

ATTACKS ON JUSTICE - SIERRA LEONE

Highlights

After the end of a devastating civil war which began in 1991, the task of rebuilding an effective judiciary started with a focus on its geographic extension. The government's National Recovery Strategy 2002-2003, introduced in October 2002, identifies the strengthening of the judiciary as a key challenge to lasting peace. Despite some progress, the justice system is not yet fully working in the rural areas where the population still lacks access to the courts and legal counsel, and where their basic rights are ignored. Judges, prosecutors and lawyers are often ill-trained and lack resources, and judicial and official corruption remain of concern. Existing courts are overburdened, and the increasing caseload leads to prolonged pre-trial detentions contrary to international standards. Considerable progress has been made towards accountability for the human rights violations committed during the civil war: the UN-sponsored Special Court and the Truth and Reconciliation Commission became operational at the end of 2002. Their efforts continue to be threatened by scarce resources. In its 5 October 2004 report, the TRC expressed concern over the lack of independence of the Office of the Attorney-General and Ministry of Justice under the current regime.

BACKGROUND

The situation in Sierra Leone has dramatically improved since 2001 (see "Attacks on Justice 2002", http://www.icj.org/news.php3?id_article=2668&lang=en). After a succession of failed peace agreements, a 17,000-member **United Nations peacekeeping force** (UNAMSIL) successfully completed the disarmament and demobilisation of militia forces by January 2002, as provided for in the **10 November 2001 Abuja ceasefire agreement**. On **18 January 2002**, the authorities announced the end of the civil war which had been fought by various warring factions against the government. The main faction was the **Revolutionary United Front** (RUF) a rebel movement supported by the Liberian warlord and later **President Charles Taylor**.

Backed by UNAMSIL, government authority was subsequently restored nationwide.

The improved security situation allowed for presidential and parliamentary elections to be held on **10 and 14 May 2002**. **President Alhaji Dr Ahmad Tejan Kabbah** won with a decisive 70.1 per cent victory. His **Sierra Leone People's Party** (SLPP) won an absolute majority of 83 seats in the 124-member parliament. Although international monitors declared the elections generally free and fair, there were some reports on irregularities and abuses (see The Carter Center "Observing the 2002 Sierra Leone Elections", <http://www.cartercenter.org/activities/showdoc.asp?countryID=84&submenuname=activities>; and International Crisis Group "Sierra Leone after Elections: Politics as Usual?", <http://www.icg.org/home/index.cfm?id=1489&I=1>). On **22 May 2004**, the

SLPP won most of the wards in the elections for local government which were held for the first time in 32 years.

Progress in the peace process had contributed to a climate of increased respect for human rights but many cases of human rights abuses were still reported during the period under review - rape and beatings by government security forces, arbitrary and prolonged detentions in prison conditions which failed to meet international standards, violence and discrimination against women and exploitation of child labour as well as restrictions on the freedom of the press (see Immigration and Nationality Directorate Home Office, United Kingdom: "Sierra Leone Country Report April 2004", http://www.ecoi.net/file_upload/panjal_02787sie.pdf; US Department of State "Country Reports on Human Rights Practices – Sierra Leone 2003", <http://www.state.gov/g/drl/rls/hrrpt/2003/27750.htm>, and "Amnesty International Report Sierra Leone 2004", <http://web.amnesty.org/report2004/sle-summary-eng>).

More than 223,000 internally displaced people had been resettled within 18 months and 250,000 Sierra Leonean refugees repatriated. Considerable progress has been made in the integration of ex-combatants. On **31 March 2004**, the government's **Disarmament, Demobilization and Reintegration Program** which had supported 56,700 ex-combatants, was officially closed.

The situation allowed the UN to begin a gradual withdrawal of UNAMSIL from **September 2002** (see "15th Report of the Secretary-General on the UN Mission in Sierra Leone", <http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/2002/987&Lang=E&Area=UNDOC>). *Security Council Resolution 1537* of **30 March 2004** approved a residual UNAMSIL presence for an initial period of six months starting from **1 January 2005**. Despite the progress, security concerns still exist (see International Crisis Group, "Sierra Leone: the State of Security and Governance", September 2003, <http://www.icg.org/home/index.cfm?id=1492&I01>).

