

# In Pursuit of Justice

a report on the judiciary in Sierra Leone

Sierra Leone



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# In Pursuit of Justice

a report on the Judiciary in Sierra Leone

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## Foreword

At publication of this report Sierra Leone stands at a decisive moment in its evolution. Against all odds it struggles to consolidate lasting peace. After years of devastating conflict the swearing in of Mr Kabbah for a second term with 70.6% of the vote has provided Sierra Leone stability. But it also lays a deep responsibility on his shoulders to reconstruct Sierra Leone as a modern, progressive state demonstrably committed to human rights and the rule of law.

But Sierra Leone must emerge from its nightmare of civil war, grinding poverty and weak governance with the capacity to deal with its own problems. This is the meaning of sovereignty, and without a working judiciary, Sierra Leone can never hope to recover the rule of law and the means to handle conflict in a peaceful and just manner.

The judiciary in Sierra Leone is still in tatters.

This report is an analysis of the judiciary in Sierra Leone. It pinpoints the weaknesses in the system, many as there are, and explains why ordinary citizens find justice through the law completely beyond their reach. It provides a description of the judiciary as it is meant to be - under law and the Constitution - and shows what it is today. Going further, it looks at present judicial weaknesses as a product not only of ten years of war, but also of decades of one-party rule and a degree of corruption which was one of the factors that sparked the rebellion that has over the years destroyed hundreds of thousands of lives, infrastructure and the governance of Sierra Leone.

The international community has a responsibility to assist Sierra Leone, but there is a danger that aid to war-torn and impoverished countries with weak or collapsed states creates the perennial problem of dependency. Emergency assistance steps in to fill a void, but in doing so it becomes a vital pillar of the system. As much as it saves life it also retards the development of home-grown solutions. A government receiving assistance can deflect criticism and postpone reforms more readily because it has abdicated some of its administrative responsibilities to outside forces. Measures being taken to enact some sort of short-term justice, such as the UN's Special Court must be made to contribute to the longer-term development of domestic mechanisms of justice.

As the product of research in Sierra Leone, involving travel into the provinces and interviews with a broad cross-section of the legal community and the "consumers of justice", this report deserves to be taken seriously. Having read it, I am convinced that foreign assistance to Sierra Leone would be blind without a focus on quickly building a credible judiciary, and further, that such a process must radically depart from the past, to create a truly independent and impartial system of justice. This report does a valuable service to international donor institutions and governments, as well as to civil society involved in Sierra Leone. It is likewise a needed shot across the bow of Sierra Leone's government.

Hon. Flora MacDonald, C.C.  
Ottawa, December 2001

## Preface

After a decade of political instability in Sierra Leone, during which the Revolutionary United Front (RUF) rebels have held varying degrees of control over territory and political power, and have signed and broken three peace agreements, the present chances of achieving sustainable peace appear better than usual. As of January 2002, the conflict had been declared officially over. After an abortive power-sharing phase, the RUF leader Foday Sankoh,<sup>i</sup> now in prison has become an increasingly impotent force, and the rebels' principal patron, Liberian President Charles Taylor, faces increasing international isolation.

The disarmament and demobilisation process has been completed sufficiently enough to ensure that as of March 2002, the State of Emergency could be lifted paving the way for an election. Despite discrepancies and challenges to registration, a total of 2,276,518 potential voters were able to register in readiness for the May 2002 elections. The peaceful conduct of free and fair elections, has laid the foundation for long term stability and for a permanent return of peace and rule of law to Sierra Leone. The international community - specifically the UN who has played a key role in restoring peace to Sierra Leone - has committed considerable resources to its presence in Sierra Leone in its first return to peace-keeping in Africa, since the debacles of Rwanda and Somalia in the early 1990s.

With an ever-increasing commitment in the UN peace-keeping force (UNAMSIL), whose extended mandate has reached a capacity of 17,500 troops and the investment being made in emergency assistance and rebuilding, - and now in a Special Court jointly sponsored by the UN and the Government of Sierra Leone to try war criminals - the International Community appears to have handed Sierra Leone a bond of commitment. The rapid response of British troops to the imminent RUF coup in May 2000 had laid the basis for greatly expanded assistance to security sector institutions, including the Sierra Leone Army.<sup>ii</sup> This has since expanded into assistance for governance.

As the focus shifts from emergency assistance and *ad hoc* security arrangements toward restoring the rule of law and the authority of civic institutions, the role of the judiciary has become a central concern. At the time of primary research for this report (September 2000), Sierra Leone, a country of five million people, had just 15 magistrates and 18 judges presiding<sup>iii</sup> over a court system serving the Western Area around Freetown and the two provincial towns of Bo and Kenema in the South and East. A temporary Magistrate Court resided in Lungi to cover the entire Northern Province. More recently a few superior courts sitting outside Freetown, have opened - in Bo in November 2001, presided over by a Nigerian judge on contract and in Mekení. No serious felonies can be tried in any judicial district but the capital. The judiciary is not only missing most of its provincial branches, it is also thoroughly under-resourced, morale is low, and delays and backlogs are reaching a critical state. It might better be described as a "rump-judiciary". As long term peace continues to hold in Sierra Leone, the demand for justice will overwhelm its current capacity.

Rebuilding a credible and functioning judiciary is a critical element in the success of the peace process. Important as they are, the high profile internationally sponsored measures for short-term transitional justice, such as the Special Court, must not overshadow the long-term needs of the judiciary and indeed should be designed to contribute to building its capacity. One observer in Sierra Leone observed when the Lomé Peace Agreement was signed that restoring the courts and making them accessible to ordinary citizens was one of three principal conditions for sustainable peace, along with providing mass basic education and allowing the

population to reap the benefits of the country's natural resource wealth. One could add that ensuring effective access to justice is also fundamental to sustainable peace and development.

The task is not simply one of restoring the judiciary to its pre-war condition. A complete overhaul of the judiciary is necessary, as it has long been beset by problems.

The judiciary, under the one-party All People's Congress (APC) regimes of President Siaka Stevens (1968-1985) and President Joseph Saidu Momoh (1985-1991), was progressively politicised and subsumed under government control. This was accomplished in several ways. The appointment of judges and magistrates was used as a key patronage tool, and judicial ranks were filled with those loyal to the APC. The system of "self-accounting" used by the judiciary, which enabled it to use the income it received for services provided to fund its operations, was abandoned in the 1970s and the judiciary became wholly financially dependent on the Ministry of Finance which controlled the Consolidated Fund.<sup>iv</sup> The Attorney General was given powers over "judicial affairs" in 1978. All this has arguably diluted judicial independence from the executive. Judges and magistrates are widely perceived as<sup>v</sup> corrupt and the justice system came to be seen as an instrument of state power and wealthy interests. A reservoir of resentment developed towards the judiciary among those who had received unfair treatment at its hands. The many RUF attacks on jails to free prisoners since 1991 have been conceived, it is widely believed, as a response to judicial corruption.

This report, in Section 1, provides an overview of the formal judicial machinery and associated institutions, as laid down by statutes and the Constitution, giving the reader a benchmark by which to judge the current situation. Sections 2 and 3 explore the current situation, with an assessment of judicial capacity and a description of the "rump-judiciary" that exists today, including a look at the role of the local courts and examines some of the offers of assistance made by international donors. Section 4 compares international fair trial norms with judicial performance in Sierra Leone, noting where possible whether human rights abuses in judicial proceedings are related to a lack of resources or to poor legal practice or negligence on the part of judicial authorities. Section 5 examines how a weak police force and the activities of local militias contributed to criminal impunity and the absence of the rule of law, and how this lack of accountability was inscribed in and reinforced by the Lomé agreement. It goes on further to explain the role of the UNAMSIL and the effect of the Disarmament, Demobilisation and Reintegration (DDR) programme on the rule of law, and how this in turn has envisaged a new role for a strengthened and more respected police force. The new institutions that play a parallel quasi-judicial role in the justice system and their role in countering the culture of impunity are described in Section 6. Finally, the ambiguous and potentially improper relationship of the Attorney General and Minister of Justice is explored in Section 7. The report concludes with a number of recommendations directed at international donors, non-governmental organisations and the Government of Sierra Leone that, taken together, would make major improvements in the delivery of justice to Sierra Leone.

## 1. Introduction - Formal Elements of Sierra Leone's Judiciary

The Constitution of Sierra Leone of 1991 established the Judiciary - consisting of the entire body of courts in Sierra Leone and the machinery that governs them - as an independent third organ of Government. The Chief Justice is the Head of the Judiciary of Sierra Leone and, acting on the advice of the Judicial and Legal Service Commission of which he is chairman, is responsible for the "effective and efficient administration of the Judiciary."

### 1.1 Hierarchy and Administration of the Courts

A two-tiered system of Common Law based on the British system and local customary law characterises the legal system of Sierra Leone.

The courts of first instance or "inferior courts" comprise the magistrates' courts and the local courts. Magistrates' courts exist in each judicial district. Local courts administer customary law in provincial communities outside the Western Area.

#### Magistrates' courts

- In line with The Courts Act (1965), the magistrates' courts operate as courts of first instance for summary and hybrid criminal offences and less serious civil matters.<sup>6</sup> These courts reportedly deal with about 80 per cent of all cases in the formal courts system. Magistrates' courts do not have jurisdiction over more serious offences such as murder and rape. These cases can, however, be heard on preliminary investigation to determine whether there is sufficient evidence to warrant a referral to the High Court.
- Juvenile Magistrates Courts exist in parallel with the ordinary magistrates' courts to try children and young persons in conflict with the law.

#### Local courts

- The local courts as established by the Local Courts Act (1963), have limited jurisdiction to try certain customary law matters. Elders of the Chiefdoms preside over the local courts, which are chaired by a single local court Chairman. Local courts are advised, supervised and their decisions reviewed by customary law officers, who are legally qualified. The customary law officer advises on matters of law and organisation, and can also train local court personnel.
- The local courts, unlike other courts, do not fall within the administrative jurisdiction of the judiciary in Sierra Leone. Since the Local Courts Amendment Act (1974) was enacted the local courts have been overseen by the Ministry of Interior Affairs, part of the executive arm of the government.
- Appeals from the local courts are heard by the District Appeal Court operating within the area where the Local Court is situated. The District Appeal Court is responsible for hearing appeals from the local courts only. This court is presided over by a magistrate sitting with two assessors who are experts in customary law.<sup>7</sup>
- Appeals from the District Appeal Court are heard in the Local Appeals Division of the High Court, in which a High Court judge sits with two assessors. Further appeals can be made to the Court of Appeal and to the Supreme Court.<sup>8</sup>
- Under the 1991 Constitution and the Local Courts Act (1963), lawyers cannot appear in the local courts.
- Local courts administer customary law, which is defined under the Constitution as "the rules of law which by custom are applicable to particular communities in Sierra Leone".<sup>9</sup> This law applies predominantly to ethnic tribal communities and derives from their respective customs and traditions. Customary law, as opposed to English Common Law, applies to 85 per cent of the population living outside the Western Area and regulates matters of marriage, divorce, succession and land tenure in the provinces. Customary Law and English Common Law theoretically operate in tandem, rather than in conflict, and all legal proceedings and judgements in Sierra Leone must, in principle, conform to the Constitution.<sup>10</sup>

### High Court of Justice

- The High Court of Justice comprises the Chief Justice, at least nine High Court justices and such other justices of the superior courts as the Chief Justice may request to sit.
- The High Court has jurisdiction to hear any criminal or civil matter that comes before it for trial at first instance. It also exercises an appellate function for cases from the inferior courts.

### Court of Appeal

- The Court of Appeal comprises the Chief Justice, at least seven Court of Appeal justices and such other judges of the superior courts as the Chief Justice may request to sit. A panel of any three Justices of Appeal or any other justice of the superior courts appointed by the Chief Justice will hear all cases.
- The Court of Appeal has only an appellate function and hears civil and criminal appeals from the High Court below. The Court of Appeal is bound by its own previous decisions and all inferior courts are required to follow its decisions on points of law.

### Supreme Court

- The Supreme Court comprises the Chief Justice, at least four other Supreme Court Justices, and such other Superior Court Judges of Sierra Leone or other countries whose laws are similar to the laws of Sierra Leone as the Chief Justice may request to sit.
- The Supreme Court is the final court of appeal for criminal and civil cases. It exercises supervisory jurisdiction over inferior courts and issues orders and directions to them as it deems necessary. The Supreme Court has jurisdiction to interpret the Constitution of Sierra Leone, to determine whether Parliament is acting beyond the powers conferred on it, or whether an Act is unconstitutional. Every court in which such matters are raised must stay the proceedings and refer them as quickly as possible to the Supreme Court. The Supreme Court is not bound by its previous decisions.

All courts, including the inferior courts, are Courts of Record<sup>11</sup> and have the power to commit for contempt if proceedings are interfered with or disrupted.

The working language of the courts in Sierra Leone is English and interpreters are used to interpret local languages into English and vice versa.

## **1.2 The Bench**

The Judiciary comprises judges at both the Superior and Magistrates Courts level, whilst the legal profession or the Bar includes private legal practitioners and State Counsel.

### Judges

- For an individual to be appointed a Judge of the Superior Courts under the 1991 Constitution he/she must be qualified to practice as counsel in Sierra Leone or “in any country having a system of law similar to Sierra Leone”.<sup>12</sup> Supreme Court Judges must have practised, or sat on the Bench, for at least twenty years, Court of Appeal judges for fifteen, and High Court judges for ten years. The appointment of judges must be recommended by the Judicial and Legal Services Commission of Sierra Leone and approved by Parliament.
- Judges in office enjoy considerable security. They can voluntarily retire at sixty, but must retire at sixty-five. They can only be removed if they are incapable of functioning or if they are found guilty of a stated misconduct while serving. Such removal can only be authorised by the President, upon the recommendation of a Special Tribunal and the subsequent approval by a two-thirds parliamentary majority.
- All salaries, allowances and benefits that accrue to a judge both during and after office are paid from the Consolidated Fund.



### Judges on Contract

- The President can, upon the advice of the Judicial and Legal Service Commission, appoint a qualified person to act as a judge in any of the superior courts when a vacancy arises or where exigencies so demand. Appointees serve on the basis of a contract on temporary terms and conditions.

### Magistrates

- For a person to be called to the Bench as a magistrate they must have a full legal education and experience in legal practice for two to three years.<sup>13</sup>
- There are three levels of magistrates - Principal Magistrates (being the most senior), Senior Magistrates, and Ordinary Magistrates. Promotion of magistrates is based on years of experience and merit. There also exists another auxiliary level for retired civil servants to be sworn in as Justices of the Peace, who sit in pairs whenever the need arises for such courts to be constituted. When sitting, they have limited jurisdiction and only try minor offences.
- Magistrates can be dismissed, suspended or promoted by the Judicial and Legal Service Commission.
- Magistrates must retire at the age of fifty-five although they can be contracted to serve as Temporary Magistrates for longer than their retirement age. A good number of the magistrates serving at the time of research were on contract, and were over the official age of retirement.

The Constitution confers wide immunity on judges as protection from undue influence. Judges are subject only to laws and the Constitution and are not under the direction of any other person or authority.

## **1.3 The Legal Profession**

- As in some other Commonwealth West African countries the legal profession in Sierra Leone is fused, and all lawyers are called barristers whether or not they are litigating counsel. Lawyers can thus give and receive instructions and briefs, run a legal office (chambers), prepare court and legal documents and litigate at all levels.
- To be qualified to practice law in Sierra Leone a candidate must have a university law degree, undergo a period of specialised professional legal training, and be called to the Bar. At present, only persons who have passed through the Sierra Leone Law School can practice in Sierra Leone. This does not however apply to barristers who were in practice before the School became fully operational in 1991.
- Under the Council of Legal Education Act (1989) and the Legal Practitioners Act of Sierra Leone (2000), only persons who have been called to the Sierra Leone Bar and have had either a year's pupillage with a senior practitioner of ten years' standing at the Bar, or have served in the Judicial and Legal Service for eighteen months, can be enrolled into the Permanent Roll of Court kept for the registration of Barristers. Before enrolment, private pupil barristers are only heard at the level of the magistrates' court, while pupil state counsel can be heard at all levels, including the Supreme Court.
- Professional legal practice is now regulated by the Legal Practitioners Act of Sierra Leone (2000). This Act establishes a General Legal Council as the governing authority in Sierra Leone with regard to the conduct of the legal profession. The Council admits and enrolls qualified persons into the Sierra Leone Bar, issues practising certificates to barristers and disciplines them in line with prescribed standards of professional conduct.
- Barristers in private practice in Sierra Leone belong to the Sierra Leone Bar Association (SLBA), which works hand in hand with the judicial and legal machinery and the Council of Legal Education. Selected members of the Association can serve on committees and commissions established by law, serving these institutions. The Bar Association also serves as an important pressure group with significant influence on Government in human rights matters. Its other role includes advocating for the proper welfare of the judicial and legal service.

## 1.4 The Government Legal Service

### Office of the Attorney General and Minister of Justice

- In Sierra Leone the Attorney General and Minister of Justice are one and the same person. He is the chief legal advisor to Government and a minister with a full seat in Cabinet. The Attorney General has been a minister with cabinet rank since the 1971 “Republican Constitution” was enacted, but only additionally became Minister of Justice in 1978 with the promulgation of the “One-party Constitution”. Although the functions of Minister of Justice are not identified in the Constitution, the minister is the official link between the Judiciary and Parliament/Cabinet and is responsible for judicial affairs.<sup>14</sup>
- In the exercise of his functions and powers as principal state prosecutor assisted by the Director of Public Prosecutions, the Attorney General is not subject to the control or direction of any person or authority. Also, although he is a Cabinet Minister, he and the Director of Public Prosecutions are not subject to the doctrine of collective responsibility for actions done or omitted to be done by them while performing their functions as state prosecutors.

### Law Officers Department

- This department is responsible for all legal matters in which the state has an interest. It prosecutes criminal matters for and on behalf of the state, drafts bills for ratification by Parliament, and, *inter alia*, prepares contractual and international legal documents for the state. The department is headed by the Attorney General and Minister of Justice, assisted by the Solicitor General and various other divisional heads, including the Director of Public Prosecutions (DPP). The DPP institutes and undertakes criminal proceedings against any person charged with an offence before any court of Sierra Leone (except the local courts). The DPP is the divisional head of Prosecutions and can take over or discontinue any criminal proceedings already instituted before judgement is passed.
- Various other divisions exist in the Law Officers Department, staffed by State Counsel, including the Drafting and Parliamentary Division and the Commercial and International Affairs Division.
- Conditions of service at the Law Officers Department are generally poor and unattractive to capable barristers.

### The Registry

- In theory, every court - even local courts - operates a registry headed by qualified clerks. All information, indictments, processes, and previous judgements must be registered and filed with the registry of the court where the matter is to be initiated.
- The registries work closely with the Office of the Under Sheriff in the service and execution of processes and orders of court. Members of the staff of the Under Sheriff’s Office include bailiffs and process servers.
- At present, the Deputy Assistant Registrar heads the Magistrates Court Registry in the main court building of Freetown, while the Master and Registrar, assisted by a Deputy Master and Registrar, heads the High Court Registry in Freetown. At the time of research, both the Court of Appeal and the Supreme Court lacked qualified court registrars and were run by assistants supervised by the Master and Registrar of the High Court.
- The various registries also have the added responsibilities of typing and compiling records for use on appeal by the appellate courts. There are no legal secretaries or stenographers in any of the courts and benchers take down their own notes in transcript form. This is a major reason why the judiciary is considerably slowed down in their hearing and determination of trials and appeals at all levels.

