

# Legal Working Paper Series on Legal Empowerment for Sustainable Development

## Justice Watchdogs: Promoting Women's Access to Justice Through Community-Based Paralegal Programs

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## Part One

### 1.1 Introduction

Within conflict-affected states, rule of law reforms have typically centered on building the capacity and legitimacy of state and formal institutions, and only address citizens' justice experiences and needs at a cursory level.<sup>1</sup> Recently, there has been recognition of the need to consider individuals in the reform process, and this awareness has led to a transition from primarily top-down institutional reforms towards those which include bottom-up interventions. This increased focus on bottom-up interventions is accompanied by an emphasis on access to justice and a strategy of legal empowerment.<sup>2</sup>

One mechanism to promote citizens' access to justice is community-based paralegal programs. Growing in number, these programs can play a significant role in improving the quality and delivery of legal services, and can stimulate the empowerment and legal literacy of communities.<sup>3</sup> Strong proponents of these programs credit paralegals with catalyzing processes of socio-political change, particularly in terms of shifts from clientelism to citizenship among service users, and for contributing positively to governance.<sup>4</sup>

However, concerns and critiques of these programs have also emerged, including around service quality and sustainability. Particularly within conflict-affected settings, there are concerns that donor funding, as opposed to government regulation, is the foremost consideration for such programs, which can lead to a lack of proper oversight. Additionally, there are concerns around the type of justice they promote, principally for women, and that they may reduce the responsibility of the state to make formal justice systems more accessible for women.

Within the context of Sierra Leone, rule of law and justice programming began with a primarily institutional and formal approach, and these interventions were found to overlook many of citizens' most immediate legal needs. As a result, new forms of programming were developed which took those needs as their starting point, with community-based paralegal programs as one strategy. Despite the significant development and rapid growth of these programs, they have received scant attention within the literature, and insufficient research exists on the linkages between these programs and women's access to justice. There is a particular need to assess the gendered impacts of these programs, especially as donor support to user-based approaches to justice continues to

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<sup>1</sup> Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative' *Carnegie Endowment for International Peace* (2003).

<sup>2</sup> Van De Meene and Van Rooji, *Access to Justice and Legal Empowerment*. Amsterdam University Press (2008).

<sup>3</sup> Schuler and Kadrigamar-Rajasingham, *Legal Literacy: A Tool for Women's Empowerment* (1992).

<sup>4</sup> Duni, Fon, Hickey, et al, 'NGOs, Social movements and Paralegal Extension in North West Cameroon: From Clientelism to Citizenship at the Margins?' (2005).

increase. This paper seeks to fill this gap, by exploring the effects of community-based paralegal programs through a case study on Sierra Leone, and makes a contribution to the field of gender and law. Further, this case study is particularly well-timed as Sierra Leone moves towards its Presidential elections, to be held in November 2012, and parliament considers a draft Legal Aid Bill.

The paper proceeds in six parts, beginning with an overview of the research methodology and investigated research questions. Second, concepts and working definitions related to legal empowerment and access to justice are discussed, which lays the conceptual framework for the research. Following this, an overview of community-based paralegal programs is provided and the Sierra Leone justice context is presented. The final sections present the research findings and conclusions, while returning to the conceptual frameworks.

## **Part Two**

### **2.1 Research Methodology**

This research had the following overlapping objectives: (i) develop new knowledge on legal empowerment and access to justice within a conflict-affected context, with a particular focus on understanding women's experience of accessing justice; (ii) produce sound research findings on local perspectives and women's experiences with respect to community-based paralegal programs; and (iii) provide observations on the risks, benefits, and opportunities surrounding these programs within a conflict-affected context.

In addition to a mapping of community-based paralegal programs, the research addressed three interlinking questions: (i) What role do these programs have in promoting women's access to justice and legal rights, and enhancing women's legal empowerment? (ii) Do these programs provide proximate and effective justice solutions? (iii) How are these programs viewed in regards to their legitimacy by the population and other justice actors?

This research explicitly focused on women's experiences and did not consider men's experiences or the barriers that men encounter while accessing justice. As the United Nations Development Programme highlights, specific attention to women is "typically required in order to address the array of gender gaps, unequal policies and discrimination that historically have disadvantaged women and distorted development in all societies."<sup>5</sup> By focusing on women who have engaged with community-based paralegal programs as complainants and/or as women in conflict with the law, the research provided a fuller depiction of women's access to justice, and the diverse barriers that hinder this access. To note, following guidelines related to child protection and research ethics, the research only engaged with individuals over the age of 18 years.<sup>6</sup>

Data was collected from April 2011 to February 2012, with field work conducted in Sierra Leone during January and February 2012. This work builds on earlier research conducted by the author in Sierra Leone, during May and June 2011, which specifically explored gendered barriers to justice, the country's formal and customary legal systems, and the Gender Acts.

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<sup>5</sup> United Nations Development Programme, 'Empowered and Equal: Gender Equality Strategy 2008– 2011' (2011).

<sup>6</sup> National Children's Bureau, 'Guidelines for Research with Children and Young People' (2011).

The focus of this research was women’s experiences of accessing justice, and therefore lent itself to qualitative research methods. Participatory action research (PAR) methods were applied, as the researcher sought authentic collaboration with the participants, a key pillar of PAR.<sup>7</sup> In particular, a feminist approach to PAR was employed, as this methodology “generates its problematics from the perspective of women’s experiences” and recognizes women are legitimate knowers.<sup>8</sup>

The interactive methodology consisted of four main stages: preparatory phase; preliminary research phase; main research phase; and analysis, reflection, and re-engagement.<sup>9</sup> The preparatory phase included an assessment of the socio-political situation and women’s status in Sierra Leone, while the preliminary research phase involved interviews, conducted from Canada, with international justice experts, and a desk review of relevant documents.<sup>10</sup>

The main research phase encompassed field work conducted in Sierra Leone, which included qualitative interviews, and site visits to prisons and community-based paralegal offices. The qualitative interviews were conducted with Sierra Leonean paralegals, paralegal clients, staff from paralegal organizations, staff from civil society groups, and government officials. Interviews were semi-structured and a total of 34 were conducted, of which 74 percent of participants were female. The research participants are categorized in the proceeding table.

The fourth stage included the analysis of data and re-engagement with select research participants, and ensured a collaborative research process. Research participants played a key sounding-board role, provided feedback, and confirmed that the report accurately represented participants’ voices.

*Table 1: Research participants*

Participants	Male	Female
Paralegals working on women’s rights issues	2	4
Paralegal organization senior staff	5	1
Paralegal clients, imprisoned at the Women’s Prison in Freetown	0	13
Government official, working in the area of legal aid	1	0
Civil society organization staff	1	2
International justice experts	0	5
<i>Totals</i>	<i>9</i>	<i>25</i>

<sup>7</sup> Reason, ‘Three approaches to participative inquiry’ In Denzin and Lincoln (Eds.), *Handbook of Qualitative Research* (1994).

<sup>8</sup> Harding, *Feminism and Methodology*. Bloomington, IN: Indiana University Press (1937) at 7.

<sup>9</sup> This method builds on the work of Kemmis and McTaggart, *The Action Research Planner*, 3rd edition. Deakin University Press (1988); and Johannsen, ‘Participatory Action Research in Post-Conflict Situations: The Example of the War-torn Societies Project’ *Berghof Handbook for Conflict Transformation* (2001).

<sup>10</sup> These relevant documents included: community-based paralegal programs’ policies, procedures and case files, as well as reports produced by Sierra Leonean governmental agencies, and local and international non-governmental organizations.

## Part Three

### 3.1 Concepts and Working Definitions

Despite the important efforts of experts and development institutions, a lack of clarity and cohesion in definition surround the concepts of rule of law, legal empowerment, and access to justice. By considering key literature sources, the following sections address these concepts and discuss the perceived benefits and risks surrounding them. This review does not attempt to be exhaustive, but rather aims to provide the context in which paralegal programs operate.

