Peacebuilding in Liberia and the Case for a Perspective from Below

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Executive Summary
Rule of law reforms in Liberia over the past five years serve as a clear example of how the international community has failed on this point, as the country's own practices have been generally neglected in the process. Characteristically, there is little updated information on the customary law and traditional practices of Liberia. In investigating how the international community addresses SGBV in Liberia, we found within the liberal peacekeeping/building paradigm few analytical tools that could be used to gain a solid understanding of the host country 'from below'. This area of society remains a professional blind-spot and represents a gap in the efforts of the international peacekeeping/-building community to build a sustainable peace in the country.

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Perhaps the greatest conceptual and operational weakness of existing reform efforts is that they tend to be informed by donors' own institutional and administrative experiences, rather than by the political, economic, and social realities of recipient countries. (…) International support for customary or non statutory security and justice systems may be a step toward rectifying a weak state legitimacy by explicitly enabling citizens to choose their own forms of security (Annual Review of Global Peace Operations 2010, p 19)

Introduction

Since the end of the conflict in Liberia, a main priority of the UN Mission (UNMIL), UN agencies, NGOs and INGOs has been to deal with the very high levels of sexual violence against women and children. Central to these efforts have been a series of Rule of Law reform initiatives, notably the establishment of Women and Children's Protection Sections (WACPS) as physical units adjacent to over 30 police stations throughout the country, staffed by teams of police officers and dedicated to addressing sexual and gender-based violence – SGBV.

This focus has led to various initiatives from the international community, including a joint UN and Government of Liberia national strategy on the implementation of UN Security Council Resolution 1325 (see Government of Liberia 2009), the creation of a Ministry of Gender and Development, and several campaigns aimed at engendering awareness. Despite these initiatives, the problem continues. Few perpetrators are brought to justice; even fewer face trial and are found guilty.

In the present paper we investigate the tension which lies between addressing specific issues *per se,* and viewing them within their broader context. Much of the problem may lie in the fact that SGBV is not dealt with in the broader context of (re)building rule-of-law institutions as a whole, or by taking into account how local traditions and systems of justice administration work in practice. There is, we argue, in supply-driven humanitarian and development aid an inherent danger that results in the funding of short-term projects that resonate with donors, at the expense of long-term infrastructure projects. This is also apparent in efforts to deal with rule-of-law institutions. Operating on a *tabula rasa* basis seems to be the preferred option of international reformers in the wake of armed conflicts. Too often, the assumption is that since 'it's a jungle out there', things must operate according to the laws of the jungle. These inherently work against the ideals and principles which international institutions *ipso facto* embody – especially in the case of SGBV.

Based on a brief account of the implementation of policies aimed at dealing with SGBV in Liberia, we argue that these suffer from various

shortcomings symptomatic of the generic and supply-driven way in which the UN and international donors tend to address (re)construction challenges in post-conflict areas. We see a fundamental disconnect between the international level where policies are devised, and the local level where these are implemented. This disconnect is due largely to the fact that policy-makers at the international level lack the knowledge and analytical means necessary to grasp the root causes of the problems, as well as because of structural factors (including the dearth of infrastructure) which limit the effectiveness of measures implemented. International donors and the UN often assume that *nothing* is working and that everything in a post-conflict environment will have to be built anew. Measures implemented are often ineffective or counterproductive, and international actors are largely left to deal with the symptoms.

Remedying these difficulties will require taking stock of how institutions worked before the intervention, and tackling the problems in a comprehensive manner, rather than in the piecemeal fashion that suits the agendas of largely Western donors. For, as we argue, the problem in Liberia is not impunity for SGBV crimes, but for crimes in general.[1] In the final section of this paper we examine such questions through material and analysis from a recent report on rule-of-law reform in Liberia by the US Institute of Peace (Isser et al. 2009). From the experiences of Liberians with both traditional arrangements and customary ones, we argue that, perhaps paradoxically, the rights of women may in some cases be better advanced by allowing the traditional chiefs to administer justice.

