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LOOKING FOR JUSTICE

LIBERIAN EXPERIENCES WITH AND PERCEPTIONS OF LOCAL JUSTICE OPTIONS

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The views expressed in this report are those of the authors alone.
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SUMMARY

This report presents the research findings and analysis of ten months of field study as part of the United States Institute of Peace and George Washington University project titled "From Current Practices of Justice to Rule of Law: Policy Options for Liberia's First Post-Conflict Decade." The analysis we present, based on three types of research methods (focus groups, individual interviews with parties to specific disputes, and interviews with chiefs, zoes [traditional leaders], and other justice practitioners) employed primarily in three counties (Grand Gedeh, Lofa, Nimba, and less extensively in parts of Monrovia), is intended to provide the Liberian government and other stakeholders in the country with more robust evidence than has hitherto been available on how both formal and customary justice systems are perceived and utilized by Liberians. It also addresses what implications this evidence has for policy options regarding justice sector reform. Our methodology was designed to trace actual practice of dispute resolution, regardless of which institution—formal, customary, or other—was involved. This allows us to understand the choices made by litigants and their levels of satisfaction in relational value to the available alternatives. These realities facing Liberians in the pursuit of justice, as well as the social beliefs that inform Liberians' conceptions of justice, are critical to take into account in any effort to design a successful justice strategy for the immediate and medium terms.

Key Findings

Liberians are overwhelmingly dissatisfied with the formal justice system, particularly at the local level.

Affordability, accessibility, and timeliness are three of the most consistent demands that Liberians have when it comes to the provision of justice. Our research reveals that the formal justice system is seen almost universally by Liberians as falling abysmally short of their expectations in all three of these important service categories. Liberians report a bewildering array of fees associated with the formal system, including registration fees, gas money for police investigators, requirements that victims pay the cost of food for the detained accused, lawyers' fees, bribes, and indirect costs such as money for transportation and time spent away from livelihoods. The formal system is also faulted for its lack of transparency and impartiality, and is widely believed to be a forum in which wealthy, powerful, and socially connected people can assert their will. Finally, the formal system is widely seen as ineffective and failing to enforce—or even get to the point of making—judgments against offenders. Victims of crime report feeling further victimized by their experience with the formal courts, expressing astonishment that they would have to pay excessively while the perpetrators nearly always walked free. One woman put into words a constant theme: "There is no justice for the poor."

In fact, what emerges clearly from the research is that many Liberians not only view the formal system as failing to deliver justice, but they regard the formal justice system as one of the most effective mechanisms through which powerful and wealthy social actors are able to perpetrate injustice in service to their own interests. The cases we traced reveal a deliberate use of opportunistic forum shopping, in which litigants choose the formal system primarily if they believe it will give them an unfair advantage over their opponent. Liberians we interviewed reported using the formal system, or the threat of the formal system, as a means of advancing a contentious social agenda for retaliatory purposes, or for gaining leverage in other matters that have nothing to do with the actual case in question.

Even if the formal justice system were able to deliver affordable, timely, and impartial results, it would still not be the forum of choice for many rural Liberians.

One of the most striking findings of our research is that most Liberians would still be unsatisfied with the justice meted out by the formal system, even if it were able to deliver on the basics discussed earlier. This is because the core principles of justice that underlie Liberia's formal system, which is based on individual rights, adversarialism, and punitive sanctions, differ considerably from those valued by most Liberians. One of the consistent complaints levied by Liberians against the formal court system is that it is overly narrow in how it defines

the problems it resolves and thus fails to get at the root issues that underlie the dispute. This concern rests on a culturally grounded and deeply held assumption that incorrect or injurious behavior is usually rooted in damaged and acrimonious social relations. In order to be seen as adequate, justice must work to repair those relations, which are the ultimate and more fundamental causal determinant, rather than merely treat the behavioral expressions that are viewed as its symptoms. Redressive action is thus considered deficient if it does not also produce reconciliation among the parties. A Western-style formal system, by contrast, is a zero-sum game in which one party is determined the winner and the other the loser of a narrow issue through sterile application of law, blind of social context. Many Liberians noted that far from resolving the underlying dispute, formal adjudication serves to exacerbate adversarial relations.

> "Actually, the customary law is the one that I prefer. . . . Our traditional laws help us to handle our dispute very easily and after the settlement of these disputes, the disputants go with smiles in their faces. . . . [In] fact, the statutory law brings separation among our people."

It is important to note that the preference for restorative justice and social reconciliation is not based on an abstract notion of tradition. Quite the contrary, it represents a very rational calculation based on the socioeconomic and cultural context in which most Liberians live. Given the subsistence livelihoods and economic interdependence of rural communities, adversarial relations between neighbors have serious consequences. As one interviewee put it: "Actually, the customary law is the one that I prefer. . . . Our traditional laws help us to handle our dispute very easily and after the settlement of these disputes, the disputants go with smiles in their faces. . . . [In] fact, the statutory law brings separation among our people."

For the most part, the customary justice system is able to provide the kind of justice most rural Liberians are looking for.

Customary institutions and practices of justice have clearly survived the civil war and remain active in virtually all of Liberia's rural communities. Moreover, the overarching principles that guide the exercise of customary justice have not been fundamentally altered by the Liberian conflict and are based on the overall goals of restorative justice and social reconciliation preferred by most Liberians.

The process of customary dispute resolution resembles nonbinding arbitration—in that a decision rendered is appealable, with additional elements of mediation, and there is a strong effort to bring both parties to a consensus resolution. There is an emphasis on revealing the truth of the matter in an expansive way that includes the root causes and additional social factors that inform the dispute. In adjudicating, chiefs rely on the counsel and participation of community elders and sometimes representatives of constituent groups such as youth leaders. A broad social consultation process is employed to verify the truth and to increase the legitimacy—and therefore the acceptance—of the decision. Admission of guilt by the perpetrator is considered the best means of knowing the truth. Trial by ordeal is sometimes employed as a means of ascertaining the truth as well.

Customary forms of redress are aimed at addressing the root causes of the dispute and not just the narrow matter at hand. Compensation or repair of the harm to the victim is important but generally subordinate to social reconciliation. For certain offenses, a public fine may be levied, often in the form of cooking a meal for the community. Public apologies are important and are often followed by a ritual such as sharing a kola nut, knocking glasses together, or performing some other gesture that signifies forgiveness and reconciliation. Egregious cases, considered beyond social repair, may involve a punitive sanction.

Many Liberians also express a preference for the customary system as it is able to address the full range of problems they confront, including public insults and the very real belief that some individuals use supernatural means (witchcraft) to harm others. In their view, the failure of the formal system to recognize these as offenses leaves serious problems and insecurity unaddressed.

Indeed, according to the survey conducted by the Centre for the Study of African Economies at Oxford University, of a total of 3,181 civil cases, only 3 percent were taken to a formal court; 38 percent to an informal forum; and 59 percent to no forum at all. Of 1,877 criminal cases, only 2 percent were taken to a formal court; 45 percent to an informal forum; and 53 percent to no forum at all.

Our research also demonstrates the limits of the customary system (perhaps accounting in part for the above statistics

regarding the majority of cases that go to no forum at all). Because of its emphasis on social reconciliation, the customary system is generally not effective or considered fair when litigants are not members of the same community, or in some cases when they are ethnically or religiously diverse. Egregious cases, considered beyond social repair, are likewise poor candidates for customary resolution. Finally, the effectiveness of customary institutions is seen by many to have been undermined by external factors, including, to some extent, social dislocation caused by the civil war and state policies limiting their jurisdiction.

State policies aimed at regulating and limiting the customary justice system in order to comply with human rights and international standards are having unintended adverse consequences.

Without questioning the ultimate goals of state policies regulating the customary justice system, we believe that a robust empirical understanding of Liberians' reactions to these policies and their on-the-ground impact is vital to inform justice strategies that include realistic provisions for garnering local endorsement and compliance, and that are sufficiently sensitive to the dangers of social unrest. A clear finding of our research is that certain policies aimed at addressing human rights and international standards have in fact had unintended adverse consequences that may be undermining that very goal.

- **Jurisdictional limitations.** Chiefs seem to be aware of the state policy forbidding customary courts from handling matters of serious crimes, and for the most part they seem to adhere to this policy. However, chiefs and rural Liberians alike generally believe that many kinds of serious crime would be better handled by chiefs than the formal courts, and in practice chiefs often hear such cases when requested by both parties. Chiefs expressed embarrassment at the limitation of their role and consequent erosion of their authority. Many interviewees believed that this policy was leading to less, rather than more, justice, as the formal courts have yet to provide a credible and viable alternative. This policy is seen by many as favoring the wealthy and powerful, who they see as able to use the formal system to their advantage, and as creating a justice vacuum and culture of impunity.
- **"Human rights."** A striking finding of our research is that to many Liberians the very term "human rights" has negative connotations. For the most part, Liberians associate the term with children's rights and defendants' rights, and complain that these are undermining the social order. Children's rights are understood as encouraging children to sue their parents and preventing them from working, which to rural Liberians is an affront to social values and has serious economic implications. To Liberians whose conception of justice is about truth and reconciliation, rather than an adversarial process, defendants' rights are seen as giving an unfair advantage to perpetrators at the expense of the victims.
- **Trial by ordeal.** The vast majority of Liberians we interviewed believe strongly that at least some forms of trial by ordeal (TBO) should be allowed, and raised very serious concerns that the ban on its use is causing significant societal problems—most particularly the inability to control crime and a rise in witchcraft. The prohibition on its use may be inhibiting its practice by chiefs (or at least the extent to which they acknowledge using it), but it is not in any way discrediting the practice itself, much less its epistemological hold on the local Liberian mindset. Moreover, there is evidence that these policies may simply be driving the practice into more secretive performance that further legitimizes other customary practitioners who are entirely unregulated by the state (e.g., Poro masters). Of even greater concern is the frequency with which Liberians blame the state for the increase in lawlessness and insecurity they perceive to have resulted from the ban.

  Our data also suggests that the blanket ban may be missing important nuance and variation, and is seen as an attack on culture rather than on harmful practice. A significant subset of our interviewees drew clear distinctions between "sassywood," which involves a prima facie harmful process, such as ingesting poison or application of a hot cutlass (it is believed that only the guilty will actually experience pain or suffer harm), and "cowfur," which involves a prima facie nonharmful process, such as ingesting dirt or taking an oath (it is believed that this will cause the guilty or one who lies to suffer some harm within a certain period of time). Many accepted the ban on the former but wanted to reinstate the latter. A minority of interviewees—mostly, but not exclusively, Muslims and Pentecostal Christians—thought the ban was a good

thing, either because they did not believe in the supernatural qualities of TBO, or they believed it was not reliable and often abused.

- **Rape.** While there is widespread understanding that rape cases must go to the formal courts, there is also widespread dissatisfaction with how formal courts handle the cases—primarily for the same reasons that formal courts are seen as ineffective generally—and concern that the ineffectiveness of the courts leads to impunity. In addition, several interviewees raised concerns that officials of the state court system have been the perpetrators of sexual abuse and rape. Both men and women stated that a consequence of the new rape law is an increase in false accusations of rape in order to achieve leverage against the other party for some other reason. While most Liberians agree that the most serious forms of rape (for example, violent rape) should be dealt with in a punitive fashion by the formal court system, they criticize the new rape law for not allowing for restorative remedies that take into account broader social interests for "less egregious" types of rape.

While many rule of law reformers advocate that a uniform system of law will best serve the aim of ending historical discrimination, many rural Liberians believe this would perpetuate discrimination and argue that they should be allowed to keep the dual system.

Very similar intentions to banish the past injustices embodied in the historical duality of Liberia's justice system appear to be motivating many rule of law reformers as well as the local population. However, somewhat paradoxically these same intentions may also be driving these two groups in opposite directions. To many national policymakers and their international counterparts, the assumption is that the key to rule of law in Liberia is to enshrine the principle of uniformity—that is, to provide a singular legal system and framework that works the same way everywhere for everybody. However, our research clearly shows that most rural Liberians are unenthusiastic about such efforts because they are seen as (yet another) effort to extend the power and domination of a Monrovian elite and foreign culture. Without rejecting the ultimate authority of the state or even a local role for the formal justice system, rural Liberians consistently reject the proposition that the "laws (and institutions) of Monrovia"—or of the international community—should be allowed to supplant and override their customary ones.

Policy Implications

In the final section of our report we develop an analytical framework against which justice reform options can be tested for their likely impact.

We suggest that the impact be analyzed from the perspective of four objectives that are vital to Liberia's postwar future:

- justice objectives,
- governance and peacebuilding objectives,
- international standards and human rights objectives,
- and political objectives.

We next identify three aspects of local Liberian reality—

- capacity of the formal system at the local level;
- capacity of the customary system;
- and Liberians' socially informed conceptions of justice—which we believe have a critical impact on whether justice policies in fact reach or undermine those objectives.

These realities will undoubtedly change over time, requiring a reassessment of policies to determine if the strategic objectives are still being maximized. However, we would warn against any overly optimistic assumptions about how quickly these realities change. While our study clearly underscores the need for a great deal more attention to the wide-ranging needs of the local level of Liberia's formal justice system, it seems to us highly unlikely that current levels of donor and government of Liberia resource allocation hold much promise of enabling such change within the time parameters initially contemplated by this study (Liberia's first post-conflict decade). Indeed, if other post-conflict cases—even the more optimistic ones—have anything instructive to say about the rate of change that might be effected in Liberia's formal system, it is quite likely that the meaningful metric for significance in change will actually be generational. We thus offer two suggestions on how policymakers might go about developing successful reform strategies in the near time.

First, rather than set standards at an unattainable level, it would be wise to consider transitional policies aimed at providing the best possible justice under the circumstances, and at creating an environment of openness and trust between the customary and formal systems that seeks to bridge the gaps and move toward full realization of Liberia's goals for its justice system. Again, without being prescriptive, we suggest a preliminary—and by no means complete—list of policy directions that might be considered:

- Place greater emphasis on building the capacity of and easing access to the formal justice system at the local level—the point of contact with the local population—for example, by reducing fees, reducing case resolution time, eliminating the need for legal representation in certain cases, etc.
- Incorporate restorative principles into formal adjudication of criminal cases—for example, by allowing victims to opt for compensation in lieu of (or in addition to) penal sanctions on the guilty (rather than requiring them to pursue costly civil cases) and by incorporating a role for traditional authorities to help reconcile the parties.
- Adopt a more nuanced approach to defining jurisdictional limitations—for example, by introducing criteria to determine when crimes may—and may not—be adjudicated by customary authorities. Such criteria might include whether or not the parties prefer customary adjudication, whether or not a third party is affected, whether or not there is a political or ethnic dimension to the crime, etc. Among the benefits of such an approach would be a reduced caseload in the formal courts.
- Restrict opportunistic forum shopping by encouraging the exhausting of traditional resolution in most cases (except for where this would lead to clear injustice) prior to entry into the formal system.
- Vastly increase accessible legal assistance and representation to the many litigants who fall victim to the vagaries of justice.
- Ensure that policies aimed at promoting human rights take into account the larger socioeconomic context of rural Liberians.

Second, we suggest that rural Liberians and customary authorities be regarded not just as a subject of policy but as a source of change and innovation. Local ideas can be tapped through a type of consultative process, consciously and explicitly engineered "to identify and listen" to local ideas and solutions rather than telling rural Liberians what those are. This process should be carefully designed to get communities to do more than identify problems. It should also get them involved in imagining solutions, what change should look like, and how to effectively bring change about. It is our belief that such a mechanism can allow policymakers to develop reform strategies that are practical because they continuously take into account and update their understanding of the types of local realities and social beliefs we have analyzed here, and also foster more meaningful local participation that can prove invaluable in Liberia's rule of law reform process.

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Saah N'Tow was the indispensable leader of our field research team and has also played a major role in the analysis and clarification of findings. He, together with Jimmy Shilue, pursued the initial pilot study in 2007 that helped refine our approach and defined the geographic focus of the study. Since January 2008 Saah N'Tow has been the coordinator of a dedicated team of Liberian fieldworkers who were responsible for conducting, translating, and organizing the vast majority of the primary information contained within. Their insights and feedback on the analysis were also invaluable.

A special thanks goes to all the members of our field research team, including Adeo Addison, Johnny Ndebe, and George Saye, who spent months traveling across Liberia helping their fellow citizens articulate their perceptions about their shared justice system. Additional thanks are also offered to Musu Redd for her many hours of translation and transcription work. We are also grateful for the transcription work performed by Paul Samuels, students from the University of Liberia's Mass Communication Department, John Passie, Stanley Gbajay, Madea James, Rev. Jacob Gblie, D. Robert Johnson, Edmond Garleh, Henry N'Tow, Wellington Geevon Smith, and Alexander Gbartee. The research team also benefitted greatly from the research and analysis assistance of Tim Luccaro, Dr. Lubkemann's graduate assistant at the George Washington University.

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Finally, while this study would have been impossible without the close partnerships of UNMIL-LJSSD, the Carter Center, and the field research team, we must take full responsibility for the final analysis presented in this report, and acknowledge that their contributions do not necessarily mean that any of these organizations or individuals endorses the conclusions we have drawn herein.

I

Introduction

OVERVIEW AND OBJECTIVES

This report presents the research findings and analysis of ten months of field study as part of the United States Institute of Peace and George Washington University project "From Current Practices of Justice to Rule of Law: Policy Options for Liberia's First Post-Conflict Decade."

Overall Project Objectives and Rationale

The broader objectives of the project as a whole are to assist the Liberian government and the international community to develop evidence-based policy options for expanding the rule of law and consolidating peace over the next decade in Liberia in ways that account for the role of informal legal systems and grassroots understandings of justice.

As Liberia reconstructs its institutions shattered by years of brutal conflict, strengthening the "rule of law" has emerged as a priority. The government and its international partners have focused primarily on the formal justice system, refurbishing courthouses, training judicial and legal officers, and strengthening legislation that protects fundamental rights. However, the task of reestablishing a functioning justice system is proving daunting and involves the full gamut of need. There are many reports that highlight the chasm between need and capacity in the formal legal system. Among the deficiencies studied by others are the sheer lack of qualified judges and lawyers, and an absolute lack of any formal court structures or personnel in some areas. Police, prosecutors, magistrates, and judges work in the absence of the most basic infrastructure and equipment. A very low rate of case adjudication has also resulted in massive backlog, and about one thousand detainees are awaiting trial at any given time. A large number of incarcerated people and inadequate prison conditions have resulted in several prison breaks.

While the rebuilding of state justice institutions and the restoration of their legitimacy will require many years and considerable resources, most Liberians resolve their disputes through customary mechanisms and institutions. While this state of affairs may be a practical inevitability, the localization and fragmentation of justice often raises its own challenges to the consolidation of peace and the establishment of a justice system that conforms with the standards of the international community. Thus, how these customary mechanisms might fit into justice reform strategies raises a number of concerns. First among these is the fact that the customary justice system utilizes a range of practices that violate international standards, most prominently, trial by ordeal and practices that violate women's rights.

A second concern relates to the legal basis for customary law and its relationship to the formal judiciary. Through a complicated and twisted legal history, paralleling Liberia's complex political history, a dual justice system has been created, in which both the formal and the customary justice systems are recognized. While it is generally considered that the Rules and Regulations Governing the Hinterland set out the basic legal framework of the dual system, there have been many calls for the overhaul of this anachronistic legislation, challenges to the constitutionality of the dual system, and questions about its legal validity due to an array of overlapping laws. The result is a great deal of legal ambiguity about the role of the customary legal system and its place in Liberia's overall justice sector.

Finally, while many justice practitioners believe that the customary justice system should play an important role in maintaining the rule of law, little has been known about the manner in which it operates today, or the degree of legitimacy it enjoys. Liberia's civil war caused mass destruction, population displacement, and social dislocation, all of which can have a devastating effect on local justice mechanisms. Moreover, the ethnic cleavages that fueled the conflict may have further eroded traditional structures and mechanisms. An understanding of how customary justice operates on the ground today—as distinct from prewar ethnographic studies, as distinct from how it is meant to operate on paper, and as distinct from assumptions made in Monrovia—is critical to ensure the viability and positive impact of future policies.

Project Description

We conceived of this project as a way to support the development of policies regarding the role of the customary justice

system in rule of law strategies. Our aim is to provide empirical research and analysis to help sort out the dilemmas described above and understand the potential impact of various policy options. From the outset this project has been distinctively guided by the view that realistic policies for cultivating post-conflict rule of law must be informed in the first instance by a rigorous analysis of current practices and social understandings of justice at the grassroots level, within the socially and ethnically diverse and sometimes politically polarized communities that comprise the Liberian social fabric.

The project aims to accomplish this objective through three primary activities:

1. An empirical field study that provides a robust assessment of (a) how the dispute resolution mechanisms to which people resort operate in actual practice and (b) how justice is understood throughout this socially diverse and politically splintered society.
2. A comprehensive analysis of the current legal framework governing the dual justice system, which seeks to identify internal inconsistencies, differing interpretations, and gaps between the law on paper and the law in practice.
3. A series of consultations, workshops, and other focused facilitative actions that will foster a policy dialogue among key stakeholders (national and international) that is as attuned to Liberia's grassroots social realities as it is to the dynamics of national politics and international human rights. By bringing the results of the project's field research and legal analysis to bear in these consultations, the project aims to contribute to the formulation of a more realistic policy road map for the revitalization of justice in Liberia and for the growth and consolidation of rule of law over an extended post-conflict transitional period (10–12 years).

Objectives of this Report: Primary Analysis of Field Research Findings

This report is the culmination of the first activity: the empirical field study.[1] Our aim is to provide our primary analysis based upon a first full and comprehensive review of all of the data that we have produced since January 2008. This data consists of more than 130 individual interviews and more than 35 focus groups conducted primarily in Nimba, Grand Gedeh, and Lofa counties.

Throughout this project we have collaborated closely with other organizations conducting related empirical and evidence-based analysis. In particular, we have worked closely with the Carter Center and its partner researchers from Oxford University's Centre for the Study of African Economies (CSAE) to design and implement a large-scale quantitative survey. The analysis of that data is currently in process, but preliminary results from the data are displayed at several points throughout this report. A detailed description of the Oxford CSAE study, along with a summary of main findings, can be found in the appendix.

We look forward to a process of review and discussion of this report with other experts and stakeholders, and expect that their contributions will further sharpen the analysis. It is also our intention to make the primary data widely available and to encourage other experts, practitioners, and policymakers to use it directly themselves. The data is rich and can undoubtedly reveal valuable insights into a range of questions that we may not have addressed here.

Approach: Field Study Design and Methodology

The design and methods for the field study component of this project have several distinctive features that relate directly to its objectives of producing a robust empirical understanding of how justice is understood at a grassroots level throughout Liberia:

Dispute resolution in actual practice

The research was designed to capture local engagement with both the formal court system as well as a full range of informal justice mechanisms and institutions. This was achieved by designing an interview protocol that traced how communities and individuals have resolved a set of signature issues—namely, violent crime, murder, rape, theft, land disputes, and a residual open category for issues of importance as identified by local respondents. The individual case interview protocols traced actual cases sequentially through their entire reported course of resolution, regardless of which type of institutions—formal or informal—were involved. The distinct advantage of this approach over ones that focus on particular types of institutions as their point of entry, is that it allowed us to capture the full range of interactions between customary and formal systems that can occur in a single case's resolution, and to better understand how communities and individuals understand the relative role and advantages of a whole variety of institutional forums relative to each other. This approach is thus decidedly not meant to produce a study of the informal/cus-

tomary justice system/institutions alone, but it is quite deliberately designed to capture a picture of the whole institutional geography and the practice of justice in its entirety as locally viewed and experienced throughout a large part of Liberia. Notably, this methodological approach has allowed us to capture the influence and intervention of actors and institutions that are part of neither formal nor customary justice institutions, but that can nevertheless be empirically documented as influencing the course of case resolution.

In our view it is the ability of this approach to capture the relational quality of all institutions and actors involved in the actual practice of justice that promises to constitute a much-needed alternative evidence base for policy formulation. This is a particularly important perspective to build upon in the formulation of any realistic policies that seek to define the articulation between the formal and customary systems. As a sociological/anthropological study, this effort attempts to document how people have formulated perceptions based on their experience of the actual practices of actors and institutions, regardless of how these may be defined "on paper."

Multiple perspectives

Our findings are distilled from a triangulated review of three data sets, namely

- Forty extensive interviews with justice practitioners (primarily chiefs, along with elders, zoes [traditional leaders], and others involved in dispute resolution);
- Ninety-one individual interviews (about seventy-eight different cases) that reviewed the entire course of a case's process with individuals who were parties to those cases (wherever possible involving both parties to a case); and
- Twenty-nine focus groups selected to span key forms of sociodemographic difference (generational and gender in particular).

We have taken rigorous and systematic steps to ensure that our analysis is based on the composite review of multiple perspectives. Thus, for example, our description of customary justice procedures is not merely a matter of reporting what justice practitioners have to say about what they do, but relies on a juxtaposition of such claims with the accounts of many other witnesses and parties with their own particular viewpoints and vested interests.

Our analysis also cross-references a fourth data set, namely, select preliminary findings from the survey conducted by Oxford University's Centre for the Study of African Economies (CSAE) in collaboration with the Carter Center and our research team. The survey interviewed a representative sample of more than 2,500 households in 176 villages spread across Bong, Grand Gedeh, Lofa, Maryland, and Nimba Counties, asking households a wide range of questions on dispute incidence, processes, and mechanisms of dispute resolution, as well as collecting their socioeconomic profile. In addition, more than three hundred quantitative interviews were conducted with local police, magistrates, commissioners, and community justice providers (chiefs, elders, secret society leaders).

Sociogeographic and demographic diversity

The research project was designed to maximize coverage of Liberia's sociogeographic diversity both between and within communities. The research was conducted in three "rural" counties— Lofa, Nimba, and Grand Gedeh—and in periurban Monrovia. Originally the project intended to include two additional counties (Cape Mount and an additional county in the southeast), both in order to ensure greater socioethnic representativeness and to better capture the dynamics of justice practice in areas in which social institutions had been less thoroughly disrupted by Liberia's civil war. When resource constraints forced us to narrow our scope we opted to focus on the large counties most fundamentally affected by the war. Through continued close collaboration, consultation, and data sharing with like-minded and research-oriented partners we hope that comparable data for other parts of Liberia will eventually be developed.

However, for purposes of this report we note that our current findings reflect the sociogeographic limitations of our fieldwork. While our review of reports by other organizations and researchers suggests that many of the principles we explain here are broadly similar in many other parts of Liberia, we think it wise to caution against excessively robust or rigid generalization to other areas of the country, absent comparable empirical and methodologically rigorous fieldwork in those areas.

Within the counties in which we conducted our field study, we systematically attended to questions of important forms of social heterogeneity, most particularly with respect to gender and age. Thus, the two of our three research protocols that were organized around signature issues (our individual case interviews and our focus group interviews) deliberately sought to recruit systematically for gender and generational diversity among respondents. In the third category of interviews

Table 1: Number of Focus Groups by Category of Participants

County	Female elders	Male elders	Female adults	Male adults	Female youth	Male youth	Female ex-combatants	Male ex-combatants
Lofa	3	2	1	1	1	4	1	0
Nimba	1	4	1	0	2	2	0	0
Grand Gedeh	0	1	1	1	1	0	1	1
Total	4	7	3	2	4	6	2	1

Table 2: Number of Justice Practitioners Interviewed

County	Quarter chief	Town chief	Clan chief	Paramount chief	Sectional/ zone chief	Mandingo or Fula governor	Elder
Lofa	1	5	4	3	1	0	0
Nimba	0	1	3	7	4	0	2
Grand Gedeh	0	3	0	6	0	2	0
Total	1	9	7	16	5	2	2

Table 3: Number and Type of Individual Case Interviews

Incident type	Total number	Respondent's sex		Victim's or plaintiff's sex			Perpetrator's or defendant's sex		
		Male	Female	Male	Female	Both	Male	Female	Both
Murder	6	4	2	5	1	0	6	0	0
Rape or gender-based violence	10	5	5	0	10	0	10	0	0
Violent crime	13	8	5	10	3	0	10	3	0
Witchcraft	4	4	0	2	1	1	3	1	0
Theft	6	4	2	3	2	1	4	1	1
Land dispute	20	15	5	11	2	7	12	2	6
Labor, market, or debt dispute	11	8	3	9	2	0	3	0	8
Other	8	4	4	4	2	2	2	4	2
Total	78	52	26	44	23	11	50	11	17

Table 4: Summary of Individual Disputes

Incident type	Total number	Number of cases by county			
		Grand Gedeh	Lofa	Nimba	Monrovia
Murder	6	1	0	5	0
Rape or gender-based violence	10	2	8	0	0
Violent crime	13	3	5	3	2
Witchcraft	4	1	0	3	0
Theft	6	1	2	1	2
Land dispute	20	5	5	6	4
Labor, market, or debt dispute	11	0	3	1	7
Other	8	0	5	2	1
Total	78	13	28	21	16

(justice practitioner interviews), gender proved to be a less relevant variable because customary justice practitioners were almost invariably males (for a graphic representation of the sociodemographic and geographic breakdown of our three types of interviews, see tables 1–4).

Local researchers

Our interview data was collected by an intensively trained team of interviewers and transcribers who were not only Liberian but who were also from the actual counties in which they carried out the research, and thus fully knowledgeable of local language, and both discursive and social mores. This not only facilitated access and fostered respondent confidence but positioned the interviewers to use more culturally effective questioning strategies for obtaining the desired information. More importantly, it allowed the interview instruments to be designed so that the interviewers could solicit and/or provide vital forms of contextualization about terminology, idiomatic reference, and custom during the course of the interview, subsequently in transcription and translation, and eventually in secondary analysis guided by the project's directors.

Archive of data

All of the interviews conducted during the course of this project have been recorded by audio, and digitally transcribed and translated. This creates an archive of primary case study material that, once made publicly available after final cleaning, can—and we hope will—be used by others who hope to pose more focused policy queries and for the development of training materials and curricula. In the spirit of rigorous scientific criteria, which itself banks upon its own "rule of law" that demands maximum transparency, this archive will enable others to review our own original data and subject our analysis and conclusions to the fullest possible critical scrutiny. For those with additional interest in the instruments and methodological procedures used to generate our data, copies of our instruments are available on the United States Institute of Peace Web site (www.usip.org).

Note

1. In parallel, we are cosponsoring a legal working group to conduct the comprehensive analysis of the legal framework governing the dual justice system.

II

[Research Findings]

1 CORE QUESTIONS

The methodology we used in our research was deliberately designed to enable us to capture the full range of mechanisms and actors through which Liberians sought to resolve their disputes. Thus, we did not take the "expected" institutions—formal or customary—as our point of departure. Rather, we traced actual cases sequentially through their entire reported course of resolution, regardless of which type of institutions and actors (formal or informal, or other social actors altogether) were involved. In this way, we could see the actual practice of justice as experienced by litigants, understand how and why they chose certain routes, and gauge their relative levels of satisfaction.

Our analysis was guided by the following core questions:

1. Where do Liberians go to resolve their disputes?
2. How do the various dispute resolution forums relate to each other (in terms of jurisdictional limitations, hierarchy, appeal, etc.)?
3. To what extent is customary law practiced today and in what ways has it changed since before the war?
4. What are the principles and procedures that govern customary law?
5. To what extent do the various dispute resolution forums produce satisfactory justice in the eyes of Liberians?
6. What is the impact of laws and policies that aim to regulate or modify customary practice?

Our aim in seeking answers to these questions was to understand how justice is in fact experienced and perceived by most Liberians, and to yield insights into the following policy questions:

1. What kind of justice reform strategies might improve the experience of justice for most Liberians in the immediate term?
2. How might justice reform strategies seek to bridge the social and cultural divide between customary justice and the formal legal system?
3. What are options and trade-offs concerning the role of customary law in Liberia's overall justice system over the medium to long term?

In this part of the report, we lay out our key research findings in five sections. First we provide the cast of characters—individuals and institutions—that make up the topography of justice for rural Liberians. Second, we review how customary justice is practiced today, the characteristics of its practitioners—chiefs, secret societies, religious leaders, etc.—and its main limitations. Third, we analyze how Liberians experience and perceive their two main justice options—the formal system and the customary system. Fourth, we discuss the impact of several recent government policies aimed at regulating the customary justice system, with emphasis on popular perceptions and unintended consequences of these policies. Finally, we discuss how these findings, taken together, determine how Liberians choose to go about resolving their disputes.

