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# Access to Justice in Sierra Leone: A Review of the Literature

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by Pamela Dale\*

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## ABSTRACT

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The purpose of this paper is to establish a baseline level of knowledge on the current state of local level justice institutions and access to justice in Sierra Leone's provinces. This entails a review of what is known and gaps in the knowledge base, coupled with an analysis of recent events, possible entry points, and opportunities for intervention. This background will provide direction for ongoing field research in Sierra Leone, and will help to identify practical solutions to problems of inaccess and inequitable access to justice.

This paper was commissioned by the World Bank's *Justice for the Poor* (J4P) program, a global research and development program aimed at informing and supporting pro-poor approaches to justice reform.<sup>1</sup> J4P's approach is to emphasize social and cultural contexts to generate empirically-based understandings of how the poor navigate and/or are excluded from existing dispute resolution and decision-making mechanisms. At its core, this approach centers around a more localized view of justice than typical justice programs, emphasizing an understanding of "justice" through the perspectives of users and building on these understandings to implement culturally-appropriate reforms. Recognizing that comprehensive justice reform is a protracted process, requiring substantial engagement and investment by a wide variety of actors, J4P implements locally-responsive interventions that have a visible effect in the short-term, while providing a catalyst for sustainable, long-term improvement.

In this preliminary phase of research, the primary source of information for this paper was a comprehensive literature review. The review included an exploration of legal documents (including laws and statutes, and case summaries where available), historical documents, anthropological texts, current social and political pieces (including newspaper articles, political speeches, and findings from committees of inquiry), and the findings from on-going or recently completed field research projects. While these sources have helped develop a context for this report, and have been cross-checked for appropriateness and validity where possible, there are several potential problems associated with reliance on secondary sources. These include, *inter alia*, lack of information on research methodologies, bias or agenda of sources, reliability over place and time, and differences in definitions of key concepts (for example, "informal", "grievance", or "youth"). Furthermore, literature related to the civil war is ex-post, and many of the studies cited may rely on small sample sizes or are difficult to generalize.

This literature review is both by intent and necessity quite rudimentary, reflecting the dearth of recent research on local-level justice systems and processes in Sierra Leone. Thus, the ideas presented in this report should not be read as conclusive, but rather as hypotheses requiring further study, analysis, and discussion on many levels. The J4P program's ongoing field research in Sierra Leone seeks to provide in-depth analyses that will supplement the present knowledge base and address these gaps. In this way, the research and literature review will contribute to development of a firm foundation for effective justice reform interventions in Sierra Leone.

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<sup>1</sup> J4P is a global research, knowledge sharing and development program, which includes an Africa regional program supported by the Bank-Netherlands Partnership Program (BNPP) (*Justice for the Poor: Breaking Legal Inequality Traps at the Local Level*, \$450,000, Jan 2006-Dec 2007), of which Sierra Leone is a part.

## INTRODUCTION

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Sierra Leone operates under a bifurcated legal structure which incorporates both elements of traditional or customary law<sup>2</sup> and a formalized system based on English common law. Currently, 85% of Sierra Leoneans fall under the jurisdiction of customary law.<sup>3</sup> The supremacy of local courts in civil cases was enshrined in the 1963 Local Courts Act and the Local Court Rules PN No 8 of 1964 (CARE 2003 and Kane 2005). The official authority of informal justice systems has ebbed and flowed as the government has undergone cycles of decentralization and tightening of state control; however, in the eyes of many Sierra Leoneans, traditional systems remain the primary avenue for redress of violations of rights or law (Alterman et al 2002).

For many outside actors, there is a lack of clarity about how and why Sierra Leoneans decide where to pursue cases. Moreover, there is even less comprehension of the workings of the various informal systems used by the majority of citizens. Much of the literature postulates that citizen's decisions to bring cases before these informal systems results, at least in part, because they comply better with local values and perspectives (such as a preference for restorative versus retributive justice), and are faster, cheaper, easier to reach, and more easy to understand (WDR 2006, ICG 2003, Duthie 2005 and Alterman 2002). However, the literature has also indicated that faith in chiefs and customary systems has diminished somewhat since the end of the civil war, and some traditional systems and practices have come into question (Fanthorpe 2004, Alterman et al 2002).

Regardless of where Sierra Leoneans pursue justice, the literature and recent studies have found barriers to access and problems with equity, transparency and consistency of rulings that may serve to further marginalize underserved populations (Keen 2005, Fanthorpe 2006, World Bank 2006b and Manning et al 2006). Justice reform efforts that work primarily with formal justice systems may, in leaving out the customary systems used by the majority of citizens, miss an opportunity to improve an aspect of the sector that is most 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 will attempt to contribute to this understanding through methods explained in further detail in the next section of this document.

The time is ripe for this type of program. The World Bank's 2006 World Development Report, which addressed issues of Equity and Development, emphasized the importance of the informal, in law as much as economic systems (World Bank 2006c). The United Nations' Commission on Legal Empowerment of the Poor is examining access concerns as key to improving prospects for development (UNDP). Sierra Leone itself is contemplating the role of customary systems as part of its decentralization, chiefdom governance reform, and justice reform efforts. By taking advantage of these entry points for engagement, international organizations can have a lasting impact on the lives of the poor and marginalized in Sierra Leone.

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<sup>2</sup> Traditional and customary systems include both the officially-recognized local customary courts, unofficial but widely-used chief's courts, religious leaders, professional organizations, secret societies, family groups, and others.

<sup>3</sup> Kane et al, 2004.