Having the mandate to review Sierra Leonean laws, the government's **Law Reform Commission** started operations in **2003**. According to its first annual report presented to the President on **6 September 2004**, the Commission reviewed six statutory laws and made proposals in the form of draft Bills, namely the *Commercial Use of Land Act, 2004*, *Consumer Protection Act, 2004*, *Sierra Leone Citizenship (Amendment) Act, 2004*, *Prevention of Cruelty to Children (Amendment) Act, 2004*, and *Sexual Offences Act, 2004*. However, none of these Bills have been adopted by Parliament as of **31 December 2004**.

JUDICIARY

Judicial Reform

National Recovery Strategy 2002-2003

The enormous task of rebuilding state institutions after the war includes the re-establishment of a working judiciary which was already moribund and ineffective.

On **31 October 2002**, the government presented the **National Recovery Strategy 2002-2003** (<http://www.reliefweb.int/library/documents/2002/govtsle-sle-28Oct.pdf>)

which consolidated two previous government programs: the **resettlement program** which started in **January 2001** in areas where the government had access, and the **recovery strategy** for the newly-accessible areas which began in **May 2002**. The strategy aimed not only at the restoration of state administration in the whole country, but also at addressing the root causes of the war. The absence of the rule of law, and of an impartial and independent judiciary were identified as two of the main causes. The strategic plan indicated that the establishment of an effective judiciary complemented by a professional police force was a key challenge for the government. Moreover, the people's confidence in the state justice system had been undermined and needed to be restored.

To provide some sort of remedial justice through minimal judicial functions before undertaking a total structural reform, the government's key priority has been the **geographical extension of the justice system** to reach the whole country. This focus has led to a neglect of other necessary and more in-depth reforms of the judiciary including review of outdated laws, harmonization of customary law with common law, and of the *Customary Legal System* (Local Courts) with the *Common Law System* (Supreme Court, Appeals Court, High Court and Magistrates' Courts (for further information on Sierra Leone's dual legal system see General Country Information b. The Judiciary, 1. Judicial Structure. On the necessity for judicial reform, see National Forum for Human Rights "The Law People See", http://www.daco-sl.org/encyclopedia/8_lib/8_3/research/lawpeoplesee.pdf; and Commonwealth Human Rights Initiative "In Pursuit of Justice, a report on the judiciary in Sierra Leone", http://www.humanrightsinitiative.org/publications/ffm/sierra_leone_report.pdf).

The **National Recovery Strategy's assessment** published on **24 December 2003** pointed out some limited progress in the rehabilitation of the judicial sector, as demonstrated by the resumption of courts sitting in all districts. In **2000**, there was no High Court and only three Magistrates' Courts operating outside the capital Freetown. By **March 2003**, a High Court judge had been reappointed to cover the district of Bo and 33 Magistrates' Courts were operating again in the whole country. However, by **December 2003**, there were only five resident magistrates because judicial officials are reluctant to assume office outside Freetown. Courts in the other 12 districts were operating with magistrates who pay a monthly visit on a roving schedule. Bad road conditions to half of these districts make access very arduous.

Judicial Appointments

Section 5(2) of the *Courts Act, 1965* authorizes two **Justices of the Peace** (JPs) sitting together to replace a magistrate for civil actions. In order to reduce the backlog of cases, in **February 2003**, the government with the help of UNDP appointed and trained **87** Justices of the Peace, court clerks and bailiffs for 18 locations without a resident magistrate. The initiative was repeated in **February 2004** to recruit persons in rural areas as staff from Freetown are reluctant to leave the capital. However, despite some basic training including exposure to human rights principles and legal instruments, some JPs lack the basic skills required for their work. JPs were mostly recruited from among retired civil servants and police officers.

Accountability for past human rights abuses

Since the end of the civil war which was characterized by massive and widespread atrocities, two institutions became operative in **2002** to achieve accountability: the

Truth and Reconciliation Commission (TRC), and the **Special Court for Sierra Leone** whose origin relies on *Security Council Resolution 1315*. The sweeping amnesty provision in Article 9 of the **July 1999 Lomé Peace Agreement** bars national courts from adjudicating human rights abuses committed prior to this agreement. A newly established **Human Rights Commission** replaces the National Commission for Democracy and Human Rights (NCDHR) which had focused on human rights education programs, lacking the independence and powers necessary for effective protection of human rights.