The original data we collected is so rich and revealing that we have chosen to include extensive primary material in this report, allowing the respondents themselves to describe actual cases in their own words. These are presented both throughout the main body of text and in text boxes. All interviews were recorded and transcribed (and in some cases translated). We provide excerpts directly from these transcripts—unedited, except to preserve anonymity.

2 THE TOPOGRAPHY OF JUSTICE

It is useful to lay out the "cast of characters" up front—that is, the full range of actors and institutions that make up the justice landscape as it appears to the Liberians we interviewed. Liberians engage with the formal justice system most commonly at the lowest level—that of the justices of the peace or the magistrate courts. More serious cases are referred directly to the circuit courts, and on occasion cases are appealed all the way to the Supreme Court. Criminal cases often involve the police and may—or may not—include the county attorney advocating on behalf of the victim and defense attorneys defending the accused.

The lack of capacity and, to a large extent, the deficit in credibility of the formal court system at the local level throughout Liberia means that the most relevant justice institutions for the vast majority of the country's population are customary ones. The core of the customary justice system involves a hierarchy that begins with the senior members of a household or a family, and then extends through a succession of chiefs—in ascendant order quarter chiefs, town chiefs, clan chiefs, and paramount chiefs. Beyond the paramount chiefs, the informal system's chain of referral continues first to the district commissioner and then to the county superintendent. Decisions that do not satisfy one or both parties at lower levels can be appealed through this entire chain of referral. The consistency with which our respondents describe this as the current system indicates that local understandings of the chiefs' hierarchy still largely reflect prewar understandings that have prevailed since this structure was first codified and recognized by the Liberian state in the early 1920s.[1] In reality, however, our research shows that cases may jump from the customary chain into the formal one—and vice versa—at nearly any point, due to the assertion of authority by a member of one or the other chain, or by choice of one of the litigants.

Certain types of disputes and disputants are also handled by another category of customary institution that derives its authority from local community mores but whose role is not explicitly recognized in Liberian law or by the Liberian state. Most prominent among these institutions are the secret societies, the most well known of which in the rural areas of our study are the Poro and the Sande,[2] described in the anthropological literature as follows:

> Poro is a male sodality [secret society] found among several groups in central and western Liberia, including the Vai, Gola, Dei, Mende, Bandi, Loma, Kpelle and part of the Ma [Mano]. The society serves two primary functions. It is the main institution to enculturate young males and to formally carry them through the rite of passage from child to adult. In addition, the elders of the Poro serve as the intermediaries between the ancestors and the living, and thus act as the ultimate arbiters of asocial actions which affect the society. The female counterpart of this organization is the Sande Society.[3]

While the ritual officers in these societies are often the first and even ultimate line of recourse for all manner of disputes that occur among their own members, cases are also often referred to them from all levels within the aforementioned "state-recognized" customary system that extends from chiefs through the county superintendant. One of our findings is that these societies not only continue to play a prominent role in the local administration of justice throughout rural Liberia but that there are also signs that the influence of these institutions in the justice process is growing,[4] in part as an inadvertent consequence of government policies that are perceived to have simultaneously weakened the power of chiefs and contributed to the growth of witchcraft.

This report will also discuss some of the particularly problematic aspects of Poro influence and activity, most particularly in local communities in which a higher degree of religious heterogeneity results in conflicts between Poro members who seek to impose customs on non-Poro members whose religious affiliation (most often as Muslims or Pentecostals) prescribes that they should resist conforming with such demands.

Our research also indicates that within certain religious and ethnic communities, leaders such as imams, Pentecostal

pastors, ethnic chiefs (e.g., Fula chief) are sometimes called upon as the first line of recourse in the resolution of disputes among their congregants or coethnics. Similarly, the authority to resolve certain types of disputes with delimited spheres of professional activity, such as by head marketwomen within the marketplace, is also recognized by many rural Liberians.

One of the most important findings of our field study is the remarkable degree to which a broad range of actors who have no legally or socially recognized roles in formal, state-backed-customary, or even community-based-customary justice institutions become involved in, and are perceived to be able and likely to influence, the resolution of cases ranging from the most trivial to the most serious. In our interviews, the exertion of such influence was reported as particularly frequent on the part of a wide range of state officials who have no legal role in the statutory system, including national legislators, deputy ministers, immigration officers, city mayors, and diplomatic bodyguards, among others. This fact may explain why so many rural Liberians and (if their referral decisions are any indication) often even justice and state officials themselves do not appear to draw particularly sharp distinctions between justice officials strictly speaking and other state authorities in determining who to approach for seeking redress and who to allow to intervene in the resolution of cases. Thus, for example, our research verified numerous incidents in which the police—who are usually the first line of litigant interaction in cases channeled directly to the formal system, and often also in cases directed to chiefs—not only served as the gatekeepers in decisions about whether and where cases would be referred, but also quite often intervened directly to resolve the situation itself.

More generally, powerful (e.g., former military commanders) or simply wealthy people and even international institutions (including a number of nongovernmental organizations [NGOs]) were also reported as sometimes exercising similar influence. Our research also reveals a strong perception among many Liberians that the wealthy and the powerful are increasingly able to exercise undue influence within the formal justice system through their membership in other forms of secret societies such as the United Brothers of Friendship (Masons). Unlike the Poro and Sande, which aspire to virtually universal recruitment within local communities, groups such as the UBF are seen as the exclusive purview of the rich and the powerful—particularly those who have ties to Monrovia.

Any effort to understand the practices, choices, and experience of rural Liberians with respect to dispute resolution must take into account this full range of actors. Perceptions and preferences should be evaluated in light of the *actual justice landscape* as seen and experienced by Liberians—not the *presumed institutional framework*. Moreover, it is from an understanding of the relational quality of these various options and alternatives in the eyes of Liberians that realistic and effective justice strategies should emerge.

Notes

1. According to Philip A.Z. Banks III, "In the early 1920s, the government created a further process in which the town chief and all other chiefs above that rank became a part of the government structure. Within this new government-created informal system the courts of the town chief, the clan chiefs and the paramount chiefs became a part of the government machinery. Under the government-created system cases decided by the town chief are appealable to the clan chief and then to the paramount chiefs, from whence a further appeal can be taken to the 'administrative courts.' These are the courts of the district commissioners in each county and the county superintendents, to whom further appeals may be taken by dissatisfied parties. Appeals from these latter courts may be taken to the Minister in charge of local government, statutorily referred to as the Minister of Internal Affairs." Philip A.Z. Banks III, "Liberia," report prepared for the United States Institute of Peace dated April 2006, on file with the authors.
2. While Poro and Sande are not specifically evident in all Liberian social contexts, most areas have roughly analogous social institutions that perform somewhat similar justice functions.
3. James L. Gibbs, "Poro Values and Courtroom Procedures in a Kpelle Chiefdom," *Southwest Journal of Anthropology* 18 (1962): 341, 349–50.
4. One fascinating sociological development is evidence of the unprecedented extension of the activity of these societies into urban areas such as Monrovia. Seemingly a contradiction in terms for societies that are defined specifically through their association with the "bush," this development is likely to be highly significant but has yet to be empirically studied.

3 THE CUSTOMARY JUSTICE SYSTEM

One of the core aims of our research was to get an in-depth understanding of how customary justice mechanisms function today, how they go about resolving cases, and who are the authorities that resolve disputes. Our data contains an immense amount of information on these questions, which we set out in this section.

Continuities in Customary Justice Mechanisms

One of the basic, though key, findings of our research is that customary institutions and practices of justice have clearly survived Liberia's devastating civil war and remain active in virtually all of Liberia's rural communities. Whereas formal courts often do not even exist at the local level, or are viewed as problematic, our research indicates that customary institutions continue to function in all communities and at all levels down to the most local. It is reasonable to surmise that if our research has found strong evidence of the survival and continuity of customary justice institutions in Liberia's most conflict-devastated and socially disrupted counties—Lofa, Nimba, and Grand Gedeh—it is likely that customary institutions also continue to be equally relevant throughout the rest of the country's rural counties.

We should note that the fact that there are chiefs and other customary justice practitioners operating in virtually all local communities does not mean that there are not varying amounts of tension and conflict over whether particular customary authorities are the legitimate occupants of their positions. However, inasmuch as we were able to determine, these are largely residual political questions that trace back to the local dynamics of the former civil war, rather than structural questions about the functioning or scope of action of the institutions themselves. In other words, there is little indication that customary justice would be carried out in markedly different ways if other claimants to these positions actually occupied them.

A second finding is that the overwhelming majority of justice that is being provided in practice to Liberians is through one or another form of customary institution. The evidence from our own interviews that customary institutions are not only reported as generally far more accessible, but also as overwhelmingly the preferred forum of first instance for most rural Liberians, is corroborated by the Oxford CSAE survey. Preliminary analysis found that 89 percent of the disputes that were taken to a third party for resolution by the inhabitants of Lofa, Nimba, Grand Gedeh, Bong, and Maryland Counties were taken to a customary authority, whereas only 11 percent were taken to a formal institution. Moreover, 74 percent of the disputes taken to a customary authority had already been resolved, whereas only 61 percent of those taken to a formal authority had achieved a final resolution.[1]

A third key finding is that the overarching principles that guide the exercise of customary justice have not been fundamentally altered by the Liberian conflict. Customary justice practitioners are particularly explicit in claiming that they hark back to the models they witnessed before the conflict in determining how to go about exercising their own judicial authority.

Principles and Procedures Applied in Customary Dispute Resolution

The principles and procedures we outline below are derived from a triangulated review of 41 extensive interviews with chiefs (often along with elders, zoes, and others involved in resolution processes), 91 interviews that reviewed the entire course of a case's process with individuals who were parties in those cases, and 36 focus groups selected to span key forms of sociodemographic difference. In this sense we can confidently state that the basis of our analysis is not merely a matter of reporting what justice practitioners have to say about what they do. It also relies on a juxtaposition of such claims by many other witnesses and parties with their own particular viewpoints and vested interests. At the same time we should certainly add the caveat that the principles distilled here also reflect the sociogeographic limitations of our work. While our review of reports by other organizations and researchers suggests that many of the principles we explain here are broadly similar in many other parts of Liberia, it remains wise to cau-

tion against excessively robust or rigid generalization to other areas of the country in the absence of comparable empirical and methodologically rigorous field work in those areas.

Nonbinding arbitration with elements of mediation

The overall picture that emerges from our evidence is that customary justice proceedings resemble a form of nonbinding arbitration, with additional elements of mediation. It is like arbitration in that the decision makers investigate the facts and pronounce a judgment to establish the "truth" and the sanction for the party at fault. Both customary justice providers and local users are very consistent that the rulings pronounced in customary justice settings are not binding in the sense that they can be, and often are, appealed to higher authorities in the customary system or to the formal system itself. In other words, if one or both parties are not satisfied with the ruling of a chief (say a town chief) they can reject the decision and bring the dispute to the next level of chief (a paramount chief), or even take the case to the formal system. Nearly all chiefs interviewed emphasized that dissatisfied parties were very welcome to take their case up the chain, as maintained in the following exchanges:

> **Interviewer**: In your opinion, if someone disagreed with your decision should that person take his grievances to government officials or judge or where you think is the right place for the person to take his grievances if someone disagrees with your decision?
> **Respondent**: If I investigate any case and some expresses dissatisfaction concerning my ruling, I will prefer them taking my complaint to the commissioner for redress.
> **Interviewer**: Now most of those cases that your people take to the government court for investigation, after the investigation in those places, do your people really tell you that, "OK old man, we went through the investigation and we were satisfied with the decision"? They can always be satisfied or they can sometimes come with disappointment?
> **Respondent**: Well, they can go to the government court and come back in town and I cannot hear anything from them and I cannot also go to them to ask how the investigation was.
>
> **Paramount chief in Nimba**

> **Interviewer**: What are the most important types of cases you are asked to resolve?
> **Respondent**: Since my appointment most cases that come to me are divorce cases because when the town chief fails then they can bring it to me.
> **Interviewer**: How often do these occur?
> **Respondent**: I receive these cases on the weekly basis. . . .
> **Interviewer**: In your opinion, if someone disagrees with your decision should they take their complaint to a government official or judge?
> **Respondent**: Normally for when I gave my ruling and you are satisfied, I give you fifteen days to go and think about and after the fifteen days, if you decide to an appeal, I will grant the appeal to go to the paramount chief.
>
> **Clan chief in Lofa**

The mediative dimension of the chiefs' justice role is evident in the overall objectives for which they strive in the resolution of cases and in the balance they seek to strike among those objectives. Although the specific balance struck among different priorities may vary from case to case and across individual justice practitioners, most descriptions of procedures and of actual case proceedings suggest that after ascertaining the truth of the matter, achieving social reconciliation is the overriding concern. Thus, chiefs often speak about "compromising" a case, which means finding a resolution that satisfies both parties and allows them "to leave with smiles on their faces." This means that much of the work of dispute resolution is sitting down with both parties and their family members and other people of influence to bring them to agreement and acceptance of the resolution. In many cases we documented, this means that the prescribed sanction may be lessened or even waived if that will help bring about agreement and reconciliation.

The search for the truth

The mediative nature of case resolution does not diminish the emphasis on the establishment of the truth. In particular, the chiefs strive to ascertain who is at fault and who is innocent by getting at a form of "truth" that attends not only to the narrow issue at hand, but also identifies and deals with the more fundamental root issues and social factors that inform the dispute. In the following exchange, a quarter chief contrasted this approach to that of the formal courts:

Respondent: I resolve theft case sometime in July between a husband and his wife. The man was living in different area and the wife as well. In the absence of the man she went and broke the house door opened. When the man returned, he took the complaint to the town chief and accused the woman of breaking in his house with criminal intents. In this light, the chief decided to refer the case to me as his boss since it was criminal in nature. The complaint came to me try my best to put it under control.

Interviewer: How did you resolve this case?

Respondent: I frankly told the woman that she has no color of right to go and break into the man's house. I also told the man that he should be factual enough not to falsely complaint of things that were actually not stolen from his house. It was at that point that he admitted that the woman only took his mattress but he has since retrieved it from her so she was forgiven. Prior to coming to me, the man told the town chief that his 5,000 LD [Liberian dollars] was missing as a result of the intrusion into his house but he did not mention that to me since he chose to be sincere. These are some of the things that the justice system doesn't understand but they are common cases for us to resolve. Can you imagine if that was made to return 5,000 LD that she has no idea on what would happen? That was going to bring about big rivalry among their both families. . . .

Interviewer: Why should government not interfere in case that belongs to chief?

Respondent: Because they will not solve it properly. They will only look on the surface. When you see cow toilet somewhere, on the top is dry while beneath is very wet, so it is with these government. When they come to handle such a case that they are not familiar with, they only deal with the surface and leave the root cause. We as traditional leaders live with the people and we know the root causes of some of the conflict that is what puts in a better position to be able to solve it. That why the other case was sent back to us.

Quarter chief in Lofa

This view that customary forums are more attentive to the causal root issues and thus more effective in resolving disputes was not only claimed by chiefs but was also widely articulated by most of the individual litigants we interviewed, as well as in most of our focus groups:

> The best way possible to settle land or any dispute in our area is to go through the elders in the community, who will talk the case between you and the next person. But when you go to court, you are calling for war because whoever the court says is wrong will keep grudge in his, her heart for the next person. Peaceful solution can be found through the elders because they understand the problem. If you go to the elders and you are not satisfied, then you can go to court.
>
> **Male elder in Nimba**

> There won't be satisfaction between the both parties because the court's ruling could have decided that Paye Konah, even though did not do it intentionally. After this length of time in prison, he will be declared freed and come home. These will bring some dissatisfaction in our mind about the way he was treated. But the way we resolved this traditional was good. We will all know that Paye Konah had not committed such and he is known as one of the peaceful boy in our community. So this matter was settled traditionally and that we are all living in peace and harmony with each other. **Male elder in Nimba**

In attempting to discover the truth and ascertain guilt or innocence, chiefs do not make determinations on their own. Rather, they rely extensively on the counsel and participation of community elders and sometimes representatives of specific social constituencies such as youth, or even elder members of the families of the contending parties. They specifically seek out the counsel of what might be termed "expert witnesses" who can provide insight into either the deeper social dynamics that underwrite the root truth of a matter (such as in the case of elders from the families of aggrieved parties), or on the substantive issue in question (such as in cases where elders knowledgeable about customary land boundaries are asked to testify). We found rather extensive evidence of chiefs taking careful measures to ensure that the information they received

was in fact as objective as possible—for example, by taking several elder "land specialists" separately to testify about a land boundary in order to confirm and ultimately cross-check their independent determinations. Chiefs are also joined by elders when they summon and interview witnesses.

This extensive social consultation process serves several important functions beyond that of drawing upon expert knowledge or even ascertaining and developing strategies for addressing the deeper social factors that inform a dispute. To the extent that decisions are the product of an open and public process of establishing consensus among leading community members and family heads, their weight is reinforced and the social pressure for parties to accept and comply with them is increased. This influence is further informed by the relatively weighty roles that kinship and gerontocratic forms of authority play in Liberian rural society.

Finally, a broader consultative process ensures that a wider range of social stakeholders' interests than merely those of the immediate parties can be accounted for. While this possibility may realize certain Liberian sociocultural ideals (such as the need to mitigate broader social conflict and to attend to the interests of corporate groups, such as the family, rather than merely those of the individuals), it should be noted that this is often viewed as a significant problem and a subversion of justice by rule of law practitioners who subscribe to narrower concepts of justice that focus almost exclusively on the rights of individuals.

> The reason I supposed to handle it is that if I handle such case it can be resolved and my people can be satisfied. Actually when I ascended to this chief position I observed that when two mates fight, they will be taken to the magistrate court for investigation and after the magistrate investigation the problem becomes worse. In fact when they are there, they are asked to pay bond fees and after the bond they both come home and live in the same house with the same man. Then the frustrating part is that we who are chief do not eat anything from the case while out there with the magistrate and when home we hear the noise. After a while they come back to us to resolve the matter. The important part that we can play in it now is that we have to invite the entire family of the both parties. As for the court, they only issue writ against the people who had the dispute for investigation but as for us we invite all of parents and ask them why are you sitting and looking at these people making palaver. What's the cause? The second lady does not want to respect me as wife of this home. And while investigating the matter we do not focus on money but then main issue that occurred and what are the underlying causes. **Zone chief in Nimba**

Many chiefs also cite admission as a critical tool in uncovering the truth. There is considerable evidence in our interviews that confessions often come willingly once a process deemed fair is underway. When an aggrieved party approaches elders or chiefs in order to "compromise" a case, the guilty party often admits fault in order to end the dispute and find an acceptable sanction. Often family members and elders play a role in coaxing the admission, emphasizing the importance of ending social conflict. In some cases, the threat of greater sanctions should the case go into the formal court system also serves to encourage confession.

For certain cases when admissions are not forthcoming, and in particular in matters of witchcraft and theft, some form of trial by ordeal (TBO) is cited by most chiefs and Liberians interviewed as the preferred means of ascertaining the truth. Our data indicates quite a variety of both methods and uses of TBO, from the most lethal, such as the ingestion of a poisonous concoction believed to bring illness or death to the guilty, to an oath taken by witnesses on dirt, water, or some other substance (akin to swearing on the Bible). Because of the highly charged nature of TBO, we take this up in detail in a later section of this report.

Redress aimed at social reconciliation

The forms of redress and punishment that are meted out by chiefs tend to be responsive to the overriding goal of social reconciliation. This has several elements. The first is a bottom-line concern with taking measures to ensure that incorrect behavior is not repeated. Rarely, however, is mere punishment—in the sense of depriving a perpetrator of liberty, life, physical comfort, or economic assets—regarded as the most effective way to ensure bad behavior is not repeated (see text box 1). Instead, a key deterrent seems to be the public shame brought on the guilty party through his or her public admission of guilt. Moreover, most Liberians would agree that recidivism is ultimately only likely to be deterred by resolving the root cause of the dispute rather than merely punishing errant

Text box 1

Traditional resolution of unintentional killing

In a hunting accident, A killed B. A denied the act until marks were discovered on his back. At that point he was brought to the Poro bush where he confessed (the interviewee insisted that in this case there was no trial by ordeal or other coercive means). He was then brought to the police and jailed. A's relatives pleaded with B's family to resolve the case traditionally. While they initially refused, an uncle of B, acting as a mediator, persuaded the family to withdraw the case as it was an accident. After a series of apologies, B's family agreed, as long as A's family paid for the expenses they had accrued, which amounted to more than 50,000 Liberian dollars (covering transport fees for their lawyers and fees for those who had searched for B). When A's family responded that they did not have money to cover the expenses, B's family agreed that instead they should sacrifice one sheep, one goat, and one hog for the spirit of the deceased to depart in peace. The two families ate together and "knocked glasses together which proves true reconciliation."

"What satisfied us, was he confessed that he is the doer of the act. And even myself asked him and he said that he didn't do it intentionally. So he asked for forgiveness and that he didn't mean to kill the boy."

The uncle, a male elder in Nimba who recounted the case, explained why traditional resolution was best for both parties: "If this man had remained in the hands of the police or court, bribery was going to take place and this man was going to be released by the police or court overnight. And that could brought misfeelings between his and us, the victim's parents. . . . There won't be satisfaction between the both parties because the court's ruling could have decided that A, even though he did not do it intentionally, but the penalty was that he will be sent to prison for either five or ten years. After this length of time in prison, he will be declared freed and come home. These will bring some dissatisfaction in our mind about the way he was treated."

behavior. In fact, mere punishment without social reconciliation may be regarded as actually aggravating root causes and antagonisms that trigger even worse and unwanted behavior between litigants.

A second element of reconciliation is compensation, or repair of the harm. Repair for some forms of harm involves a focus on wronged individuals. Thus, for example, if goods were stolen from someone, they should be returned to that person by the thief, along with any costs the victim incurred in resolving the dispute. Generally speaking, however, compensation is subordinate to the overall goal of reconciliation. As noted above, we collected a number of cases in which victims actually volunteered to forgo compensation when a party who had been ascertained as guilty by a chief could not pay in order to facilitate the reconciliation process.

Other offenses viewed as having been committed primarily against the community as a whole (e.g., disorderly conduct, public insult, bearing false witness, avoiding communal work responsibilities) may require forms of atonement toward the community as a whole, most often by cooking a meal for the community or paying a public fine. As at least two respondents reported, public fines are generally deposited into the community treasury to be used for development projects, such as the construction of a building for midwives or a school:

> In our town here there is an ordinance on stealing and when an individual steals, he is strictly brought to my office for investigation and if it is proven that he/she stole, I transfer him/her to the traditional elders who in turn impose fine on the culprit. The usually imposed on people who commit theft is he/she will kill cattle and cook for the town people. This serves as a penalty for such act not to be repeated. **Clan chief in Nimba**

> When [goat, sheep and hogs] are given, the town people cook food with [them] and they deposit the money in the treasure for development purpose. The midwife houses you see were not built by the government. They were erected by the citizens themselves from the fines collected from people who violated the town's rules.
>
> **Male zoe in Nimba**

Securing public apologies is usually also an integral ingredient to achieving a resolution that verifies truth and achieves reconciliation and results in the most important measure of success: that both parties leave satisfied with the result and without harboring (or at least expressing publicly) hostility toward each other. Apologies are not just a gesture toward the

Text box 2

"The reason why these cases should be handled by us is that we as chiefs know the condition of our people. And these people are very poor and financially [in]capable of defending themselves in government court. For example, if an individual from this town is collected and sent to court and is guilty. If he fails to pay the court fines and expenses, he is sent to jail and the rest of the family behind him that are depending on him for support, will definitely suffer. But as is the traditional people, if these cases occur we look at the condition of our people and amicably resolve it. But in the court the disputing parties have to hire lawyer to plead for them, which requires lot of expenses. As for us our fines are like one chicken or one cattle to cook for the community and the both parties remain in the scene and reconcile."

Paramount chief in Nimba

victim; they also serve as an important opportunity of redemption for the perpetrator—an opportunity absent in formal proceedings. To quote one chief: "The first thing is to make peace between the people, the second thing is to tell the truth and apologize."

"The first thing is to make peace between the people, the second thing is to tell the truth and apologize."

In order to secure genuine social reconciliation, redress also usually involves some form of reconciliation ritual among the formerly aggrieved parties. Prominent examples are the sharing of a kola nut, the knocking of glasses together, or the placing of hands on the back (an act of forgiveness) of a child or junior kin member. More than merely public signs, these ritual acts are believed by many Liberians to have important effects that mitigate sociospiritual danger or insecurity. Thus, sharing the kola nut is described as a "sacrifice" that will dampen the activity of spirits that can cause ill will to flourish, and placing the hand upon a child's back is described as binding the forgiver to that commitment, on peril of suffering a curse should he or she later renege. Stated one adult male respondent:

> The traditional way is good because whenever you go wrong, and they fine you. Even if you wrong XYZ, they will tell you the fact, even though it may hurt. But the fact will be told and later they will bring the both of you together as brother and sister. **Male adult in Nimba**

While the vast majority of cases are resolved using some combination of the above elements, exceptionally egregious acts—such as brutal rape and murder—and repeated delinquency are apparently viewed as beyond social repair, even when they are committed by members of the community. In such cases, punishment and compensation become the overriding objectives, and there is far greater willingness to refer these cases to the formal system.

It is worth noting that some chiefs refer to the use of prisons and corporal punishment (usually lashes or a form of stockade known as "country handcuffs") as something that they used in the past, and in some cases, as something they would like to have at their disposal again. Our data indicates only a rare use of force for punishment, although a somewhat greater tendency to use force in the process of detaining and investigating a perpetrator.

Enforcement

As noted, a key feature of customary law is that it aims for a solution agreed upon by both parties. A party that does not accept the resolution is free to reject it and appeal to the next level. Decisions of customary courts thus are not coercively enforced. Social pressure, however, is a heavy factor in ensuring that the parties accept and carry out the decision in the case. This comes in a number of forms, most directly by family members and elders who appeal directly to the parties to accept the resolution for the sake of ending the conflict and feelings of ill will. In several cases, when parties chose to bring the dispute to formal authorities—sometimes out of dissatisfaction with the customary result, but more often because they felt they could leverage the formal system to their advantage—community members intervened to return the dispute to the chiefs to resolve amicably. The data also reveals an implicit or sometimes explicit threat that failure to accept the resolution will lead to ostracism. As one respondent reported,

> When we judge the case and find out that you wrong, then we will tell you that this is what you did to your friend and don't do it next time. If you continue doing it, our law is nobody will speak to

Text box 3

"The advantage we have over the statutory courts when it comes to handling these matters especially stealing is, when someone is suspected of stealing and reported to the court/police, the police jail the person and if the victim does not stand strong with money the suspect is released by the police but as for us the traditional people, we embarrass the suspect and find quick evidence to prove. We rather help the victim by not requesting for much money, so we are far better than them in handling criminal matters."

Clan chief in Nimba

> you in the whole town. Everybody will cut speech from you and you can't go take fire from anybody house unless you buy your own matches. Before two or three days when you come to yourself, then you say, "OK, what I did is wrong, look how everybody in this town and the town is big and nobody can't speak to me."
>
> **Town chief in Grand Gedeh**

Finally, for many, the fear of a worse result in the formal system serves as a motivating factor to accept the customary resolution. This may be due to the party's inability to access the formal system at all, or to a credible fear of bias and/or more severe treatment.

Costs and fees

The overall costs of entry into the customary justice system are considerably lower than those in the formal system—and sometimes even free. Moreover, our research points to a fairly consistent practice of communities using a well-established and commonly known standard set of fees for many offenses (see table 5). The cost structure of the customary system is thus not only much lower but also far more consistent, less arbitrary, and more transparent than in the formal system.

Collected fees tend to be used to cover transportation or other administrative costs, including the cost of stationery, and/or are distributed directly among the chiefs or elders who resolve cases. Many chiefs, verified by case interviews, report forgoing fees for parties who cannot afford them, accepting chickens or rice in lieu of money, or substituting fees with work for the chief or the community.

Sources of Authority of Chiefs

The principles discussed earlier in this section are applied by a relatively well-established hierarchy of chiefs, who make up the state-recognized customary courts. Significantly, these chiefs have a dual basis of authority. One of these sources of authority and legitimacy is the local community itself. Chiefs are cognizant that they must remain highly responsive to the concerns of local communities and their demands for justice in order to maintain a local basis of legitimacy:

> **Interviewer**: Now let me understand this, as chief of [this] town . . . are you answerable directly to the superintendant, or answerable directly to the town?
>
> **Respondent**: Yes, I am answerable first to the town people.
>
> **Town chief in Nimba**

It bears noting that in contrast to many other social settings in Africa, many communities in Liberia have a stronger tradition of choosing chiefs through elective processes rather than merely through hereditary procedures. According to an earlier study, the election of all chiefs at the town level or higher was a policy actually dictated by the Liberian state well before the recent civil war.[2] Although we can only speak tangentially to the subject of the post-conflict state of the local legitimacy of chiefs throughout Liberia,[3] this particularity certainly suggests that their legitimacy is far more likely to be a function of performative criteria than is the case in many other contexts where other selection criteria are enshrined either by custom or law. Elections are likely to increase the importance of the community as a source of legitimacy and require greater social responsiveness to the community by chiefs than is often the case in systems that privilege hereditary principles for selecting customary authorities. Comments from some of the chiefs that we interviewed certainly suggest as much. As one noted,

> When you are called chief, you are not just a chief that can talk, but you are the one that gives power. Now as a chief, it left with you to hold your people good, if you can't, then they will impeach you. . . . For example, because of the way I have served my people, I have spent twenty-nine years in power.
>
> **Chief in Nimba**

Table 5: Standard Fee* per Justice Practitioner Consultation

	Average	Median
Theft	299	150
Land Dispute	192	150
Labor, Debt, or Market Dispute	218	150
Violent Crime	282	250
Other	133	50

* Fees are representative of sitting fees paid to Justice Practitioners, and do not reflect standard fines or penalties for particular cases. Fees are also oversampled for Lofa County, with limited information available for Nimba and Grand Gedeh.

It is this sense of local legitimacy that also underwrites chiefs' express beliefs that they are the best equipped to understand and deal with most justice issues in their communities, and therefore should be granted at least as much latitude to do so as they believe was once the case, and that they should not be circumvented in the justice process. Nearly all chiefs we interviewed felt that, despite state policies limiting their jurisdiction, they should be allowed to resolve any kind of dispute brought to them by the two parties, as exemplified by the following excerpts:

> **Respondent**: When a rape case is brought before me to be investigated with the understanding and concern of the both parents that, "Yes, we want for you to settle this matter," then I can investigate it and be resolved. But I will not register the fact that this case is mine and I have jurisdiction over it.
> **Interviewer**: Why you feel that if a case is brought to you with the understanding of the disputing parties' parent you will settle it?
> **Respondent**: I was elected to settle home dispute among my people, so if they can come to me with one understanding that I should settle a dispute between them, why not, I will be willing to do so.
> **Interviewer**: You are saying that your people elected you to settle matters that are affecting them like house matters?
> **Respondent**: Fine. **Paramount chief in Nimba**

> **Interviewer**: Now another case we have here is severe physical violence—cases that occur when people go to co-op [cooperative] to work and misunderstanding occur between them and some of them pick up cutlasses and chop someone and have them wounded or where group of men pick up cutlasses and mortar pestle and enter into dispute and people get wounded in the midst of the dispute. Do you sometimes receive these cases in your court?
> **Respondent**: When these cases occur, we can send them to the commissioner for investigation.
> **Interviewer**: So it is not under your jurisdiction?
> **Respondent**: No.
> **Interviewer**: But when such case happens to be brought in your court, would you like for it to be investigated by you?
> **Respondent**: Yes.
> **Interviewer**: Why you think you should be allowed to investigate such case?
> **Respondent**: My people elected me to lead them so when such opportunity is given me, I will be very obligated about it.
> **Interviewer**: Why you think your people should allow you to investigate severe physical violent case?
> **Respondent**: In the first place, I was elected to serve as chief for them so if they bring a case to me and I traditionally handle it, they will be very happy because they won't spend more money before me to get justice and they will regard me as their chief. Secondly, I will also have it in mind that they are my people and I am for them.
> **Interviewer**: The next question to you is that, why you feel that it is better for you to handle palaver from your people than the court to do so?
> **Respondent**: It is because my people elected me to handle dispute in their midst and not the court.
> **Clan chief in Nimba**

The other source of a chief's authority and legitimacy is the Liberian state itself, specifically the Ministry of Internal Affairs. Chiefs quite clearly think of themselves as the local extension of the authority of the Liberian state, as evidenced in statements such as the following:

> **Interviewer**: Do you consult with a government official about a case?
> **Respondent**: Yes, I sometimes consult the judge, the commissioner and the police.
> **Interviewer**: Why do you go to them for consultation?
> **Respondent**: Because we are all government official and it is sometimes wise to get their advice.
>
> **Paramount chief in Lofa**

> Our normal cases that are agreed upon by law should continue to be left with us as except in the situation where it is going out of control. But I still think that government has part in all the cases that are resolved by chiefs because the chief is the eye of the government.
>
> **Clan chief in Lofa**

On virtually all matters that fall under the purview of their local authority—whether these pertain to justice issues or not—chiefs regard their point of articulation with the Liberian state to be the relevant local officials of the Ministry of Internal Affairs. The following exchange was repeated in almost every interview with a chief:

> **Interviewer**: In matter of deciding justice, who has authority over the chiefs?
> **Respondent**: The commissioner is the one who has power and authority over me.
> **Interviewer**: That is from the Ministry of Internal Affairs. Is there anybody from the Ministry of Justice?
> **Respondent**: No.
>
> **Quarter chief in Lofa**

Generally chiefs note that the proper chain of command is from the lowest chief (usually quarter chief) up to the highest (paramount chief), and from there to the district commissioner. The most notable exceptions to this hierarchy are cases of either outright witchcraft, or in which witchcraft is a suspected contributing factor. In such instances a referral to a Poro ritual official by a chief (or sometimes even by a district commissioner or county superintendant) is likely. Poro officials are also likely to receive referrals from a chief on any cases in which both litigants are Poro members.

