

# Sierra Leone

## Justice Sector and the Rule of Law

A review by AfriMAP  
and the  
Open Society Initiative for West Africa

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# List of abbreviations and acronyms

ACC	Anti-Corruption Commission
ADR	Alternative Dispute Resolution
A-G	Attorney-General
APC	All People's Congress
APRM	Africa Peer Review Mechanism
CARL-SL	Centre for Accountability and the Rule of Law
CDIID	Complaint, Discipline and Internal Investigations Department
CEDAW	Convention for the Elimination of all forms of Discrimination against Women
CGG	Campaign for Good Governance
CID	Criminal Investigation Division
CPA	Criminal Procedure Act
CRA	Child Rights Act
CRC	Convention of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSD	Corporate Services Department
CSO	civil society organisation
DACO	Development Assistance Coordination Office
DCI-SL	Defense for Children International, Sierra Leone Section
DFID	Department for International Development
DPP	Director of Public Prosecution
ECOWAS	Economic Community of West African States
EU	European Union
FBC	Fourah Bay College
FGM	female genital mutilation
FSU	Family Support Unit
GBP	British pounds
GIZ	German Technical Cooperation
GoSL	Government of Sierra Leone
HRCSL	Human Rights Commission of Sierra Leone
IBA	International Bar Association
ICCPR	International Covenant on Civil and Political Rights
IBA	International Bar Association
ICRC	International Committee of the Red Cross
I-G	Inspector-General of Police
IMC	The Independent Media Commission
INTOSAI	International Organizations of Supreme Audit Institutions Standards

IRC	International Rescue Committee
IRCBP	Institutional Reform and Capacity Building Project
JICA	Japanese International Cooperation Agency
JLSC	Judicial and Legal Service Commission
JPs	justices of the peace
JSCO	Justice Sector Coordination Office
JSDP	Justice Sector Development Programme
JRSIP	Justice Sector Reform Strategy and Investment Plan
LAWCLA	Lawyer's Centre for Legal Assistance
LAWYERS	Legal Access through Women Yearning for Equality, Rights and Social Justice
LDP	Law Development Project
LG	Leadership Group
LPA	Lomé Peace Agreement
LRC	Law Reform Commission
MDAs	ministries, departments and agencies
MP	Member of Parliament
MSWGCA	Ministry of Social, Welfare, Gender, Children's Affairs
MTEF	Medium-Term Expenditure Framework
NAP	National Action Plan
NCD	National Commission for Democracy
NEC	National Electoral Commission
ONS	Office of National Security
OSD	Operational Support Division
OSJI	Open Society Justice Initiative
PI	Preliminary Investigations
PNLA	Pilot National Legal Aid Scheme
PPBs	Policing Partnership Boards
PRSP	Poverty Reduction Strategy Paper
PSCs	private security companies
RUF	Revolutionary United Front
SCSL	Special Court for Sierra Leone
SGBV	sexual and gender-based violence cases
SLAJ	Sierra Leone Association of Journalists
SLBA	Sierra Leone Bar Association
SLP	Sierra Leone Police
SLPP	Sierra Leone People's Party
TRC	Truth and Reconciliation Commission
TWG	Technical Working Group
UNDP	United Nations Development Programme

UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund
UNIPSIL	United Nations Integrated Peace Building Office in Sierra Leone
UNPBF	United Nations Peace Building Fund
UPR	Universal Periodic Review
WASCE	West African School Certificate Examination
WVS	Witness and Victims Service

# Preface

This study is the result of a three-year research project undertaken on behalf of the Open Society Initiative for West Africa (OSIWA) and the Africa Governance Monitoring and Advocacy Project (AfriMAP) of the Open Society's four African Foundations. The study's objective is to identify opportunities and highlight challenges in the justice sector in Sierra Leone, in line with AfriMAP's overall objectives to monitor observance of acceptable standards and commitments relating to participatory democracy, transparent and accountable governance, human rights, the rule of law and public service delivery by African states. Research for this study was undertaken in a context of major changes on the continent over the last two decades. The political and social context has changed as have also the institutional and normative contexts. The Constitutive Act of the African Union laid down a set of common values for democratic governance and human rights for member states. The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights are not in so terrible a state. At the sub-regional level, the ECOWAS Community Court of Justice, with competence to hear individual complaints of alleged human rights violations, is forging formidable jurisprudence.

## Project objective

AfriMAP's research aims at promoting adherence and respect for these principles by highlighting key issues, proposing recommendations and identifying relevant stakeholders to effect necessary reforms and enforcement. This report assesses Sierra Leone's compliance with international, regional and national laws and standards, respect for the rule of law, human rights and the administration of justice, the frameworks and capacity of the justice sector, accessibility of the justice system, independence and accountability of judges and lawyers. The report highlights the challenges, constraints and successes and makes recommendations for necessary reforms to improve the functionality and effectiveness of the sector. We hope that this report will be an important resource for all stakeholders and contribute to ongoing reform efforts in Sierra Leone and by extension, the continent.

## Methodology

The research for this report was carried out by an expert team working under the supervision of a technical leader, all from Sierra Leone. The team used both primary and secondary data,

and involved a review of relevant international, regional and national documents, laws, official documents, published works, research conducted by other organisations and individuals and media reports. This was followed by interviews with and focus group discussions on relevant institutions in order to get a holistic view of the entire justice sector in Sierra Leone. The draft report was reviewed by a range of experts and discussed during a validation workshop attended by representatives of government departments, civil society organisations, including the media and development partners. This final report reflects the valuable comments and criticisms received.

## Acknowledgements

Following a presentation of AfriMAP methodology at a meeting convened by the Open Society Initiative for West Africa (OSIWA) early in 2009 in Freetown, the Campaign for Good Governance (CGG) was selected as the host institution for this and other AfriMAP studies in Sierra Leone. The CGG was tasked with the mobilisation of the research teams, overall coordination of the reports as well as organising the validation workshop. We are grateful to Ms Valnora Edwin and the able staff of the CGG who dedicated enormous time and energy to ensure the success of this project. We acknowledge the contribution of Mr Mohamed Suma (Technical Leader) and his team of researchers and assistants for the first draft report. Judge Adrian Fisher and Mrs Memunatu Pratt of the Department of Peace and Conflict Studies at Fourah Bay College, University of Sierra Leone commented on early drafts of the report. Further reviews and updates of the report were done by Ms Jamesina King of the Human Rights Commission of Sierra Leone. The report was edited by Pascal Kambale, AfriMAP Deputy Director, with invaluable assistance from Bronwen Manby, AfriMAP Senior Programme Advisor and Jeggan Gray-Johnson, AfriMAP Advocacy and Communication Officer. The preparation and completion of this report would not have been possible without the help of Yaye Helene Ndiaye, AfriMAP's Programme Officer and the support of Joe Penambgi and the OSIWA country team in Sierra Leone. We thank all others whose names we are unable to mention here for the valuable contribution made to the success of this report. The entire project was carried out under the supervision of Afia Asantewaa Asare-Kyei, Justice, Human Rights and Rule of Law Programme manager for OSIWA.

# Foreword

The justice sector in Sierra Leone has been going through major changes over the last decade. The country has made commendable strides in the promotion and protection of fundamental rights, notably through the establishment of the National Human Rights Commission. The Law Reform Commission is mandated to review the laws of Sierra Leone in order to reform or take other initiatives and propose the enactment of new laws. The government has adopted a national reform strategy and a significant component of that strategy seeks to foster expanded access to justice, which is a core agenda for a just and equitable society. The lack of access to justice also undermines the possibility of equality in society, which is a key tenet of human rights and the rule of law.

While there is a semblance of order and the country is making efforts to observe the rule of law, human rights and the administration of justice, this study highlights important challenges that an effective administration of justice still faces. Of particular concern are the lack of institutional capacity and the shortage of human resources to effect needed reforms, particularly due to the lack of financial resources. Accessibility, accountability and the responsiveness of the justice system continue to be a major challenge, with allegations of executive interference and corruption within the judiciary widespread. The criminal justice system faces a myriad of problems and consequently fails to function effectively and efficiently. Arbitrary arrests, detentions, bad practices regarding the administration of bail and human rights abuses are commonplace. The courts system is poorly funded, with a lack of magistrates and premises without basic equipment. Prisons are overcrowded, living conditions are appalling, and many detainees have been awaiting trial for years.

Addressing inequality and the discrimination of women will have to be prioritised as sexual and gender-based violence remains a serious problem in the country, despite the passage of the three Gender Acts – the Domestic Violence Act, the Devolution of Estate Act and the Registration of Customary Marriages and Divorce Act.

The Open Society Initiative for West Africa (OSIWA) has contributed substantially to justice sector reform in the country. Moving forward, we will continue to support efforts to strengthen the independence, accountability and effectiveness of the judiciary and enhance the public's confidence in the rule of law, with specific emphasis on strengthening the capacity of civil society organisations to fill the transparency and accountability gap and conduct ongoing oversight,

analysis and advocacy at multiple levels in relation to the justice sector in order to enhance both the effectiveness and credibility of legal institutions.

There is a need for a long-term coordinated programme that addresses justice sector reforms. We hope that this report will inform all relevant stakeholders and be used to begin a reform process that builds a momentum for greater change.

Afia Asantewaa Asare-Kyei

Programme Manager, Open Society Initiative for West Africa (OSIWA)



# **Part I**

## **Sierra Leone: Justice Sector and the Rule of Law**

Discussion Paper



# Introduction

This document is extracted from, though not a summary of, a more detailed report on the justice sector and the rule of law in Sierra Leone. Its purpose is to review the most significant reform efforts in the sector over the past years and highlight areas in which further effort is needed, proposing concrete steps for effective action.

Sierra Leone's justice sector is currently undergoing major reforms after years of neglect and malfunctioning. In years past, public accountability hardly existed. Institutions meant to uphold human rights, such as the courts and civil society, were thoroughly co-opted by the executive. There were very few courts across the country; where courts existed, a general sense of pervasive corruption in the judiciary undermined the integrity and public confidence in the justice sector. Indeed, the country's Truth and Reconciliation Commission (TRC) identified the lack of public access to justice as both a cause of its decade long civil war and a factor that helped sustain it.

Many such problems continue to threaten the effectiveness of Sierra Leone's justice sector. Nonetheless, some initiatives have met success. Since the end of the conflict in 2002, the government, in collaboration with international donors, has been working to protect against corruption and undue executive influence. A judicial code of conduct has been established, and an Anti-Corruption Commission now investigates and prosecutes cases of corruption in the judiciary. Recent reforms within the Sierra Leone Police (SLP) have also enhanced their capacity to formulate effective crime-fighting strategies and build trust among the public. Since 2005, the collaboration of the Sierra Leone government with international donor organisations has led to considerable improvements to the prison system, both in management of prisoners and infrastructure. The passage of the three Gender Laws and Child Rights Act in 2007 are promising steps towards the protection of vulnerable persons. Civil society organisations have also begun to play an important role in monitoring and promoting these reforms.

However, despite these encouraging changes, much remains to be done. Poor coordination within the sector continues to inhibit complete reform, while undue executive influence remains a relentless problem. Long delays in hearing cases, lack of adequate legal aid services, discriminatory laws and allegations of corruption continue to impede universal access to justice. Prison conditions remain overcrowded and inhumane, and juveniles have yet to realise their full rights, guaranteed by international and now domestic law. Continued vigilance, as well as legal reform, is therefore needed to ensure an independent judiciary that can engender a true culture of human rights.

# 1. Legal and institutional framework

Though first ‘discovered’ by a Portuguese sailor, Sierra Leone became a British colony in 1808 when freed British slaves settled the city of Freetown. Sierra Leone gained independence from the British in 1961, but quickly became mired by years of mismanagement and a one party system. In 1991, the Revolutionary United Front (RUF) began a brutal ten-year civil war, which ended with the signing of the Lomé Peace Agreement (LPA) in 1999 and the cessation of hostilities in 2002. The Special Court for Sierra Leone (SCSL) and Truth and Reconciliation Commission (TRC) were then set up to ease the transition from civil war to the rule of law. In 2004, the TRC published a report of its findings, recommending a whole range of reform, including the justice sector. Since the war, the government of Sierra Leone (GoSL) has made slow but steady progress towards instituting this reform.

## International law and the Constitution

Sierra Leone is a party to 217 international treaties, including the most critical human rights treaties. However, it has signed far more treaties than it has ratified. Further, the Constitution protects the supremacy of the domestic law by stipulating that treaties and agreements signed by the state must first be ratified by Parliament.

Many major international human rights standards have been incorporated into the domestic laws; however, many remain undomesticated. In many cases, the delay in domestication is attributable to administrative lapses in a government department. To monitor the progress of law reform, the GoSL should set up a committee that represents all institutions responsible for the reformation of laws in the country.

Sierra Leone has also not remained fully up to date with its reporting obligations. Reasons advanced include the ten-year civil war, which disrupted the administration of the country and its information gathering/reporting capacities. In addition, Sierra Leone has not ratified a sizeable number of treaties, thus not binding itself to its treaty reporting obligations. Beginning in 2008, the Ministry of Foreign Affairs and International Cooperation began designing a methodology to upgrade the reporting standards of the country. As a result, in May 2011, the Universal Periodic Review (UPR) Working Group of the United Nations High Commission for Human Rights examined Sierra Leone’s human rights record. In fact, during that session, Sierra Leone was quizzed by member states about, among other things, the delayed submission of reports to various treaty bodies. The UPR was an opportunity to bring Sierra Leone’s human rights record under international scrutiny. At the end of the session, member states made specific recommendations and comments requiring it to take actions. In total, the member states made over 129 recommendations, of which the Sierra Leone delegation accepted 44. The delegation stated that action was already being taken on the remaining 57 recommendations.

The attitude of judges towards international law has also hampered the effectiveness of the system in challenging laws in violation of international human rights. Judges must engage in international law studies to upgrade their readiness to use such laws. The Constitution must also

declare that human rights obligations to which Sierra Leone is a party are incorporated in the Constitution and are directly applicable in their courts.

Sierra Leone has undergone controversial constitutional development in its journey towards democracy. Sierra Leone existed under the 1961 Constitution until the introduction of the Republican Constitution in 1971. However, authoritarian attempts to stifle fundamental human rights climaxed in 1978 with the adoption of the One Party Constitution. Finally, the 1991 Multi-party Constitution reintroduced political pluralism, decentralisation, and international human rights standards into the political life of the country.

The 1991 Constitution is a significant improvement for judicial autonomy, independence and the administration of the rule of law. It subjected the appointment and dismissal of judges to the approval of Parliament. The Constitution provided for fundamental human rights, as well as commissions of inquiry and arbitration committees. It also provided for the office of the Ombudsman to address cases pertaining to persons aggrieved by the actions of government officers and offices.

The Constitutional Review Commission has a mandate 'to review the Sierra Leone Constitution of 1991 with a view to recommending amendments that might bring it up to date with economic, social and political developments that have taken place nationally and internationally since 1991'. The Commission follows a similar methodology to that of the Law Reform Commission (LRC), including nationwide consultations with experts and stakeholders, along with soliciting inputs from government institutions and private individuals.

Engaging the Supreme Court in constitutional matters requires adherence to strict court rules that stifle free access. For example, the requirement of *locus standi* (the right to be heard) to challenge the constitutionality of a law or any other matter is sometimes abused. These issues result in complex procedures, delays and a shortage of judges in the court.

## National legislation and law reform

Upon establishing independence in 1961, Sierra Leone inherited many laws from the British. Its legal system is thus based on English common law, indigenous customary law (largely uncodified), and some form of Islamic law, which applies to the marriage and property inheritances of Muslims. The 1991 Constitution provides that the laws of Sierra Leone shall comprise of the Constitution; laws made by or under the authority of Parliament; any rules, regulations or other statutory instruments made by any person or authority pursuant to a power conferred to it by law; the existing law; and the common law.

The LRC reviews the laws of Sierra Leone with a view to their reform or repeal. It submits reports on areas of the law and draft bills to the office of the Attorney-General and Minister of Justice, who has the statutory duty to process them for enactment by Parliament. Most laws go through the LRC before reaching Parliament.

## The court structure

The Supreme Court, Court of Appeal and the High Court constitute the superior courts, while the magistrate and local courts comprise the inferior courts. All courts adjudicate in criminal and civil cases under statutory and English common law. Customary law applies throughout

Sierra Leone, except in the capital, Freetown, where only English common law is applicable. According to the Constitution, should customary law conflict with common law, common law takes precedence. In addition to regular courts, specialised courts are provided for in the laws of the state. They include courts marshal, juvenile courts, and labour courts. Additionally, the Special Court for Sierra Leone exists as a transitional justice mechanism with jurisdiction to address events of the recent civil war. It is important to note that even though it operates in Sierra Leone, it is however not part of the hierarchy of the courts of Sierra Leone.

The distribution and dispensation of justice through common law courts requires attention. Common law courts are not fully distributed throughout the country, nor are they functioning well. Sierra Leone suffers from a shortage of judicial staff, especially in the provinces. Accordingly, the court structures need attention, especially in the provinces, where the system is open to abuse by officials. The magistrates, chair persons and chiefs operate in areas considered far from the scrutiny of supervisory authority, and are often tempted by corruption.

## Recommendations

- Just as the Constitution recognises fundamental human rights as justiciable, it should also recognise social, economic and cultural rights.
- To monitor the progress of law reform, the GoSL should set up a committee to represent all institutions responsible for the reformation of laws in the country.
- Judges should engage in international law studies to upgrade their readiness to use such laws, even if only as supporting evidence in cases brought before them.
- The Constitution should make an unequivocal declaration that the human rights obligations to which Sierra Leone is party are directly applicable in Sierra Leone courts.
- To guarantee the security of organisations such as the Human Rights Commission-Sierra Leone, the Constitution must include them, as it does the Office of the Ombudsman, National Electoral Commission and the Political Parties Registration Commission.
- To address corruption, further supervision of judges and magistrates is required, particularly in the provinces.

## 2. Management of the justice sector

Since the conclusion of the civil war, several efforts have been put in place to revamp the justice sector, whose deterioration stood out as one of the contributing factors to the war. Development programmes are now targeted at the justice sector as a whole. Outstanding improvements have been in the area of infrastructure, transportation, logistics and training. However, the sector remains under-funded, and significant flaws in law reporting, records systems, information management and human resource capacity remain a huge challenge.

# Strategic planning and financial management

The following make up the justice sector of Sierra Leone:

- The judiciary (courts);
- The Ministry of Justice and Attorney-General (law officers, Solicitor General, prosecution);
- The Ministry of Internal Affairs
- The Ministry of Local Government and Rural Development (local courts, police and prisons oversight);
- The Ministry of Social Welfare, Gender and Children's Affairs (approved school, remand home, juvenile justice, family matters and women issues);
- The Sierra Leone Police (investigation, prosecution, law enforcement);
- The Sierra Leone Prison Service (law enforcement and custodian of prisoners);
- The Anti-Corruption Commission (investigation and prosecution of corruption-related offences);
- Human Rights Commission (investigation of human rights abuses);
- Judicial and Legal Services Commission;
- Law Reform Commission (law review and reform);
- The Office of the Ombudsman (maladministration and administrative injustices); and
- The Ministry of Finance and Economic Development (budgetary allocations).

The government of Sierra Leone has demonstrated a commitment to enabling access to affordable justice, supporting the rule of law, preventing further conflict, and improving safety and security for the people of Sierra Leone, particularly the poor, marginalised and vulnerable. This political commitment encouraged the United Kingdom's Department for International Development (DFID) to allocate 25 million pounds over a period of five years for a major reform of the justice sector. The DFID also provided 19 million pounds over a four year period (2011–2014) for a new Improved Access to Security and Justice programme and a memorandum of understanding (MoU) to that effect has been signed with the Attorney-General on behalf of the government.

The following were identified as priorities for reforms: outdated laws and procedures; developing a multi-sector approach; overcrowding in prisons and improving prison conditions; delays in court; juvenile justice; community relations with the police; support mechanisms that facilitate access to justice for the poor; and research and information (JSDP Project Memorandum).

The Justice Sector Reform Strategy and Investment Plan 2008–2010 (JSRSIP) focused on achieving four goals with seven target areas. The four goals are: (1) safe communities; (2) access to justice; (3) strengthened rule of law; and (4) improved justice service delivery. The seven target areas are: (1) activities to reduce crime and fear of crime; (2) activities to improve primary justice mechanisms; (3) activities to speed criminal case processing; (4) activities to improve the handling of juveniles; (5) activities to speed civil dispute processing; (6) activities to improve human rights and accountability; and (7) activities to improve justice service delivery (measuring of the targets).

The status report of the JSRSIP 2008–2010, commissioned at the end of the activities in 2010, indicated that there has been some improvement in coordination among sector members. Initially, the individual budgets of the ministries, departments and agencies (MDAs) did not reflect the sector strategy. MDAs were therefore encouraged to align their plans and budget with the JSRSIP. There were also not enough resources to meet the needs of the MDAs, and allocations to most justice sector MDAs were insignificant. The status report indicated that there has been increased capacity in the MDAs to produce costed strategic plans in line with the sector strategy. The sector continues to rely heavily on the good will of donors and development partners, who contribute about 80% of the sector's sustenance in terms of salaries, logistics, vehicles, stationery and other office supplies. However, they have been able to utilise donor funds more effectively to achieve their targets. The second Justice Sector Reform Strategy and Investment Plan 2011–2014 (JSRSIP II) has been approved by the Leadership Group and is currently in Cabinet for approval. The strategy is aimed at 'Accelerating Equitable Security and Justice, Community Empowerment and Mobilization and Accountability and Oversight'.

The process of accessing funds involves the formulation of budget call circulars and engaging with individual MDAs by the Ministry of Finance and Economic Development. This process is viewed by many MDAs as a kind of defence of their budgets due to limited resources. Certain activities and interventions are prioritised, leaving a greater part of activities incomplete. This exerts tremendous pressure on the sector institutions to function properly. There is also great discontent in the conditions of service (salaries, vehicles and other logistical support, including stationery).

## Court administration

The executive is still in control of vital state resources needed for administration of the judiciary. The Ministry of Finance allocates state resources upon approval by Parliament. The Sierra Leone Police is the only sector MDA that enjoys a self-accounting system. The Ministry of Finance is looking at the possibilities of rolling out such self-accounting systems to the judiciary and other justice sector MDAs. It is hoped that this will enable the judiciary to overcome most difficulties in accessing the funding needed for its smooth operation.

Court administration is plagued with numerous problems. These problems include understaffing, poor conditions of service, a poor working environment and insufficient office equipment and supplies needed for normal functioning. The physical conditions and facilities of the justice sector institutions received some support after the war. The government does not have a strong financial base to embark on major infrastructural development. Donors support approximately 80–90% of infrastructural development. There is still much to be done for courthouses, police stations, prisons and other structures to make them safer, more secure and hospitable.

Court staff in Sierra Leone are not sufficiently trained. Training opportunities within the country for judicial education are limited. However, the judiciary established a judicial and legal education institute in December 2010. The institute trains judicial officials, including the legal executive, to alleviate the need for legal officials, as well as increase their capacity. Other major issues of concern are poor conditions of service, including low salaries, which lead to

understaffing. The work environment (office space) and access to modern equipment, such as computers, is limited. Morale is not high among magistrates, judges and other senior court officials.

Court buildings are inadequate, especially in the provinces. In Freetown, the courts are highly congested, inadequately furnished and create an inhospitable environment (no air-conditioning, poor water and sanitation, and limited and interrupted power supply). However, in recent times, there have been major renovations to courts in Freetown, as well as other parts of the country. Industrial reforms pursued by the Justice Sector Development Programme (JSDP) include provision of additional court buildings, residences for judges and magistrates, prisons and prison officers quarters, and the Family Support Unit (FSU).

## Access to information

Record-keeping is largely manual. Records are generally kept in paper files, and archives are stacked in cartons and cabinets. There is no proper storage and security for documents. Delays in the administration of justice and disruptions in the normal functioning of the courts are bound to occur from such situations. There are efforts underway to computerise the records and information (case tracking and other software systems for easier information storage, access and retrieval). However, no donor has committed funds for such initiatives.

Access to information about the law and courts legislation is not easily available to justice sector staff and others. Transcripts are not widely distributed, being limited to lawyers, magistrates and judges. There is very limited expert commentary on Sierra Leone cases. Law reporting does not occur on a regular basis and is an additional area of constraint. Recently however, the court, with support from the United Nation Development Programme (UNDP), started making its decisions available on CDs to the public. The initiative will go a long way to ameliorate the problem of access to the Supreme Court decision. It is important that a website be created to post these decisions, and a similar initiative be sought for the High Court as well. In addition, as part of its legacy, the Special Court established a website intended to serve as a one-stop shop for all legal information pertaining to Sierra Leone. Like the initiative of the court, this is a laudable venture, and will make Sierra Leone laws and legal information widely available to the public.

Data and information gathering on the courts and the justice sector remains a huge challenge. There is a need to improve the accessibility of comprehensive data to the public. Case tracking and an effective database system are important ways to improve information accessibility.

## Recommendations

- The government should increase budgetary allocations to the justice sector, otherwise the sector will collapse when donor support wanes.
- The oversight role of the Ministry of Internal Affairs for the police and prisons needs to be defined clearly.
- A sound financial management system should be implemented for all assistance directed towards the sector's development. This should include an audit, and should consider assigning qualified accountants to the MDAs. This will encourage donors to invest in the sector.

- Large-scale recruitment and training should be held for the court.
- Conditions of service in the justice sector need to be improved to attract the best people.
- There is a need to improve the record-keeping system to access information more easily and prevent data from damage or loss.
- Facilities such as buildings, water, electricity and furniture need to be improved.
- The storage system for legislation and jurisprudence needs to be improved to ensure availability and access to practitioners.
- Law reporting must be re-instituted.
- An effective communication strategy between the judiciary and the sector must be implemented for information dissemination and feedback.

### 3. Independence and accountability of judges and lawyers

#### Judges and magistrates

A lack of judicial independence has been noted as one of the chief causes of the decade-long civil war. Despite the Constitution's strong wording in favour of judicial independence, several structural flaws within the document weaken the judiciary's independence in practice. While there is considerably less executive influence on the judiciary today than a decade ago, there remains a strong perception within the legal and civil society communities, as well as the public-at-large, that the judiciary is subject to strong executive influence. Executive interference is alleged to occur at the highest levels of the court system, as well as on magistrate and local courts.

The Constitution stipulates that all judges should be appointed by the President, 'acting on the advice of the Judicial and Legal Service Commission (JLSC) and subject to the approval of Parliament'. All members of the JLSC are appointed by the President in some way, either specifically to serve on the Commission, or to hold the public office that qualifies them automatically for membership on the Commission. The JLSC framework raises the risk that the ruling political party can dominate the pre-Parliamentary appointments process.

There are currently no formal procedures for evaluating potential judge appointees and those seeking promotion. The JLSC is responsible for appointing magistrates. Magistrates are at serious risk of interference from other branches of government. The absence of clear requirements for removal of magistrates in the Constitution or Courts Act makes the abuse of the removal process a possibility. Under the Local Court Act of 1963, the Minister of Internal Affairs was responsible for appointing the Chairperson and Vice-Chairperson. The old law has been replaced by the Local Court Act of 2011, which transferred the power to appoint, promote, transfer, suspend and dismiss any local court officer from the Minister of Internal Affairs to the Chief Justice, with advice from the Judicial and Legal Service Commission and the newly constituted Local Court Service Committee. This provision is consistent with one of the recommendations of the country's Truth and Reconciliation Commission. Historically, though, the Paramount Chief has usually played the dominant role in recommending an appointee, even though the Ministry must furnish official approval of the choice. However, since 2004,

the local chieftdom council has come to play a larger role in the nomination process, putting undue pressure on the Chairperson to serve the interests of local authorities if he/she wishes to be reappointed.

There are critical shortages of judges and magistrates throughout the country, particularly outside of Freetown, leading to heavy caseloads and some magistrates being forced to cover towns and districts far from their home base. All appointees for the Superior Court of Judicature must be entitled to practise law in a court of unlimited jurisdiction in civil and criminal matters in Sierra Leone, or a country with an analogous legal system. Magistrates have no particular stated requirements, and can begin hearing cases as soon as they receive qualifications to practise law in the country and complete a pupillage with a trained lawyer. There are no formal training procedures or schedules for judges after they assume office. All the magistrates and justices of the peace (JP) spoken to for this report called on the need for continuous training to be able to apply the law most effectively and promote justice.

Poor conditions of service permeate the judiciary in Sierra Leone. Both judges and private attorneys pointed to the low salaries in the public sector, as opposed to the potentially unlimited amount one can earn as a private attorney, as the main reason Sierra Leone has trouble attracting sufficient numbers of qualified applicants to the bench. Conditions in the customary courts are also troubling, as there are often delays in the payment of court staff.

In September 2005, a Code of Conduct was implemented to prescribe formal processes for public complaints against the judiciary. The Code of Conduct aims to restore public confidence in the judiciary, as well as protect the reputation of individual judicial officials and the judiciary as an institution. The Code is binding on all officials and deals with such matters as judicial integrity, competence and diligence, equality, and civic and political activities. For violations of these principles, the Code established a judicial ethics committee, which consists of the most senior Supreme Court Justice, Court of Appeal Justice and High Court Judge. However, there are no enumerated disciplinary actions for breaches of the Code, and the judicial ethics committee has complete discretion to adopt its own procedures for investigating complaints. The specific breaches and punishment outcomes delivered by the JLSJ are not made public. The lack of confidence among many judges, lawyers and the public requires the judiciary to make more efforts to formalise and utilise its disciplinary procedures and make the results accessible to the public.

## Prosecution service

All offences prosecuted under the name of the Republic of Sierra Leone are initiated by the Attorney-General and Minister of Justice, or any party authorised by him in accordance with applicable laws. In practice, the Director of Public Prosecution's (DPP) office prosecutes only the most serious crimes, and members of the Sierra Leone Police implement the majority of prosecutions.

The most problematic aspect of the prosecution service is the constitutional provision that fuses the Attorney-General and Minister of Justice into one office. Opponents of this provision argue that this structure prevents the Attorney-General from exercising his prosecutorial authority without bias from the executive branch, of which he is a member as Minister of Justice.

The prosecution service is weak, most notably because of its severe shortage of staff and other resources. There is a severe shortage of police prosecutors throughout the country, and their training is often insufficient.

The Anti-Corruption Commission (ACC) also possesses the power to prosecute. The ACC Act of 2008 amended the 1991 Constitution and conferred prosecutorial discretion upon the ACC.

## Lawyers

There are few reports of harassment of lawyers for their representation of particular defendants or cases by formal governmental officials.

Poor conditions of service have made attracting lecturers difficult for institutions of legal education. No further training is required for lawyers who fulfil the requirements of schooling and pupillage necessary for entry into the legal profession. There have been some complaints by judges that lawyers do not know how to use human rights arguments to support their cases, and that these arguments could be very persuasive, especially at the higher court levels. This suggests the need for more rigorous training of lawyers in human rights.

The Legal Practitioners Act 2000 established the General Legal Council as the governing authority that regulates the conduct of the legal profession. It is responsible for among other things, the admission and enrolment of persons entitled to practise law, issuing of practising certificates to legal practitioners, prescription of standards of professional conduct and code of etiquette for the profession and discipline of legal practitioners. The General Legal Council through its Disciplinary Committee holds inquiries into allegations of unprofessional conduct contrary to the Legal Practitioners Act and Legal Practitioners (Code of Conduct) Rules 2010. The General Legal Council can impose disciplinary measures against legal practitioners which include deletion of the person's name from the register of legal practitioners, suspension, payment of a fine or censure. In the recent past, the General Legal Council has taken disciplinary action against a few legal practitioners.

## Recommendations

- The Constitution should be amended to reduce the role of the executive in the appointment of judges and JLSC members. The discretionary appointments on the JLSC, which are afforded to the President, should be eliminated and instead, the influence of other groups, including the judiciary and civil society, should be strengthened. The number of appointees on the JLSC could also be increased, as this measure could reduce the risk of politicisation of appointments.
- To protect the integrity of the judicial budget, a judicial advisory body should be created, which, during the pre-parliamentary stage of budget creation, would work with the executive to determine the proper amount of judicial funding needed, and to inform the executive branch of particular gaps or critical areas that must be addressed.
- Standards of judicial appointment and promotion should be formalised, including the introduction of promotion examinations, interviews and required evaluations of past judgments or work experience.

- The Constitution should be amended to eliminate the provision for judges on contract, or at the very least, to require the approval of Parliament for their appointment.
- To better define the procedural relationship between the President and the Commission, the exact scope of the JLSC's role in recommending appointees should be made more specific in the Constitution.
- Caps upon the number of Supreme Court justices who are allowed to sit on the court should be instituted to prevent the risk of presidential court packing.
- The judicial powers – particularly the power to determine the judicial makeup of a particular case – that currently vests in the Chief Justice of the Supreme Court should be spread more broadly throughout the judiciary. This would ward off abuse stemming from concentration of power in one person.
- A judicial advisory body should be created to protect the integrity of the judicial budget. During the pre-parliamentary stage of budget creation, this body would work with the executive to determine the proper amount of judicial funding needed, and to inform the executive branch of particular gaps or critical areas that must be addressed.
- Stricter recusal procedures should be formalised and enforced to protect against judicial conflicts of interest.
- The removal process for magistrates should be formalised within the Constitution or Courts Act of 1965.
- Two-year magistrate career training schools could be created to increase the number of skilled magistrates and to replace justices of the peace, who often lack any legal background.
- Training of judges and lawyers in human rights and international law should be strengthened. Funding should be provided for training at regular intervals and measures should be developed to evaluate the progress made by the training. A more extensive internship programme, both domestically and abroad, should be developed for law students.
- To reduce critical shortages and to improve the quality of the judicial system, the government should look for permanent sources of funding to improve conditions of service for judges and to continue the 'top-up' salary programmes provided to judges and magistrates by UNDP and JSDP.
- Civil society should assist in sensitising local court officials, chiefs and the public across the country to the proper jurisdictions of the various courts and the right to resist pressure from authorities to try cases in inappropriate jurisdictions.
- The Judicial Code of Conduct should be amended to include information about potential disciplinary infractions and punishments available. The judiciary should make this information available to the public and should disclose the results of its disciplinary proceedings.
- More emphasis should be placed on the legal training of police prosecutors and justices of the peace.
- To avoid excessive interference by the executive in prosecutions, the Attorney-General's Office should be separated from that of the Minister of Justice, and the

extent of the A-G's *nolle prosequi* power should be restricted (e.g. he must provide a clear legal rationale for dismissing charges, or the decision should be open for judicial review).

- The disciplinary committee for lawyers should be strengthened, and the public should be encouraged to file complaints against lawyers. Civil society should work to ensure that these complaints are investigated by the Bar Association and that the results of these investigations are made public.
- The admissions process at the Law Department at Fourah Bay College should be standardised and based solely on merit. Conditions of service should be improved at the university to attract more staff. Human rights courses should also be implemented specifically for law students.

## 4. Criminal justice

The ten-year conflict within Sierra Leone left the infrastructure of the criminal justice system, including the police, judiciary and prisons, in a mess. Ongoing reforms have led to enhanced capacity in these sectors, and innovations in legislation and civil society have advanced Sierra Leone's criminal justice system beyond even what existed before the conflict began.

### Protection from crime

Analysis of crime trends for the past four years illustrates several areas of concern. Most notably, these include consistent increases in some of the most serious crimes, including murder and robbery with violence. Assault crimes have also begun to rise. The Sierra Leone Police (SLP) identified several possible explanations for the failure to reduce crime numbers for serious offences, including a high unemployment rate, the effects of the global recession, and inadequate cooperation between police and the community.

There have been few changes in the ways in which statistics are collected. There are no discrete categories of ethnicity, gender or age, which would aid the police in identifying strategies to protect vulnerable groups. There is also no translation of overall crime numbers into actual crime rates, which makes it difficult to determine if crime is actually increasing or if the rise is due simply to a larger population.

The government has completed several major reforms since 2000 to increase the protection afforded to vulnerable groups, particularly women and children, including the establishment of the Family Support Unit (FSU) as an arm of the police to combat sexual violence and cruelty against women and children. The most common crime reported to FSUs is domestic violence, followed by sexual assault and child abuse.

Unlike domestic violence, legal reforms have not yet been implemented for rape crimes. Currently, rape of females over 14 years of age is still prosecuted under the Offences Against Persons Act, which provides a maximum sentence of life imprisonment. The bill on sexual offences, which raises the age of adulthood under rape laws from 14 to 18, is yet to be tabled in Parliament. Harmful practices, such as female genital mutilation (FGM), child marriage and human trafficking continue to harm the vulnerable populations of women and children.

## Policing

Recent reforms within the SLP force have enhanced their capacity to formulate effective crime-fighting strategies and build trust among the public, a major goal since the end of the civil war. However, the SLP still falls short in maintaining transparency, and requires greater civilian input in local policing activities. Police abuse of suspects has decreased since 2002, and the percentage of citizens feeling comfortable in accessing the police has also increased. However, frequent reports of physical abuse, illegally assessed fees and unlawful detention continue to undermine the SLP's credibility. The lack of sufficient equipment, poor response times and investigative delays reduce the SLP's capacity for crime prevention and reduction. More resources and greater training of police officers is needed in investigative techniques, human rights and criminal law. In addition, formal monitoring systems should be established to ensure proper treatment of suspects and detainees.

Despite recent improvements, training for police officials remains inadequate. Police are not trained in forensic techniques and lack equipment necessary to carry out forensic investigations and surveillance. FSUs also require adequate training and increased funding for their activities. Poor conditions of service continue to be cited as a major contributing factor in the persistence of corruption and assessment of illegal fees within the SLP. Chiefdom police receive especially poor remuneration. They are paid by the local court from the revenue they receive through fines.

The SLP has a Complaint, Discipline and Internal Investigations Department (CDIID). The department is charged with handling and investigating complaints from the public regarding police abuse, and disciplining members of the police in certain cases. Punishment includes reduction in rank, fines, a reprimand or two weeks of corrective training. For more serious offences, dismissal may result. Discipline of officers does occur, although in small numbers compared to the number of allegations of wrongdoing from the public. Transparency about the disciplinary actions of the CDIID could be improved.

Private citizen action against crime remains relatively low for most offences, except larceny. Neighbourhood-watch groups have been established in some localities, reporting criminal activity to the police, or enacting citizen arrests. Private security companies (PSCs) are also quickly growing in number throughout the country. However, mob violence against reported thieves remains a common problem across the country.

The right to a fair trial is enshrined in the Constitution, though this right is frequently violated in practice through excessive pre-trial detention, long trial delays, unjust sentencing laws and scarce legal representation for the indigent. A bill entitled the National Legal Aid Act of 2010 is currently being drafted, has gone through Cabinet and is waiting to be tabled in Parliament. When enacted, it is hoped that the National Legal Aid Act of 2010 will alleviate some of these problems. Even though few people in the country speak English fluently, there is a severe lack of interpreters at all levels of the Superior and magistrate courts.

A major cause of delays across the courts system is the Preliminary Investigations (PI) system, which is provided for by Section 108 of the CPA. The PI system was implemented largely to prevent a backlog of frivolous or unsubstantiated cases in the higher courts, as magistrates can drop the charges if the evidence is too weak to support trial. Alternatively, the system can

adjourn the matter indefinitely, until the prosecution can produce sufficient evidence to warrant a trial. However, despite its initial purpose, the PI system has resulted in serious delays in the openings of trials. It has also led to much duplication of proceedings, as witnesses are called again to repeat their testimony and evidence is re-presented in the High Court proceedings. Defendants are also remanded during PI, increasing the burden on the prison system. However, the Criminal Procedure Act of 1965 is currently being reviewed by the Rules of Court Committee. When enacted, PI will be held for a maximum of 28 days, during which the magistrate should commit the case to the High Court, if there is evidence.

Intimidation of witnesses occurs frequently in Sierra Leone, in private settings outside of court by defendants or their associates, as well as in the courtroom by attorneys. Intimidation of victims is a particularly serious problem in sexual assault cases, where the offender is typically known to the victim and may live in close proximity, or even with her and her family.

Recent legislative reforms have provided greater protections for juveniles and women, but most communities have failed to implement these reforms. Violations of the rights of women and children in customary courts remain particularly common. Witness protection mechanisms are virtually non-existent, intimidation of witnesses and victims is pervasive at all levels of the justice sector, and even serious criminal cases are frequently dropped because of threats and harassment. In 2009, there were 13 people on death row, three of whom were women. In April 2011, during the celebrations of the country's 50th anniversary of independence from Britain, the President pardoned 96 prisoners, five of whom were on death row, including a female prisoner convicted of murder. However, there are still nine convicts on death row, including a female still in prison awaiting execution in Freetown. Civil society efforts to produce a legal ban have not yet been successful.

The plight of juveniles in the criminal justice system is thus particularly serious. There is currently only one full-time juvenile magistrate based in Freetown; provincial magistrate courts handle all cases, including juvenile cases. Training of juvenile magistrates is inadequate and there are confirmed reports of courts failing to sentence juveniles in accordance with the law, which allows children under 18 years of age to be sentenced to an 'Approved School'.

## Sentencing

Sentences that may be handed down under Sierra Leone's 1965 Criminal Procedure Act (CPA) include the death penalty, imprisonment and payment of a fine. Some crimes have specified sentences, while others do not, leaving the length of sentencing entirely up to the judge. The death penalty is mandatory for the most serious felonies, including murder, treason and mutiny. Most crimes, with the exception of the most serious, have the option of fines, which, if not paid, would result in incarceration.

Though there are maximum sentences for many offences in the formal courts, these sentences are rarely enforced. Sentencing in customary courts is often inconsistent and discriminatory towards women and juveniles. Civil society efforts to legally ban the death penalty have not yet been successful. Civil society groups, including Prison Watch, are advocating for major reforms to sentencing laws to include provisions for alternative sentencing. Currently, most crimes offer the option of either paying a fine or serving a prison sentence. As a result, the majority of those

incarcerated are among the poorest citizens. Community service and mandatory attendance at educational programmes could be beneficial alternatives for minor crimes. However, the CPA, currently being revised, incorporates a system for alternative sentencing.

## Prisons

Since 2005, the collaboration of the GoSL with international donor organisations has led to considerable improvements to the prison system, both in management of prisoners and infrastructure. However, severe overcrowding, poor health conditions and sanitation, and lack of rehabilitative facilities continue to plague the nation's prisons.

Currently, there is no division of inmates by type of crime or status. Remand prisoners are placed with the convicted, and those accused of murder occupy the same space as those accused of loitering. The Department of Prisons has expressed their desire to separate prisoners by category, but lack the financial means and capacity to do so. There are approximately 1 000 prison staff in the country, 20% of which are female. Until the JSDP started conducting workshops for prison staff, officers had limited or no training.

The Freetown Central Prison currently has a limited vocational programme, with skills training in carpentry, tailoring, shoemaking, blacksmithery and masonry. In the provinces, facilities vary and tend to be more limited. Overall, however, critical shortages of machines and hand tools for programmes such as carpentry remain.

## Recommendations

- The Sierra Leone Police Corporate Services Division, with the support of governmental institutions and NGOs, should develop more comprehensive statistics, divided by ethnicity, age and gender of both victim and perpetrator. These would assist police in identifying and determining the impact of crime on the most vulnerable groups in society. The police should also make greater efforts to making crime statistics available to the public without onerous procedures and restrictions.
- The SLP should make a greater effort to build trust among rural populations and to increase crime reporting and formal prosecution rates outside of Freetown.
- Independent complaint commissions within each community should be established to improve community/police relations. Civil society must play a more vigilant role in monitoring police abuse of citizens, and formal mechanisms, such as monitoring councils or police watch groups, should be established.
- Funding should be increased to civil society groups and the government to improve their monitoring of local court practices and to end the trial of serious offences within customary or illegal chieftdom courts.
- The government should pass the Sexual Offences Act, which would provide increased protection for sexual assault victims by raising the age of adulthood under rape laws to 18 from 14. In addition, incest should be criminalised.
- The government and international donors should be pressured to increase funding to the Ministry of Social Welfare, Gender and Children's Affairs. Shelters or safe houses should be constructed for abused women and children.