Background

Scholarly research on UN peacekeeping operations has a rather short history, dominated by theory from the discipline of *international relations*. The focus has largely been on operational issues, rather than analysis of the broader picture of international politics and global governance.[2] However, there are exceptions (see Center on International Cooperation, 2005, for an overview); and in the past decade, researchers like Roland Paris and Michael Pugh have questioned the practices of peacekeeping in relation to the prevailing global norms and the global order that peacekeeping serves.[3] Whereas these scholars argue that peacekeeping tends to be flavoured by dominant ideologies, we focus on how this happens, by questioning the rationality behind

1 The paper builds on fieldwork undertaken in Liberia in December 2007, May 2008, and January/February 2009 and is based on the general implementation of UNSC resolutions on women, peace and security (1325, 1820, 1888 and 1889), visits to WACPS, and interviews with NGO workers, UN officials and Liberian government officials.
2 Bellamy (2004).
3 See: Paris (2000, 2003) and Pugh (2004)

peace efforts. The *à la carte* methods of Western donor countries negatively affect their ability to listen, consult and in general demonstrate greater understanding for a society in a post-conflict situation. This was also highlighted by UN SRSG Kai Eide in his final press conference in Afghanistan, where he urged the international community to '… understand the pulse of (…) (the) society better than we do today.'(Eide 2010)

Rule of law reforms in Liberia over the past five years serve as a clear example of how the international community has failed on this point, as the country's own practices have been generally neglected in the process. Characteristically, there is little updated information on the customary law and traditional practices of Liberia. In investigating how the international community addresses SGBV in Liberia, we found within the liberal peacekeeping/building paradigm few analytical tools that could be used to gain a solid understanding of the host country 'from below'. This area of society remains a *professional blind-spot* and represents a gap in the efforts of the international peacekeeping/-building community to build a sustainable peace in the country.[4] The best attempt at mapping Liberia's customary justice system is probably that made by Isser and her research team from USIP (2009). They provide thorough documentation of this traditional system, how it has survived years of civil war and remains active and functional in all communities throughout the country, at all levels.

Liberia's Customary Justice System

The local level has an impact on the national level, and vice versa. In Liberia this is especially relevant as the country has a dual justice system: a formal court hierarchy under the judiciary, and a system of customary courts authorized under the Hinterland Regulations. This system was established as an attempt on the part of the Liberian state and the Ministry of Internal Affairs to extend its authority by using indirect rule. The landscape of the justice system in Liberia is a complex one, involving several different and parallel systems.

The levels of the customary justice system range from senior members of a household to the county superintendent. Below is a brief overview of the hierarchy, in descending order (see also Isser et al. 2009: 23):

- county superintendent
- district commissioner
- paramount chiefs
- clan chiefs

4 Seabrook (forthcoming).

- town chiefs
- quarter chiefs
- senior member of a household / family

This customary justice system involves 'non-binding arbitration with additional elements of mediation' (Isser et al. 2009: 26), whereby cases can be appealed to higher levels and to the formal system. If, for example, one of the parties disagrees with the decision of a town chief, the case can be taken further to the next level, which might be the paramount chief or the formal system. However, the customary justice system is not permitted, by state law, to handle matters of serious crime. In order to find the truth and assign guilt in a case, the chiefs consult civil society – communities of elders, youth groups or families in the local community. The chiefs are also accompanied by elders when they examine witnesses. Isser and her research team describe how the customary justice system is anchored in the social community by this consultative process, and how the system is capable of 'addressing deeper social factors that inform dispute'. The process is said to be transparent and public. The decisions are part of a system that relies on the substantial role played by kinship and the elders in Liberian society. Redress is first and foremost aimed at social reconciliation. The most efficient means of ensuring that unwanted behaviour is put to an end is not punishment, but the social shame placed upon the guilty part. As of today, this customary system is preferred by Liberians in general; it is seen as being more accessible and efficient than the formal system (Legal Working Group 2009: 3).

