be a police service protective of the human rights and dignity of all, but a more effective and professional police service that enjoys good relations with the community.

Further Reading

Legget, T. et al, "Criminal Justice in Review 2001/2002," Monograph 88, November 2003, Institute for Security Studies, Pretoria.

Notes

† Cheryl Frank and Sean Tait are, respectively, director and senior program officer of the Criminal Justice Initiative at the Open Society Foundation for South Africa.

1 Van Der Spuy, discussion on police accountability, held by the Open Society Foundation for South Africa and the Open Society Justice Initiative, Johannesburg, 2002.

2 Amnesty International, *Policing to Protect Human Rights, A Survey of Police Practice in Countries of the Southern African Development Community, 1997-2002,* Amnesty International Publications, London, 2002.

3 Institute for Security Studies, *National Victim Survey 2003,* Pretoria, 2003. See www.iss.co.za.

4 Open Society Foundation for South Africa and Open Society Justice Initiative, *Report: Civilian Oversight and Monitoring of the Police In South Africa,* June 23-24, 2003. See www.justiceinitiative.org.

5 See Independent Complaints Directorate, *Annual Report 2002/2003,* Ministry of Safety and Security, Pretoria, 2004.

6 David Bruce, *Democratic Reform of the Police – Any lessons for Kenya from South Africa?*, 2003. Paper presented at the Roundtable Conference on Police Reform in East Africa, *Police as a Service Organisation: An Agenda for Change,* Nairobi, April 24-25, 2004.

7 South African Police Services, *Annual Report,* Ministry of Safety and Security, Pretoria, 2004.

8 Institute for Security Studies, 2003.

The Challenges of African Legal Dualism: an Experiment in Sierra Leone

Vivek Maru† examines how a project providing paralegal assistance can help address the colonial legacy of "decentralized despotism" in Africa.

Law in most African countries is bifurcated: formal legal systems inherited from the former colonial powers coexist with "customary" legal regimes derived from traditional approaches to justice. This legal dualism poses challenges for law reform across the continent. I would like to describe a few of those challenges, in particular as they arise in Sierra Leone, and to sketch the way in which a community legal services program there is attempting to grapple with them.

The dilemmas of African customary law

Customary institutions deserve a degree of autonomy and respect. They have roots in cultural traditions and, for many in rural Africa, are the most accessible institutions. On the other hand, the same institutions are theo-

retically subordinate to national constitutions and—although this is more contentious—international human rights law. The line between autonomy and subordination is difficult to draw.

That said, it would be too simple to conceive of the challenges of legal dualism exclusively in terms of opposition between human rights and African culture. Ugandan political scientist Mahmood Mamdani situates present-day customary law in the history of colonialism. In particular, Mamdani focuses on the colonial strategy of indirect rule. The kernel of that strategy was to rule rural Africa by proxy, first subjecting African chiefs to colonial authority and then enhancing the power of those chiefs over their own people.

Under this system, chiefs became both law-makers and law-enforcers, and they used customary law to carry out colonial demands and to practice exploitation of their own by means of excessive fines, forced labor, and arbitrary decisions. Mamdani argues that the legacy of indirect rule continues to this day in the form of a despotic African countryside, in which too much power is concentrated in the hands of chiefs. According to this view, independent African states—the inheritors of colonial authority—have failed to confront, indeed have often taken advantage of, this legacy of despotism.[1]

Dualism and justice in Sierra Leone

There is evidence to suggest that Mamdani's analysis is relevant in contemporary Sierra Leone. One scholar, Arthur Abraham, concluded that the transformation of Sierra Leone's Mende chiefs from sovereign but limited kings into colonial agents "put chieftaincy out of the reach of traditional sanctions," such as the right of subjects to depose their chiefs. "[T]he traditional democratic basis of Mende chiefship was radically undermined."[2] The colonialists designated "chiefdoms" as the primary administrative units in the countryside and "paramount chiefs" as their rulers. Since Sierra Leone's political independence in 1961, governments of both major political parties have used paramount chiefs, as they are still called, to consolidate and maintain power. What Abraham wrote in 1978 remains true: "Every government in the post-colonial period has not only pledged itself to uphold the institution of chieftaincy, but has used it as the basis for local support."

The legacy of indirect rule continues to this day in the form of a despotic African countryside.

The 1896 ordinance that first made Sierra Leone a British protectorate established "courts of the native chiefs." The same institutions are legally recognized today—though renamed "local courts"—as arbiters of customary law. Reforms in the late colonial period replaced paramount chiefs with court chairmen as the heads of these courts,[3] but those chairmen are still appointed by paramount chiefs for approval by the

local government ministry. In practice, customary law is also administered by lesser "village" and "section"[4] chiefs although these are not recognized by statute. Customary law varies by ethnic group, and is uncodified.

The formal legal system, meanwhile, is concentrated in Freetown, the nation's capital. Of a total of ten magistrates, five sit in Freetown while the other five rotate among 12 provincial magistrate courts. Of 11 high court judges, 10 presently sit in Freetown while only one is assigned to rotate among the provinces. Most chiefdoms have branch offices of the Sierra Leone national police in addition to "chiefdom" police officers, who serve the customary institutions. Law requires that crimes punishable by more than six months' imprisonment be dealt with by the national police and the formal courts, though such jurisdictional boundaries are not always adhered to. Of the two overlapping legal regimes, customary law has more practical relevance for the vast majority of Sierra Leoneans than the formal legal system.

