

TRADITIONAL JUSTICE MECHANISMS IN LIBERIA

Liberia's Justice Landscape is a Tripartite Justice System, A justice framework combining three distinct systems to address disputes based on their context.



Key Traditional Mechanisms

Palava Hut Process

Definition : A communal conflict resolution process led by elders to settle disputes through dialogue, confession, and reconciliation.

- **Purpose**

Used to resolve issues such as extramarital affairs, land disputes, theft and murder.

- **Participants**

Elders, chiefs, and family members from both the offender's and victim's sides.

- **Process and Rituals**

► **Confession and Forgiveness** : The wrongdoer must admit guilt and seek forgiveness.

► **Restitution** : Compensation may include items like palm oil, rice, or livestock.

► **For Violent Crimes** : Mourning rituals, animal sacrifices, and temporary banishment ensure justice and prevent retaliation.

► **For Rape** : A confidential process involving restitution or, controversially, forced marriage to the victim.

The Kola Nut Process

Definition : A symbolic and practical mechanism for addressing breaches of civil law, such as adultery, through restitution and dialogue.

- **Purpose :**

Resolves interpersonal disputes involving betrayal or social contracts.

- **Process :**

► Local leaders mediate the issue.

► Restitution (cash, livestock, or other goods) is provided to the aggrieved party.

Sassywood (Trial by Ordeal)

Definition : A supernatural-based method to determine the guilt or innocence, involving physical trials or rituals.

- **Purpose :**

Used for cases involving theft, murder or witchcraft.

- **Process :**

► **Mild** : Everyday tasks or harmless substances that reveal guilt through unexpected outcomes.

► **Moderate** : Drinking herbal brews to test honesty - vomiting signals innocence.

► **Severe** : Dangerous physical trials, such as touching hot metal, with guilt inferred based on reaction.

► **Controversy** : Sassywood is illegal due to its risks, but it persists due to cultural belief in its effectiveness.

+ Strengths of Customary Justice

Restorative Justice : A justice approach focused on repairing relationships and restoring social harmony rather than punishing offenders.

In the Palava Hut and Kola Nut processes, reconciliation takes precedence over punishment.

Accessibility: The ease with which rural communities access justice through familiar and culturally relevant mechanisms. Chiefs and elders resolve disputes based on shared values, contrasting with the perceived corruption of formal courts.

- Weaknesses of Customary Justice

Eroded Authority : The weakening of traditional justice systems due to social changes, such as urbanization and migration. Displaced ethnic groups often lose access to customary processes.

Resource Challenges and Co-optation : Limited resources and nepotism hinder the efficiency and fairness of customary systems. Chiefs may charge high fees, rely on bribes, or lack training in traditional customs.

Procedural Inconsistencies and Human Rights Issues : Conflicts between traditional practices and modern human rights standards. Harmful practices like forced marriage or sassywood violate universal human dignity and exclude women from decision-making.



Most, if not all, modern African states have pluralistic justice and security systems, shaped by colonial intervention and post-colonial compromise. What potentially sets Liberia apart, however, is its peculiar history, stemming from Americo-Liberian colonisation and settlement, that has resulted in a three-fold system comprising a formal justice system, modelled on that of the USA; a legislated customary legal system 'created by regulation and statute', and mostly worked through customary courts; and a 'traditional' indigenous system. With regard to the latter, each of Liberia's 15 ethnic groups has its own customary justice mechanismsⁱ, which are largely undocumented/un-codified. Often chiefs and elders try to resolve disputes at the point of origin, with the aim of preserving community peace and harmony, discouraging appellate options outside the family circle.

Drawing largely on Pajibo (2008: 16-23), this policy brief summarises dispute resolution mechanisms exercised within the traditional indigenous system. Although they have differing iterations across the different ethnic groups, three main mechanisms may be observed:

- the Palava hut process.
- the sharing of the kola nut,
- and 'sassywood' or trial by ordeal.

Palava Hut

The palava hut process is of near universal importance in the Liberian context and therefore has greater applicability, even in diverse communities. The palava hut is typically convened by elders and aims to settle a range of disputes, including gender-related matters such as extramarital affairs, divorce cases, land disputes and debt (including non-support of children). In some communities, cases of theft and murder may also be decided by this process. The admission of guilt by the guilty party is central to the process.ⁱⁱ According to Pajibo (2008: 16-23):

