to compensate for the post-war weakness of the courts by providing nationwide alternative dispute resolution (ADR).[51] This recommendation was ultimately fulfilled but on the strength of traditional leaders' own efforts, and in a largely unplanned manner. Many formal justice actors appreciate the role of

[49] Stephen C. Lubkemann, Deborah H. Isser, and Philip A. Z. Banks III "Unintended Consequences: Constraint of Customary Justice in Post-Conflict Liberia" in Deborah Isser's *Customary Justice and the Rule of Law in War Torn Societies* (2011), 201.
[50] Amanda C Rawls, "Policy Proposals for Justice Reform in Liberia: Opportunities Under the Current Legal Framework to Expand Access to Justice", *Traditional Justice: Practitioners' Perspectives, Working Paper No 2* (2011).
[51] International Legal Assistance Consortium (ILAC), *ILAC Report: Liberia* (2003).

customary justice. The Minister of Internal Affairs described customary justice in straightforward terms: "They relieve the courts and absorb conflict where the police don't cover the country."[52] Similarly, the Minister of Justice encouraged use of the dual system because the formal system is expensive and time consuming for the population in rural areas.[53]

Nevertheless, both Ministers registered concerns about harmful traditional practices and customary authorities overstepping their jurisdiction. These concerns are widely held among state authorities. A survey of formal justice actors in Bong and Lofa Counties found a perception that the formal justice system was superior to the traditional system in almost all respects, ranging from human rights and constitutional compliance to accountability, fairness, efficiency and ability to maintain law and order.[54] The survey respondents were overwhelmingly open to working more closely with traditional actors but were sceptical about traditional actors wanting to work with them.[55]

While many judges and lawyers expressed desire for engagement with customary authorities, the views of one judge we spoke with remain representative for many legal professionals:

> We are cognisant of calls for integration … I do not support that. It is the unschooled joining the schooled. Tradition is always fading and changing, it varies by location and is highly subjective, case by case and arbitrary. By contrast the legal system is guided by written codes, objective, measurable and openly predictable.[56]

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[52] Interview, Hon. Varney Sirleaf, Minister of Interior Affairs, 03 December 2018.
[53] Interview, Hon. Frank Musa Dean, Minister of Justice, and Cllr. J. Daku Mulbah, Solicitor General, 04 April 2019.
[54] Parley Liberia, "Survey of Formal Justice Actors' Knowledge, Attitudes and Perceptions of Traditional Justice Systems" (April 2019). The survey was conducted for ILAC in March 2019 and reached 77 formal justice system actors in 10 districts of Bong and Lofa Counties.
[55] 87% of respondents were open to working more closely with traditional actors, whereas only 57% felt traditional actors were open to working with them, and 40% felt they were not. Parley Liberia, "Survey of Formal Justice Actors' Knowledge, Attitudes and Perceptions of Traditional Justice Systems" (April 2019).
[56] Interview, Circuit Court Judge, 05 December 2018.

It is a fact that customary justice is less objective and measurable than statutory law. But the flexibility of customary justice is arguably one of the sources of its legitimacy, and less harmful in the context of the relatively highly contextualised local disputes in which it is meant to be applied. Given the resilience and popularity of customary law, many observers have argued that the formal system has much to learn from its traditional counterparts, as well as much to teach them.[57]

For customary actors, there is residual resentment that the Liberian state has stripped away their jurisdiction over most criminal matters without consistently providing an effective alternative. Just as the customary system handles the great bulk of minor disputes in the countryside, the formal system should (but frequently do not) act as a safety valve, relieving traditional authorities of the need to deal with serious crimes that threaten the integrity of their communities.

Many customary actors desire greater recognition of their role in dispensing justice and keeping the peace in their areas, and express openness to further training on the legislation and Constitution of Liberia – including the policies underlying them – in order to help them develop rules further harmonised with these norms. Traditional leaders also expressed a desire to be heard and respected by the formal justice system and frequently felt this was not the case.

Human rights issues with custom

While the restorative approach applied in customary justice is central to its acceptance, it raises a number of risks. First, the adaptability of traditional rules to the circumstances of cases leaves traditional leaders with a great deal of discretion in deciding cases. This makes it more difficult for parties to disputes to anticipate the consequences of their actions. It also creates space for decision-makers to act on conscious or unconscious biases, or simply rule in an arbitrary manner.[58]

[57] Lubkemann, et.al (2011), 227.

[58] There have been efforts to determine conditions for when a plural legal order can be deemed to be in accordance with human rights law. Concerning the right to a fair trial, for example, the Human

By way of example, the youth leaders we spoke with pointed out that traditional leaders may be compromised and might show bias in favour of important personalities in the community. This is perceived as general problem that keeps young community members from being confident that justice will be done in cases involving them. Discrimination against women in relation to their equal enjoyment of land and property rights is another prevalent example.[59]

A related problem stems from the premium put on community cohesion in traditional proceedings. In some situations, traditional rules may reflect expectations that victims should accept perpetrators being given a lesser punishment as a means of facilitating community reconciliation. Such expectations have a potentially negative impact on individual rights. Some of the most obvious cases of this that have been described in Liberia include those in which victims of rape or sexual assault perpetrated by others in the community are discouraged from seeking punishment of the perpetrator by their families.[60]

A second category of risk posed by customary adjudication is that of coercive methods, particularly in cases involving alleged crimes. In order for justice to be seen to be done and reconciliation to be embraced, it is crucial that violators admit their transgression, apologise and take measures of reparation. When suspects are reluctant to admit guilt, there is a risk that they have to go through harmful practices, including forms of trial by ordeal, in an effort to determine their guilt.