## 1.5 Special Commissions and Committees of the Judiciary

Various commissions and committees have been established by law and by the Constitution to facilitate the judicial and legal process and to bring the laws of Sierra Leone into conformity with modern standards. These include the following:

- *Rules of Court Committee*: Section 145 of the Constitution establishes this committee to formulate rules for the effective functioning of the courts and to review existing ones. While there is an acute demand for updated

and reformed rules of court, this committee has not yet undertaken a meaningful review or produced any updated rules of procedure that govern the day-to-day operation of the courts (see Section 2.7)<sup>15</sup>.

- *Law Reform Commission*: This Commission was established by the Law Reform Commission Act (1975) to review English law imported into the Sierra Leone legal system and make it appropriate to local circumstances and contemporary legal standards. Local enactments that appeared equally outdated were to be reformed and indigenous customary laws were to be harmonised and codified into a single system of laws for Sierra Leone. Although after 1975, some law reform drafts were reportedly presented by the Commission, most of its proposals have not been enacted and it has for the most part become moribund. (See Section 2.7.)
- *Council for Law Reporting*: Law reporting has been attempted with various limited degrees of success in the past, but the last actual edited reports produced are from 1972-73. Even informal efforts initiated from within the judiciary to produce law reports collapsed in 1987. (See Section 2.7.)

## 1.6 Judicial Finances

The Judiciary operated a “self-accounting system” in the 1960s and 70s, which proved quite successful. Under that system, revenues generated by the then Judicial Sub-Treasury from court fees and fines were used to fund the Judiciary, and the only returns made to the Public Treasury were in the form of audit reports explaining income and expenditure for a given period. This system was discontinued in the late 1970s as the one-party state was consolidated. A Central Accounting System was introduced and all revenues generated from the various sub-treasuries became payable to the Consolidated Fund set up for that purpose.

## 2. Judicial Capacity: Erosion of the Machinery of Justice in Sierra Leone

Despite the presence of such an elaborate judicial structure, Sierra Leone's judicial system can barely function - even in Freetown - rendering justice inaccessible for the average citizen. Three decades of patrimonial politics starved the judicial system of the resources necessary for its independence and led to the politicisation of justice. A decade of civil war and military *coups d'état* has rendered this already compromised edifice a hollow shell. With the gradual restoration of peace, the judiciary is slowly striving to become responsive to present needs.

Restoring the rule of law and the institutions of justice is foremost a question of building capacity - in both infrastructure and personnel. At present much of the reason why the rights of those in need of justice are violated is because the system simply cannot afford to protect them. A comprehensive assessment of judicial capacity is therefore a necessary initial step in rebuilding the judiciary. The following assessments and observations of judicial capacity were made during our research in September 2000.

### 2.1 Courts in the Crosshairs

Following a familiar pattern of state resources in Sierra Leone, the judiciary is most effective in the capital, yet is all but insignificant in the provinces. The infrastructure of the court system was parlous even a decade ago, suffering from under-investment in court buildings, accommodation for itinerant judges and magistrates, and transport facilities. The civil war and instability have destroyed much of what remained as RUF rebels systematically targeted institutions of state power, including the courts. Magistrates' courts, which deal with approximately 80 per cent of the total caseload in Sierra Leone, are a good barometer of judicial activity. There were about ten magistrates' courts, staffed by twelve magistrates, functioning in the Freetown area. However, in the provinces there was only one magistrates' court in both Bo and Kenema,<sup>16</sup> each staffed by one magistrate<sup>17</sup> and another temporarily sitting in Lungi to cover the rebel-controlled Northern Province.

Before 1991, when RUF rebels launched the first incursions into eastern parts of Sierra Leone from Liberia, there was at least one functioning magistrates' court in each of the twelve provincial judicial districts. About 26 full-time magistrates staffed these courts at that time, but by September 2000 there were only 15 (of which two were women), most in Freetown. Prior to 1991, High Courts also operated in the Eastern, Southern and Northern Provinces (in Kenema, Bo, and Makeni respectively). In the provinces, where 85 per cent of the population lives, there had not been a single Superior Court considering serious criminal cases for six years.

In September 2000 the Chief Justice reported that his main priority was to get one High Court judge to Bo and Kenema in the Southern and Eastern provinces, respectively, for a three-week period to temporarily alleviate the backlog there. Following concern about child abuse, a High Court Judge had been posted to Bo in the last week of November 2001 as many reported cases of rape in the southern province had not been presented for a lack of an appropriate level of judge.<sup>18</sup> By March 2002, high courts in Kenema and Bo, as well as magistrates' courts in Port Loko, had been reopened.<sup>19</sup>

Local courts deal with minor civil cases (except for native land disputes) and petty public order offences that are subject to traditional customary law. Despite the civil war they have continued to function throughout much of the country, but often without any facilities or support and under the influence of armed rebels or local civil defence militias.

Judicial capacity in Freetown has suffered the least damage because it is the institutional heart of the judiciary and has absorbed the exodus of judicial personnel from the provinces during the conflict. The ten operating magistrates' courts in the Western Area (Freetown and the Headquarters of judicial districts) hear the vast majority of cases in the formal system, and consequently the backlogs are more severe at this level.

One magistrate in Freetown reported that she routinely hears fifty cases per day, and had faced as many as 100 cases on her daily cause-list. Another reported hearing on average thirty criminal cases per day. The Master and Registrar explained that while the average daily cause list for magistrates amounted to thirty, only about ten could be dealt with fully, implying that case backlogs are growing quickly.

A particular problem at the magisterial level is the shortage of court space, rather than of magistrates themselves, and in the Freetown Central Court Building, they must share courtrooms on rotation. This was one of the biggest causes of delay.

Although most cases are dealt with by magistrates, the few that are referred to the High Court overload the system. The daily High Court cause-lists viewed revealed that judges were sitting five days a week, hearing between six and nine cases per day. The backlog at the High Court level has caused delays for years with cause-lists showing a number of active criminal and civil cases dating back to 1993-95. The treason trials of the Armed Forces Revolutionary Council (AFRC) junta's leaders in 1998 and the disruption caused by the 1999 RUF invasion of Freetown apparently caused a particularly large backlog of High Court cases. One 'peace dividend' is that more people resort to courts to resolve all sorts of disputes rather than depending on 'private justice'. As commercial activity increases and resolution of constitutional law issues is sought, the caseload will inevitably go up in Freetown and in the provinces.

Both the Court of Appeal and the Supreme Court are understaffed. The Court of Appeal in particular, which should have seven judges has only three (enough for a single panel) and is seriously overloaded. While backlogs in appeals are partly a result of insufficient clerical support (see Section 5.3), the judges themselves are simply overwhelmed. A Court of Appeal judge produced his weekly cause-list showing sittings on five days, with between three and six cases per day. Court of Appeal cases are more complex than at the High Court level, and each one demands that judges review the large volumes of records passed on to them.

## 2.2 Snapshot - the Freetown Central Court<sup>20</sup>

The Central Law Courts in Freetown are located in a colonial-era three-story building in the city centre. In 1989, the third floor was gutted in a fire, but the structure itself, while badly riddled with bullets, has survived intact through two military coups and the 1999 RUF invasion. This building houses most of the magistrates' courts in Freetown, the High Court and Supreme Court, chambers for magistrates and judges, the office of the Chief Justice, a "lock-up" for prisoners, a law library and offices for a variety of support staff.

Until some basic upgrading in early summer 2000, courtrooms lacked lights and fans. The only air-conditioned rooms in the building were the chambers of the Chief Justice. Outside his chambers, most air-conditioning units we saw were perforated with bullets. Interior corridors were generally unlit and semi-dark. With few exceptions, most courtrooms were very sparsely furnished, and magistrates typically sat on dilapidated chairs behind barely standing utility tables.<sup>21</sup> The court clerk in one of the magistrates' courts had no seat to his chair. The Court Library's most recent law books dated to 1970, and while there are steel shelves, there have been no tables or chairs since 1989. Although some judges and magistrates borrow books from the library since it still has materials useful for reference to old laws applicable in Sierra Leone, no judge or magistrate reported having recently used it for research.

The lock-up, where pre-trial and remand prisoners are held during the day at court was grossly inadequate. Two cells measuring approximately 10'x15' held an average of 50 prisoners for seven to eight hours a day. One cell was unventilated and completely dark, as there had been no light bulb for the past nine months, and the other had a small window. There was an adjacent toilet to which prisoners could be escorted, but it was extremely unhygienic and lacked running water and a door. Prisoners were not regularly fed by prison authorities during their seven to eight-hour stay and reported only receiving one hot meal in twenty four hours in the Freetown remand facility, a wing of the Central Prison.<sup>22</sup> Needless to say, this state of affairs means that lawyers are unable to gain proper access to the prisoners and indicate that fair trial norms are very likely to be violated.

### **2.3 Burdens of Service - Working on the Bench**

Every member of the Bench interviewed emphasised extremely poor conditions of service as the most pressing cause of the general judicial crisis. The same point was raised by many others interviewed, not only those in the Bar, but those with no direct stake in the question of remuneration and conditions for the judiciary. In Freetown and the provinces, many ordinary Sierra Leoneans emphatically agreed that judges and magistrates were compromised by their conditions of service, and should be paid more as a precondition of their impartiality and fairness. The Office of the Master Registrar reported that typical annual salaries at current exchange rates are only US\$900 for magistrates, US\$8000 for High Court Judges and US\$ 9000 for Court of Appeal Judges. Due to the general disruption of trade and transport, the cost of living is considerably higher in Sierra Leone than in neighbouring West African countries. Supplemental allowances are provided for accommodation, medical expenses and transport, totalling about US\$5 per month, a sum that falls far short of meeting actual costs.

In addition to low rates of pay, the damage to the property – homes, libraries and vehicles – of magistrates and judges over the past decade must be taken into consideration. A Principal Magistrate at the central courts lost his house and legal library during the 1999 invasion of Freetown, and as we found, walked to court almost every working day from the eastern edge of the city. Most of the High Court judges in Freetown rely on a single vehicle for transport and our own research schedule was a hostage to its movements: judges were often either waiting for the car and therefore available for an interview or rushing to catch it and breaking their appointments. This seriously affected the cases they were able to hear each day.<sup>23</sup>

Many judges identified the destruction of their law libraries, a consequence of the looting and burning tactics of the RUF in 1999, as the critical constraint in their work.<sup>24</sup> While many senior private practitioners seemed to have weathered the violence with their collections intact, or now have access to resources to rebuild their personal libraries, judges and magistrates were not generally as fortunate. In addition, the Government bookshop only had a very limited stock of legislation prior to 1999. Some High Court and Court of Appeal judges remarked that when preparing judgements they often telephoned private practitioners for legal references. In the absence of alternatives, judges routinely demand that barristers give them photocopies of cases cited in hearings.

The suitability of chambers for the Bench and offices for government legal services in general was a major problem. Almost none of the magistrates' and judges' chambers visited had the space or shelving to accommodate even the most modest book collections. In the court building, chambers were extremely small and in many cases they were simply partitioned corners of larger rooms, sometimes of courtrooms themselves. Magistrates and judges usually provided whatever furnishing does exist, including the paint for the walls. Files

were stored in stacks on tables or on the floor. The constraints of chambers affected the ability to hold *in camera* hearings or take statements from witnesses confidentially. Furthermore, the lack of comfort (furniture and air-conditioning) directly impact on the output of the judiciary, most of whom are eager to leave for home directly after hearings in the morning.

Several members of the superior courts brought up the matter of the lack of judges' robes. For some judges, new robes were last supplied in the early 1980s and one of the Court of Appeal judges heard cases in his LL.B. graduation gown. The only new robes known to have been provided were to newly appointed Supreme Court Judges a year or two before. Numerous judges, as well as lawyers in private practice, complained that this problem seriously degraded the dignity of the Bench.

The only dedicated support staff for the Bench was the secretary of the Chief Justice. There was a large typing pool, but they had no legal training and were serving the entire central court using old manual typewriters. All typed transcripts for the Court of Appeal cases that we saw consisted of upwards of 100 pages, and one judge reported that, electricity supply permitting, he would write judgements through his evenings.

Finally there was a serious lack of training available to members of the Bench. One of the longest serving benchers, a Principal Magistrate, reported that magistrates certainly had received no substantial training or upgrading in the form of either courses or conferences since he joined in 1977. The Master and Registrar confirmed that neither magistrates nor judges had been given any training in her memory. The only prior initiative has been from the British Department for International Development (DFID), which held a computer skills workshop for Bench members. We encountered only one computer in the entire judicial system in the office of the Chief Justice, which was not in working order.<sup>25</sup>

These extremely poor conditions of service have resulted in a serious shortage of judges and magistrates. Usually, the combination of superior compensation and prestige leads the most accomplished members of the Bar to move to the Bench. In Sierra Leone, however, it is less a question of attracting the best and brightest than attracting any at all. When we were researching, there had been three vacant magistrate posts advertised since the beginning of 2000, the prerequisite being one year of work as a barrister, and there had thus far been only one application. The general economic malaise affecting the entire legal profession means that private practitioners simply cannot afford to move to the Bench. The problem of a lack of judges has not been significantly alleviated, for as of January 2002 the shortages were as follows:

Magistrates' Courts	26	13
High Court	9	5 permanent 3 on contract
Court of Appeal	7	2 permanent 1 on contract
Supreme Court	5	2 permanent 5 on contract

#### [The longhand system, or judge as secretary](#)

There were no stenographers in Sierra Leone's judiciary. Although all courts are courts of record, even at the Supreme Court level judges had to compile the transcript of each hearing in longhand. This becomes the sole record of a trial. It was clear from observation that this system slows the work of the courts as the magistrates and judges essentially take dictation from witnesses and barristers, and statements read into the record are delivered slowly and with tremendous care to avoid repetition.

All judges interviewed described the longhand system as a serious strain on their strength during long days in the courtroom. Taking notes is exhausting. Indeed, one High Court judge suggested that note taking actually degrade



the quality of their deliberations, both as a distraction and an energy-draining chore. The last time any member of the Bench could recall encountering a stenographer in a court of Sierra Leone was in 1983.<sup>26</sup>

The process of introducing stenographers into the Sierra Leone Judiciary was in fact envisaged and discarded. But in its place, the training of audio recorders is being implemented.

### Interpreters

The language of the courts is English, while Sierra Leone's *lingua franca* is Krio and the country is home to a large number of indigenous languages. We could not establish whether there were dedicated court interpreters within the judiciary at the time of our research, although there were interpreters attached to some district magistrates' courts before the civil war. In the Freetown courts, we observed both police officers and court clerks standing in as interpreters.

## **2.4 Office of the Under-sheriff**

The office of the Under-sheriff is responsible to the Inspector General of Police as the Sheriff of Sierra Leone and to the Master and Registrar for the execution of all court orders and processes. This office contained about 33 bailiffs serving the entire judiciary of Sierra Leone with two in Kenema (Eastern Sierra Leone), two in Bo (Southern Sierra Leone) and the rest in Freetown. The bailiffs were mostly assigned to magistrates' courts. All other judicial districts in the provinces were without bailiffs, a result of their displacement from the provinces and residence in Freetown.

Under the present system, bailiffs retain custody of all property seized in execution of court orders until all means of retrieval and appeal have been exhausted and they are put up for public auction. They have been responsible for holding valuable property worth millions of Leones without proper and secure storage facilities. Three small rooms, including the office of the Under-sheriff itself, have been used to store such items in the main court building in Freetown.

The principal problem of the Under-sheriff's office stemmed from low pay. The highest paid bailiff only earned up to \$50 a month and some earned as little as \$25 a month. In addition, travel and transport expenses incurred by bailiffs were often not reimbursed. Entrusting bailiffs with valuable property without the proper security or storage facilities leaves them open to corruption and other excesses. This only reinforces the public's perception of corruption in the judiciary. It was commonly assumed that once one's property falls into the hands of bailiffs, it becomes very difficult to have it returned before the assets are sold. One sure way of allaying this specific concern would be to give the Under-sheriff's office the necessary working tools, including transport and spacious and secured storage facilities.

## **2.5 Crisis in the Registries, or the Sedimentary Filing System**

The courts at every level in every judicial district are meant to have the support of dedicated registries, to provide the essential services of receiving, processing and filing case documents, as well as allocating cases and preparing files for appeals. In practice, the gradual disintegration of the registry system had created an acute bottleneck restricting the dispensing of justice.

The registry for the Freetown Magistrates Courts received all hand-written charge sheets from the police and issued summons, warrants and subpoenas accordingly. Although charge sheets were registered and hearings scheduled in the various magistrates' courts, records were not typed or filed at this level. Any case referred or appealed to the High Court must be fully typed before the case can proceed. There were two typists with very old typewriters to type these records, which included the magistrates' hand-written transcripts.

At the High Court and Court of Appeal registries, the need to prepare typed records, including transcripts of judgements and rulings, once again created large backlogs. One sample record of a case being appealed from

the High Court was 150 pages of A3 paper, which takes one typist about a month to complete. We found about 50 case records waiting to be typed by the three Court of Appeal typists. Because few cases reached the Supreme Court, and those that do are often too politically sensitive to bear any delay, the backlog of pending cases was only about 25. At the time of research, there was not a single computer in the Sierra Leone registries.

As an illustration of the infrastructural constraints, the High Court registry files were located in one office-sized room. Files were held in paper folders and stacked chronologically by year. Thus, for example, 1997 High Court case records were in two stacks roughly seven feet high in a corner. These files naturally included judgements, which are vitally important reference documents for barristers and judges working in any common law system, and so they must be accessible. To retrieve a file required a great deal of manual shifting, and the badly tattered condition of most files was the result. Storage systems and equipment that would enable faster and easier file retrieval, plus the space to accommodate them, were badly needed.<sup>27</sup> A beginning has been made to address these needs by overhauling the records management system within the Freetown Central Courts.

## 2.6 Struggling Barristers - the Legal Profession in Sierra Leone

While not formally part of the judiciary, both private legal practitioners and state counsel play a daily role in its functions.

The Law Officers Department has responsibility for prosecuting and defending on behalf of the state, but its ability to perform this function is extremely constrained. The full complement of legal officers was 38 in the national office in Freetown alone, but at the time of research there were only 10 officers in Freetown and one, serving simultaneously as a customary law officer and state counsel, in the provinces. The deficiency was primarily due to poor remuneration, which made it impossible to attract even new graduates to government service. Although the Law Officers Department is empowered to prosecute cases on behalf of the state at any court level (save the local courts), in practice it had to hire private practitioners on contract for serious cases in the superior courts. It relied largely on the police to prosecute criminal cases at the magistrates' courts level.

Private practitioners, whose situation is not consistently as dire as that of their counterparts in government service or on the Bench, have also suffered from Sierra Leone's general economic collapse. Barristers lost their best source of income when almost all formal, large-scale commercial activity dried up by the latter half of the 1990s. Some barristers interviewed seem to be managing well through the crisis, but most were extremely vulnerable, and many formerly wealthy and powerful law firms had been completely reduced or abandoned. Legal practice in Sierra Leone is to a large extent the domain of sole practitioners. Less than 10 per cent of barristers work in a firm. The result of a legal profession increasingly starved of revenue has been a sharp drop in *pro bono* legal assistance that barristers were once able to give in addition to their paid work.