- The FSU should create and maintain a register of all persons convicted of child abuse in the country. This will improve police surveillance, investigation and prosecution of sexual offences.
- The government should continue to work on a strategy and funding plan to construct the child welfare committees mandated by the Child Rights Act of 2007.
- Donor organisations should be encouraged to provide greater resources to the Gender-Based Violence National Action Plan (NAP), or the rollout plan, which is working to implement the Gender Acts.
- Civil society and government activists should lobby parliament to pass specific legislation outlawing female genital mutilation and engage in community-based sensitisation campaigns to meet the standards outlined in the Convention for the Elimination of Discrimination against Women (CEDAW).
- Greater sensitisation is needed among local communities with respect to human trafficking, as well as greater collaboration among the agencies who deal with trafficking cases.
- In order to protect the SLP from politicisation, the composition of the Police Council should be modified to receive less domination by the executive branch, and reflect more civilian participation. This is in line with the new local-needs policing strategies.
- Civil society should work to strengthen the Policing Partnership Boards (PPBs) in their localities and put pressure on police to respond more enthusiastically to civilian input.
- Funding needs to be increased for police equipment. Police should receive increased training in forensic techniques and funding for forensic equipment and surveillance.
- The process of abolishing the Preliminary Investigation system in the magistrate's courts needs to be accelerated to reduce delays.
- To increase conviction rates, FSU staff, local hospital workers, traditional leaders and the public need more training about the Gender Acts. Education should be given to local community leaders and ordinary citizens concerning their rights and how to utilise them in the midst of the new laws.
- Funding needs to be increased to halt the backlog of payments to chieftom staff.
- To combat increasing political and ethnic violence, the police should focus on building coalitions with youth in their communities to foster dialogue and relationship building among supporters of different political parties.
- Civil society should work to inform people of their rights while in detention.
- The Constitution should be amended to provide explicit authority for the CDIID to investigate complaints against the police. In addition, a thorough list of disciplinary procedures, offences and punishments should be codified into a new Police Act.
- Private security companies need to be regulated to ensure the well-being of the public and the workers in the industry.
- The emerging legal aid scheme should be strengthened to improve access to justice.
- The judiciary must commit resources to recruit and train professional interpreters of the law.

- The government should adhere to TRC recommendations and abolish the death penalty.
- Government, civil society and international donors should work together to provide more vocational training for prison inmates, as well as increased funding to improve living conditions within the prisons.
- Outdated laws should be updated.
- Police and court officials should be trained on proper treatment of juveniles.
- Sierra Leone should update its law on juvenile justice, specifying, for example, what cases require diversion, and strengthen its monitoring system for officials who would make these diversion decisions.
- Training for prison officials should be improved.
- The public should be sensitised on the need to avoid mob violence and should be encouraged to take criminal matters directly to the police.
- Alternative sentences, including community service, should be provided for minor offences, thus reducing overcrowding in prisons.

## 5. Access to justice

Generally, Sierra Leoneans have little knowledge about their rights and about the Constitution of Sierra Leone. Efforts by NGOs have helped greatly to educate the public about basic human rights. Civic education about the Constitution is not part of the country's educational curriculum, nor is it widely undertaken by human rights organisations. Additional efforts are required to educate the public about the provisions of the Act, as well as to enforce observance. Successful efforts by NGOs in raising public knowledge about human rights have led to frequent standoffs between traditional authorities and their subjects, with the latter often claiming that their rights are being violated by the chief. This has minimised the powers of traditional authorities, as many of their subjects tend to either flout their decisions, or entirely ignore their courts.

Magistrate courts are distributed according to judicial districts in Sierra Leone. This statutory distribution creates a geographical imbalance in the distribution of courts in the country. There are more lawyers and courtrooms in Freetown than the rest of the country. The poor road network, coupled with the pervasive poverty in the provinces also significantly affects the movement of litigants and their ability to meet the costs of legal services. People are thus forced to rely on the customary law system. Through the JSRSIP, the government is planning to build a magistrate court in each of the 12 headquarter towns, to bring formal justice to the people. Additionally, proceedings in the magistrates' courts are conducted mainly in English, with limited interpretation services. Filing procedures are considered complex by the largely illiterate population. The justice system also largely discriminates against people with disabilities. These people often have no provision to read court documents or even to access courtrooms without the aid of a guide. There are also gender-related barriers to accessing justice in Sierra Leone. Financial and social barriers prevent women from accessing justice. Women face increased barriers in both the formal and traditional systems of justice because of discrimination, lack of information and lower educational levels.

While the court fees may be relatively minimal, they sometimes constitute a barrier to indigent citizens. It is even more difficult to afford the cost of legal services, which constitutes the principal barrier of access to the formal courts. There is a lack of public confidence in the judiciary, principally as a result of allegations of pervasive corruption. Sierra Leone's judicial system is hampered by extortion and bribery among court officials, insufficient staff and the detention of hundreds of accused persons without trial for protracted periods. Low salaries for magistrates and judges increase the appeal of corruption and bribery in the judiciary. There are unconfirmed allegations that police prosecutors receive bribes from litigants to compromise evidence in a given matter.

There is currently no fixed or statutory scale of fees for lawyers in Sierra Leone. The Pilot National Legal Aid Scheme (PNLA) was launched in April 2010, but Parliament is yet to enact a law on legal aid. The PNLA is serving as a precursor to a national legal aid scheme. Sierra Leone therefore does not have a comprehensive national legal aid scheme, given that the bill is yet to be enacted. The government does sponsor a limited legal aid scheme, mainly for persons facing treasonable charges, and some local human rights organisations provide legal aid to indigent citizens. However, these efforts are not sufficient to meet the ever-increasing need for public access to justice. The PNLA scheme therefore aims at establishing a sustainable, affordable, credible and accessible national legal aid for accused persons in Sierra Leone who cannot afford to pay for the services of a lawyer. It is hoped that this pilot project will form the basis for the establishment of the office of public defender in Sierra Leone.

The extremely formal rules surrounding the right to begin proceedings have invariably prevented a largely illiterate and uninformed citizenry from accessing justice. As a result, the JSRSIP is planning to adopt a best practice review of civil procedure in the magistrates' courts, with a special emphasis on streamlining and simplifying procedures. This includes considering the potential for small claims procedures and alternative dispute resolution. Overall, court orders have not been successfully enforced for a number of reasons. Some verdicts are handed down after the demise of one of the parties in the matter, and most unsuccessful litigants may have exhausted all their money on the litigation and so have nothing for the successful party to take back. In addition, court officials often collude with unsuccessful parties to delay and frustrate enforcement. Some simply refuse to obey court orders, mostly because of their connections with the authorities. The JSRSIP is thus reviewing enforcement methods, including the performance of bailiffs.

Apart from the courts, there are other statutory bodies responsible for ensuring compliance with human rights provisions, to provide alternate means for redressing human rights violations and for the general promotion and protection of the human rights provisions in the Constitution. These include the Human Rights Commission of Sierra Leone (HRCSL), the Independent Media Commission (IMC) and the Office of the Ombudsman. Sierra Leoneans tend to rely on informal or traditional alternative means of settling disputes. For the vast majority of people in Sierra Leone, disputes are settled by family members or by local chiefs, elders or leaders, and ultimately by the Paramount Chief. Formal courts are mostly used as a last resort. Chiefs and their Councils of Chiefs have extended their jurisdiction beyond strictly chieftaincy-related matters to family and property matters, land disputes and matrimonial disputes. Presently,

60–70% of Sierra Leoneans fall under the jurisdiction of customary law. Many Sierra Leoneans prefer traditional systems of justice because they reflect local values and are faster, cheaper, easier to reach and easier to understand. However, faith in chiefs and traditional practices has diminished since the end of the civil war. The activities of local government authorities and civil society groups, aimed at raising awareness among the rural populace, mean that more people are now aware of their basic rights, and so they flout verdicts handed down by chiefs.

## Recommendations

- The government of Sierra Leone must provide additional funding and effective supervision to the IMC, the National Commission for Democracy (NCD) and the Office of the Ombudsman to undertake public awareness raising programmes about basic fundamental human rights. The government should reintroduce civic education courses in the curricula of schools and colleges with the view to educating citizens about their rights and obligations.
- The government should build more courts in the provinces to make justice more accessible to the people. The GoSL should replicate the JSDP's successful circuit court system in other parts of the country, and provide attractive incentives to legal practitioners who choose to live and work in the provinces. The government should implement the JSRSIP's stipulation to provide equipment, training and technical assistance to juvenile court personnel to handle and respond to child crime.
- The government should increase the salary of staff members of the justice sector to minimise corruption in the judiciary.
- The government should enact a law establishing an independent statutory body to coordinate and administer legal aid, which is funded through the national budget. A Public Defender's Office should also be established under this scheme.
- The government should review civil procedures in the magistrates' court with a special emphasis on streamlining and simplifying procedures. The government should also take steps to ensure that small claims procedures and alternative dispute resolutions are enforced.
- The government must ensure that the provisions of the three gender bills enacted in 2007 are not only disseminated, but also fully implemented.
- Delays in court proceedings must be addressed. The Civil Procedure Rules designed to streamline the processing of civil cases in the High Court must be enforced. It is also important that a witness and victims support service be set up to encourage victims of egregious crime to come forward and testify, and to coordinate witnesses for court proceedings.
- The government should increase its financial assistance to the Human Rights Commission to make it more efficient and less dependent on the international community.
- In view of the significant role played by traditional authorities in dispensing justice at the rural level, the GoSL should provide training to traditional authorities in the basic concepts of human rights (including gender issues), appointment and tenure, and

basic record-keeping.

- The JSDP or its successor institution, in collaboration with the judiciary, should embark on the training of more paralegals to address cases of injustice at the wider district level. Measures to protect women must be strengthened. Fines for various offences should be standardised to avoid the exploitation of litigants by chiefs and court clerks.

## 6. Development partners

The major development partners for the justice sector of Sierra Leone are the United Kingdom's Department for International Development (DFID), the UNDP, the World Bank (specifically through the 'Justice for the Poor'), European Union, UNICEF, UNIOSIL/UNIPSIL, Irish Aid and the International Rescue Committee (IRC) and German Technical Cooperation (GIZ).

These partners have assisted in reconstruction where structures were destroyed, damaged or made non-functional. Their efforts have put life in the basic functioning of the justice sector MDAs. Their support has been in the form of multi-lateral and bi-lateral support. Outstanding support has been towards:

- Training (the SLP, judges, magistrates and draftsman);
- Infrastructure (SLP police stations, family support units; judiciary court buildings and residences for magistrates, judges, prosecutors; Sierra Leone Prison Service prisons and prison officers quarters; remand homes and approved schools);
- Logistics and equipment, including vehicles (majority of the justice sector MDAs);
- Hiring judges and the Director of Public Prosecution; and
- Salary improvement (top-ups) for magistrates and others.

Support to the sector has been diverse, such as the relief to MDAs (vehicles and office equipment, including stationery, etc.), restructuring (strategic planning, review of outdated laws and procedures), capacity building (paying for posts within the MDAs) and long-term training for sector personnel. In recent times, support has involved a more holistic and sustainable sector-wide approach. This sector-wide approach has led to the development of the Justice Sector Reform Strategy and Investment Plan 2008–2010. This process targeted reforms and planning to focus on initiatives that have sector-wide implications, especially so when resources are limited. It is aimed at ensuring the strengthening of communication, coordination and cooperation (dubbed the 3Cs) between the various MDAs.

Coordination among donors encompasses both formal and informal methods, but cannot be described as effective. Coordination is necessary, because it leads to greater transparency, better harmonisation, improved division of labour, effective utilisation of limited resources and enhanced aid effectiveness.

All donor-funded programmes involve local and international staff. Concerns have been raised that international staff are paid much higher salaries, while local staff do most of the work. There is also discontent among some of the local staff that some of the external experts perform below standard and make no effort to transfer skills.

Development assistance has become a huge issue in global development debates. Those in favour of development aid argue that withdrawal of funds will exacerbate the situations of the global poor. The majority of the countries that receive donor assistance do not generate sufficient revenue to meet domestic budget requirements, as their resource bases are weak or under-developed. However, those who are of the view that aid is not the solution argue that more than half of what is allocated never reaches the beneficiary country, as they are spent on consultancies and buying equipment that hardly creates the necessary impact on the lives of the underprivileged. In addition, development packages are designed by people who have little understanding of the priorities of the recipient countries. Donor assistance is also allocated with an eye to the interests of the donor countries (creating jobs for their citizens, exerting their influence and power, etc.).

## Recommendations

- Information on development programmes should be taken to the grassroots level, detailing the implementation strategy of such assistance for wider public consumption and transparency.
- The forms of support should be scrutinised to determine the country's best interest (taking the country out of poverty, not just the usual cosmetic aid).
- The GoSL must continue to take a strong lead in coordinating development assistance, preferably through the Leadership Group, by periodically engaging the Group to solve challenges and work jointly towards achieving goals.
- Support to civil society must be upgraded to include sustainable capacity development.
- Effective coordination of support to the judiciary must be prioritised to meet the needs of the judiciary. The Chief Justice or Master and Registrar need to be frequently engaged on this issue.
- Skills transfer should be a matter of policy for development partners in working with local staff. Only those skills that cannot be found locally need to be brought from outside the country.
- Donors must be more transparent in their activities to clear up most of the misconceptions (influence, external consultants, etc.) that exist.
- The GoSL needs to be more proactive in engaging donors and development partners by asking key questions on the design and implementation of their packages.
- Development assistance must include human rights issues in the various programmes.



# **Part II**

## **Sierra Leone: Justice Sector and the Rule of Law**

Main Report



# 1

## Legal and institutional framework

Sierra Leone has acceded to or ratified the major international and regional human rights treaties. The 1991 Constitution and domestic legislation also protect a broad range of human rights. However, the vast majority of these rights are civil and political rights; socio-economic rights remain largely unprotected by Sierra Leonean law. There are also a number of statutes and traditional practices still in force that are inconsistent with international human rights law. A 2008 constitutional review commission report has recommended areas for amendment to align the constitution to acceptable international and regional rule of law and human rights standards. However, these recommendations are yet to be enacted, as the constitutional review process has not been completed. Efforts to reform the law have been more successful. The Law Reform Commission (LRC) has provided a systematic process of review to ensure that Sierra Leonean laws are modernised to fit the needs and the international human rights obligations of the country.

### A. International law and the Constitution

Portuguese sailor and explorer Pedro Da Cintra first 'discovered' the area surrounding Freetown, naming it Serra Lyoa (Lion Mountains) in 1462. In 1787, the first settlers of freed black slaves from England arrived, founding the 'Province of Freedom', with its capital, Freetown. The England based 'Sierra Leone Company' took charge of the settlement in 1791, and in 1808, Sierra Leone became a British colony. However, '[c]olonial rule was ... authoritarian in practice until literally in the morrow of independence when it was transmogrified into a parliamentary democracy'.<sup>1</sup>

In 1961, Sierra Leone gained independence from the British. Yet, already by 1962, manipulation of electoral processes and the absence of democratic institutions tainted Sierra

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<sup>1</sup> Strengthening parliaments in conflict/post-conflict situations. Sierra Leone – a case study' by Alimamy Paolo Bangura, Introduction: independence and statehood.

Leone's governing regimes. The one-party system maintained under the All People's Congress (APC) from 1978 to 1992 witnessed violence, intimidation and bribery to keep opposition voices down.

In 1991, the Revolutionary United Front (RUF) began a brutal ten-year civil war, which claimed thousands of lives, and maimed and displaced thousands more. The government of Sierra Leone (GoSL) eventually ended the war with the signing of the Lomé Peace Accord (LPA) in July 1999, with hostilities finally ending in 2002. To ease the transition from civil war to the rule of law, the LPA called for the establishment of transitional justice mechanisms: a Truth and Reconciliation Commission (TRC). In 2004, the TRC published a report of its findings. This included recommendations for future reform and compensation of victims of the conflict through a reparations programme. Also included in the TRC report were recommendations for reform of the justice sector. Since the war, the GoSL has made slow but steady progress towards instituting this reform. A hybrid international-domestic war crimes Special Court for Sierra Leone (SCSL) was also established to try persons who bore the greatest responsibility for the atrocities inflicted on the people since 30 November 1996.

## International law

According to documents accessed at the Ministry of Foreign Affairs and International Cooperation, Sierra Leone is a party<sup>2</sup> to 217 international treaties, including the most critical human rights treaties. Although it has ratified the International Bill of Human Rights,<sup>3</sup> Sierra Leone is not a party to the second optional protocol to the International Covenant on Civil and Political Rights (ICCPR), which aims to abolish the death penalty. Sierra Leone has also ratified all major international instruments protecting the rights of the child, and the latest, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, was ratified in 2011. However, Sierra Leone has signed more treaties than it has ratified since independence. Examples include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Charter establishing the African Court on Human and Peoples Rights.

## Domestication

While Sierra Leone is party to many international human rights treaties, the relationship between international and national law within the country is of a dualist structure. This means that the legal systems are independent of each other. Unlike in monistic systems, domestic law within Sierra Leone reigns supreme. The Constitution protects this supremacy by stipulating that treaties and agreements signed by the state affecting its law must first be ratified by Parliament.<sup>4</sup> Consequently, Parliament must incorporate all international instruments into domestic law to

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<sup>2</sup> Either by signature, ratification, acceptance, adherence, approval, adoption, notification, territorial application, accession or succession.

<sup>3</sup> The International Bill of Rights is comprised of a UN General Assembly Resolution called the Universal Declaration of Human Rights (UDHR), adopted in 1948, and two UN treaties: the International Covenant on Civil and Political Rights (1966), with its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (1966). Both covenants entered into force in 1976, following the ratification by a sufficient number of countries.

<sup>4</sup> The provision to section (40) 4) of the 1991 Constitution.

make them applicable within domestic courts. This has important implications. For example, the unsuccessful Abidjan Peace Accord, signed in November 1996 between the incoming Government of Sierra Leone and the RUF, was not presented to Parliament for ratification and domestication. According to Alimamy Paolo Bangura, a former Foreign Affairs minister under the AFRC military junta, ‘Since the instrumentality for operationalising the Agreement had to come from Parliament, whatever success that may have been possible was jeopardised.’<sup>5</sup>

Accordingly, although the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) has been ratified, not all provisions of the treaty have been domesticated. This is despite the enactment in 2007 of the three ‘Gender Laws’, namely the Registration of Customary Marriage and Divorce Act, the Devolution of Estates Act and the Domestic Violence Act. The Registration of Customary Marriages and Divorce Act 2007, replaced by the Registration of Customary Marriages and Divorce Act 2009, protects girls from forced marriage, requires the consent of both parties to the marriage, and makes 18 years the minimum age for customary marriages, except where necessary consent from stipulated persons is obtained.<sup>6</sup> Women’s status is further protected by requiring registration of customary marriages and divorces. The Act further guarantees women’s economic security by entitling them to acquire and dispose of property in their own right. The Devolution of Estates Act 2007 has drastically changed inheritance rights by repealing rules of distribution, which in the past favoured men over women, and introducing equal inheritance provision for all men and women throughout Sierra Leone when there is no will. It has also enhanced women’s economic standing by enabling wives and children under customary law, as well as cohabiting partners, to inherit their deceased husband’s, father’s or partner’s estate, without undue interference from extended family members.

The Domestic Violence Act 2007 criminalises violence that occurs within a domestic relationship, provides for protection orders and offers support to domestic violence victims. Domestic violence and domestic relationships are broadly defined in the Act. Even though the Act targets violence in a domestic setting, irrespective of the gender of the victim, its passage was widely celebrated by women, as a culture of silence and impunity persisted in respect of such crimes committed against them. However, even with such improvements, the laws of Sierra Leone still fall short of the CEDAW requirements. The Lawyer’s Centre for Legal Assistance (LAWCLA) cites 14 provisions of the laws of Sierra Leone that discriminate against women. These include: the Citizenship Act of 1973,<sup>7</sup> which does not give equal rights to the foreign husbands of Sierra Leonean women to apply for Sierra Leonean Citizenship, as foreign wives are entitled to, and the Christian Marriage Act,<sup>8</sup> which gives the father priority over the mother in approving the marriage of a person below the age of 21. Several sections of the Muslim and Civil Marriage Acts are equally discriminating. Furthermore, the three gender laws do not sufficiently cover

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<sup>5</sup> ‘Strengthening parliaments in conflict/post-conflict situations. Sierra Leone – a case study’ by Alimamy Paolo Bangura, Introduction: independence and statehood.

<sup>6</sup> Section 4(2) of the Act states that, where either party is less than 18 years and not a widow or widower, consent of the parents or guardians or a Magistrate or Local Government Chief Administrator is required.

<sup>7</sup> Section 7 of the Citizenship Act 1963.

<sup>8</sup> Section 7 *ibid*.

offences relating to sexual violence. In August 2012, a pre-legislative process for the Sexual Offences Bill was concluded in Parliament. The bill, when enacted, is expected to bring together sexual violence offences found in many laws in Sierra Leone. A draft bill on matrimonial causes is also under review for presentation to Parliament. Provided they are enacted, these two laws will reinforce the measures already taken by Sierra Leone to domesticate CEDAW.

The interplay between the formal and customary law systems also gives way to human right abuses and violations against women in many parts of the country where customary laws dominate. Customary law in Sierra Leone is largely unwritten, and defined in the Constitution as ‘the rules of law which by customs are applicable to particular communities in Sierra Leone’.<sup>9</sup> Because most customary laws are biased against women and are not codified, they expose women to the caprices of traditional rulers. The Constitution guarantees equality before the law and prohibits discriminatory laws. However, constitutional provisions that allow discriminatory laws with respect to adoption, marriage, inheritance and other interests of personal law<sup>10</sup> contravene Sierra Leone’s obligations under CEDAW, even with the enactment of the 2007 Gender Laws.

Many other human rights laws are yet to be domesticated within the Sierra Leone legal system. Social, economic and cultural rights, such as the right to education, are not enforceable, as they fall under fundamental principles of state policy in the Constitution, which are not justiciable. In addition, sections 26, 27 and 32–37 of the Public Order Act of 1965 criminalise ‘libellous’ and ‘defamatory’ speech. Such laws curtail the freedoms of assembly and of expression, which are important in a democratic society, especially for political campaigns during elections. Moreover, the state of emergency powers given to the president curtails guarantees of due process and judicial independence enshrined in the Constitution. Section 41(b) requires a presidential candidate to be a member of a political party to qualify as a candidate. This is in contravention of human rights norms, as established by the United Nations Human Rights Committee (UNHRC).<sup>11</sup> Section 77 (l) of the Constitution requires an elected candidate to forfeit his parliamentary seat when he sits and votes with members of a different party during his term as a Member of Parliament. According to the Sierra Leone Citizenship Act 1973, citizenship by birth is, to a large extent, discriminatory on the basis of race, as is shown by the repeated use of the phrases ‘persons of Negro-African descent’. Lastly, the Human Rights Commission of Sierra Leone (HRCSL), established by an Act of Parliament, has not been enshrined in the 1991 Constitution. This reduces the Commission’s sense of security and independence that would otherwise prevail had it been established as a constitutional body.

In many cases, delay in the domestication of international treaties is attributable to administrative lapses of one government department or the other. It is common to hear officials

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<sup>9</sup> Section 170(4) of the Constitution of Sierra Leone, 1991.

<sup>10</sup> Section 27(4)(d) of the Constitution.

<sup>11</sup> See General Comment 25 of the UNHRC on Article 25 of ICCPR, Paragraph 15, and Article 2, 10 and 13 of the African Charter on Human and Peoples’ Rights. General Comment 25 and Draft Article 25 of the ICCPR, which provides that every citizen has ‘the right, in a non-discriminatory basis, and without unreasonable restraint to (1) take part in the conduct of public affairs directly or freely chosen representatives; (2) vote to be elected at genuine, periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (3) have access, on general terms of equality, to public service of his or her country. Also see General Comment 25 of the UNHRC on Article 25 of the ICCPR paragraph 17, and Article 2(10 & 13) of the African Charter of Human and People’s Rights.

in one department blaming those of another department for the delay in reforms. Within Parliament itself, the necessary administrative machinery for monitoring and lubricating the process of domestication of international treaties is simply non-existent. For example, despite drafting the Persons with Disability Bill in 2009, and later further reviewing it to better align it with the Convention on the Rights of Persons with Disabilities (CRPD), the bill was only enacted in March 2011. In addition, the international treaty signed by one administration is often not congruent with the state policy of another. This causes reluctance on the latter's part to ratify and domesticate such treaties. Setting up a monitoring committee representing all the institutions responsible for the reformation of laws in the country, namely the Law Reform Commission (LRC), the Office of the Attorney-General and Minister of Justice, and Parliament might assist in solving issues of delay.

As a result of such delays in domestication, individuals and civil society groups currently find it difficult to enforce undomesticated international human rights instruments in Sierra Leone's courts. Some judges still consider international human rights treaties to be persuasive, though not binding, provided they are not in conflict with domestic law.<sup>12</sup> However, the negative attitude of many judges towards international law has also limited litigants from referring to and benefitting from these principles in court. One possible explanation is that Sierra Leonean judges are conservative with regards to the domestic laws, and would rather dwell only on the laws that are within their jurisdiction and with which they are most familiar.<sup>13</sup> This illustrates the need for judges to engage in international legal programmes to upgrade their readiness to use such laws, even if only as persuasive authority.

## Reporting obligations

In addition to delayed domestication of its international human rights treaties, Sierra Leone has lagged behind in its reporting obligations. Several reasons have been advanced by both government and civil society group officials to explain this failure to report. Many point to the ten-year civil war, which disrupted the administration of the country and its information gathering and reporting capacities. Others maintain that Sierra Leone signed, but did not ratify a sizeable number of treaties, and thus has not bound itself to its treaty reporting obligations.<sup>14</sup> Beginning in 2007, reporting began to improve in the country, especially reporting on the Convention on the Rights of the Child (CRC)<sup>15</sup> and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). However, reporting institutions still lack adequate facilities to gather data and mechanisms to facilitate reporting obligations.<sup>16</sup> In 2008, the Ministry of Foreign Affairs and German International Cooperation established new mechanisms to upgrade the treaty reporting record of the country. A newly established human rights secretariat within the Ministry is now in charge of ensuring that the government is

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<sup>12</sup> Interview with a judge of the High Court in Sierra Leone, 11 July 2009.

<sup>13</sup> Interview with HRCSL Commissioner, August 2009.

<sup>14</sup> Interviews with Senior State Counsel (11 March 2010) and the Commissioner of the Human Rights Commission (12 March 2010).

<sup>15</sup> Government presented Sierra Leone's 2nd Periodic Report at the 48th Session of the Committee on the Rights of the Child on 29th May, 2008 in Geneva.

<sup>16</sup> Interview with Chair of HRCSL August 2009.

fulfilling its international reporting obligations. The secretariat is headed by a lawyer, who is a consultant, and works in active collaboration with a team comprising representatives of other ministries, departments and agencies. The team provides data and assists in drafting, with technical expertise provided by UNIPSIL and the Human Rights Commission, also members of the team. By mid-2012, the human rights secretariat of the ministry submitted two outstanding reports in respect of the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

Also in May 2011, the Universal Periodic Review (UPR) Working Group of the United Nations Human Rights Council examined Sierra Leone's human rights record. During that session, Sierra Leone was quizzed by member states over, among other things, the delayed submission of reports to various treaty bodies.<sup>17</sup> The UPR brought Sierra Leone's human rights record under international scrutiny and gave member states the opportunity to recognise the government's efforts to promote human rights and consolidate peace, as well as to make specific recommendations towards addressing the human rights challenges. Out of about 129 recommendations made, the government noted that 57 of them had already been implemented. The government accepted all recommendations, and only rejected outright those related to bringing its legislation into conformity with equality and non-discrimination for all by prohibiting discrimination based on sexual orientation or gender identity, and repealing all provisions that criminalised sexual activity between consenting adults. The recommendations included:

- Ratifying outstanding international treaties and fulfilling reporting obligations and interaction with UN Human Rights mechanisms;
- Undertaking constitutional and legislative reforms to address discrimination and guarantee rights, including citizenship rights for persons of non-African descent;
- Adopting strategies to address women's, girls' and children's rights issues;
- improving prison conditions;
- Adopting measures and institutional mechanisms to improve economic, social and cultural rights, as well as reducing poverty; and
- Implementation of the TRC recommendations.

There is a scarcity of information on whether complaints about Sierra Leone have ever been reported to international human rights bodies. Many authorities oscillate between not being aware of any complaints and guessing that there were only a few. The *Wanza* case is one instance in which the government acted swiftly to avoid the embarrassment of losing a case, especially in an international court. In 2007, the State of Sierra Leone and its President were summoned to the ECOWAS (Economic Community of West African States) Court by businessman Mohamed Kamel Wanza 'for abuse of his human rights by discriminatory treatment and outright denial of his legitimate right to receive payment for goods and services supplied to the government of Sierra Leone (to the sum of: GBP10 672 184.85; USD9 150 159.59; Le2 954 111 631.00), and being deprived of his citizenship, which he acquired by naturalization...'. Realising it would lose the case, the government opted to settle the matter out of court.

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<sup>17</sup> See <http://www.ishr.ch/upr/1063-upr-of-sierra-leone-post-conflict-women-and-childrens-rights-remain-of-urgent-concern>.

## Constitutionalism in Sierra Leone

Sierra Leone has undergone controversial constitutional development in its journey towards democracy. Sierra Leone gained independence in 1961, existing under the 1961 Constitution until the introduction of the Republican Constitution in 1971. Authorities' attempts to stifle fundamental human rights climaxed in 1978 with the adoption of the One-Party Constitution. This Constitution lingered for over a decade, and saw the beginnings of the ten-year civil war. Finally, the 1991 Multi-Party Constitution reintroduced political pluralism and international human rights standards into the political life of the country.

The 1961 Constitution embraced a number of basic constitutional concepts, such as judicial review, and gave citizenship to all British subjects born in Sierra Leone on the eve of independence. It must be noted that the 1961 Constitution provisions for citizenship did not have any qualification or condition related to race. It also set up an independent judiciary. Most importantly, it incorporated a Bill of Rights and made provision for conducting elections.

In 1962, the ruling Sierra Leone People's Party (SLPP) made amendments to the citizenship provisions in the Constitution by introducing Negro-African origin as a precondition for citizenship.<sup>18</sup> The effect of this was to take away the citizenship rights that had previously been conferred and enjoyed by those Sierra Leoneans under the 1961 Constitution who were not of Negro-African origin. This action denied persons of non-Negro-African descent Sierra Leonean citizenship by birth. These provisions still apply in Sierra Leone. The constitutional amendment also reserved membership in Parliament for Sierra Leone citizens of Negro-African origin. This was followed by the enactment of the Public Order Act 1965<sup>19</sup> which criminalised libel, allowed Paramount Chiefs to control public meetings, mandated the Governor-General to proclaim emergency regulations, and the police to disperse crowds and arrest uncooperative persons.

In 1966, the ruling SLPP attempted, but failed, to introduce a One-Party Constitution. Later that same year, the SLPP drafted a bill to create a republican state. However, the general elections of 1967 led to a series of military take-overs. The All People's Congress (APC) opposition party restored civilian rule in 1968 and promulgated the Republican Constitution in 1971. Among other things, the new Constitution provided for fundamental human rights and freedoms of the individual. It also created an electoral commission and assigned the Supreme Court as the final court of appeal. However, the 1971 Constitution maintained the provision of the citizenship amendment of 1962. It also barred a public officer, a member of the armed forces of the Crown, or holder of any office under the Crown from contesting Parliamentary elections, unless he or she had ceased to hold the office 12 months prior to the elections. This represented a fundamental step in Sierra Leone's move from monarchy towards democracy.

In April 1974, the APC made amendments to the Republican Constitution, removing the disqualification of members of statutory corporations from entering Parliament and empowering the President to appoint three persons to Parliament. This paved the way for the Force Commander and the Commissioner of Police to enter Parliament as appointed members. Following a referendum, the APC promulgated the One-Party Constitution in 1978.

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<sup>18</sup> Constitution (Amendment) (No.2) Act, 1962 (No.12 of 1962).

<sup>19</sup> Act No. 46 of 1965 of the Laws of Sierra Leone.

This Constitution made it impossible for non-APC members to qualify as candidates for the presidency.<sup>20</sup> All members of Parliament had to be members of the party, and the party's Central Committee dominated presidential elections. The 1978 Constitution also provided for seven presidentially appointed members of Parliament, used to appoint the heads of the military, police and the labour congress. This politicised the previously independent public service institutions. The party Secretary-General also served as an ex-officio member of the Cabinet.<sup>21</sup> Consequently, the basic freedom of association suffered a tremendous setback.

The One-party Constitution of 1978 was the single greatest blow to the rule of law and independence of the judiciary. The Constitution permitted the President to appoint or suspend the Chief Justice and other judges at will. The President was also given the power to retire judges who had passed the age of 55. As most judges had passed that age, this was a potent weapon in the hands of the President, and was subsequently used to remove two successive Chief Justices. Furthermore, the judiciary became wholly financially dependent on the Ministry of Finance. The Office of the Attorney-General was also merged with the Minister of Justice.

Sierra Leone's current Constitution was promulgated just before the outbreak of the war in 1991. Compared to the 1978 Constitution, the 1991 Constitution constitutes a significant improvement for judicial independence and the administration of the rule of law. It subjected the appointment and dismissal of judges to the approval of Parliament. Fundamental human rights are provided for, and the Chair of the Electoral Commission became the National Returning Officer, instead of the Chief Justice. The 1991 Constitution also provides for commissions of inquiry, arbitration committees, and Labour Industrial Dispute bodies, set up under the Arbitration Act, to settle disputes between employers and employees. To enhance the justice sector and promote democracy, it also created the Office of the Ombudsman to address cases pertaining to persons aggrieved by the actions of government officers and offices.

## **Constitutional Review Commission**

In its final report, the TRC identified a number of lapses in the 1991 Constitution. The Constitutional Review Commission was thus established with the mandate to review the Constitution and make recommendations for change. Government Notice No. 6, Vol. CXXXVIII of Sierra Leone Gazette No. 2 in January 2007 established the Constitutional Review Commission. It comprised 44 members, appointed by President Ahmad Tejan Kabbah, with a mandate 'to review the Sierra Leone Constitution of 1991 with a view to recommending amendments that might bring it up to date with economic, social and political developments that had taken place nationally and internationally since 1991'.<sup>22</sup> It was chaired by the Chair of the Law Reform Commission and had a Secretariat manned by a Permanent Secretary, who was assisted by two research assistants on the LRC and a Legal Counsel of the National Public Procurement Authority. It had a quorum of 12. The Commission followed a similar methodology to that used to reform other laws, including nationwide consultations with experts and stakeholders, along with soliciting inputs from government institutions and private individuals.

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<sup>20</sup> Section 22 of the One-Party Constitution of Sierra Leone, 1978.

<sup>21</sup> Section 86 of the One-party Constitution of Sierra Leone 1978.

<sup>22</sup> CRC Preliminary Report 2007.

The Commission proposed major reforms that sought, among other things, to upgrade the Constitution to meet international human rights standards. The Commission discussed the Constitution in detail, with reference to several constitutions in Africa, as well as those of the United States and the United Kingdom. Its preliminary report, containing its recommendations, was submitted to the government in January 2008. The report also included other important matters that were not included in the Constitution, such as:

- The need for a second Chamber of Parliament;
- Affirmative action to remedy the effects of past discrimination against people based on race, tribe, gender, place of origin, political opinions, colour or creed;
- A Prisons Service Council;
- An Independent Forces Complaints Commission;
- A Parliamentary Service Commission; and
- An Extractive Industries Transparency Commission.<sup>23</sup>

Such proposals will positively enhance democracy and human rights in the country. However, the government is yet to act on the report. The HRCSL noted in its 2008 annual report that there has been inaction on the part of the government in the constitutional review process. During the UPR Process in 2011, the Attorney-General indicated Government's commitment to continue and complete the review after the November 2012 elections. In the Constitutional Review Committee Report to the President, the Review Commission itself failed to recommend the inclusion of economic, social and cultural rights in the Bill of Rights.

## Challenging violations of the Constitution

Section 171 (15) of Act 6 of the 1991 Constitution establishes the supremacy of the Constitution; any law found to be inconsistent with it is null and void. Accordingly, section 124(1)(a &b) of the Constitution makes provision for challenging a law purporting to violate its provisions. The Supreme Court has exclusive jurisdiction to interpret the Constitution. It can rule on compliance of a law or parliamentary excesses of an enactment. The right to take the government to court is guaranteed and the Constitution does not mandate fiat (permission required to sue the government), though the State Proceedings Act 2000 requires three months' notice to be given to the government by the person intending to institute proceedings against the government.

There are differing opinions on how effectively the Sierra Leone constitutional framework promotes positive results. Some commentators believe the system is transparent and procedurally apt. However, others, especially human rights and advocacy groups, posit that the process is too difficult. Engaging the Supreme Court in constitutional matters requires adherence to strict court rules, which inhibit free access. For example, the requirement of *locus standi* (the right to be heard) to challenge the constitutionality of a law or any other matter is often used by the Supreme Court to throw a matter out without making a determination on the real issues.<sup>24</sup> This adds to the existing problem of complex procedures, delays and a shortage of judges in the courts.<sup>25</sup>

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<sup>23</sup> CRC Preliminary Report 2007 p. 4.

<sup>24</sup> interview with HRCSL Commissioner August 2009.

<sup>25</sup> See Chapter IV on Access to Justice.

Nevertheless, constitutional issues have been tested in court. In the case of *Akar vs The Attorney-General*,<sup>26</sup> the UK Privy Council, the Supreme Court of Sierra Leone ruled that the Constitutional Amendment Act of 1962 on discriminatory citizenship provisions based on race was unconstitutional, discriminatory and not justifiable in a democratic society. The Sierra Leone Bar Association (SLBA) also challenged the appointment of the Attorney-General and Minister of Justice when Mr Eke Halloway was appointed in 2002. According to the SLBA, the appointment was unconstitutional in that it was not approved by Parliament. The Supreme Court ruled against the Sierra Leone Bar Association. Recently, in the *Sierra Leone Association of Journalists (SLAJ) vs the Attorney-General & Minister of Justice*, the SLAJ challenged the constitutionality of the criminal libel provisions in the 1965 Public Order Act in light of the 1991 Constitution's provisions on freedom of expression. However, the Court ruled that the SLAJ had no *locus standi* to initiate action on the matter since it was not under threat by the law in question. It further ruled that the Public Order Act of 1962 was not in conflict with the 1991 Constitution of Sierra Leone. In this case, the government won.

However, despite such examples, constitutional test cases against the government seldom occur. When they do, the government often wins, as demonstrated above. Nevertheless, in the rare instances in which the courts have ruled against the government, it has mostly complied. For example, in 1996, the opposition All Peoples Congress (APC) Party took the SLPP government, represented by the Ministry of Social Welfare, Youth and Sports, to court, to seek clarification on whether they needed fiat to take the government to court. The ruling went in favour of the APC. The government has also complied with court rulings in cases relating to land disputes. Accordingly, whatever the difficulties surrounding litigation against Government or its agencies, the fact that cases are heard in court is a positive sign. Consequently, erroneous perceptions that individuals who sue the government are unpatriotic will hopefully wane.

## **B. National legislation and law reform**

Upon establishing independence in 1961, Sierra Leone inherited many laws from the British. Its legal system is thus based on English common law, indigenous customary law (largely uncodified), and some form of Islamic law, which applies to marriage and property inheritance rights of Muslims. The 1991 Constitution provides that the laws of Sierra Leone shall comprise:

- The Constitution;
- Laws made by or under the authority of Parliament;
- Any rules, regulations or other statutory instruments made by any person or authority pursuant to a power conferred to it by law;
- The existing law; and
- The common law.

Section 74 of the Courts Act 1965 provides that all common law enforced in England up to 1 January 1880 shall apply in Sierra Leone. Section 170(4) of the 1991 Constitution states that the existing law shall comprise the written and unwritten laws of Sierra Leone, as they existed

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<sup>26</sup> (Privy Council App. No.20/68) 1968–1969 African Law Reports S.L. p. 274.

immediately before the coming into force of the Constitution, and any statutory instrument issued before that date that will come into force on or after that date.

Customary law includes the rules of law that, by custom, apply to particular communities in Sierra Leone. Section 76(1) of the Courts Act 1965 states that customary law shall not prevail if it conflicts with natural justice, equity and good conscience. Furthermore, Section 76(3) provides that, where there is no expressed position of the law, the court should rule based on the demands of justice, equity and good conscience. However, principles of equity do not take precedence over statute.

## **The Law Reform Commission (LRC)**

The 1975 Law Reform Commission Act No. 12 established a Law Reform Commission to review all laws in force in Sierra Leone. The purpose of the review was to reform, develop, consolidate and codify such law. However, Law Reform Commission Decree No. 17 of 1994 repealed this Act under the National Provisional Ruling Council military government, although the Decree was later amended in 1996 to again allow the LRC to review all laws in Sierra Leone.

Currently, the LRC reviews the laws of Sierra Leone to determine their reform or repeal. It reports on researched areas of the law and draft bills that are submitted to the office of the Attorney-General and Minister of Justice. The Law Reform Commission is the sole mandated entity dealing with law reform in Sierra Leone. Consequently, most of the laws are developed by the LRC before they reach Parliament.<sup>27</sup>

The Law Reform Commission consists of a Chairperson, who is the head of the Commission, and six other Commissioners. They consist of a judge of the superior court of judicature, nominated by the Chief Justice; a representative of the Attorney-General and Minister of Justice; two representatives of the Sierra Leone Bar Association; the Director of the Sierra Leone Law School; and a representative of the University of Sierra Leone Faculty of Law. The Commission also has a Secretariat comprised of professionals and administrative staff.

Since 2003, the Commission has reviewed and submitted more than 20 draft bills to the office of the Attorney-General and Minister of Justice.<sup>28</sup> From 2004–2006, the LRC submitted the following draft bills:

- Land (Commercial use and acquisition) Act;
- Consumer Protection Act;
- Sexual Offences Act;
- Prevention of Cruelty to Children (Amendment) Act;
- The Sierra Leone Citizenship (Amendment) Act;
- The Family Law Act;
- The Devolution of Estates Act;
- The Muslim Marriage Amendment Act;
- The Civil Marriage Amendment Act;
- The Christian Marriage Amendment Act;
- The Registration of Customary Marriages and Divorces Act;

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<sup>27</sup> Interview with researcher Idriss Kargbo LRC, August 2009.

<sup>28</sup> Interview with Director of Research, LRC, 5 August 2009.

- The Partnership Act;
- Diamond Cutting and Polishing Act;
- The Import and Export of Rough Diamonds Act;
- Local Government Act;
- National Drugs Control Act;
- Citizenship Act;
- Mines and Minerals Act; and
- Bills of Exchange and Cheques Act.<sup>29</sup>

In 2007, the Commission completed work on the following: Persons with Disability Act; Offences against the Person Act; Offences against Property Act; Drugs Abuse Act; Citizenship Act; Mines and Minerals Act; and Local Courts Act.<sup>30</sup>

In 2007, LRC representatives also contributed to the proposed amendments to the 1991 Constitution of Sierra Leone.

The LRC is currently also working on the following areas: The Provinces Land Act; Restatement of Customary Law Act; Alternative Dispute Resolution Act; The Police Act; The Correctional Services Act; The Law Officers' Act; and The Evidence Act.<sup>31</sup>

Recently, the National Electoral Commission (NEC) submitted proposals to the LRC for electoral law reform. The proposal looked at Section 32(8) that gave power to the President to hire and fire Commissioners. The NEC felt that these provisions infringe on the independence of the Commission. They believe this power should instead be vested in the Supreme Court. Section 41(b) of the Constitution requires that a presidential candidate must also be a member of a political party. The NEC also believes this contravenes both national and international legal instruments. Of the ten sections identified for substantive reform, six were not altered, two were altered in a manner that did not fully address the concerns raised, and two were amended in line with the recommendations. This new law on public elections was enacted by Parliament in May 2012.