Rights Committee has laid down specific requirements that have to be met for a state recognizing juridical systems based on customary law to comply with its obligations under Article 14 ICCPR. If such systems are empowered to deliver binding judgements the proceedings before them have to be limited to minor civil and criminal cases, they have to comply with the standards enshrined in the ICCPR and state courts have to validate their judgements with regard to the Covenant rights. Affected individuals must have the possibility to contest these judgements in a procedure that meets the requirements of Article 14 ICCPR. Moreover, the Committee in this regard emphasizes that states have to fulfil their general obligation under the Covenant to respect and ensure the human rights of all individuals within their territory or jurisdiction, *see* UN Human Rights Committee 'General Comment No 32' (23 August 2007) UN Doc CCPR/C/GC/32 [24].

[59] Interview, representatives of NGOs working on land tenure issues, 04 April 2019.

[60] Interview, Cllr Jonathan Flomo, County Attorney Gbarnga Justice Hub, 05 April 2019.

Some forms of trial by ordeal are not harmful but play on superstitions in encouraging parties to proceedings to tell the truth. Other forms can cause serious harm, by for instance forcing suspects to ingest poison or place their arm in boiling oil in the belief that only a guilty person will suffer.[61] These methods, collectively referred to as "sassywood" have been outlawed, but are allegedly still prevalent in parts of the countryside.[62] They raise particular issues when applied in cases involving alleged crimes of "witchcraft", based on persistent beliefs that some individuals can harm others by invoking supernatural powers.

The perpetuation of harmful trial by ordeal methods raises serious human rights concerns related to the rights to a fair trial and to be free from torture.[63] There have been consistent efforts to better understand the role of such rituals in customary justice and distinguish non-harmful trial methods from harmful ones.[64] However, the periodic emergence of particularly egregious cases complicates efforts to develop a nuanced approach to the issue.[65]

Finally, we were also told of instances in which people who committed grave crimes, were not sent to the courts, but rather "carried to the bush devil" (typically the head of the local Poro, the male secret society), and disappeared or subjected to severe physical punishment.

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[61] USIP (2009), 5.
[62] Trial by ordeal and especially sassywood were not raised as issues by interlocutors in Bong, Lofa and Nimba counties. We were told that it remains prevalent mainly in the south east of the country. Interview, Cllr Jonathan Flomo, County Attorney Gbarnga Justice Hub, 05 April 2019.
[63] Liberia ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1984 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its Optional Protocol in 2004.
[64] "Record of Proceeding, National Conference on Enhancing Access to Justice" (15 April 2010), Lubkemann et al (2011), 224.
[65] For instance, at the end of 2018, a particularly shocking case came to light in the south involving the torture of three women accused of witchcraft, resulting in the death of one of them. National Institute for Public Opinion (NIPO) and Foundation for Community Initiatives (FCI), "Johnny's Town Murder Trial: Finally, Justice Is Done!" *Daily Observer* (03 September 2019).

Ineffectiveness of formal justice

The formal judiciary faces a number of key challenges that weakened their effectiveness prior to the 1990-2003 conflict, and that have never been completely resolved in its wake. Perhaps most important, the Liberian courts have struggled to achieve a measure of meaningful independence. Lack of independence was particularly pronounced before the conflict. The resulting inability of the courts to address grievances was cited by the country's Truth and Reconciliation Commission as one of the central drivers of the conflict.[66]

Since the conflict there have been sustained efforts to build the independence and the effectiveness of the judiciary. However, recent controversies such as that surrounding the March 2019 impeachment of Supreme Court Associate Justice Kabineh Jan'eh risk creating perceptions that the judiciary lacks independence or is politicised. The ILAC team heard concerns expressed about this case and its potential effect on trust in the judiciary by many international and national observers. One told us:

> This case plays into what is going on in the countryside. Take the example of a man who gets slapped and walks two hours to a police station to find no one there. Next time he will either slap back or hold it in. That's why the war happened. It just piled up and it's happening again. No one ever believed in courts but in the last years, some trust built up. Now it's going again.[67]

However, a more practical issue felt keenly at the local level is the chronic failure to ensure that the judiciary receives sufficient resources to be able to function properly. Most courts in the countryside have no budget for the most basic needs such as capital maintenance, purchase or repair of vehicles, office supplies or gas for electric generators.[68]

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[66] Truth and Reconciliation Commission of Liberia, *Preliminary Final Report*, vol. 2 (2009).
[67] Interview, NGO representative, 02 April 2019.
[68] Marina Caparini, "Extending State Authority in Liberia: The Gbarnga Justice and Security Hub", *NUPI Report* (2014).

Budgets for the judiciary have fallen since 2013, and came to only three per cent of the national budget in 2018, prompting the Chief Justice to complain that this allocation was "grossly inadequate to meet … requirements in setting up new courts, improving infrastructure and instituting reform in the judicial sector."[69]

The most obvious result of this dynamic at the local level is an expectation that users of the justice system should pay arbitrary fees at every stage of a process. This has put justice beyond the reach of many ordinary people and strengthened the impression that the courts only serve to protect the interests of the rich.

Moreover, longstanding structural issues related to the judicial budget have been worsened recently by an across the board inability to pay civil servants, including those in the justice system. One Circuit Court judge we spoke with at the end of 2018 had already worked for 18 months without pay, and virtually every judicial official we have spoken with since has laboured under the same conditions.[70]

Lack of access to formal justice

While traditional communities clearly understand their obligation to refer serious criminal cases to the formal courts, they uniformly express frustration regarding the insurmountable barriers to doing so.

