DECENTRALISED POWER AND TRADITIONAL AUTHORITIES: HOW POWER DETERMINES ACCESS TO JUSTICE IN SIERRA LEONE

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Introduction

This article addresses the influence of international intervention on access to justice in rural Sierra Leone and links it to the decentralisation of power. Decentralisation was implemented in 2004 across Sierra Leone and resulted in a strong debate about the nature of political power at the local level (Fanthorpe 2006; Richards 2005; Jackson 2006). This was partly the result of the previous governance structure of Sierra Leone and in particular a colonial bifurcation that placed Paramount Chiefs in political power outside the Western Area of Freetown (Jackson 2005; Sawyer 2004.[1] At the same time, Sierra Leone was a post-conflict state having emerged from a very damaging and brutal civil war with significant external donor support. As such, Sierra Leone has enjoyed a certain status as a success story, of a state

[1] Paramount Chieftaincy was established in 1938 by the Native Administration Act. Chiefdoms delivered services including education, agriculture and justice. Chiefdom Councils were established in 1964 under the Tribal Authorities Act, re-established in 2003 and then became subject to a 2009 Chiefdom Act. They consist of a Paramount Chief, Section and Town Chiefs, an electoral college of councillors, and an administrative staff including court functionaries and chiefdom police. A distinction should be made between the lower ranking chiefs and paramount chiefs who are state agents and exercise executive, administrative and judicial powers. For a comprehensive discussion see Fanthorpe (2006); Fanthorpe et al. (2011); and Jackson (2006).

that has been resurrected and reconstructed by the international community (Evans et al. 2002; Fitzgerald, 2004; Ginifer and Kaye 2004; Poate et al. 2008). The international community therefore had an interest in making the state work and as a result international intervention has largely governed much of the macro-reconstruction efforts of the state, particularly in governance, justice and security (Jackson and Albrecht 2011).

Central to this article is a focus on the political dynamics of legal pluralism, specifically the interaction between 'formal' and 'informal' justice, and the significance of power relations at the local level following decentralisation.[2] The relationship between local power, decentralised authority and justice at the local level is not frequently articulated, particularly in the context of donor supported post-conflict reforms and what impact these have on justice processes at the local level. Reforms in the area of decentralisation, and justice/security sector reform, are often not seen as having a close link, probably because justice/security is seen as separate from political power issues, i.e. the former interventions tend to have a more 'technical' focus.[3] It is the contention of this article that justice interventions alter power structures and it is the politics arising from these structures that play an important – if not *the* important - role in the outcomes of such reforms. The coexistence of formal and informal systems at a local level reinforces the power structures that support an elite in the countryside and prevent access to justice for those who are excluded from that elite. Legal pluralism may be seen as a problem (elites manipulating the system) or as a potential solution (providing a choice between remedies) for those seeking justice.

If access to justice is so influenced by power arrangements, donor programmes in support of justice must become better at understanding and working with local politics, including abandoning dichotomies that are of little use in understanding reality (formal/informal, modern/traditional). Whereas many post-colonial African

[2] This paper is based on fieldwork carried out in Sierra Leone between 2002 and 2007 for DFID and the World Bank, where the author was an adviser to the Government of Sierra Leone, and more recent research on local government in post-conflict environments for the UNDP. There are several definitions of 'formal' and 'informal', but this paper follows Manning (2009) in taking formal as having a formal legal mandate.

[3] See, for example the OECD/DAC (2005) Guidelines on Security Sector Reform, which are deliberately technical in approach and form the current 'orthodoxy' on security and justice interventions.

Governments had seen the chiefs as something of an impediment to modernising strategies, many chiefs have also enhanced their role particularly since the 1990s and have formalised their governance role. However, on the ground the picture is frequently far more complex than a simple dualistic approach to traditional authority being either formal or informal and it is the negotiation of those relationships and links that remains important. As a result successful programmes need to empower the marginalised within local power structures. Dismantling or reducing the power of the chiefs is impractical in the short term and so programmes need to work with them. What they should not do, however, is to enhance their power at the expense of access to justice for the marginalised.

This article argues that local power arrangements are important in determining people's access to justice in Sierra Leone and they also have a strong impact on the outcome of justice processes. Furthermore, these links are usually overlooked within internationally supported local government and justice reforms, where traditional authorities like Paramount Chiefs are able to negotiate local political institutions to maintain biases against lineages and social categories, particularly youth and gender. Many international donor programmes emphasise the development of formal justice systems, but traditional or customary law still provides the majority of justice decisions for the population, particularly in the districts (Jackson 2006; Baker 2008; Manning 2009). As Baker and Scheye (2007) observe, there are a number of core assumptions underlying current international approaches to justice sector reform, including: first, that a lack of a formal justice system is tantamount to a lack of justice *per se*; second, that the formal state justice system is what people want; and, third, that a formal state system of justice is sustainable. To these three, in the case of Sierra Leone, I would add that there is also an assumption that the traditional and formal systems are somehow unaffected by local power structures. In reality, I argue, traditional authorities are important to justice outcomes, because of: the nature of traditional authority; their relationship with decentralised power structures; power over those holding decentralised roles; and, traditional roles over land.