The Sierra Leone Bar Association (SLBA) is nevertheless an active body with a fully constituted executive, a human rights committee and an impressive record of service to the legal community. It has campaigned on a number of legal issues, some of which are addressed in this report. The SLBA's interventions and efforts strongly advocate for basic civil rights within the justice system rather than for the narrowly defined "interests" of private practitioners as a group of professionals. The SLBA has, for example, protested the use of police prosecutors in place of independent professional state prosecutors in the magistrates' courts, even though it might be more advantageous for defence barristers to face prosecutors with less specialist legal training than themselves.<sup>28</sup>

### Legal education in Sierra Leone

The system of legal education for training magistrates, judges and lawyers has, surprisingly, flourished over the past decade. Until 1991, all graduates of the Faculty of Law at the University of Sierra Leone (Fourah Bay College) had to go to the United Kingdom to complete their professional training. In 1991, the School of Law was founded with the Council of Legal Education to oversee the training of graduates for entry into the legal profession. Since that time, the School has only suspended operations once - for a year during the 1997-98 AFRC junta period - and has sent hundreds of qualified candidates to the Bar. In addition to training lawyers for Sierra Leone,



the School also provides professional training for Gambians, who have no law school in their own country. The School of Law, located a stone's throw from the central courts and the Law Officers Department, possesses the best public law library in Sierra Leone, which is used by the judiciary and private practitioners in addition to its students. Furthermore, the lectures and seminars organised by the School have been, along with events organised by the SLBA, the only consistent forum for the exchange of ideas and standards of contemporary practice available to members of the legal profession in Sierra Leone.

## 2.7 Law Reporting and Review - The Petrified Forest

Common Law systems rely on accumulated case law to augment the formal statutes and the Constitution. Commonwealth law is for this reason in constant flux, continually importing and exporting precedents, and is reliant on law reports. However, if the Commonwealth's legal systems are bound together through the cross-fertilisation of local precedents and court practices, Sierra Leone is on the outer periphery of this community.

The Sierra Leone Constitution mandates the Rules of Court Committee, the Law Reform Commission and the Law Reporting Committee to keep rules of court and legal statutes under constant review and to ensure a regular publication of Sierra Leone case law. However, the Law Reform Commission has not functioned since 1992, and while Sierra Leone's Commonwealth neighbour, The Gambia, overhauled its entire legal framework in 1994 (Evidence Act, Criminal and Civil Law Procedure, and Commercial Law), at the time of research, Sierra Leone had yet to undertake any meaningful review of its procedural and other laws.<sup>29</sup> The Criminal Procedure Act (1965) and the High Court Rules (1960 – Subsidiary Laws of Sierra Leone) dealing with criminal and civil proceedings at the High Court Level in Sierra Leone and several other related laws were all enacted between 1960 and 1965. The Rules of Court Committee and the Law Reform Commission have simply not been carrying out their mandate.

Law reports for Sierra Leone were last produced commercially by the African Law Reports in Oxford up until 1972-73, while the last efforts by the judiciary itself to fulfil its constitutional role in this regard resulted in reports for 1960-63. The judgements of the Supreme Court between 1980 and 1984 were simply collected and bound without editing. The barrister who supplied this information had himself bound Supreme Court judgements from 1985 to 1995 for his personal use.

Thomas Maclean of the SLBA has, in the time since our research, made occasional attempts at law reporting, which now serve as a useful example. DFID is committed to funding a law-reporting project, but the SLBA is yet to provide the expertise to implement it. In the meantime however, a useful contribution is now being made by a pro-bono legal service called Lawyers Centre for Legal Assistance which recently published its inaugural newsletter cataloguing many cases involving human rights violations addressed in the magistrates' courts.<sup>30</sup>

## 2.8 Donor Assistance for the Judiciary - Critical Scaffolding

By the admission of the Minister of Finance, the government's finances were so constrained at the time of our research that expenditure was prioritised in "critical areas" – military spending and reconstruction – while it starves "resources to other essential services to maintain the agreed macroeconomic framework for 2000".<sup>31</sup> Between 1980 and 1995, even before the worst depredations of the war and *coups d'état*, Sierra Leone's GDP contracted by about 25 per cent.<sup>32</sup> Consequently, the prospects for reviving the judiciary through rebuilding damaged or destroyed infrastructure and bringing about better conditions and training for personnel turn almost entirely on donor support from outside institutions and governments. Sierra Leone's good governance programme now prioritises integrated judicial and legal reforms as part of the national strategy aimed at promoting a democratic environment and establishing a Rule of Law where justice and human rights are respected.<sup>33</sup> However, not even a fundamental shift in budget allocations and priorities could produce the money needed to reverse the sad decline of the judiciary without an infusion of foreign donor money.

Since the time of primary research, various sources of new funding for the judiciary have emerged. A major source of funding lies with the UK Government Department for International Development (DFID) Law

Development Programme, which was first envisaged in 1995-96 but which was repeatedly delayed by the security situation.

This programme initially proposed to inject over 2 million pounds into capacity building initiatives for the judiciary over a three-year period.<sup>34</sup> While DFID has parallel proposals under the Good Governance and Security Sector Reform umbrellas, that would tie into the work undertaken under the Law Development Programme, the concentration was on rebuilding infrastructure and providing logistical support. This has now been revised to focus more broadly; not merely on the judiciary but also to benefit the legal profession generally and impact upon bringing justice to the public at large through varied projects.

Refurbishment of court buildings in Freetown and the provinces, providing mobility to personnel and circuit courts, and enhancing the equipment available to registries and other supporting elements of the judicial system are now underway. Indeed, the main court building in Freetown is currently undergoing massive renovation. Work has also begun in certain provinces. The Programme is also now contracting legal practitioners to work on law reform in selected areas of the law and a senior private practitioner to render services to the Law Officers Department. Two other programmes that have come in for attention are the Chiefdom Development Project which aims to support the return of chiefs to their chiefdoms, furnishing them with leadership and stability still lacking in many communities; and the Anti-Corruption Project which is to provide support to the new Anti-Corruption Commission.

In other areas related to legal sector reform the Commonwealth which had initially set up a Task Force for training and administration of the Sierra Leone Police, including the provision of the Inspector General, jointly works with DIFD on a project now known as the Commonwealth Community Safety and Security Project. The project is intended to improve police structures, functioning, accountability and operational effectiveness; increase the interface between the police, NGOs, civil society, other government agencies, chiefs and others; and provide training and help increase diversity and the quality of investigation and prosecutions.

Since the re-admittance of Sierra Leone to the Councils of the Commonwealth on 10 March, 1998, The Commonwealth Secretariat has also supported the Special Court and urged member countries to do the same. It has also been involved in retraining officials of the Ministry of Justice and hopes to engage in recruiting judges from other West African countries to serve on the bench in Sierra Leone in the near future.

Plans by the World Bank to fund the restructuring of certain government ministries, the Office of the Attorney General among them, are also of much relevance, but have been very slow to incubate. But reportedly discussions have now commenced with the Sierra Leone Government about the priority needs of the judiciary and other aspects of the law and justice sector. Offers from the African Development Bank to provide computers to the judiciary are under discussion.

NGOs have also been actively involved in the restoration of the judiciary. In 2001, The International Human Rights Law Group (IHRIG),<sup>35</sup> the Sierra Leone Bar Association and No Peace without Justice organised a conference on the Rule of Law. The majority of the findings of the conference coincide with the recommendations laid out at the end of this report.

Civil society groups are actively involved in training others to implement a nation-wide sensitisation campaign on the Truth and Reconciliation Commission. They assist local NGOs with advocating for the adoption of new legislation that complies with international human rights conventions. They build capacity to use international norms and mechanisms for domestic law reform; assist in the co-ordination of the scattered legal assistance efforts and attempt to make more strategic use of existing resources so as to address systematic deficiencies within the post-conflict legal environment in the country. They provide support for important human rights cases; bring human rights cases that can have a strategic impact or be a model before the courts; and assist local structures to provide legal aid to indigents in both criminal and civil cases.

### 3. The Unsupervised Local Courts

Local courts administering customary law are courts of first resort for the majority of the population. Yet they are not strictly an organ of the judiciary because they fall under the jurisdiction of the Interior Ministry. As a result, they exist on the periphery of the justice system. However, it is the local court structures based on community-level authority that have persisted through the war, providing a more resilient institution of law than the formal magistrates and superior courts. The greater part of the population – approximately 85 per cent – live in rural and urban chiefdoms and rely primarily on the local courts to resolve disputes. With responsibility for regulating native customary law institutions – succession, marriage, land tenure and divorce – as well as handling minor criminal offences, these courts, presided over by elders and ‘wiser’ members of the chiefdoms, fulfil a key role in dispute resolution in Sierra Leonean society.

To ensure their proper functioning, local courts are supervised by customary law officers of the Attorney General's office, while litigants in the local courts have the right of appeal to the District Appeal Court at the magistrates' court level. The operations of the local courts are subsidised by the Interior Ministry and the state is obliged to provide the infrastructure - in the form of open-air *barreys*, or court shelters – to enable the courts to function. Local courts are also courts of record, and therefore require paid court clerks. While in one sense the local courts emanate from local tradition and hierarchies, they very clearly rely on the support of the state to operate fairly and effectively.

It is in this context that the near collapse of the formal state and the insecurity of war and *coups d'état* have undermined justice at the community level.

While all the 32 chiefdom local courts in the Southern Province – never under RUF control – have operated uninterrupted through the 1990s, at the time of research, subsidies and infrastructural support had not been provided since 1994. Normally, customary law officers from the Attorney General's office were assigned to a set of chiefdoms, responsible for oversight and the education of the court's lay personnel. These officers had the power to overturn local court decisions they deemed unconstitutional, refer matters that fall outside local court jurisdiction to the higher courts, and intervene to quash egregious fines or punishments. They toured chiefdoms to give lectures to local court personnel on the extent of their jurisdiction, how to distinguish between civil and criminal matters, the possible conflicts of interest in trying cases, proper court procedures, and the administration of the courts. This system has, however, collapsed, and has not operated effectively since 1990. We were informed of only one customary law officer for all the provincial local courts outside the Western Area (in theory there should be 164), who was resident in Bo town, Southern Province. He lacked a vehicle, was not provided with accommodation in Bo and was paid very little. He was also the sole state counsel representing the Law Officers Department in all matters outside Freetown.

Our research indicated that the lack of state subsidies for the local courts combined with the absence of supervision by qualified and mobile customary law officers has had several directly negative effects on the quality of justice at the local level. In some areas, local courts had simply ceased to function, as members had gone on strike to protest pay arrears. In the Eastern Province, a huge backlog of land disputes and other civil cases had accumulated as the courts had been suspended over the past 3 years. In the Southern Province, while local courts have functioned uninterrupted, they have become solely reliant on the revenue generated from the fines they levy through court decisions. We heard from numerous sources that fines (the predominant sanction applied at the local court level) were non-standard across the chiefdoms, and in general had become arbitrarily heavy.

Partly out of fear of arbitrary and onerous penalties levied by the local courts, many litigants, often with the support of barristers, have sought the committal or transfer of their cases directly to the magistrates' courts in Bo and Kenema. But those who lack the funds to hire counsel or who are physically outside the jurisdiction of the provincial magistrates' courts have no recourse. The right to appeal a local court decision is similarly difficult to exercise for the same reasons.

The issue of jurisdictional boundaries between local and magistrates' courts, although clear enough in law, is confused in the minds of many lay court personnel. Without customary law officers to continually elucidate questions of jurisdiction, a great deal of animosity has developed in the local courts towards the provincial barristers accused of "snatching" cases they believe are theirs to try, but which are legitimately committed up to the level of the magistrates' courts.

Finally, customary law is not codified and is in several ways inconsistent in its interpretation and application across the chiefdoms of Sierra Leone. There is in practice a body of customary law in conflict with statutes or with the Constitution. In addition, because realities in the provinces make both oversight of local court decisions and the right of appeal difficult if not impossible to apply, there is a gulf between the application of rights in Freetown and the provinces. The issues of consent to marry and ownership of property by married women exemplify this conflict. Under most customary law practices in Sierra Leone, the consent of the parents alone, and not the daughter, is legally sufficient for marriage to take place, whereas the Constitution and the country's international obligations under certain human rights covenants prohibit this practice.<sup>36</sup> Also, most customary laws in Sierra Leone prohibit married women from owning property, and, because the woman herself is considered property, customary law contains the concept of "widow inheritance". This means that widows are inherited as property, usually by the deceased husband's brother.

The codification of customary law would ensure its conformity with the Constitution and would create uniform standards throughout Sierra Leone. This is a necessary task, and one that has begun to be discussed by stakeholders, donors and civil society groups. But experiences in other jurisdictions indicate that efforts toward codification and constitutional conformity, because they challenge established normative systems, will require great political will and visionary, rather than populist, leadership to accomplish.

#### **4. Standards of Fair Trial in Sierra Leone: The Rights of the Accused**

In the face of such fundamental institutional weakness, the concepts of fair trial and due process are rendered less meaningful to both practitioners and consumers of justice in Sierra Leone.

Comments on fair trial standards are drawn from impromptu court visits, inspections of detention facilities and interviews with barristers, the judiciary and prisoners in custody, during our research. The comments of police and prison officials also shed light on the area of pre-trial rights.

There are failings in trial standards at most levels of the Sierra Leone judiciary, but many of these problems are caused or justified by the lack of resources. In the country's context, this is a difficult argument to counter. In fact, the standards of trial observed within the formal courts, and especially at the superior court level, are truly remarkable considering the constraints faced by the judiciary and their colleagues in the Bar.

A more systematic analysis of trial standards is necessary work for the future, and should scrutinise procedure, the law of evidence, inefficiencies causing delay, as well as the provision of fundamental trial rights to the accused. The following framework could provide the basis for such work, which, given the calibre of many members of the legal profession in Sierra Leone, must be an indigenous initiative.

The Sierra Leone Constitution contains guarantees of fair trial. It states that a person charged with a criminal offence must be given a fair trial hearing within a reasonable time by a court of law. Fair trial standards are further provided for in detail in various criminal and other procedural laws referred to in Section 2.7.<sup>37</sup> Furthermore, the right to a fair trial is contained in human rights treaties to which Sierra Leone is a party, namely the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention)<sup>38</sup> and the African Charter on Human and Peoples' Rights (African Charter).<sup>39</sup> Finally, Articles 5,9,10 and 11 of the Universal Declaration of Human Rights (1948) are considered to embody customary international law as it affects the rights of the individual to fair trial.

The focus of this assessment of trial standards in Sierra Leone is on criminal proceedings, although in many cases the problems identified - delays, for example - are common to all types of proceedings. As well as identifying statutory and international treaty obligations, where appropriate, reference is also made to non-binding documents that indicate the general evolution of the law and of trial standards, for example observations of the United Nations Human Rights Committee (HRC) and resolutions of the United Nations General Assembly.

## 4.1 Pre-trial Rights

### *The right to know the reasons for arrest*

Article 9(2) of the ICCPR states, “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. Section 17(2)(a) of the 1991 Constitution also guarantees this. We were informed that police in Sierra Leone rarely provide a caution at the point of arrest that informs the suspect of his rights and the nature of the charge. Barristers confirmed that it is common for the accused in criminal and civil matters at the magistrates’ court level to learn of the nature of the charges only when appearing at the first hearing. Certain pre-trial prisoners questioned in detention were unaware of the exact charges they faced, although they could infer the reason for their arrest from the circumstances of their apprehension. A partial means of rectifying this situation is to provide legal training for police and indeed, the Commonwealth and DFID are actively engaged in providing training to police on these and related matters. However, experience indicates that mere training will not persuade law enforcers to adhere to strict norms. Real implementation is bound up with larger issues of citizens’ knowledge of legal rights, police sub-culture, impunity, accountability and the ability to ensure incentives and disincentives for required behaviour.<sup>40</sup>

### *The right to legal counsel*

The Human Rights Committee [HRC] has stated that “all persons who are arrested must immediately have access to counsel”.<sup>41</sup> The Sierra Leone Constitution states that an arrested person must be told within twenty-four hours why he was arrested and that he has the right “of access to a legal practitioner or any person of his choice” (Section 17(2)(b)). The Lawyers Committee for Human Rights has observed that, “the right to be provided and to communicate with counsel is the most scrutinised specific fair trial guarantee in trial observation practice, because it has been demonstrated to be the one that is most often violated.”<sup>42</sup>

In Sierra Leone, the state provides legal counsel only to those accused of capital crimes – those punishable by death. No matter how serious the offence, defence counsel is not provided by the state at the magistrates’ courts level where most matters are heard. The cost of hiring defence counsel vastly exceeds the resources at the disposal of most of the population. While there is no evidence to suggest that the accused would be prevented from immediately communicating with counsel if they had the financial means to hire one, this is rarely an issue for the typical suspect held in custody. Most of the pre-trial prisoners interviewed for this study were yet to access legal counsel.

### *The right to a prompt appearance before a judge and the right to bail*

Section 17(3) of the Sierra Leone Constitution states that an arrested person shall be brought before a court within ten days in the case of a capital offence or certain other charges of a very serious nature, and within 72 hours in the case of any other offence in order to be able to challenge the lawfulness of the arrest and detention. If a detained person is not brought before a judge within these mandatory periods, he must be released and is entitled to compensation if the detention was unlawful.<sup>43</sup> However, although it is constitutionally provided for, judges and magistrates interviewed did not order the release of a prisoner charged with a minor offence if a person had been detained beyond the limit without a hearing.

Article 9(3) of the ICCPR states that pre-trial detention “shall not be the general rule,” and endorses the right of release on bail unless exceptional circumstances prevent it. However, despite the provision for release on bail for

all minor offences being enshrined in the Criminal Procedure Act (1965), the reality in Sierra Leone has been very different.<sup>44</sup>

Delays in bringing those arrested in front of a judge, in the filing of charges, in the setting of court hearings, and in moving through large caseloads have created a situation in which detained persons have been routinely kept in custody far beyond acceptable limits. Additionally, a point of particular concern is what senior police officers confirmed as a “culture of denying bail”, which leads to great numbers of pre-trial prisoners being held in custody awaiting hearings. If an arrested person is unable to secure legal counsel to lodge a *habeas corpus*, the denial of bail is practically incontestable. Judges interviewed declined to accept any responsibility for detentions beyond the constitutional limit and the denial of bail, declaring that they were matters where the accused should exercise their own rights. Considering the level of legal understanding and the poverty of most people that end up in police cells, it seems the judges, along with the police, should have a role to play in helping accused persons understand and exercise their rights. They can hardly be expected to resist unconstitutional detention acting alone.

One representative case which was before the magistrates’ court in Freetown during our period of research is indicative of the denial of rights in this area. A detained man had been held in the remand section of the central prison at Pademba Road after being arrested for non-payment of debt, a civil charge. This charge had later been converted to a criminal one. Although bail had been granted his bail conditions were too onerous for him to exercise this right. The hearing of his case had been adjourned eight times due to witnesses failing to appear, and he had effectively been held in pre-trial detention for two months and fifteen days when we spoke with him.<sup>45</sup>

The problem of pre-trial delays and unconstitutional detention has become especially critical in the provinces, where justice is only administered at the level of the magistrates’ court. The magistrates and police commissioners in Bo and Kenema emphasised that in all but the most serious cases, they tried to be as lenient as possible with the terms of bail while working hard to prevent case backlogs that would cause delays. However, we found an increasing number of people detained and awaiting trial who were accused of serious felonies and did not qualify for bail. In September 2000, the Commanding Officer of Bo’s prison recalled having written to Freetown authorities to report 13 inmates held without hearing since 15<sup>th</sup> June 2000, all accused of capital offences, including murder. Although there were reports of transfers of inmates to Freetown, with no High Court sitting outside Freetown, and no resources to transfer the accused persons to the capital, a quick hearing seemed unlikely. Reports were made however, of certain transfers to Freetown before that period.

