

Sierra Leone

A country review of crime and
criminal justice, 2008

African Human Security Initiative

Monograph 160
May 2009

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Acknowledgments

The Africa Human Security Initiative (AHSI) extends its sincere appreciation to all those who were involved in the production of this report.

The report was made possible by the collaborative efforts of several contributors. The following team of Sierra Leonean, researchers, all based in Freetown, Sierra Leone, authored the key report: Dr Osman Gbla, the director of the Centre for Development and Security Analysis, Ahmed Sannoh of the Office of National Security, Ayodele Gatta, lawyer and an official with the prison service in Sierra Leone, and Patricia Alarsa Ndanema of the Human Rights Commission. Eldred Masunungure, Director of the Mass Public Opinion Institute in Zimbabwe and an independent consultant, reviewed the initial report and the AHSI Secretariat, led by Dr Annie Barbara Chikwanha and the AHSI network, contributed significantly to the final review and editing work.

Much appreciation is extended to the many Sierra Leonean officials in the criminal justice sector and members of the public who participated in the interviews and focus group discussions.

Foreword

It is now slightly over six years since seven African Non-governmental research organisations; the African Security Dialogue and Research; Africa Peace Forum; Human Rights Trust of Southern Africa; Institute for Human Rights and Development in Africa; South African Institute for International Affairs; West Africa Network for Peace building, and Institute for Security Studies met in Pretoria, at the invitation of the Institute for Security Studies, and agreed to establish a network to review and monitor African leaders' performance in respect of broad human security issues, taken at the levels of OAU and AU summits. This marked the birth of the African Human Security Initiative a year later. The University for Peace Africa Programme – UPEACE, has since joined the original seven organisations.

Because of the success of the studies and particularly, the cooperation and assistance from the countries monitored, namely, Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda, the African NGO research organisations decided to embark on a second phase of the African Human Security Initiative Project and to use the opportunity created by the African Peer Review concept to compliment the formal NEPAD/APRM process by focussing on Criminal Justice System in five selected countries; Benin, Mali, Sierra Leone, Tanzania and Zambia.

Criminal justice systems in Africa tend to work slowly and are encumbered with bureaucratic procedures that hinder the effective delivery of justice. Crime and the defective justice systems have deterred development and prohibited Africans from realising their full developmental potential. The links between crime, the criminal justice systems, democracy and development have remained largely unexplored in the region and it is because of this that AHSI decided to draw attention to the need for reforms in the criminal justice system that enhance human security.

The African Union and its predecessor, the Organisation of African Unity, have adopted over the years, far-reaching decisions in the form of Conventions, Treaties, Agreements, Resolutions or Declarations, the implementation of which should have had equally far-reaching and significant impact on enhancing the quality of criminal justice systems. The decisions touch on good governance and the respect for peoples' and human rights; the eradication of discrimination against women; the protection of the rights of the African child; economic growth and poverty reduction amongst others.

The African Human Security Initiative is indebted to the many researchers in the above five countries who have dedicated their valuable time in producing the country reports which, apart from complimenting the work of the African Peer Review Mechanism, also provides governments with empirical evidence on the status of criminal justice and its impact on political processes in their countries.

In order to maintain the momentum arising from these studies and also remain focused on the need to remind African leaders to comply with their commitments taken at summit levels, African Human Security Initiative will encourage dialogue and public awareness of the broader implications of the studies, particularly of crime and criminal justice on democracy.



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List of acronyms

ACC	Anti-corruption Commission
ACHPR	African Charter on Human and Peoples Rights
AFRC	Armed Forces Revolutionary Council
ACRWC	African Charter on the Rights and Welfare of the Child
AIG	Assistant Inspector-General, SLP
APC	All Peoples Congress Party of Sierra Leone
APRM	African Peer Review Mechanism
AU	African Union
BPRM	Bo Peace Reconciliation Movement
CCSSP	Commonwealth Community Safety and Security Project
CDIID	Complaint, Discipline, Internal Investigation Department
CEDAW	Convention on the Elimination of Discrimination against Women
CEDSA	Centre for Development and Security Analysis
CEPIL	Centre for Public Interest Lawyers
CMS	Community Mediation Scheme
CRC	Convention on the Right of the Child
CSD	Corporate Services Department, SLP
DCI	Defence for Children International
DFID	Department for International Development
DGTTF	Democratic Governance Thematic Trust
DPP	Director of Public Prosecutions
ECOWAS	Economic Community for West African States
FSU	Family Support Unit, SLP
GoSL	Government of Sierra Leone
HRCSL	Human Rights Commission of Sierra Leone
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights

ICRC	International Committee of the Red Cross
ILO	International Labour Organisation
ISS	Institute for Security Studies
JSDP	Justice Sector Development Programme
KAIPTC	Kofi Anan International Peacekeeping Centre
LCS	Local Court Supervisor
Le	Leones (currency of Sierra Leone)
LAWCLA	Lawyers Centre for Legal Assistance
MCSL	Methodist Church Sierra Leone
MPRU	Media and Public Relations Unit, SLP
MSWGCA	Ministry of Social Welfare, Gender and Children's Affairs
NaCSA	National Commission for Social Action
NaCWAC	National Commission for War Affected Children
NASSIT	National Social Security and Insurance Trust Act
NEPAD	New Partnership for African Development
NFHR	National Forum for Legal Rights
NGO	Non-governmental organisation
NMJD	Network Movement for Justice and Legal Assistance
NRA	National Revenue Authority
NPRC	National Provisional Ruling Council
ONS	Office of National Security
OSD	Operational Support Division, SLP
OSJI	Open Society Justice Initiative
PCC	Public Complaints Commissioner
PDO	Public Defenders Officer
PICOT	Partners in Conflict Transformation
PRSP	Poverty Reduction Strategy Paper
PTS	Police Training School, SLP
REC	Constitutional Review Commission of Sierra Leone
RSLAF	Republic of Sierra Leone Armed Force
RUF	Revolutionary United Front
LLRC	Sierra Leone Law Reform Commission
SLP	Sierra Leone Police
SLPF	Sierra Leone Police Force
SLPP	Sierra Leone Peoples Party
SLSSR-IP	Sierra Leone Security Sector Reform Implementation Programme

SLLRC	Sierra Leone Law Reform Commission
SLTRC	Sierra Leone Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNICEF	United Nations Children's Fund
UNSMR	United Nations Standard Minimum Rule
UNDP	United Nations Development Programme
UNIOSIL	UN Integrated Office in Sierra Leone
US	United States of America
USAID	United States Aid
WAFF	West African Frontier Force
WASCE	West African School Certificate Examination

Executive summary

Sierra Leone provides an interesting case study on the assessment of crime¹ and the criminal justice system. As a country in transition from one-party authoritarianism and 11 years of a fratricidal war, there are serious implications for crime and the functioning of the criminal justice system. State repression, ineffective security and a justice system that has gone through eras of military and single-party dictatorships raise grave concerns about the capacity of the state to ensure the security of citizens and to guarantee the administration of fair and impartial justice. The collapse of the Sierra Leone crime and justice system was emblematic of the failure of the state in its entirety.

The situation worsened with the outbreak of the civil war in 1991 as incidences of human rights violations escalated. There was a systematic assault on security and justice-sector personnel, as well as the destruction of the already limited and under-resourced judicial infrastructure such as courts, police barracks and prisons. Revolutionary United Front fighters and the Armed Forces Revolutionary Council regime (1997–1998) affected the operation of the criminal justice system in the country. In addition to the flagrant abuse and violation of the rights of many Sierra Leoneans, the decade-long war (1991–2002) adversely affected the operations of criminal justice institutions, including the police, prisons and the judiciary. The fighting forces occupied some areas of the country for a very long time, thereby preventing the smooth working of justice sector institutions, while destroying their infrastructure and killing their personnel.

As a post-conflict peace-building intervention, the Sierra Leone government, in close cooperation with international partners, has over the years introduced programmes aimed at improving the criminal justice system in the country. For instance, the British-led security sector reform programme that started in earnest in 1998 has placed a premium on building the capacity of security sector

institutions, including the armed forces, the police, the newly formed Office of National Security and the justice sector through the Justice Sector Development Programme. It has become clear, however, that this programme has placed greater focus on developing the police and the armed forces than prisons, to which little attention has been paid. Furthermore, despite all efforts under the capacity-building programmes, much more needs to be done to make the system function effectively and efficiently. Success in this area is urgent: Sierra Leone recognises that an accessible and effective means of addressing conflicts, disputes and crimes is a key element to ensuring the maintenance of peace in the country.

As a participating country in the African Peer Review Mechanism (APRM) under the New Partnership for African Development (NEPAD) – which Sierra Leone acceded to in 2004 – the country is an appropriate candidate for a review of its criminal justice system. Although the justice system is not included in the APRM review process, it has important implications for democracy and good governance. This review is intended to complement the formal APRM process by focussing on a sector currently outside its focus.

Assessment of the criminal justice system in Sierra Leone focused on policing and prosecution, prisons, the judiciary, access to justice, juvenile justice, customary justice and the various international and regional treaties relating to crime and the criminal justice system signed and ratified and taken on board by Sierra Leone. Primary and secondary sources were employed extensively to carry out the assessment. The primary sources comprised in-depth discussions, interviews and focus-group discussions with selected respondents. The secondary sources comprised information from desk research and literature reviews.

The findings and recommendations in respect of each of the criminal justice areas are as follows:

POLICING

Although the Sierra Leone Police (SLP) is a core player in the crime and criminal justice sector, the assessment noted the following:

- Budgetary allocations to the SLP are inadequate, which hampers the police in effectively discharging its functions

- Remuneration and conditions of service are poor, which leads to low morale among police officers
- Infrastructural requirements and logistical and other needs are inadequately provided for
- The public perception of the police is negative
- There is a shortage of State Counsels owing to a lack of incentives and attractive conditions of service
- There are incessant adjournments and delays in the justice delivery system
- The police is politicised
- The prosecution laws are outdated

The following recommendations are therefore made:

- The Criminal Procedures Act of 1965 should be reviewed and modernised
- A vibrant legal aid scheme should be established to assist indigent suspects with their defence
- Remuneration and conditions of service of members of the Sierra Leone Police should be improved
- The autonomy of the police should be strengthened and efforts should be made to avoid the politicisation of the force. This will entail a review of the composition of the Police Council to make it truly independent.
- Budgetary allocations to the police should be increased significantly
- Cases of corruption in the police should be dealt with urgently and every attempt should be made to reduce corruption in the force
- Efforts should be made to improve the image of the police in the public eye by enhancing policy and community relations
- Refresher training courses for police forces should be mounted, covering areas such as police ethics, human rights, law and police-civil relations

THE PROSECUTION

The key findings of the assessment are as follows:

- The prosecution services are poorly funded and this has led to poor morale
- There are too few state counsel and the incentives are too poor to attract new entrants

- Legal training is poor and the general education level of police prosecutors is low
- Logistical support is inadequate
- Criminal prosecutions suffer from backlogs, delays and persistent adjournments
- Witness protection mechanisms are poor
- The fusion of the offices of the Attorney-General and the Minister of Justice has resulted in political meddling
- There is corruption amongst prosecuting staff
- The legislation is outdated

The following recommendations are therefore made:

- Budgetary allocations should be increased
- The autonomy of prosecution should be enhanced by uncoupling the offices of the Attorney-General and the Minister of Justice
- Police prosecutors should be given adequate basic legal training
- There should be a regular review of the remuneration and conditions of service of judicial officers
- Effective witness protection mechanisms should be put into place
- The outdated Criminal Procedures Act of 1965 should be reviewed
- Prosecutors should be given incentives to prosecute cases effectively and speedily
- Corruption among prosecutors should be investigated and stemmed.

PRISONS

The key findings are as follows:

- Over-crowding in prisons and poor living conditions continue to be a problem
- Long and convoluted court proceedings delay prisoners' access to justice
- The conditions of service for prison wardens are poor
- Inadequate resources contribute to delays in prosecuting the accused
- The accused suffer long adjournments and stiff bail conditions
- The accused lack access to legal representation

- There is some compliance with international protocols and conventions on the rights of prisoners

The following recommendations are therefore made:

- Training and capacity building programmes with focus on the Prisons Ordinance and Prison Rules should be undertaken
- Adequate resources should be provided for running the Prisons Service
- Conditions at prisons and of prisoners should be improved
- The terms and conditions of service for prison officers should be improved
- The bail system should be reviewed
- More remand homes and approved schools should be established and their conditions should be improved
- Remand homes should in particular be established in Makeni and Kenema so that the practice of housing juveniles together with adults in jails can come to an end
- The Prisons Ordinance and Prison Rules should be brought into line with minimum international standards, e.g. by abolishing corporal punishment and solitary confinement
- Female prisoners should be separated from male prisoners as far as sleeping areas, toilets and recreational facilities are concerned
- The special needs of female prisoners relating to feminine hygiene and maternal health should be taken into account when they are allocated to prisons
- Trial prisoners should be kept away from convicted prisoners

THE JUDICIARY

The key findings are as follows:

- The existence of a dual legal and court system, namely one for the provinces and the other for Freetown, create disunity and injustice
- The Public Order Act of 1965 and emergency laws were used to transgress on peoples' rights, which led to the killing and unjust jailing of many citizens
- There are cases of injustice, inaccessibility to the law and delays in the dispensation of justice

- The cost of hiring a lawyer is far beyond the means of the vast majority of citizens
- Cases of corruption are found in the judiciary.

The following recommendations are therefore made:

- The dual legal system should be reviewed
- Outdated legislation should be reviewed
- The judiciary should be strengthened by recruiting more judges and magistrates
- Capacity-building programmes should be instituted for members of the judiciary and their support staff
- The judicial bench should pay periodic visits to prisons to assess conditions there
- The conditions of service of members of the judiciary and their support staff should be improved

ACCESS TO JUSTICE AND JUVENILE JUSTICE

The key findings are as follows:

- The weak court delivery system hampers access to justice
- The imposition of heavy court fines coupled with the population's general lack of resources remains a major constraint to accessing justice
- Key personnel, e.g. law enforcement and probation officers, are not adequately aware of laws governing juvenile delinquents
- There are no specific courts to deal with juvenile cases
- The juvenile units of the police and the probation units are understaffed
- Offenders are detained for more than the stipulated periods provided for by national and international law
- Some practices under the guise of tradition and customary law violate women's rights
- The children's detention centres are inadequate
- Children have limited access to basic facilities in the few detention centres that do exist

- The Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) is underfunded.

The following recommendations are therefore made:

- Budgetary allocations to the MSWGCA should be increased
- All personnel dealing with juveniles should be trained in the laws governing juveniles
- More approved schools and remand homes should be built, especially in the provinces, and they should provide basic social services and handling facilities for juveniles
- More court officials should be assigned to juvenile cases to ensure speedy trials
- Separate courts for juveniles should be provided
- Legal aid services should be provided for the poor and children in conflict with the law

CUSTOMARY JUSTICE

The key findings are as follows:

- There is overall satisfaction with the dispensation of customary justice
- Up to 70 per cent of the people of Sierra Leone do not have access to the formal justice system
- The local courts, which fill the void, are understaffed as there are too few customary law officers and local court supervisors
- State subsidies for local courts are lacking
- Staff incentives are lacking
- There is political interference in the administration of customary justice
- There are logistical barriers in accessing local courts

The following recommendations are therefore made:

- Legislation governing customary justice should be reviewed, e.g. the jurisdiction of the Local Courts Act should be expanded
The capacity of local courts and their personnel should be enhanced

- The supervision of local courts should be strengthened
- Local court staff should receive regular pay and incentives

ADHERENCE TO REGIONAL AND INTERNATIONAL INSTRUMENTS

The key findings are as follows:

- Sierra Leone has signed and ratified a substantial number of regional and international conventions and protocols
- The country has demonstrated a commendable level of commitment to international obligations
- In many cases there is an unacceptably long delay between the signing and ratification of an instrument and its implementation

The following recommendations are therefore made:

- Sierra Leone should strengthen its compliance with relevant regional and international instruments
- The country should shorten the period between the signing and ratification of an instrument and its implementation
- Instruments that have been ratified should become part of the corpus of the country's laws.

Map 1 Map of Sierra Leone



1 Introduction

OVERVIEW

Sierra Leone is a fitting African case study for discussing crime and criminal justice as part of continental efforts to ensure peace, security and democratic governance. The country is in a double transition: from authoritarian military and single-party political regimes to democracy, and from war to peace. The country's authoritarian background has had a serious effect on both the incidence of crime and the operation of its criminal justice system. State repression and an ineffective security and justice system during eras of military and single-party dictatorships have raised serious concerns about the capacity of the state to guarantee the security of citizens and to deliver fair and impartial justice. Sierra Leone is also faced with the problem of access to justice, especially for vulnerable groups such as children, women and the indigent. Most of the poor cannot afford the cost of lawyers, while the local court system has its own problems, including an absence of standardised court fees and fines.

The situation worsened with the outbreak of the civil war in 1991. Not only was there an increase in the incidence of human rights violations, but there were calculated attempts to target security and justice-sector personnel

and to destroy the limited and under-resourced judicial infrastructure, including courts, police barracks and prisons. The Revolutionary United Front (RUF) and its military partners, the Armed Forces Revolutionary Council (AFRC), which ruled from 1997 to 1998, had a devastating effect on the operation of the criminal justice system in the country. Apart from the flagrant abuse and violation of the rights of many Sierra Leoneans, the decade-long war (1991–2002) adversely affected the operations of criminal justice institutions such as the police, prisons and the judiciary. The fighting forces occupied some areas of the country for a very long time, which hampered the smooth working of justice sector institutions, destroyed their infrastructure and killed off their personnel. By September 2000, for example, there were only 15 presiding magistrates in the country (earning annual salaries of just US\$900) and 18 judges serving outside Freetown (Commonwealth Human Rights Initiative 2002).

As a post-conflict peace-building intervention, the government of Sierra Leone, in close cooperation with international partners, has introduced programmes aimed at improving the criminal justice system in the country. For instance, a British-led security sector reform programme that started in earnest in 1998 has placed a premium on building the capacity of security sector institutions, including the armed forces, the police, the newly formed Office of National Security (ONS) and the justice sector through the Justice Sector Development Programme (JSDP). It has become clear, however, that the programme has placed greater focus on developing the police and the armed forces than prisons, to which little attention has been paid. Furthermore, despite all efforts under the capacity-building programmes, much more still needs to be done to make the system function effectively and efficiently. Success in this area is urgent: Sierra Leone recognises that an accessible and effective means of addressing conflicts, disputes and crimes is a key element to ensuring the maintenance of peace in the country.

As a participating country in the African Peer Review Mechanism (APRM) under the New Partnership for African Development (NEPAD) – to which Sierra Leone acceded in 2004 – the country is an appropriate candidate for a review of its criminal justice system. Although the justice system is not included in the APRM review process, it holds important implications for democracy and good governance. This review is intended to complement the formal APRM process by focussing on a sector currently outside its focus.

AIMS AND OBJECTIVES OF THE REVIEW

The overall objective of this study was to generate data and information that can be used to review the scale of crime and the criminal justice system in Sierra Leone, one of the African countries undergoing the African Peer Review Mechanism (APRM) process. The ultimate goal is to enhance the implementation of New Partnership for African Development (NEPAD) programmes in Sierra Leone in particular and in Africa in general.

The specific objectives of the review were as follows:

- To assess the extent and magnitude of crime in Sierra Leone, as well as the efficiency and effectiveness of the criminal justice system, which includes the judiciary, the police and prisons service
- To identify the problems and constraints of Sierra Leone's criminal justice system
- To review the policies, strategies and programmes that are in place to ensure access to justice in Sierra Leone
- To examine the process of and the procedures for dispensing justice for juveniles
- To identify areas requiring strengthening and to develop appropriate recommendations
- To assess the customary justice system in Sierra Leone
- To gauge the perceptions of Sierra Leoneans and other stakeholders on the and effectiveness of the country's criminal justice system

METHODOLOGY

To conduct this review, primary and secondary sources were employed extensively to gather information and data. The primary sources comprised interviews and in-depth and focus group discussions with selected individuals working on crime and with criminal justice-related issues in Sierra Leone. For the section on the judiciary, selected High Court judges, magistrates and lawyers were interviewed and involved in discussions, as were selected members of the Sierra Leone Police (SLP), in particular those working in the field of prosecution. Selected members of civil society concerned with the criminal justice system were interviewed and engaged in discussions as well. Foremost among these were members of the Lawyers Centre for Legal Assistance (LAWCLA), Timap²

for Justice and the Network Movement for Justice and Development (NMJD). Individuals working in the JSDP and in the Justice Sector Coordination Office were also targeted for discussions and unstructured interviews. Discussions focused essentially on issues concerning the structure and organisational capacity of Sierra Leone's judiciary, justice delivery processes and procedures, and the constitutional provisions regulating the work of the judiciary.

For the review of the Prisons Service, the primary sources included unstructured interviews with selected members of the following institutions: Prisons Service headquarters in Freetown and the department's southern, eastern and northern provincial headquarters, the safety and security component of the JSDP, the human rights section of the UN Integrated Office in Sierra Leone (UNIOSIL) – now the UN Peace Building Office, the Human Rights Commission of Sierra Leone (HRCSL), the SLP, the Ministry of Internal Affairs, Local Government and Rural Development, the Judiciary and Law Officers' Department, and a cross-section of the Sierra Leonean public. Questions included issues concerning the provision of state security, prison conditions, the treatment of prisoners, and the efficiency and effectiveness of prisons as a correctional facility.

Primary and secondary sources were also used extensively for the review of policing and prosecution. Primary sources included structured and unstructured interviews with selected individuals in the police service, the judiciary and members of civil society on the nature, structure and efficiency of policing and prosecution in the country. Secondary sources included a review of relevant literature, such as the Sierra Leone Constitution Act No. 6 of 1991 (the Constitution) and the Criminal Procedures Act of 1965, as well as relevant textbooks and journal articles on policing and prosecution in Sierra Leone.

For the customary justice section of the review, the primary information sources comprised interviews and discussions with Customary Law Officers, Local Court Supervisors and civil society activists. Questions focused essentially on the structure, nature, composition and efficiency of customary law in Sierra Leone. Secondary sources consisted predominantly of reviews of relevant acts and legislation, such as the Local Courts Act of 1963 and the Chiefdom Police Act (Cap 284, Laws of Sierra Leone), as well as relevant textbooks and journal articles.

Primary sources for the juvenile justice and access to justice section review constituted interviews and discussions with individuals handling

issues of juvenile justice and access to justice. These included the director of the LAWCLA, selected officials of the Ministry of Social Welfare, Gender and Children's Affairs (MSWGA), selected members of the SLP and civil society. Secondary sources constituted a review of relevant literature, including textbooks, journal articles and legislation.

THE SIERRA LEONE LEGAL SYSTEM

A peculiar feature of the Sierra Leone legal system is the concurrent existence of a plurality of laws: the English legal system on the one hand and the indigenous customary legal system on the other. The imperatives of effective administration over her colonies saw the British importing their legal system into Sierra Leone, while retaining the existing customary laws of the indigenous peoples in the protectorates (provinces). The retention of customary law in the protectorates was based, firstly, on economic expediency in that administrators were not prepared to expend resources on changing the legal system and, secondly, for administrative convenience in view of the unrecorded influence of tribal authorities in the administration of the provinces.

The English legal system in Sierra Leone was predicated on the need for a general law (*lex loci*) for the country as there was no dominant pre-existing legal system in Sierra Leone prior to British colonisation. The British introduced into the corpus of the Sierra Leone legal system some variants of English law as the fundamental and general law of the people.

Subsumed under English law³ are different types of enactments, namely:

- Common law
- The doctrines of equity
- The statutes of general application in force in England
- Imperial legislation, e.g. acts of the British Parliament, orders-in-council and ordinances etc
- Enactments of the local legislature

The foregoing represents the host of laws incorporated in the English law framework of Sierra Leone's legal system. Common law, the unwritten law of England, is essentially based on customs and court decisions emanating from the decisions of the justices of the common law courts: King's Bench and Queen's Bench.

The doctrines of equity emanate from the Court of Chancery. Common law is the legal precursor of equity, which follows that law and evolved to temper its rigidity. The statutes of general application were statutes whose application was not restricted. The reception date for such statutes varied from colony to colony, but they became generally applicable in Sierra Leone on 1 January 1880.

Imperial legislation represents the body of laws enacted by the British Parliament, e.g. Acts of Parliament, orders-in-council, ordinances etc. Legislation of this nature was in force in Britain prior to its colonial adventures in West Africa. However, because of the exigencies of administration, some of these laws were imported into the colonies for purposes of administration⁴. Enactments of the local legislature are, in contrast to imperial legislation, domestic laws enacted by the local legislature of Sierra Leone during the post-independence period.

With regard to the retention of the customary law of the indigenous peoples of Sierra Leone, the colonialists were expected to employ a 'repugnancy test' to establish whether customs were repugnant to British notions of natural justice, equity and good conscience. Customary law applies exclusively to the indigenous peoples of the provinces (known in local parlance by the sobriquet 'up-line people').

The dualism of laws in Sierra Leone's legal system is recognised in Section 76 of the Courts Act of 1965. What can be gleaned from the legislative intent of the drafters of section 76 and the Constitution is that customary law applies to the provinces. However, this should not be construed to mean that English-style laws do not apply to the provinces. An interpretation of the provisions of section 76(1) yields to the fact that it sanctions dualism in Sierra Leone's legal system. However, in the observance of the dual legal system, where a rule of customary law is incompatible with any English statute, the former would be declared null and void while the latter prevails.

HUMAN RIGHTS AND THE CRIMINAL JUSTICE SYSTEM

Fundamental human rights are enshrined in the Constitution of Sierra Leone. In chapter III, under the heading: 'The Recognition and Protection of Fundamental Human Rights and Freedom of the Individual', the constitution provides for a legion of rights⁵. Amongst the rights protected are the right to life, protection from arbitrary arrest or detention, freedom of movement, freedom

from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, privacy of the home, the right to assembly and association, and protection from discrimination. While it is conceded that these rights are indisputably sacrosanct, they are nevertheless qualified in that they can be abridged where their exercise by beneficiaries infringes on the rights of others. They can also be attenuated on grounds of public policy, security or to give effect to the enforcement of the decision of a court of competent jurisdiction. Where a public emergency is declared by the country's President as per the provisions of section 29 of the Constitution, the fundamental human rights enunciated under Chapter III may also be abridged.