Notwithstanding the work done by the LRC in drafting new laws and amending existing laws, only a few of the bills sent to the Law Officers Department have been enacted. These include the three bills on domestic violence, the registration of customary marriages and divorces and devolution of estates, the Citizenship (Amendment) Bill, the Diamond Cutting and Polishing Act 2006, the Mines and Mineral Act 2009, the Local Courts Act 2011 and the Persons with Disability Act 2011.<sup>32</sup>

Evaluation of the LRC is contingent upon both the volume of laws that have been passed onto the Law Officers Department in the Office of the Attorney-General and Minister of Justice, and those that have been passed in Parliament. While many draft bills have been sent to the Law Officers Department, Parliament has produced little in the way of laws. This is because

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<sup>29</sup> Justice sector Survey, 2008.

<sup>30</sup> Justice sector Survey, 2008.

<sup>31</sup> Interviews with LRC Director of Research (August 2009), though the Justice sector Survey (2008) records that these draft bills have been submitted to JSDF in 2007. Further interviews with LRC Director of Research in August 2012.

<sup>32</sup> LRC Annual Report 2006–2007/Interview with Director of Research LRC, August 2009.

the Law Officers Department has not processed many of these draft bills for presentation to Parliament. Nevertheless, the LRC has sensitised the stakeholders on the process of reform and has accommodated and deliberated submissions from all contributors in the reform process. In summary, the LRC provides a systematic process of review to ensure that the national laws are modernised according to the needs of the country and are in line with the provisions of international treaties to which the state is a party.

## **c. The court structure**

The 1991 Constitution of Sierra Leone established the formal judiciary and other justice-related institutions. Section 120(1) states that the judicial power of Sierra Leone shall be vested in the judiciary, headed by a Chief Justice. Section 120(4) provides that the judiciary shall consist of the Superior Courts of Judicature (the Supreme Court, the Court of Appeal and the High Court), as well as other lower or traditional courts, as Parliament may establish by law.<sup>33</sup>

### **The superior courts**

According to Section 121(1), the Supreme Court consists of the Chief Justice, not less than four Justices of the Supreme Court, and such other Justices of the superior courts in Sierra Leone or of higher courts in other countries practising a similar body of law. The jurisdiction of the Supreme Court is enshrined in Section 122 of the Constitution. The Supreme Court is the final Court of Appeal in Sierra Leone and has jurisdiction to hear and decide criminal and civil appeals from the lower courts. The Supreme Court also has original jurisdiction, at the exclusion of all other courts, to interpret the Constitution of Sierra Leone, and to determine whether an act of Parliament goes against the Constitution or exceeds the powers given to Parliament to make laws. While the Supreme Court is not bound by its own previous decisions, all lower courts are bound to follow its decisions on points of law.

The Court of Appeal consists of the Chief Justice, no less than seven Justices of the Court of Appeal, and such other Justices of the superior courts as the Chief Justice may request to sit for the determination of a particular case. This court is duly constituted by three Justices, with the most senior of the Justices presiding. The Court of Appeal has only appellate jurisdiction, and hears and determines civil and criminal appeals from the High Courts below. It is bound by its own previous decisions, as are all courts below.

The High Court consists of the Chief Justice, not less than nine High Court Judges, and such other judges of the superior courts as the Chief Justice may request. The High Court is duly constituted by any one judge, with or without a jury. The Court has original jurisdiction to hear and decide any criminal or civil matter. It also decides appeals from the magistrate and local courts below, and can exercise supervisory jurisdiction over them.

### **The inferior courts**

Magistrate courts were first established by the Court Act of 1965. They operate as courts of first instance for summary and hybrid offences, as well as other less serious criminal and civil matters. More serious offences, such as murder and rape, are not tried by magistrates' courts,

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<sup>33</sup> See below for further discussion on the laws of Sierra Leone.

but can be heard on preliminary investigation<sup>34</sup> to decide if there is sufficient evidence to warrant a trial before the High Court. Juvenile magistrates' courts also exist in parallel with the ordinary magistrate courts to try children and young persons in conflict with the law. Magistrates' courts can also hear appeals from local courts. Local (customary) courts are established by the Local Courts Act of 1963. In 2011, the government enacted new legislation, the Local Court Act of 2011, to govern the local courts in Sierra Leone. The local courts are courts of first instance, and their decisions can be appealed in a District Appeal Court. The District Appeal Court has only appellate jurisdiction, and comprises a magistrate sitting with two assessors, who are both experts in customary law. District Appeal Court decisions can be appealed in the Local Division of the High Court in certain cases. Local courts exist exclusively in the provinces where nearly 70% of Sierra Leoneans live.<sup>35</sup> Unlike under the 1963 Act, when local chairmen were appointed by the Minister of Interior (now the Minister of Internal Affairs, Local Government and Rural Development) under the 2011 Act, Local Court Chairpersons are appointed by the Chief Justice, with recommendation from the newly established Local Court Service Committee.<sup>36</sup> Presently, the jurisdiction of local courts is limited to low amounts and values, as stipulated for civil cases. In addition, their jurisdiction does not cover cases relating to the civil status of a person.<sup>37</sup>

## Specialised courts

In addition to regular courts, the laws of Sierra Leone also provide for specialised courts. Such courts include courts martial, juvenile courts, and industrial courts. Courts martial are established pursuant to section 84 of the Republic of Sierra Leone Military Forces Act No.34 of 1961. These tribunals are empowered to try any person subject to military law, as well as offences against the general law, that apply to all persons who join the army. Section 85 of the Act provides that a court martial shall be convened by the Force Commander or any General, Brigadier or Colonel or officer of corresponding rank. A court martial comprises the President and not less than two other officers. However, in a trial of an officer or warrant officer, it should comprise at least five officers. A judge advocate may also be appointed to advise the court martial in matters of law and procedure. Until 1998, there was no right of appeal against a court martial decision. This violated the rights of persons convicted by a court martial. This position was changed in 2000 by an amendment that allowed such decisions to be appealed in a court of appeal.<sup>38</sup>

The juvenile court consists of a magistrate and two justices of the peace. The juvenile court adjudicates all matters in which children are charged, except in cases of homicide.<sup>39</sup> In addition, Section 76 of the Child Rights Act (CRA) 2007 requires that a family court hear cases and decide on non-criminal matters that affect children. Its jurisdiction includes matters concerning parentage, custody, access and maintenance of children, and can exercise other powers conferred onto it by law.<sup>40</sup> Though not yet in operation, such courts will consist of a panel comprising the

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<sup>34</sup> For further discussion of preliminary investigations, see *infra* p. 76 under 'Delays in Bringing Cases to Trial'.

<sup>35</sup> Justice Systems and the Rule of law in Post-Conflict Sierra Leone, A. Tejan Cole & M. Gibril Sesay.

<sup>36</sup> See section 7 of the Local Court Act, 2011.

<sup>37</sup> LRC Report 006/2007, p. 10.

<sup>38</sup> The Armed Forces of the Republic of Sierra Leone (Amendment) Act 2000.

<sup>39</sup> Section 7 of the Children and Young Persons Act 1960 of the Laws of Sierra Leone.

<sup>40</sup> CRA, Section 78.

chairman (a magistrate) and between two and four other persons appointed by the Chief Justice, on the recommendation of the Chief Social Welfare Officer.

## **Transitional justice mechanisms**

In the aftermath of the brutal civil war, the GoSL requested the establishment of a special war crimes court to try the perpetrators of the conflict. Following UN Security Council Resolution 1315 and an agreement signed between the GoSL and the UN in 2002, the Special Court of Sierra Leone was established with the mandate to ‘prosecute those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996’.<sup>41</sup> The Special Court is a court of mixed jurisdiction and composition. Accordingly, both Sierra Leone and international law apply, and Sierra Leoneans serve as judges and attorneys alongside non-Sierra Leoneans. However, though it has jurisdiction under international law and Sierra Leonean law, the prosecution has never indicted any suspect under Sierra Leonean law. Article 10 of the Court’s statute gives the Court jurisdiction to try persons irrespective of any previous amnesty protection. This includes the blanket amnesty granted to all ex-combatants under the Lomé Peace Accord. Even though national courts have concurrent jurisdiction, Art. 8(2) of the Statute gives the Special Court primacy. The Special Court started operations in August 2002 and has indicted 13 people.<sup>42</sup>

Around the same period, the Sierra Leone Truth and Reconciliation Commission (TRC) was established in accordance with Article XXVI of the Lomé Peace Accord and the TRC Act of 2002.<sup>43</sup> The TRC was established to address impunity, respond to the needs of the victims, promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered during the civil war. It became operational in 2002, and published its final report in 2004. The report offered a historical record of violations and made far-reaching recommendations relating to future governance.

Although the two institutions of transitional justice dealt with the same war in Sierra Leone, they were fundamentally different in several ways. These differences included their legal status and functions; temporal, personal, and subject matter jurisdictions; roles objectives, rules and procedures; and even sources of funding. Thus, while the TRC was mandated to prepare a historical record of the violations and human rights abuses from 1991, when the war began, until the Lomé Peace Accord of 7 July 1999, the Special Court had a mandate starting from 1996 to try those who bear the greatest responsibility for the conflict. Furthermore, Justice Robertson of the Special Court Appeals Chamber emphasised the primacy of the Special Court over national courts, and by implication, over national bodies such as the TRC.<sup>44</sup> Unlike the Special

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<sup>41</sup> Third Annual Report of the President of the Special Court of Sierra Leone.

<sup>42</sup> Three of the 13 indictees have died (Foday Sankoh, Sam Bockarie, a.k.a. Maskita and Hinga Norman of the CDF), and nine accused have been convicted and sentenced to prison terms, eight of whom are currently serving their terms in Rwanda. The appeal of former President Charles Taylor is still on-going at the Special Court in The Hague. Johnny Paul Koroma, leader of the AFRC, and another indictee are still at large.

<sup>43</sup> The Truth and Reconciliation Commission Act section 6(1) of 2000 established the TRC of Sierra Leone.

<sup>44</sup> ‘Decision on Appeal by the Truth and Reconciliation Commission and Accused Against the Decision of Judge Bankole Thompson delivered on 3 November 2003 to Deny the TRC’s Request to Hold a Public Hearing with Augustine Gbao’. Available at [www.sc-sl.org](http://www.sc-sl.org).

Court, which prosecuted ‘serious violations of international humanitarian law’, the TRC did not prosecute at all, and dealt only with reporting and making recommendations in respect of violations and abuses of international humanitarian law.

## **D. Recommendations**

- The government must strengthen mechanisms to ensure that Parliament domesticates international and regional treaties that the government has ratified. National laws must be reviewed to conform and secure the rights guaranteed in treaties and agreements. To address the problem of delay in the domestication of international treaties, the government should set up a committee representing all the institutions responsible for the reformation of laws, namely the Law Reform Commission, the Office of the Attorney-General and Minister of Justice, and Parliament.
- The government must fulfil outstanding international and regional reporting obligations under the various treaties it has ratified, and implement the Universal Periodic Review Recommendations.
- The government must put in place a participatory process to implement the TRC Recommendations regarding the enactment of a new Constitution that recognises economic, social and cultural rights, and that includes the Human Rights Commission as a constitutional body. The new Constitution should enable international and regional treaties ratified by Sierra Leone to be directly applicable in the courts.
- Judges should engage in international law programmes to upgrade their readiness to use such laws, even if only as binding authorities in cases brought before them.
- To allow for better access to justice, civil jurisdiction of local courts should be increased to cover claims and debts of higher amounts.

# 2

## Government respect for the rule of law

Since the end of the war in 1991 and the onset of democracy, the government of Sierra Leone has generally respected the rule of law. The constitution guarantees the right of any citizen to challenge, in court, a decision of the executive. However, nearly three decades of autocratic government has limited the knowledge, culture and desire for challenging government in court to a few elite. Commissions of inquiry have been set-up to inquire into instances of government abuse of executive power. However, follow-up on the implementation of the recommendations of commissions of inquiry is either non-existent or ineffective.

### **A. The legislative process**

In Sierra Leone, Parliament is the supreme legislative authority. Laws can be proposed to Parliament by any Member of Parliament, from both sides of the aisle. Usually, the minister responsible for the subject matter of the law will propose the draft bill. If, for instance, the subject matter concerns trade, the Minister of Trade, or his/her representative, will likely present the bill. Once a bill has gone through the legislative process, it becomes an Act of Parliament and is binding throughout Sierra Leone.

The development of new laws or the reform of existing laws in Sierra Leone generally commences with an initiative from a Government ministry or department. The Law Reform Commission (LRC) may also initiate reform as part of its routine examination and review of the law. Ministers of government can introduce and pilot bills in Parliament on behalf of the government. Parliamentarians can also introduce bills through a Private Members' Motion. The Law Officers' Department provides support to the executive and Parliament in the processing of

bills. Once a draft bill reaches the Law Officers' Department, research officers undertake the task of formulating policy options for policy-makers. If the proposal comes from another body, the officers scrutinise the proposed bill and study its legal implications *vis-a-vis* other instruments in the national legal framework and international law obligations. If necessary, experts and stakeholders are called upon to clarify certain aspects of the proposed bill. The legal drafts person then works on the language of the bill, and forwards it for approval to the minister. It is then taken to Cabinet for approval, and then submitted to Parliament.

*First Reading:* A draft bill is usually presented to the Clerk of Parliament by either a minister of government or Member of Parliament (MP). The Clerk of Parliament will then notify the MPs about the bill by reading the short title of the bill to the House. The Minister or MP sponsoring the bill then asks for a 'motion' that the bill be read a second time. The bill is then printed in leaflets and circulated to all MPs. While lobbying and consultation may continue, once a bill has been introduced to Parliament, it can only be changed by formal amendments. Such amendments generally take place at the Committee Stage.

*Second Reading:* At this stage, the long title of the bill will be read aloud and the minister or MP sponsoring the bill is given the opportunity to explain to the House the purpose of the bill. During this stage, Parliament may debate the general principles contained in the bill. The sponsoring member then moves for the bill to go to the Committee Stage.

*Committee Stage:* The third stage occurs when the bill is referred to the committee. If it is of major importance, the bill may be referred to a committee of the whole House, comprising all members, chaired by the Speaker of the House. The Speaker calls the number of each clause of the bill in succession, or whole groups of clauses, to which no amendment has been proposed. The House will then scrutinise the bill in detail, filing amendment proposals and conducting a vote. Less important bills will be referred to a standing committee comprised of four or five MPs. The Committee Stage enables individual clauses to be considered and amended.

*Reporting Stage:* The findings of the committee are then reported to the House. The Speaker or the chairperson of each committee reads the bill in its amended form to the House. The bill undergoes further scrutiny to rectify errors connected with the drafting or its amendment. A final vote is then taken.

*Act of Assent:* If the bill passes the final vote, it is taken to the President for approval. Upon the act of assent (signing by the President), the bill becomes law. If the President refuses to sign a bill, it is returned to the House within 14 days, along with the reasons for the refusal. The bill will immediately become law if two-thirds of parliamentarians vote to override the President. The bill becomes enforceable law once it is published in the Sierra Leone *Government Gazette*.

In general, the government obeys the laws of the land and its own written procedures. Parliament operates its established system of proposing laws and encourages debates. In addition, voting in Parliament is not always strictly according to party lines. For example, the Parliament voted across party lines to ratify the Report on Electoral Constituency Boundary Delimitation Process, which divided the country into electoral boundaries for the purpose of presidential and parliamentary elections in 2007. With 54 in favour, 14 against and three abstentions in a House that was dominated by the ruling party, the motion was passed. At times, the ruling party relies on its parliamentary majority to pass bills that would facilitate its

policy implementation and avoid undue and unnecessary opposition. However, in most cases the debates are lively. The media also covers parliamentary procedures and sometimes reports on Parliament. There is no evidence that the government deliberately uses other law-making processes to circumvent assembly debates.

## **B. Executive compliance with the law**

Sierra Leone law allows an individual(s) to initiate legal proceedings against executive action if a complainant believes the executive has acted contrary to the interest of the state or has acted beyond its mandate.<sup>45</sup> The Office of the Ombudsman also aids in checking excesses of public officers. This office was established by the 1991 Constitution and charged with investigating government departments, corporations, and actions and inactions of public service members. The Constitution also provides for the establishment of Parliamentary Standing Committees 'to investigate or inquire into the activities or administration of such Ministries or Departments as may be assigned to it, and such investigation or inquiry may extend to proposals for legislation. Parliament may at any time appoint any other Committee to investigate any matter of public importance.'<sup>46</sup> Furthermore, the Constitution stipulates that 'the Cabinet shall be collectively responsible to Parliament for any advice to the President by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office'.<sup>47</sup>

Though an individual can initiate proceedings against an executive action, the President himself cannot be sued for any act or omission done in his official or private capacity, as long as he holds the position of Head of State.<sup>48</sup> During a trial at the Special Court, the Defence subpoenaed President Kabbah to testify as a witness for the Defence.<sup>49</sup> However, the Attorney-General and Minister of Justice invoked this immunity. The judges supported this argument, with the exception of one, Justice Bankole Thompson, who wrote a dissenting opinion. Other government officials cannot be sued as individuals for acts done within their official capacity, though they can be sued for private action.<sup>50</sup>

Despite this legal framework, 28 years of autocratic rule, punctuated by military governments, has limited the culture, knowledge and desire for challenging Government in court to a few elite. The general populace believes that it is futile to challenge the government in court. Furthermore, the passing of the State Proceedings Act of 2000 is viewed as an attempt by the government to forestall future legal proceedings against it and weaken the constitutional provisions that allow individuals to challenge the government in court. The Act came to pass after a Supreme Court case between an APC complainant and the Ministry of Social Welfare Youths and Sports respondent in 1996, in which the Court affirmed that the complainant needed no fiat to take

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<sup>45</sup> See section 127(1) of the Constitution of Sierra Leone, 1991.

<sup>46</sup> Ibid at section 93(2), (3) and (4).

<sup>47</sup> Ibid at section 60(1).

<sup>48</sup> Ibid at section 48(4).

<sup>49</sup> The Second and Third Accused persons in the *Civil Defence Forces* Case before the Special court filed a motion to subpoena then President Kabbah.

<sup>50</sup> See section 99(1) of the Constitution of Sierra Leone, 1991.

Government to court.<sup>51</sup> However, section 133(2) of the Constitution also required Parliament to ‘make provision for the exercise of jurisdiction under this section’. The State Proceedings Act of 2000<sup>52</sup> was thus enacted pursuant to that requirement. However, it put certain hurdles in the path of a would be complainant by necessitating a three months’ written notification served on the Attorney-General. The State Proceedings Act also seems to protect the government from complying with a judicial review of its actions. Section 18 maintains that, though the government or its officer may lose a suit that is brought against it, the courts may not compel it to give back property.<sup>53</sup> In the past, court rulings against government have been useful to strengthen the complainant’s position to negotiate with government to address the claim. There are only a few cases in which the courts ruled against government and the government then complied with the ruling.<sup>54</sup>

### **c. Pardons, commutation of sentences and commissions of inquiry**

Section 63(1) of the 1991 Constitution confers upon the President the power to pardon a convict, grant respite of execution of any punishment, substitute less severe forms of punishment, or remit the whole or part of a punishment. Some human rights activists maintain that the powers of the President alone to exercise the prerogative of mercy give him too much power, which may be abused. The Constitution also requires the Cabinet to appoint a committee to advise the President on the selection of the beneficiaries of the pardon. However, this can simply reflect Presidential whims, since the President appoints his own Cabinet. Furthermore, the absence of established criteria for the selection of prisoners to be pardoned could lead to allegations of corruption levied on the committee members.

The Kabbah government granted general amnesty to the former combatants involved in the civil war. This was in accordance with the Abidjan Peace Accord of 30 November 1996 and the Lomé Peace Accord of 7 July 1999, signed between the government of Sierra Leone and the

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<sup>51</sup> The introduction of the Act reads: ‘Being an Act to provide for the exercise of jurisdiction in respect of claims by or against the government pursuant to the abolition by subsection of section 133 of the Constitution of Sierra Leone of the petition of rights process and for other matters connected there-with.’

<sup>52</sup> Section 3(1) states that no proceedings shall commence against the government under section 2 until the expiration of three months after written notice of intention to commence proceedings have been served by the claimant or his attorney or agent on the Attorney-General.

<sup>53</sup> Section 18: ‘(1) In any civil proceedings by or against the government, the court shall, subject to this Act, have power to make all such orders as it has power to make in proceedings between private persons and otherwise to give such appropriate relief as the case may require: Provided that: (a) where in any proceedings against the government, any such relief is sought as might in proceedings between private persons be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; (b) in any proceedings against the government for the recovery of land or other property, the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof, make an order declaring that the plaintiff is entitled as against the government to the land or property or to the possession thereof. (2) The court shall not in any civil proceedings grant an injunction or make an order against an officer of the government if the effect of granting the injunction or making the order would be to give any relief against the government which could not have been obtained against the government under the proviso to subsection 1.’

<sup>54</sup> Interview with Commissioner HRCSL, August 2009.

RUF.<sup>55</sup> However, this amnesty was not supported by the United Nations, on the grounds that it went against international human rights treaty obligations. Later, the Special Court of Sierra Leone indicted only 13<sup>56</sup> individuals who bore the greatest responsibility for gross human rights violations.

The President also has the power to appoint a commission of inquiry into any subject that is of public interest. Section 147 of the Constitution states that 'such commission shall be appointed on the advice of the cabinet or by a resolution of Parliament demanding the same'. A commission so appointed may consist of a sole commissioner or two or more persons, one of whom shall be appointed the chairperson of the commission. When a commission of inquiry makes an adverse finding against any person, resulting in a penalty, forfeiture or loss of status, the report of the commission shall be deemed to be a judgment of the High Court of Justice. Accordingly, an appeal to the Court of Appeal shall lie as of right. Therefore, a commission of inquiry has concurrent jurisdiction with the High Court.

The current President has appointed several commissions of inquiry to investigate alleged police excesses in dealing with students; violence between the two major political parties in which the security forces were blamed for inaction; allegations of sexual violence during political violence at the SLPP offices, the attack on the newly elected Presidential candidate of the SLPP opposition party, Julius Maada Bio, and the alleged burning of the office of the ruling party All People's Congress in Bo, southern Sierra Leone. Parliament may also establish inquiries of their own, and investigate actions and persons within and outside Parliament. Section 148 deals with the powers, rights and privileges of commissions of inquiry, including their status as a High Court. Section 149 deals with the publication of the commission's report, requiring the President to publish both the report and the government white paper on the report within six months. Section 150 gives power to the Rules of the Court Committee to make rules regulating the practice and procedure of all commissions of inquiry. The reports of inquiries are usually published, but are not always published for the benefit of the public immediately after they are submitted to the President. Depending on the interest of the government or pressure exerted from outside, some reports are published immediately as the inquiry is concluded. For instance, the Shear-Moses Commission, instituted to inquire into the acts of political violence at the SLPP headquarters in Freetown in 2009, is yet to be published. However, the Kelvin Lewis Commission of Inquiry established following the 9 September 2011 violence in Bo, where Brigadier Maada Bio was attacked and the APC office burnt down, has been released. Government action in full compliance with its own white paper on the TRC report is yet to be seen.

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<sup>55</sup> Abidjan Peace Accord, 1996, Article 14: 'To consolidate the peace and promote the cause of national reconciliation, the government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL in respect of anything done by them in pursuit of their objectives as members of that organisation up to the time of the signing of the Agreement. In addition, legislative and other measures necessary to guarantee former RUF/SD combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civic and political rights with a view to their reintegration within a framework of full legality.' The Lomé Peace Accord, 1999, Article IX(1-3), granted complete pardon and amnesty to Corporal Foday Sankoh, all combatants and collaborators.

<sup>56</sup> The Special Court for Sierra Leone indicted 13 people, but could only complete cases against nine of them. Sam 'Maskita' Boackarie was reported dead, Johnny Paul Koroma is still at large, and Foday Sankoh and Hinga Norman died in detention.

## D. Recommendations

- Parliamentary structures should be strengthened to enable Parliament to effectively exercise its oversight roles over the executive in the implementation of laws and policies.
- Legal proceedings brought against the government, and the outcome of such proceedings, must be monitored and regularly reported on, and citizens' capacity should be strengthened to apply for judicial review.
- Government departments must be able to identify instances of complaints against the state and preserve such documentation under the control of a single department or officer.
- The Constitution should create an independent and transparent body with set criteria for the selection of those eligible for presidential pardons.
- Government must promptly respond to the recommendations of commissions of inquiry by publishing its reports and white papers, and set up mechanisms to ensure recommendations are implemented.

# 3

## Management of the justice sector

The mismanagement of the justice sector and its gross deterioration stood out as one of the contributing factors for the civil war, as reported by the Truth and Reconciliation Commission in 2004. Accordingly, since the conclusion of the civil war, several efforts have been made to reform and manage the sector. The government and its development partners are now targeting development of the judiciary from a sector-wide approach. Major development programmes are thus no longer targeted at individual justice sector-related ministries, departments and agencies (MDAs), but rather at the sector as a whole. Some improvements lie in the area of infrastructure (buildings for the Sierra Leone Police, the judiciary, prisons, etc.), and improvements in transportation and logistics (including providing basic office supplies and building the capacity of personnel in the sector). Yet, despite these major strides, the sector remains challenged by under-funding, an absence of law reporting, and poor information management and human resource capacity.

### A. Strategic planning and financial management

#### **Institutional framework**

The following MDAs make up the justice sector of Sierra Leone:

- The judiciary, comprising the Supreme Court, Court of Appeal, High Court, magistrates' courts and, most recently, local courts, as a result of Local Court Act of 2011;
- The Ministry of Justice and Attorney-General's Office (law officers, Solicitor-General, Public Prosecution);
- The Ministry of Internal Affairs (oversees police and prisons);
- The Ministry of Social Welfare, Gender and Children's Affairs (approved school, remand home, juvenile justice, family matters and women issues);

- The Sierra Leone Police (investigation, prosecution and law enforcement);
- The Sierra Leone Prison Service (law enforcement, custodian of prisoners and rehabilitation);
- The Anti-Corruption Commission (investigation and prosecution of corruption-related offences);
- Human Rights Commission (investigation of human rights violations, monitoring and reporting);
- Judicial and Legal Service Commission (advises the Chief Justice on judicial administration and on the appointment of judicial and legal officers);
- Law Reform Commission (undertakes law review and reform);
- The Office of the Ombudsman (investigates mal-administration and administrative injustices); and
- The Ministry of Finance and Economic Development (budgetary allocations).

In addition, the Sierra Leone Bar Association continues to make pronouncements on key legal and judicial issues in the country.

## Planning in the justice sector

Since the end of hostilities in 2002, the government has shown commitment to enabling access to affordable justice, supporting the rule of law, preventing further conflict, and improving safety and security for the people of Sierra Leone. This commitment encouraged the United Kingdom's Department for International Development (DFID), working through the Justice sector Development Programme (JSDP)<sup>57</sup> in 2005, to allocate more than 25 million pounds over a period of five years towards the Justice sector Reform Strategy and Investment Plan (JSRSIP) 2008–2010. This allocation was subsequently renewed.

The JSRSIP 2008–2010 identified the following priorities for reform:

- Updated laws and procedures;
- Developing a multi-sector approach;
- Addressing overcrowding in prisons and improving prison conditions;
- Addressing delays in court;
- Reforming of juvenile justice;
- Improving community relations with the police;
- Supporting mechanisms that facilitate access to justice for the poor; and
- Research and information (JSDP Project Memorandum<sup>58</sup>).

Development of the JSRSIP took place over a two-year period between 2005 and 2007, with extensive consultation with relevant stakeholders, including justice sector MDAs, civil society, donors and development partners working on justice issues in Sierra Leone. The strategy was then launched at a public ceremony by President Ernest Bai Koroma in February 2008. It focused on achieving four goals with seven target areas:

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<sup>57</sup> JSDP Project Memorandum-found on JSDP website [www.jsdpsl.org](http://www.jsdpsl.org).

<sup>58</sup> *Ibid.*

Goal	Target
1. Safe communities	1. Activities to reduce crime and fear of crime
2. Access to justice	2. Activities to improve primary justice mechanisms
	3. Activities to expedite criminal case processing
	4. Activities to improve the handling of juveniles
	5. Activities to expedite civil disputes processing
3. Strengthened rule of law	6. Activities to improve human rights and accountability
4. Improved justice service delivery	7. Activities to improve justice service delivery (measure of all the above targets)

The Leadership Group (LG) was charged with implementing the JSRSIP and comprises the heads of the justice sector MDAs. These include the Chief Justice; Minister of Justice; Minister of Internal Affairs, Local Government and Rural Development; Minister of Social Welfare, Gender and Children’s Affairs; the Ombudsman; the Inspector-General of the Police; the Director of the Sierra Leone prison service; the Anti-Corruption Commission; the Human Rights Commission; the Law Reform Commission; and the Legal and Judicial Service Commission. The LG is chaired by the Vice President, which signifies a high level of political commitment. The Technical Working Group (TWG) supports and informs the LG. It comprises budget vote controllers (middle managers) of the justice sector MDAs, as well as civil society representatives.

The Justice Sector Coordination Office (JSCO) serves as the main government office providing support for the JSRSIP. The JSCO was established in 2007 and is located within the Ministry of Justice. The JSCO is intended to be a permanent structure of government and will ensure that sectoral planning for the justice sector is sustained, especially in the government budgeting process under the Medium-Term Expenditure Framework (MTEF).<sup>59</sup> The core functions of the JSCO are to coordinate the implementation of the reform and investment agenda set out in the JSRSIP by taking a lead role in key issues. This includes donor harmonisation and being a resource base for all information within the sector, as well as working with institutions in the sector to facilitate resource allocation both within the government’s budgetary framework and in relation to inputs from donor agencies.<sup>60</sup>

## Financial resources

Individual MDAs of the justice sector prepare their budgets and submit them to the Ministry of Finance, which puts out a budget call circular. The Ministry of Finance then engages the various MDAs to prioritise their activities, as there are not enough resources to meet the needs of the MDAs and government allocations to most justice sector MDAs. All state resources are allocated through the Ministry of Finance, upon approval by Parliament. The following table gives an indication of the approved allocations and expenditure for 2011–2014 for the majority of the justice sector MDAs. Individual MDA budgets are not reflected in the sector strategy. Most MDAs maintain their individual plans to preserve their autonomy and independence. The

<sup>59</sup> Through the budget process each year, priorities are set in relation to Government’s development objectives and resources are allocated (3 years – hence, medium term).

<sup>60</sup> Justice sector Survey 2010 p. 29.

justice sector MDAs are thus gradually being encouraged to align their plans and budget with the justice sector strategy.

*Table 1: Non-salary, non-interest recurrent indicative budgetary ceilings for financial year 2011–2014 for MDAs of the justice sector*

Details	Financial year 2012 budget (Le million)	Percentage of total non-salary non-interest recurrent expenditure	Financial year 2013 indicative ceiling (Le million)	Percentage of total non-salary non-interest recurrent expenditure	Financial year 2014 indicative ceiling (Le million)	Percentage of total non-salary non-interest recurrent expenditure
Min. of Internal Affairs	1 280.0	0.2%	1 408.0	0.2%	1 548.8	0.2%
Anti-Corruption Commission	1 311.8	0.2%	1 443.0	0.2%	1 587.3	0.2%
Office of the Ombudsman	564.4	0.1%	620.8	0.1%	682.9	0.1%
Law Reform Commission	582.8	0.1%	641.1	0.1%	705.2	0.1%
Supreme Court	251.8	0.0%	277.0	0.0%	304.7	0.0%
Court of Appeal	314.2	0.0%	345.6	0.1%	380.1	0.1%
High Court	611.1	0.1%	672.2	0.1%	739.4	0.1%
Law Officers Dept.	1 043.5	0.2%	1 147.8	0.2%	1 262.6	0.2%
Office of the Solicitor General (of which Justice sector Coordination Office)	789.6 (114.9)	0.1% (0.0%)	868.6 (126.4)	0.1% (0.0%)	955.4 (139.0)	0.1% (0.0%)
Justice & Legal Service Commission	145.7	0.0%	160.3	0.0%	176.3	0.0%
Sierra Leone Police	34 160.0	5.4%	37 576.0	5.9%	41 333.6	5.8%
Prisons Dept.	9 800.0	1.5%	10 780.0	1.7%	11 858.0	1.7%
MSWGCA	5 451.6	0.9%	6 432.9	1.0%	7 590.8	1.1%
National Commission for Human Rights	843.0	0.1%	927.3	0.1%	1 020.1	0.1%
<b>Total</b>	<b>57 149.5</b>	<b>8.9%</b>	<b>63 300.6</b>	<b>9.8%</b>	<b>70 145.2</b>	<b>9.8%</b>

N/B: USD1 (US) = Le4 350 (mid-rate) as at August 2012

Source: Ministry of Finance, 2011 (Budgetary speech to Parliament by Minister of Finance Dr Samura MW (Kamara).

The sector-wide approach that brings together all the key players of the justice sector must be strengthened with necessary support. National budgetary support to the sector is minimal (about 10% of non-salary expenditure). This allocation restricts the sector from pursuing its numerous activities. Effective financial management of the sector is thus one key area of concern. Effective coordination, communication and cooperation among the justice sector MDAs is also required for planning purposes and access to the limited government resources. This will enhance strategic planning, timely allocation of government resources and obtaining donor support. Sound accounting systems, with qualified accountants will enhance financial interaction with the Ministry of Finance and the development partners.

The audit service, by constitutional mandate, conducts an audit of all government MDAs. A report of the Audit Service Sierra Leone<sup>61</sup> of 2009 indicated that few justice sector institutions<sup>62</sup> were audited in 2009. Findings of the audit revealed inconsistencies in records, wrong postings, and salary payment irregularities. The Audit Report for 2010 noted that, despite some areas of progress, the country has a long way to go in improving the quality of public financial management.<sup>63</sup> The audit is usually conducted in accordance with International Organization of Supreme Audit Institutions Standards (INTOSAI). Budget information is published on a quarterly basis for budgets and actual expenditures. Detailed budgets and planning documents are published by the Ministry of Finance and Economic Development by sector, region and category of expenditure.

In its current state, the executive controls vital state resources needed for the administration of the judiciary. Even the revenue emanating from court fines and other sources goes to the government through the National Revenue Authority. The Sierra Leone Police (SLP) is the only sector MDA that generates a revenue self-accounting system. The Ministry of Finance is looking at the possibility of rolling out such self-accounting systems to the judiciary and other justice sector MDAs. This was put forward as one of the key recommendations of the Presidential Task Force. It is hoped that when such systems are implemented, the judiciary will overcome most of the difficulties in accessing the much needed funds and resources required to carry out its functions. Such difficulties currently undermine the independence of the Judiciary. Economic independence will ensure the judiciary is not held back as a result of failure by the executive branch to provide vital resources necessary for its operations.

Furthermore, because the justice sector is grossly underfunded,<sup>64</sup> the sector relies heavily on the good will of donors and development partners, who contribute about 80% of the sector's funding. The JSRSIP cost approximately USD27.2 million over three years (2008–2010). The DFID is the only donor that has allocated GBP1.2 Million, through the JSDP, for the JSCO to coordinate the implementation of the JSRSIP. However, there are positive signs from other donors, such as the UNDP. In addition, approaches have been made by the GIZ and a few

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<sup>61</sup> Audit Service Sierra Leone; A report signed by Auditor-General (Mrs Anna Caesar) dated 31 December 2009.

<sup>62</sup> Such institutions included the Ministry of Justice, Judiciary High Court, Appeal Court and Supreme Court, Ministry of Social Welfare Gender and Children's Affairs, Sierra Leone police, Sierra Leone prisons service.

<sup>63</sup> Report on the Audit of Accounts of Sierra Leone Government for the financial year ended 31 December 2010, signed by Auditor-General (Mrs Lara Taylor-Pearce), dated 9 December 2011, <http://www.auditservice.gov.sl>.

<sup>64</sup> As can be seen from the budgetary allocations (See Table 1).

others who support the strategy.<sup>65</sup> Three project areas within two MDAs (the judiciary and the Law Reform Commission) and civil society organisations (paralegals) are supported by the GIZ mission on the rule of law and access to justice.

There is no clear line for civil society to engage the justice sector MDAs in their planning and budgeting processes, though the Ministry of Finance and Economic Development has some civil society participation, in the form of minor consultations. Invitations, together with information pamphlets on the budget are sent out to some local civil society groups for their input and suggestions. On the whole, their participation and response to such calls are gaining momentum at the public hearing stage. However, the ability of some local NGOs and civil society to effectively monitor justice sector reforms remains a challenge. In 2010, following the phasing out of the JSRSIP 2008–2010, the government evaluated the programme. The report stated that, even though not all the targets set out in the strategy were fully achieved, many were, including the following:

- Institutional progress related to the JSRSIP;
- Increased capacity among MDAs to produce costed strategic plans linked to the JSRSIP;
- Increased coordination and programme complementarity among MDAs in the justice sector; and
- A huge cut in programme duplication among MDAs.

The report therefore concluded that some of the strategic targets in the JSRSIP 2008–2010 were over ambitious and, therefore, MDAs could not fully accomplish them. However, the report recommended that, since the targets are still relevant, they should be reviewed in consultation with the MDAs using specific, measurable, achievable, relevant, and time-based (SMART) principles.

Given the reasonable success of the JSRSIP 2008–2010, a new Improved Access to Security and Justice programme costing GBP 19 million over a four-year period (2011–2014) has also been supported by the DFID and an MoU has been signed with the Attorney-General on behalf of the government. Unlike the JSRSIP 2008–2010, the current strategy incorporates both security and justice. The strategy is aimed at ‘Accelerating Equitable Security and Justice, Community Empowerment and Mobilization and Accountability and Oversight’. The three outputs form part of the government’s Justice Sector Reform Strategy and Investment Plan, which defines the government policy for interventions within the sector, in line with the government’s Agenda for Change. The programme, which started in September 2011 is the successor programme to the JSDP, which phased out in August 2011.

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<sup>65</sup> Discussions with Mariama Anthony-Williams, who served as JSCO Deputy Coordinator during 2009.

Table 2: The government's Justice Sector Reform Strategy and Investment Plan II 2011–2014

Outcomes	Benchmarks
Justice is easily accessible locally	Presence of formal justice institutions (police stations and posts, local court buildings and magistrate courthouses, local police partnership boards) in 14 districts; presence of primary justice services in 14 districts. Primary justice services scaled up and available in 149 Chiefdoms and the Western Area. Increased public confidence and trust in the justice system (measured using public services surveys).
Justice is expedited	Decreased time to process theft and sexual offences in court. Use of alternative dispute resolution (in particular, mediation), at the community level, in 40 police stations. Increased diversion of cases concerning juveniles from the formal justice sector.
Rights and accountability are respected	Improved standing of Sierra Leone on TI Corruption Perceptions Index 2011–2014. Incremental engagement of probation facilities/services with juveniles in contact with the law. Options framed for inspection of courts and places of detention.

Source: Republic of Sierra Leone, Justice Sector Reform Strategy and Investment Plan II 2011–2014.

## B. Court administration

Court administration is plagued with numerous problems, ranging from understaffing, poor conditions of service, poor working environment and insufficient office equipment and supplies needed for normal functioning. The physical conditions and facilities of the justice sector institutions received some support after the war. The government does not have a strong financial base to embark on major infrastructural development. About 80–90% of infrastructural development is supported by donors. There is still much to be done for courthouses, police stations, prisons and other structures to be safer, more secure and more hospitable.

The Chief Justice is responsible for the management of the court, assisted by the Master and Registrar. Resident judges in the provincial areas also have deputy Masters and Registrars. Court administration in Freetown (Western Area) is very different to other provinces. Whereas in Freetown there is a sitting magistrate for juveniles, in the provinces, the single resident magistrate sits on all cases. There are also discrepancies in logistics and other supplies, which are more accessible and abundant in Freetown than the provincial offices. Until the new Local Court Act 2011 was enacted, the local courts were managed by the Ministry of Internal Affairs, Local Government and Rural Development in the appointment of Court chairmen, though they were supervised by the Attorney-General and Ministry of Justice. However, under the current laws, local courts have been brought under the tutelage of the office of Chief Justice.

Proper record-keeping and access to information is crucial in justice dispensation. When records are not properly kept, unavailability of vital information hinders prosecution, proceedings and judgment. For practitioners in particular, limited availability of legislation and jurisprudence remains a concern. Because legislation is not widely available, there are many instances of incorrect charges, less confidence in defending accused persons, and arbitrary judgments being passed.

## Infrastructure and court facilities

Court buildings in Sierra Leone are grossly inadequate, especially in the provinces. Most were built in colonial days, and the majority were burnt down during the civil war. In Freetown, the courts are highly congested, inadequately furnished and lack air-conditioning, access to water and proper sanitation. However, major renovations have been completed on the Law Courts Building on Siaka Stevens Street in Freetown, and new buildings have been erected in Kenema, Makeni through the Law Development Project (LDP).<sup>66</sup> The Infrastructure Component of the JSDP is also pursuing infrastructural reforms of the sector. Eleven handovers of building projects were completed, owned and maintained by the respective agencies by February 2010. This includes provision of additional court buildings, residences for judges, magistrates, prisons and prison officers quarters, family support units, among others. Other notable new buildings that were completed and opened were the new magistrates' court buildings next to Pademba Road Prisons (West Freetown) and Cline Town (East Freetown). The new magistrates' courts have separate juvenile courts, separate female holding cells, air-conditioning and other facilities that meet minimum standards.<sup>67</sup> In addition, major repairs have been completed on the approved school and remand home for juveniles.

However, stationery and furniture supplies in the courts continue to be inadequate and remain a huge challenge. Donor support in this direction remains a lifeline for the courts. The UN Peace Building Fund provided significant office equipment to the judiciary to enable it fast track cases that would otherwise have taken a long time in terms of preparing the necessary paper work. This equipment included photocopiers, scanners, computer, printers, papers, etc. This pilot initiative actually helped clear a backlog of 700 cases between August 2007 and December 2009.<sup>68</sup>

## Record-keeping and reporting

Record-keeping in the courts is largely manual. Records are kept in A4 paper files in the filing offices at the registry. The archives are kept in cartons and cabinets. The most sensitive documents, confidential information and records are not highly protected (especially from damage), making them difficult to access. This causes delays in the administration of justice, as well as disruptions in the normal functioning of the courts. Handwritten documents also cause delays, as another judge loses a lot of time trying to read the handwriting of a previous judge or magistrate. The old-fashioned typewriter is still common in most court buildings across the

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<sup>66</sup> A DFID funded project managed by British Council. It precedes the JSDP.

<sup>67</sup> According to Fasalie Koroma, the JSDP Infrastructure Component Manager.

<sup>68</sup> As stated by Nana Busia, Senior Rule of Law Adviser and Programme Manager, 'Improving Access to Justice' of the UNDP.

country. Fortunately, litigants are not asked to buy paper or pay a fee to cover paper costs in the court systems. However, litigants or researchers are normally charged a research fee to obtain court documents and are also required to pay for photocopying of court documents, if requested.

### **c. Access to information**

Parties to a case are openly informed in court of the next stage and when the case is likely to be called for next hearing. When litigants are not in court on time to be informed of the stage of the process and the date of next sitting, it is very difficult for them to retrieve this information. To do so, they need to engage with court officials, which can be time-consuming and frustrating. This situation has changed though, as Legal Access through Women Yearning for Equality, Rights and Social Justice (LAWYERS) has supported the creation of information desks within the main Law Courts Building on Siaka Stevens Street. The objective is to assist court users and the public in accessing court records and basic information about the courts. There are efforts underway to computerise the records and information (case tracking and other software systems for easier information storage, access and retrieval). However, no donor has committed funds for such initiatives. It thus remains a tremendous challenge.

Furthermore, until recently, access to legislation and jurisprudence is not easily available to justice sector staff and the public. The full text of legislation is published in English, and normally available for a moderate price at the government bookshop. Current laws are more readily accessible than the older ones, as they easily go out of stock; most legislation is thus not widely available. Some legislation (2000–2009; 1992 and 1996; 1997–1999; 1974, 1975 and 1978, and a few others) have been posted on the Sierra Leone website.<sup>69</sup> A few individuals<sup>70</sup> have collected, selected and compiled legislation. Because of this piecemeal effort by individuals, it became very difficult for practitioners to access a comprehensive legal resource, or to follow amendments to the law, as older amendments often go out of stock. Therefore, the only reliable source of full texts is the court libraries and judge's chambers. However, the court, with support from the UNDP, recently began making its decisions available to the public on CD. In addition, the Special Court for Sierra Leone, as part of its legacy programme and with support from the Open Society Institute, has established a pilot website for the Sierra Leone Legal Information Institution.<sup>71</sup> This website is intended to serve as a single resource for all laws, decisions and judgments from the various courts, including national and international cases relevant to Sierra Leone. The initiative will go a long way to ameliorate the problem of accessing vital legal information for both practitioners and researchers.