#### 3.1.1 Rule of Law

##### Overview

The rule of law is a complex and often unstructured, all-encompassing concept.<sup>11</sup> It is almost universally supported at the national and international level and across the political spectrum.<sup>12</sup> While there have been a number of attempts to consolidate its diverse meanings and interpretations, Chesterman notes that the overwhelming support for the rule of law is only possible because of the “widely divergent views of what it means in practice.”<sup>13</sup>

Conceptions of the rule of law vary, from being synonymous with law or legality, to incorporating broader notions of justice.<sup>14</sup> Generally, the rule of law is recognized as a cornerstone of good governance and democracy,<sup>15</sup> and its promotion is viewed as an essential component of sustainable development and post-conflict recovery. The World Bank (2002) conceptualizes the rule of law as entailing equal treatment for citizens under the law, equal legal protection, and accessible justice. Common principles of the rule of law include the predictability and clarity of law, and open, clear and stable rules for making such laws.

In an effort to promote uniformity in usage and understanding, the 2004 United Nation’s Secretary-General’s report, *Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, provides a detailed definition of the rule of law: “[The rule of law] refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

Rule of law reform also covers a range of initiatives and projects. Golub explains that rule of law orthodoxy includes a set of ideas, activities, and strategies aimed at promoting the rule of law,

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<sup>11</sup> Waldron, ‘Is the Rule of Law an Essentially Contested Concept (in Florida)?’ *Law and Philosophy* 137, 154 (2002).

<sup>12</sup> Chesterman, ‘An International Rule of Law?’ *American Journal of Comparative Law*, Volume 36 (2008).

<sup>13</sup> *Ibid*, at 1.

<sup>14</sup> *Ibid*.

<sup>15</sup> United Nations Women, ‘Progress of the World’s Women: In Pursuit of Justice’ (2011).

economic growth, good governance, and poverty alleviation.<sup>16</sup> Further, there are a variety of social goals associated with rule of law reform. Belton argues that the rule of law is not a single unified good but is composed of five separate socially desirable goods or ends.<sup>17</sup> These are: a government bound by law, equality before the law, law and order, predictable and efficient rulings, and human rights.<sup>18</sup> Golub contends that this combination of goals is ill-defined and varies widely.<sup>19</sup> Similarly, Carothers argues that the rule of law has become an elixir for the challenges facing the developing world, which promises to deliver results ranging from sustainable development, peace, justice and security, to equality and democracy.<sup>20</sup>

### Actors

Rule of law reform programming is a global phenomenon, and as such is supported by a number of development actors. There is a growing focus on rule of law reform and most United Nations agencies, regional banks, and bilateral development agencies have rule of law reform programs. The main actors can be divided into those that primarily fund and those that primarily implement rule of law initiatives. Actors who primarily fund initiatives include: the United Nations Development Programme, the United States Agency for International Development, and the Department for International Development, as well as the World Bank, Soros Foundation, and regional banks. Key implementers include the Asia Foundation, the American Bar Association, and the Organization for Security and Co-operation in Europe. In addition, local actors, non-governmental actors, and international companies are also involved in rule of law initiatives.<sup>21</sup>

### Measuring the rule of law

A variety of indices exist to measure the rule of law, which include indicators on corruption, human rights, labour rights, and other civil rights. Key indices include Freedom House's Civil Liberties Index, Governance Research Indicators, and Minorities at Risk. Initial attempts to develop indicators often mirrored conceptions of the rule of law, as a monolithic applicable to all contexts and approaches.

Recently, attempts have been made to develop indicators that are flexible and can be adapted to various settings and jurisdictions. For instance, the American Bar Association's World Justice Project, the Vera Institute of Justice, and Altus Global Alliance developed a comprehensive rule of law index that includes sixty indicators in the areas of accessibility, administration and enforcement, delivery of justice, and people's access to and engagement with the justice system.<sup>22</sup> A 2008 pilot study utilizing these indicators in India, Nigeria, Chile, and the United States, demonstrated that a single set of indicators can be flexible enough to be applied in extremely diverse settings and jurisdictions – yet are concrete enough to be meaningful to stakeholders, including policy makers,

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<sup>16</sup> Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative' *Carnegie Endowment for International Peace* (2003).

<sup>17</sup> Belton, 'Competing definitions of the rule of law: Implications for practitioners' *Carnegie Papers* 55 (2005).

<sup>18</sup> Ibid.

<sup>19</sup> Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative' *Carnegie Endowment for International Peace* (2003).

<sup>20</sup> Carothers, 'The Many Agendas of Rule of Law Reform in Latin America' *Rule of Law in Latin America: The International Promotion of Judicial Reform* (2000).

<sup>21</sup> World Bank, 'Rule of Law Reform in Post-Conflict Countries: Operational Initiative and Lessons Learnt' (2006).

<sup>22</sup> VERA Institute of Justice, 'Developing Indicators to Measure the Rule of Law: A Global Approach' (2008).

justice actors, and civil society. These indicators represent an attempt to depart from single-score indices that are used to rank countries, and instead attempt to produce a more nuanced understanding of context.<sup>23</sup>

### Conflict-affected contexts

Within conflict-affected contexts, there is a growing emphasis on rule of law reforms in aid and development packages. The World Bank's report, *Rule of Law Reform in Post-Conflict Countries*, highlights four rationales that have been promoted by different agencies as justifications for rule of law reform in fragile, conflict-affected, or underdeveloped states.<sup>24</sup> These justifications are as follows: (i) Economic development: the rule of law is essential to economic development, and therefore there is a need for predictable and enforceable laws for contract enforcement and foreign investment. (ii) Democratization: the protection of human rights and mechanisms holding governments accountable are essential in liberal democracy, and inherent in the rule of law. (iii) Poverty reduction: rule of law reform is considered essential to poverty reduction as the poor suffer more from crime, the impact of crime on their livelihood is greater, and they are less able to access justice systems.<sup>25</sup> (iv) Peace building: transitional justice, the creation of courts to resolve conflict, and writing constitutions and legislation to remove sources of conflict and injustice are increasingly considered essential aspects of peacebuilding in fragile and post-conflict states (UN Secretary General, 2004).

### Gender and women

The concept of rule of law has been critiqued for its top-down and state-centered approach, which results in "insufficient attention to the legal needs of the disadvantaged."<sup>26</sup> Women, in particular, have been largely excluded from the rule of law agenda, at both the conceptual and practical levels, and virtually no rule of law approaches specifically target women's lives.<sup>27</sup>

The rule of law requires a functional and fair justice system, which is free of discrimination, bias, and corruption.<sup>28</sup> However, for marginalized groups, and women in particular, rule of law rhetoric typically means little in practice. Law is often shaped by and beholden to the interests of the most powerful segments of society, and justice systems also reflect these power imbalances. Further, the rule of law has traditionally only applied to the public sphere, and consequently what happens within the private domain (including within the family), has been "hidden and beyond the scope of law."<sup>29</sup>

Recognizing these critiques, the concept of legal empowerment focuses on directly assisting ordinary people, especially the poor, and strengthening the roles, capacities, and power of the

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<sup>23</sup> VERA Institute of Justice, 'Developing Indicators to Measure the Rule of Law: A Global Approach' (2008).

<sup>24</sup> World Bank, 'Rule of Law Reform in Post-Conflict Countries' (2006).

<sup>25</sup> Department for International Development (DFID), 'Justice and Poverty Reduction' *Issues Paper* (2010).

<sup>26</sup> Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative' *Carnegie Endowment for International Peace* (2003).

<sup>27</sup> Nyamu-Musembi. 'For or Against Gender Equality? Evaluating the Post-Cold War Rule of Law' Reforms in Sub-Saharan Africa, *UNRISD* (2005).

<sup>28</sup> United Nations Women, 'Progress of the World's Women: In Pursuit of Justice' (2011).