## DISCUSSION OF FIELDWORK

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### 1.1 Purpose of Fieldwork<sup>4</sup>

The primary purpose of the fieldwork in Sierra Leone is to aid in the development of a more comprehensive picture of conflict and justice in Sierra Leone's provinces, which will be used to inform the evaluation of existing interventions and inform the development of effective operations in the areas of governance and justice. Key questions that will be answered in the course of the field research include:

- Who are the main authorities or power holders in the communities? Where do they derive their authority and legitimacy?
- What are prevailing social norms and governance rules regarding how collective decisions are made, how public resources are mobilized and utilized, and how authority is exercised? Do different groups have noticeably different attitudes towards and perception of authorities, and different degrees of participation in collective action?
- What kinds of systems and mechanisms are utilized to resolve and manage grievances and to lodge claims against state or non-state authorities, and why? Are certain groups or communities more likely to pursue justice? If so, why?
- What trajectories do the grievances follow, and why? What are the outcomes of these processes, and what factors influence the results?
- How do the mechanisms employed, the trajectories, and the outcomes differ with respect to:
  - a. the characteristics of individuals and communities involved (and why)?
  - b. the characteristics of particular grievances (and why)?
- What barriers to effective justice and governance exist, and which individuals, groups, and communities are most affected? How are these barriers overcome, or how could they be overcome? Which groups have a vested interest in maintaining the barriers?
- How are the answers to all of these questions changing over time? How and why does local-level justice and governance improve or deteriorate?
- What is the impact of external justice and governance interventions? Do they affect people's attitudes towards authorities, their participation in public affairs, and their perception of influence? Do they trigger change in what people demand and obtain in relation to justice and governance? Do they result in more just outcomes? Are their effects sustainable beyond the end of the intervention?

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<sup>4</sup> Much of the material for this section is drawn from the *Justice for the Poor and Understanding Processes of Change in Local Governance Concept Note (2006)*, developed by the World Bank with the participation of external stakeholders. Substantial pieces of the text were drawn verbatim from this note.

A secondary objective of the fieldwork is to develop the project design, financial management, and qualitative research capacity of a local organization, with the objective of assisting this partner in using such findings to inform policy debates. To achieve this goal, J4P has selected the Campaign for Good Governance, a local NGO, to assist with research design, implementation, and project management.

## 1.2 Methodology

As stated earlier, one purpose of the Justice for the Poor program is to gain a clear understanding of justice *through the eyes of the poor*. This perspective requires a research approach that wedds an aggregate view of the community experience with a more nuanced view of representative individual experiences. In order to capture both of these perspectives, J4P will utilize a mixture of quantitative and qualitative research methods. Quantitative analysis will be used to elicit information about knowledge, attitudes, and self-reported behavior, as well as about characteristics of the respondents and the communities. It will also be used to provide insight into the functioning of primary justice institutions and the cases they handle. Qualitative methods will delve more deeply into a smaller number of cases, offering greater insight into the process, and allowing greater room for surprising or unexpected findings. Specifically, J4P will use some combination of the following:

- Household survey data, drawing on the surveys conducted as part of the joint World Bank Institutional Reform and Capacity Building Program (IRCBP)-GoBifo evaluation, and tapping into other data sources as necessary (such as the National Commission for Social Action of Sierra Leone’s (NaCSA) opportunities and services mapping, the recent government census, and biannual public expenditure tracking surveys);<sup>5</sup>
- Court records analysis from both customary and common law courts, across different levels of courts and different areas of countries;
- Case study methods, combining and cross-referencing data to develop informative stories that are notable either for their frequency or their uniqueness;
- Focus group interviews with a wide range of stakeholders at the district, chiefdom, and community level, including chiefdom and local government authorities, customary and general law courts officials, police, NGO representatives, women and youth leaders, and “ordinary” men, women, and youth (with an emphasis on the poor and marginalized in each community); and
- Individual interviews with subsets of the population, to provide in-depth information on individual experiences with justice systems.

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<sup>5</sup> IRCBP is funded by a World Bank IDA Grant No. H0860-SL, US\$25.12 million. Approved: 11-May-04. Closing Date: 30-Jun-08. GoBifo is a Krio word meaning “go forward” or “progress,” and is the name of a pilot CDD project operating in Bombali and Bonthe Districts. GoBifo is funded by the World Bank’s JSDF trust fund facility. (US \$2million, Feb 2005-Dec 2007). NaCSA is a Sierra Leonean government organization responsible for implementing the National Social Action Program, or NSAP, which is funded by the World Bank, IDA Credit #2748-SL, US\$35.0 million. Approved: April 24, 2003. Closing Date: Dec 31, 2008.

### 1.3 Timeline

The initial phase of J4P Sierra Leone research began in late 2006. It has involved intensive capacity-building of the research team, in addition to substantial and informative preliminary research. Because of the qualitative research capacity in-country, J4P has proceeded with a very small and well-supervised research team in this initial phase of the project. Initial research, which has combined practical field training with data gathering, is building upon preliminary scoping research conducted between April and October of 2006. Currently, the research teams are conducting interviews and site visits and developing written analyses of case studies in project sites, which are detailed below. A training period has preceded, and an analysis period has followed, each stage of research.

- **Stage 1: Practical Field Training and Initial Case Studies**

The research teams were dispatched to a fishing village in the Western Area Rural District and a chiefdom in Bo District to practice qualitative research techniques and gather information on the community and on the range of grievances present. The team received intensive supervision, feedback, and support from the World Bank and the Campaign for Good Governance. The researchers, in cooperation with the supervisory team, selected cases to develop and analyze, and together produced comprehensive case studies on local council and town headmanship election grievances, disputes over spending of development funds, and the provision of community labor.

- **Stage 2: Second Round of Case Studies**

The research teams have been dispatched to Bombali District in the Northern Province and Moyamba District in the Southern District to conduct Stage 2 research. As in Stage 1, they will introduce the research initiative to key stakeholders and conduct key informant interviews, leading to selection of informative cases. Case analysis will be conducted and case studies released.