The most obvious problem is the charging of fees for the most basic services by justice actors (including both police officers and judges). However, the expense and time involved in sending witnesses to support the prosecution of suspects was little less onerous, requiring not only payment of transportation and accommodation costs to visit distant courts, but also including the opportunity cost of lost time working farms. These frustrations were compounded when travel time was wasted to attend hearings rescheduled on technicalities or

[69] Abednego Davis, "3% Allotted for Judiciary in 2018-19 National Budget", *Daily Observer* (10 October 2018).
[70] Interview, Circuit Court Judge, 05 December 2018.

suspects were released to their communities without a clear explanation, giving rise to suspicions of corruption and impunity.

> We feel dissatisfaction with justice system because they don't follow the case up beyond pre-trial detention. We feel that the justice system should take all subsequent steps. But we have to pay for all subsequent steps to be taken.[71]

The same community described how the inefficiencies in the formal system also lead to destructive forms of forum shopping, in which parties to local disputes bypass traditional mechanisms and complain to the police. In these cases, persons who should not be involved in criminal proceedings at all – including chiefs who had tried to mediate disputes – faced indefinite pre-trial detention based on scanty evidence unless they could produce money for a bond. There was a general sense that the formal system not only bypassed tradition but actively undermined it:

> The police should also respect the town chief, come and seek out the town chief to say who they are arresting, be given address to go to. Magistrates and police don't respect town chiefs. There was a fight between youths on coo (collective farmwork), we started a reconciliation process but one youth runs to court, police come and handcuff the chief, how is he supposed to be respected when he returns?

In other communities, most notably Gbarnga, the police had made efforts to be accessible to local constituencies whereas the courts remained remote. The President of the local motorcycle taxi union said his membership distrusted the police after the conflict, but that early workshops by UNMIL and the Carter Center had laid the ground for better relations. He was in regular contact with the Police Chief, who trusted the riders to turn over suspects from among their number, just as they trusted the police to release suspects against whom there was no evidence. Although the police still charged fees for services (LD 500 to initiate an investigation, LD 1500 to drive out and arrest suspects) it was understood that this was because "the

[71] Interview, traditional community leadership, Bain-Garr District, Nimba County, 07 April 2019.

Government gives them nothing." By contrast, the Magistrates Court was seen as arbitrary and unapproachable:

> We have had a cordial relationship with some Circuit Court judges. But we have a terrible relationship with magistrates. If we bring a case, we have to pay LD 1500 for the court to issue a writ. We have to pay for stationery, we have to pay for motorbike conveyance from court to prison. We once went to a magistrate over a LD 1000 unpaid taxi bill, asked for simple hearing, and the judge demanded a LD 3,000 fee and sent the suspect to detention.[72]

The Police Commissioner in Gbarnga stated that his force was making active efforts to be accessible to local communities.[73] He confirmed cooperation with communities in handling minor crimes cases as long as they took contact with the police within the 48 hour period before suspects had to be transferred to the courts, and noted that the community leaders knew they could bring such cases back to the police if local resolution could not be achieved. The Commissioner expressed concern that the inaccessibility of court procedures could undermine the work of the police and contribute to breakdowns in public order:

> If there is no improvement at the courts, the police are held responsible. Delay in the process is causing big problems. People don't understand how the law works, what is bailable and what is not. The community just sees a man out they took to police. We can't query the courts and ask why the man is out on bail. That leads to mob violence. We are also seeing more traditional involvement in serious crimes like aggravated assault. If people feel there is no access to justice, they take things into their own hands.

Perhaps the most divisive barrier to formal justice is the judicial practice of ordering pre-trial detention of all suspects, even in misdemeanour cases, and releasing suspects strictly on payment of

[72] Interview, Bong County Motorcycle Taxi Union, 09 April 2019.
[73] Interview, Frederick D. Nepay, Police Commissioner, Gbarnga, 09 April 2019.

cash bail. According to one of the two public defenders covering Bong County, up to 75% of his clients are indigent and accused only of misdemeanours, and should therefore be eligible for release on recognisance, e.g. a written promise to show up for future court hearings.[74] He described a typical case in which bond was denied, in which parents and relatives of ten suspects had signed a request giving their phone numbers and making themselves legally liable if the defendants did not appear at scheduled hearings.

In rural communities and towns, the practice of reflexively ordering detention and requiring cash bail is seen as directly predatory, and as representative of a more general threat of extortion looming over any interaction with the formal judiciary. The Gbarnga Police Commissioner contrasted his approach with that of the Courts, expressing serious concerns about the latter:

> If the case moves on to court, it gets more complicated. You may be held in contempt by the court if you just turn up to talk, but you can come here anytime and speak directly with police chief. We need the courts and communities to sit together and work things out.[75]

One judge referred to a particularly egregious case that came before the Judicial Inquiry Commission in Monrovia, in which a complainant paid a fee to have a judge arrest a suspect and was then ordered by the judge to pay for the suspect's transportation to pre-trial detention. When the complainant refused, the judge threatened to jail him for contempt of court, saying "…you are the guys that go out there to destroy the good image of the judiciary."[76]

Justice delayed by backlogs

Trial processes in Liberia tend to be slow and lengthy. There are many reasons for the inefficiency, including long-standing capacity and resource deficits. While there are a significant number of staffed

[74] Interview, Mohamed Golafalley, Public Defender, Gbarnga Justice Hub, 05 December 2018.
[75] Interview, Frederick D. Nepay, Police Commissioner, Gbarnga, 09 April 2019.
[76] Interview, 10 April 2019. The judge was suspended by the Commission.

Magistrate's Courts located in rural areas, they do not have budgets for basic necessities such as office equipment, new vehicles, fuel, or maintenance of the facilities or vehicles.[77] The limited terms of Circuit Court sessions are an important bottleneck, with hearings frequently bumped from session to session almost indefinitely.