The government has put in place certain institutional mechanisms to monitor the observance and enforcement of these fundamental human rights. One of such institution is the Human Rights Commission of Sierra Leone (HRCSL), established in 2004, which seeks to promote and protect human rights in the country. To achieve its objectives, the HRCSL through interventions consequent upon research findings seeks to detail the nature and observance of human rights by the government. The HRCSL also conducts an annual national base-line survey at both the individual and institutional levels on the attitude to and knowledge and observance of the practices of human rights in Sierra Leone. The results of the surveys are documented and used for a range of purposes: public education, advocacy, legislative reform, policy formulation and to improve the government's human rights record.

Efforts to promote human rights have also led to the establishment of the Office of the Ombudsman⁶. Otherwise known as the Public Complaints Commissioner (PCC), the mandate of the ombudsman extends to instances where a person complains about the infringement of his/her fundamental human rights as a result of some administrative action by officials of government. The functions of the ombudsman include the investigation of any action taken or omitted to be taken by or on behalf of the following:

- Any department or ministry of government
- Any statutory corporation or institution of higher learning or education set up entirely or partly out of public funds
- Any member of the public service for action taken or omitted to be taken in the exercise of the administrative functions of that department, ministry, statutory corporation, institution or person

While the powers of investigation by the ombudsman in the observance and enforcement of human rights is commendable, he does not have the power to prosecute persons indicted for gross violation of human rights.

Drawing a nexus between the human rights regime and the criminal justice system often exposes breaches of the fundamental human rights of suspects, especially during the trial process. Persons accused of a crime are today often still being detained for indeterminably long periods of time, which is contrary to the provision that any person who is arrested and detained on a reasonable suspicion of having committed a crime shall not be detained for any period longer than 24 hours. The judicial system is slow as a result of inexplicable adjournments, which prolongs the period for which such criminal trials are supposed to run.

Another affront to the criminal justice system is the human rights record of prisons and other penitential houses in Sierra Leone. Most prisons are colonial relics and do not conform to the modern-day concept of reform institutions. They are decrepit and the facilities are inadequate and outmoded. There is a problem of overcrowding and consequently a prevalence of such communicable diseases as tuberculosis, malaria, cholera etc. Medicare facilities are barely existent. The myriad of problems affecting penitential houses raise the question of whether inmates have rights at all, especially when viewed from the legal prism of presumption of innocence.

2 Policing

INTRODUCTION

Policing and prosecution are twin concepts in the human security profile and the criminal justice delivery system the world over. The policing mechanism is germane to a peaceful society founded on the concepts of equity and justice. The arrest of criminals/felons and their subsequent prosecution by the state provide the deterrent factor.

In Sierra Leone, the Sierra Leone Police and the Office of the Director of Public Prosecutions are both at the heart of the government's attempt at creating an egalitarian society. Cognisant of this, this section of the work examines the institutional capacity and the challenges militating against effective policing and prosecution in Sierra Leone. Identification of the structural/institutional weaknesses of both bodies is used to proffer recommendations for making both institutions more effective.

THE SIERRA LEONE POLICE: A BACKGROUND

The evolution of policing in Sierra Leone predates the birth of Sir Robert Peel's Metropolitan Police in London in 1829. The Sierra Leone Police (SLP), as it is known today, had its beginnings in 1808 when Freetown became a Crown Colony. The objective was essentially to consolidate British territorial gains and to uphold her territorial hegemony. The period from 1863 to the late 1900s is referred to in the SLP's history as the 'political era of policing', a phrase used to reflect the inextricable link that existed between the police force and local politics.

During the colonial era, the objectives of the police were not in accord with contemporary global trends in policing, which are to combat criminal offences such as murder, rape, theft etc. Rather, the police was designed to stifle dissident voices among the local populace, to harass political deviants and to contain the militancy of minorities. In its approach to this task, which manifested itself in excessively harsh responses conditioned by the military orientation of the force at that time, the police was not a civil force.

Prior to the founding of the Province of Freetown (now Freetown) in 1787, social cohesion amongst the indigenous people of what is now known as Sierra Leone was the responsibility of the king's court orderlies, who enforced the court's punishment. This activity represented the earliest form of policing in the settlement.

A new dimension was added to the history of policing in Sierra Leone after the founding of the Province of Freetown for the resettlement of freed slaves from all over the world. Policing during this period was largely primitive: adult males were organised into groups of about 10 families for a rotational watch. The groups were vested with the collective responsibility of apprehending persons accused of having committed crimes. Their duty was also to ensure order in the province and to report suspicious movement. This form of policing was both community-based and community-oriented and played a pivotal role in the development of policing in Sierra Leone.

A corollary of the declaration of the settlement as a British Crown Colony in 1808 was direct British involvement and the consequent adoption of English customs, practices and law. Settlers assumed the status of British subjects in 1811. In 1863, the West African Frontier Force (WAFF) took over the function of maintaining order in the colony, a role it performed until 1906. Consequent on this, there arose a need to deploy British nationals to head up the emergent police force. Thus, by October 1894, a Captain VF Laphan from the British

Army was head of the police. In 1906, British citizen George Brook became the first police commissioner and in 1948 the Police Training School (PTS) at Hastings was established to train Sierra Leoneans. The first Sierra Leonean to head up the police was LW Leigh (1963 – 1969). It was during his tenure that parliament passed the Police Act of 1964 that established the Sierra Leone Police Force (SLPF), the forerunner of the SLP.⁷

It should be noted that the divisional system of today's SLP owes its existence to the leadership of Hon. PK Johnson, the first Inspector-General of Police appointed in 1906. Under the divisional arrangement, each division is commanded by a Chief Police Officer. A division is further subdivided into police districts under the command of an Officer Commanding District. Hon. Johnson was succeeded by Hon. James Bambay Kamara in 1987. His period of service remains as one of the lowest points of in the history of the SLP as corruption within the police reached an all-time high. His tenure was also characterised by gross human rights violations by the rank and file of the force.

The war instigated by the RUF and elements of AFRC left the SLP prostrate. There was great devastation of police infrastructure and logistical equipment, and police personnel suffered heavy casualties. The SLP was left in a state of operational deficit. By 1999 it had become apparent that the SLP would need to undergo immediate reform to earn both national confidence and international credibility. Unprofessional conduct among the ill-motivated rank and file was overwhelming. Morale among police personnel was at its lowest ebb. Cognisant of this state of affairs, the then President, Ahmad Tejan Kabba, appointed an expatriate, retired UK-trained police officer Keith Bridle, as the Inspector-General of Police in November 1999.

Prior to his appointment, Bridle had headed up the Commonwealth Development Task Force, which was transformed into the Commonwealth Community Safety and Security Project (CCSSP) in 2000. The objective of the CCSSP was to support the operational activities of the SLP with capacity building in order to ensure prompt and effective responses to crime and acts of public disorder.

CONSTITUTIONAL AND INSTITUTIONAL FRAMEWORK OF THE SIERRA LEONE POLICE

The SLP was re-established under the provisions of section 155(1) of the Constitution of 1991 and is headed by an Inspector-General of Police. The force is a creation of

an Act of Parliament. In law, in particular section 155(3) of the Constitution, the SLP is strictly apolitical and insulated from partisan politics in that members of the force are prohibited from holding elective posts while in service

An important structure is the Police Council, which was created under section 16(1) of the Constitution. The following persons serve on the Council:

- The Vice President of Sierra Leone, who acts as chairman
- The Minister of Internal Affairs
- The Inspector-General of Police
- The Deputy Inspector-General of Police
- The Chairman of the Public Service Commission
- A Member of the Sierra Leone Bar Association, who must be a legal practitioner of not less than 10 years' standing. He is nominated by the Bar Association and is appointed by Sierra Leone's President
- Two members appointed by the President, subject to the approval of Parliament

The Permanent Secretary of the Ministry of Internal Affairs responsible for police matters is Secretary to the Police Council. According to section 156(3), the Inspector-General is appointed by the President acting on the advice of the Police Council, subject to the approval of Parliament.

The functions of the Police Council

The Police Council is responsible for advising the President of Sierra Leone on all major matters of policing relating to internal security, including the role of the SLP, police budgeting and finance, administration and any other matter as required by the President (Section 157(1)).

The Police Council may, with the prior approval of the President, make regulations for the performance of its functions under the Constitution or any other law, and for the effective and efficient administration of the SLP. Regulations made by the Police Council pursuant to section 158(2) of the Constitution shall be in respect of the following:

- Control and administration of the SLP
- The ranks of officers and men of each unit of the SLP, the members in each such rank and the use of uniforms by such members

- The conditions of service, including those relating to enrolment and pay, pensions, gratuities and other allowances to the officers and men of each unit, and deductions there from
- The authority and powers of command of officers and men of the SLP
- The delegation to other persons of powers of commanding officers to discipline accused persons, and the conditions subject to which such delegation may be made (section 158(3))

Powers of police officers under the Police Act

The powers of police officers in Sierra Leone are spelt out in Part iv of the Police Act. Police officers are invested with the power to conduct in person all prosecutions before any court of summary jurisdiction. This power is exercisable whether the power is laid in his name or not, and whether or not the offence was committed in his presence or that of any other police officer (section 24).

The powers of the police also extend to the power to arrest, even without a warrant. However, there is a stark contradiction in that in a court of law the apprehension of any person must be based on a legally issued warrant specifying the charge. In terms of section 25, where a person is arrested by a police officer without a warrant, such a person shall be entitled to demand that a warrant be shown and read to him as soon as practicable after his arrest.

Police officers in Sierra Leone are responsible for servicing any criminal summons lawfully issued by a court. Service must be effected during the hours of daylight, with the proviso that where a police officer has reasonable cause to believe that a person is evading service, then such summons may be served at any time (section 26). The police are authorised to take fingerprints of suspects.

The Police Act (sections 28 and 30) states that in cases of riot, police officers have the powers to close licensed premises and to stop processions for which permits have not been issued. Where a requisite permit has been obtained, a police officer has the power to regulate processions using the provisions of section 31. The police also have the power to control vehicular traffic.

A person who conducts himself in such manner in a public place, street or highway as to cause obstruction or annoyance to the public may be moved or arrested and taken before a magistrate. On summary conviction such a person shall be liable to a fine not exceeding five pounds sterling.

Table 1 Operational strength of the Sierra Leone Police by job category

Rank	Male	Female
Inspector-General of Police	1	–
Deputy Inspector-General of Police	1	–
Assistant Inspector-General of Police	10	2
Chief Superintendent	25	–
Superintendent	58	4
Assistant Superintendent	143	14
Inspector	513	60
Sergeant	2 110	241
Constable (including new recruits)	4 828	1 122
Auxiliary	11	–
Total operational strength	7 700	1 443
Support Staff	314	105
Grand total	8 014	1 548

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

Table 2: Breakdown of Sierra Leone Police support staff

General duty		6 089
Operational Support Department		3 043
Auxiliary		11
Support staff (secretary/nurse)	125	419
Support staff (labourer/mechanic)	294	
Total strength		9 562

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

Offences by and against police officers under the Police Act

In terms of section 36(1) of the Police Act, a police officer who starts or is an accessory to the offence of mutiny shall be liable on conviction to imprisonment for a period not exceeding five years. Where a police officer joins in or causes any disturbance, or is at an assemblage susceptible to riot and does not suppress such assemblage, or has knowledge of any mutiny or deserters, the officer shall be liable on summary conviction to imprisonment for a period not exceeding two years (section 36(2)).

Other salient provisions cover assault of a police officer. The person who committed the assault shall, on summary conviction, be liable to a fine not exceeding 100 pounds or to imprisonment for a period not exceeding one year. A person who obtains enlistment into the force by fraudulent means shall be liable on conviction to imprisonment for a period not exceeding six months, or to a fine not exceeding 50 pounds (section 42).

In order to insulate the police officers of the SLP from partisan politics, they are barred from having connections with any political society, organisation or movement, or with any trade union or any union (civil service or otherwise) either within or without Sierra Leone (section 52(1)), unless they have the approval of the Minister. However, no express approval is necessary for membership of a police federation. Breach of the provisions of this section warrants dismissal.

The Police Act covers a range of other offences. These provisions are geared towards maintaining discipline among officers and men of the force and to protect them from being assaulted by members of the public in the lawful execution of their statutory responsibilities.

Institutional capacity of the Sierra Leone Police

The institutional capacity of the SLP is examined in respect of the organisational structure, its personnel and the divisional components of the force.⁸ The operational strength of the SLP by job category on 2 June 2008 is given in Table 1.

On the same date, the support staff of the SLP numbered 9 562 persons. A summary breakdown of this figure is shown in Table 2.

Table 3 Sierra Leone Police personnel distribution by region

Region		Male	Female	Total	% of total
West	Operational strength	4 347	1 018	5 716	60
	Support staff	252	99		
North	Operational strength	1 199	152	1 373	15
	Support staff	21	1		
South	Operational strength	926	122	1 073	14
	Support staff	22	3		
East	Operational strength	1 228	151	1 400	11
	Support staff	19	2		
Total		8 014	1 548	9 562	100

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

Table 4 Divisional structure and personnel strength

Name of Division	Total	Name of Division	Total
Airport	92	Magburaka	175
Bo	469	Makeni	362
Bonthe	63	Mano River	144
Central	510	Masiaka	89
Daru	183	Mango Bendugu	78
Eastern P/S	137	Motema	193
Goderich	124	Moyamba	165
Kabala	132	Port-Loko	186
Kailahun	190	Pujehun	139
Kamakwie	104	Ross Road	307
Kambia	252	Rutile	96
Kenema	482	Tankoro	213
Kissy	456	Tongo	141
Lungi	155	Waterloo	210

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

Sierra Leone is divided into four police regions: North, East, West and South. The personnel distribution by region is given in Table 3.

Under the divisional arrangement, the SLP is structured into 28 divisions. Each division is headed by a Chief Police Officer and a designated Divisional Police Officer. Table 4 shows the divisional structure and the personnel strength.

The SLP in addition has departments that provide services to complement effective policing. These departments are often staffed by personnel that have the requisite training and expertise required by such departments. Table 5 provides details.

Policemen are also seconded by the SLP on *ad hoc* assignments. After completion of such assignments, the officers and men report to police headquarters for reposting to divisions or departments. Table 6 provides details of such assignments.

SIERRA LEONE POLICE COMMAND STRUCTURE

The command structure of the SLP is vertical with the Inspector-General of Police at the helm. He is assisted by the Deputy Inspector-General, who oversees both the organisational and operational support services of the force. Five Assistant Inspectors-General (AIG) are in charge of the following organisational support services: Personnel Services, Operations, Corporate Services, Personal Training and Welfare, and Support Services.

The operational support arm of the force is also under the supervision and control of five AIGs. Four of these have control over different divisions of the SLP and the fifth supervises the Operation Support Division (OSD), which controls the Police Support Group, the Close Protection Group, the Mobile Armed Response Group, the Static Protection Group, the Armed Intervention Group, the Transitional Government and the Escort Subgroup.

Some departments and specialised units, as described below, have been selected to participate in this research in order to highlight their relevance to contemporary policing in the country.

Corporate Services Department

Keith Bridle, past Inspector-General of Police of the SLP, embarked on a series of restructuring processes during his tenure, which gave impetus to the birth

Table 5 Departmental structure of the Sierra Leone Police and personnel strength

Name of Department	Total
Anti-corruption	2
Anti-drugs	9
Complaints, Discipline, Internal investigation Department	40
Criminal Investigation Service	177
Criminal Intelligence Service	43
Communications	89
Cooperate Services Department	19
Estate Department	72
Internal Audit	13
Interpol	12
Marine Police Department	18
Media and Public Relations Unit	11
Operations Planning and Personnel Department	66
Operational Support Department	1 745
Hospital and Health Services	82
Police Headquarters	203
Police Band	59
Police Training School	78
Justice Support and Legal Service (Prosecution)	85
Special Branch Headquarters	78
Stores Department	41
Traffic Department	44
Transport Department	164
Regional police West	173

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

Table 6 Sierra Leone Police officers on assignment and study leave

Name of assignment	No. of personnel
Vice President's Lodge	28
UN Mission	20
Special Court for Sierra Leone	10
President's Lodge	9
On study leave	5
Retired Vice President's Lodge	1

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

of the Corporate Services Department (CSD). Its function was to monitor and ensure compliance and continuity after the departure of expatriate British officers. The CSD has four units, namely Inspectorate, Research and Planning, Internal Audit and Change Management. The activities of these units are coordinated by a secretariat Programme Support Office. The director of the CSD serves as the custodian of all reliable information in respect of the functioning of the organisation. He relays such information to the Executive Management Change Board from time to time.

Justice Support and Legal Services Unit

Established in 2004, the Justice Support and Legal Services Unit is primarily responsible for guiding the police on all matters dealing with the provision of legal frameworks in the law enforcement sector. The unit provides an ideal means of access to justice, especially for less privileged citizens. The unit complements the efforts of the judiciary.

Maritime Unit

The Maritime Unit of the SLP was established to police the territorial waters of Sierra Leone together with the Republic of Sierra Leone Armed Forces (RSLAF), and responds to security problems associated with sea traffic and fishing. The unit has displayed its efficiency by successfully conducting rescue missions involving passenger boats on the verge of sinking. It has also

arrested several smugglers and handed them over to the National Revenue Authority (NRA).

Complaint, Discipline, Internal Investigation Department

The Complaint, Discipline, Internal Investigation Department (CDIID), which is headed by a director, was established pursuant to an Act of Parliament that produced the Police Disciplinary Regulation Code of 2001. The CDIID is charged with the responsibility of eradicating all unprofessional and corrupt conduct within the SLP. It receives complaints relating to police misconduct, unprofessional action and excesses. Following proper investigations it takes disciplinary action against officers and men who have violated the rules and regulations of the SLP.

Operational Support Division

As an integral part of the SLP, the OSD is an improvement on the anti-riot unit that preceded it. It is subdivided into the following groups:

- The Police Support Group is normally unarmed and is responsible for public order, cordons and searches, raids etc.
- The Static Protection Group consists of a team of six officers armed with rifles, who are permanently deployed to provide armed protection of key points and offices and the residences of key personnel.
- The Armed Intervention Group provides highly trained and specially armed and equipped teams that are skilled in armed intervention to resolve armed sieges and hostage-taking situations involving armed criminals, renegade rebels etc.
- The Close Protection Group consists of teams of six specially selected and highly trained male and female officers who are permanently deployed to provide bodyguards for key personnel.
- The Escort Subgroup provides armed escorts for the movement of key personnel and conveys high-risk prisoners, arms and explosives.
- The Community Relations Unit is an outreach unit linking the police with the community by ensuring that the community, through the concept of local needs policing, becomes an integral part of the policing strategy of its areas.

Media and Public Relations Unit

Since the establishment of the Media and Public Relations Unit (MPRU) in 1999 much has been done to promote the image of the police. The MPRU aims to boost public confidence and trust in the police by projecting a better image. It encourages positive reporting on police activities by the media. The unit has succeeded in erasing the public's negative perception of the police.

THE EFFECTIVENESS OF THE SIERRA LEONE POLICE IN COMBATING CRIME

Crime prevention has the aim of reducing criminal activities by targeting the offender, the victim or the opportunity for crime presented by a situation. By the removal of a potential offender from a situation, the police are able to prevent a crime from being committed. Statistics show an increase in the incidence of crimes in Sierra Leone between 2002 and 2004 (Table 7). However, these statistics could also indicate growing police effectiveness and increased confidence in the police. As people begin to place greater trust in the police, they are more likely to report incidents that were hitherto unreported. The majority of the crimes currently reported occur in West Region. This is attributable to post-war effects, an explosion in rural-urban migration, the growth of urban slums and the effects of globalisation.

Assault and the related crime of wounding with intent account for about 50 per cent of the crimes recorded, fraud and larceny for about 30 per cent, and robbery and burglary for about three per cent each.

While respondents to the survey are of the consensus that the police has been fairly effective in combating crime, it must be emphasised that there is

Table 7 Crime statistics by region, 2002–2004

Year	West	North	South	East	Total
2004	34 189	9 225	4 348	7 544	55 306
2003	31 009	9 503	4 019	7 242	51 773
2002	32 305	8 913	2 470	3 814	47 502

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

need to train the police to respond to emergent crimes such as terrorism, cyber crimes, human trafficking, drug peddling, the smuggling of minerals etc. There is also a public perception that the number of police stations in the country (27 divisions) is not adequate for tackling crime effectively.

The SLP has been making efforts to combat crime through the use of routine beat patrols. Respondents are of the opinion that the police, despite the paucity of funds and the problem of logistics, have been doing their best at combating crime. Respondents also suggest that the successful conduct of two national elections in the country is a pointer to the effectiveness of the police in combating crime.

Crime prevention is one area of operational policing where the SLP lacks a strategic approach. Occasional patrols, raids, searches and static sentries represent the main crime prevention initiatives. But these actions have not proved very effective, possibly because they are reportedly not adequately supervised and co-ordinated.

One measure of the effectiveness of police work is the efficiency with which it responds to distress calls from the public. Ninety-five per cent of respondents are of the opinion that the force has been fairly responsive to distress calls. A swift police response may be required in a variety of circumstances, e.g. the rescue of an offender from mob action. Failure by the police to act swiftly has often led to breaches of the law. Contemporary policing requires fast police responses, but an effective response is only achievable where proper logistics, such as communications equipment and operational vehicles, are available.

POLICE/COMMUNITY PARTNERSHIPS IN COMBATING CRIME

The effective combat response to crimes requires a well-organised police/community partnership since most suspects or alleged criminals live within and are known to members of communities. The world over, police forces maintain informant systems. However, if members of the public are to complement the efforts of the police, their identities must remain secret. It is claimed that in Sierra Leone the identities of informants have often been made available to suspects by the police. This situation has discouraged persons who may have vital information from passing it on for fear of reprisals by the alleged criminals.

In building an effective police/community partnership, structures must be in place for quality networking between the police and the public. One of the most acceptable definitions on community policing is the one by Robert Trojanowicz et al. in their seminal work entitled *Community policing: a contemporary perspective* (1998).

A new philosophy of policing based concept that police officers and citizens working together in creative ways can help solve contemporary community problems relating to crime, fear of crime, social and physical disorder, and neighbourhood decay.

To achieve the objectives of community policing, the police local command units in Sierra Leone have formed partnership boards with their local communities in what is referred to as 'co-active policing' This style of policing is based on local-needs policing whereby the police and private citizens form partnerships to solve community problems. For greater effectiveness in this regard, the SLP needs to revisit its law enforcement practices and introduce community policing strategies, and for the sake of continuity, regular consultations must be held with community leaders and other organisations.

The success or otherwise of community policing depends on the implementation of a proactive and problem solving policing approach. There needs to be a paradigm shift in the SLP away from its monopoly on its policing function to greater inter-agency cooperation and the development of networks with other agencies for the dissemination of information. This would result in policing moving away from being the sole preserve of the SLP to becoming a networking arrangement between the police, the public and private and non-governmental agencies.

INCIDENCE OF CORRUPTION IN THE SIERRA LEONE POLICE

One of the blights of policing in the developing world is the incidence of corruption. The credibility of police officers in Sierra Leone is tainted by corruption, which is prevalent in both the officer corps and the rank and file. The majority of the respondents are of the view that corruption permeates the force at all levels.

They identified low remuneration, inadequate incentives and poor conditions of services as the major causes of corruption.

Faced by a spiralling cost of living, members of the force are finding it increasingly difficult to meet their social and economic responsibilities. To augment their 'stipendiary pay packet', many policemen thus resort to illegal methods. The most common manifestation of corruption is in the form of bribes and other forms of gratification from members of the public who have infringed the provisions of certain statutes, e.g. traffic regulations. Policemen detailed to traffic control extort money from public transport drivers for alleged offences.

A critical appraisal indicates that these problems arise because of inadequate funding of the SLP by government. There has been a progressive reduction in the budgetary allocation to the force in percentage terms, even though it has increasing responsibilities.

PUBLIC PERCEPTION OF THE SIERRA LEONE POLICE

The survey revealed that the public perception of the police is still very negative. The SLP is perceived to be corrupt and ineffective, and consequently public confidence in the police is lacking. Some respondents believe that efforts should be directed at improving the welfare of the force so as to meet the standards that obtain in other West African counties such as Ghana and Nigeria.

Cognisant of its negative image, the SLP has evolved a change management process designed to focus on four main areas: corporate governance, strategic leadership, strategic management and strategic implementation. Emphasis is being placed on developing the leadership skills of core individuals, including senior officers in charge of change management in the SLP.

DECENTRALISATION OF THE SIERRA LEONE POLICE

The survey indicates a consensus of opinion that the SLP needs to be decentralised. Though there has been some decentralisation in the past, respondents are of the opinion that the process should be continued. Previous efforts resulted from the need to reduce the excessive workload on top management and to reduce excessive bureaucracy in the policy-making process. Decentralisation

permits local managers or divisional commanders to take effective charge of their areas of jurisdiction, and provides lower-level management and commanders the opportunity to gain the requisite experience in decision-making and gain recognition.

Some of the offices that have been decentralised are the Inspectorate Unit, the Corporate Services Department, the Community Relations Department, the Family Support Unit and the Complaint, Discipline Internal Investigations Department. There are plans for further decentralisation within the SLP.

POLITICISATION OF THE SIERRA LEONE POLICE

The survey has shown that the SLP is caught up in a web of political intrigue. Respondents are of the opinion that the force is highly politicised. The effect of this is that crimes committed by persons with political connections are not investigated properly and such persons are consequently not charged with the crime. Some policemen have suffered persecution because of their political beliefs in the form of delayed promotion and premature retirement. Political interference has also manifested itself in the areas of recruitment, promotion, dismissal etc. Party faithfuls have often been recruited into the force despite not meeting the set criteria for recruitment.

The politicisation of the force is an affront to the provisions of section 52(1) of the Police Act, which provides as follows:

Police officers shall not, except with the expressed approval of the Minister, be members of, or have any connection whatsoever with, any political society, organisation, or movement, or with any trade union, or any union (civil service or otherwise), either within or without Sierra Leone.

A literal interpretation of this provision is that membership of any political party by members of the SLP has to be sanctioned by the Minister who oversees police matters. There is no record of such express approvals having been given. Contravention of the provisions may entail immediate dismissal. However, with the composition of the Police Council being along partisan lines, it becomes difficult to see how the SLP can be insulated from politics. Funding for the police is drawn from the coffers of the government of the day, thus interring all hopes of a depoliticised force.