Many Liberians . . . see judiciary functions (particularly local ones) as merely one among several facets of responsibility that are legitimately vested in a single authority figure.

It bears noting that the chieftancy throughout Liberia is not an institution that deals solely with justice issues. Rather, chiefs also perform administrative, socioreligious, and ritual-cultural functions—and are both authorized by the state and expected by local populations to do so. This highlights a fundamental difference between local and Western-oriented expectations about what justice institutions should and should not do. Whereas international rule of law standards call for full independence of the judiciary, many Liberians (and one should note many other rural societies in Africa and beyond) see judiciary functions (particularly local ones) as merely one among several facets of responsibility that are legitimately vested in a single authority figure.

The multifaceted nature of the chiefs' role may also be a factor that affects the pathways cases take, some moving from the chiefs' courts directly into the formal system, while others move up through the chain of officials in the Ministry of Internal Affairs.

Ultimately there are numerous factors that play into the pathways that cases take, and these are explored more fully later in this report. However, there seems to be an overall trend that disputes rooted in local customs and disputes involving the chieftancy are referred to and handled by the district commissioner and/or the county superintendent—in line with their roles as overseers of traditional authorities and their responsibility for maintaining local order. Thus, for example, our interviews cover a number of disputes stemming from clashes between the Poro and local religious groups, most often involving the demand that all nonmembers of the Poro go indoors during the appearance of the Poro "devil." Where chiefs cannot resolve these matters, the district commissioner is often called in by the chiefs to urge the groups to respect one another's religious and cultural beliefs. In one case where youths beat a paramount

chief, the superintendent formed a Tribal Council to bring them to justice.[4] The involvement of Ministry of Internal Affairs officials is also more likely to be solicited in witchcraft cases, in particular those that create disturbances of the peace. In several of our interviews, officials from the Ministry of Internal Affairs were said to have intervened in such cases. As one male respondent stated:

> Sometime ago some people joined a society called "Zoebayoo,"[5] wherein they used to make medicine for husbands and wives to divorce. Or sometimes they throw signs on people to make you paralyze, or they even killed you for your own land business if you had a land case with them, so that you will not be able to defend your land. But Internal Affairs was able to step into this problem by bringing sassywood.[6] And all those who were involved in the act were caught and they confessed their crimes. **Male youth in Tappita**

However, interviewees also expressed some chagrin at the apparent refusal of some—though not all—Ministry of Internal Affairs officials to respond to this demand. One zoe in Nimba summed up typical views on the respective roles of the Ministry of Internal Affairs and Ministry of Justice (MOJ):

> I want to say the same government that considered that Ministry of Justice to exist as a ministry in this country is the same government that considered that Ministry of Internal Affairs. And so I am also advising and asking the government not to allow the Ministry of Justice to interfere into the Ministry of Internal Affairs mandate. The MOJ cannot investigate witchcraft matters or activities. Rather it is the town, clan, paramount and zone chiefs all the way to county superintendent that are responsible for anything that happens in the community and we say our interest is in it because it happened in our communities. Let the justice minister realize that these local officials names above are the direct leaders of the towns, villages, clans and counties and are abreast of the day to day problem that affects their communities. And those things that has to do with our culture and tradition and our customary law should solely be left in our purview and not the MOJ. **Male Zoe in Nimba**

Other Customary Actors

If chiefs derive their legitimacy from a "dual basis of authority" (the state and the local community), there is a second category of customary justice practitioners whose basis of legitimacy is singularly derived from local communities. Among the most prominent in this category are the ritual officers (masters, zoes) of the Poro and Sande societies (and their institutional analogs in other ethnic settings throughout rural Liberia not covered by this study in which other specific "initiation/secret societies" perform structural social functions that are broadly comparable). In this second category of solely community-based authority, our research also indicates an important role played by imams for those who profess Islam. There is also some indications of a role played by church leaders, in particular of Pentecostal and charismatic sects, by professional association officials, such as market associations, and by ethnic chiefs, such as local Fula chiefs.

Our research data does not contain much information on the specific procedures that are used within secret societies (such as the Poro and Sande) to determine truth or guilt and to provide redress for the simple reason that secrecy about these procedures is a defining characteristic of these groups. Nevertheless, we do have fairly interesting and important data that provides us with information about the relationships and interactions between these societies and other customary and formal institutional actors. We are therefore able to define at least some of the key roles that these groups are assigned and play within the institutional justice topography as a whole.

Much as family heads and elders are expected to serve as the first line of customary resolution for disputes that arise within immediate and extended families, Poro society officials and imams, and in some cases pastors, are expected to be the first—and often ultimate—authorities to deal with disputes that arise among members of their constituent groups. In the case of Poro society officials in particular, this expectation can extend to even significant crimes that technically should be referred to the formal court system (such as cases of violence that result in blood and rape), as evidenced in the following exchange:

> **Interviewer**: What are the cases that the chief is to handle and not to handle?
> **Respondent**: Well the town chief controls only B Town but as traditional [Poro] chairman, I control two clans. . . . Most of these cases that he talked

> about like rape, fighting, stealing, land dispute, I have experienced all in my office. I have handled and resolved most of it. Even a rape case was brought in my office in D Town and I resolved it peacefully. When the incident took place, the Poros master (devil) came out and some staffs from [NGO 1] and [NGO 2] came to take the case but I told them that it was under my jurisdiction. I have the owner to investigate any matter that occurs in the midst of the Poro's members.
>
> **Poro "chairman" in Nimba**

In the counties in which our research was conducted, certain issues are also usually viewed as the sole purview of Poro authorities regardless of whether the offender is a Poro society member. This is most pronounced in the case of witchcraft. While chiefs report that they have always for the most part referred such cases to Poro authorities, several reported that the government's prohibition against TBO has reinforced their reliance on the Poro in order to control this problem. As one respondent stated:

> I will strongly advise the government not to take away our culture because when we are about to go in the bush to brush the government farm, communal farm and undertake some public project, some individual can refuse to go there. And it is the help of the Poro that enables us to discipline these stubborn guys.
>
> **Male elder in Nimba**

Some chiefs also state that when there are cases of extreme and uncontrollable violence, Poro authorities, rather than state officials, are called upon to intervene as a measure of last resort. Similarly, cases of disorderly conduct among women, especially involving public insult, seem to be most often referred to Sande society officials.

One of the more problematic issues that has arisen of late within a number of communities is between Poro society members and nonmembers. In particular, disputes arise when nonmembers refuse to defer to demands that safeguard the imperative of secrecy of these societies, when they feel that in doing so their own individual rights or religious-based customs are being infringed upon. Traditionally, violations of secrecy, such as nonmembers refusing to go indoors during certain rituals, or inadvertently entering certain areas during ritual times, were dealt with by involuntary conscription into the Poro society. Customary chiefs and state officials alike have varied in their abilities and strategies for responding to these issues.

In some cases local chiefs have effectively exercised their authority to negotiate compromises and find mutually acceptable accommodations that prioritize the reestablishment of social harmony—or at least mutual tolerance within the community. Thus, in one notable example, a chief found that both the Poro society was at fault for bringing the "devil to town" on a Sunday when Pentecostal congregants were likely to be out and that the congregants were also at fault because they stayed outside when the bush devil came into town. The implied resolution was that the Poro could not perform their rituals on Sundays and that on other days the congregants should abide by established custom that required that all non-Poro members to stay indoors when the "devil came to town."

In a manner not dissimilar to that which informs the sensibilities of parents who send miscreant children to attend military schools in the United States so that they will learn social structure and discipline, disorderly conduct within local communities was traditionally dealt with through the exercise of concerted social pressure, and sometimes outright coercion, to get parents to commit their children to the Poro (or for young women, the Sande) Societies' "bush education." As two respondents stated:

> Sande society is an informal school where our females are sent to be trained and learn other skills. When they return from there, they become very respectful and diligent.
>
> **Paramount chief in Nimba**

> Even in the town, when children are going off hand we asked the parents to send them in the Poro bush. When they come from there, they behave very intelligent because of the advices and warnings they receive. So this method is helping us to gradually ease the problem faced by our people.
>
> **Male zoe in Nimba**

Limitations of Customary Justice: Local Perspectives

While our research clearly points to the vitality of customary justice in postwar Liberia, it also reveals some of the limits of the system in achieving justice. Limits from the point of view

of international standards will be explored in the section on policy options and trade-offs. In this section, we focus on local perspectives of the limits of customary justice, as articulated by our interviewees. These fall into two intersecting categories: inherent limits of customary justice, and limits created by external factors.

A first limitation of customary forums recognized by many chiefs themselves is that their intervention only works when litigants share an interest in, or are at least open to, the goal of reconciliation. This is not always the case, a fact attributed by a variety of interviewees to the social disruptiveness caused by Liberia's recent conflict. As one interviewee noted:

> Like the sassywood business we are talking about, there are some matters that cannot be resolved by the circuit court except those who put them together. Take for example, if we decide to do a thing before doing it we have to face the law you know that. If we say we doing it like this, and one person failed to follow that he or she will receive the punishment. If that punishment comes we all will be there, the town chiefs, the chairlady and we all will explain to you to that person again and ask you why the time mentioned to do this or that have been disrespected therefore, your punishment worth its equivalent. These are some of the advantages coming here. These are things the children don't obey today. If you tell them to go brush the road they will tell you no. When you tell them let's go to the town farm they will tell you they can't whereby any contribution or work needs to be done in the town should be shoulder by everyone. But someone said human right says no one should be forced to do anything. In this case, when the hunger comes it is the town chief who will be held responsible. So in this case when you are fined for disobeying the laws of the town then you take the matter to the court, because you depend on something there. These are what we are facing here in our district. **Female elders in Lofa**

It seems that the motivation to reconcile increases to the extent that litigants are part of the same local community. This highlights another significant limit of customary justice in the Liberian context: it is viewed as most effective in dealing with intracommunity cases but often as far less so in intercommunity situations or when one of the litigants is an outsider, as the following exchange indicates:

> **Interviewer**: Are there any traditional way of settling [this land] dispute?
> **Respondent**: Where we have now reached there is no traditional options.
> **Interviewer**: OK. Because in some places they have the elders of the district who are ranked in certain quarters, they are allowed to draw wisdoms of these things to look into these matters. Are there any?
> **Respondent**: It would be good for us to consider such only if the land dispute is between sons of this place. It is very unfortunate for "G" because he is not from here. He does not have any link with these traditional people, so in an attempt to engage that, they will say that we are trying for us to go against the law to have upper hand to dupe them.
> **Male elder in Nimba**

This limitation is highlighted in particularly consequential ways within communities that are ethnically and/or religiously diverse, particularly when partisanship in the recently ended war was organized along these sectarian lines. In at least some of our interviews minority group members within such communities identified the very custom applied by customary institutions as inherently biased against them and thus incapable of providing them with justice:

> Anytime one carries a complaint to one of their members [Poro society member] the case will never be cut with one ruling. This means that anyone who is not a member of the Poro society will never be right in any case.
> **Male Mandingo adult in Lofa**

> I think that we said the same thing to the Commissioner recently; we said we want the other elders to involve the other elders. Let them work together as usual. Because before the [war], the old man who was the head of the elder, he used to have the Mandingo on the other side and the Mano on the other side. They all used to join and do things for common before the war. But since then they split. They can't invite these

Text box 4

Interviewer: How was this resolved?

Respondent: The traditional leaders and the police resolved it. We were advised that we only need to respect one another. When a group is praying, the other should respect it.

Interviewer: Can you describe the ruling that was given in details?

Respondent: The ruling is that each group must pay respect to one another. That is, if one group is praying the other must observe the rule by respecting them. Then we will live in peace. This is why they said they must respect one another's culture.

Interviewer: Did you consider the ruling to be fair?

Respondent: It was fair except that they didn't say whether a group was wrong or right.

Interviewer: Did they give reason why they never said who was right or wrong?

Respondent: They said they've come to only reunite and not to pass judgment.

Interviewer: Did the other party to the conflict see the ruling as fair?

Respondent: We all accepted it.

Interviewer: Why do you think they too accepted the ruling?

Respondent: They too had their representatives among the group that came to settle the dispute.

> people at all, but anything they saying here the elders of this town, who are the elders, only the Mano elder.
>
> **Male elders in Nimba**

> The reason she said that she is not satisfied is, according to her, the case was judged in based on tribalism. And because the case was judged in Mano, so she will not accept the ruling.
>
> **Female adult in Nimba**

However, we also found evidence in some places of established and still working mechanisms for negotiating solutions in cases in which disputants invoked different customs (see text box 4).

Erosion of the status and authority of customary institutions due to external factors was another frequently cited limitation. Many chiefs feel they are less effective in definitively resolving cases, that locals rely less upon their services, and that they have suffered erosion in the authority they are able to exercise in the overall provision of justice. Quite a number of chiefs expressed regret at the perceived erosion of their authority within their communities, as evidenced by the following statements:

> The statutory law is trying to interrupt in our customary law thus making our customary law to appear ugly to our people but we ourselves are standing firm to protect our traditional system to be respected.
>
> **Male zoe in Nimba**

> We who fathers, served as chiefs, elders, they have told us in short that we have no part to play there anymore.
>
> **Male elders in Nimba**

> So we are actually downplayed by the citizens. We are no regarded as chiefs any longer. We are not allowed to collect any bond fee nor writ fees. All we are to do is to collect only sitting fee which is just little amount. . . . Our people do not regard us any longer, we are completely down. So as the result when we sometimes invite law breaker they deliberately refuse saying there is no writ.
>
> **Paramount chief in Nimba**

The social dynamics of the war may have certainly played a role in this process. Most specifically, the war may have affected how younger generations view the legitimacy of customary authorities. However, we also interviewed young men who actually urged the government to grant greater authority to elders and other customary justice practitioners and that greater emphasis be placed on customary resolution mechanisms in order to resolve pressing issues. In the following example, young men expressed the need for greater power to traditional authorities to deal with witch-

craft, which they felt was responsible for the death of many young people:

> The idea of stopping sassywood is to our detriment. At any time witchcraft can go and perform and you can't say anything because the government says that there should be no sassywood. We want the government to bring the sassywood business back because it is our custom. Let them leave it with the older people so that when a witch commits a crime we will know.
>
> **Male youth in Grand Gedeh**

Our evidence thus suggests that the war's effects on generational attitudes toward customary justice may be somewhat mixed. In our view this certainly is an area that merits more empirical research that can shed more light than our data is able to provide.

Interestingly, according to our data, the most significant limitations on the effectiveness of the customary justice system tend to be attributed—by chiefs, litigants, and focus group participants alike—to new government policies that restrict the jurisdiction of chiefs and the methods they can deploy to ascertain truth and resolve cases. We will discuss these perceptions in far greater depth later in this report.

Notes

1. Sandefur, Justin, Bilal Siddiqi, and Andrew Zeitlin, "The Rule of Law and the Rule of Men: Forum-Shopping in Liberia's Dualistic Legal System" (presentation, Centre for the Study of African Economies Annual Conference on Economic Development in Africa, University of Oxford, March 2009).
2. According to Banks, under the Liberian Constitution, the town, clan, and paramount chiefs are locally elected but they are accountable to higher executive authority, including district commissioners, county superintendents, and the Ministry of Internal Affairs, all of whom are appointed by the president and serve at his pleasure. However, although elected by the local people, chiefs can be suspended by the superintendent or dismissed by the president. Banks, "Liberia," 2006.
3. In maintaining a narrow focus on the justice functions of customary authorities alone, this study does not pretend to provide a full analysis of the current state of customary authority as a whole nor of the basis and state of these institutions' local legitimacy. Such a study is sorely lacking in Liberia and could vitally inform rule of law, as well as other important arenas of policymaking (most notably administrative decentralization), as similar studies have done in other post-conflict countries (such as Mozambique).
4. Banks notes that under the government-sanctioned system of customary justice, after appeal to the paramount chiefs, "a further appeal can be taken to the 'administrative courts'. These are the courts of the district commissioners in each county and the county superintendents, to whom further appeals may be taken by dissatisfied parties. Appeals from these latter courts may be taken to the Minister in charge of local government, statutorily referred to as the Minister of Internal Affairs. . . . Under the foregoing procedure a further appeal may be taken to the President, at his discretion. . . . As early as 1907 the Supreme Court of Liberia held that administrative courts, of which the tribal courts manned by executive appointed or elected officials constituted a part, was 'unconstitutional' and a violation of the doctrine of separation of powers. The 1847 Constitution clearly stipulated, and reiterated by the 1986 Constitution, that the 'Judicial Power' created by the Constitution is the sole province of the judicial branch of government. The Executive Branch, of which the administrative courts are a subdivision, cannot therefore exercise judicial power. The Court repeated this position many times.... Later in an attempt to curb the powers of such administrative courts the drafters of the 1986 Constitution included in that organic instrument that the courts of the judicial branch of the government would have jurisdiction over matters of customary law. Despite that, the administrative courts continue to this day." Banks, "Liberia," 2006.
5. Name of a type of witchcraft cult.
6. "Sassywood" is a form of trial by ordeal, which we discuss at length throughout this report.

4 LIBERIAN PERCEPTIONS OF JUSTICE

Our data contains a wealth of information on how people perceive the process and results in both the customary and formal justice systems. While much can be inferred from the experiences people recount in their attempts to resolve their disputes in the various forums, interviewees were also quite explicit in their critiques and praise of their justice options. These views and their consequences are most meaningful when seen in a comparative light—that is, comparing the way individuals experience and perceive each system. In fact, the picture that emerges from our research is one in which Liberians themselves assess the whole array of their "justice options" together *in relation to one another* when considering what course of action they can and should pursue. Indeed, our research reveals how cases often jump back and forth across these different types of institutions—sometimes throughout the course of a single case's resolution—rather than always entering one of these institutional streams and simply staying put.

A comparative analysis of Liberians' perceptions and actual practice in both systems—formal and customary—is important from another perspective. Too often the typical way in which policy debates about the role of the customary systems tend to be framed—in Liberia and elsewhere—is to juxtapose a rather oversimplified (even caricatured) portrayal of customary systems against a picture of an idealized formal system. These idealized formal systems may represent what policymakers would like to happen, and even what they have planned on paper to happen. But the distance between what is imagined on the programmatic page and the experience of formal justice as actually practiced by officials and experienced by local populations is often cavernous. Meaningful and realistic assessments of policy options should instead proceed from an empirical analysis of both formal and customary institutions as they actually operate and as they are perceived by the population.

On the whole, as we demonstrate below, there is a strong demand throughout Liberia for institutions that can consistently and effectively provide local residents with justice in a timely fashion. However, our research also reveals that most Liberians feel that the formal justice system rarely delivers resolutions that meet popular expectations for justice, while the informal system is often hindered from doing so—and is not entirely up to all justice tasks either.

It is vital to first ground any analysis of Liberian demands for—and frustrations with—the country's current justice institutions in a careful, empirically grounded understanding of how most of this country's population defines "justice" itself in the first place. Many of the concerns that we note as shaping local Liberian expectations about justice will readily resonate with policymakers and practitioners who work primarily with the common conceptual currency that shapes international rule of law discourse. However, our research also reveals that other widespread and deeply held Liberian beliefs about what "good justice" should involve tend to strike a balance between values, to emphasize priorities, and to highlight specific concrete concerns that differ in significant ways from those that implicitly inform the thinking of many policymakers. While both of these sets of concerns have significant implications that policymakers must consider, those in the second range are arguably far more profound and strategically consequential for the development of a rule of law strategy that is conducive to Liberia's consolidation of peace and that cultivates popular perceptions of good governance and the legitimacy of state institutions.

First Range Concerns: Frustration with a Lack of the Basics

Perhaps the clearest finding of our research is that Liberians are most deeply dissatisfied with the formal justice system. Over and over our respondents recounted dismal experiences with the formal courts and a near universal lack of trust of formal justice institutions.

Accessibility, timeliness, and affordability

Accessibility, timeliness, and affordability are three of the most consistent demands that Liberians have when it comes to the provision of justice. Our research reveals that the formal justice system is seen almost universally by Liberians as fall-

Text box 5

Accessing formal institutions is hard

In the 176 villages surveyed by Oxford CSAE, magistrate courts and police stations were reported to be based almost exclusively in large urban or semiurban centers. The reported cost of transport to police stations and courts was approximately 150 Liberian dollars (LD) on average (costs were typically only reported when transport was available), but could go as high as 500–1000 LD. Average walking time to police stations and courts was 3.5 hours and up to 10–12 hours in some instances.

SOURCE: Based on preliminary data from an ongoing Oxford CSAE study called "Community-Based Justice and the Rule of Law in Liberia." Details of the study are provided in the appendix.

Text box 6

Rape case of eighty-three-year-old woman, Lofa

A man raped an eighty-three-year-old woman. The woman was taken to the hospital where the rape was confirmed, and the suspect was arrested and jailed. The victim's daughter went to the magistrate court to pursue the case, but she was told that she had to pay five hundred Liberian dollars. After she did, she was told to get a second medical report. The case was then referred to the circuit court. After traveling a second time to the circuit court in Voinjama, they were told that it was the end of the term and they would need to come back the next term. The next term, there was no transportation available and it was the rainy season. The victim was put in a wheelbarrow for transport, but as her health was failing, her daughter decided to bring her mother home and to go to the court herself. Once there she was told that unless her mother was present the court would not hear the case. The next day she was told by the court that the suspect had broken out of jail. In the meantime, while she was at the court, her mother died.

ing abysmally short of their expectations in all three of these important service categories.

Formal court proceedings are consistently reported as far more expensive than customary alternatives. The overwhelming majority of Liberians believe that the progress of a case in a formal court has virtually nothing to do with the substantive merits of the case. They believe that even the most meritorious, clear cut, or heinous cases will make absolutely no progress unless an often bewildering succession of "fees" and costs are continuously being paid. This menu varies considerably but will typically include "sponsorships" to pay for the police transportation costs and time to take someone into custody, or even investigate a case; a variety of ad-hoc "writ," "filing," "bond," "referral," and "case registration" fees (with police and courts alike); payment for the provision of food to the imprisoned accused (if the accuser/victim does not make such payments, the accused will be set free); and even money to pay for the paper on which depositions are taken ("stationery fee"). Time after time, our interviewees report that even the most egregious crimes (e.g., murder, violent rape resulting in death, violent stabbings) fall by the wayside within the state courts unless money for such "fees" keeps flowing. Rather typical expressions of frustration include:

> I am the victim and you are asking money from me? Someone has done wrong to me and you are still demanding money from me?
>
> **Female adult in Lofa**

> If I decide to pursue the case through the police or court of law, I may end up spending more money than what he owes me. This making me to be the loser in the process.
>
> **Male adult in Monrovia**

> [At the Temple of Justice] the people are just there for money. . . . Their major conscience is money. . . . Because when you go there nothing will happen. Until you will feel bad, they will just collect money from you, from office to office up to the top. **Male chief in Monrovia**

The cost of hiring a lawyer is another financial obstacle faced by most Liberians. Many of our interviewees report abandoning plans to pursue cases in the formal justice system because of their inability to afford a lawyer. In fact, as one respondent indicated, far from being seen as agents of justice,

Text box 7

Theft case, Grand Gedeh

A male adult in Grand Gedeh, A, let B borrow his cell phone, but B gave it to C who sold it to D. A went to the police and paid a fee to make a statement. A then brought B to the police, and when they found the SIM card in his pocket they put him in jail. A then brought the police on his own motorbike (and paid for the gas) to find C. The phone was retrieved and the police told A that they would keep the phone until A took B to court. A did not want to go to court because B already admitted his fault and the police had the phone. "They took B back into the cell and then the CID [Criminal Investigation Division] man told me to 'do something' before I could get the phone. So I asked him what something and he told me to 'clear his desk.'. . . He told me to find him 'cold water.'. . . I had to spend two hundred Liberian dollars for us not to go to court, that was how the CID man gave me my phone." B remained in jail. "The case is actually about the police or the CID officers as to what they do when they are to judge a case; even if that fellow was to say that I didn't give him a phone and he had money to bribe them, what I believe is that they were going to take the case somehow that I wasn't going to get the phone back. That is the lesson I learn." "The reason why I didn't want to go to the court is that whether I was right or not, I was going to spend some money there. If you went there the first thing they will tell you is to register your case, which involves money. Court matter is not a short procedure; it takes a lot of time, the go and come, go and come the next day. It takes lot of transportations and my phone was going to be in their possession."

lawyers are most often seen as a means through which to gain unfair leverage over other parties in a case or dispute:

> The other thing that leads to confusion is the court system. If something happens to you and you don't have money your opponent who has money will hire lawyer to eventually win the case against you because the court will step on your case. **Female elders in Lofa**

In addition to the direct professional fees, additional money must usually be spent to find a lawyer, often requiring a trip to Monrovia, given the stark absence of legal professionals outside of the capital. Liberians generally complain about the significant indirect costs associated with the lack of proximity of formal courts and the amount of time formal proceedings take. For example, the distance that must be traveled to reach a justice venue, the number of times such trips must be made, and the duration of these trips can all significantly affect the cost of pursuing justice. When asked to calculate the amount spent on resolving a dispute, Liberians rarely distinguish between the direct and indirect costs. For many, time spent away from their livelihoods and, in particular, farming is as costly as money itself.

A final cost that must be taken into account is that of corruption. Outright bribery is assumed by virtually all Liberians to play a determining role in most formal court outcomes and believed to be indispensable if you want to win a case. As one male respondent in a labor dispute reported:

> Actually, I am not getting transparent justice in my matter because I don't have money. If I had money to hire more lawyers and be able to bribe the judges then by this time all is over in my favor. **Male adult in Nimba**

The expectation that officials in the formal court system will find some way to illegitimately extort money is sometimes so strong that it affects the willingness of litigants to reveal exactly what wrong they have suffered because they fear it may be further compounded. As one male respondent who had been beaten and robbed by his nephews noted:

> One funny thing that I thought of about the court was, when I carried the complaint, I did not mention about the planks. I only told the judge that "E" and his brothers beat me on my land because if I have mentioned about the planks, the court could have definitely demanded to have a share in it. And so I felt for my nephew and never exposed it out. **Male adult in Nimba**

One woman's reflections on the relationship between money and justice in the formal system fairly accurately sums up the sentiments of many, if not indeed most, Liberians:

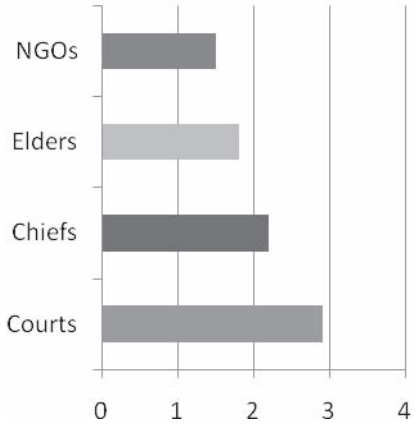
> All of the courts in Liberia require money. If you have no money, no justice for you. All paths

Text box 8

Unresolved ritual murder case, Nimba

The son of A, an adult female in Nimba, was killed, ostensibly for the purpose of taking his body parts. The perpetrators were taken to jail at South Beach. The county attorney refused to take the case as A could not produce the clothes her son wore when he was killed. A sought legal representation from several lawyers, but she could not pay the fees. As far as she knows, nothing happened in the case. She has heard that the perpetrators have been released.

Figure 1: Perceived Cost of Justice Forums



NOTE: The Oxford CSAE survey asked respondents to give their subjective evaluation of four sets of justice forums: (1) the chiefs, (2) elders, religious, and secret society leaders, (3) magistrates, JPs, and courts, and (4) NGOs. For each of these institutions, respondents were asked about four dimensions: comprehensibility, cost, fairness, and respect for local norms. This figure summarizes average responses to the question about cost. Higher scores imply that the forum in question is more costly.

Respondents identified courts as the most expensive option and affordable by only a minority. Chiefs and elders were affordable by most people, although not by all. NGOs, which typically provide free services, were seen as the most affordable option; however, NGOs appear not to be typically used as forums for dispute resolution. The question and ranking system were as follows:

COST: "How expensive are the total costs involved in having a case decided by [FORUM]?" Responses were marked on a five-point scale:

0 = Free. Everyone can afford it;
1 = Inexpensive. Almost everyone can afford it;
2 = Not too expensive. Most people can afford it;
3 = Expensive. A minority of people can afford it;
4 = Very expensive. Only the richest people can afford it.

SOURCE: Based on preliminary data from an ongoing Oxford CSAE study, "Community-Based Justice and the Rule of Law in Liberia." Details of the study are provided in the appendix.

require some backing—money or influential person to plead for you. No justice for the poor.

Female adult in Nimba

By way of comparison, our evidence strongly suggests that most rural Liberians have ready access to customary justice institutions, are far more satisfied with what they identify as a much faster pace with which these institutions reach resolutions, and find the costs involved in the customary system to be not only far more affordable, but also more consistent and predictable, and ultimately far more likely to be fair. The comparisons drawn by our interviewees generally echoed sentiments such as the following:

> We have the traditional way we judge our own cases. It is like each wrong committed against another the penalties are spelt out and known amongst us. . . .You will notice that the one who practice these things [carrying false rumors that lead to confusion between two families] becomes tie-tongue when the two families or persons wronged are present. That is the way we judge our cases. . . . We don't ask for money rather the cases are judged based on their true nature. The one found guilty is emphatically told while the innocent go free. But when you go to the other side that is the government way, you will feel discourage about yourself because you don't have money. . . . The magistrate and circuit court are good but some matters don't need their attention. In the case where the complainer knows someone there he or she prefers to go there for favors. Had similar case that was judged on the government side be judged on the country side the actual truth would be revealed and the guilty person would be seriously warned not to do the same. But if the government does not give us the power, the one between the two who knows that he has contact by money will forward his case to the circuit court.
>
> **Female elders in Lofa**

I prefer taking matters to the traditional people then the court because the traditional people do not focus mainly on money, but peace and harmony. Although there are little charges that are levied, but these charges are not as costly as the

Text box 9

"The elephant magistrate"

A young woman in Lofa, A, was accused by a neighbor of stealing her cell phone. The police took A into custody where she spent the night and was brought to the magistrate the next day. "At the court, the magistrate only listen to the girl's explanation and finally said that the allegation against me was true. He said according to Liberian law if you went to someone's place and anything got missing you are held responsible. I said to him that was not the case because I did not enter the girl's room. He the magistrate should have allowed me to explain my side of the case but he did not. He did not ask me but render the decision for me to be detain in jail. . . . I spent a month in jail eating nothing. . . . On a particular day [the magistrate] came on a motorbike and said to me, '[A], I know that you are not the one who took the cell phone, but Liberia law says since you were present and it got missing it means you are the one that took it.' I said 'is that the way you are talking?' He said, 'Yes, I am the elephant magistrate here. Anything I say is final.'. . . Later the magistrate came and said, 'As you look so, you and my daughters are equal. So I want to take you to my house in order for you be washing my clothes.'. . . There I was washing his clothes and doing everything like that of a wife."