Another category in the customary system is the secret societies. Prominent secret societies in Liberia are the Sande, the Poro and the United Brothers of Friendship (UBF). The first two societies exist throughout Liberia and are inclusive in their recruitment strategy, the last one, UBF, is perceived as being part of, and as maintaining the position of, the elite culture in Monrovia. Unlike Liberia's customary system, these secret societies are not recognized by law or the state, but gain their authority from local communities. Whereas the customary system seems to have been limited in recent years, Isser and her research team found trends to indicate that secret societies in Liberia are prominent and play an increasingly influential role on the justice system.

Still, most of the disputes solved in Liberia are solved through recourse to the customary system. The Legal Working Group has expressed concerns about the constraining of the customary systems (2009: 7). Furthermore, the Group fears that undermining the customary system and the traditional leaders by limiting their authority might

result in a justice vacuum that could destabilize communities and regions.

Both the reports mentioned above also note concerns about the customary system as regards human rights, gender equality and separation of power. That, however, does not mean that the international community should not have strategies for building on these traditional structures as long as the same concerns can be directed towards the formal justice system) . The case study presented below shows the effects of this gap in justice-reform efforts, and indicates that mapping and integrating customary structures in the reform can provide a more comprehensive approach to building a sustainable peace in Liberia.

Too Little & No Plan?

The efforts of the international community to address SGBV in Liberia have been numerous (see Schia and de Carvalho 2009 for an overview), and include building special Women and Children's Protection Sections (WACPS) adjacent to every county headquarters of the Liberian National Police (LNP). However, despite various action plans – both international and national – anti-SGBV efforts still lack coherence and have not yielded the results initially hoped for. The UN has recognized this: 'sexual violence against women and children remains a central reality of life in Liberia' (UNMIL 2008). Over fifty cases of rape are reported every month, and few of these are sent to court. An unknown number of cases are never reported to the police.

The reasons for this are many. Reporting a case of SGBV to the police can lead to stigmatization of the victim from the community. Also, as the WACPS are based mainly in county capitals, reporting a crime can take the victim days of travelling. As an NGO worker told us, 'It's difficult to report to the police as there is no way of contacting them in the countryside.' Furthermore, the police often lack even basic logistical support. Some counties count only a single police car, and even fewer have the means to pay for fuel. The police often need to be pressured in order to investigate – and victims reporting a crime are routinely asked to contribute financially towards its solution.

Those who do contact the police are often left in the difficult position of having reported a crime and identified the perpetrator (who more often than not is known to the victim), without the police having the means to investigate or otherwise follow up. Furthermore, there is no proper backup for police investigation, and few officers have received the necessary training. Most convictions happen either through concession or witness corroboration. Although international donors have

sought to remedy this, much of what has been provided is incompatible with Liberian police methods.

Finally, even if a case is investigated, proper prosecution routines are generally lacking. Outside of Monrovia, there are few qualified judges, and few places which have all the elements of rule of law. As the situation is now, large numbers of people are jailed without ever having been prosecuted.[5] In consequence, SGBV is still largely dealt with by the traditional customary system and solved through payment of a monetary settlement. Faced with these challenges, the UN and international donors have set up various programmes, with SGBV one of the priorities to be dealt with.

SGBV and the Rule of Law: A Fragmented Approach

However, these programmes are often disconnected or not based on actual local needs. As a UN official said to us, 'The UN tends to fragment vulnerable issues. SGBV has become fragmented and rape has taken all the attention.' An NGO worker explained: 'GBV tends to be equated with rape, at the expense of other forms of gendered violence.' Other issues which the UN generally condemns, such as Female Genital Mutilation (FGM), a practice which 10 UN agencies united in condemning on 27 February 2008, have also been absent from the UN agenda in Liberia, despite widespread practice. As was confirmed to us by a UN official, 'The UN work on "harmful traditional practices" has been in the pipelines for years, but the government are not keen on dealing with the issue.' FGM as a form of gendered violence has thus been entirely absent from the UN's agenda, despite international condemnation of the practice. It has been put in the shadow of rape, and been disconnected from SGBV: 'Rape is easier to tackle than FGM: the government blames the conflict, and most cases are in rural areas', a UN official explained.