DISCIPLINARY MEASURES IN THE SIERRA LEONE POLICE

Most respondents believe that disciplinary measures in the force are fairly adequate to address indiscipline in the force. The legal instruments available for regulating discipline include the Police (Discipline) Regulations 2001 and the Police Act, both of which contain elaborate provisions for maintaining discipline in the SLP. Respondents probably based their perceptions on the adequacy of disciplinary measures and a subjective understanding of the process, rather than on having actual knowledge of the relevant legislation.

The disciplinary process suffers from the problem of politicisation of the force. Officers with connections are often spared when they infringe on some of the regulations. The most delicate internal control problem that is likely to plague the institution in the future is that of indiscipline. According to media reports, the SLP is still beset with cases of drunkenness, insubordination, dishonesty, extortion, favouritism, absenteeism, lateness and neglect of duty.

The rationale of discipline is to allow an employee to perform his work with judgment and self-control. Discipline is achievable in two ways: by education, training and instruction (positive discipline), and by admonition and punishment (negative discipline). The most important link in the chain of discipline is the first-line supervisor, the sergeant, since he works closely with his men, inculcates good habits and attitudes by example and instruction, and continually evaluates the performance of his staff. However, effective performance by a sergeant is often constrained by such inhibiting factors as a low-level of education and a lack of supervisory acumen.

THE POLICE ACT AND THE NEEDS OF MODERN-DAY POLICING

One immediately noticeable flaw in the legal system of Sierra Leone is the maze of archaic laws inherited from the colonial regime, which are yet to be amended to bring them into line with the contemporary needs of a modern state.

The Police Act is one such law. Enacted three years after Sierra Leone attained its independence, more than four decades have passed without the act being amended or repealed to pave way for a new legislation. Respondents were

of the consensus that the Police Act should be amended. While not denigrating its value when it was enacted, its provisions are now anachronistic and do not accord with the contemporary needs of modern-day policing. The law has clearly become ineffective in the face of new challenges.

UNDERFUNDING OF THE SIERRA LEONE POLICE

A modern police force, which the SLP aspires to be, is one that is adequately funded to meet both its recurrent and capital expenditures. Without an adequate budgetary allocation to cater for overhead costs, logistics and other supplies, realisation of the objectives of effective policing is a mirage.

Budgetary constraints have continued to mitigate against effective policing in Sierra Leone. With an expanding force, but a vehicular fleet grounded by dwindling resources, the SLP will continue to be hampered in the effective performance of its tasks. Resource management and the financial sustainability and viability of the SLP are major areas of concern. Increased budgets are often eroded by inflationary trends. The budget allocations for the years 2002 to 2004 only partially reflect the main aspect of the security sector reform agenda of *more police, less soldiers*. Furthermore, non-wage recurrent spending may be inadequate in view of the substantial infrastructural needs of the SLP. The budgetary allocations are captured in Table 8.

While the level of funding has grown by Le 4,11 billion since 1999, the SLP is still significantly underfunded. For the year 2005, the SLP submitted a budget

Table 8 Budgetary allocations to the Sierra Leone Police,
2005 – 2008 (billions of leones)

	2005	2006	2007	2008
Salaries and wages	16 966	17 814	18 705	20 578
Standard recurrent	13 901	15170	15 924	17 516
Non-standard recurrent	2 159	2 465	2 591	2 850
Capital	1 933	2 109	2 217	2 438
Development	1 200	1 000	1 000	1 000
Total	36 260	38 560	40 438	44 382

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

proposal for Le 64 billion, which included co-development and capital expenditure proposals. The allocation received was Le 35 billion. There was virtually no money for development or capital expenditure.

THE USE OF BAIL, ARREST WITHOUT WARRANT AND CORRUPTION

The right to bail by a person accused of a crime is a constitutional right, since a person is presumed innocent until proven guilty. The non-indictable offences that police officers are empowered to prosecute are ordinarily bailable offences by virtue of section 79(3) of the Criminal Procedures Act, which determines that when a person is charged before the court with any offence other than murder, treason or a felony the courts shall admit him to bail, unless it sees good reasons to the contrary.

Section 80 of the Criminal Procedures Act empowers the police to admit suspects to bail. A police officer can provide bail by recognisance as a condition precedent for the appearance of an accused before the Magistrates' Court. The term 'recognisance' excludes the use of money by suspects to secure bail at police stations. In police circles this is known as 'Bail is free'. How free the bail actually is, is another matter, as most suspects report that they have had to pay to secure bail at a police station before they are charged before a court of competent jurisdiction. Respondents were unanimous that bail conditions are excessive and that they encouraged police corruption.

With respect to the power of arrest without warrant, section 25 of the Police Act empowers officers to arrest suspects without having a warrant. Section 13 of the Criminal Procedures Act defines the circumstances under which such an arrest may be effected. However, a warrant shall, on demand of the person apprehended, be shown and read to suspect as soon as practicable after the arrest. While section 25 does not sanction the arrest of suspects without a warrant of arrest validly issued by a court, the purport of the section is that arrest can be effected where the officer inadvertently does not have the warrant in his possession. Respondents were of the opinion that the power of arrest without a warrant was 'very likely' to be abused by police officers. This can be construed to mean that even though a warrant has not been issued, an officer purports to effect the arrest on the pretext of one having been issued.

CONSTRAINTS MILITATING AGAINST EFFECTIVE POLICING IN SIERRA LEONE

The survey revealed that several constraints militate against effective policing in Sierra Leone, as follows:

- The incidence of corruption in the police force
- Inadequate budgetary allocation and underfunding of the force
- The existence of an anachronistic legal framework for policing
- Politicisation in the force
- Poor educational enlistment requirements
- Inadequate logistics and equipment, e.g. offices, operational vehicles and stationery
- A poor public perception of the SLP
- Low morale as a result of poor remuneration
- Insufficient personnel

RECOMMENDATIONS

Cognisant of the general constraints that militate against effective policing in Sierra Leone and the imperatives of modern-day policing, the following recommendations are made in an effort to try and help solve some of the many problems that confront the SLP.

- The present entry qualifications for recruitment into the force should be reviewed. A West African School Certificate Examination (WASCE), which is the current minimum entry qualification, is not adequate and should be reviewed. Five WASCE credit passes should be the minimum requirement for enlistment.
- Recruitment procedure should be shorn of primordial considerations such as ethnicity, politics etc.
- The SLP should be made independent of government control to counter politicisation in the force. The patronage-based recruitment of party faithful should be eschewed.
- The government should increase the SLP's budgetary allocations to enable it to address the problems of logistics, personnel etc.

- The government should construct more police stations and barracks to improve the efficiency and welfare of police officers, and to enhance efforts at stemming the rising incidence of crime.
- There should be mandatory refresher courses for officers and men in topics such as police ethics, human rights, law, police/civil relations etc.
- The police/community relations structure should be enhanced to combat crime more effectively.
- The composition of the Police Council should be reviewed to make it truly independent of political interference.
- Corruption in the force should be treated with the urgency it deserves. The prosecution of all offending police personnel would be a strong deterrent.
- Remuneration and fringe benefits in the SLP should be reviewed and improved.
- The Police Act is an obsolete piece of legislation that does not accord with the imperatives of modern-day Sierra Leone. Parliament should enact new and modern police legislation.

3 Prosecution

INTRODUCTION

Globalisation has spawned many social, economic and political problems that are often manifested in the commissioning of crimes by felons and petty criminals. This class of people are often a threat to the peace, order and well being of society. Technological advances have also brought with them some hi-tech crimes not contemplated in the penal laws of Sierra Leone and not accommodated under the Criminal Procedures Act of 1965. Such crimes include cyber crime, economic crimes, trafficking in hard drugs, the smuggling of precious minerals and trafficking in people. Of course, not all these crimes are wholly attributable to technological developments, but they have become more sophisticated. To address these crimes, a country needs a vibrant judicial system, good prosecution services and an efficient judiciary. The laws of a nation should be evolving continually in response to changes in the crime spectrum.

The prosecution of felons and criminals is the responsibility of a state's prosecution services. In Sierra Leone, the foremost prosecution authority of government is the Office of the Director of Public Prosecutions to which officers of the Sierra Leone Police (SLP) are attached for prosecutorial duties. The main legal/

procedural instrument for the prosecution of crime is the Criminal Procedures Act of 1965.

CONSTITUTIONAL FRAMEWORK OF THE PROSECUTION SERVICES

The prosecution of crime in Sierra Leone derives its validity from the provisions of the Constitution of 1991. The positions of Attorney-General, Minister of Justice and Solicitor-General and the Office of the Director of Public Prosecutions were all created under the Constitution.

Office of the Attorney-General

The Attorney-General, who also holds the position of Minister of Justice, is the principal legal adviser to government. He is appointed by the President of Sierra Leone and holds office as a justice of the Supreme Court. He is empowered to prosecute all offences committed within the territory of Sierra Leone, or to authorise some other person to do so in his stead. He has audience in all courts except local courts.

Office of the Solicitor-General

The Office of the Solicitor-General is a public office established under section 65(1) of the Constitution. The holder of the office is appointed by Sierra Leone's President on the advice of the Judicial and Legal Service Commission and shall be a person qualified to hold office as a justice of the Court of Appeal. The Solicitor-General is the principal assistant to the Attorney-General and has audience in all courts of Sierra Leone except local courts. The Solicitor-General shall be subject to the general or special direction of the Attorney-General in all matters.

Office of the Director of Public Prosecutions

According to section 66(1) of the Constitution, the Office of the Director of Public Prosecutions is directly responsible for the prosecution of all infractions of the law in Sierra Leone, consequent upon the Director of Public Prosecutions (DPP) obtaining the authority to do so from the Attorney-General. The DPP

is appointed by the President of Sierra Leone on the advice of the Judicial and Legal Service Commission and shall have the requisite qualifications to sit as a Justice of the Court of Appeal. His appointment is, however, subject to the approval of Parliament. The powers of the DPP are as follows:

- To institute and undertake criminal proceedings against any person before any court in respect of any offence against the laws of Sierra Leone
- To take over and continue any such criminal proceedings that may have been instituted by any other person or authority
- To discontinue at any stage before judgment is delivered any criminal proceedings instituted, or undertaken by himself or any other person or authority

The power of the DPP under section 66(4)(c) of the Constitution is known in legal parlance as the power of *nolle prosequi*. This power, though a laudable constitutional provision, is susceptible to abuse, especially in politically sensitive cases. The power is often used in political matters.

The DPP is also empowered under the constitution to delegate his responsibilities to persons acting under him and in accordance with his general or special instructions. However, the exercise of this power shall be subject to the general or special direction of the Attorney-General/Minister of Justice.

INSTITUTIONAL ARRANGEMENTS OF THE PROSECUTION SERVICES

Apart from the constitutional arrangements for the prosecution of crime in Sierra Leone, there are some other institutional structures in the prosecution process. These arrangements will be examined with reference to existing legal regulations (excluding the Constitution) and the personnel/infrastructural frameworks.

The Attorney General's control over criminal proceedings

Section 64 of the Constitution outlines the Attorney-General's powers for controlling criminal proceedings. These include the power to discontinue criminal proceedings at any time before the delivery of judgment. This power

is also provided for under the provisions of sections 44 and 45 of the Criminal Procedures Act. In any criminal case and at any stage thereof, before verdict or judgement, the Attorney-General may accordingly enter a *nolle prosequi* by informing the court in writing that the Crown intends that the proceedings shall not continue. Where this is the case, the accused or the defendant shall at once be discharged in respect of the charge for which the *nolle prosequi* is entered. Where the accused has been committed to prison, he shall be released and if on bail, his recognisance shall be discharged. Discharge in this case shall not operate as an acquittal and is not a bar to subsequent prosecution of the accused on the same facts. Some of the powers vested in the Attorney-General by virtue of section 44(1) of the Criminal Procedures Act can be delegated by him to law officers. The exercise of such powers by a law officer is coterminous with its exercise by the Attorney-General. However, the power to exercise *nolle prosequi* is only exercisable by the Attorney-General and is non-delegable.

The prosecutorial powers of the Sierra Leone Police

Under section 24 of the Police Act of 1964, police officers are authorised to prosecute infractions of the law before any court of summary jurisdiction, i.e. inferior courts of record such as Magistrates' Courts. The section provides that:

Any police officer may conduct in person all prosecutions before any court of summary jurisdiction whether the information or complaint be laid in his name or not and whether or not the offence was committed in his presence or that of any other police officer.

The prosecutorial power of the police is a consequence of the shortage of skilled legal manpower in Sierra Leone. However, police prosecutors can only prosecute non-indictable offences. Trials in Magistrates' Courts involve summary trial offences and police officers can thus only prosecute summarily at Magistrates' Courts. A condition precedent to the exercise of the power of prosecution is that the Attorney-General must have given a police officer the authority to prosecute.

However, as revealed by the survey, the capacity of police officers to carry out this function is inadequate. The effective prosecution of cases by police officers is often inhibited by poor education, paucity of legal knowledge in the areas of substantive and procedural law, and a lack of diligence on the part of

prosecutors. This often leads to accused persons being discharged, to the consternation of the victims of crime.

Another serious difficulty that militates against the effective prosecution of cases by police officers is the shortage of police prosecutors. Currently Sierra Leone only has about 85 police prosecutors to service the country's 14 districts. Given that most cases of infraction of the law fall in the non-indictable offences category, and considering the rise in the prevalence of non-indictable offences, it is abundantly clear that the number of police prosecutors in Sierra Leone is inadequate to meet the needs of effective prosecution at magisterial court level.

The lack of commitment by police prosecutors has the effect of most criminal wrongs not being redressed. It should be noted that where a police prosecutor fails to appear in court after being served with a hearing notice that stipulates the time and place of the hearing, the charge is dismissed by the court. At best, if there are cogent and compelling reasons, the case is adjourned.

A drawback of political interference in policing has been the lowering of educational requirements for enlistment and the role this has played in the poor prosecution record of police officers. The reduction in enlistment requirements was probably intended to absorb political surrogates who had contributed to the electoral victory of particular parties.

It is evident that the prosecution of cases will remain unsatisfactory unless the following actions are implemented:

- The educational requirements for enlistment into the force are reviewed
- Proper and coordinated refresher courses are conducted for police prosecutors
- Incentives are introduced to encourage police prosecutors to be more effective.

PROSECUTION AND THE SHORTAGE OF STATE COUNSELS

Effective prosecution, especially at the superior court of record, is dependent on the requisite legal manpower being available. In Sierra Leone there is a dearth of State Counsels. The Law Officers' Department has a staff compliment of only about 23 persons and they are overwhelmed by the sheer number of cases needing prosecution (Table 9).

Table 9 Statistics on law officers in Sierra Leone

Designation	No. of personnel
Director of Public Prosecutions	1
Solicitor-General	1
Principal State Counsel	4
Senior State Counsel	4
State Counsel	7
Draftsmen	3
Consultants	3
Total	23

Source Data Office, SLP Headquarters, Freetown, 2 June 2008

One of the reasons advanced for this under-capacity is that the remuneration package for law officers is such a disincentive that legal practitioners in the private sector are reluctant to take up appointments as State Counsel. Most law officers in Sierra Leone work in the Western Area, where the majority of the cases are pending. The other three regions only have one law officer each.

LINKS BETWEEN THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND OTHER AGENCIES

While the DPP's office is primarily responsible for criminal prosecutions, there are other law enforcement agencies whose functions are adjunctive to that of the DPP. One is the Anti-Corruption Commission (ACC), which by virtue of the recently amended Anti-Corruption Commission Act is empowered to prosecute.

PROBLEM AREAS IN THE PROSECUTION SERVICES

The politics of prosecution in Sierra Leone

There is consensus of opinion among respondents that the Office of the Attorney-General, headed as it is by an Attorney-General/Minister of Justice

who is a political appointee, cannot be insulated from politics. The influence of politics in the prosecution of cases is reflected by the fact that criminal allegations against members of the opposition are more likely to be prosecuted than such cases against members of the ruling party.

The need to amend the Criminal Procedures Act

All the respondents were of the opinion that the Criminal Procedures Act is in urgent need of amendment. The obsolete nature of the legislation is demonstrated by the continued use of such terms as 'Crown' and 'Crown Counsel'. As the procedural law in regard to the prosecution of crimes, the Act's provisions need to be reviewed and amended to reflect modern-day practices in prosecution.

Delays in the prosecution of cases

Respondents have identified some causes for delays in the dispensation of justice in criminal proceedings, as follows:

- Insufficient State Counsel
- Too many adjournments at the instance of either party
- A lack of diligence in prosecution by police prosecutors
- A lack of commitment by court personnel
- The litigants' fear of reprisals from perpetrators of crime

SUMMARY OF PROSECUTORIAL PROBLEMS IN SIERRA LEONE

The following are some of the prosecutorial constraints encountered in Sierra Leone:

- Inadequate funding by government, which has resulted in low morale and a lack of commitment among judiciary staff
- A shortage of State Counsel and a lack of incentive to attract sufficient new entrants to the public sector justice delivery system
- The poor educational background of police prosecutors and poor or non-existent legal training.

- Poor logistical support, e.g. a shortage of vehicles to transport prisoners to court.
- Incessant adjournments in criminal prosecutions
- A poor witness protection mechanism, with witnesses fearing reprisals and as a result being dissuaded from giving evidence in open court
- Allegations of corruption among judiciary staff
- The existence of an anachronistic legal regime

RECOMMENDATIONS

- A periodic but regular review of the remuneration packages of judicial officers should be undertaken. This would act as an incentive to members of the bar to take up judicial appointments in the public sector.
- Police personnel involved in prosecution should be given basic legal training to enable them to perform their judicial functions more effectively.
- The budgetary allocations to the judiciary should be increased.
- The Attorney-General's Office should be separated from that of the Minister of Justice to stem the politicisation of the judiciary. While the Attorney-General should be a professional and apolitical appointment, the Minister of Justice could be political, although the position could also be held by a professional legal practitioner. The Constitution would have to be amended to accommodate this proposal.
- Effective mechanisms should be evolved to protect witnesses from possible reprisals by accused persons.
- The Criminal Procedures Act should be amended to accord with modern-day trends in criminal prosecution.
- Incessant adjournments should be disallowed and prosecutors should be given incentives to encourage the effective prosecution of cases.
- A legal aid scheme should be established to assist indigent suspects with their defence.
- To reduce congestion at the courts, the judicial bench should conduct periodic visits to prisons to ensure that lesser infractions of the law are not brought to court. Judges should exercise their prerogative rights of mercy to decongest both the courts and prisons.

4 Prisons

INTRODUCTION

One of the critical challenges as far as the consolidation of peace, security and reconciliation in Sierra Leone is concerned, is the extent to which the dignity of the human person, which was trampled underfoot during the war, can be restored and respected. Even in pre-war Sierra Leone, many ills were blamed on the lack of justice, especially for the poor and downtrodden. The abuse was characterised by the prison system where the rights and dignity of prisoners were either ignored or flagrantly wronged, as captured in the Report of the Sierra Leone Truth and Reconciliation Commission (SLTRC 2004), which noted the need to restore human dignity at both the individual and the national level.

An important yardstick for measuring a nation's obligation to uphold human dignity and the rights of its citizens is the manner in which that nation treats people who are put behind bars, either in jail or in other detention centres. Though the main focus of the post-war reconstruction drive was on security, increasing attention is now being given to the criminal justice system, perhaps as a result of an awareness that until Sierra Leone improves the delivery of justice to an appreciable degree, the country will continue to be unstable. Efforts are thus

being made to upgrade critical institutions, including Sierra Leone's Prisons Service. Importantly, the government, in collaboration with its development partners, has set out to improve conditions at the country's prisons. With the support of the UN and the Justice Sector Development Project (JSDP), four new prisons have been built and eight have been renovated and enlarged. Under the Sierra Leone Security Sector Reform Implementation Programme (SLSSRI), the Prisons Department was in 2006 provided with funds to procure vehicles.

Sierra Leone's Constitution provides for the protection of the fundamental rights of all citizens, including those incarcerated or imprisoned. Whilst the 1960 Prison Rules and the 1961 Prisons Ordinance do not meet the standards of some international protocols and conventions, they nonetheless require that prisoners be treated with respect and dignity. Significantly, gradual but noticeable compliance with a few of the international protocols and conventions can now be detected, especially as far as security, discipline and good order, the use of force and firearms, and the exercise of fundamental rights, such as freedom of conscience and worship, are concerned.

It became clear during the research that whereas the will exists to implement full compliance with international protocols and conventions as they relate to the rights of prisoners and people in detention, the Prisons Service completely lacks the human resources, logistics and funding to provide the flexibility needed for this.

CONSTITUTIONAL AND LEGAL FRAMEWORK OF THE PRISONS SERVICE

The country's Constitution and the Prison Rules, which derive from the authority of the Prison Ordinance Act (No. 22 of 1960), provide the legal framework for the Prisons Service. The Constitution contains a series of provisions for the protection of the rights of prisoners, including the presumption of innocence until guilt is established beyond all reasonable doubt and the right to legal counsel and representation. It also proscribes arrest and detention without recourse to the due process of the law, as well as any form of torture and cruel or inhuman and degrading treatment or punishment. It determines that any person who is charged with a criminal offence should be afforded a fair and speedy trial within a reasonable time by an independent and impartial tribunal established by law.

The Prison Rules govern the internal administration of prisons, including prisoners' rights and the conduct of prison officers. For example, they state that prisoners should be treated with dignity and restricts the unnecessary use of force, provide for regular physical exercise and regulate the availability of sufficient bedding, clothing and their cleanliness. They also lay down that prisoners should be given a sufficient quantity of food and must be allowed to have contact with the outside world through visits and letters. Finally, the rules recognise the reformatory role of prisons and provide for education and library facilities.

The point must be made that although prisons fall under the exclusive control of government, the manner in which prisoners are treated is a matter of international concern. The reason for this is that Sierra Leone's government has acceded to or needs to be guided by international treaties, customary international law, international declarations, minimum rules and a body of principles. These standards are considered to be the benchmarks for the operation of prisons worldwide. Just two examples: the UN Charter and the International Bill of Rights are the basis for international law on the defence and promotion of the rights of prisoners.

PRISON CONDITIONS AND TREATMENT OF PRISONERS

Research on the Prisons Service focused on a number of issues, namely the condition of prisons, the treatment of prisoners and of children and women in particular, and the special needs of women as prisoners. The pertinent findings of this research follow below.

Overcrowding and poor living conditions in prisons

There are 16 prisons in the country of which 13 are functioning. It was noted that overcrowding and poor living conditions are two key problems faced by the prisons. On a national scale, at the time of this research, the prisons were 112 per cent overcrowded. The Maximum Prison at Pademba Road in Freetown and the prisons in Bo, Makeni and Kenema were more overcrowded than the others (Table 10). It is in these prisons that the living conditions were the most appalling.

At a number of prisons, especially at Makeni, it was discovered that prisoners either slept on mats spread on the floor, or on locally-made mattresses, which

Table 10 The most overcrowded prisons in Sierra Leone

Prison	Capacity	
	Design	Actual
Freetown	324	1 246
Makeni	75	111
Bo Prison	80	102
Kenema	150	193

Source Sierra Leone Prisons Service Headquarters, Freetown, May/June 2008

generally swarmed with bed bugs. The researcher saw a good number of the inmates who were infected with scabies and other skin diseases. The windows did not have wire mesh protection against mosquitoes. Mosquito blood stains were noticed on the walls of many cells, suggesting that the prisoners' nights were marred by anguish and sleeplessness.

Compounding the overcrowding and poor living conditions in prisons, was a lack of adequate food and the unavailability of pure water in many prisons. It was acknowledged by prison authorities that in early 2008 the Guma Valley Water Company refused to supply water to the Maximum Prison at Pademba Road because of millions of leones in outstanding water bills, which led to an acute water scarcity in the prison yard. That resulted in the unlocking of a cross-section of prisoners to fetch water from outside. This occurrence was not only a blatant abuse of prisoners and their fundamental human rights, but the unlocking of prisoners was a serious breach of prison security procedures.

Case flow, long adjournments and stiff bails

This research established that the prosecution and trial procedures of Sierra Leone's legal system are an important factor in inhibiting the general efficiency of the Prisons Service. It can be argued that prison reforms without a concomitant improvement in the legal system will be a waste of time and resources. About 54 per cent of detainees are remand and trial prisoners who are presumed innocent until proven guilty. However, prisoners in this category have suffered many trial delays and long adjournments. The following are just some examples:

- John Lahai has stood trial in the Magistrates' Court of Freetown for unlawful carnal knowledge of a minor from 13 December 2002 to date.
- Bonny Savage Alozie was charged with fraudulent conversion. He has been awaiting trial since 2003.
- Santigie Kamara, who is incarcerated in the Kenema prison on a murder charge, has been undergoing trial since 16 November 2002.
- Hassan Sesay has been in remand from 16 August 1999 to date. He is charged with murder and has had his case adjourned *sine die*, which means that his trial is adjourned until the court decides otherwise.
- Abu Massaquoi, charged with conspiracy, has been a trial prisoner at the Pademba Road Prison since 6 July 2004.

Many interviewees, both prisoners and other citizens, have alluded to the difficulties involved in meeting bail requirements. An accused is rarely released upon his own recognisances and many accused thus suffer in jails even though bail would have been authorised by the courts and bail is regarded as a right for all persons standing trial. Persons accused of capital offences, such as murder and treason, cannot be granted bail, but they constituted only about 13 per cent of the prison population. Thus, if bail were not made too stiff and set beyond affordability, the prison population would be reduced significantly.

In addition, it was noted that there were often delays in serving indictments. This has contributed not only to overcrowding in the cells, but is also tantamount to obstructing the possibility of swift trials. Some people have remained imprisoned for periods of up to two years without an indictment being issued or a court appearance. The Department of Public Prosecutions cites lack of capacity for delays in issuing indictments.