<sup>29</sup> *Ibid.*

disadvantaged and civil society. In short, legal empowerment views the poor as agents rather than as victims, and promotes that “lasting institutional change depends on a more empowered polity.”<sup>30</sup>

### 3.2 Legal Empowerment

#### Overview

Legal empowerment is recognized as being located at the nexus of law and development, and for using law as a tool to promote change and agency.<sup>31</sup> It is extolled for offering practical legal solutions to people and communities, and for seeking strategies that flow from the “evolving needs and preferences” of disadvantaged and marginalized groups.<sup>32</sup>

Although legal empowerment is critiqued for being ill-defined and lacking conceptual rigour,<sup>33</sup> it differentiates from what is perceived as the predetermined, top-down focus of the rule of law orthodoxy. Proponents of legal empowerment, such as Earle *et al*, highlight that legal empowerment differs from the rule of law orthodoxy, as it views the poor as partners and encourages them to influence public policy, and emphasises non-judicial strategies.<sup>34</sup> Further, Golub argues that, in contrast to the rule of law approach, the legal empowerment alternative is more balanced and is a “manifestation of community-driven and rights-based development.”<sup>35</sup> As Golub recognizes, legal empowerment initiatives often overlap with, and “go under the rubrics of,” legal services for the poor, public interest law, alternative lawyering, developmental lawyering, social justice, social accountability, women’s empowerment, and strengthening the poor’s land tenure security.<sup>36</sup>

Regarding women and gender equality, legal empowerment approaches aim to support social integration, and for seeking to promote gender equality and the empowerment of women.<sup>37</sup> Tied to the promotion of skills and confidence, legal empowerment initiatives aim to provide women with information, training and assistance, and it is anticipated that women will apply these skills to protect and claim their legal rights.<sup>38</sup>

#### The Commission on Legal Empowerment of the Poor

The Commission on Legal Empowerment of the Poor has sought to reposition law and justice concerns at the centre of poverty alleviation, and has generated greater interest in the nexus

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<sup>30</sup> Maru, ‘Between Law and Society: Paralegals and the Provision of Primary Justice Services in Sierra Leone and World Wide’ *Namati*.’ (2012).

<sup>31</sup> HAKI, ‘The Legal Empowerment Approach to International Development: a White Paper’ (2011).

<sup>32</sup> International Development Law Organization, ‘Legal Empowerment Working Papers: the Mystery of Legal Empowerment: Livelihood and Community Justice in Bolivia’ (2010).

<sup>33</sup> von Broembsen ‘Legal Empowerment of the Poor: The Re-emergence of a Lost Strand of Human Rights?’ Rapoport Center Human Rights Working Paper Series (2012).

<sup>34</sup> Earle, Scott, and Owen ‘The Impact of Justice and Rule of Law Interventions on Development Outcomes and Poverty Reduction’ *Assessing the Evidence of the Impact of Governance on Development Outcomes and Poverty Reduction* (2010).

<sup>35</sup> Golub, ‘Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative’ *Carnegie Endowment for International Peace* (2003).

<sup>36</sup> Golub, ‘Legal Empowerment: Practitioners’ Perspectives’ *International Development Law Organization* (2010) at 10.

<sup>37</sup> Asian Development Bank ‘Legal Empowerment for Women and Disadvantaged Groups’ (2009).

<sup>38</sup> *Ibid*.

between poverty, injustice, and legal exclusion.<sup>39</sup> The Commission's report, *Making the Law Work for Everyone*, established that approximately four billion people are excluded from the rule of law, and argued that strategies that expand legal empowerment positively impact broader issues of stability, peace and democratic governance.<sup>40</sup> Although the report is commended for garnering public attention and a degree of legitimacy to legal empowerment,<sup>41</sup> it is critiqued for failing to properly address the political economy of reform, for having a limited impact on policymakers, for being conceptually weak, and for making unsubstantiated claims.<sup>42</sup>

To note, the Commission provided the following definition of legal empowerment:

A process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.... It involves states delivering on their duty to respect, protect, and fulfill human rights, and the poor realising more and more of their rights, and reaping the opportunities that flow from them, through their own efforts as networks, and governments.<sup>43</sup>

### The Secretary-General's Report

The 2009 UN Secretary-General's report, *Legal Empowerment of the Poor and Eradication of Poverty*, is the guiding document on legal empowerment for the United Nations system, and is significant as it is the most important resource for UN member governments, their aid agencies, and the international development community.<sup>44</sup>

Ostensibly, the report provides a similar definition of legal empowerment as that of the Commission of Legal Empowerment of the Poor, defining it as a "process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors."<sup>45</sup> Looking more in-depth however, the report goes beyond the framework provided by the Commission and offers a more expansive view of access to justice, and a focus on community-level awareness and access to legal services, including paralegal programs.

The report also draws explicit attention to women and highlights the importance of gender equality. Noting that "the vast majority of the adult poor are women," the report argues that legal empowerment initiatives should specifically target women, including rural women, and include awareness-raising campaigns on gender equality. The report takes the position that providing legal aid services to women and reducing women's barriers to justice should be mainstreamed in all

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<sup>39</sup> Stephens, 'The Commission on Legal Empowerment of the Poor: An Opportunity Missed?' *Hague Journal on the Rule of Law*, (2009).

<sup>40</sup> Commission on Legal Empowerment of the Poor, 'Making the Law Work for Everyone' (2008) Volume I and II.

<sup>41</sup> Golub, 'Legal Empowerment: Practitioners' Perspectives' *International Development Law Organization* (2010).

<sup>42</sup> Bank 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication' *The Hague Journal on the Rule of Law* (2009) at 127.

<sup>43</sup> Commission on Legal Empowerment of the Poor, 'Making the Law Work for Everyone' (2008) at 3-4.

<sup>44</sup> Golub, 'Legal Empowerment: Practitioners' Perspectives' *International Development Law Organization* (2010).

<sup>45</sup> UN Secretary-General, 'Legal Empowerment of the Poor and Eradication of Poverty' A/64/133 (2009) at 2.

development interventions, and ascertains that “concerted efforts” are required to address discriminatory legislation.<sup>46</sup>

### Methodology and activities

Various organizations and scholars have presented frameworks and methodologies in an attempt to promote a common understanding and standardization of legal empowerment initiatives.

For example, the legal empowerment network HAKI presents an approach to legal empowerment that consists of a comprehensive spectrum of interventions, and classifies activities and methodologies into a scale of three orders.<sup>47</sup> First-order interventions include basic legal awareness-raising, or legal literacy work, that educates the public about its legal rights and obligations, institutional structures of the legal system, and specific mechanisms that marginalized groups can use to advance their interests. Second-order interventions focus on resolving legal problems and administrative challenges that are faced by marginalized groups. These interventions are community-driven and provide both formal and informal legal services, including mediation. Paralegals are a key mechanism for implementation at this level, as they are able to address informal and formal divides, understand local contexts, are cost-effective, and help ensure that programs are in sync with communities. Third-order interventions are designed to have an impact on the highest-level policy constraints and systemic factors that shape the circumstances in which legal problems arise. These interventions target persistent inequitable power relations that continually marginalize the poor. The Asian Development Bank classifies legal empowerment activities as basic awareness-raising, formal and informal support activities (to benefit individuals), and activities aimed at improving entire communities’ relationships with the law and broader structures of administrative governance.<sup>48</sup>

## **3.3 Access to Justice**

### Overview

The concept of access to justice ties closely to legal empowerment, and the Commission on Legal Empowerment of the Poor recognizes it as a key pillar of legal empowerment. Access to justice has gained prominence in development discourses, and is linked to other human rights including those related to human development, health, and poverty reduction.<sup>49</sup>

The concept is also associated with issues of governance, and the United Nations Development Programme recognizes that democratic governance is “undermined where access to justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent.”<sup>50</sup> The 2011 United Nations General Assembly Interactive Thematic Debate on the Rule of Law and Global Challenges focused on the importance of access to justice, and the Assembly stressed that access to

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<sup>46</sup> Ibid at 18.

<sup>47</sup> HAKI ‘The Legal Empowerment Approach to International Development: a White Paper’ (2011).

<sup>48</sup> Asian Development Bank ‘Legal Empowerment for Women and Disadvantaged Groups’ (2009).

<sup>49</sup> National Network on Environments and Women’s Health, ‘Women’s Poverty, Women’s Health: the Role of Access to Justice’ (2001).