Truth and Reconciliation Commission (TRC)

Article 26 of the *Lomé Peace Agreement* provides for the establishment of the **TRC**, which is regulated by the *Truth and Reconciliation Commission Act, 2000* (http://www.usip.org/library/tc/doc/charters/tc_sierra_leone_02102000.html). The TRC started its one-year term on **5 October 2002** after a difficult beginning due to administrative and financial challenges as well as renewed fighting in 2000. The **TRC's mandate** was to establish an impartial historical record of the violations of Human Rights and International Humanitarian law during the civil war, to promote healing and reconciliation, and to make recommendations for the prevention of a repetition of the violations and abuses (Section 6.1 *TRC Act 2000*). It successfully conducted countrywide hearings from **April to August 2003**. Hearings were either public or closed upon request. It received statements of victims and perpetrators, the government, NGOs and experts, mostly on thematic issues. The **TRC** included four Sierra Leonean and three international commissioners. Time and resource constraints impeded its work, forcing it to cut back on the number of victim statements it could receive. It also had to decline calls to spend more time for public hearings outside Freetown.

After a six-month extension, the **TRC** completed its duties on **31 March 2004** and its **report** was published on **5 October 2004**. In the overview (<http://www.trcsierraleone.org/drwebsite/publish/index.shtml>), the Commission stressed that contrary to conventional wisdom, diamonds were not the root cause of the civil war. They only fueled the conflict which was inevitable after years of “bad governance, endemic corruption and denial of basic human rights”. On the role of external actors, the Commission called on **Liberia** to make symbolic reparations, and on **Libya** to pay reparations for their role during the conflict. It also warned the current political leadership that many of the causes of the conflict have not been adequately addressed.

Special Court for Sierra Leone

In **2002**, measures were taken to make the UN-sponsored **Special Court for Sierra Leone** workable (see General Country Information on the Special Court). The UN Secretary General appointed the Special Court's Prosecutor in **May 2002**. In **July 2002**, the government and the UN announced their appointments for judges who were sworn in Freetown in **December 2002**. The work of the Special Court is constrained by serious financial difficulties as it is financed through voluntary contributions. Due to financial and time considerations, the trial chamber decided in **February 2004** to jointly try the **Revolutionary United Front (RUF)**, **Civil Defence Force**, and **Armed Forces Revolutionary Council (AFRC)** leaders.

Thirteen indictments were issued from **March to June 2003** including one against Liberian president **Charles Taylor** whose indictment was unsealed in **June 2003**. The indictment of RUF deputy military commander **Sam Bockarie** was withdrawn following his death in Liberia in **May 2003** in confusing circumstances, allegedly shot by his former paymaster Charles Taylor. Similarly, the indictment of RUF leader **Foday Sankoh** was withdrawn following his death at the age of 65 on **29 July 2003** while in custody of the Special Court. Nine of the 11 accused are in custody of the Court to date. The whereabouts of **Johnny Paul Koroma**, leader of the former AFRC - a group of dissident soldiers who overthrew **President Kabbah** on **25 May 1997** and aligned to RUF - is unknown.

After relinquishing power in Liberia, **Charles Taylor** found shelter in Nigeria. On **31 May 2004**, the **Special Court's Appeals Chamber** declined to quash the indictment and arrest warrant against Taylor who arguably benefited from head of state immunity. The Court reaffirmed earlier decisions that it was an international court, operating independently from the Sierra Leonean national judiciary, and applying international law. Since it has been accepted that sovereign equality of states does not prevent prosecution before international tribunals, Article 6(2) of the Court's statute which removed head of state immunity was in conformity with international law and consequently the court was bound to apply it (<http://www.scs-l.org/Documents/Taylor/SCSL-03-01-I-059.pdf>) .

Preliminary motions challenging the Special Court's jurisdiction and legality were filed in **November 2003** and decided by the Court in **spring 2004**. The decisions made it clear that although often described as a hybrid national-international tribunal, the Court considers itself to be a truly international court. Therefore, it concluded that it did not violate section 122(1) of the *Constitution* providing for the supremacy of the **Supreme Court** since it operates outside the Sierra Leonean judiciary. The Court also ruled that the amnesty provision in Article 9 of the *Lomé Peace Agreement* had no impact upon Article 10 of its statute which excludes the application of amnesties in proceedings before it. The *Lomé Peace Agreement* created rights and obligations under domestic law, which would not affect the prosecution of international crimes before an international tribunal. The Court also has jurisdiction over national crimes, but the issue of whether the amnesty provision applies has not been raised.

