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Sierra Leone

Women face human rights abuses in the informal legal sector

Introduction

Women in rural Sierra Leone¹ have few protections from discrimination and other human rights violations and abuses. They face formal and official discrimination under the law, in customs and in rulings in matters of personal status, marriage and inheritance. Although there is a system within the formal sector through the Local Courts which officially adjudicates on these matters, Chiefs often perform these judicial functions illegally. Amnesty International has found that not only do Chiefs act outside their jurisdiction, at times they collude with men in the community to forcibly evict women and children from their homes or subject them to arbitrary detention and other forms of gender based violence.

Women are forced by a lack of formal protection from the Sierra Leonean Government into situations where their rights---civil, political, social and economic---are violated on a daily basis. Treated as minors under the guardianship of a male family member, women lack formal equality in marriage and the ownership or administration of common property, either during the marriage or when it has ended. Inequality and discrimination affect their right to an adequate standard of living and their right to housing for themselves and their children. Women's access to justice and redress is severely impeded. Practices that take place in the name of custom or customary law also violate women's human rights to live free from violence, coercion and discrimination.

Identifying where responsibility for this problem lies is complex. Formal and customary law coexist in Sierra Leone. Formal law comprises of the Constitution, laws made by Parliament, and common law. Customary law, part of common law, is largely unwritten and defined in the Constitution as "the rules of law which by custom are applicable to particular communities in Sierra Leone."² The Constitution guarantees equality before the law and prohibits laws which are discriminatory. However, there is a constitutional provision which severely limits the scope of this guarantee in areas which impact upon women such as in adoption, marriage, divorce, inheritance and property. Likewise the manner in which customary law is adjudicated is a co-existence of formal and informal justice systems. The formal justice system is regulated, with Local Courts intending to be the first point of call for communities or individuals seeking justice. Paramount and local Chiefs also preside informally, and in some instances illegally, in the informal legal sector. The boundary of jurisdiction between Chiefs and Local Courts with regard to customary law is not well understood amongst the rural population, Local Court officials and Chiefs themselves.

¹ Rural Sierra Leone is considered all areas outside of the capital, Freetown.

² Sierra Leone 1991 Constitution Sec. 170.

Despite this complexity however, some things are clear. Local Courts are the only institution permitted to adjudicate in matters of customary law. This is not a recent development – with the creation of the Courts Act, 1963, Local Court chairman officially took over this function from Chiefs. However, practice has not followed Sierra Leonean law. Chiefs continue to adjudicate on these matters informally -- and illegally. Not only is it illegal for Chiefs to adjudicate on these matters, but the cases handled by Chiefs lack the same protections for redress provided for by the formal legal sector—through the Local Courts.

Not all is negative, however. There are some new initiatives which look promising in the search for justice for women. Paralegal and legal aid organizations based in rural Sierra Leone provide women with free legal advice, mediation between family members and within the community, and awareness raising workshops on women’s human rights issues with members of the local community and local government. Amnesty International has found that in general, rural women were empowered by this assistance and believed these services to be effective in resolving their disputes. Through these legal aid interventions, women became aware of their rights under the law, learned how to challenge or appeal rulings they felt were unjust or unfair, and became aware of other services available to them in the community

Chapter I – Customary Law: the formal and informal sector

Amnesty International found on a recent research mission to Sierra Leone (October 2005) that Local Court officials, Chiefs, community members, including women, lacked clarity with regard to which sector, formal or informal, adjudicated on matters related to customary law. This lack of clarity impacted on women’s access to justice and was a primary obstacle with regard to the protection of women’s human rights.

a. Formal sector and customary law

The Sierra Leone Constitution recognizes both formal and customary law. Additionally, formal and informal legal sectors exist, both of which adjudicate on matters related to customary law. The formal laws of Sierra Leone comprise the Constitution, laws made by Parliament, and the common law. The common law includes English common law and customary law. The judiciary is headed by a Chief Justice and is composed of superior courts of jurisdiction – the Supreme Court, Appeals Court and High Courts, and inferior courts - the Magistrates Courts, which adjudicate in criminal and civil cases under statutory and English common law.

Common law applies throughout Sierra Leone except for the capital, Freetown, where only English common law is applicable. According to the 1991 Sierra Leonean Constitution, should customary law conflict with common law, common law will take precedence. The 1991 Constitution protects equality before the law and equal protection of the law, by prohibiting the making of any law which is discriminatory “either in itself or in its effect”.

However, this guarantee does not cover “adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law.”³ These areas are often regulated by customary law. This means that discriminatory laws on such matters that have a particular impact upon women are *not* necessarily unlawful under the Constitution. This loophole or exception is so large that Amnesty International considers that it places women’s human rights legal protection to be at risk.

Customary law, largely unwritten, is made up of the rules and regulations applicable by custom and within particular communities in Sierra Leone. Customary law is recognized throughout rural Sierra Leone and defines social relations between men and women, and frequently reinforces the inequality of women.