- **Stage 3: Final Phase I Case Studies**

Depending on time, the research teams will be dispatched to additional research sites for Phase I research. As in the preceding stages, the teams will develop case studies from start to finish, analyzing the trajectory of the grievances and the outcomes through information gained in key informant interviews, focus group discussions, and participant observation exercises.

### 1.4 Site Selection

J4P Sierra Leone and the Campaign for Good Governance have selected the following areas as key sites to conduct Phase I research: Western Area Rural, Bombali District (Northern Province), Bo and Moyamba Districts (Southern Province), and Kono District (Eastern Province). District selection, and subsequent chiefdom and community selection, was based on a number of criteria, outlined below. Selection also took into account logistical and financial considerations, particularly in relation to remote locations.

- **Inclusion of sites in each of Sierra Leone's three provinces (North, South, East) and the Western Area.** Geographic diversity has the benefit of capturing different ethnic

groups, different economies, and different histories (particularly different experiences during the war). It also allows for greater legitimacy and operational relevance of any conclusions.

- **Inclusion of locations with ethnic and political divisions.** Some of the most interesting disputes seem to occur in areas with a mix of ethnic groups or of political affiliation. Conflicts between ethnic groups may also add another dimension to the interaction of multiple rule systems.
- **Frequency, visibility, and intensity of disputes and claims.** Given that cases will be selected not for their representativeness but for their ability to shed light on the research questions, locations with more frequent, more visible, or more aggressively contested disputes and claims will provide richer data than locations where such disputes and claims are rare, silent, or quickly-abandoned.
- **Presence of justice and governance interventions.** The presence of World Bank-supported community-driven development projects, World Bank-supported IRCBP project components, Department for International Development (DfID)-supported justice sector reform programs, DfID-supported work with civil society, and various civil society initiatives (including Timap for Justice, which also now received World Bank support) was considered in site selection.
- **Relative isolation / connectedness of communities.** Selection aimed for a mix of more and less remote communities, ensuring that the sample includes both relatively isolated communities and those that are more connected to transport, communications, and social and economic networks.
- **Inclusion of key types of disputes.** Some types of disputes (e.g., mining or other material resources) are strongly location-specific but have great national significance, and/or seem like particularly relevant entry points for understanding local-level justice and governance.
- **High density of key populations sectors.** The project has explicitly sought sites with high densities of populations (identified in the section termed “Marginalized Populations”, below) that may face increased barriers to access to justice systems.
- **Overlap with GoBifo evaluation.** The World Bank is sponsoring a randomized evaluation of this pilot community-driven development project. Overlapping with this ongoing evaluation allows for sharing of data and other collaboration, as well as consideration of the impact of GoBifo on local-level justice and governance.

## ACCESSING JUSTICE

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Sierra Leoneans attempting to access justice<sup>6</sup> through the country's complex, bifurcated legal system are presented with a number of barriers. These barriers 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. Initial research has shown that access to the informal and formal legal systems, satisfaction with outcomes, and perceptions of justice vary widely across chiefdoms (GoSL 2006b). Thus, the list of barriers highlighted below should not be assumed to be universal – or, for that matter, comprehensive. Further research, including in-depth qualitative study of the sort undertaken by J4P, is needed in order to determine the extent to which these and other barriers impede access to justice in the provinces.

### 2.1 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>7</sup>, Sierra Leone is one of the world's poorest nations. This extreme poverty magnifies the effects of conflicts that are small by western standards, such as disputes over small sums of money or “minor” loan conflicts, and also amplifies the costs of recovery. The costs of accessing justice in Sierra Leone come in a variety of forms: direct costs of services, fines, time, and transportation.

#### *Direct Costs of Services*

In Sierra Leone's formal courts, where an inadequate legal aid structure makes contesting parties, regardless of income, responsible for court fees, legal representation, and other service fees, the costs are prohibitively high for all but the wealthiest of citizens (GoSL DACO 2003). 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 (Alterman et al 2002 and ICG 2003). Determining provincial resident's willingness to pay for court services, and gaining a more detailed picture of the current court fee structure, will be necessary in order to address service-fee based barriers to access.

#### *Fines*

Whether bringing cases in the formal or informal court system, Sierra Leoneans are sometimes faced with high and often unpredictable fines. While the formal law of Sierra Leone imposes strict limits on the amount of fines that can be charged in customary law cases (Fanthorpe 2004), 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 Freetown government, court fees make up a substantial portion of municipal budgets (Thompson 2002 and Jackson 2005). This has arguably been exacerbated with the advent of the newly-reinstated Local Councils, which now have

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<sup>6</sup> It is important to clarify that access to *justice* is not synonymous with access to *courts*. While this section discusses, among other things, barriers encountered when attempting to pursue claims through the formal courts, a well-functioning justice system will provide sufficient legal clarity to allow for resolution of many – if not most – disputes outside of the courts.

<sup>7</sup> EIU 2006.

the authority to collect various types of revenue previously collected by chiefdoms, and to share in others (most prominently, the annual local head tax). Court fees are one of the only sources of revenue left to chiefdoms, which provides an incentive for some chiefs and local court members to charge excessive fees and levy large fines, and even to bring cases for the sole purpose of collecting fees (Fanthorpe 2004). It can also create intense competition between chiefs to hear cases (Fanthorpe 2004). 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 at a level incommensurate with offenses and in a discriminatory manner (Fanthorpe 2004 and Maru 2005). Without a clear and predictable picture of the costs, provincial residents are, naturally, reluctant to bring cases to any of the various courts.

### *Time*

Both the formal and (to a lesser extent) the informal legal systems are thought to raise prohibitively long delays in the resolution of the cases brought before them. While initial research has yet to provide reliable data on the average time for resolution of cases in the courts, these delays and the accompanying opportunity costs are likely to have a substantial impact on individuals' decisions on whether or not to contest a case in court. These costs should be calculated and considered when designing justice sector projects.

