

# **The Criminal Justice System in Sierra Leone-Issue Paper**

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***Compiled by Dr. Annie Barbara Chikwanha***

This issue paper attempts to highlight the main problems in the country's criminal justice system. The issues raised in this issue paper take into account the Government of Sierra Leone's constrained capacity to correct most criminal justice deficiencies. The government has been struggling for a decade to provide the basic human needs for all Sierra Leoneans. The issue paper seeks to trigger researchers to address the following questions: How has the country fared in re-establishing the criminal justice system during the transitional phase from war to peace? How have the post war structures performed in delivering justice? How far has the country fared in complying with international standards, protocols and norms? What are the constraints in the system?

As with all African countries, the Sierra Leone legal system encompasses a combination of the Constitution, common law, statutory law and customary law. A two-tiered system of Common Law based on the British system and local customary law, characterize the legal system. Judicial power in Sierra Leone rests with the judiciary of which the Chief Justice is head. Deficiencies in the justice and penal system exist the world over. However, there is a difference in the way these manifest themselves and this has to do with regime types. Authoritarian regimes systematically detain and torture suspects and prisoners. In democratic regimes, such occurrences usually result from official neglect, individual maliciousness, incompetence, inadequate resources and institutional capacity it thus the aim of this issue paper to determine where Sierra Leone can be located on this regime continuum. As a nascent democracy, we would presume that it falls into the latter category.

This issue paper is compiled from a literature review of studies and anecdotal evidence on the criminal justice system in Sierra Leone.

## **Access to Justice**

- Demand for legal representation among a largely poor and illiterate population is enormous in Sierra Leone. The Lawyers' Centre for Legal Assistance (LAWCLA) remains the most popular organisation where the poor can seek tangible legal help. Even though, LAWCLA is still deeply concerned with transitional justice in the same manner that external interventions have emphasized legal efforts and concentrated funding on the Special Court for Sierra Leone and the Truth and Reconciliation Commission (TRC). Though this is essential in the transition from war to peace, it falls short of building structures for strengthening the emerging and contemporary criminal justice system. However, justice needs are virtually everywhere in a country that has just emerged from a brutal decade old civil war and that is currently struggling with entrenching good governance.

- Women's access to justice in particular is hampered by many factors: cultural, legal and social. Discrimination in the laws compromises their access to justice as does the lack of laws to protect women against gender related violence. Discriminatory social attitudes at the family and security official level also exacerbate the problem. There is also a general vacuum on sources of legal advice and assistance.

## **Prisons**

Prisons conditions show that justice does require human dignity of those convicted and this must be in accordance with established international standards. The accused, when held in custody pending trial, are supposedly entitled to a presumption of innocence and to treatment in accordance with the UN Minimum Standard Rules of Detention. The government does not systematically torture prisoners but the deplorable conditions prisoners live in are tortuous in themselves. Though the Government struggles to provide basic services to its citizens, the general conditions in detention facilities and prisons are unacceptable as stipulated by international standards. The questions should be on how to best aid the reformation of criminal elements so they can be reintegrated back into society.

- The Prison Watch reports detail important deficiencies with respect to prolonged detention without charges, overcrowding of cells, abusive conditions for women and youths, inadequate food, sanitation, and medical facilities. The remand section remains the worst incarceration facility. There are 12 district prisons in the country and only 8 are functioning. The 8 still have a problem of inadequate living conditions, poor conditions of service, lack of professional skills amongst the staff, poor remuneration and a general official neglect of prison officers.
- There are prisoners who have been on remand for more than three or four years all over the country. There is a major problem of access to justice in prison. For instance, of the 1,899 prisoners in the system at the end of September 2007, 698 were on remand and a further 321 had trials pending. Prison Watch monitors conditions in the 13 jails around the country and it describes conditions for the long-term prisoners as being 'extremely basic'. Beatings, rape, and illegal drug possession in jails are all common.
- Remand prisoners, juveniles and women are held alongside convicted prisoners and in some prisons, they are crowded into cells more than three times beyond capacity. Juvenile detainees do not have adequate access to rehabilitative services, such as education or vocational training. Pretrial detainees are also often held with convicted prisoners. Only death row prisoners are kept separately.
- The length of remand and adjournment of cases in the country is reported as "excessive".