The official language of the court is English, but court proceedings are normally interpreted for non-English speakers. Plain language/vernacular versions of laws are unavailable, as local languages are widely spoken, but not read, and the scripts of local languages are not common. In many instances, cases are delayed as a result of the absence of interpreters in courts. In the cases in which interpreters are mostly volunteers, translations can be confusing. Transcripts

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<sup>69</sup> [www.sierra-leone.org/laws.html](http://www.sierra-leone.org/laws.html). This website is an independent initiative by Peter Anderson.

<sup>70</sup> A staff member of the law officers department showed the data collector a bound compilation of legislation. A few of his colleagues had done the same thing.

<sup>71</sup> See <http://www.sierraleoneii.org/>.

of judgments are not widely distributed, but limited to lawyers, magistrates and judges. There is virtually no expert commentary on Sierra Leone cases. Sierra Leone Law Review Limited published a law journal once in 2000, but did not continue with subsequent publications. Similarly, the Sierra Leone Law Journal published by the University of Sierra Leone for the first time in 1994 was also discontinued. A very few comments on the application of laws can be found in foreign textbooks, but they are very difficult to come by.

Law reporting occurred regularly until 1973. However, since then, there has been no law reporting on a regular basis, other than selected judgements and decisions between 1974 and 1982. These were published in 2006 by the Sierra Leone Bar Association, with support from the JSDP. The absence of a local law reporting system thus remains a huge impediment to the development of a robust Sierra Leonean jurisprudence and a more easily accessible justice system.

### **Access to information about the courts and within the justice sector**

The court is normally open to the public and the media during trials. Relationships with the media and court personnel seem quite good, as journalists are free to attend court sittings. Almost all courtrooms have a public gallery where the media and interested parties sit. However, there are restrictions on reporting of rape and related offences and juvenile matters. Cameras or photographs are not allowed in courts. The judiciary has an information disclosure policy, which includes an information consent model. It ensures that one obtains approval from the head (the Chief Justice, senior judges or Master and Registrar) before accessing the required information. However, more recently, the public has been able to gain greater access to information through interviews with the consultant Master and Registrar. Certain civil society organisations and journalists have commented on the perceived reluctance of senior members of the judiciary in providing information.<sup>72</sup>

In general, information on the justice sector can be very difficult to access. Information is normally found in generic reports on the sector, records and archives. However, it is difficult to access specific details in an organised and easily retrievable manner. In the magistrate courts, some mechanisms are in place for magistrates to perform a basic analysis of cases. However, most justice sector information is not accessible to the public or available online, except in a few cases from the JSDP website ([www.jsdpsl.org](http://www.jsdpsl.org)), as well as local groups such as the Centre for Accountability and the Rule of Law-Sierra Leone, Timap for Justice, and other organisations working within the justice sector.

In addition, information gathering and processing on the part of the MDAs requires a huge investment. Available resources tend to be allocated to more pressing needs of the MDAs. Accordingly, most of the justice sector MDAs do not use the available data or information in their routine operations, such as planning and monitoring. Currently, the SLP and a few other MDAs have established research and information units. The United Nations Integrated Peace Building Office in Sierra Leone (UNIPSIL) is currently supporting the establishment of a database for the Sierra Leone Prison Service.<sup>73</sup> However, further development is needed.

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<sup>72</sup> My data collector experience when collecting information about the sector.

<sup>73</sup> Personal Communication—Abdul Sidique, Human Rights Officer.

Certain MDAs, such as the Office of the Ombudsman, Law Reform Commission, the Anti-Corruption Commission, the Human Rights Commission, and few others, do report annually, as required by law. Furthermore, a more holistic approach to reporting for the sector was initiated by the JSDP in 2006, which compiled available information on the sector through the 'Justice Sector Survey'. The survey is a snapshot of basic information on the various justice sector MDAs and civil society that work on justice issues in the country. The responsibility for the production of the survey is now being transferred to the Justice Sector Coordination Office (JSCO). The most recent edition of the survey published by the JSCO is the Justice Sector Survey 2010, which has been very helpful in enabling the public to access relevant information on the justice sector.

However, in the absence of complete transparency, the judiciary will be exposed to accusations and misunderstanding about its processes, as identified in the strategic plan of the judiciary. Inadequate information on the court and other justice sector MDAs creates an atmosphere of suspicion among the public, who are not aware of what goes on within the courts. Unavailable information also discourages development partners. The justice sector must work on an effective communication strategy that will create a flow of information to and from the courts.

### **Collecting data for this study**

The data collector made several appointments, followed by phone calls to identified data/information bearers. Granting interviews was very difficult, as most of the key informants were either overwhelmed or not wanting to disclose information. Senior officials were more lethargic than junior staff, but at the same time, junior staff tended to be cautious or afraid of their bosses. In most cases, it took, on average, more than two weeks to be granted an interview or to have the questionnaire returned. The same is true in the provinces.

### **D. Recommendations**

- Government must increase budgetary allocations to the justice sector; otherwise the sector will collapse when donor support wanes. For sustainability, there needs to be a firm base of infrastructure and human resource capacity to build on the gains of the past five years.
- Sound financial management systems, including an audit, should be put in place for all assistance directed towards the sector's development. Such arrangement should consider assigning trained and qualified accountants to the MDAs. This will encourage donors to invest in the sector, as they will be assured of accountability.
- The court should embark on massive recruitment and training to respond to the huge challenges it faces in such areas as administration, human resources, communication, research, planning and public information. The same applies to other justice sector institutions. Training should also focus on general administrative and managerial skills.
- Poor conditions of service are discouraging and driving skilled personnel away from the justice sector. Conditions of service need to be improved to attract the best people for the job. Salaries must be competitive and working environments need to be more conducive to quality work.

- Facilities such as buildings, water, electricity and furniture must be improved in number and quality for a conducive and healthy working environment. More court buildings with basic minimum standards are a necessity in the dispensation of justice.
- To improve the pace of court proceedings, as well as the disposal of cases, modern equipment such as recorders and transcribers should be introduced to assist judges, magistrates and court officials, who normally use manual equipment in their daily work.
- The record-keeping system must be modernised to replace and upgrade the current archaic system. This will enable easier access to information and, at the same time, prevent damage or loss due to poor storage. A proper storage system for the full text of legislation and jurisprudence needs to be improved for availability and access to practitioners (judges, lawyers and academics).
- Law reporting needs to be addressed as a matter of urgency. A sustainable system for regular publication of the law reports must be put in place.
- An effective communication strategy is needed for the judiciary and the sector as a whole for information dissemination and feedback from the public. Strategies such as a stakeholders' interactive forum, court users' committees, community town hall meetings and radio programmes should be employed. These measures will bridge the gap between the public and the judiciary.

# 4

## Independence and accountability of the judiciary

Judicial power in Sierra Leone is vested in the judiciary headed by the Chief Justice.<sup>74</sup> The Constitution provides that in exercising its judicial functions, the judiciary is subject to the Constitution or any other law and shall not be subject to the control or direction of any other person or authority.<sup>75</sup> The judiciary consists of the Supreme Court, the Court of Appeal and the High Court known as superior courts of record and other inferior courts and traditional courts established by law. The Constitution protects a judge from prosecution for anything he does in the performance of his judicial functions. Judges are to deliver their decisions in writing not less than three months after conclusion of evidence and addresses.<sup>76</sup> Executive interference in the courts has been a persistent problem in Sierra Leone for decades, particularly during the one-party rule of President Siaka Stevens from 1967–1985. Under Stevens’ rule, the executive branch gained complete control over judicial appointments,<sup>77</sup> and almost complete control over dismissals. The 1991 Constitution introduced several critical legal reforms designed to strengthen the independence of the judiciary. However, the decade-long civil war left the judicial system in ruins as court buildings were destroyed and judges were forced to flee. Since the end of the conflict in 2002, the government, in collaboration with international donors, has been working

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<sup>74</sup> Section 120(1) of the Constitution.

<sup>75</sup> *Ibid*, section 120(3).

<sup>76</sup> *Ibid*, section 120(16).

<sup>77</sup> Section 113 of the 1978 Constitution provides the President with the power to appoint the Chief Justice without the involvement of any other institution or oversight organ or advisory committee, including Parliament and the Judicial and Legal Services Commission. Lower-ranking judges were appointed by the President with the advice of the Attorney-General and Minister of Justice, who was appointed by the President and a member of the Executive Branch.

to protect the judiciary from corruption and undue executive influence. A judicial code of conduct has been established and an Anti-Corruption Commission (ACC) now investigates and prosecutes cases of corruption. However, the constitutional structure of the judiciary, including the appointment and removal of judges, still allows for considerable domination by the executive.

## A. Judges and magistrates

### Judicial independence

A 2007 report by the International Crisis Group declared that the judiciary is still strongly perceived as ‘unjust’ and ‘subservient to the executive’.<sup>78</sup> In 2008, the Secretary-General of the Sierra Leone Bar Association received a large number of complaints from litigants and lawyers about executive interference with the proceedings of judges and magistrates. This prompted a letter of complaint to the Attorney-General and Minister of Justice, with copies sent to all core international bodies working in Sierra Leone. The Secretary-General characterised the letter as a ‘warning shot’ to the executive, and spoke of the importance of ensuring an independent judiciary in post-conflict Sierra Leone, especially given the findings of the TRC.<sup>79</sup> According to officials at the Human Rights Commission of Sierra Leone, there is considerably less executive influence over the judiciary today than a decade ago, though there are still many allegations of interference.<sup>80</sup> A strong perception thus exists within the legal and civil society communities, as well as the public-at-large, that the judiciary remains subject to strong executive influence.

Executive interference is alleged to be particularly rife at the highest levels of the court system. A former high-ranking judicial official attributed the delays in certain Supreme Court rulings to executive pressure. He pointed to the delay of the court’s ruling in the Sierra Leone Association of Journalists (SLAJ) seditious libel case<sup>81</sup> as evidence, citing hesitation on the part of the court to give a decision that goes against the wishes of the government.<sup>82</sup> No interviewee could recall a case in which the Supreme Court had ruled squarely against the government. A current High Court judge candidly remarked that the level of executive interference in the court system in any given period depended on the personality of the Chief Justice. Strong-willed justices have been able to issue independent rulings, while less strong-willed justices often yielded to executive pressure.<sup>83</sup>

The impact of executive pressure upon the Chief Justice is critical to determine the integrity of the judiciary, as the Chief Justice has tremendous power over judicial functions. The Chief Justice decides the composition of the panel in particular cases, according to the Constitution.

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<sup>78</sup> As reported by the UN Office for the Coordination of Humanitarian Affairs at <http://www.irinnews.org/report.aspx?ReportId=73760>.

<sup>79</sup> Interview, Easmond Ngakui, Secretary-General of Sierra Leone Bar Association, Freetown, 1 July 2009.

<sup>80</sup> Afrimap interviews with high-ranking HRCSL officials, 17 June 2009.

<sup>81</sup> The SLAJ challenged the criminalisation of seditious libel, as contained in the Public Order Act of 1965, as conflicting with section 25 of the 1991 Constitution. The final arguments were concluded on 9 March 2009, but the Supreme Court waited until late 2009 to issue a ruling against SLAJ. This was in violation of section 120(16), which requires a decision within three months after final arguments have terminated.

<sup>82</sup> Afrimap interview with retired judicial official, Freetown, July 2009.

<sup>83</sup> Interview with High Court judge, Freetown, 15 June 2009.

A quorum requires three judges, with the Chief Justice possessing exclusive authority to decide who sits on a specific case.<sup>84</sup> The Chief Justice also has the authority to allow judges from the High Court to sit on the Court of Appeal, and Court of Appeal justices to sit on Supreme Court cases.<sup>85</sup> At his prerogative, the Chief Justice may appoint additional justices to sit on a particular matter, thus easily altering the makeup of the bench.<sup>86</sup> The Chief Justice is also responsible for evaluating judges, magistrates and justices of the peace (JPs).<sup>87</sup>

There are also allegations of pressure exerted by the executive upon magistrates of the lower courts. Several magistrates interviewed by AfriMAP claim to have been subjected to executive attempts to influence the outcomes of cases before the courts. However, there are also reports of magistrates successfully resisting such pressure. For example, in 2008, in Bombali District, the magistrate resisted the interference of the relative of a person in a high executive position in a case before the court.<sup>88</sup> Magistrates in the provinces also report that interference by local chiefs or customary officials is common, though there is less pressure to comply with these orders.

The 1991 Constitution contains many provisions that meet international standards for guaranteeing the independence of the judiciary. Article 120(1) vests judicial power explicitly in the judiciary, headed by the Chief Justice, and Article 120(15) prohibits the abolishment of any judicial position that is currently occupied by a substantive holder. Article 120(3) states that the judiciary should be free from the control or direction of any authority other than the Constitution or other laws. Article 120(9) confers immunity upon judges for actions undertaken in performance of their duties, while Article 138(4) provides for the financial independence of judges by charging their salaries, pensions and other emoluments on the Consolidated Fund, and prohibiting the alteration of these funds to the judge's disadvantage. Strongly worded language also bars judges from simultaneously holding any other private or public office providing profit or emolument.<sup>89</sup>

Despite the Constitution's strong wording in favour of judicial independence, in practice, there are several structural flaws that weaken the judiciary's independence. The minimum standard established by the International Bar Association provides that 'rules of procedure and practice shall be made by legislation or by the judiciary in co-operation with the legal profession, subject to parliamentary approval'.<sup>90</sup> The Constitution fails to provide for parliamentary approval of the rules of court procedure. Article 145 establishes a Rules of Court Committee, which makes rules of practice and procedure in all courts in the country. The Committee is composed of nine members, only four of which belong to the judiciary, with three executive branch members and two lawyers.<sup>91</sup> While the Constitution does not specify the specific procedures required of the

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<sup>84</sup> Article 121(2), 1991 Constitution.

<sup>85</sup> Article 120 (10–11), Constitution of Sierra Leone, 1991.

<sup>86</sup> 1991 Constitution, section 121(1)(c).

<sup>87</sup> Interviews with numerous judges, justices, magistrates and registrars, June and July 2009.

<sup>88</sup> AfriMAP Focus Group comprising court monitors and civil society in Makeni, 3 August 2009.

<sup>89</sup> Article 138(4) states fully that a Superior Court judge 'shall not while he continues in office, hold any other office of profit or emolument, whether by way of allowances or otherwise, whether private or public, and either directly or indirectly'.

<sup>90</sup> International Bar Association Minimum Standards of Judicial Independence, section A(6).

<sup>91</sup> The committee comprises four judges, including the Chief Justice (as chairperson); two attorneys nominated by the Bar Association; the Director of Public Prosecution; a nominee of the Attorney-General/Minister of Justice, who may or may not be part of the executive; and the First Parliamentary Counsel, who is part of the executive branch as a member of the Law Officers Department, which is headed by the Attorney-General and Minister of Justice.

Committee, in practice, the Chief Justice relies on the vote of all members to have a measure passed.<sup>92</sup>

Furthermore, while the International Bar Association (IBA) minimum standards permit responsibility over judicial administration to be shared among the judicial and executive branches,<sup>93</sup> the Constitution allows an uncomfortable amount of executive influence over the budget, at the expense of the judiciary. Too much executive control over the budget can politicise the allocation of judicial funds and compromise the ability of judges to carry out their judicial functions properly.<sup>94</sup>

Formulation of the judicial budget begins with the preparation of the estimated budget by the Ministry of Justice. The Ministry of Finance then determines what amount will be received by the judiciary, subject to the approval of Parliament.<sup>95</sup> According to a former Chief Justice of the Supreme Court, the executive process of allocating funds is 'subject to all kinds of vagaries'.<sup>96</sup> This may weaken the ability of Sierra Leone to meet the principle elaborated on in the UN Basic Principles on the Independence of the Judiciary, which insist that the state provide adequate resources for the judiciary to properly perform its functions.<sup>97</sup> The judiciary's budget committee, comprised of judicial administration, but no member of the bench, decides how to allocate the funds, once given. However, the process of allocating funds and the final budgetary allocations are not made public. To protect the right of Parliament to control the issuance of public funds, while reducing executive influence over the judicial budget, a judicial advisory body should be created during the pre-Parliamentary stage of budget creation. This body would work with the executive to determine the proper amount of judicial funding needed, and identify critical areas requiring attention.

There is weak protection against judicial conflict of interest in the superior courts. Though Article 120(14) prohibits any judge from sitting on any appeal of a judgment in which he participated, judges who have connections to particular parties or matters are most often left to voluntarily recuse themselves.<sup>98</sup> In a legal system with so few lawyers and judges, the lack of formalised recusal procedures can lead to injustice.

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<sup>92</sup> Afrimap interview with former Chief Justice Ade Renner-Thomas, Freetown, 22 July 2009.

<sup>93</sup> IBA Minimum Standards of Judicial Independence, section A(9).

<sup>94</sup> See the statement of Sir Franches Purchas, writing for the *New Journal of Law* in September 1994 (quoted by Chief Justice Ade Renner-Thomas in his 2005 Keynote Address to the Sierra Leone Bar Association): 'Constitutional independence [of the Judiciary] will not be achieved if the funding of the administration of justice remains subject to the influences of the political market place. Subject to the ultimate supervision of Parliament, the judiciary should be allowed to advise what is and what is not a necessary expense to ensure that adequate justice is available to the citizen and to protect him from unwarranted intrusion into his liberty by the executive.'

<sup>95</sup> Report by International Commission of Jurists: 'Attacks on Justice—Sierra Leone, available at [http://www.icj.org/IMG/SIERRA\\_LEONE.pdf](http://www.icj.org/IMG/SIERRA_LEONE.pdf).

<sup>96</sup> Chief Justice Ade Renner-Thomas, 'Keynote Address Delivered at the Opening Ceremony of the Annual Conference of the Sierra Leone Bar Association', 15 July 2005.

<sup>97</sup> UN Basic Principles on the Independence of the Judiciary (1985), Principle 7.

<sup>98</sup> Judges and justices in Freetown said that the judge could theoretically be forced off the case, but in general, voluntary recusal was the most common method.

## Appointment, promotion and dismissal of superior court judges

Both structural and practical flaws in the appointment process of judges seriously weaken judicial independence in Sierra Leone. Article 135 of the Constitution stipulates that all judges, including Supreme Court, Court of Appeal, and High Court judges, should be appointed by the President, 'acting on the advice of the Judicial and Legal Service Commission (JLSC) and subject to the approval of Parliament'.<sup>99</sup> According to the IBA minimum standards, executive participation in judicial appointments is not necessarily in conflict with judicial independence, provided that appointment and promotion of judges rests in a judicial body in which the members of the judiciary and the legal profession form a majority.<sup>100</sup> Out of seven members in the JLSC, four are required to be members of the judicial or legal professions, thus constituting a simple majority. However, this procedure belies the dominant role of the executive in shaping JLSC membership. All members of the JLSC are appointed by the President in some way, either specifically to serve on the Commission, or to hold a public office that qualifies them automatically for membership on the Commission. The seven members of the JLSC include the Chief Justice (who is chairperson), the most senior justice on the Court of Appeal; the Solicitor-General; the Chairman of the Public Service Commission;<sup>101</sup> one practising counsel,<sup>102</sup> nominated by the Bar Association and appointed by the President; and two other persons, who cannot be legal practitioners and who are appointed by the President.<sup>103</sup>

The JLSC framework raises the risk that the pre-parliamentary appointments process will be dominated almost entirely by the ruling political party. One of the Commission's members – the Solicitor-General – is the principal assistant to the Attorney-General and the Minister of Justice, thus leaving only one lawyer on the Commission who might (but is not required to) work outside of the executive branch.<sup>104</sup> The TRC recommendations call for the broadening of representation on the JLSC. To comply with these recommendations, there should be greater focus on reducing executive input into the appointment process of judges by strengthening the judiciary's role in appointing members of the JLSC. The discretionary slots afforded to the President should be eliminated. They should be replaced with two slots reserved for judges, legal practitioners or civil society appointed by the courts, or by an independent body composed of members of the legal profession and civil society.

The 1991 Constitution also suffers from a lack of clarity regarding the respective duties of the JLSC in the appointment process of judges. The exact scope of the words 'with the advice of the Judicial and Legal Services Commission' is unclear. In interviews with prominent judicial officials in Freetown, the ambiguity over the role of the JLSC in the appointment process is apparent. Opinions vary considerably concerning the power of the JLSC. One High Court judge declared the JLSC to be much more powerful than the President. Officials from the Justice Sector

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<sup>99</sup> Section 135, 1991 Constitution.

<sup>100</sup> According to IBA standards, however, appointments and promotions by a non-judicial body will not be considered inconsistent with judicial independence in countries with long histories of democratic tradition.

<sup>101</sup> Section 151 of the Constitution mandates that the appointment of the Chairman of the Public Service Commission be done by the President, subject to the approval of Parliament.

<sup>102</sup> Must have at least 10 years standing.

<sup>103</sup> Section 140(1) of the Constitution.

<sup>104</sup> Section 65(4) of the Constitution.

Development Programme characterise the JLSJ as ‘not very effective’ and ‘kind of dormant’,<sup>105</sup> A high-ranking official at the Human Rights Commission described how many members of the JLSJ were ‘too busy’ to play as large a role as necessary in the judicial appointment process.<sup>106</sup> In practice, there have not been reports of a President appointing a judge without a prior recommendation of the JLSJ.<sup>107</sup> However, the potential for this occurrence exists, given the vague wording of the provisions of the existing Constitution. Therefore, the role of the JLSJ in recommending candidates for the bench should also be formalised as a requirement enshrined firmly in the Constitution to better define the procedural relationship between the President and the Commission.

Moreover, the fact that judges must be re-recommended by the JLSJ and reappointed by the executive to be promoted to a higher court further exacerbates the executive pressure imposed upon them. Current judges interviewed for this report all claimed that the appointment and promotion process was based upon record of service, seniority and integrity.<sup>108</sup> However, there are widespread reports from former high-ranking judges and NGO officials that advancement within the judiciary is highly dependent upon following the wishes of the executive. Former Chief Justice, Ade Renner-Thomas, noted in a public address that despite a constitutional guarantee of security of tenure, judges can still be forced by the executive to retire. He also mentioned that several Chief Justices have been forced to leave.<sup>109</sup> It is alleged that he was also forced to leave, as he was not in favour with the executive. One former judge complained that the judiciary was similar to the civil service, with one’s advancement almost entirely dependent upon favourability with the executive.<sup>110</sup>

Another serious problem is the prevalence of judges on contract, appointed by the President on a temporary, renewable basis, which bypasses the constitutional procedures for regular appointments. The Constitution stipulates that all regularly appointed judges have security of tenure, to be removed only for misconduct or upon reaching the retirement age of 65. However, Section 136 also allows the President, in the event of a vacancy or incapacitation in the Office of the Chief Justice, Supreme Court, Court of Appeal or High Court, to appoint another qualified person to serve, either for a fixed term of the President’s choosing, or until the appointment is revoked by the President.<sup>111</sup> There is no requirement for parliamentary approval of such appointments. This procedure permits current or former judicial officials who have reached retirement age to continue sitting on the bench, and allows the President to quickly resolve shortages in judicial officers. The frequent use of contract judges on the bench violates international practice<sup>112</sup> and is a serious threat to the independence of judicial decision-making.

The Constitution also fails to provide a cap on the number of judges who can sit on the

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<sup>105</sup> AfriMAP interviews with judges and JSDP officials, Freetown, June 2009.

<sup>106</sup> AfriMAP interview at HRCSL, 17 June 2009.

<sup>107</sup> Interview with several High Court judges, registrars, magistrates, attorneys and civil society activists.

<sup>108</sup> High Court judge interview, Freetown, June 2009.

<sup>109</sup> Chief Justice Ade Renner-Thomas, Keynote Address, Sierra Leone Bar Association, 2005.

<sup>110</sup> AfriMAP interview with judge, Freetown, July 2009.

<sup>111</sup> Article 136(2–5).

<sup>112</sup> For example, IBA section (C)(23)(b) states that the appointment of temporary judges should be avoided, except in the cases of countries with long histories of democratic traditions.

Supreme Court. The 1991 Constitution stipulates that ‘the Supreme Court shall consist of not less than four other Justices of the Supreme Court and such other Justices of the superior court of judicature or of the superior courts in any state operating a body of law similar to Sierra Leone’.<sup>113</sup> This wording gives room for the executive branch to attempt to constitute the court in its favour during particular cases.

Solutions to improve the appointment process are complex and varied. There are currently no transparent formal procedures for evaluating potential appointments and promotions. This is in contrast to West African neighbours, such as Ghana, which require judges and magistrates to complete promotion examinations, and present written judgments to a judicial council committee.<sup>114</sup> In addition, to implement a more rigorous evaluation system, Sierra Leone may also wish to require that parliamentary approval of judicial appointments be raised from a simple majority to a super majority to promote a more rigorous selection and vetting process. If JLSC membership were increased in number, it may also reduce dominance of the selection process by the ruling political party. Caps upon the number of Supreme Court justices who are allowed to sit on the court should also be instituted.

Section 137 states that judges in the Superior Court of Judicature hold office in good behaviour, provides for a mandatory retirement age at 65 (with exceptions for judges on contract), and provides for removal only in cases of inability to perform the functions of office or misconduct. The Constitution provides that the President may only remove a judge from office on the recommendation of a tribunal, after an investigation, and with the approval of a two-thirds majority by Parliament. However, the President appoints the particular tribunal for each judge, with no particular requirements, other than each appointee be qualified or have been qualified to sit on the Supreme Court. Though the Constitution provides that he acts ‘in consultation’ with the JLSC, as explained above, the role of the JLSC is not clearly specified. This lack of adequate procedure to vet those who serve on the tribunal has serious implications for the fairness and integrity of the outcome of the proceedings. It is likely that the executive may only choose individuals that are most likely to support the outcome the executive wants to see. To enhance the integrity of the process, the JLSC must be involved in vetting the individuals who serve on the tribunal. Therefore, though the removal process for judges partially meets international standards by requiring approval of a two-thirds majority of Parliament, it still maintains heavy executive input. This violates international standards that mandate that removal power be vested in an independent tribunal.<sup>115</sup>

## **Appointment and dismissal of magistrates of the inferior courts**

After a recommendation from the Chief Justice, the JLSC appoints magistrates.<sup>116</sup> The Courts Act of 1965 requires that there should be a constituted magistrate court for every district, though this has not been realised. The President has the option of appointing justices of the peace (JPs) for

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<sup>113</sup> Section 121(1)(b).

<sup>114</sup> *Ghana: Justice Sector and Rule of Law*, published by AfriMAP and OSIWA, 2007, p. 67.

<sup>115</sup> IBA 4(b).

<sup>116</sup> The Courts Act (No. 31) of 1965, Preliminary Section, 2.

Sierra Leone or for a particular judicial district.<sup>117</sup> In some areas, JPs only have the power to advise the magistrate. However, in situations in which cases could not be disposed of with reasonable promptness, magistrates have the power to summon two JPs to sit in the capacity of magistrates in that district.<sup>118</sup> There is no specific provision for the removal of magistrates in the Constitution or Courts Act of 1965, although one can infer that they can be removed by the same authority that appoints them.

Interviews with judicial sector officials, ranging from judges to lawyers to magistrates themselves, have stated that magistrates face serious risk of interference from other branches of government. One member of Parliament, who is also a lawyer, said that he felt that magistrates, as opposed to higher court judges, specifically seemed to feel constrained to grant him applications because of his status as a legislator.<sup>119</sup> The absence of clear requirements for removal of magistrates in the Constitution or Courts Act makes the abuse of the removal process a significant possibility.

## Composition of the judiciary

In general, there are critical shortages of judges and magistrates throughout the country, particularly outside Freetown. This has led to heavy caseloads and backlogs. Some magistrates have been forced to cover towns and districts far from their posted location, just to meet with the demand for judicial services. For example, the magistrate in Kenema is also responsible for the towns of Tongo and Blama. However, he has only ventured outside of Kenema once as a result of the poor condition of the roads and the time required to travel.<sup>120</sup> Four judicial districts – Bonthe in the Southern Province, Kambia and Koinadugu in the Northern Province, and Kailahun in the Eastern Province<sup>121</sup> – currently lack resident magistrates, while most other districts only have one.<sup>122</sup> A circuit court has been established in Moyamba District, but as of July 2009, it only services four chiefdoms.<sup>123</sup> Even in Freetown, one magistrate admitted at times refusing to attend court because of a lack of transportation.<sup>124</sup>

The number of women sitting on the bench of Sierra Leone is approaching parity with men, as they now represent over 40% of judges and justices within the Superior Courts of Judicature. Three of the five Supreme Court Justices, including the Chief Justice, are women. Though positions in the High Court, Court of Appeal, or Supreme Court require many years on the bench, which typically favours men, there are solid percentages of women sitting in these courts. The greatest gender disparity occurs in the magistrate court, as only two of the country's 18 magistrates are female.

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<sup>117</sup> Courts Act of 1965, 13(1).

<sup>118</sup> Courts Act of 1965, 5(2).

<sup>119</sup> Interview with member of Parliament/lawyer, Freetown, 30 June 2009.

<sup>120</sup> Interview with Magistrate, Kenema, 31 July 2009.

<sup>121</sup> Kailahun District has an estimated population of 382 829, extrapolating from 2004 Census figures.

<sup>122</sup> Interview with HRCSL Regional Officers, July 2012.

<sup>123</sup> Interview with Moyamba Focus Group, 1 August 2009.

<sup>124</sup> Interview with Magistrate, Freetown, 18 June 2009.

Table 3: Breakdown by gender of judges and magistrates, 2012

Court	Total	Male	Female
Supreme Court	5	2	3
Court of Appeal	5	2	3
High Court	11	8	3
Magistrates' Court	18	16	2
<b>Total</b>	<b>39</b>	<b>28</b>	<b>11</b>

Source: Information obtained from the High Court Registry, 2012.

## Qualifications and training

The Constitution stipulates that all appointees for the Superior Court of Judicature must be qualified to practise law in a court of unlimited jurisdiction in civil and criminal matters in Sierra Leone, or in a country with an analogous legal system. A person must have been qualified to practise law for no less than 20 years to sit on the Supreme Court, for no less than 15 years for the Court of Appeal, and ten years or more for the High Court.<sup>125</sup> Magistrates have no particular requirements. They can begin hearing cases as soon as they receive qualifications to practise law in the country.

There are no required training procedures or schedules for judges after they assume office. However, there was a series of training programmes, in concert with donor partners such as the JSDP and UNDP, in which judges were sent overseas to train in judicial administration.<sup>126</sup> Judges interviewed for this report were divided on whether the training was effective. Some judicial officials said that the training was sufficient and should be conducted on a regular basis, as need arises. However, most stated that the training was seriously inadequate and lacked emphasis on core subjects, such as due process of law and proper judicial administration. There is no training exclusively for judges in constitutional and human rights law, though there have been several workshops at the special court, open to the entire justice sector. Areas that judges and lawyers have cited as being most in need of intensive training include human rights issues and international law. Some magistrates have had intensive training, conducted by the former Chief Justice of Gambia, but there has been no reported training that is compulsory for magistrates.<sup>127</sup>

In districts in which JPs sit in place of magistrates, many have not been trained. One JP in Bo reported that he had not received any training in four out of the six years he had been a magistrate. His main training consisted of a one-month crash course in Freetown at the start of his service. An engineer by trade, he had no formal training in law and reported that he decided cases strictly by the facts, as lawyers would often try to steer JPs astray with complicated use of the law. All the magistrates and JPs interviewed for this report called on the need for continuous training to be able to apply the law more effectively.

Furthermore, the evaluation system for judges and magistrates does not provide them with effective feedback on their performance or proper advice on how to improve their conduct. Both

<sup>125</sup> 1991 Constitution, section 135(3).

<sup>126</sup> Interviews with High Court and Court of Appeals Judges, Freetown, June–July 2009.

<sup>127</sup> Interviews with magistrates in Kono, Kenema, and Freetown, June–July 2009.

magistrates and judges are required to submit returns once a year concerning their caseloads and judgments to the Chief Justice of the Supreme Court. Feedback has been haphazard and unsystematic. Some judges and magistrates report receiving feedback and suggestions to increase their caseload or reduce delays. Others have received no input. There is also no regular procedure for judges and magistrates to inform the judicial administration of the most critical areas of reform needed, nor are strategies imparted to individual judges on how to best contribute to the justice sector's main goals.<sup>128</sup>

## Remuneration and conditions of service

Poor conditions of service permeate the judiciary in Sierra Leone. Every judge interviewed for this report cited remuneration as a major barrier in building an effective judiciary. Judges in the Superior Court receive transportation and housing allowances, though many say that these stipends are inadequate to meet their actual housing and transport needs. Magistrates fare even worse. In 2012, a magistrate's official salary is Le450 000 (approximately USD100) per month. However, this is augmented by an additional Le2 000 000 (approximately USD450) per month from a project supporting the judiciary. Magistrates in the provinces receive transportation, but are sometimes responsible for courts in multiple towns or districts, thus making it difficult to perform their duties effectively. Both judges and private lawyers, including high-ranking members of the Bar Association, pointed to the low salaries in the public sector, which are in sharp contrast to the potentially unlimited amount one can earn as a private lawyer.<sup>129</sup> The UNDP and JSDP have been providing temporary increases in the salaries of judges and magistrates. However, these programmes are temporary and require that the government eventually assume full responsibility for sustaining such increased remuneration.

## Maintaining standards of judicial conduct

In 2002, a national Corruption and Governance Survey on Sierra Leone revealed that 70% of respondents thought that the judiciary was manipulated by economic interests, with over half reporting that the judiciary was influenced by the executive.<sup>130</sup> Sierra Leone's 2005 National Anti-Corruption Strategy Report<sup>131</sup> identifies the judiciary and the health and education departments as the governmental institutions considered most corrupt by the public.

The 1991 Constitution bars judges from simultaneously holding any other office, private or public, that provides profit or emolument.<sup>132</sup> In September 2005, a Code of Conduct was implemented under the direction of then Chief Justice Ade Renner-Thomas. It was voluntarily adopted by all members of the judiciary before its issuance, and is now binding on all serving judicial officials. The code deals with judicial integrity, competence and diligence, equality, and civic and political activities. For violations of these principles, the Code established a judicial ethics committee, which consists of the most senior Supreme Court Justice, Court of Appeal Justice

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<sup>128</sup> Interviews with judges and magistrates, countrywide, June–July 2009 and 2012.

<sup>129</sup> Interviews with lawyers and judges, Freetown, June–July 2009 and 2012.

<sup>130</sup> 2002 Corruption and Governance Survey, supported by the World Bank and the UK's Department for International Development.

<sup>131</sup> This report was completed by the National Anti-Corruption Strategy Secretariat in February 2005.

<sup>132</sup> Section 138(4), 1991 Constitution.

and a High Court judge.<sup>133</sup> Any person with a complaint against a judicial officer, other than the Chief Justice, may deliver the complaint in writing to the Chief Justice, who then determines if it warrants transmission to the committee.<sup>134</sup> However, there are no enumerated disciplinary actions for breaches listed in the Code. The Code also confers complete discretion upon the judicial ethics committee to adopt its own procedures for investigating complaints, though there are specified rules for deliberations. If a recommendation made to the Chief Justice is sufficiently serious (e.g. dismissal), the Code directs the Chief Justice to refer the matter to the JLSC. However, the specific breaches and punishment outcomes delivered by the JLSC are not made public. Importantly, the Code mandates that the Chief Justice keep a register of all complaints investigated by the committee, as well as the subsequent outcomes.<sup>135</sup> The judiciary needs to make a greater effort to formalise and utilise its disciplinary procedure, as well as making results publicly accessible.

## Local courts

Until July 2011, when Parliament enacted a new Local Courts Act, local courts were governed by the Local Courts Act of 1963. Local court had jurisdiction to administer estates of deceased persons whose personal law was customary law, to hear and determine civil cases governed by customary law, other than those involving the Paramount Chief involving title to land, all civil cases with limited monetary claims and minor offences. Their jurisdiction applies to persons within the limits of the court's jurisdiction. The courts apply customary law and, in the absence of a provision of customary law, they apply the general law. However, while there is a formal right to appeal against a local court decision to the District Appeal Court, comprising a magistrate and two assessors, these appeals are rare. There is a Customary Law Department in the Law Officers Department charged with supervising local court chairmen and reviewing their decisions.<sup>136</sup> However, customary law officers also double as state counsel in the formal courts, so their time is limited and their resources are stretched.<sup>137</sup>

The appointment of local court chairpersons was within the jurisdiction of the Ministry of Internal Affairs and Local Government, rather than the judiciary.<sup>138</sup> The Minister had the power to suspend the local court chairperson (who has sole decision-making ability in the court) if he/she was deemed 'unworthy or incapable of exercising his powers justly'.<sup>139</sup> The Chairperson was then not able to exercise any power until reinstated by the Minister. The structure of the local courts under the Local Court Act of 1963 also made them susceptible to executive pressure. Given that the Minister had the statutory mandate, on the recommendation of the Paramount Chief, to hire and fire local court officers, this created a public perception that local courts lacked integrity, independence and impartiality.

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<sup>133</sup> Sierra Leone Judicial Code of Conduct, Section 6.3.

<sup>134</sup> Complaints against the Chief Justice are submitted to the most senior Justice of the Supreme Court.

<sup>135</sup> Code of Conduct for Judicial Officers of the Republic of Sierra Leone.

<sup>136</sup> Local Courts Act of 1963, sections 36–39.

<sup>137</sup> Customary Law, African Human Security Initiative, available at [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/M16oCHAP8.PDF?link\\_id=3&slink\\_id=7968&link\\_type=12&slink\\_type=13&tmpL\\_id=3](http://www.iss.co.za/dynamic/administration/file_manager/file_links/M16oCHAP8.PDF?link_id=3&slink_id=7968&link_type=12&slink_type=13&tmpL_id=3).

<sup>138</sup> Customary Law, African Human Security Initiative, available at [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/M16oCHAP8.PDF?link\\_id=3&slink\\_id=7968&link\\_type=12&slink\\_type=13&tmpL\\_id=3](http://www.iss.co.za/dynamic/administration/file_manager/file_links/M16oCHAP8.PDF?link_id=3&slink_id=7968&link_type=12&slink_type=13&tmpL_id=3).

<sup>139</sup> Local Courts Act of 1963, section 5.

Local courts also receive significant pressure from chiefs and other local officials. Very few officials within the chiefdom, other than the Paramount Chief and community elders, have any power in the local courts, thus leading to few checks upon their interferences.<sup>140</sup> For example, on 8 July 2009, during a land case in Bombali District, one chiefdom speaker<sup>141</sup> attempted to intervene on the side of the plaintiff in a local court. He entered the courtroom and announced that the accused person must be fined immediately because he was in the wrong. Though the Chairperson of the local court fined the speaker, he never paid the fine.<sup>142</sup> Upon hearing of abuses in the local courts, magistrates and judges have an obligation to inform the local court supervisor, as they are prohibited from interfering directly.<sup>143</sup> Civil society activists are also aware of the pressure faced by judicial officials and are reminding them of their rights to resist.<sup>144</sup>

Conditions in the local courts are troubling, as there are often delays in payment of court staff. Money generated in local courts is put into the chiefdom fund, and not devoted to staff salaries. This increases the incentive to charge excessive fines, but then not to document all money received.<sup>145</sup> In Bo District, there are reports of local court officials, court clerks and other court staff not receiving salaries for up to three years, and in Kenema District, up to seven years.<sup>146</sup> A recent local tax was imposed throughout the country and used to pay backlog salaries. However delays still persist.

### *Appointments in local courts*

As stated previously, there were serious problems with the appointment of Chairpersons of local courts. Under the previous Local Courts Act of 1963, as amended, the Minister of Internal Affairs had the power to appoint the Chairperson and Vice-Chairperson. The Chiefdom Council consists of the Paramount Chief, councillors and other powerful local individuals, and is authorised to appoint bailiffs and clerks, subject to the Minister's approval.<sup>147</sup> Historically, the Paramount Chief has usually played the dominant role in recommending a Court Chairperson appointee, even though the ministry must furnish official approval of that choice.<sup>148</sup> Furthermore, since 2004, local chiefdom councils have come to play larger roles in the nomination process.<sup>149</sup>

Appointments occur every three years, thereby putting pressure on the Chairperson to serve the interests of local authorities if he/she wishes to be reappointed. There were also reported instances of the Minister refusing to appoint the nominee of the local authorities, and instead imposing their own candidates in the chiefdoms in Pujehun and Moyamba Districts.<sup>150</sup>

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<sup>140</sup> Vivek Maru, *The Challenges of African Legal Dualism: an Experiment in Sierra Leone*, Open Society Justice Initiative.

<sup>141</sup> The Chiefdom Speaker is charged with assisting the Paramount Chief.

<sup>142</sup> Focus group interview with Makeni civil society activists, 3 August 2009. The Chairperson was later taken to the Provincial Secretary on a disciplinary violation for negotiating a deal with the Speaker to allow the plaintiff to pay Le500 000 to move the court to the land site.

<sup>143</sup> Interviews with magistrates country-wide, June–August 2009.

<sup>144</sup> For example, civil society activists across the country told of successful attempts to convince local court chairpersons that they have the legal right to resist pressure from chiefs to hear cases outside their jurisdiction.

<sup>145</sup> JSDP interview, Freetown, 23 June 2009.

<sup>146</sup> Interviews with local court officials in Kenema and civil society activists in Makeni.

<sup>147</sup> Local Courts Act of 1963, 4(1).

<sup>148</sup> Local Courts Act, 6–7.

<sup>149</sup> AfriMAP Focus Groups, Makeni, Bo, and Kenema, July 2009.

<sup>150</sup> AfriMAP Focus Group, Makeni, 27 July 2009.

Lack of training plagues the local courts as well. Two major complaints lodged by the public about the local courts are that court authorities lack knowledge of proper court procedures and that local court staff lack trained personnel and qualified local court chairperson.<sup>151</sup> Women are not well represented in the composition of local courts chairpersons. In Makeni and Kenema, there is currently one female chairperson in the local courts in both districts, a tiny fraction of the chairpersons in the entire district.<sup>152</sup>

### *Local Courts Act of 2011*

A new Local Courts Act was enacted in 2011. The new law transferred oversight functions of local courts from the Minister to the office of the Chief Justice. The new law now gives the Chief Justice the authority to appoint, promote, transfer, suspend and dismiss any local court officer. The Chief Justice does so after consultation with the Judicial and Legal Service Commission and the Local Court Service Committee. The latter is a committee established by the new Act. These provisions are consistent with the recommendations of the country's Truth and Reconciliation Commission. The enactment and implementation of the Local Court Act of 2011 is expected to address the current challenges of local court judicial administration and will provide for the payment of staff from a national consolidated fund.<sup>153</sup> This is a perhaps the biggest step towards bringing the institution of local court under scrutiny after years of political manipulation.

### *Local courts, 'kangaroo' courts and women's rights*

The JSDP and other NGOs have provided local court officials with training on the gender laws on domestic violence, registration of customary marriage and divorce, and the devolution of estates. However, these training sessions are irregular and short, lasting between one and three days.<sup>154</sup> Section 40(1) of the Local Court Act of 1963 forbids any individual or institution, other than local courts from exercising the judicial powers reserved to that court. The local court itself is prohibited from trying any case outside its jurisdiction, which only encompasses minor criminal, civil and customary cases. However, the prevalence of illegal 'kangaroo' courts in local chiefdoms, as well as unlawful discrimination against women by local courts is a continual problem for women seeking justice in the areas of matrimonial disputes, sexual assault and inheritance of property or land.

Matrimonial disputes: local courts can exercise jurisdiction over matrimonial disputes within each court's applicable customary law. However, informal chiefdom courts (courts headed by a Paramount or Section Chief, who is prohibited by the Local Courts Act from exercising judicial powers over all cases except certain land and boundary disputes) often divorce couples illegally, marginalising women in the process. For example, in Bombali District, a man, who had been married to his wife for 30 years, sought a divorce in a chiefdom court. After paying the Chief Le400 000 (USD115), he received a divorce and then absconded, leaving his wife alone

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<sup>151</sup> Funding proposal by the JSCO, April 2009.