### *Transportation*

Transportation presents a formidable obstacle to accessing the formal courts systems, particularly for residents in remote areas (Alterman et al 2002). The limited number of functioning magistrates courts are based in district headquarter towns, which are far away (both physically and mentally) from residents of many remote - and even not-so-remote - 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. Though local (customary) courts are more numerous than magistrate courts and are dispersed through every chiefdom, transportation and distance can still be a barrier to access for those living in more remote communities far from the local courts (as few as one or as many as five) present in their chiefdom. Adding to the burden of transportation is the fact that the parties to a case are often expected to pay for the transport of other participants – such as witnesses or chiefdom police delivering summonses – as well as their own.

## **2.2 Structure-Related Barriers**

The structure of the formal and informal courts also presents a barrier to access in Sierra Leone. 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 all justice systems in Sierra Leone.

### *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, a language 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 well-defined procedural rules that are known to court insiders such as judges and lawyers, but remain a mystery to many individuals outside the legal system. The combined effect of the court's formality and language is likely to be extremely intimidating to provincial residents.

### ***Box 1: Legal-Speak and a Sexual Offense Case***

During one observation of local court proceedings, the J4P researchers observed a district Magistrate delivering the findings from a preliminary investigation against one young man charged with having Unlawful Carnal Knowledge (sex) with a girl under the age of 16. The defendant had no legal counsel, did not speak English – the language of the official justice system – and obviously had little understanding of the court's proceedings. According to the magistrate's statement, the boy had admitted to having sex with the girl in question; the J4P team wondered if he might not have understood the severity of the charges against him. On the basis of that admission, the Magistrate determined that the case would be passed on to the High Court.

After informing the defendant of his decision, the Magistrate asked him various questions – such as whether he would like to modify his statement, speak on his own behalf at the High Court, or call witnesses or present evidence in the High Court. The boy visibly had no idea how to answer. As the proceeding continued, translated from the Magistrate's very formal English legalese to Krio (the local creole language) and back again, one had the sense that the Magistrate and police prosecutor might have been the only ones in the room who really understood what was going on.

### ***Views of Justice***

While formality and language in and of themselves present obstacles to pursuing justice in the formal courts, these procedural limitations can be seen as smaller manifestations of a larger disagreement on the definition of “justice” or fairness. At the most basic level, definitions of “criminal behavior”, “deviance”, “corruption”, and other legal terms differ widely between the customary and formal law systems (Thompson 1997). The accepted penalties for violations of social order also vary between the two systems. 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 (Maru 2006). These differing views of justice may make citizens unwilling to take cases to the formal courts.

### ***Court Buildings and Court Personnel***

Symbols of authority, including formal and informal court structures, were targets of the Revolutionary United Front (RUF) during the civil war (Bellows and Miguel 2006). 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 Government of Sierra Leone's NaCSA program and the DFID-funded Justice Sector Development Programme (JSDP), some have yet to be rebuilt outside of major urban centers. Beyond the physical condition of the courts, it is extremely difficult for remote courts to recruit skilled officials. An additional indication of neglect is the assertion by some local court clerks and chiefdom police that they are owed years of back pay and have inadequate resources to perform their jobs. Even when delivered, salaries are very low, providing further incentive to court officials to engage in bribe-taking. In both the formal and informal systems, a lack

of management oversight and limited opportunities for appeal mean that the level of effectiveness of the courts depends largely on the skills and personalities of the local court officials or chiefs (DfID 2004).

### **2.3 Social Barriers**

In addition to cost and structure-related barriers, Sierra Leoneans encounter “social” obstacles to justice in both the formal and informal court systems. Social barriers are those that arise from a lack of information, or from perceptions of the role of the justice system. Key among the social barriers are unclear definitions of what is and is not a crime and beliefs that the justice system is replete with bias and serves the interests of the rich at the expense of the poor.

#### ***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 and customary – are (Kane et al 2004). While customary law is traditionally bound in customary practice, many Chiefs passed new laws without informing the public, and prosecuted violators in order to gain revenues from fines and penalties (Fanthorpe 2004). 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. Lack of access to information on what constitutes an offense, coupled with limited awareness of avenues for redress, makes it difficult for citizens to hold public officials accountable for arbitrary or unjust prosecution.

#### ***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 (Fanthorpe 2004). In one study, 80% of people surveyed believed that there were two interpretations of law; one for the rich and another for the poor (Thompson 1997). While more research needs to be done to determine how this belief translates into practice, there is a possibility that perceptions of bias may lead less wealthy or connected citizens to avoid pursuing justice against their more powerful counterparts.

## MARGINALIZED POPULATIONS

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The barriers to access to justice presented in the preceding section impact all residents of Sierra Leone's provinces, though to varying degrees. While not universally true, the literature suggests that some individual characteristics of community members are also associated with greater inaccess. These characteristics include, though not necessarily exclusively: gender, age, association with fighting forces, urban migration, "stranger" classification, and ethnicity. While any or all of these characteristics may be found to be associated with greater 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. For example, while women in general may be subject to discriminatory practices, women from high-status families may be significantly less at risk than low-income or displaced men (Richards et al 2004).

Despite this caveat, below is a summary of some of these at-risk groups, along with a brief discussion of some of the common barriers to justice they face.

### 3.1 Gender

Women face increased barriers to access in both the customary and common law systems in Sierra Leone. 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.<sup>8</sup> 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 (Constitution, 1991). These matters, which generally fall under the purview of customary law, are thus subject to discriminatory application without adequate avenues for redress.

Even in circumstances where the law (or its application) is not openly discriminatory, women may experience increased barriers to justice due to characteristics of the social environment. For example, studies have found that women have comparatively lower education levels and less access to information about their rights and responsibilities under the law (GoSL 2006b). Women are also frequently economically dependent on their spouse or male family members, limiting their ability to seek justice in intrafamilial disputes.