This article begins by briefly outlining the context of international intervention and the approaches that were taken in both decentralisation and also in security and justice following the end of the war in 2002, and primarily for DFID. It then moves on to map the justice actors at district level and how they interact. In particular it shows how justice institutions are linked into local power structures and how these structures can be influenced by local power brokers, particularly political elites. The article then goes on to map power and rivalries within and between political elites at the local level and how people may be able to negotiate

these networks. However, the analysis concludes that those with resources are better able to negotiate these networks than those with few resources. International interventions around decentralisation and justice and security sector reform have either made little difference or reinforced local elite power. The implication for intervention is that strategies for the provision of support need to develop mechanisms to enhance the ability of local people to negotiate the power and justice structures at a local level.

The Context of Intervention

Since independence from Britain in 1961 the main feature of Sierra Leone's political system was an increasing centralisation of power and resources in Freetown coupled with a dualism between Freetown and the rest of the country. This dualism has been reinforced by a continuation of the colonial bifurcation of western legal systems in Freetown and of a form of indirect rule in the countryside based on a system of District Officers and Chiefs. Following the end of the Margai era in 1968, the then mayor of Freetown, Siaka Stevens, became Prime Minister and following a period of military interventions, he assumed full Presidential powers in 1972, a position he held until his nominated successor, Major General Joseph Momoh took up power in 1985. Throughout this period Sierra Leone drifted towards dictatorship, concentrating resources in Freetown resulting in the widespread alienation of many parts of the population (Richards 1996; Jackson and Albrecht 2010, 2011).

Eventually, political pressure on Momoh forced a constitutional review in 1991. That same year the Revolutionary United Front (RUF) was formed by Foday Sankoh, and began a campaign of violence along the Liberian border. The stated aim of the RUF at this time was to end corruption, but in reality on the ground this was quickly supplanted by a logic encompassing control over resources and, effectively, a revolt against centralized social and political control, particularly of the countryside (Richards 2005; Fanthorpe 2006; Jackson 2006). As the RUF revolt took hold, Momoh's Government was replaced in a coup by the National Provisional Ruling Council (NPRC) led by Valentine Strasser, which became increasingly ineffective in the face of the RUF, leading to the employment of a South African mercenary firm Executive Outcomes in 1995. Militarily this was successful, but the NPRC were less so and were eventually forced to hand over power in an election held in 1996 when Ahmad Tejan Kabbah of the Sierra Leonean People's Party (SLPP) was elected President.

Two months later discussions between the SLPP and the RUF led to the Abidjan Peace Accords of 1996, but the unwillingness of either party to agree on disarmament or to international monitoring arrangements led to a breakdown in the peace by early 1997. Another coup in Freetown led by the Armed Forces Revolutionary Council (AFRC) meant that President Kabbah was forced into exile in Guinea. This in turn led to the next cycle of violence that incorporated ECOMOG, a Nigerian-led regional peacekeeping force combating the AFRC, the involvement of a British firm, Sandline, in illegal arms dealing with the SLPP and the eventual return and reinstatement of President Kabbah backed by a significant UN military presence in 1998.

UN intervention was plagued by a number of issues immediately after deployment, leading to a hostage crisis in April 2000 where several UN units were surrounded by a reanimated RUF. The eventual intervention of UK forces in May 2000 and the reorganisation of the UN military presence within UNAMSIL II, led to the UK-led *Operation Palliser,* which started as a non-combatant evacuation operation, then transformed into a military campaign until January 2002, despite direct orders to the contrary (Albrecht and Jackson 2009; Jackson and Albrecht 2011).

The context of the intervention then was challenging. Out of a total population of around 6 million, some 50,000 people were estimated to have been killed, around 500,000 had become refugees and around 500,000 were classified as Internally Displaced Peoples (IDPs) (Horn, et al. 2006). At the same time, the governance infrastructure of state institutions symbolising the power structures that RUF fought against, had been entirely destroyed. In the countryside there were no government records or buildings and the chiefs had largely fled or been killed. In sum, the situation was one of rather literal state building. There was no existing state left at almost any level (Jackson 2006). The state, in fact, had been key to the conflict in the first place. As the Truth and Reconciliation Commission stated:

> While there were many factors, both internal and external, that explain the cause of the civil war, the Commission came to the conclusion that it was years of bad governance, endemic corruption and the denial of basic human rights that created the deplorable conditions that made the conflict inevitable. Successive regimes became increasingly impervious to the wishes and needs of the majority. Instead of implementing positive and progressive policies, each regime perpetuated the ills and self-serving machinations left behind by its predecessor. By the start

> of the conflict the nation had been stripped of its dignity. Institutional collapse reduced the vast majority of people into a state of deprivation. Government accountability was non-existent. Political expression and dissent had been crushed. Democracy and the rule of law were dead. By 1991, Sierra Leone was a deeply divided society and full of the potential for violence. It required only the slightest spark for this violence to be ignited. The Commission traced the roots of these lapses through the post-independence period and into the colonial period.
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> This context provided ripe breeding grounds for opportunists who unleashed a wave of violence and mayhem that was to sweep through the country. Many Sierra Leoneans, particularly the youth, lost all sense of hope in the future. Youths became easy prey for unscrupulous forces who exploited their disenchantment to wreak vengeance against the ruling elite. The Commission holds the political elite of successive regimes in the post-independence period responsible for creating the conditions for conflict (TRC 2004: 1).