<sup>152</sup> Bombali District, where Makeni is located, has 14 chiefdoms and Kenema District, 16.

<sup>153</sup> The new Local Courts Bill is being pushed by the JSDP as a means of improving the efficiency of, and access to the local courts. One reform would be that supervision of the local courts would move from the Ministry of Internal Affairs to the Ministry of Justice, in hopes of fostering greater independence of local court officials. See JSDP Progress Report of January 2007.

<sup>154</sup> AfriMAP Focus Groups in Kenema, Makeni, Moyamba, and Bo, July–August 2009.

and without means of financial support. Women also face discrimination in local courts. In Bo District, a woman seeking a divorce in the local court was levied repeated fines in excess of Le1 million (USD290), and suffered several incidents of harassment. The court refused to issue her divorce certificate after she had paid the proper fees, placed her father in custody, and forced her to pay her husband's court expenses. She was also forced to go to another local court to answer charges of failing to fulfil her domestic responsibilities.

The local courts and illegal chieftdom courts have no authority to try serious offences, such as domestic violence and sexual assaults, yet there are reports of these courts hearing and rendering verdicts in these cases. For example, according to the International Rescue Committee, a husband cracked his wife's skull with an axe because she did not have dinner cooked when he arrived home. He received a sentence stating that he had to compensate community elders in a chieftdom court with two goats, five gallons of palm oil and USD50. Local Court No. 1 in Makeni also tried a case of sexual abuse of a young girl in 2007, with reports of harassment of the victim and lack of privacy.

Notwithstanding the above, some civil society activists do report progress in prosecuting violence against women in the formal courts. A former chairperson of one of the two major political parties was convicted of unlawful carnal knowledge in Makeni. However, in this case, the High Court exercised its discretion to impose on the convict a fine of Le4 million, rather than imprisonment. In Makeni, it was reported that a woman who had been assaulted chose to go to the magistrate court instead of the illegal chieftdom court and her case received prompt attention.<sup>155</sup> According to gender activists in Bo, the situation in the city is improving, with residents more knowledgeable about their rights to have sexual offences sent to magistrate courts. However, outside of the city proper, local courts still often refuse to acknowledge their lack of jurisdiction to handle certain cases.

Women also face barriers to inheriting land, despite the Devolution of Estates Act of 2007, which guarantees wives and daughters much greater rights to inherit the property of their husband and fathers than they enjoyed in the past. Many local courts flout this recent legislation. In 2008, for example, in Bauma Chieftdom, a young woman, the eldest child in her family, was in line to inherit her family's land. Her younger brother then challenged her claim. The local court said that the woman must appear in court with a caretaker, in this case, her uncle, who had a strong belief in traditional culture. Her uncle openly went against her wishes in court, and she thus lost her case.

The situation in local courts has been improving in at least some areas; in Makeni and Kenema, a woman serves as chairperson in one of the local courts. However, greater efforts are needed to sensitise court officials and chiefs regarding jurisdictional rules, as well as the general population, who can exert pressure on local courts that discriminate against women. Citizens also need to know of their right not to be tried in illegal chieftdom courts, and that they can access the formal magistrate and high courts for serious offences. One potential option to remedy illegal court procedures and verdicts is to enforce strict disciplinary action against officials exercising illegal jurisdiction.

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<sup>155</sup> AfriMAP Focus Group, Makeni, 27 July 2009.

## B. Prosecution

All offences prosecuted in name of the Republic of Sierra Leone are initiated by the Attorney-General and Minister of Justice, or any party authorised by him/her in accordance with applicable laws.<sup>156</sup> The Attorney-General and Minister of Justice have jurisdiction in all courts of Sierra Leone, except the local courts.<sup>157</sup> One prosecutorial position within the A-G's office that wields great power in prosecution is the Director of Public Prosecution (DPP). The DPP has the constitutional authority to 'institute and undertake criminal proceedings against any person before any court in respect of any offences against the laws of Sierra Leone'.<sup>158</sup> However, in practice, the DPP's office prosecutes only the most serious crimes, such as murder and treason and other offences that are committed to the High Court or beyond. The majority of prosecutions are implemented by members of the SLP within the magistrates' courts.

The most problematic aspect of the prosecution service is the constitutional provision that fuses the Attorney-General and Minister of Justice into one office. Opponents of this provision argue that this structure prevents the Attorney-General/Minister of Justice from exercising his/her prosecutorial authority without bias from the executive branch, of which he/she is a member. Executive influence is particularly apparent in the power of *nolle prosequi* granted to the Attorney-General in section 44(t) of the Criminal Procedure Act (CPA) of 1965. This power allows the Attorney-General/Minister of Justice to terminate proceedings at any criminal stage before verdict or judgment is delivered, resulting in the discharge of the accused.

The granting of this power to the A-G risks weakening the independence of the DPP, who, through section 66(4) of the Constitution and 46(t) of the CPA, is provided the authority to initiate and undertake any criminal proceeding, as well as terminate proceedings at any stage before judgment in any criminal case. Because section 66(6) of the Constitution makes all constitutional and legal powers of the DPP subject to the 'general or special direction' of the Attorney-General and Minister of Justice, the DPP effectively cannot independently enter an order of *nolle prosequi* without orders from above. This situation presents the potential for the AG, who is also a member of the Cabinet, to exercise almost unlimited control of prosecutions, without prospect of judicial review of his decisions.

Historically, the Attorney-General and Minister of Justice's use of *nolle prosequi* has been against political opponents. For example, during Siaka Stevens' regime, Attorney-General Francis Minah refused to proceed with a case charging State Security Department officers with killing civilians during the Ndongboryosoi rebellion in the Pujehun District.<sup>159</sup> There are more recent allegations that the A-G has used his power of *nolle prosequi* to confer unjust advantage upon government officials or powerful interests. For example, in 2008, the Attorney-General and Minister of Justice ordered the DPP to exercise the power of *nolle prosequi* in a well-known case in which the editor of the newspaper *Awareness Times* filed libel charges against the Presidential Press Secretary, Sheka Tarawalie, for allegedly making obscene and defamatory comments about her on an internet website.<sup>160</sup>

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<sup>156</sup> Section 64(3) of the Constitution.

<sup>157</sup> Section 64(4) of the Constitution.

<sup>158</sup> Section 66 of the Constitution.

<sup>159</sup> African Human Security Initiative, 'Sierra Leone: A Country Review of Crime and Criminal Justice', May 2009.

<sup>160</sup> 'Sierra Leone: Court Strikes out Libel Case against Shekito', *Concord Times*, 22 July 2008.

The Attorney-General, even though not a member of the JLSC,<sup>161</sup> also has the potential to influence judicial appointments and dismissals, because the Solicitor-General, who is a JLSC member, is charged as an assistant to the Attorney-General/Minister of Justice. To remove the potential of improper influence by the executive upon prosecutions, the A-G's office should be separated from that of the Ministry of Justice. A mechanism for review of the A-G's use of *nolle prosequi* should be instituted to reduce possible abuse.

Furthermore, the prosecution service is weak, most notably due to its severe shortage of staff and other resources. State counsels receive less than USD300 a month as a salary, and many private lawyers admit that the poor conditions of service are a major deterrent from accepting such appointments.<sup>162</sup> The JSDP and JSCO are currently reviewing the DPP and Minister of Justice's offices, attempting to devise ways to improve the attractiveness of government legal work.<sup>163</sup>

Accordingly, there is a severe shortage of police prosecutors throughout the country. For example, there are only five in Kenema and six in Makeni, even though the magistrates' courts are the most utilised level of the formal sector.<sup>164</sup> Police prosecutors receive no formal legal training from the government, though there are occasional training sessions by other institutions. A high-ranking JSDP official defended the performance of police prosecutors, claiming that their work often surpasses that of legal professionals. However, there are frequent reports of police prosecutors being bullied by attorneys and losing cases because of simple legal errors, such as failing to know all the required elements for an offence or bringing the wrong charges.<sup>165</sup> One magistrate said that he uses some of the time reserved for giving judgments to explain why he arrived at his decision, hoping that it will instruct police prosecutors to remedy their mistakes in future.<sup>166</sup> In 2008, the resident magistrate in Bo criticised police prosecutors, claiming that their lack of skill led to frequent adjournments.<sup>167</sup> Several magistrates pointed to the need for continuous training of police prosecutors, as occasional Special Court, JSDP and UNDP training is not sufficient.

Currently, there is no formal human rights training available specifically to prosecutors and the police. Some judges, lawyers, and NGO officials claim that human rights knowledge is intuitive in the prosecution service. However, others assert that the system does not operate fairly because of a lack of knowledge and willingness on the part of prosecutors and police to incorporate human rights principles into their work.<sup>168</sup> However, the main problem human

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<sup>161</sup> Because the President has two discretionary slots available to him, the AG could be a member of the JLSC, even though not constitutionally guaranteed a spot.

<sup>162</sup> One experienced private attorney, for example, claimed that he could make up to 10 000 dollars per case.

<sup>163</sup> JSDP interview, Freetown, 23 June 2009.

<sup>164</sup> AfriMAP Focus Group, Kenema, 31 July 2009.

<sup>165</sup> During the 2008 cocaine trafficking case, two accused persons were acquitted because police prosecutors had failed to produce sufficient evidence for conviction. See 'Two Set Free in Cocaine Trial', *Sierra Leone News*, 21 March 2009, available at <http://thesierraleone.com/national/146-two-set-free-in-cocaine-trial>.

<sup>166</sup> Interview with magistrate, 31 July 2009.

<sup>167</sup> Sierra Leone Court Monitoring Programme, 'Examining the Themes "Dignity and Justice for All": The Case for Justice Delivery in Rural Sierra Leone', January 2009.

<sup>168</sup> Interviews with judges, lawyers and civil society activists, Freetown, June–July 2009.

rights officials pointed to involve the questionable independence of the police themselves. The insecurity experienced by lower-ranked police officials, according to an official in the Human Rights Commission, may lead them to be open to executive interference, especially in high-level cases, since there is little in the way of formal protection for them.<sup>169</sup> Furthermore, the organisational structure of the police council,<sup>170</sup> with the Vice-President serving as Chairperson, potentially exacerbates the risks of politicisation of police prosecutors.

## The Anti-Corruption Commission

The Anti-Corruption Commission (ACC) also possesses the power to prosecute. The ACC has received over 400 complaints of misconduct by judges, magistrates and other senior judicial personnel, and by the end of 2007, had investigated over 60 officials.<sup>171</sup> Before the Anti-Corruption Act of 2008 was passed, the ACC lacked the power to prosecute without the consent of the Attorney-General and Minister of Justice, who holds the power to prosecute all offences according to Section 64(3) of the 1991 Constitution. The new ACC Act amended the 1991 Constitution and conferred prosecutorial powers upon the ACC.

In March 2009, the Supreme Court decided a case that tested the limits of the ACC's new prosecutorial power. The case concerned former Magistrate Adrian Fisher of Bo, who had been arrested for alleged misappropriation of public funds. The ACC requested that the A-G's office grant a trial by judge alone, rather than by judge and jury. It relied upon the Criminal Procedure Act of 1965, which allows the A-G, at his discretion, to decide this issue. Fisher challenged this action in the High Court, claiming that, because the ACC was now independent of the A-G, the A-G's office could not involve itself in an anti-corruption trial. The High Court forwarded the matter to the Supreme Court. The Court ruled that trial by judge alone did require the consent of the A-G. However, the Court declined to answer the question of whether the ACC Act conflicted with the A-G's constitutional power to prosecute all cases. The Court declared that the matter was not a constitutional issue, and remanded it back to the High Court. Many lawyers believe that the Supreme Court refused to provide a definitive answer to this question as a result of executive pressure.<sup>172</sup>

## C. Lawyers

### Structure and composition of the legal profession

There are no official statistics on the current number of lawyers in Sierra Leone. The Office of General Legal Council, which requires the registration of all practising lawyers in the country, has about 150 registered lawyers on its roll. The Secretary-General and President of the Bar

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<sup>169</sup> AfriMAP interviews at HRCSL, Freetown, 17 June 2009.

<sup>170</sup> The police council is the highest police body, providing civilian oversight to the SLP and having advisory, budgetary and regulatory power over the police force. The council is dominated by the executive branch, with its membership including the Vice-President (who serves as Chairman), Minister of Internal Affairs, Inspector-General of Police, Deputy Inspector-General of Police, a legal practitioner nominated by the Bar Association and appointed by Parliament, the Chairman of the Public Service Commission and two other members appointed by the President, subject to the approval of Parliament.

<sup>171</sup> Sierra Leone Justice Sector Coordination Office, Judicial Sector Survey 2008.

<sup>172</sup> Interview with attorneys and judicial officials, countrywide, June–July 2009.

Association both estimated the number of practising lawyers to be about 100.<sup>173</sup> Of this number, less than ten currently work outside Freetown. For example, Bo District, with an estimated population of 515 945 in 2008,<sup>174</sup> only had six lawyers. This is a ratio of one lawyer for every 86 000 people, well below the threshold needed to provide adequate legal services to the public. Other cities fare worse. In Makeni, there are only two lawyers and in Kenema, there are four, with ratios of one lawyer for every 210 000 people and 128 865 people, respectively.<sup>175</sup>

## Independence

There are few reports of harassment of lawyers for their representation of particular defendants or cases by formal governmental officials. There are unconfirmed reports that, during the trial of international cocaine traffickers in 2008, foreign powers, including the United States, put pressure on the government. The reason for the pressure was not clear. However, lawyers interviewed for this report, who were involved in the case, claimed no knowledge of such events.

There are occasional reports of lawyers proving unwilling to represent certain clients because of perceived judicial pressure. For example, during the well-known 2002 libel case involving newspaper editor Paul Kamara as defendant and the President of the Court of Appeals as the complainant, most lawyers were unwilling to represent Kamara for fear of offending a senior judge in front of whom they had cases pending.<sup>176</sup>

## Legal training

The Legal Practitioners Act of 2000 governs the legal profession within Sierra Leone. Under this Act, the General Legal Council regulates the admission, enrolment, practice and discipline of all practising lawyers. The Legal Practitioners Act establishes the General Legal Council. The Council consists of the Attorney-General and Minister of Justice, or his/her representative who must be a legal practitioner of more than 15 years' experience, the Solicitor-General, six practising legal practitioners elected by the Bar Association, and an attorney employed in the public sector, appointed by the A-G. The Council is headed by a Chairperson selected from one of the legal practitioners of more than 15 years standing.<sup>177</sup>

A person cannot practise law in Sierra Leone unless he or she has met the requirements under the Act.<sup>178</sup> These include the completion of an appropriate law degree from the University of Sierra Leone or a university of a Commonwealth country approved by the Council of Legal Education, as well as the passage of professional examinations it conducts. Prospective lawyers must also complete a pupillage lasting no less than a year with a lawyer who has at least ten years of legal experience in Sierra Leone.<sup>179</sup> Students at the Department of Law at Fourah Bay

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<sup>173</sup> Interviews at the Sierra Leone Bar Association, 1 July 2009.

<sup>174</sup> Calculations based on the 2004 Census figures.

<sup>175</sup> Makeni had an estimated 2008 population of 420 561 and Kenema 515 461, with projections based on the 2004 Census figures.

<sup>176</sup> See the International Commission of Jurists report, 'Attacks on Justice – Sierra Leone', p.7, available at [http://www.icj.org/IMG/SIERRA\\_LEONE.pdf](http://www.icj.org/IMG/SIERRA_LEONE.pdf).

<sup>177</sup> Legal Practitioners Act of 2000, section 3.

<sup>178</sup> See section 9 of the Legal Practitioner Act, 2000.

<sup>179</sup> Pupillage in Government service lasts 18 months. See section 10–11 of the LPA, 2000.

College complete a four-year degree of study, with a curriculum encompassing such subjects as criminal law, contract law, torts, constitutional law, international trade, public international law and evidence.<sup>180</sup> Before 1991, Sierra Leoneans had to go outside the country to complete their professional legal training after receiving an initial degree from Fourah Bay College. However, the School of Law was opened in 1991. By 2007, it had produced 243 graduates, 26% of whom were female.<sup>181</sup> However, the number of female graduates has not increased significantly in recent years.

There are no specific grants or scholarships for any educational programme. There is one governmental fund, entitled 'Sierra Leone Government Granting Aid', provided through the Ministry of Education upon application, and available to students in tertiary education. However, this fund is extremely limited, and is not available to many students.<sup>182</sup> In 2007, Fourah Bay College Department of Law had an admissions rate of 54%.<sup>183</sup> However, the admissions process is not made public, and there continue to be complaints that family connections and other non-merit-based considerations are often used as a primary criterion for entry.<sup>184</sup>

A Human Rights Clinic was established at Fourah Bay College in 2000. It includes a Legal Aid Project, in which law students provide supervised legal research and services at various institutions, including the Access to Justice Project and Campaign for Good Governance. Other activities sponsored by the Clinic include public debates, newsletters and a School Education Project, in which clinic members teach human rights lessons to secondary school students. The Clinic currently seeks greater funding to provide more internships to its students, including internships abroad for its most high-achieving students.<sup>185</sup> There are no specific human rights courses within the Law Department at Fourah Bay College. However, there is currently a focus on developing a module in international humanitarian law, and law students can take human rights courses in the political science and peace studies departments. A major challenge with legal education is the difficulty attracting lecturers as a result of the poor conditions of service. The Dean of the Social Studies Faculty at Fourah Bay College has specifically called for better salaries to provide more teaching staff.<sup>186</sup>

No training is required after one fulfils the requirements of schooling and pupillage necessary for entry into the legal profession. There is no required post-qualification training by law. Organisations such as the Special Court have offered some training, though usually not specifically geared towards lawyers. There have been some complaints by judges that lawyers do not know how to use human rights arguments to support their cases, and that these arguments could be very persuasive, especially at the higher court levels. This suggests the need for more rigorous training of lawyers in human rights.

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<sup>180</sup> Justice Sector Survey 2008.

<sup>181</sup> Justice Sector Survey 2008.

<sup>182</sup> Interview with Dr Osman Gbla, Law Department, Fourah Bay Law School, Freetown, 23 July 2009.

<sup>183</sup> 70 students were admitted out of 130 applications.

<sup>184</sup> Interviews with FBC students and graduates, June 2009.

<sup>185</sup> Grant proposal of the Fourah Bay College Human Rights Clinic for 2007–2008.

<sup>186</sup> Interview with Dr. Osman Gbla, Law Department, Fourah Bay Law School, Freetown, 23 July 2009.

## Disciplinary committee of the General Legal Council

The Legal Practitioner's Act holds lawyers accountable for professional misconduct to clients, witnesses and the public.<sup>187</sup> Those who impersonate lawyers can also be charged with a criminal offence.<sup>188</sup> According to the Act, the disciplinary procedure should consist first of a complaint made against a lawyer to the General Legal Council, after which the disciplinary committee sits, and the various parties, including the complainant and lawyer, testify. If there is a finding of culpability, the committee would recommend action, which may include fines, suspension, censure and removal from the court rolls in Sierra Leone.<sup>189</sup> The Act lists conduct considered punishable. These include breach of confidentiality and accepting payment while failing to perform the work paid for in a reasonable time. There are few reports of the General Legal Council issuing any serious punishments in recent years. One lawyer and Member of Parliament partly attributes this phenomenon to the reverence held by Sierra Leonean society for lawyers. Another contributing factor, according to one attorney, is that people do not consider misconduct, such as failure to fulfil obligations to a client or excessive fees, as serious complaints, and thus do not report them. He pointed to other jurisdictions, such as England, where a lawyer could be disbarred for accepting fees and failing to appear in court, but he claimed that this practice is not viewed with such severity in Sierra Leone.<sup>190</sup>

The disciplinary system for lawyers was inactive in the past, and victims of attorney neglect or incompetence typically had limited options for redress. However, in the recent past, the General Legal Council responsible for regulating the conduct of lawyers published the Legal Practitioners Code of Conduct Rules of 2010 and the Disciplinary Procedure Rules of 2011. The General Legal Council Disciplinary Committee has been set up and hears complaints against lawyers in accordance with the Rules.

### D. Recommendations

- The Constitution should be amended to require parliamentary approval of rules of court procedure.
- To protect the integrity of the judicial budget, a judicial advisory body should be created, which, during the pre-parliamentary stage of budget creation, would work with the executive to determine the proper amount of judicial funding needed, and to inform the executive branch of particular gaps or critical areas that must be addressed.
- In line with TRC recommendations and international standards, the Constitution should be amended to reduce the role of the executive in the appointment of judges and JLSC members. Discretionary appointments to the JLSC by the President should be eliminated. Instead, other groups, including the judiciary and civil society, should assist in the appointment process. The number of appointees on the JLSC could also be increased, thereby reducing the risk of politicisation of appointments. Standards of judicial appointment and promotion should be formalised, including the introduction

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<sup>187</sup> Legal Practitioner's Act 2000.

<sup>188</sup> Section 24, LPA.

<sup>189</sup> Section 36(1), as amended in 2004.

<sup>190</sup> Interview with lawyer and MP, Freetown, 30 June 2009.

of promotion examinations, interviews and required evaluations of past judgments or work experience. The Constitution should be amended to eliminate the provision for judges on contract, or at the very least, to require the approval of Parliament for their appointment. Finally, the exact scope of the role of the JLSC in recommending appointees should be made more specific in the Constitution.

- Caps upon the number of Supreme Court justices who are allowed to sit on the court should be instituted, to prevent the risk of presidential court packing.
- The judicial powers – particularly the power to determine the judicial makeup of a particular case – currently vested in the Chief Justice of the Supreme Court should be spread more broadly throughout the judiciary to prevent abuse stemming from concentration of power in one person.
- Stricter recusal procedures should be formalised and enforced to protect against judicial conflicts of interest.
- To reduce critical shortages and improve the quality of the judicial system, the government should look for permanent sources of funding to improve conditions of service for judges and to continue the ‘top-up’ salary programmes provided to judges and magistrates by the UNDP and JSDF.
- More emphasis should be placed on the legal training of police prosecutors and justices of the peace.
- Judges and lawyers need better training in human rights and international law. Funding should be provided for regular training and measures should be developed to evaluate progress as a result of training.
- Civil society should sensitise local court officials, chiefs, and the public across the country to the proper jurisdictions of the various courts and the right to resist pressure from authorities to try cases in inappropriate jurisdictions.
- The Judicial Code of Conduct should be amended to include information about potential disciplinary infractions and available punishments. The judiciary should make this information available to the public and should disclose the results of its disciplinary proceedings.
- To avoid excessive interference of the executive in prosecutions, the Attorney-General’s Office should be separated from that of the Minister of Justice, and the extent of the A-G’s *nolle prosequi* power should be restricted (e.g. he must provide a clear legal rationale for dismissing charges, or the decision should be open for judicial review).
- The General Legal Council disciplinary committee for lawyers should be strengthened, and the public should be encouraged to file complaints against lawyers. Civil society should work to ensure that these complaints are investigated and that the results of these investigations are made public.

# 5

## Criminal justice

The ten-year conflict within Sierra Leone left the infrastructure of the criminal justice system in a mess. However, ongoing reforms have led to enhanced capacity in the sectors, as well as innovations in legislative reforms and monitoring of the sector by civil society. This has advanced Sierra Leone's criminal justice system beyond what existed before the conflict began. Recent reforms within the Sierra Leone Police (SLP) in the post-conflict era have enhanced their capacity to formulate effective crime-fighting strategies and build trust among the public. However, the SLP still falls short in maintaining transparency and requires greater civilian input in local policing activities. Abuses of suspects by police have decreased since 2002, and the percentage of citizens feeling comfortable in accessing the police has also increased. However, frequent reports of physical abuse, illegally assessed fees and unlawful detention continue to undermine the SLP's credibility. The lack of sufficient equipment, poor response times, and investigative delays reduce the SLP's capacity for crime prevention and reduction. More resources and greater training of police officers in investigative techniques, human rights and criminal law is needed. Formal monitoring systems should be established to ensure proper treatment of suspects and detainees.

The right to a fair trial is enshrined in the Constitution. However, this right is frequently violated in practice through excessive pre-trial detention, long trial delays, unjust sentencing laws and scarce legal representation for the indigent. Recent legislative reforms have provided greater protections for juveniles and women, but as yet, most communities have failed to implement these reforms. Violations of the rights of women and children in customary courts remain particularly common. Witness protection mechanisms are virtually non-existent, intimidation of witnesses and victims is pervasive at all levels of the justice sector, and even serious criminal cases are frequently dropped as a result of threats and harassment. Since 2005, the collaboration

of the Sierra Leone government with international donor organisations has led to considerable improvements to the prison system, both in management of prisoners and infrastructure. However, severe overcrowding, poor health conditions and sanitation, and a lack of rehabilitative facilities continue to plague the nation's prisons.

## A. Protection from crime

### Incidence of crime

The Police Act of 1964 charges the SLP with the responsibility of preserving the law and protecting property by detecting crime and apprehending offenders. A critical tool in achieving these objectives is crime statistics, which are collected by the Research and Planning Unit of the SLP's Corporate Services Department (CSD). The CSD office in Freetown gathers crime data on a monthly basis from each police station in the country, and each year compiles the statistics into an official report.<sup>191</sup> The SLP collects data for 96 separate offences, 31 of which are included in the report, and divides offences into six main categories.<sup>192</sup> The report subdivides the national data into four regional categories,<sup>193</sup> provides analysis of crime trends and organisational performance for that year, and offers recommendations for improving the capacity of the SLP to meet its objectives. According to the Criminal Investigation Division (CID), the report is a useful tool to hone in on particular crimes and geographical 'hot spots' that need more vigilant policing, including preventive measures such as 24-hour patrols and outreach activities in particularly crime-ridden areas.<sup>194</sup> However, the annual report does not include a district-by-district breakdown, or data for individual towns or cities. Consequently, local police are unable to use the report to gauge the performance of their individual units or districts. The various district headquarters can receive crime data from all district police stations, which enables CID officers to assess crime rates in different localities and determine where to deploy night patrols.<sup>195</sup>

According to the Sierra Leone Police Annual Crime Statistics Report for the year 2011, the Western Area has consistently recorded the highest number of offences since 2007. For 2011, the Western Area recorded 61.38%, followed by the Northern Region with 13.71%. It further noted that the Western Area recorded the highest number of armed robbery cases since 2009, with 91.78%, followed by the Eastern Region with 4.79%. The incidence of armed robberies decreased significantly, by 16.42%, in 2010, and by 0.15% in 2009. Sexual offences were reportedly the highest in the Western Area, with 43.71%, followed by the Southern Region with 37.95%. However, there was a decrease of 4.7% in reported sexual offences. There is an increase in dealing in hard drugs, especially cannabis and cocaine. Personnel need more training in specialist areas of investigation, including cyber-crime, fraud, and so on. In addition, the crime department should be supported with more vehicles and crime-scene equipment.

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<sup>191</sup> Interviews with CSD officials, Freetown, 15 June 2009.

<sup>192</sup> These categories are 1) offences against the person (e.g. murder); 2) offences against women and children (e.g. child abuse); 3) offences against property (e.g. malicious damage); 4) economic offences (e.g. embezzlement); 5) mischief and public order (e.g. disorderly behaviour); and 6) miscellaneous offenses (e.g. electoral fraud).

<sup>193</sup> The SLP's Yearly Crime Reports from 2005–2008 divide the country into four regions of West, East, North and South.

<sup>194</sup> Interviews with police officials, SLP Headquarters, Freetown, 11, 15 and 18 June 2009.

<sup>195</sup> Interviews with Crime Officer, Kenema, 31 July 2009.

An analysis of crime trends for the past years illustrates several areas of concern, most notably consistent increases in some of the most serious crimes, including murder and robbery with violence. In their 2007 and 2008 crime reports, the SLP identified several possible explanations for the failure to reduce crime numbers for serious offences. These included a high unemployment rate, the effects of the global recession, and inadequate cooperation between police and the community. Crimes recorded between 2007 and 2011 show the prevalent crimes trends. Armed robbery offences dropped by 36 (1.28%) from 2007 to 2008.<sup>196</sup> However, it should be noted that the number of armed robbery offences from 2008 to 2010 increased steadily, though in 2011 the trend dropped by 1.72%.<sup>197</sup> In 2011, offences such as assault, larceny and fraudulent conversion are still the most common recorded prevalent crimes.

*Table 4: Most common crimes reported, 2007–2011*

Offences	2007	2008	2009	2010	2011
Assault	18 620	19 871	18 695	18 369	18 664
Larceny	10 056	10 505	8 976	9 247	9 519
Malicious damage	1 989	2 057	1 730	2 053	1 861
Fraudulent conversion	5 741	5 577	5 186	5 267	4 733
False pretences	2 664	2 356	2 828	3 207	2 476
Robbery with aggravation	165	129	230	251	146

Source: Sierra Leone Police Annual Crime Statistics Report for the Year, 2012.

However, doubts have been raised over the reliability of the SLP's crime statistics, thus limiting their usefulness to the public or civil society. The statistics are not comprehensive because the national figures do not include information gathered from chiefdom police, and the district police lack training in data-gathering methodologies.<sup>198</sup> Though the JSDP and, later, the JSCO conducted police perception surveys to gauge public attitudes towards crime and the effectiveness of the police, there are no surveys of victims. Consequently, there is no way to assess how many crimes may go unreported. The issue of underreporting is a particularly severe hindrance to the accurate gathering of statistics regarding sexual assault.<sup>199</sup> According to the 2011 SLP Annual Crime Statistics Report, a comparative analysis of sexual offences for 2008, 2009, 2010 and 2011 indicate a significant decrease in sexual cases in 2011. It thus categorises rape as a low-incidence crime, even though activists across the country report an increase in rape cases.<sup>200</sup> There are also no discrete categories for ethnicity, gender or age. Such categories would aid the police in identifying strategies to protect vulnerable groups.

For the year 2011, the police recorded a total of 60 451 offences nationwide. Offences against

<sup>196</sup> Sierra Leone Police Annual Crime Statistics Report for the year 2011, published January 2012.

<sup>197</sup> *Ibid.*

<sup>198</sup> Interviews with JSDP officials, British Council, Freetown 23 and 26 June 2009.

<sup>199</sup> Interviewees at FSU, Freetown Police Headquarters, Kenema Police Division and civil society activists in Freetown, Bo, Kenema, Makeni and Moyamba all revealed that many families choose to forgo police assistance in sexual assault cases in favour of private compensation, mediation, or trials in illegal chiefdom courts.

<sup>200</sup> IRC Rainbow Centre Reports record an increase in reports of rape cases, in contrast to the SLP statistics.

the person had the highest incidence (28 282), followed by offences against property (17 454), economic offences (9 229), offences against women and children (3 362), mischief and public order offences (1 815) and miscellaneous offences (309).<sup>201</sup> A regional analysis for the same year shows that the highest number of recorded cases occurred in the Western Area, with 61%, followed by Northern Province with 13.71%, Southern Province with 12.68%, and finally the Eastern Province with 12.24%.<sup>202</sup> While much of this discrepancy is likely due to post-conflict growth in Freetown's population and the increase in urban slums,<sup>203</sup> part of the difference may be due to the failure of rural populations to file police reports or a preference for alternative dispute resolution systems. Accordingly, there is a clear need for the police to reach out to provincial communities to raise their profile and build trust in the force's ability to fight crime. Though the SLP maintains that crime statistics are open to the public, in practice, to receive access, one must go through a formal request process that requires notice of the intended use of the statistics. The decision to grant access to the data appears to rest entirely with the discretion of high-ranking officials in the SLP in management positions.<sup>204</sup>

Crime data nationwide and in Freetown is relayed to the public largely through weekly press briefings by the Director of the Media and Public Relations Unit for the SLP, and by crime officers in the provinces who address the public through weekly community radio addresses.<sup>205</sup> In the Freetown press briefings, the Director discusses the incidence of crime in the country, as well as the prevention and reduction measures the police are currently taking. References to crime data at these briefings tend to be general rather than specific. For example, at a briefing in March 2009, the Director noted that there had been unacceptable rates of crime among students in recent years, but did not elaborate on the specific crimes or rates.<sup>206</sup> In smaller communities, use of statistics varies. For example, SLP radio addresses in Moyamba identify the specific crimes that occurred in the community during the previous week, while police in Makeni report information about weekly increases or decreases in crime.<sup>207</sup>

The Anti-Corruption Commission (ACC) also collects crime statistics. It provides data to the public on the number of complaints, subcategorised by geographical area and the affected ministry/department, as well as the number of convictions and dismissals. The ACC is now decentralised, with offices in all regions of the country, but an overwhelming majority of complaints still occur in the Western Area.<sup>208</sup>

There are no compiled national statistics on the number of reported crimes that are prosecuted or result in convictions. Ostensible reasons for this include the limited information-gathering capacity of the police and courts. Allegations abound of cases that are dropped by police, clerks or local court officials in exchange for payments or because of personal connections.

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<sup>201</sup> Sierra Leone Police Annual Crime Statistics Report for the Year 2011.

<sup>202</sup> *Ibid.*

<sup>203</sup> African Human Security Initiative, 'Sierra Leone: A Country Review of Crime and Criminal Justice', May 2009.

<sup>204</sup> The Assistant Inspector-General agreed to furnish the data for this publication after a formal request was filed.

<sup>205</sup> Interviews with police in Kenema and civil society activists in Kenema, Moyamba and Bo.

<sup>206</sup> 'Students Team up with Police to Curb Violence in Sierra Leone', *Awareness Times*, published 30 March 2009, available at [http://www.news.sl/drwebsite/publish/article\\_200511682.shtml](http://www.news.sl/drwebsite/publish/article_200511682.shtml).

<sup>207</sup> Focus Group in Makeni by AfriMAP, 27 July 2009.

<sup>208</sup> Government of Sierra Leone Justice Sector Coordination Office, Justice Sector Survey, 2008.

The presence of illegal payments for police bail and the prevalence of fines as an alternative to incarceration often allow the powerful or well-connected to escape prison sentences much more often than the poor or marginalised.<sup>209</sup> Women and children are often particularly affected by the excessive fines levied by local and chiefdom courts, as they often depend on others for financial support.

## Women and children

The government has completed several major reforms since 2000 to increase the protection afforded to vulnerable groups, particularly women and children. In 2001, the government established the Family Support Unit (FSU)<sup>210</sup> as an arm of the police to combat sexual violence and cruelty against women and children. The most common crime reported to FSUs is domestic violence, followed by sexual assault and child abuse.<sup>211</sup> However, the FSU was largely ineffectual in combating these crimes for the first several years because of a lack of a strong legal framework, cultural attitudes, and a lack of sufficient equipment and staff.<sup>212</sup> Reforms undertaken by government and international donors, such as the UNDP, JSDP, GIZ and JICA have strengthened the FSU by providing the necessary infrastructure, equipment, large-scale sensitisation efforts and increased training for officers.

As of 2008, the FSU had established 43 offices nationwide, with 30 of these offices outside Freetown.<sup>213</sup> In 2012, additional FSU offices were opened in Aberdeen Police Station and Central Police Station, both in Freetown. The construction of these two offices was supported by the Japanese Government. The Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) provides one social worker in each FSU office to provide social services to victims, while the International Rescue Committee established 'Rainbow Centres' in a few districts and in Freetown to provide free medical examinations and treatment for sexual abuse victims.<sup>214</sup> Of the 477 sexual assault cases reported to the FSU from January to May 2009, 135 have been charged to court. Of those, 71 have been resolved, with 249 still under investigation. There have been sentences of up to 16 years, though conviction rates remain low, with no convictions in the first five months of 2009.<sup>215</sup> In 2011 and 2012, the Director of the Public Prosecution Office and the High Court made significant efforts, with resultant progress in the prosecution of rape and sexual violence cases in the High Court. However, there is still a backlog of these cases awaiting prosecution, and prosecution lawyers describe the difficulties they experience in securing complainants and witnesses to testify, ostensibly because of the long delay in proceeding with the cases.

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<sup>209</sup> Interviews with court monitors in Kenema, Bo, Moyamba, Freetown and Makeni, June–August 2009.

<sup>210</sup> The FSU evolved from the Domestic Violence Unit, established by the SLP at Kissy Police Station in Freetown in 1999.

<sup>211</sup> From January to May 2009, there were 1 007 complaints of domestic violence, versus 477 sexual assault cases and 139 child cruelty cases.

<sup>212</sup> FSU officers were often accused by NGOs of simply sending domestic violence complainants back to their families, according to the US State Department report on Sierra Leone, 2007.

<sup>213</sup> Family Support Unit Location of Stations Countrywide. Figures provided by FSU Deputy Director in Freetown.

<sup>214</sup> Sources: Campaign for Good Governance Report, 'Silent Victims, Young Girls at Risk', December 2004, Interview at FSU, Freetown, 23 July 2009, and IRC Rainbow Centre Update, January 2009.

<sup>215</sup> Statistics provided by FSU, Freetown.

Domestic violence cases illustrate both the progress and current limitations of the FSU. Prior to 2007, domestic violence was not considered a separate offence, but rather prosecuted as a form of wounding or assault under the Offences Against the Person Act of 1861, which applied equally to both men and women.<sup>216</sup> Formal convictions were rare<sup>217</sup> and under customary law, which was the only form of law available to 80% of the population, domestic violence was often considered an acceptable form of discipline for a range of conduct unacceptable to male partners or husbands, including insubordination and failure to perform wifely duties.<sup>218</sup>

The Domestic Violence Act of 2007 provided greater legal authority to the FSU to investigate and prosecute cases of domestic violence. The Act makes domestic violence a separate criminal offence and widens the scope of the crime beyond physical and sexual abuse to include economic abuse,<sup>219</sup> harassment, and emotional, verbal and psychological abuse.<sup>220</sup> The Act requires government to provide temporary safe homes for victims of domestic violence,<sup>221</sup> and allows women to apply for civil protection orders.<sup>222</sup> These provisions provide the police and the courts with greater power to control violent relationships, which include even prohibiting perpetrators from living in the same house as the victim. However, the implementation of the Act has still been very slow, thus inhibiting law enforcement efforts against gender-based violence. Though the Act calls for the creation of temporary shelters, only one has been constructed as a result of a lack of funds. The newly constructed building is incomplete and therefore not operational. Women thus continue to return to perpetrators.<sup>223</sup>

Unlike domestic violence, legal reforms have not yet been implemented for rape crimes. Currently, rape of females over 14 years of age is still prosecuted under the common law, which provides a maximum sentence of life imprisonment. In practice, however, the maximum sentence is rarely applied.<sup>224</sup> Rape of children under 14, which in some estimates accounts for up to 80% of all rape crimes, is punished by the Prevention of Cruelty to Children Act.<sup>225</sup> This Act provides up to 15 years in prison for rape of a child under 13. However, raping a child between the ages 13 and 14 is only classified as a misdemeanour, and so carries a maximum sentence of two years in prison.<sup>226</sup> Many rape cases, including those of children, never reach the courts. The FSU is now required by the Child Rights Act of 2007 to maintain a register of child abusers.<sup>227</sup>

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<sup>216</sup> Section 18 (wounding with intent); section 27 (malicious wounding); section 43 (aggravated assault on females and boys under 14 years of age) and section 47 (assault occasioning actual bodily harm) were all possible offences that could be charged under the Offences against the Persons Act of 1861.

<sup>217</sup> There was only one conviction for domestic violence in the country in 2006.

<sup>218</sup> Amnesty International Report, Sierra Leone – Women Face Human Rights Abuses in the Informal Legal Sector, 17 May 2006, available at <http://www.unhcr.org/refworld/type,COUNTRYREP,AMNESTY,SLE,447b19a14,o.html>.

<sup>219</sup> Economic abuse is defined as 'unreasonably withholding or destroying the other person's financial resources'.

<sup>220</sup> Section 2(2)(c) of the DVA defines this abuse as 'conduct that makes another person feel constantly unhappy, humiliated, afraid or depressed or to feel inadequate or worthless'.

<sup>221</sup> Section 15(2)(g), DVA.

<sup>222</sup> Section 13, DVA.

<sup>223</sup> Interviews with FSU, July 2009; Moyamba Focus Group, 1 August 2009.

<sup>224</sup> Interviews with Hawa Kamara, Court Monitor for Gender and Juvenile Issues, SLCMP, July 2009.

<sup>225</sup> Chapter 31 of the Laws of Sierra Leone, 1960.

<sup>226</sup> Section 31(6–7).

<sup>227</sup> FSU Training Manual.

However, in many communities, a rape victim can suffer from a lifelong stigma after reporting she has been raped, thus causing underreporting of the crime.<sup>228</sup> There are also no mandatory increases in sentences for repeat sexual offenders. Sentencing is left entirely up to the discretion of the judge, subject to the maximum sentencing rules.<sup>229</sup> Even when cases reach the courts, long delays in the formal courts often lead to private settlements, such as payment of money to the family. For instance, in one case of child rape in Freetown, the victim's mother accepted Le500,000 (USD162) from the adult perpetrator to drop the charges, after which he went around the neighbourhood boasting of his actions. This prompted the ashamed mother to return the money and recommence the proceedings.<sup>230</sup> In some cases, perpetrators even strike deals to marry their victims.

The MSWGCA, along with civil society groups, are currently lobbying Parliament to pass a new Sexual Offences Act, which would raise the age of adulthood under rape laws from 14 to 18. This would, harmonise sexual offence laws with the Child Rights Act of 2007 and international and regional instruments such as the Convention of the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The new Act would also criminalise incest and decrease the maximum imprisonment, to 25 years, for the rape of an adult. This should assist in increasing sentences for rape. However, at the time of writing, there were several important omissions in the draft bill. There is no provision criminalising the actions of those who withdraw sexual offences from the court in favour of private settlements, and there is no clarity on the age of consent, which should be raised to 18 to protect children from undue pressure by adults.<sup>231</sup>

To protect juveniles, the Child Rights Act of 2007 called for child welfare committees in villages and chiefdoms, charged with monitoring children's rights and providing advice to children charged with minor civil and criminal offences.<sup>232</sup> The child welfare committees are mandated to include a variety of individuals of both genders, including two child representatives, social workers, NGO officials, parents and traditional leaders. Persons disagreeing with the decision of the child welfare committee are provided the right to appeal to a district-level child panel. The committees lack authority to incarcerate juveniles, or to impose a fine or order damages, but the widespread use of these institutions, with their mandate as advice-giving bodies rather than punitive remedies, could produce a shift towards community-based mediation and rehabilitation rather than punishment for juveniles. However, child welfare committees have yet to be established, although there are reports from at least one district that the committees are currently in the process of being constituted.<sup>233</sup>

Funding remains a problem when pursuing legal reform involving women and children. Donors sometimes do not listen fully to suggestions by domestic authorities on how to best use resources to sensitise the population. For example, one high-ranking FSU official interviewed

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<sup>228</sup> Mambu Feka Interview, Prison Watch, Freetown, 15 June 2009.

<sup>229</sup> See the Offences against Persons Act of 1961 and the Prevention of Child Cruelty Act of 1926.

<sup>230</sup> Interviews with Hawa Kamara, Sierra Leone Court Monitor on Gender issues, July 2009.

<sup>231</sup> Sierra Leone Court Monitoring Programme, A Case for the Enactment of the Sexual Offences Bill, 19 March 2009, [http://www.slcmp.org/drwebsite/articles/A\\_Case\\_For\\_The\\_Enactment\\_of\\_the\\_Sexual\\_Offences\\_Bill.shtml](http://www.slcmp.org/drwebsite/articles/A_Case_For_The_Enactment_of_the_Sexual_Offences_Bill.shtml).

<sup>232</sup> Serious crimes such as rape and murder, which must be referred immediately to the Sierra Leone police for potential criminal prosecution.