<sup>50</sup> United Nations Development Programme, ‘Access to Justice: A Practice Note’ (2004).

justice, coupled with rule of law, is “critical to creating an overall enabling environment in countries for social and economic progress and achievement of the Millennium Development Goals.”<sup>51</sup>

Definitions of access to justice vary widely within the literature,<sup>52</sup> and recently, there has been a shift from a one-dimensional focus on the procedural aspects of access to justice, to a more inclusive assessment of the legal system.<sup>53</sup> For the purposes of this study, the Open Society Initiative for West Africa’s (2007) definition was adopted, which conceptualizes access to justice as having three main aspects: (i) knowledge, as people must have information and knowledge about their rights and how to access them, and this extends to service providers as they are required to have appropriate knowledge and expertise for the provision of effective services); (ii) the environment, as the state’s systems and infrastructure for service provision must be effective and easily accessible; and (iii) the quality of services.<sup>54</sup>

### Barriers

In regards to barriers that can limit an individual’s ability to access justice, the literature identifies three central categories, which are: (i) inadequate legal protection, including gaps in the legal framework, and institutional barriers; (ii) the lack of capacity to provide justice remedies, barriers within court systems and informal justice systems, and lack of enforcement; and (iii) the lack of capacity to demand justice remedies, which includes external obstacles, internal obstacles, and lack of legal awareness.<sup>55</sup> The lack of knowledge and capacity to demand justice is a barrier for a number of reasons. First, this makes it difficult for citizens to regulate their own behavior according to the law, and to know the expected judicial responses. Second, when citizens are unaware of legal procedures, they might choose inappropriate mechanism for pursuing justice.<sup>56</sup> Further, a lack of legal knowledge means that individuals are more vulnerable to abuse or exploitation in the judicial system, and are less likely to receive a fair trial.<sup>57</sup>

### Women’s Access to Justice

In addition to the aforementioned barriers, women face discrimination based on their sex, gender, ethnicity, and class, which further hinders their access to justice. The presence of these added gender-specific barriers contribute to the continued violence and violations committed against women. Specific barriers include gender-based discrimination in society and in the justice system, lack of legal protection, lack of institutional technical capacity and services, fear of reprisal or social ostracism, inadequate public services or outreach by non-governmental organizations, and also lack of economic independence.<sup>58</sup> In addition to the presence of discriminatory customary and social

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<sup>51</sup> United Nations, ‘General Assembly Interactive Thematic Debate on the Rule of Law and Global Challenges: Promoting universal adherence to and implementation of the rule of law at the national and international levels.’ Panel 2: Rule of law and development (2011).

<sup>52</sup> See for example: Global Rights ‘Promoting Access to Justice and Human Rights: Paralegal Training Manual, Bundibugyo District, Uganda’ (2011), and World Bank ‘Access to Justice in Sierra Leone: a review of the literature’ (2008).

<sup>53</sup> Bahdi, ‘Background Paper on Women’s Access to Justice in the MENA Region’ *International Development Research Centre* (2007).

<sup>54</sup> Open Society Initiative for West Africa ‘Ghana Justice Sector and Rule of Law’ (2007).

<sup>55</sup> World Bank, ‘Barriers to Access to Justice’ (2008).

<sup>56</sup> Harding, Scanlon, Lees, et al. ‘Access to justice and the rule of law’ *Forced Migration Review* (2008).

<sup>57</sup> Ibid.

<sup>58</sup> World Bank, ‘Barriers to Access to Justice’ (2008).

practices,<sup>59</sup> women’s limited participation in judicial systems and decision-making forums can also severely limit their access to justice.<sup>60</sup> Well-functioning and accessible justice systems are critical for women to achieve their rights, and these systems have the ability to shape societies by providing accountability, preventing impunity, and creating new social norms.<sup>61</sup>

## Part Four

### 4.1 Community-based Paralegal Programs

The following section provides an overview of the main characteristics of community-based paralegal programs, and their effects on citizen’s access to justice. These programs and their services vary depending on the country, the local context, and the mandate of the program.

#### 4.1.1. Definitions

##### Programs

The community-based paralegal movement arose as a response to the need to “promote and protect human rights and to provide greater access to justice in grassroots communities, particularly for marginalized, less privileged, and poor residents.”<sup>62</sup> These programs work on a variety of justice issues, and target both the individual and community. The Asian Development Bank explains how paralegal organizations must establish “relationships of trust” with the communities they serve, and therefore paralegals are ideally drawn from those communities.<sup>63</sup> Further, working within their own communities enables paralegal organizations to better understand the “local dynamics of power, conflict and decision-making.”<sup>64</sup>

Paralegal programs can play a significant role in increasing access to justice, particularly for communities underserved by the formal system.<sup>65</sup> These programs are recognized for improving the quality, accessibility and delivery of legal services, and can stimulate the empowerment and legal literacy of communities, by supporting individuals to make informed legal choices<sup>66</sup>. In particular, paralegal programs have been successful at reaching the poor, particularly women, and those living in rural areas.<sup>67</sup>

Paralegal programs are recognized for providing cost-effective, relevant, and proximate justice solutions.<sup>68</sup> Strong proponents credit paralegal programs with catalyzing processes of socio-political change, particularly in terms of shifts from “clientelism to citizenship” among service users,

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<sup>59</sup> Global Justice Center, ‘Unequal Access to Justice in the Middle East’ (n.d.).

<sup>60</sup> Chr. Michelsen Institute, ‘Indigenous Women’s Access to Justice in Latin America’ (2010).

<sup>61</sup> United Nations Women, ‘Progress of the World’s Women: In Pursuit of Justice’ (2011).

<sup>62</sup> Global Rights ‘Paralegal Training Manual on Improving Women’s Access to Justice in Northern Nigeria’ (2010).

<sup>63</sup> Asian Development Bank ‘Legal Empowerment for Women and Disadvantaged Groups’ (2009).

<sup>64</sup> Ibid.

<sup>65</sup> World Bank, ‘World Development Report: Conflict, Security and Development’ (2011).

<sup>66</sup> Schuler and Kadigamar-Rajasingham, *Legal Literacy: A Tool for Women’s Empowerment* (1992).

<sup>67</sup> Global Rights ‘Paralegal Training Manual on Improving Women’s Access to Justice in Northern Nigeria’ (2010).

<sup>68</sup> Sendugwa and Havugiyaremye, ‘Building the Foundation for Access to Justice in Rwanda – a Report of the Legal Aid Baseline and Needs Analysis Survey’ (2007).

and for contributing positively to governance.<sup>69</sup> The advantages of paralegal programs over other justice systems including lawyers, is that they are often closer to the communities which they serve (culturally, geographically, and economically),<sup>70</sup> and can have highly specialized knowledge of particular areas with which lawyers may be unfamiliar, such as alternative justice dispute mechanisms and cultural practices. Utilizing the definition provided by the German development agency, GIZ, paralegals bridge the “gap between law and the people.”<sup>71</sup>

Although there is a limited body of research regarding paralegal programs, concerns and critiques of these programs have emerged. These concerns include the limited length of training programs, that paralegals do not fully know or comprehend the law, and that they often provide substandard services.<sup>72</sup> Further, paralegals are often utilized in cases deemed less serious, particularly those involving juveniles, which can compromise the effectiveness of the defense provided.<sup>73</sup> Particularly within conflict-affected settings, there are concerns that donor funding, as opposed to government regulation, is the central consideration for such programs, which can lead to a lack of proper oversight. Lastly, the Initiative for Peacebuilding cautions that although paralegal programs may promote women’s access to justice, and alleviate some of the burden from the state to provide accessible justice, attention needs to be paid to addressing the required longer-term gender-sensitive reforms of the formal security and justice sector.<sup>74</sup>

## Paralegals

### *Categories*

Based on research conducted on paralegal programs in eight African countries, the Netherlands Institute for Southern Africa (NiZA) explains that there are two broad categories of paralegals.<sup>75</sup> First, there are those who are “trained and employed as paralegals, either in various government offices, private law firms, trade unions or in legal service non-governmental organizations,” and second, there are community-based paralegals that are generally unpaid or are paid little, but play a critical role in providing advice to members of their communities. Typically, the paralegal organization will compensate the unpaid paralegals for transportation costs and other direct expenses.<sup>76</sup> Due to the nature of community-based paralegals’ work, they are often viewed as human rights activists.<sup>77</sup>

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<sup>69</sup> Duni, Fon, Hickey, et al, ‘NGOs, Social movements and Paralegal Extension in North West Cameroon: From Clientelism to Citizenship at the Margins?’ (2005).

<sup>70</sup> Namati, ‘How Does Legal Empowerment Work?’ (2011).

<sup>71</sup> GIZ, ‘Facilitating justice: the Work of Paralegals’ (2004).

<sup>72</sup> Conteh, ‘10 Misconceptions about Paralegals in Sierra Leone’ (2010).