A eventually managed to escape and appealed to United Nations Mission in Liberia (UNMIL) police, who went to arrest the magistrate. The magistrate admitted the allegations but then ran to the court and stood beneath the Liberian flag and claimed that he could not be arrested there. He then took a motorbike to Monrovia and "in spite of all efforts made by the police on motorbike to apprehend him failed when their gas finished at Fissibu Highway."

The case was registered in the circuit court, but the magistrate is free. A waited for her lawyer, who has all the documents, but he did not show up.

> court's. Nextly the traditional people do not waste time as the way the court does. Lastly, when the traditional people settle many matter, the both parties usually leave with smile in their faces. **Adult female in Nimba**

Our findings in this respect are strongly corroborated and bolstered by the independent data produced by the Oxford CSAE survey, some of whose preliminary and provisional findings are reported in figure 1.

Transparency and impartiality

Our research also indicates that most Liberians are highly concerned that justice be a process that is transparent and impartial (see figure 2). Concerns with transparency—in the sense of being able to identify and understand all aspects and contributing factors that produce a resolution—underwrite particularly severe local critiques of formal court proceedings that to most local Liberians seem opaque and virtually incomprehensible.

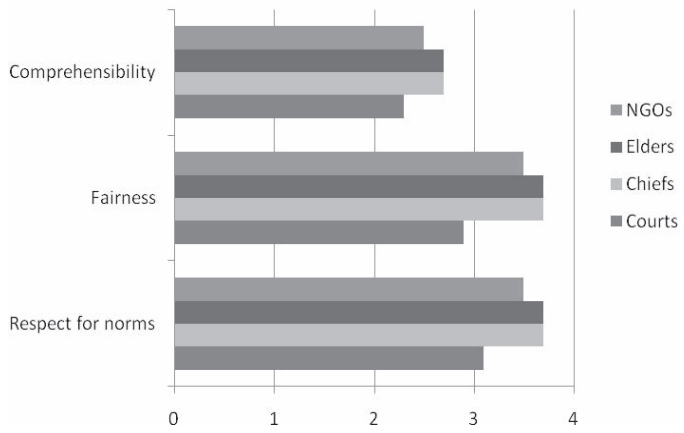
Liberians' descriptions of their experience in the formal court system are invariably characterized by confusion and a deep sense of disempowerment. Victims/plaintiffs and perpetrators/defendants express frustration in being bounced around from official to official, court date to court date, detention cell to detention cell without understanding why. Victims in particular are confounded by decisions rendered without their having had an opportunity to voice their views. Stated one female victim of assault:

> When I tried to talk, the judge said, "We are not stupid. We know what we are doing." So we didn't talk a thing. It was only today that I think I did some talking. Basically, what I said was, "Sir, we are here. Will the case be possible today?"
> **Female adult in Lofa**

This lack of transparency in turn underwrites a suspicion that formal court proceedings are by default subject to being influenced in ways that inherently ensure partiality and bias in their rulings. This is further reinforced by the deep sense of imbalance of power felt by most Liberians against state-backed authorities. Most Liberians believe that the exertion of naked power in the pursuit of self-interest seems to be one of the most prevalent and predictable principles governing the process of case resolution by officials in formal justice institutions.

We collected evidence that on occasion the "laws" that are invoked by the officials in the formal justice system seem to be invented outright—often in order to further their self-interest. These can include questionable invocations of impunity ("A state official cannot be charged or imprisoned if

Figure 2: Perceptions of Justice Forums



NOTE: The Oxford CSAE survey asked respondents to give their subjective evaluation of four sets of justice forums: (1) the chiefs, (2) elders, religious, and secret society leaders, (3) magistrates, JPs, and courts, and (4) NGOs. For each of these institutions, respondents were asked about four dimensions: comprehensibility, cost, fairness, and respect for local norms. This figure summarizes average responses to the questions about comprehensibility, fairness, and respect for local norms. Higher scores imply that the forum in question (a) uses words and procedures that the respondent can understand, (b) more frequently gives fair rulings, and (c) issues decisions that respect the norms and beliefs of the respondent's community.

Respondents ranked chiefs and elders as easiest to understand, fairest, and most likely to respect the norms and practices of the community. Courts were consistently ranked lowest on all three dimensions. NGOs were given an intermediate ranking. The questions and ranking system were as follows:

- COMPREHENSIBILITY: "To what extent do you feel you can understand the words and procedures used by [FORUM] to decide a case?" Responses are marked on a three-point scale, from 1 = "I cannot understand very much" to 3 = "I can understand almost everything."
- FAIRNESS: "Are the rulings/decisions made by [FORUM] usually fair to all the parties involved (both the accuser and the accused)?" Responses are marked on a four-point scale, from 1= "No, never fair to either party" to 4 = "Yes, almost always."
- RESPECT FOR NORMS: "Do the rulings/decisions that are made by the [FORUM] usually respect the norms and beliefs of the people who live in your community?" Responses are marked on a four-point scale, from 1 = "No, almost never" to 4 = "Yes, almost always."

SOURCE: Based on preliminary data from an ongoing Oxford CSAE study, "Community-Based Justice and the Rule of Law in Liberia." Details of the study are provided in the appendix.

he is standing/working under the flag of the nation," stated a magistrate), or invented descriptions of so-called laws ("If you go to someone's house and afterwards something is found missing, you are responsible according to Liberian civil law," stated a judge).

Taken together with the prohibitive costs associated with formal courts described earlier, the lack of transparency, and the imbalance of power, the two overwhelming factors that govern the course of state-backed justice, according to most interviewees, are the personal power/interests of the state's agents and money.

By way of contrast, the procedures involved in customary justice proceedings are generally described by Liberians as at least understandable. This bears in important ways on how the customary system as a whole is viewed as far less partial than the formal system, and it affects how Liberians interact with both systems when they confront perceived partiality in a justice proceeding. Most particularly, Liberians feel that because they can understand customary proceedings they are more readily able to identify situations of partiality when these do occur. As suggested in the following exchange between an interviewer and a brother of a murder victim, this transparency at least allows them to take measures that seek to counterbalance that bias:

> **Interviewer**: When it comes to infringing on your right like to say, "murder," if the perpetrator was even seen, which one of the system was going to give you transparent treatment in the whole matter?
> **Respondent**: The traditional method because even when you are hurt they have the traditional leader that will talk with you, invite you. In fact, you then come to your senses, even they will send people to counsel you instead of the system the white people has brought. Because, we should not forgo our culture because we are Africa.
>
> **Male adult in Nimba**

Sometimes those measures involve appeal within the customary system itself—and it is arguably the particular way in which Liberian customary systems allow for an extensive appeal process that absolves that system of the same overall accusations of generalized and inherent partiality that Liberians associate with the formal system.

However, there are also certain forms of partiality that are inherent in customary rulings and that motivate select minority groups in particular to seek redress from noncustomary institu-

Text box 10

Religious dispute, Lofa

The Poro society is viewed as the host of all other groups who live in the community. As such, they feel aggrieved when their traditions are challenged by "outsiders." Most often these challenges manifest themselves when members of the Pentecostal community refuse to abide by local traditions and mandate that all non-Poro people go indoors whenever the Poro "devil" enters the town. The superintendent had to intervene to settle the dispute because the Pentecostal members refused to have a traditional forum settle any disputes in which their members were involved.

tions (sometimes the formal court system, but not always so) in order to deal with certain types and calibers of cases. This is particularly likely to occur when a case implicates communities, or community members, who differ in their customs, especially when the issue traces back to those very differences. In such cases, if the customary institution itself more closely reflects the social (often ethnic or religious) identity or safeguards the customary practices of one party, the other party suspects that the application of (an alien) custom will be inherently biased against them. That party thus seeks additional review and recourse from a more neutral, and usually higher, authority. Important examples that emerged from our research include conflicts over land between groups with different ethnic and religious affiliations (such as between the Mano and Mandingo in Nimba), and between Poro society members and others in the same community who were not part of the Poro (often for religious reasons—Muslims or Pentecostals for example). In short, the proceedings of societies such as the Poro are neither seen as "transparent" nor as fair and impartial by those who are not members and whose own beliefs bring them into conflict with the demands that such institutions make and the behaviors they try to impose.

Interestingly, Liberian concerns that justice be transparent and impartial underwrite the widespread local demand that our research found for the reallowance of TBO practices. Through statements such as "a tree [i.e., sassywood] cannot lie," Liberians simultaneously express their desire for impartial judgments that cannot be corrupted through unfair influence and their assessment that the social institutions that currently make such judgments are unduly subject to precisely such influences. At the same time, these same concerns with transparency and impartiality in justice also inform an ongoing argument within Liberian society at the local level about exactly what forms of TBO should be allowed and who and under what circumstances should be subjected to TBO. They also inform emerging critiques about the very fairness of such methods for determining guilt in the first place. These issues will be discussed at greater length later in this report.

Effectiveness and enforceability

Finally, Liberians express a deep desire that justice be enforced. One of the most consistent complaints and frustrations that Liberians articulate is that both those apprehended because they have been accused of a crime and those actually convicted of crimes in the formal system are often released. Among the most frustration-inducing and frequently reported reasons for these releases are (1) either suspected or observed outright corruption by the police or other officials and (2) the unwillingness or inability of victims/accusers to pay the food costs of detainees (who are then reported as almost invariably released by the police) or other mounting fees. As one respondent reported,

> When someone steals from you and you carry him to the police station they will say bring the money so that we will send your court. After that they will fix the paper and send your court you have to pay money to the police station. [Then] at the court you are demanded to pay messenger fee so that the one who is guilty against you will be put to jail. . . . When your paper is fixed, you will be sent to the court then you will be sent for a fee to bring. Meanwhile the guilty will be in jail. All what you are going through cost money, even though your money has been stolen. After spending all that it cost you to go through this process within the course of one or two days you will notice the same person put in jail, now moving freely, passing you. When you try to complain to authority, you will be told that the case is with the government. Some people say if you put somebody in jail, it means that you are responsible to feed that person. You will be told to feed that person otherwise the person will be freed.
>
> **Female elders in Lofa**

Text box 11

Ritualistic murder, Nimba

When A's sister went missing, he went to the police, but they refused to do anything as there was no proof. Later A's sister's body was found in a well, with indications that she was murdered for ritual purposes. The police demanded 1,500 Liberian dollars from A for gas money to arrest the perpetrator. According to A, an adult male in Nimba, "When we went to Sanniqueliie pursuing the case, the police in Sanniquellie did not tell us anything good. They never allow us to see the perpetrator. When that happened and from that time they have just been delaying, causing me to make an SOS call on the human rights group in Monrovia. When I talk to one of the supervisors, he advised that I should hold my peace and that matter was concerning human life and no matter how long it last, it will be unearth one day. But when the police asked the perpetrator during their interrogation that, what enthused him to have killed the girl, the perpetrator answered by saying that the girl committed suicide by taking caustic soda, which is not true. And since then the people had not seek our interest." A does not believe any prosecution has gone forward. He also believes that the defense attorney and police were bribed. "But we have decided to take another measure since government has failed to address our case. . . . Yes, the only system I can try now to work is violence to carry on hostility, organize my brothers because we are hurt and the government is not sensitive to our feeling. We will go and jump on the perpetrator and kills him the same way."

The lack of the formal court system's capacity to enforce its rulings was repeatedly highlighted by respondents involved in a wide variety of cases. We even collected information about two cases in which rulings by the Supreme Court of Liberia continued to be blatantly ignored by powerful individuals or organizations. The fact that even Supreme Court decisions may be openly flaunted speaks to the formal system's broader lack of local credibility in the areas of enforcement and effective resolution.

By contrast, Liberians for the most part report that resolutions reached through customary processes are final and carried out. As described earlier in this report, in the absence of official enforcement mechanisms, the principle of voluntariness, together with a range of social pressures and a strong desire for reconciliation, serve to enforce customary resolutions.

However, Liberians also note problems with the effectiveness and enforceability of customary institutions, mostly in areas where such institutions were either never meant to go, or where they have more recently been prohibited from going. Thus, as noted, customary mechanisms are generally ineffective in disputes that involve parties who are not members of the community, or that pit minority members of a community against a majority, such as Muslims in a predominantly non-Muslim community, or Christians in a community dominated by the Poro or other secret societies. A number of our cases involve Liberians frustrated at the lack of options available to them in pursuing disputes against strangers and prominent Liberians, because the formal system is generally ineffective, and because the elders or chiefs have no authority over the opponent. In addition, customary mechanisms are generally considered insufficient to deal with certain egregious crimes, such as brutal murder and child rape, which most Liberians believe require the more severe sanctions of the formal system—despite the fact that they remain deeply skeptical of the effective sanctioning power of state institutions.

On the flip side, Liberians also complain about the inability to achieve a resolution in matters that could—and, in their view, should—be handled by customary mechanisms, but that have been taken out of their purview. In particular, the blanket government prohibition against all forms of TBO is widely felt to hobble customary authorities in both their efforts to ascertain the truth in some cases, and more importantly to deal with forms of "crime" that are of particularly grave concern to most Liberians, such as witchcraft. More broadly, government directives that reserve certain crimes for the formal courts (such as crimes in which blood is shed; rape, including statutory rape; all forms of murder, including manslaughter) are felt by most Liberians to inhibit customary institutions from intervening in situations in which they are believed to generally be better equipped to resolve or enforce. This is discussed in more detail later in this report.

Second Order Concerns: Fundamentally Liberian Justice

One of the most striking findings of our research is that most Liberians would still be unsatisfied with the justice meted out by the formal system, even if it were able to deliver on the

basics discussed earlier. This is because the core principles of justice that underlie Liberia's formal system, which is based on the American legal system, differ considerably from those valued by most Liberians. Certainly a key element of justice to all Liberians is the requirement of determining who is at fault and who is innocent. However, to the overwhelming majority of those we interviewed, the appropriate scope, objectives, priorities, and means of redress that make for satisfactory justice differ significantly from those that prevail in the formal legal system.

One of the consistent complaints levied by Liberians against the formal court system is that it is overly narrow in how it defines the problems it resolves and thus fails to get at the root issues that underlie the dispute. In contrast, Liberians greatly appreciate and value the way in which customary mechanisms focus on resolving precisely these root issues. As explained by one interviewee who had experienced both the formal court and customary resolution:

> So actually looking at the court, they only focus on the nature of your complaint and care less to know what transpired in the past. So in short, the court does not satisfy the both parties when cases are resolved by them. But for our traditional people they look at the nature of the case and also dig out the past to know what happened, and based upon that they peacefully resolved the matter. And at the climax the both parties leave with smile. And so to conclude, I prefer the customary system.
>
> **Male adult in Nimba**

On one hand Liberian insistence that satisfactory justice requires that root issues be considered reflects a strong interest in not only addressing past behavior but in trying to ensure that this behavior does not repeat itself again.

On the other hand this insistence also rests on a culturally grounded and deeply held assumption that incorrect or injurious behavior is usually rooted in damaged and acrimonious social relations. In order to be seen as adequate, justice must thus work to repair those relations, which are the ultimate and more fundamental causal determinant, rather than merely treat the behavioral expressions that are viewed as its symptoms.[1] Redressive action is thus considered deficient if it does not also produce reconciliation among the parties.

Liberian insistence that justice must address root causes and that it focus on achieving reconciliation reflects expectations that stand in stark contrast—and even clash in vital ways—with deeply held assumptions that define the principles and objectives of the formal legal system.

Specifically, whereas Liberians expect contention and adversarial relations themselves to be a primary, and often even the overriding, concern in the justice process, a Western-based formal justice system takes adversarialism as a given point of departure for the justice process. Thus, in the Western model legal proceedings determine winners and losers among adversaries but have no business addressing adversarialism per se. In fact, a court that attempted to address such issues would arguably be viewed as infringing on individual rights. In the formal system, the resolution of a case that clearly determines guilt and innocence (and that punishes the offender) is considered to have fully satisfied the requirements of "justice," even if the resolution also happened to increase adversarialism and social friction among the contending parties. Such a view is *diametrically opposed* to prevalent Liberian understandings of what "justice" requires, as evidenced in the following rather typical statements by interviewees:

> If it were traditional people, they were going to handle this case the best way. For transparency and satisfaction, they were going to give us the opportunity and privilege to express our misfeelings to be handled by them. Above all, they were going to resolve the matter and called us indoor and give us advices. Unlike that, the court only give the ruling and focus on how to get their fees.
>
> **Adult female Nimba**

> What I like about the customary system is, it is not expensive and our elders and chief focus on how to reunite the disputing parties. Above all, they gave the both parties the opportunity to explain the underlying cause that resulted in the current dispute. Unlike the customary system, the court system is very expensive. Their fees are not affordable by our people. In court the judge only focus on the existing current matter at hand, leaving the underlying causes. So I solely prefer our traditional people to handle our matters.
>
> **Adult male in Nimba**

For most Liberians, punishment is important to the

Text box 12

Traditional resolution of land dispute, Nimba

A male elder in Nimba, A, caught B, his nephew, cutting and hauling wood on A's land without his consent. When A told B to stop, B refused and beat A, during which time A's cutlass, watch, and US$150 went missing. A sued B in the Magistrate Court, but the town elders persuaded A to withdraw the case and resolve it traditionally. The chief elder presided over the case and urged A to forgive B and allow him to take the wood. A explained, "They told me to put hand over my nephew's and let bygone be bygone as an uncle to them. . . . The elders appealed to me to waive all claim because B and his brothers were unable to pay my money. And actually, looking at their status where they are not even squatting on their own land or quarter in the town because they were very small when they came in our quarter to squat. So because of their condition, I accepted the traditional people appeal to waive the money and other personal effects that got missing from me during the fight."

A further explained why he was satisfied with this outcome: "Actually when that incident occurred between B and I, I was not really feeling pleased when I sued them in the court. So I started regretting for what I did. I think I was to first inform my elders in the town. Even when the police came for them, I felt very bad because of how they were going to be treated in court. . . . I was actually regretting because when you take the case to the court, the judge will give the ruling and after that the both parties remain enemies forever. There will be no satisfaction between the disputing parties. And in the court the judge mainly focus on his fees or cost of court. Even to withdraw the case from the court, I paid some money to the judge. When I first went to court to sued before the magistrate, I was asked to pay 1,500 LD for the writ and 500 LD for the officer allowance. And to withdraw the case, I also paid additional 1,500 LD bringing a total of 3,500 LD spent from my pocket. All these expenses was paid on my nephew behalf. So I prefer taking matters to the traditional people for settlement than going to court. Actually it is not good to take your neighbor to court because it creates animosity."

process of redressing injustice, but it is to be subsumed under other priorities that are viewed as generally more important. Arguably the most important priority is that of ensuring the problem is definitively resolved—this is all the more a priority if the problem is particularly threatening and socially egregious. Our research indicates that there are cases in which behavior is judged to be so horrific that perpetrators are viewed as entirely beyond social repair, and in which Liberians often demand extreme forms of justice such as the death sentence. However, in the vast majority of situations, including many cases of murder and rape, social reconciliation is viewed as a more important objective than punishment per se. In fact, the infliction of some form of pain or loss (social, physical, economic) upon a perpetrator in a manner that does not directly contribute to reconciliation is seen as augmenting adversarialism in undesirable ways that impede, rather than contribute to, true justice. As one town chief stated:

> Actually, the customary law is the one that I prefer and protect in administering justice to our people. Our traditional laws help us to handle our dispute very easily and after the settlement of these disputes, the disputants go with smiles on their faces. . . . In fact, the statutory law brings separation among our people. After the court ruling we observe that the guilty one is either put in prison or heavily charged to pay cost of court, bond fee, etc. So I prefer the customary system.
>
> **Town chief in Nimba**

In order to achieve reconciliation and allow everyone to "leave with smiles on their faces" (an oft-repeated phrase in our interviews), redressive action should usually involve a public admission of guilt by the perpetrator accompanied by an acknowledgement of forgiveness by the wronged party. Where appropriate, compensation that attempts to restore the condition of a victim is also required; as is some attention to broader social factors and concerns prior to a specific dispute event that may have motivated the perpetrator to act as he or she did in the first place (for example, a longer history of contention between the families of a perpetrator and his or her victim). "Punishment" was viewed as most "fair" when it involved perpetrators taking ritual or other action viewed as indicative that they would not continue to engage in similar behavior, and when it involved their providing some form of compensation to the party that had been wronged. Although compensation to victims is viewed as very important for justice and in achieving reconciliation as part of it, there were a fair number of cases in which victims chose, or were convinced to forgo compensation, in order to serve the more valued interest

Text box 13

Nimba county inspector

Interviewer: Why you think that the statutory system will not enhance the reconciliation process?

Respondent: Because it's all about knocking gavel in court. That Mr. X, you are wrong, so go to jail. And Mr. Y, you are right so you can go home. As the result people go with misfeelings, and sometimes they will feel that because of their status in the society, they were not given justice fairly. More besides, the level of our people as I continue to emphasize, we are not capacitated to hire lawyer. Defense lawyers are not performing, and besides performing, lawyers are not encouraged to come in the interior to take up cases for the less fortunate who cannot afford to retain a legal counsel. . . .So since there is gap, the statutory system will not perform to the expectation of the population. So what can the customary do? What we can do since we want reconciliation is to approach the customary way, where people, perpetrators, and victims will share food. Because once you and myself share food, glass, and break kola nut and as well as eat and hug together, that is the beginning of genuine reconciliation. And that problem somebody must be willing to give for other people to take. The statutory system is not the best for a country coming out war that is yelling for reconciliation.

of reconciliation. In a handful of cases reconciliation was even considered worth incurring additional costs altogether.

Redress is viewed by most Liberians as most deficient when guilt is determined but absolutely no remedial measures are taken whatsoever—no punishment, no compensation, no reconciliation, no addressing of root social causes. However, the provision of punishment that merely inflicts some form of pain or loss on a guilty party without attending to reconciliation or compensating victims ranks a very a close second in terms of unsatisfying justice solutions. The most consistent complaints that Liberians have about the formal justice system are that it rarely is capable of enforcing any redressive measures at all and that what recourse it does provide is almost always limited to punishment without providing compensation to the victim or social reconciliation among the parties. In fact, more often than not, when the formal system does provide redress (in a form of punishment), it is regarded as a source of added forms of victimization even of those it determines to be in the right and innocent (through the battery of fees that are imposed in the process), and as the source of accentuated conflict that is ultimately detrimental to all—victims, perpetrators, and the community at large.

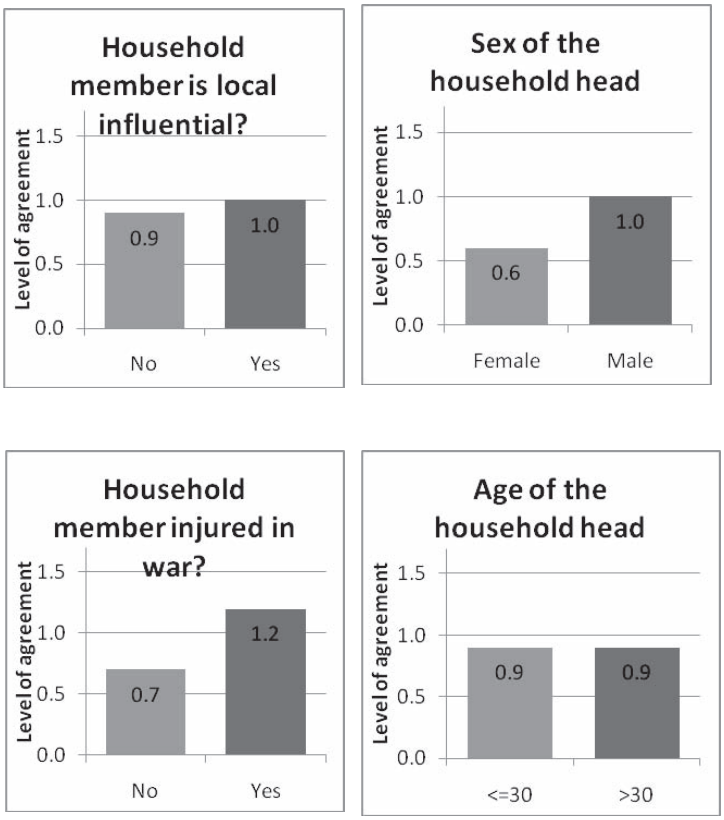
In summary, appropriate "punishment" in the Liberian social context is not primarily about inflicting pain on a guilty party, whether through removing social freedom or causing physical or economic harm. Rather, to most Liberians "punishment/redress" is viewed as most sensible when it is primarily a matter of providing compensation to victims, restoring social relations between parties, and providing public signs of atonement that signal a perpetrator's renewed commitment to the social mores of the community.

Finally, our research clearly reveals that Liberians want a justice system that is locally "relevant" (see figure 3). First, this means that it is a system that does not seek to supplant or colonize their social institutions and mores. As we will discuss at greater length in our review of how Liberians view new "human rights" laws and initiatives, there is a great deal of local sensitivity and reaction against perceived assaults on local social institutions and practices that most local actors believe are serving vital local functions. As one respondent stated:

> I don't think we will sit down as traditional chief to see the Sande society being dissolved by some individuals. In fact, if this is done something will be done about the Poro in time to come. . . . In our traditional setting, the Sande society helps us to train our girls' children, especially the hardheaded ones to be intelligent. So eliminating the Sande will give rise to many problem. Even in the USA, there are societies like the Bible society and many others, so if the white man wants to dissolve the Sande then let all the societies in the world including the Bible society to be dissolved. Most of our ministers, representatives, and other authorities passed there and they got useful and helpful training from there. So if the government action is taken concerning the Sande, our children will be loose and we won't have anybody to discipline them.
>
> **Male zoe in Nimba**

Second, a concern with "relevance" means that Liberians want their justice institutions to address the full range of offenses, problems, and crimes that they believe they confront and to address those problems rather than simply deny they

Figure 3: Level of Agreement With Statement That Customary Law Trumps Formal Law



NOTE: The Oxford CSAE survey asked respondents to describe the extent to which they agree or disagree with the statement: "The decisions of chiefs and traditional leaders should be obeyed even if they are different from what the formal law says." Respondents could choose from five responses:"strongly disagree," "disagree," "neutral," "agree," and "strongly agree." These responses were converted to numerical scores after the fact, with 2 as the highest level of agreement and - 2 the lowest. The responses were broken down into four subgroups:

- "Household member is a local influential?" The population of households is split into those that reported a member of the household to be a local influential or person in position of authority, and those that did not.
- "Household member injured in war?" The population of households is split into those that reported a member being injured during the war and those that did not.
- "Sex of the household head." Self-explanatory.
- "Age of household head." The population of households is separated into those with heads that were thirty years old or less, and those with heads that were over thirty.

The striking finding is the overall level of agreement with the statement. Female respondents were slightly less likely to agree than men, as were households that self-reported war victimization.

are important or even real. Some of the issues that Liberians want to see addressed as justice include forms of behavior such as public insults that might be considered offensive but not worthy of treatment in a formal justice system. Other issues that Liberians are overwhelmingly preoccupied with, such as the perception that some individuals are using supernatural means to hurt (or even kill) others in order to augment their own power, are usually viewed as incompatible with modern formal justice systems. We will discuss the issue of witchcraft and TBO extensively later in this report.

Third, "relevance" means that cases be resolved in accordance with the criteria that we have outlined in our discussion of "fundamentally Liberian justice" above. Ironically, our research finds that it is when formal system actors violate the system's own precepts by deferring to these principles that locals most commend their actions! Indeed, we found extensive evidence of "informalization" of the formal justice institutions and procedures at the local level—in the sense that in practice

formal procedures often deferred to and operated according to—principles that govern customary mechanisms rather than abide strictly by formal legal precepts. For example, several interviewees describe attempts by the police to try to resolve cases by mediating between the parties in question without referring the case to court, inclusive of cases as varied as public insulting, physical assault, theft, rape, and even manslaughter. Other cases note referrals by officials in the state-backed system to zoes or chiefs because their ritual position or social knowledge was believed to better equip them to fully handle the issue at hand. When state-backed institutions pursue such courses of action they are clearly not implementing the principles of statutory law but rather are lending the added power of the state to the implementation of key principles that most people recognize as governing the informal system.

In concluding this discussion of Liberian perceptions and conceptions of justice it is important to note that our case interviews provide plenty of evidence that Liberians use justice institutions and devise strategies that aim to achieve objectives that directly contradict those we have presented here as the core tenets of a Liberian sense of justice. Paradoxically, however, these cases tend to reinforce our interpretation of what Liberians feel justice should be all about, as these interviewees tend to describe such actions and choices (even when they are their own!) as examples of efforts to reduce fairness in self-serving ways, rather than as measures taken to achieve fairer outcomes. There is thus no small degree of irony to be found in the situations in which individuals report that they are willing to take a matter to a formal court or an agent of the justice system (most often the police) precisely because in doing so they can capitalize on some form of bias in their favor. As one respondent reported:

> I was sitting here when this young man came, the husband of the lady, he said, "We have done you wrong." He said his wife got angry and beat my daughter on the farm. So, I asked, "Your wife beat my daughter on the farm?". . . My sister sent for the lady and asked her what had happened. When she was called, the lady came and begged for mercy. I was not there. It was after all this that the husband came to me. When he came, he told me that the woman would be brought to the town to beg us. To this I agreed. But, when they went for her, she refused to come. So, the next day, I personally went over to see her and asked her to come to town and apologize. Surprisingly, she refused and was very defiant. She said that hair should grow in her palm if she were to make any apology. She boasted that [Judge X's] court was her court and that nothing would come out of the case against her in that court.
>
> **Female adult in Lofa**

Indeed, as we will discuss in greater detail later in the report, it is not an exaggeration to state that for most Liberians the formal justice system is seen as being incapable of providing satisfactory justice. It is not simply that it is viewed as merely an inadvertant source of injustice. Rather, the formal justice system is viewed by most Liberians as one of the most effective mechanisms through which powerful and wealthy social actors are able to perpetrate injustice in service to their own interests.

Notes

1. Without delving too far into a sociocultural analysis, there are at least two aspects of the social context in Liberia that are important to highlight in order to understand the rationale behind local demands for justice that involve a broader scope than might be required (or even acceptable) elsewhere and that privileges the objective of reconciliation. First, local communities in Liberia—both historically and recently—have had to be far more self-reliant when it comes to maintaining internal public order than might be the case in countries in which the state's power and presence has been far more pervasive at the local level. Without a capillary presence of the central state (other than that provided in the form of "deputized" traditional authorities), local communities in Liberia have long had strong incentives to not only deal with conflict when it erupts, *but to also take steps that prevent it from erupting in the first place.* Rural Liberia is thus not unlike many other similar social settings in Africa in which the anthropological literature testifies to similar concerns with dampening animosity within communities in which people have strong kinship ties and must figure out how to manage social conflict in a context of high socio-economic interdependence. Second, as has been documented to be the case in much of West Africa, Liberian understandings of what causes individuals to behave as they do strike a balance in the relative emphasis that is placed on

the influence of social and other contextual factors versus individual will—a balance that is different than most Americans would implicitly strike. Part of the reason that Americans do not view broader social context as a justice issue is that their views of individual agency emphasize the power of the individual's will over and against almost all circumstances—and thus locate the responsibility for choice almost singularly in the individual—apart from virtually any aspect of his or her social context. By way of contrast, Liberian cultural views of agency seem to implicitly theorize a greater role for contextual factors—especially social ones—in influencing and determining behavior. These contrastive views plays a powerful, if implicit, role in shaping social expectations about what will satisfactorily "treat" a problem and what the scope of justice should and should not be.

5 VIEWS ON REGULATION OF THE CUSTOMARY SYSTEM

Introduction: Local Perceptions that Matter

Another core set of findings from our data relates to the impact of recent efforts by the state to limit, modify, or regulate the customary justice system. Here, too, as much is revealed from the actual experiences and case histories we have collected as from the direct expression of views by our interviewees. Our data reveals a great deal about how most Liberians perceive and are reacting to developments in the following specific areas:

1. The government's efforts to remove matters of serious crime from the jurisdiction of the customary justice system;
2. The introduction of the concept of human rights—in particular, children's rights and the rights of criminal defendants—and of laws and policies that promote these rights;
3. The efforts to prohibit any use of TBO;
4. The new policies related to gender issues, most particularly the new rape law;
5. The broader efforts to establish rule of law in one of its most commonly implied senses—that of uniformity.