Officially the Local Court is the only institution permitted to adjudicate customary law, under the Local Courts Act of 1963. Cases that fall under the jurisdiction of the Local Courts include: marriage, divorce, debt, succession, and land tenure. The Local Courts are presided over by a Court Chairman, who is appointed to a three-year term by the Paramount Chief and whose appointment the Ministry of Local Government and Community Development must approve. The Courts’ rulings are overseen by Customary Law Officers, officers of the Ministry of Justice, and may be overturned by those officers. Despite a Constitutional provision that provides for the right to appeal against decisions by Local Courts before Magistrates Courts, such appeals rarely take place⁴. Local Courts have the power to hear and determine all civil cases governed by law where the claim is less than 250,000 leones [\$US75]and criminal law cases where a sentence does not exceed six months or fine does not exceed 50,000 leones [\$US15]. Criminal cases are between the Chiefdom committee and an individual and include cases such as contempt, petty theft, and abusive language.⁵ However, the Local Courts reportedly occasionally try cases that fall outside their jurisdiction, for example, serious crimes such as rape.⁶

Historically, and particularly during the recent conflict, the government has given little attention to the running of Local Courts, and Local Court officials interviewed by Amnesty International seemed unfamiliar with the provisions of the Local Courts Act. Even fewer members of the public had any understanding of the function or jurisdiction of these

³ Sec. 27 of the Constitution provides that no law shall contain any provision that is discriminatory, either in itself or in its effect and prohibits discriminatory treatment by any person acting by virtue of any law. However the Constitution nullifies much of the promise of equality provisions in section 27 (4) (d) by making exception to the prohibition of discriminatory laws with respect to laws dealing with marriage divorce and inheritance or other interests of personal law.

⁴ Local Courts Act, 1965

⁵ Local Courts Act, 1963

⁶ Amnesty International interview with human rights worker in Bo town, Bo District.

courts.⁷ Efforts are now being taken by the Law Reform Commission to reform the Local Courts Act and educate the public of its functions.

b. Informal sector and customary law

In practice, most customary law cases are dealt with outside the formal justice sector.⁸ Disputes and conflicts are resolved informally, most often by Chiefs. Disputes that cannot be resolved within the extended family are brought first to local Chiefs, elders or leaders, and ultimately to the Paramount Chief. Only in the last resort do disputes go before the Local Court.⁹

Chiefs are elected for life, and are the most recognized authority and visible face of government in communities. They are considered the custodian of the customs and traditions of the people. Local government in rural areas is based on 149 traditional chiefdoms, each headed by a Paramount Chief. This follows with the Chiefdom speaker, section Chief, and village/town Chief. If it is a large town it is further subdivided to quarter head, tribal head, and family head.¹⁰ The northern, eastern and southern provinces are divided into districts; each district is sub-divided into chiefdoms; and large towns are further subdivided.

An 1896 Ordinance that first made Sierra Leone a British Protectorate established “courts of the native chief”. Much later reforms replaced Paramount Chiefs with court chairman as the heads of the courts. Local Court Chairmen are appointed by Paramount Chiefs for approval by the Ministry of Local Government. The Local Courts Act, 1963 further institutionalized these reforms and prohibited Chiefs from adjudicating customary law including presiding over court cases, imposing fines or imprisoning people.

However, in practice they have continued to adjudicate in a parallel and informal system by Chiefs. The Chief presides over a so called “court”, which is held in the presence of members of the traditional Council of Elders. Councils of Elders are composed of tribal authorities, members of other ruling houses, and other respected members of the community.

⁷ Local Courts are more extensively described in Amnesty International, *No one to turn to: Women’s lack of access to justice in Sierra Leone*, AI Index: AFR 51/011/2005.

⁸ Alterman, Owen, Binienda, Aneta, Rodella, Sophie, and Varzi, Kimyia, *The Law People See: The Status of Dispute Resolution in the Provinces of Sierra Leone in 2002*, A National Forum for Human Rights Publication, Freetown, p. 10

⁹ A 2005 study found that of 128 people interviewed throughout rural Sierra Leone, approximately 42 per cent said they would go to the Chief to resolve personal and family conflicts. Campaign for Good Governance, *Report on the project – short term inputs to support the informal justice sector component*, a study carried out on behalf of the UK Justice Sector Development Project June 2005.

¹⁰ Alterman, Owen, Binienda, Aneta, Rodella, Sophie, and Varzi, Kimyia, *The Law People See: The Status of Dispute Resolution in the Provinces of Sierra Leone in 2002*, A National Forum for Human Rights Publication, Freetown, p. 23

Normally, plaintiffs approach the Chief informally and pay a fee. The defendant receives a verbal summons to the court, and the Chief decides the venue of the hearing.¹¹

Despite the illegality of this system, this is where the majority of adjudications of customary law take place due to its familiarity, informality, and relatively lower cost.

Recognition of the need for the Local Courts to provide greater access to justice for the rural population, efforts are now underway by the Law Reform Commission to undertake a nationwide consultation with a view to revise the Local Courts Act. Training, awareness raising and education about the Local Courts Act is currently being planned for Chiefs at all levels and for members within the community.

Chapter II – The impact of illegal adjudication by Chiefs on women’s human rights

Chiefs have a tremendous impact on women’s access to justice in rural Sierra Leone. In some cases they can be a positive influence in a community, by assisting members of the community to resolve disputes without a formal legal hearing. However in some cases, Amnesty International has found that they have exceeded their authority under the law by imposing punishments on women which violate their human rights -- including the right to liberty. Amnesty International has also discovered that in other cases, the Chief’s role and actions in dealing with cases of domestic violence and sexual abuse has resulted in the continued perpetuation of violence at the community level. At times, the hearings themselves have become the mechanism for perpetrating further discrimination and violence. Amnesty International has also found that despite that civil cases fall under the jurisdiction of the Local Courts, Chiefs are also illegally judging cases related to civil status. These illegal practices carried out by Chiefs both violate the national laws of Sierra Leone, and render justice for women inaccessible.

a. Abusing women’s human rights

On a recent research mission to Sierra Leone, a woman in Kenema town, Kenema district told Amnesty International:

“I am married and have five children with the same father who until recently was my husband. A few months ago my husband left me to marry another woman. He is now trying to evict me and our five children from the property where we have lived for so many years. The first thing that happened was that an order came from the paramount chief through the Chiefdom police that we should leave our family home. When the Chiefdom police arrived, I was terrified and told them that I couldn’t move as my children and I have nowhere else to go. When the paramount chief found out that I refused to move he took the case to the Local Court.