<sup>73</sup> Expert Working Group Report ‘International Perspectives on Indigent Defense’ United States Department of Justice (2011).

<sup>74</sup> Initiative for Peacebuilding, ‘Breaking Patterns of Sexual and Gender-based Violence Security and Justice Provision in Post-conflict Nepal’ (2010).

<sup>75</sup> Netherlands Institute for Southern Africa, ‘Making Human Rights Real for All: Baseline Survey Information of Paralegal Work and Training in Southern Africa’ (2005).

<sup>76</sup> Open Society Foundations, ‘Community-based Paralegals: A Practitioner’s Guide,’ (2010).

<sup>77</sup> Ibid.

## *Duties*

The Legal Assistance Cluster explains that paralegals provide legal advice to communities and individuals about their legal rights, issues of human rights, administrative matters, as well as constitutional and development problems. Further, paralegals also assist in community organization.<sup>78</sup> Paralegals address intra-communal disputes, as well as problems and abuses that arise between “citizens and traditional authorities, between citizens and state institutions, and between citizens and private firms.”<sup>79</sup> Regarding target clientele, paralegals often focus on disempowered communities in particular, in order to remedy breaches of fundamental rights and freedoms.<sup>80</sup>

Although mandates vary depending on the context, the activities of paralegals can be broadly classified as legal training, legal information dissemination, and legal aid. Paralegals apply a combination of legal and non-legal tools to meet clients’ justice needs, including: mediation, advocacy, education, organizing, and litigation.<sup>81</sup> In some contexts, paralegals may represent indigent clients in local courts or in the formal justice system.<sup>82</sup> In addition, a key function of paralegals is to support the work of lawyers, for example through statement-taking, tracking witnesses, and filing and serving documents.<sup>83</sup>

## **Part Five**

### **5.1. Sierra Leonean Justice Context**

#### Justice System

Sierra Leone has a democratically elected president and unicameral parliament, and operates under three layers of government: formal national government, formal local government, and customary chieftdom structures. The country has a pluralistic legal structure that incorporates customary law and formal law. Customary law and formal law theoretically operate in tandem, rather than in conflict,<sup>84</sup> and this dualism is recognised in the 1965 *Local Courts Act*, Section 76.

Derived from English common law, the formal law system is administered through the judiciary, the police, and prison systems. Formal law dominates in the capital, Freetown, and has additional courts operating in Bo, Kenema, Port Loko, and Makeni.<sup>85</sup> Crimes punishable by more than six months’ imprisonment must be dealt with by the formal system and the national police force. However, such jurisdictional boundaries are not always adhered to. For instance, customary

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<sup>78</sup> Columbia University, ‘Law and Development Association of the Southern Province of Zambia: an Assessment of the Adult Paralegal Program’ (2006).

<sup>79</sup> World Bank, ‘Community-based Paralegals’ (2011).

<sup>80</sup> Maru, ‘Between Law and Society: Paralegals and the Provision of Primary Justice Services in Sierra Leone and World Wide.’ Namati (2012).

<sup>81</sup> World Bank, ‘Delivering Justice to Sierra Leone’s Poor’ (2009).

<sup>82</sup> Expert Working Group Report ‘International Perspectives on Indigent Defense.’ United States Department of Justice (2011).

<sup>83</sup> Interview with paralegal in Freetown, on 25 January 2012.

<sup>84</sup> Commonwealth Human Rights Initiative and the Sierra Leone Bar Association, ‘In Pursuit of Justice.’ (2002).

<sup>85</sup> Baker, 2005. ‘Who Do People Turn to for Policing in Sierra Leone?’ *Journal of Contemporary African Studies* 23.3 (2005).

courts often adjudicate cases beyond their jurisdiction, including cases of rape that should be sent to the formal courts.<sup>86</sup>

The majority of the country's population is subject to customary law, as approximately eighty-five percent of Sierra Leoneans fall under its jurisdiction,<sup>87</sup> and the local courts remain the primary mechanism through which citizens seek redress.<sup>88</sup> Within the customary system, laws are based on by-laws set at the chiefdom level, and vary widely.<sup>89</sup> These laws also differ by ethnic group, and are typically unwritten and evolve with changing circumstances.<sup>90</sup> Advantages of the customary system include that laws can respond to changing community needs, and are flexible to address individual circumstances.<sup>91</sup> The Local Courts are the cornerstone of customary law, and were formalized in 1963 by the *Local Courts Act*. These Courts operate independently of the judiciary and lawyers cannot participate in their proceedings.

In addition to the state-recognized customary law system, citizens often engage with additional community-based justice systems, where decisions are made by traditional rulers, including Section Chiefs, Town Chiefs, and Paramount Chiefs. These processes are deemed to be less transparent and often charge arbitrary fines.<sup>92</sup>

### Recent Justice Initiatives

The Government of Sierra Leone has ratified international conventions related to justice and equality, including the International Covenant on Civil and Political Rights (on 23 August 1996), the African Charter on Human and Peoples' Rights (on 21 September 1983), and the International Convention on the Elimination of All Forms of Racial Discrimination (on 2 August 1967), and has made recent and concrete steps towards gender equality and the improvement of women's rights. The following sections summarize these initiatives.

#### *Gender Acts*

In 2007, the three revolutionary Gender Acts were passed into law, under a certificate of urgency from past President Ahmad Tejan Kabbah. The Acts are: the *Domestic Violence Act*, the *Registration of Customary Marriage and Divorce Act*, and the *Devolution of Estates Act*, and collectively they seek to improve the legal rights of women in Sierra Leone. In brief, the *Domestic Violence Act* (2007) is the first formal law to address domestic violence in the country, labeling it as a criminal offence. The Act states the domestic violence can include: economic abuse; harassment; emotional, verbal or psychological abuse; intimidation; physical abuse; and sexual abuse. The Act provides the following definition:

“Conduct that in any way harms or may harm another person, including any omission that results in harm and either (i) endangers the safety, health or wellbeing of another person, (ii)

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<sup>86</sup> Castillejo, 'Building Accountable Justice in Sierra Leone.' FRIDE (2009).

<sup>87</sup> World Bank, 'Barriers to Justice in Sierra Leone' (2007).

<sup>88</sup> World Bank, 'Sierra Leone: Legal and Judicial Sector Assessment' (2004).

<sup>89</sup> Castillejo, 'Strengthening Women's Citizenship in the Context of State-building: the Experience of Sierra Leone.' FRIDE (2008).

<sup>90</sup> World Bank, 'Sierra Leone: Legal and Judicial Sector Assessment' (2004).

<sup>91</sup> Castillejo, 'Building Accountable Justice in Sierra Leone.' FRIDE (2009).

<sup>92</sup> BRAC 'Sierra Leone: Annual Report 2010' (2010).

undermines another person's privacy, integrity or security, or (iii) detracts or is likely to detract from another person's dignity or worth as a human being."<sup>93</sup>

By addressing issues of inheritance, the *Devolution of Estates Act* positively promotes women's economic position in the country. The majority of property in Sierra Leone is obtained through inheritance, and this Act requires property to be equally distributed between the deceased's spouse and children (regardless of sex), and criminalises expulsion of widows from their homes after the death of the husband.<sup>94</sup> The *Registration of Customary Marriage and Divorce Act* reinforces similar provisions made in the *Child Rights Act* (2007). The Act requires that all marriages be registered, sets the legal age for marriage at 18 years, requires the consent of both parties to marriage, and provides that gifts, payments, or dowries are non-refundable.<sup>95</sup>

#### *Draft Legal Aid Bill and Pilot National Legal Aid Scheme*

Recognizing the need for a national legal aid program, Sierra Leone has drafted the Legal Aid Bill. This draft bill draws heavily on the language of the Lilongwe Declaration and Plan of Action, and makes reference to the binding nature of the international law framework and refers to the relevant provisions of the Dakar Declaration (1999), and the African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001).<sup>96</sup>

The draft legislation establishes an independent Legal Aid Board, funded by parliament, a public defender scheme and allows for cooperation agreements with accredited legal aid service providers, and was submitted to the Attorney General on 6 July 2010 for tabling before parliament.<sup>97</sup>

Regarding the role of paralegals, the draft bill sets out guidelines for their involvement in civil and criminal cases.<sup>98</sup> In general, paralegals can provide information about the relevant law and legal processes, assist with alternative dispute resolution, provide advice on legal issues, and refer cases to legal practitioners. With respect to criminal cases, paralegals can assist at police stations, prisons and courts by providing defendants with information on rights and procedures, facilitating the tracing of sureties for bail, facilitating the tracing of parents and guardians of juveniles, and by notifying witnesses of upcoming training dates.<sup>99</sup>

In collaboration with this draft bill, the government developed the Pilot National Legal Aid Scheme, which commenced operation in January 2010. The mandate of the scheme is to develop parameters for a sustainable and accessible national legal aid program, and to provide free legal assistance. This program's scope is currently limited to Freetown, and targets indigents and marginalized groups (including: women in conflict with the law, children and youth, and

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<sup>93</sup> Government of Sierra Leone 'The Gender Acts' (2007).