Another contributory factor is the unfettered right of appeal available to the defence from the courts of first instance clear through to the Supreme Court. There is no filtering system to establish whether the grounds of appeal have merit and the Supreme Court Justices must, as a result, expend considerable time and energy reviewing every appeal and producing judgements. The Supreme Court currently hears cases dating as far back as the 1960s. Some concern petty crimes such as the "theft of a 30 US dollar phone".[78]

The county-level prosecutors ("county attorneys") are apparently not obliged to review the sufficiency of evidence within case files received from the police. In some instances, prosecutors ask police to conduct further investigations, but they rarely discontinue cases for insufficiency of evidence (either by means of a 'nolle prosequi' motion of non-prosecution or by simply allowing the case to lapse). Although there are efforts to review old cases involving ongoing pre-trial detention, the risk remains that many will remain in custody despite insufficient evidence against them to support a conviction.

A formal requirement on prosecutors to assess the strength of the evidence and determine whether the case should proceed could present a way to reduce the number of unmeritorious cases within the system. In addition, many supported the establishment of an Intermediate Appeal Court to relieve the pressure on the Supreme Court or a Review mechanism (e.g. single Justice) to make a preliminary assessment of the merits of any Appeal. Such a mechanism could also serve as a review body for traditional justice systems. How this could be achieved will be described in more detail below.

[77] Caparini (2014).
[78] Interview, Jamesetta Howard Wolokolie, Associate Justice, Supreme Court, 09 August 2019.

Arbitrary pre-trial detention

An issue highlighted by both national and international actors is the prevalence of prolonged pre-trial detention periods. Although there are time limits for pre-trial detention, adherence appears to be arbitrary and often dependent upon the effectiveness of defence representation. By the same token, failures to investigate and prepare cases for trial in breach of procedural time limits risk miscarriages of justice, with accused persons who may be guilty being released before trial and are potentially free to commit further offences.[79]

In cases of suspected bribery, perpetrators are "mysteriously" released from pre-trial detention without explanation. At a meeting arranged by the Carter Center between community leaders and magistrates, a quarter chief asked for guidance in a case where he had physically subdued a violent man and carried him to the police only to have the magistrate immediately release him without explanation. He reacted with frustration, stating: "You tell me what to do now, because I'm scared."[80] In these circumstances, communities sometimes perceive no alternative other than dealing with perpetrators themselves.[81]

Pre-trial detention is also linked to negative forms of forum-shopping discussed above. People turn to the formal justice system when they want immediate retribution. They choose to bypass reconciliatory methods in favour of the police, who have the ability to directly detain and place the alleged perpetrator in pre-trial detention. If no one is pushing for the case to move forward, the alleged perpetrator could remain in pre-trial detention for an extended period of time, sometimes longer than the maximum sentence allowed for the crime for which they have been charged.[82]

This is a particularly serious issue for those living in rural communities who are unaware of how the formal justice system

[79] Interview, Jamesetta Howard Wolokolie, Associate Justice, Supreme Court, 09 August 2019.
[80] Carter Center training session, Suakoko, Bong County, 08 April 2019.
[81] USIP (2009), 54.
[82] United States Department of State: Bureau of Democracy, Human Rights and Labor, "2018 Country Reports on Human Rights Practices: Liberia" (2019), 10.

works. The person detained and their family members may not be aware of the fact that they need to follow up with the magistrate to pursue the case. Even if they are, they may not be physically or financially able to do so. Those that report alleged perpetrators to the police may also believe that a case is over once the person has been placed in detention, not realising that the trial has not even begun.[83]

Since the end of the conflict, there has been pressure on the police and formal justice actors to end widespread impunity for sex offenders.[84] The Rape Law which was recently adopted automatically denies bail. The Law allows for those accused of such offences to be taken into custody even where there is insufficient evidence to support the accusations. The significant number of pre-trial detainees is in part down to the police using the Rape Law to be seen as effective in combating sexual and gender-based violence.[85]

Issues with investigation techniques, reluctant witnesses and lack of access to forensic technology such as DNA testing complicates efforts to establish culpability in rape cases. There is a general perception among Liberian women that selective justice persists and that serial perpetrators of serious sexual offences have remained unpunished because they are persons of influence and power.

Unclear criminal jurisdiction

One of the most obvious issues which we came across during the assessment is the ambiguity that surrounds the demarcation line between the formal and customary jurisdiction. While we were told by traditional authorities as well as representatives of the formal legal system and civil society that traditional legal systems may only

[83] Caparini (2014).
[84] Lizzie Dearden, "UN calls on country where up to three quarters of women have been raped to 'end impunity' for sex attackers" *Independent* (15 October 2016).
[85] Lizzie Dearden, "UN calls on country where up to three quarters of women have been raped to 'end impunity' for sex attackers" *The Independent* (15 October 2016). Some observers claim that this explains a significant part of the overrepresentation of pre-trial detainees in prison: "most prisoners are pre-trail detainees, placed in detention due to a rape law that disallows preliminary examination" Winston W. Parley, "Liberia: Rape Law Congests Prisons" *All Africa* (16 May 2014).

deal with minor criminal cases, the threshold in this regard seems to be blurred.

Rape and murder were always named as examples of offences off limits for traditional authorities, in theory. However, there was no coherent narration of what actually happens or what should happen with these cases in practice. Some formal actors claimed that traditional authorities quietly deal with these cases in many cases, implicitly because the formal justice system is so difficult to access.[86] Some interlocutors suggested that it was not known in some rural areas that marital or other domestic forms of rape are considered a crime.