#### *The right to humane detention during pre-trial detention*<sup>46</sup>

According to the HRC, states are obliged to provide detainees with services that satisfy their essential needs, including food, clothing, adequate medical attention and the right to communicate with their families.<sup>47</sup> Police and court lock-ups, as well as the remand section of the central prison, are filthy, claustrophobic and dehumanising. As already noted in Section 2.2, the Central Court’s two lock-up cells accommodated on average 45-50 prisoners over eight hours each day, and one of them was completely unventilated and unlit. Prisoners were not fed by prison authorities during the eight hours they spent at the courts, had extremely basic toilet facilities, and sometimes had to walk to and from the prison when there was no transport to convey them. Police cells were equally appalling. The cells in Bo and Kenema police stations are dark, lacked even a ledge to sit on, and had no toilet facilities whatsoever. Thirty pre-trial prisoners reportedly died in one of these cells in Kenema in the early 1990s due to heat and lack of air, and the very same cell remained in use unchanged. A major investment in detention facilities is urgently required to alleviate the dire human rights abuses suffered by persons awaiting trial in Sierra Leone.

## 4.2 Hearing Standards

### [The right to a competent, independent and impartial tribunal established by law](#)

The Constitution guarantees the independence of the judiciary from the executive and legislative wings of government (section 120(3)), stipulates standard requirements of office for the appointment of judges (sections 135 and 136) and provides for job security and tenure of office with standards conforming to international norms (section 137). The removal of a judge from office, for example, requires the recommendation of a special tribunal and a two-thirds majority in Parliament (section 137(7)).

The competence and independence of the Bench is well-reputed. However, serious concerns about the impartiality of judges and magistrates were continually raised and focussed less on political control or bias than on corruption. Judges and magistrates expressed with great frankness their conviction that related directly to the abysmal conditions of service for the Bench that have persisted well back into the pre-war period and that are discussed in section 2.3. In the words of one High Court judge, “the conditions of service make a mockery of the idea of impartiality.” He pointed to the issue of transport to illustrate:

*“I worked in the provinces as a magistrate for some years, and I was never provided with a vehicle to travel between courts and to and from home. It is inevitable that you rely on the generosity of others to do your job. And one day you see before you in court the man who gave you a lift a week before. How can one be impartial . . . a judge should be independent, and have his own means of transport so that he doesn't have to rely on others.”*

The combination of poor transport and accommodation, the poor infrastructure of the courts, infrequent electricity supply, and virtually non-existent law reference facilities have all taken a toll on the effectiveness of judicial personnel.<sup>48</sup> When these constraints are considered against the backdrop of extremely heavy caseloads, and in some instances severe backlogs, the effectiveness of judges must come into question. The Basic Principles on the Independence of the Judiciary include in the practical safeguards of that independence, “the duty of the state to provide adequate resources to enable the judiciary to properly perform its functions.”<sup>49</sup> However, the conditions that precluded proper honest judicial functioning in the past have only been magnified and will require a complex skein of intertwined improvements to take place across the system before it can be remedied.

### [The right to an interpreter](#)

The Constitution stipulates that an arrested person must be informed “in a language which he understands” of the reasons for his or her arrest and that he or she has the right to an interpreter, without any payment, in the course of his or her trial (see Section 23(5) of the Constitution). This is also guaranteed under international law where the right to translation of both oral proceedings and all relevant written documents is fundamental.<sup>50</sup> As noted in Section 2.3, there are serious shortfalls in the provision of interpreters. From our observations, although *ad hoc* oral translation was provided by police prosecutors or court clerks, English-language documents, including charge sheets and judgements, were not always translated into Krio or other indigenous languages. When one considers that over 85 per cent of the population is illiterate, this seems less an immediate concern than the need for professional oral translation, which must be adequate to ensure the accused is fully aware of the charges, the evidence and the judgement. However, in the Magistrate Courts in particular, it has been common practice for magistrates to grant barristers and police prosecutors leave to either lead or cross-examine witnesses in Krio.

### [The right to legal counsel and the right to adequate time and facilities for the preparation of a defence](#)

Access to legal counsel and the facilities to prepare a defence are closely linked in practice. A key element of the latter is the individual's right to communicate with counsel in confidentiality and with the benefit of appropriate information, files and documents. The ICCPR states that everyone shall be entitled to defend himself in person or through legal representation, which must be appointed by the state if the defendant does not have the means to pay for it, “where the interests of justice so require”. Whether the “interests of justice” require the state to provide



representation depends on the seriousness of the offence and the potential maximum punishment. There is naturally room for interpretation in both the decision to provide state-appointed representation, and the nature of the “facilities” the state is obliged to provide to a defendant.

Although provided for by the Constitution (Section 23(5)), in practice both these rights have been seriously curtailed in Sierra Leone. While everyone has the right to hire private representation, this is a luxury only a small minority can afford. The state only appoints defence counsel in cases involving capital offences, namely treason, murder, and serious economic crimes.<sup>51</sup> Stark economic reality prevents the state from adopting a stringent interpretation of this article. In such a poor country, many criminal cases have proceeded without legal representation, and addressing the representation gap would involve prohibitively high costs likely to be beyond the state’s reach at this time.<sup>52</sup>

Paradoxically, the preponderance of undefended cases, especially in the heavily overloaded magistrates’ courts, has prevented the complete collapse of the system. With capacity stretched to the limit, time is at a premium. As one magistrate explained, undefended cases are easier and quicker to hear, and if not for them, his own court would be crippled with backlogs.

The provision of information and other facilities necessary to prepare a defence is another chronically abused right, and unlike the appointment of defence counsel, has less to do with economic constraints than poor practices. Statutes in Sierra Leone do not require the prosecutor or plaintiff to hand over proofs of evidence or disclose material facts to the defence before the hearing in both criminal and civil cases (“discovery”), as is the case in other Commonwealth jurisdictions such as South Africa and Canada. This situation has led to the very frequent complaint in Sierra Leone of “trial by ambush”. This is described by a number of barristers as the sensation a defendant experiences when arriving in court for the first hearing to confront both charges/claims and a body of evidence developed by the prosecutor or plaintiff, of which he was until that moment completely ignorant. If the prevailing practices prevent even professional counsel from accessing the evidence of the case in preparing a defence, it is easy to see how disproportionately disadvantaged the un-represented defendant is in the majority of cases.

#### [Equal access to the courts](#)

The description of a legal system operating fully in the capital area and only partially in parts of the provinces (see Section 2.1) suffices to show that the courts, and the laws a defendant is subject to, depend on where he or she is located in the country. We estimated that over 85 per cent of the population fell outside the practical area of coverage of the professionally constituted courts. Indeed, the average citizen is lucky to have even a functioning local court at hand. It is for this reason that basic investment in court infrastructure, vehicles and accommodation for judicial personnel is such a critical human rights issue for Sierra Leoneans.

#### [The right to a trial without undue delay](#)

Although the term “undue delay” is elastic up to a point, that limit has been routinely and seriously transgressed in the Sierra Leone courts. In international law the delay provision is interpreted to mean that a case is heard reasonably promptly after the point at which proceedings are initiated, and the final judgement and sentence (if appropriate) is delivered without undue delay.<sup>53</sup> Under the Constitution, a judgement must be made within three months of the hearing, but at the time of research this provision had yet to be interpreted by the Supreme Court of Sierra Leone, as it had been in Nigeria.<sup>54</sup> Delay occurs routinely at all levels of courts throughout Sierra Leone.

The murder and flight of judges caused by the 1997 coup and subsequent junta rule resulted in the suspension of legal cases and caused delays throughout the court system. These delays have been exacerbated by the deterioration of the registries, the shortage of judges, the increasingly difficult conditions of service and the weakness of the supporting organs of the state such as the police, the prisons and the office of the Attorney General. Prolonged and frequent adjournments sought by some counsel and also, at the magistrates’ court level,



certain police prosecutors, in addition to long periods of repetitive cross-examinations, are all factors that contribute to undue delay.

The longest recent delay between hearing and judgement we encountered in the High Court records was nine years. A random search of cause-lists for recent hearings at the High Court revealed a number of undetermined cases initiated between 1993 and 1995, indicating routine delays of up to eight years. Yet the High Court is considerably better than the Court of Appeal, where a shortage of judges and a slow typing service seriously compromise its work (see Section 4.3 on appeals).

Again, improving the rights of the accused by guaranteeing prompt hearings and timely judgements depends primarily on infrastructural improvements and greater material inducements to serve on the Bench. A number of procedural changes to enhance efficiency need to be effected and attitudes towards timeliness improved. However they would be premature without attending to more basic needs first. As a starting point, such simple remedies as the introduction of stenographers or modern recording and transcription facilities in all courts; the provision of assured power supply and functional chambers; the introduction of filing cabinets, word processors and photocopiers to the registries; and ensuring reliable transport for all judges, would enable the judiciary to immediately work more effectively.

### 4.3 Post-trial Rights

#### The right of appeal

Although the right to appeal is constitutionally guaranteed, the ability of most citizens to do so is seriously compromised by poverty. Navigation through the lengthy appeals process is complicated, and is only possible for those with the money to hire counsel over the long term and, for those outside Freetown, to travel and support themselves away from home to attend hearings. There is no right of direct appeal from the local courts to the superior courts and, with the current lack of District Appeal Courts, appeals are heard in the magistrates' courts and are usually subject to long delays.<sup>55</sup> Local court personnel and several barristers with experience in the provinces claimed that the delays in an appeal to the magistrates' court could take between four and seven years. Generally, the usually poor quality of records from the local courts and the need for parties to travel to long distances to main provincial towns to access a magistrates' court are the primary causes of delay. Appeals from a provincial magistrates' court to the High Court in Freetown again involve travel to the capital for all concerned, which is not only expensive and time-consuming, but has been positively life-endangering through the 1990s. Obviously, the right to appeal is experienced very differently by those living in Freetown - where all levels of the judicial machinery exist - and those in the provinces.

The most acute problem that we found to be affecting the right to appeal within Freetown was the weakness of the registries and the records service. As mentioned, all court records were hand-written and kept in single copies up to the Superior Courts level, where everything had to be typed. The Master and Registrar provided evidence of large backlogs at all levels of appeal from the magistrates' courts to the Supreme Court, all due to the delays in preparing typed records. As explained in Section 2.5, for example, at the time of research there were just three typists in the Court of Appeal registry producing on average one set of appeal records per month each, with a backlog of about 50 cases on appeal from the High Court.

A particular weakness at the Court of Appeal level is the shortage of judges. The Court is comprised of seven judges and the Constitution provides that three judges sit on appeal cases. However in January 2002 there were only three appeal judges in total. It is patently clear that there are too few judges to ensure effectiveness, swiftness and impartiality at all stages for cases on appeal. The same holds for Judges at the Supreme Court level where a full panel sits with five Supreme Court Judges and an ordinary panel sits with three but vacancies persist creating delays and backlog. As Court of Appeal judges have died, retired or left Sierra Leone, the total number of judges has been depleted and a large number of their cases have been consigned to indefinite judicial purgatory.

The right of appeal is a fundamental fair trial right ensuring at least two levels of scrutiny, making safe convictions and just sentencing more likely. Appeals also allow higher courts to ensure the consistent application of the law throughout the territory and permit the cross-fertilisation of standards from one judicial level to another. Judges and magistrates themselves benefit from a healthy culture of appeals. Appeals can be good for individuals facing the courts and for the judicial system's overall cohesion and professional development. But Sierra Leone's "rump judiciary" is missing most of its provincial appendages and relies on a marginal set of registries. The right of appeal is in danger of becoming meaningless to the average citizen.

#### 4.4 Juvenile Rights in Sierra Leone Courts

The provision of special protections for juvenile offenders in the courts is particularly relevant in Sierra Leone, where over 50 per cent of the population is under 15 years old, and both children and youths<sup>56</sup> have been at the forefront of a ten-year reign of unrestrained brutality. In Sierra Leone, children have been both abducted by the RUF and initiated as fighters into the CDF militias. The RUF in particular used child combatants as a central plank of its operational strategy. A typical indoctrination process involved forcing children to commit heinous acts of violence, often against members of their own communities, in order to sever the filial ties and create a bond of total dependence to the movement. It is commonly believed in Sierra Leone that most of the worst atrocities (summary executions including decapitation, the amputation of limbs, arson and rape) have been committed by young persons. To welcome former child combatants back into wider society and rehabilitate them, rather than exclude and punish them, is a key challenge facing the justice system.<sup>57</sup>

By all indications, the formal justice system is not addressing the cases of former child combatants. This is partly because they are largely located in the provinces beyond the physical reach of the courts and partly because other mechanisms, such as the promised Truth and Reconciliation Commission (see section 6.2), may provide a more rehabilitative means to deal with their violent records. Yet juveniles routinely move through the courts charged with lesser offences, a reflection of the crisis of youth unemployment and the lack of formal educational opportunities.

There are four special protections extended to child and youth offenders under Sierra Leone's statutes and the Convention on the Rights of the Child: the right to separation from adult offenders; the right to anonymity and privacy in a hearing; the right to counsel supportive of juvenile needs; and the right to detention in a rehabilitation facility rather than a prison. These protections are additional to all the standard fair trial rights. We observed several shortfalls in the provision of these protections, despite the best-intentioned efforts of many judges and magistrates. An *Article on Juvenile Justice* by a researcher employed by the Office of the Chief Justice states that, "it is difficult to determine whether the police have at all times kept juvenile suspects and offenders separate from their adult counterparts".<sup>58</sup> Measures to separate juveniles from adults in police stations and in court lock-up are *ad hoc*, yet police claim to hold juveniles in "open detention" - in the station but not in the cells. We were not able to confirm this. However, judging from the atmosphere and lay-out of the police stations we visited, a juvenile would have little difficulty walking away if not actually placed in existing cells. In the central court lock-up, juveniles and women awaiting hearing were usually held in the corridor next to the cells holding male adults.

The issue of detention of juveniles after conviction is altogether more serious. There has been an "Approved School" for rehabilitating juvenile offenders in Freetown in the past, but in the 1990s this facility ceased to offer either security or rehabilitation, and essentially became a camp for displaced persons from the provinces. In the provinces, we found that there was nothing approaching either remand homes or an approved school, and the aforementioned article states that "child offenders in many parts of the country often share cells with adults in unfavourable conditions and for long periods".<sup>59</sup> A special commission investigating conditions in the prisons found that most if not all prisons in the country were holding juveniles, with the central prison in Freetown holding about 20, all for "rebel activities". None of the prisons had separate juvenile detention facilities.

Judges and magistrates take pains to protect the anonymity and privacy of juveniles during hearings, and several confirmed that all proceedings involving juvenile defendants were *in camera*. We observed that a juvenile witness was giving evidence in a rape case at the magistrates' court in a magistrate's chambers. With regard to "special

counsel” for juveniles, we found that no defence counsel of any kind is provided by the state unless the charges are for a capital offence. Certain human rights organisations – such as Defence for Children International, Sierra Leone Section – attempted in the past to provide free legal services for juvenile offenders and child victims of rape and sexual abuse, but this was only a temporary situation. Several magistrates and judges did emphasise that they take juvenile ignorance of court procedures and the law into account, and endeavour to inform them of their rights during hearings.

## 5. The Rule of Law

### 5.1 Erosion of the Rule of Law

The erosion of the machinery of justice is just one of the factors contributing to an altogether more fundamental problem: the general cultural erosion of the notion of criminal accountability and the rule of law. Sierra Leoneans’ expectations of justice have been woefully low due to their accrued experience of failed court systems, powerful local militias and a weak police force.

There are few parts of Sierra Leone where official courts, supported by policing and facilities for detention, have existed over the past ten years. Even before the civil war, under-capacity, corruption and arbitrariness had hobbled the authority of the courts. However, with the onset of chronic insecurity in 1991, a host of improvised ‘justice systems’ emerged to compete with or replace the state judiciary, just as vigilantism in the form of civil defence militias (CDF) filled the vacuum created by the retreating official Sierra Leone Army (SLA). As a result, the authority of the courts has been seriously eroded.

Outside Freetown and the provincial capitals of Bo and Kenema, the police Criminal Investigation Department freely admitted that at that time the local cells of the CDF supplied the sole guarantee of order and possibility for redress in criminal and civil matters. These local bodies were loosely organised but well armed and drew from a largely illiterate rural population. They dispensed an unpredictable brand of summary justice in what the police and members of the Bench refer to as ‘bush courts’ or ‘kangaroo courts’. They were completely beyond the reach of official structures, and therefore of any means of appeal or standards of fair trial and predictable punishment. The CDF militias in some cases did and in some case did not co-operate with traditional authorities - Paramount Chiefs<sup>60</sup> and Councils of Elders - and the local customary law courts, but it is widely reported that both Chiefs and local court Chairmen were powerless to challenge the power of militias (see Section 3 on local courts).

At the time of our research, the situation was even more critical in the Northern Province, where the RUF still retained control. The savage violence meted out by the rebels to civilians is well documented, and has nothing to do with justice, regardless of the claims made by the RUF to this effect.<sup>61</sup> There may be a form of traditional justice administered at the village level by the local courts, but these authorities have been powerless to resist or punish the abuses of the RUF over the past decade.

The unaccountable nature of the once robust and selfless CDF militias in the Southern and Eastern Provinces endangered the few institutions of formal justice that continued operating outside Freetown. The two magistrates’ courts functioning in Kenema and Bo, as well as the police and the few barristers in the towns, operated under the constant threat of CDF harassment, as illustrated by a confrontation that we heard about (see box).

*On 8 September 2000, police in Kenema discovered 26kg of cannabis sativa in the possession of a kamajor (Mende term meaning “hunter” and denoting membership in the CDF). Although he was arrested and arraigned, the magistrate was threatened with violence in his own courtroom and thought it prudent to grant bail. The suspect soon broke the terms of bail and his suret -, another local kamajor, disappeared from Kenema. He was returned to police custody by a sympathetic CDF District Administrator (head of the CDF in Kenema), responding to the pleas of the magistrate and the local Police Commissioner.*

*Soon thereafter, the Deputy Defence Minister and recognised leader of the CDF nationally, Chief Hinga Norman, visited Kenema from Freetown and met with local kamajors. Early in the morning the day after his return to Freetown, a group of kamajors led by the formerly sympathetic District Administrator ambushed the*

*Police Commissioner in his car on the way to work in the middle of Kenema and beat him mercilessly, before removing the detained kamajor from the police cells. The kamajors had reportedly prepared a list of ten names for similar treatment, which included the magistrate in Kenema and prominent barristers in the town, but the Ghanaian battalion of UNAMSIL peace-keeping troops stationed in Kenema managed to intervene to prevent further beatings and rescue the Police Commissioner.<sup>62</sup>*

*While we were conducting research in Kenema, the Inspector General of Police helicoptered in from Freetown to investigate the incident and attempt a reconciliation between CDF leaders on one hand and the police and civil authorities on the other. He managed to get all sides to sit down together and elicit an apology and statement of good will from the CDF. But significantly, no action was taken to re-arrest the kamajor suspect. Numerous interviewees in Kenema and Bo identified this incident as a landmark event, seriously undermining the rule of law in the provinces and reinforcing the popular perception of 'discriminatory justice' and an unaccountable CDF.*

Although nominally controlled by the Paramount Chiefs and answerable to local court authorities, CDF militias had effectively become a law unto themselves. Indeed, there are many indications that the formal leadership of the CDF movement at the national and district level was either powerless or negligent when it came to controlling the behaviour of rank and file. Reports from civil society groups – such as the National Forum for Human Rights, the Campaign for Good Governance, and the Regional Reconciliation Committee (RRC) for the Southern Region – and the Human Rights Unit of UNAMSIL created an indisputable picture of a CDF movement that had become responsible for most of the human rights abuses occurring in 'government territory'. The CDF was seen to be beyond the reach of civil authorities and often even certain CDF leaders themselves, capitalising on a *de facto* immunity from prosecution, and engaging in entrepreneurial activities referred to as "Operation Feed Yourself" (a reference to a term first used by the RUF). In Kenema, the base for most diamond buyers and a key market for supplying the industry near the richest diamond areas, we were given corroborated reports of CDF kamajors engaged in diamond mining alongside their purported RUF enemies.<sup>63</sup>

## 5. 2 Restoration of the Rule of Law

Though there has been a long dark time for the judiciary, the past two years have seen a steady build up of hopeful events which portend well for rule of law and from which judicial functioning will benefit.