¹¹ Ibid p. 32

My husband then asked the Local Courts to grant us a divorce arguing that I would not perform my wifely duties because I wore trousers when in bed with him. This accusation was enough for the Local Court to present me with divorce papers. My husband had already signed them. The human rights people told me not to sign them and I did not do so. Therefore, the Local Court summoned me for failing to obey their orders. The Local Court officials put me in a box in public all day to humiliate me. Thankfully some human rights advocates came and had me freed the same day.

The human rights people told me to refuse to sign the divorce papers because they had not included a clause which required my husband to pay care and maintenance for the children as part of the agreement for the divorce. The human rights people wrote a letter to the Local Court to this effect. How will my children—his children continue to go to school if these fees are not paid. I barely make enough to cover the food for all of us.

In the end it turned out that the customary law officer saw the ruling made by the Local Court and advised that they had no jurisdiction in this case. In the end the customary law officer wrote and said that my husband must pay the care and maintenance of the children. Basically they told him that in order for him to divorce me he needs to pay care and maintenance. My husband is still reluctant.”¹²

This case is illustrative of the confusion which exists throughout rural Sierra Leone regarding where Chiefs’ powers end and Local Court’s jurisdiction begins. While it is common for women to be forcibly evicted from their homes and land without consideration of their contribution to the assets from the marriage upon the death or divorce of their husband, it is only the Local Courts, accountable to the people through the Government of Sierra Leone that can make this determination. Under Sierra Leonean law, under no circumstances can the Chief take it upon himself to order the eviction of a woman from her family home. Likewise it is unlawful for Chiefs to utilize Chieftom police to carry out forced evictions or other human rights abuses. Despite their name, Chieftom police do not work for Chiefs, they work on behalf of the Local Courts and enforce judgements in the customary legal system and serve as marshals of the Local Court. Their primary responsibilities are to keep order in the Local Courts, serve summons, and enforce punishments such as the collection of fines.

This separation of powers between the formal and customary law sectors is not new. As mentioned above, there is a provision within the Local Courts Act, 1963¹³ which prohibits any person from adjudicating without due authority – rendering the Chief’s actions in the above case illegal. Amnesty International’s research revealed that this provision is rarely respected by the Chiefs, or enforced by the Government of Sierra Leone. Additionally a right

¹² Amnesty International interview in Kenema town, Kenema district October 2005

¹³ Part VII Section 40 states that “Any person who shall within the area of the jurisdiction of any duly constituted Local Court exercise or attempt to exercise judicial powers, otherwise than in accordance with the provisions of any Act or sit as a member of such Court without due authority, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 25 pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment. No prosecution under this section shall be instituted with the consent in writing of the Judicial Advisor.

to bring cases before the Magistrates Courts on appeal exists, however such appeals rarely take place. In the Sierra Leonean justice system, Customary Law Officers are officers of the Ministry of Justice who oversee rulings and have the power to overturn unfair rulings imposed by Local Court. The above case illustrates how this is carried out in practice.

Amnesty International's research indicates that Chiefs have in some instances illegally carried out functions as both prosecutor and judge in cases brought before them by members of the community. In some cases brought against them by their husbands, the women did not have a fair hearing but encountered stigmatisation and ostracism as well as other threats to their liberty and security. Examples which were brought to Amnesty International's attention included Chiefs who have levied arbitrary charges against women, such as "witchcraft"¹⁴. Amnesty International is also aware of cases where Chiefs have determined guilt without evidence, imposed arbitrary and exorbitant fines, imprisoned women unlawfully in their homes or in "tribal prisons", charged fees for services, and threatened to, or actually carried out, expulsions from the community as a form of punishment.

A woman in a village outside of Makeni town, Bombali district told Amnesty International:

"My son is 13 years old and he suffers from epilepsy. In September this year (2005) my son and I were accused of witchcraft. My husband brought this charge to the Chief. My husband said that our child was bewitched and it was me who was responsible for bewitching him. Based on this accusation that my husband made, the Chief charged both me and my son with witchcraft. He said that we each had to pay him: one five gallons of palm oil, 50,000 leones [US\$15], one goat, and 20 ft pan of straw rice.

I pleaded with the Chief for mercy claiming that I had no way of paying those kinds of fines. His answer was to order me to go to the tribal prison. He told me to stay there until I paid him bail money of 12,000 leones [US\$4]. After I gave him the bail money he released me. He then demanded that I pay him the fines. I didn't have that kind of money so I begged him to let me go to Freetown to get the money together to pay him. He said he would only let me go if I could identify someone in the village who could pay the fine if I did not return. My uncle, who also lived in the village, agreed.

The next day I went to Freetown to find my brother. He was the only one I knew who could help me. I left my son in the village with the other people in my family. I stayed in Freetown for a while as it took a long time to convince my brother to return to the village with me. When I finally returned with my brother, I found my son in the care of a community worker. The community worker told me he had become destitute because no one wanted to care for him as they thought he was bewitched. Upon hearing my story, the community worker advised me and my brother to take the matter to a human rights lawyer from the Access to

¹⁴ It is unlawful for Chiefs to adjudicate on cases of witchcraft. There is no crime of "witchcraft" in Sierra Leonean law, and thus any such charge is arbitrary and violates international human rights standards.