With some crimes it seemed to depend on the individual case whether it was handed over to the police or deemed possible to solve within the community. This included assault, e.g. with a knife or a stick.[87] Furthermore we were told by several representatives of traditional justice systems and the formal system alike – including the police – that cases which are referred to the police may also be referred back if the police – often after consulting with traditional authorities – is of the opinion that they are better dealt with by the community.

Lack of legal information

There has been a great deal of legislation passed in recent years that directly impacts on core concerns of rural communities. This includes new laws on community forestry, local government, domestic violence and land rights. However, the communities we spoke with had at most heard of these laws by way of discussion on the radio (usually ECOWAS radio, successor to popular UNMIL radio). Some had never heard of the legislation and all were very eager to receive copies.

The potential opportunity cost of this lack of awareness is demonstrated by the new land rights law. A number of CSOs working on implementation of the law described the process it

[86] Interview, Frederick D. Nepay, Police Commissioner, Gbarnga, 09 April 2019.
[87] Interview, traditional community leadership Zorzor District, Lofa County, 06 April 2019.

envisions of forming local governing bodies that then become responsible for managing the land under their jurisdiction.[88] Lack of awareness of the law creates a risk that communities will not form such bodies in a timely manner, jeopardising the ability to protect their land that the law promises them.

For some of the communities we interviewed, the failure of the state to provide updated information on the law is a clear missed opportunity to build trust and show serious intent to govern. In the words of one community we visited:

> Without respect no peace. That includes training, why is the Carter Center educating chiefs on international law instead of the state.? The Government crafted a land policy but did not explain it to us, the Carter Center did. We need more capacity building. [89]

However, several of the communities we interviewed had been able to inform themselves about earlier rules on land ownership and developed successful strategies to protect their land. For instance, one community in Bong County had recently taken the trouble to survey who held rights to all the land in its territory in order to protect itself from outside encroachment.[90] Such communities have seen clear benefits from being able to legally protect their interests even in a context where legal information is not always readily available.

[88] The law does not specify a territorial or administrative unit these bodies should correspond to, so this will have to be worked out at the local level in a process that has barely gotten underway in most of the country.
[89] Interview, traditional community leadership, Bain-Garr District, Nimba County, 07 April 2019.
[90] Interview, traditional community leadership, Zota District, Bong County, 06 April 2019.

Support to Justice in Liberia

The Liberian peacebuilding process that began with the signing of the CPA in 2003 has been characterised by a consistent preoccupation with rule of law and access to justice issues. This coincides with the rule of law emerging at the global level as a UN peacebuilding priority.[91] In part because of its relative stability and accessibility, Liberia became something of a laboratory for successive generations of rule of law approaches. The results have been mixed, as successive new approaches led to the achievement of milestones in innovation, and then frequently undermined them.

International donors and partners have alternated between top-down and bottom-up approaches, as well as between methodological and thematic concerns including constitutional reform, rebuilding court infrastructure, resolving land and natural resource disputes, addressing sexual and gender-based violence, promoting reconciliation, and supporting alternative dispute resolution. These diverse rule of law priorities have come and gone against a background of concerns about inconsistent donor funding in broader development support to Liberia.[92]

A highly significant divergence in rule of law policy in 2010 illustrates how such inconsistencies can have a negative outcome. During that year, greater attention to the needs of justice seekers culminated in a "bottom up" push to expand access to justice by strengthening the coordination between the formal and customary systems. At the same time, security concerns related to the impending departure of UNMIL drove a new "top down" policy to increase the state security and justice presence in rural areas. Both processes were initiated simultaneously, and neither were ultimately completed. As a result, a large mobilisation of financial and political capital resulted in marginal gains in terms of access to justice.

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[91] UN Security Council, "The rule of law and transitional justice in conflict and post-conflict societies – Report of the Secretary-General", UN Doc. S/2004/616 (23 August 2004).
[92] The International Dialogue on Peacebuilding and Statebuilding, "Contribution by the Government of Liberia" (March 2010).

The Gbarnga conference

In April of 2010, a three-day *National Conference on Enhancing Access to Justice* was held in Gbarnga, Liberia's second city. The "Gbarnga conference" was hosted by the MOJ, the MIA and the judiciary and brought together over 100 traditional leaders, civil society representatives, and government officials from all 15 counties of Liberia to discuss how access to justice could be improved by strengthening the internal dynamics and interaction of the formal and customary systems.

In opening the meeting, then-President Ellen Johnson Sirleaf stated:

> Our traditional leaders, many of whom are present here today, play an essential role in resolving disputes in Liberia. Our shared traditions inform who we are, where we came from, and where we are going together. When disputes arise in many parts of Liberia, it is our chiefs who are our first line of defence in resolving these disputes fairly and peacefully. I believe we all recognise that this system of conflict resolution plays a positive role throughout our country.[93]

The participants were asked to discuss and formulate ways forward around a set of question including referral of cases and appeals between the two systems, forum-shopping, harmful customary practices, and division of jurisdiction between formal and customary actors.[94] The conference was successful in many regards. The prior consultative process had great meaning for traditional leaders, many of whom felt listened to for the first time. It led to fruitful discussion and concrete proposals for how the formal and customary justice could cooperate in a more effective manner.[95]

The end result was a long list of recommendations for law reform, administrative reform, areas for further research and recommendations for new initiatives within the current legal framework. These recommendations were left in the hands of the

[93] "Record of Proceeding, National Conference on Enhancing Access to Justice" (15 April 2010).
[94] "Record of Proceeding, National Conference on Enhancing Access to Justice" (15 April 2010).
[95] Rawls (2011), 10.

