



PARALEGAL MANUAL 2012



A PRACTITIONER'S GUIDE TO PROVIDING BASIC JUSTICE SERVICES IN
SIERRA LEONE

The *Timap for Justice Paralegal Manual* is dedicated to Ed Sawyer.

Freetown, Sierra Leone
June 2012

Contents

FOREWORD	1
PREFACE	2
1 INTRODUCTION	3
1.1 TIMAP FOR JUSTICE	3
1.2 THE TIMAP FOR JUSTICE PARALEGAL MANUAL	3
1.3 THE ROLE OF THE PARALEGAL AND THE STEPS TO SOLVING JUSTICE PROBLEMS.....	4
1.4 GUIDING PRINCIPLES FOR ALL STAFF	6
2 PARALEGAL SKILLS.....	7
2.1 INTERVIEWING AND STATEMENT-TAKING.....	7
2.1.1 Interviewing Clients	7
2.1.2 Statement Taking.....	8
2.2 INVESTIGATIONS AND FACT-FINDING	10
2.3 PROVIDING INFORMATION AND NAVIGATING AUTHORITIES	11
2.3.1 Providing Information	11
2.3.2 Navigating Authorities.....	12
2.4 MEDIATION	14
2.4.1 What is Mediation?	14
2.4.2 What are the Benefits of Mediation?	14
2.4.3 Timap’s Mediation Process.....	15
2.4.4 Mediation Techniques	17
2.4.5 Mediation Agreements and Enforcement	20
2.4.6 Important Notes on Mediation	20
2.5 ADVOCACY	21
2.5.1 What is Advocacy?.....	21
2.5.2 Effective Advocacy	21
2.5.3 Advocacy Letters.....	23
2.5.4 Using the Media	26
2.6 COMMUNITY MEETINGS	26
2.6.1 Needs Assessment at Community Meeting	27
2.6.2 Community Education	28
2.6.3 Proposals for Community Meetings	29
2.7 ORGANIZING COLLECTIVE ACTION.....	29
2.8 LITIGATION	30
2.8.1 The role of paralegals in litigation.....	31
2.9 WORKING WITH CHILDREN	35
2.9.1 Child and Adolescent Development	35
2.9.2 Legal Framework	35
2.9.3 Core Competencies.....	36
3 TIMAP FOR JUSTICE: PROCESSES & PROCEDURES	39
3.1 ORGANIZATIONAL STRUCTURE	39
3.2 CASE MANAGEMENT SYSTEM.....	41
3.3 MOBILE CLINIC SYSTEM.....	42
3.3.1 The System	43
3.3.2 Contact persons	43
3.4 EMERGENCY FUND.....	44
3.4.1 Background	44
3.4.2 Purpose of the Guidelines	44

3.4.3 The Guidelines	45
3.5 FINANCIAL MANAGEMENT.....	47
3.6 SUPERVISION.....	48
3.6.1 Visiting paralegal offices	48
3.6.2 Mobile clinics	51
3.6.3 COBs	51
3.6.4 Meet the parties	51
3.6.5 Other updates and reports	51
3.6.6 Other general notes	51
4 HOW GOVERNMENT WORKS.....	53
4.1 THE BRANCHES OF GOVERNMENT.....	53
4.1.1 The Executive Branch	53
4.1.2 The Legislative Branch.....	54
4.1.3 The Judiciary Branch.....	55
4.1.4 Separation of Powers/Checks and Balances	56
4.2.1 The Legal Territory of Sierra Leone.....	57
4.2.2 The Judiciary.....	57
4.3 OTHER GOVERNMENT BODIES.....	62
4.3.1 Local Government	63
4.3.2 Office of Paramount Chief.....	63
4.4 EDUCATION POLICY: THE MINISTRY OF EDUCATION.....	65
4.4.1 Structure.....	65
4.4.2 School Fees and Subsidies	66
4.4.3 Policies Regarding Teachers	68
4.4.4 School Management Committees (SMCs).....	70
4.4.5 Community Teacher Associations (CTAs).....	70
4.4.6 WFP Feeding Programme.....	71
4.4.7 Student Exploitation	71
4.4.8 Corporal Punishment	72
4.5 HEALTHCARE POLICY: THE MINISTRY OF HEALTH & SANITATION	74
4.5.1 Introduction.....	74
4.5.2 Institutional Actors and Structure.....	74
4.6 MINING POLICY: MINISTRY OF MINERAL RESOURCES.....	84
4.6.1 Natural resource laws and the mining permit process	84
4.6.2 Negotiating a lease	85
4.6.3 Child Mining	85
4.6.4 Labour/Employment	86
4.6.5 Illicit Mining	87
4.6.6 Environmental protection	87
4.6.7 Community Development.....	87
4.6.8 Non-compliance with mining laws.....	88
4.7 SOCIAL WELFARE POLICY: THE MINISTRY OF SOCIAL WELFARE, GENDER AND CHILDREN’S AFFAIRS (MSWGCA) AND OTHER AGENCIES INCLUDING FSU AND LOCAL COUNCILS.....	88
4.7.1 Government Bodies	88
4.7.2 Child Welfare and Protection Policy	89
4.8 AGRICULTURE.....	90
4.9 WATER	93
5 LAW IN SIERRA LEONE	96
5.1 BASIC CONCEPTS.....	96
5.1.1 What is “Law”?	96
5.1.2 What is “Justice”?	96
5.1.3 Types of Laws	96