Human Rights Commission of Sierra Leone

Although Article XV of the **1999 Lomé Peace Agreement** calls for the creation of an "autonomous, quasi-judicial national Human Rights Commission" within 90 days, it was only on **30 July 2004** that Parliament passed the *Human Rights Commission of Sierra Leone Act, 2004* (<http://www.sierra-leone.org/Laws/2004-9p.pdf>). The Human Rights Commission's five members are appointed by the President subject to parliamentary approval from a list prepared with the input of civil society organizations. Its mandate includes both the promotion and protection of human rights. Among its functions are the investigation of alleged human rights abuses, and the review of existing and draft legislation for compliance with Sierra Leone's international human rights obligations. Unlike the former **NCDHR**, it has the power to subpoena witnesses and to compel the production of documentation. If the government refuses to produce information on the grounds of national security or public interest, the Commission can take the matter to the Supreme Court which decides whether the information shall be disclosed.

Independence of the Judiciary

Although the **1991** Sierra Leonean Constitution provides for the independence of the judiciary, in practice judges fail to act independently, particularly in cases concerning the government.

The **Truth and Reconciliation Commission (TRC)** was **highly critical of the role played by the judiciary**, as indicated in its findings of **October 2004** on the causes, nature and extent of violations during the conflict (<http://trcsierraleone.org/drwebsite/publish/v2c2.shtml>). Lawyers and judges failed to defend the population against the systematic human rights violations, and the majority of Sierra Leoneans lacked meaningful access to the courts. Corruption permeated all levels of the judiciary. Moreover, the TRC noted that under the current regime with the Attorney-General's office fused with the Ministry of Justice, the **Attorney-General** cannot be free from political interference. The TRC made recommendations for the protection of human rights, the rule of law and independence of the judiciary (<http://trcsierraleone.org/drwebsite/publish/v2c3.shtml>).

Anti Corruption Commission (ACC)

Corruption remains endemic, both within the private and public sector. Reportedly, there are cases of corruption within the judiciary, and most citizens perceive the outcome of cases to be determined by corruption. The integrity and performance of judges and Justices of the Peace are compromised by the lack of adequate salaries, allowances and modern equipment which would allow them to process cases more effectively.

Established pursuant to the *Anti Corruption Act, 2000* on **1 January 2001**, the **Anti Corruption Commission (ACC)** makes slow progress. Its work is impeded by the mandated procedure under which the ACC investigates cases of alleged corruption, with the **Office of the Attorney-General** and **Ministry of Justice** deciding whether to prosecute. In its "annual report 2003" (<http://www anticorruptionsl.org/pdf/accreport03.pdf>), the ACC proposed 26 amendments to the *Anti Corruption Act* to fine-tune its operations. However, no action has been taken by the parliament so far.

ACC officials complained that former Attorney-General and Minister of Justice, **Eke A. Hallway (May 2002-August 2004)**, often failed to act upon their recommendations, and that cases, if brought to court, proceeded slowly. The ACC submitted 40 cases for prosecution, but by the end of 2003, only 12 cases had reached the courts and two cases had been completed. On the other hand, Eke A. Hallway claimed that the ACC submitted investigative reports lacking the detail necessary for prosecution. In its "annual report 2002" (<http://www anticorruptionsl.org/pdf/accreport02.pdf>), the ACC complained about the "lukewarm attitude of the judiciary which after two years, has yet to take a single matter of adjudication to final conclusion."

To address these problems, in **October 2003** the **Commonwealth** sent three judges to sit on a special bench within the **High Court** to hear matters related to corruption. On **23 September 2004**, the ACC announced that two foreign prosecutors hired by the

Commonwealth and **British Department for International Development** were to arrive in the next month.

Cases

In a case filed by the **Sierra Leonean Bar Association**, the **Supreme Court** on **30 January 2004** declared **Eke Halloway's** swearing-in as **Attorney-General and Minister of Justice** on **27 May 2002** by the President without parliamentary approval to be constitutional. A majority of the legal community considered the Supreme Court to have been subservient to the president in this case. When the President appointed the new Attorney-General and Minister of Justice **Dr Frederick Max Carew** on **3 August 2004**, he cited this Supreme Court judgment to support his view that there was no need for parliamentary approval.

Justice Mohamed Taju Deen was convicted in **June 2001** of taking a bribe to impose a lighter sentence on Sierra Leone's former Minister of Agriculture, Forestry and Food Security, **Dr Harry Will**. Will was sentenced to a USD 250 fine for misappropriation of USD 1.5 million from World Bank development funds. However, the Court of Appeal overturned the conviction on **12 August 2004**. The government's appeal against the decision is still pending before the Supreme Court.