This fragmentation of SGBV also occurs at the strategy level, where SGBV policies are implemented without taking into account the broader processes of (re)building rule-of-law institutions. As one interviewee put it, 'there is no question that rapes are bad, but the response is devised wrongly.' In many cases, a deeper understanding of the root causes of SGBV is entirely lacking in UN policies. For instance, when asked what understanding of the causes of rape informed the response to SGBV devised by the UN, none of the UN officials we interviewed were able to answer. As to the causes of rape, an official in UNMIL's Gender Section told us (in January 2009): 'We are doing our research.' UNMIL's first report on the causes of rape was reported

5 UNMIL's Correction Advisory Unit reported in 2008 that the prison facilities are massively overcrowded, with over 90 per cent of the prison population in pre-trial detention.

to be in preparation. But whether this report will have an effect on the policies pursued by UNMIL remains to be seen. As one UN official explained to us: 'The problem we have with these [strategies] is that we have hundreds and hundreds of strategies. It's just madness! It's why nothing ever gets done.'

It also seems that efforts to deal with SGBV have come to the fore, at the expense of other processes such as judicial reform, training new legal specialists, and fighting corruption. As one interviewee told us, '[GBV work] is diverting the attention from the serious problem, corruption. It detracts the attention from corruption. The government today is massively corrupt.' According to this legal specialist, the problem was that too much emphasis was put on addressing solely SGBV, and that other more problematic issues were left unaddressed: 'Everyone looks at GBV at the expense of a holistic picture of the criminal justice system. The problem is the legal system as a whole.' A view we encountered frequently was that the problem in Liberia in terms of impunity for SGBV crimes was not so much that the system was biased against women, but that 'GBV programmes do not address the root causes of why people can't get justice.' Work on tackling SGBV today focuses largely on the symptoms, without addressing the cause. As one interviewee exclaimed: 'Why can't victims of rape get justice? It's not because they're women; not because they're victims of rape; it's because *nobody* gets justice here!' While the UN and international donors seek to deal with SGBV through various programmes, these are seldom coordinated, take little stock of the institutions already working, and lack an understanding of the cause of the problems at hand.

Liberia: Terra Nullius?

Thus, the UN has little understanding of the traditional customary system. Indeed, most UN people we interviewed had only a marginal understanding of the Liberian penal code. As a case in point, UN personnel and NGO workers we spoke with generally saw it as a great success that rape had been introduced in the penal code as a crime in 2005 as the result of pressure from the international community. Symptomatic of this lack of knowledge of the judicial system is IRIN News (the Integrated Regional Information Networks, part of the UN Office for the Coordination of Humanitarian Affairs) which states, in the country profile of Liberia, 'Liberian law prohibits domestic violence; however, violence against women has become widespread. Several NGOs have programmes to help abused women and girls, and to increase awareness of their rights. […] In December 2005, parliament passed legislation to make rape illegal.' (IRIN 2007) This is incorrect. The new rape law did not formalize recognition of rape as a

crime – rape was already on the statutes. What it did was to modify and add to existing legislation, for instance making new provision for rape within marriage, and against sexual intercourse with minors between the age of sixteen and eighteen. The views we heard from most representatives of the international community during three fieldwork sessions in Liberia clearly indicate the extent to which the UN system is inadequately informed to deal with SGBV and the rule of law in a comprehensive manner.

The *terra nullius* fallacy is also evident in the logistical support provided to the national police. Equipment provided for the WACPS included PCs and electric generators. However, computer literacy is often limited, and generators require scarce fuel, which is needed for driving. The dire lack of resources to actually go and investigate crimes is a much more pressing concern than providing top-of-the-line computer equipment. Indeed, it was unclear to us why these computers had been provided in the first place, as the working methods of the police did not require them. The logistical support provided for the WACPS was dispatched without having first considered the working methods of the local police, their needs, and without having made any attempt to budget for running costs.