Congflation of criminal and civil matters and severity of sentences

One of the reasons for overcrowding in prisons, which itself is an infringement on the rights of prisoners, is the fact that the judiciary sometimes confuses civil matters with criminal matters. Civil matters are supposed to be handled with some degree of leniency and should attract less punishment. Alternatively, some other resolution can be arranged between the conflicting

parties out of court. But trivial civil matters, like debt or a misdemeanour between a husband and wife, are often adjudicated to be criminal in nature. This sometimes results in either a long remand for the accused, a prison sentence or an excessive fine. The conflating of criminal and civil matters occurs mostly in the provinces where police prosecutors prefer charges against the accused. A few of the remand and convicted prisoners in Bo and Makeni fell in this category, as follows:

- Jeneba Koroma was serving a prison term of two years for owing the sum of Le 600 000 (about US\$200).
- Saffie Kamara was remanded for taking the sum of Le 1,5 million from her intended spouse, with whom she was staying. She was charged with larceny and at the time of the researcher's contact with her on 31 May 2008 had spent five weeks on remand with only three appearances in court.

ARRESTS AND PROSECUTIONS

It is very common for the police to carry out both arrests and prosecutions. By law, the police should arrest and lawyers from the Law Officers' Department should prosecute. However, over the years, this requirement has been treated with increasing flexibility. The combination of the critical roles of arrest and prosecution by the Sierra Leone Police (SLP) has been viewed as a serious affront to criminal justice on the grounds that whilst it is the function of the police to arrest alleged criminals and obtain their preliminary statements, they may not always have the requisite legal knowledge to prosecute the same criminals in a court of law. There is a strong tendency by police prosecutors to charge accused with the wrong offences. This has certainly hindered justice and put accused persons at a disadvantage.

Part of the reason for the police arrogating to themselves the responsibility of prosecution is the lack of capacity by the Law Officers' Department. At the time of research, it was noted that there were no government-supported legal-aid providers in the country. Only two non-governmental organisations (NGO) provided such assistance, namely Timap for Justice and the LAWCLA, but even they do not cover the whole country.

In an attempt to improve the quality of prosecutorial services, SLP management decided to organise training in prosecution for a number of police officers

in 2008. The training team comprised prominent local and international legal practitioners and scholars. In addition, consideration is being given to permitting those officers who have undergone legal education and have attained law degrees the right to prosecute.

Use of discretion in prisons and the role of Justices of the Peace

The threshold for the use of discretionary power seems to be unclear, especially at prisons in the provinces where even a junior prison officer may have discretionary powers. This is a critical issue as dealing with matters concerning prisoners should not be left to junior officers, especially in an unsupervised environment. It was also discovered that criminal justice is being hampered to a considerable degree by persons without legal education being appointed as Justices of the Peace, constitutional lawyers and magistrates, especially in the provinces. Justices of the Peace are not supposed to sentence people to prison for more than a year, but it was established that they can be very unreasonable in their rulings and tend to sentence accused to jail terms of more than a year for very trivial offences. Here are a few examples to illustrate this point:

- Ali Papa Kamara was sentenced to prison by a Justice of the Peace for seven years on 19 March 2008 for assaulting a policeman.
- Ahmed Kendeka was sentenced to five years' imprisonment at the end of February 2008 by the Matru Magistrates' Court, which is presided over by Justices of the Peace, for a debt of Le 25 000 (an amount of less than US\$10).
- Amidu Kallon was sentenced to six years' imprisonment by the Pujehun Magistrates' Court, which is also presided over by Justices of the Peace, in February 2008 for store breaking.

Illness and poor medical facilities

In almost all the prisons visited the researcher saw a number of prisoners with swollen legs owing to lack of exercise, thin and frail-looking prisoners because of inadequate food rations, and prisoners in a poor state of health as a result of inadequate medical facilities and poor hygiene and sanitation. An

interesting but sad admission came from the Makeni prison when it was noted that, without prognosis, Panadol was the common therapeutic drug handed out for every illness reported by prisoners.

In almost all prisons visited, at least one room was set aside for the reception and care of sick prisoners. Most prison health facilities are staffed by nurses who, it was claimed, visited the cells every morning to enquire after the health of prisoners, but this could not be verified. The greatest problem recorded, however, was that in many provincial prisons there were no vehicles to take prisoners whose health had deteriorated to referral hospitals.

When asked about the types of illnesses and diseases that were prevalent in the prisons visited, the response across the board was that the most common ones were malaria, fungal infection, bloody stools, pneumonia, gonorrhoea, scabies, syphilis, muscular pain, oedema, eye and ear infections and hypertension. All the prisons denied having HIV/AIDS-infected prisoners. They admitted, however, that no HIV/AIDS tests had ever been done in the prisons to ascertain the HIV status of prisoners.

The prison authorities advised that the prisons were disinfected on an arbitrary basis. It was noted that the available supplies of disinfectants were not proportionate to the sizes and population counts of the prisons. Lack of regular fumigation, inadequate water and toiletry supplies, and general unhygienic conditions make prisoners very vulnerable to infectious diseases.

Recreation and exercise

In most prisons the cells are unlocked from 07:15 to 18:00 daily and the inmates are permitted to go out into the open yard for fresh air or to do exercise, but the requirement that they be given the opportunity to exercise is heavily inhibited by lack of space and recreational facilities in most prisons, especially those in the provinces. In some prisons, the cells are unlocked from 19:00 to 21:00 in addition, but inmates are only allowed into the corridors, not the yard. The only prisoners exempted from this regimen are those who fetch water and assist in the kitchens. It is our opinion that preventing prisoners from leaving the prison corridors to get fresh air in the open or to exercise is a violation of their human rights and incongruous with minimum international standards. The main recreational facilities offered by most prisons were ludo, draughts, cards and football.

Meals

It was found that prisoners were not fed on time. In some prisons the inmates were only served two meals a day and it appears that some preference was given to sentenced and trial prisoners over remand prisoners. A disturbing observation was that in order to permit the serving of a more meaningful and heavy meal, an ad hoc arrangement had been made in some prisons to collapse lunch and dinner into one meal.

Access to legal representation

The majority of the inmates interviewed, especially in provincial prisons, said that they had no access to legal representation. Many reported that they were charged with offences that were not appropriate for their circumstances. Especially in the provinces, where most criminal charges are handled by police prosecutors, it was claimed that the charges proffered had no legal basis. The non-availability of prosecuting lawyers implies that accused remain at the mercy of Justices of the Peace, magistrates and judges. This situation contributes to process delays and compounds the prison congestion problem. In 2007, some prisoners in Bo and Moyamba did not go to court at all for lack of prosecution services.

About 92 per cent of sentenced prisoners interviewed indicated that they had had no legal representation during their trials. During a visit to the Freetown Central Prison on 20 June 2008, a total of 425 prisoners were said to be on remand of whom about 10 per cent had no legal representation. Poverty was identified as the main reason for prisoners not being able to secure legal representation, although the adjunct to this is ignorance. In contrast, juveniles, especially those housed at the Remand Home in Freetown, are provided with legal assistance by local and international NGO's, such as LAWCLA and Defence for Children International. This is not surprising since children and juveniles belong to a vulnerable group that is targeted by many NGOs.

Contact with the outside world

International standards and conventions determine that prisoners should be allowed to communicate with their families and friends by correspondence

and supervised visits at regular intervals. Prison authorities are bound by these standards to inform the spouse and/or immediate relative of an inmate about his/her admission into a facility, any serious illness or death that may befall the person, or his/her transfer from one institution to another. In Sierra Leone, these standards are generally not complied with. Whilst some of the welfare officers interviewed pointed to the lack of logistics that made it difficult to inform relatives, others claimed that some prisoners provided incorrect address and other details. Inmates argued, however, that welfare officers were always difficult to access.

It is also difficult for inmates to communicate with their relatives or friends by correspondence, either because of illiteracy or because of a lack of capacity in prisons. An administrative structure to distribute prisoners' letters does not exist. However, in the Kailahun prison an *ad hoc* arrangement had been made with members of the Drivers' Union to carry letters from prisoners to relatives at no cost. On a country-wide basis, the International Committee of the Red Cross (ICRC) collects and distributes letters from inmates on a quarterly basis. This has proved to be the most successful way of getting prisoner's letters to family and friends. It is hoped that this critical area will be addressed as part of the ongoing reforms being introduced by the Prisons Service.

All prisons allow regular visits, although the conditions of this facility vary from prison to prison. At a few prisons visitors are allowed to bring in food for the inmates, although cooked foods are accepted only after having been tasted by the visitor in the presence of a prison officer. Visitors are also permitted to bring clothes for remand prisoners. Whereas in many prisons the demarcated place for visits is the hallway leading to the office of the Officer in Charge, some prisons have set aside designate rooms for visits.

None of the 13 functioning prisons, except the Central Prison in Freetown, had a working telephone. But even here, prisoners were not permitted access to the telephone.

Treatment of women and juveniles/children in prisons

In line with international standards, women prisoners should not be discriminated against. They should be protected from all forms of violence or exploitation and should be held separately from their male counterparts.

The research did not find any evidence to suggest that female prisoners were discriminated against, exploited or maltreated. In all the prisons visited, there

were visible signs of demarcation between female and male prisoners. The two sexes were kept in separate cells, but they often tended to mix in a manner that is unacceptable. For instance, in most prisons males and female inmates shared recreational and exercise areas. In Kenema, male and female prisoners even shared bathrooms. The special needs of female prisoners, ranging from menstrual pads to toiletries, cosmetics, slippers etc. were not supplied in any prison except in the Central Prison in Freetown, where women were provided with a dress, a head-tie and an undergarment.

In a number of prisons, particularly in Freetown, Bo and Kenema, it was common to see pregnant women and suckling mothers. The explanation was that women entered prison with unnoticeable early pregnancies and that special facilities for such women did not exist. When the time was right, they would be referred to the government hospital or to non-government agencies that had the facilities to care for such women.

As for juveniles and children, there are only two Remand Homes, namely at Bo and Freetown, and one Approved School in Freetown, which for a country of about five million people, where youths and children are in the majority, is inadequate. These facilities do, however, ensure that children who have committed crimes are not treated in the same way as adults and are not put in the same prisons. In a bid to avoid overcrowding in a situation where there are few juvenile facilities, the Remand Home in Bo at times gives offending children lashes and then lets them go. Corporal punishment does, however, violate the human rights of children. Special Juvenile Courts do not exist in Sierra Leone.

There are many abandoned children in the communities, some of whom have taken to crime. MSWGCA is doing little to integrate such children into the communities, or to trace their families.

PRISONS SERVICE ADMINISTRATION AND BUDGETS

The primary task of the Prisons Service is to receive remand and convicted prisoners from the courts. Warrants sanctioned by magistrates, judges or by appropriate persons in authority request the Prisons Service to take custody of these prisoners and house them in an habitable environment. It is also the responsibility of the Prisons Service to receive trial prisoners, political detainees and security-risk prisoners. The Prisons Service must look after the welfare of prisoners and ensure that they are reformed and rehabilitated.

The desired staff complement of the Prisons Service in March 2008 was 2 260. Tables 11 to 14 show the actual distribution of senior staff in terms of position, deployment, gender and location, as well as prison/staff ratios.

Meaningful terms and conditions of employment, including attractive salaries, are a main factor in ensuring the achievement of efficiency in organisations. Interviews with prison staff indicated that the level of salaries paid in the Prisons Service are ridiculously low and that the benefits and incentives received are no better. For example, a Grade 1 recruit earned a minimum of Le 39 150 (about US\$13) and a maximum of Le 47 250 (US\$16) per month, whilst the highest grade in the service, i.e. the position of Director of Prisons, earned a minimum of Le 281 750 (US\$92) and a maximum of Le 368 000 (US\$123). It is therefore not surprising to observe a low morale and laxness among almost all the prison officers interviewed. The grim picture this portrays strongly suggests that the professional ethos of the officers could be compromised, with a concomitant effect on their standard of care for and the degree of human rights

Table 11 Senior Prisons Service staff complement by position

Position	Number of staff
Director of Prisons	1
Deputy Director	1
Assistant Director of Prisons	4
Chief Superintendent of Prisons	7
Superintendent of Prisons	14
Deputy Superintendent of Prisons	10
Assistant Superintendent of Prisons	23
Chief Officer (Classes 1 and 2)	0
Principle Officer	63
Prison Officer (Classes 1,2 and 3)	660
Recruit Prison Officer	10
Other (daily wage, clerk etc)	34
Total	827

Source Data provided by Staff Officers Kamara and Turay, May/June 2008

Table 12 Deployment of prison staff by region and gender

Prison	Male	Female	Total staff
Western			
Prison Headquarters	70	16	86
Freetown Central	156	0	156
Freetown Central Technical	82	10	92
Female Central	0	94	94
Training School Waterloo	70	28	98
WE Oil Palm Plantation	14	0	14
NEPC Prison Camp	20	1	21
Masanki (destroyed)	5	0	5
Southern			
Moyamba	26	3	29
Bo	27	5	32
Pujehun	13	2	15
Bonthe	14	2	16
Northern			
Makeni	24	6	30
Port Loko	22	6	28
Magburaka (Local)	14	3	17
Magburaka (Central)	4	0	4
Kabala	9	3	12
Kambia	17	3	20
Eastern			
Kenema	34	6	40
Kailahun	11	4	15
Sefadu	20	3	23
Total	652	195	847⁹

Source Data provided by Staff Officers Kamara and Turay, May/June 2008

Table 13 Prison inmate population by gender

Prison	Male	Female	Total
Freetown Central	1 092	43	1 135
Makeni	100	11	111
Moyamba	52	0	52
Port Loko	85	4	89
Magburaka (Local)	23	2	25
Kenema	167	5	172
Bo	71	4	75
Kabala	18	2	20
Kambia	56	1	57
Pujehun	43	0	43
Bonthe	31	0	31
Kailahun	75	0	75
Sefadu	117	2	119
Total	1930	74	2004

Source Sierra Leone Prisons Service Headquarters, Freetown, May/June 2008

protection of prison inmates. Complaints about low salaries were also received at the remand homes and the approved school.

Even in terms of supplies, e.g. uniforms, the situation was awful. Officers received incomplete and irregular supplies of uniforms. Uniforms were last supplied in 2006, when officers were given two uniforms and a pair of shoes. The budgetary allocation to the prisons administration is not only inadequate for the efficient operation of prisons, but is the funds do not arrive on time and are not easily accessible. Unlike the case with the SLP, the Prisons Service does not have a departmental accounting system. As such, the budget allocation does not go directly into the coffers of the administration. This is a key obstacle to the effective administration of prisons. By 20 June 2008, when the researcher visited the Central Prison at Pademba Road, the Prisons Service had not received its budget allocation for the second quarter of 2008.

Table 14 Prison/staff ratios

Prison	Total inmates	Total staff	Staff/inmate ratio
Western			
Freetown Central	1 135	344	3,3:1
Masanki	0	5	n/a
Southern			
Moyamba	52	29	1,8:1
Bo	75	32	2,3:1
Pujehun	32	15	2,1:1
Bonthe	31	16	1,9:1
Northern			
Makeni	117	30	3,9:1
Port Loko	89	28	3,2:1
Magburaka (Local)	25	19	1,3:1
Magburaka (Central)	0	4	n/a
Kabala	20	12	1,7:1
Kambia	32	18	1,8:1
Eastern			
Kenema	172	43	4:1
Kailahun	75	14	5,5:1
Sefadu	119	23	5,2:1
Total/average	1974	632	3,1:1

Source Data provided by Prisons Commanders in Bo, Makeni, Kenema and Freetown, May/June 2008

COMPLIANCE WITH INTERNATIONAL PROTOCOLS AND CONVENTIONS

There has been some degree of compliance in Sierra Leone with international protocols and conventions on the rights of prisoners. The Constitution provides a range of fundamental rights and liberties that are germane to persons

held in detention and these are compatible with international human rights standards. However, the standards for the administration of prisons and the treatment of prisoners are outlined by the Prison Rules. The following determinations from the Prison Rules and the Prison Ordinance indicate to what extent regulations in Sierra Leone deviate from internationally accepted standards:

Section 35 provides for the solitary confinement of prisoners as a form of punishment for prison offences. However, as most prisons lack electricity, confinement in generally dark cells thus also means being confined to the dark. This situation is an affront to Rule 31 of the UN Standard Minimum Rule (UNSMR), which prohibits punishment by confining prisoners to dark cells. The UN Basic Principles for the treatment of Prisoners (1990) calls on all member states to abolish solitary confinement as a form of punishment.

Section 53 provides that prisoners who are in solitary confinement should not engage in regular physical exercise. This contravenes Rule 21 of the UNSMR, which states that every prisoner, with the exception of those employed in outdoor work, shall have at least one hour of suitable exercise in the open air daily, provided the weather is conducive.

In the First Schedule there is a prescription for penal diets, i.e. a reduction in the food allocated to a prisoner as a form of punishment. This is contrary to Rule 32 of UNSMR, which stipulates that food reduction should not be used as a form of punishment unless a medical officer certifies in writing, after an examination, that the prisoner is fit to sustain it. The research uncovered that in some prisons, especially in the provinces, penal diets are generally used without any medical certification.

Both the Prison Rules (section 73) and the Prisons Ordinance (section 57) provide for corporal punishment in prisons. However, Article 20 of the Constitution proscribes any form of torture, or any punishment or other that is inhumane or denigrating. The Prisons Rules were promulgated decades before the Constitution came into force in 1991. Although corporal punishment is thus provided for in Sierra Leonean law, Rule 31 of the UNSMR, which disallows corporal punishment, is contravened. One recommendation by the SLTRC was the abolition of corporal punishment.

Section 45 of the Prison Ordinance states: 'Every sentence of imprisonment, whether the sentence was one of imprisonment with hard labour or simple imprisonment, passed upon any criminal prisoner, shall work as directed by

the Officer in Charge'. From this it is obvious that work for prisoners is compulsory, though it is unclear whether prisoners are to be paid or compensated. The research found that prisoners were often deployed at government offices and private places without any regular reward. Rule 71 of the UNSMR stipulates that prison labour must not be an affliction. Rather, it should be capable of increasing the prisoner's ability to earn an honest living after release. Rule 76 of the UNSMR calls for some form of equitable remuneration to be paid to prisoners for their service, and that such remuneration could be used by them or be sent to relatives.

A number of provisions in the Prison Rules cover medical services. However, they do not particularly apply to the mental health of the prisoners. Rule 22 of the UNSMR specifies that medical services should include psychiatric service for the diagnosis and treatment of mental abnormality.

Although the Prison Rules were written too long ago to capture international prison standards adopted in more recent times, they do contain some provisions that are consistent with international standards, but they are not being applied at the moment. These include Rules 107 to 114, which provide for justices to visit the prisons regularly, conduct inspections of cells and receive petitions from prisoners. Rule 55 provides for the transfer of prisoners from one prison to another so that they can meet their relatives.

The following international instruments are applicable to Sierra Leone's Prisons Service, even though there are problems with ratification and application in most instances:

- Universal Declaration of Human Rights of 1948
- International Covenant on Civil and Political Rights of 1976
- International Convention on the Elimination of All Forms of Racial Discrimination of 1969
- Convention on the Rights of the Child of 1990
- Convention on the Elimination of All Forms of Discrimination against Women of 1981
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987
- Standard Minimum Rules for the Treatment of Prisoners of 1977
- UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) of 1985

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990
- Basic Principles on the Treatment of Prisoners of 1990
- The African Charter on Human and Peoples Rights of 1984

SUMMARY OF FINDINGS

From the foregoing, a number of conclusions can be drawn and observations made not just about the prisons, but also about the entire criminal justice system in the country.

Generally speaking, the main objectives of the Prisons Service, namely to provide corrective measures and to reform and rehabilitate prisoners so that they once again can become useful members of society, are not being achieved because of a number of challenges, e.g. inadequate human and institutional capacities within prisons, lack of cooperation among stakeholders in the justice sector, long and windy court proceedings, poor conditions of service for prison officers, the inadequate and late allocation of budgetary funds to the Prisons Service, to cite just a few. The burden of all these failings falls on the prisoners, thereby violating their fundamental human rights as prisoners.

A significant observation that needs to be made is that the problems facing Sierra Leone's prisons today are not new. From the inception of prisons in the country, problems abounded as regards accommodation, sanitation, human rights, welfare, male and female segregation etc.

It is observed that in spite of some reform measures being undertaken by government on an ongoing basis in partnership with development partners, many of the prisons in Sierra Leone are still miserable. This amounts to a violation of the rights and liberties of detainees. The paradox is that prisons have the aim of rehabilitating criminals, but cannot do so for a lack of means.

RECOMMENDATIONS

In light of the problems highlighted above and in order to strengthen the Prisons Service and raise the profile of criminal justice in Sierra Leone, the following recommendations are made:

- To enable the prisons to function in an efficient and effective manner consistent with their mandate and international requirements, a training and capacity-building programme covering the following areas should be instituted:
 - The Prison Ordinance and the Prison Rules
 - The approach to prison management as covered in international protocols on human rights
 - Prison administration for middle and senior managers
- Since prisons can hardly function effectively in the absence of adequate logistics, supplies, appropriate amenities and good working conditions, it is recommended that –
 - A full assessment is made by government on how existing resources at the disposal of prison authorities are used, and that clear rules and procedures for the use of logistics, including vehicles and equipment, are established
 - The quarterly budgetary allocation to the Prisons Service is increased and disbursed on time so that adequate food, supplies and logistics can be procured
 - The living conditions of all prisoners are improved
 - A review is made of the terms and conditions of service for prison officers in order to enhance staff morale and efficiency
- As no substantial reform can be effected in the Prisons Service without corresponding reforms of the penal system, the bail system, the trial process, judgement patterns and accessibility to legal counsel, it is recommended that –
 - The bail system be reformed and made much more liberal and affordable
 - The judgement patterns of the courts be reviewed in line with best practice
 - The number of remand homes and approved schools be increased and that they be maintained properly
 - The prosecution be capacitated by employing additional State Counsel and providing legal training for police prosecutors
 - Court trials be expedited to reduce the excessive number of remands and adjournments
 - Some mechanism be put in place for the provision of legal aid to inmates on remand and during trials

- Meaningful incentives be offered to magistrates and judges for handling the case loads more efficiently
- It is recommended that the Prison Ordinance, the Prison Rules and the Criminal Procedures Act be amended in line with minimum international standards and requirements. Key areas of reform should be solitary confinement and corporal punishment, and the provision of remuneration for prisoners who engage in some form of labour.
- With regard to juveniles and women, it is recommended that –
 - Female prisoners be separated from male prisoners as far as sleeping areas, toilet and recreational facilities are concerned
 - The special needs of female prisoners with regard to feminine hygiene and maternal health be considered seriously in prisons budgetary allocations
 - Remand homes be established in the provincial headquarter towns of Makeni and Kenema so that juveniles can be kept separate from adult prisoners
 - Authorities ensure that trial prisoners are kept away from convicted prisoners.

5 The Judiciary

INTRODUCTION AND BACKGROUND

The judiciary of any country is a very important arm of government as it is entrusted with the responsibility of interpreting the country's laws and convicting lawbreakers through a hierarchical court structure. As such, the judiciary is not only crucial to ensuring fair and transparent justice, but is also the bedrock of democracy and sustainable development. A review of any country's justice sector should focus attention on its nature, type and structure, as well as on the conditions of service of its personnel, institutional capacity, independence and the justice dispensation process. This section examines judiciary independence, the process of appointing members of the judiciary and the whole chain of the criminal justice process from investigation to arrest, indictment, arraignment, trial, verdict and appeal.

The judicial system in Sierra Leone is a particularly interesting African case study. To begin with, the country is noted for having a very rich and important judicial history in West Africa. Furthermore, as a country in transition from war to peace and from authoritarianism to democracy, Sierra Leone's judiciary also offers interesting lessons. The war contributed to the destruction of

judicial infrastructure and a brain-drain of judicial personnel. It also led to gross human rights violations. Personnel in the police and Prisons Service were targeted for molestation and killing, and most of the police barracks and prisons were destroyed. Many top members of the judiciary, including judges, magistrates and lawyers, fled the country, leaving the judiciary without adequate and qualified personnel.

In addition, Sierra Leone is plagued with the problem of access to justice, especially as regards vulnerable groups such as poor people, children and women. The majority of the poor in the country cannot meet the cost of lawyers or court expenses. The local courts are noted for being autocratic, for not having standardised court fines and for lacking basic facilities. These and many other problems adversely affect the effective dispensation of fair and transparent justice in Sierra Leone. Although the police, prisons and the justice sector have benefitted from many reform and capacity-building programmes, problems in the judiciary are still many. This assessment seeks to look at the problems and constraints of the judiciary, and to make appropriate recommendations.

As indicated, Sierra Leone's judiciary has a rich history, especially with regard to the development of the justice system in West Africa. During the British colonial period the country hosted the first Vice Admiralty Court in West Africa to preside over slave-trade cases. During the same period, Sierra Leone also served as the Chief Administration of the British West African states of Sierra Leone, Nigeria, Ghana and the Gambia. For many years, Sierra Leone also hosted the West African Court of Appeal. When on 19 February 1866 the United West African Settlement was established, Sierra Leone's Supreme Court was declared the Supreme Court of the Gambia, the Gold Coast (Ghana) and Nigeria (KAIPTC 2006:106).

In the immediate post-independence period, especially during the reign of Sir Milton of the Sierra Leone Peoples Party (SLPP) from 1961 to 1964, the judiciary was relatively effective in terms of dispensing fair and transparent justice. There was very little government interference in the work of the judiciary as the country's Chief Justice and judges, who retired at age 62, could not be sacked. In 1963, the Local Courts Act, which removed chiefs from being judges in the local courts, was passed. The local courts were, however, run by elders appointed by the chiefs. In spite of this laudable initiative, the local courts in the provinces continued to be notorious for various forms of abuse. During the 1962 elections

the courts were used by government to harass members of the opposition, the All Peoples Congress Party of Sierra Leone (APC).

The judiciary began to experience serious government interference during the SLPP regime led by Sir Albert Margai (1964–1967). The government made deliberate attempts not only to interfere with the work of the judiciary, but also to undermine its independence. For example, Sir Albert removed the Chief Justice, Sir Bankole Jones, and appointed his friend, Gershon Collier. He also introduced and implemented the Public Order Act of 1965 and the Criminal Procedures Act of 1965, which reduced the rights of people accused of offences against the state. On a more positive note, Sir Albert's regime introduced Magistrates' Courts in the provinces in 1965, thereby increasing the provincial people's access to English law.