<sup>233</sup> Interview, Kenema Focus group.

for this report stated that its largest funders tend to stick with certain methods, such as radio programmes and school sensitisation efforts, when adopting other methods, such as sending educational text messages to cell phones,<sup>234</sup> might be even more effective. Civil society activists in Moyamba have also expressed frustration that their advocacy for the construction of juvenile remand homes has not yet been realised, even though Moyamba has been the site of a JSDP pilot programme since 2005. To speed up implementation of the remand homes, domestic violence shelters, child welfare committees and community sensitisation on the gender laws, there must be increased funding to the MSWGCA. It is responsible for providing services to women, children, the aged and disabled, but receives the lowest amount of annual funding of any ministry.<sup>235</sup> Donor organisations should be encouraged to provide greater resources to the Gender-Based Violence National Action Plan (NAP), which is working to implement the gender laws. Donors should consider ways to reduce expenses such as consultancy fees to move more funding into the implementation phase of these projects.

### *Harmful customary practices*

Although the Child Rights Act of 2007 forbids any practice that 'dehumanises or is injurious to the physical and mental welfare of a child', the government has not passed specific legislation outlawing female genital mutilation. The practice remains widespread in the country, with up to 90% of Sierra Leonean women undergoing the procedure.<sup>236</sup> It is alleged that the wife of a former President sponsored the cutting of 1 500 girls during her husband's presidential election, with less prominent politicians sponsoring smaller numbers across the country.<sup>237</sup> FGM is typically performed by female community leaders who lack medical training, and procedures sometimes lead to infection, and even death. For example, in October 2007, a girl in Port Loko District died after undergoing FGM.<sup>238</sup> Attempts to sensitise the population have proved difficult. Four female journalists were accused of reporting on an anti-FGM campaign in Kenema in February 2009. The women were kidnapped, stripped and marched through the streets by the Bondo Society, the secret society responsible for the majority of the country's FGM procedures.<sup>239</sup> However, there has been some reduction of FGM through targeted strategies within local communities. For example, rather than an outright ban on the procedure, activists in some areas have found success in convincing communities to raise the age of the procedure to 18 and to require the girl's consent before she undergoes the procedure.<sup>240</sup>

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<sup>234</sup> Most families have a cell phone, though a considerable number do not have radios, according to the FSU.

<sup>235</sup> Its 2006 budget was only USD500 000, the majority of which went to staff costs. Source: Interview with Lotta Teale, 'Implementing the Gender Acts in Sierra Leone', available at <http://www.socialedge.org/blogs/alyson-in-africa/archive/2008/01/29/implementing-the-gender-acts-in-sierra-leone>.

<sup>236</sup> The US State Department, available at <http://www.state.gov/documents/organization/9424.pdf>.

<sup>237</sup> 'Sierra Leone: Female Circumcision is a Vote Winner', Reported by UN OCHA March 2005.

<sup>238</sup> US State Department 2008 Report on Sierra Leone, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119023.htm>.

<sup>239</sup> Reuters, 'Reporters Stripped by Sierra Leonean Circumcision Society', 11 February 2009, available at <http://www.reuters.com/article/latestCrisis/idUSLB71752>.

<sup>240</sup> 'Chiefs Ban Genital Cutting of Girls Under 18', AllAfrica.com, 16 April 2009, available at <http://allafrica.com/stories/200904160734.html>.

Customary law among certain ethnic groups allows forced marriage of girls before they reach puberty. This practice continues to occur throughout the country.<sup>241</sup> The Child Rights Act of 2007 banned this practice. However, it left a loophole that allowed child marriage with parental consent. As a result of sensitisation efforts by the MSWGCA, the FSU and civil society groups, some progress has been made, and activists in several districts claim that child marriage is decreasing.<sup>242</sup> For example, in 2007 in Kenema District, a chief refused to hear a case in the local courts against a young girl who had refused a marriage. Instead, he sent the matter to the police.<sup>243</sup>

Human trafficking into and out of Sierra Leone remains a serious problem. The majority of trafficking victims in Sierra Leone are women and children, trafficked by their family members or friends.<sup>244</sup> Some women and children are trafficked to other West African states, or brought from those states to Sierra Leone to serve as domestic workers or street labourers, as commercial sex workers, or as labourers in the diamond mining industry. However, up to 90% of trafficking is estimated to be internal. A typical trick is to offer promises of education, caretaking or employment to convince the victim to leave her home village. There is no evidence that trafficking is taking place through employment agencies, marriage brokers or organised crime.

Trafficking has a low conviction rate: of the 21 cases reported to the FSU in 2006, only one resulted in a conviction, a woman sentenced to five years in prison. The woman's conviction is attributed, not only to the anti-trafficking law passed in 2005,<sup>245</sup> but also to the outreach done in the particular community, which had hosted a training session on trafficking that led suspicious community residents to turn the woman over to the police. Thus, greater sensitisation is needed among local communities about trafficking, as well as greater collaboration among the agencies who deal with trafficking cases, including the SLP, MSWGCA and the Department of Immigration.

## **B. Policing**

### **Legal framework**

The Sierra Leone police are responsible for the policing of crime in the country, except in cases of corruption under the jurisdiction of the Anti-Corruption Commission. Provisions within the 1991 Constitution prohibit any raising of a police force, except by an Act of Parliament, and bans any member of the police from holding office as President, Vice-President, Minister, Deputy Minister, or qualifying for elections as a Member of Parliament while still on the police force.<sup>246</sup> The Police Act of 1964 created the SLP and, together with the Criminal Procedure Act (CPA) of 1965, this legislation governs police procedures.<sup>247</sup> Broad arrest powers have been conferred upon

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<sup>241</sup> UNICEF estimated that 62% of girls under 18 were married in 2007.

<sup>242</sup> Afrimap Focus Groups in Bo, Kenema, Makeni and Moyamba, July–August 2009.

<sup>243</sup> Kenema Focus Group, 31 July 2009; 2008 State Dept Report on Sierra Leone.

<sup>244</sup> <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119023.htm>.

<sup>245</sup> Anti-Human Trafficking Act by the President of Sierra Leone, 12 August 2005.

<sup>246</sup> 1991 Constitution, Part 11, section 155, 1–3.

<sup>247</sup> Junior officers within the department report that, even though they know about some of the provisions in the Act, they have no copies and have never seen it.

the police. They can arrest without a warrant if they have ‘reasonable cause’ that the suspect has committed a crime, if another person accuses the suspect of having committed an enumerated crime, or if any person is loitering at night or disturbing the peace.<sup>248</sup> The CPA also governs search and seizure, including the issuing of search warrants. It also provides instructions to magistrates concerning preliminary investigations, though there are no direct instructions to the police on how to collect statements and evidence. Magistrates and judges have the power to grant bail, and police are not allowed to charge fees for bail. The 1991 Constitution requires the police to release a suspect if he is not charged to court within 72 hours, for most offences.<sup>249</sup> Other relevant legislation used by the police in maintaining law and order includes the Public Order Act of 1965.

The SLP is headed by an Inspector-General of Police (I-G),<sup>250</sup> who is appointed by the President of Sierra Leone on the advice of the Police Council, and subject to approval from Parliament.<sup>251</sup> The power to appoint, remove or discipline senior police officials is constitutionally vested in the Police Council. Lower-level appointments are exercised by the Council acting upon the recommendation of the I-G. The I-G is in charge of the operational control and administration of the SLP, subject to the control and direction of the Police Council, which is conferred with broad powers by the Constitution.<sup>252</sup> The Police Council is the highest police body, and has the power to provide civilian oversight of policing in Sierra Leone. Some of its constitutionally stated functions include advising the President on internal security matters, budgeting and administration, and making regulations (with prior approval from the President) concerning the administration and conditions of service of the police force.<sup>253</sup> The Council comprises the Vice-President (who serves as Chairman); the Minister of Internal Affairs, the Inspector-General of the Police; the Deputy Inspector-General of the Police; a legal practitioner nominated by the Bar Association and appointed by Parliament; the Chairperson of the Public Service Commission and two other members appointed by the President, subject to approval from Parliament. The Police Council lacks effective civilian representation because it is dominated by the Executive Branch. It also lacks gender diversity.

The I-G is aided by the six Assistant Inspector-Generals in different divisions, which encompass Personnel, Training and Welfare; Operations; Crime Services; Support Services; Professional Standards and the Operational Support Division (OSD). The OSD is the division responsible for maintaining public order, and usually charged with manning transport checkpoints and patrol teams who respond to distress calls.<sup>254</sup> There are several armed units of the OSD, including those responsible for the protection of key personnel and those responsible

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<sup>248</sup> The other offences include embezzlement, false pretences, or any felony, larceny embezzlement or receiving. A warrant is not needed if the suspicions of another person against the accused are well founded according to the officer, and if the suspicious person is willing to provide his or her name and address, and to accompany the officer to the police station.

<sup>249</sup> 1991 Constitution, 17(3). For capital offences and economic or environmental offences, the maximum time of detention is 10 days.

<sup>250</sup> Article 155(1).

<sup>251</sup> Article 157(1).

<sup>252</sup> Article 157(4).

<sup>253</sup> Article 158.

<sup>254</sup> Overseas Security Advisory Council, 2009 Crime and Safety Report – Sierra Leone, available at <https://www.osac.gov/Reports/report.cfm?contentID=96514>.

for hostage negotiations and transporting high-risk prisoners.<sup>255</sup> In the past, the mechanisms for ensuring control of firearms have proved effective. Procedures are in place to register and assign firearms and few incidents involving incorrect firearm use have been reported.<sup>256</sup> The rules of engagement when using firearms is currently being reviewed by the security sector. This is as a result of deaths and injuries from gunshots by the police in quelling riots and armed robberies. In June 2012, the President instituted a coroner's inquiry into the deaths of civilians allegedly shot by police in Bo, Bumbuna and Wellington.

## Composition of the Sierra Leone Police

According to its own personnel figures, as of May 2009, the Sierra Leone Police has almost 10 000 members, with almost 6 000 officers in the General Division and 3 000 in the OSD. The remainder are support staff and recruits. This total puts the ratio of police to the population at 1:586 which makes policing very difficult. In 2012, the police verbally reported that their personnel figures have increased to close to 15 000 personnel. This is yet to be confirmed, but even if this number is correct, it is still insufficient to adequately provide services to the population.

*Table 5: SLP personnel strength by rank and gender, 2010*

Rank	Male	Female
Inspector-General of Police	1	-
Assistant Inspector-General	8	2
Chief Superintendent of Police	22	0
Superintendent	63	5
Assistant Superintendent	118	12
Inspector	733	173
Sergeant	2 117	289
Police Constable	5 705	1 137
<b>Total</b>	<b>8 767</b>	<b>1 616</b>

Source: SLP Records reported in Justice Sector Survey, 2010.

The SLP reportedly has over 550 members who graduated from institutions and universities, including over 50 personnel with masters degrees.<sup>257</sup> There are no statistics on ethnic representation, but the SLP has a policy of enlisting police staff at regional levels, which results in a representation of local ethnic groups. The SLP claims that all three of the major tribes are represented, and very few NGO or government officials interviewed for this report cited ethnic imbalance as a major concern. However, many concede that appointments and

<sup>255</sup> Some of the armed units include the Static Protection Unit, which guards the residences of important personnel; the Armed Intervention Group, responsible for high-risk emergencies; the Escort subgroup, which provides transport in high-risk situations and the Close Protection Group, who act as bodyguards for key personnel.

<sup>256</sup> Firearms are assigned to OSD officers on a daily basis and are returned at the end of the day, when ammunition is checked, according to SLP police officials interviewed.

<sup>257</sup> Interviews with police officials at Freetown headquarters, 11, 15 and 18 June 2009.

promotions in the higher echelons of service occur on the basis of political party affiliation,<sup>258</sup> which is often divided along ethnic lines. The SLP maintains that it is firmly non-political. Perceptions of politicisation originate because citizens associate certain officers with particular parties, simply on the basis of geography or unfounded assumptions. However, the domination of the Police Council by the executive makes it difficult to maintain a completely non-partisan police force.

The restructuring programme also provides for the appointment of women in senior positions in the force. Women still only represent 16.3% of the police personnel, but there has been considerable effort to recruit female members. The Western Area has a much greater representation of women, with almost a quarter of police members and half of support staff being women. However, women in the provincial forces are less well represented, at only 12% of the police officials and a quarter of support staff. The police have a gender equality and mainstreaming policy, issued in 2009, aimed at promoting equality of opportunity for women and men, and eliminating gender-based discrimination. In 2012, the Sierra Leone Police established a gender unit at the police headquarters in Freetown, created to ensure that all gender-related policies were implemented and monitored, and to make the SLP a more gender-responsive and equal-opportunity institution.<sup>259</sup>

The Chiefdom Police Act of 1960 created the Chiefdom Police Force, which is employed by Chiefdom Councils upon the recommendation of the District Watch Committee.<sup>260</sup> The Chiefdom Police are responsible for serving processes and summons from the local courts, for maintaining order within the local courts, and for helping to collect chiefdom revenue. They are also responsible for enforcing by-laws made by the Chiefdom Council. Each chiefdom within a Chiefdom Police Unit has a lock-up, which is supervised by the District Watch Committee.<sup>261</sup>

## **Policing reforms and strategy**

Before the post-conflict reforms, the SLP was heavily politicised. The 1978 Constitution appointed the then Commissioner of Police as one of seven presidentially appointed Members of Parliament. Recruitment policies gave the ruling party the ability to exercise considerable ethnic and political favouritism rather than focusing on professional qualifications. This resulted in a lack of diversity and decreased professionalism of the police force. In the late 1990s, the police began working with international partners (the UK's Department for International Development and Foreign and Commonwealth Office) to usher in a sweeping reform and a restructuring programme, encompassing recruitment, training and policing.<sup>262</sup>

The most important of the reforms has been the advent of community policing. In 1998, the government formulated a Police Charter that redefined the role of the police force to focus

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<sup>258</sup> Interviews with officials at Inspector-General's Office, 15 June 2009.

<sup>259</sup> [http://news.sl/drwebsite/publish/article\\_200520546.shtml](http://news.sl/drwebsite/publish/article_200520546.shtml), 'Sierra Leone Police Opens Gender Unit', *Awareness Times*, 21 June 2012.

<sup>260</sup> The DWC consists of several SLP members, including the District Commissioner, and one representative from each Chiefdom in the district, who is appointed by the district's Chiefdom Committee (Chiefdom Police Act, sections 4–6).

<sup>261</sup> African Human Security Initiative, 'Sierra Leone: A Country Review of Crime and Criminal Justice', May 2009.

<sup>262</sup> The removal of military forces was achieved in 2005, with the removal of UNAMSIL forces. [http://www.iss.co.za/index.php?link\\_id=31&slink\\_id=4970&link\\_type=12&slink\\_type=12&tmpl\\_id=3](http://www.iss.co.za/index.php?link_id=31&slink_id=4970&link_type=12&slink_type=12&tmpl_id=3).

on local-needs policing and professionalism. The Charter extends beyond traditional detection and prevention of crime to encompass respect for human rights, the removal of military and para-military forces from civilian areas, and meeting local concerns in collaboration with the community.<sup>263</sup> The SLP has created a community relations department at police headquarters, which works with divisional commanders to structure policing to provide for local needs, to implement crime prevention strategies with local unit commanders and to build trust within the local communities. In addition to the creation of the FSU and weekly press briefings, the SLP also created local policing partnership boards (PPBs), which include an executive chairperson, vice-chairperson and public relations official. PPBs consist mostly of civil society activists and allow the public to provide intelligence about criminal activities in their communities, while also working with police to formulate strategies on how to best address crime within the community.<sup>264</sup>

There has been a noticeable improvement in community relations with the police. According to nationwide police perception surveys conducted in 2009, commissioned by the JSCO, 34.7% of Sierra Leoneans were satisfied with the services of the SLP, up from 30.5% in 2008.<sup>265</sup> When asked to rate the security situation in their community, 7.9% of respondents said that their community was very safe in 2009, markedly lower than the response of 30.4% in 2007.<sup>266</sup> A significant proportion of respondents in 2009, 51.4%, expressed that there has been a decrease in the overall level of crime in the two years preceding the survey. In addition, 41.4% of respondents were very concerned with crime in their neighbourhood in 2009, as compared to 45.1% in 2008, and 23.9% of respondents were not satisfied with police visibility, a decrease from 26% in 2007. In other words, there was a decrease in the level of dissatisfaction with police visibility. Respect for the police dropped from 42.2% of respondents who said they had great respect for the police in 2007 to 26.5% in 2009. Anecdotal reports also provide insight into persistent reluctance of the population to confide in the police, with one civil society activist in Kenema declaring that people go to the police 'when they have no other option'.

Regarding the progress of community policing reforms, PPBs vary in impact and levels of activity in different jurisdictions. In Freetown, there does seem to be frequent activity, with training sessions hosted by the SLP in collaboration with donor organisations for the PPBs.<sup>267</sup> However, in Makeni, civil society activists claim the boards have not been active since 2007, after a change in local police leadership rendered them less influential, while those in Moyamba reported more positive relationships.<sup>268</sup> Civil society should work to strengthen the PPBs in their localities and put pressure on police to respond more enthusiastically to civilian input. Poor response time and police inaction are some of the most common complaints expressed by the public. Police, particularly outside of Freetown, have limited access to vehicles, making it difficult or impossible to respond to all crimes. A common complaint is that police, particularly outside

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<sup>263</sup> Sierra Leone Policing Charter 1998.

<sup>264</sup> Kenema police official, member of PPB, Freetown police.

<sup>265</sup> JSCO Justice Sector Survey, 2010.

<sup>266</sup> JSCO Justice Sector Survey, 2010.

<sup>267</sup> The Sierra Leone Police (SLP) working with the United Nations Integrated Office in Sierra Leone (UNIOSIL) and the Justice Sector Development Programme (JSDP) held a workshop entitled, 'Mobilizing the Community for Effective Policing in Sierra Leone' for the local PPB at the police training school in Hastings, Freetown, in May 2007.

<sup>268</sup> AfriMAP Focus Groups with Civil Society Activists, country-wide.

of Freetown, charge complainants for transport costs and stationery.<sup>269</sup>

## Qualifications, training and remuneration of police personnel

To become a police officer in Sierra Leone, one must be 18 years old and literate. Candidates must also pass the West African School Certificate Examination (WASCE), an interview, and physical and medical tests. In 2000, the SLP renewed its recruit training with a focus on making the process much more transparent and competitive, in line with the new Police Charter and focus on community policing. In the past, classes of recruits received training for three months. New recruits now receive ten months of training, with three months of that time reserved for practical training.<sup>270</sup> The Assistant Inspector-General of Police stated in an interview that police are trained in academic subjects, criminal law, evidence and statements, traffic duties, routine police duties, human rights, and HIV/Aids. At the police training school in Hastings in January 2009, over 300 recruits graduated from the new ten-month programme. The Assistant Inspector-General in charge of training stated that her department completed a meseries of training courses for police officers, including mid-level and advanced management training, CID investigations, peace keeping pre-deployment training, and in-service courses for personnel.<sup>271</sup>

However, despite such improvements, training for police officials remains inadequate. Police currently receive refresher courses in detective training and management of major cases, sponsored by donor organisations and administered in stages in different areas.<sup>272</sup> However, police are not trained in forensic techniques, and lack equipment necessary to carry out forensic investigations and surveillance. They are thus forced to rely on informants and their own knowledge of criminal activity in their area to investigate criminal matters. The majority of police officers and civil society leaders interviewed about police effectiveness cited lack of continuous training as a critical flaw in the quality of police services. Training efforts could benefit from more streamlining and coordination among the different providers. Critically, police must be trained in how to investigate cases properly before charging suspects with a crime. This would deter erroneous or arbitrary incarceration and arraignment. There have been quite a few high-profile cases in which police have been charged with issuing charges without cause. For example, in the case of Saffie Koroma in Makeni High Court, the defendant was charged with the murder of her child, but after spending two years in pre-trial detention, she was acquitted due to a lack of sufficient evidence.<sup>273</sup>

FSUs also require adequate training and increased funding for their activities. In 2008, only 25 convictions were successfully obtained from a caseload of 1 275.<sup>274</sup> To increase conviction rates, more training needs to be directed to FSU staff in investigating, prosecuting and monitoring cases. FSU officers need to be trained in how to monitor the implementation of the gender and

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<sup>269</sup> Afrimap Focus Groups in Kenema and Bo, July 2009.

<sup>270</sup> Interviews with Freetown and Kenema Police, June–July 2009.

<sup>271</sup> 'Police Beef up Strength by 305', from Sierra Leone Police official website, available at [http://www.sierraleonepolice.org/drwebsite/publish/article\\_48.shtml](http://www.sierraleonepolice.org/drwebsite/publish/article_48.shtml) (Accessed 1 August 2009).

<sup>272</sup> Interview with Kenema Crime Officer, 31 July 2009.

<sup>273</sup> Sierra Leone Court Monitoring Programme, 'Examining the Themes "Dignity and Justice for All": The Case for Justice Delivery in Rural Sierra Leone', January 2009.

<sup>274</sup> Statistics provided by FSU.

child rights laws, and how to write and send reports to the relevant authorities for action. Local hospital workers, traditional leaders and local councils also require increased training in their legal responsibilities towards victims. In the face of recalcitrant local leaders, education should be given to community leaders and ordinary citizens concerning their rights and how to utilise them in the midst of the new laws. The FSU has developed an extensive training manual and conducted its first training of trainers in 2009. From there, it selected people from each region to receive instruction on how to train their local units. However, the FSU has reported that serious gaps remain.<sup>275</sup>

Poor conditions of service continue to be cited as a major contributing factor in the persistence of corruption and assessment of illegal fees within the SLP. Numerous officials, internal and external to the police force, cited poor salaries as the most pressing issue in need of reform. The average monthly salary as of 2012 for lower-level police officials was approximately USD100, with a USD12 monthly stipend for rice. In 2012, each member of the police force was provided with a bag of rice each month. Housing in the barracks is extremely limited. Several lower-ranking officers reported that many on the force cannot afford to even pay rent, and as a result have to live with friends or family.<sup>276</sup> Facilities are also inadequate for the effective functioning of basic duties. Many local police stations lack functioning telephones, or only have one working line, making it difficult for local residents to seek assistance or for police officials to communicate regularly with other agencies.<sup>277</sup> Police often assert that they lack transportation to crime and accident scenes. Even when they have access to vehicles, they lack access to fuel. However, members of the community claim that the police cite lack of fuel as an excuse not to respond even when serious crimes, such as armed robbery, have occurred.<sup>278</sup> Reports of police charging complainants for these items before responding to crime scenes are common throughout the country.<sup>279</sup> Chiefdom police receive especially poor remuneration. They are paid by the local court from the revenue they receive through fines. In Bo District, there are reports of chiefdom police not receiving payment for up to three years, and in Kenema District, up to seven years.<sup>280</sup> As mentioned previously,<sup>281</sup> a recent local tax was imposed throughout the country to pay backlog salaries, but delays still persist.

## Police abuse

Unlawful detentions continue to be rampant in Sierra Leone as a result of a lack of legal representation for the majority of detainees, poor police knowledge of proper procedures, and lack of monitoring of arrests and detentions. For most offences, the Constitution dictates that

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<sup>275</sup> FSU interview, Freetown, 23 July 2009.

<sup>276</sup> Interviews with officers at Freetown SLP Headquarters, 23 July 2009.

<sup>277</sup> Overseas Security Advisory Council, 2009 Crime and Safety Report—Sierra Leone, available at <http://www.osac.gov/Reports/report.cfm?contentID=42931>.

<sup>278</sup> AfriMAP focus groups in Bo, Makeni and Kenema, July 2009.

<sup>279</sup> Interviews with civil society activists, Countrywide, June–July 2009.

<sup>280</sup> Interviews with customary officials in Kenema and civil society activists in Makeni, July 2009.

<sup>281</sup> See *supra* p. 42.

police must charge the accused to court within 72 hours of arrest,<sup>282</sup> but reports from private and government lawyers indicate that police sometimes fail to charge or release the accused at that time. The problem is exacerbated by the lack of legal representation for the majority of those arrested, as police will typically follow procedure only upon the intervention of a lawyer.<sup>283</sup> *Habeas corpus* petitions are available in the High Court, which would require the police to show cause for holding a suspect outside the mandated period. However, this right is rarely asserted as there are so few lawyers available to the accused. Reports from lawyers also accuse the police of releasing an individual within 72 hours and then re-arresting them after a brief intervening period, sometimes as little as an hour.<sup>284</sup> There is also a provision within the Constitution to provide a person who is unlawfully arrested or detained with compensation from the individuals who caused such violations of rights.<sup>285</sup> However, many people are not informed of this right, and lack legal representation or specific remedies under the law to pursue civil or criminal claims. In addition, there are reports across the country of police who allow bribes or interference from outside parties to affect the outcome of the investigation into a crime.

The 1991 Constitution requires respect of certain rights, including the right to be free from arbitrary arrest. The 1965 Criminal Procedure Act requires officers to use no more force than is necessary to prevent escape when making an arrest<sup>286</sup> and to inform persons of the cause of their arrest.<sup>287</sup> However, reports of abuse by police, including use of excessive force, remain a problem in Sierra Leone.<sup>288</sup>

Though public perceptions of the police have improved on the whole, cases of police brutality still occur. They appear to be a particular problem at political rallies and events, and investigations and prosecutions of these incidents are slow and unfruitful. For instance, Amnesty International reported that police and security officials violently attacked eight journalists and political supporters attending political meetings of the SLPP and APC in August 2008.<sup>289</sup> A news blackout on the police was imposed by the Sierra Leone Association of Journalists (SLAJ) in September in response to a perceived failure of the SLP to investigate the crime.<sup>290</sup>

In March of 2009, a wave of violence between supporters of Sierra Leone's two major political parties, the APC and SLPP, tore across the country. The disturbance started on 13 March at the Eastern Police Station in central Freetown, when supporters of the SLPP reportedly threw rocks at the mayor and APC supporters at a public ceremony. APC rioters then torched two cars, including one owned by the National Secretary-General of the SLPP, and set fire to SLPP national headquarters. Police were able to quell the riots that weekend, but by the following Monday,

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<sup>282</sup> For capital offences such as murder and treason, offences carrying a sentence of life imprisonment, and for economic or environment offences, police can detain a suspect for 10 days without charging him or her to court.

<sup>283</sup> Interviews with Attorneys, Freetown, June–July 2009.

<sup>284</sup> Interviews with private and government lawyers in Freetown, June–July 2009.

<sup>285</sup> 1991 Constitution, Section 17(4).

<sup>286</sup> CPA, section 8.

<sup>287</sup> CPA, section 15.

<sup>288</sup> Human Rights Report, 2008, Human Rights Commission of Sierra Leone.

<sup>289</sup> Amnesty International Report, Sierra Leone, 2009.

<sup>290</sup> 'SLAJ Declares News Blackout on Police', *Cotton Tree News*, 23 September 2008, available at [www.cottontreenews.org/content/view/1281/34/](http://www.cottontreenews.org/content/view/1281/34/).

violence erupted again, and APC rioters resurfaced with a blockade at the SLPP headquarters. Police could not restrain the rioters, who stormed the headquarters, reportedly raping six women and injuring others. That weekend, violence also gripped the provinces during a ward bye-election in the Soro-Gberma Chiefdom in Eastern Province. Here, APC supporters attacked SLPP supporters and wounded the wife of the SLPP Chiefdom Chairperson.

There were allegations that the police purposefully avoided restraining the rioters because of the APC's influence within the SLP. Some even alleged that a member of the police force and Presidential Guard was involved in the rape. Two weeks after the initial incident, the Inspector-General of the police, Brima Acha Kamara, said that no charges would be filed for the alleged rapes. He claimed that the medical reports showed that no rapes had taken place and that there were no witnesses who supported the claims. Denouncers of this decision pointed to the statements of doctors who confirmed gang rapes, and one pregnant woman who even claimed to be stabbed during the rape. Objectors claimed that the I-G was a 'puppet' for the ruling APC, who was attempting a cover-up. They pointed to the failure to file charges as proof that the SLP is heavily politicised, despite the extensive reforms made to the police since the 1990s. A commission of inquiry, established in the summer of 2009 and chaired by Justice Bankole Thompson, was charged with investigating the events of March 2009 and to issue its findings.

Though the question of what transpired during these incidents has never been resolved, tension ultimately eased, aided by the signing of a communiqué, the formation of a coalition of youths from both parties, and the President's call for peace during a symbolic visit to the opposition headquarters. However, the situation raises troubling questions about the potential for political and sexual violence to erupt spontaneously, the possibility that the SLP is unduly influenced by political affiliations, as well as their perceived unwillingness to launch a full investigation into sexual assault allegations. It also illustrates the need for police to build coalitions with youths in their communities to foster dialogue among supporters of different political parties.

The police's poor handling of demonstrations, political rallies and crowd control has contributed to a loss of confidence by the public. Furthermore, the armed division of the police have been heavily criticised for unwarranted killing of unarmed suspects. This has led to the institution of a coroner's inquiry and a review of the rules of engagement on the use of force in 2012. The police maintain that executing their duties remains challenging with the prevalence of violence among youths and an increase in armed robbery in major towns. Police officers have also lost their lives and sustained injuries while executing their duties. In 2011, youths violently attacked and killed a police officer during a police raid.

### *Investigation of complaints against police*

The SLP has a Complaint, Discipline and Internal Investigations Department (CDIID), charged with handling and investigating complaints from the public about police abuse, and disciplining members of the police in certain cases. Disciplinary regulations established in 2001 provide the framework for the police discipline process. They include offences ranging from the failure to

repay loans, receiving bribes from complainants, to the failure to investigate properly.<sup>291</sup> The most common complaints against the police in 2007 were corruption, lack of professionalism, assault and unfair treatment. Punishments include a reduction in rank, a fine, a reprimand or two weeks of corrective training. For the most serious offences, dismissal may result.<sup>292</sup> Discipline of officers does occur, even if in small numbers when compared to the number of allegations of wrongdoing from the public. In 2011, of the 1 589 complaints received by the CDIID, 29 resulted in dismissal, 55 were suspended from duty, 379 received warning letters, 18 were struck off, four were reduced in rank, 593 were recommended for corrective training and 160 were informally resolved.<sup>293</sup> In 2008, two police officers were dismissed and found guilty of unlawful carnal knowledge of young girls.<sup>294</sup> Three others involved in the major cocaine trafficking case in 2008 were dismissed and are now serving jail sentences after being convicted in the criminal courts.<sup>295</sup>

Transparency about the disciplinary actions of the CDIID could be improved. Complaints against police are made public only through press releases on the radio and television that inform citizens of police progress. There are few publicly available documents outlining police disciplinary procedures, and there is no legislation that officially lays out fixed procedures, offences and punishments for officers. However, the SLP have made some progress in this area. For example, the SLP made public its Policy on Sexual Abuses and Harassment within the police force, declaring that sexual exploitation, abuse and harassment are all grounds for dismissal.<sup>296</sup> The Justice Sector Coordination Office, as well as other stakeholders, have called for an independent complaint committee within each community. This would consist of ten members, with equal numbers of both genders to represent the diversity of the community. Such committees would provide a more direct pipeline for complaints to reach the police from the community.<sup>297</sup> Civil society must also play a more vigilant role in monitoring police abuse. Formal mechanisms, such as monitoring councils or police watch groups, should be established in all localities.

There has been limited legislative action to update police laws or enact reforms within the force. The SLP still operate under the Police Act of 1964, which only states a basic mission of crime policing, and thus does not provide legal protection for the recent police reforms made in collaboration with international donor programmes. The Constitution should also be amended to provide explicit authority for the CDIID to investigate complaints against police.<sup>298</sup> A thorough list of disciplinary procedures, offences, and punishments should be codified into a new Police Act to replace the outdated 1964 Act.

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<sup>291</sup> Second Schedule, Discipline Code, found in the Police (Discipline) Regulations, 2001.

<sup>292</sup> Section 19, 2001 Police Disciplinary Regulations.

<sup>293</sup> SLP Records, Head of CDIID, dated January 2012, provided by Corporate Affairs Directorate, SLP.

<sup>294</sup> Interview with SLP Director of Media, Ibrahim Samura, 5 June 2009.

<sup>295</sup> 'Fifteen Convicted for Cocaine', press release written by SLP Director of Media, available at SLP website, [http://www.sierraleonepolice.org/drwebsite/publish/article\\_52.shtml](http://www.sierraleonepolice.org/drwebsite/publish/article_52.shtml), 1 August 2009.

<sup>296</sup> 'Policy on Sexual Exploitation, Sexual Abuse and Sexual Harassment Sierra Leone Police April 2008', press release by SLP, available at [http://www.sierraleonepolice.org/drwebsite/publish/article\\_35.shtml](http://www.sierraleonepolice.org/drwebsite/publish/article_35.shtml).

<sup>297</sup> Interview with head of Justice Sector Coordination Office, 17 June 2009.

<sup>298</sup> The Ghanaian Constitution has a provision establishing authority to investigate complaints against police.

Table 6: Disciplinary actions by the CDIID, 2011

Disciplinary actions	North.	South.	East.	West.	Police headquarters	Total
Suspension	2	5	2	1	45	55
Warning letters	7	2	60	87	223	379
Dismissed	3	2	2	3	19	29
Struck off	0	2	2	2	12	18
Reduced in rank	0	0	0	0	4	4
Corrective training	7	33	30	25	498	543
Cases informally resolved	4	15	16	0	125	160
No. of cases closed	5	10	12	0	150	177
Discharged cases	9	15	10	0	18	52
Pending cases	5	4	6	5	30	50
Under investigation	4	30	30	10	200	274
Total	41	114	154	127	1 153	1 589

Source: SLP Records, Head of CDIID, January 2012, provided by Corporate Affairs Directorate, SLP.

## Non-state action against crime

Private citizen action against crime remains relatively low for most offences, with the exception of larceny.<sup>299</sup> However, occasionally it results in violence, or even gruesome violations of human rights and serious threats to the maintenance of public order.<sup>300</sup> Neighbourhood-watch groups have been established in some localities, who then report criminal activity to police or enact citizen arrests. The JSDP has funded a training manual for community groups on how to form effective neighbourhood watch groups, stressing involvement of local government, local police partnership boards, civil society and business institutions, as well as influential community stakeholders.<sup>301</sup> Other groups arise spontaneously after a crime, resulting in ‘mob justice’. Mob violence against reported thieves is a common problem across the country. For example, in July of 2009 in Bo, a suspect escaped police custody, only to receive a beating by civilians. There were even reports that an investigating officer participated in the assault.<sup>302</sup> In other parts of the country, particularly in Freetown, suspects apprehended by civilians are beaten severely, resulting in grave injuries and even death.

Opinions vary regarding the success of private citizen action. One police director in Freetown said that the police force supports neighbourhood-watch programmes, declaring them ‘to a large

<sup>299</sup> For example, a wide collection of Makeni civil society activists agreed that people tend to access the police and the courts when seeking redress for crime in their district, rather than initiating private violence.

<sup>300</sup> Makeni civil activists, for example, reported that a thief, who had assaulted a person on a motorcycle, cutting off his hand in the process, was then severely beaten by an angry mob.

<sup>301</sup> A Training Manual on Community Police Neighbourhood Watch Scheme in Sierra Leone, Produced by Forum of Conscience, in Partnership with the Sierra Leone Police and Local Police Partnership Boards in Moyamba District and Central Police Division in the Western area as case study.

<sup>302</sup> Bo Focus Group, 30 July 2009.

extent successful' in gathering information on criminal activities in local communities.<sup>303</sup> The Kenema Crime Officer also claimed that there were no reports of improper conduct by vigilante groups in his district. By encouraging citizen communication with the police, according to this view, these groups were particularly helpful in breaking the culture of silence in communities that were hard to reach by the police. However, one Assistant Inspector-General in Freetown said that, while neighbourhood-watch groups were sometimes successful in reducing incidents of armed robbery, there are very real fears that these groups would devolve into vigilantism.<sup>304</sup>

Private security companies (PSCs) are quickly growing in number throughout the country. An estimated 30 companies are now in operation, as opposed to just two before the war.<sup>305</sup> Licensing and regulation of PSCs falls under the authority of the Office of National Security (ONS), in line with the National Security and Central Intelligence Act of 2002. However, the Act does not specify official guidelines for evaluating license applications, and no particular penalties exist for breaches. Currently, the ONS requires potential PSCs to present a completed application, along with financial documentation and certificates of company registration, and claims to evaluate applicants according to the adequacy of their resources, character and fitness, and the public interest. PSCs are not allowed to carry or use arms. There are no minimum standards for entry into the field, and training is the sole responsibility of individual PSCs. Training thus varies substantially by company. In addition, difficulties gathering data due to a lack of a comprehensive criminal registry prevents companies from verifying whether security guards have criminal records. There is significant variation in the pay and working conditions at different companies, and there is evidence that some PSCs do not treat guards according to Sierra Leone's labour standards.<sup>306</sup>

There are two different views on the role of PSCs in Sierra Leone. One, expressed by an Assistant Inspector-General of the SLP, believes that private security operations make the nation more secure, create jobs and provide assistance to the police. Others in the SLP have stated that private security is largely ineffective. A high-ranking police official said that there are only three effective private security companies in the country.<sup>307</sup> However, police have stated that they receive few complaints about private security forces, and because they do not carry weapons, they are not a significant threat to the security of the state or the population.<sup>308</sup>

## **c. Fair trial**

### **Access to legal representation**

The 1991 Constitution contains several provisions protecting the rights of accused persons. Section 17 guarantees the right to be informed immediately at time of arrest of the right to access a legal practitioner. Section 23 affords accused persons the right to cross-examine witnesses,

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<sup>303</sup> Interviews at SLP Headquarters, Freetown, June 2009.

<sup>304</sup> Interviews at SLP Headquarters, Freetown, June 2009.

<sup>305</sup> Estimated Figures from the Office of National Security.

<sup>306</sup> The Globalisation of Private Security: Overview of the Private Security Sector in Sierra Leone, October 2008, available at [http://www.ssrnetwork.net/document\\_library/detail/4222/the-globalisation-of-private-security-country-report-sierra-leone](http://www.ssrnetwork.net/document_library/detail/4222/the-globalisation-of-private-security-country-report-sierra-leone).

<sup>307</sup> Interview with Assistant Inspector-General of Police, 15 June 2009.

<sup>308</sup> Interviews with SLP officials, June–July 2009.

to be defended by himself or a lawyer of his own choosing, and to have adequate time and facilities to prepare a defence. To comply with the International Covenant on Civil and Political Rights (ICCPR), Sierra Leone must guarantee legal assistance to all indigent defendants, 'in any case where the interests of justice so require', and without payment if the defendant lacks necessary resources.<sup>309</sup> Section 28 of the 1991 Constitution incorporates this right to legal aid, mandating Parliament to establish a legal aid scheme for indigent persons. In practice, however, implementation has been slow and fraught with obstacles. As a result, many criminal defendants go unrepresented. In March 2009, the Sierra Leone Bar Association (SLBA) established a legal aid scheme, with funding from the UNDP. In four months, the scheme served 193 clients countrywide with legal representation in Freetown, Makeni, Bo, Kenema and Waterloo.<sup>310</sup> The project has seen impressive success: of these 193 represented defendants, 88 detainees were released from March to June 2009, mostly from Pademba Road Prison in Freetown. However, despite its successes, the scheme faces difficulty attracting experienced lawyers, given the low salary. According to the President of the SLBA, legal aid lawyers earn approximately Le1.5 million per case (USD430), versus the Le5 million (USD1 450) per case that a senior lawyer could earn in private practice. The scheme had only 15 lawyers, each dealing with five cases per month, and this for a country with a population of five million.

The SLBA notes that the legal aid scheme is particularly effective at reducing overcrowding in police jails and prisons, discharging accused persons in cases of insufficient evidence, and resolving many cases at the magistrate level; 69 of the 193 cases were completed at this level, while only 15 were committed to the High Court. However, continual access to funding is a major hurdle for the scheme, and by 2012, it had ceased to exist.

In April 2010, the GoSL and JSDP officially launched the Pilot National Legal Aid Scheme (PNLA). The government finally recognised that the majority of people held in prisons lack financial resources, and therefore have no access to a lawyer at any stage of their court proceedings. Such a situation constitutes a major impediment to justice in Sierra Leone, and is a primary cause of the delays in justice. The scheme aimed to establish a sustainable, affordable, credible and accessible national legal aid system for Sierra Leonean citizens who cannot afford to pay for the services of a lawyer. The pilot project is also expected to form the basis of the Office of the Public Defender. The scheme was a huge success, as it provided legal representation to many accused persons at the magistrates' courts and High Court in Freetown. It also encountered funding challenges and, as a pilot scheme, it was limited only to Freetown. By May 2012, the services of the PNLA came to an end. During its existence, the PNLA conducted consultations and advocacy across the country for the development and passage of a national legal aid law.

After two years of consultations on the provisions of the bill and advocacy, Parliament enacted the National Legal Aid Act in May of 2012. Under this law, legal aid services will be extended nationwide. Lawyers have expressed concern about the unavailability of legal aid services after the services of PNLA ended in May 2012. They claim that the PNLA should have continued until the National Legal Aid Board was in a position to provide the services so needed

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<sup>309</sup> International Covenant on Civil and Political Rights, Article 14(d).

<sup>310</sup> According to the Secretary General of the Bar Association, the programme also employs four paralegal assistants, who conduct the initial investigation after a report is filed.

by the populace. At its annual general meeting in June 2012, the Sierra Leone Bar Association passed a resolution calling on government to swiftly establish the National Legal Aid Board.

## Interpretation

English is the official medium for all communication in court. Section 23(5)(e) of the 1991 Constitution guarantees an interpreter for all who cannot speak the language of the court. However, even though few people in the country speak English fluently, there is a severe lack of interpreters at all levels of the superior and magistrates' courts. In the magistrates' courts, they are practically non-existent. Most witnesses testify in Krio, while lawyers and magistrates communicate with each other in English. As a result, many defendants cannot understand the communications between their legal team, the prosecution and the judge. There is rarely anyone present who explains the court procedures to the accused, and as a result, defendants often have limited understanding of the proceedings. Even if an interpreter is present, he or she typically lacks training in the law, and so is unable to fully explain legal terms and procedures.<sup>311</sup> The lack of interpreters raises further problems when the accused is a foreign national who understands neither English nor Krio. In the 2008 cocaine trafficking case, the trial had to be delayed because the court could not locate a Spanish-English interpreter.<sup>312</sup> In a 2008 case involving a defendant from Guinea, the court could not locate a professional interpreter. Consequently, another accused person was assigned to interpret for the defendant, and nobody was able to verify the accuracy of the translation.<sup>313</sup>

To ensure that defendants have a proper understanding of criminal procedures and trial proceedings, the judiciary must commit resources to recruit and train a cadre of professional interpreters of the law, skilled in all the languages of Sierra Leone, as well as other languages likely to be encountered, such as French.

## Delays in bringing cases to trial

Enshrined in Sierra Leone's 1991 Constitution is the right of an accused person to a fair hearing, within a 'reasonable time' and by an appropriate court.<sup>314</sup> However, this right is far from realised for the majority of Sierra Leone's citizens. Delays are a critical problem across the country, particularly at the magistrate court level and in the provinces. Some prisoners have been detained without an indictment for as long as a decade.<sup>315</sup> The Constitution mandates time limits in which courts above the magistrate level must issue judgments,<sup>316</sup> but these provisions are rarely followed. Some courts have still not issued judgments, even though arguments ended three or four years ago.<sup>317</sup> A lawyer in Bo reported arguing a case of false pretences – a relatively minor offence – which still had not received judgment one year after closing arguments had ended.<sup>318</sup>

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<sup>311</sup> Based on visits to magistrate courts, July 2009, and interviews with judicial officials.

<sup>312</sup> Interviews with lawyer on cocaine case and other lawyers, Freetown, June–July 2009.

<sup>313</sup> Interview with Hawa Kamara, court monitor, July 2009.

<sup>314</sup> Section 23(1), 1991 Constitution.

<sup>315</sup> Interview with Director of Prison Watch, Freetown, 15 June 2009.

<sup>316</sup> For example, Section 78 of the Constitution requires the High Court and Court of Appeals to issue a judgment within four months of commencing a case or appeal.

<sup>317</sup> AfriMAP Focus Group, Bo, and interviews with Police and Attorneys, June–July 2009.

<sup>318</sup> AfriMAP Focus Group Bo, 30 July 2009.