The post-colonial Sierra Leonean state had been in a state of decay for some years before the outbreak of hostilities in March 1991. War, neglect, patronage, and the increasing use of violence by the state meant that by the late 1990s the provision of security had become splintered into numerous factions, community by community across the country. It is commonly accepted that the failure of the state to honour its patrimonial promises and the failure of institutions to provide justice in the countryside significantly contributed to brutal and seemingly inexplicable violence as well as two military coups (Keen 2005; Peters 2006: 7; Richards 1996). At the same time, the colonial bifurcation of the state had led to an enriched core around Freetown and an impoverished periphery in the countryside where the development of an alienated youth created the conditions for the conflict (Richards 1996; Jackson 2005, 2007). The restoration of a functioning state that could control a monopoly of violence was therefore perceived by international donors as an imperative in the early stages of intervention and the military nature of the initial intervention coloured the way in which those external actors, particularly the UK, structured that intervention (Jackson and Albrecht 2010).

The context of complete state collapse led to an initial priority of state re-establishment, security provision and the construction of basic justice systems that could manage conflict locally. The ‘Chiefdom Restoration Project’, which was

primarily driven by security needs and was controversial amongst international governance advisers within Sierra Leone, was identified as being important as part of the restoration of governance in the countryside, but more particularly as part of the security agenda in recreating the responsibility of the chiefs to 'report strangers' (Jackson and Albrecht 2011 Denney 2011).[4] That support should be directed towards an identifiable central authority was never questioned in the case of Sierra Leone, not even as that authority's ability to enforce a degree of security across its territory had weakened to the point of non-existence. The key driver of intervention was therefore reconstructing a state that was perceived to have fallen into decay over a period of some thirty years, around twenty of them being characterised by violence. Even so, it was perceived that doing so would be possible within a relatively short programme horizon.[5]

Post-War Justice Sector Reform

Initial interventions both before and immediately after the war within Sierra Leone were heavily dominated by re-establishing security through the disbandment of the RUF and the formation of a new military, and the reconstruction of the SLP (Jackson and Albrecht 2011 Denney 2011). One of the unintended consequences of a focus on policing was that reforms of other institutions forming part of the justice sector moved forward more slowly. This lag in the development of justice alongside security has been a characteristic of the reform process right from local courts, formal legal systems, and prisons to Ministerial development. Even by 2008 the police themselves were regularly commenting that weaker capacity across justice institutions was undermining effectiveness through an inability to process cases (Howlett-Bolton 2008).

Support to the justice sector can basically be divided into two periods, before and after 2005. After 2005, the development of the Justice Sector Development Programme (JSDP) brought together the SLP, the judiciary, the prison service and the Ministry of Internal Affairs in a comprehensive programme across the sector. Before 2005, the main involvement of external donors in the justice sector was the

[4] The author was part of these discussions. In fact the programme came to an unfortunate end by the time of the Local Government Act in 2003.

[5] This idea has continued throughout the planning horizons used by DFID within planning and evaluation in Sierra Leone and is reflected in many of the internal planning documents.

Law Development Project. Started in January 2001 this concentrated on reconstructing infrastructure and developing logistics including refurbishment of the main court in Freetown and magistrate courts in Bo and Kenema.

However, the capacity to use these courts had not necessarily been developed and it was relatively late that training of twenty registrars, administrators, under-sheriffs and bailiffs began. The legacy of a failing justice system that had built up over several years was still being felt in Sierra Leone as late as 2008. In particular, there was a huge backlog of cases, including those awaiting trial, imprisonment or enforcement decisions, poor record keeping, and insufficient space in prisons.

In common with many countries, there have also been issues in incorporating traditional systems within the justice system as a whole. It is clear that the traditional system, operated by Paramount and Section Chiefs, offers access to many more people than the formal state system. The traditional system has been seen as part of the justice sector reform supported by donors at least partly because the formal system does not reach into the countryside.[6] Local citizens have made limited use of traditional systems in Sierra Leone to effect reconciliation and peacebuilding within local communities, although the extent of this remains under-researched (Baker 2006).

It is easy with hindsight to criticise the lack of progress in justice reform. However, it should be recognised that the justice sector had been subject to a very long decline. Reconstructing a legal system takes time and investment. By 2008 there were approximately 200 members of the Sierra Leone Bar Association and virtually all of them resided in Freetown. This leaves access to justice extremely difficult for those who live in the countryside. Given the fact that the RUF may be seen as a rural-based organisation, the lack of justice in the countryside must be seen as extremely risky in a fragile country (Jackson 2006).