The subsequent APC regime, especially under Siaka Stevens (1968–1985), intensified the process initiated by Sir Albert. The Stevens regime passed both a republican constitution in 1971 and a one-party constitution in 1978, thus laying a firm foundation for the executive to dominate not only the opposition, but also the judiciary and the legislature. Both constitutions vested extraordinary powers in the President with regard to the appointment and dismissal of judges, the Chief Justice and the Attorney-General. The one-party constitution was particularly obnoxious in this regard. Section 115 (1) decreed that a judge of the Supreme Court 'may be required by the President to retire any time after turning 55 years of age or may retire any time after attaining the age of 62 years or shall vacate that office on attaining the age of 65'. These provisions were deliberately inserted to serve as insurance against judicial activism and independence. The appointment of the Chief Justice was political in nature, as clearly stated in the constitution: 'The President shall appoint him by warrant under his hand'. This provision provided the assurance that the Chief Justice would continue to hold office at the pleasure of the President.

The right to appeal a judgment of a court martial was removed during Sir Albert's rule and this saw the sentencing to death and eventual execution of Brigadier Bangura, the Governor-General of Sierra Leone from 1965 to 1968, and others. The court martial also jailed Foday Sankoh, the former RUF leader. The constitution also permitted the President to sack judges at any time and combined the roles of the Attorney-General and the Minister of Justice. Political cases enjoyed protection in court and a typical example occurred

under Attorney-General Hon. Francis Minah: he did not continue the case involving State Security Department officers who killed civilians during the Ndongboryosoi rebellion in the Pujehun District. The Joseph Saidu Momoh APC regime (1985–1992) followed in the footsteps of Stevens. Momoh declared an economic emergency in 1985, which enabled him to use the police and courts to suppress the rights of persons accused of economic crimes. He also used the judiciary to eliminate political opponents, e.g. Francis Minah and others who were sentenced to death for treason and hanged.

Eleven years of war impacted negatively on the judiciary in several respects. In the first place, the war contributed to a gross violation of human rights through mass killings, torture and other forms of violence. Secondly, it witnessed the systematic targeting of justice-sector personnel, including policemen, judges, lawyers and magistrates. Many police officers and court workers fled to Freetown and to other countries. Thus, for a very long time during the war, only Freetown, Bo and Portloko had Magistrates' and/or High Courts. The military regimes of the National Provisional Council (NPRC, 1992–1996) and the Armed Forces Revolutionary Council (AFRC, 1997–1998) also contributed greatly to undermining the human rights of citizens, as well as the smooth functioning of the judiciary, since the constitution was suspended and replaced with rule by decree.

The return to multiparty democracy in 1996 under the rule of Ahmed Tejan Kabbah of the SLPP (1996–2007) introduced another chapter in the country's judicial life. The government benefited greatly from the various provisions of the 1991 Constitution, which in theory ushered in democratic governance and the rule of law. For instance, section 120(3) of the Constitution reads:

In the exercise of its judicial functions, the judiciary shall be subject to only this constitution and shall not be subject to the control or direction of any other person or authority.

As such, there are clearly-spelt out provisions in this Constitution guaranteeing judicial independence and a complete separation of powers. It provides a legal framework for implementing the rule of law and ensuring the security of tenure of judges. What remains to be seen is the will to implement these provisions. There are perceptions in the country that the judiciary still operates in the old ways and that it is saddled with rampant corruption, inadequate staffing and

infrastructure, injustice, outdated legislation and political interference, and that the judiciary is underpaid and under-resourced.

Steps were and are still being taken to address these concerns. One such intervention is support by the UK's Department for International Development (DFID) to Sierra Leone's Justice Sector Development Programme (JSDP), which commenced its work in 2005. This particular intervention recognised the need for an integrated approach to tackling the problems of the judiciary. Strategically, the project aims to support the development of an effective and accountable justice sector, particularly for the poor, the marginalised and the vulnerable. Accordingly, the JSDP is aligned with Sierra Leone's Poverty Reduction Strategy Paper (PRSP) and other Government of Sierra Leone (GoSL) reform programmes, including the anti-corruption security sector reform and the strengthening of civil society. The programme also seeks to establish mechanisms to improve coordination and cooperation between justice-sector institutions and to address the logistical and infrastructural obstacles to improving safety, security and access to justice (KA IPTC 2006:108). Some other laudable programmes include a new code of conduct for judicial officers and the recruitment of young lawyers to the magisterial bench to take over courts in the provinces that were previously managed by Justices of the Peace.

THE JURIDICAL FRAMEWORK AND STRUCTURE OF THE JUDICIARY

The Constitution of Sierra Leone Act No. 6 of 1991 clearly established the judiciary as an independent arm of government. Unlike the 1971 and 1978 constitutions, the current constitution seeks to establish a legal framework that will ensure the effective implementation of the rule of law and the principle of separation of powers. In this section, the review critically examines the extent to which this constitutional provision is respected in the country.

The judiciary is headed by the Chief Justice, who, acting on the advice of the Judicial and Legal Service Commission, is responsible for its administration. As provided for by the Constitution, the judiciary has jurisdiction in all civil and criminal matters, including matters relating to the Constitution and such other matters in respect of which Parliament may, by or under an Act of Parliament confer jurisdiction on the judiciary. There are three arms of the judicature, namely the Supreme Court, the Court of Appeal and the High Court. These are

Table 15 Court structure and the required establishment

Level of court	Establishment figures
Supreme Court	Not less than five justices
Court of Appeal	Not less than seven justices
High Courts	Not less than nine justices
Magistrates' Courts	Seven Principal Magistrates, five Senior Magistrates and 14 Magistrates

Source Report of the Task Force Committee of the Sierra Leone 'Safety, Security and Access to Justice Programme' otherwise known as the Justice Sector Development Programme (JSDP), January 2004:22

the superior courts of record. The courts of first instance are the Magistrates' Courts and the local courts. The Supreme Court and the Court of Appeal sit in Freetown. Apart from a High Court in Freetown, there are High Courts in the three provincial headquarter towns of Bo, Kenema and Makeni, as well as in Moyamba, Kono and Portloko. There are Magistrates' Courts in every district headquarter town, as well as in Freetown and Waterloo. Registrars, who are responsible for the day-to-day running of the system, administer each level of the court system.

The Law Officers' Department is headed by the Attorney-General/Minister of Justice and is entrusted with the responsibility of providing legal advice to government, and to represent government in civil and criminal matters. It has four main divisions, as follows:

- The Prosecution Division, headed by the Director of Public Prosecution
- The Parliamentary and Drafting Division
- The Civil and Commercial Division
- The Customary Law Division, headed by a Customary Law Officer, normally deals with over 350 local courts in the provinces and has the function of advising and training court officials on potential human rights cases and sentencing.

INDEPENDENCE OF THE JUDICIARY

As already noted in the introduction, section 120 of the Constitution clearly guarantees the independence of the judiciary. Thus in theory, the judiciary

is supposed to be independent in terms of the decisions it makes and also in exercising its constitutional functions. Accordingly, the appointment of judges should be based on merit and not on political considerations, and their salaries should be paid from the consolidated fund. Furthermore, judges must have secure tenure of office and be subject only to the law and the Constitution. Judges can be removed only if found incapable of functioning or found guilty of misconduct while serving. Removal must be authorised by the country's President upon the recommendation of a special tribunal and the subsequent approval by a two-thirds' Parliamentary majority.

Though some of these requirements for a free and independent judiciary are applied to some extent, overall the independence of Sierra Leone's judiciary has at times been put into question. A good illustration is the appointment of judges and other senior officials, including the Chief Justice. Section 135 of the Constitution clearly stipulates that the President shall, acting on the advice of the Judicial and Legal Service Commission, and subject to the approval of Parliament, appoint the Chief Justice by warrant under his hand from among persons qualified to hold office as justices of the Supreme Court. Accordingly, the President has great influence as to who assumes high office in the judiciary and this in a way affects judicial independence.

It could at times also be difficult for the Chief Justice to take an independent judicial decision, especially in cases where there is an executive interest. As the appointment of the Chief Justice is highly politicised, the person occupying that position continues to hold office only at the pleasure of the President and subject to his good behaviour. This situation compelled members of the Sierra Leone Bar Association to comment that the constitutional provision that allows the President to have disproportionate influence in the appointment of the Chief Justice and other senior members of the judiciary hangs like the Sword of Damocles over the heads of judges and the Chief Justice (Amadu 1999: 306). What all this means for the protection of the fundamental rights of citizens is that it is difficult for judges to defend the Constitution or the citizens against executive excesses.

Furthermore, combining the roles of Attorney-General and Minister of Justice in a way also affects the smooth operation of the judiciary as the incumbent is a political figure who not only advises government on judicial matters, but also has a great say in policy decisions. It is not surprising, for example, that political cases have had protection in court, as per the 1980s example of

the Attorney-General, Hon. Francis Minah, who decided not to continue a case involving the State Security Department, as described above. Another example is when Momoh declared an economic emergency in 1985 and the police and courts were used to suppress the rights of persons accused of economic crimes. The SLTRC also found that Momoh used the judiciary to eliminate political opponents, e.g. when Francis Minah and others were sentenced to death for treason and hanged (SLTRC 2004: 59).

THE DEATH PENALTY IN SIERRA LEONE

Sierra Leone is one of many countries where the death penalty is still legal. In 2003, nine members of the former armed opposition groups AFRC and RUF and one civilian were sentenced to death. They were accused of attacking the armoury at Wellington Barracks on the outskirts of Freetown in an apparent attempt to overthrow the government of President Kabbah. This sentence caused a discrepancy between national courts and the Special Court for Sierra Leone, which was in the process of trying people accused of crimes against humanity, war crimes and other serious violations of international law during Sierra Leone's conflict. The maximum sentence that can be imposed by the Special Court is life imprisonment, whereas the national courts may impose the death penalty. Murder, aggravated robbery and treason are all capital crimes.

In any case, the Court of Appeal acquitted the ten for procedural lapses during their trial on the grounds that the trial judge had failed to analyse the evidence led by the prosecution and to relate the same to the law. He also failed to direct the jury adequately on the law relating to accomplices and the danger of convicting on the uncorroborated evidence of an accomplice (Fofanah 2004). However, some 15 others are reported to be under sentence of death in Sierra Leone, even though there have been no judicial executions since October 1998 when 24 AFRC members convicted of treason were publicly executed after an unfair trial before a military court (Amnesty International 2004).

The death sentence goes against the recommendations of the SLTRC that was established by the government in 2000 to create an impartial historical record of human rights abuses committed during the armed conflict, and to provide a forum where victims and perpetrators could recount their experiences. One of the key recommendations in the SLTRC's report (2004) was that the death penalty should be abolished. But the Constitutional Review Commission (REC)

of Sierra Leone subsequently recommended only that the death penalty be replaced by life imprisonment in all cases of treason or other crimes of a political nature that do not directly result in the death of another person.

On 20 November 2004, Sierra Leone abstained from voting on a moratorium on the death penalty at the UN General Assembly. This abstention has been condemned by many rights activists in the country.

THE INSTITUTIONAL CAPACITY OF THE JUDICIARY

As the arm of government responsible for the interpretation of the law, the punishment of lawbreakers and the dispensation of justice, the judiciary requires qualified and competent officials, as well as a working environment with adequate infrastructure, equipment and other necessary facilities. A review of the various courts of the country in terms of human, material and other resources revealed that though there have been some improvements, there is a lot more to be done. This is indicated in the following analysis of the human and other resources of the various courts in the country.

The Supreme Court

The Supreme Court of Sierra Leone is entrusted with a number of tasks, including the following:

- Attending to original cases relating to constitutional matters
- Hearing appeals from lower courts
- Supervising the various court divisions
- Acting as a reference point, especially for interpreting court rules and procedures

Currently, the Supreme Court, which should have five judges, only has three permanent judges, which includes the Chief Justice and one judge on contract. Administrative support staff includes a Principal Assistant Registrar, a bailiff, a stenographer, a secretary and six messengers. The gender distribution of this staff is skewed: 84 per cent to 16 per cent in favour of males (Justice Survey Report 2008:11). Table 16 shows the caseload management of the Supreme Court in 2007.

Table 16 Caseload management of the Supreme Court in 2007

	Criminal and civil cases brought forward	Filed	Concluded	Pending	Dismissal	Trial duration (months)
Original	2	2	2	0	0	1 to 5
Appeal	7	7	1 civil	6 civil	0	3 to 4
Miscellaneous	0	0	0	0	0	1 to 5
Total	9	9	3	6	0	

Source: Justice Survey Report 2008:12

The Court of Appeal

The Sierra Leone Court of Appeal has jurisdiction over all civil and criminal matters emanating from all inferior courts and tribunals. The court has the following human resources:

Table 17 Staff of the Court of Appeal

Level	Number
Justices	7
Registrar	1
Assistant Registrar	1
Principal Assistant Registrar	1
Assistant Registrar, Grades 1 to 2	4
Clerks (permanent and temporary)	10
Tip staff	1
Bailiffs	1
Messengers (permanent and temporary)	8
Watchmen/drivers	6

Source: Justice Survey Report, 2008:13

According to the Justice Sector Survey Report (2008), 65 per cent of staff is male. Caseload management for the Court of Appeal in 2004 was as follows: registered criminal cases – 34; registered civil cases – 49; upheld – 2; overturned – 1.

The High Court

The Sierra Leone High Court has jurisdiction over all criminal and civil matters. It also exercises appellate and supervisory jurisdiction over all inferior courts and tribunals, and has resident judges in Bo, Kenema, Makeni and Moyamba. These judges travel to the remaining provincial areas that have no resident judges.

There are currently eight High Court judges in the country against an ideal number of not less than nine. The caseload management of the High Court in 2007 was 75 criminal cases and 835 civil cases. The average trial duration is now seven days, as compared to 105 days in 2004 (Justice Sector Survey Report 2008:13).

Magistrates' Courts

The Magistrate' Courts in Sierra Leone have jurisdiction to try minor criminal and civil cases. They also have appellate jurisdiction over local courts within the judicial district. There are 12 working Magistrates' Courts throughout the provinces and 10 in the Western Area. The available human resources of the Magistrates' Courts are 16 magistrates, including three Principal Magistrates and three Senior Magistrates. The gender distribution is 88 per cent male. There are 39 court staff, of whom 88 per cent are male (Justice Sector Survey Report 2008:13).

The foregoing details suggest that although serious efforts have been made over the years to improve the state of the judiciary in terms of infrastructure, human and other resources, there are still major problems in the area of institutional and management capacity. Problems that plagued the judiciary prior to the outbreak of the war persist. For example, the courts lack adequate libraries, recording equipment, training facilities and in-service training. Judges often have to write down their own trial records and decisions by hand. Owing to poor conditions of service and low salaries, it is very difficult to attract qualified lawyers to the bench. In addition, there are problems such as outdated statutes,

complex relationships between the formal legal system and customary law, and failure to report case law.

Judges and lawyers have too large a case load and too little time and resources to handle cases efficiently. Over the years this has led to numerous adjournments and delays in the dispensation of justice. Some programmes have been put in place to address the difficulties, such as the mainstreaming of community policing within the SLP, the introduction of modernised rules of civil procedure by the judiciary, and a UNDP-initiated programme of case tracking and reporting system for Magistrates' Courts.

The dispensation of justice in the country is the responsibility of a number of actors. These include the SLP that is responsible for investigating crimes, prosecution and producing witnesses or accused persons in courts; the Prisons Service that produces accused persons in court from prisons; the lawyers that provide legal advice and represent the accused; the expert government witnesses such as pathologists who provide evidence as required; and the Ministry of Social Welfare that provides probation reports to assist with sentencing. The limited level of cooperation between these actors sometimes explains the delays and inefficiencies experienced in the judicial system.

CONCLUSIONS

The review of Sierra Leone's judicial system has provided information on the background of the judiciary, its legal and constitutional provisions, structure and composition, and an assessment of its independence and its institutional and management capacities. One of the major findings of this review is similar to a major finding of the SLTRC, namely that the bifurcated court system – two types of laws in one country, one for the provinces and the other for Freetown – has created disunity and injustice. Another finding is that the Public Order Act and the Statute of Emergency Laws have been used to deny people their rights, with many people being jailed or killed unjustly and many people lacking access to justice. Lawyers, judges and court officials sold justice to those with money. Another major finding is that whilst in principle, at least, citizens are promised fair hearings in a competent, independent and impartial justice system, in practical terms there are cases of injustice, inaccessibility and delays in justice dispensation. It is also the conclusion of the review that the cost of hiring a lawyer is far beyond the means of the vast majority of citizens.

RECOMMENDATIONS

From the foregoing findings, the following recommendations are made:

- There is a critical need not only for uniform laws, but also for a review of outdated legislation
- The salaries and other emoluments of judges and magistrates need to be increased
- The Judges Conditions of Service Act should be reviewed and amended so that salaries and service conditions can be adjusted automatically without legislation having to be amended each time
- More judges and magistrates need to be recruited
- The salaries of Registrars and support staff need to be increased and their conditions of service improved
- Modern sentencing concepts, such as non-custodial sentences, e.g. fines, probation and community service, should be introduced and their application encouraged
- A file management system needs to be set up in order to monitor and track case files easily so that cases can be disposed of more speedily
- The image of the judiciary must be improved by encouraging fair and impartial judgments
- Judges and magistrates should be exposed to current laws and practices by having study tours to other jurisdictions arranged for them
- Registrars and support staff should be trained in modern registry practices on a continual basis
- Well-stocked library facilities should be provided for the use of all courts, both in Freetown and in the provinces

6 Access to justice

GENERAL OVERVIEW OF ACCESS TO JUSTICE IN SIERRA LEONE

According to the Ministry of Justice, in a technical sense 'access to justice' focuses on how fairly litigants are treated, the justness of results delivered by the justice system, the speedy manner in which cases are dealt with, the litigants' understanding of the justice system, the responsiveness of the system to those who use it, whether the appropriate procedures are provided at a reasonable cost and, most important, the effectiveness of the system taking into consideration how adequately resourced, reliable and organised the justice delivery system is.¹⁰ Generally, 'access to justice' broadly refers to how people from different backgrounds are able to equally and equitably gain from the justice delivery system.

The concept of the rule of law is central to the administration of justice in any civilised state. Without the rule of law, and without fair and administrative justice, the existence of human rights laws would be of little significance. The overall objective of New Partnership for African Development (NEPAD) is to ensure that policies and practices of participating countries are consistent with

its established principles and core values, which encompass political, economic and corporate governance principles, and democracy. Fair and equitable access to the justice system to a large extent consolidates the objective of democracy and the promotion and protection of human rights.

Internationally, standards have been adopted on the rights of access to judicial and other remedies that serve as a suitable and effective grievance resolution mechanism against violations of human rights. One of these is Article 10 of the Universal Declaration of Human Rights (UDHR 1948), which provides as follows:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his or her rights and obligations and of any criminal charge against him/her.

This article forms the benchmark to a series of established human rights standards to which Sierra Leone is a party. Ratification of this declaration gives states a positive duty to organise their institutional machinery in such a manner that all social or economic obstacles that prevent or hinder the possibility of access to justice by all individuals is eradicated. One cannot overstate the importance of Article 10 of the UDHR for a country like Sierra Leone in which the majority of people live on less than US\$1 a day.

Section 8(2c) of Sierra Leone's Constitution provides for 'the operation of the legal system that promotes justice on the basis of equal opportunity, and that opportunities for securing justice are not denied any citizen by reason of economic or other disability'.¹¹ In contrast to the Constitution's intention, however, it is evident that a high percentage of Sierra Leoneans have limited or no access to justice, specifically to justice before modern law. This is because most litigants are simply not aware of their rights and, most importantly, cannot meet the financial demands of accessing justice, as provided for in section 17(2b)¹² of the Constitution.

The legal system under which Sierra Leone operates is bifurcated, as it encompasses elements of traditional or customary law¹³ and a formalised system based on English common law. However, in view of the high level of illiteracy amongst Sierra Leoneans, the majority of the disputes enter the customary law structure. The country's local tribunals that existed during the colonial regime were formalised in 1963 by the Local Court Act with the specific objective to:

consolidate and amend the laws relating to the local courts, to provide for the extension of their jurisdiction and for the hearing of appeals of such courts and to make certain accidental and consequential provision for the administration of justice in the provinces.

According to a 2007 study on access to justice in Sierra Leone (Sierra Leone Human Rights Commission 2007), 85 per cent of Sierra Leoneans fall under the jurisdiction of customary law, which remains the primary avenue of trust for the redress of violations of rights or law in the rural areas.

Sierra Leone's legal system consists of three basic elements: the Magistrates' Courts, where proceedings are based on partly outdated British statutory law and conducted in English, the local courts, which apply regionally diverse non-codified customary law, and the technically illegal but widespread Kangaroo¹⁴ courts operated by paramount chiefs, who also apply customary law (KAIPTC 2005).

Sierra Leone's justice system has gone through turbulent times. Dating back to the colonial era, the principles of the rule of law and an independent judiciary were deeply observed in Sierra Leone's pre and post-colonial eras. The country's inherited legal system worked effectively, reflecting no conflict between law and politics, until 1961 when the country gained independence. Recognition of the potential threats that an independent judiciary could pose to the exercise of power, led to the emergence of battle lines between law and politics (*ibid.*) Notwithstanding the ordeals the judiciary went through in trying to maintain its independence, it eventually lost the battle. This led to the citizenry losing its civil, political, economic and socio-cultural rights.

Exacerbating the state of the post-colonial legal system was the emergence of the rebel war. The rule of law, which is premised on legality and which states that nobody can be punished or subjected to material or physical loss through the arbitrary exercise of discretionary power by the government, was grievously eroded (*Ibid.*). The legal structures responsible for enforcing law and order were in total disarray, giving rise to excessive corruption by government officials, impunity, the arbitrary persecution of citizens and gross violation of human rights. This is evident from 2001 studies of the legal system (*ibid.*), which indicated overwhelming consensus among legal practitioners and the lay public about the subjectivity of the judiciary in the administration of fair justice. The SLTRC report (2004) noted that one major reason considered to be a catalyst for the civil war was the mismanagement of the justice sector and the unfair trials

by and judgements of both the customary and formal legal mechanisms. This resulted in a loss of respect for the legal system – people gradually lost faith in the system and refrained from accessing its services (Sierra Leone Truth and Reconciliation Commission 2004).

Excessive violence against women and children was the order of the day during the country's political instability, leaving a substantial number of women and children displaced, orphaned and traumatised. Children were subjected to terrible atrocities and many were abducted and forced to fight as child soldiers. Little girls were raped, kept as sex slaves by the rebels and were eventually impregnated. Boy child-soldiers were especially used as combatants and they unleashed suffering on adults and their peers. Child combatants themselves received severe punishments by 'authorities' that abducted or recruited them (LAWCLA 2005).

Amnesty International (2004) reported that an estimated 5 000 child combatants were serving under both government and opposition forces in the Sierra Leone conflict, whilst 5 000 others were recruited for labour by the many armed groups in the country. Children abducted or recruited during the war were constantly drugged to keep them active on the battle front. Drug abuse became a common phenomenon for children during this time. Nationwide surveys conducted after the war revealed that the number of children on the streets increased rapidly after the conflict. Many were displaced or orphaned, and demobilised child combatants engaged in various negative activities, including drug abuse (Fofanah 2005).

Similar findings from the Rapid Assessment Survey conducted by the National Commission for War Affected Children (NaCWAC) on street children and other war-affected children in 2004 disclosed that 53,5 per cent of street children and 23 per cent of other war-affected children had single parents, whilst almost 14 per cent of street children and four per cent of the other war-affected children interviewed were orphans. The findings also revealed that hard drugs like marijuana were used by some of the street children (National Commission for Social Action – NaCSA 2004).

This resulted in an increase in the number of children that came into conflict with the law, as well as incidents of child abuse (Ministry of Social Welfare, Gender and Children Affairs 2006). An assessment compiled by the Family Support Unit (FSU) of the SLP noted that amongst the offences reported against children in 2003 and 2004, sexual abuse was highest, representing about 21 per cent of cases in 2003 and 22,5 per cent of cases in 2004 (Ibid.).

ACCESS TO JUSTICE FOR CHILDREN IN CONFLICT WITH THE LAW

Juveniles who find themselves in conflict with the law suffer undue delays in accessing justice. The formal court system has no fixed court specifically for juvenile proceedings. In addition, only one magistrate handles juvenile cases. This leads to the frequent adjournment of cases and extends the time spent by juveniles in remand homes. Even with a complete sitting panel comprising the magistrate, clerks, the police and the probation officer, the court staff is not fully trained and is ill-equipped to handle and respond to child crime, quite apart from adhering to acceptable minimum international standards, such as issues of security for the child's person during trial (Ibid.).

According to Chapter 44 of the Children and Young Persons Act of 1960, every crime committed by a child or a young person, with the exception of homicide, should be dealt with by a Juvenile Court. In most cases, however, children are tried as adults in open court, with no consideration for the child's right to privacy and confidentiality. Conditions in the detention facilities at remand homes and the Approved School for offenders fall below the provisions outlined in the UN Rules for the Protection of Juveniles Deprived of their Liberty, which stipulate, amongst others, that educational, medical and adequate recreational facilities must be provided.

In 2003, MSWGCA reported that 212 juveniles were in conflict with the law, including 110 cases in the Western Area (79 boys and 31 girls) and 102 in the three provinces. Of those in the Western Area, 26 were in the area's Remand Home at Freetown, whilst 18 were kept at the Approved School. The rest of the affected children, including those in the provinces, were detained in police cells or prisons, had been discharged or were kept on bail. In 2005, 44 children and 2006, 32 children absconded from the Remand Home in Freetown because of poor security and lack of adequate care and feeding (MSWGCA 2006).

ACCESS TO JUSTICE FOR WOMEN

Access to justice for women in both the customary and common law system is rather chaotic in Sierra Leone. Women often encounter discrimination before the law, especially in rural areas and particularly in matters concerning marriage, property and inheritance. They face grave human rights abuses at the

hands of men in their homes, in their communities and at the hands of local chiefs who act illegally by imposing fines, punishment and in some cases even arbitrary detention. An instance of a rural women's lack of access to justice and arbitrary detention was reported by Amnesty International in *The state of human rights in Sierra Leone* (Sierra Leone Human Rights Commission 2007) as follows: 'In the Buya Romende Chiefdom in Port Loko District, a woman was put in chains because she refused to return to her husband who had deserted her for a period of two years'.