<sup>94</sup> Government of Sierra Leone 'The Gender Acts' (2007).

<sup>95</sup> Government of Sierra Leone 'The Gender Acts' (2007).

<sup>96</sup> United Nations Office on Drugs and Crime, 'Handbook on improving access to legal aid in Africa' (2011).

<sup>97</sup> As of 1 February 2012 the Legal Aid Bill had not been passed.

<sup>98</sup> The following information comes from a 2010 article on the draft bill, as the bill is still in draft stage some provisions may have changes.

<sup>99</sup> Centre for Accountability and Rule of Law, 'What Civil Society Organizations Should Know About the Draft Legal Aid Bill' (2010).

unemployed adults between the ages of 18-28 years).<sup>100</sup> The program addresses a range of cases, such as debt issues and loitering charges. Highlights of the program include the provision of legal education for prisoners and a focus on bail hearings. Regarding awareness of the program, there have been reported cases where Magistrates have referred individuals lacking legal representation to the program's office. Paralegals are a key aspect of this program, and they are provided with legal training and focus on mediating minor matters, in order to reduce the strain on the court.

### *Police initiatives*

Since the late 1990s, there have been substantial attempts to reform Sierra Leone's justice sector and police forces. These reforms have predominantly focused on building a stronger central state, with attention to security as the foundation for managing and protecting state sovereignty.<sup>101</sup> Despite this sector reform, the Sierra Leone police and armed forces are criticized for high instances of corruption and for creating barriers to accessing justice.<sup>102</sup>

As a response to the high levels of violence against women, Domestic Violence Units were established in the country's police stations. In 2001, their mandate expanded and their name changed to the Family Support Units. These Units are staffed by police officers and social workers, and are located within the main police stations across the country. It is intended that each community is to have either a Unit or focal person who is trained to handle and report domestic violence to the appropriate authorities.<sup>103</sup> Currently, there are a total of 30 Units, with approximately 229 personnel.<sup>104</sup>

According to the 2007 Child Rights Act, the Units are responsible for handling the following matters: sexual assault, physical assault (domestic violence), cruelty to children, offences committed by children, and anti-human trafficking relating to children.<sup>105</sup> Research has found that the Units have been a relatively successful strategy to address sexual and gender-based violence; particularly with respect to organizing community outreach campaigns that inform the population about the implications of sexual and gender-based violence, and raising awareness about the need to press charges against perpetrators.<sup>106</sup>

### Barriers to Justice

Within many conflict-affected and fragile states, citizens face significant barriers in accessing justice, and formal justice systems are predominantly inaccessible to the vast majority of the population, owing to a range of economic, political, social, and geographic factors. The existence of legal pluralism can also present challenges to justice and the rule of law, and within Sierra Leone the

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<sup>100</sup> Pilot National Legal Aid and Justice Sector Development Program, 'An Overview of the Work of Pilot National Legal Aid Scheme' (2011).

<sup>101</sup> Albrecht and Buur, 'An Uneasy Marriage: Non-State Actors and Police Reform' *Policing and Society* 19, 4 (2009).

<sup>102</sup> Irish Aid and International Alert 'Addressing Gender-based Violence in Sierra Leone: Mapping Challenges, Responses, and Future Entry Points' (2007).

<sup>103</sup> Sierra Leone Action Network on Small Arms, 'Report on Two Day Seminar with Members of the Defence and Presidential Affairs Committee on Disarming Domestic Violence and the Bill on Arms and Ammunition' (2009).

<sup>104</sup> United Nations Office on Drugs and Crime, 'Handbook on improving access to legal aid in Africa' (2011).

<sup>105</sup> Government of Sierra Leone, 'Child Rights Act' (2007).

<sup>106</sup> Bastick, Grimm, and Kunz, 'Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector', Geneva Centre for the Democratic Control of Armed Forces (2007).

dual legal system is blamed for creating disunity and injustice.<sup>107</sup> Legal pluralism is particularly challenging for women, and this structure can entail multiple stands of law, based on customs and identity, and a plethora of non-state justice systems that operate outside the purview of the state system.<sup>108</sup>

The 1991 Constitution of Sierra Leone (Act 6 of 1991) also has an effect on women's access to justice, and although it provides some degree of equality and protection for women, it makes exceptions in the areas of personal law (subsection 4). Specifically the Constitution's anti-discrimination clause does not apply to any law with respect to "adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law" (Subsection 4, 1, d). In 2010 there was an active constitutional review process underway, which was expected to remove the controversial sub-section. The intention was to launch a revised constitution at the 50<sup>th</sup> anniversary of independence; however this has yet to happen.<sup>109</sup>

The literature identifies key barriers that Sierra Leoneans face in accessing the country's formal and customary justice systems, and the following sections provides an overview, with particular attention to women's experiences.

#### *Cost and corruption*

High costs related to the justice system, including for services, fines, and transportation, make the formal justice system inaccessible for the majority of Sierra Leoneans. These high costs are exasperated by corruption, as corruption within the judicial branch and police can discriminate against women who do not have the means to pay bribes in order to gain access to the justice system.<sup>110</sup> Human Rights Watch has highlighted the existence of corruption with Sierra Leone's justice system, including extortion and bribe-taking by officials.<sup>111</sup>

The Sierra Leonean Government acknowledges that corruption is rampant and endemic, and is a "principle factor for the socio-economic decay, poverty and instability" in the country.<sup>112</sup> Public perception of the Sierra Leone police is particularly negative, as the force is perceived to be corrupt and ineffective and, as a result, public confidence is lacking.<sup>113</sup> The police ranked highest on the 2011 National Public Perception of Corruption Survey report, launched by the Anti-Corruption Commission, and contributing factors to corruption within the force include low remuneration, inadequate incentives, and poor conditions of services.<sup>114</sup> Corruption is also present within the customary legal system, and research has identified incidents of excess fines and arbitrary decisions.<sup>115</sup>

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<sup>107</sup> African Human Security Initiative, 'Sierra Leone: A country review of crime and criminal justice' (2009).

<sup>108</sup> Bastick, Grimm, and Kunz, 'Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector' Geneva Centre for the Democratic Control of Armed Forces (2007).

<sup>109</sup> As of 1 March 2012 a revised constitution had not been released.

<sup>110</sup> International Council on Human Rights Policy, 'Corruption and Human Rights: Making the Connection' (2009).

<sup>111</sup> Human Rights Watch, 'World Report 2011: Sierra Leone' (2011).

<sup>112</sup> Anti-Corruption Commission, 'What is the Meaning of Corruption in Sierra Leone' (2011).

<sup>113</sup> African Human Security Initiative, 'Sierra Leone: A country review of crime and criminal justice' (2009).

<sup>114</sup> Ibid.

<sup>115</sup> Transparency International, 'Global Corruption Report,' Part one: Comparative analysis of judicial corruption (2007).

