

## Barriers to Justice in Sierra Leone

by Pamela Dale\*

### Introduction: Justice in Sierra Leone

#### What is J4P?

*Justice for the Poor (J4P) is a global research and development program aimed at informing, designing and supporting pro-poor approaches to justice reform. It is an approach to justice reform which:*

- *Sees justice from the perspective of the poor/marginalized*
- *Is grounded in social and cultural contexts*
- *Recognizes the importance of demand in building equitable justice systems*
- *Understands justice as a cross-sectoral issue*

Sierra Leone operates under a bifurcated legal structure which incorporates both elements of traditional or customary law and a formal system based on English common law. Currently, 85% of Sierra Leoneans fall under the jurisdiction of customary law, and traditional systems remain the primary avenue for redress of violations of rights or law.<sup>1</sup> Yet, for many outside actors, there is a lack of clarity as to how and why Sierra Leoneans decide where to pursue justice. There is even less comprehension of the workings of the various informal systems used by the majority of citizens.

Regardless of where Sierra Leoneans pursue justice, literature reviews and recent studies have found barriers to access and problems with equity,

### Barriers to Justice

Sierra Leoneans attempting to access justice through the country's complex legal system are presented with a number of barriers. These obstacles can be broadly broken down into those that are the results of the system's costs (including costs of services, fines, time, and transportation) or structure (court infrastructure, skills of officials, and lack of ownership), or, in the case of the formal justice system, its incompatibility with social norms.

#### Cost-Related Barriers

One of the foremost barriers preventing access to Sierra Leone's justice systems, both formal and informal, is cost. With a GDP per head of \$548 in 2005<sup>1</sup>, Sierra Leone is one of the world's poorest nations. This extreme poverty magnifies

transparency and consistency that may serve to further marginalize underserved populations<sup>2</sup>. Typical justice reform efforts, which work primarily with formal justice systems, may put in place reforms that are not relevant to a wide swath of the population. A comprehensive approach to justice reform requires understanding of and engagement with customary systems. The World Bank's *Justice for the Poor* program is an attempt to contribute to this understanding through its research and development programs in Sierra Leone.

\*Adapted from Dale, P. (2006) *Access to Justice in Sierra Leone: A Review of the Literature*. World Bank

<sup>1</sup> Kane, M. et al. (2004). *Sierra Leone: Legal and judicial sector assessment*. World Bank.

<sup>2</sup> The World Bank Group. (2006). *Govment bizness na ni bizness: Building demand for good governance and enhancing conditions for social accountability in Sierra Leone*.

the effects of conflicts that are small by western standards, and also amplifies the costs of recovery. The costs of accessing justice in Sierra Leone come in a variety of forms, including direct costs of services, fines, time, and transportation.

**Direct Costs.** In Sierra Leone's formal courts, where an inadequate legal aid structure makes contesting parties responsible for court fees, legal representation, and other service fees, costs are prohibitively high for all but the wealthiest of citizens<sup>2</sup>. Yet even in local courts, which are designed to be "closer to the people", interviews suggest that costs are often too high to encourage use<sup>3</sup>.

## Barriers to Justice, Continued



*“Justice goes to the highest bidder. In one survey, 80% of Sierra Leoneans believed that there were two interpretations of law – one for the rich, and one for the poor.”*

**Fines.** While Sierra Leonean law imposes strict limits on fines charged in customary law cases<sup>4</sup>, enforcement is exceedingly difficult given the lack of central control over customary courts. Because of the irregular and inadequate funding provided to Chiefdoms by the government, court fees make up a substantial portion of municipal budgets<sup>5</sup>. Like customary law itself, the rules for fees and fines in customary courts are unwritten (though the Local Courts Act provides some guidance), and many Chiefs were found to distribute arbitrary fines, often in a discriminatory manner<sup>6</sup>.

**Time.** Both the formal and (to a lesser extent) the informal legal systems are thought to raise prohibitively long delays in the resolution of cases. Especially in rural areas, where the majority of the population is engaged in agricultural activities, frequent absences from the land bring significant opportunity costs.

**Transportation.** Transportation presents a formidable obstacle to accessing the formal courts, particularly for citizens in remote areas<sup>7</sup>. The limited number of functioning magistrates courts are based in district headquarters, which are distant from many villages. With minimal access to adequate roads or vehicles, many inhabitants of rural communities find it physically and financially impossible to access the formal courts, especially for cases that can take several visits to provincial capitals to resolve.

### Structure-Related Barriers

The structure of the formal and informal courts also presents a barrier to access. Here, the term “structure” is used to express both elements of the court procedures (formality, language, views of justice) and the current state of the courts (skills of officials, some court buildings). While the first category primarily affects access in the formal courts system, the second can be encountered across the justice system.

**Formality and Language.** With its basis in English law and legal procedure, the state justice system in Sierra Leone is very formal in its rules, processes, and appearances. Court proceedings take place in English, which is not widely understood outside of Freetown and its environs – and is not well

understood by many even in the capital - and the language is heavy in legalese. Unlike the customary courts, the formal courts maintain procedural rules that are known to court insiders such as judges and lawyers, but remain a mystery to many individuals outside the legal system.