January 2002 officially marked the end of the armed conflict with the disarmament and demobilisation process being deemed to be successfully completed. Both the RUF and CDF militias have been disarmed to a large extent through the Disarmament Demobilisation and Reintegration programme [DDR]. To date, a total of 47,600 combatants have been disarmed nearly 28,000 assorted weapons collected and 25,000 destroyed. Under a joint initiative between UNAMSIL and GTZ many weapons have been turned into tools and agricultural items. Paramount Chiefs and officials have returned to most districts; police redeployed into nearly all parts of the country and the civil administration established beachheads in most districts. The state of emergency, implemented for nearly four years, has been lifted and free and fair elections held. The RUF that sought to transform itself into a political party has largely been rejected as a representative force; the mandate of the UN Mission in Sierra Leone [UNAMSIL] has been extended to underpin peaceful transition and assist in the rebuilding of the country's security machinery.

UNAMSIL's role has been a pivotal one in the struggle to restore the rule of law in Sierra Leone.<sup>64</sup> Established as a peacekeeping force of some 6,000 troops UNAMSIL's capacity now stands at 17,500 soldiers - the largest UN peace force anywhere in the world. UNAMSIL's role has gradually metamorphosised from peacekeepers into peace enforcers. Its mandate has been extended on several occasions and has recently been prolonged for an additional six months until 30<sup>th</sup> September, 2002. This, in order to furnish support and consolidate the ongoing peace process which will prove indispensable after the elections. As on 30<sup>th</sup> March 2001 its main objectives were "to assist the efforts of the Government of Sierra Leone to extend its authority, restore law and order and stabilise the situation progressively throughout the entire country, and to assist in the promotion of a political process which should lead to a renewed disarmament, demobilisation and reintegration programme and the holding, in due

course, of free and fair elections.” A human rights section within UNAMSIL is mandated to promote and respect human rights and has a provision to provide technical assistance to the judicial system within Sierra Leone. To date, they have identified several short-term projects, which aim to improve the legal system, such as the establishment of a library of law books. However lack of funds has stalled the commencement of several projects.

Finally the TRC and the Special Court are now sanctioned and will soon be in operation. Awareness programmes will spread information about its functioning and the process itself will reinforce notions of human rights and rule of law within society.

## 5.3 The Police

### 5.3.1 Police Impotence

The judiciary cannot operate effectively without police support, and the critical weakness of the Sierra Leone Police (SLP) in the past has greatly hindered the work of the courts in upholding the rule of law. Indeed, the RUF consistently targeted police officers and infrastructure as part of its strategy to destroy state capacity. During the January 1999 RUF invasion of Freetown, every police station save two were burnt, and police files, including those of the Criminal Investigation Unit, were lost. Most of the SLP's vehicles were destroyed and weapons were stolen and turned on officers themselves. About 250 SLP officers were murdered, together with about 375 of their family members.

This campaign to destroy the police force in Freetown was only the most visible and intensive phase of a programme of terror reaching back to 1991 in the provinces. There are many SLP officers among the tens of thousands of displaced on the Freetown peninsula. Even in districts such as Pujehun and Bonthe, where there is no RUF presence, there were police officers in place but the dominance of the local CDF militias limited their freedom of operation. The tradition of over-centralisation of policing in the capital, and the neglect of provincial police capacity, was a further cause of SLP weakness outside Freetown. While the entire force possessed 17 vehicles in 1998, the SLP reportedly had only one vehicle in the Eastern Province, where the RUF incursions from Liberia triggered the civil war and where diamonds are most abundant. According to our information, the Police Commissioner of the Southern Province based in Bo had no equipment for regular communications with his staff in the district detachments of Bonthe and Pujehun. The provincial SLP commands have also been traditionally deprived of better-trained personnel, which were always concentrated in Freetown's headquarters and the Criminal Investigation Unit. Already starved of resources and talent, the war only exacerbated the deficit of qualified police officers, who were killed in large numbers in the Kono diamond fields and several other areas.

The Police Commissioners of Bo and Kenema were new appointees at the time of research, both of whom eloquently described a vision of community-based policing, refresher courses for officers and the devolution of decision-making and talent in the SLP. However, these same officers admitted they were mostly powerless to arraign criminal suspects if they are *kamajors*. Reversing police impotence in the provinces has required an ambitious and co-ordinated effort involving robust and proactive peacemaking. The SLP will require the support of the reinstated Paramount Chiefs, civil society outside Freetown, and a new mode of co-operative policing that embraces the CDF and exploits its capacities and grass-roots origins. The Police Commissioners in Bo and Kenema were indeed hoping to collaborate with the CDF to keep peace and enforce law and order through joint policing networks.

However, many dangers still lurk. Despite generous amounts provided to the Multi-Donor Trust Fund set up by the World Bank in 1998, there exists a shortfall for reintegration projects to be properly implemented. Arms and discontent abound. Almost 50,000 young men have been disarmed, and though nearly 18,000 ex-combatants are absorbed in various short term programmes, many have little to do because several reintegration programmes have not yet got off the ground. Root causes for discontent persist - such as the alienation of the urban-elite from the large mass of the rural poor. Unfair distributions of wealth and political and economic disparities can create conditions for quick conflagration.

### 5.3.2. The New and Important role of the Sierra Leone Police

The 6,500 strong police now deployed throughout Sierra Leone are perceived as being key to consolidating peace and restoring democracy in a “Sierra Leone where freedom, law and order will reign supreme.”<sup>65</sup>

The police have already played a key role in the compulsory community arms collection and destruction programme run, to mop up illegal small arms from the civilian population and have been effective in keeping peace during the recent elections.

UNAMSIL and various donors have catalysed the revamping of the police and its image. New police stations have been constructed and others restored and rehabilitated: at the opening of the new police station at Kono the Deputy Special Representative said “I don’t thank the ex-combatants for burning it (the police station) down, but I do thank them for rebuilding it.”<sup>66</sup> An eight member Commonwealth Development Police Task Force has provided training and administration for the SLP as well as an Inspector General. To follow up on this initiative, a Commonwealth Community Safety and Security Project was set up to establish an effective community based and accountable police service capable of being a major contributor to the securing of a safe and just society in which the rights of individuals and communities are respected.

The institutional capacity of the SLP to deal with illegal small arms is being developed. A publication programme launched before the elections was designed to assist police officers on human rights issues during the elections and contribute to building a police force that is effective and respectful of human rights.

### 5.4 Culture of Impunity

The restoration of the rule of law is still being threatened by a pattern of criminal impunity, won by the perpetrators of human rights abuses and crimes against the state over the past decade.

Indeed one of the reasons Sierra Leoneans accepted the Lomé Peace Agreement and its amnesty provisions for the RUF and AFRC was their belief that retributive justice through the courts was beyond their reach. The use of retributive justice had backfired on Sierra Leoneans in January 1999 when AFRC and RUF fighters murdered state prosecutors and members of the Bench during their invasion of Freetown in retaliation for the Kabbah government’s prosecution of the AFRC junta and execution of 24 of its members. Even with the breakdown of the Lomé agreement in May 2000, the amnesty provisions, relating to acts committed before July 1999 when the agreement was signed, are still being honoured in a selective fashion. “Juntists” such as Johnny Paul Koroma, who led the AFRC military junta from 1997 to 1998, are benefiting from immunity. However, in another case, former RUF leader Foday Sankoh, having escaped the death sentence for treason once before, now faces another possible treason trial by the government of Sierra Leone now that he has broken his commitments under the Lomé agreement. He, along with 49 other RUF members and more than 30 AFRC/ex SLA members were brought before the Sierra Leonean courts in March 2002, and charged with murder and other criminal offences.

For many, Sankoh should instead be tried by the Special Court for Sierra Leone created by the UN Security Council, and this was reiterated by the Attorney General of Sierra Leone<sup>67</sup> who announced that the aforementioned charges would not prejudice any case the Special Court for Sierra Leone might decide to bring against him and other individuals. Indeed, in the short-term, the Special Court, as we shall discuss in section 6, could serve a useful function as a highly visible symbol of an end to the culture of impunity and publicly mark the rebuilding of the judiciary.

Within a context where prosecution and punishment via the courts was both politically and practically difficult, a deep-seated fatalism toward the concept of justice had taken grip in Sierra Leone. New initiatives which are designed to strengthen the judicial machinery will certainly enhance the application of justice to a certain extent, but the judiciary must be supported by strong security organs, namely the police and the military. The first bricks in the foundation for an efficient and effective legal system have been laid, but its effectiveness will only be known



when the people of Sierra Leone throughout every part of the country are able to develop faith that justice will be done, so that they may cease to live with insecurity and pull themselves out of poverty.

## 6. Quasi-judicial Institutions after the Lomé Accord

### 6.1 A Special Court for Sierra Leone

In Resolution 1315 of 14<sup>th</sup> August 2000, the Security Council asked the UN Secretary-General to negotiate the creation of an “independent special court” to prosecute war criminals in Sierra Leone. This marked an important innovation in the peace process, turning away from the focus on reconciliation that characterised the 1999 Lomé arrangement. It is also in line with the reservations of several Security Council members and the UN Secretariat, voiced at the time of the Lomé negotiations, that the amnesty provisions protecting ex-combatants contravene international law and could not therefore be recognised. Because the Lomé Accord was widely viewed as a dreadful compromise forced upon the Kabbah government by an international community unwilling to invest resources and troops in Sierra Leone, the proposal for a special court to be established in agreement with the United Nations and with the financial support of the international community a year later, indicates a greater level of international support for the country.

In January 2002,<sup>68</sup> a planning mission was carried out to discuss with the Government of Sierra Leone the practical arrangements for the establishment and operation of the Special Court, including, the question of premises, the provision of local personnel and services, and the launching of the investigative and prosecutorial processes. An agreement between the United Nations and the Government of Sierra Leone on the establishment of the Special Court was signed on 16 January 2002.<sup>69</sup> The signing of the agreement brings to a close one chapter, and opens another one regarding the implementation and operation of the Special Court. This initial phase<sup>70</sup> encompasses plans for premises, staffing of the Registry and the Office of the Prosecutor, the appointment of judges, the Prosecutor and the Registrar.

The Special Court will try only “those who bear the greatest responsibility” for the conflict in Sierra Leone. It will have jurisdiction to prosecute those primarily in political and military leadership positions accused of crimes against humanity, war crimes and other serious breaches of international humanitarian law committed back to the signing of the Abidjan Peace Agreement on 30<sup>th</sup> November, 1996.<sup>71</sup> It will not exclude, however, others in command authority singled out by the gravity of the crime committed, its massive scale or heinous nature. Two other categories of persons never before prosecuted by an international jurisdiction of a special court, namely peacekeepers and juveniles will also fall under the jurisdiction of the Special Court. But substantial conditions need to be fulfilled before any possible prosecution. In the case of peacekeepers, the State of Nationality must be either unable or unwilling to prosecute, while in the case of juveniles, which has been a point of particular controversy<sup>72</sup> the Prosecutor must show that all alternative options to prosecution, including the Truth and Reconciliation Commission, have been explored, exhausted and rejected for justifiable reasons. Both the Sierra Leone Government and the UN are in agreement that there must be strict observance of juvenile protections in court proceedings and juveniles would not be sentenced to prison, but rather to rehabilitative facilities. Given the conditionalities, it is quite likely that few juveniles would actually come before the Special Court. The Court can also legally try people who are located outside of Sierra Leone. However, there has as yet been no Security Council Resolution to give the Court powers to *force* other states to hand over suspects.

The RUF has declared that its support for the Court will depend on its ‘impartiality’, insisting that those prosecuted must not only be from the RUF.<sup>73</sup> This statement further echoes the thoughts amongst the people of Sierra Leone; all sections of society have expressed concern that the judicial process should be “fair, impartial and comprehensive in its temporal and territorial reach, and that the Special Court be, and should be seen to be independent of both the Government and the United Nations.”<sup>74</sup>

The Special Court will be composed of two trial chambers and an appeal chamber. The prosecutor will be independent and non-Sierra Leonean, appointed by the Secretary-General, while the Government of Sierra Leone will appoint the deputy prosecutor who must be Sierra Leonean. Although three out of the eight judges (one per trial chamber and two on the appeals bench) have to be appointed by the Government of Sierra Leone they do not

themselves have to be Sierra Leonean. Registrars,<sup>75</sup> clerks, prosecutorial<sup>76</sup> staff and others will also in all probability be provided by the UN, and the proposed total of persons to be attached to the court is 189, all on the UN scale of salaries paid by UN sources.<sup>77</sup>

In September 2000, the UN evaluation team concluded that the infrastructure proposed by the Government in Sierra Leone was inadequate to accommodate the court and to detain pre-trial and convicted prisoners. The UN therefore proposed to construct a new pre-fabricated, self-contained compound on government land at a cost of US\$2.9m. It was argued that this proposal would be “cost effective and rapid and would have the additional advantages of an easy expansion paced with the growth of the Special Court and a salvage value at the completion of its activities”.<sup>78</sup> Nevertheless the proposal to use prefabricated structures angered some in Sierra Leone, who desired that permanent buildings be constructed as a way of building long-term judicial capacity.

After much deliberation, the Planning Mission of the Special Court has requested the Government of Sierra Leone to make available land adjacent to the New England Prison for the permanent premises of the Special Court. The cost of the construction of the permanent premises on the New England site is estimated at US\$4,435,250,00. Nevertheless, the establishment of the permanent premises of the Special Court is not expected to be completed until April 2003. The Government has offered a building in the compound of the Bank of Sierra Leone, and in addition the Registrar of the Freetown High Court has offered the use of one of the courtrooms and a small room for closed hearings, should the need arise prior to April 2003. It has also been confirmed that the New England site could be used for the detention facilities as well, thus avoiding exposing the detainees travelling on the public highway to and from Court. However, the renovation of the existing structure is not expected to be completed until the end of September 2002.<sup>79</sup>

The Secretary-General asked that the court be paid for with “assessed contributions”, meaning mandatory rather than voluntary contributions from UN members. The Security Council, however, rejected this idea and is insisting on voluntary contributions. The amount of that budget was a total of US\$114m for 3 years, with the first year costing US\$30m. For many states this was too high and it has now been revised to approximately US\$ 60 million, with approximately US\$ 16 million in the first year. This will be funded entirely by the voluntary contributions of 15 to 20 donor countries including the UK, Canada, the Netherlands, Lesotho and the United States. States have started to deposit money in the trust fund, however progress is painfully slow. Nevertheless the Secretary General’s decision to establish the court and authorise preparations for the operation of the Special Court was initiated because he was “convinced of the political will of Member States and their commitment to the success of the Special Court.”

Scaling down reflects enhanced use of local human resources,<sup>80</sup> and institutions, a different calculation basis for salaries, as well as greater reliance on already existing UNAMSIL facilities that can eliminate the need for establishing separate administrative services such as personnel administration, communication, transport, finance and procurement. Nevertheless the Secretary-General emphasised that the Special Court will retain its nature and sui generis character.

Whatever the cost of the Special Court in the end, its value must be considered in terms of its long-term contribution to the rule of law in Sierra Leone. Certainly it will be a very visible display to the people of Sierra Leone that the international community is committed to ensuring some justice is done - a definite improvement over the situation a couple of years ago. The infrastructure investments in buildings and equipment could make a tangible improvement to the resources of the formal judiciary once the Special Court completes its work.

However, the work of this court as it is proposed will not impact greatly on the operations of the judiciary. There has been concern voiced that the court should include a number of Sierra Leonean judges in the interest of longer-term capacity building and for a smooth progression from short-term transitional measures to the establishment of a fully functioning judiciary.<sup>81</sup> However, staff is likely to be recruited internationally, as are most of the judges. There is a delicate balance to be found between employing local court personnel, and therefore building capacity and legitimacy, and using foreign personnel to bring a sense of impartiality and to ensure that resources are not sucked out of the existing judicial structures. The cause-lists will likely be too small to affect caseloads in the



formal courts, and the court and detention facilities themselves will be physically set apart from the existing judicial machinery.

## 6.2 Truth and Reconciliation Commission

The Truth and Reconciliation Commission (TRC) is widely viewed as one of the pillars of the Lomé Peace Agreement, and on 22<sup>nd</sup> February 2000, the Parliament enacted it into law with the Truth and Reconciliation Commission Act. The international freedom of expression group, ARTICLE 19, the local Forum of Conscience, and the United Nations High Commissioner for Human Rights have all advocated for the creation of this institution. Several international donors, including the British Government, have pledged significant funds to support the initiative. The Act came into force on 2<sup>nd</sup> March and it is estimated that the TRC will officially commence at the beginning of June, pending the fund raising campaign. Ms Mary Robinson, the High Commissioner for Human Rights, launched the campaign on the 21<sup>st</sup> February to raise about US\$10,000,000 which is the estimated budget for the first 15 months of operation (three month preparatory phase plus 12 months of operation). An interim secretariat directly funded by the Office of the High Commissioner for Human Rights, under Ms Yasmin Jusu-Sheriff - a Sierra Leonean lawyer - has recently been established to prepare the commencement of the TRC. UNAMSIL is assisting in both logistic and substantive matters.

Section 2 of the Act formally establishes the TRC and provides for its legal status (as a body corporate). The TRC will be comprised of seven members, four who must be citizens of Sierra Leone, and three who will not be (section 3). The Commissioners have all been identified, although their appointment has been delayed due to section 5(1) which provides that the TRC is to be inaugurated within two weeks of the appointment of its members. The TRC is to operate for one year, but may be extended by six months upon good cause being shown (section 5(1)).

The TRC was first proposed in mid-1998 as a mechanism to complement the official judicial machinery in the search for a “balance between the twin requirements of justice and reconciliation”.<sup>82</sup> In the knowledge that the Government of Sierra Leone could never achieve peace by pursuing a purely military strategy against the RUF, a “two-track approach” (military strength plus political negotiation and flexibility) had been adopted since the restoration of President Kabbah’s government in February 1998. Similarly, there has been a consensus that formal retributive justice, delivered by the courts, is beyond the capacity of the judiciary, and would regardless be a very confrontational path to peace, which would require robust security guarantees that no force aligned with the government has been prepared to furnish. The TRC’s architects (a coalition of Freetown-based NGOs) in the period leading up to the Lomé agreement were, however, strongly supportive of the idea of formal retributive justice, as far as this was possible. A Freetown civil society forum stated in early 1999 that a TRC could “enable the country to cope with the aftermath of the crisis by hearing the truth directly from perpetrators of gross human rights violations.....and recommend judicial prosecutions for some of the worst perpetrators.”<sup>83</sup>

The situation after the Lomé Peace Agreement, however, is very different. A blanket amnesty for human rights abuses committed before July 1999 has largely erased the rationale for perpetrators of such crimes to co-operate with a TRC. In addition, the Special Court plus a greatly enhanced UNAMSIL presence in Sierra Leone shifts the balance in favour of the retributive justice path, albeit by circumventing Sierra Leone’s existing judiciary. Although the TRC continues to enjoy support, it is often described as an ‘escape valve’ for the Special Court, an auxiliary institution for frying smaller fish.