On **5 April 2002**, the President of the Court of Appeal, **Justice Tolla Thomson**, sued **Paul Kamara**, editor of the Sierra Leonean newspaper "Fo di People" for libel. This was over Kamara's articles questioning his management of the Sierra Leone Football Association's finances. Kamara had also queried the compatibility of the judge's role in the Football Association with a constitutional provision stipulating that high court judges are not allowed to hold other offices. Reportedly, after an expeditious trial lacking fair trial and due process guarantees, Kamara was convicted on **12 November 2002** to a six-month prison sentence and fined. Local and international media questioned the fairness of the trial and impartiality of **Judge Hawa Jalloh**. In addition to being a junior colleague of the complainant Justice Thomson, she was the sister-in-law of the complainant's leading lawyer. Fearing the consequences of offending a senior judge in front of whose court they had cases pending, most lawyers were unwilling to represent Kamara. Kamara's lawyer was twice detained for contempt of court after commenting on the trial's procedural flaws and insisting on an adjournment to prepare his case. After serving his prison sentence, Kamara was released in **April 2003**. He announced that he intended to bring the case to the **ACC**. A civil court ordered him to pay damages to Justice Thompson on **9 October 2003**. Since **5 October 2004**, Kamara has been back in prison on a two-year sentence for libel for reporting that a **1967 Commission of Inquiry** had found **President Kabbah** guilty of fraud.

ACCESS TO JUSTICE

An over-burdened court system which suffers from an increasing backlog of cases in areas, moreover, where there is no resident magistrate has resulted in overcrowded prisons and prolonged pre-trial detention periods that are contrary to international standards.

There are also concerns about the discrepancy between the consequences of convictions in **national courts** and in the **Special Court of Sierra Leone**. The former may impose the death penalty whilst imprisonment is the maximum sentence that can be imposed by the Special Court. The **Truth and Reconciliation Commission (TRC)** has recommended the abolition of the death penalty from the domestic judicial system in its report of **October 2004** (<http://trcsierraleone.org/drwebsite/publish/v2c3.shtml>). The **TRC** also said it and the Special Court for Sierra Leone had failed to seize the opportunity to offer the world a unique framework of transitional justice, and recommended that any future truth and reconciliation commission was to work simultaneously with a court.

Cases

Sixty-seven members of the **Revolutionary United Front (RUF)** and **33** members of a renegade militia known as the "**West Side Boys**" were arrested in **May 2000** after firing on civilians protesting against RUF leader **Foday Sankoh**. They still have not been tried, although section 17(1) of the Constitution prohibits arbitrary detention, and emergency regulations allowing arrest and detention without charges were lifted in **May 2000**. It was only in **May 2002** that the members of the "West Side Boys" and 47 members of the RUF were charged on counts of murder. Their case was committed to the **High Court** which has repeatedly adjourned it in violation of international standards and the Sierra Leonean Constitution. The other 20 members of the RUF have not yet been indicted since their arrest in **May 2000**.

Following the decision of the High Court on **21 July 2004** to postpone indefinitely the trial of the "**West Side Boys**" members, disturbances broke out in Pademba Prison and the government had to deploy anti-riot forces. The defendants were denied family visits and have not been provided with legal representation, which is particularly worrying since they could face capital punishment if convicted.

Similarly, some of the **Special Court** detainees are subjected to long periods of pre-trial detentions although not to the same extent as are detainees of the national system. Two of the defendants belonging to the **Armed Forces Revolutionary Council (AFRC)** were arrested in **March 2003**, and a third in **September 2003**. Their trial is scheduled to begin only on **10 March 2005**.

Ten members of the former rebel forces involved in the armed attack on an army armory in an alleged attempt to overthrow the government in **January 2003** were sentenced to death for treason by Freetown's High Court on **20 December 2004**, with a right to appeal. In **September 2003**, one of the suspects was transferred to the jurisdiction of the **Special Court** where he will be tried for crimes under international law and faces life imprisonment as a maximum sentence.

LEGAL REFORMS DURING THE PERIOD

October 2002: The Truth and Reconciliation Commission started its one-year term.

- October 2002:** National Recovery Strategy was introduced to restore state administration in the whole country and address the root causes of the war.
- July 2004:** The Parliament passed the *Human Rights Commission of Sierra Leone Act, 2004*.
- September 2004:** Law Reform Commission presents its first annual report.

General Country Information

a. Legal system overview

1. Rule of Law and independence of the judiciary

Sierra Leone gained independence from the **United Kingdom** on **27 April 1961** as a constitutional democracy. The current Constitution was formally approved by the **House of Representatives** in **August 1991**, and later endorsed by a national referendum. It has been suspended twice, first **between April 1992 and March 1996** following a military-led coup, and again in **June 1997** after dissident members of the armed forces led by **Johnny Paul Koroma** seized power, deposing the **President Alhaj Dr. Ahmad Tejan Kabbah**. President Kabbah regained power with international assistance in **March 1998** and the *1991 Constitution* was reinstated.