## Police Prosecutors

- There is an acknowledged shortage of state lawyers in the Law Officers Department hence the police step in to prosecute cases in the National Courts. However, since these Police prosecutors lack adequate skills and training on how to prosecute matters, they fail to perform their tasks well. Reports state that they often come to court unprepared and give flimsy excuses such as forgetting the files at their offices. The victims therefore end up losing their cases as a result of their incompetence and this contributes to delays in trial proceedings.
- Prosecutorial capacity is very weak. Members of the armed forces were sometimes implicated in human rights abuses as well, including rape, for which they are rarely prosecuted. (See Prison Watch 2006 'Report on Prisons and Detention Monitoring in Sierra Leone')

## Gender related violence

- The Constitution provides for equal rights for women; however, in practice, women face both legal and societal discrimination. In particular, their rights and status under traditional law vary significantly depending upon the ethnic group to which they belong.
- Despite constitutionally guaranteed equal rights, women face extensive legal and *de facto* discrimination, as well as limited access to education and formal (business) sector jobs. Married women have fewer property rights than men, especially in rural areas, where customary laws prevail. Abuse of women, including rape, sexual assault, and sexual slavery, rampant during the war still continue *albeit* in a moderate form. Female genital mutilation is widespread and no law prohibits it.
- Justices are often accused of insensitivity on the social and cultural attitudes towards the role and rights of women in society. Lawyers, judges, magistrates and even customary court chairmen require familiarization with the provisions of the laws on preventing discrimination against women.
- Domestic violence against women, especially wife beating, is common. The police are unlikely to intervene in domestic disputes except in cases involving severe injury or death. In rural areas, polygyny is common. Women suspected of marital infidelity are often subjected to physical abuse. They are frequently beaten until they divulge the names of their partners. Because husbands claim monetary indemnities from their wives' partners, beatings often continue until the woman names several men even if there are no such relationships. There also are reports that women suspected of infidelity are required to undergo animistic rituals to prove their innocence.
- Cases of rape are underreported, and indictments are rare, especially in rural areas. Medical or psychological services for rape victims are still limited. Rape victims cannot afford the medical report needed to file charges.
- Prostitution is widespread and though it is not prohibited by law, prostitutes are sometimes arrested and charged with loitering or vagrancy.
- Child prostitution is a major problem. To address the issue of child prostitution in

the capital, the Freetown City Council introduced a regulation that would bar minors from nightclubs, a common venue for commercial sex transactions but this has not stopped the practice.

### **Policing/Law Enforcement**

- The police force is viewed as corrupt and incompetent, partly due to insufficient funding. However, the size of the police force has been increased and officer training was recently expanded to include professional ethics and the proper handling of human rights issues. Budget constraints have impeded recruitment efforts, as has the lack of basic educational skills of applicants, many of whom had no schooling during the civil war. There are frequent reports that police officers take bribes at checkpoints, falsely charge motorists with violations, and impound vehicles to extort money.

### **Juvenile justice**

- The definition of a juvenile in the country contravenes the international laws on the rights of the child which define anyone under 18 as a minor. The Children and Young Persons Act (Chapter 44 of the Laws of Sierra Leone 1960), which govern the treatment of juveniles in conflict with the law, apply only to those below the age of 17. And to add salt to injury, it contains both welfare principles and punitive methods for reforming and rehabilitating child offenders.
- Juvenile cases are neglected. The court hearings are held only once a week on Wednesdays. A Magistrate and two Justices of the Peace listen to these cases. However, in the event one is absent, that is, either of the justices of the Peace or the magistrate, a verdict cannot be reached. The juveniles thus end up in custody and therefore they do not get reformed. Attending to juvenile cases just once a week trivializes the problem and denies them justice through delays.
- Juveniles' rights are both not respected and known by security officers. Most times the police do not contact the parents of the juvenile when they are arrested thereby contradicting the juvenile's rights. These juveniles are kept at the police stations for very long periods without contacting their parents or guardians. This violates article 9(4) of the Convention of the Rights of the Child and Rule 0.1 of the Beijing Rules.
- Lack of legal representation for offenders is another cause of delay in trying juveniles. In many cases, juvenile offenders are not represented even in alleged felonies. Since they (juvenile offenders) lack the technical expertise to adequately represent themselves, they are not taken seriously by court officials. Also, magistrates are more likely to hear cases in which offenders are represented. Thus, juvenile cases are frivolously adjourned time and time again denying them justice.