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. Before the 2007 review of the Constitution by the Constitutional Review Commission (CRC), specific laws regarding adoption, marriage, divorce, burial, devolution of property on death and other personal laws, all of which are of great importance to women, fell under the purview of customary law.

In Dambu Village, Njalaahun Chiefdom in Kailahun District, a woman reported that she was mercilessly beaten for refusing to succumb to the love advances of a man. When the matter was reported to the chief's court, the victim was accused of seducing the man to get him attracted to her. She was eventually fined for the act of seduction.

Women and girls are vulnerable to physical assault, sexual abuse and violence. Commercial sex workers, both women and girls, are often beaten by their clients and even by the police. Most of these cases go unreported because experience has shown that the complaints of commercial sex workers are not taken seriously by law enforcement bodies as such women are not seen as rights holders (Amnesty International 2005).

The state of human rights in Sierra Leone (Sierra Leone Human Rights Commission 2007) also revealed that domestic and sexual violence as a source of human rights violation continued to be on the increase. Most complaints on domestic and sexual violence received by the Sierra Leone Human Rights Commission were referred to the FSU, which also addresses such issues.

In August 2007, during presentation of Sierra Leone's initial second, third, fourth and fifth annual reports to the committee of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the concluding comments about increasing levels of violence in Sierra Leone and an inadequate response by government, raised concern. Government authorities

were urged by the committee to improve the effective enforcement of domestic violence legislation to ensure that victims have immediate access to means of redress.

The low educational levels of women limit their access to information about their rights and responsibilities under law. Even where a law is non-discriminatory, women experience increased barriers to justice because of the characteristics of the social environment. The economic dependence of women limits their ability to seek justice in inter-family disputes.

Past and present governments have, however, made deliberate attempts to strengthen and address these problems. The initiatives involve collaborative efforts with NGO's such as the JSDP and with others that provide alternative justice remedies.

ACCESS TO JUSTICE FOR THE MARGINALISED

Section 8(2c) of the Constitution guarantees the right of access to justice in courts for all without discrimination. Sierra Leone is a party to several international human rights instruments, including the International Convention on Economic, Social and Cultural Rights (ICESCR), the International Convention on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR). Even so, implementation of the provisions of some of the treaties continues to be a big challenge. The state does, however, provide limited assistance to accused persons who are being tried for capital offences such as murder, treason and robbery with aggravation (JSDP 2006).

Inaccessibility to justice by most Sierra Leoneans residing in the provinces has been put forward as one of the causes of the civil war. The HRCSL established that before 2007, courts in rural areas did not function effectively. Because of a shortage of court personnel in 2007, High Court sittings were irregular, which created a huge backlog of cases in Freetown and more so in the provinces.

To facilitate increased access to justice in Sierra Leone, comprehensive judicial reform programmes aimed at addressing the functional and institutional weaknesses inhibiting the effective functioning of the justice sector was launched in conjunction with the UNDP. The latter supported access to justice through the payment of attractive remuneration to 18 magistrates, establishing the Justice Sector Reform Secretariat, conducting an assessment of the

Justice Training Institute, supporting the clearing of the criminal and civil case backlog, and building capacity in the justice system.

The importance of this support is evident by the fact that it has provided the opportunity for the cases of many people in the rural interior to be heard and for prompt action to be taken when a Magistrates' Court failed to function. Discussions with the JS DP¹⁵ revealed that it was able to train Justices of the Peace and other law enforcement officers, and to support the appointment of court officials nationwide. These interventions improved access to justice and the disposal of cases in lower courts.

In 2004, in line with recommendations by the Lomé Peace agreement in 1999 and the SLTRC in 2004, the HRCSL was established in line with the Paris Principles¹⁶ by Act No. 9 of Parliament. The establishment of the commission was in realisation of the need for an independent body that will address all issues pertaining to the promotion and protection of the inalienable rights of the people of Sierra Leone in accordance with international norms and standards. The HRCSL is mandated to deal with all cases of human rights violations and abuses, including the torture and cruel treatment of children. Currently, the HRCSL is funded by the government, the Office of the High Commission for Human Rights and UNDP through the Democratic Governance Thematic Trust Fund (DGTTF).

The HRCSL handles complaints of reported human rights violations and effectively collaborates with other organisations working in the field of human rights and justice, as mandated by section 7(2 IV) of the Act, which requires 'the effective cooperation with non-governmental organisations and other public-interest bodies in the field of human rights'. Complaints of violations by state institutions and actors are investigated and recommendations are made. Discussion with the Complaints Registrar¹⁷ of the HRCSL brought to light that most of the cases reported are related to the deprivation of right to property, domestic violence and torture, cruel, inhuman and degrading treatment, deprivation of right to life, right to education and unlawful detention by police officers. The Commission effectively collaborates with the FSU and the MSWGCA on cases of domestic violence and child neglect. It should be noted, however, that the financial dependence of the HRCSL on external donors threatens the sustainability of the institution and potential beneficiaries (HRCSL 2007).

Another major stride in the promotion of justice was the establishment of the Sierra Leone Law Reform Commission (SLLRC) in 2007 to review the

Constitution. This body recommended amendments to bring the Constitution in line with national and international economic, social and political developments, coupled with the recognition of human rights and the freedom of the individuals. Proposed amendments include the provision of adequate mental and health facilities, and structures and financial support for the expansion of the education sector, including the provision of free senior secondary school education.

In 2008 the SLLRC observed that guarantees for the protection of freedom and deprivation of property, and freedom of expression and the press had also been strengthened. However, it should be noted that in spite of Sierra Leone's obligations under international law and the recommendations of the REC, the death penalty is still also maintained for serious offences such as treason and crimes of a political nature that do not directly lead to loss of life. Its general application continues to be in force, but is subject to review every two years with a view to its eventual abolition (Sierra Leone Law Reform Commission 2008).

Provisions in the constitution that discriminate against women, such as the sections on marriage, divorce, burial, adoption and devolution of property, have been reviewed to address women's access to justice. Article 4 of CEDAW, to which Sierra Leone is a party, empowers all governments to take temporary special measures to remedy the adverse effects of discrimination against women. This facilitated the application of CEDAW to Sierra Leone in 2007. The MSWGCA, the Human Rights Committee of Parliament, the HRCSL and women's organisations worked assiduously to ensure the passage in Parliament of the 'Gender Justice Laws' in 2007, which include the Domestic Violence Act No. 20¹⁸, the Devolution of Estate Act No. 21¹⁹ and the Registration of Customary Marriage and Divorce Act No. 22²⁰. These three pieces of legislation now provide equal protection and treatment for women before the law.

Regardless of the above, however, latent violence against women persists, especially in rural areas. Previous research conducted by Amnesty International²¹ highlighted women's lack of access to justice, particularly in the customary law system, where male monopoly of judicial office and discriminatory customs and tradition tipped the scale against women. They continue to face grave human rights abuses at the hands of local chiefs who act illegally and impose fines.

Practices that take place in the name of tradition or customary law also violate women's rights to live free from violence, coercion and discrimination. Consultations in Mayakah Lane, Shebora chiefdom in the Bombali District,

revealed that a woman was seriously beaten by an old man for refusing his love proposal. When the matter was reported to the chief, the woman was molested by the chief and blamed for not heeding the man's love advances. A woman in the same chiefdom revealed that another woman was beaten by a young man because she refused to fall in love with him. The chief supported the young man and stated that the woman must have made some sexual advances to the young man to be treated in that manner.

Despite the recent institutional changes aimed at ensuring access to justice, people's perceptions about the integrity and impartiality of lawyers and local court officials remain a problem amongst litigants. Respondents in the three targeted regions, namely Bombali, Kailahun and the Western Area, and those in rural areas, revealed that partial justice, the levying of heavy fines and lack of resources to access the courts are major constraints. For instance, a respondent in Kailahun district revealed that:

A friend of mine was summoned to a court for refusing to pay someone he borrowed money from. The actual money he was supposed to pay was Le 150 000 (US\$50). The man who summoned the debtor to court informed the chiefs that a sum of Le 500 000 (\$167) must be paid to him. Despite the plea from the debtor that the information provided by the complainant was wrong, neither the chief nor the court clerks listened to him.

He was forced to pay the money. Other respondents noted that the rights of the poor are not respected and, because they do not have the money for litigation in local courts, their cases are dropped, thus denying them access to timely justice.²²

OTHER EFFORTS TO MAKE JUSTICE ACCESSIBLE

Section 23 of the Constitution guarantees the right of access by all to the courts, yet the vast majority of Sierra Leoneans specifically do not have access to the English law courts, thus making the constitutional provision meaningless. For people to be able to enforce their rights, legal representation is extremely important. Section 28(5) of the Constitution mandates Parliament to make provision for the rendering of financial assistance to indigent citizens whose rights have been infringed. Parliament has not yet made any such provision (Justice

Sector Survey Report 2008). However, consultation is currently taking place aimed at setting up a Public Defenders Office (PDO) that would address cases at no cost.²³

As Sierra Leone's formal justice system is typified by low access to legal services, and then only in urban areas, alternative justice mechanism projects, e.g. legal aid services, have emerged. In 2001, the National Forum for Human Rights (NFHR)²⁴ and the Open Society Justice Initiative (OSJI) decided to improve access to justice through the training of paralegals. Once trained, the paralegals are to offer legal education and advice to people in rural areas. This led to a study of the customary law conflict resolution mechanisms and general perceptions of the justice system in selected districts in the country (National Forum for Human Rights 2001).

Survey results have revealed that regardless of the law system in place, i.e. customary or common, justice is not accessible to most people as a result of weak delivery institutions, corruption and inadequate human resources. This resulted in a recommendation that human right groups should promote the accessibility of justice to all through various forms of intervention.

Between February and May 2004, LAWCLA in collaboration with Global Rights²⁵ trained 120 paralegals from community-based groups in three districts in the East and the North, namely Kono, Kailahun and Kabala, in a range of legal issues faced by communities on a daily basis. Training centred on the role of a paralegal, the powers of the police and the rights of the accused, women's rights, family law and domestic violence, property rights, succession and inheritance, children's rights, sources of law, the court system and the legal process, local governance and the powers of local councils. The curriculum is found in *A handbook for paralegals*,²⁶ which serves as a reference point for all paralegals.

According to the Juvenile Research Consultant²⁷ of LAWCLA, the paralegals training programme was born out of the fact that lawyers are not able to provide adequate legal services to the rural and urban poor as there are too few in relation to the country's population. From another perspective, the geographical distribution of lawyers is skewed, with the vast majority found in the bigger towns. Problems of language and distance make lawyers in Sierra Leone quite inaccessible to the ordinary person.

The United States Aid Agency (USAID) has also been working to stimulate citizen's collective awareness of human rights issues through local civil society

organisations. In 2006, USAID in collaboration with local communities and the NFHR launched a campaign to secure legal rights for citizens to access key information about government processes and decision-making. This led to the training of 117 paralegals that targeted women, youth groups and human rights associations. Training was geared towards monitoring, reporting and addressing human rights issues in the various communities.

Timap for Justice is an independent NGO that makes justice a priority. It evolved out of the 2003 rural paralegal project initiated by the OSJI and the NFHR. Currently Timap deploys 25 paralegals in 13 offices in the North, South and West of the country. Their main focus includes human rights education, negotiation and mediation. The programme is directed by two lawyers who train, supervise and support the paralegals in their work. The lawyers only intervene in cases where a paralegal is not able to achieve resolution, or where the harm or injustice is severe. Today, the Timap's justice project has succeeded in achieving over 1 000 solutions to cases in various areas of intervention.

Faith-based organisations like the Methodist Church Sierra Leone (MCSL) in collaboration with the NMJD currently operates a partnership called 'Partners in Conflict Transformation' (PICOT). Since 2006 PICOT has been supported by Irish Aid through Christian Aid Sierra Leone. The two partners have paralegals trained by the Centre for Public Interest Lawyers (CEPIL) of Ghana and currently retain the services of a lawyer that handles cases above the remits of paralegals. The main idea behind PICOT is to train paralegals who in turn would provide legal education in their communities and assist those who are in conflict with the law. The specific aim of PICOT is to ensure the delivery of justice to minors through mediation and human rights education. Currently MCSL operates in 60 communities in three chiefdoms in Kailahun District, namely Peje West, Peje Bongre and Njaluahum, whilst NMJD operates in 60 communities in the Bo and Kenema districts.

Discussions with the project officer²⁸ in Segbwema, Kailahun District brought to light that between April 2007 and March 2008 a total of 298 women and 294 men successfully accessed the services of paralegals with satisfying mediation results at Kangaroo courts.²⁹ Originally, chiefs felt threatened by paralegals in their communities, fearing that they would strip them of their responsibilities and other forms of coping mechanisms. However, this has not been the case and there are now instances of chiefs themselves sending cases to paralegals for redress.

Since 1996, Conciliation Resources, a UK-based organisation, has been working in partnership with the Bo Peace and Reconciliation Movement (BPRM) in its Community Peace and Empowerment in Southern Sierra Leone Project. Targeted districts are Bo and Pujehun and the project specifically addresses the needs of people hardest hit during the war. The main area of focus is the training of community-based peace monitors, who play a vital third-party dispute resolution and mediation role. BPRM regularly monitors the work of the peace monitors to identify their problems and to get background information about ongoing conflicts. Field reports are used to develop effective interventions.

In February 2008, the JSDP collected data on people's access to justice specifically in rural areas with the aim of designing a plan to introduce the Community Mediation Scheme (CMS), which aims at empowering rural people to resolve minor disputes without undue cost.

The JSDP intends to implement the CMS in Bo and Bombali Districts as a pilot project, which reflects government's commitment to making justice accessible to rural people. On another note, one of the recommendations in the report of the SLTRC was the establishment of the Alternative Dispute Resolution Scheme to address minor cases at community level – government intends to address this.

RECOMMENDATIONS

- The government should provide an effective national legal aid service in various districts to promote justice specifically for the poor in rural areas
- The JSDP, 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. Despite the passage of laws to protect women, most village chiefs and court clerks who administer justice are not aware of these laws.
- Fines for various offences should be standardised to avoid the exploitation of litigants by chiefs and court clerks.

7 Juvenile justice

INTRODUCTION

Article 40 of the Convention on the Rights of the Child (CRC), to which Sierra Leone is a party, calls on states to recognise the rights of children who are in conflict with the law and for them to be treated in a manner consistent with the child's sense of dignity and worth. The UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) of 1985 define a juvenile as being 'a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult'.³⁰ A specified age criterion is thus not provided.

Under Sierra Leonean law, the Children and Young Persons Act of 1960, commonly known as Chapter 44, which governs the treatment of juveniles in conflict with the law, generally applies to anyone below the age of 17 years.³¹ However, this is inconsistent with the age stipulated in the Approved School Order, which stipulates that juvenile offenders deprived of their liberty are normally to be detained until they are 18 years of age.³² There are other significant inconsistencies in the various pieces of legislation that provide definitions of children. For example, Chapter 31 of the Prevention of Cruelty to Children

Act of 1960 defines a child as a person below 16 years old. In the Sierra Leone Citizens Act of 1973 a person is deemed to be of full age when s/he has attained the age of 21 years. The Anti-Human Trafficking Act of 2005 defines a child as a person below 18 years. To add to the confusion, section 31 of the Constitution stipulates that the voting age is 18 years.

However, the African Charter on the Rights and Welfare of the Child (ACRWC)³³ and the CRC³⁴ define a child as being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. In compliance with international standards, the recent Child Right's Act of 1989, which is a domestication of the CRC, has declared a child in Sierra Leone as anyone below the age of 18 years.

CONSTITUTIONAL AND INSTITUTIONAL ARRANGEMENTS FOR DELIVERING JUVENILE JUSTICE

Sierra Leone has ratified all major international instruments on juvenile justice with the exception of the Convention against Torture and Other Cruel and Degrading Human Treatment, which Sierra Leone ratified in 2002, but not the optional protocol. Primarily, there are three main guiding international legal instruments governing the treatment of juveniles. These are the UN Standard Minimum Rules for the Administration of Juvenile Justice,³⁵ the UN Rules for the Protection of Juveniles Deprived of their Liberty,³⁶ and the UN Guidelines for the Prevention of Juvenile Delinquency.³⁷

The CRC is the key instrument under which the three documents exist. Other important documents are the three bills of rights, which include the Universal Declaration on Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR). The principles of fundamental human rights in relation to justice contained in these documents have achieved universal acceptance and have been signed by Sierra Leone.

At the national level, laws governing children in Sierra Leone include the Prevention of Cruelty to Children Act of 1927, commonly called Cap 31, and the Children and Young Persons Act of 1945, commonly called Cap 44 and found in the laws of 1960. These are followed by other related policies and pieces of legislation that govern children at risk, such as the Protection of Women and

Girls Act, Chapter 30 of the laws of 1960, the Education Act of 2004 and the Anti-Human Trafficking Act of 2005. In 2007 the government domesticated the Child Rights Act of 1989, demonstrating its commitment to internationally signed treaties.

In Sierra Leone, issues relating to children in general are dealt with by the Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) and the Ministry of Justice, with the UN Children's Fund (UNICEF) as the Justice Ministry's lead development partner.

Certain provisions like the age determination in Cap 44 do not fall in line with modern approaches to juvenile justice in relation to guidelines and policies set out in 'hard norms', like the CRC and the ACRWC,³⁸ as well as 'soft norms' on children, like the Beijing Rules³⁹, the Riyadh Guidelines⁴⁰ and the Havana Rules.⁴¹ In Sierra Leone, the age of criminal responsibility is 14 years and any person above the age of 14 years is thus clearly deemed fully capable of committing a crime and considered capable and liable for his or her acts.

The trial process of juveniles in conflict with the law, according to both national and international standards, demands certain procedures geared towards ensuring fair and equitable justice, and the respect and dignity of the child, as stipulated in various provisions of the CRC, the ACRWC and the Child Rights Act of 2007. These procedures include, amongst many others, the right to an interpreter in court, the right to legal representation, the right to appeal, the right to have the matter determined without delay and the right to privacy. An assessment is given below of the extent to which Sierra Leone has lived up to both national and international provision in relation to the treatment of children in conflict with the law.

Right to an interpreter in a Juvenile Court

Article 40(2b(vi)) of the CRC provides the right to free assistance of an interpreter if the child cannot understand or speak the language used in court. In Sierra Leone, the official court language is English. However, Krio, the commonly-spoken local language, is used in most cases used during court sessions. Generally, children who come into conflict with the law are street children whose level of understanding of English is very limited. Regardless of the absence of interpreters, offenders are in most cases in a position to clearly understand what is being said by the magistrate and other court personnel.⁴²

Imprisonment of juvenile offenders

Section 24(3), Chapter 44 of the laws of Sierra Leone of 1960 stipulates that 'a young person sentenced to imprisonment shall, so far as circumstances permit, not be allowed to associate with adult prisoners'. The *state of human rights in Sierra Leone report 2007* (Human Rights Commission of Sierra Leone 2007) revealed that during a visit of the Commission to the Pademba Road Maximum Prison in 2007, it was discovered that juvenile offenders were still being detained with adults, which is in contravention of article 7(b)⁴³ of the ACRWC and Article 10(2b)⁴⁴ of the ICCPR, as well as national law.

The Permanent Secretary⁴⁵ of the MSWGCA acknowledged that technically and administratively it was wrong, but the Approved School for the detention of juvenile offenders was in a deplorable condition. Moreover, there were no other detention facilities available country-wide and the offenders could not be sent home since they were serving jail terms. The only alternative was to detain them in the Pademba Road Prison.

On a visit to the Approved School at Wellington in June 2008 it was found that six offenders imprisoned for larceny – one of whom had already been imprisoned for 26 months and the others at least two months – had in June 2008 been transferred from the Pademba Road Prison to the Approved School.⁴⁶

Section 216 of the Criminal Procedures Act of 1965 prohibits the imposition of the death penalty on anyone committing a crime when below the age of 18 years. This provision is in accordance with the CRC.⁴⁷ A visit by LAWCLA to the Pademba Road Prison revealed there was a strong likelihood that one of the women found on death row, whose birth certificate was absent, was under 16 years. This was discerned from her appearance and from information obtained from prison officers (Lawyers Centre for Legal Assistance 2005)

Right to legal counsel

The provision of legal aid is enshrined in section 28(5) of the Constitution.⁴⁸ To date, however, no legislation has been put in place to give effect to this right. Section 14(3)(4) of the ICCPR, to which Sierra Leone acceded in 1966, also requires the provision of legal counsel if the defendant cannot personally provide one.⁴⁹ In support of the above provision, Article 40(2)(b)(ii)⁵⁰ of the CRC, which

Sierra Leone ratified in 1990, also stipulates the relevance of legal assistance and guidance for juveniles.

Article 17(b 3) of the CRC⁵¹ stipulates that 'a guaranteed due process is the right to a legal preparation and representation'. Unfortunately, in practice the situation encountered is to the contrary. Most juveniles who come in conflict with the law are street children with hardly any family members showing up on their behalf. In most cases juveniles provide wrong information or addresses to police and probation officers, who have the responsibility of collecting background information about the juveniles to assist the court proceedings, or to contact the child's parents or other guardian.

According to the Deputy Registrar of the High Court, legal representation for juveniles is limited and in most cases they are not represented in court. However, the Juvenile Court Clerk indicated that Defence for Children International (DCI), an NGO working on juvenile justice-related issues, sometimes provides lawyers for juveniles if they are informed about the case in time. Sometimes the probation officer from the MSWGCA speaks on behalf of the juvenile.⁵²

Right to a speedy trial

Article 40(2)(b)(iii) of the CRC obligates state parties to ensure that a trial date is determined without delay by a competent, independent and impartial authority or judicial body. Harvey (2000:3) noted that: 'The Sierra Leone delegation in its session with the CRC committee admitted that one of the gaps in the judicial process is that minors are not always tried as quickly as they should be'. DCI noted that institutional constraints faced by the entire justice system, coupled with lack of care shown by parents or witnesses of offenders to attend court sessions, causes delays.⁵³

In discussions with the duty officer and matron of the Remand Home in Freetown, it was confirmed that the above-mentioned situation existed until May 2007. They advised that originally court sessions were held only on Wednesdays since there was no specific court for juveniles [a situation that still pertains today] and the limited number of magistrates could only squeeze in one session a week.

Furthermore, transporting offenders to court was a major problem as there were no vehicles attached to the home. This resulted in offenders arriving late

for hearings and magistrates adjourning the cases of those who arrived late. Because of lack of transportation and for reasons of security, given the limited number of duty officers attached to the home, it was not always possible to take all the juveniles needed for hearings to court simultaneously. This situation in most cases resulted in inmates pelting personnel of the home with stones.

However, since May 2007, the situation had improved slightly. A vehicle had recently been allocated to the MSWGCA by UNICEF on the understanding that it only be used for the transportation of juvenile offenders to court. Although a Land Rover was always made available to the Remand Home, obtaining sufficient fuel had proved to be a major problem. According to the duty officer, the court now also sat for juvenile cases every day. At the time of the interview there was little delay in transporting children to court.

The Permanent Secretary confirmed that the only major concern was the time set for juveniles to attend court sessions. As no specific Juvenile Court had yet been established, court sessions were held in the afternoon. After the trial of adult cases, the same courts were used for juvenile cases, which resulted in the cases of juveniles being heard up to 17:00 daily. Although matters were sometimes adjourned because a magistrate got tired, such occurrences were very low.

Right to privacy

Article 40(2)(b)(vii) of the CRC mandates that a juvenile should have his or her privacy respected at all levels in the proceedings. The Clerk of the Juvenile Court said, however, that at times juvenile cases were heard in the presence of other litigants. The reason for this was that there was no special court assigned to juvenile cases. At the time of this research, the High Court was being used since it was in recess. When it resumed the Juvenile Court would look for a new venue. Court No. 7, which was assigned to juvenile cases in the afternoons, was normally in use till the arrival of juveniles. In some cases, when the accused in an adult case was not present, an available juvenile offender was called to be tried while adults were still present, which is a contravention of international standards.

Right to bail

Although section 15 of Chapter 44 and section 17 of the Constitution provide for bail under certain conditions, it is not granted. In cases of homicide and

treason, bail is not allowed. The Deputy Master Registrar of the Law Courts indicated that bail was sometimes also not granted for cases such as rape.

Detention provisions

Article 37(b) of the CRC stipulates that 'detention shall be for the shortest appropriate period of time'. This CRC provision is supported by Rule 19 of the Beijing Rules, which states that 'the placement of a juvenile in an institution shall always be a disposition of last resort and shall be for the minimum necessary period'.

According to the matron⁵⁴ of the Remand Home at Kingtom, until May 2007 offenders normally stayed at the home for a period of six months to one year before they were released, charged or sent to the Approved School. Many factors, including the lack of transportation, the non-availability of a specific court for juveniles or of a magistrate, had been responsible for the arbitrary detention of children in contravention of international standards. It was stressed, however, that since May 2007 the longest detention period at the home had been three months, even though this is still too long. During the visit to the Remand Home it was found that a school boy aged 13 years had already spent 11 weeks at the home without having made a single appearance at the juvenile court.

Right to be heard and to cross-examine witnesses

Articles 40(2)(b)(iii) and 12(2)⁵⁵ of the CRC guarantee the child's right to be heard in judicial proceedings. In practice, and in accordance with section 15 CAP 44 of the 1960⁵⁶ Laws of Sierra Leone, juvenile offenders are given the opportunity to be heard in court. It was revealed that before the start of trial sessions offenders are asked to explain what led to their prosecution in the juvenile court, regardless of whether a legal representative is present in court or not. Remand inmates interviewed confirmed that they are allowed to speak in court.

On the issues of witnesses, if they are available, they are normally cross-examined. It was, however, disclosed that getting witnesses to appear at a court hearing is rather difficult and can lead to frequent adjournments of Juvenile Court cases.⁵⁷ It was also indicated that witnesses, if they do appear,

are discouraged by the time they need to spend at court before a juvenile case is called. Most witnesses appear just once and do not turn up when called thereafter.

The right to appeal

The right to appeal is enshrined in Part V11, section 41 of the Laws of Sierra Leone⁵⁸ and Article 40(2)(b)(v) of the CRC⁵⁹. According to the law, juvenile offenders are supposed to be informed about their right to appeal at the close of trial in the Magistrates' Court. In the past, however, this has not been the practice (Lawyers Centre for Legal Assistance 2005). The Court Clerk said that this had changed and that juveniles were now informed about their right to appeal. Appeals were seldom lodged, however.