By 2004, it had become obvious that whilst the Law Development Programme (LDP) had provided infrastructural improvement and training for the judiciary, huge capacity problems remained and the justice sector as a whole remained the poor relation of other security programmes (Jackson and Albrecht 2011). Despite the fact that discussions regarding the integration of the justice and security systems had taken place as early as 2002, other elements of the justice sector,

[6] The commonly cited figure – but very difficult to verify – is that around 80% of people access justice through traditional mechanisms.

namely prisons, probation, legal reform, non-state justice and legal advice, had not benefited from any external support or development assistance.

Also, prior to the JSDP, which started in 2005, no assistance had been given to the Ministry of Internal Affairs, which governed the justice sector. This has had implications in terms of a lack of representation for the police and justice sector at Ministerial level, and access to Government resources for justice in general. In conjunction with the decentralisation process this has produced a situation where there is considerable variation in interpretation of customary law at the local level, with lack of coherent and effective central oversight. A broad and detailed consultation at village level carried out by DFID concluded that there was a general desire among the populace for better governance rather than the abolition of the chiefdom system (Fanthorpe et al. 2011). This provided a direction for all subsequent governance activities in local administration, including the re-establishment of local government in 2004. However, the same section of the report goes on to outline the key dilemma in relying on the chiefdom system to deliver justice. It states that: "[...] the fact that chiefdom administration was in deep crisis is clear for all to see in the reports on the pilot consultations. Due process in chiefdom administration had virtually disappeared due to the combined effects of war, resource starvation, and opportunism" (Fanthorpe et al. 2011: 56). The report goes further to state that "Chiefdom administration is not working" (ibid.: 5).

Given these comments, it is perhaps surprising that the chiefdoms have been identified as a key element in driving the population into conflict by enhancing their economic, social and political alienation (Jackson 2005). The rule of a male gerontocracy in the countryside complete with degraded and corrupt links to elements of the state and particularly to the diamond trade in diamond-bearing areas meant that the chiefdom system had been in decline for a long time before the war eventually destroyed large parts of it. It was not an accident that the first targets sought out by RUF fighters during the war in almost every case, was the chief, closely followed by the District Officer.

Mapping Justice and Power Structures at District Level

While there has been an emphasis on the chiefs, it is important to recognise that the reality of local justice for most people in Sierra Leone is not a bifurcated system with two mutually exclusive and antagonistic systems (formal versus informal), but a hybrid consisting of a number of differing choices with a wide

variety of differing possible outcomes. This is not only reinforced by the apparent contradiction of having a 'modern' government system coexisting with a 'traditional' one, but also by the willingness of local people both to exercise a preference for the lowest possible level of justice (i.e. the most local to them) and also to 'shop around' for the desired forum for any given situation (Kelsall 2006).

A detailed survey of local institutions and their complex relationships is beyond the scope of this paper[7]. However, it should be acknowledged that this consists in reality of variations of shades of grey rather than a sharp division between 'formal' or 'informal', with the District Magistrates' Court at the formal, state, end of a spectrum and the informal family elements at the other end. The Government of Sierra Leone (GOSL) itself estimates that around 70 per cent of people in the country cannot access the formal state system and rely on the customary system through the local courts or informal mechanisms at local level (such as talking to the chief) that remain undocumented.

Magistrate's Courts

The judiciary itself consists of a High Court and district level Magistrates' courts. The High Court is based in Freetown but visits the three Provincial Capitals of Makeni, Kenema and Bo. There is a 'Law Officers Department', which serves as an office for public prosecutions and is responsible for all prosecutions within the formal system. However, there are just ten prosecutors in the whole country, with seven based in Freetown and one each in Bo, Kenema and Makeni, so in practice prosecutions within Magistrates' courts are handled by police prosecutors (Castillejo 2009).

Typically located in district capitals, these courts are presided over by a mixture of magistrates, court clerks and Justices of the Peace (JPs) who usually receive training in largely uncodified common law. Magistrates' courts typically hear serious cases involving larceny, assault, sexual assault, fraud, and arson. The Ministry of Justice estimates that around 70% relate to land disputes (Castillejo 2009).[8]
There are significant problems with the magistrate court system, including

[7] See Manning 2009 for a detailed survey.

[8] A study by Kelsall (2006) showed that larceny consisted of 36%, with assault and sexual assault comprising another 27%.

completion times and adjournments. These are frequently caused by a failure of those involved to come to the court, mainly because many people put their own family business above attendance at court but also because many witnesses do not have the means to come to court, or have the fee (Kelsall 2006; Casillejo 2009). There is also a chronic shortage of magistrates and lawyers within the system. Magistrates are not only underpaid but are also frequently *un*paid as salaries are often delayed (Castillejo 2009). This presents a risk to the whole legal structure through bribery, allowing those with money immunity from prosecution. There have also been several instances where either Chiefs or other powerful individuals have exercised significant influence over sentences or had cases thrown out of court (Kelsall 2006; Jackson 2006; Castillejo 2009).

The financial imbalance in access to justice is exacerbated by a system that does not provide legal representation for parties. There is only a public defender in capital cases that get to the High Court. At the same time the Sierra Leone Bar Association states that there are one hundred lawyers in private practice in Sierra Leone, but only seven are outside Freetown (Castillejo 2009). If a case gets to the High Court without a defence lawyer any defendant is likely to spend considerable amounts of time in prison on remand[9]. The considerable costs of going to court are also exacerbated by paying for travel to a district court or medical examinations and reports.