What emerges from our data are two sets of commonly voiced concerns. The first concern highlights a cultural clash, whereby a majority—although not all—rural Liberians interviewed view all or some of these state regulations as undesirable and negative intrusions upon their traditions and social norms. While some attribute foreign influence as the source of these intrusions, many also view recent government policies through a different lens that emphasizes a specific interpretation of Liberian history in which a Monrovian elite is (again) seeking to impose its norms on those in the "country."

The second concern highlights the unintended and inadvertent consequences some of these regulations have had on rural Liberians. Thus, while policymakers surely intended these regulations to improve Liberians' access to justice and to strengthen and assert the legitimacy of the state, there is significant evidence that in many parts of Liberia they are having the opposite effect. In essence, many Liberians see these regulations as undermining the effectiveness of the customary system in resolving issues of grave concern to the population, without providing any effective alternative avenues to do so. As a result there is mounting popular disquiet with what is perceived as a growth of crime and malfeasance, and a disturbing tendency to blame the government for this state of affairs not only because its courts have proven incapable of attending to these problems, but most of all because it has prevented other institutions believed to be capable of attending to them from doing so.

It is by no means our intention to question the ultimate goals that recent government laws, regulations, and policies are meant to serve. However, we do believe that a robust empirical understanding of Liberians' reactions to these policies and their on-the-ground impact is vital for policymakers if they hope to plot strategies for change that include realistic provisions for garnering local endorsement and compliance, and that are sufficiently sensitive to the dangers of social unrest and political blowback in a country that is still consolidating a recently won peace. Ultimately, these local perceptions must be recognized as no less consequential than the objectives and intentions of policymakers or than the actual on-the-ground capacity of the state itself, to any hard-nosed assessment of the trade-offs that must be confronted in different policy options for cultivating rule of law over the next decade in Liberia. Most specifically, these local perceptions are germane to any assessments of whether customary justice mechanisms can and should play a role in cultivating rule of law in Liberia and, if so, how exactly to configure any relationship between formal and customary justice institutions.

Jurisdictional Limitations

A first finding concerning the state policy that forbids customary justice actors from handling questions of serious crime is that, for the most part, it has been effectively communicated to the chiefs. Our justice practitioner interviews reveal that chiefs at all levels are well aware that these matters

Chiefs are frequently pressured by members of their community to consider cases that they are technically forbidden from taking.

are to be turned over to the state authorities—either by referral to the district commissioner, the police, or the magistrate courts. We also find that chiefs are, for the most part, adhering to these policies and refusing to take cases that involve death, rape, violence that induces blood, and—less consistently—major theft, and referring these cases to state officials.

There are ultimately some significant differences between the state and local communities over where the line should be drawn for jurisdiction in some types of cases. Local communities tend to agree that very serious cases—for example, brutal rape of an old woman, intentional killing by a community outsider—should be handled by state authorities. At the same time they are generally dismayed that such cases are being—in their view—woefully handled by the state courts. There is also broad consensus that chiefs are generally better equipped for and that customary principles are far more appropriate to the task of bringing justice to all but the most heinous forms of murder, rape, and violence. Manslaughter (involving accidental killing) and instances of alleged rape between young lovers in particular were examples of cases that respondents felt the customary system could resolve more effectively and for which it would produce rulings viewed as more fair than those afforded by the formal court system.

Indeed, chiefs are frequently pressured by members of their community to consider cases that they are technically forbidden from taking. And many chiefs admit that in practice they do so, provided both parties request it. There is also evidence that once cases are in the formal court system, chiefs and elders may request, or even demand, that the case be referred back to them for out-of-court settlement. Such requests are often honored. Our data also points to numerous instances where the police or magistrates—on their own initiative—refer such cases back to the customary authorities for resolution. This seems to occur with particular frequency in cases that involve witchcraft.

Quite a number of chiefs expressed "embarrassment" that so many types of cases have been taken away from them, along with considerable concern about the inadvertent social consequences that have resulted. One of these is erosion of the perceived authority, effectiveness, and relevance of chiefs. Thus, many chiefs lament the downgrading of their own standing in their communities, frustrated that these limitations undermine respect—both by the government and their own constituents—for their state-given mandate to keep order in the community. As one paramount chief lamented:

> So we are actually downplayed by the citizens. We are no regarded as chiefs any longer. We are not allowed to collect any bond fee nor writ fees. All we are to do is to collect only sitting fee which is just little amount. . . . Our people do not regard us any longer, we are completely down. So as the result when we sometimes invite law breaker they deliberately refuse saying there is no writ.
>
> **Paramount chief in Nimba**

Several chiefs even attribute the reduction of their jurisdiction to greedy and power hungry formal justice actors. They provide examples of magistrates and justices of the peace who take cases of all kinds—not just serious crimes—away from the chiefs, even when the parties themselves had chosen a customary mechanism. Several further relate instances in which magistrates and justices of the peace issue writs of arrest against chiefs and other customary actors—including Poro leaders—for handling matters beyond their jurisdiction. Typical responses include the following:

> [When we resolve cases] the Justice of the Peace issue writ against us for undermining them and arrest the disputing parties who have already reconciled. . . . There are some JoPs with writ in their files looking for cases. Sometimes when they see is settling disputes among our people they stopped us and issue writ of arrest.
>
> **Paramount chief in Nimba**

> Nowadays the Poros master is afraid to [resolve disputes] because nowadays if physical violent occurs in town and the Poros master comes out and handles the situation one of the disputing parties leaves and goes to the magistrate and issues writ against the Poro master. The magistrate will then arrest all the members of the Poro and have them taken to court. While in court the magistrate will compel each one of them to further bond and after that the magistrate will release the case

> to be settled traditionally which is a problem for us. This is causing a lot of criminal activity.
>
> **Zone chief in Nimba**

Both chiefs and many other interviewees also decry the detrimental impact on the social order of policies that prevent them from judging certain types of cases or using certain types of methods. As one chief related:

> The abolition of the sassywood from our traditional people is harming us greatly because people take it as an opportunity to damage others lives. Because precedence is not being set by our traditional people, so the criminal rate increases greatly. So in short, the witchcrafts are very happy because no justice on them. **Chief in Nimba**

In large part, this mounting social frustration can be attributed to the vacuum created by the implementation of policies that restrict the scope of customary justice institutions but provide no genuinely viable alternatives.

Liberians from across the social spectrum widely view this vacuum as a place in which the powerful, wealthy, and socially connected are increasingly able to secure unfair advantages in dispute resolutions. As we have already discussed, many Liberians voice the view that a litigant is most likely to appeal to the formal court system if and when they believe they will be able to leverage money or social connections that will produce admittedly partial (and unjust) rulings that are in their favor. Awareness that this can and often does happen has in turn played a role in also undermining local confidence in the customary system by encouraging some people to "shoot straight" to the formal system if they believe they have the leverage for exercising undue influence therein.

Ultimately, given the severe capacity and legitimacy constraints on the formal system that prevent it from effectively bringing crime to justice—both in the punitive and restorative senses previously described—most Liberians have concluded that the government's prohibition against customary authorities handling any serious crime is promoting virtual impunity for perpetrators and chronic dissatisfaction among victims.

Human Rights

Many interviewees expressed serious reservations about the introduction of "human rights" to their communities. It is striking from reading the interviews that to the overwhelming majority of Liberians the very term "human rights" has very negative connotations. Most commonly, it was understood by our interviewees to refer to two issues: children's rights and the rights of criminal defendants—perhaps because it is advocacy on those issues that has been the most widespread.

With regard to children's rights, most Liberians understand this to mean that parents may not beat their children, that children are not supposed to work, that parents must pay for their children to go to school, and that children may sue their parents in court or complain to other authorities (most notably the police) if these rights are not met. In some cases, Liberians' reactions simply reveal their social practice of disciplining their children through physical punishment, and their reluctance to give this up. The emphasis on children's ability to take their parents to court has broached a more serious social norm: the respect and deference that children and youth are expected to have vis-à-vis their parents and elders. Thus, many Liberians fault the introduction of these foreign concepts for undermining social order and cultivating waywardness among their local youth. As three male focus group members related:

> The main problem now in this district is this issue of the misuse of child right. Some children are using the child right opportunity to disrespect their parents. Whenever parents want to discipline their children, some authorities will come up and say do not abuse the child right.
>
> **Male youth in Nimba**

> This child right business is something that the human rights should be blamed for because they are not making children to understand their rights by calling them to explain to them. So some children just have the mind to do whatever they want to do. **Male youth in Nimba**

> The thing you call here human rights, is really human wrong because they go in the society bush which is not right. Long ago when we were going to school we respected everybody. When we saw our elders we respected them, but not this time children don't respect their elders.
>
> **Male elders in Nimba**

Our data also reveals a more complex problem that stems

from economic realities that most rural Liberians confront and that human rights advocates may either not be sufficiently aware of or simply choose to ignore. In the rural Liberian context, any outright prohibition on child labor and the right to education pose a serious economic burden for most Liberian families, as noted in the following typical statements:

> As for me, I don't like this system of human rights law. In fact, it will never help us in preparing our children to represent us tomorrow. For example, I bore 25 children and now look at my age and how the war has damaged our living standard. If human rights law says that I am not allowed to ask them work for me, then how do I sustain them? So let this human rights law wait a bit.
>
> **Chief in Nimba**

> Another group that has spoiled or loosed our children in the street is the Human Rights Group. The child rights advocates have caused some of our children to be very stubborn, not even wanting to help their parents to work. For example, I am surviving on the production of cane juice [locally distilled liquor]. If I tell my child come and help me pack the cane at the distillation site, he tells me I am going to play football because I have the right to play. And at the end I will be compelled to pay his school fees because he has the right to go to school. **Male zoe in Nimba**

The effects on household labor may also play a role—along with concerns with social respect—in why rural Liberian women in particular seemed so thoroughly vociferous in their opposition to "child rights" laws and initiatives. As multiple female focus group members stated:

> We, the women, are the ones who bear the child and suffer for the child. If your child does something wrong to you as a mother when you whip that child then government can hold you and take you to human right. They don't want this time children to respect the parents. Any time the child does something wrong and you talk the child will say he/she is going to live on his/her own.
>
> **Female elders in Lofa**

> Really there is disrespect between the mother and the child and human right causes this. The first time when the children do anything bad you would frighten them saying I will beat you or punish you. But if you beat your child now he will take you to police station. When we were growing up when a child was told papa is coming or mama is coming, he is frighten. **Female elders in Lofa**

> For me I have a serious problem with the police. The police have introduced a system where whenever your children do wrong, and you try to discipline them, they will invite you and your child to explain; which is not good to our tradition. This is making the children very arrogant. The recent most recent case took place with my six children. I believe the human right should be the place to take the children for advice. My child and I standing in public for the both of us to explain is a complete disrespect. **Female adults in Grand Gedeh**

> In our country, we have child right but yet to have parent rights. If your child does wrong and you try to restrict them, the authority-in-charge arrests you. This has gone to the extent that our children are all on the streets. We have even spent more money for them to get in school but some of them deliberately refused to attend classes. With all these naughty acts if we try to discipline them we are arrested. **Female adults in Nimba**

Several interviewees elaborated on the notion that the interior of Liberia is not ready for such "Western" concepts:

> Actually the human right law only belongs to the white people because they have airplane, cars etc and they are sufficient in their homes and they have all their children needs and wants but as for us we are very poor and in need if our children do not help us to do some work for us will continue to remain in poverty. . . . Human rights law has also caused our children to be loosed up in the street and even involving themselves into criminal acts like burglary, gambling and are becoming drug addicts. **Paramount chief in Nimba**

> I want for human rights to deposit some money in banks that will be used to support our children so that we can not ask them to do anything for us. If we receive this support from them we will not trouble them any longer but they should not go about and suppress us and knowing fully well that we are in need greatly.
>
> **Paramount chief in Nimba**

> Those systems are not bad but our people are not prepared to meet the challenges of these systems. These systems . . . work predominantly in literate society such as America, Europe, and other parts of the world. These countries did not just jump into; rather, it took them many years to adapt this system. So, we are in a desperate situation when we graduated from war. The cost of living is high. Then you expect to live like the Westerner?
>
> **County inspector in Nimba**

The other issue most commonly associated with "human rights" is the right of criminal defendants to counsel and adequate detention facilities. Reactions to this issue are particularly revealing of most Liberians' beliefs about what constitutes justice. As described earlier, to most Liberians the most important element of justice is reconciliation, which requires the perpetrator to admit fault and may involve apology and compensation. In this light, human rights advocacy on behalf of criminal defendants is seen as an effort to free the perpetrator from blame, and thus as an enormous obstacle to the aim of reconciliation. Typical statements by respondents include the following:

> I am actually against the idea of the human right or child rights in Liberia. The formation of the human rights or child rights has caused many problem for our country. Some murderers have been free from prison by human rights advocates. Some of them even boast that, "If I kill, the human rights advocates will plead for me." So the idea of the human rights is causing serious problem for the society. **Female adult in Nimba**

> I only see human rights pleading for criminals who commit crimes like murder, rape, and stealing. When these crimes are committed by these naughty boys and jailed, human rights law pleading for criminals. **Male adult in Nimba**

Interestingly, many Liberians also see human rights as giving an unfair advantage to the perpetrator, at the expense of the victim. As the following statements suggest, underlying this complaint is the belief that justice is achieved by both parties coming together to bring out the truth and agree on redress—a belief directly at odds with the adversarial system of the formal courts:

> But if one of the activities of the human rights is to also plead for perpetrators to be freed from jail or crimes then it is not right for our society. The human rights advocates, in such a situation, must make it their duty to call both parties. Go through transparent justice, but pleading for only perpetrator is an unusual habit that may cause problem for our society. **Female adult in Nimba**

> When you are taken there as a prisoner who commits crime, you have opportunity to go anywhere. They are well taken care of. They eat delicious food and wear decent clothes. And they are put out to go and do contract. So if the traditional people will choose to go into the matter, we will be satisfied. Instead of what the people have brought and infringing on our rights.
>
> **Male adult in Nimba**

A third problematic "human rights" issue occasionally cited by interviewees relates to the practice of public work and community labor. Several chiefs complain that because of "human rights" people no longer respect the chiefs and Poro masters when there is community work to be done, such as brushing public roads, constructing bridges, and working on community farms. Unlike in the past, community members insist that they must get paid for their labor.

Trial by Ordeal

Our data contains an immense amount of information about the uses of TBO and how Liberians have understood and reacted to the ban on it issued by the government. A first finding is that there are a wide variety of types of practices and reasons for their use that are lumped under the terms TBO and/or "sassywood," and that differences among these practices are

immensely important to consider for purposes of formulating legislation and policy.

We can identify three overarching categories of uses of TBO. First, it can be used as a means of identifying the guilty party when an admission is not forthcoming. In such cases, some form of TBO is administered to the suspect or suspects, and it is believed that only the guilty party will suffer some form of harm. Second, it can be used to ensure that truth is spoken by suspects, witnesses, or others. Here, it is believed that those who undergo the TBO will suffer some form of harm if they do not tell the truth. TBO in this way is used most commonly as part of the fact-finding in a customary proceeding, but it is also cited as an important way for men to determine if their wives committed adultery. In a variation on the first and second uses, suspects themselves may ask to undergo TBO in order to prove their innocence. Third, TBO can be used to "get rid of the witch." This is most commonly used to enable suspected—and admitted—members of witch societies (known variously as snake societies, "Bambah" societies, Korsaw-Korsaw, among other names) to "swear off the witch" and become mainstream members of the community.

It is equally important to distinguish between different types of methods of TBO and the logic behind their use. Thus, one set of methods involves practices that are physically harmful prima facie—meaning that they would be expected to cause physical harm if applied in any normal situation outside of the ritual context of TBO. Examples of such forms include the ingestion of poison, the application of hot metal to the skin (usually described as a "cutlass"), and the immersion of one's hand in a pot of boiling oil. The logic of TBO in this form is that the supernatural power of the ritual will *protect* the innocent from harm (by not burning the skin, or by forcing the innocent to vomit ingested poison), but not the guilty, who will suffer physical harm or even death. This form is generally used to identify a guilty party.

A categorically different set of TBO methods involve activities that are not physically harmful prima facie—such as eating a small clot of dirt, taking an oath, or trying to separate two brooms after these have been lain on top of each other (there are many more specific variations in this category). The logic of the TBO ritual in this form is that the supernatural power of the ritual will *identify* the one who is guilty and/or who does not tell the truth, and punish them by ensuring that the guilty or untruthful person will (eventually) suffer malaise if they perform a mundane and harmless act within a defined ritual context. In another version of this method, a guilty person will supposedly be incapable of doing a mundane and harmless task that others who are innocent can do with ease (such as uncrossing two brooms when one is laid on top of the other). This form may be used for any of the three purposes described earlier.

While not entirely consistent, many Liberians use the term "sassywood" to refer to the first method (administering harm), and the term "cowfur" to refer to the second method (administering a form of oath). (For more Liberian views on sassywood and a glossary of sassywood terms and practices, see tables 6 and 7.)

From a rule of law and international human rights perspectives, there is a rather significant distinction to be drawn between a ritual that requires someone to swallow poison to ascertain their guilt or innocence, and another that asks them to ingest harmless dirt or take an oath on the theory that a supernatural power will consequently cause them to suffer physical harm if they lie after doing so. Indeed, the latter is not very different from the oath of truth taken on the Bible in many formal court proceedings in the United States. This distinction is all the more important when we consider another characteristic of these rituals as they were described to us: that participation should not be forced but must be voluntary. In fact, in several of our cases, it was the suspects and/or witnesses who asked to undergo TBO in order to clear their names. At the same time, we should note that there are also examples of suspects who refused to take the TBO, and as a consequence were presumed guilty.

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An additional noteworthy point is that most Liberians believe that TBO methods only function effectively in determining guilt when infractions have been committed within the same community and among its members. In this sense it is not believed that TBO can be applied to a stranger outside the community. If a visiting guest of a community member is believed to have committed a crime, TBO can be applied to a member of the host family who agrees to stand in for the guest.

A second set of findings relates to Liberians' reactions to the ban on TBO and the consequences of that ban in

Table 6: Selected Quotes on Sassywood

This is the way our people grew up over five hundred years ago. They practice the use of sassywood to bring criminal to justice. And if the criminal, witchcraft is guilty, he, she is given oath so as not to repeat such act. So my recommendation to the government is let her amend that law, and let sassywood be practiced by our people because it is the only means of dealing with criminal case by our traditional people.	Sometimes when there is a land dispute between two parties, according to what I was told, they usually abstract some of the earth dirt and put it in the water and both parties will swear on it. Each parties will say if this portion of land we are talking about is not part of my land I should die. As they have been explaining to me that if one of the parties lies he or she will die from that swear.
We believe to be oath is, the sharing of drink from the same cup and the breaking of kola nut that was a sign of unity and reconciliation. But we did not put herbs together and forced them to take in to get them reconcile. No, it wasn't done that way.	I personally don't like sassywood that hurts people. I am totally against those types of forceful confessions. We simple thing like rice or money for our oath here but if the government wants to stop it, it should show us something that we can use to get the truth out of people.
So we contacted one fellow to administer sassywood. When he came and heard people accusing the little girl, so he concluded that it is the little girl who stole the money, which was not true. The fact came out when the individual who stole the money was purchasing many items. He was arrested and admitted that he stole the money. So some of the sassywood are not true but are done with the motive of making money.	Actually sassywood has categories. There are some that are bad most especially the one that was administered with hot cutlass. There is some that is not bad. It was actually giving chiefs respect. When someone commits a crime and is in hidden, everyone is called and asked to swear. Since the sassywood affects those who are guilty and does not confess, people were afraid to commits crimes but nowadays the whole community is loosed.
This sassywood thing here is hurting us here. Of course I don't know what really government see inside, you see these witchcraft and thieves, since they heard about it they are happy, so they get ground now so they don't want to listen to anybody again. So anything they want to do they can do it because no sassywood.	It is because of the abolition of the sassywood that causing many people to die in our community. When these cases are reported to the court, the judges ask you to provide proof to clear all reasonable doubt. And when you explain, they let them go free. So our people are really dying.
In fact we were practicing trial by ordeal even in recent time and it was transparent and fair and it was the own fastest medium use by our traditional people to psychological make perpetrator to admit to his or her wrong doing. But since the government put stop to it, there have been series of problems in traditional communities.	My son that sassywood thing we can walk from here to Monrovia, the thing killing us left and right, the town that you passed the Konobo before you reach to Touboh. Go there and ask and say how many people died in this place here? You see the land commissioner that is there, his wife mother died just like that.
Interviewer: During the land dispute case, why didn't you carry on trial by ordeal? **Respondent:** I am too civilized for that.	We don't believed in sassywood, when we see people playing with sassywood we can laugh at them, we are Muslim. We hold one thing, we don't hold two things.
Yes it is good to stop it because we don't know what most of that traditional medicine that we swear on are made of. Take for example if the man who is administering the sassywood is against you, he will harm you under the pretense of administering justice. I will be happy if the governments stop because truth in any case is not hidden.	We cannot blame the government because it doesn't know if some of the sassywoods are truthful and not because some people falsely administer sassywood which leads to the death of people. In every society there are bad apples and government cannot base its decision on the isolated cases and put a complete halt to the administration of sassywood without consulting the indigenous people.
I think it is good for the government to put stop to the sassywood, because sometimes the sassywood may not catch the right person and this may cause confusion in the society.	No, sassywood is not transparent and fair. It is part of our earlier culture. It is actually like fake magic. Magic is used by the magician to satisfy certain people. It is like witchcraft.
Before the abolishing of the sassywood, these wicked guys were arrested and given oath to stop wickedness in the community. And by administering oath they are subjected to stop bewitching innocent lives. If they defile the oath, they definitely die. Also the trial by ordeal was very important to our traditional people. For example, the TBO was used to make women who are living adulterous life to confess to their husband.	As for witchcraft case, the thing that we were depending on to give us fact is the oath (sassywood) and has been abolished. So my recommendation to the government is that let us be allowed to administered oath (sassywood) because it is the only thing that the witchcraft is afraid of. The traditional oath is the only means we have to administer to them so that they can give us the facts when they bewitched people.
Nankpeah is a traditional oath and when suspects are brought before it, each one shows his/her hands over it. A question is asked concerning the incident if guilty or not, if you are the doer you will immediately start to cough but if you are innocent and clear about the incident you will go free.	Actually, let no one lie to you, sassywood can not kill. Many individuals who were involved into witchcraft activities were given sassywood not to repeat their wickedness but they repeated it and nothing was done to them.
When the sassywood is conducted, it clarifies every doubt. If you are involved in the act, it shows you out. And if you are not, it does not harms you. So abolishing the sassywood, for me I do not agree. When the sassywood is conducted, it clarifies every doubt. If you are involved in the act, it shows you out. And if you are not, it does not harms you. So abolishing the sassywood, for me I do not agree.	The period when sassywood was administered was safer than these days.

Table 7: Glossary of Sassywood

Sassywood method	Description	Sassywood method	Description
Cutting sand	Consulting an oracle or soothsayer to divine the truth.	*Swearing or oath*	Suspect either ingests innocuous substance, or touches an object, and swears that they are innocent or will repent from their actions. If they are speaking falsely, or dishonor their vow, they may be subject to spiritual forces that will bring about their death. No actual physical harm is inflicted or poison ingested, apparently. Only if the person is guilty will medicine activate. Witnesses may also have to place a small monetary donation as collateral to vouch for their veracity. If they are caught lying, they forfeit their money.
Striking lightning	A ritual specialist is used, often from neighboring Guinea, who will cause lightning to strike the guilty if they do not atone for their crime.	*Bible swearing, Bible oath*	"My case was carried to him and he allowed the people to bribe him and he went against me and even put me in jail. These judges were told to administer sassywood in court to the witnesses but still we find no transparency. The court allows the both parties to take in oath by kissing the Holy Bible. Some people called it that way because you swear upon your life."
Standing on a calabash	Everyone in the community stands on a calabash as directed by a soothsayer. Whoever is on the calabash when it breaks is the thief.	*Eating or ingestion ceremony*	All suspects are forced to imbibe a substance, which may be poisonous or innocuous, and told to tell the truth. If they lie or are the true criminal they will be taken ill, vomit, or die.
Switch method, or crossing brooms	"He came and brought two brooms as tools to administer the sassywood. The brooms were intercrossed in each other and during the process, if anyone holds it and move it from apart then you are innocent; if not, then you are guilty of the crime."	*Cowfur, or cawful*	"Cowfur, it is prepared in food and all of the community, innocent victims, as well as perpetrators, partake of it." Those who are guilty will die within two years. Emphasis is placed on the entire community ingesting the cowfur, not just the suspect(s).
Hot cutlass	A cutlass is heated until red hot and then placed against the skin of all those under suspicion. It is typically placed against the bare feet of the suspect. It is believed that only those who are guilty will feel the heat of the cutlass and be burned by it.	*Curful*	"If something gets missing and everyone denies the allegation, another form of the sassywood is curful, is prepared in food and everyone eats it together and give a grace period for the suspects to confess and if not he, she dies after that time."
Hot oil	Similar to hot cutlass, only the guilty will be burned or feel the pain of heated oil. "Firstly, you have to say that if it were you who stole the item, the hot oil placed on me must burn my hand; but if my name was falsely used against the stolen item, that hot oil is not going to burn me. But if I were the one who stole the item, I would be caught."	*Glee*	"It is form of hemlock or concussion that normally played psychologically on the suspect to at time confess under duress. It is administered in two forms. By heating a cutlass and pressing it against the suspect's body part."

their view. An overwhelming finding of our research is that the majority of Liberians we interviewed feel fairly strongly that at least some forms of TBO should be reinstated because the ban is causing considerable harm in their communities. Along with nearly all the chiefs that we interviewed, a majority of Liberians from across the social spectrum bemoan the loss of at least some forms of TBO, and believe that this prohibition is depriving them of one of their most reliable and straightforward means of solving crime and keeping order. Common statements on this issue include the following:

> Because we are not allowed to administer sassywood so many take it to be an opportunity to engage into criminal activities, most especially the witchcraft activities have increased in the community. . . . Actually, to admit, when we were allowed to administer sassywood our people were

Table 7 (Continued)

Sassywood method	Description	Sassywood method	Description
Hot stones in oil	"When the sassywood man came, he came with some little rocks in a pot with oil. This was placed on a hot fire and it boil. Afterwards, the sassywood man put his hand in the hot oil and took out the stones. He said gentlemen do you see it; we said yes. At the trial there two white men. One of them was the general manager and the other white man said he had been in Kenya where similar thing happened and they found out and it worked so he tried encouraging his colleague to do it but he said no. After the ordeal was performed, the lot never fell on any of those employees present except two other employees that were absent. So the sassywood man concluded that the absentee were responsible for the missing item.	*Taking a stone from the spot*	A method of Trial by Ordeal used in land disputes in which disputing parties are forced to ingest earth from the disputed land to see which person is the rightful owner. "Then we could have put the stones from the same ground in water where the parties would have taken an oath on the land. If anyone lies, then the oath makes you useless."
Seven pieces of red pepper	"When they say a black bag is missing and you say you don't know anything about it, they will take the pepper and put it in the water, but you will not wash your face with the water, it will be placed under the white cloth. They will bring it around and ask if anyone knows something about the missing bag and if you say you don't know anything about, they will ask you to swear or make an oath to the seven peppers. In the process you will say, 'If I know anything about the missing item these are my eyes.' Truly, I saw seven persons taking this sassywood, and one person was caught in the process. Tears came from the boy who was guilty eyes. He was caught and he confessed that he took his sister money."	*Kafue*	This is essentially an oath that one swears when testifying in a traditional forum. Witnesses actually ingest food as a sign of honesty. "As for us, we don't ask anybody to swear on traditional medicine. When we start a case, we request each party to bring five dollars each and buy something to eat which serves as kafue for us to say the truth."
Country cuffs, or handcuffs	Means of binding ones hands in a painful position in order to elicit a confession, or to detain a suspected criminal.	*Trolou*	"A country pot fill with herbs and kola nuts. If a suspect is in hidden and we split the kola nuts and swear over it and place it over the pot. Every body will be asked to eat portion of the kola nut. The person who is guilty will definitely be cursed by the agreement."
Kola nut in hands	No Description Available		

not dying as the way they are dying presently and there were not many criminal cases as we have today. Most especially, the witchcraft cases, they were controllable. But now these people are loose and we are unable to control them. We observed now that many young people just die without reason.

Town chief in Nimba

If the practice of trial by ordeal is abolished, criminal rate will increase, the Bambah society, snake society members, they will gain more and be free to practice wickedness because sassywood is no more administered on them and our people will continue to die innocently.

Adult male in Nimba

The sassywood as a whole, when there is crime committed and the doer is hidden, the sassywood can bring them out immediately but nowadays some cases remain undone. Whether you steal someone thing and denies there is nothing to clarify it. So at this present moment, we have no means to bring some of these cases out.

Paramount chief in Nimba

> The witchcraft business is on the increase in this town because the government has said that no one should give sassywood. The witchcrafts are very active now. The government is causing the witchcraft to be flexible and they are on the increase; the young women and men are just dying mysteriously here. Even next door Ivory Coast, people are still practicing sassywood. If you killed your own child in witch, they know what to do to you over there.
>
> **Female ex-combatants in Grand Gedeh**

A significant subset of our interviewees draw distinctions between different categories of TBO, and our research indicates that there is considerable variation in how Liberians assess the potential legitimacy, efficacy, and social importance of these different sociospiritual methods. Thus, for example, there appears to be much wider variation in local opinions about whether the category of prima facie physically harmful acts should be allowed, and even whether it consistently provides reliable results. Those who are against it either object to the potential for serious bodily harm, and/or question whether it is a reliable method to compel truthful confessions and identify perpetrators. Thus, as the following statement demonstrates, some interviewees cited their own experience in sassywood application in which it failed to identify the culprit, or in which they were witness to a deliberate bias or abuse in the application.

> "Sassywood" is not transparent and fair. It is part of our earlier culture. It is actually like fake magic. Magic is used by the magician to satisfy certain people. It is like witchcraft. . . . The reason [people say it works] is usually because someone had given them information that the person is a real criminal, and that they know for a fact, that he had done it. They do fact findings and then pin the case on the person. I know this because they have accused many persons falsely. Maybe a woman had been involved in witchcraft before, now as soon as something happens, people will call for the sassywood and when they come, they will accuse the woman, even though she had nothing to do with that case. If a person was caught stealing before, if anything got missing, usually the sassywood person would accuse that person. It is like you having a bad child. Every time something goes wrong, you suspect that child, even though, the child may not be guilty. That is how sassywood is. It is a guessing game.
>
> **Male adult in Lofa**

However, others readily bore witness to their own and others' experience with the effectiveness of even the most extreme sassywood methods. For example, this informant in Lofa stated:

> Some one performed [sassywood] on me at Paynesville town hall. At that time I used to sell dry pepper. This man came to me in search of empty room. After I lodged him he stole all the bags of pepper that was in the room. We were so worried and did not know what to do. In this state, one Kpelle lady promised to help us if we only give her 1000 LD. We gave it to her and she took use to the Paynesville town hall by then it was in 2005. The sassywood man use hot iron on each of us feet whoever the doer was the iron would burn him or her. This was my first time experiencing this process. In this process the trial by ordeal man used hot red cutlass on our skin particularly on your leg. Every one of us that were selling for the people went through the process and none of us got burnt by this red hot cutlass. I personally did not experience any pain from the hot red cutlass. . . . When the sassywood was conducted it caught the very man that slept in the room. Yet he still denied it. For this he brought his own sassywood man to redo the process. When the process was conducted he was caught again. After this, we went to police and they made that identical man to sign document. He even paid half of the money in question.
>
> **Male adult in Lofa**

As the following statements indicate, there is less controversy and more consensus that the other set of techniques that involve the ritualized empowerment of normally harmless activity can and should be allowed in order to encourage greater truthfulness, and to identify witches and compel them to forswear their socially destructive activities:

Even though we have been stopped not to administer oath [sassywood] to suspects or criminals but nowadays if we realize that the disputing parties are not Christian, there is an oath [sassywood] that we prepare if a suspect denies an allegation, everyone in the town will eat the cowfur [sassywood] so that the fact can come out and also, so that human right group can know that it is not only the suspect that ate the oath. After the eating of the oath, the person who commits the act will definitely comes out and says the truth and this set of oath is prepared in food [rice] with chicken or meat and everyone including the suspect will eat it and wash hands in one bucket of water. If the suspect is among those who ate the oath, he will definitely come out and confess.