Others, however, consider the TRC should not be seen as an auxiliary institution, rather as one of the accountability mechanisms that will assist in the peace and reconciliation process. They see the TRC as providing a wider opportunity for victims (and perpetrators) to tell their stories, particularly as they will not be subject to the same evidentiary requirements as the Special Court. Indeed, the UN has begun a campaign to sensitise the RUF to the idea of a TRC. These different conceptions of the respective roles of the Special Court and the TRC have been the source of much concern.

In subsequent discussions between stakeholders and expert groups, areas of co-operation and functional modalities have been clarified in order to avoid any conflict and to optimise co-operation. The baseline principles

are complementarity and independence of each institution. It was recommended that regular consultations between the two institutions would define their on going relationship.

## Recommendations

On information sharing:

When information received in confidence by the TRC is required by the Special Court in a case of an accused who “bears the greatest responsibility”, such information should be shared with the Special Court, when:

- a. The information or evidentiary material sought can only be obtained from the Commission, and
- b. The evidentiary material requested is essential for the conviction or acquittal of the accused.

Similarly, if both institutions exercise their powers to compel the production of the same document or evidentiary material, the person, or authority faced with the competing request should inform both institutions of the competing request and seek their agreement as to precedence. If the Prosecutor has convinced the Commission that the evidentiary material sought is required and essential in the case of any one accused of bearing the greatest responsibility, the Special Court shall have priority.<sup>84</sup>

The greatest promise of the TRC’s work lies in ensuring it devolves down to the community level and adapts to traditional, locally understood methods of reconciliation. Sierra Leoneans must themselves lead this process, with minimum dependency on international experts; only thus can this become a long-term, legitimate mechanism for conflict resolution and reconciliation.<sup>85</sup>

Sierra Leone’s ‘rump-judiciary’ will take years of investment and wise administration to rebuild, and, in its present state, the coming of peace could simply open a floodgate of litigation and prosecutions in the judicial system. Indeed, the pent-up demand for justice accumulated during years of brutal conflict would instantly overwhelm the courts, even if the judiciary could reassemble some of its capacity in the provinces. For this reason, it is extremely important that the legal basis now laid for a TRC be built upon, and a nation-wide, grassroots reconciliation programme develop that provides the rank-and-file combatant a means of re-entering his or her former community.<sup>86</sup>

### 6.3 Human Rights Commission

The importance of a National Human Rights Commission should not be underestimated. Even where there are well resourced effective and accessible judiciaries tasked with implementing the rule of law and the protection of human rights, there is felt need for complementary institutions that monitor the functioning of the instrumentalities of the state which, most often, are responsible for violation and neglect in preventing human rights violations. Human Rights Commissions also aid government in furthering human rights values in their official work and incorporating these values into policy and can be very valuable in spreading human rights education and broadly impacting the national culture by imbuing it with a rights based orientation. This is particularly important in a society that has seen long periods of brutal violence.

The Lomé Peace Agreement did indeed call for such an institution to be established not more than three months after the signing in July 1999. However it soon became clear that in light of the badly delayed implementation of the Accord, the creation of an HRC would not be the first priority. As the proposed HRC is seen as a permanent institution in ensuring a future peaceful Sierra Leone, - rather than a provisional mechanism for creating that peace (the manner in which the TRC is perceived), the TRC has taken precedence.

Although the Human Rights Unit of UNAMSIL has been working on the preparatory details for creating an HRC; due to lack of funds and indecision both amongst the donor community and government, about its exact role and function, the idea is still on the drawing board. In fact, Sierra Leone does have a National Commission for Democracy and Human Rights. First created as the National Commission for Democracy in 1994 by the National Provisional Ruling Council military government, its independence was very limited and it was essentially mandated to educate the public about the constitution and cultivate a “sense of nationalism, patriotism and loyalty to the

State in every citizen".<sup>87</sup> In 1996 following the return to democratic rule it got its present name and a mandate that added a human rights component. Many have suggested that the mandate of this particular institution should be further extended so that it may be turned into a full-fledged Independent Human Rights Commission, but there is still much indecision on all sides about whether there should be separate institutions to deal with human rights violations and education in democracy respectively, or it should all be fused into one.

There is considerable experience in the Commonwealth and in the African region with HRCs, and the Commonwealth Human Rights Initiative has also played some role in advancing best practices when establishing their own HRCs. Over the long term, Sierra Leone would greatly benefit from a popular and accessible HRC, with the powers to conduct enquiries, create special human rights commissions on specific issues, recommend judicial action on human rights abuses, submit *amicus* briefs in important trials with implications for human rights, and educate the population on their rights and the uses of the HRC.

#### 6.4 Office of the Ombudsman

This is not an institution created by the Lomé agreement, but rather dates to the 1991 "multi-party constitution". It was only in April 2000 that the first Ombudsman was appointed, but at the time of research he had yet to be provided with a furnished office, staff and appropriate resources.

The Office of the Ombudsman is mandated to provide redress for cases of official maladministration and would work closely with the HRC and the Anti-Corruption Commission,<sup>88</sup> referring cases for investigation and sharing resources. In its first six months of *ad hoc* operation, the office had received many complaints from civil servants relating to poor conditions of service, wrongful dismissal and promotions, and had also taken statements on police misconduct. The Ombudsman's powers are not judicial and do not provide for any kind of formal sanction for wrongdoing. In cases where informal mediation is not effective, the Ombudsman can make an official recommendation to the parties in dispute, and then inform the President, who himself has three months to take action before Parliament is informed. The Ombudsman also works with the Public Service Commission, which is responsible for appointing civil servants and determining their conditions of service.

At present, the Ombudsman is more functional in responding to queries and complaints from the public about government functionaries, parastatals, security forces etc. He also chairs a popular radio discussion programme called "Security Talks."

### 7. Two Hats on one Head - the Attorney General and Minister of Justice

A central feature of any democracy is a clear separation of powers between the judiciary and the executive, whereas a classic feature of one-party or authoritarian states is a blurring of this separation by constitutional means. The executive wing of government is essentially a temporary creation of politics, and responds to political realities. The judiciary is bureaucratic, and exists to ensure that the interests of the individual are balanced against those of the state, and in particular that his or her rights are protected against its intrusions or neglect. These are two very different mandates, and very often they come into conflict in healthy democracies. This is why the judiciary must be free from executive influence, and moreover be *seen* to be so.

Prior to 1978, the clear separation of the office of the Attorney General from the "responsibility for judicial affairs" had been axiomatic to the arrangements for the judiciary's independence. The Attorney General was in fact a ministerial post, and so could be combined with responsibility for any other government department - say Education or Foreign Affairs - but the 1971 constitution explicitly excluded the Attorney General from responsibility for judicial affairs. This was the responsibility of the Minister of Justice.

In a complete reversal of this principle, the 1978 Constitution of Sierra Leone - the "one-party constitution" - created the basis for a unitary state under then President Siakka Stevens. The 1978 Constitution fused the office of the Attorney General with the Minister of Justice, making one person both the representative of the state in legal

cases (the traditional role of the Attorney General) and *additionally* responsible for judicial affairs. The effect on judicial independence was immediate, as Mohammed Fofanah explained in a recent analysis of the issue:

*“Above all, and this could only be tacitly implied from the provisions of the 1978 Constitution and the powers that the then Attorney General accorded himself under the new nomenclature, the Attorney General and Minister of Justice actually became the mouth-piece of the Judiciary in Cabinet and Parliament and to the wider public; he became the lynch-pin between the Judiciary and the other two “independent” organs of state and was, to a large extent, the Judiciary’s vote-controller in Cabinet for the purposes of budget preparations. He was not only the Government’s Chief Prosecutor, but also the Nation’s “Justice Minister”, who, like the Chief Justice, was to hold the balance between the state and the individual vis-à-vis the latter’s rights and liberties. He was constitutionally the Head of the Law Officers Department...; was an integral member of the Executive; and politically the “head” of the judiciary”.*<sup>89</sup>

The ambiguous role of the Attorney General in mediating between the Judiciary, Cabinet, and Parliament is not helped by the fact that nowhere is his role (“responsibility for judicial affairs”) specifically spelt out in the 1991 Constitution. The interpretation of this concept is left to the individual Attorney General, who may take pains to preserve a distance from the administration of the judiciary, or may not. From a constitutional perspective, nothing would prevent a less-than-scrupulous Attorney General from interpreting his role liberally and making decisions that affect judicial operations. This possibility must be understood against the fact that, while the Attorney General works ‘above’ the Chief Justice as liaison with the other wings of Government, he can simultaneously appear in court as counsel for the state, even before the Chief Justice himself. To draw again on the comments of one High Court judge, what is the difference from the judge’s point of view between having to pass an impartial judgement on a case presented by the man who gave you a lift to court last week, and determining a case brought by the Attorney General to your court, say, the day after you relied on him to intercede with Parliament to approve your dismissal of a corrupt member of the Bench? In both cases, the judge is not entirely free to make a principled decision.

One effect of the magnification of the responsibilities of the Attorney General is the general confusion in Sierra Leone of his and the Chief Justice’s powers, at least in popular understanding. Very little is known about the office of the Chief Justice, and there is a widely held notion that the judiciary is part of the Law Officer’s Department - that is, part of the state’s own legal services.<sup>90</sup> Indeed, in our own research we encountered a letter from a senior prison official, complaining of the backlog of pre-trial prisoners in his prison and asking for the appointment of a High Court judge in his area to try them, addressed not to the Chief Justice, who is responsible for the judicial machinery, but to the Attorney General instead.<sup>91</sup>

A separate issue is the guarantee of impartiality and independence the Attorney General should provide in directing prosecutions. The duty of the Attorney General is to the state, and not to any one person or government. To serve the goal of impartial justice in directing prosecutions is always a task fraught with controversy, and it easily conflicts with the short-term political interests of any administration. Yet the Attorney General is called upon to act without reference to these pressures, and the job therefore requires great force of character and the ability to resist the influence of political colleagues. In Sierra Leone, the Attorney General is a full voting member of Cabinet, and sits with this body of elected politicians, making policy and acting as the government’s chief legal advisor. He himself is appointed, not elected.

Politically motivated prosecutions have in fact long been noted in Sierra Leone, and the Bar Association recently criticised this tendency, noting in a 1999 press release that: “Government has commenced a number of prosecutions only to abandon the same during the course of prosecution.”<sup>92</sup> The Bar Association urged the government to “ensure that prosecutions are only commenced on the strength of evidence and not on political or other considerations.”

It is instructive to note that Zimbabwe, a Commonwealth cousin, emerged from independence in 1980 with an Attorney General that was also a full voting member of Cabinet. But, at the first opportunity to make a

constitutional amendment - a decade after independence in 1990 - it transformed the post from a political to a bureaucratic one. The Attorney General was made a law officer with full protections of tenure and job security, as well as an exemption from the “doctrine of collective responsibility”.<sup>93</sup> This was a move designed to enhance the independence of decisions about prosecutions from politics.

The shifting and ambiguous role of the Attorney General and Minister of Justice through three constitutions since independence helps to explain the widely critical attitudes of members of both Bar and Bench toward his office. Even within his own Law Officers Department we heard that the “fusion” of the Attorney General with the Minister of Justice in 1978 was a nail in the coffin of multi-party democracy and an “attempt to muzzle the judicial wing”. It seems a widely held feeling that while the independence of the Chief Justice is constitutionally guaranteed, the 1978 change actually brought the judiciary under close political control, essentially by making it a ‘client’ of the Attorney General and Minister of Justice, reliant on his intercessions in Cabinet and Parliament to defend its interests.

The time is ripe for a constitutional amendment de-fusing the post of Attorney General from that of the Minister of Justice, restoring the pre-1978 principle of a strict delineation between decisions relating to prosecution and legal representation for the state and those relating to judicial administration. This is not to condemn the conduct of past or present Attorney Generals, but to recommend a change that will prevent potential political abuses of strictly non-political institutions, and will send a strong message of judicial independence.

Many we spoke with in Sierra Leone described the judiciary during the one-party era as highly politicised and corrupt. Frustration with this system of government fuelled the fires of rebellion from 1991 onwards. As Sierra Leone is turning the corner towards peace now, it must quickly tackle the reform of its institutions of governance. The Lomé Peace Agreement provided for a constitutional review, and now is the time to act on the recommendations first made ten years ago by the then National Constitutional Review Commission under Dr. Peter Tucker<sup>94</sup> which identified many of the problems discussed here and recommended “de-fusion”.

Naturally, it will take a far-sighted and courageous Attorney General to become the architect of this reform, which would emasculate some of his powers. To ensure the judiciary is seen to be fully and unquestionably independent, when its role in restoring peace and working with new institutions such as the Ombudsman, the Anti-Corruption Commission, and the Special Court are so much in the spotlight, is a vitally important objective. De-fusion would be a memorable legacy for any Attorney General to leave.

## Conclusion

There are a number of critical challenges facing the judiciary today, all of which relate to the overarching goal of restoring the rule of law to Sierra Leone. It is not a case, however, of simply returning to the pre-war system, since popular frustration with the judiciary and other organs of the state perceived as oppressive and unfair fuelled the civil war. Nothing can excuse the brutality visited on Sierra Leone’s population by the RUF and various other factions and armed groups since 1991. However, a direct link can be made between the targeted destruction of the courts and the police and the arbitrariness and abuses of those institutions during the pre-war one-party era.

One senior minister remarked that two things caused the war: diamonds in Sierra Leone’s territory and existence of the President of neighbouring Liberia, Charles Taylor (who has supported and benefited from RUF activity in the mining areas). This tends to oversimplify the causes of conflict and assigns blame far too conveniently. In fact, these factors merely played a role in perpetuating the conflict once it had already begun. Many of the causes are to be found *within* Sierra Leone’s society, in the way institutions of the state had been used for private gain, had been made to serve personal political interests, had failed to create opportunities for the young and had become instruments of oppression in the eyes of neglected Sierra Leoneans. It is for this reason that, while building on what exists - a constitutional framework, a long tradition of jurisprudence, a good system of legal education, and a remarkably resilient system of courts in Freetown - the judiciary must become a more independent, more sustainable, and more accessible institution than it has been in the past. It must also become more efficient at dispensing justice, as this report shows.

The most immediate challenge is the restoration of functioning courts in the provinces. As poor as the situation is in the Western Area, at least a skeleton of courts and judiciary exists that can be augmented and improved. Away from Freetown, the task is one of rebuilding from bottom up. Now that the government is re-establishing control in the Northern Province, there are at least 12 magistrates courts and three high courts to rebuild alone outside Freetown. Of the over 160 local courts, most will by now need new or renovated meeting structures. It is hoped that the Local Governance Reform Secretariat - a DFID sponsored organisation - will complement the infrastructure reforms needed for the local courts in Sierra Leone.

Extending the reach of the judiciary beyond Freetown must be an exercise closely tied to the simultaneous restoration of the rule of law in less tangible ways. As local courts are resurrected, by building court structures and appointing new court chairmen, the Law Officers Department must develop the resources to supervise all the local courts closely with customary law officers. The Interior Ministry must likewise take responsibility for the upkeep of the local courts (unless they are formally transferred to the judicial service) and pay salaries and expenses promptly, in order to curtail the egregious fining sanctions that we found to be widespread at this level. The Parliamentary Drafting Service, working with a resurrected Law Reform Commission, must finally tackle the huge challenge of codifying customary law, to make it consistent throughout the local courts and most essentially, to bring it into conformity with the Constitution.

The authority of the law cannot be restored by building new courts alone. The police and prisons must be equal recipients of any assistance. At the time of research, a clearly discriminatory form of justice prevailed even where magistrates' courts existed in the provinces, and the CDF militias were practically beyond their reach. The courts were extremely vulnerable to harassment and threat of violence from these armed groups, and the police were relatively impotent. British assistance to both the judiciary and the police in the provinces had been earmarked for years, but security concerns had postponed its use. There was a fear that concrete investments in buildings and vehicles would be too risky, yet plainly there has been no hope of restoring genuine security in these ostensibly peaceful areas without this help. Now that the conflict has ended it is time to greatly accelerate spending on this infrastructure.<sup>95</sup>

Ultimately the projection of judicial authority into the provinces will succeed or fail on the back of the personnel who return to staff the courts and other civic institutions. Already DFID, is supporting a programme to return Paramount Chiefs to their chiefdoms, which, putting the arbitrary and unaccountable manner of many chiefs in the past to the side, could greatly complement the power of local courts. Indeed, the building of homes and local governments offices for Paramount Chiefs has been ongoing, particularly in the relative peace prior to the official date of disarmament of January 18<sup>th</sup> 2002, such as Pujehun, Bo and Moyamba. There must simultaneously be a massive investment in the judiciary and their support staff, both in conditions of service and training. Only solid inducements - decent pay, accommodation and transport - for qualified barristers and judiciary in the provinces and among those displaced to Freetown will convince them to take positions on the Bench in the provinces. After ten years in abeyance, there are obviously now far too few qualified to staff a fully reconstituted provincial judiciary, and training new staff is therefore a major requirement.

A second important challenge facing the judiciary is to reverse traditional perceptions of corruption and to create a Bench that is impartial and respected. Encouraging foreign Commonwealth judges to serve on the Sierra Leone Bench, introducing exchanges and training programmes, and making the appeals process more accessible and faster could all improve standards and perceptions of justice. It is an established principle in the Commonwealth that maintaining the independence and impartiality of the judiciary is expensive - judges are paid more than their counterparts of similar tenure in other areas of civil service.<sup>96</sup> It is a pragmatic calculation that while any member of the legal community should be bound by professional oaths of conduct, only particularly good pay and conditions can ultimately deflect the considerable temptations that judges inevitably encounter when they hold the power of the law in their hands.

But Sierra Leone is the world's poorest country, and its budget is almost totally reliant on foreign assistance. Any noticeable improvement in conditions of service in the judiciary would necessarily be linked to a contribution from

abroad. While simply paying judges and magistrates more could arguably be the single most effective improvement to the delivery of impartial justice, finding a donor to fund payroll, rather than single-payment improvements, is virtually impossible. Donors do not sign up to open-ended commitments; this flies in the face of the prevailing orthodoxies of development assistance, which always envisage short-term injections of money and expertise to create self-sustaining programmes.

A payroll trust fund would overcome this dilemma. A relatively small initial investment by international donors could, if managed transparently and professionally, make a huge impact on the morale and effectiveness of the judiciary. The idea of a payroll trust fund originated within the judiciary, and it is strongly endorsed by both members of the judiciary and private legal practitioners. Further more the idea is supported by the Sierra Leone Bar Association, with the caveat that it would require responsible trusteeship to prevent the misuse of proceeds.

The notion of a fund to ensure the independence of the judiciary could expand from mere payrolling, to encompass assistance with building and repairs; provide vehicles, fuel and security; set up proper case management systems; and provide hardware<sup>97</sup> for the courts. Furthermore, it could be used to provide for training of court staff (whether clerks, administrators, magistrates and judges), set up checking procedures in order to avoid corruption, set up a code of conduct, and provide an opportunity for judicial officers at all levels to gain knowledge and experience by working with other Commonwealth judicial officers.