There have been several major reforms initiated in the justice sector in recent years. However, they have still not resolved the key barriers to a speedy trial.<sup>319</sup> The average length of a criminal case at a magistrate court is six months, assuming that all witnesses are available and all parties are prepared for trial. However, this is often a rarity.<sup>320</sup> The typical caseload for most magistrates is 15–20 a day, though there was one report of up to 40 cases a day.<sup>321</sup>

A major cause of delays across the courts system is the preliminary investigations (PI) system, which is provided for by Section 108 of the Criminal Procedure Act. Though magistrates lack the jurisdiction to try serious felonies such as murder, treason and sexual assault, Section 108 allows a magistrate to conduct a PI in these cases to determine if there is probable cause to commit the matter to the High Court. The PI system was implemented to prevent a backlog of frivolous or unsubstantiated cases in the higher courts, as magistrates can drop the charges if the evidence is too weak to support a trial. Alternatively, it can adjourn the matter indefinitely, until the prosecution can produce sufficient evidence to warrant a trial. However, despite its initial purpose, the PI system has resulted in serious delays in the openings of trials. It has also led to much duplication of proceedings, as witnesses are called again to repeat their testimony and evidence is re-presented in the High Court proceedings. Defendants are also remanded during PI, increasing the burden on the prison system. This potentially violates their constitutional right to a trial within a reasonable time, as the PI process can often extend for months, or even years.<sup>322</sup> The PI in a recent murder case in Bombali District lasted eight months.<sup>323</sup> Though the prosecutor can apply for the case to be committed to High Court without a PI, this procedure is cumbersome and not common.

Most magistrates interviewed for the report expressed dissatisfaction with the delays caused by the PI system and called for it to be abolished. However, some cited several reforms that must be accomplished before this can happen, including the strengthening of the police's capacity to conduct thorough investigations and gather proper evidence, training of police prosecutors to reduce the incidence of incorrect or frivolous charges, and an increase in the number of judges on the High Court to handle the increased caseload. Furthermore, speedy commitments of cases to the High Court, even after PI is completed, are rare. For example, in Bo an 11-year-old alleged victim of rape waited over two years to have her case resolved in the High Court, only to have the case thrown out for lack of corroborating evidence. Other rape victims have waited over three years with no verdict.<sup>324</sup>

Challenges in getting witnesses to appear in court compound delays, especially in the provinces. Witnesses often live far away from the formal courts and are reluctant to testify, especially for a second time in the High Court after they have already testified in an initial PI. A typical day in a magistrates' court in Freetown often produces only one witness for each case,

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<sup>319</sup> Such barriers include long preliminary investigations, high court fees, detainees' lack of knowledge of their rights, lack of legal representation, poor conditions of service for magistrates and judges, and difficulties in bringing witnesses to court.

<sup>320</sup> Interviews with magistrates, countrywide, June–July 2009.

<sup>321</sup> Interview with Kenema magistrate, 31 July 2009.

<sup>322</sup> According to the Lawyers' Centre for Legal Assistance, these investigations can last up to five years.

<sup>323</sup> AfriMAP focus group, Makeni, 27 July 2009.

<sup>324</sup> AfriMAP Focus Group, Bo, 30 July 2009.

resulting in a week-long adjournment until the next witness appears. Judges and civil society activists in the provinces also attribute the persistence of illegal chiefdom courts to the delays experienced in the formal and local courts. The rural population often prefers local courts because they tend to be quicker and are more familiar. However, they can still face considerable delays.<sup>325</sup> This often results in the matter being taken to a local chief, who will issue a verdict within a day or two.

There are a few measures that could speed up prosecution of criminal cases. The Criminal Procedure Act allows magistrates to conduct summary trials of offences that would normally be committed to the High Court if the offence warrants a sentence of less than seven years and the accused person consents. Fast-track courts, such as those established in Ghana,<sup>326</sup> could be a partial solution to the delays if they try criminal cases of particular public concern or interest. However, they would also face many of the same problems plaguing the current courts, including difficulty attracting staff with adequate training.

Undue delays in court proceedings have been attributed, among other things, to outdated court rules and inadequate systems.<sup>327</sup> To this end, the judiciary in 2007 issued Civil Procedure Rules, designed to streamline the processing of civil cases in the High Court. Under the new system, after fixing a trial date, a pre-trial conference is conducted in which all issues relating to the conduct of the trial are discussed, including the number of witnesses and the number of hours to be allocated to the case.<sup>328</sup> Under the JSRSIP 2008–2010, the GoSL implemented a small-scale, low-cost Criminal Case Fast Track Project in the High Court. The project provided funding to address bottlenecks and delays in processing criminal justice cases. In 2006, a Criminal Case Management Best Practice Handbook was developed, aimed at achieving a speedier disposal of criminal matters. A fast-track Commercial Court has also been established with improved facilities and justice service delivery. It is reported that cases are dispensed with in this court more promptly than other courts.<sup>329</sup>

The GoSL is also working on a database and case-tracking system within the magistrates' courts as a prelude to a wider case-tracking system. The system aims to keep track of cases and raise alarms when cases appear to be taking too long. The GoSL has emulated the Ugandan Chain Linked Project, which promotes cooperation, coordination and communication between criminal justice sectors.<sup>330</sup> The challenge now is to implement and sustain these initiatives. While these initiatives have been generally commended, local commentators have opined that these plans may not be implemented without continued financial and technical assistance from the international community.<sup>331</sup> The APRM recommends that an appropriate exit strategy be designed, whereby the government can demonstrate sufficient financial ability and political will to implement these strategies.

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<sup>325</sup> African Human Security Initiative, 'Sierra Leone: A Country Review of Crime and Criminal Justice', May 2009.

<sup>326</sup> Ghana: Justice Sector and the Rule of Law, published by AfriMAP and OSIA, 2007, p. 106.

<sup>327</sup> Interview with a senior monitor, Sierra Leone Court Monitoring Programme, 3 July 2009.

<sup>328</sup> Justice Sector Reform Strategy and Investment Plan 2008–2010 p. 76.

<sup>329</sup> Interview with a member of the S.L. Bar Association in 2012.

<sup>330</sup> *Ibid* 58.

<sup>331</sup> Members of Parliamentary Committee on Human Rights, 20 May 2009.

## Witness protection

Intimidation of witnesses occurs frequently in Sierra Leone. This may occur in private settings outside of court by defendants or their associates, as well as in the courtroom by lawyers. Intimidation of victims is a particularly serious problem in sexual assault cases, where the offender is typically known to the victim and may also live in close proximity, or even with her and her family. In July 2009, a magistrate was forced to issue a warning to the defence lawyer of a defendant accused of sexually abusing a 14-year-old girl because the defendant, out on bail, had reportedly gone to the victim's home, threatening her and her family. However, no active measures were taken to prevent the defendant from approaching the victim in the future. The magistrate merely threatened to revoke bail if he heard reports of continued threats.<sup>332</sup>

Intimidation of witnesses and victims is a serious problem in the local courts, which often conduct illegal trials for serious offences such as sexual assault and rape of children. In October of 2006, a clergy member was accused of sexual abuse and the trial was held in the local court in Makeni. It was conducted in open court, with reports of the Chairperson shouting at the victim even before she had begun testifying. This made the victim unwilling to speak about the matter. The case was adjourned twice, and eventually withdrawn and settled at home.<sup>333</sup> In a 2007 case in Court No. 1 in Makeni, the Chairperson attacked a 14-year-old sexual abuse victim in court, claiming that she had received money from the man and thus had no claim of sexual assault.<sup>334</sup> Accordingly, the Criminal Procedure Act should be revised to provide greater protection for victims and witnesses, including special criminal provisions and increased fines and sentences for those who intimidate or harass parties involved in court proceedings. Greater monitoring by civil society and government can reduce the incidence of sexual offence trials being conducted in local courts and in open court.<sup>335</sup>

The Special Court for Sierra Leone is currently supporting the establishment of a national Witness and Victims Service (WVS) as part of its legacy to Sierra Leone. This service is yet to be formalised by Parliament, but currently the police, the judiciary and the Anti-Corruption Commission are using the service in the Special Court, and witnesses have benefitted from the protective measures and security arrangements, counselling, and other appropriate assistance. The WVS, when formalised, should advocate for the witness's best interest and ensure that he or she does not suffer any harm from testifying. It will recommend protective and security measures for witnesses, develop long-term and short-term plans for witness protection and support, and ensure that all witnesses receive relevant support, including counselling or medical assistance, especially in cases of crimes against children.

## Juvenile justice

As with the gender laws, enforcement of the Child Rights Act has been slow. There are numerous reports of children under the age of 14 being tried and convicted of crimes in courts across

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<sup>332</sup> Visit to the magistrate court, Freetown, 23 July 2009.

<sup>333</sup> AfriMAP focus group, Makeni, 27 July 2009.

<sup>334</sup> AfriMAP focus group, Makeni, 27 July 2009.

<sup>335</sup> Civil society activists in Bo, Makeni and Kenema have reported progress in forcing local courts to stop trying serious offences by informing citizens of their rights, complaining to the Customary Law Officer, or writing letters to Government officials.

the country. For example, many local courts often fail to respect the legal rights of juveniles. Proceedings are often conducted in open court, in violation of the law. In some communities, children cannot bring an action against adults for violations but can still have actions brought against them. Reports from Makeni, Kenema and Bo indicate that children are often asked to pay the same fees as adults in local courts. In Kabala, for example, a child was involved in simple larceny. Instead of being sent to the police, as mandated by law, the child was immediately sent to the local court, where he was fined Le200 000 (USD58).<sup>336</sup> When the children cannot afford the fines, they are sometimes put in cells. Some children are even sent to state prisons for minor offences when police stations lack facilities.<sup>337</sup> Children are sometimes sent to adult prisons on remand, and kept in local police stations in ad-hoc living situations. A 14-year-old girl in Makeni was even held behind the police counter in a local police station, which was accessible to many people.<sup>338</sup> Renovations of an approved school and remand home have improved access for some juvenile offenders and, as of May 2008, children are no longer held at Pademba Road Prison. However, there are still reports of children being sent to provincial prisons.

Trial delays are also rampant for juveniles. A courtroom within the Law Courts Building in Freetown has been renovated by the JSDP to serve as a 'child-friendly court'. There is currently only one full-time juvenile magistrate, based in Freetown. Provincial magistrates handle all cases, including juvenile cases.<sup>339</sup> Training of juvenile magistrates is inadequate. The JSDP sent two magistrates to Malawi to complete a short training course on juvenile justice, and a two-day intensive training programme was held in June 2009 in Freetown for all stakeholders. However, there is no systematic continual training in issues relating to juvenile justice. The plight of juveniles in the criminal justice system is thus particularly serious, as there are several critical flaws in the trial, sentencing and detention systems for juveniles. Article 40 of the UN Convention on the Rights of the Child (CRC) encourages states where appropriate and desirable to promote measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected, and to adopt a variety of diversionary measures as alternatives to institutional care. However, Sierra Leone has yet to implement significant alternatives to traditional incarceration. The Child Rights Act of 2007 includes progressive provisions that would expand the ability of the police and courts to decide whether diversion should be used in particular cases, and allow the FSU to initiate diversion after giving notice to parents or guardians of the juvenile offender.<sup>340</sup> However, in its 2008 annual report, the Human Rights of Commission of Sierra Leone noted the failure of courts to sentence juveniles in accordance with the law.<sup>341</sup> The law gives the court discretion to send children under 18 years of age and who are guilty of a crime to an 'approved school' until the child turns 18.

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<sup>336</sup> After DCI intervened, it was reduced to 50 000.

<sup>337</sup> For example, three children in Kenema, aged 9–15, accused of verbal harassment, were sent to state prison by Local Court 1 before trial because there were no facilities available.

<sup>338</sup> AfriMAP Focus group, Makeni, 27 July 2009.

<sup>339</sup> Interview with magistrates, Freetown, June 2009.

<sup>340</sup> 'The Need for Diversion within the Juvenile Justice System', a report by Sierra Leone Court Monitoring Programme, 30 June 2009, available at [http://www.slcmp.org/drwebsite/commentaries/The\\_Need\\_for\\_Diversion\\_in\\_the\\_Juvenile\\_Justice\\_System\\_in\\_Sierra\\_Leone.shtml](http://www.slcmp.org/drwebsite/commentaries/The_Need_for_Diversion_in_the_Juvenile_Justice_System_in_Sierra_Leone.shtml).

<sup>341</sup> Section 26(1) of the Children and Young Persons Act (Cap. 44).

## D. Sentencing

Sentences that may be handed down under Sierra Leone's criminal laws include the death penalty, imprisonment and fines. Some crimes have specified sentences, while others do not, leaving the length of sentencing entirely up to the judge or magistrate. The death penalty is mandatory for the most serious felonies, including murder, treason and mutiny. Most crimes, with the exception of the most serious, have the option of fines. If these are not paid, then the result is incarceration. Many of Sierra Leone's criminal laws are seriously outdated, being based on British colonial laws that have since been repealed in Britain itself. Thus, for example, Sierra Leone still follows the Offences Against the Persons Act of 1861, which provides a maximum life sentence for homosexuality among men,<sup>342</sup> imprisonment as punishment for abortion (both for the provider and for the pregnant woman), and a maximum sentence of life imprisonment as a penalty for rape.

Part V of the Public Order Act of 1965 is also a source of contention within Sierra Leone. It contains a defamatory and seditious libel provision that criminalises the publication or distribution of false materials that are likely to 'disturb the public peace' or are 'calculated to bring into disrepute' office holders under the Constitution.<sup>343</sup> Violations of the Act are punishable by imprisonment for up to seven years.<sup>344</sup> The sentence may also potentially ban a publication if the convicted person is a newspaper owner or publisher. Since the 1960s, the law has been used by both civilian and military regimes to suppress opposition. There have been arrests and detentions of prominent journalists, including the managing editor of the *Independent Observer* and the publisher of the *Awareness Times*, for publishing unfavourable pieces on the government. The HRCSL has issued calls for parliamentary repeal of these seditious libel provisions and the institution of civil remedies for defamation.<sup>345</sup>

Furthermore, the current sentencing regime provides inadequate remedies for victims. Emphasis is placed on the punishment of the offender, rather than compensation for the victim. For example, there are inadequate counselling and psychological services provided to rape victims, before, during and after prosecution. This is in spite of the FSU implementing a training manual to advise counsellors on how to make appropriate referrals for victims, and how to maintain proper confidentiality, respect and collaboration with survivors of sexual assault.<sup>346</sup>

Sentences vary depending on the court in which a case is heard. Magistrates lack the jurisdiction to hear cases involving offences offering more than a five-year sentence of imprisonment. However, given the lack of statutorily defined minimum sentences for most offences, it can be difficult to determine whether a crime should be heard before a magistrate. The magistrate may, with the consent of the accused, summarily decide a case (excluding murder or treason), and sentence the offender to not more than seven years in prison. Otherwise, the

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<sup>342</sup> Homosexuality among women is not criminalised.

<sup>343</sup> Public Order Act of 1965, section 32.

<sup>344</sup> The seven-year maximum sentence is for a repeat offence. Publication of defamatory materials against Government officials is punishable by up to two years and/or a fine, while dissemination of materials that disturb public order has a maximum sentence of one year and/or a fine.

<sup>345</sup> HRCSL Report: 2008, July 2009.

<sup>346</sup> The Family Support Unit Training Manual, September 2008, pp. 110–115.

case must be committed to the High Court, as it has original jurisdiction over all serious felonies. As a result of the dire shortage of lawyers across the country, violations of sentencing laws are likely to go unnoticed and unchallenged.

Though there are maximum sentences for many offences in the formal courts, these sentences are rarely enforced. A justice of the peace sitting on a magistrates' court in Bo District stated that, in his five years of service, he had never levied a maximum sentence.<sup>347</sup> However, many minor crimes carry stiff sentences in Sierra Leone. A visit to Pademba Road Prison in Freetown revealed that many convicted persons were incarcerated for long sentences for crimes such as loitering, petty larceny and unpaid debts. For example, a woman completed a four-and-a-half year sentence for failing to pay a debt of Le3 million (USD870). A man, arrested and sentenced on the same day, began an 18-month sentence for loitering with intent, an offence often applied to snare prostitutes and young men in the streets after dark. In addition, Section 230(3) of the Criminal Procedure Act dictates that judges should take into consideration time served on remand. However, according to interviewed officials, judges frequently ignore that provision. They sentence offenders to serve the full sentence after conviction, even though the detainee has spent months, even years, in pre-trial and trial detention.<sup>348</sup>

Local courts have jurisdiction over criminal cases whose sentences do not exceed six months in prison or a fine of Le50 000 under the Local Courts Act of 1963.<sup>349</sup> These provisions are frequently flouted, as customary courts frequently issue excessive fines. For example, the Centre for Accountability and the Rule of Law reported a fine of Le605 000 issued in a slander case at a local court in Koinadugu District.<sup>350</sup> Sentencing in customary courts is often inconsistent and discriminatory towards women and juveniles. Reports of fines exceeding Le300 000 for divorces, marital disputes and juvenile crimes are common. Possible solutions include increasing the number of paralegal projects in the provinces, which will assist and advise the customary officers on the proper amounts for fines, improving the relationship between formal and local courts, and referring matters to the formal courts, if necessary. To solve the problem of illegal chiefdom courts issuing fines, the Local Courts Act contains a provision that makes such activity illegal for any person who exercises the jurisdiction of the local courts without proper authority. Thus, chiefs operating illegal chiefdom courts should be fined for presiding over civil and criminal offences.

Civil society groups, including Prison Watch, are advocating for major reforms to sentencing laws to include provisions for alternative sentencing. Currently, most crimes offer the option of either paying a fine or serving a prison sentence. Thus, the majority of those incarcerated are among the poorest citizens. Community service and mandatory attendance at educational programmes could be beneficial options for minor crimes.

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<sup>347</sup> Interview with Justice of the Peace, Bo District, 30 July 2009.

<sup>348</sup> Interviews with civil society activists in Freetown, June–July 2009.

<sup>349</sup> Local Courts Act of 1963, Section 13(3).

<sup>350</sup> SLCMP Report from January 2009, available at [http://www.slcmp.org/drwebsite/manager/uploads/1/33d\\_newsletter\\_SLCMP.pdf](http://www.slcmp.org/drwebsite/manager/uploads/1/33d_newsletter_SLCMP.pdf).

## Women on death row: Their stories

There are currently no prisoners on death row in Sierra Leone, as at June 2012. However, in 2009, there were three women on death row at the Freetown Central Prison at Pademba Road. The women had much in common: all three were illiterate, all three were convicted of murdering the child of one of their husband's first wives, and all three did not have sufficient legal representation or understanding of the criminal justice system. MK, a woman aged 32, was convicted of murdering a child whom she said had been sick for more than a year, suffering from malnutrition and an undefined illness. After her arrest, she was taken to a police station, where she signed a confession, which she later claimed she had not understood. She alleges that her husband told her to answer guilty, and that she did not at the time understand the implications of this action. Another woman on death row, MSK, claimed that the child died when she was feeding him and food 'got up his head', apparently choking him. In 2004, three years after the incident occurred, her case went to trial. She lacked legal representation from her arrest until her conviction. Both lost their appeals.

The third woman who was on death row, NF, had never appealed. When interviewed, she appeared confused and did not seem to know what an appeal was. She is an illiterate woman, who was accused of murdering her husband's friend's daughter. She claims the child fell down a well. The Paramount Chief subjected her to 'guilt' tests by dipping her hands into hot oil to see if she felt pain. She failed this test twice and was then taken to the police. There, she alleged she was beaten, even though pregnant, and so was forced to confess.

These women were the focus of an unsuccessful campaign by AdvocAid, a local NGO, to pressure the President to grant them pardons on Sierra Leone's Independence Day in May 2009. Civil society continues to advocate for the abolition of the death penalty and executions, as they are in direct conflict with the right to life recognised by the UDHR [Universal Declaration of Human Rights], ICCPR [International Covenant on Civil and Political Rights] and Sierra Leone's own Constitution. However, in March 2011, in a landmark decision by the Court of Appeal, MK's original trial for murder was rendered a nullity and she was discharged. Given the fact that she had spent eight years in prison, the State declined to re-prosecute her. She was the longest serving female prisoner on death row.

### **SOURCES:**

Interviews done for this report at Pademba Road Prison, Freetown, 6 July 2009; 'Death Row Women Cry out for Justice', *Premier News*, 17 June 2009; '3 Women on Death Row Cry Out for Presidential Pardon', *Awoko News*, 23 April 2009; and 'Press Release: Presidential Pardon Sought', AdvocAid, 21 April 2009; AdvocAid Press Release 'Justice at last: The longest serving woman on death row in Sierra Leone released after 6 years', 10 March 2011.

## Death penalty

The death penalty applies to the crimes of murder, treason and related offences, mutiny under the Treason and State Offences Act of 1963, and robbery with aggravation.<sup>351</sup> Section 16 of the 1991 Constitution provides for that no person shall be deprived of life except in execution of a sentence of a court for a criminal offence for which he has been convicted. Section 211 of Sierra Leone's Criminal Procedure Act of 1965 provides for death by hanging for all condemned persons, and death by shooting in a public place for robbery with aggravation, treason and mutiny.<sup>352</sup> However, there has been a de facto moratorium on executions since 1998.<sup>353</sup> Section 63 of the Constitution allows the President to grant a pardon, respite or substitute a lesser form of punishment to someone convicted of an offence.

Civil society advocacy efforts for the abolition of the death penalty, as recommended by the TRC, have been unsuccessful. In fact, new death sentences were levied in May 2008, when three men were convicted of killing a man. However, that same year saw the release of ten men previously on death row for treason, after successful appeals. Nonetheless, lobbying for constitutional reform has been unsuccessful.<sup>354</sup> In December 2008, civil society activists denounced Sierra Leone's abstention from a UN General Assembly resolution that called for a global moratorium on executions.<sup>355</sup> As of 2009, there were 13 people on death row, three of whom were women.

## Commutation of all death sentences

In April 2011, the President, exercising his prerogative of mercy, commuted the sentence of all prisoners on death row to life imprisonment. Currently there are no prisoners on death row. However, murder trials are pending, and if the accused persons are convicted they are likely to be sentenced to death. The fact remains that, unless and until the death penalty is abolished and repealed by Parliament, judges will continue to sentence those convicted of murder, treason and robbery with aggravation to death.

## E. Prisons

### Legal framework

Sierra Leone's 1991 Constitution guarantees all citizens, including the incarcerated, their most fundamental rights. This includes the right to due process of law and to be free from torture or any cruel, inhuman or degrading treatment.<sup>356</sup> The legal framework for Sierra Leone's prison system lies within the Prison Ordinance of 1960, which regulates prison administration, including the treatment of prisoners and conduct of prison staff. Despite minor amendments in

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<sup>351</sup> Robbery with aggravation under the Larceny Act 1916 as amended by the Larceny (Amendment) Act No.16 of 1971.

<sup>352</sup> Section 1 of the Criminal Procedure (Amendment) No.3 Act of 1973 and Act No.22 of 1973.

<sup>353</sup> AdvocAid, 'Press Release: Presidential Pardon Sought', 21 April 2009, available at <http://www.thenewpeople.com/advocaid.doc>.

<sup>354</sup> In August of 2008, civil society groups unsuccessfully lobbied the Constitutional Review Commission to abolish the death penalty.

<sup>355</sup> 'Death penalty Sierra Leone: successful appeal strengthens case for abolition', *IPS News*, 12 December 2008, Available at <http://ipsnews.net/news.asp?idnews=45088>.

<sup>356</sup> Sections 15–21, 1991 Constitution.

the 1965 Criminal Procedure Act, there have been no major changes to these laws. According to the Directorate of Prisons, prisons have generally received less attention from the government and the international community than the courts and police. Immediately after the conflict ended in 2002, the military and police received a great deal of attention from the British government and NGOs. Only in 2006 did prisons receive substantial support after the JSDP began helping prisons develop an organisational strategy. The JSDP and Prison Watch have been key players in attempts to reform the laws. They have scrutinised the laws and made recommendations for reform, but these proposals have yet to be sent to the legislature. The 1991 Constitution does not contain a separate section on the prison service, nor does it address the rights of prison inmates or detainees, other than listing their right to be free from arbitrary detention and torture.

## Conditions and international standards

The Prison Rules themselves guarantee that all prisoners should be treated with respect and dignity, have access to adequate food, physical exercise, letters and visits, and proper hygiene. There has been considerable progress in the prison system in recent years to meet these standards, due to increased monitoring by NGOs and increased funding by international donors, such as the DFID (UK). The JSDP claims that, from 2005 to 2007, remand rates of the prison population fell from 70% to 65%.<sup>357</sup> Furthermore, the prisons now meet at least some international standards. For example, there are few reports of torture or serious physical abuse in prisons, and prisoners are allowed visitors, are entitled to legal representation if they can pay for it, and legal aid if they are indigent. However, the Department of Prisons admits that the conditions of its facilities fall well short of international standards in other areas, including poor medical care, poor sanitation and overcrowding.

Overcrowding is foremost among the prisons' critical problems. Sierra Leone has 15 prisons, housing a total of 2 334 inmates. The Freetown Central Prison houses almost half, at 1 159 inmates (300% capacity), as of 30 June 2009.<sup>358</sup> The second largest prison was destroyed during the civil war, although reconstruction is currently under way. The new prison will house 500 to 600 inmates after completion. There has also been a new prison structure completed in the Bo District. However, as a result of the current overcrowding, prisoners often have to compete with each other for access to beds, and sleep on mattresses on the floor. In 2008, only Freetown Central Prison had a functioning telephone, to which inmates did not have access.<sup>359</sup>

Lack of proper healthcare also plagues prison facilities. A trained medical doctor serves as the medical officer for the Freetown prison, but he is not exclusively engaged in this capacity. Resident nurses are supposed to be available to see prisoners on a daily basis, and if a matter is serious, the prison should refer inmates to government hospitals. However, in the provinces, vehicles are often unavailable to transport seriously ill inmates to a hospital. The JSDP often provides emergency drugs for acute conditions, as the prisons do not have sufficient funds to maintain a reliable supply. A lack of laboratories forces the Department of Prisons to send inmates to the main hospital in Freetown or to military facilities, and the prison medical ward

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<sup>357</sup> Interviews with JSDP officials, Freetown, 23 and 26 June 2009.

<sup>358</sup> Statistics provided by the Director of Prisons.

<sup>359</sup> African Human Security Initiative, 'Sierra Leone: A Country Review of Crime and Criminal Justice', May 2009.

cannot admit serious cases.<sup>360</sup> Skin diseases, such as scabies, are prevalent within prisons, and researchers have noted numerous bloodstains from mosquitoes on the walls of many cells.<sup>361</sup> There are reports of malnutrition, though the Department of Prisons defends itself by saying that the situation is no worse than outside the prison. Prisons claim to provide the inmates with three meals a day, though in some prisons only two meals per day are said to be served.<sup>362</sup>

Limited access to clean water further challenges the prison system. In 2008, there was a water crisis at Pademba Road Prison when the Guma Valley Water Company cut off the water supply to the prison because it failed to pay its water bills. Many prisoners were let out of their cells to bring water from outside the prison, which constituted an abuse of the prisoners' rights, as well as a major breach of public safety and a violation of prison security procedures.<sup>363</sup>

Currently, inmates are not divided according to type of crime or status. Remand prisoners are placed in with the convicted, and those accused of murder occupy the same space as those accused of loitering. The Department of Prisons has expressed its desire to separate prisoners by category, but lack the financial means and capacity to do so. The Department of Prisons assigned much of the blame for the overcrowding to the judiciary, which, in its opinion, did not adequately dispose of cases. Less than 50% of the prison population have been convicted of a crime. Most are on remand or have yet to receive a trial.<sup>364</sup> Though men and women inmates are separated, these barriers are often not firmly established. In some prisons, women and men are only separated by a wall, and in Kenema, the men and women even share bathrooms. However, the female sections do now have female guards. There is one all-female prison in the country, in Kenema, with 40 women incarcerated as of 30 June 2009. There are more males than females in prison. In July 2009, there were only 30 female inmates in Pademba Road Prison in Freetown, as opposed to almost 1 000 males. Though there are no reports of discrimination against females in the prisons, but special resources, such as female hygiene products, are scarce. Female prisoners at Pademba Road Prison in Freetown were recently relocated to the prison facilities of the Special Court for Sierra Leone, which offers better facilities than their previous location.

Women who give birth while incarcerated must care for the child in prison. For example, one female inmate at the Freetown prison gave birth one year into her four and a half-year sentence for unpaid debt. She cared for the child behind bars until he was nearly three years old.<sup>365</sup> Prison officials state that they attempt to ensure that women with infants are housed in cells with other mothers, but there is no official requirement to do so. The Department receives donations to feed the children from charities.<sup>366</sup>

There are approximately 1 000 prison staff in the country, 20% of which are female. Until the JSDP started conducting workshops for prison staff, officers had limited training. The JSDP has trained approximately 200 officers, in batches of 50 per course (four courses) and

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<sup>360</sup> Interviews at Department of Prisons, Freetown, 6 July 2009.

<sup>361</sup> African Human Security Initiative, 'Sierra Leone: A Country Review of Crime and Criminal Justice', May 2009.

<sup>362</sup> Interviews with prison guards, Pademba Road Prison; Report by AHSI, May 2009.

<sup>363</sup> African Human Security Initiative, 'Sierra Leone: A Country Review of Crime and Criminal Justice', May 2009.

<sup>364</sup> Of the total population, 993 are on remand, and 263 are currently on trial.

<sup>365</sup> Interview with inmate, Pademba Road Prison, 6 July 2009.

<sup>366</sup> Interviews at Prison Department, Freetown, 6 July 2009.

plans to continue until all staff receive training. This training includes instruction in prison techniques, prisoner rights and human rights. However, officials acknowledge even this training is inadequate, and call for more funding to provide comprehensive training to all staff.<sup>367</sup>

The Ministry of Internal Affairs is responsible for supervising the oversight of prison conditions. An oversight committee in Parliament has also been established. According to the Director of Prisons, the oversight committee has inspected the prison a number of times. Until recently, the International Red Cross visited almost daily, and now Prison Watch and the HRCSL have access to the prisons as well.

According to the Director of Prisons, every prisoner has the right to request to see the officer-in-charge to lodge a complaint. Prison officials maintain that inmates can also exercise the right to see the regional commander or the director, if desired. Inspectors also speak to inmates about their grievances. Complaints are lodged to prison authorities, and a prisoner can prosecute an officer. In the prison court established by law, high-ranking officers adjudicate cases, with potential penalties including loss of remission. The act of striking a prisoner can get an officer dismissed, according to prison officials. There have been no reports of homicides and rapes occurring in the prisons. The most common complaints against officers are that the inmates have been unfairly refused exercise time.

## **Reintegration of prisoners upon release**

The Department of Prisons openly speaks of its desire to reshape itself from a punitive organisation to a correctional facility, emphasising rehabilitation. The Freetown Central Prison currently has a limited vocational programme, with skills training in carpentry, tailoring, shoemaking, blacksmithery and masonry. In the provinces, facilities vary and tend to be more limited. For example, in Makeni, inmates receive almost no vocational training. In the past, the JSDP supported literacy programmes in Freetown, though they are currently defunct. However, such programmes still exist in Moyamba Prison. In the provinces, there are some agricultural training programmes, run by technical staff from the Ministry of Agriculture. Funding from the JSDP allowed Moyamba Prison to establish a prison farm to provide agricultural skills training, while the UN Peace Building Fund furnished new tools to some prisons for this purpose.

Overall, however, critical shortages of machines and hand tools for programmes such as carpentry remain. The Department of Prisons claims to have over 100 technical instructors, though this number is still insufficient. Funding is a problem, as the Department receives limited support from NGOs or the government for training inmates. There are almost no counselling services; only religious leaders educate inmates on the 'ills of crime'. The prison system provides no human rights or legal advice, though there are paralegals from other organisations who sometimes provide this support. After inmates are released, there is no follow-up. Increased funding for in-prison training throughout all prisons in the country would improve inmates' chances of a successful transition back into society and avoid recidivism.

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<sup>367</sup> Interview at Director of Prisons, Freetown, 6 July 2009.

## F. Recommendations

- The SLP Corporate Services Division, with the support of governmental institutions and NGOs, should develop more comprehensive crime statistics, divided according to ethnicity, age and gender of both victim and perpetrator. This would assist police in identifying and determining the impact of crime on the most vulnerable groups in society. To better analyse crime trends, the police should also focus on calculating crime rates over time and including crimes reported, prosecutions undertaken and convictions obtained.
- NGOs should work with the SLP to develop and administer a survey of crime victims to assess the level of underreporting of crime and the efficacy of the police in combating the fear of crime. The SLP should also make a greater effort to make crime statistics available to the public, without onerous procedures and restrictions. In addition, the SLP should make a greater effort to build trust among rural populations, and to increase crime reporting and formal prosecution rates outside of Freetown.
- Civil society must also play a more vigilant role in monitoring police abuse of citizens, and formal mechanisms, such as monitoring councils or police watch groups, should be established in localities. Funding should be increased to civil society groups and the government to improve their monitoring of local court practices, and to more efficiently bring trials of serious offences to a close, particularly sexual assault and domestic violence cases, within local or illegal chieftdom courts.
- To increase conviction rates, more training needs to be directed to FSU staff, local hospital workers, traditional leaders and the public-at-large about the gender laws. Specifically, FSU officers should be trained to investigate, prosecute and monitor cases under the gender laws and Child Rights Act, as well as how to generate reports for the central authority.
- The GoSL, in partnership with its donor partners and civil society, should continue to work on a strategy and funding plan to put together child welfare committees, which are mandated by the Child Rights Act of 2007. The provision in the Registration of Customary Marriage and Divorce Act that allows children to marry with consent from parents or a local authority should also be repealed to reduce parental pressure on children to enter into forced marriages.
- To protect the SLP from politicisation, the composition of the Police Council should be modified so it is less dominated by the executive branch, and so that it reflects more civilian participation and control, in line with the new local-needs policing strategies.
- Civil society should work to strengthen the Policing Partnership Boards (PPBs) in their localities and put pressure on police to respond more enthusiastically to civilian input.
- The preliminary investigation system in the magistrate courts should be abolished to reduce delays. However, to accomplish this task, police must be trained to investigate cases properly before charging suspects with a crime. The capacity of High Court judges and state council must also be increased.

- Private security companies need to be regulated to ensure the well-being of the public and the workers in the industry.
- To combat increasing political and ethnic violence, the police should focus on building coalitions with youths in their communities to foster dialogue and to build relationships among supporters of different political parties.
- The Constitution should also be amended to provide explicit authority for the CDIID to investigate complaints against police, and a thorough list of disciplinary procedures, offences and punishments should be codified into a new Police Act to replace the outdated 1964 Act.
- The National Legal Aid Board must be established immediately and an effort needs to be made to provide legal aid services nationwide, as provided for in the newly enacted National Legal Aid Act 2012 and the Constitution.
- The government should adhere to TRC recommendations and abolish the death penalty. Outdated laws, from specific criminal laws, such as the Offences Against Persons Act of 1861, to comprehensive legislation, such as the Criminal Procedure Act and the Public Order Act, should be updated. The provisions criminalising libel in the Public Order Act of 1965 should be repealed.
- Government, civil society and international donors should work together to provide more vocational training for prison inmates, as well as increased funding to improve living conditions within prisons, including healthcare, clean water and food.

# 6

## Access to justice

The Constitution guarantees the right of access to justice in courts, without discrimination. It mandates the government to secure and maintain the independence, impartiality and integrity of courts of law and unfettered access thereto, and to this end, ensure that the operation of the legal system promotes justice on the basis of equal opportunity. The Constitution also guarantees every accused a 'fair hearing' and imposes a duty on Parliament to provide financial assistance to indigent citizens whose fundamental rights in terms of the Constitution have been violated.

However, in both the customary and formal systems of justice, Sierra Leoneans have problems with access, equity, transparency and consistency of rulings. Definitions of criminal behaviour, deviance, corruption and other legal terms differ between the customary and formal law systems. Women face increased barriers in both systems due to discrimination, lack of information, and lower educational levels. Access to justice for women in both the customary and common law system is haphazard in Sierra Leone. Women often encounter discrimination before the law, especially in rural areas and particularly in matters concerning marriage, property and inheritance. Although the Constitution provides some degree of equality and protection for women, constitutional guarantees do not always translate to equal access or opportunity in the judicial or social sphere. Specific laws regarding adoption, marriage, divorce, burial, devolution of property on death and other personal laws, all of which fall under the purview of customary law, should be amended.

### **A. Knowledge of rights**

The three statutory bodies mandated to educate the public about their rights are the Office of the Ombudsman, the National Commission for Democracy (NCD) and the Human Rights Commission of Sierra Leone (HRCSL). Among other things, the Office of the Ombudsman is

mandated to educate the public about their rights and duties in a free, democratic society vis-à-vis the responsibilities and accountability of public officers. The country's first Ombudsman was appointed in 2000. From 2001 to October 2007, the Office was weak, under-resourced, and seen to be largely ineffective, with no clear focus.<sup>368</sup> Although it is a national institution, for a number of years it had offices in Freetown only. It has recently established offices in the regional headquarter towns. The NCD is mandated to promote human rights and good governance. Prior to the establishment of the Human Rights Commission of Sierra Leone, the NCD carried out extensive public awareness raising programmes, including radio, television and school visits that aimed to educate people about human rights. The HRCSL, which was established based on the recommendations of the Sierra Leone TRC, is mandated to promote and defend human rights.

Only about 30% of Sierra Leoneans are informed about their rights, and the rate is significantly worse in poor and rural communities.<sup>369</sup> In general, Sierra Leoneans have little knowledge about the Constitution of Sierra Leone, but additional efforts by NGOs have helped greatly to educate the public about basic human rights. Civic education about the Constitution is not part of the country's educational curriculum, nor is it widely undertaken by human rights organisations. Printed copies of the Constitution are sold only in Freetown, and there are no public education programmes specifically aimed at teaching the Constitution. A Legal Officer of the Lawyers Centre for Legal Assistance (LAWCLA) disclosed in an interview that probably less than 15% of the population has seen the Constitution. Despite the passage of gender and child rights laws in 2007, local commentators say additional efforts are required to not only educate the public about the provisions of the Act, but also to enforce its observance.<sup>370</sup>

NGOs engaged in human rights education include the Campaign for Good Governance (CGG), the Centre for Accountability and the Rule of Law (CARL-SL), Timap for Justice, LAWCLA, LAWYERS, the National Forum for Human Rights and Prison Watch, among others. In addition to radio discussion programmes on rights, CARL-SL produces monthly newsletters about human rights issues. Timap for Justice is principally engaged in training paralegals and the police in Freetown, as well as some provincial towns, to simplify the laws and engage in advocacy and sensitisation programmes. LAWCLA provides legal aid to indigent citizens, and has offices in Freetown, Makeni and Bo. Some local commentators believe that the successful efforts by NGOs in raising public knowledge about human rights have led to frequent standoffs between traditional authorities and their subjects, with the latter often claiming that their rights are being violated by the chief.<sup>371</sup> This has minimised the powers of traditional authorities, as many of their subjects tend to either flout their decisions or entirely ignore their courts. In addition to efforts by child protection NGOs, the MSWGCA has also undertaken public education programmes regarding the 2007 Child Rights Act. Though additional efforts are required, public knowledge about the rights of children has increased tremendously.<sup>372</sup>

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<sup>368</sup> Strategic Plan for the Office of the Ombudsman Covering the Period 2009–2013, p. 6.

<sup>369</sup> Interview with a senior official of Timap for Justice, June 2009.

<sup>370</sup> Panel Discussion on Female Genital Mutilation hosted by US Embassy in Sierra Leone, 25 November 2009.

<sup>371</sup> UN Radio discussion programme, April 2009.

<sup>372</sup> Interview with Children's Desk Officer, Ministry of SWGCA, 6 July 2009.

## B. Physical access

There are serious challenges with respect to citizens' physical access to courts, particularly in the provinces. Following the passing of the Courts Act of 1965, Sierra Leone was divided into 15 judicial districts.<sup>373</sup> Twelve of the judicial districts are located in the provinces. Section 4 of the Act states that there shall be a magistrate court in every judicial district. Currently, there are no resident magistrates in the four judicial districts of Kailahun in the Eastern Province, Kambia and Koinadugu in the Northern Province, and Bonthe in the Southern Province.<sup>374</sup> In the Moyamba judicial district, the JSDP started a mobile magistrate court in 2007, which services only four chiefdoms in the district. Currently, there are only three resident High Court judges in the provinces. They are based in Bo, Kenema and Makeni, which are the regional headquarter towns. However, magistrates and judges available in the headquarter towns are often too far away from villages or communities to be readily accessed.<sup>375</sup> In fact, it was only in 2006 that a registry was set up in the Northern provincial headquarter town of Makeni.

There are more than ten magistrates' courts in Freetown. The prevalence of courtrooms in Freetown the result of the extreme system of centralisation that characterised the country's administrative system in the post-colonial era. In addition, Freetown is the most populous city in Sierra Leone. Accordingly, most lawyers also reside in Freetown, which gives litigants in the provinces limited access to them. Until recently, the Anti-Corruption Commission (ACC) used to try all its cases in Freetown. Persons accused of corruption in the provinces were required to travel to Freetown for trial, which imposed serious financial constraints on the accused.<sup>376</sup>

Transportation is thus an obstacle to accessing the formal court systems, particularly for residents in remote areas as a result of poor road networks and financial difficulties. During an AfriMAP-led focus group discussion, all participants agreed that people would be more willing to use the formal court system if they had easier access to lawyers and courts.<sup>377</sup> In the Kailahun district, for instance, there is only one magistrates' court based in the district headquarter town of Lauwa. Residents from other parts of the district, including Daru and Pendembu must traverse a poor road network to access the court. There are also no reliable public transport systems in these places, thereby impeding public access to the courts. People are thus invariably forced to rely on the customary law system. Consequently, the government, through the JSRSIP 2008–2010, planned to build more magistrates' courts in the headquarter towns so as to bring formal justice to the people.<sup>378</sup> With assistance from the JSDP, the court-building programme has already begun in Freetown and the provinces. In the provinces, rehabilitation work has begun in courts, as has construction of accommodation for judges, magistrates and prosecutors.<sup>379</sup>

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<sup>373</sup> Sierra Leone: A country review of crime and criminal justice, 2008.

<sup>374</sup> Interview with HRCSL Regional officers, 5 July 2012.

<sup>375</sup> Justice Sector Reform Strategy and Investment Plan 2008–2010 p. 15.

<sup>376</sup> In June 2009, a retired Deputy Director of Education, South was indicted on corruption-related charges. He was then arrested in Bo and transferred to Freetown for trial.

<sup>377</sup> AfriMAP focus group discussions were held on the following dates: Makeni, 27 July; Bo, 30 July; Kenema, 31 July; Moyamba, 1 August.

<sup>378</sup> Justice Sector Reform Strategy and Investment Plan, 2008–2010, p. 60.

<sup>379</sup> Statement by Consultant Master and Registrar at a Parliamentary Seminar on Peace Building, 20 May 2009.

In addition, the justice system largely discriminates against people with disabilities. For instance, there are no braille transcripts, hearing aids, elevators or sign language interpreters in any of the courts. After years of campaigning, the Sierra Leone Disability Act was enacted in 2011. This Act seeks, among other things, to provide people with disabilities with increased access to justice.<sup>380</sup>

## C. Financial access

### Bribery and corruption

The perception persists that corruption and bribery among court officials hampers delivery of justice, particularly to the poor and vulnerable populations, and that the ‘moneyed’ clients get justice. Low salaries for judges, magistrates and court clerks increase the appeal of corruption and bribery in the judiciary. For instance, a High Court judge, Justice Taju Deen, was convicted in 2001 on corruption charges and sentenced to 12 months imprisonment.<sup>381</sup> In July 2008, the late Paramount Chief of Bo, Rashid Kamanda Bomgay, was also accused of instructing court assessors to rule against the rightful owner in a land dispute. The disputed land was later distributed between the Paramount Chief, the magistrate and others.<sup>382</sup>

In addition, there is a dearth of state lawyers in the Law Officers Department, which means that police officers often prosecute cases in the national courts, particularly at the magistrate level.<sup>383</sup> Since these police prosecutors generally lack adequate prosecutorial skills, they often fail to perform their tasks efficiently. There are allegations that police prosecutors receive bribes from litigants to compromise evidence in a given matter. Though trials are supposedly fair, there is evidence that corruption influences some cases.<sup>384</sup> In rape and domestic violence cases in particular, illegal payments are reportedly often used to settle matters out of court.