Approved School Order

Chapter 44, section 26(1) of the Laws of Sierra Leone gives the court the power to place a child or a young person in the custody of an Approved School until the age of 18, or for any shorter period that must, however, be greater than two years. If a young person is over 16 at the time of being sentenced, the child will only be committed until s/he is 18. A visit to the Approved School in June 2008 revealed, however, that in breach of this law six offenders already above the age of 16 years were sentenced to between three and five years imprisonment. Specifically, one of the 16-year-old offenders was sentenced in June 2008 to five year's detention for burglary, which will make him 21 years old at the time of release.⁶⁰

These inconsistencies on the part of law officers are clear manifestations of arbitrary detention contrary to the provision of chapter 44, section 20(2) of the Laws of Sierra Leone, which stipulates that 'court orders for juveniles should not exceed a period of three years'. Two boys aged 10 years each were found at the Approved School. Apparently they were brought in by their parents because of stubbornness and continuous truancy.

In June 2008, during Sierra Leone's presentation of its second-period report to the 48th session of the CRC, the committee urged Sierra Leone to ensure that juvenile standards are fully recognised and implemented, particularly in relation to articles 37(b), 39 and 40 of the convention, as well as the Beijing Rules, the Riyadh Guidelines and the Havana Rules. The committee expressed

its dissatisfaction with Sierra Leone's non-compliance with the law and urged the country to ensure that when detention is carried out it is done in compliance with the law and with respect for the rights of the child as set out under the convention.⁶¹

The Approved School and Remand Homes

The primary goal of a juvenile justice system is the rehabilitation and reintegration into society of juveniles through the provision of the necessary facilities and skills. Children should be given the opportunity to reform whilst they are being held in custody. The Beijing Rules, the Riyadh Guidelines and the Havana Rules lay down the processes that are geared towards rehabilitating juveniles and reintegrating them into society.

Currently there are only three detention centres for children in Sierra Leone, two Remand Homes located in Bo and Freetown and a reformatory institution for children in conflict with the law, referred to as the 'Approved School'.⁶² Before the civil war, the school at Wellington had poor sanitary facilities, no clean drinking water supply and no effective security (e.g. a fence), a situation that created many problems with street youths and the police. It was also reported that before the war offenders were sometimes fed three times a day, although the provision of daily meals was reduced on occasion because of a lack of funds (Ministry of Social Welfare, Gender and Children Affairs 2006).

In addition, there was limited access to basic medical facilities, recreation and education as required by Rule 2(12) of the UN Rules for the Protection of Juveniles Deprived of their Liberty,⁶³ even though an NGO, Rainbow of Hope, did provide basic non-formal education and counselling services. Facilities for girls did not exist and neither was there a community-based programme to integrate offenders into the community when they left the home. Contrary to the reformatory purpose of an Approved School, offenders released from the school tended to be drawn deeper into criminal activities. No follow-ups were made by social workers to ensure that the children were integrating into the community (Ibid.).

During the civil war the Approved School became dilapidated to such an extent that it was eventually closed down. In 2006, as part of the government's recommendations for improving the criminal justice system, the renovation of the Approved School to minimum international standards was prioritised.

The Approved School was to provide basic services such as health, formal education, vocational and agricultural training, and recreational and other relevant activities that would prepare committed children to becoming useful citizens (Ibid.).

The National Child Justice Strategy was approved by Parliament in the same year. Priority interventions were to include the rehabilitation of the Approved School and the Remand Home⁶⁴ at Kingtom, as well as the establishment of foster and bail homes in the Moyamba District. The rehabilitation of the Approved School and construction of a wall around the property for security reasons was completed in 2007, but the school could not be opened immediately because of a lack of certain facilities. It was only in May and June 2008 that juvenile offenders held in custody at Pademba Road Prison were transferred to the Approved School.⁶⁵

A site visit to the school⁶⁶ showed signs of government's commitment to meeting international standards, as well as to the promotion and protection of the rights of juveniles. Rules 31,⁶⁷ 37 and 38⁶⁸ of the UN Rules for the Protection of Juveniles Deprived of their Liberty mandate the availability of good medical facilities and food, the provision of basic education and the acquisition of basic training skills by offenders.

Interviews with the matron of the school and with offenders themselves showed that the assigned contractors provide food⁶⁹ on time and in sufficient quantities to meet the MSWGCA requirement for three meals a day. Major challenges remained in the areas of education and health. Medical facilities were non-existent and juveniles were taken for treatment at a community clinic. Since the school's reopening, only four cases had been forwarded to the clinic. According to the matron, prescription costs were handled by the MSWGCA, but in most cases expensive drugs were not made available, leaving juveniles in a state of incomplete medical treatment. There was optimism, however, that a change of attitude would come about on the part of the government. Life Line Ministries provided medical assistance to offenders at the school. Before the war, medical support had sometimes been provided by the DCI.

Neither formal nor vocational training was available for juveniles at the school. Classrooms were available, but non-operational. The JSDP had provided some furniture and sewing machines for skills training, but supplies such as needles, thread and material to facilitate the sewing classes were not to hand. Vocational training classes in carpentry were not functioning because of a lack

of training materials. Only one trained teacher was paid for by government, whilst the others were voluntary teachers.

Education and training facilities at the Approved School thus fall totally below the expectations of Rule 12 outlined in the UN Rules for the Protection of Juveniles Deprived of their Liberty, which provides that:

Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

Currently there are no accommodation constraints. The newly constructed dormitories can accommodate 35 offenders on cement beds topped by good mattresses. The JSDP also had a dormitory constructed for girls. The squatting toilets were in a good state and toiletry supplies were efficiently provided by MSWGCA contractors. No clothing is provided for offenders, but they may receive clothes through the goodwill of workers.

At the time of the visit the Approved School housed 15 offenders and two boys aged 10 years who had been brought in by their parents as a measure to modify their behaviour.

Punishment at the Approved School

Solitary confinement and compound cleaning duty are the two main forms of punishment meted out at the Approved School. The duty officer confirmed that corporal punishment was banned at the school. Time spent in solitary confinement in a small room-like cell was at the discretion of the staff.⁷⁰ It should be noted that punishment of solitary confinement contravenes Rule 67⁷¹ of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

The Remand Homes

According to reports by the matron of the Remand Home in Freetown, Harvey (2000) and LAWCLA (2005), there has been some improvement in conditions at the home in Freetown compared to previous years. Originally, food supply to

the home was irregular as contractors were not paid on time by the MSWGCA. As a result, inmates did not get three meals a day, which drove them to absconding from the home. Sanitary conditions and health facilities were appalling, mattresses were tattered and not available in some rooms, and educational facilities were non-existent. Children were sometimes locked up in a small room as punishment, whilst poor security facilities permitted others to escape.⁷²

The JSDP, as part of its strategic goal to deliver child justice, rehabilitated the Remand Home. The home has two dormitories for boys and girls respectively. At the time of the visit, all rooms had cement beds, but not all beds had mattresses. A perimeter wall had been built by the DFID to improve the security of inmates. Food was supplied regularly by MSWGCA contractors and offenders were being served three times a day. The home housed 13 male and one female offender of whom one was detained for murder, one for sexual abuse, one for threat of life and 11 for assault and larceny.

Educational facilities in the Remand Home do not receive government support. A specific classroom for learning is not available, but one of the empty rooms at the home could be used for classes. Chairs and tables had already been provided. From 2004 the DCI supported a teaching and learning project at the home in English and mathematics, but his intervention became ineffective at a certain point because of funding constraints. The DCI recommenced its educational support to the home in 2007, although on a very limited scale. No trained teachers are available, but students from the Milton Margai College of Education and the Fourah Bay College intermittently assist at the home.

The government also does not provide health facilities to the home. GOAL, an NGO working with street children, takes care of all medical expenses and normally visits the home on once a week. Referral cases are taken to the Police Hospital located near the home and the bills are settled by GOAL.

The Permanent Secretary of the MSWGCA advised that in April 2008 the ministry had met with the various stakeholders, including UNICEF, the Ministry of Health, DFID and the Ministry of Education to discuss how educational and health facilities could be provided at the home.⁷³ To date, however, there has been no action.

Concerning security at the home, the recently raised perimeter wall is considered too low. The matron of the home related how in April 2008 an offender escaped by using a rope to climb an electric pole close to the fence. Another offender escaped by forcing his way through the secured roof. A site inspection

revealed damage to corridor balustrades caused by offenders intent on making their escape.

The home has a small recreation field where football is played. LAWCLA donated a television and video set in May 2008. The home is staffed by four persons, including the officer-in-charge, the matron, the duty officer and a storekeeper. From June 2008, police and prisons staff were deployed at the home to provide security.

During the 48th session of the CRC in 2008 the committee raised concerns about Sierra Leone's understaffed and ill-equipped remand homes and approved school, singling out inadequate security, poor learning facilities and the little recreation provided.⁷⁴

Few parents visit the children, most of whom are street children. The Probation Officer⁷⁵ indicated that in most cases the residential addresses provided by the offenders were false. Unlike the situation at the Approved School, no punishment is administered at the home as this would be a violation of the rules.

LACK OF APPROPRIATE TRAINING

It was observed that none of the personnel involved with juvenile offenders, e.g. the Court Clerk, police officers, Justices of the Peace, caretakers at the Remand Homes and the Approved School, had received any training related to the handling of juveniles. According to the Juvenile Court Clerk general training on court procedures had been conducted in 2006, but this had not been specific as regards juveniles. Remand Home and Approved School staff members acknowledged that not a single one of them had had training on juvenile-related issues. This contravenes Rule 22.1 of the UN Rules, which stipulates that professional education and in-service training courses should be provided to maintain the necessary and professional competence of all personnel dealing with juveniles.

INSTITUTIONAL CAPACITY AND STATUTORY SAFEGUARDS

MSWGCA is the lead ministry mandated to provide services for children in relation to the protection of their rights. It has two divisions, namely the Social Welfare Division and the Gender Division. The chief social development officer is the professional head in charge of all child protection activities, including the

probation units. A probation officer is based in each of three regional towns and each monitors two courts. The Western Area office has a staff of five headed by a probation officer, whilst the 12 districts have only one probation officer each. The ministry's main development partner is UNICEF. Child welfare committees work in support at the various district levels.

The overall objective of probation officers is to care for and protect children in conflict with the law by ensuring that the children are given a fair trial and protected throughout the judicial process. Other responsibilities include monitoring the detention centres of offenders, ensuring that child offenders have visitation rights, making foster homes available for abandoned children, arranging financial support to foster families, and following up on adoption processes. Effective implementation of these tasks is, however, hampered by inadequate administrative, logistical and financial support from the MSWGCA.

It was the ministry's plan to appoint social workers to all chiefdoms, but staff shortages have prevented implementation and volunteers are now being used to do this work in the Northern and Eastern Areas, even though these services are not always dependable. Qualified social workers are not willing to be deployed in remote areas.⁷⁶

The Family Support Unit (FSU) of the Sierra Leone Police (SLP) works closely with the MSWGCA on children who are victims of abuse. In 2006, 31 social workers and the heads of various regional and district offices of the MSWGCA received training with regard to the sexual abuse of children and issues relating to the handling juveniles. A probation officer⁷⁷ indicated that the proposed attachment of MSWGCA staff to each FSU has not come about because the ministry is too understaffed. The few personnel based at FSUs have had to perform the role of probation officers in addition to their social worker roles, which has not been effective. Most social workers leave the jobs immediately after training.

Over the years, the ministry has consistently been underfunded. The total budget allocated to the ministry for the 2005/2006 fiscal year was Le 700 million, approximately US\$250 000 (MSWGCA 2006). The bulk of this amount goes to cover staff costs, leaving little to fund programmes.

JUVENILE JUSTICE REFORMS

One of the findings of the Sierra Leone Truth and Reconciliation Commission (SLTRC) was that lack of access to justice was one of the main reasons that

triggering political instability in 1991. Addressing justice-related issues thus became an issue of great concern of the post-war government. The JSDP was officially launched in September 2005 with the specific role to enhance the performance of the justice sector and to promote conflict-prevention and post-conflict reconstruction. The JSDP's programmes have been closely aligned with other government reform programmes, e.g. programmes for public sector financial management, service delivery, anti-corruption and the strengthening civil society (Justice Sector Survey Report 2008).

Priority reform requirements identified by the JSDP include out-of-date laws and procedures, delays in courts, overcrowding in prisons, improve prison conditions, better police/community relations, support mechanisms that facilitate access to justice by the poor, research and information and, most important, juvenile justice.

In 2004, 795 children (678 boys, 117 girls) have been documented and monitored by probation officers in police cells, prisons and correctional facilities in the country. This number increased to 1 046 children (955 boys and 91 girls) in 2005, while from January to April 2006 a further 194 boys and 17 girls from the Western Area and the regions were documented to be in conflict with the law (MSWGCA 2006).

Up to 2006 juvenile detention centres were appalling, leading to children frequently escaping from these facilities. In 2005 and 2006, 76 offenders (44 male and 32 females) were reported to have absconded from the Remand Home in Freetown. Lack of appropriate holding cells at the SLP, unnecessary delays in court proceedings because of frequent adjournments or a shortage of transportation to take offenders to court caused many delays in the administration of juvenile justice.

In 2006 JSDP supported the development of a National Child Justice Strategy, which was adopted by government in the same year. The strategy presents four broad strategic directions: prevention of abuse against children and delinquency, alternatives to trial and pre-trial detention, enhancement of the trial process, and the improvement of human resources and institutional development associated with child justice. Implementation of this strategy has resulted in the rehabilitation of the remand homes and the Approved School in 2006/2007, although the facilities still do not meet all international standards.

With the support of JSDP and UNICEF, members of the Human Rights and Legislative Committee in Parliament undertook a thorough review of the Draft

Child Rights Bill, which eventually led to the enactment of the Child Rights Act in 2007.

In May 2002, Sierra Leone ratified the Optional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflict. As a follow-up to the ratification, nationwide sensitisation and education programmes were launched by the MSWGCA, child protection networks, the army, the SLP and NGOs. The programmes focused on preventing the recruitment and involvement of persons under 18 years in the armed forces. This resulted in 2004 in the revision of the recruitment policy of the Republic of Sierra Leone Armed Force (RSLAF) by establishing the minimum age of enlistment into the army at 18 years.⁷⁸ Prior to this, section 16(2) of the Sierra Leone Military Forces Act of 1961 had permitted the recruitment of persons above 'the apparent age of seventeen-and-a-half years, or of persons below that age and for whom written consent would have been given by their parents/guardians'.

Up to 2007, the criminal age of responsibility in Sierra Leone was 10 years. The 2007 enactment of the Child Rights Act raised the criminal age of responsibility to 14 years. Parliament's considerable concern about legal aid provision for children within the justice system also resulted in a new definition of a child. In the Child Rights Act a child is defined as being below 18 years of age, which corresponds to the definition contained in the Convention on the Rights of the Child.

THE DOMESTICATION OF HUMAN RIGHTS LEGISLATION CONCERNING JUVENILES

Several strides have been taken by past and present governments in ensuring that international and national laws relating to the promotion and protection of children's rights are domesticated and implemented.

In 2004, the Education Act was enacted. This led to the reform of the education system, e.g. by making basic education free and compulsory for all children nationwide. In the same year, the Human Rights Commission Act was passed to provide for the establishment of an independent body that addressed all issues pertaining to the promotion of the inalienable rights of the people of Sierra Leone in accordance with international norms and standards, in particular the Paris Principles. The Commission for Human Rights that was established as a result is mandated to deal with all cases of human rights violations and abuses,

including the torture and cruel treatment of children.⁷⁹ One of the commission's committees specifically addresses all matters related to the welfare of children. In September 2008 the commission organised a workshop to assess the level of implementation of the provisions outlined in the Child Rights Act.

Sierra Leone was rated at 'TIER 3'⁸⁰ by the Bureau of Public Affairs of the US Department of State based on its assessment report on human trafficking. Sierra Leone responded by enacting the Anti-Human Trafficking Act of 2005, which contains very strong provisions relating to the punishment of traffickers of children. This led to the formation of the Trafficking in Persons Task Force that includes UNICEF, the immigration department, law enforcement agencies, and the print and electronic media. These groups have been actively involved in mass sensitisation programmes nationwide.⁸¹

The enactment of the Child Rights Act represented the domestication of the UN Convention on the Rights of the Child (CRC) and its Optional Protocols, and the African Charter on the Rights and Welfare of the Child. The Act does not only provide a standard definition of a child – a person below 18 years as required by the CRC, but also criminalises all violations and abuses of child rights, including the sale of children, child prostitution and child pornography.

In 2001 the enactment of the National Social Security and Insurance Trust Act made provision for widows and children as primary beneficiaries to the benefits due to survivors of a deceased National Social Security and Insurance Trust of Sierra Leone (NASSIT) pensioner. The Inheritance Act of 2007 also made provision for a mother and child to benefit likewise.

IMPLEMENTATION PROBLEMS

A major factor affecting the effective implementation of programmes related to the administration of juvenile justice is the low budgetary allocation to the MSWGCA. The government of Sierra Leone has many financial constraints as far as meeting international standards in administering juvenile justice.⁸² In June 2008, one of the observations made by the Parliamentary Committee to the CRC is that the MSWGCA collaborates with other ministries, departments and agencies that have their own budget allocations. The CRC committee noted that the MSWGCA itself receives only a fraction of the national budgetary allocation and lacks adequate funding to carry out its work related to children. The committee further noted that the ministry is very dependent upon development

partners like UNICEF to implement its mandate for children, a situation that is not sustainable.⁸³

As a State Party, Sierra Leone was urged to take into account the CRC committee's recommendations, to prioritise and increase budgetary allocations for children at national and local levels, and to ensure that the MSWGCA receives adequate financial and human resources to carry out its work relating to children.⁸⁴

Little observance is given to provisions in the existing laws and offenders are still being detained arbitrarily. The lack of remand homes for children in the provinces continues to prevent juveniles deprived of their liberty from enjoying basic human rights. Children in conflict with the law are held in custody with adult offenders and in deplorable conditions before they are sent to Freetown for trial. The bail homes⁸⁵ that were established and supported by UNICEF nationwide as a rapid response measure were good while they lasted. However, probation officers were ill-equipped and not in a position to effectively manage the homes, which resulted in a number of offenders escaping and prompting the closure of the homes.⁸⁶

SUMMARY OF FINDINGS

- A limited budgetary allocation to the MSWGCA, which has the function of overseeing the welfare of children, hampers its effective operations
- Not all law enforcement personnel are aware of the laws governing juveniles
- The attention given to juveniles in conflict with the law is inadequate as juvenile units at police stations have limited staff
- Children still continue to be tried in open court and are locked up with adult prisoners
- Specific courts for the administration of cases related to juveniles do not exist, as a result of which there are many delays in juveniles being tried
- Effective transportation to facilitate the movement of juveniles to courts of law is still a major challenge
- Basic facilities are not available at the Approved School and Remand Homes, thereby impinging on the rights of juvenile offenders
- There are just two Remand Homes in Freetown and Bo and an Approved School in Freetown for the detention of juveniles, with no such facilities elsewhere in the country.

- The Probation Unit of the MSWGCA is understaffed. There are only two probation officers to serve the whole of the Western Area, which makes it difficult for them to be effective in the implementation of their responsibilities, especially in relation to collecting background information on juveniles⁸⁷
- Only two NGOs, namely LAWCLA and DCI, are actively involved in providing legal aid for children
- Offenders are still detained for more than the stipulated time contrary to the provisions in both national and international law
- Juveniles are still kept at Pademba Road Prison and other prisons in the various districts because of the lack of detention centres for children
- Stated national and international rules are not effectively applied

RECOMMENDATIONS

- All personnel dealing with juveniles, i.e. court personnel, probation officers and detention officers, should be trained to ensure that they are fully informed about the laws concerning juveniles.
- The government should ensure that it provides a country-wide legal aid service to assist juveniles in particular.
- Basic facilities such as education, health and recreation should be made available at the Remand Homes and the Approved School to ensure that these detention centres meet international standards, and provide offenders with basic education and skills training whilst in custody.
- Additional magistrates should be assigned to the Juvenile Court to ensure speedy trials and avoid juveniles from being detained arbitrarily at Remand Homes.
- A separate court for the hearing of juvenile cases, as required by international conventions, should be made available.
- Facilities should be created for the detention of juveniles, especially in the provinces.
- The number of probation officers should be increased to facilitate the delivery of juvenile justice. Such officers should be attached at the zonal level to address cases specific in their area. The same should apply in the provinces.

8 Customary justice

INTRODUCTION

Sierra Leone has a dual court system, the general law courts and customary law local courts. This duality is a legacy of colonial rule. Customary/traditional or the informal justice system occupies a very important place in Sierra Leone's legal system as it provides the majority of Sierra Leoneans with a mechanism to access justice. Customary law is enshrined in section 170(2) of the Constitution of 1991, which states that the common law in Sierra Leone shall comprise, among other things, the rules of customary law. Section 170(3) then stipulates that the expression 'customary law' means the rules that by custom are applicable to particular communities of Sierra Leone.

PROFILE OF CUSTOMARY JUSTICE IN SIERRA LEONE

Customary law is largely unwritten and differs from place to place in Sierra Leone. For most citizens the formal justice system is remote and inaccessible. For this reason, the majority of them, especially those living in the populous provinces, turn to the customary laws, norms and practices that most Sierra

Leoneans live by. Conflicts and disputes are usually settled by traditional methods through mechanisms such as secret societies and paramount chiefs, rather than being taken to the police or the courts. There is concern, however, that the traditional justice system sometimes employs justice dispensation methods and procedures that are discriminatory against groups such as women and juveniles. There is little interaction between the formal and informal justice systems.

Customary justice dispenses justice in line with the beliefs, customs and traditions of the inhabitants of the local area through the administration of customary law by the institution of local courts. These courts are responsible for adjudicating matters and resolving disputes at the chiefdom level in accordance with the provisions of the Local Courts Act of 1963.

The local government division of the Ministry of Internal Affairs and Local Government is responsible for governing the different agencies of customary justice in the country. The Chiefdom Police, established by the Chiefdom Police Act (Cap 284, Laws of Sierra Leone of 1960) is employed by Chiefdom Councils upon the recommendation of District Watch Committees comprising the District Commissioner, the Superior Police Officer commanding the police district and one representative from each chiefdom in the district, as appointed by the district's Chiefdom Committee (sections 4, 5 and 6 of the Chiefdom Police Act).

The Chiefdom Police serve processes and summons from local courts and also keep law and order in the courts. Their other duties include:

- The detection of crime
- The apprehension of offenders
- The maintenance of law and order
- The enforcement of all lawful by-laws and orders made by the Chiefdom Council
- Assistance with the collection of chiefdom revenue
- Any other duties assigned by the District Officers or Superior Police Officers as required by the Chiefdom Committees.

Every chiefdom with a Chiefdom Police unit has a chiefdom lock-up. The lock-up falls under the supervision of the District Watch Committees.

Apart from the local courts and the Chiefdom Police, which are governed by the local division of the Ministry of Internal Affairs and Local Government,

there is the Customary Law Division in the Law Officers Department to assist with the proper application of customary law in the administration of justice in the provinces. The division consists of Customary Law Officers assisted by paralegal staff who are 'learned' in customary law. These officers, who are also State Counsel, have a quasi-judicial capacity and are known as Local Court Supervisors (LCS) and Record Officers. They advise the local courts in matters of law and organisation, and educate and train local courts staff on the extent of the jurisdiction of the courts, how to distinguish civil from criminal matters, the possible conflict of interest when cases are tried, proper court procedures and court administration. LCSs also have powers of review pursuant to sections 36 to 39 of the Local Courts Act.

Local courts have limited jurisdiction. They have the responsibility of regulating native customary law institutions, such as marriage and divorce, and to adjudicate land/bush disputes and minor criminal cases, especially those where the maximum penalty is imprisonment for six months or a fine of £50 pounds sterling (section 13(c) of the Local Courts Act of 1963). The local courts are presided over by elders of the area who are proficient in customary law.

The local courts can be said to dispose of a significant volume of minor criminal cases. There are 288 such courts throughout the country, namely 28 in Bombali, 26 in Port Loko, 30 in Koinadugu, 17 in Kambia, 16 in Tonkolili, 27 in Bo, 28 in Moyamba, 18 in Pujehun, 26 in Bonthe, 28 in Kono, 18 in Kenema and 26 in Kambia.⁸⁸ Lawyers do not have the right of audience before these courts.

The system of customary law and local courts has, however, not been effective in Sierra Leone since 1990, for the following reasons:

- Local courts are understaffed because of a neglect of duty by Chiefdom Committees and the Provincial Secretary who are responsible for electing and hiring staff
- Too few Customary Law Officers or LCSs
- A lack of state subsidies for local courts
- A lack of staff incentives to get the work done
- Too much political interference in the administration of customary justice.

These constraints account for delays in the dispensation of customary justice and negatively impact on the quality of justice at the local level. In fact, in some areas visited by the Centre for Development and Security Analysis (CEDSA), local courts had simply ceased operating as the staff had gone on strike to protest

against delays in the payment of their salaries. In the Eastern Province a huge backlog of land disputes and other civil cases have accumulated as the courts have been ineffective for the last three years.⁸⁹ While local courts have been functioning continuously in the Southern Province, they have become solely reliant on the revenue generated from fines levied through court decisions.⁹⁰ The interviews revealed that fines are non-standard across the chiefdoms and that, in general, they have become arbitrarily exorbitant. Consequently, many litigants in these areas have sought the transfer their cases to the Magistrates' Court in Bo. However, those who lack the funds, have no recourse to formal justice. Even the right to appeal a local court decision as stipulated in the Local Courts Act is difficult to exercise.