According to **section 5(1)** of the 1991 Constitution "[t]he Republic of Sierra Leone shall be a State based on the principles of Freedom, Democracy and Justice". Chapter III provides for "[t]he recognition and protection of fundamental human rights and freedoms of the individual". Chapter IV grants political rights to every citizen of Sierra Leone "eighteen years of age and above and of sound mind" and establishes a multi-party system. Chapter V vests executive power in the **President** who is to be elected by the majority of votes cast nationally and by at least 25 per cent of the votes cast in each of the four regions (the Northern, Eastern and Southern Provinces, and the Western Area). The President appoints the **Cabinet** subject to approval by the legislature. The maximum duration of the President's tenure is two five-year terms.

Under Chapter VI, legislative power resides in a unicameral 124-member **Parliament** which is elected by universal adult suffrage for a five-year term. Parties that secure a minimum of five per cent of the votes in the legislative elections are allocated seats on a system of proportional representation, while 12 seats are allocated to 12 **Paramount Chiefs** representing the provincial districts. According to section 76 of the Constitution, members of the Parliament are not permitted to hold office concurrently in the Cabinet.

Further chapters of the Constitution provide for the establishment of various other institutions including the **Ombudsman** (Chapter VIII) and **Commissions of Inquiry** (Chapter IX).

Chapter VII of the Constitution (sections 120-145) provides for the judicial power of Sierra Leone. The independence of the judiciary is declared in section 120(3): "In the exercise of its judicial functions, the Judiciary shall be subject only to this Constitution or any other law, and shall not be subject to the control or direction of any other person or authority".

The Constitution suffers from an important institutional problem in terms of judicial independence. According to section 120(1), the **Head of the Judiciary** is the **Chief Justice** who benefits from the same guarantees as judges of the Superior Court of Judicature. However, his supervisory power and more generally the independence of the judiciary are threatened by section 64 of the Constitution which merges the

positions of **Minister of Justice** and **Attorney-General**. Thus, functions which are innately executive and judicial reside in the same person.

2. Legal Publicity and Judicial Transparency

The system is flawed by the lack of access to laws and case law. According to section 105(3) of the 1991 Constitution, legislation must be published in the Government Gazette in order to come into force. In Freetown where the Gazette is printed by the Government Printer's office, the public have reasonably easy access to legislation from **2000** onwards. However, copies of earlier legislation, except for the Constitution, are rare. Most of the legislation in force can be found at the **Library** attached to the **Law School** which legal professionals have access to for a fee. Recently a project to put legislation on-line has started to be implemented (<http://www.sierra-leone.org/laws.html>). It is extremely difficult to get case law; the last law report was issued in **1973**. Courts lack recording facilities and often also secretarial services. Denials of formal justice often happen as a result of misplaced documents and files.

b. The judiciary

1. Judicial Structure

The structure of the judiciary is provided for in the Constitution and legislation. Section 120(4) of the 1991 Constitution states that "[t]he Judicature shall consist of the Supreme Court of Sierra Leone, the Court of Appeal and the High Court of Justice, which shall be the superior courts of record of Sierra Leone and which shall constitute a Superior Court of Judicature, and such other inferior and traditional courts as Parliament may by law establish". The **Parliament** completed this structure by adding the **Magistrates' Courts** (*Courts Act, 1965*) and **local courts** (*Local Courts Act, 1963*).

The **Supreme Court** is the ultimate court of appeal in both civil and criminal cases, and has supervisory jurisdiction over other courts and adjudicating authorities in Sierra Leone, as well as original jurisdiction for constitutional issues. The **Court of Appeal** has jurisdiction to hear and determine appeals from decisions of the **High Court** in both criminal and civil matters, and also from certain **statutory tribunals**. Appeals against its decisions may be made to the **Supreme Court**. The **High Court** has unlimited original jurisdiction in criminal and civil matters, as well as appellate jurisdiction against decisions of **Magistrates' Courts**. **Magistrates' Courts** have jurisdiction in summary criminal cases, and in preliminary investigations to determine whether a person charged with an offence should be committed for trial. **Local courts** have jurisdiction, according to *native law and custom*, in matters that are outside the jurisdiction of other courts. Local courts apply "customary law" which is defined by the 1991 Constitution as "the rules of law, which by custom are applicable to particular communities in Sierra Leone (section 170(3))". The local courts do not fall within the administrative jurisdiction of the Sierra Leonean Judiciary but are overseen by the **Ministry of Internal Affairs**.