- Among the Kwa-speaking people, who include the Bassa, Belle, Grebo, Krahn and Kru, the palava hut process seeks a confession of the wrongful act, an apology for the wrong that has been done, and forgiveness from the victim.
- Usually, the process is initiated by the offending party or a member of his/her family, with family members of both the perpetrator and the victim meeting with the contesting parties.
- The meeting is presided over by an elder or a selected local leader. Once hearings have taken place and the truth has been established, certain rituals are performed. If the case is of a non-violent or civil nature, the offending party has to provide a number of items such as cane juice, cooking oil (palm oil), a goat or chicken, rice, and/or a piece of cloth (lappa). If the case concerns a theft, restitution by the offender is demanded. If the offending party is unable to make restitution, the family will be required to do so. If the offender is an able-bodied person, he or she may be required to perform labour services such as farm work for the victim.
- In the case of a violent offence such as murder, elders urge both parties to observe a period of grieving during which special rituals are performed to ensure that the dead person is acceptable in the ancestral realm. In many cases an animal is slaughtered and the blood is poured on the grave. Almost always, the perpetrator is deemed guilty, regardless of the circumstances under which the death occurred. The Kwa-speaking people believe that, no matter what a person may have done, that person does not deserve to be killed. The elders typically decide on a penalty, which comes in several forms as fines, followed by a cleansing ceremony after which the perpetrator makes a public apology to the victim and his/her family. Following the acceptance of the apology, the perpetrator is banished from the community for a period varying from three to seven years. (The length of time is measured by the farming cycle.) The period of banishment is intended to ensure that the aggrieved family will have



ample time to deal with the death of their loved one, and reduce the urge for revenge.

- Among the Kwa-speaking people rape is a serious crime but one which is dealt with in absolute secret. The idea is to prevent the identity of the victim becoming known. The perpetrator is not allowed to be present: he is already deemed guilty of the offence. He is instead represented by a member of his family, usually the most senior member. The representative of the rapist approaches the father of the victim, carrying a palm branch, prostrates himself before the father of the victim and holds his feet – a gesture of apology and a request for forgiveness. If the branch is taken, the victim's father acknowledges his apology and his request for forgiveness. The family of the rapist then makes restitution in the form of a 'fine'. In some instances, the rapist is made to marry his victim. The community then undertakes a cleansing ritual, focusing primarily on the victim.

Among the Mende-speakers in Liberia, the process is slightly different. The role of the family is not central to the reconciliation process. Instead, local chiefs, traditional leaders (all of whom are always men) often referred to as *zoes*, lead the process. In the case of violent offenses, such as rape or murder, a cleansing ceremony is also required, typically including animal sacrifice and accompanying rituals. Murder is considered the most abominable of offences, with consultations following investigation being conducted away from the public, in the *zoe* bush, in which case only the initiated members of the particular ethnic group are allowed to participate. If the murder is found to be premeditated, the perpetrator is fined heavily and banished, but if it is considered accidental, forgiveness rituals are enacted, including animal sacrifice and ritual cleansing. In cases of rape, female *zoes* take the lead, and perpetrators that are found to be guilty are fined in cash or in kind, and sometimes are made to marry their victim.

2.1.1 . Kola Nut

Kola Nutⁱⁱⁱ is mostly employed in breaches of the civil law, including adultery, in which case a form of a 'fine', known locally as 'damage', is paid. For example, if a man, usually a polygamist, complains that his wife has cheated on him and wants redress, the local leaders, chiefs and elders are convened. If the perpetrator is deemed guilty, he is made to pay restitution, in the form of cash or some other item, such as a chicken or goat, to the aggrieved husband.

2.1.2 . Sassywood , or trial by ordeal

In several local settings cases of theft of property, death or witchcraft/sorcery are settled by 'trial by ordeal', known locally as *sassywood*. It is fundamentally based on supernatural beliefs and takes a variety of forms along a spectrum from objectively harmless to deadly. In the mildest versions, suspects might be asked to do an everyday act, such as picking up a light object from the ground. If they are guilty of the charge against them, it is believed that they will find this task impossible. In another similarly harmless form, suspects might be asked to eat or drink food or water that is objectively harmless – often that they have prepared themselves. If they are guilty, or dishonest, it is believed that the substance will make them ill within a specified period of time. In some instances, a straw is tied around the neck of the alleged perpetrator and, following an incantation by the 'judge', the straw may tighten around the person's neck in an attempt to strangle him or her. If this happens, the person is deemed guilty. If the straw does not tighten, he or she is set free. In more serious and dangerous forms of trial by ordeal, suspects are made to perform a dangerous act. The alleged perpetrator is made to imbibe a mixture or brew made from indigenous plants. If he or she regurgitates the brew, this constitutes a not guilty verdict. Failure to do so demonstrates guilt and the person will be banished from the village (in the case of murder), scorned, shamed and (in the case of theft of property) made to make restitution. Another *sassywood* method involves the use of a red-hot metal that is brought into contact with the alleged perpetrator's person. A similar trial is to place their hands in hot oil. If the alleged perpetrator withdraws from the heat, he or she is ruled guilty. It is believed that if they are not guilty, they will be protected from the ill effects



of the act. The practice of *sassywood*, although widespread and commonly invoked, is illegal. However, the government has found it difficult, if not impossible, to curb the practice, which is accessible, provides ‘instant justice’ and in which a sizeable proportion of the population believes.

