

1 Introduction

OVERVIEW

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

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

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

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

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

AIMS AND OBJECTIVES OF THE REVIEW

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

The specific objectives of the review were as follows:

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

METHODOLOGY

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

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

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

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

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

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

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

THE SIERRA LEONE LEGAL SYSTEM

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

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

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

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

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

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

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

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

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

HUMAN RIGHTS AND THE CRIMINAL JUSTICE SYSTEM

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

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

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

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

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

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

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

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