## **The Judiciary**

- The judiciary is viewed as corrupt and inefficient due to lack of funding and years of misrule. Despite these obstacles, the judiciary has demonstrated independence, and a number of trials have been free and fair. The judiciary has thus tried to demonstrate independence. However, the Constitution provides for an independent judiciary, and though the government generally respects this provision, in practice, the judiciary is often subject to corruption.
- People accused of crimes often face lengthy delays before trials, and there is limited judicial presence outside of the capital. However, there have been attempts to expand judicial presence outside the capital district, Freetown. By the end of 2007, there were functioning magistrate courts in the country's 12 judicial districts, with many of them presided over by justices of the peace (lay legal persons). Magistrates were permanently stationed at the five provisional headquarters in Bo, Moyamba, Makeni, Port Loko, and Kenema. The magistrates visited the remaining seven judicial districts at least once per month.

## **Arbitrary Arrest or Detention**

- The Constitution prohibits arbitrary arrest and detention; however, government forces occasionally arrest and detain persons arbitrarily. The law requires warrants for searches and arrests in most cases; however, arrest without warrants still occur. Though there are judicial protections against false charges, prisoners are often detained for prolonged periods on false charges.
- There are provisions for bail, and there is a functioning bail system; however, international observers described frequent cases of excessive bail. Many criminal suspects were held for months before their cases were examined or formal charges were filed.

## **Denial of Fair Public Trial**

- The Constitution and the law provide for a speedy trial; however, in practice, the lack of judicial officers and facilities often produce long delays in the judicial process. Though trials are reportedly fair, there was evidence that corruption influenced some cases. A majority of cases on the magistrate level were prosecuted by police officers, many of whom had little or no formal legal training.

## **Customary justice**

- Local courts apply traditional law and customs in the chiefdoms. Elected indigenous leaders preside over the local courts. Magistrates hold courts in the various districts and in Freetown, they administer the English-based code of law. These levels thus deliver different justice that is not always in conformity with the constitution.
- Traditional justice systems continue to extensively supplement the central

government judiciary in cases involving family law, inheritance, and land tenure, especially in rural areas. There were reports that local chieftains at times exceeded their mandates and executed harsh punishments. For example, in August 2007, there were reports of Councils of Chiefs administering flogging as punishment.

### **Defamatory and seditious libel**

- The Public Order Act of 1965 criminalizes both defamatory and seditious libel; however, the law was rarely applied and only in cases involving top officials. Punishment for first-time offenders can be up to 3 years' imprisonment, and subsequent seditious libel offenses can bring terms of up to 7 years. However the definition of libel can vary and be discriminatory.

### **Criminalisation of political activity**

- Though the freedom of speech and of the press is guaranteed, the government at times restricts these rights and criminal libel laws are used occasionally to jail journalists.
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### **Language barriers**

- Section 23(5) e of the Sierra Leone Constitution makes provision for the right to the assistance of a competent interpreter, free of charge if the person does not understand or speak the language used in court. This is one flaw in the law Courts as they do not always have interpreters. The clerks in the different courts usually act as interpreters. However, the court often asks individuals to volunteer to interpret for a case when the accused lacks an understanding of the basic rules of translation. The absence of trained interpreters tends to result in injustice.

### **Right to Speedy Trial**

- There is also the problem of the lack of expeditious trial in the courts. Courts make several adjournments either because there is no evidence, or the witness is absent, or the prosecutor or defence counsel is absent. This violates article 14(3) c of the ICCPR, article 7(1) d of the African Charter, which states that criminal proceedings must be started and completed 'without undue delay'.