On the other hand, having two systems working alongside each other also represents challenges: 'The problem with customary law is that no one has ever mapped the customs in Liberia. This represents a problem in terms of getting them [the two systems of law] to work together', Anthony Valcke of the American Bar Association told us. 'Customary law needs to be mapped.' What we witness in Liberia is to a large extent what Sarah Cliffe and Nick Manning have termed 'the fallacy of *terra nullius*' – the inability of the UN to take into account pre-existing institutions and the assumption that everything must 'start from zero' (Cliffe and Manning 2008: 165)

Avoiding the *Terra Nullius* Fallacy

Taking stock of how the system works *before* an intervention is a prerequisite for understanding how to intervene efficiently and productively. As Erik Jensen has emphasized in the case of rule-of-law institutions, the interplay between statutory and traditional customary systems may in many cases be more efficient and enjoy greater legitimacy than a 'modern' statutory system imposed from outside. The problem, according to Jensen, is that expectations as to programmes installing 'formal laws and legal institutions' are too high:

> These expectations are driven by a set of assumptions about the number of outcomes that can be achieved through rule of

> law assistance and when they can be achieved. The number is unrealistically high and the timing unrealistically short. We expect too much, too soon, with too little money, too much emphasis on technical precision, and too little on the embedded political, economic, and cultural dynamics that surround institutional change (Jensen 2008: 129).[6]

Simply imposing a new set of formal laws and institutions without understanding how the customary traditional system works, as has largely been the case in Liberia, may not work: 'One needs to understand what is being handled well through informal mechanisms based on custom and convention and what strategic issues are not being handled well through those mechanisms or not handled at all.' (Jensen 2008: 122) With reference to the UN mission to East Timor, Jensen comments, 'UNTAET was slow to realize the role and value of traditional justice, perhaps because some presumed that the traditional system of justice lacks mechanisms to meet international standards of human rights, especially gender equality' (2008: 132).

From our fieldwork in Liberia and the interviews conducted there, it can seem as if the UN is once again trapped, seeing what it expects to see rather than what is on the ground. The response devised in such cases is generally recourse to standard responses – which in the case of the UN and Western NGOs means a propensity to build institutions and institutional responses based on the Western liberal model (see Sending 2009), combined with the imperative of results-based management. In connection with the institutions of rule of law, this often leads to a strong belief in formal and centralized institutions, and measures where the output is clear and measurable. In the case of the WACPS, such measures can lead to a fragmentation of thorny issues which should be seen as interrelated. Institutional responses to SGBV cannot be effective unless the rule-of-law institutions as a whole function properly. As UN DSRSG for the Rule of Law Henrietta Mensa-Bonsu stressed in an inaugural speech on 7 June 2009, 'the justice system will only be as good as individuals, make it.' (UNMIL 2009)[7] However, too little has been done to train new people to take on these important tasks, and the rule-of-law institutions lie fallow.

Odd Bedfellows? SGBV & Traditional Justice

If we for the moment agree that using the interplay between statutory and traditional customary systems may in many ways be more efficient and legitimate than addressing the rule of law institutions

6 This seems the case in much of the literature on rule-of-law reforms in peace operations. See for instance Till Blume (2008) in which he reviews Call (2007), Carrothers (2006), Jones et al. (2005) and Stromseth et al. (2006).

7 What was inaugurated on the day of that speech was in fact a newly-constructed building.

through imposing of a Western liberal statutory system, several problems arise. First and foremost, the challenge is for the international community to understand how these traditional systems work. While there has been a tendency to ignore traditional conflict management mechanisms, there is also an almost total lack of understanding of how traditional arrangements work. If these arrangements are to work in conjunction with a statutory court system, a precondition is knowledge about how traditional arrangements work, and which areas they cover in a manner generally acceptable by international standards. In the case of Liberia – as mentioned above – little such knowledge about the traditional system has been available. Here the recent impressive study by the US Institute of Peace (Isser et al. 2009) breaks some new ground in showing not only how traditional systems work, but also what expectations Liberians have to conflict management systems, be they traditional or 'modern'. That study makes it possible for us to tentatively sketch out how such an interplay between different mechanisms and institutions for conflict management might work in addressing SGBV.