### 3.2 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 in the country. Youth, who are defined in Sierra Leone as those between 18 and 35 years of age, make up 34% of the population (World Bank 2006a). Despite their strength in numbers, youth frequently have less claim to citizenship and less voice in community decision-making structures than their elders (Fanthorpe 2001 and Sommers 2003). They also face more difficulty accessing employment opportunities, a

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<sup>8</sup> Relevant sections of the Constitution include: Ch 2, sections 8 and 9 (Social Objectives); and Ch 3 (Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual).

familiar phenomenon in West Africa, where youth unemployment rates are three times that of adults (UNOWA 2006). Unemployed youth are more susceptible to illicit employment activities, such as prostitution or theft, which undermine their acceptance in communities and put them at odds with the justice system (Women's Commission 2002). Their lack of standing in the community, coupled with common perceptions of youth as irresponsible and disrespectful – or, as Sommers puts it, “carriers of crime and disease”<sup>9</sup> – 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 (Fanthorpe 2004 and Kane 2005). While every major political party has spoken in the run up to the 2007 election of the need to incorporate the demands of youth, many youth feel that their concerns receive only lip service (EIU 2007).

According to many analysts, political marginalization and harsh penalties for violations of societal norms (such as heavy fines for refusal to perform communal labor or for “woman damage”<sup>10</sup>) spurred many youth to take up arms against their communities during the civil war.<sup>11</sup> Youth found an identity in the images and messages of Rambo and Tupac Shakur, rebellious social outcasts who rose up against perceived oppressors in often violent ways (Richards 1996). The circumstances that led youth to fight have not evaporated with the cessation of hostilities; rather, in the post-war environment, many youth who were involved with the fighting forces have found it difficult to accede to traditional authorities (GoSL 2004d, Ginifer 2003 and Women's Commission 2002), and youth continue to mistrust adults in authority positions (Women's Commission 2002). Preliminary field work has found some level of tension between youth and elder community members in virtually every research site (see, for example, Box 3 on community labor, pg 19). Even in the absence of open rebellion, youth disenchantment (coupled with and exacerbated by a shortage of land and economic opportunities) has contributed to out-migration, primarily to urban areas or mining communities (DfID 2004 and Richards 1996). Migration, though, brings its own problems, including difficulty accessing land, labor exploitation, and further weakening of citizenship ties (Richards et al 2004). All of these factors may impact youth's ability to access justice.

### **3.3 Association with Fighting Forces**

Sierra Leone's twelve-year civil war resulted in the deaths of nearly 50,000 people, and displacement of one-third of the population (Bellows and Miguel 2006). At the end of the war, communities in rural 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 chiefdoms or villages (Keen 2003 and Bellows and Miguel 2006). These attacks often deliberately targeted local political figures and governance structures, including chiefs, schools, and court facilities.

Many ex-combatants disarmed post-war as a condition of reintegration assistance, and/or participated in the Truth and Reconciliation processes, where they have offered explanations and apologies for their actions during the war (Malan 2003 and Duthie 2005). However, ex-combatants

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<sup>9</sup> Sommers 2003, pg 12.

<sup>10</sup> The term “woman damage” can include adultery, inappropriate contact with another man's wife/girlfriend, and related charges.

<sup>11</sup> This argument has been made by many researchers and authors in the years since the end of the war. Among the documents sourced for this paper, references to disaffected youth and war were made in ICG 2003, Maru 2006, Jackson 2005, Fanthorpe 2006 and GoSL 2004d.

continue to face significant social, political, and economic barriers to return and reintegration (Duthie 2005 and Ginifer 2004). Many young recruits who were involved with fighting forces as “rebel wives” or in other non-combat roles have been both excluded from reintegration assistance and ostracized by families and communities (Women’s Commission 2002). Memories of war have left a legacy of tension and distrust between communities and those associated with fighting forces. Some ex-combatants, especially those associated with the government forces, feel that their contributions to the security of the state have not been adequately recognized. Others, who acquired positions of authority in chiefdoms during the war, have been reluctant to relinquish this power to rejuvenated traditional authorities. This residual anger and distrust may lead to ex-combatants engaging in high-risk or illegal behavior and being accused of crimes more frequently, and may impede their ability to access justice (Lloyd 2005).

### 3.4 Urban Migration

The population of Freetown grew 217% from 1985 to 2001, as economic opportunity and conflict drove migrants from rural areas to the relative safety of the city (Africa 2002, as cited in Sommers 2003). Recent population estimates have varied widely, some suggesting a population of over a million, while the 2004 census puts the current population of the city at approximately 800,000 (GoSL 2004a). While it is difficult to find recent data for Sierra Leone specifically, worldwide urban migration trends point to movement driven primarily by young people (between 15 and 30 years of age), mostly male, who are seeking broader economic or social opportunities in large cities (Lloyd 2005). Young Sierra Leonean refugees, who were raised in displaced persons camps and have not learned to farm, came to Freetown in large numbers at the end of the war seeking non-agricultural employment. However, as indicated above, 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 (Hietmeyer 2002, as cited in Lloyd 2005). Thus, while migrants’ physical access to formal justice institutions is improved in urban areas, they remain at risk for both victimization and involvement as perpetrators of crime.

### 3.5 Strangers

There are frequent references in the literature to what Fanthorpe refers to as the “extreme localization of criteria of identity and belonging”<sup>12</sup> in rural 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 paths such as marriage or the patronage system, in order to gain some of the benefits of citizenship (Reno 2003). Insufficient family or social connections are thus a key source of vulnerability and poverty (Richards et al 2004).<sup>13</sup> Similar to other vulnerable groups listed in this section, strangers may be at risk for discrimination throughout the justice cycle, with greater likelihood of being involved in crimes and conflicts, and higher barriers to access to the informal justice systems.