*Justice Project*¹⁵ in Makeni. We went to Makeni to talk to the lawyer there. After they heard our story they sent a letter to the Chief in our village. Immediately when the letter reached the Chief, he dropped the witchcraft charge and all the fines that he had imposed on me. I am not sure what I would have done if it had not been for the human rights lawyer with the Access to Justice Law Centre in Makeni.”¹⁶

In President Kabbah’s 2003 address to the nation he clarified that Chiefs’ powers are limited to land allocation and boundary disputes. He clearly stated that it is only within the power of the Local Courts to adjudicate on customary legal cases -- Chiefs have no power to determine guilt or innocence, to impose imprisonment, fines, other punishments or to demand bail, or indeed to adjudicate such cases at all. Local Courts are limited to determining all civil cases where the claim is less than 250,000 leones [US\$75] and criminal law cases where a sentence does not exceed six months or fine does not exceed 50,000 leones [US\$ 15].¹⁷ All other cases fall under the jurisdiction of the Magistrate Court or High Court.

Amnesty International has found that paralegals and legal aid providers helped women understand the importance of ensuring that cases are handled legally through Local Courts. Paralegals and legal aid providers were in some cases assisted women to bring cases formally to the Local Courts where they feel they have experienced an unfair ruling by the Chiefs.

b. Violence against Women

Like other societies emerging from conflict, Sierra Leone has high levels of violence against women consistently across the country. Although overall prevalence studies have not been carried out, United Nations Mission in Sierra Leone (UNAMSIL) has reported that rape and sexual violence is higher in post-conflict Sierra Leone than prior to the conflict.¹⁸ Most cases of violence against women, particularly those cases perpetrated by a husband or other family member, are “dealt with” within families. Outside of families, Chiefs are traditionally the first point of contact. Chiefs may also deal with cases of gender-based violence outside the family context in the wider community.

¹⁵ The Justice and Peace and Human Rights Commission have been operating since February 2005, and provide legal advice and representation to women, children and young people. The project was developed after a study found that 98 per cent of people, living in a generally impoverished community had no access to justice at all. The project held rallies or marches, workshops and daylong discussions about the impact of violence against women and children, to raise awareness particularly among local leaders who have been reluctant to take up these issues. Training sessions focused on legal procedures for investigating and prosecuting violent crimes, the role of community leaders and the police, and the mental and physical impact of violence upon the victims.

¹⁶ Amnesty International interview Makeni town Bombali district October 2005

¹⁷ Local Courts Act, 1963

¹⁸ Consultations carried out by the human rights section of United Nations Mission in Sierra Leone (UNAMSIL) throughout all rural areas in Sierra Leone for the 2005 UN Stakeholder’s conference reported this to Amnesty International.

Studies carried out by national non governmental organizations reveal that in general, Chiefs are unaware of the criminal nature of these offences, the psychological impact that these abuses have on women, and in general remain reluctant to punish perpetrators, believing that punishment of the abuser brings disharmony to the community.¹⁹ This reluctance to pursue justice for women has resulted in a culture of impunity for violence against women, and may be a factor in the continued high levels of rape and sexual assault in Sierra Leone today. As a result, women are left with little protection against violence committed by their male relatives.

The Chief's lack of knowledge is compounded by the fact that customary law allows men to "chastise" their wives in certain circumstances.²⁰ Under customary law, a man may "chastise" his wife if he believes she has committed adultery, flirted with another man, or been "derelict of her domestic duty."²¹ Studies carried out in 2002 by Physicians for Human Rights revealed that many women themselves believed that it was their husband's right to beat them.²² "Chastisement" is not defined in customary law, however it usually involves physical assault – for example a man may strike his wife or children for even minor acts of disobedience. If a husband goes beyond "chastisement", the customary practice is that the wife will move back to her family home and ask her brother or father to seek advice from the Chief on the matter.

This practice forces women to constantly defer to men in cases involving violence committed against them. Given the extreme poverty and displacement of many families in post-conflict Sierra Leone, it is often difficult for a brother or father to even seek advice of the Chief, potentially leaving the woman vulnerable to further abuse by her husband.

The conflict in Sierra Leone has also led to a large number of female headed households, many of whom are widows. Widows face specific forms of discrimination which may not be recognised as human rights abuses by mainstream human rights organizations or governments. As Graca Machel²³ said: "*Wherever they are, irrespective of their religion and*

¹⁹ A study by Knowledge, Aptitude and Practise study carried out as part of a pilot project in 2005 for the Access to Justice Project of the Roman Catholic Church in the northern towns of Makeni, Kambia, and Kabala in Bombali and Tonkolili Districts.

²⁰ Joko Smart, H.M., *Sierra Leone Customary Family Law*, Fourah Bay College Bookshop Limited, 1983. p. 108

²¹ Ibid p.109

²² Physicians for Human Rights, *War Related Sexual Violence: A population based assessment*. PHR Washington 2002 p. 10

²³ Graca Machel is married to Nelson Mandela and has been very active internationally and is world-renowned for her commitment to children's and women's rights, education, and development. She served as President of the National Commission of UNESCO in Mozambique, as a delegate to the 1988 UNICEF Conference, and on the steering committee of the 1990 World Conference on Education for All. In 1994 UN Secretary-General Boutros Boutros-Ghali appointed Graca the independent expert in

culture, a common feature of widowhood is the violence perpetrated against them at the hands of near relatives and condoned by the inaction of governments. Many widows are hounded from their homes and denied access to essential resources such as shelter and land to grow food. They are also subject to degrading and life-threatening traditional practices. They have no status and often they are figures of shame and ridicule. This neglect of millions of widows has irrevocable long term implications for the future well-being and sustainable development of all our societies."²⁴

A widow from Magburuka, Tonkolili district told Amnesty International:

*"After my husband died in the war, I had to marry his brother. I have six children now, four from my former husband and two from my current husband. My current husband does not stay in the house very much and he does not help to maintain the children on a regular basis. Soon after our son was born, I went ahead and got him circumcised but did not consult my husband about it as he was not around. When he discovered that I had circumcised his son without his knowledge he beat me. He beat me so badly that I needed medical attention but did not have money to go to the hospital. I had to get drugs provided by the drug peddlers. At first I wanted to go to the police but my husband's family advised me not to. I did not consider taking this issue to the Chief as I had no money and he would not take it seriously. The Local Court was also not an option, as I have no money... What I am really afraid of now is that my husband will go to the Chief and the Chief will force me to leave the house. If he does that, where will I go and how will I take care of the children? I have no family of my own to go to. Really all I want now is for my husband to return to our home and help with the children."*²⁵

Women were, and frequently still are, perceived as the property of their husbands, to be inherited on the death of their husband along with the rest of his property by the husband's family. In some cases, a woman is required or encouraged to marry the brother of her dead husband so that her husband's family maintains all rights to his property. In some parts of Sierra Leone, a woman has no entitlement to inherit her husband's property, including the house she and her children may live in. The husband's family may choose to allow the wife to have some or all of his property, although she has no legal entitlement to it.²⁶ Customary practices have sometimes evolved so that women now receive a share of their husband's estate, but sons always receive a greater share than the wife or daughters.²⁷

charge of producing the U.N. Report on the Impact of Armed Conflict on Children, and Graca spent 1994-96 traveling to investigate the plight of children in countries beset by war.

²⁴ Graca Machel is , speaking at Opening Plenary of 2001 Conference of Widows Rights International, <http://www.widowsrights.org/index.htm>

²⁵ Amnesty International interview in Magburuka town, Tonkolili district October 2005

²⁶ The husband always inherits his wife's property, whether they have children or not.

²⁷ Joko Smart, H.M., *Sierra Leone Customary Family Law*, Fourah Bay College Bookshop Limited, 1983. p. 152

One woman in Makeni town, Bombali district described how, having been widowed as a result of the conflict and then remarried, she had been subjected to sexual violence by her husband on whom she and her children were economically dependent, but had been unable to obtain redress. She told Amnesty International:

“I have six children. I had five children with my former husband who died in the war and now one with my new husband. Since we have been together my new husband has been neglecting the children and all he wants is sex. I don’t want to have sex because I am a new mother and I am tired. I also do not want to have more children. I really did not know what to do. My family is not around as most died in the war and everyone else in the community, including the Chief, is advising me to just sit tight. They warned me not to go to the police about my husband raping me, or not paying for the children, they would just lock him up and then there would be no chance that he would pay. Also if he was locked up it would be bad for the children and have a negative impact upon them.”²⁸

Many women told Amnesty International about their desire to leave their husbands to escape the violence that their husbands were inflicting on them. They said that they were discouraged from going to the police or from seeking a divorce by other family members, as seeking help from the police would automatically lead to breaking up the family. Neither option would guarantee them any financial support from the husband – which would sentence most women and their children to a lifetime of dire poverty.

One woman in Bo town, Bo district, told Amnesty International:

“When my husband started beating me all I wanted to do was to leave him and get a divorce. His family told me to just stay with him. They also advised me not to go to the police as they said that it would be much worse for both him and me if I did that. Really, though, all I want to do now is get a divorce but I am worried about how I would survive.”²⁹
Under both formal and customary law the husband is under no obligation to contribute financially towards the care of the children while the family is living together. If a woman has left her husband or if they have decided to separate, she is not entitled to any support for herself, and the amount stipulated in law for support for the children is grossly inadequate.³⁰ The wife is eligible for support only if her husband deserts her, and the amount prescribed by law is minimal: 20,000 leones (US\$6) per month.³¹ As it is considered difficult to prove desertion, women are often left without access to even the minimal maintenance to provide for their children.

Many women told Amnesty International that they had tried without success to pursue maintenance cases with the police – through the recently created Family Support Units

²⁸ Amnesty International interview Makeni town, Bombali district October 2005.

²⁹ Amnesty International interview Bo town, Bo district October 2005

³⁰ Married Women’s Maintenance Act, Cap. 100 of the laws of Sierra Leone, 1960.

³¹ Ibid

located within the Police Service – but had been encouraged to go back to their own families, go to the Chief or simply survive on their own. The Ministry of Social Welfare, Gender and Children’s Affairs, also responsible for addressing these concerns, is understaffed and therefore has limited capacity to do so.

Although many women desire to work, own land, and have access to property in order to be financially independent of their husbands, their options are limited. Few skills and a lack of education make it difficult for women to find paid work, which would allow them to rent a home or buy a small plot to grow some food. Even when women do have some money, landlords often refuse to rent to women and will only deal with men.

This discrimination feeds into a more vicious cycle of wider human rights violations and abuses in the country. A lack of income and economic independence perpetuates a cycle of violence, with women being forced to stay in abusive or violent relationships because they have no other options.

c. Personal/civil status and the informal legal sector

Women have experienced discrimination in cases related to their personal or civil status claims, which are often handled by Chiefs. Laws governing marriage, divorce, maintenance, property, and inheritance are guided by customary law and impact upon women in every aspect of their lives.

Under customary law women’s status in society is equal to that of a minor. This has resulted in women’s unequal relationship with men throughout their lives which impacts upon their ability to seek justice or remedies of any kind for any abuses they have suffered. Before marriage, a woman is subordinate to her father or brother, and after marriage, to her husband. If her husband dies, she is subordinate to her male relative, usually a brother, until she remarries. Married women are expected to devote themselves to maintaining the family and taking care of the home.