One response to this is to use the formal system as a means of leveraging settlement in the local court or with informal authorities. Known in Sierra Leone as 'subterranean movements', this seeking of alternative remedies to those imposed by a court is reportedly common (Kelsall 2006; Fanthorpe 2006; Jackson 2006).

Local Courts

Customary courts are known as 'local courts' in Sierra Leone and are regulated by the Local Courts Act. These courts administer customary law which varies across chiefdoms, which have the power to establish customary bye-laws. Typical cases heard in the local courts include conflict resolution, family matters, conflicts over money, loans or small frauds, and land issues. But such courts should not deal with larger crimes or major theft (Kelsall 2006). Local courts are also

[9] The current JSDP within Sierra Leone, a DFID funded justice support programme, has identified this (interview with current JSDP manager, 2011).

investigative, i.e. whereas a magistrate's court hears pre-prepared cases presented by lawyers or police, a local court may hear 'truth-telling' by those involved, who are forced to swear on a variety of objects, including the Bible or the Koran.

Sentencing is open to negotiation through bargaining and the sentence is essentially a process of negotiation between the court, the accused and the plaintiff with the aim of ensuring that fines are fair and can be paid (Fanthorpe 2006; Kelsall 2006). This is not always benign and may establish bye-laws that may contradict human rights or constitutional law, or impose unusual punishments or excessive fines. As Castillejo (2009) reports, the level of fines may be more representative of the financial needs of the chiefdom than the actual offence since court fines are a key source of chiefdom income.

In practice chiefs wield a lot of power over local political and justice processes (Fanthorpe 2006; Richards 2005). They are the hub of local elites; control land through exercising trusteeship; dispense local justice; and have access to resources through tax collection and granting of land rights (Jackson 2005). They also appoint the Court Chairmen and the four other court members, so the court itself is an instrument of the Chief (Castillejo 2009).

While the jurisdiction of local courts is mandated by the state, in practice they hear many cases that they should not and they are known to levy fines in excess of the maximum allowed by law (Castillejo 2009). Oversight of these courts is minimal and there are also variations between different localities. Appeal is rare since this would make the case a formal case being put to a magistrate's court at district level. In addition, local courts are frequently closely tied to chiefs through kin or social networks, allowing an element of elite capture of the local legal system (Jackson 2005; Kelsall 2006; Manning 2009).

The customary system is said to have a number of advantages, including cost, accessibility, understanding and relative speed in dispensing justice that is usually based on mediation (Jackson 2006; Castillejo 2009). However, there are a number of issues that raise concerns. Whilst the costs of bribery are frequently cited as being an issue in the Magistrates' courts as well as the Local courts, the Local courts frequently levy a fee for a hearing and also impose disproportionately high fines that are well beyond their legal mandate and represent the financial needs of the chiefdom (Castillejo 2009). Those who are unable to pay are then forced to leave the chiefdom or go to prison, so the costs of failure in a court can be very high. Local courts, then, contrary to common perception, are both expensive and high risk, particularly for particular groups who are traditionally excluded, like

women and children (Richards 2003; Jackson 2006; Castillejo 2009).

Local Government Reform: Rivalries between Decentralised and Traditional Power

A key policy decision of the post-war Government was to decentralize power from Freetown to a rejuvenated local government structure. This process led to the Local Government Act and local government elections held in May 2004. Most analysts agreed that the centralized system of government was a major contributing factor to the war during the 1990s and the World Bank, UNDP and DFID in particular, placed a strong emphasis on decentralization and reconstruction of the shattered local state as part of their post-war reconstruction efforts (Jackson 2005, 2007; Fanthorpe 2006).

Following the war, in 2003, the Ministry of Local Government and Community Development (MLGCD) canvassed public opinion on local government.[10]The consultation included debates about the limitation of chiefdom power, representation of excluded groups and non-party elections. However, the consultation process itself did not produce uniform agreement on all of these issues and the only significant addition was the creation of a new district council in the Western Area. In addition, a proviso was included, giving strong supervisory powers over local government to the three Resident Ministers who head the Provincial Administration.[11] The centre thus retained significant control over the new councils.

The position of the Local Council Chief Administrator (LCCA) is critical. This position effectively controls the entire bureaucracy of the council and also acts as secretary and main contact for the councillors. The appointment of competent individuals has therefore been extremely important in the early stages of decentralization. Certainly the competence of staff more generally, particularly in some of the more remote districts, has been problematic due to the difficulties in recruiting good staff outside Freetown.

The change of roles within the chiefdoms, instigated by the Local Government

[10] See Jackson (2006) for a more detailed discussion of the process and context.