### *Structure*

Barriers related to the justice system structure also hinder citizen's access to justice. For example, within the country there is a shortage of trained justice personnel, as there are approximately only 10 judges and about 100 lawyers to address the justice needs of the country's five million-plus people.<sup>116</sup>

Within the formal legal system, barriers arise related to a lack of consistent procedures, lengthy prosecution times, backlogs of cases, persistent adjournments, and the disappearance of case files.<sup>117</sup> The lack of capacity in evidence gathering techniques, particularly regarding forensic evidence and sexual violence cases, results in the loss of evidence and further hinders justice. Lastly, witness protection mechanisms are poor or non-existent,<sup>118</sup> which deters individuals from providing statements or testifying.<sup>119</sup> Within the customary system, a primary barrier is that the laws are unwritten and not codified, which makes the system subject to potential biases and discrimination.<sup>120</sup>

### *Lack of legal representation and legal awareness*

The demand for legal representation among the population is significant, and the vast majority of citizens appearing in court lack legal representation.<sup>121</sup> Within the country there is limited legal rights education, especially in rural areas, which results in citizens and particularly women being not fully aware of their legal rights, under both domestic and international law.<sup>122</sup>

### *Gender-based discrimination*

Sierra Leone is characterized as a patriarchal society, where institutionalized gender inequalities are exacerbated by discriminatory customs, particularly in regards to property rights, marriage, and sexual offences. Social, cultural, economic, and legal inequalities have entrenched women's subordination and dependence on men.

Additional barriers related to societal norms can also obstruct women's access to justice. There is often an ingrained culture of silence surrounding sexual and domestic violence, which results in cases of sexual violence not being reported.<sup>123</sup> Combined with the low status of women, their ability to access justice is severely hindered. Further barriers include shame and stigma, and that women are often pushed towards reconciliation and mediation, as opposed to judicial legal processes. Moreover, relatives often interfere with the justice process and push for out-of-court settlements, which further compromise women's ability to seek justice.<sup>124</sup>

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<sup>116</sup> Open Society Foundations, 'Community-based Paralegals: A Practitioner's Guide' (2010).

<sup>117</sup> Ibid.

<sup>118</sup> African Human Security Initiative, 'Sierra Leone: A country review of crime and criminal justice' (2009).

<sup>119</sup> Interview paralegal organization staff member in Freetown on 16 January 2012.

<sup>120</sup> Robb-Jackson, 'Strengthening Women's Access to Justice in Sierra Leone' Report prepared for the International Development Research Centre (2010).

<sup>121</sup> Castillejo, 'Building Accountable Justice in Sierra Leone' FRIDE (2009).

<sup>122</sup> Ibid.

<sup>123</sup> Chikwanha, 'The Criminal Justice System in Sierra Leone: Issue Paper' (2008).

<sup>124</sup> Interview with paralegal organization staff member in Freetown on 16 January 2012.

The potential of retaliatory violence and post-traumatic stress also impede women's access, as women have reported incidences of threats, harassment, and physical violence for having sought justice.<sup>125</sup> These gender-based barriers are particularly problematic, as the reluctance to pursue justice for women, combined with a lack of women's economic independence,<sup>126</sup> has perpetuated a cycle of violence and a culture of impunity for violence against women.<sup>127</sup>

## Part Six

### 6.1 Community-based Paralegal Programs in Sierra Leone

***“Paralegals are a critical piece of the justice puzzle”***

(Female participant, in Canada)

***“Without paralegals the country would relapse into conflict”***

(Male participant, in Freetown, Sierra Leone)

#### 6.1.1 Background

Community-based paralegal programs have rapidly grown in size and representation in Sierra Leone, and the role of these programs has been increasingly recognized within the country's justice sector. As noted, the proposed National Legal Aid Bill provides a space for paralegals as primary justice providers, and the Justice Sector Reform Strategy and Investment Plan II, 2011-2014 acknowledges the role of paralegals in “providing free services appropriate to the needs of ordinary people” as well as in “reducing remand populations.”<sup>128</sup>

Despite the growing support of community-based paralegal programs, individuals and institutions have raised concerns. These concerns include that paralegals do not fully know the law, and as a result will provide substandard services.<sup>129</sup> Concerns around shifting power dynamics have also emerged, particularly in regards to Paramount Chiefs. Paralegals are providing communities with new and additional justice options, and thereby changing the traditional role of Chiefs as the main justice focal point. Attempting to stem any conflict, the paralegal organizations have stressed that they play a complementary role to Chiefs, and have focused on engaging them in their work. For example, the organizations have held community meetings, which engaged Paramount Chiefs, Section Chiefs, Village Headmen, and religious leaders.<sup>130</sup> Although some resistance remains, there are examples of community leaders supporting these programs. For instance, one organization cited an example of a Paramount Chief coming to the office to answer to a complaint, while another organization noted an occasion where a Paramount Chief sought out their services for a justice issue.<sup>131</sup>

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<sup>125</sup> Robb-Jackson, ‘Strengthening Women’s Access to Justice in Sierra Leone’ Report prepared for the International Development Research Centre (2010).

<sup>126</sup> African Human Security Initiative, ‘Sierra Leone: A country review of crime and criminal justice’ (2009).

<sup>127</sup> United States Department of State, ‘Human Rights Report: Sierra Leone’ (2009).

<sup>128</sup> Conteh, ‘Exploring the community level impact of paralegals in rural Sierra Leone’ Sierra Express Media (2011).

<sup>129</sup> Interview with paralegal organization staff member in Freetown on 2 February 2012.

<sup>130</sup> Interview with paralegal organization staff member in Freetown on 2 February 2012.

<sup>131</sup> Interviews with staff members from paralegal organizations in Freetown on 23 and 27 January 2012.

The most prominent paralegal organization, Timap for Justice, has been active in the country since 2004,<sup>132</sup> and has spearheaded the movement to bring justice and conflict-resolution services to the country's poor and marginalized communities. This organization has been recognized by independent institutions, including Transparency International, the International Crisis Group, and the UN Commission on Legal Empowerment of the Poor, for establishing a creative, flexible, and effective approach to provide justice services, within the challenging and complex Sierra Leonean context.<sup>133</sup>

Building on the work of Timap for Justice, in 2009 the Sierra Leonean Government, donors (including the World Bank, GIZ, and the Open Society Justice Initiative), and non-governmental organizations collaboratively developed a national approach to paralegal programs. This approach is focused on the scaling up of legal aid, and includes a “front line of community paralegals and a smaller core of supporting lawyers.”<sup>134</sup>

Under this initiative, there is a network of six paralegal organizations, which are: Access to Justice Law Center, Justice and Peace Commission, AdvocAid, BRAC, Methodist Church Sierra Leone Development and Relief Agency, and Timap for Justice. This network is coordinated by the Namati Organization, which provides oversight and training, and is currently developing monitoring and evaluation tools for paralegal organizations.

In addition to this network, other national and international organizations are providing community-based paralegal services in Sierra Leone. For example, the Center for Accountability and Rule of Law has a Community Monitors program, and these trained volunteers focus on issues of gender-based violence, monitor local courts and community justice issues, and report back to the Center. Additionally, World Hope International has a paralegal program that is focused on human trafficking, and provides individuals and communities with support and facilitates engagement with the police. (To note, this is not an exhaustive list of paralegal organizations operating in the country).

## **6.1.2. Structure and Operation**

### Geographic reach

Paralegal programs operate throughout Sierra Leone's four regions (Northern, Southern, Western, and Eastern areas), and are particularly visible in the Western area, which contains Freetown. Often through mobile clinics, these programs are able to reach remote rural communities and empower them to engage with authorities, find solutions to social problems, and promote governance at local levels.<sup>135</sup> As a result, mobile clinics are recognized as an important tool for supporting access to justice.<sup>136</sup> The types of services provided by paralegals can differ based on location; for example paralegals operating outside of Freetown utilize mediation as a main methodology, as there is a lack of lawyers to whom cases can be referred.<sup>137</sup>

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<sup>132</sup> Until 2005, the Timap organization was known as Access to Justice.

<sup>133</sup> Open Society Foundations, 'Community-based Paralegals: A Practitioner's Guide,' (2010).

<sup>134</sup> World Bank, 'World Development Report: Conflict, Security and Development' (2011).

<sup>135</sup> Conteh, 'Exploring the community level impact of paralegals in rural Sierra Leone' Sierra Express Media (2011).

<sup>136</sup> United Nations Security Council, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' (2011).

<sup>137</sup> Interview with paralegal organization staff member in Freetown on 11 January 2012.