Law Reform Commission, which was tasked with analysing their feasibility under current Liberian law and developing a timeline for implementation. The plan for those involved in the Gbarnga Conference was to meet again a year later in order to be informed of the progress made and the steps to follow.[96] However, this did not occur.

Security and Justice Hubs

During the same year, the UN Peacebuilding Commission backed a proposal to extend state security and justice services to Liberia's districts through the construction of five regional "Security and Justice Hubs".[97] This proposal came in part due to security concerns about the effect of the impending withdrawal of UNMIL. The planning and development of these hubs consumed a great deal of national and international attention as the proposals to follow up on the Gbarnga conference withered on the vine. In retrospect, the UN has acknowledged that security considerations came to occupy such a central role in the handover process that other crucial peacebuilding elements, such as justice, were neglected.[98]

By 2019, serious sustainability questions had emerged around a Hub system that had fallen short of expectations, while access to justice in the field remained problematic for many of the same reasons identified in 2010. Only one of the five planned hubs had been built, in Gbarnga, and the chronic failure to budget for basic necessities such as food for resident police officers, gas for electric generators, and equipment and office supplies had seriously compromised its effectiveness. In April 2019, the Police Support Unit (PSU), a special unit assigned to the Security Hub, abandoned its post due to hunger.[99] Representatives of the Gbarnga motorcycle taxi union attested to the negative effect on local security that had followed from neglect of the Hub:

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[96] Interview, Hon. Deweh Gray, Deputy Minister for Legal Affairs, Ministry of Foreign Affairs, 01 April 2019.
[97] Abu Sherif and Dr Grace Maina, "Enhancing security and justice in Liberia: The regional hub model", *Accord Policy and Practice Brief* No 23 (March 2013).
[98] Daniel Forti and Lesley Connolly, "The Mission is Gone, but the UN is Staying: Liberia's Peacekeeping Transition", *International Peace Institute Report* (December 2018), 4.
[99] Marcus Malayea, "Hunger Drives Security Officers from Gbarnga Hub", *Daily Observer* (02 April 2019).

> The PSU took two hours to get to Palala (site of a recent incident near Gbarnga), their explanation was no fuel, no car, no motorbike. When UNMIL was here, the PSU turned up immediately. We can attest they are not in their barracks now, they're not being fed. We went up last night, the place was in darkness. We are worried about the risk that the PSU will come into Gbarnga and harass citizens. [100]

Many communities credited the Carter Center in Liberia and a number of national CSOs with having consistently sought to move forward on the Gbarnga conclusions. However, without concerted support from the judiciary and other official justice actors, it will be difficult to scale up and institutionalise promising work that has been piloted in the field. It will also be important to encourage sustained attention to these issues. The ILAC survey of formal justice actors in Bong and Lofa Counties indicated only half remained aware of the 2010 Gbarnga Conference.[101]

For communities living in the areas covered by the sole completed Security and Justice Hub in Gbarnga, the policy of developing such Hubs had a negligible impact on their perceived access to justice. At the same time, customary leaders reported feeling disappointed by the lack of progress since the Gbarnga conference, having contributed to conclusions they feel could make substantial progress in expanding access to justice.[102] In this sense, it is not too late to make up for lost time in returning to the Gbarnga conclusions and redoubling efforts to follow up on them.

[100] Interview, Bong County Motorcycle Taxi Union, 09 April 2019.
[101] Parley Liberia, "Survey of Formal Justice Actors' Knowledge, Attitudes and Perceptions of Traditional Justice Systems" (April 2019).
[102] Interview, traditional community leadership from Bong, Lofa and Nimba counties, 08 August 2019.

Conclusions and Recommendations

This section describes the key findings of this report and sets out recommendations for how to enhance access to effective justice for all Liberians.

Dual and interdependent

One of the most important conclusions concerns the interdependence of Liberia's dual legal system. It is well known that Liberia has a dual system, with customary authorities dealing with a range of cases, including minor crimes in their communities, and more serious criminal cases requiring referral to the formal court system.

The day-to-day work of customary chiefs and elders in Liberia is vital, both to local communities and to the integrity of the broader justice system. At minimal cost and with remarkable effectiveness, the traditional system absorbs and handles a vast number of local disputes that would otherwise be very challenging for formal institutions to process.

This is in part because the formal justice system does not currently have the infrastructure, resources and reach to take on a large mass of new cases beyond its current docket. However, neither does it have the local legitimacy, knowledge of rural traditions, and trust that customary institutions enjoy. If the customary system were to cease functioning, very little of their caseloads would be likely to arrive at the courts but would either remain unresolved or be dealt with through private self-help in a manner that could significantly destabilise the countryside.

Somewhat less obviously, the customary authorities are also dependent on the work of the formal system. The prevalence of customary justice in Liberia is rooted in local preferences for justice seen as accessible and reflective of community values and norms. Although the customary authorities admittedly lack knowledge of the statutory system, they are uniformly aware that serious crimes of violence must be referred to formal courts. This understanding benefits both sides: the traditional authorities can focus on cases

involving capable of being repaired with a restorative approach. Meanwhile, the state is committed to pre-empting traditional approaches to adjudicating serious crimes that would likely lead to human rights violations.

A key problem is that the legitimacy of the chiefs and their ability to maintain local order suffers when the formal system fails to live up to its commitment to process serious cases. Rural communities frequently find themselves facing unlawful fees to ensure that police arrest suspects and that courts process the cases, as well as expensive and time-consuming trips to distant courts to act as witnesses. Where communities are unable to afford these expenses – or where a bribe changes hands – violent, disruptive suspects may eventually be returned to their communities without having been tried or punished.