Paramount chief in Nimba

There are some that are bad most especially the one that was administered with hot cutlass. There is some that is not bad. It was actually giving chiefs respect. When someone commits a crime and is in hidden, everyone is called and asked to swear. Since the sassywood affects those who are guilty and does not confess, people were afraid to commit crimes but nowadays the whole community is loosed. **Paramount chief in Nimba**

While it is true that I am in support of the TBO, there are two types of the sassywood that are usually administered and they are the one called "glee" and the one called "cowfur." Of the two mentioned, the glee is the most dangerous. It is form of hemlock or concussion that normally played psychologically on the suspect to at time confess under duress. It is administered in two forms. By heating a cutlass and pressing it against the suspect's body part. For this glee, I do not support. But for the cowfur, it is prepared in food and all of the community, innocent victims, as well as perpetrators, partake of it. That I subscribe to. But since the government abolished sassywood, we have experienced a vast increase in criminal activities in our community.

Male adult in Nimba

Respondent: I won't go to the herbalist because I believe in God. But [some people] prefer to go the herbalist that will put fear in people that they may come out to say the true. In this light, trial by ordeal that will take the life of another person should be put stop to, but the one that will put fear in people should not be put stop to.

Interviewer: Suppose somebody committed an act that involve murder. . . . If trial by ordeal was done to kill the person who kill the [victim] will that not also be proper?

Respondent: If the TBO can make that man boldly to say I did the act then the law will institute the penalty on that person according to human right. **Male adult in Lofa**

Finally, a minority of interviewees felt that the ban on TBO was a good thing. The majority of this group were Pentecostal Christians and Muslims, who either stated their unwillingness to participate in these methods and/or their disbelief in them altogether as a tenet of their faith. As the following statements demonstrate, this group also included a number of other men and women, young and old, who think TBO should be abolished as it is not effective and/or subject to abuse.

I think it is good that it has been abolished because lies are sometimes associated with such, thereby accusing the wrong person.

Male adult in Lofa

There is nothing good about it because it entails people going through suffering just to be able to find a criminal through guessing. It is not fair to the accused because no one is sure about anything. **Male adult in Lofa**

I think it is good for the government to put stop to the sassywood because, sometimes the sassywood may not catch the right person and this may cause confusion on the society.

Female adult in Lofa

I personally feel that TBO is not necessary now because it is out of my jurisdiction. Trying people by fire or other instruction sometimes make peo-

Text box 14

Interviewer: Why did you go to the zoe, chief, and others?

Respondent: The reason why I went to these people was because I went to the police and for more than a month they never find the goods.

Interviewer: Why did she go for the witchdoctor in Guinea?

Respondent: The reason why she went to bring witchdoctor was because the case was with the police for three weeks without result, the marketing association another three weeks without any result, and the goods were not returned by those who stole it. I went to some friends and they advise me to get this man so that he can make possible for me to get my goods.

Interviewer: Why you did not get a zoe from Zorzor to find the goods instead you went to Guinea?

Respondent: I did it because the zoe that I went to in Zorzor told me that he can find the goods, but the person will die after the goods is found. Being a Muslim, I did not think that that was the best way as I simply wanted my goods and not to kill somebody.

Female adult in Lofa

> ple who are innocent to say things they are not to say. So TBO is not a good thing. We do not want to practice it. **Paramount chief in Nimba**

It is important to note that local views about TBO can in fact be quite nuanced and complex, such as in cases where individuals do not doubt the overall effectiveness of TBO but believe that it can—like any other method—fail when it is inexpertly or inaccurately applied. As one young male stated:

> Another disadvantage is that the sassywood man may target two or three persons from among you so that whenever he performs it you could be caught. In this instance the hot cutlass will burn you whereby you are the doer of the act or another way around you may feel insecure because of the performers and therefore refused to go through the exercise when this happen people will start pointing fingers at you that you are guilty that is why you refused to go through the exercise.
>
> **Male youth in Lofa**

Others recognized that TBO was not necessarily an accurate or fair method, but that it was preferable to the alternative of going to the state courts:

> TBO may or not be fair, but shouldn't be abolished because the justice system is not correct now, in that whoever has money will win the case. Since the locals don't have money they prefer using the method of TBO. In some instances, if you are female, the judge will want to have an affair with you before he can go through your case.
>
> **Female adult in Monrovia**

> Because if you say don't do Sande, don't do Poro and don't do trial by ordeal, what preparation have you made for the people to know that the new concept is better for them? So you just come in the village and say, "Don't practice this, don't practice that." I don't think that will help. What are the substitutes or the alternatives that you are offering them? **County inspector in Nimba**

The majority of rural Liberians are in favor of reinstating some or all forms of TBO, and a great many of those are passionate in their pleas. Both chiefs and their local constituents believe that the effectiveness of customary chiefs has suffered significantly as the result of the government's blanket prohibition against practicing TBO. This measure is almost universally noted for preventing customary justice practitioners from dealing with witchcraft in particular, which is viewed as a rapidly proliferating and very grave problem that is the source of great local concern and growing dissatisfaction with the new government. The prohibition against TBO is also viewed by many chiefs as having removed an important "measure of last resort" in their arsenal for ascertaining the truth in particularly difficult cases in which witnesses, a variety of forms of social persuasion and "advising," and consultation with elders all prove unfruitful in resolving the differences between irreconcilable accounts. Thus, the ban on TBO is blamed for a litany of problems: the inability to resolve crime because they

cannot identify the guilty; the inability of the innocent to clear their name; a reduced incentive for parties to admit their guilt (given the lack of alternative means of proving it), and thus an undermining of traditional methods of "compromising" cases; a general increase in criminality and sense of impunity; and most significantly, a drastic increase in the most lethal forms of witchcraft.

Faced with the prohibition on TBO, some chiefs recounted an active search for alternative strategies—although to date those pursued are generally deemed far inferior and less effective. Thus, some have opted to swear an oath on the Bible, as that was a practice approved in the formal system. One male zoe in Nimba county was more creative in finding alternative means to reform members of snake societies, although he still remained skeptical of ultimate success in the absence of sassywood:

> The Bambah activities grew rampant and we became concerned. A meeting was called by us and decided that since the government has abolished the practice of trial by ordeal and the administering of sassywood, which had given rise to the increase of witchcraft activities in our community, what we can do to reform those young people who are bent on destroying lives in their community to becoming useful citizens in the community? It was concluded that all adults in the community make it his/her duty to educate those young people about development being made in Ganta by their counterparts who are engaged in building stores, clinics and houses; and that they could do the same only if they relinquish those negative vices and focused on positive things. Besides the parents, as chairman, I set up a committee to carry out the strategy throughout our towns, villages using persuasive method by calling on them members of the secret snake society. As the campaign gains momentum, some members of the Bambah came and openly confessed their activities. This time, we did not use force but persuasion and, as the result, some of them given out their juju willingly. . . .
>
> Another team was setup to put these guys together and again educate them about the importance of living together in peace and harmony. Above all, the strategy we used was to advise them and compare their lives to that of others like Guasi-Boy, Sunday-boy, and other businessmen in Ganta and Nimba as a whole. We told them that those guys did not use horns or chalks to build these store and houses they are currently enjoying. This campaign continues in almost all parts of the both clans in control. But if the old system that was used in 2003, where we were allowed to administer oath, sassywood, those boys couldn't recondition the activities of Bambah society.
>
> **Male zoe in Nimba**

Interestingly, our research finds some evidence that the struggle to find alternatives to TBO for dealing with witchcraft may actually be strengthening other purely community-based customary justice institutions—in particular, so-called secret societies, whose legitimacy is grounded in local socio-cultural precepts, such as the Poro society. Unable to deal directly with witchcraft themselves because of the prohibition against TBO, a number of chiefs report that they now rely even more heavily on the ritual specialists of the Poro society to produce solutions in such cases. As a result, as the following respondent notes, social pressure to join these societies is increasing in at least some communities.

> Another strategy was to encourage these guys who were not members of the Poro society to join so that they can thoroughly be counseled and educated. **Male zoe in Nimba**

Rape

From the outset, this field study was designed to capture gender-differentiation in perceptions and choices about justice options, most particularly so with respect to views on means of resolving crimes of sexual violence, including rape. Gender was therefore a primary social differentiator that shaped both our focus groups and individual case interview recruitment strategies. While we also collected a considerable amount of information on this topic from our interviews with chiefs, our analysis in this instance purposely lends rather greater weight to the more gender-balanced forms of our data (the individual case interviews and the focus groups) than to the utterances of chiefs (justice practitioner interviews), all of whom were men.

While the concerted efforts and approach that we described produced a number of very revealing case studies

and insightful focus group discussions, we think it important to note that the sensitivity of this subject may have limited our ability to probe this issue as fully as might be possible by a study that concentrated all of its efforts and resources on this issue alone. We therefore believe that our conclusions on this issue deserve additional attention and would benefit from the collection of more empirical evidence that could test our assessments and refine this analysis. That said, our data does reveal clear findings on some points and helps to put many additional issues in critical perspective. Most basically, a clear finding of our field research is that women and men both identify rape as a significant local problem. Below we explore findings related to how Liberians believe this problem should—and should not—be addressed.

The formal system and the new rape law

The majority of rural Liberians, including chiefs, are generally well aware that rape is an issue that the state justice system has reserved for its exclusive jurisdiction. While chiefs often express a belief that they are as well equipped as—or even better equipped than—the state courts to deal with such cases, as the following exchange demonstrates, they are aware of and are generally willing to comply with the policy to refer these cases to state justice authorities:

> **Interviewer**: Do you resolve rape cases?
> **Paramount Chief**: No, rape cases do not belong to me and I don't venture around it because it belong to justice.
> **Interviewer**: But you are dispensing justice in your office...
> **Paramount Chief**: The reason is when rape cases occurred and we try to put it under control the [NGO] people complain to the Ministry of Internal Affairs that we are overlapping our functions—and so we let it go to its rightful place.
>
> **Paramount chief in Lofa**

However, our research also indicates clearly that men and women alike believe that the crime of rape is not being adequately addressed by the state courts, in that, even in the most egregious cases, rapists taken to the police and/or courts generally get off with impunity. As the respondents report:

> An old woman at age eighty was raped in [this town]. After eating her cold rice that morning, her grand children left her lying down. While in that mood, a boy entered on her, choked her and placed cloth in her mouth and raped her. Upon the completion of his mission, ran away. In the process of his escape, some students who were coming out for recess spotted him come out of the old ma's room. Before they could enter to find out what was unfolding, they met her eyes turning as if for death. The old ma was brought to the circuit court fortunately, the boy was saw escaping but was pursued and arrested put to jail. . . . The old ma was brought here in hammock. When we saw her, we were all crying by then the boy was put to jail. We don't know what happen later on the women group came and told us that the boy that was in jail is seen presently [free] in the town. They left the boy to Guinea. It had not taken long when the old ma died. **Female elders in Lofa**

> Our women are raped and the perpetrators go free with impunity. In most cases, these cases are taken to the police station, but due to the lack correction room, prison cell, jail these perpetrators are released. Even babies are being raped in our setting and victims have been denied justice.
>
> **Female adults in Nimba**

> At times people go ahead in the community and then rape our sisters around here and nothing can be done about it. After they had been taken to the police station and then you will just see that they had been discuss verbally and at the end they will be set free. And that child is going with serious infection. **Female youth in Nimba**

Throughout our interviews, the state's justice officials were not only derided for failing to adequately address this problem, but in a fair number of cases were actually accused of perpetrating this crime themselves:

> Many times we find out that those who carry out the raping activities are officials, like the bigger people within the town. Some of them do these for rituals and other things. They grab the

small-small children and rape them. If you took the complaint to the Police station, the police will only come and say we will investigate. After few minutes, you will see the people [rapists] passing around and not in the police custody and nothing will come out of it in the end.

Female youth in Grand Gedeh

The magistrate that is here now, he was accused of raping one girl by the name of X. . . . They took him to court [but] how they settled that case is still a mystery to us. We saw that magistrate back to his office here. He is still sitting down here. This is one of those things that I am against in this district. The man is boasting that he is an elephant. **Female elders in Lofa**

The women are not respected here. If a woman has a case but doesn't have money, that case will be judged against her or she must be willing to go to bed with that man. It happened in a case involving my husband and myself. I was charged $5,000 Liberian dollars for the case to be investigated. When I complained of not being able to afford that amount, the judge asked me to go sleep with him. I told him that I rather not be right in the case than to do this. **Female youth in Lofa**

A second set of findings relates specifically to Liberians' understanding of and views regarding the new rape law, which, among other things, criminalizes statutory and marital rape and sets strict punishments. We found virtually no evidence that most Liberians found this law to be working as an effective deterrent—which may relate at least in part to the perception that the state justice system simply cannot or will not take the measures that might provide local satisfaction anymore than it appears to in any other type of case. Stated one female focus group member:

If these new laws were being enforced or added to these other laws, well I just don't think the new laws are . . . being enforced in this country. What I am saying, it is from experience, because once a man rapes a child and the child is taken to the hospital while the man is taken to the police station or jail, you will see that same man after few minutes being released from prison. That man will not even spend one week or sometimes there because the law they have at the police station is that once you carried someone there and they can't see you constantly or within three days' time, they will free the person.

Female youth in Grand Gedeh

We also encountered a great deal of suspicion among members of a male focus group that the new rape law is being manipulated by those who seek leverage over other parties in unrelated disputes:

Some women are happy about this rape law while others are not. Some use this to falsely accuse their husbands probably because of some dispute.

Male adults in Lofa

Well, if a girl does not have money, she could easily lie on the man say that so and so individual rape me. And that particular case will be forwarded to the police station. Such a case will be influenced by the police and you will just remain in jail because of the law.

Male adults in Grand Gedeh

People are using the rape thing to make money. As you know, we are just from war and times are hard. I recommend that we have such forums or show film shows in our communities, towns and villages to educate our people on the importance of the new rape bill so that people will not misuse the opportunity. Before our people just used to talk rape cases with the elders, but now the victim has to go to hospital for 2 weeks and all that long process. We appreciate the changes, but we want them to take time to do it and use more time to give enough education to our people.

Male elders in Nimba

Because rape isn't a small crime, whenever a woman proclaims it, it is taken very seriously. So they jailed the man for three days. Then the man's family went to the girl and appealed to her because they knew it was false and that the girl wanted some money from the man. She agreed to

withdraw the case if the fellow could give a certain amount of money. That was how it went.

Male adults in Grand Gedeh

While such suspicions seem particularly pronounced among men, it is important to note that they were also validated to some extent by women as well. Stated members of a female focus group:

> [In terms of unpunished rape] the [biggest] problem is that there are some [rape victims] who are minors. But some of us are adults who men will claim want to help you. After you should have had fun and these men decide to discuss you, what will you do? Will you say that you were raped even if you personally took a man to your room? Will you go and explain this to the police station? You are not a child. You will be asked why you went to the man's place or invited him to your place. There are laws too for such.
>
> **Female adults in Grand Gedeh**

> When we speak of the rape, let's look at the other side of it too; because these days' young girls, we the young girls, when they entered into a sex for money contract with a man them the money or the exact money they requested for after sex, then they take that person to the Police and say that the man raped them. **Female youth in Grand Gedeh**

At this juncture, it is important to emphasize that our research identifies a situation that is far more complex than simply one in which men are accusing women of manipulating the rape law. Rather, we found that a significant number of Liberian men and women alike testify that the rape law is being manipulated by litigants of both genders to achieve other ends. Thus, for example, in some cases in which interviewees described rape accusations, the originators of those accusations were identified as men (usually disgruntled fathers or spouses) rather than women. Some of these cases were actually described as false accusations—such as the following one that involved a jealous boyfriend who accused his girlfriend's lover of rape:

> A girl came on a talent show we had on our campus here. Later on she was taken home by one of her boy friends. But she came with a fellow here. She went with this guy and slept with him; the both of them had been loving before. The fellow that brought her checked for her but couldn't find her. The next day he saw her and asked as to where she slept, she explained where she slept and when they went there they raised a case that the girl was a virgin and didn't know about life so they had to take the fellow she slept with to the police station with the case that he raped her.
>
> **Male adults in Grand Gedeh**

In other cases, accusations appeared to be driven by interests and concerns that were not necessarily those of the alleged victim:

> It was one day, sometimes ago that a girl's parents asked her where she spent the night and she wouldn't talk even though she was asked over and over. Now, when her father who had left for town came back, he was told how his daughter had slept out and wouldn't say where she slept though asked repeatedly. So, the father asked his daughter to show him where she slept or else he would beat her. She wouldn't. So, he started to beat her, after the beating started she told him that she slept at that boy's place. When the girl said this, her grandmother decided to take the case to the town chief. When the case reached the chief, that boy's brother decided to stand as surety [bond] for him, as his grandmother was not there. The one who stood as surety then went and explained what transpired to that boy's grandmother. Upon hearing the case, the grandmother took some family members and when to appeal to the girl's family to have the case resolved at the home. But, the girl's father refused and said he was going to see the case to the end. While the family was still appealing, the girl's father came to get the police involved. He told the police that the boy raped his daughter, but the daughter said that it was not rape, but she and that boy were lovers. When the girl explained this, the father said he was not listening to that and the boy was put in jail.
>
> **Female adult in Lofa**

Another set of concerns about the rape law raised by many interviewees relates to that law's definition of rape and the prescribed sanctions. In contrast to the rape law that grants comparable moral equivalence (and legal gravity) to a broad range of acts, most Liberians reserve the term "rape" for only a limited subset of the most extreme of those acts, and nuance the rest of that continuum as a set of infractions of very different levels of social gravity and that should invite very different forms of social and legal repair. At the one end of this continuum are the gravest situations of violent sexual assault by strangers and/or in particular on minors in which the local emphasis skews hard toward harsh punitive measures. Even in such cases, however, reconciliation may remain a concern, as the following statement attests:

> In town there was a little boy about sixteen years old who used to sleep at his friend's place. The friend had a five years old sister in the house. One night when they were sleeping, he woke up from the bed and went to the little girl and raped her. Early in the morning he went to his house in Zwedru. The little girl was crying when she wanted to "pee-pee" [urinate]. She continued to cry. Her mother asked her what happened and that she never used to behave like that. She refused to talk but after she was asked many times, she finally said that it was the boy who slept there that night raped her. When the girl's brother was asked, he said that he was sleeping and didn't observe anything. They went to the boy's family but his family said that they should talk it a family way. [Ultimately] the case just left in the town like that and they talked it a family way. The father of the girl was vexed and wanted to bring the case to Monrovia but they begged him.
>
> **Female youth in Grand Gedeh**

At the other end of the spectrum, most Liberian men and women that we interviewed seemed highly skeptical of the idea that forcibly imposed sex by a spouse should be viewed as the same type of problem:

> What our brother and most people in the interior consider as rape is when you see the woman in the bush and you jump on her forcibly and have sex with her or if you burglarize her home and force her into unwanted sex, that's rape. We are getting to understand that you can rape your own wife. Sometimes if you don't entertain her properly, she can refuse you. What would be the result of the law if I beg my wife and she says no?
>
> **Male elders in Lofa**

> We understand rape to be when any man who is not your man forces you and have you. That is what we call rape. . . . OK, the one that I know even my husband when I am married, but if my husband asked me for sex and I don't want to have sex that day and I gave excuse and say I am tired and he force me I have all right to take him to court for raping me? **Female elders in Lofa**

Along the continuum, the data we collected indicates that, as with other types of cases, in the resolution of most types of rape most rural Liberians continue to emphasize restorative and socially reconciliatory objectives as more important than punitive ones. The objective of reconciliation remains particularly important in a context in which the kinship relations that are so vital to all aspects of subsistence and social order itself are likely to socially link perpetrators and victims and their families. As one member of a female focus group states:

> With rape cases in this county, especially [this] district, it is very hard to go out, I mean to go to court. The victim's parents are very hard to go to court. Because it is like my son, you know me very well and my son rapes your daughter. After the news comes out that your son has raped my daughter, the family will come in and beg. So it is very hard for them to go to court. Because you are my uncle, I won't carry you to court for the case: but actually they don't know the effects. This is because of the culture: it plays on us. So, it is very hard for them to go court. Most of the rape cases can die down here. And even if they are carried to court, nothing happens. Like when some people take it very hard and go to court. They carried them to the [county seat]. When they get there it will just die down. **Female elders in Lofa**

Similarly, it is only when one recognizes that the objective of addressing the condition of the victim—at least to some

extent and in some fashion—is paramount (as opposed to punishing the perpetrator) that the demands of the following rape victim's family seem to make any rational sense:

> The old man told her that since she was a student, she should go to him so that he could teach or tutor her in her lessons at night. She asked him why it had to be at night but the "Papay" said that she should just go to his house. She went to his house and he told her, "Since you have come to me, I want to tell you that I did not want to teach you, but wanted to see you for something else." While the girl was sitting, he forced her and raped her. She went home crying. Her mother asked her what was happening but she said that nothing was happening. When day broke, they asked her again, and she began to tell them what happened. When the old man was called and asked, he said that it was a mistake and that he was sorry. The girl's family said that it couldn't just stay that way; rather, he should be taking the girl to the hospital where she will be receiving treatments. His response was that he didn't have money but he could only be helping to carry her to the hospital every morning.
>
> **Female youth in Grand Gedeh**

As with other types of cases, Liberians are critical of the formal system when it focuses narrowly on a rape perpetrator's singular criminal act (or even just merely on an accusation's face value), and does not plumb what is regarded as a "deeper truth of the matter," which may well involve social actors other than the perpetrator and victim and a series of other social contingencies viewed as relevant contributing factors.

Rape and the customary justice system

The fairly broad skepticism about the formal system's approach and capacity to address the crime of rape and about the way in which the rape law is being used raises the important question of whether customary justice institutions are viewed by Liberian men and women as offering a better alternative.

Although we believe further empirical work on this specific question is merited, we currently draw the following conclusions from the data that we do have. First, we found no evidence of a belief—among men or women—that when chiefs do intervene to resolve these cases they are doing so in ways viewed as unjust or, more specifically, in ways that are dissatisfying to women. As already noted, dissatisfaction with the resolution of such cases and an interest in pursuing them through the more acrimonious and punitive process afforded by the formal system does not seem to be dictated so much by gender, as by a variety of other interests which can and do equally inform the behavior of men as of women.

Second, the lack of any explicit statements of dissatisfaction about how chiefs (or family representatives) resolve rape cases, stands in rather marked contrast to the very vociferous and quite explicit statements of dissatisfaction with the outcomes for rape cases produced by the formal system that were quite readily forthcoming from both many of the men and women that we interviewed. At the very least, this seems to indicate far less dissatisfaction with customary means for resolving of this type of case when compared to the formal alternative as actually experienced and practiced. Our findings do not indicate gender differentiation in this perception, despite probing for it.

Third, the fact that a fair number of chiefs indicated that they are still solicited by their constituents to adjudicate such cases (despite being prohibited from doing so)—and will generally only do so if both parties insist on it—reinforces our conclusion that there is a general preference for resolving these cases through customary mechanisms and according to customary principles. In summary, while our own evidence is insufficient to warrant any claim that there is widespread (or for that matter gender-differentiated) satisfaction with how customary mechanisms resolve rape cases, it does indicate that among the de facto available alternatives, customary forms of resolution are probably preferred and viewed as producing less dissatisfying outcomes by both men and women.

This greater degree of satisfaction (or at least a lesser degree of dissatisfaction) with customary mechanisms for dealing with rape may partially reflect greater local confidence in the overall effectiveness and enforcement capacity of customary (as opposed to state) mechanisms. However, our data also indicates that, just as with other types of cases, this preference may also be driven by the fact that customary mechanisms for dealing with rape realize fundamental assumptions that most Liberians have about what justice should entail in ways that formal court alternatives in general and the rape law in particular do not. As discussed earlier, for most kinds of rape, most Liberians want to see restorative solutions that take into account broader social or group interests.

While we did not collect extensive cases about how the resolution of rape cases by customary authorities is viewed by most Liberians, our interviews with these authorities do suggest that it is a mistake to assume that they are sidelining the issue of rape because it is a "women's issue"—in large part, precisely because they do not regard it as only a woman's issue. To the extent that the interests of extended families, spouses, and community relations are viewed as relevant and at stake, this ensures at the very least that chiefs remain willing to deal with these issues—even if for certain reasons they were to dismiss "women's issues" as less relevant. However, this observation raises another set of very important questions that in our view merit extensive and carefully crafted additional empirical research:

1. Exactly what is the typical balance that customary mechanisms tend to strike between the individual victims' abstract rights, their specific (restorative) interests, and other social interests (intrafamilial harmony, community harmony, the interests and stakes of other social actors etc.).
2. What is the view of women—particularly those who suffer from rape—about those balances as they are typically struck? How do they compare those balances to the outcomes the formal system offers in practice? What do they view as the ideal balance to be struck?

On the first question, it is clear that customary mechanisms—whether intrafamilial resolution or chiefs—do consider a broader set of social interests and factors than those of the victim alone. More focused research is needed on exactly what those balances typically are. A weighing of the disadvantages and advantages of allowing these interests to impinge on the resolution of these cases requires careful contextualization that should give particular emphasis to women's assessment of the balances that are being struck. Thus, despite the fact that we did not identify any trend of women complaining about such balances, it could well be that a more focused investigation would unearth complaints that would dovetail with the suspicions of many that women's interests are being subordinated or sidelined in customary deliberations.

Speaking to the second set of these questions, our data casts some doubt on assumptions that the rape law strikes a balance that local Liberian women believe to be the right one that will realize a sense of justice for rape victims. In the reality of the rural Liberian context, taking into account available alternatives, a greater emphasis on social reconciliation and restoration may prove to be quite rational calculations. We discuss this and how it may impact on policy options later in this report.

Uniformity versus Duality

Very similar intentions to banish the past injustices of a colonial caste system as embodied in the historical duality of Liberia's legal framework and institutions appear to be motivating many rule of law reformers in Liberia and also informing how local populations outside of Monrovia are responding to these reform efforts. However, somewhat paradoxically, these same intentions may also be driving these two groups in diametrically opposite directions in terms of the legal framework and institutions they each prefer to see developed in Liberia. In Monrovia, among many national policymakers and their international counterparts, the assumption is that the key to rule of law in Liberia is to enshrine the principle of uniformity—that is, to extend a single set of laws to Liberia as a whole and to provide a singular legal system and framework that works the same way everywhere for everybody—in order to set all Liberians on equal legal footing before the law and its institutions. Such sentiments are given life through efforts such as those to once and for all do away with the Hinterland Regulations and—in some quarters—to move as quickly as possible toward replacing customary justice institutions altogether with formal courts.

Most rural Liberians are decidedly unenthusiastic—and in some cases emphatic or even virulent in their opposition—to such efforts because they are seen as (yet another) effort to extend the power and domination of a Monrovian elite and (legal) culture.

However, our research clearly shows that most rural Liberians are decidedly unenthusiastic—and in some cases emphatic or even virulent in their opposition—to such efforts because they are seen as (yet another) effort to extend the power and domination of a Monrovian elite and (legal) culture. Our research finds that without rejecting the ultimate authority of the state or even a local role for the formal justice system, rural Liberians consistently reject the proposition that the "laws (and institutions) of Monrovia"—or of the international community—should be allowed to supplant and override their customary ones:

[I prefer the] traditional method because even when you are hurt they have the traditional leader that will talk with you, invite you. In fact you then come to your senses, even they will send people to counsel you instead of the system the white people had brought. Because, we should not forgo our culture because we are African.

Adult male in Nimba

The human rights law was imported from United States of America and Europe and they understand it so that their ways of life is theirs and not ours. So what I want to recommend to the government of Liberia is we want our old system practiced by our forefather to be with us.

Male zoe in Nimba

We conclude from our research that the vision of "rule of law" of most Liberians who live outside of Monrovia might be described as far more "federalist" or even "localist" in its emphasis on maximizing the rights of local communities to determine the principles and means by which justice is achieved and delivered. Indeed, the only "uniformity" that local populations seem eager to see enshrined in national frameworks and policies is the uniform protection of local prerogatives that give rise to diversity at the level of specific laws, institutions, and procedures. This is a vision that is endowed with much less specific law content than the far more detailed framework that seems to be sought by most national and international rule of law policymakers in Monrovia.

6 AN ASSESSMENT OF LIBERIANS' QUEST FOR JUSTICE

How do most Liberians assess their options and seek redress given the prevalent perceptions of customary and formal justice institutions that we have just described? Liberians will weigh the factors of cost, accessibility, potential bias, and desired outcome in choosing their forum. For most Liberians, this calculation can only lead to the customary system, which provides the most (perhaps only) accessible and affordable, and potentially fairer option. Throughout rural Liberia customary systems are thus the far more typical and preferred choice (for an analysis of forum use by subgroup, see figure 4).

The Oxford CSAE survey collected detailed household- and community-level information on respondents' lived experience of a wide range of crimes and conflicts, including assault, sexual violence, murder, and theft, as well as disputes involving land, debt, property, and family. Respondents provided details of each incident, including the forums visited, the time and costs incurred, and details of the judgment, including reported subjective satisfaction.

Tables 8 and 9 summarize where respondents typically took their disputes to be resolved. "Formal forum" included police officers, magistrates, JPs, and any government official including the district commissioner and the county superintendent. "Informal forum" included all other third parties, including family heads, traditional leaders, elders, secret society members, soothsayers, midwives, the full hierarchy of chiefs, and any other local influential individuals.

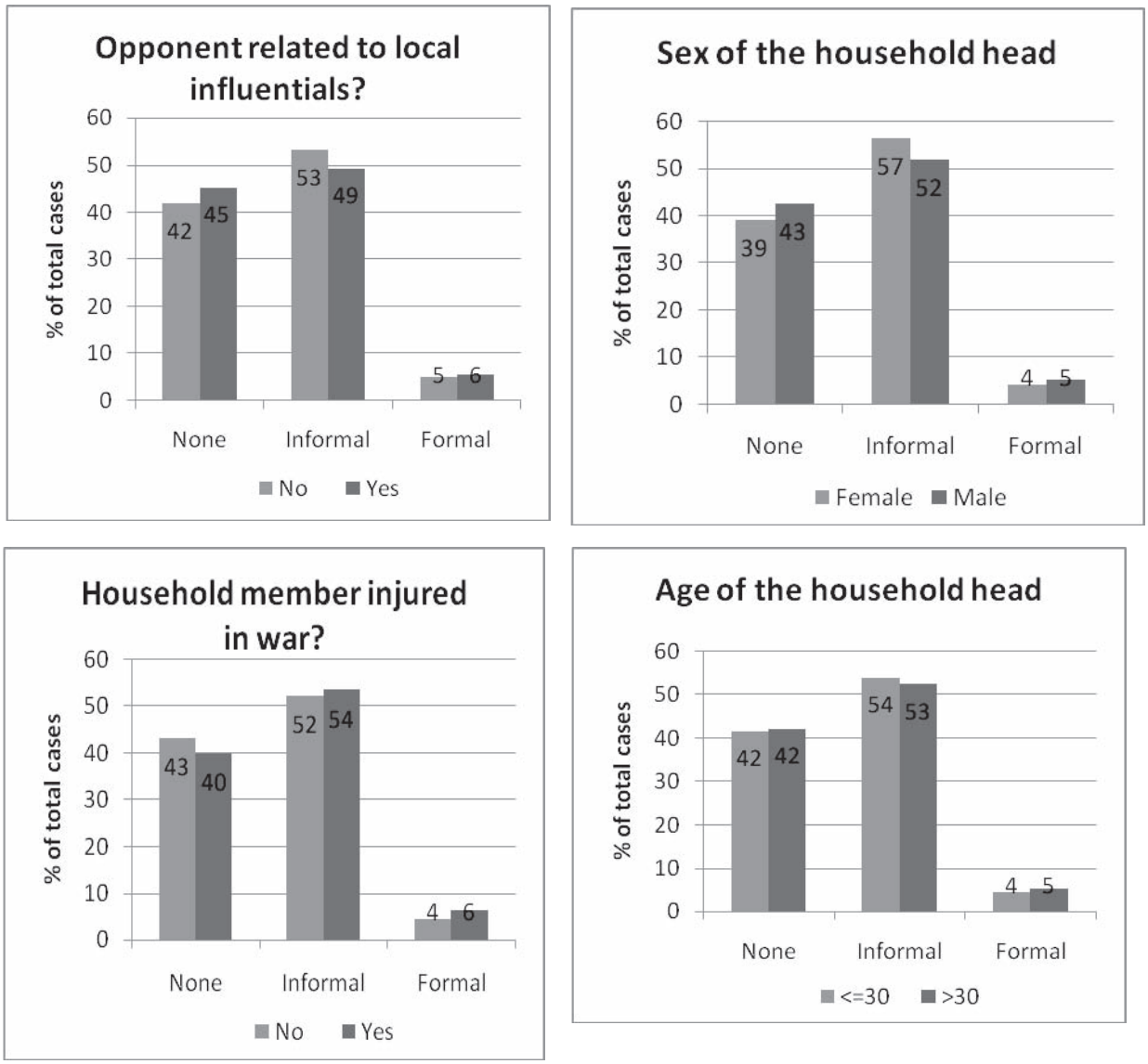
A striking finding is that the majority of disputes (57 percent) reported to our survey team were not taken to any third party for resolution; these include half the reported instances of rape/sexual abuse, murder, assault, and domestic violence, one-third of reported land disputes, four-fifths of reported theft, and two-thirds of the reported disputes over property and labor. Further analysis will show how many of these cases were resolved between the two parties on their own. When Liberians chose to take a dispute to a third party, they overwhelmingly chose the customary justice system. The only cases reported to the formal system in significant numbers were murder and rape—crimes that traditional leaders acknowledge are usually "too big" for them—yet even these were taken with equal frequency to the formal and informal systems.