As a result of the scarcity of the constitutional administration of justice, traditional justice systems continue to supplement the central government judiciary extensively in cases involving family law, inheritance, and land tenure, especially in rural areas.

2. Special Courts

With the inclusion of an amnesty provision in the **July 1999 Lomé peace agreement**, the issue of impunity was again placed on the international agenda after the collapse of the peace process in **May 2000**. In **June 2000**, the government of Sierra Leone asked for UN assistance to set up an independent and impartial court. The **Security Council** adopted *Resolution 1315* on **14 August 2000** mandating the Secretary General to negotiate an agreement with the Government of Sierra Leone for the creation of an independent **Special Court**. On **16 January 2002**, the agreement was signed with the statute of the **Special Court** as an annex. In conformity with constitutional requirements, the provisions of the agreement were incorporated into Sierra Leonean law by an *Act of Parliament* in **March 2002**.

The **Special Court** has a trial chamber with one judge appointed by the Sierra Leonean government and two by the UN, and an appeals chamber with three judges appointed by UN and two by the government. The internationalization of the Court's composition is intended to ensure its independence and impartiality. The Special Court's **mandate** is to prosecute those "bearing the greatest responsibility" for the commission of serious violations of international humanitarian law and Sierra Leonean law during the conflict. Peacekeepers are exempted from the Court's personal jurisdiction in the absence of a Security Council Resolution.

The decision to broaden the personal jurisdiction of the Court to persons over the age of 15 was very controversial and led to protests by many national and international non-governmental organizations despite the statute's provisions for special treatment of juvenile offenders. The Court's truncated temporal jurisdiction starting from **November 1996** is criticized as impeding accountability for the many atrocities committed prior to this date.

The Special Court exercises a mixed subject matter jurisdiction over international crimes, namely crimes against humanity, violations of Article 3 common to the *Geneva Conventions* and of *Additional Protocol II*, and other violations of international humanitarian law, as well as crimes under Sierra Leonean law relating to the sexual abuse of girls (*Prevention of Cruelty to Children Act, 1926*) and the wanton destruction of property (*Malicious Damage Act, 1861*) in order to address the characteristics of the Sierra Leonean civil war. The applicable *Rules of Procedure and Evidence* are the ones used by the **International Criminal Tribunal for Rwanda** as in force at the time of the Special Court's establishment. However, the Special Court's judges have the power to amend the rules, which they have done on a number of occasions. In doing so, they might refer to the Sierra Leonean *Criminal Procedure Act, 1965* which is not applicable as such before the Special Court since it is not part of the Sierra Leonean Judiciary (see [Latest Developments](#)).

3. Court Administration

The conflict in Sierra Leone has had a serious negative impact on the legal system as a whole. The institutional framework described is barely functional. Since **1995**, the administration of justice outside Freetown has been almost non-existent. The **High Court** of Sierra Leone did not sit outside Freetown until **November 2001** when a High Court Judge was reappointed to Bo to cover the districts of Bo and Kenema. Since the end of the war, considerable progress has been made in the restoration of the

court system with Magistrates' Courts functioning again in all districts, although with shared magistrates and a large number of Justices of the Peace.

Although the primary cause was the war, even prior to **1995** the judiciary faced acute problems sitting in the provinces. Judges and Magistrates had, and still have, no proper accommodation. The courtrooms, which were then in an extremely precarious situation, have been destroyed, and transportation to and from the provincial towns has been always unavailable. As an important component of the **National Recovery Strategy 2002-2003** (see "Attacks on Justice 2004, Judiciary"), the rebuilding of the Magistrates' Courts made considerable progress during **2003**, but not all court buildings were functional by the end of that year.

However, despite the reconstruction of court buildings, the infrastructure remains largely inadequate for the administration of justice. According to various reports, national judicial institutions desperately lack almost everything a judicial system needs to deliver justice efficiently, independently and impartially. Deterred by the unattractive salaries and conditions of services, there are not enough judges and magistrates. Due to the lack of technical resources, the system is not computerized. There is no systematic reporting of verdicts. However, Sierra Leonean newspapers regularly report on verdicts, albeit not from a legal or technical perspective. The judiciary lacks the training necessary to enable it to carry out trials of those accused of international and national crimes.