The same inefficiencies in the formal system encourage destructive forms of forum shopping, in which parties to local disputes bypass traditional mechanisms and complain to the police. In these cases, persons who should not be involved in criminal proceedings at all face indefinite pre-trial detention while traditional authorities are placed in competition rather than complementarity with the courts. However, the practice of ordering default detention and denying bail on recognizance to eligible suspects is perhaps most destructive of trust between communities and the formal justice system.

Preventive function of justice

As a result of these factors, courts in Liberia have become at best a bottleneck and at worst an obstacle to access to justice, failing to live up to their potential, and complicating the ability of the customary authorities to play their complementary role. This raises a deeper concern related to the preventive function of justice. The courts are an important site where the state exercises and legitimises its monopoly on violence. When courts are unable to play this role, private individuals may take matters into their own hands.

The ineffectiveness of the formal courts was frequently referred to as an explanation, thought certainly not a justification, of recent mob violence targeting police and court facilities, as well as the property

of suspects. It also underlies talk of an increase in "bush justice" whereby serious crime suspects are subjected to extra-legal proceedings and severe punishments by local communities rather than taken to court.

In a post-conflict setting like Liberia, there is a clear risk that such violent acts, coming as a response to grievances, can spill over into more generalised insecurity. In the worst case, they may reopen tensions rooted in the past conflict. Finding ways to ensure that justice is effective, accessible and satisfactory for ordinary Liberians is therefore a crucial step towards further stabilisation. Access to justice remains fundamental to conflict prevention.

Building on what is known

In responding to all of these issues, one conclusion is the importance of the 2010 Conference on Enhancing Access to Justice in Gbarnga. The process that led to the Gbarnga Conference provided customary actors a sense that their voices were fully heard, while affording all participants an opportunity to work toward concrete solutions rather than simply enumerate problems.

Building on the Gbarnga recommendations presents a number of key advantages. Not least because these recommendations build on the experiences and expressed preferences of justice seekers and justice providers in rural areas of Liberia that are still struggling hardest to overcome the effects of the past conflict. They create a framework for a two-way diffusion of awareness and understanding that can strengthen trust in the formal system while bringing the customary system more closely in line with the country's constitutional framework. Finally, they provide an effective and relatively affordable way forward that builds on the work of established institutions and actors.

Adopting this course will require commitment from all stakeholders. For the Government of Liberia, revisiting the Gbarnga Conference conclusions can provide an effective way forward in fulfilling its commitments to "improved satisfaction with the judicial system and rule of law" under the 3rd pillar of the *Pro-Poor Agenda for*

Prosperity and Development (PAPD). The Agenda acknowledges lack of trust in the formal system and the need for further resources and reforms to increase access to justice in rural areas. It is also crucial to acknowledge that rural justice seekers are not only put off by deficiencies in the formal system, but also actively support the customary system, which they see as providing quick and satisfying resolutions at minimal cost. Reform policies that do not proceed from these local realities are unlikely to be sustainable.

Meanwhile, donors frequently harbour understandable reservations about engaging with customary justice actors. The list of concerns about customary justice is long and includes risks of serious human rights violations, lack of due process and discrimination, particularly against women. In the Liberian context however, significant progress in addressing concerns about customary justice has been made, while documents such as the Gbarnga Conference outcomes point the way toward a more complementary relationship with state actors that can foster better compliance with constitutional guarantees.

While women are at worst risk of victimisation, the team also met with female and male chiefs and elders committed to building peaceful and equal communities. Precedents exist for innovative means to mobilise local communities against discriminatory practices and gender-based violence. Communities must also continue developing ways to better engage young people in recognition of their outsized importance for Liberia's future.

Recommendations

Successfully reviving an approach based on engagement with customary justice will imply a need to understand local conditions, listen to local voices and accept local priorities and concerns, even if they do not always track those of the formal authorities. The experience of international organisations like the Carter Center and national civil society organisations that have invested in and maintained working relationships with customary communities and authorities will be invaluable in better understanding local realities.

Based on the information and evidence compiled in the assessment process, ILAC particularly recommends action in the five following general areas:

1. Address dysfunctionalities of the formal justice system: The Government should consider how best to restore public trust in the judiciary in all parts of the country. There is a widespread perception that the courts respond inconsistently to justice needs and often prey on the population. Part of the solution involves leading by example. Building public trust in institutions is a forward-looking project that requires all levels of government to demonstrate transparency and integrity.

However, another crucial precondition is ensuring viable budgets and ensuring payment of all civil servants, including those in the justice sector. There is an alarming gap between the budget resources now reaching courts and those actually needed to ensure that they are able to provide minimum judicial services without passing the costs – other than legally mandated court filing fees - to the users of the justice system. Justice actors at the local level should also do what they can to ensure access to justice services, including appropriate resource sharing with other state institutions in the area.

Other longstanding problems require urgent attention in order to build public trust. Decisions on bail and bond must be made based strictly on the letter and spirit of the law in all cases ranging from the most serious accusations of murder and rape to those concerning misdemeanours. Contempt of court rules should not be abused to allow for arbitrary detention.

Prosecutors can issue a decision not to prosecute cases (*nolle prosequi*) but rarely do so. In future, they should be accountable for their decisions and consideration should be given to introducing a sufficiency of evidence test. These measures should be seen as necessary, but not adequate preconditions for the greater goal of reducing rates of pre-trial detention and court backlogs.

Recommendations:

- The judicial budget should be adequate to meet current needs and systems for auditing the expenditure of these funds should be strengthened.
- The Supreme Court should ensure that persons legally eligible for unconditional bail receive it as a matter of course.
- The Ministry of Justice should introduce a formal requirement on prosecutors to assess the strength of the evidence and determine whether cases should proceed.