[11] These have headquarters in Bo, Makeni and Kenema respectively

Act, has caused significant friction with the new local councils. The Government is keen that chiefs and councils work closely together and the provision in the Act by which councils set tax rates and chiefs collect and share revenue is designed to encourage this. The problem, however, is really that the Act is not clear about the relationship between chiefs and councils in a number of key areas, including development funding, Ward Committees and Chiefdom Committees, local taxes, and the nature of responsibility with regard to land and natural resources. Whilst local development activity is the responsibility of the Council, access to human and physical resources, particularly land, remain the preserve of the chief. Councils and Chiefs have to work together, but there are no guidelines as to how this should happen.

The biggest conflict remains financial. The Act transfers several sources of revenue from the chief, to the local council, including some local taxes, fees and licenses[12]. Local councils have the authority to determine the rate of local tax and the level of precepts. All revenues have to be paid into local authority accounts and will be subject to audit. At the same time, the collection of the tax remains in the hands of the chiefdoms, which have to declare the amount of tax collected. Local councils can also disburse monies directly to chiefdoms for development purposes. In several local councils there have been reports of local councillors collecting their own taxes, while in at least one council, the council sacked the Chief Administrator and divided up the tax receipts amongst themselves (Jackson 2006). This remains a core issue and a recent report on the effectiveness of decentralisation concludes that the main constraint remains central government's insistence on maintaining the powers of the chiefs since without effective tax authority local councils are unable to construct a social contract with the population (Fanthorpe et al. 2011). This is exacerbated by lack of willingness of central government to decentralise functions, a reliance on patronage for appointment and the political parties' policy of using local government as a means of developing political support (Fanthorpe et al. 2011).

Confusion and rivalry over power was not helped by poor implementation of the Act itself or measures such as fiscal decentralisation. As a result there is a local rivalry between the administrative staff posted by the central government, the chiefs and the local councillors (Jackson 2007). This has been further exacerbated by the involvement of local MPs as they try to gain local political traction (Fanthorpe et al. 2011). The escalation of political conflict in the countryside is a

[12] The main tax is the 'head tax', a form of poll tax.

symptom of the lack of an effective oversight mechanism. Notionally, the Ministry of Local Government oversaw disputes relating to chiefdom, crime, gambling, bye-laws and land. With the abolition of District Offices, this workload has increased exponentially and the Ministry was unprepared. There is little record keeping, few staff and no clear procedures. In effect there is little or no oversight from the centre (Cutting 2004).

In terms of justice provision, this leaves the citizen with a nominally wide choice, but that apparent choice is actually limited by the close linkages between those who may be dispensing justice. It is also telling that during the consultations on the draft Local Courts Act in 2006, one Paramount Chief directly equated justice with power by stating that "[…] if you take the authority of the local courts away from the Paramount Chiefs, they won't have any power" (Manning 2009). In some chiefdoms there is a close alliance between the LCCA, the chief and senior councillors, meaning that the magistrates' and local courts can be placed under significant pressure to bring about particular outcomes, usually in favour of the family or interests of the local political elite (Castillejo 2009). Kelsall (2006) also reports a case of a man's daughter being beaten by another child where hospital fees are paid, but the man also seeks compensation for the beating. The Treasury Clerk is a friend of the offender's mother and intervenes, promising to settle the case privately. The case is not settled, however, and the man either has to go to the District appeal court or the magistrates' court, where he will have considerable costs for fees, a letter and for an arrest. He could, of course, go to the Treasury Clerk's boss, the Local Court Supervisor, but he is a relative of the Treasury Clerk (Kelsall 2006).

Powerlessness and Access to Justice

The previous section outlined the nature of political power and pointed to the close link between local political power and justice. This becomes clear when we examine the lack of access to justice of specific groups within society. In urban areas, there may be an option of a formal justice mechanism, usually a Magistrates' court or an appeal court, but in rural areas the majority of the population rely on access to local courts, presided over by a board appointed by the Paramount Chief. This leaves the Chiefdom as the only real actor 'beyond the tarmac road' (Baker 2008). The local courts mainly investigate and make judgements based on customary law, and chiefs also have the power to set bye-laws in conjunction with predominantly male elders. This means that citizens do not necessarily know the bye-laws that apply to them or that they may contravene

human rights (Castillejo 2009). At the same time, there appears to be little chance that a poor person could bring a successful case against a chief or a member of a chief's family.

One additional factor is the continuing importance of kin groupings to rural society. Chiefs are themselves constrained by ruling family and kin linkages as well as traditions within the rural hierarchy.[13] Family history is frequently taken into account in selecting people for formal positions so descendants of chiefs are more likely to gain positions of influence than are relative newcomers. Kinship also has the effect of restricting power to a particular ethnic group – the *indigenes* – or the original founders. Because chiefdom and kinship is so tied to the land, legitimacy is usually tied to the length of time that a particular family has occupied a piece of land.