**Views of Justice.** While formality and language present obstacles to justice in the formal courts, these procedural limitations are smaller manifestations of a larger disagreement on the meaning of “justice”. Definitions of “criminal behavior”, “corruption”, and other legal terms differ widely between the customary and formal systems<sup>8</sup>. The accepted penalties for violations of social order also vary. While customary law is based in traditions of restorative justice and community cohesion, which prioritize restitution followed by community healing, the formal system emphasizes retributive justice<sup>9</sup>.

**Court Buildings and Personnel.** Symbols of authority, including court structures, were targeted during the civil war<sup>10</sup>. As a result of both war and time, many court facilities were left in a state of disrepair, and despite the considerable effort and success of such initiatives as the GoSL’s NaCSA program and the DfID-funded Justice Sector Development Programme, some have yet to be rebuilt outside of urban centers. Additionally, in both the formal and informal systems, a lack of management oversight and limited opportunities for appeal mean that the effectiveness of the courts depends largely on the skills and personalities of the local court officials or Chiefs<sup>11</sup>.

### Social Barriers

In addition to cost and structure, Sierra Leoneans encounter “social” obstacles to justice in the court systems. Social barriers are those that arise from a lack of information, or from perceptions of the role of the justice system.

**Lack of Information.** During recent attempts at justice sector reform, analyses have found that many Sierra Leoneans are not aware of what the laws – either formal or customary – are<sup>12</sup>. While customary law is traditionally bound in customary practice, many Chiefs passed new laws without

informing the public<sup>13</sup>. Citizens are even less likely to know the content of formal laws, and recent legislation and court rulings are reportedly difficult for even legal professionals to access.

**Perceptions of Bias.** Interviews with Sierra Leoneans, both in Freetown and in the provinces, yield a frequently-held belief that justice goes to the highest bidder<sup>14</sup>. In one study, 80% of people surveyed believed that there were two interpretations of law; one for the rich and another for the poor<sup>15</sup>.

<sup>1</sup> Economist Intelligence Unit. (2006). *Sierra Leone Country Profile 2006*. London.

<sup>2</sup> GoSL. (2003). *Sierra Leone national recovery strategy assessment: Final report*. Freetown.

<sup>3</sup> Alterman et al. (2002). *The law people see. The statute of dispute resolution in the provinces of Sierra Leone in 2002*. National Forum for Human Rights

Publication, Freetown, Sierra Leone.

<sup>4</sup> Fanthorpe, R. (2004). *Chiefdom Governance Reform Programme Public Workshops: An analysis of facilitator's reports*. DJID. London.

<sup>5</sup> Thompson, N. (2002). *In pursuit of justice: A report on the judiciary in Sierra Leone*. Commonwealth Human Rights Initiative. Vol. 9:2.

<sup>6</sup> Ibid 4.

<sup>7</sup> Ibid 3.

<sup>8</sup> Thompson, B. and G. Potter. (1997). Government corruption in Africa: Sierra Leone as a case study. *Crime, Law and Social Change*. Vol 28, No 2, 137-154.

<sup>9</sup> Maru, V. (2006) Between law and society: Paralegals and the provision of justice services in Sierra Leone and worldwide. *The Yale Journal of International Law*. Vol 31:2, 427 - 476.

<sup>10</sup> Bellows, J. and E. Miguel. (2006). *War and institutions: New evidence from Sierra Leone*. American Economic Association Papers and Proceedings. 96(2), 394-399.

<sup>11</sup> Department for International Development. (2004) *Identifying options for improving chiefdom and community governance in Sierra Leone*. London, UK.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid 4.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid 8.



## Marginalized Populations

The barriers to access to justice presented above impact all Sierra Leoneans, though to varying degrees. While not universally true, some individual characteristics of community members are also associated with greater inaccess. These include, *inter alia*, gender, age, association with fighting forces, urban migration, "stranger" classification, and ethnicity. While any or all of these characteristics may increase inaccess, it is important to note that is very difficult to distinguish a social hierarchy, and one cannot determine vulnerability solely by analyzing a list of personal characteristics.

**Gender.** Women face increased barriers to access in both the customary and common law systems. Though women are afforded some degree of equality and protection in the 1991 Constitution of Sierra Leone, these constitutional guarantees do not always translate to equal access or opportunity in the judicial or social sphere. In fact, the key non-discrimination clause in the Constitution, which prohibits any law that is "discriminatory either of itself or in its effect" contains a specific exception for laws "with respect to adoption, marriage, divorce, burial, devolution of property on death or other personal law" – many of those matters which are of the greatest importance to women<sup>1</sup>. These matters are thus subject to discriminatory application without adequate avenues for redress.

**Age.** Sierra Leonean society is hierarchical, with clear divisions in power and authority between youth and elders, and this divide has contributed to both small- and large-scale conflict. Youth,

who are defined as those between 18 and 35 years of age, make up 34% of the population<sup>2</sup>. Despite their strength in numbers, youth frequently have less claim to citizenship and less voice in community decision-making structures than their elders<sup>3</sup>. Their lack of standing in the community, coupled with common perceptions of youth as irresponsible and disrespectful, have placed youth at high risk for exploitative jurisprudence, and their access to justice is further limited by processes that tend to favor older defendants<sup>4</sup>.