As Isser and her colleagues note, '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.' However, while there seems to be agreement that rape is a type of crime that should fall under the jurisdiction of the formal court system, Liberians also criticize the new rape law 'for not allowing for restorative remedies that take into account broader social interests for "less egregious" types of rape.'(Isser et al. 2009: 6) As a male respondent from Nimba County is reported to have said, the traditional system has an element of reconciliation which the formal court system lacks: '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' (ibid.) In the words of another respondent, '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' (ibid.: 4). There would appear to be a clear case for attempting to draw upon both systems in administering justice, for the traditional system does seem to take into account several elements which the formal court system does not. Liberians are dissatisfied with the formal system, and not only because it does not deliver effectively:

> 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 [...] 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 [...] 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. (Isser et al.: 6–7)

From a Liberian perspective, formal resolution of a case in court does not resolve the issue, but 'serves to exacerbate adversarial relations' (ibid.).

Indeed, the formal court system does have problems of effectiveness. This is also confirmed by Isser and her colleagues: 'The fact that even Supreme Court decisions may be openly flouted speaks to the formal system's broader lack of local credibility in the areas of enforcement and effective resolution' (ibid.: 46). This contrasts with the customary system, of which most Liberians report that 'resolutions reached through customary processes are final and carried out. (...) 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' (ibid.).[8]

All this could easily be taken together and mounted as a strong defence of the traditional system at the expense of the formal system generally advocated by international organizations – but this is not necessarily so. Liberians – as confirmed on several occasions through our own fieldwork as well – generally feel that there are some cases which should be handled by the statutory system:

8 However, according to the USIP report, '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. Several 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.' (Isser et al.: 48).

> [c]ustomary 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 [...] [T]here are cases in which behaviour 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. (Isser et al.: 46–48)

Such a view would also correspond to the practice of chiefs, who generally seem to refer these cases to the formal system. In a sense, then, the interplay between formal and traditional systems needs to take into account the deep-rooted perceptions, beliefs and cultural practices (for lack of a better term). While Liberians seem to agree that cases of rape should be handled by the formal system – despite its many inadequacies – such a view could be adapted to local perceptions about the gravity of these crimes: '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' (Isser et al. 2009: 54).[9]

Although the formal system may enjoy a fair amount of legitimacy, it can at times be problematic. Isser and co-workers encountered this in a focus group in Lofa, where men seemed somewhat suspicious of the new rape law and the fact that dealing with rape was now to be the sole prerogative of the formal system, as they feared this was open to abuse: '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' (ibid.: 67).

In some cases, taking matters to the formal system seems to be done with the intention of making money. As male elders in Nimba put it,

> 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,

9 As Isser et al. point out, '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.' (2009: 6).

> 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 two 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. (ibid.: 67)[10]

The wealth of material presented by Isser and her colleagues is impressive, and there are many more examples that could be cited of cases in which traditional arrangements appear to work more effectively and enjoy greater legitimacy than formal arrangements. However, it is important to note that one reason for this is the emphasis that traditional institutions place on *restorative* justice:

> [I]n 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. (ibid. 69)

We could go on mentioning examples, and the USIP report presents an ample amount of them which show how traditional authorities in an effective and seemingly legitimate manner administer justice to victims of rape. On the basis of this, there seems to be a clear argument here for a dual system of justice – at least in the shorter term – rather than for the international community to focus all its efforts on implementing a weak formal system throughout the country. The research undertaken by USIP has shown that, just as there is no mechanism by which modern statutory systems *ipso facto* gain legitimacy by virtue of the principles they embody, neither are there any prescriptions for how such a system could become effective overnight. It would seem advisable to operate with caution when reforming rule-of-law institutions, as failure of the new systems to operate can easily not only result in their losing support, but can also severely damage the social fabric. As Isser et al. ask, '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 combina-

10 It is important to note, as Isser et al. do, that the '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.' (2009: 68).

tion of restrictions on the scope of authority of customary chiefs and the incapacity of local state justice institutions?' (2009: 86)

The case of the rape law in Liberia would indicate that a certain amount of duality in the international community's efforts at addressing the shortcomings of so-called 'rule-of-law institutions' may be a viable road. Achieving the goals set by any international body seeking to address such institutions in a post-conflict setting should take into account the realities on the ground – rather than pursuing these goals and principles according to some generic blueprint at all costs.