Strengths and weaknesses of customary justice systems

Models of justice are commonly divided into three main categories: retributive, deterrent and restorative. In broad terms, the Liberian formal justice system could be considered as primarily concerned with retributive and deterrent aspect of justice, Retributive justice focuses on the moral dimension. It emphasizes the notion that perpetrators of a crime or those who fail to abide by laws or customary norms “deserve” to be punished for their wrongdoing. A deterrent view of justice focuses on the instrumental dimension of justice. It emphasizes that punishment for wrongdoing is necessary to prevent further violations of the law and to signal the boundaries of socially acceptable behaviour. On the other hand, customary systems prioritise restorative justice, which focuses on the need to rebuild or restore relationships and/or socio-economic status. focuses on social reconciliation and attempts to address root causes underlying disputes and/or repair damage social relations. It often employs a broad social consultation process and is able to address a range of social disputes that courts do not necessarily factor, such as public insults and witchcraft. Social and family pressures of every kind are brought to bear on the disputing parties to shift ground, to accept, to compromise and to settle the dispute. The strengths and weaknesses of customary system stem from these differences with the formal system.

Strengths include:

- **A restorative view of justice:** The common element of the various models of traditional dispute settlement in Liberia is the emphasis on

peaceful settlement, compromise, and agreement where communal interests outweigh individual rights and interest. This difference in focus is often a source of tension between the formal and customary justice. However, while Palava Hut and Kola nut are largely non-punitive and could be said to be reconciliatory processes, it should be noted that traditional systems also have retributive elements, for instance *sassywood*, or trial by ordeal is designed to establish guilt and thereby penalize the alleged perpetrator.

- **Accessibility:** Rural Liberians pursue justice almost entirely through traditional means. The rural system is seen as accessible, with chiefs, elders or spiritual leaders resolving disputes based on widely accepted cultural paradigms. It is often considered in direct contrast to the formal system, which is seen as corrupt, with limited reach in the counties.

Weaknesses

- **Eroded authority:** While most Liberians still rely on traditional justice, its structures have been weakened over time and as a result of the social dislocations caused by the war (massive population movements, forcible urbanisation), resulting in different ethnic groups finding themselves in a particular geographic locale where ethnicity is blurred at best or irrelevant at worst, and unfamiliar with, or unable to access customary processes and recourse. The informal system has also been weakened by state policies that have undermined the ability of chiefs and elders to resolve local disputes.
- **Co-option of the processes by selecting local leaders** (especially paramount and town chiefs), on a nepotistic basis, is resulting in the appointment of chiefs with limited knowledge and training in the customs of the people over whom they have judicial supervision. Customary courts are also acutely understaffed. This is exacerbated by



a lack of resources, with customary courts charging litigants burdensome fees to defray the courts' operating costs. This can make them susceptible to bribery. While some chiefs are on the government's payroll (i.e. Ministry of Internal Affairs), this is not universally the case, resulting in chiefs having to use their own money to ensure that tribal courts sit.

- Differing processes e.g. verbal or written summons, records-keeping, and lack of infrastructure all add to this complex picture. Unclear mandates also affect customary systems. Differing perspectives of the formal system also confuse matters. For instance, while *sassymood* is prohibited by the judicial system, the Hinterland Regulations (2001), managed by the Ministry of Internal Affairs, permits non-dangerous trial by ordeal.
- At odds with universal human rights principles: Finally, some traditional approaches are of course at odds with formal mechanisms, and can be highly controversial. For instance, a rape may traditionally be talked through because it is seen as a problem between families and it is for the perpetrator and his family to make the victim and her family whole again; this can include payment, or sometimes even marrying the victim. *Sassymood*, or trial by ordeal, determines guilt and/or elicits confessions through harmful practices which have to be strictly and clearly condemned because they are violating the most basic principles of human dignity. Further, women are often excluded from the decision-making processes related to these mechanisms, and may be unfairly targeted (for instance being accused of witchcraft through *sassymood* processes).

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ⁱ Liberia's 15 distinct ethnic groups may be divided into two main linguistic groups, the Mende and the Kwa. The Mende-speaking groups are mostly located in western, northern and central Liberia while the Kwa-speaking groups are found in the east and south of the country. While the two groups share a number of similarities in terms of conflict/crime resolution and reconciliation, they also differ in certain respects.

ⁱⁱ Increasingly, transitional justice and conflict resolution mechanisms funded by donors and promoted by international NGOs take 'traditional' approaches as their starting point. In Liberia, various institutions, including the United Nations, take on the palava hut approach.

ⁱⁱⁱ Kola nut is a caffeine-containing nut chewed in many West African cultures, individually or in a group setting. It is often used ceremonially, presented to chiefs or presented to guests, and are an important part of the traditional spiritual practice of culture and religion, used as a religious object and sacred offering during prayers, ancestor veneration, and significant life events, such as naming ceremonies, weddings, and funerals.



The African Security Sector Network (ASSN) signed a Memorandum of Grant Conditions in 2014 with the International Development and Research Centre of Canada (IDRC) for the execution of a three year research project titled “Hybrid Security Governance in Africa: Implications for State building”. This project investigates the complex amalgam of statutory and non statutory actors and institutions typically at play in the African security sector. Its central thesis is that, in the African context, security sectors are often constituted and driven by multilevel norms, structures and networks that span the conventional state / non state divide. It covers six African countries: Cote d’Ivoire, Liberia, Nigeria, Sierra Leone, Somaliland and South Africa.

With the Support of **IDRC**  **CRDI**

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