As demonstrated above, Amnesty International’s research demonstrates that for many women, the process of pursuing remedies with regard to divorce, maintenance, property or inheritance is too expensive, too confusing and as a result, is inaccessible. Laws pertaining to personal or civil status are unwritten; rulings based on customary law are not systematically recorded, and are influenced by region and religion. Further, laws defining civil status differ depending upon which Chief in which district is administering it. Women’s unfamiliarity with laws and procedures as well as the lack of an ability to question Chiefs’ rulings leave women vulnerable to arbitrary and unjust rulings in matters which impact their very ability to exercise their human rights.

Custom allows for Chiefs to advise on civil and personal matters if they are approached by members of the community, including the women themselves. However the Local Courts Act 1963 prohibits Chiefs from charging fees for service. Despite the illegality

of the practice, summons or “hearing” fees are regularly charged prior to the carrying out of any procedures. The amounts and types of fees charged fluctuate significantly from one Chiefdom to the next. Under Sierra Leonean law personal or civil status claims such as seeking a divorce falls under the jurisdiction of the Local or Magistrate court. However due to financial or physical inaccessibility, and the unfamiliarity of the courts which exist within the formal legal system, women often seek resolution with the Chief.

One woman in Kenema town, Kenema district told Amnesty International:

“When I had a fight with my co-wife over my husband I went to the village Chief where my co-wife and my husband live. The Chief brought us together but it did not resolve the dispute. I then decided to go to the local Chief from my village. This strategy did not work, as my co-wife did not respect the authority of my Chief. I decided then to take the matter to the Town Chief. This did not work either because my mate’s relatives told him that they would handle the case within the family. The Town Chief agreed and asked for a withdrawal fee of 20,000le (\$US8) from each of us. Despite the promise that my mate’s family would resolve our dispute, the fighting between us continued. I went back to the Town Chief and told him that the case had still not been settled and he recommended that I take the case to the Local Court.”³²

One woman in a town outside of Makeni town, Bombali district told Amnesty International:

“I am 25 years old. I left the house with the children and went to live with my own family. My husband, even though he was living with us, he was not paying for anything at all. I charged him with failing to take care of his children. When I complained about it to my family or to other women they told me to be patient and just forgive the man. I just want to leave the man. I want to get a divorce. The Chief charges us 60,000 leones [US\$18] for a divorce. He also makes us wash the man—so that the man will be in a position to marry another woman—as a clean man. I don’t support the idea of washing the man and also the money involved is too much! In general though I do not like taking these cases to the Chief as he does not take these matters seriously. He just asks us for money and then the matter does not really get solved. My friend told me about human rights as she said they helped her to solve her problem.”³³

Both customary and formal law in Sierra Leone discriminate against women in matters of divorce. The financial burden of both pursuing a divorce and living with the financial consequences of having one make it almost impossible for women to survive on their own. Restrictions on petitioning for a divorce within the first three years of marriage, applicable to both men and women, may force a woman to remain with her husband even if he is abusing her because of the financial implication she would encounter if she left him.

³² Amnesty International interview Kenema town, Kenema district October 2005

³³ Amnesty International interview Makeni town Bombali district October 2005

The Matrimonial Causes Act of 1960 provides for divorce on the grounds of cruelty, adultery, or desertion for either party. In customary law, divorce is considered difficult to obtain because of the multiple variations in the law. However, either party to the marriage can initiate divorce proceedings in the Local Court. However, again due to the poor allocation of maintenance made available for children, women rarely follow this route in practice.

Chapter III - International Standards

In addition to ensuring the observance of its own laws, the Government of Sierra Leone has an international obligation to respect and protect and fulfil the spirit and the letter of women's human rights. International law obliges Sierra Leone to refrain from committing violations of human rights and to protect women from human rights violations committed by agents of the state, but also from abuses committed by private individuals or groups. International law has developed the standard of *due diligence* as a way to measure whether a government has acted with sufficient effort to live up to its responsibilities to uphold human rights, including in cases where the perpetrator is not an agent of the state.³⁴ Sierra Leone must have laws and policies in place to protect against discrimination, but also should adopt a wide range of measures to protect women's human rights, and provide redress and reparation to those women whose rights have been violated.

Sierra Leone is a party to the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention) and its Optional Protocol, as well as the two international covenants – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which place an obligation on states to ensure the equal right of men and women to the enjoyment of all the rights set forth in them. As a party to these human rights treaties, the Government of Sierra Leone is not only obliged to amend discriminatory legislation, but also to actively legislate against discrimination and violence against women.

In both the ICCPR and the ICESCR, Article 2 contains a general clause specifying that rights should be implemented for all, without discrimination. Article 3 elaborates the general principle enshrined in Article 2, specifically on the issue of sexual discrimination, underlining that equality of men and women in enjoyment of rights should be made a reality

³⁴ See African Commission on Human and Peoples' Rights, *Communication 155/96, The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, paragraph 44 stating: "Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights – both civil and political rights and social and economic rights – generate at least four levels of duties for a State that undertakes to adhere to a human rights regime, namely the duty to respect, protect, promote and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties... Each layer of obligation is equally relevant to the rights in question."

in law and practice.³⁵ The scope of the application of the right to equality between men and women contained in ICCPR and ICESCR has been developed by both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.³⁶

At the regional level Sierra Leone is a party to African Charter on Human and People's Rights and it has signed, but not ratified, the Protocol to the African Charter on the Rights of Women in Africa. Article 2 of the African Charter on Human and Peoples' Rights also requires states to implement rights equally between men and women.

Under Article 2 (f) of the Women's Convention state parties undertake to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against women." Article 5 of the Women's Convention further states that state parties shall take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

a. Discrimination against Women

The Women's Convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms the political, economic, social, cultural, civil or any other field".