In the present case, the pursuit of the rights of women in cases of SGBV does not seem to have greatly improved their access to justice. From such a perspective, as Isser and her colleagues note, '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.' (2009: 86) There is little evidence that the traditional chiefs do *not* take the rights of women into account. Quite to the contrary, Isser et al. noted few if any complaints about how traditional authorities handle rape cases – whereas these exist in abundance when it comes to the formal court system (see ibid.: 88).[11]

There is little to indicate that the best way to achieve justice for all – and especially weaker groups – in Liberia is through strengthening the formal system at all costs, at the expense of traditional arrangements. For many Liberians, justice seems to go through a dual administration of justice which takes due account of local practices and traditional arrangements. Implementing a uniform legal system, by extending one set of statutory law to the country as a whole with a unitary legal system and framework that works the same way everywhere for everybody does not stand out as the best option (see Isser et al. 2009: 71). For the time being – and perhaps even beyond – justice for all in Liberia may involve different systems of customary and formal arrangements which interplay according to principles of effectiveness, local legitimacy, and the extent to which they can take into account the perspective of the victim as well.

Final Remarks

The international response to the situation of women in Liberia – although touted as one of the great success stories in implementing

11 A brief note of caution: while available evidence seems to indicate that crimes involving SGBV are addressed by the customary authorities in a satisfactory and effective manner, there is still very little research which takes into account the perspectives of the victims.

UNSC resolution 1325 by the UN and the Liberian government – has not achieved what it set out to do. Efforts at reforming the institutions of the rule of law have shown a mixed record, to say the least.

The issue of SGBV tends to be fragmented. Responses have focused on specific matters which often fit the narrow agendas of international donors, rather than taking into account the needs of the institutions of the rule of law as a whole. While these quick impact-projects may be necessary, they tend to dominate, obstructing a holistic approach to reforming the rule-of-law institutions. As long as no-one in Liberia gets justice, women and children will not get it either – no matter how many police stations and courthouses are built.

This does not mean that SGBV should be reduced to a legal problem or an issue of rule of law. A working justice system is necessary to address SGBV, but it may not be sufficient. Also in dealing with the root causes of SGBV, the UN has been stumbling in the dark. Why so many men in Liberia rape women and children – sometimes mere infants – is a serious and difficult question. UNMIL and the UN agencies in Liberia have begun to try to tackle it. However, the bureaucratic machinery chooses to focus on small, manageable projects which can show quick progress – and that approach also contributes to give the impression that the issues are being dealt with, when they often are not. The international response to SGBV in Liberia has focused too much on symptoms and too little on causes.

Instead of looking into the country's dual system of customary and statutory law, and seeing how they may work together and complement each other, international actors often act as if Liberia were a modern-day *terra nullius* – a place where nothing of what existed prior to the UN's intervention can be used. Paradoxically, in those areas that do resemble such a *terra nullius*, like the training and competency of judges and magistrates in the statutory system, little has been done to address the problem through training new personnel.

Dealing with SGBV in Liberia requires a comprehensive response, one that can take into account all the institutions of the rule of law – including customary justice institutions – as well as addressing the underlying causes rather than reactively patching up the symptoms. Successfully addressing SGBV requires that the policies devised and implemented should be based on close knowledge of the problem at hand and of the institutions and infrastructure available for solving them. A main problem today is the propensity to apply readymade, generic solutions that resonate well with Western donors.

How to manage the interplay between different systems so that most victims – in this case, victims of SGBV – receive acceptable justice is still a matter of debate. This is a question that requires urgent and sustained attention. However, the fact remains that the hinterlands of Liberia are neither *terra nullius* nor a savage jungle. It is time for international rule-of-law reformers to start seeing the trees that are there, and discard the assumption that customary arrangements 'out there' are based on some mythical law of the jungle and can be reformed through indiscriminately imposing a generic Western liberal blueprint.