2. Help customary justice achieve greater harmony with the Constitution: Customary leaders are intent on learning more about the Constitution and laws of Liberia, and approaches that emphasise explaining the policies behind these rules – as well as their textual content – have proven to have value. While these efforts remain important, ILAC notes proposals to create a more formal connection between customary and formal routes to justice.

An intermediate appeal court or mechanism could present a solution that would grant greater recognition to traditional adjudicators, while also clarifying the means for formal actors to supervise and review customary decisions. Such a mechanism would also reduce the number of cases proceeding to the Supreme Court via appeals from lower courts and alleviate its backlog.

Acknowledging that the creation of a permanent new judicial instance is an ambitious goal, an intermediate solution would be to create an ad-hoc review body, comprised of a formal judge sitting with a traditional leader. To ensure compliance with the principle of separation of powers, the traditional leader on such a body should not be under the supervision of the MIA. This would militate in favour of appointing elders rather than chiefs to such a position.

Recommendations:

- The Supreme Court should work with the Ministry of Justice, the Ministry of Internal Affairs and the National Council of Chiefs and Elders to assess the most appropriate legal means

of developing an intermediate review mechanism within the Circuit Courts or another suitable forum.

- The intermediate review mechanism should act as an intermediate appeal courts for the formal justice system. It should also review customary proceedings upon petition to ensure compatibility with applicable human rights and fair trial standards.

3. Documentation of customary law: The 2010 Gbarnga Conference saw broad consensus that further steps to document customary law would complete the insufficient knowledge base available at the time. Participants promoted a research process to document the "customary laws of all communities in the 15 counties of Liberia" as well as analysis of the relationship to statutory law in order to propose necessary reforms.

These goals remain relevant and a documentation exercise would also provide crucial support to the work of a proposed intermediate review mechanism. A complete documentation process including substantive and procedural rules is a desirable long-term goal. However, it will be important to prioritise which areas of customary law are in most urgent need of documentation.

Recommendations:

- The Ministry of Justice, Ministry of Internal Affairs, the Supreme Court and the National Council of Chiefs and Elders should work with the Louis A. Grimes Law School and the James A. A. Pierre Judicial Training Institute to develop a modality for documenting customary practice.
- Documentation should begin with *customary proceedings and procedural rules* as a priority, in order to provide the most relevant support to an intermediate review mechanism.
- The results of documentation work should be incorporated in the curriculum of the James A. A. Pierre Judicial Training Institute and Louis A. Grimes Law School, in dialogue with the Ministry of Internal Affairs and National Council of Chiefs and Elders. .

4. Support to Legal Aid: Greater access to reliable legal information, advice and representation is badly needed in rural areas where most lawyers cannot afford to work. The Minister of Justice adopted a new *Legal Aid Policy* in April 2019 after a lengthy consultative process. This is a positive development but the policy envisions a potentially protracted and resource intensive process, involving both legislative reform and the setup of a new institution. Given the urgency of the issue, ILAC encourages all involved parties to explore interim options compatible with the aims of the policy that could be achieved through support to established justice actors under existing law.

Recommendations:

- All actors involved in provision of legal aid should develop an interim coordination framework to ensure maximum complementarity and effectiveness pending further implementation of the Legal Aid Policy.
- The Supreme Court should consider how the Public Defenders Program can operate as strategically as possible in support of the aims of the Legal Aid Policy.
- The Liberian National Bar Association should play a leading role in promoting measures to expand access to justice for all Liberians, including via its foreseen role in the Legal Aid Policy.

5. Dissemination of legal information: While a number of institutions and civil society organisations work to disseminate legal information, many communities remain uninformed about laws that directly affect them. As efforts to document customary law proceed, information about customary rules and proceedings should also be disseminated to formal justice institutions.

- The Ministry of Justice, Ministry of Internal Affairs, the Supreme Court and the National Council of Chiefs and Elders should develop a strategy for ensuring the timely and accurate dissemination of legal information in rural areas.
- A dissemination strategy for legal information should take into account the role of traditional print and broadcast media as well as social media in reaching out to rural communities.

It should ensure that marginalised groups such as women have equal access to legal information.

6. Follow-up Conference: A ten-year follow-up meeting to review the results of the 2010 Gbarnga Conference would give momentum to efforts to expand access to justice. Such a meeting should take stock of what steps that have been taken since 2010, as well as gaps where further efforts are required and outstanding issues that may have been incompletely understood or addressed at the time. It would also be a concrete opportunity to bring relevant actors together to discuss the above and other proposals for access to justice.

Recommendations:

- The Ministry of Justice, Ministry of Internal Affairs, the Supreme Court of Liberia and the National Council of Chiefs and Elders should work together in organising a ten-year follow up to the 2010 Gbarnga conference with a view to addressing gaps where further efforts are required to enhance access to justice.
- The Law Reform Commission should revisit the conclusions of the 2010 conference and report on its subsequent work on implementation of the recommendations, in order to identify lessons that can aid the process going forward.

In April 2019, an International Legal Assistance Consortium (ILAC) team of experts representing four ILAC member organisations carried out a needs assessment concerning access to justice in Liberia. This report examines Liberia's "dual legal system", which incorporates both a formal judiciary operating primarily in the country's cities and towns, and customary adjudication of minor disputes by traditional authorities in the rural interior. The aim of the report is to examine the interplay of these two systems in order to identify both obstacles to access to justice for ordinary Liberians and opportunities to overcome them. The report notes the particular challenges faced by women justice-seekers, as well as efforts to overcome them. The assessment was made possible by core funding provided by the Swedish International Development Cooperation Agency (Sida).

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ILAC is a global rule of law consortium providing technical assistance to justice sector actors in fragile and conflict-affected countries.

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