## Focus

The majority of the organizations focus on complainants who are from marginalized and vulnerable communities, and define themselves as “generalist paralegals.”<sup>138</sup> However, some organizations have clear target groups and clientele. For instance, AdvocAid specifically targets women in conflict with the law, and supports justice, education and reintegration for female detainees, including post-prison support.<sup>139</sup> The organizations work predominantly on issues of child maintenance, debts, domestic violence, and loitering.<sup>140</sup> The national legal framework is the predominant focus, although some of the organizations also engage with international legal standards, for example the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

## Methods

Paralegal organizations in Sierra Leone employ an array of tools and strategies in their work, and are typically backstopped by lawyers to whom they refer serious or complex cases. Although the effectiveness of these programs is partly due to their connection to lawyers and the threat of litigation, the structure and operation of the programs is actively increasing the provision and quality of justice service delivery.

As a front-line strategy, paralegals focus on the mediation of disputes, as opposed to litigation. This approach is recognized for maintaining peaceful co-existence among disputing parties who often reside in the same community.<sup>141</sup> The dispute resolution role of paralegals is stressed as being at least as important as their linkages to the legal system, particularly as paralegals are able to identify alternatives for resolutions that are relevant to the local population.

The main services provided by paralegal programs include legal advice, strategic campaigning, visits to police stations, the courts, and prisons, and public education through information dissemination and sensitization (including dramas and radio programs). For example, AdvocAid and the Sierra Leone Court Monitoring Programme, with the support of the Special Court for Sierra Leone, have produced a booklet entitled: *Afta We Den Arrest Yu: Wetin Neks* (After You’ve Been Arrested, What Next?). The booklet contains photographs and visual aids in the Krio language, and provides clear information on the criminal justice process to accused persons so that they understand their rights when faced with criminal proceedings. AdvocAid has also produced a series of legal education posters which are present in the court and police stations in Freetown. In addition to service provision, paralegal organizations are promoting a pro-bono legal culture. For instance, AdvocAid has an internship program that draws students from Fourah Bay College Law Department, and provides them with human rights work experience.<sup>142</sup>

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<sup>138</sup> Interview with paralegal in Freetown, on 31 January 2012.

<sup>139</sup> Interview with paralegal organization staff member in Freetown, on 11 January 2012.

<sup>140</sup> In addition, World Hope International has a clear mandate to focus on human trafficking.

<sup>141</sup> Conteh, ‘Exploring the community level impact of paralegals in rural Sierra Leone’ Sierra Express Media (2011).

<sup>142</sup> Interview with paralegal organization staff member in Freetown, on 11 January 2012.

## Part Seven – Analysis and Conclusions

***“Paralegals ensure that people, and especially women, have a sense of justice”***

(Female participant, in Freetown, Sierra Leone)

### 7.1 Sustainability

The rapid expansion of community-based paralegal programs has triggered questions of the sustainability of this method of justice delivery. The commitment to providing accessible legal solutions must be a joint endeavor between the government and civil society. Thus far the government has shown promising signs that it recognizes the critical role of primary justice, and its commitment will be judged on whether the Legal Aid Bill is passed, how quickly legal aid institutions are established and the amount of state resources provided for legal aid provision.<sup>143</sup> This draft Bill represents an attempt by the government to link top-down approaches to access to justice with a bottom-up focus on citizen’s justice needs, and is critical not only for the continuation of community-based paralegal programs, but also for improving the quality and standardization of services.

In anticipation of the Bill, a select number of paralegals have formed the Sierra Leone Association of Paralegals.<sup>144</sup> This Association has drafted a constitution, which contains minimum education and remuneration standards, and a code of ethics. The aim of the Association is to increase coordination and learning between paralegals, and to also provide a space for internal monitoring and evaluation. The Association has the long term objective of becoming unionized in Sierra Leone, and the key drivers behind this objective include the November 2012 Presidential elections and the uncertainty surrounding the Legal Aid Bill. There are some emerging concerns surrounding this movement, including that unionization may lead to paralegals becoming similar to other, elite justice providers, which could lead to internal corruption and affect power dynamics between paralegal and clients. However, the benefits outweigh the risks, as the Association will provide a mechanism to identify and share best practices and, ideally, to deliver and enforce gender equality training.

### 7.2 Effects on Women’s Access to Justice

***“Paralegals can turn the legal system and women’s equality around”***

(Female participant, in Freetown, Sierra Leone)

***“Paralegals are the antidote to police corruption”***

(Male participant, in Freetown, Sierra Leone)

This research interrogated the role that community-based paralegal programs have in promoting women’s access to justice, legal rights, and legal empowerment, and established that these programs are significantly improving women’s experiences of justice in Sierra Leone.

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<sup>143</sup> Interview with paralegal organization staff member in Freetown, on 12 January 2012.

<sup>144</sup> Interview with paralegal in Freetown, on 31 January 2012.

Returning to the concept of legal empowerment, community-based paralegal programs are promoting legal awareness and knowledge, with a focus on national laws, including the Gender Acts, and, although to a lesser extent, international standards. Through community outreach and training, these programs are also effectively increasing advocacy on women's rights and gender equality issues. As evidenced by their growing clientele, these programs play a key role in the community, and are seen as a legitimate justice focal point. Through the provision of free services and mobile clinics, the programs are ensuring that justice is more accessible, particularly for remote, rural communities. Additionally, owing to the methodology of longer term engagement with cases and an ongoing (physical) presence in the community, these programs have the potential to reduce retaliatory violence against women who seek justice services.

***“We keep in contact with the client and have a relationship; it’s not just about the case”***  
(Female participant, in Freetown, Sierra Leone)

A potential risk surrounding these programs, and their specific mission of supporting women, is that this may reduce the responsibility of the state to make formal justice processes more accessible. To minimize this possibility, it is critical that paralegal programs are recognized as but one initiative to strengthen women's access to justice, and that paralegal organizations continually collaborate with formal justice actors. The draft Legal Aid Bill is a mechanism to address this potential risk, and would demonstrate the state's responsibility to make justice accessible. Further, there is a need to combine the legislation with initiatives to strengthen the gender training and capacity of lawyers, the judiciary, and government officials that are responsible for legal policy and law reform.

As highlighted in the access to justice section, women are often pushed towards reconciliation and mediation, as opposed to judicial legal processes, and this may limit their justice options, in turn hindering their ability to seek justice. Similarly, a further barrier is that women's relatives often interfere with justice processes and push for out of court settlements. Given that paralegals utilize mediation as their main method, particularly in rural areas, this issue needs to be considered and there is a need for paralegals to have clear guidelines on when and how to refer a matter to the Magistrate and police. Further, the majority of paralegal organizations in Sierra Leone explained that they do not mediate cases of sexual violence, however, further research is required on how paralegals respond to sexual violence cases, particularly in remote areas.

Although these programs are producing tangible results for women's access to justice, the impact of these programs on women's rights and broader gender equality should be strengthened. For instance, very few of the paralegal organizations have clear strategies in regards to gender issues or women's rights, and the majority of the organizations do not provide gender-specific training, which is required given the organizations' aim of supporting women's access to justice and that their primary clientele is women. Lastly, in response to the high number of organizations, there is a need for clear clientele strategies, in order to ensure that vulnerable segments of women are not excluded from programming, and that efforts are not simply being duplicated but rather are built upon.

### **7.3 Conclusions**

Community-based paralegal programs occupy an important space in Sierra Leone's justice sector, and provide concrete, proximate, and relevant solutions to the most widely experienced

justice problems. These programs are a promising mechanism that contributes to legal empowerment and access to justice. Returning to the literature, the central barriers that limit access to justice include institutional barriers and the lack of capacity to provide justice remedies, as well as the lack of capacity to demand justice remedies.<sup>145</sup> Specifically, these paralegal programs contribute to the strengthening of justice via three streams: (i) by increasing the quality and accessibility of legal services for citizens in a meaningful and effective way; (ii) by strengthening and complementing the formal and state justice processes, while promoting transparency; and (iii) through the provision of legal and human rights education. For example, these programs are lessening the presence and extent of corruption, particularly in regards to the police, often by the mere presence of a paralegal.<sup>146</sup> Further, the programs are increasing the speed and reliability of justice, while alleviating pressure on the country's detention centers and strengthening the operation of legal institutions, including the police and courts.<sup>147</sup>

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<sup>145</sup> World Bank, 'Barriers to Access to Justice' (2008).

<sup>146</sup> Interview with paralegal organization staff member in Freetown, on 23 January 2012.

<sup>147</sup> Interview with paralegal organization staff member in Freetown, on 27 January 2012.