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<sup>12</sup> Fanthorpe, Richard. Neither Citizen nor Subject? ‘Lumpen’ Agency and the Legacy of Native Administration in Sierra Leone. *African Affairs*, 2001, 100: 363-386, pg 372.

<sup>13</sup> However, other factors, such as wealth, political connectedness, or sheer numbers, can change the balance of power between strangers and indigenes, as has been seen in some common and conflictual cases (see Box 2, pg 14).

***Box 2: Strangers in the Majority, Indigenes in the Minority, and a Struggle for Power***

One illustration of the power and persistence of the “stranger” and “indigene” identities is a conflict over access to power in one community in the Western Area Rural District. Decades of in-migration by “stranger” ethnic groups has led to a situation where the “indigenes” are in the minority. When elections – first for a local councilor, and then for a village headman – were held, each group put up a candidate, and in both cases the indigene candidates lost.

This sparked frustration, tension, and outright conflict between the two groups. Invoking tradition and customary law, the indigenes asserted that they owned the land and would not be governed by strangers. The strangers and their allies invoked electoral law and new rules of eligibility which granted the right to run for office to anyone who had been resident in the area for at least five years. Thus traditional sources of power and legitimacy – ethnic identity and historical claims to the land – came into tension with modern, electoral sources of legitimacy.

### **3.6 Ethnicity**

Sierra Leone is home to approximately twenty distinct ethnic groups speaking eighteen indigenous languages and exercising unique traditions of social control and delivery of justice (UNOCHA 2007). The Temne and Mende, Sierra Leone’s largest ethnic groups, make up a combined 60% of the population, though other ethnic groups, particularly the Limba, Krio, Fula, and Madingo, also hold prominent economic and social positions within the state (Rosenbaum and Rojas 1998).

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 (Richards 1995 and Keen 2003). Fanthorpe and Keen have also pointed to a recent rise in ethnic and religious nationalism, especially prevalent during local and national elections (Fanthorpe 1998 and Keen 2003).<sup>14</sup> The recent experience around Paramount Chieftdom elections in Biriwa Chieftdom, in which a conflict over the eligibility of a Madingo candidate to compete in the election even though he was a “stranger” and not from a (Limba) ruling family went all the way to the Supreme Court, provides further evidence of the possibility for political disputes to take on ethnic dimensions.

The role of ethnicity in access to justice is not yet clear. Initial research conducted under the GoBifo/ENCISS/Decentralization program revealed differences in survey respondents’ satisfaction with the resolution of disputes and conflicts based on their ethnicity (Manning et al 2006). Patterns of where crimes and conflicts were first reported also varied with ethnicity. However, this study was not conducted as a specific analysis of the role of ethnicity in dispute resolution and access to justice, and thus leaves many questions unanswered.

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<sup>14</sup> The next national elections in Sierra Leone are scheduled for 11 August 2007, with local elections to follow in 2008.

## COMMON DISPUTES AND CONFLICTS

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A variety of literature sourced for this document made reference to common disputes and conflicts in Sierra Leone. Much of the literature took a retrospective approach, discussing possible root causes of the civil war ex post facto. Other reports and studies presented an overview of the rates of occurrence of the most common disputes. However, a quantitative and qualitative analysis of frequent causes of dispute, coupled with in-depth studies of crime and case trajectories, has yet to be undertaken. Such research would provide a more nuanced view of disputes and resolution pathways in Sierra Leone, and contribute to development of targeted, effective interventions. In anticipation of this research, the following section provides a brief overview of the current state of knowledge on common disputes and conflicts in Sierra Leone.

### 4.1 Resource-Related Conflicts

There is an abundance of literature on the role of mining, land tenure, and other resource-related conflicts in rural Sierra Leone. Unfair access to land and misappropriation of natural resources and related revenues continue to be among the most common concerns brought to the Ministry of Local Government and Community Development, according to a recently completed study of chiefdom governance (DfID 2004), and land conflicts are the most common form of provincial civil litigation (CARE 2003).

#### *Land Tenure*

Like its legal system, Sierra Leone's land tenure system is bifurcated. While land in Freetown and the Western Areas is held under a freehold system with transferable titles, land in the provinces falls under the custodianship of the chiefs (FIAS 2004 and GoSL 2005). There is frequent confusion as to the definition of "custodianship" and the role of chiefs in protecting and distributing land. Many rural citizens are under the impression that land in fact *belongs* to the chief – a misconception that some chiefs have reportedly taken advantage of in order to advance their own economic interests (Archibald and Richard 2002 and Maru 2006). In fact, though the chief is appointed as the guardian of provincial land under the Provinces Land Act of 1960 and the Courts Act of 1965, many argue that family, communal, and (rarely) individual land ownership exist in the provinces (Archibald and Richard 2002 and President, 2003).

Individual tenure in the provinces usually takes place when a family gifts a plot of land to individual family members, and land is passed down through a sole bloodline rather than through a larger family group (GoSL 2004). Individual tenure can also occur through the clearance of virgin forest or the purchase of land from an individual or family owner. Most frequently, land is held by family units tracing a common, usually patrimonial, lineage and exercising paramount title to a plot of land. While individual family members have varying degrees of interest in specific sections of family land, land management responsibility is held by the head of the family with support of principal members. Finally, in communal tenure systems, land is held on behalf of the community as a whole, with decisions on distribution and use primarily made through consultation with authority figures in the community.

Additional restrictions on land ownership prevent its purchase by "non-natives", a blanket description that is unwritten, enforced by individual chiefs, and generally encompasses everyone

who is not a member of a provincial tribe, including native Sierra Leoneans living in Freetown (GoSL 2004, Archibald and Richard 2002, Jackson 2005 and President 2003).<sup>15</sup> This restriction can also impede the ability of women and mixed-ethnicity children from owning land, as both national and tribal citizenship are primarily passed down patrilineally<sup>16</sup>. Provincial land is, however, available for lease to non-natives with the approval of the Paramount Chief.