Literature

Bellamy, Alex J. (2004) 'The "next stage" in peace operations theory', *International Peacekeeping* 11 (1): 17–38

Blume, Till (2008) 'Security, Justice and the Rule of Law in Peace Operations', *International Peacekeeping* 15 (5): 713–721.

Call, Charles T. (ed.) (2007) *Constructing Justice and Security After War*. Washington, DC: United States Institute of Peace.

Carrothers, Thomas (ed.) (2006) *Promoting the Rule of Law Abroad: In Search of Knowledge*. Washington, DC: Carnegie Endowment for International Peace.

Center on International Cooperation (2010) *Annual Review of Global Peace Operations 2010*. Boulder, CO: Lynne Rienner.

Center on International Cooperation (2005) 'Peace Operations Literature Review'. Project on Transformations in Multilateral Security Institutions Implications for the UN. Consultant: Ian Johnstone Associate Professor of International Law Fletcher School of Law and Diplomacy, Tufts University.

Cliffe, Sarah and Nick Manning (2008) 'Practical Approaches to Building State Institutions', in Charles T. Call and Vanessa Wyeth (eds), *Building States to Build Peace*. Boulder, CO: Lynne Rienner.

Eide, Kai (2010) 'SRSG Kai Eide's last press conference as SRSG in UNAMA', 4 March 2010. Available at http://unama.unmissions.org/Default.aspx?tabid=1761&ctl=Details&mid=1892&ItemID=7955 (accessed 13 August 2010)

Government of Liberia (2009) 'The Liberian National Action Plan for the Implementation of United Nations Resolution 1325', available at http://www.undp.org/cpr/documents/gender/lnap_gender.pdf (accessed 23 June 2009)

IRIN News (2007) 'Republic of Liberia: Humanitarian Country Profile', available at http://www.irinnews.org/country.aspx?CountryCode=LR&RegionCode=WA (accessed 23 June 2009)

Isser, Deborah, Stephen C. Lubkemann, Saah N'Tow et al. (2009) *Looking For Justice: Liberian Experiences with and Perceptions of Local Justice Options*. Washington, DC: United States Institute of Peace.

Jensen, Erik G. (2008) 'Justice and the Rule of Law', in Charles T. Call and Vanessa Wyeth (eds), *Building States to Build Peace*. Boulder, CO: Lynne Rienner.

Jones, S. G, J.M. Wilson, A. Rathmell & K.J. Riley. (2005) *Establishing Law and Order After Conflict*. Santa Monica, CA: RAND.

Legal Working Group (2009) 'Findings of the Legal Working Group'. Monrovia: Ministry of Justice and UNMIL. Available at http://www.usip.org/files/Liberia%202009/LWG%20%20Findings%20Final_Updated.doc (Accessed 13 August 2010).

Paris, Roland (2000) 'Broadening the Study of Peace Operations', *International Studies* 2(3):*27.

Paris, Roland (2003) 'Peacekeeping and the Constraints of Global Culture', *European Journal of International Relations* 9(3): 441–473.

Pugh, Michael (2004) Peacekeeping and Critical Theory', *International Peacekeeping* 11(1): 39–58.

Sending, Ole Jacob (2009) *Why Peacebuilders Fail to Secure Ownership and be Sensitive to Context*. Oslo: Norwegian Institute of International Affairs (NUPI).

Stromseth, Jane, David Wippman and Rosa Brooks (2006) *Can Might Make Rights? Building the Rule of Law After Military Interventions*. Cambridge: CUP.

UNMIL (2008) 'Liberia: UNMIL Humanitarian Situation' Report No. 156, 24 November. Available through http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-7LPQBP?OpenDocument (accessed 23 June 2009)

UNMIL (2009) 'Quality of personnel essential for restoring confidence in justice system, says UN Deputy Envoy', available at http://unmil.org/1article.asp?id=3344&zdoc=1 (accessed 23 June 2009).

World Bank (2008) 'Worldwide Governance Indicators Show Some Countries Making Progress in Governance and in Fighting Corruption', available at http://www.emansion.gov.lr/doc/Liberia_Corruption.pdf (accessed 23 June 2009).