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Mamdani's structural concern that customary law is controlled by overly powerful chiefs may be related to several other challenges posed by customary law in Sierra Leone. Substantively, customary law sometimes conflicts with human rights. Among certain ethnic groups, a girl can be betrothed without her consent before she reaches puberty.[5] Women are also generally disallowed from inheriting family property.[6] Customary law is supposed to comply with the national constitution and it should not, according to the 1963 Local Courts Act, contradict "enactments of parliament" or "principles of natural justice and equity." But these nominal limitations are seldom, if ever, enforced.

Moreover, customary law is often applied unfairly. Favoritism and excessive fines are common. In Bumpeh-Gao Chiefdom in the Southern Province, I watched as two fines, each for 10,000 Leone (U.S. $3.50), were levied against a witness—someone who was in principle assisting the court in its work—within the course of half an hour. The reason was that the witness spoke a one-word answer to a question asked of him before the court clerk had finished recording the question in his languid handwriting.

Among the causes of both substantive and procedural unfairness is a lack of independent review. Within the chiefdom, few but the paramount chief and elders favored by him have any power over the functioning of local courts. This may be symptomatic of the concentration of power that Mamdani highlights. There is a theoretical right to appeal from local courts to the formal legal system but in practice such appeals are quite rare. There is also one national "customary law officer" with the power to super-

vise local court chairmen and review local court decisions. This form of review may not qualify as independent because the law officer is a member of the executive rather than judicial branch. Even assuming adequate independence, the same person doubles as the only public prosecutor working in the provinces: his time is stretched thin.

The background for all of these problems is severe poverty and lack of infrastructure. Weak education and health care systems, poor roads, paucity of clean water, and substantial unemployment place this post-conflict nation right at the bottom of a list of 177 countries ranked in the United Nations Development Program's human development index.

Community-based paralegals

Where should law reform begin in this situation? How does one begin to serve the people who live under this system? The Open Society Justice Initiative and the Sierra Leonean National Forum for Human Rights are undertaking an experimental effort to provide basic legal services in five chiefdoms in Sierra Leone. The idea is to work primarily through community-based paralegals—as they are provisionally called—rather than through lawyers. There are only 100 or so lawyers in the country, less than 10 of whom are outside the capital and its vicinity. Moreover, lawyers are not allowed to appear in customary courts. The paralegals come from the chiefdoms where they work and have grown up under customary law, but are given training in (mostly) formal law as well as in the workings of government. Their methods are diverse. For individual justice-related problems, the paralegals provide information on rights and procedures, mediate conflicts, and assist clients in dealing with government and chiefdom authorities. For community-level problems, paralegals advocate for change from above and assist in organizing collective action from below. I am one of two lawyers who supervise, train, and support the paralegal staff.

The project employs three distinct approaches to reforming customary law and the dualist legal structure. First, the formal legal system is sometimes invoked to check unfairness and exploitation in the customary system. Where local court decisions are severely unjust, the project's supervising lawyers will lodge appeals in the formal court system to seek both redress for the client and a precedent-setting ruling. Sometimes, the very fact that paralegals can speak the formal legal language and are associated with formal law is enough to inhibit would-be exploiters in the customary setting. For example, in June 2004, the Sierra Leone Farmers' Association was delaying sending seed-rice to a particular village in Kakua chiefdom. A paralegal went with village leaders to visit the official who, it turned out, had been holding out for a bribe. Our paralegal told us that the official trembled as soon as he saw "human rights" on the paralegal's ID card. The rice was soon delivered.

But we are not legal missionaries, banishing the darkness of customary law with the light of the formal legal system. Customary institutions, as

noted, deserve respect both for their traditional origins and for their greater accessibility and relevance to most Sierra Leoneans. A second reform effort acknowledges this by working to improve the customary system from within. Paralegals identify fair-minded chiefs and elders who can assist with internal advocacy. They hold community meetings to engage people in dialogue on justice issues in the chiefdom. When paralegals mediate local conflicts, they provide an alternative and fine-free process that synthesizes traditional and modern approaches. A paralegal mediating between a delinquent child and a father who has resorted to beating might, for example, begin with something from the Convention on the Rights of the Child and end with the ritual of a child placing his head on his father's feet. We hope that as our paralegals gain respect in their chiefdoms, their presence will decentralize some of the power that is now concentrated in the hands of the chieftaincy.

Finally, paralegals can serve as bridges between the two regimes. One effect of legal dualism is that rural people are marginalized from and fearful of the structures of government and the formal legal system. Paralegals have assisted rape victims, for example, in pursuing prosecution with the Sierra Leone Police (rape is outside the jurisdiction of customary courts). If the government is not paying teachers in a particular community, paralegals will raise the issue with the Ministry of Education.

Our hope is that these piecemeal, grassroots efforts will contribute to a reform of Sierra Leone's dualist legal structure that draws on the experience of ordinary Sierra Leoneans and meets their needs by combining the strengths of the formal and customary legal systems, rather than exalting one over the other.

Notes

† Vivek Maru is project manager for the Open Society Justice Initiative Paralegal Project in Sierra Leone.

1 Mahmood Mamdani, *Citizen and Subject,* Princeton University Press, 1996.

2 Arthur Abraham, *Mende Government and Politics under Colonial Rule,* Sierra Leone University Press, 1978, 303-11.

3 Paul Richards, *Fighting for the Rainforest: War, Youth & Resources in Sierra Leone,* International African Institute, 1996, 46.

4 The country's 12 districts are each divided into chiefdoms, with an average of 12 chiefdoms per district. Each chiefdom is in turn divided into anywhere between 2 and 15 sections, and each section encompasses tens of villages.

5 Joco Smart, *Sierra Leone Customary Family Law,* Atlantic Printers, 1983, 33. This is the most recent research available, but its conclusions are borne out by experience in the field.

6 Smart, 196.