Sierra Leone's land tenure system can have both positive and negative impacts on provincial residents. The primary benefit, like that of customary law in general, is its flexibility (World Bank 2006c). Because provincial land law is unwritten and based in local values, it is able to change over time without facing significant bureaucratic hurdles. The traditional landlord–stranger relationship required that all male visitors stay with respected families, ensuring their quick adaptation to the community's way of life and adherence to local laws. The requirement that all leases of land to non-natives be approved by chiefs, while potentially problematic, has also limited the amount of land controlled by absentee landlords or appropriated by mining companies.

However, in a primarily agrarian economy, control of land tenure brings with it substantial power, and with this power comes potential for abuse (Shipton 1992). While land access and ownership can increase voice in the political arena (World Bank 2006c), it can also be used to coerce support and reinforce existing power relationships. Because land title in the provinces is generally unwritten, chiefs and elders are often relied upon to settle disputes and determine historical land ownership rights (Fanthorpe 2001 and Alterman et al 2002). The existing land tenure system in the provinces allows traditional elites to exercise control over the land and agricultural labor of marginalized groups, such as those with weak lineages, strangers, and youth (GoSL 2003). Control of land also translates to social controls, as chiefs and other authority figures can in effect determine when and if a youth is able to marry and become economically independent (Jackson 2005). It is thus unsurprising that many fighters in the civil war were impoverished rural youth, who openly associate the onset of large-scale conflict with increases in land pressure and land access concerns (Richards 1995 and 2005).

### ***Mineral Resources and Conflicts***

Closely entwined with agrarian conflicts are mineral resource conflicts. Though a small country, Sierra Leone has substantial mineral resources, with a formal mining sector that constituted approximately 20% of GDP throughout much of the 1990s (EIU 2006). Diamonds, gold, bauxite, rutile, and iron ore are all found in large quantities in Sierra Leone, and there is recent evidence of oil and gas reserves offshore (EIU 2006 and 2007). With a price tag of approximately US\$210 million in 2006, diamonds are Sierra Leone's principal export and the country's primary employer after subsistence agriculture (EIU 2006 and 2007). While Sierra Leone neither monitors nor regulates gold output, and does not maintain production or export figures, gold deposits have been found throughout the country, and the woman-dominated alluvial gold mining industry has a substantial potential for growth (Averill 2006). Bauxite reserves, estimated at 12.4 million tons, and an estimated 1 billion tons of iron ore are expected to provide substantial income in the coming years, as post-war mechanized production increases (EIU 2006). Sierra Leone's 278 million tons of high-value rutile ore, nearly one quarter of the world's total supply, was the country's largest private-sector industry

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<sup>15</sup> For more information, see the Provinces Land Act, Cap 122.

<sup>16</sup> Citizenship is passed down patrilineally in most cases. However, national citizenship can be gained through the mother in some cases (as detailed in <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.html?tbl=RSDLEGAL&id=3ae6b50610&count=1> #6), and some ethnic groups, such as the Pa Mende, grant tribal citizenship matrilineally.

pre-war and is expected to regain significance in the coming years (EIU 2006). Additionally, the suspected unlicensed and unregulated mining of coltan deposits in Bo District is likely a profitable shadow industry in this community (EIU 2006).

Sierra Leone's mineral resources have the potential to provide substantial employment and profits for the mining communities and the country as a whole. Far from the jewel of Sierra Leone's economy, however, the mining industry has long provided a glaring example of the elite capture, lawlessness, and asymmetrical income distribution that characterize many resource-rich, but income-poor, nations. While Sierra Leone has recently taken steps toward improved regulation and accountability in the mining industry, such as the ongoing review of mining laws and a commitment to the Extractive Industries Transparency Initiative, looting and inequalities in distribution are still widespread (EIU 2006 and 2007) and the small force of Mines Monitoring Officers is often perceived as unavailable, ineffective, or subject to bribery (Baker 2005).

The extent to which Sierra Leone's mineral, and particularly diamond, deposits contributed to the outbreak of civil war is still subject to debate. In a 2000 statement, Sierra Leone's then-Ambassador to the United Nations, Ibrahim Kamara, directly denied that conflict was due to marginalization of youth, a rural-urban divide, or other often-cited causes, and attributed it directly and solely to diamonds and greed (Herbst 2000). Le Billon points out that the "transformation of nature into tradable commodities is a deeply political process; involving the definition of property rights, the organisation of labour, and the allocation of profits"<sup>17</sup>. Indeed, the externalities of the extraction process, such as degradation of the environment or usurpation of land rights, may contribute to marginalization and frustration (Humphreys 2005).

While the role of mineral resources in the onset of civil war is subject to debate, there is little doubt that the everyday circumstances of life in mining communities can provide ample room for grievance. The mining areas have long provided employment for Sierra Leonean youth, both male and female, who migrate from agrarian home communities in search of access to land and increased economic opportunity. Frequently, however, these youth find the circumstances they were trying to escape in their hometowns replicated in their new locales, where they are strangers without strong social ties, living on borrowed land, and working in harsh conditions for limited incomes. The intersection of uneven income distributions, poor working conditions, large migrant or transient populations, access to drugs and alcohol, and illicit industries can create the potential for both small- and large-scale conflict.

Grievances also frequently arise over the rights to mine particular areas, perhaps especially for small-scale (artisanal) mining, wherein licensees are awarded by chiefs. Conflict – or the grounds for conflict – is common between mining companies and the communities whose land is being mined or prospected. Many communities have accused companies of breaking promises to compensate landowners and/or invest in development, or of failing to rehabilitate land or infrastructure damaged by mining activities (NMJD 2004, Polgreen 2007, and USAID 2006). Many other communities make no such accusations, but may suffer silently out of a fear of standing up to powerful government and private interests.