Discussions with various Sierra Leoneans regarding customary justice led to the following findings:

- There is overall satisfaction with the dispensation of customary justice in different local areas
- Though most matters are first reported to family elders before proceeding to the local courts, when such matters eventually got to the courts, parties are mostly satisfied with the decisions
- The majority of the respondents in the Northern Province agreed that fines levied by local chiefs are within the reach of the poor and are based on the nature of the offence
- Judgements of the local courts are based on investigations and testimonies of witness
- A majority of the respondents agreed that there are barriers, such as transport costs, to accessing local courts
- Local courts in the Northern Province do not receive support from any organisation
- Marital problems are always settled amicably
- Matters involving land/bush disputes are not recorded during local court proceedings and are not subject to appeal.⁹¹

Notwithstanding the generally positive perceptions about the customary justice system, there are also negative perceptions about their operation in the country. Their judgements in respect of marital problems are regarded by many as being discriminatory. For instance, customary law provides for polygamous

marriages, but there are no uniform procedures. The characteristics of such marriages are extra-judicial divorce, which can be obtained easily, the inferior status of women and the absence of a minimum age limit for marriage as the capacity to marry is determined by a person's physical development. As a result, very young girls have been married to older, influential men such as chiefs. Furthermore, marriage under customary law does not confer absolute right to guardianship of children, nor does it confer any right to property on divorce. This type of discrimination infringes upon the principles of good justice and is in conflict with Article 16 of CEDAW, which specifically imposes an obligation to respect the right of free choice as far as choosing a spouse is concerned, and to entering into marriage only with free and full consent. It is also in conflict with Article 18 of the ACHPR, which enjoins states to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

The position of a woman who has not undergone any recognised form of marriage, but who has cohabited with a man until his death, is not protected under the customary law of inheritance. If there are children, they may not benefit from the estate of their father. However, according to the Report of the Sierra Leone National Consultation (2001:63), under section 29 of Chapter 45 of the Administration of Estates Act, they could petition, on equitable or moral grounds, to secure a share in the estate.

Interviews with some officials of the customary justice system in the Kenema District of Eastern Sierra Leone unearthed several findings. Kenema District comprises 16 chiefdoms and has 27 local courts. Some chiefdoms have one court, while others have two or more courts depending on size and population. The chairpersons of the courts are recommended by paramount chiefs subject to the approval of the Ministry of Local Government and Internal Affairs. The tenure of chairpersons is three years. Re-nomination by the Chiefdom Committee is permitted. At the time of writing, the mandate of all chairpersons had expired and they were waiting for re-nomination and appointment.

The problems besetting the customary justice system in the Kenema District, like in many other districts in the country, are many and varied and include the following: court chairmen and court members do not receive a regular salary, travelling allowances are not provided for court members who should travel to invite suspects and the accused to attend local court proceedings, members of the local courts have no entitlement to social security, and the lock-up facilities

in most chiefdoms are in a deplorable state or non-existent. Local court excesses and reports of gross human rights abuses have come to light. For instance, the Regional Coordinator of Civil Society in the Eastern Region recounted how one lady was fined the sum of Le 600 000 for refusing to be intimate with her husband and for having a boyfriend.

RECOMMENDATIONS

The following recommendations, based on the above findings, are aimed at making the customary justice system more effective:

Legislative reforms

All legislation governing customary justice must meet a comprehensive review so as to cater for modern-day realities. For example, the Local Courts Act should be revised to expand the jurisdiction of the courts. This would ease the burden of the poor and people who detest the complexities and procedures of the general law courts, and prefer to settle their disputes within the ambit of their customs and traditions. Customary dispute settlement gives satisfaction to parties in disputes, whichever way a judgment goes, as is evident from the findings about the perceptions of people in relation to customary justice delivery in their local areas.

Institutional reforms

Reform of the institutions and agencies that together represent customary justice should address organisational, personnel and fiscal issues, as follows:

- Salaries should be paid regularly
- Customary law should be harmonised
- Capacity should be built and local court personnel should be trained
- The Chiefdom Police should be trained to carry out of orders and serve court processes effectively
- Transport should be provided for local courts supervisors to make them more effective
- Job incentives should be provided for the staff of local courts

9 Adherence to regional and international instruments

INTRODUCTION

The imperative of globalisation has led to the evolution of and consequent entry into force of several multilateral conventions and protocols or treaties. International legal instruments are not self-executing and states can elect to accede to or ratify such legal instruments, or not. After ratification by states, the international instruments may be domesticated by such states through enabling legislation. The legal implication of the domestication of such conventions and protocols is that they become integrated into the corpus of laws of such countries.

The fundamental principle of treaty law is that treaties are binding upon the parties that have acceded to them and that such accession must be performed in good faith. This rule is known in legal terms as *pacta sunt servanda* and is arguably the oldest principle of international law. In the absence of a certain minimum belief that states will perform their treaty obligations in good faith, it becomes preposterous for countries to enter into such obligations with one another. Consequent upon Sierra Leone's voluntary election to be bound by the treaties it has acceded to, ratified or adopted, it needs to domesticate such instruments.

REGIONAL INSTRUMENTS SIGNED AND RATIFIED BY SIERRA LEONE

In this section, the report focuses on the regional protocols and agreements that Sierra Leone has signed and ratified. It also highlights those instruments the country still needs to ratify. The regional protocols emanate from the AU and the Economic Community of West African States (ECOWAS). The protocols and agreements signed and ratified by Sierra Leone, as listed in Table 9.1, cover a wide spectrum of issues, including migration, crime, security, law enforcement, integration etc. The table includes information on dates of signature, ratification and accession, and the entry into force of the various instruments.

An examination of the various regional treaties and protocols indicates the degree of compliance by Sierra Leone to the provisions of such international legal instruments. Evident from Table 18 is the time lapse between the signing and ratification of instruments. For example, the Convention Governing the Specific Aspects of Refugee Problems in Africa was signed by Sierra Leone on 10 September 1969, but was not ratified until 28 December 1987, some 17 years later. The same can be said of the African Charter on the Right and Welfare of the Child, where there was a gap of about 10 years between signature and ratification. Such delays do not cast Sierra Leone in a favourable light in our new world order.

INTERNATIONAL INSTRUMENTS SIGNED AND RATIFIED BY SIERRA LEONE

Sierra Leone is a member of the UN and has signed and ratified several international legal instruments dealing with a range of issues, including trans-boundary crimes, security, law, enforcement etc. Sierra Leone needs support from the international community to give effect to these instruments, given the imperatives and demands of post-war reconstruction and reintegration efforts. Table 19 presents some of the international conventions and protocols Sierra Leone has signed and/or ratified.

Table 19 demonstrates that Sierra Leone is a signatory to virtually all the international conventions and protocols covering diverse aspects of international law from human rights, human trafficking and the rights of the physically challenged to transnational crimes, drugs and civil rights.

Table 18 Regional instruments signed by Sierra Leone

Treaty/protocol	Date of signature	Date of ratification	Date of accession	Entry into force
African Union Treaty	12 July 2000	9 February 2001	Deposited 01 March 2001	Adopted 11 July 2000
African Charter on Human and Peoples Rights	27 August 1981	21 September 1983	Deposited 17 January 1984	
African Charter on the Rights and Welfare of the Child	14 April 1992	13 May 2002	Deposited 18 June 2002	
AU Convention on the Prevention and Combating of Terrorism				Adopted 14 July 1999
Protocol on the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples Rights	9 July 1998			Adopted 10 June 1998
Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	9 December 2003			9 December 2003
Protocol to the AU Convention on the Prevention and Combating of Terrorism	21 January 2006			
African Union Non-aggression and Common Defence Pact	9 March 2005			
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition	27 November 2001			
Convention Governing the Specific Aspects of Refugee Problems in Africa	10 September 1969	28 December 1987	Deposited 14 March 1988	

Treaty/protocol	Date of signature	Date of ratification	Date of accession	Entry into force
African Charter on Democracy, Elections and Governance	17 June 2008	30 January 2007		
African Union Convention on the Conservation of Nature and Natural Resources	15 September 1968			
Convention for the Elimination of Mercenaries in Africa	19 December 2003			Adopted 3 July 1977
Bamako Convention on the Ban on the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa	9 December 2003			Adopted 30 January 1991
The African Nuclear Weapon Free Zone Treaty (the Pelindaba Treaty)	11 April 1996			Adopted July 1995

Table 19 International instruments signed by Sierra Leone

International convention/treaty	Date of signature	Date of ratification	Date of accession	Entry into force
Comprehensive Nuclear Test Ban Treaty	8 September 2000	17 September 2000		
Convention on the Prohibition, Stockpiling and Production of Anti-Personnel Mines and their Destruction	29 July 1998	25 April 2001		
Protocol Against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition	27 November 2001			31 May 2001

International convention/treaty	Date of signature	Date of ratification	Date of accession	Entry into force
UN Convention Against Corruption	9 December 2003	30 September 2004		
Rome Statute of the International Criminal Court	17 October 1998	15 September 2000		
United Nations Convention against Transnational Organised Crimes	27 November 2001			29 September 2003
United Nations Convention against Illicit Trafficking in Narcotic and Psychotropic Substances	9 June 1989	6 June 1994		1988
International Covenant on Civil and Political Rights			23 August 1996	16 December 1966
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	8 September 2000	17 September 2001		18 January 2002
International Convention on the Elimination of All Forms of Racial Discrimination	17 November 1966	2 August 1967		7 March 1966
International Convention on Economic, Social and Cultural Rights			23 August 1996	16 December 1966
Optional Protocol to the International Covenant on Civil and Political Rights			23 August 1996	
Convention on the Elimination of all Forms of Discrimination against Women	21 September 1988		11 November 1988	3 September 1981
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women	8 September 2000			

International convention/treaty	Date of signature	Date of ratification	Date of accession	Entry into force
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	18 March 1985		25 April 2001	26 June 1987
Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	26 September 2003			
International Convention Against Apartheid in Sports	16 May 1986			3 April 1988
Convention on the Rights of the Child	13 February 1990			2 September 1990
Amendment to Article 43 (2) of the Convention on the Rights of the Child			27 November 2001	18 November 2002
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	8 September 2000		15 May 2002	12 February 2002
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families	15 September 2000			1 July 2003
Convention on the Rights of Persons with Disabilities	30 March 2007			3 May 2008
Optional Protocol to the Convention on the Rights of Persons with Disabilities	30 March 2007			
International Convention for the Protection of all Persons from Enforced Disappearance	6 February 2007			Not yet in force

International convention/treaty	Date of signature	Date of ratification	Date of accession	Entry into force
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	27 November 2001			15 November 2000
Protocol Against the Smuggling of Migrants by Land, Sea and Air	27 November 2001			15 November 2000
UN Standard Minimum Rules for the Administration of Juvenile Justice	26 September 2003			
Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others				Cabinet approval
Geneva Convention		10 June 1965		12 August 1949
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field		10 July 1965	10 July 1965	
Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea		10 July 1965	10 July 1965	
Geneva Convention Relative to the Treatment of Prisoners of War		10 July 1965	10 July 1965	
Geneva Convention Relative to the Protection of Civilian Persons in Time of War		21 October 1986	21 October 1986	

International convention/treaty	Date of signature	Date of ratification	Date of accession	Entry into force
Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)		21 October 1986	21 October 1986	
Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict (Protocol II)		21 October 1986	21 October 1986	
International Convention Against the Taking of Hostages			26 September 2003	
International Convention for the Suppression of Terrorist Bombing			26 September 2003	
International Convention for the Suppression of Financing of Terrorism	27 November 2001	26 September 2003		
International Convention for the Suppression of the Unlawful Seizure of Aircraft	19 July 1971	13 November 1974		
International Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons				26 September 2003
Convention on the Safety of United Nations and Associated Personnel				26 September 2003
Convention Relating to the Status of Refugees			22 May 1981	
Protocol Relating to the Status of Refugees			22 May 1981	

While some of the international treaties and conventions have been signed and ratified, others, e.g. the International Convention for the Protection of all Persons from Enforced Disappearance, have been ratified by Sierra Leone even though they are not yet in force. The reason for the instruments not yet having entered into force is because sufficient member states are yet to sign it to achieve the requisite number of signatures for its entry into force.

INTERNATIONAL CONVENTIONS AND PROTOCOLS TO BE RATIFIED BY SIERRA LEONE

In the international community many states have defaulted in ratifying certain conventions and protocols. The reason for this is multifaceted. Some countries refuse to ratify some international instruments because of the dictates of sovereignty or self-interest, while others usually take a long time to ratify such instruments. Sierra Leone has defaulted as well as regards the signing of some international instruments. Amongst the conventions and protocols yet to be ratified by Sierra Leone are the following:

- Convention on the Prevention and Punishment of the Crime of Genocide (entry into force 12 January 1951)
- Convention on the Privileges and Immunities of the United Nations
- Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes against Humanity
- Convention on the Reduction of Statelessness
- Convention Relating to the Status of Stateless Persons
- Convention Concerning Occupational Safety and Health and the Working Environment
- Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
- Slavery Convention
- Protocol Amending the Slavery Convention
- Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty
- Amendment to the International Convention of All Forms of Racial Discrimination

- International Covenant on Economic, Social and Cultural Rights (Sierra Leone has not signed, but did accede to it on 23 August 1996)
- International Covenant on Civil and Political Rights (Sierra Leone has not signed, but did accede to it on 23 August 1996)
- Optional Protocol to the International Covenant on Civil and Political Rights (Sierra Leone has not signed, but did accede to it on 23 August 1996)
- International Convention on the Suppression and Punishment of the Crime of Apartheid
- Amendment to Articles 20(1) of the Convention on the Elimination of all Forms of Discrimination against Women
- Amendment to Articles 17(7) and 18(5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Universal Declaration of Human Rights
- OAU Convention Governing the Specific Aspects of the Recharge Problem in Africa
- Protocol to the Africa Charter in the Establishment of an African Court on Human and People Rights (Supplement to the African Mechanism for the Promotion and Protection of Human Rights in Africa)
- Protocol to the African Charter on Human and Peoples Rights (Relating to the Rights of Women)
- Draft Protocol to the OAU Convention on the Prevention and Combating of Terrorism
- African Maritime Transport Charter
- Worst Forms of Child Labour Convention (No. 182) (Adopted by the International Labour Organisation (ILO) General Conference on 17 June 1999)
- Minimum Age Convention 1973 (No. 138) (Adopted by the ILO General Conference on 26 June 1973)
- Amendment to the Convention on the Rights of the Child. General Assembly Resolution 155/50 of 21 December 1995
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation
- Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, Protocol 1 of 1954, and Protocol 11 of 1999)

The above list of international conventions and protocols yet to be ratified by Sierra Leone is not exhaustive, since there are several more. To this extent, it

is a matter of grave concern that despite the trauma of the horrendous decade-long rebel war, Sierra Leone has not ratified, amongst others, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes against Humanity.

Furthermore, considering the historical background of Sierra Leone as a colony for the settlement of repatriated slaves consequent on the abolition of the heinous slave trade, it is imperative that it ratifies the Slavery Convention.

The problem of states dithering to sign and/or ratify protocols and treaties has the effect of important treaties that have been signed by some states cannot be put into force owing to the lack of the requisite quorum. For instance, Sierra Leone signed the International Convention for the Protection of all Persons from Enforced Disappearance on 6 of February 2007, but like several other states, is yet to ratify the convention. Consequently, the convention has not yet been able to enter into force.

The challenges posed by the institutional inertia of such government departments as Sierra Leone's Ministries of Foreign Affairs and of Justice partly explain the failure of the country to ratify some of the conventions and protocols. Sierra Leone's capacity and efficiency in processing international legal instruments should be enhanced. Irrespective of these lapses, it is gratifying to note that Sierra Leone has integrated herself into a fast globalising world, being a member of such multilateral bodies as the UN, AU and ECOWAS.

RECOMMENDATIONS

Sierra Leone has signed and ratified the greater proportion of the conventions and protocols dealing with transnational crimes, human rights, gender issues, war etc. Although many important legal instruments are yet to be ratified, the country has shown a commendable level of commitment to her international obligations. However, greater effort should be directed towards the domestication of some of these conventions and protocols. While there are positive indicators of the benefits of Sierra Leone's ratification of these instruments, it is imperative that they be enacted locally into the corpus of laws of the Sierra Leone legal system. The utilitarian value of domestication is that the country would be enabled to prescribe and impose penalties where there is an infraction of the provision of such instruments.

Notes

- 1 A national crime victimisation survey was carried out at the same time as this review was conducted. Its findings, which constitute part of this report, are published in a separate forthcoming ISS report entitled 'A survey of crime victims in Sierra Leone', by Dr AB Chikwanha.
- 2 Timap is Krio phraseology meaning 'to defend justice' or 'Stand up'.
- 3 Most of the English laws inherited from the colonialists are still on the statute books of Sierra Leone. These laws have not been amended to suit cotemporary legal experience and are mostly otiose. It is submitted that this legislative inertia is an affront on Sierra Leone's sovereignty. See section 170 of the Constitution for laws comprising the Sierra Leone legal system.
- 4 The legal vehicle for the importation and adaptation of imperial legislation into Sierra Leone is the Laws (Adaptation) Ordinance of 1960.
- 5 For an appraisal of these rights, see sections 15 to 30 of the Constitution.
- 6 The Office of the Ombudsman was established under a provision of section 146 (1) of the Constitution. Under the provision parliament was mandated to establish the office by not later than 12 months from the date of the commencement of the Constitution. The Ombudsman was originally the Parliamentary Commissioner appointed under the Parliamentary Commission Act 1967 to investigate complaints of administrative action.
- 7 Section 3 of the Police Act of 1964 established what was then known as the Sierra Leone Police Force (SLPF). The history of policing in Sierra Leone is drawn mostly from AI Shek Kamara's 2005 essay entitled 'Future challenges facing the Sierra Leone Police'.
- 8 The statistics used here were current as at 2 June 2008. The statistics are maintained by the SLP's Freetown Headquarters, which has a data office and obtains weekly returns on the personnel strength of the force.
- 9 Differences in totals are due to absence of information from some prisons.
- 10 The Ministry of Justice, Department for Constitutional Affairs, What is justice?, www.dca.gov.uk/civil/final/contents (accessed 23 March 2008).
- 11 Section 8(2c) of the Constitution reads in full as follows: 'The Government shall secure and maintain the independence, impartiality and integrity of courts of law and unfettered access

thereto, and to this end shall ensure that the operation of the legal system promotes justice on the basis of equal opportunity and that opportunities for securing justice are not denied any citizen by reason of economic or other disability’.

- 12 Section 17(2b) of the Constitution states: ‘Any person who is arrested or detained shall be informed immediately at the time of his arrest of his right to a legal practitioner or any person of his choice and shall be permitted at his own expense to instruct without delay a legal practitioner of his own choice and to communicate with him confidentially’.
- 13 Officially recognised local courts settle disputes and sometimes include chiefs, families, secret society groups etc.
- 14 Kangaroo courts deal with cases that are not taken to formal or customary local courts. Cases are mostly presided over by chiefs and village elders at the community local courts.
- 15 Information provided by Mr Momo Turay, a Project Officer at JSDP.
- 16 The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris from 7–9 October 1991. The principles stipulate that governments must establish an independent institution by an Act of Parliament to promote and protect the rights of citizens.
- 17 Ms Lucian Caulker is the Complaints Registrar of the HRCSL.
- 18 The Domestic Violence Act No. 20 of 2007 specifically criminalises violence in the private sphere.
- 19 The Devolution of Estate Act No. 21 of 2007 provides for a uniform system of distribution of estates nationwide, irrespective of the personal wishes or will of the deceased person or his/her survivors.
- 20 The Registration of Customary Marriage and Divorce Act No. 22 of 2007 grants persons married under customary law the right to register their marriage and obtain a certificate in the same way as persons married under civil, Christian and Muslim rites.
- 21 Amnesty International, No one to turn to: women’s lack of access to justice in Sierra Leone, AI Index: AFR 51/011/2005, 6 December 2005.
- 22 Field report by the author.
- 23 Information provided by Mr Momo Turay, a Project Officer at JSDP.
- 24 The NFHR is a federation of 33 local human rights and rights-related organisations. It aims to mobilise a greater voice through coordination, networking, collaboration and education/awareness-raising in a bid to promote and protect respect for human rights, democracy, rule of law, good governance, justice and accountability.
- 25 Global Rights was formerly known as the International Human Rights Law Group.
- 26 Melron C Nicol Wilson, *A handbook for paralegals*, Nicol Wilson and Co., 2004. LAWCLA and Global Rights developed a *Handbook for paralegals in Sierra Leone*, which serves as a quick source of reference for Sierra Leonean paralegals.

- 27 Barrister Oju Wilson.
- 28 Sheku Fonnies is the Project Officer for the paralegal services in Kailahun District.
- 29 Kangaroo courts are informal courts operated by chiefs at village or section level.
- 30 See Rule 2.2[a] of the UN Resolution 40/33, Beijing Rules 1985, Annex 2.
- 31 Part 1 of Chapter 44 stipulates that a young person means a person who is 14 years of age or upwards, and under the age of 17 years.
- 32 Where a young person is charged with any offence punishable, the court may order that he be committed to custody of an Approve School until he attains 18 years, or for any shorter period.
- 33 Article 2: For the purposes of this Charter, a child means every human being below the age of 18.
- 34 Article 1: UN Convention on the Rights of the Child, 1989. This was ratified by Sierra Leone in 1990.
- 35 UN Resolution 40/33, Beijing Rules 1985, Annex 2.
- 36 UN Resolution 45/113, 1990, Annex 4.
- 37 UN Resolution 45/112, Riyadh Guidelines 1990, Annex 3.
- 38 OAU Doc. CAB/LEG/24.9/49 (1990); entered into force on 29 November 1999.
- 39 The UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985.
- 40 The UN Guidelines for the Prevention of Juvenile Delinquency, 1990.
- 41 The UN Rules for the Protection of Juveniles Deprived of Their Liberty, 1990. The Havana Rules are a follow up to the 1955 Standard Minimum Rules for the Treatment of Prisoners, but specifically protect 'juveniles in detention or custody'.
- 42 Information obtained from general observation by the author at Juvenile Court sessions and from Mr Joel Kamanda, the Juvenile Court clerk.
- 43 The article in the African Charter on the Rights and Welfare of the Child reads: 'Ensure that children are separated from adults in their place of detention or imprisonment'.
- 44 The article in the International Convention on Civil and Political Rights reads: 'Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age' and legal status.
- 45 Mrs Nelson Harding was the Permanent Secretary of MSWGCA as at 20 June 2008.
- 46 Discussions with inmates by the author, coupled with information collected from Duty Officer.
- 47 See article 37(a) of the CRC.
- 48 Section 28(5) of the Constitution states: 'Parliament shall make provision (a) for the rendering of financial assistance to any indigent citizen of Sierra Leone where his right under this

chapter has been infringed or with a view to enable him to engage the services of a legal practitioner to prosecute his claim. (b) For ensuring that allegations of infringement of such rights is substantial and the requirement or need for real aid is real’.

- 49 The relevant part of Section 14(3)(4) of the ICCPR reads: ‘To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it’.
- 50 The relevant part of article 40(2)(b ii) of the CRC reads: ‘To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence’.
- 51 Article 17(b3)(iii) of the CRC states: ‘Shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence’.
- 52 Information provided by Mr Joel Kamanda, Juvenile Court Clerk.
- 53 This information from Harvey 2000 may also be found in MP-M Fofanah’s *Challenges of juvenile justice*.
- 54 Discussion with Mrs Gertrude Sesay, matron, Kingtom Remand Home, 21 June 2008.
- 55 Article 12(2) of the CRC determines: ‘For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law’.
- 56 Section 15 CAP 44 of the 1960 Laws of Sierra Leon states: ‘... the court shall hear the witness for the defence and any further statement which the accused may wish to make in his defence’.
- 57 Information provided by Mr Joel Kamanda, Juvenile Court Clerk, 27 July 2008.
- 58 Part VII, section 41 of the Laws of 1960 reads: ‘Every appeal made against an order or sentence made or passed by a juvenile court under the provision of this ordinance shall be entered within seven days of the date the order was made or sentence appealed against’.
- 59 Article 40(2)(b)(v) of the CRC states: ‘If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law’.
- 60 Author’s findings.
- 61 Committee on the Rights of the Child, 48th Session: Consideration of report submitted by state parties under Article 44 of the Convention, Concluding observation for Sierra Leone, CRC/C/SLE/CO/2, 20 June 2008
- 62 An Approved School is an institution where a juvenile is detained for reformation after trial.

- 63 The UN Rules for the Protection of Juveniles Deprived of their Liberty stipulates that the place of detention shall be equipped to ensure meaningful activities and programmes to foster responsibility and self respect for the individual.
- 64 A detention centre for juvenile offenders on trial.
- 65 Information provided by the matron of the Approved School and Mrs Nelson Harding, the permanent secretary at the MSWGCA.
- 66 The visit to the Approved School was undertaken on the 20 June 2008.
- 67 Rule 31 recognises that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.
- 68 Rule 38 determines that every juvenile of compulsory school-going age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society.
- 69 UN Rules for the Protection of Juveniles Deprived of their Liberty: 'Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times'.
- 70 Information provided by Mr Yousuf Bangura, duty officer at the Approved School in Wellington.
- 71 Rule 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty reads: 'All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health of the juvenile concerned'.
- 72 Information collected by the matron of the Remand Home – Mrs. Gertrude Sesay.
- 73 Information provided from Mrs Nelson Harding, Permanent Secretary of the MSWGCA.
- 74 Committee on the Convention on the Rights of the Child, 48th Session, June 2008: Concluding observations on Sierra Leone.
- 75 Mr Mariatu Kamara is the Probation Officer for the MSWGCA.
- 76 Information provided by Mrs Nelson Harding, Permanent Secretary, MSWGCA.
- 77 Information provided by Mr Jaward, Probation Officer, MSWGCA.
- 78 Report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. This UN General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 12 February 2002.
- 79 See section 17(1) of the Human Rights Commission Act.
- 80 The tier system is based on the US government's efforts to combat human trafficking. Countries in Tier 3 are those considered to 'neither satisfy the minimum standards, nor demonstrate a

significant effort to come into compliance'. Also see the US State Department Annual Report on Trafficking of 11 June 2004.

- 81 Initial country report on the implementation of the Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2007.
- 82 Information provided by Mrs Nelson Harding, Permanent Secretary, MSWGCA, June 2008.
- 83 Committee on the Rights of the Child, 48th Session: Consideration of reports submitted by state parties, concluding observations on Sierra Leone, 20 June 2008.
- 84 Ibid.
- 85 Bail homes are used as a transit point before trial.
- 86 Information provided by Mr Mike Charley, a UNICEF Child Protection specialist.
- 87 Information provided by Mrs Nelson Harding, Permanent Secretary, MSWGCA, June 2008
- 88 Source: interview with local court supervisors.
- 89 Source: Local court officials.
- 90 Source: Ibid.
- 91 Source: Interview with Mr MS Turay, LCS Bombali.

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