

Submission by the Coalition of Justice and Accountability for the UN Universal Periodic Review of Sierra Leone

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Introduction

The Coalition of Justice and Accountability (COJA) wishes to highlight key human rights concerns in relation to the justice system in Sierra Leone. Under section B, COJA raises concerns over the ratification and domestic implementation of the Rome Statute of the International Criminal Court; a civil society friendly judicial system (a system that encourage interactive section between the civil society and the office of the prosecutor, defender and registry to improve the work of the court, especially access to justice , fully qualified judicial personnel, and the need for human rights training for administrators of the natives administrative court. In Section C, COJA raises concerns about human rights violations in the context of lack of access to justice. In section D, COJA makes six recommendations for action by the government.

B. Normative and institutional framework of the State

1) Prosecution of crimes against humanity, war crimes and genocide

The Sierra Leonean government has only signed but has not ratified the Rome Statute of the International Criminal Court, making it difficult to nationally prosecute cases of international crimes i.e. crimes against humanity, war crimes and genocide. However, in 2002 the government of Sierra Leone and the United Nations signed an agreement to set up a hybrid court called the Special Court for Sierra Leone. This Court was mandated to try persons for crimes against humanity, war crimes and other crimes under Sierra Leonean law. COJA therefore believes that Sierra Leone already has the ability to prosecute persons for committing all the crimes under the ICC [and should therefore ratify the Rome Statute without delay?].

There is no mechanism that mandates the government to develop a user or civil society friendly mechanism for the judicial system.

2) Natives Administrative Court

The Customary Law Act 1965 provides for natives administrative courts, headed by a court chairman in the provinces. In many instances, miscarriage of justice and discrimination against women occur in these courts. Unfortunately, women and girls experience various human rights violations in the hands of these court chairmen especially when it involves Mohammedan (marriages based on Islamic principles) or customary marriage.

3) No investigation into political sex crimes

COJA is very concerned over the government's handling of the alleged rape case against women of the main opposition party, the Sierra Leone People Party, in March of 2009. The government set up a commission of enquiry, headed by former trial judge (appointed by the President) at chamber 1 of the special court. . COJA was concerned that, being the government appointee of the Special Court

he may not be independent as the chair of the commission of enquiry. COJA was also concerned by the government decision to set up a special commission of enquiry to investigate these cases instead of the Sierra Leone Human Rights Commission which has the mandate to do so under section 7 of the Human Rights Commission Act 2004. COJA was shocked when the commission decision was that there was no rape.

4) No implementation of recommendations made by Truth and Reconciliation Commission

The Sierra Leone Truth and Reconciliation Commission (TRC), created by an Act of Parliament as a post conflict judicial accountability mechanism. The TRC launched its report in 2004, and recommended that the Human Rights Commission monitor the implementation of the TRC's recommendations as a national follow up body (The report is available at :<http://www.sierra-leone.org/TRCDocuments.html>). COJA has observed that this recommendation has still not been seriously addressed by the government other than by including it in the Commission Act 2004.

COJA is aware of numerous recommendations submitted to the government by the TRC which are yet to be addressed by the Government especially in relation to human rights protection and promotion, including the abolition of the death penalty, and review of discriminatory gender laws in the 1991 Constitution and other national legislation. In this regard, COJA has also called on the government to respond to UN Committee on CEDAW's concluding observations in line with the TRC recommendations.

C. Promotion and protection of human rights on the ground

1. Judicial system

Since 2004, COJA has documented in many instances the need to ensure that Sierra Leone's judicial system incorporates international Human Rights Standard, so that international crimes can be prosecuted in Sierra Leone. This would eliminate the need for international tribunals, such as the Special Court.

COJA discovered from their experience in working with the Special Court, that part of the success of the Court is linked to their openness and working closely with the civil society. This type of approach is missing in Sierra Leone's judicial system and continues to inhibit progress and effectiveness of that system. This creates tensions between the courts and civil society and it also makes access to court information difficult.

2. Delays in trials and prolonged detention of accused persons

In 2010, COJA documented the case of a man who was detained for 2 weeks in Mashaka because the magistrate was ill and there was no other magistrate to cover for him. This single magistrate covers Lungi, Port Loko, and Mashaka towns respectively. These towns have no appeal courts and

all appeal cases are commuted to the regional headquarter towns of Makeni or Freetown the capital city..

COJA is also aware of the logistical difficulties for magistrates to access riverine and large terrain areas. Under such circumstances accused persons are always detained beyond the required time for detention.

3. Native administrative courts

A Report presented by the Justice Sector Development Programme (2006) clearly indicated that about 70% of the population access native administrative courts. These courts are responsible for interpreting customary laws which cover customary marriage, divorce, wife battering, child abuse etc.

About 98% of the courts' Chairpersons who preside over all cases are males and lack human rights knowledge in areas including juvenile justice and women's rights.

COJA is aware that the government is in the process of reviewing the Customary Law Act 1965. However there is no national programme agenda in place to review the procedure of appointment of native administrative court chairmen so as to include women.

The majority of rural dwellers visit the above mentioned courts, especially rural women. This is primarily because these courts adjudicate cases in their own local languages and are less expensive than the minimum legal fee of Le 500,000 per case in national courts. This single factor makes the majority of the rural poor avoid national courts and instead rely on native administrative courts.

In 2009 in a village in Kenema district COJA compiled a report on a case involving a lady who was banished from her home village because she was single .She was summoned to the native administrative court on the grounds that she was prone to prostitution as a single woman. It was only after the intervention of human rights NGOs urging the native Court to banish all male residents who were single and have girl friends that the court reversed its decision.

4. Limited access to legal assistance for victims of human rights abuses

Although the government has initiated the legal aid programme under the Justice Sector Development Programme COJA has observed that it is largely limited to urban areas and does not cover native administrative courts. Access to justice for victims of human rights abuses at native court level and in the national courts is still very problematic in Sierra Leone.

In 2009 COJA recorded more than 25 cases of victims of human rights abuses in the national courts of the western area alone who had no legal representation and who without the intervention of legal NGOs would have had their cases thrown out of court for lack legal representation. COJA is also aware of numerous human rights abuses in the native administrative courts due to lack of basic human rights protection in the rules and procedures of these courts.

D. Recommendations for action by the State under review

1. Ratify and implement domestically the Rome Statute of the International Criminal Court.
2. The Sierra Leone Judicial system should be civil society friendly, just like the Special Court for Sierra Leone
3. Increase the numbers of magistrates in regional areas and ensure that they have specialised courts dealing with matters relating to children and women.
4. Ensure there is sufficient legal aid for indigents.
5. Provide native court administrators with human rights training
6. Review the Sierra Leone Human Rights Commission Act 2004 and ensure it makes provision for the investigation of all human rights violations, and the monitoring of government compliance with the key recommendations of the TRC report.