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<sup>17</sup> Le Billon 2001, pg 568

## 4.2 Community Labor and Funding

Sierra Leone's provinces are starkly poor, with limited (if any) access to community development funding for development or maintenance of municipal services. Thus, provincial residents are often required to contribute labor for communal activities, such as road building, farming, or building schools or clinics. While communal labor has a long tradition in the provinces, post-war interviews with rural youth indicated that many believed that the children of the poor were providing labor that benefited only the traders and wealthy members of society (Richards 2005). Those who refused to provide labor were subject to onerous fines that placed them further in poverty. In contrast, interviews with community elders frequently yielded the impression that youth wanted the benefits of their communities but were unwilling to contribute. While recent studies have shown that the communal labor burden is in actuality quite similar across age groups (GoSL 2006b), youth's lack of voice in community affairs may contribute to their impression that their labor is valuable, but their opinions are not.

Initial research has suggested, however, that in some cases youth have been able to use their labor as leverage, for example in the selection of externally-funded community development projects. In one recent case study, a group of youth joined with several community leaders, including elders, to overrule the community's initial choice of a school in favor of a community center, the youth's preferred project. Such cases may be rare and limited to more peri-urban or developed areas, but this will be explored further as research proceeds.

In initial discussions with community stakeholders, the allocation of resources from community funds has also arisen as a point of contention in many communities. During the DfID-sponsored Chiefdom Governance Reform Programme Public Workshops, some rural residents noted that chiefs entered into contracts with mining companies to exploit mineral and natural resources without prior consultations with community members. Though .75% out of the 3% tax on extracted diamonds goes to local community development funds, some community members have alleged that these revenues are mismanaged, with the funds either disappearing or being distributed among influential families (GoSL 2004d). Once again, this mismanagement of community revenues and labor resources can serve to further distort income inequalities and create disputes.

## 4.3 “Woman Palava” and Marital Conflicts

At the start of the civil war, the Revolutionary United Front intentionally targeted rural youth's frustrations with the difficulties in finding brides as a recruitment mechanism (Richards 2005). The limited number of rural brides was brought on in part by the “historic monopoly of female marriage partners by male land-owning elites”.<sup>18</sup> Thus, once again, restrictions on land ownership paired with age-based discrimination to create an environment ripe for conflict.

Young men were also frequently targets of claims for “woman palava (damage)”, generally involving allegations of sexual relations between a young man and the wife of a wealthier community member (Richards 2005). In fact, claims for woman palava were found to surpass all but land disputes in their frequency in local courts (Richards 2005). While the trajectories for these disputes have not been studied in any recent surveys, they may form an interesting point of research because of both

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<sup>18</sup> Richards 2005, pg 576

their frequency and their place at the intersection of many power relationships in communities (youth – elders, male – female, wealthy – poor, landowner – non-landowner).

***Box 3: Communal Labor and a Road through the Bush***

A great many of Sierra Leone's communities are beyond the reach of a "motorable road." This is true even with the generous definition of "motorable" often used in Sierra Leone, which might include a steep and narrow path that only a sturdy 4x4 and intrepid driver can climb.

One such string of villages branches from the main (dirt) route some 15 miles from one of the country's major provincial cities. To reach these communities, one must hike along a narrow "bush path" through dense vegetation, clamoring over makeshift bridges and around fallen trees. Periodically, the path crosses a sunlit, cleanly-brushed dirt clearing with a handful of thatch-and-mud houses: a village.

Though not particularly remote by Sierra Leonean standards, these villages are cut off from key economic and social systems. People needing medical attention are carried by hammock along the miles of rough path to the main road, where they then wait for transport to town. In one group of communities visited by the J4P team, the only development projects that had ever reached them were latrines and wells built by a local NGO. The materials for these projects were carried up the path "on the heads of our children," according to one chief.

Realizing they needed a road to "bring development" – both better facilities and access to markets and social facilities – a group of nine villages along this route came together to build a "motorable" road. As is typical, the elders of each village met amongst themselves to agree upon the road project, and thereby committed their communities' youth – without their prior consent – to provide (unpaid) labor. In this case, building the road would entail back-breaking physical labor, without appropriate tools, over a period of months.

On the day work was meant to begin, however, youths from three of the villages – including the two closest to the existing road, and thus with the least to gain from the project – did not show up. Infuriated, the local councilor sued them to the local court, where they were reportedly fined 200,000 Leones (\$65, a substantial amount for poor villagers) and then imprisoned for failure to pay. A local human rights NGO helped to get them released with the understanding that the youths would raise the money to pay the fine. The youths had to borrow and scramble to put together such a substantial sum. Then, once they had paid, they were sent back to work on the road with which they had not wanted to help from the beginning – not surprisingly, with some bitterness.

The nine villages ultimately managed to make substantial progress – approximately 6 miles of road de-stumped and cleared of bush – before finally concluding that they could go no further without outside help (for which they are still waiting), including proper tools and expertise. They did so, however, only at the cost of significant conflict and divisions among the youths and between youths and authorities. If such conflict can erupt even when the project is genuinely in the community's interest, one can imagine the animosity when the project (as is common) is of more questionable communal benefit.

## CONCLUSIONS

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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 additional research at this point in time. The World Bank's *Justice for the Poor/Understanding Processes of Change in Local Governance* program will continue to solicit input from local academics and stakeholders to enhance overall knowledge and cross-check findings, and will update this document accordingly. The program will also engage with justice reform efforts led by local and international civil society, international organizations, and formal and informal government institutions in an effort to improve and enhance justice for the poor.

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