Judges do not have general administrative powers over their courts; their duties are strictly judicial. The **Chief Justice** - appointed by the **President** with parliamentary approval (*1991 Constitution*, section 135(1)) - exercises administrative powers over the courts. He usually acts through the **Master and Registrar** appointed by the **Judicial and Legal Service Commission** (*1991 Constitution*, section 141(1)) which consists of the **Chief Justice**, the most senior **Justice of the Court of Appeal**, the **Solicitor General**, one **practicing counsel** nominated by the Sierra Leone Bar Association and appointed by the President, the **Chairman of the Public Service Commission**, and **two non-legal practitioners** appointed by the President subject to parliamentary approval.

4. Budget and Autonomy

An editorial in a Sierra Leonean newspaper of **July 2000** remarked: "It is no gain-saying that the Judiciary is the most neglected branch of government. While the Executive and Legislative branches are head over heels about fat salaries and better conditions of service, the Judiciary is left to wallow in a state of disrepair and utter neglect". The salaries and conditions of service are not decent enough to attract experienced practitioners.

The **Ministry of Justice** submits the estimated budget to the **Ministry of Finance** which determines, in the light of its own budget, the amount that the judiciary receives. The **Parliament** has to approve the Ministry of Finance's budget.

c. Judicial Actors

c.1. Judges

1. Independence and Impartiality

Section 138(4) of the 1991 Constitution provides that “a Judge of the Superior Court of Judicature shall not while he continues in office, hold any other office of profit or emolument, whether by way of allowances or otherwise, whether private or public, and either directly or indirectly.”

2. Qualifications, Appointment and Training

Concerning appointment, “[j]udges of the Superior Court of the Judicature shall be appointed by the President by warrant under his hand acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament *(1991 Constitution section 135(2))*”.

The **Sierra Leone Bar Association** has noted in the past that judges were employed “by means of renewable contracts after retirement (which) is incompatible with judicial independence and is likely to compromise the quality of judicial performance”.

3. Security of Tenure

Remuneration is governed by section 138(3) of the 1991 Constitution, which states that “[t]he salary, allowances, privileges, rights in respect of leave of absence, gratuity or pension and other conditions of service of a Judge of the Superior Court of Judicature shall not be varied to his disadvantage”.

The remuneration and conditions of service of judges are seriously deficient, and conducive to the emergence of corrupt practices. Furthermore, they deter private legal practitioners, who would otherwise have wished to serve on the Bench, from taking up judicial appointments.

4. Professional Secrecy and Immunity

According to section 120 (9) of the 1991 Constitution, “[a] Judge of the Superior Court of Judicature shall not be liable to any action or suit for any matter or thing done by him in the performance of his judicial functions”.

5. Discipline, Suspension and Removal

Removal is governed by section 137(7) of the Constitution: “[a] Judge of the Superior Court of the Judicature shall be removed from office by the President (a) if the question of his removal from office has been referred to a tribunal appointed under subsection (5) and the tribunal has recommended to the President that he ought to be removed from office; and (b) if his removal has been approved by a two-thirds majority in Parliament”.

6. Accountability and Corruption

See “Attacks on Justice 2004”

c.2. The Legal Profession

1. Professional Associations

The **Sierra Leonean Bar association** comments on issues concerning the judiciary and plays an informal role in the law-making process.

d. Access to Justice

1. Access to Justice

The population of the rural areas still lacks access to the state court system despite the progress made in the restoration of the courts (see “Attacks on Justice 2004, Judiciary”). **Human Rights Watch** said in its 2004 Report that the system of local courts remains the only system accessible to about 70 per cent of the population. Presided over by traditional leaders, the local courts apply *customary law* which is often discriminatory particularly against women. Moreover, there are frequent reports of abuses committed by local courts such as illegal detentions, imposition of excessive fines, and adjudication of criminal cases which by law are to be tried in a higher court

2. Fair Trial

Both criminal and civil cases proceed slowly, and reportedly can last from one to nine years. Inadequate infrastructure, in particular the lack of a legal secretariat, and the insufficient numbers of judges, prosecutors and defenders cause long pre-trial delays in the filing of charges and setting of court hearings. Moreover, hearings are frequently adjourned due to the non-appearance of one of the parties.

3. Legal Aid

Although most of the Sierra Leonean population cannot afford legal counsel, there is no system of public defenders. Lawyers are not required to provide *pro bono* services. The state provides legal counsel only to those accused of capital crimes. Some local NGOs provide legal aid services.