Article 2 of the Women's Convention expressly states:

³⁵ The International Covenant on Civil and Political Rights (39) states in Article 2 (1): "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 3 states: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." Similarly, the International Covenant on Economic, Social and Cultural Rights,(40) in Article 2(2), requires States Parties to: "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 3 requires that States Parties: "undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."

³⁶ See Human Rights Committee, General Comment No 28 and Committee on Economic, Social and Cultural Rights, General Comment No 16.

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

b. Abolition of discriminatory legislation

Article 2 (a) of the Women’s Convention requires states parties to “embody the principle of equality between men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.” Similar provision is contained in article 2(1) (a) of the Protocol to the African Charter on the Rights of Women in Africa. Article 26 of the ICCPR also states that “the law shall prohibit any discrimination” on grounds such as sex.

Under the human rights treaties it has ratified, Sierra Leone is obliged to bring its domestic law into conformity with these treaties. Article 27 of the Vienna Convention on the Law of Treaties clearly states that a State Party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. It flows that Sierra Leone can not invoke provisions in its national laws, including its Constitution, to fail to implement effectively the human rights provisions related to equality between men and women described above.

In so far as the Sierra Leonean Constitution allows discriminatory norms of customary law to continue to apply, it should be amended to reflect the obligation of Sierra Leone under international human rights law.

c. Right of equality before the law

Article 15 of the Women’s Convention recognized the right of equality between men and women before the law. Similarly, article 26 of the ICCPR requires equality before the law and

requests that the law prohibits any discrimination and guarantee all persons equal protection against discrimination on ground such as sex. The Human Rights Committee (HRC) has stated that the “right of equality before the law and freedom from discrimination requires states to act against discrimination by public and private agencies in all fields.”³⁷

The CESCR has clarified that, with regards to article 3 of the ICESCR, “the principle of equality in the law must be respected by the legislature when adopting laws, by ensuring that those laws further equal enjoyment of economic, social and cultural rights by men and women. The principle of equality before the law must be respected by administrative agencies, and courts and tribunals, and implies that those authorities must apply the law equally to men and women.”³⁸

Right to equality before the courts also mean that Sierra Leone must ensure that access to justice and the right to a fair trial, as provided for in article 14 of ICCPR, are enjoyed by women on equal terms with men. Any obstacles, by law or practice that prevent women from direct and autonomous access to the courts should be removed. Women status as witness and her evidence should be treated without discrimination. Similarly, women should have equal access to legal aid, in particular on family matters.³⁹

The unlawful detention of women based on decisions by Chiefs is in clear violation of the right to liberty and the right to a fair trial recognized in the International Covenant on Civil and Political Rights and in the African Charter on Human and Peoples’ Rights to which Sierra Leone is a party.⁴⁰

d. Right to effective remedy

A key obligation arising from the ratification of human rights treaties is that of ensuring that individuals whose rights under the treaty are violated have access to effective and enforceable

³⁷ See Human Rights Committee, general comment No 28, paragraph 31.

³⁸ See Committee on Economic, Social and Cultural Rights, general comment No. 16, paragraph 9.

³⁹ See Human Rights Committee, General Comment No 28, paragraph 18.

⁴⁰ Article 9 of the International Covenant on Civil and Political Rights states that, *inter alia*, that “No one shall be deprived of his liberty except on such ground and in accordance with such procedure as are established by law”. Article 14 also states that “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

In its General Comment N. 3 the Committee on Economic, Social and Cultural Rights states: “among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, accordance with national legal system, be considered justifiable”. The Human Rights Committee has also clarified, in relation to Article 2 of the ICCPR, that “Article 2, paragraph 3, requires that in addition to effective protection of Covenant Rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights.”

remedies. These include not only redress at judicial level, but also through administrative mechanisms.

Providing effective remedies includes an obligation on states to ensure that individuals whose rights have been violated receive reparations. The scope of reparation is wider than monetary compensation alone, and should include other forms of reparations, such as restitution, rehabilitation, satisfaction and guarantees of non-repetition.

e. Right to equality in marriage

Article 16 of the Women's Convention and Article 23 of the International Covenant on Civil and Political Rights recognize the right to equality in marriage, including "same rights and responsibilities during marriage and at its dissolution". Sierra Leone is under an obligation to guarantee, *inter alia*, equal rights in respect to ownership or administration of property and in relationship to inheritance.

f. Obligation to prevent, stop and to punish violence against women

The UN Declaration on the Elimination of Violence against Women states in Article 1:
"...the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

According to the UN Committee on the Elimination of Discrimination against Women, gender-based violence against women is violence "*directed against a woman because she is a woman or that affects women disproportionately.*"

While the Women's Convention makes no reference to violence against women, the contemporary understanding of this violence grounds it, to a large extent, in ongoing, pervasive discrimination against women and their subordination in daily life. As the UN body monitoring the implementation of this Convention, the Committee on the Elimination of All Forms of Discrimination against Women, explained,

"Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;*
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;*
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;*
- (d) The right to liberty and security of person;*

- (e) *The right to equal protection under the law;*
- (f) *The right to equality in the family;*
- (g) *The right to the highest standard attainable of physical and mental health;*
- (h) *The right to just and favourable conditions of work."*

This means that gender-based violence against women may constitute a violation by the state of its obligations under Women's Convention where the state fails to exercise due diligence to prevent, stop or punish it.

According to article 4 of the UN Declaration on the Elimination of Violence against Women "*States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.*"

g. Reporting to treaty monitoring bodies

The Government of Sierra Leone, with UNIFEM's assistance and women's organizations are preparing the initial report to the CEDAW Committee, the body established to monitor states' implementation of their obligations under the Women's Convention.

Amnesty International believes that this represents an opportunity for Sierra Leone to monitor and review its legislation and practices and encourage public scrutiny of the actions of the government.