Public confidence in the judiciary has suffered principally as a result of allegations of pervasive corruption. Charles Margai, a legal luminary of 30 years, declared in a radio interview in 2009 that the ‘Sierra Leone judiciary has sunk’, and recommended that local judges or members of the bench should be replaced or interspersed with foreigners.<sup>385</sup> The judiciary is supposed to be the bedrock of good governance in sustaining the country’s democracy. Upholding the independence of the judiciary is consistent with concretising the rule of law theory of fair play and equal access to justice. With justice, the potential for conflict is minimal. The Sierra Leone police are expected to be partners with the judiciary in executing justice to all and sundry, without discrimination or favour. In dispensing justice, the police enter into an equal partnership with the judiciary, with whom they share an indispensable and complementary function. The breakdown of justice dispensation stems from the destruction of the police partnership with the judiciary in prosecuting crimes. Wherever the police fail to properly investigate criminal matters, they inevitably undermine the function of the judiciary. Likewise, the judiciary also hampers the efforts of the police when they fail to independently adjudicate matters before them.

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<sup>380</sup> Interview with Hon. Cuffie, Legal Practitioner and pioneer of the Disability Bill.

<sup>381</sup> A chart of anti-corruption cases in the courts: <http://www.anticorruptionsl.org/currentcourtcases.htm>.

<sup>382</sup> AFRIMAP-led focus group discuss, July 2009.

<sup>383</sup> The Criminal Justice System in Sierra Leone-Issue Paper November 2008: Compiled by Dr Annie Barbara Chikwanha, p. 3.

<sup>384</sup> The Criminal Justice System in Sierra Leone-Issue Paper November 2008, Compiled by Dr Annie Barbara Chikwanha.

<sup>385</sup> UN Radio Interview with Legal Practitioner cum Politician Charles Margai, June 2009.

## Court fees and the provision of legal aid

'Court fees for filing of legal processes in a case at the High Court is Le10 000 (approximately USD3), and Le5 000 (approximately USD1.50) at the magistrates court.'<sup>386</sup> Filing a writ of summons at the local courts is cheaper, but while fees may be relatively minimal, they sometimes constitute a barrier to indigent citizens. It is even more difficult to afford the cost of legal services, which constitutes the principal barrier to accessing the formal courts.<sup>387</sup> The High Court's Rules (Civil Rules of Procedure) 2007 provide that any person may sue or defend as a pauper on proof that he is not worth Le1 000 000 (approximately USD300).<sup>388</sup> Order 14(13) exempts persons admitted to sue as a pauper from paying any court fees. Yet it requires such persons to apply to the master and registrar and to prove that they have reasonable grounds for proceeding as a pauper.<sup>389</sup> Most litigants are unaware of this statutory provision and there is little evidence of its application.<sup>390</sup> Local commentators believe that the fluctuating nature of fines imposed in the local or informal courts, coupled with the prevalent poverty in rural communities, make it even more difficult to access justice in those communities. There are allegations that unreasonably heavy fines are sometimes imposed on people who are generally considered to be deviants or political opponents. Currently, the statutory minimum wage in Sierra Leone is about Le40,000 (approximately USD15).<sup>391</sup> Given the poverty levels in the country, many litigants who file or are required to respond to cases at the High Court should qualify as 'paupers', and thus require legal aid.

There is currently no fixed or statutory scale of fees for lawyers in Sierra Leone. The Legal Practitioners Act of 2000 mandates the General Legal Council to prescribe the scale of fees for legal practitioners in respect of non-contentious matters.<sup>392</sup> While there is no standard scale of fees for consultation and legal services, initial consultation fees range from Le150 000 (approximately USD50) for senior lawyers to Le50 000 (approximately USD20) for junior lawyers.<sup>393</sup> With such fees, most litigants cannot meet the financial demands of accessing justice, as provided for in section 17(2b) of the Constitution.<sup>394</sup> A report by a JSDP legal aid consultant noted that 'probably more than 80% of the legal needs of the poor people of Sierra Leone go unmet, and about 85% of the population living outside the Western Area rely on traditional customary law dispute resolution mechanisms'.<sup>395</sup> A number of local human rights organisations, including

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<sup>386</sup> Interview with Deputy Master and Registrar, High Court of Sierra Leone, 10 July 2009.

<sup>387</sup> Interview with Legal Officer, LAWCLA, 10 July 2009.

<sup>388</sup> High Court (Civil Procedures) Order 2007, Order 14(10).

<sup>389</sup> 1965 Amended Court Act of Sierra Leone.

<sup>390</sup> Interview with Secretary General, Sierra Leone Bar Association, 13 July 2009.

<sup>391</sup> Interview with Deputy Manager, Payroll Benefit Department, National Social.

<sup>392</sup> Interview with a Legal Practitioner at MS Turay and Associate Chambers, 17 July 2009.

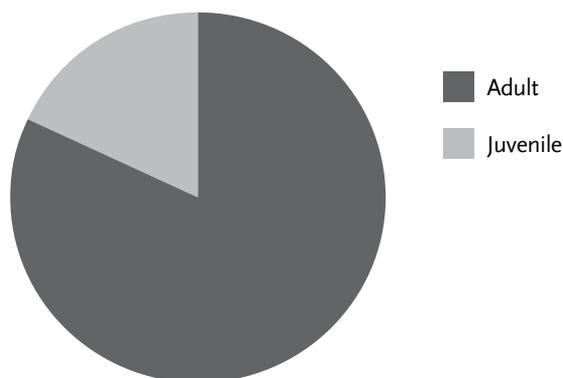
<sup>393</sup> Interview with Treasurer, Sierra Leone Bar Association, 10 July 2009.

<sup>394</sup> Sierra Leone: A country review of crime and criminal justice, 2008 p. 74.

<sup>395</sup> Sierra Leone: Draft National Legal Aid Policy 2009, p. 1.

Timap for Justice<sup>396</sup>, Lawyers Centre for Legal Assistance<sup>397</sup> and Legal Access through Women Yearning for Equality Rights and Social Justice, provide some legal aid to indigent citizens. As mentioned previously, the Sierra Leone Bar Association (SLBA), with funding from the United Nations Development Programme (UNDP), also launched a legal aid project. However, these efforts are not sufficient to meet the ever-increasing need for public access to justice. A 2009 report by a JSDP-sponsored consultant recommended that Parliament enact a Legal Aid Act that provides for the administration, implementation, coordination and monitoring of a National Legal Aid Scheme.<sup>398</sup> An earlier report on the Feasibility of a Legal Aid System for Sierra Leone, commissioned by the JSDP in March 2007, recommended that an independent statutory body be set up to coordinate and administer legal aid in Sierra Leone. It further recommended establishing a public defender's office. In response, the Pilot National Legal Aid Scheme (PNLA) started operations in January 2010, and was officially launched in April 2010. Prior to the PNLA, the government operated a limited legal aid scheme, mainly for persons facing charges of treason, and some local human rights organisations provide legal aid to indigent citizens. However, these efforts were not sufficient to meet the ever-increasing need for public access to justice. Therefore, the PNLA scheme aimed to establish a sustainable, affordable, credible and accessible national legal aid for accused persons in Sierra Leone who cannot afford to pay for the services of a lawyer. In May 2012, Parliament enacted the National Legal Aid Act, which will increase legal aid services nationwide. Since it was established, between January 2010 and June 2011, the PNLA has provided legal services to over 3 475 persons, including 2 851 adults and 624 juveniles, among which were 3 183 males and 292 females.<sup>399</sup>

Figure 1: PNLA case summary by age, January 2010–June 2011



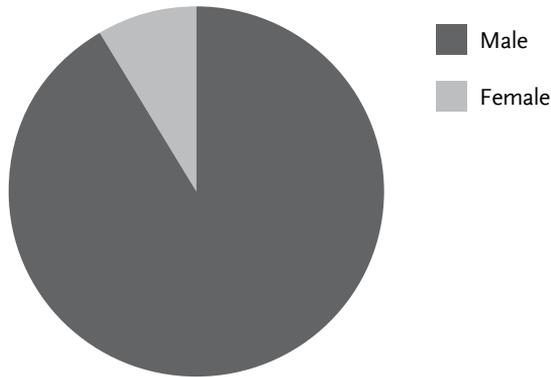
<sup>396</sup> Timap for Justice is a pioneering effort to provide basic justice services in Sierra Leone. Because of a shortage of lawyers in the country and because of Sierra Leone's dualist legal structure, Timap's frontline is made up of community-based paralegals rather than lawyers. Website: <http://www.timapforjustice.org/>.

<sup>397</sup> LAWCLA is an independent, non-profit Public Interest Human Rights Law Centre, which among other things, provides free legal services to poor members of the public. Website: <http://www.lawcla.org/aboutus.html>.

<sup>398</sup> Sierra Leone: Draft National Legal Aid Policy 2009, p. 1.

<sup>399</sup> Data provide by Ida Lisk, Coordinator of PNLA in July 2011.

Figure 2: PNLA case summary by sex, January 2010–June 2011



## D. Procedural problems

Extremely formal rules for procedures have invariably prevented a largely illiterate and uninformed citizenry from accessing justice. Any person may begin and carry on proceedings in the High Court by a solicitor or in person. However, a body corporate cannot technically institute an action, except by using a lawyer, and a ‘next friend’ or guardian *ad litem* of a person with a disability can only act using a lawyer.<sup>400</sup> According to Order 5(1) of the High Court Rules 2007, to appear in court, a petitioner must file a writ of summons. Without a writ of summons, no civil proceedings will commence. Before a writ is filed, it must be endorsed by a statement of the capacity in which the plaintiff sues (when the plaintiff sues in a representative capacity), or with a statement of the capacity in which the defendant is sued (when a defendant is sued in a representative capacity). According to Order 6(1), the writ must have a statement of the nature of the claim, as well as the relief or remedy sought in the action. No writ shall be issued unless the statement of claim is filed with it. According to Order 6(8), no writ of summons for service out of the jurisdiction shall be issued without the leave of the court or a judge. In accordance with JSRSIP 2011–2014, plans are underway to adopt a best practice review of civil procedures in the magistrates’ courts with a special emphasis on streamlining and simplifying procedures, including considering the potential for small claims procedures and alternative dispute resolution.<sup>401</sup>

## Respect for court orders

The High Court Rules grant the court the power to enforce their judgments.<sup>402</sup> Court orders are enforced in a variety of ways. The court may issue a writ of *feri facias*, which is a writ ordering a levy on the belongings of a debtor to satisfy the debt. The court may also hold a garnishee proceeding or appoint a receiver to take a debtor’s wages on legal orders, such as for child support. Lastly, the court can issue a writ of sequestration, which authorises the seizure of

<sup>400</sup> High Court Rules of Procedure 2007, section 14(14).

<sup>401</sup> Justice sector Reform Strategy and Investment Plan, 2011–2014.

<sup>402</sup> High Court Rules 2007, Order 46.

property and an order of committal, which entrusts the property to an attorney. If a judgment or order gives possession of land or immovable property, it may be enforced by issuing a writ or order of possession. However, a writ of possession cannot be issued until it is shown that every person currently possessing the property has received notice of the proceedings and has had a chance to apply for any relief to which he or she may be entitled.

On the whole, court orders have not been successfully enforced for a number of reasons. Given the excessive delays that characterise court proceedings, some verdicts are handed down after the demise of one of the parties, almost rendering verdicts meaningless. Also, many unsuccessful litigants have exhausted all their money on the litigation and have nothing for the successful party to take. In addition, court officials collude with unsuccessful parties to delay and frustrate enforcement. This highlights the fact that the courts do not follow up to ensure that their orders are executed. Some unsuccessful litigants may also decide to drag the case through the various appeal processes and other legal mechanisms simply to frustrate the other side, most often with the advice and support of their counsel. Some simply refuse to obey court orders, mostly because of their connections to powerful members of society. Accordingly, the JSRSIP is seeking to undertake a review of enforcement methods, focusing on the performance of bailiffs and the provision of capacity building activities for officers who enforce court orders.

## **E. Alternative access to justice**

### **The Human Rights Commission of Sierra Leone (HRCSL)**

The TRC report, published in October 2004, recommended establishing a national human rights commission to serve as both a watchdog and a visible route through which people can access their rights.<sup>403</sup> The Human Rights Commission was thus established pursuant to Section 3(1) of the Human Rights Commission Act of 2004, and set up in December 2006. The Commission has a mandate to address all rights guaranteed by Chapter III of the 1991 Constitution of Sierra Leone or embodied in international agreements to which Sierra Leone has acceded. Section 7(1) of the Act empowers the Commission to protect and promote respect for human rights by voluntarily undertaking investigations into alleged violations or on the basis of a complaint (Section 7[2]). During an investigation, the Commission has the same power as that vested in the High Court and can compel the production of documents, among other things. The Commission can intervene in legal proceedings involving any human rights issue by issuing *amicus curiae* briefs. It can order payment of compensation and financial assistance, including legal aid, to indigent citizens of Sierra Leone who are victims of human rights violations. However, the Commission cannot investigate matters pending or decided by a court of competent jurisdiction or any human rights violations that occurred before 26 August 2004. Any person aggrieved by any decision of the Commission may appeal to the Supreme Court. The Commission cannot investigate alleged cases of corruption, or abuse of power or unfair treatment by public officials or private persons and institutions. These powers rest with the Anti-Corruption Commission (ACC) and the Office of the Ombudsman.

The HRCSL only has offices in Freetown and the three provincial headquarter towns of

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<sup>403</sup> TRC Report Vol. 2, Recommendations, para. 98 p. 135.

Bo, Makeni and Kenema. Although the Commission has indicated it intends to establish more offices across the country, current financial difficulties suggest that this is a long-term goal. Since its establishment, the HRCSL has collaborated with non-governmental organisations and public-interest institutions to promote human rights, gender justice laws, child rights laws and human rights-based local court procedures. The HRCSL's Complaint, Investigations and Inquiries Rules, which describe procedures for handling allegations of human rights violations, were only completed and published in 2008. In its 2008 report, the Commission said it experienced a 400% increase in the number of complaints filed during the year, from 40 in 2007 to 204 in 2008. Of the 204 complaints received, it ruled that 81 were inadmissible and referred them to the appropriate agencies for action.<sup>404</sup>

The 2008 report also highlighted how several recent difficult cases were resolved, including the successful negotiation to facilitate the restoration of the supply of water at the Central Prison in Freetown and an investigation into the mysterious death of an 18-year old girl in Kenema in 2007.<sup>405</sup> In 2007, the Commission also successfully negotiated the release of inmates at the maximum security prisons who were being unlawfully imprisoned.<sup>406</sup> In collaboration with the United Nations Mission in Sierra Leone, it has organised conferences aimed at enhancing the capacity of civil society groups to monitor human rights nationwide, as well as implementing TRC recommendations.

In accordance with its statutory mandate, the HRCSL has regularly produced the annual State of Human Rights reports from 2007 to 2011. These were presented to the President, Parliament and the public. In 2011, the Commission held its first public hearings in respect of 235 ex-servicemen who complained of discrimination by their former employers, the Ministry of Defence. They claimed they were wrongly categorised as 'chronically ill and mentally imbalanced', though they were wounded in action following the war and, as a result, received less in termination benefits than other wounded-in-action personnel. The Commission gave a decision in favour of the complainants and recommended the payments to which they were entitled. These payments had still not been implemented as of June 2012.<sup>407</sup> Earlier in that same year, in accordance with its Complaints Rules, the HRCSL successfully facilitated a conciliation agreement between the Sierra Leone Police Presidential bodyguards and a group of complainants, a group of workers at the Bo/Kenema power station. The complaint was of high handedness and violence by the guards when there was a power cut during a presidential visit in Kenema.<sup>408</sup> The SLP fulfilled the terms of the agreement, which included an apology to the victims, a radio broadcast in Kenema by both parties on the outcome of the HRCSL conciliation proceedings and a symbolic monetary compensation.<sup>409</sup> In 2011, the HRCSL was accredited Grade 'A' status by the UN International Coordinating Committee for National Human Rights Institutions for the Promotion and Protection of Human Rights in Geneva for complying with the UN Paris Principles.<sup>410</sup>

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<sup>404</sup> The State of Human Rights in Sierra Leone 2008, p. 34.

<sup>405</sup> The State of Human Rights in Sierra Leone 2008 p. 20.

<sup>406</sup> Sierra Leone Court Monitoring Programme Newsletter.

<sup>407</sup> Interview with Commissioner, July 2012.

<sup>408</sup> *Ibid.*

<sup>409</sup> *Ibid.*

<sup>410</sup> The State of Human Rights in Sierra Leone 2011: an annual report of the Human Rights Commission of Sierra Leone, p. 10.

Challenges faced by the Human Rights Commission of Sierra Leone, highlighted by the Chair, Mr Edward Sam, were insufficiency of funds to implement nationwide programmes, and recruiting and retaining qualified staff. Other issues included the administration of justice, conditions of prisons and other places of detention, a lack of effective and efficient responses to violence against women and children, failure to establish the TRC follow-up committee, the need to intensify the training of chiefs regarding their roles and responsibilities in the protection of human rights, the high incidence of teenage pregnancy and the high drop-out rates of school girls, which undermined their right to life, education and overall development.<sup>411</sup>

To commence and sustain its operations, the Commission relied heavily on the technical and financial support provided by the United Nations Peace Building Fund (UNPBF), Irish Aid and the UNDP. In 2007, the Commission received USD1.2 million from the UNPBF to subsidise its operational and programmatic costs.<sup>412</sup> In its 2008 report, the commission said it had achieved a 97% level of implementation of the HRCSL/UNPBF project.<sup>413</sup> The report noted, however, that development partners did not support any of the several funding proposals it submitted in 2008.<sup>414</sup> It warned that its continued success depends on the provision of adequate funds to be able to deliver its services, particularly in the light of the high level of expectation from the public. It urged the government of Sierra Leone to increase its financial assistance to the Commission. As at June 2012, the Commission's work is hampered by inadequate funding, thus limiting its services to communities. This highlights the need to strengthen the Commission to make it less dependent on international donor institutions. While the Commission enjoys statutory independence in the execution of its mandate, local commentators believe that its over-dependence on the government for financial support could compromise its independence. However, the internationally recognised Paris Principles governing national human rights institutions require such institutions to be adequately resourced by the government.

## Alternative dispute resolution mechanisms

In addition to the Human Rights Commission of Sierra Leone, other statutory bodies mandated to provide alternative dispute resolution services include the Office of the Ombudsman and the Independent Media Commission (IMC). The Office of the Ombudsman was established to give assistance to persons who believe they have suffered injustice as a result of maladministration at the hands of public officers employed by government departments or agencies. The IMC is one of the pillars of democracy developed by the GoSL, in collaboration with the Sierra Leone Association of Journalists (SLAJ), to enhance good governance and press freedom in Sierra Leone. The IMC Act 2000 mandates the Commission to compile and adopt a comprehensive Code of Practice, in consultation with the SLAJ and any other media practitioners' association, and to monitor the implementation of the code throughout the country.<sup>415</sup> The Commission aims

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<sup>411</sup> Ibrahim Kalokoh, *For di People Newspaper*, 23 July 2009.

<sup>412</sup> Interview with Public Information Officer, Human Rights Commission, 20 July 2009.

<sup>413</sup> *The State of Human Rights in Sierra Leone 2008* p. 91.

<sup>414</sup> *Ibid* p. 22.

<sup>415</sup> *Independent Media Commission, 2008 Annual Report*, p. 5.

to protect the interest of the public against exploitation or abuse by media institutions and to ensure that they achieve the highest level of efficiency when providing media services.<sup>416</sup>

Other existing alternative dispute resolution bodies are not very well utilised, and are restricted mainly to Freetown. The GoSL, through the JSRSIP 2008–2010, has supported activities to link court processes to community alternative dispute resolution methods, such as mediation, to expedite case disposal and reduce case backlogs.<sup>417</sup> Under this scheme, plans are underway to reduce the number of cases that come to the criminal justice system by settling less serious disputes at the community level. It also builds on the Informal Resolution Policy Unit already designed by the Sierra Leone Police.<sup>418</sup> In addition, it would reduce the number of children in conflict with the law that are processed through the formal justice system by encouraging significant community intervention. For example, it proposes to offer first time, non-violent offenders a second chance.<sup>419</sup> To this end, the scheme plans to develop Guidelines on Diversion for service providers, community leaders and law enforcement officers to identify and utilise diversionary programmes. Given the high rate of illiteracy, particularly in rural and poor communities, extensive training and sustained monitoring might be required to effectively implement the scheme. The judiciary also recently established a division of the High Court for commercial disputes. Although it is still formally a division of the High Court, the commercial court has its own registry, building and customer service ethos. Lawyers have commented that this court is more effective, with less disposal time in determining cases.

## Traditional justice systems

In view of the high level of illiteracy among Sierra Leoneans, the majority of the disputes enter the customary law structures.<sup>420</sup> The institution of chieftaincy is guaranteed by section 72(1) of the 1991 Constitution. The authority of the paramount chieftaincy was formally established in 1938 by the Native Administration Act and has undergone significant reforms over the years. The system of chieftdom councils was established by the Tribal Authorities Act of 1964, and comprises the paramount chief, section and town chiefs, an electoral college of councillors and a chieftdom administration. The chieftdom administration includes a varying number of staff (including court functionaries and chieftdom police).<sup>421</sup> Consistent with the Constitution of Sierra Leone, the Paramount Chieftaincy Act of 2009 provides guidelines with respect to the qualifications, powers, functions, removal and other matters connected with the chieftaincy.<sup>422</sup>

The country's local tribunals that existed during the colonial regime were formalised by the 1963 Local Court Act and the newly enacted Local Court Act of 2011. Since 1963, when the first Local Courts Act was passed, the chiefs no longer preside over court cases, except those relating to land and boundary disputes.<sup>423</sup> The same applies under the Local Court Act of 2011. Nonetheless,

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<sup>416</sup> *Ibid* p. 9.

<sup>417</sup> Justice Sector Reform Strategy Investment Plan, 2008–2010, p. 75.

<sup>418</sup> *Ibid* p. 59.

<sup>419</sup> *Ibid* p. 67.

<sup>420</sup> Sierra Leone: A country review of crime and criminal justice, 2008, p. 74.

<sup>421</sup> Peace Building Support Office: Briefing Paper on Local Governance and Democracy in Post-Conflict Sierra Leone, p. 6.

<sup>422</sup> Section 72(5) of the 1991 Constitution of Sierra Leone.

<sup>423</sup> Local Court Act 1963, section 13(1).

chiefs play a monumental role in settling disputes. Chiefs and their Councils of Chiefs have extended their jurisdiction beyond strictly chieftaincy-related matters to family and property matters, land disputes and matrimonial disputes. In essence, traditional chiefs have unofficially retained judicial power that they continue to exercise, despite the abolition of traditional courts in 1963. Currently, 85% of Sierra Leoneans fall under the jurisdiction of customary law. Many Sierra Leoneans prefer traditional systems of justice because they reflect local values and are faster, cheaper, easier to reach and easier to understand. The following table shows the cost of litigation in native administration courts in three provincial districts. These figures indicate that traditional systems are relatively cheaper than the formal court system.

*Table 7: Litigation fees/costs in native administration courts in Sierra Leones (Le)*

	<b>Bo</b>	<b>Moyamba</b>	<b>Kenema</b>
Summons	20 000	10 000	30 000
Transport for police to convey message to defendant	5 000	5 000	10 000
Oath/swearing	10 000	10 000	20 000
Reimbursement of witness transport at every court appearance	5 000	5 000	5 000
Witness fees paid to the court		5 000	

Source: Prepared by AfriMAP focus group.

However, faith in chiefs has diminished since the end of the civil war. In addition, the overt participation of chiefs in the 2007 presidential and parliamentary elections, wherein they took sides with political parties, considerably diminished their authority. During an AfriMAP focus group discussion in the districts of Bo, Kenema, Makeni and Moyamba, the participants agreed that the power of chiefs had significantly eroded, and that fewer people use chiefs' courts today. The activities of local government authorities and civil society groups, aimed at raising awareness among the rural populace, mean that more people are now aware of their basic rights. The result is that they now tend to flout verdicts handed down by chiefs.<sup>424</sup>

Furthermore, with the traditional systems of justice, there are also difficulties with access, equity, transparency and consistency of rulings, which may further marginalise some segments of the population.<sup>425</sup> In many cases, customary law and its procedures fail to accord with either Sierra Leone's Constitution or the international human rights treaties the country has signed. Discrimination against women and bias on the basis of social status are particularly rampant. The three gender laws passed in 2007 seek to address those discriminatory practices, but huge questions remain as to their implementation. Traditional forms of punishment, which are considered degrading and dehumanising by international human rights standards, prevail in some communities. For example, in 2008, a chief in northern Sierra Leone chained an 11-year old girl for not paying the fine imposed on her.<sup>426</sup> In view of the significant role played by the traditional authorities in resolving disputes, the JSRSIP seeks to train traditional authorities in

<sup>424</sup> AfriMAP held a week-long focus group discussion in the week of 27 July.

<sup>425</sup> [http://www.ssrnetwork.net/document\\_library/detail/4243/access-to-justice-in-sierra-leone-a-review-of-the-literature](http://www.ssrnetwork.net/document_library/detail/4243/access-to-justice-in-sierra-leone-a-review-of-the-literature).

<sup>426</sup> Interview with Project Officer, Defence for Children International, 21 July 2009.

the basic concepts of human rights (including gender issues), appointment and tenure, and basic record-keeping.<sup>427</sup>

## F. Recommendations

- The government must provide additional funding to the HRCSL, IMC, the NCD and the Office of the Ombudsman to undertake public awareness programmes about basic fundamental human rights.
- The government, with its partners, should build more courts in the provinces to make justice more accessible to the people. The government should also replicate the JSDP's circuit court system in other parts of the country, and provide attractive incentives to legal practitioners who choose to live and work in the provinces. Additional juvenile courts should be constructed across the country.
- The judiciary should work towards ensuring that its processes and structures are disability-friendly and provide interpreters in sign language. Parliament should expropriate funding to implement the Disability Law across the country to provide access to justice for persons with a disability.
- The government should take urgent steps to implement the new National Legal Aid Act by establishing the board tasked with providing legal aid.
- The government should take steps to ensure that small claims procedures and alternative dispute resolutions are enforced. The possibility of using alternative dispute resolutions linked to the formal court, as suggested by the JSRSIP, must be pursued.
- Gender-related barriers to accessing justice must be addressed as a matter of urgency. The government, through its statutory bodies, must ensure that the provisions of the three gender laws enacted in 2007 are not only disseminated, but are also fully implemented.
- The Justice Sector Coordination Office and its partners, in collaboration with the judiciary, should train more paralegals to address cases of injustice at the wider district level. Measures to protect women must be strengthened and local and chiefdom justice administrators must be trained on the gender justice laws to protect women. Fines for various offences should be standardised to avoid the exploitation of litigants by chiefs and court clerks.
- In view of the significant role played by traditional authorities in dispensing justice at the rural level, and to help curb some of their excesses, the government should implement the JSRSIP's proposal of training traditional authorities in the basic concepts of human rights (including gender issues), appointment and tenure, and basic record-keeping.

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<sup>427</sup> Justice Sector Review Strategy and Investment Plan, 2008–2010, p. 52.

# 7

## Development partners

Since the conclusion of the civil war and the onset of democracy, many partners have assisted in the reconstruction of the justice sector. Support has been given through multilateral agreements (as in the case of the World Bank and the European Union) or bilateral agreements (as in the case of DFID and Irish Aid). It is estimated that 85% of the justice sector budget is provided by donors, either in its General Budget Support (EU, World Bank and DFID) or the newly created Sector Budget Support (DFID/JSDP initiative). Overall, donor support has assisted in training, infrastructure, logistics and equipment, including vehicles, hiring judges and the Director of Public Prosecution, and improving salaries of magistrates and others.

### **A. Foreign assistance in the justice sector**

Donor support to the sector is normally found in project documents that are sometimes available via the web, in project memorandum, reviews/evaluations and annual reports. It is not common practice for financial information (considered sensitive by donors) to be made public. This includes operational costs, fees for consultancies, information on the disparities between local and international consultants, and management fees for organisations that win bids to manage donor-funded programmes.

The following are the main supporters of the justice sector reforms in Sierra Leone.

### **The UNDP**

The United Nations Development Programme continues to implement various projects in the justice sector. Major projects include: 'Access to Justice', 2004–2007; Administration of the Peace Building Fund (UNPBF), 2007–2009; and 'Improving Access to Justice' in partnership

with the Bureau of Conflict Prevention and Recovery, 2009–2011. The UNDP’s progress report<sup>428</sup> indicates that full implementation of the Access to Justice Project is in progress. The project was extended to 2012. Significant improvements in service delivery within the justice sector MDAs have been recorded. These improvements are attributed to the provision of logistics, top-up salaries for the Law Officers Department, the creation of a civil society forum, and the willingness of government functionaries to engage and work together in delivering justice and support to the quasi-judicial function of the Human Rights Commission of Sierra Leone. Media practitioners have also received some training, along with a handbook, that guides them in reporting on high-profile sexual and gender-based violence cases (SGBV). Basic incentives, such as awards and fellowships, are also part of the project.

## **The DFID**

A new Improved Access to Security and Justice programme, costing GBP19 million over a four year period (2011–2014) has also been supported by the DFID (UK). The strategy is aimed at ‘Accelerating Equitable Security and Justice, Community Empowerment and Mobilization and Accountability and Oversight’. The three outputs form part of the government’s Justice Sector Reform Strategy and Investment Plan, which defines the government’s policy for interventions within the sector, in line with the government of Sierra Leone’s Agenda for Change. The programme, which started in September 2011, is the successor programme to the Justice Sector Development Programme (JSDP) that was phased out in August 2011.

## **The EU**

The European Union supports the justice sector through the General Budget Support it provides for the country. It also supports civil society groups and capacity building through the EU Fund for Democracy and Human Rights.

## **UNICEF**

The United Nation’s Children’s Fund continues to support the Ministry of Social Welfare Gender and Children Affairs, specifically with probation and juvenile justice, the implementation of the Child Right Act of 2007, anti-human-trafficking law and the gender justice laws. UNICEF continues to perform studies, data collection and analysis of the general situation of children, developing codes of conduct for teachers on sexual abuse, and working with local justice mechanisms (chiefdom by-laws, gender training and sensitisation). In the area of orphanages and child holding centres, UNICEF has mapped out and set minimum standards and guidelines. The Family Support Unit (FSU) of the Sierra Leone Police, which works on domestic abuse and sexual and gender-based violence, also receives support from UNICEF in the areas of capacity building, training and basic logistics.<sup>429</sup>

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<sup>428</sup> UNDP & BCPR Project on Access to Justice Monthly Progress Report, June 2009.

<sup>429</sup> Reported by Mike Charley, a national staff member of UNICEF Sierra Leone.

## The World Bank

World Bank support to the justice sector comes from the General Budget Support it gives to the government of Sierra Leone. Its primary contribution has been support for J4P, a small project within Sierra Leone, which is part of a larger global project. J4P primarily focuses on how people access justice. It works with local partners such as the Campaign for Good Governance (CGG), Timap for Justice and the Decentralisation Secretariat of the Institutional Reform and Capacity Building Project (IRCBP). Along with the CGG, J4P conducted qualitative research in Bombali, Bo, Moyamba and the Western Area, and in Kono District in 2009.<sup>430</sup> With the IRCBP, J4P conducts annual household surveys (National Public Service Survey<sup>431</sup>). J4P also partnered with Timap for Justice on community-based paralegals and evaluated the work of Timap for Justice in pilot districts.

## The ICRC and the IRC

Water and sanitation, including basic medical supplies to detention centres, formed the core of the International Committee of the Red Cross' (ICRC) support to the justice sector. The International Rescue Committee (IRC), through the Rainbow Centres and the FSU, supports victims of rape and sexual abuse. They are engaged in a series of advocacy campaigns, primarily on domestic violence and gender-based violence. The IRC is also involved in training local authorities and the SLP on the new gender laws, and developed a generic tool for civil society organisations for court monitoring.

## The GIZ

The German International Cooperation (GIZ), with funding from the Federal Republic of Germany,<sup>432</sup> developed the Promoting the Rule of Law and Justice Project in Sierra Leone. The project concentrated on four areas:

- Qualification of justice personnel (supporting the Legal and Judicial Training Institute [LJTI] with equipment, developing and implementing new curricula, funding training courses for judicial personnel at the LJTI, and funding for decentralised training of local court officials);
- Reform of the justice sector (supporting the development of reform proposals and supporting the Law Reform Commission with equipment);
- Access to justice (funding training of paralegals, providing transport for circuit magistrates' courts during their mobile hearings, and supporting the customary law officers with equipment and salary top-ups); and
- The Police Project (peacekeeping training, addressing gender-based violence and other police training needs).

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<sup>430</sup> Disclosed in an interview with Gibril Jalloh, Programme Officer J4P.

<sup>431</sup> The National Public Services Survey is conducted annually by the IRCBP and her partners to look into 'Public Services, Governance, Dispute Resolution and Social Dynamics'. The first was conducted in 2007.

<sup>432</sup> Interview with Lucie Laplante, GIZ, now GIZ Justice Advisor and Head of Justice Project in Sierra Leone.

## The UNIPSIL

The Human Rights and the Rule of Law Section of the United Nations Integrated Peace Building Office in Sierra Leone (UNIPSIL) supported the Constitutional Review Commission, the prisons, training of police prosecutors, capacity building of civil society, the Law Reform Commission, Human Rights Commission of Sierra Leone and the local courts. UNIPSIL also provides capacity-building training, assessment of detention centres, production of training manuals for targeted institutions, and advocates the inclusion of human rights in school and college curricula. UNIPSIL has worked in close partnership with the Human Rights Commission of Sierra Leone and provides technical support to the Commission.

## Additional supporters

A few other organisations, such as the Open Society Justice Initiative (OSJI), Christian Aid and the Commonwealth Secretariat, either directly support the formal justice sector institutions or informal institutions, such as NGOs, paralegals and civil society.

## B. Improving coordination

Coordination among donors has been both formal and informal, though rather ineffective. Many donors independently planned and implemented programmes immediately after the war ended, and shared little information with other relevant stakeholders. However, recent years have seen improvements. The majority of donors currently engage stakeholders and development partners, while the quest for information by the media, relevant line ministries and civil society ensures that information on many projects are made public.

At the formal level, an institutional framework was initiated a few years ago through the government's Development Assistance Coordination Office (DACO). DACO, under the office of the then Vice-President, was established to supervise the development of Sierra Leone's Poverty Reduction Strategy Papers. DACO was therefore the key institution coordinating all activities relating to the production of the country's PRSP I (2005) and II (2009). The government uses the PRSP to track most of the development assistance coming into the country. DACO thus acted as the main organ behind the country's development strategy through the PRSP, and has striven to collate basic information about development partners and their assistance to Sierra Leone. It also produced an annual information booklet on Sierra Leone (*Encyclopaedia Sierra Leone*). Its mandate was then extended to include coordination, facilitation and analysis of development assistance.

The newly created Justice Sector Coordination Office (JSCO), under the Ministry of Justice, is charged with mobilising and coordinating donor assistance towards the Justice Sector Reform Strategy and Investment Plan (JSRSIP) in particular, and towards the justice sector as a whole. The mandate of the JSCO is currently being reviewed for sharper focus on the attainment of results. In 2006, key donors within the justice sector committed to formally meet once a month as part of a harmonisation and information-sharing exercise. However, they were unable to follow through on the initial commitment and currently meet once every two months. The meetings aim to minimise duplication of efforts, effectively use limited resources and to collaborate successfully to achieve a maximum impact on activities and initiatives in the sector.

The Child Justice Strategy and the enactment of the gender laws serve as examples of the success of such coordination meetings.

### **c. Analysis of development aid and assistance**

Development aid has become a huge issue in global development debates. Various opinions have been expressed, both for and against development aid. Those in favour of development aid argue that withdrawing funds will exacerbate the situation of the global poor. The majority of the countries that receive donor assistance do not generate sufficient revenue to meet domestic budget requirements, as their resource base is weak or underdeveloped. In contrast, those that believe that aid is not the solution advance some interesting points:

- More than half of what is allocated never reaches the beneficiary country.
- Expatriate personnel working on projects funded by donor agencies are often paid exorbitant consultancy fees and other administrative costs abound. This hardly creates the necessary impact on the lives of the poor.
- The development packages are designed by people who have little or no understanding of the priorities of recipient countries.
- The interests of donor countries influence the allocation of aid or assistance. Such interests include creating jobs for their citizens and exerting their own influence and power.

For Sierra Leone to reap greater benefits from development aid, it needs to re-examine its engagement with donors and evaluate the development aid packages it receives. It would be better to align some of the packages with current trends and national aspirations, such as the PRSP II (Agenda for Change) and the JSRSIP. This will enable the packages to identify gaps and areas of harmonisation. If this is not done, development assistance will not have the desired impact on the majority of the people, and valuable resources from well-intentioned nations will be underutilised.

### **Assistance to civil society organisations**

During operations, the Justice Sector Development Programme (JSDP) devoted a significant amount of its support specifically to civil society in the form of a demand-side strategy. This strategy specifically targets local civil society groups working in the justice sector and aims to strengthen their capacity, both human and material, in meeting the challenges of justice sector reform. Regional and district networks were formed to support the civil society groups working on justice issues. The UNDP's 'Improving Access to Justice' programme also supports civil society to enable them to respond to sexual and gender-based violence in their communities. Both the UNDP and JSDP used to meet in a common forum to share ideas and experiences in working with civil society. The JSDP also provided grants to civil society organisations. The European Union's project on Communicating Justice and Capacity Building is another area of direct assistance to civil society. Some civil society groups, such as Timap for Justice, receive substantial support for their work with communities. Other groups that receive support in their efforts to make justice accessible to the majority of the population in the country include:

- Defence for Children International Sierra Leone Section (DCI-SL), for juvenile justice;
- The Network Movement for Justice and Development, for community justice issues;
- The Centre for Accountability and the Rule of Law, for court monitoring, research and advocacy; and
- The Campaign for Good Governance.

## **Support to the judiciary**

The judiciary has received significant attention and donor support since the cessation of hostilities from donors such as the DFID (LDP and JSDP), the UNDP, the Commonwealth Secretariat, Irish Aid and the GIZ. The DFID has funded infrastructure, refresher training for judges and improvements to the remuneration of judicial personnel, among others. The Commonwealth Secretariat has supported drafting of legislation and hiring of judges and prosecutors. The UNDP has also funded the construction of court buildings, and provided logistics and top-up salaries for magistrates. The Peace Building Fund project provided huge logistical support and equipment, including vehicles. The ongoing ‘Improving Access to Justice Project’ also provides considerable support to the judiciary.

## **Development assistance and local human resources**

All donor-funded programmes utilise both local and international staff. There has been some concern emanating from civil society about the actual benefit of such assistance to the country. The reason advanced is that international staff are often paid much higher salaries, while most of the work is done by local staff. An anonymous staff member stated that this disparity in salaries could be as high as 4:1 (international to local staff). There is also discontent among some of the local staff that some of the external experts are below standard in terms of their performance and the qualified and experienced staff make no effort to transfer skills. In contrast, managers of donor-funded programmes have also expressed concern about the scarcity of requisite capacity within the country. They have affirmed their commitment to ensuring skills transfer while using international staff, which is now a principle included in the terms of reference for their assignments. Another concern expressed by state authorities is that these programmes absorb the best staff, leaving state institutions weak. In terms of hiring, almost all development partners have their own specialised manner of recruitment. Jobs are advertised in a transparent, competitive bid process and provide a valid justification for single-source selection. The JSDP uses the British Council equal opportunities standards, while the UNDP uses the UN standards and other best practices around the world.

It is difficult to determine which donor interventions or support to the justice sector are ineffective because of the peculiar circumstances in Sierra Leone. The justice sector suffered from neglect under one-party rule. This led to a loss of public confidence in the judiciary, which was exacerbated during the war, subsequently leading to a total collapse of the system. Donor support during this period was uncoordinated, with donors pursuing their individual agendas with no consultation or involvement and inputs from stakeholders. Government had no choice but to accept the aid, without enough information on the packages and how they were managed.

With the cessation of hostilities and the introduction of democratic governance, a mixture of donor assistance has been pouring into the sector, ranging from quick-fix interventions to long-term strategic planning. As such, donor support has most often been welcomed with little or no time to evaluate such support. For instance, the police, judiciary, prisons and other justice sector MDAs were short of vehicles, logistics and basic office supplies, including stationery and office space. Donors such as the DFID, Commonwealth Secretariat, UNDP and the World Bank immediately supported the National Recovery Strategy with a fire-fighter approach.

However, with sustained peace and the stabilisation of democracy, a more comprehensive approach to reform and donor assistance is being adopted. The DFID approach through the JSDP is one such initiative that has identified and set in place a framework for broader sectoral reform through strategic planning. The UNDP 'Improving Access to Justice Programme' is another initiative that identified the gaps in the JSRS and IP and developed intervention packages accordingly. These initiatives involved a wide range of consultations with relevant stakeholders who included their inputs in the design and planning process. Sectoral consultation, coordination, communication and cooperation among stakeholders and partners have all been strengthened. The positive aspects of this approach are that limited resources are effectively utilised, efforts are not duplicated, and communication and coordination among donors, the justice sector MDAs, civil society and other stakeholders have improved. The responsibility now lies with the government to assume the challenge of championing donor coordination and harmonisation to guide donor assistance towards the sector. Government structures such as the Justice Sector Coordination Office (JSCO) need to be strengthened in capacity (human and material) to meet this challenge.

An analysis of development assistance to the justice sector shows there is huge donor interest in supporting the sector. Development partners have shown strong commitment by continually supporting a series of projects and programmes. The DFID and UNDP in particular have expressed long-term commitment to improving justice delivery to the poor, marginalised and vulnerable groups. However, management of this support requires further examination. For example, the JSDP was managed by the British Council, as was the case with the LDP. The UNDP administered the UNPBF, especially the disbursement of funds and major procurements. This arrangement does not build the kind of confidence required to empower the government and its institutions in managing programmes.

Foreign assistance is weakened by poor coordination between donors and the government. The government must take the lead and strengthen the JSCO in ensuring that development assistance to the sector is effectively coordinated and aligned with the sector strategy. In supporting civil society, the requisite skills and empowerment must be provided on a sustainable basis. The current support is based solely on the donors' priority programmes rather than on meeting the needs of civil societies to enable them to function effectively. A mechanism must be put in place to avoid depleting the already weak human capacity base of the justice sector by development assistance programmes brought in by donors. In supporting the targeted MDAs, there is a need to improve on the conditions of service of the crucial posts and, where possible, the placement of consultants within the MDAs. This arrangement will facilitate skills transfer and enable consultants to better appreciate the working conditions of the MDAs.

Human rights issues must be mainstreamed as a matter of policy into development assistance. A human rights based approach to programming in development assistance will have a holistic engagement strategy, making it meaningful for beneficiaries nationally. This will reduce or remove barriers that normally hinder efficiency, effectiveness and participation.

## **D. Recommendations**

- Donors need to be more transparent in their activities to clear up misconceptions among the public regarding influence, external consultants and so on. To this end, information on development programmes must be taken to the grassroots level, detailing the implementation strategy of such assistance for wider public consumption and transparency. The forms of support must be scrutinised to determine the country's best interests.
- The government must take a strong lead in coordinating development assistance, preferably through the Leadership Group, by periodically engaging with donors to solve challenges and jointly work towards achieving goals. Effective coordination of support must be prioritised to meet the needs of the judiciary. The Chief Justice or Master and Registrar must be frequently engaged to reach agreement on the type of assistance that will have the desired impact on justice reform. Coordination is necessary because it leads to greater transparency, better harmonisation, improved division of labour, effective utilisation of limited resources and more effective aid.
- Support to civil society must be upgraded to include sustainable capacity development.
- Skills transfer should be a matter of policy for development partners in working with local staff, and only those skills that cannot be found locally need to be brought in from outside the country.
- The government needs to be more proactive in engaging donors and development partners by asking key questions in the design and implementation of their packages, as well as the impact they will have on national development as a whole.