### Payroll Trust Fund

The idea of a payroll trust fund is simple. Its effective and transparent operation could be ensured by entrusting it to an independent board of trustees, with the help of an international financial institution. Its effect would be extremely transformative in Sierra Leone.

While a single, lump-sum grant of assistance funds could create the fund, Sierra Leone's total judicial payroll is small enough that the annual interest on a modest amount of fund capital would make a very sizeable impact on the remuneration of judges and magistrates. For the 34 judges and magistrates, including the Chief Justice, on payroll in Sierra Leone at the time of our research, the approximate total annual remuneration package, including all allowances, was US\$215,593.<sup>98</sup> A trust fund of US\$1m yielding income at 8.5 per cent annually would provide a 39 per cent boost to the annual payroll, while a fund of US\$2.5 million would provide a 100 per cent boost, effectively doubling salaries and providing for the essential expansion of the judiciary.<sup>99</sup>

The advantage of such a scheme lies in the fact that it requires just a single payment. It is logistically simple by donor programme standards, is self-sustaining and would see money go directly to those who need it without being diverted to "programme management". Moreover, even US\$2.5m is a very small amount of money in comparative terms: in September, 2000, over US\$90m was being spent in Sierra Leone on UN peace-keeping *each month*, and in August the United States had pledged US\$70m to train and equip new Nigerian peace-keepers for Sierra Leone over the coming six months. Freetown is crawling with hundreds of new white Toyota Landcruisers used by expatriate UN and development NGO staff; their market value is approximately US\$50,000-60,000 each, or almost three times the amount Sierra Leone's fifteen magistrates are receiving as a group in a year.

A third challenge is to bring Sierra Leone's judiciary into the contemporary legal Commonwealth through training, exchanges and law reporting. Members of the judiciary could not recall a single formal training or skills-upgrading exercise (apart from a DFID computer training workshop for judges) over at least the past two decades. There is nevertheless a keen desire among the judiciary and other legal personnel, such as police prosecutors and registry staff, to develop their skills through formal courses. The Commonwealth, and the Commonwealth Secretariat in particular, has a major role to play in this area because of the obvious legal commonalities among its member states and long experience in holding Commonwealth legal conferences, exchanges and training programmes.

The Secretariat should immediately assist in launching genuine law reporting in Sierra Leone, building on the tentative first steps of the Bar Association. The Commonwealth Magistrates and Judges Association is well placed



to facilitate training and conferences for the judiciary in Sierra Leone. The Commonwealth Lawyers Association could help the Bar Association to strengthen its role as an advocate for human rights standards in the Sierra Leone judiciary. Finally, the Commonwealth Fund for Technical Co-operation could be a source for more serious programme funding for judicial capacity building to augment the donor assistance.

While the Commonwealth Secretariat notably produced a “Commonwealth Action Plan for Sierra Leone” in mid-1999, laying out plans for technical assistance in police reform, municipal regeneration, election preparations, and civil service restructuring, few have been acted upon. Although the Commonwealth is a Moral Guarantor of the Lomé Peace Agreement in 1999, its actual involvement has been limited to representation in the quarterly Joint Implementation Committee meetings, which have clearly not gathered the kind of momentum required. The only evident presence now in Sierra Leone bearing the Commonwealth “brand” is the recent assistance in voter registration and election monitoring and the on-going Police Development Task Force (The Commonwealth Community Safety and Security Project), whose members drive vehicles bearing the Commonwealth Secretariat’s emblem. However, this programme is wholly funded by the British government through DFID.

Finally, the contribution of the proposed Special Court to the restoration of the rule of law in Sierra Leone will be badly misplaced if there is not an organic relationship between its operations and those of the formal judiciary. It is plainly obscene that while the Special Court will try at most 30 people with a staff of 189 and an annual budget of at least US\$15m, the total payroll of the entire Sierra Leone judiciary was approximately US\$215,000 at the date of research. On the basis of the report of the Secretary General, the three-year budget will be US\$58m. The Registrar alone will have 28 support staff, including trained and equipped stenographers. The Prosecutor’s office will consist of 20 investigators, 22 prosecutors and 26 support staff. To those working in Sierra Leone’s own judiciary, this operation will likely seem like an extraterrestrial visit, so disproportionate will be the conditions of work of its staff in comparison to its own. It would be easy for lavish, UN-standard provisions within the Special Court to generate considerable resentment among the legal community and the general population in Sierra Leone.

#### Stop Press:

In the Secretary-General’s Fourteenth Report<sup>100</sup> to the Security Council on the United Nations Mission to Sierra Leone, the Secretary General reconfirmed much of what is recommended in this report when he stated, “A particular challenge will be to address the long-standing problems of the judicial system in Sierra Leone. This will require a comprehensive and sustained effort on the part of the Government, with the support of the international community, towards the rebuilding of an impartial, transparent and independent judiciary. The Government has appointed chairmen for all local courts as well as justices of the peace, who would handle minor civil and criminal cases. However, only 5 of the 14 magistrate courts in the country are currently functioning, albeit with very limited capacity in terms of trained personnel and logistics. UNAMSIL, UNDP and the Government of the United Kingdom are now co-ordinating their efforts to facilitate the early extension of judicial coverage through the provision of logistical support and the immediate rehabilitation of key infrastructures.”

On the role of the international community towards Sierra Leone, the Secretary General recommended that international agencies, institutions and governments “stay the course and protect the major investments that have made possible the progress achieved.” However, the major onus of responsibility rests with the Sierra Leonean government which “must deliver the peace dividend to the people and address not only the consequences of the war, but also its root causes, including corruption, human rights abuses, highly centralised Government structures and neglect of the developmental needs of the population in the provinces.”

The stand the United Nations has taken broadly echoes our views on the path Sierra Leone must take if it is to realise its long-term goal of an active, functioning judiciary and sustainable peace in the region.



## Recommendations

The judiciary in Sierra Leone is in a crisis that only long-term and stable government support and reform-minded, diligent efforts on the part of the legal profession can solve. This immense task will require money, wise administration and, above all, time. It would be fruitless to lay out a shopping list of recommendations that attempted to address the many shortfalls and deficiencies identified by this report. Instead, we focus here on key action points – issues that demand urgent action and that once addressed will make a tangible, observable difference to the practitioners and consumers of justice.

### Government of Sierra Leone

- *Personnel and infrastructure*

Major investment in augmenting the current judiciary with new staff at all levels (including stenographers, registry staff, magistrates and judges) should be made a priority, to be implemented when it becomes financially workable.

- *“De-fusion”*

In the next constitutional review, called for in the Lomé Peace Agreement, the position of Attorney General and Minister of Justice should be defused, creating an Attorney General responsible for representing the interests of the state in prosecution and other interventions and for advising the Government in legal matters, and a separate Minister of Justice responsible for the well-being of the judicial machinery. The duties attached to each of these posts should be clearly stated in the Constitution. Furthermore, consideration should be given to the need for independence in prosecution decisions, which could be enhanced by transforming the position of Attorney General into a fully bureaucratic one, albeit with cabinet rank.

- *Supervision of local courts*

Emphasis should be placed on ensuring effective and regular supervision of the local courts by customary law officers from the Law Officers Department. These officers must have reliable transport and be trained in their duties of supervision. Due to the present difficulties of recruitment, conditions of service for officers serving in the provinces should be slightly better than those in Freetown.

- *Codification of customary law*

The Law Officers Department (Parliamentary Drafting Division) and a resurrected Law Review Commission should seriously tackle the task of codifying customary law and bringing it into conformity with the Constitution and international treaty commitments. This is a long-term task, but should not be allowed to languish as in the past.

- *Subsidies for local courts*

Financial support must be restored to the local courts, to combat the practice of predatory fining and to ensure that the local court system operates as efficiently as possible in the provinces.

- *Law reporting*

The Judiciary (under the leadership of the Chief Justice and with the financial support of the Government of Sierra Leone) should return to the task of law reporting in a serious manner, engaging the help of international donors and institutions and the Sierra Leone Bar Association where necessary.

- *Transparency and anti-corruption measures*

Priority should be given to ensure adequate procedures are in place to guarantee transparent appointments and vetting of those in positions of power, including judicial and quasi-judicial posts such as the Ombudsman etc.

- *Law review*

The Law Review Commission once constituted, must be given the facilities and resources necessary to undertake the very urgent task of updating the laws of Sierra Leone, including the laws of criminal and civil procedure and commercial law. This is an area in which foreign assistance – from the Commonwealth Secretariat and the World Bank – could be easily provided.

- *Appeals-process streamlining*

To make the appeals process more accessible to the average citizen, appeals should be made possible from the local courts directly to the district superior courts. Furthermore, as the judicial machinery is restored and rebuilt, special consideration must be made for any backlog of appeals, and extraordinary measures must be taken to clear them.

- *Human Rights Commission*

In consultation with civil society, work should begin toward the early setting up of an independent and effective Human Rights Commission, or amplifying the current National Commission for Democracy and Human Rights as a means of furthering human rights protection and promoting a culture of human rights across the country.

### International Donor Agencies

- *Payroll trust fund*

Donors should consider the creation of an interest-bearing trust fund, designed to improve conditions of service on the Bench. A minimum sum of US\$2.5 million would create an annual income roughly doubling the current judicial payroll indefinitely.

- *Training and exchanges*

Judicial assistance should include programmes that provide judges and magistrates with first-hand exposure to practice in other Commonwealth jurisdictions, preferably through exchanges, secondments and international judicial colloquia. The introduction of more (funded) foreign Commonwealth judges and magistrates into the Sierra Leone judiciary would also help spread contemporary practice in the country. Emphasis and particular attention must be paid to the lower and provincial judiciary who often do not get first attention but deal with the largest body of cases.

- *Infrastructural improvements*

The United Kingdom government (working through DFID) is to be commended for its initiatives under the Law Development Programme to improve judicial infrastructure as well as for the revisions and integrated approach. Early and regular disbursement of earmarked funds will ensure steady progress and additional assistance is urgently required to rebuild, furnish and equip a fully functioning court system.

- *Stenographers and registry modernisation*

It would require relatively little investment to modernise Sierra Leone's registries and train a cadre of stenographers or introduce modern computerised records and case management. As our research has shown, this would make an immediate and very measurable impact on the functioning of the judiciary.

- *Legal aid programme*

There is currently no comprehensive legal aid in Sierra Leone, and this directly compromises the average citizen's access to justice. Legal aid programmes should ultimately be funded by the Government of Sierra Leone, but seed money and funding for civil society initiatives would create much needed momentum. These could include disseminating information on legal rights by radio as well as providing appropriate civil society organisations with the means to provide free legal consultations. As an example of such an initiative, there is the newly established pro bono legal services centre called the Lawyers' Centre For Legal Assistance.

## International NGOs

- *Engage with local institutions*

Non-governmental organisations in Sierra Leone working in the areas of governance and civil and political rights need support from international partners in order to participate fully in the process of creating new institutions, such as the TRC, the HRC and the Special Court.

- *Training and support for the judiciary and lawyers*

International NGOs with specific experience in improving judicial standards and international law should consider dialogue with in-country groups to provide legal practitioners and the judiciary in Sierra Leone with human rights training courses, including a focus on international human rights law.

- *Trial observations*

High profile and political cases will most certainly come before the formal courts and the Special Court as part of the peace process, and international human rights organisations could conduct systematic trial observations with in-country partner organisations.

## United Nations

- *Integrate court protection and support into peace-keeping operations*

The courts and court personnel in the provinces are vulnerable to harassment and attack, and UNAMSIL troops should therefore include court protection in their peacekeeping plans.

- *Where possible, aid in the construction of judicial infrastructure*

If peacekeepers have engineering/reconstruction capacities in the provinces, the restoration of courts and other judicial infrastructure, as well as police buildings, should be a priority task. Funding for the Special Court should also provide for capacity building in the formal judiciary.

## Commonwealth

- *Implement 'Action Plan'*

The Commonwealth Action Plan for Sierra Leone should be revived, amended to present needs and vigorously implemented, both in terms of its concrete commitments and its spirit.

- *Commonwealth Technical Assistance Funding*

The Commonwealth should take the lead in the creation of a salary trust fund by providing seed money and leadership. Similarly the Commonwealth in partnership with the UN should be in the forefront of assisting in finding resources and expertise toward setting up of a human rights commission.

- *Secretariat-led training*

Using resources within the Commonwealth Secretariat and in collaboration with civil society groups, the Secretariat should implement long-term training and exchange programmes for Sierra Leonean benchers and programmes to introduce more expatriate Commonwealth judges to the Sierra Leone judiciary.

- *Commonwealth Consolidated Appeal*

A consolidated appeal fund for judicial reconstruction in Sierra Leone should be presented to Commonwealth member states, possibly at the next Commonwealth Law Ministers Conference.

- *Law reporting and review initiatives*

With very modest financial assistance, The Commonwealth Secretariat could make a very important impact in this vital area by providing expert help.

## Commonwealth Associations

- Sierra Leone has a vibrant civil society and Bar and Bench that are eager for dialogue and for forging partnerships and programs with Commonwealth Associations-these joint initiatives should essentially meet the needs articulated in this report. There is scope for the law related Commonwealth Associations<sup>101</sup> to act in concert or separately and for the CHRI itself to provide assistance and act in solidarity with in-country groups.

There is particular scope for active programmes for judicial colloquia, exposure opportunities and expert exchanges, sharing, contributing to regular law reporting and advocating together for various human rights issues and contributing in cash and kind to law schools, law courts etc.

## Note on Research and Individuals Interviewed

This report serves to give an overall impression of the state of the judiciary and its needs. Research for this was carried out over a period of four weeks spent in Sierra Leone, in September 2000. While secondary data has been brought up to date, primary data stems from the date of research. It is probably fair to say that there have been some general but slow improvements, nevertheless conditions still remain difficult and tenuous. Significant change requires greater momentum and impetus fuelled by sustained financial and personnel commitment from the international community.

CHRI's visit was facilitated by the Sierra Leone Bar Association and the Ministry of Foreign Affairs and International Co-operation and we record our deep appreciation of the same. Interviews were sought in Freetown, Bo and Kenema, all of which were peaceful at the time. Travel in the rural areas of the Eastern and Southern Provinces to assess judicial infrastructure was too logistically difficult and potentially dangerous to contemplate within the timeframe available, and travel in the rebel-held territory of the Northern Province was impossible.

Inevitably, the short time spent gathering information in an insecure environment and the very real obstacles to securing reliable statistical data, travelling widely, and accessing members of the judiciary outside the capital, Freetown, will be reflected in the nature of the findings. Physical scrutiny of the functioning of the local courts in rural areas and systematic trial observations was not possible, but would have been illuminating. Nevertheless, a great many interviews were conducted with legal practitioners and members of the judiciary, and their experience, insights and frustrations form the basis of what is a useful and wide-ranging report that the authors hope will influence the policy agendas of government and donors alike.

The main authors and principle researchers for this report are Niobe Thompson, a program officer at CHRI and a Sierra Leonean lawyer provided by the Sierra Leone Bar Association, Mohamed Pa-Momo Fofanah. Without their diligence and commitment the report would not have been possible. For later verification and additional information our thanks goes to Joseph Rahall, Honor Flannigan of the British Council, Sierra Leone, Mauro Miedico from UNAMSIL and Keith MacKiggan from DFID, London and in particular to Abdul Tejan-Cole and Alison Smith of No Peace without Justice, in Sierra Leone - all of whom answered our many sporadic questions with great promptness and courtesy.

Additional research and editorial assistance for the report has, at different times, been provided by Rachel Cooper, Philip Dufty and Charlemagne Gomez at CHRI. Final editorial responsibility rests with the Director Maja Daruwala.

CHRI warmly thanks all our interviewees who gave their time freely and answered questions openly in the hope that a greater awareness of the fragile state of the judiciary might be achieved internationally. These include in particular:

## *Superior Courts*

- Desmond Luke, Chief Justice
- Justice J. Smart, Supreme Court

- Justice E.T. Maitland, Court of Appeal
- Justice J.E. Massalley, High Court
- Justice E.K. Cowan, High Court

#### *Lower Courts*

- Patrick Hamilton, Principal Magistrate
- C.G. Cole, Magistrate
- Magistrate Tunis
- A.S. Fofanah, Magistrate
- Magistrate Margai, (Kenema)
- Chairman, Local court, Kenema

#### *Office of the Attorney General/ Law Officers Department*

- Solomon E. Berewa, Attorney General and Minister of Justice
- Priscilla Schwartz, State Counsel & Personal Assistant to the Attorney General
- State Counsel Kabba
- Jacob Aryee, Parliamentary Draftsman
- S.A. Bah, State Counsel
- M.M. Sesay, State Counsel
- M.T. Ngobeh, Principal State Counsel, Acting Customary Law Officer (Southern Province & Eastern Province)

#### *Sierra Leone Police*

- Keith Biddle, Inspector General of Police
- Peter Hughes & Peter Kinson, Commonwealth Police Development Task Force
- C. Bangura, Director of Training, SLP
- J. Conteh, Dep. Commandant, Police Training School
- J.P. Chris-Charley, Police Commissioner, Southern Province (Bo)
- A. Karrow-Kamara, OIC, Criminal Investigation Dept., Southern Province (Bo)
- J.L. Siaffa, Police Commissioner, Eastern Province (Kenema)
- Inspector M. Jobe, police prosecutor
- Officers in charge of central court lock-up

#### *Private Practitioners*

- Emmanuel E. C. Shears-Moses, President, Sierra Leone Bar Association
- Abdul Tejan-Cole, Secretary, SLBA
- Frank Kargbo, Freetown
- Terrence Terry, Freetown
- Mariana Kalleh, Freetown
- David Quee, Freetown
- Roland Wright, Freetown
- Berthan MaCauley Jnr., Freetown
- Arrow Bockarie, Bo
- A.M. Bangura, Kenema
- Alex Johnson, Accra, Ghana
- Sam Okudzeto, Accra, Ghana

## Others

- Registrar Mrs. Showers,
- The Administrator General
- Mr Jenkins, Office of the Undersheriff
- Francis Gabbidon, Ombudsman
- Prof. F.C. Tuboku-Metzger, Director, Sierra Leone Law School
- Raphael Abiem, Rule of Law Officer, UNAMSIL
- James Rodehaver, Human Rights Officer, UNAMSIL
- Richard Bennett, Acting Chief, Human Rights Unit, UNAMSIL

## Outside West Africa

- Jasmine Sandoh, Sierra Leonean barrister, London
- Roy Rodriguez, Development Co-operation, Commonwealth Secretariat, London
- Prof. Ade Adefuye, Political Affairs, Commonwealth Secretariat, London
- Sandra Pepera, formerly Political Affairs, Commonwealth Secretariat
- Dr. Karen Brewer, Secretary General, Commonwealth Magistrates and Judges Association
- George Okello, Executive Secretary, Commonwealth Lawyers Association

In the course of simultaneous research into the peace process in Sierra Leone, many other interviews were conducted with individuals in political and diplomatic positions, civil society organisations, private industry (and the diamond industry), and United Nations agencies, in Sierra Leone and abroad. Much of the information that surfaced in these meetings was applied as background and context to this assessment of the judiciary.

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<sup>1</sup> Taylor's appointed replacement for Sankoh - General Issy Sesay - is not reported to hold anything approaching Sankoh's following among rebel rank and file. His actual command seems effective only in the Makeni region, while rebel units to the east and north still see Sankoh as their true leader.