Sierra Leone has 30 overdue reports to the UN treaty monitoring bodies, including 13 reports which are more than 10 years overdue. The Government of Sierra Leone should begin immediately the process of drafting its overdue reports in accordance with the relevant treaty bodies' guidelines. In doing so it must include information on the steps taken to ensure equality between men and women and to redress violations and abuses of women's human rights.

Chapter IV - Conclusions

Amnesty International has found that women in rural Sierra Leone face grave human rights abuses at the hands of men in their homes, their communities – as well as at the hands of the Chiefs who act illegally in imposing fines, punishments and in some cases, arbitrary detention. Further, the Government of Sierra Leone has failed to protect women from these abuses by stopping or preventing Chiefs from acting illegally and by failing to enact legislation which prevents discrimination in sectors relating to personal or civil status.

The inability to challenge the authority of Chiefs who illegally adjudicate in the informal legal system perpetuates a cycle of abuse and violence that is impossible for individual women to break on their own. Efforts at several levels by the Government of Sierra Leone are required in order to improve women's access to justice. These include amending

the Constitution to ensure that it is not discriminatory either in law or in effect, supporting a transparent process of legal reforms on marriage, inheritance, divorce and sexual offences, and supporting the development of legislation which will provide effective redress against domestic violence.

The government must also play a role to stop human rights abuses at the local level by imposing punitive measures against Chiefs and other members of the community who act outside or against the law. Measures should also be put in place to ensure that cases are properly handled in Local Courts and that those courts function properly. Amnesty International is aware that efforts are now being made to make the Chiefs' role understood as a part of the Local Courts Act currently under amendment and looks forward to its implementation throughout the 149 districts in Sierra Leone.

Steps must be taken to ensure that women can exercise their right to an adequate standard of living for themselves and their families, including housing. They also have a right to the opportunity to earn a living and must be allowed to pursue this.

Amnesty International has found that paralegal and legal aid organizations have been playing a role as an ad hoc measure in the post conflict period to support the rural poor, including women, to access justice. The Justice and Peace and Human Rights Commission of the Roman Catholic Church, the Lawyers Centre for Legal Assistance in the district capitals and Freetown, and Timap for Justice in Magburuka and Bo have been providing paralegal and legal aid services to many women in district towns and surrounding villages. However, all these organizations told Amnesty International that they were completely overstretched, with many more cases than they could handle.⁴¹ These organizations require further support in order to take effective steps towards meeting the need for free legal advice, mediation between family and community members and representation in court cases.

These organizations also require further support in order to continue with their work of conducting workshops to raise awareness about human rights among local communities and local government officials. Amnesty International's interviews with rural women in Sierra Leone in 2005 showed that as women became more aware of their rights under the law and Constitution, they were able to challenge and appeal against rulings which they felt were unjust or unfair.

In the longer term, the Government of Sierra Leone should take steps to ensure that these types of services are available for all Sierra Leoneans, and especially women in view of the structural inequalities and discrimination they face.

⁴¹ Interviews with members of Timap for Justice, October 2005 an unpublished article by Vivek Maru, a co-founder of Timap for Justice, provided much of the background information here.

Chapter V – Recommendations

Amnesty International calls on the Government of Sierra Leone to take the following actions, without delay, to end abuses against women by Chiefs and to end discrimination against women in law and practice:

Bring an end to discrimination and violence and other abuses against women

- Enforce the prohibition of unlawful punishments – including arbitrary imprisonment and punitive fines – and other human rights abuses inflicted on women in the name of custom and tradition;
- Prohibit all violence against women, including “chastisement”, as assault and a crime against the person and prosecute the perpetrators;
- Rape and other sexual violence against women should be treated as offences against the woman and any reparation, including compensation, should be awarded to her as an individual;
- Ensure that Family Support Units fulfil their responsibility to protect women against all forms of gender based violence in the family and in the wider community and do not in any way attempt to persuade women to remain in situations where they are subjected to such violence;

Undertake Legal and Institutional Reforms

- Secure an amendment to article 27 sec (4)c of the Constitution which currently allows for discrimination relating to customary law;
- Ensure that disputes under customary law are referred to the Local Courts in compliance with Sierra Leone law, and prohibit unlawful adjudications of customary law matters by Chiefs and their imposition of arbitrary and other unlawful punishments;
- Provide clear directives and training to chiefs about the limits of their powers, and prosecute any Chiefs who persist in attempting to adjudicate unlawfully;
- Institute the recording and publishing of customary law enforced by the Local Courts rulings and actions, and ensure that it does not discriminate against women and conforms to international human rights standards, including the Women’s Convention;
- Strengthen oversight of Local Courts and training of Local Court officials by Customary Law Officers, in the Ministry of Justice especially with regard to recording rulings and standardizing penalties;

Strengthen Protection for Women's Human Rights

- Ensure that Chiefs, Local Court personnel, the police and formal legal personnel are trained in human rights principles, in particular as they apply to women, including a recognition that VAW is a crime, and that when exercising any mediation functions, they do not use their influence to coerce women to remain in violent or abusive relationships, impose unlawful fees, or attempt to unlawfully adjudicate in matters which should be referred to the police, Magistrates and High courts;
- Ensure that paralegal and legal aid services are available and accessible on a systematic basis throughout the country, in order to ensure effective access to justice. Strengthen paralegal and legal assistance for women, including by support to non-governmental organizations that provide these services, and by enabling women themselves to become trained as paralegals in relevant areas of the law and legal procedures;
- Conduct effective public education throughout society with the aim of modifying social and cultural patterns and of eliminating prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women, as required by Sierra Leone's obligations under the Women's Convention. This should include raising public awareness of women's human rights, particularly their rights to freedom from discrimination and unlawful punishments;