This places certain groups of people in an increasingly powerless position. *Non-indigene* (stranger) women and youth are in particularly vulnerable positions with almost no representation and no power to influence decisions in local courts. Paramount Chiefs are frequently cited as hearing cases when they have no mandate to do this, and individuals who oppose the chief are likely to be ostracised from the community (Richards et al. 2004; Fanthorpe 2006; Richards 2005; Castillejo 2009). Young men are expected to obey their elders whilst (male) elders wield power in families, social groupings, and justice forums like the courts. 'Youth' in Sierra Leone, as elsewhere, is a social category, having more to do with social status, belonging and kinship relations than with age (Fanthorpe 2001; Richards et al. 2004; Richards 2005). 'Youth' in Sierra Leone means 'anyone younger than the elders' and is linked to land control, wealth and marriage; those who lack those things remain classed as 'youth'. Even the legal definition of youth relates to those under 35. The social exclusion of these 'youths' was identified as a key driver of the conflict (Richards 1996; Fanthorpe 2001, Richards 2005).

Women have also been marginalised by the customary system of justice, although this varies between the north and south of the country (Castillejo 2009). The customary system tends to govern domestic issues that concern many women while women also face higher barriers to entry to the formal sector in terms of financial and social issues. The management of domestic affairs, dominated by men, is institutionally biased against women and frequently violates women's constitutional

[13] This is partly where the secret societies come in since they perform a regulatory function in society, including influencing the Chief.

and human rights. Many of practices continue within the customary system despite the introduction of human rights legislation, including women having the status of 'minors' in many local courts (Castillejo 2009). During research within the Chiefdoms in 2002, there were comments from women that expressed pleasure at being asked their opinion because they "[…] are not considered worthy of taking any challenging responsibility other than cooking and nursing children." (Fanthorpe et al. 2002: 31). The same report goes on to report that polygyny (one man with several conjugal relationships), leviratic marriage (inheriting a brother's wife), collecting 'marriage tax' whilst girls were still at school, hearing serious rape cases in local courts rather than district courts (and therefore treating it as a minor case) and patrilineal inheritance were all rigorously supported by local courts (Fanthorpe et al. 2002).

Impact of External Donor Intervention and Power

The majority of international donor support has been concentrated on strategic developments within Freetown and the development of the Ministries. With the exception of the Moyamba pilot district the UK's Justice and Security Development Programme has had very little impact beyond Freetown, but a new version of this programme seeks to expand more generally on the relationship between state and non-state, the Chiefs and the role of civil society in terms of mediation and justice (Albrecht 2010). At the same time, there has been a development of several legal NGOs designed to improve access to justice within the existing mechanisms at the local level. These include Timap for Justice and the National Forum for Human Rights. Many NGO programmes consist of a barrister and several paralegals, who offer advice, mediation and case work. In some cases, NGOs will also represent people up to the national court level. As such, paralegals operate as a vital information source for people whose preference is for the lowest settlement level but who also may not understand all of their options.

The development of NGOs and civil society organisations (CSOs) has been a deliberate attempt to construct a series of oversight mechanisms within civil society, partly to compensate for the extremely weak justice oversight mechanisms at state level (Castillejo 2009). The JSDP developed a 'demand-side strategy' to develop the capacity of civil society to provide oversight at local level but also to develop projects that are likely to attract donor funding (DFID 2010). However, there are questions about the capability of civil society to do this, their access and also their independence from those local institutions they are supposed to be investigating (DFID 2010; Castillejo 2009).

Civil society may provide leverage to those seeking redress or compensation without going to court. Representation to a paralegal costs nothing, but shows intent and therefore may make a settlement out of court more likely. Kelsall (2006) documents a case in which a ten year old daughter of a local dignitary had been raped by a middle aged man. Timap had taken the case to the police and the family of the girl then tried to drop the case because the perpetrator had paid customary compensation. As Kelsall (2006) further points out, a cynical reading of this is that the family took the case to Timap as a form of leverage, knowing that the customary court would increase the offer of compensation to prevent a formal court case. This is useful leverage for the plaintiff (although the girl's thoughts are not documented) but it sits uncomfortably with the idea of punishing human rights violations.

Secondly, NGOs and this form of demand-led legal support and oversight represent a threat to the power of the chiefs (Richards 2003; Jay and Koroma 2004). In this way, civil society can form a local opposition to the chiefs and therefore a threat. However, there are real questions about *who* actually constitutes civil society. There is certainly a legitimate concern that many civil society groups are not representative, may be chasing donor funding rather than developing independent strategies and may also be comprised of different versions of the same local elites who have had access to education (Castillejo 2009).

However, it is clear that organisations like Timap do empower local people. The state law lacks hegemony in Sierra Leone as it is geographically limited to urban areas, is socially limited (by secret societies) and is also institutionally compromised (glacial speed, financially limited, lacking capacity). As such, any external intervention is likely to be similarly limited. However, where Timap and others have been successful has been in helping individuals to act within the framework of state law through providing access to knowledge, legal advice, advocacy and mediation (Kelsall 2006). Certainly where the state law is applied in Sierra Leone, this type of NGO intervention has improved access to justice (DFID 2010 Castillejo 2009).

This leaves the international community with a series of choices about how to move forward. Given the lack of hegemony of the state law across Sierra Leone, the donor community is in a good position to broaden the existing mandate of the state law through geographical expansion coupled with support to overcome the institutional flaws of lack of capacity and resources. At the same time, there clearly has to be recognition of the strength of local institutions, including secret

societies and customary law in those areas currently outside the remit of the state law as codified. In part this is already being recognised with DFID producing an Improved Access to Security and Justice Programme in Sierra Leone that explicitly recognises the importance of the customary system as well as formal legal institutions (Albrecht 2010).