However, the data also reveals a number of patterns that are exceptions to this general rule, and where the formal system is preferred. These include both rather straightforward reasons, and a set based on a more complex social calculus. Of the first variety, most Liberians believe that state institutions should be the natural next step, when the chain of referral of customary authorities has been exhausted without satisfactory resolution—though they are frustrated that it rarely, if ever, provides them with satisfactory justice when such referrals occur. Moreover, as discussed earlier, Liberians generally believe that crimes that rise to a certain level of seriousness (putting aside the regulation prohibiting customary authorities from dealing with such cases), or that involve strangers to the community, should be dealt with by the formal justice system.

Our research suggests that Liberians also seek to avail themselves of formal justice institutions when they perceive that customary justice institutions are themselves partisans in a case and thus incapable of providing fair resolution. Such cases include situations in which customary authorities are themselves implicated and situations of interethnic conflict, in which the very cultural basis from which local customary justice institutions and officials derive their authority is a contributing factor to the problem in question. Thus, for example, we collected information on a series of cases (including land disputes, theft, witchcraft accusations, and even murder) in Lofa and Nimba whose source traces to clashes between (so far) mutually exclusive tenets of the Poro society and community members who profess faith in either Islam or Pentecostal Christianity.

However, for the (now growing) minority of Liberians for whom formal court options are accessible, the social calculus of justice is likely to be somewhat different and rather more complex. Our interviews reveal that direct referral to the formal court system is most likely to occur when individuals believe they can gain an advantage over the other party by exploiting the already discussed factors believed to govern that system (personal power or social connections; money/bribery). Numerous examples are provided throughout our

FIGURE 4: FORUM USE BY SUBGROUPS OF POPULATION



NOTE: The vertical axis shows the percentage of total cases within a given subgroup of the population that are taken to the forum in question (for instance, percent of disputes in female-headed households that are taken to the formal sector). The three bars for each subgroup sum to 100 percent.

The subgroups shown are:

- "Household member is a local influential?" The population of households is split into those that reported a member of the household to be a local influential or person in position of authority, and those that did not.
- "Household member injured in war?" The population of households is split into those that reported a member being injured during the war and those that did not.
- "Sex of the household head." Self-explanatory.
- "Age of household head." The population of households is split into those with heads that were thirty years old or less, and those with heads that were over thirty.

SOURCE: Based on preliminary data from an ongoing Oxford CSAE study, "Community-Based Justice and the Rule of Law in Liberia." Details of the study are provided in the appendix.

Table 8: Forum Usage for Civil Disputes

		percent of all cases taken to		
Dispute	Number of cases	No forum	Informal forum	Formal forum
Bribery/corruption	14	57	29	14
Debt dispute	1,497	67	31	2
Family/marital dispute	788	58	41	1
Child custody	21	62	38	0
Child/wife neglect	181	59	41	0
Divorce/separation	131	34	61	5
Other	455	64	35	1
Labor dispute	157	65	34	1
Land dispute	430	32	60	8
Property dispute	68	53	37	10
Witchcraft	227	56	41	4
Total	3,181	59	38	3

Table 9: Forum Usage for Criminal Disputes

		percent of all cases taken to		
Crime	Number of cases	No forum	Informal forum	Formal forum
Assault	600	52	44	3
Domestic violence	974	53	46	1
Murder	97	53	23	25
Property destruction	548	78	18	4
Rape/sexual abuse	113	50	28	21
Theft	1,420	78	19	3
Other crime	303	55	42	3
Total	1,877	53	45	2

interviews where the choice to move directly—or eventually—into the formal justice system was perceived to have occurred because one party had an opportunity to influence the outcome through the aforementioned means. Notably these opportunities are not only suspected by the "losers" in such cases, but also often admitted by those who describe their own strategizing in a case!

There are also a fair number of cases where referral to the formal courts—or the threat of referral—is recounted as a tactic used either to advance contentious social agendas, for retaliatory purposes, or for gaining leverage in other matters that have nothing to do with the actual case in question. Thus, for example, this practice of "making the case big" was mentioned in a number of our interviews in relation to recently passed laws such as the rape law. In the opinion of one woman from Sanniquellie: "The new rape bill should be revisited because there are people here who are using it to attack one another."

In this twisted sense, to many Liberians, the formal justice system is seen as not only incapable of providing satisfactory justice but also as one of the most effective mechanisms through which certain social actors are able to perpetrate injustice in service to their own interests.

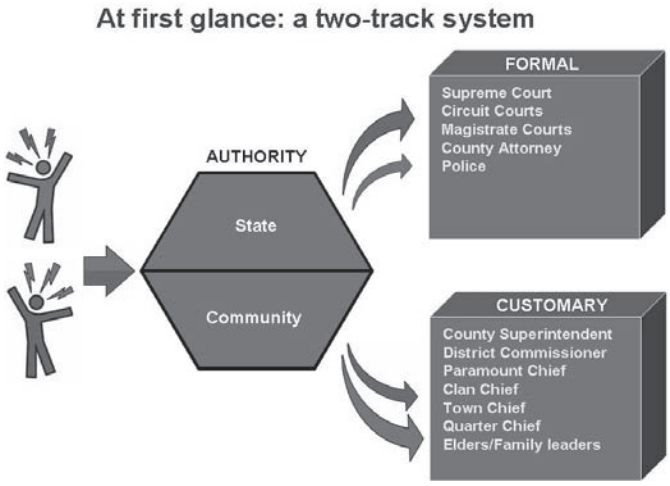
Many Liberians also seek to mobilize extralegal mechanisms from outside the formal or customary justice systems altogether, to influence justice proceedings. For many, theirs is an effort to identify someone they believe can effectively exert power over their opponent in order to achieve a partial outcome on their behalf—and to use money or social connections to activate that power for their benefit. For many others theirs is an effort to monitor and prepare for (or even preempt) the possibility that their adversary in a case will manipulate social connections and use money to subvert justice—by making sure they can do the same only with greater ultimate effect. Thus, quite often the strategies that Liberians formulate to counteract real or perceived biases do not strive to reestablish "truly just" procedures as most Liberians would define them.

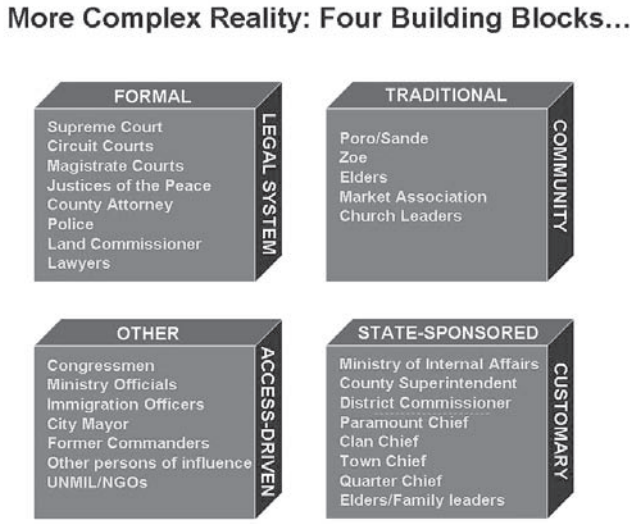
Figure 5: The Quest for Justice

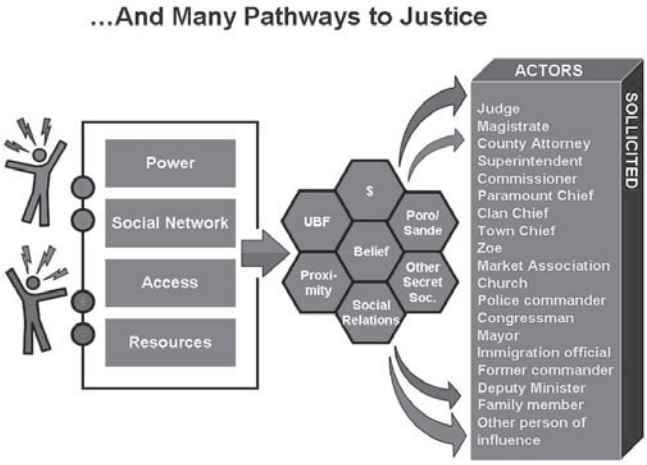
The diagrams to the right illustrate the complex calculations that go into Liberians' determinations of where to pursue justice. The diagram at the top presents the dual justice system, suggesting that Liberians look at the state and customary courts as the two options for them to choose between and follow through their respective hierarchies.

The middle diagram illustrates that from the perspective of rural Liberians, there are in fact many more potential avenues of dispute resolution than the formal courts or state-sponsored chiefs courts. Thus, a range of community-based actors including family members and elders, secret societies, religious leaders, and business associations are all potential justice providers. Likewise, a different set of actors who are not officially affiliated with any justice mechanism are also seen as potential arbiters due to their power, wealth, or influence.

The bottom diagram suggests how Liberians choose among the pool of potential justice providers by weighing the potential of advantage from each individual due to factors such as power, social relations, access, and resources. The specific manifestations of these factors include membership in secret societies or the UBF (Masons), availability of money to pay costs, family and community relationships, social and religious beliefs, etc.







Rather, when confronting bias, Liberians are likely to try to secure influence that will ensure that partiality still prevails—only in one's own favor and against other parties.

Increasingly, Liberians decide how they will pursue justice, based on a careful assessment of their own position (relative to that of other interested parties) within a single pool of institutional power—as embodied in particular persons (see figure 5). This single pool includes both customary and formal justice institutions—and notably we should also reiterate that our interviews clearly and consistently show that the actors in that "power pool" whose involvement is ultimately sought (or who choose to intervene) in the resolution of even serious criminal cases do not necessarily have established roles in either state-backed or customary justice institutions. This is particularly the case when it comes to state officials who have no legal role in the statutory system, be they superintendents, national legislators, deputy ministers, immigration officers, or diplomatic bodyguards.

This tendency to seek out the intervention of the highest established authority figure available or to which one has access in order to resolve the question at hand—even if it is strictly speaking a justice issue, and the authority is strictly speaking not part of the justice system—may also be derived from the lack of a clear distinction between judicial and other governance roles in the minds of most Liberians. This sensibility has been fostered by the country's very long history of intervention in all manner of local cases—formal and informal—by government authorities who were not part of the judicial system. Most famously this was a well-documented practice by a succession of Liberia's own presidents, who for political purposes often embraced and fully played to the chiefly role—and thus to local expectations that unitary authority was legitimate.

The expectations established by this history are still very much alive and being continuously realized and reinforced today (albeit not to our knowledge by the president herself). This is revealed in our research both by the frequency with which respondents appealed to the Liberian president to step in to resolve local justice problems directly, and by the ample evidence we have collected of frequent interventions in formal court proceedings (and some customary ones) by all manner of authorities (including senators, customs inspectors, prominent businessmen) who technically are supposed to have no say nor exercise any influence in criminal or civil judicial processes.

Finally, as discussed previously, the limitations set by the state on the customary justice system have served to undermine that system and close off options for peaceful resolution of cases of great importance to many Liberians. Liberian frustration with the perceived pervasive "injustice of justice"—particularly when the formal system is involved (or because it constrains the scope of customary institutions)—affects how more and more people are weighing the advisability of pursuing extreme extralegal recourse options. Thus, the state's efforts to protect its exclusive purview over certain types of cases may ironically be producing higher levels of social frustration and lowering the threshold for extralegal violence precisely to the extent that such safeguarding is successful, for the very simple reason that these cases— including even the most serious crimes—are not being resolved in a satisfactory or timely manner, or simply at all. To wit, the conclusions of the brother of a murder victim whose inability to pay fees that would advance the case through the (statutory) courts led him to plan to "take justice into our hands. We will take some boys and kill the perpetrator."

Liberian frustration with the perceived pervasive "injustice of justice" . . . affects how more and more people are weighing the advisability of pursuing extreme extralegal recourse options.

Consequently, throughout much of the country, there is a very palpable sense of mounting insecurity and dissatisfaction within local communities. Various forms of crime, social conflict, and acrimony are perceived to be flourishing, unchecked by either the debilitated and discredited formal court system, or by customary institutions perceived to have been hobbled by government policies that undermine their effectiveness. Our research reveals that these perceptions underwrite both a rising tide of frustration with the Liberian government, and a growing willingness to seek extralegal solutions (such as mob justice, personal revenge) that conform to neither state nor socially sanctioned criteria of justice.

[III]

Conclusion

POLICY IMPLICATIONS

This study aims to provide the Liberian government and other stakeholders with more robust evidence than has hitherto been available about how both formal and customary justice systems are perceived and utilized by rural Liberians. Our approach has been guided by the conviction that in order to succeed, policies for cultivating rule of law need to be far better informed about current practices and social understandings of justice at the grassroots level throughout Liberia. The empirical evidence base we have developed through this project's field research can make policymakers more cognizant of the complex social realities that mediate the effects of their policies and allow them to account for these in policy development.

In this final section of our report, we outline some of the key implications of our research findings for different strategic policy options. Our intention is to demonstrate how the outcomes of different policy options are likely to be affected by the Liberian social realities we have studied. We do not provide any definitive prescriptions. In our view adjudication among different policy options is not a task for which empirical research is equipped for the simple reason that policy prescriptions are in first instance the result of value-based judgments about what the correct balance of social priorities and mores should be. This is ultimately a political act rather than a scientific one. However, by sharpening understanding of the likely consequences of different policy paths, we allow policymakers to more realistically assess the impact of different options on the balances they strive to maintain among different values and objectives.

Analyzing the Impact of Policy Options: A Framework

The framework we develop below provides a mechanism for using our research findings to examine how key aspects of local Liberian reality are likely to influence how, and if, any particular justice reform option realizes (or conversely undermines) several policy objectives that are widely recognized to be vital to Liberia's postwar future. In describing this framework, we first specify those vital objectives and then specify the mediating aspects of Liberian social reality whose effects our findings allow us to analyze.

Vital objectives that must be accounted for in justice reform policy

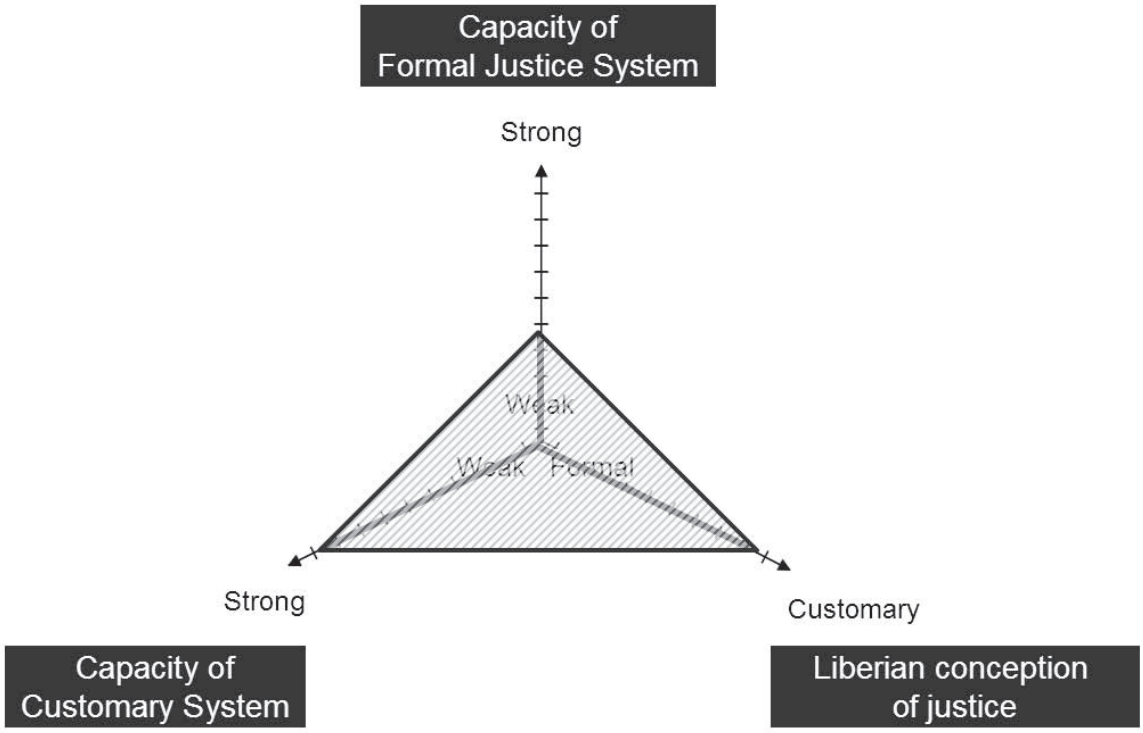
In our view there are at least four vital objectives for Liberia in its continuous effort to put its history of conflict firmly in the past. They are developing a functioning justice system, developing a legitimate state capable of managing a range of tensions, promoting international standards and human rights, and managing competing political demands.

Justice objectives. The narrowest objectives of justice reform policy are those that deal specifically with the delivery of justice. Such objectives include

- Maintaining law and order. Among the primary functions of a justice system are to ensure that disputes are resolved without resort to violence, and to bring criminal behavior under control.
- Satisfying local demands for justice. As we have discussed throughout this report, local satisfaction (or lack thereof) is a function of several factors, including access and affordability, the use of locally preferred principles in case resolution and redress, and effective enforcement.
- Cultivating the legitimacy of justice institutions. This involves enhancing the local legitimacy of the formal justice system, although to the extent that the customary system is granted certain jurisdiction, this objective would also apply to fostering local legitimacy for the customary system in these assigned functions.

Post-conflict governance and peacebuilding objectives. In a post-conflict country such as Liberia, justice reform policies must, in our view, remain attentive to a range of governance and peacebuilding concerns that extend beyond the narrower confines of the justice system itself. For the most part, these concerns are related to the challenges of consolidating a hard-won peace and strengthening a fledgling democratic political

Figure 6: An Analytical Framework



The Liberian realities (triangular shaded area above) impact how and if policies achieve the series of four vital objectives below. For each of those, the question needs to be asked: how can these four broad objectives be reached given the current capacity of the formal system, the current capacity of the customary system, and the current Liberian conception of justice? If policy options fail to address these issues, they have a high risk of not achieving these objectives.

process. Objectives in this category include

- mitigating intrasocietal tensions that could undermine peace and reignite conflict.
- enhancing the local legitimacy of the state as a whole and of its institutions locally.
- promoting good governance practices by state institutions, including through greater transparency and accountability, and diminishing corruption.

Promoting international standards and human rights objectives. The international standards and human rights objectives that justice reform efforts will be required to pay attention to include

- eliminating practices judged as onerous, harmful, and in violation of basic individual rights (e.g., TBO).
- eliminating discriminatory practices against social groups (most notably women, but also ethnic, religious, and other minorities).
- complying with international rule of law and human rights standards.

Political objectives. Last but not least, objectives in this category are arguably those to which most policymakers remain most attentive and responsive in all arenas of policymaking (not just justice reform). These include

- defending the priorities, agendas, and authority of competing ministries and other organs of the government of Liberia.
- responding to the priorities and pressures brought to bear by the international community. In the case of justice reform, this most notably involves the priorities of donors and agencies involved in rule of law and human rights programming.

We should note that our subsequent analysis *does not* assess the effects of different policy options on this last category of political objectives. There are two primary reasons for this: (1) neither intragovernmental political dynamics nor the international community's priority determination process were subjects of our field research; and (2) these objectives are likely to be almost reflexively attended to by our target audience (policymakers and practitioners) anyway. However, our exclusion of these political objectives in our analysis should not be taken to mean that we regard these political objectives as unimportant or less likely to drive policymaking.

Three outcome-mediating aspects of the local Liberian reality

The primary value of our research findings is that they provide an empirical basis for assessing how three aspects of Liberian reality—currently poorly understood by most policymakers—influence whether justice reform policies and strategies realize the aforementioned objectives. These three aspects are

1. Liberians' own culturally informed and socially differentiated beliefs about justice;
2. the capacity and grassroots legitimacy of the customary justice institutions;
3. the capacity and grassroots legitimacy of formal justice institutions, in particular at the local level.

As graphically represented in figure 6, our analytical framework seeks to identify the mediating effects of these three aspects of Liberian reality on any particular policy option, and to assess what those mediating effects are likely to imply for the realization of the four outlined primary policy objectives.

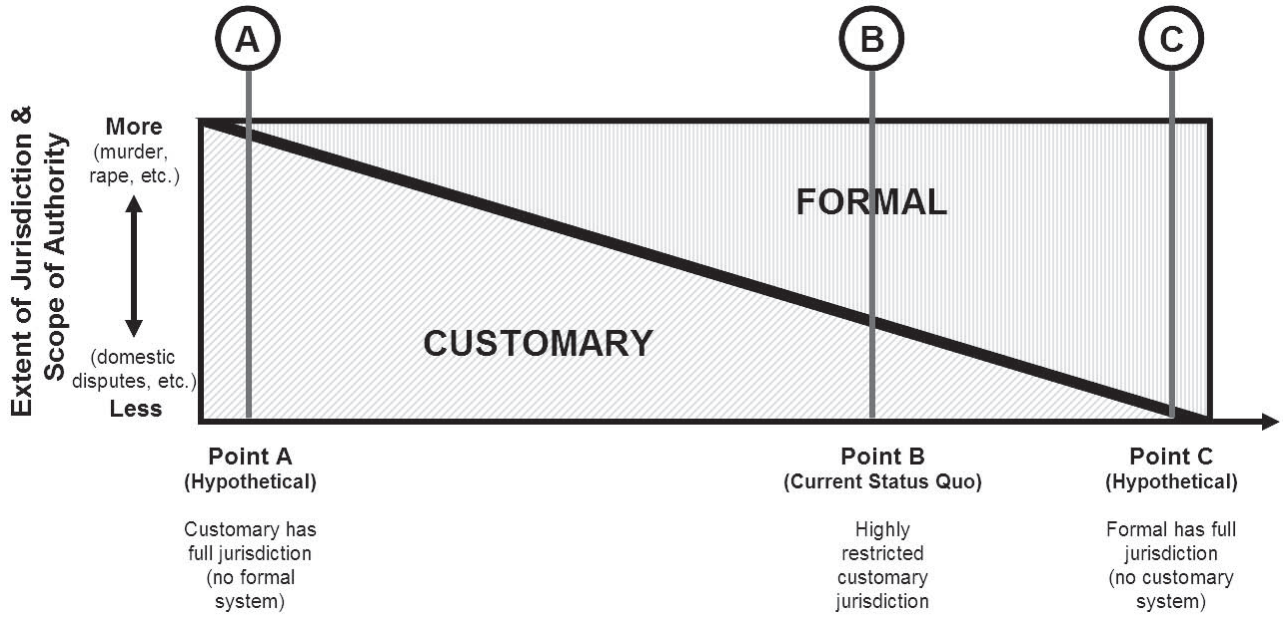
Strategic Policy Options

In applying our framework to a range of policy options, we focus here on two strategic questions regarding the relationship between the formal and customary justice systems. These are by no means the only strategic questions, but our analysis might serve as a model for application to additional policy options.

1. What should be the respective jurisdiction and scope of authority of the formal and customary justice systems?
2. What should be the key objectives and principles that guide the resolution of justice?

We note that the government of Liberia has made clear that it intends to strengthen the justice system in Liberia and bring it into conformity with international standards. It is not our intent to question that goal. Our analysis seeks simply to shed some new light on what the costs of different courses of policy action may be, and whether current policies that at face value aim to achieve those stated objectives are actually

Figure 7: The Jurisdiction Division of Labor—Option Continuum



doing so (or paradoxically actually undermining progress in that direction).

Jurisdiction/scope of authority

The options for assigning jurisdiction range along a continuum, which is represented in figure 7.

Putting aside the improbable scenarios implied at the left hand of this continuum (which would involve the elimination of the formal system), the strategic options for allocating jurisdictional division of labor range across three scenarios. Scenario A roughly represents the status quo before the civil war, in which customary chiefs report they were the first line of justice for virtually all forms of offense. Scenario B roughly represents current policy in which customary authorities are granted jurisdiction over a much narrower range of cases, excluding all violence that draws blood, major theft, rape, and murder. Finally, scenario C would represent a system in which customary forums played no role in a justice system. We choose to represent these jurisdictional options as a continuum rather than as distinct categories because a continuum allows for more nuanced consideration of points of practice that might be conceived of between those we have identified.

It is important to note that this continuum is oversimplified, since it ignores the fact that current policy permits some cases to be taken to either customary justice forums or formal courts. This introduces another dimension to our options that involves overlap and various options for institutionalizing the opportunity for forum shopping.

What then are the implications of pursuing different jurisdictional division of labor options? More specifically, what do our findings say about how local Liberian realities are likely to mediate the effects of different policy options on the realization of the specific strategic objectives we identified previously?

Strategic Option A: The Policy Implications of Staying the Course

The status quo provides the logical point of departure for this comparative analysis. Perhaps the local factor that most significantly mediates the effect of current jurisdictional division of labor policy is the sheer lack of local capacity of the formal justice system. This term "capacity" encompasses both the quantitative insufficiencies we have highlighted (e.g., numbers of courts, number of qualified justice officials), which render the formal system largely inaccessible to many Liberians; as well as the many grave qualitative deficiencies that we have discussed (e.g., costs, lack of transparency, slowness) all of which conspire to render its services highly unsatisfactory to most Liberians. Our findings raise significant

concerns about the unintended effects for most of Liberia's key strategic objectives that result from current policies regarding jurisdiction and scope of authority.

Justice objectives

It seems clear that the restriction of the jurisdiction of customary authorities without a strengthening of the grassroots capacity, performance, and availability of formal institutional alternatives, is creating a justice vacuum at the local level that is increasing, rather than reducing, the unmet demand for justice. The local perception is most certainly not one of decreasing lawlessness, but to the contrary, that criminality is on the rise, and remains unchecked. This is in part because of state justice policies themselves that effectively create a vacuum; and in the extreme, injustice is viewed as being enabled and perpetrated through the formal justice system itself.

Our data suggests that to the extent that local Liberians view the formal system as less comprehensible and more susceptible to corrupt influence than customary alternatives, the limitation of the customary courts' jurisdiction is seen as actually diminishing the degree of transparency, accountability, and integrity of local justice. The perceived susceptibility of local formal courts to undue influence and the widespread conviction that they provide particularly effective mechanisms for the powerful and connected to perpetrate injustice is simultaneously undermining the legitimacy of the formal justice system and the authority and effectiveness of the customary systems alike. Increasingly, Liberians seem to approach justice by seeking forms of "advantage"—if only to preempt the other party who is believed likely to seek to exploit the system in any way he or she can. This dynamic is thus contributing to an expansion of the local justice vacuum by also undermining the authority of customary justice authorities even in the more restricted domains of jurisdiction to which they have been confined under current policy.

Governance and peacebuilding

The justice vacuum described above underwrites a sense of rising insecurity and mounting dissatisfaction with a state whose institutions appear to most as incapable of coping with the challenges of local justice. Such perceptions do not bode well for key post-conflict governance objectives of enhancing the overall legitimacy of the state, or of mitigating intrasocietal tensions.

Expanding further on this latter point: as it currently operates the limitation of the customary system at the local level is seen as accentuating local social tensions because of the enforcement failures of the formal system and paradoxically also because of the nature of its enforcement "successes." Thus, while lack of redress through the formal system is a frequent complaint, no less so is recrimination against the socially divisive effects of its focus on punishment and its failure to attend to the restorative and socially conciliatory priorities that inform local notions of what justice should do.

International standards and human rights

Finally, we consider whether the current jurisdictional division of labor between customary and formal justice is in actual practice promoting international standards and human rights objectives. Our findings are not encouraging. Generally speaking, many human rights initiatives appear to local Liberians as absurdly myopic in their narrow focus (e.g., defendant's rights, children's rights), to the detriment of ramifying effects and with disregard for any balance among a broader array of local concerns, conceptions of justice, and socioeconomic realities. Backed by the coercive force of the formal system, "human rights" in this vein is becoming a dirty word to a broad spectrum of local Liberians, viewed by a growing number as complicit in the aggravation of social tensions and the perpetration of injustice. More specifically, we examine the impact of the current status quo on particularly "high profile" human rights concerns: trial by ordeal and rape.

With regard to TBO, the prohibition against its use may be inhibiting its practice by chiefs (or at least the extent to which they acknowledge using it), but this prohibition is not in any way discrediting the practice itself, much less its epistemological hold on the local Liberian mindset. Indeed, the robustness of this cultural mindset underwrites growing alarm at the perceived deleterious effects of these policies (i.e., the proliferation of witches), which are blamed increasingly on the state and which even fuel politically troublesome conspiracy theories about why state actors would promote these policies in the first place. As we have said, there is also evidence that these policies may simply be driving the practice into more secretive performance that further legitimizes other customary practitioners who are entirely unregulated by the state (e.g., Poro masters).

Turning to rape: is reserving the crime of rape for the formal system leading to more satisfactory rates and forms of resolution of this crime in the eyes of most Liberians? Our findings indicate that men and women alike believe that rapists generally get off with impunity when these cases are

taken to the formal courts. From their perspective, reserving this crime for the formal system alone is not improving the plight of rape victims because it rarely reaches any resolution, and is often even further victimizing them by imposing fines and fees that are prohibitive. To the extent that customary authorities refuse to respond to the evident demand from their constituents to resolve this issue, those victims of rape who cannot afford formal justice appear to be falling prey to the justice vacuum.

Our findings also raise serious questions about whether the rape law strikes a balance that Liberian women believe will realize a sense of justice for rape victims. Without reviewing the whole breadth of our prior discussion about the criteria most Liberians emphasize as priorities for justice, we should note that of the rights-oriented laws recently passed in Liberia, the rape law is arguably the one that is most punitive in nature and most narrowly focused on individual parties to the exclusion of broader social or group interests. In this sense it cuts most directly against the grain of the local Liberian conceptualizations of justice that we have previously described. As we indicate later in our discussion of the implications of allowing greater customary jurisdiction in the resolution of rape, the question of what constitutes a relatively more satisfactory resolution of this crime, and who might deliver it (customary or formal courts), particularly from the perspective of Liberian women, and of rape victims more specifically, is one that merits more focused research that is open-minded about what local women's views on this question may be and that takes those views seriously.

Notwithstanding the need for additional research on this matter, our findings at the very least raise a sobering set of questions about the human rights implications of maintaining a status quo that reserves rape for the exclusive jurisdiction of the formal system in its current form. These questions include: Are strongly punitive laws, such as the rape law, actually changing social mores and providing a real deterrent? Or are they merely playing into and reinforcing the undesirable dynamics that currently shape how outcomes are actually negotiated in the current "vacuum of justice context" that has been created by a combination of restrictions on the scope of authority of customary chiefs and the incapacity of local state justice institutions? Are broad popular perceptions that the rape law is being manipulated, and the possibility that it actually is, potentially devaluing accusations with genuine merit? In the foreseeable future will the formal system actually offer an alternative to customary mechanisms for dealing with this issue that is timely, affordable, and does not further victimize rape victims?