<sup>2</sup> The Government has announced that the army will be renamed the Republic of Sierra Leone Armed Forces, with effect from 1 April.

<sup>3</sup> Four, including the Chief Justice, served in the Supreme Court, three in the Court of Appeal and eleven in the High Court.

<sup>4</sup> This is the general revenue fund from which government funding for programmes is drawn.

<sup>5</sup> A survey of National Perceptions and Attitudes Towards Corruption in Sierra Leone, 2000 by Dr. J. Lappia & Associates found the judiciary was perceived as amongst the top three most corrupt institutions of state.

<sup>6</sup> More serious civil matters are referred directly to the Highcourt after assessment.

<sup>7</sup> Appeals used to be heard by the Group Local Appeals Court before being heard on further appeal by the District Appeal Court, but this system has been abandoned. Research showed that the chieftdom and local courts officials want the Group Local Appeal Courts re-instituted so that locals can be made to sit and hear appeals from the local courts using a broader panel, before such matters are referred/appealed to higher courts using non-customary law governed by general law. See Section 4 of this report.

<sup>8</sup> It is suggested here that the appellate system be shortened by cutting out the District Appeal Courts, so that appeals from the local courts can be heard directly at the level of the High Court. (see Recommendations).

<sup>9</sup> Chapter XII Article 170(3).

<sup>10</sup> In practice, there are many areas in which the two legal systems are significantly at odds. Furthermore, customary law is different depending on the locality and local traditions, and is nowhere set down in a codified manner. The codification of customary law would make the work of the local courts easier and readily accessible (see Recommendations).

<sup>11</sup> A Court of Record is: "A court that is required to keep a record of its proceedings, and that may fine or imprison. Such records import verity and cannot be collaterally impeached." Taken from: H.C.Black, Blacks Law Dictionary (Sixth edition), St Paul, Minn: West Group, 1990.'

<sup>12</sup> 1991 Constitution, Chapter VII Part V Article 135(3). Currently, except for one Superior Court Judge who is serving on contract, no non-national is serving on the Sierra Leone Bench in either the superior or inferior courts.

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<sup>13</sup> Because of the shortage of qualified persons to serve at the lower Bench, the period of post-training experience has recently been reduced to only a year.

<sup>14</sup> Since the Attorney General's functions as Minister of Justice are not clearly defined in the Constitution, and because there exists a likelihood that judicial independence could be eroded because of the dual role the Attorney General and Minister of Justice plays, it is recommended that the two offices be de-fused and held by separate persons. See Section 7 for a full discussion of this complex issue.

<sup>15</sup>The Department For International Development[DFID] new activities under its revised Law Development Project is slated to re-activate the Rules of Court Committee, add new members, ensure that rules of courts are drawn up, published and disseminated to practitioners.

<sup>16</sup> Bo is the Headquarter Town for the Southern Province, the area outside Freetown least affected by the rebels over the past decade, and Kenema is the Headquarter Town for the Eastern Province, the area first invaded by the RUF in 1991 and which still hosts large numbers of former RUF combatants in its diamond areas.

<sup>17</sup> During the period of research, the magistrate in Kenema went into hiding and suspended his court after he was threatened and the Eastern Province Commissioner of Police was violently attacked by the local civil defence force militia.

<sup>18</sup> UNICEF Sierra Leone situation report, 11 December 2001.

<sup>19</sup>Thirteenth report of the Secretary-General on the United Nations Mission in Sierra Leone S/2002/267 14 March 2002 para 16

<sup>20</sup>On 4<sup>th</sup> April 2002, a partially refurbished law courts building was opened with a library replenished with books specially requested by the judiciary. Court archives are housed in a redesigned basement and training on maintenance of records is underway.

<sup>21</sup> The only decent courtrooms we saw are those in the main court building that were renovated about 2 years earlier to hear the treason trial cases involving AFRC/RUF junta members. The room housing the Court of Appeal at the Law Officers' building has also been recently painted.

<sup>22</sup>The lock up facilities for detainees has since been provided with a working toilet and running water.

<sup>23</sup> Since the primary research, DFID has provided many judges with second hand Mercedes.

<sup>24</sup> In many parts of eastern Freetown, over half of the structures have been destroyed, and it was very often members of the legal profession that were targeted for retribution by the RUF and AFRC rebels in 1999.

<sup>25</sup> One Supreme Court Judge insisted that judges be provided with at least 3 computers for the time being to help in the speedy preparation of judgements and storage of record. Later, however, he showed us a fax and laptop owned and used by him for his judicial and related matters.

<sup>26</sup> While interviewing one High Court judge, he drew out of his briefcase a new fountain pen bought for note taking. He thought that by using a good re-fillable pen rather than disposable ballpoints, he could save both money and his writing hand. It seemed to be an object of fairly high importance to him.

<sup>27</sup> One barrister we encountered uses his Saturdays to search through the case archives held in the basement of the central Freetown courts for precedents.

<sup>28</sup> The SLBA has also condemned the arbitrary manner in which criminal matters with ostensible political influence have been charged to court and hastily withdrawn. This practice is viewed by the SLBA as "an abuse of the criminal justice system, the due process of law and a violation of the fundamental rights of those concerned particularly as trials are preceded by long periods of detention and in some cases a denial of bail by the courts...." See Press Release by the SLBA, 8/07/99.

<sup>29</sup> More recently, DFID's Law Development Programme has contracted certain private and public legal practitioners to work on law reform in selected areas of the law.

<sup>30</sup> December 2001, Vol.1, Issue 1.

<sup>31</sup> "Statement on the Supplementary Budget for the Second Half of the Financial Year 2000," Government of Sierra Leone, 28 July, 2000.

<sup>32</sup> World Bank, World Development Report 1999, Oxford University Press: Oxford & New York (1999).

<sup>33</sup>Interim Poverty Reduction Strategy Paper, June 2001.

[http://poverty.worldbank.org/files/Sierra\\_Leone\\_IPRSP.pdf](http://poverty.worldbank.org/files/Sierra_Leone_IPRSP.pdf)

<sup>34</sup> This programme was in fact finally launched on 3 October, 2000.

<sup>35</sup> IHRG opened a new office in Sierra Leone in May 2001.

<sup>36</sup> The International Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women, to which Sierra Leone is a party, prohibit this practice.



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<sup>37</sup> “Procedure” at the Court of Appeal and Supreme Court levels is largely the domain of the Court of Appeal Rules (1985) and the Supreme Court Rules (1982) respectively; both of which form part of the fundamental legal rules on court procedure in Sierra Leone.

<sup>38</sup> Sierra Leone adopted this convention on April 25, 2001.

<sup>39</sup> International Covenant on Civil and Political Rights, UN General Assembly resolution 2200A (XXI), 16 December, 1966, entered into force 23 March, 1976 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly resolution 39/46, 10 December 10, 1984, entered into force 26 June, 1987; African Charter on Human and People’s Rights, OAU adopted 27 June, 1981, entered into force 21 October, 1986.

<sup>40</sup> See CHRI’s Police Reform programme: [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

<sup>41</sup> Concluding Observations of the Human Rights Committee, Georgia, UN Doc. CCPR/C/79 Add. 75, 1 April, 1997, para. 27 [Hereafter Concluding Observations of the HRC].

<sup>42</sup> LCHR (2000), p. 5.

<sup>43</sup> The release is without prejudice to the bringing of further charges and may either be conditional or unconditional.

<sup>44</sup> Section 79(3) states that in minor offences (i.e. offences other than murder, treason or felonies) the Court “shall” admit the accused to bail unless it sees good reason to the contrary. Section 230 provides that the length of a sentence shall be reduced by the amount of pre-conviction time spent in prison.

<sup>45</sup> Section 230 Criminal Procedure Act (1965) provides that the length of a sentence should be reduced by the amount of pre-conviction time spent in prison (during committal or remand). For a case such as this, the question is whether the maximum penalty which could be imposed for the offence would be as great as the length of time spent in detention. As regards the bail conditions it should be noted that a court may dispense with a surety if this will not defeat the ends of justice (section 79(7)).

<sup>46</sup> The authors were not able to visit the Central Prison in Freetown, which houses pre-trial prisoners, during the research mission. However, an interview with the Chair of the Commission of Enquiry into the Prisons was secured, and two visits were made to the holding facilities for pre-trial prisoners in the Freetown Central Court Building.

<sup>47</sup> See Human Rights Committee, General Comment No. 9/16, 27 July, 1982.

<sup>48</sup> At the time of research a single vehicle was used to ferry the Superior Court judges to and from the courts in Freetown, and these judges therefore had little control over their own schedules, especially in the afternoons when they research and prepare judgements and when the car is at the same time moving judges home in batches (the situation for Magistrates has been outlined in Section 2.2). A Superior Court judge spends the morning and early afternoon hearing cases and taking transcript-style notes. Chambers, to which benchers would normally retire, were not air-conditioned and were uniformly uncomfortable and poorly furnished. Consequently, judges preferred to return to their homes as early as possible in the day, to review cases and write judgements in greater comfort. In Freetown, the municipal power supply came on less than 50 per cent of the time, and because judges cannot afford generators and petrol they are often unable to work at home. At the time, this problem did not affect the main court building in Freetown since a large generator donated by the American Embassy to the Judiciary had been installed.

<sup>49</sup> Basic Principles on the Independence of the Judiciary, UN General Assembly resolution 40/32, 29 November, 1985 and resolution 40/146, 13 December, 1985.

<sup>50</sup> ICCPR, Art. 14(3), European Convention, Art. 6(3), American Convention, Art. 8(2), African Commission Resolution, Para. 2(E)(4), and ICC Statute, Art. 67(1)(f).

<sup>51</sup> Indeed, the HRC has held that any person charged with a crime punishable by death must have counsel assigned. On the other hand, someone accused of speeding would not necessarily be entitled to state-appointed counsel. (UN Doc. CCPR/C/57/D/571/1994, Para. 9.2.).

<sup>52</sup> This does not mean that the accused’s right to self-defence is not guaranteed and practised, but since the vast majority of such accused persons are laymen in the law there is little chance for them to secure that right in every case.

<sup>53</sup> Manfred Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary, N.P. Engel, Arlington (1993), p. 244.

<sup>54</sup> See Section 120 (16) of the 1991 Constitution. Notably, in the contemporary Nigerian situation, it was held in the case of *Ifezue-v-Mbadugha and Another* (1985), Constitutional and Administrative Law Reports: Law Reports of the Commonwealth, pg 1141, that section 258 (1) of the Constitution of the Federal Republic of Nigeria (1979) requiring every court to deliver its decision in writing not later than 3 months after conclusion of evidence and final addresses had to be seen as ‘not merely directory, but mandatory in nature’. This cures the mischief of denying justice evidenced in delays in court proceedings.

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<sup>55</sup> Because District Appeals Courts have not operated in the provinces since the beginning of the conflict, in practice, appeals from local courts go straight to provincial magistrates' courts.

<sup>56</sup> In Sierra Leone, the Children and Young Person's Act (Cap 44) defines a child as "a person under the age of 14" and a young person as "between 14 and 17 years."

<sup>57</sup> The Lomé Agreement 1999 states, "the children of Sierra Leone, especially those affected by armed conflict, in view of their vulnerability, are entitled to special care and the protection of their inherent rights to life, survival, and development in accordance with the provisions of the Convention on the Rights of the Child."

<sup>58</sup> "The Challenges to the Administration of Juvenile Justice in Sierra Leone," by Mohamed Pa-Momo Fofanah, Chambers of the Chief Justice, Sierra Leone 31/03/2000, p. 3, unpublished.

<sup>59</sup> *Ibid.*, p. 3.

<sup>60</sup> Traditional leaders of the estimated 160 chiefdoms in Sierra Leone are supported by the state with special privileges and pay since the British colonial era. Paramount Chiefs are the local civil authority, whereas Local Court Chairmen are the highest Local Court authorities; in practice, the chiefs have usually held considerable sway over the courts.

<sup>61</sup> See RUF/SL 1995, "Footpaths to Democracy, toward a New Sierra Leone," no stated place of publication, Revolutionary United Front of Sierra Leone, with the help of International Alert, London; Also, Paul Richards, Fighting for the Rain Forest: War, Youth & Resources in Sierra Leone, London: James Currey (1999).

<sup>62</sup> Two latent facts provide useful background to this incident: the kamajors, along with government soldiers and the RUF, have used cannabis - locally termed "diamba" - as a "moral booster" for front-line troops since the war began; and the Police Commissioner involved was none other than Alex Stevens, son of the late President Siakka Stevens, architect of the one-party state under 22 years of APC rule. The kamajors are politically aligned with the southern-based Sierra Leone People's Party, whereas Stevens' regime was based on the support of the northern-aligned APC. The Sierra Leone Police were a highly politicised APC machine under Stevens, and the kamajors still despise and distrust the police for this reason - understandably so, if the son of President Stevens was running the police in the Eastern Province even in 2000.

<sup>63</sup> Through summer 2000, a shift of power seems to have taken place within the CDF movement, from the formal leadership, including the District Administrators, to those involved in initiating men and boys into the kamajor society - namely the priests. There has reportedly been little co-ordination between chiefdom authorities and CDF commanders and the priests, led by chief CDF initiator, High Priest Kondowa. Even Chief Hinga Norman, the recognised head of the CDF movement, stated, perhaps ingenuously, that the initiators hold the true power within the CDF. See Regional Reconciliation Committee Southern Province, "Report on Unacceptable Behaviour of CDF in the Southern Region," August 2000, open letter to the Government of Sierra Leone.

<sup>64</sup> UN Security Council Resolution 1270, 22<sup>nd</sup> October 1999.

<sup>65</sup> UNAMSIL's Civilian Police Commissioner Joseph Dankwa in a press statement on 13<sup>th</sup> February, 2002.

<sup>66</sup> UNAMSIL press release 13 February 2002.

<sup>67</sup> Thirteenth report of the Secretary-General on the United Nation Mission in Sierra Leone, 14 March 2002.

<sup>68</sup> For the report of the Planning Mission on the Establishment of the Special Court for Sierra Leone - see United Nations S/2002/246 8 March 2002.

<sup>69</sup> [www.sierra-leone.org/specialcourtagreement.html](http://www.sierra-leone.org/specialcourtagreement.html).

<sup>70</sup> Projected completion by end May 2002.

<sup>71</sup> For detail on the scope, mandate and structure of the proposed Special Court, see, "Report of the Secretary-General on the establishment of a Special Court for Sierra Leone," United Nations S/2000/915.

<sup>72</sup> Whilst not initially agreeing with the UN's position of including those aged between 15 and 18, the Government of Sierra Leone later accepted that juveniles of this age who were not coerced into committing crimes were old enough to understand the evil of their actions, and must be held accountable.

<sup>73</sup> Eleventh report of the Secretary-General on the United Nations Mission in Sierra Leone, 7<sup>th</sup> September 2001.

<sup>74</sup> Report on the Planning Mission on the Establishment of the Special Court for Sierra Leone, 8 March 2002 [S/2002/246].

<sup>75</sup> Robin Vincent of the United Kingdom has been chosen as Registrar.

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<sup>76</sup> A senior attorney with the United States Department of Defence, David Crane, has been named as prosecutor.

<sup>77</sup> The question of staffing of the Court and who will provide those staff is not actually dealt with in the Statute or Agreement. While the draft budget being circulated by the UN is based on the premise that staff will be recruited according to UN guidelines and paid according to UN salaries, there has been no agreement on this issue. However, the “source” for the funding for salaries will not be a UN source *per se*, as that implies assessed contributions: rather, it will probably be funded through voluntary contributions, which may include the “in kind” contribution of personnel from some member States.

<sup>78</sup> UN S/2002/246.

<sup>79</sup> UN S/2002/246.

<sup>80</sup> It was stated that having met with many of the Sierra Leonean members of the legal profession, the Planning Mission is convinced that, while not experienced in the relevant fields of international criminal law, with the necessary training they could render an important contribution to the work and success of the Special Court. S/2002/246.

<sup>81</sup> Letter dated 10<sup>th</sup> December 2000 to the UN from the Sierra Leone Bar Association, the Campaign for Good Governance and the Sierra Leone Association of Journalists.

<sup>82</sup> “Moments of Truth in Sierra Leone: Contextualising the Truth and Reconciliation Commission,” ARTICLE 19 & Forum of Conscience, August 2000, p. 10.

<sup>83</sup> *Ibid.*, p. 12.

<sup>84</sup> S/2002/246 Annex.

<sup>85</sup> Many of these issues were addressed in detail by a major conference in February 2001, entitled *Accountability Mechanisms for Violations of International Humanitarian Law in Sierra Leone*. The conference discussed both the Special Court and the TRC in terms of: their processes and penalties; their outreach and transparency; their documentation and protective measures; the staffing, the appointment of judges and commissioners, and financing; and the role of paramount chiefs and traditional justice. It produced a series of recommendations which can be found at: <http://www.sierra-leone.org/npwj0200.html>.

<sup>86</sup> Manifesto 99, a Freetown-based NGO, is trying to consult with communities in all parts of Sierra Leone on traditional methods of reconciliation, in order to provide the TRC with the means to adapt to local needs and become a grass-roots initiative.

<sup>87</sup> *Protectors or Pretenders? Government Human Rights Commissions In Africa*, - Human Rights Watch - Binaifer Nowrojee.

<sup>88</sup> The Anti-Corruption Commission, although created by an Act of Parliament in 2000, was not operational in any way at the time of research.

<sup>89</sup> Mohamed Pa-Momo Fofanah, “Food for Thought for the Proposed Constitutional Review Committee: Should the Attorney General Continue to Function as Minister of Justice?” Chambers of the Chief Justice, Supreme Court of Sierra Leone (1999), p. 9, unpublished.

<sup>90</sup> The Chief Justice’s office routinely receives letters from the Sierra Leone public addressed to the “Chief Justice, c/o Law Officers Department”.

<sup>91</sup> Also, a petition by chiefs and elders of the Bo and Pujehun Judicial Districts complaining about the conduct of a certain magistrate, was reportedly addressed to the President and copied to the Attorney General and Minister of Justice, with no mention made of the Chief Justice (see Standard Times Newspaper, 30/10/2000, Monday edition, vol. 56, no.33 pg. 1).

<sup>92</sup> Sierra Leone Bar Association press release, 8 July, 1999.

<sup>93</sup> I.e., Association with and responsibility for all policy decisions made by the government.

<sup>94</sup> See the pre-White Paper Report of the National Constitutional Review Commission (March 1991), pg. 26.

<sup>95</sup> A provincial police commissioner feared that the significant sums allocated by the British to rebuild the SLP would largely disappear into consultancy budgets and payroll for foreign staff, rather than fund concrete improvements in buildings, communications equipment, vehicles and training programmes.

<sup>96</sup> Commonwealth Secretariat, LCAD.

<sup>97</sup> Such as computers or communication equipment

<sup>98</sup> This figure is derived from exact payroll data for the High Court, Court of Appeal and Supreme Court supplied by their respective registries, and from approximate salaries for magistrates as reported by two Ordinary Magistrates, two Principal Magistrates and the Master and Registrar.

<sup>99</sup> \$1m yielding annual interest of 8.5 per cent produces \$85,000, while \$2.5 produces \$215,500; these figures are compared with total annual payroll of \$215,593.

<sup>100</sup> 19 June, 2002.

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<sup>101</sup> Such as the Commonwealth Journalists Association, Commonwealth Legal Education Association and the Commonwealth Lawyers Association.