Conclusions

This article has explored the relationship between justice provision and local government in post-conflict Sierra Leone. It shows how national reforms and international interventions in the justice/security sector associated with decentralization have altered power structures and that these altered power structures have subsequently come to play a significant role in determining the outcomes of these reforms and interventions. Local political power structures remain dominated by paramount Chiefs and traditional elites and continue to exclude significant groups from justice and power. Chiefs, as agents of the state, can count on the support of central government agencies in their insistence that they retain considerable power over local institutions and, in this, they represent a desire of centralised political power to exert authority at a local level (Fanthorpe et al. 2011). These local power dynamics have a strong bearing on the extent to which rural citizens can gain access to justice despite efforts to decentralise power and legally empower marginalised groups. Reform efforts have overlooked the inherent political dimensions of justice provision, which in rural Sierra Leone are deeply embedded in informal social structures, including kinship relations and secret societies, but which have also been influenced by more recent local government reforms and the continuing influence of the chiefs.

For most people, justice is not dispensed from formal, modern systems but from a dense network of institutions at the local level, which may or may not be codified or even visible. These institutions constantly change and are subject to a variety of controlling bodies, which regulate the meaning and enforcement of common law. Indeed, even the formal institutions of local and magistrate courts draw on common law rather than state law in many of their cases, and this is open to interpretation and influence according to changing local customs. Different social structures exercise influence over justice processes and outcomes. These biases exist despite the public, national agreements, for example to enforce human rights legislation. Local power is at least partly exercised through the appointment to courts and through the role of elders within villages, many of which are relatively old and also male. As documented, this leads to institutional bias within the

customary system, particularly against women and those classified as youth.

Overall, these political dynamics leads to a dilemma for international support in the justice sector. Whilst some argue that international support should forget formal, western justice and support the local systems (Baker 2008), it is clear that there are considerable issues with this style of justice and abuse of the traditional system may have significantly contributed to the war in the first place (Richards et al. 2004; Jay and Koroma 2004; Jackson 2005). For the powerless, this means that they have no effective access to justice.

The core issue, then, must be to encourage external support that empowers people to access justice within the legal frameworks within which they operate. In other words, there has to be an acknowledgement that a formal legal framework lacks hegemony and is unlikely to be available to every community within Sierra Leone. At the same time, this does not mean that people within those communities should be just subject to the whims of local political elites or the biases of the chiefs. This implies a huge improvement in capacity and reach of the formal, state legal system and in the ability of those involved to be able to access support, knowledge and advice to enable them to use it.

The political reality of the local situation in Sierra Leone is that both the chiefs and central government civil servants are attempting to access what David Booth (2010) refers to as 'strangulation by politics', whereby there is a campaign for the reinstatement of colonial era institutions characterised by a central state exercising power through 'indirect rule' and thereby retaining control over the local districts (Fanthorpe et al. 2011). This stands in contrast to the decentralised vision of local political power making local decisions, but it does go some way to explain the persistence of dependency politics at local level and the almost complete dependency on the chief for access to land, services and justice.

This does, however, have its limits, and it is clear that human rights, development and good government have all become part of the day-to-day lexicon of the government. The current government's agenda, for example, refers to the idea of a social contract between a government that delivers services and a population that pays taxes. This means a return to the chiefdom system of the pre-war period is unlikely. Its implication, given the persistence of chiefs, is that both the formal and informal systems are going to coexist for some time.

This does not mean that external intervention should merely acknowledge that local situations are complex, but that there needs to be a subtle shift in the way in

which support for those excluded from the contemporary system is designed. Specifically, the lack of legal and political hegemony of the state means that any formal system will be not only difficult to access, but is also likely to vary in quality across the country. This is likely to be exacerbated by availability of staff and how embedded local staff are within local communities controlled by chiefs and will also vary geographically. Whilst it is commonplace to discuss chiefs as if they were a homogenous national group, this is not true and there are considerable variations in different regions and districts (Fanthorpe et al. 2011).

The experience for individuals within districts is likely to be unpredictable and uneven as well as varying in quality and outcome. It is very difficult to predict what may be the best course for a particular individual to pursue both within either formal or informal system, or indeed in those districts where research has shown that jurisdiction between formal and customary courts is also variable.

Given this, the analysis of the local system within Sierra Leone suggests a strong refocusing away from just concentrating on support for the courts and towards supporting individuals within the system in finding the best way to negotiate the reality of local justice systems. This may encompass 'justice shopping', whereby support could be given in order to maximise the outcome for individuals regardless of which system is being used, or improving education, support and financial resources to enable better 'justice navigation' by individuals. This would provide a practicable solution in the medium term as the formal legal system, along with conventions such as human rights, develops more fully. It provides a means whereby individuals may be empowered within real systems as those systems evolve, rather than either leaving them to the mercy of a formal system that is the preserve of the few, or a customary law system dominated by local elites.

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