**Association with Fighting Forces.** At the end of the twelve-year civil war, communities in Sierra Leone were left grappling with the aftereffects of atrocities committed against them by combatants, many of whom were very young and some of whom perpetrated violence in their own villages<sup>5</sup>. Many ex-combatants disarmed post-war, and/or participated in the Truth and Reconciliation processes, where they have offered explanations and apologies for their actions during the war<sup>6</sup>. However, there remains a legacy of tension and distrust between communities and those associated with fighting forces. This residual distrust may lead to high-risk or illegal behavior or more frequent accusations of crimes, and may impede access justice<sup>7</sup>.

**Urban Migration.** The population of Freetown grew 217% from 1985 to 2001, as

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## Marginalized Populations, Continued



*“Preliminary field work has found some level of tension between youth and elder community members in virtually every research site.”*

### Further Information

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### Questions?

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economic opportunity and conflict drove migrants from rural areas to the relative safety of the city<sup>8</sup>. Young Sierra Leonean refugees, raised in displacement camps, came to Freetown in large numbers at the end of the war seeking non-agricultural employment. However, un- and underemployment remain high throughout Sierra Leone. Insufficient employment opportunities, combined with disruption of social and cultural ties to migrant's home communities, can result in a rise in crime and violence as a source of power and position<sup>9</sup>.

**Strangers.** There are frequent references in the literature to what anthropologist Richard Fanthorpe refers to as the “extreme localization of criteria of identity and belonging”<sup>10</sup> in Sierra Leone. “Stranger” status can persist for generations, and is often ascribed to or adopted by individuals whose ethnic identity is different from that of an area's original inhabitants (“indigenes”). Rights and property in rural areas are conferred as both a result and validation of citizenship, and strangers in a community must frequently form relationships with indigenes, through marriage or the patronage system, in order to gain some of the benefits of citizenship<sup>11</sup>. Insufficient family or social connections are thus a key source of vulnerability and poverty<sup>12</sup>.

**Ethnicity.** Sierra Leone is home to approximately twenty distinct ethnic groups, exercising unique traditions of social control and delivery of justice<sup>13</sup>. While the role of pre-existing ethnic tensions in Sierra Leone's civil war is

subject to debate, many analysts have shown that the various fighting forces exploited ethnicity as a recruitment tool<sup>14</sup>. While the recent GoBifo/ENCISS/Decentralization program survey revealed differences in respondents' satisfaction with the resolution of disputes and conflicts based on their ethnicity, the role of ethnicity in dispute resolution and access to justice in Sierra Leone is still unclear<sup>15</sup>.

<sup>1</sup> GoSL. (1991). Constitution of 1991.

<sup>2</sup> The World Bank Group. (2006). *Drift consultations with youth in Sierra Leone*.

<sup>3</sup> Fanthorpe, R. (2001). Neither citizen nor subject? ‘Lumpen’ agency and the legacy of native administration in Sierra Leone. *African Affairs*, 100:400, 363-386.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Malan, M. (2003, March). The challenge of justice and reconciliation. *Sierra Leone: Building the road to recovery*, ISS Monograph No 80, Pretoria: Institute for Security Studies.

<sup>7</sup> Lloyd, C., editor. (2005). *Growing up global: The changing transitions to adulthood in developing countries*. National Research Council.

<sup>8</sup> Sommers, M. (2003). *Urbanization, war, and Africa's youth at risk: Towards understanding and addressing future challenges*. Basic Education and Policy Support Activity and Creative Associated International.

<sup>9</sup> Ibid 7.

<sup>10</sup> Ibid 3, pg 372.

<sup>11</sup> Reno, W. (2003). Political networks in a failing state: The roots and future of violent conflict in Sierra Leone. *Internationale Politik und Gesellschaft*, 10, No. 2, 66.

<sup>12</sup> Richards et al. (2004). *Social capital and survival: Prospects for community-driven development in post-conflict Sierra Leone*, World Bank: Social Development Papers No. 12.

<sup>13</sup> UNOCHA, IRIN News. (2007). *Republic of Sierra Leone: Humanitarian country profile*.

<sup>14</sup> Keen, D. (2003). Greedy elites, dwindling resources, alienated youths. The anatomy of protracted violence in Sierra Leone. *Internationale Politik und Gesellschaft*, 2.

<sup>15</sup> Manning et al. (2006). *Crime and conflict statistics from the GoBifo/ENCISS/Decentralization survey*. World Bank Group, Washington, DC.

## Conclusion

There is much to be learned in order to understand the exercise of law and justice in Sierra Leone, and much to be gained by pursuing research at this point in time. The World Bank's *Justice for the Poor* program will continue to engage with justice reform

efforts led by local and international civil society, international organizations, and formal and informal institutions in an effort to improve and enhance access to justice for the poor.