Ultimately, our field findings compel us to urge policymakers to assess the impact of different jurisdictional division of labor alternatives on strategic human rights objectives in terms of the de facto alternatives as they actually exist on the ground, and not as measured against an unrealized ideal expressed on paper. Here, again, the sheer incapacity of the formal system at the local level is the premier reality that frames any comparison of the effects of both systems on human rights.

Taking all of these points into consideration, our evidence points to the conclusion that in its current form of operation and at the current pace of internal reformation, it would be difficult to conclude that the expansion of the formal system's local jurisdiction at the expense of customary alternatives is, in actual practice, promoting international standards of justice.

Strategic Option B: Ceding More Jurisdiction to the Formal System

With respect to jurisdictional division of labor policy, we can confidently predict that any move to the right of our strategic option continuum (i.e., toward further restriction or outright elimination of customary justice institutions and their replacement en toto by formal courts) would most likely accentuate all of the tendencies we have outlined for the current status quo, at least absent a massive, dramatic, and rapid increase of the formal system capacity overall, most particularly at the local level.

Strategic Option C: Ceding More Jurisdiction to the Customary System

Any move to the left of the strategic choices continuum would imply some degree of reversion in the direction of the prewar system in which customary authorities had jurisdiction over more types of cases than they have now. Our analysis of the likely effects of a strategic policy move in this direction on most of Liberia's key strategic objectives is limited here to rather broad strokes, with a recognition that the devil is more in the detail than in the generalities when it comes to predicting important impacts.

However, at this broad level of discussion, two important overarching findings anchor our analysis along with our already discussed observation about the lack of capacity within the formal justice system. These are our findings:

1. Customary institutions are far more pervasive and readily accessible throughout the country, even in the most rural areas, than their formal alternatives;

2. For the most part, customary justice institutions garner considerably more local legitimacy and are regarded as fairer arbiters of justice than their formal alternatives. Again, we would reiterate that our own findings in this respect are strongly corroborated by the CSAE Oxford survey, whose independent provisional findings on this question have also been presented in this report.

Our data suggest that the following impacts of a strategic policy move in the direction of greater devolution of jurisdiction to customary authorities.

Justice objectives

Generally speaking, most rural Liberians believe that the provision of local justice would be more satisfactory in almost all respects (efficiency, fairness, satisfaction of local criteria of justice, accessibility, affordability, relevance) and in almost all types of cases, even if they passed through customary forums only as a first line of recourse. To this observation we must add some important caveats, namely, that many customary authorities and many of their constituents alike believe that there is still a need for state court intervention (1) in the most egregious cases (although the types of cases deemed highly egregious are less expansive than those currently classified as such by the state); (2) in cases in which differences between customs themselves are at the root of disputes (this is particularly a concern for minority ethnic and religious groups); and (3) as the next level of appeal once any type of case has exhausted the hierarchy of customary authority. We also add that female perceptions of the relative advantages and disadvantages of each type of forum, in particular for the resolution of rape cases, is an area that requires additional focused empirical research.

Our findings also suggest that most rural Liberians believe that the "local justice vacuum" would be significantly diminished and criminality reduced if customary chiefs were given more authority to resolve more types of cases. Here we must add another caveat: this belief rests in part on the assumption that chiefs would be allowed to resolve cases using TBO methods. Yet, the relative greater effectiveness of customary chiefs is not believed to be a function of this alone. Indeed, while many Liberians believe the effectiveness of chiefs in dealing with at least certain types of crimes (e.g., witchcraft) would be diminished if they were given jurisdiction but restrained from using TBO, most still believe that criminality would nevertheless still be reduced for several other reasons. These include the greater attention chiefs pay to "root causes," their capacity to bring local social pressure to bear in enforcement, and the premium placed in their resolutions on achieving reconciliation and negotiating forms of redress that mitigate (rather than aggravate) potentially dangerous forms of social animosity.

Governance and peacebuilding

The question of what effect some degree of devolution of jurisdiction to customary authorities might have on the legitimacy of the state and its institutions is a complicated one. On one hand, the extent to which customary authorities regard themselves, and are regarded by their constituents, as agents of the state, implies that the legitimacy they accrue could be transferred to the state that grants them authority. It is thus probably accurate to surmise that the state's local legitimacy in the justice arena might well improve if it reassigned to customary authorities some of the jurisdiction that is currently the purview of the discredited formal system. However, we should note that this question is complicated because customary authorities do not only perform justice functions but also have typically been assigned other simultaneous roles in governance, including administrative ones. Hardly unique to Liberia, this multifaceted dimension of local customary authority means that this question is wrapped up in several different policy debates, each of which attend to different dimensions of governance, and which mutually impinge upon each other when it comes to questions of legitimacy. In short, neither questions about the overall legitimacy of customary authorities, nor the extent to which they implicate the legitimacy of the state as recognized agents of justice, can actually be considered from a justice reform perspective alone.

Granting a greater role to customary authorities in local justice would likely have two effects on intrasocietal social tensions. On one hand, their greater emphasis on social reconciliation would have what most rural Liberians believe would be a desired effect that they find wanting in the forms of resolution afforded by the formal system. On the other hand, minority ethnic and religious groups do fear that customary authorities will dole out solutions that may infringe upon customs underwriten by their own social authority. In this sense such devolution would most certainly require mechanisms for monitoring and countering biases that in privileging one set of customs over another might well inflame some forms of intrasocietal tension, particularly ethnic and religious forms. Moreover, even within the

most ethnically and religiously homogenous communities, customary authorities may not be well equipped to deal alone with cases that implicate people from outside the community per se.

International standards and human rights

The unitary nature of traditional authority highlights a characteristic of customary justice that almost invariably runs afoul of international justice standards, which usually place strong emphasis on the need for judicial independence. There are fundamental differences between core principles that dictate the priorities customary authorities attend to in meting out justice and international human rights–based conceptions of justice that are difficult—and maybe even impossible—to fully reconcile. International standards are far more individualistic in their conceptualization of the rights that matter, particularly so in situations of violent bodily harm such as rape and murder. Consequently, any legal consideration of interests other than the most narrow ones are viewed as an unwarranted infraction on those rights. It is hard to see how such a view can be easily reconciled with the worldview of most rural Liberians, in which equal, or more, emphasis is given to group interests and social relations as individual rights, and in which the focus is on ameliorating a specific victim's condition in a practical way rather than on merely penalizing someone for violating a principle of law.

Arguably, the greatest concern with some degree of devolution of jurisdiction to customary authorities is that it might undermine key human rights objectives, such as eliminating onerous practices (e.g., TBO), guaranteeing the rights of women, and preventing other forms of social discrimination. At a general level, our analysis has three primary things to say to this concern.

First, to the extent that international human rights standards are narrowly individualistic and implicitly prioritize individual over and above group rights and interests, which many Liberians and their customary authorities prioritize, it is indeed likely that the criteria applied by customary authorities would violate international human rights concerns. The question of whose hierarchy of priorities should be privileged is in final instance a political question as well as one of fundamental identity, and thus one that we do not seek to adjudicate in this analysis.

Second, the devolution of jurisdiction to customary authorities does not necessarily mean that all the methods that they have used to procure justice would have to be authorized. Thus, it is entirely possible to envision a scenario in which chiefs are authorized to once again deal with manslaughter or theft cases, and yet are still prohibited from using any form of TBO in their deliberations.

Third, policymakers should avoid seeing all customary authorities as entrenched defenders of custom, unable, unwilling, and uninterested in change. Thus, for example, there is considerable disagreement even among chiefs themselves about the relative validity of the more harmful forms of TBO, as opposed to other forms, such as ingesting dirt on the theory that a supernatural power will consequently cause them to suffer physical harm if they lie about a land claim. The latter is in effect not very different than asking someone to swear on the Bible in a formal court proceeding. Indeed, another characteristic of these rituals as they were described to us is that participation should not be forced but must be voluntary. Aside from this distinction, there are several examples of customary authorities who are already experimenting with social innovation. This is a fundamental observation that informs our process recommendations about exactly what mechanisms might produce solutions that have a greater chance of successfully bringing about desired change in local mores.

Moving to more specific human rights implications of allocating greater jurisdiction to customary authorities, we consider the issue of rape. A key question is whether customary justice institutions are viewed by Liberians—most particularly women—as offering a better alternative to formal courts? Though inconclusive, our data is nevertheless suggestive. First, we found no evidence that when chiefs do intervene to resolve these cases they are doing so in ways viewed as unjust or, more specifically, in ways that are unsatisfying to women. Second, this lack of any explicit statements of dissatisfaction about how chiefs (or family representatives) resolve rape cases stands in rather marked contrast to the very vociferous and explicit statements of dissatisfaction with the outcomes for rape cases produced by the formal system. Third, a fair number of chiefs indicated that they are still solicited by their constituents to adjudicate such cases. This greater degree of satisfaction (or at least a lesser degree of dissatisfaction) with customary mechanisms for dealing with rape may partially reflect greater local confidence in the overall effectiveness and enforcement capacity of customary (as opposed to state) mechanisms. However, this preference may also be driven by Liberian ideas about what justice should entail. While the rape law may reflect the way policymakers believe Liberian women should think about rape, its consequences, and its remedy, our data at the very

Figure 8: Guiding Objectives and Principles for Criminal Justice Outcomes

Priority Level	Customary	Formal
Higher (Superordinate)		
↑	■ Reconciliation ■ Restore victim's condition ■ Prevent recurrence by addressing contributing social factors ■ Other social interests ■ Punishment of perpetrators ■ Fees	■ Fees (in practice if not principle) ■ Punishment
↓		
(Subordinate) Lower		
Excluded		■ Contributing social factors ■ Other social interests ■ Grievance of perpetrator ■ Restore victim's condition

least casts some doubt on assumptions that it actually strikes a balance that local Liberian women believe to be the right one for realizing a sense of justice for rape victims.

While more focused research is required to ascertain the views of rural Liberian women on this question, one might consider it wholly rational that the current social realities with which they must contend for the foreseeable future impact these views. Thus, the current rape law's provisions may make a great deal more sense in a context in which

- a rape victim can assume she will not have to continuously interact with a perpetrator's family;
- community interactions are not essential to basic subsistence and survival;
- a court is in fact likely to successfully prosecute and imprison a rapist;
- a long litany of prohibitive fees and costs will not be levied in the formal court.

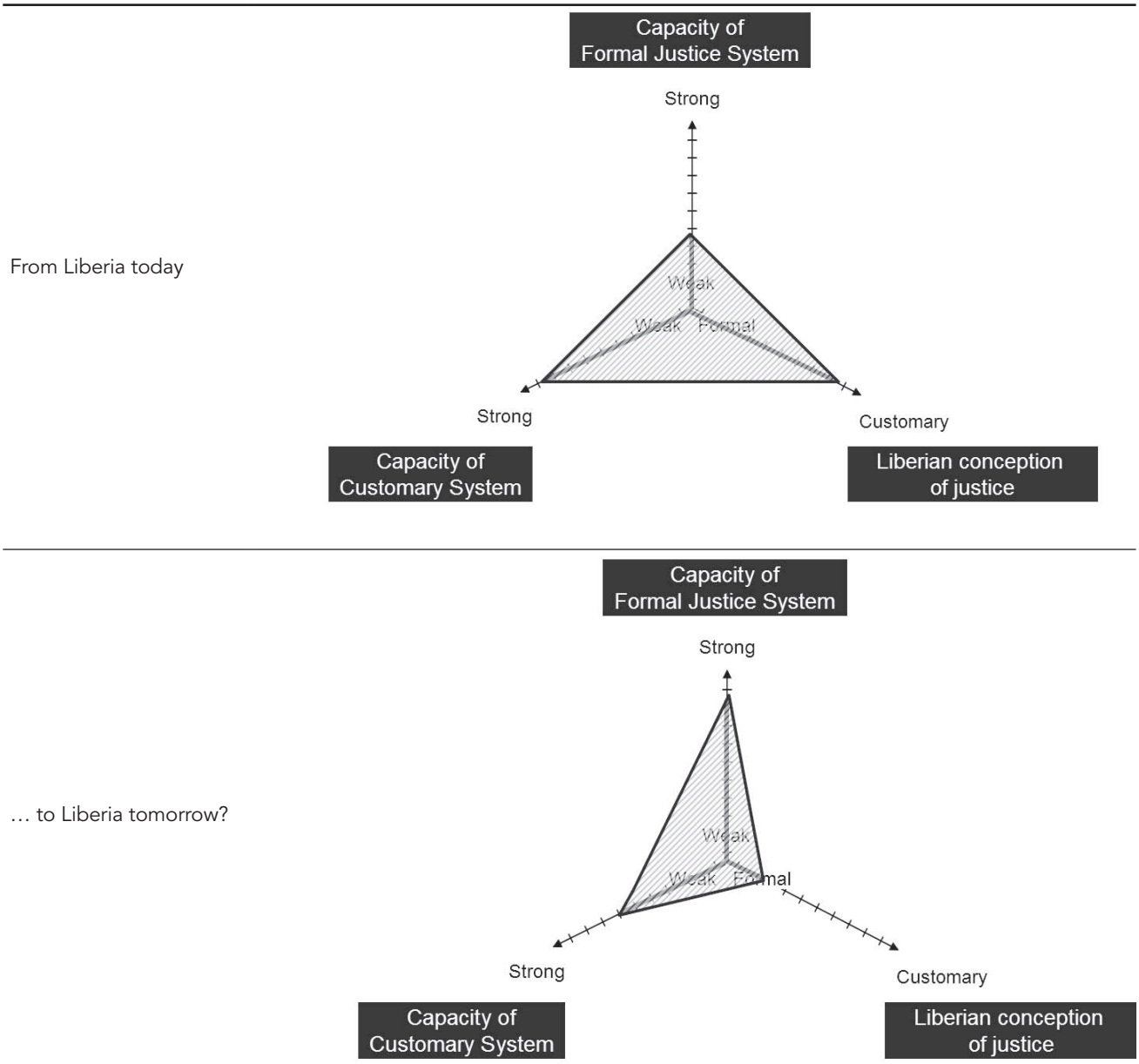
Conversely, in the rural Liberian context, a greater emphasis on social reconciliation and restoration may prove to be quite rational calculations. The key here may be to assume less and ask more, taking rural Liberian women as serious and capable assessors of their own situation and of the best options for improving it. In our view, more grounded research that highlights the opinions of local Liberian women, and rape victims themselves, is needed before a reliable answer to the question of whether customary jurisdiction in this area would or would not improve the situation of women and more effectively address rape than do formal courts.

Objectives and Principles that Guide Justice

A second set of strategic choices that must be confronted about the role and relationship of formal and customary institutions involves the question of which principles are to be prioritized in defining the objectives of justice and procedures for achieving it. As we discussed extensively, the formal and the customary systems currently operate according to very different priority hierarchies, which in turn play a major role in defining the process by which cases are believed to be legitimately resolved. Our graphic representation of the options in figure 8 reflects the fact that in this instance the strategic options appear to us to be more starkly and categorically differentiated (although priorities in the customary system do shift to a position that is in a limited sense more proximate to those prescribed in the formal system to the degree that cases involve offenses that are particularly grave and committed by strangers rather than members of the community itself).

The question of what should be the objectives and guiding principles of justice are separable from policy deliberations about jurisdictional divisions of labor. In this respect, we underscore a fundamental finding that we believe should be a primary consideration in any debate about the development of rule of law in Liberia—namely, even if the formal court system was functioning free of corruption, exactly according to its explicit precepts and making more timely resolutions, and was more accessible to average Liberians, it still would not be capable of delivering the justice that would satisfy most rural Liberians. This is because Liberians emphasize criteria and priorities in their definitions of justice in ways that differ from those that guide the formal

Figure 9: Changing realities



system. Perhaps the most important point about this finding is that if justice reform policy wishes to realize the vital policy objectives that matter for Liberia's future, it must deal with this reality in its own right regardless of whether the jurisdictional division of labor grants a greater or lesser role to customary institutions, or even eliminates their role altogether. Local perceptions of what satisfactory justice should entail are critical to the local legitimacy of justice institutions—formal or customary. The adjudication between these different conceptions of justice involves deeply political questions about Liberia's own identity and whose values, precepts, and mores it will privilege at the expense of others.

Our research suggests that a revision of emphasis in the forms of punishment or redress (from punitive to restorative) may be a particularly promising and socially welcome point of entrée. Without being prescriptive, we would suggest that policymaking on this issue take into account the following questions: In what ways might the formal system itself benefit from reforms that bring it closer into line with at least some of the socially prevalent cultural assumptions that inform the Liberian definitions of "justice" we have outlined here? Should

redress be more restorative or merely punitive? Should narrow party interests or broader communitarian interests be allowed to matter in case resolution? By extension, what benefits may accrue to rule of law efforts that dedicate efforts to identifying local precepts of justice and actively seek how to strike socially acceptable balances between these and established international norms rather than focus solely on realigning customary mores with established legal frameworks and international expectations?

Toward Successful Policymaking

The challenges that confront the Liberian government and its international partners in the effort to establish rule of law in the aftermath of the country's long civil war are daunting, not least of all because key strategic objectives may suggest courses of policy action that are at odds with each other. For example, how is the government of Liberia to cope with the challenges that practices such as TBO pose?

In bringing local Liberian perspectives to bear on this, and many other questions, our findings and analysis have, if anything, made these questions more difficult and complicated by rendering visible costs and consequences (e.g., in social legitimacy) that have hitherto remained unconsidered. Our analysis so far highlights the reality and more specifically nuances the contours of these dilemmas, but admittedly does not offer many ready-made or self-evident solutions. Here we offer two suggestions on how policymakers might go about developing successful reform strategies.

Transitional policies: reflecting the reality of the moment

At the risk of being repetitive, it is our strong view that successful policies must reflect a deep understanding of and be responsive to realities on the ground—in particular, the three realities we have emphasized here: capacity and legitimacy of the formal system at the local level; capacity and legitimacy of the customary system; and Liberian beliefs about what constitutes justice.

As demonstrated in figure 9, these realities will undoubtedly change over time, requiring a reassessment of policies to determine if the strategic objectives are still being maximized. However, we would warn against any overly optimistic assumptions about how quickly these realities change. While our study clearly underscores the need for a great deal more attention to the wide-ranging needs of the local level of Liberia's formal justice system, it seems to us highly unlikely that current levels of donor and government of Liberia resource allocation hold much promise of enabling such change within the time parameters initially contemplated by this study (Liberia's first post-conflict decade). Indeed if other post-conflict cases—even the more optimistic ones—have anything instructive to say about the rate of change that might be effected in Liberia's formal system, it is quite likely that the meaningful metric for significance in change will actually be generational.

In the meantime, rather than set standards at an unattainable level, it would be wise to consider transitional policies aimed at providing the best possible justice under the circumstances, and at creating an environment of openness and trust between the customary and formal systems that seeks to bridge the gaps and move toward full realization of Liberia's goals for its justice system. Again, without being prescriptive, we suggest a preliminary—and by no means complete—list of policy directions that might be considered:

- Place greater emphasis on building the capacity of and easing access to the formal justice system at the local level—the point of contact with the local population—for example, by reducing fees, reducing case resolution time, eliminating the need for legal representation in certain cases, etc.
- Incorporate restorative principles into formal adjudication of criminal cases—for example, by allowing victims to opt for compensation in lieu of (or in addition to) penal sanctions on the guilty (rather than requiring them to pursue costly civil cases), and by incorporating a role for traditional authorities to help reconcile the parties.
- Adopt a more nuanced approach to defining jurisdictional limitations—for example, by introducing criteria to determine when crimes may (and may not) be adjudicated by customary authorities. Such criteria might include whether or not the parties prefer customary adjudication, whether or not a third party is affected, whether or not there is a political or ethnic dimension to the crime, etc. Among the benefits of such an approach would be a reduced caseload in the formal courts.
- Restrict opportunistic forum shopping by encouraging the exhausting of traditional resolution in most cases (except for where this would lead to clear injustice) prior to entry into the formal system.

- Vastly increase accessible legal assistance and representation to the many litigants who fall victim to the vagaries of justice.
- Ensure that policies aimed at promoting human rights take into account the larger socioeconomic context of rural Liberians.

Recognizing local communities as a neglected driver of change

What has impressed all of us involved in this field research is the degree to which local Liberians are themselves engaged in imagining and experimenting with innovative solutions to some of the seemingly intractable problems. For example, there is the case of a local zoe who appealed for the organization of a national process akin to disarmament, demobilization, and reintegration initiatives elsewhere to consider how to deal with the scourge of witchcraft without resorting to TBO methods; the man who suggested convening a national conference with the Traditional Council of Liberia to develop a policy guideline on what parts of traditional resolution might be considered in conflict resolution and to ensure that the Ministries of Internal Affairs and Justice do not contradict each other; and the woman who recommended that police be trained to resolve matters in a way that allows parties to live in peace without animosity and not be overly focused on fees.

Rural populations and customary authorities are not often thought of as sources of change and innovation, but our data convinces us that some of them actually can be. While the many "dialogues" that have been implemented by national and international actors purport to be an exchange of ideas between local communities or citizens and those who are making policy at the top, in actual practice most of these dialogues tend to look like traffic on a one-way street. Typically, locals are "educated" (i.e., simply told) about new laws, programs, or solutions and very rarely ever asked to participate in their formulation or asked to make suggestions about how they might be improved. When local opinions are sought in such dialogues they tend to quickly degenerate into a long "gripe session" that identifies a laundry list of problems; such a process unfortunately does not tap the local imagination for solutions to these problems.

However, the local knowledge that local actors can bring to bear reflects local norms and beliefs, as well as an awareness of how change in institutions or practices may affect the broader social context in which they are embedded. This awareness is likely to allow for a more nuanced assessment of local social barriers and a receptiveness to forms and rates of proposed change. It can also serve as a wellspring for new ideas about legal and institutional reform that are grounded in lived local practicalities. It can thus provide a new source of ideas that can be used to devise more realistic strategies for implementing and giving form to desirable change.

We believe that these local ideas can be tapped through a different type of consultative process, consciously and explicitly engineered "to identify and listen" to local ideas and solutions rather than telling them what those are. This process should be carefully designed to get communities to do more than identify problems; it should also get them involved in imagining solutions, what change should look like, and how to effectively bring it about. This consultation process should aim not only to tap a new source of ideas for change but also to foster a sense of community engagement in the national legal reform process (thus enhancing its legitimacy), while also building the capacity, local knowledge, and contextual understanding of national key stakeholders and international actors alike. Drawing upon the lessons learned through previous dialogue efforts by a handful of national (Association of Female Lawyers in Liberia) and international (Carter Center, Inter-Peace) organizations who have increasingly moved away from a "telling" and more toward a "listening" form of engagement with local communities and through additional consultations with UNMIL-LJSSD, we have more concretely outlined the steps that could realize such consultations in an annex to the electronic version of this report, which can be found at www.usip.org. It is our belief that such a mechanism can allow policymakers to develop reform strategies that are practical because they continuously take into account and update their understanding of the types of local realities and social beliefs we have analyzed here, and also foster more meaningful local participation that can prove invaluable in Liberia's rule of law reform process.

Conclusion

In conclusion, we would emphasize that this report, and this section in particular, is by no means the final word on this complex subject. It is our hope that the findings and analysis we present here will stimulate a more systematic discussion by a broad range of stakeholders in Liberia about how justice reform strategies might take into account social realities. We expect that such discussions will greatly enhance and sharpen this analysis, and may challenge our conclusions as well. We also hope that the research methodology we used in this proj-

ect may inspire others to engage in empirical studies that will deepen and broaden the set of data available to policymakers on these issues.

Finally, everyone who participated in this project is guided by a hope in the lasting peace and stability of Liberia. And it is to those individuals in Lofa, Nimba, and Grand Gedeh Counties, along with Monrovia, who shared their time and opinions that we our most grateful. May this study be a vehicle for their voices being heard and heeded in the ongoing reconstruction of their nation.

[Appendix]

APPENDIX: COMMUNITY-BASED JUSTICE AND THE RULE OF LAW IN LIBERIA

by Bilal Siddiqi and Justin Sandefur

This study examines the accountability and performance of justice delivery mechanisms in post-conflict Liberia. The underlying data were collected as part of a baseline survey that sets the stage for a randomized controlled trial of an innovative access to justice intervention implemented by the Carter Center.

Research Questions

The following research questions guide the study:

- How do individuals who experience crime and conflict choose between multiple legal institutions?
- Does institutional competition increase accountability?
- Can a community-based law and justice intervention improve institutional performance and the quality of justice delivery?

Methodology

Through 2008–9, CSAE conducted a representative household survey of 2,500 households spread over 176 villages in five Liberian counties: Bong, Grand Gedeh, Lofa, Maryland, and Nimba. The selection of communities was random and based on standard probability-proportional-to-size sampling. Twelve to sixteen households were selected randomly within each community. Each household was adminstered a 60–90 minute interview that collected detailed information on the household's experience with a range of crimes and conflicts, including the forums visited, the time taken and costs incurred, and details of the judgment, including reported subjective satisfaction. The interviews also collected socioeconomic and attitudinal information including household size, ethnic and religious affiliation, war experiences, educational background and decisions, occupation, expenditure patterns, asset ownership, legal knowledge, and civic attitude towards violence and crime. In addition, more than 300 key informant interviews were conducted with local police, magistrates, commissioners, and community justice providers (chiefs, elders, secret society leaders) to measure the overall incidence of crime and conflict, norms and beliefs, and the broader institutional context.

Findings

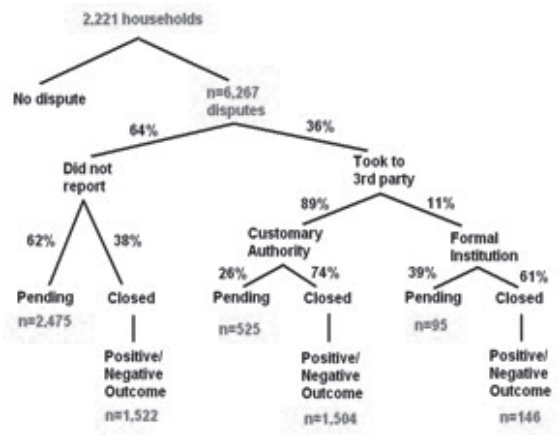
- Liberians are (often surprisingly) candid about their lived experience of crimes, conflicts, and disputes, with the average household reporting three disputes and several reporting more than six or seven to the survey team (see figure A.1). *Yet most people do not carry disputes to any forum* (see tables 8 and 9 in the report's main text).
- While formal legal reform in Liberia is proceeding at a rapid pace, *formal legal institutions are costly, difficult to access, and practice laws and procedures that the ordinary Liberian considers alien.* Thus, women, for example, despite reporting less general agreement with the supremacy of customary law, are also less likely to take cases to formal institutions. The formal system of justice is also widely seen as less "fair" (see figures 1, 2, and 4 in the main text and table A.1).
- *The informal system is overwhelmingly the system of choice along the entire spectrum of conflicts and disputes,* with only the most serious crimes such as murder and rape being taken in equal numbers to both systems (see tables 8 and 9 in the main text). Most Liberians surveyed stated that decisions by traditional leaders should take precedent over the formal law (see figure 3 in the main text).
- Although more proximate and socially acceptable, *the informal system is not perfect and shows signs of being dominated by local influential individuals.* When "powerful" people (landowners, administrators, and other local elites) are involved in a dispute, the case is less likely to be reported anywhere, and if reported it goes to the informal system. Poorer people (proxied by those who stated subsistence farming as their main or sole occupation) are less likely to report cases to any forum (see figures 3 and 4 in the main text and table A.1).
- *For policymakers, this suggests a trade-off between extending the accessibility and relevance of the formal system, and strengthening the customary system with an aim to make it*

Table A.1 Multinomial logit analysis

Percentage change in odds for unit increase in X	Formal–Informal	Formal–No forum	Informal–No forum
Plaintiff: Ethnic majority [1=Yes]	–20.1	–22.0	–2.5
Plaintiff: Male [1=Yes]	62.8**	60.4**	–1.5
Plaintiff: Powerful [1=Yes]	7.5	–14.8	–20.8***
Plaintiff: Powerful relations [1=Yes]	35.6*	-3.2	–28.6***
Plaintiff: Subsistence farmer [1=Yes]	–44.0***	–42.3***	3.2
Defendant: Ethnic majority [1=Yes]	1.7	6.0	4.3
Defendant: Male [1=Yes]	155.1***	232.2***	30.2***
Defendant: Powerful [1=Yes]	41.0	3.6	–26.5**
Defendant: Powerful relations [1=Yes]	16.4	11.9	-3.9
Defendant: Subsistence farmer [1=Yes]	–42.5**	–44.1*	-2.8
Plaintiff [1=Yes]	–54.8**	–98.9***	–97.6***

N = 4987; dispute dummies not shown; * statistically significant at the 10% level (p<0.10); ** statistically significant at the 5% level (p<0.05); *** statistically significant at the 1% level (p<0.01)

Figure A.1 Schematic Representation of Data Set



more progressive and open. While the formal system is considered far removed from the norms and reality of ordinary Liberians, there is some tentative evidence that nongovernmental organizations are considered somewhat less alien (see figure 2 in the main text), perhaps suggesting an additional avenue for policy.

Ongoing Work

The Carter Center, in conjunction with the Catholic Justice for Peace Commission, is piloting an innovative Community Legal Advisor (CLA) program that seeks to strengthen the links between the formal and customary systems. Mobile CLAs visit rural communities on a regular schedule, providing free-of-cost legal advice, assisting disputants in negotiating local institutions, and directly mediating disputes if so requested. CSAE is working in partnership with the Carter Center to implement a randomized controlled trial of the intervention. Half of our baseline survey communities have been randomly selected to receive the treatment (visits from the mobile paralegals), and the remainder have been assigned as control communities. Follow-up surveys will be conducted in both treatment and control communities after several months of exposure to measure differences in key outcomes such as the incidence, reporting, and resolution of disputes; reported satisfaction and trust in the justice system; household economic status and decisions; and the behavior of justice providers. The results of the study will deepen our understanding of the effectiveness of interventions designed to strengthen community-based accountability and its implications for household wellbeing.

About CSAE

The Centre for the Study of African Economies (CSAE) is an economic research centre at the University of Oxford. CSAE carries out economic research with a particular focus on Africa. CSAE work in Liberia is being conducted in partnership with the Carter Center, the United States Institute of Peace, the George Washington University, and Yale University. The research has received generous support from the Open Society Institute (OSI). In Oxford, the project is housed in Improving Institutions for Pro-Poor Growth (iiG), an international network of applied research institutes across Africa, Asia, the United States, and Europe. iiG research is funded by the UK

Department for International Development (DFID), the William and Flora Hewlett Foundation, and the OSI. The views expressed are not necessarily those of DFID, Hewlett, or OSI.

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Saah N'Tow currently heads the President's Young Professionals and the Scott Fellows' Program in Liberia, joint programs between the government of Liberia, the Center for Global Development, and John Snow Incorporated. He formerly served as the national coordinator of the field research team on the United States Institute of Peace and George Washington University research project "From Current Practices of Justice to Rule of Law: Policy Options for Liberia's First Post-Conflict Decade." He holds master's degrees in humanitarian assistance and human services administration from Tufts University and Springfield College, respectively, and a bachelor's degree in mathematics from the University of Liberia. As a community activist and independent researcher and writer, he has been engaged with issues of concern to the Liberian diaspora in the United States, including its role in its homeland, and more generally with economic and social development initiatives in his native Liberia. He has also published a collection of original poetry titled *Dirges for My Homeland*.

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As Liberia reconstructs institutions shattered by years of brutal conflict, the government and its international partners have focused on the formal justice system, refurbishing courthouses, training judicial and legal officers, and strengthening legislation that protects fundamental rights. Yet most Liberians resolve their disputes through customary mechanisms and institutions. To many Liberians, the formal justice system is seen as not only incapable of providing satisfactory justice but also as one of the most effective ways for certain social actors to perpetrate injustice in service to their own interests. This study, based on interviews and focus groups in Liberia, investigates how Liberians assess their options as they seek redress for crimes and civil disputes, and it explores the implications for reform of the traditional justice system.

Related Links

- *Would You Fight Again? Understanding Liberian Ex-Combatant Reintegration*, by Richard Hill, Gwendolyn Taylor, and Jonathan Temin, (Special Report 211, September 2008)
- *Constructing Justice and Security after War,* ed. Charles T. Call, 2007
- *Combating Serious Crimes in Postconflict Societies,* ed. Colette Rausch, 2006
- *Responding to War and State Collapse in West Africa,* (Special Report 81, January 2002)

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