5.1.4 The Formal Sources of Sierra Leonean Law.....	97
5.2 CONSTITUTIONAL LAW	99
5.3 CRIMINAL LAW	100
5.3.1 Elements of a Crime	100
5.3.2 Specific Offences	101
5.3.3 Strict Liability for Various Offences	105
5.3.4 Vicarious Liability.....	105
5.3.5 Parties to a crime	106
5.3.6 Inchoate Offences.....	106
5.3.7 Defences	107
5.3.8 Sexual offences	108
5.4.1 Police Powers and Arrests	112
5.4.2 The Rights of an Accused.....	116
5.4.3 Remedy.....	118
5.4.4 Court Procedure	118
5.4.5 Juvenile jurisdiction.....	124
5.5 FAMILY LAW.....	128
5.5.1 What is a family?.....	128
5.5.2 Marriage.....	128
5.5.3 Divorce	132
5.5.4 Separation	134
5.5.5 Family finance.....	134
5.5.6 The law relating to children	137
5.5.7 Domestic Violence	146
5.5.8 Devolution of Estates Act	159
5.6 CONTRACT LAW.....	162
5.6.1 Making a Contract.....	163
5.6.2 Voiding a Contract	164
5.6.3 Breach of Contract.....	165
5.6.4 Remedies: Enforcing a Breached Contract	165
5.7 TORT LAW.....	167
5.7.1 What is the law of tort?.....	167
5.7.2 Intentional torts	168
5.7.3 Defamation.....	170
5.7.4 Negligence	170
5.7.5 Strict liability.....	171
5.7.6 Animal Liability	171
5.8 PROPERTY LAW.....	173
5.8.1 What is property?	173
5.8.2 Classifications of property	174
5.8.3 Real property.....	174
5.8.4 More on leaseholds and tenancies	177
5.8.5 Duties of a landlord	178
5.8.6 Duties of a tenant.....	178
5.8.7 More on Property	178
5.9 CUSTOMARY LAW	180
5.9.1 What is customary law?.....	180
5.9.2 Who makes, interprets, and enforces customary law?	180
5.9.3 Local Courts.....	181
6. INTERNATIONAL HUMAN RIGHTS LAW.....	188
6.1 BASIC CONCEPTS.....	188
6.2 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS.....	188
6.3 DOMESTIC PROTECTION OF HUMAN RIGHTS	189
6.3.1 Chapter 3 of the 1991 Constitution	189

FOREWORD

Timap began with a question. Scholars and citizens agreed that maladministration of justice and arbitrariness in governance were among the root causes of Sierra Leone's civil war. In envisioning a fairer Sierra Leone, one that would never revert to conflict, several human rights organizations identified in 2003 the need to do something to assist Sierra Leoneans when they faced injustice in their daily lives. But what, given Sierra Leone's distinctive context—its plural legal system, its small and concentrated supply of lawyers, its social institutions weakened after 11 years of war—should such assistance look like?

With time, Timap has experimented towards an answer: a frontline of community paralegals, supervised and supported by lawyers. Timap's paralegals employ a range of tools—mediation, advocacy, organizing, education—to assist Sierra Leoneans in pursuing concrete solutions to instances of injustice. Just as primary health care workers are connected to doctors and the formal medical system, Timap's paralegals are connected to lawyers who provide supervision and support and who, in some severe cases, undertake litigation in the formal courts or higher-level advocacy with government. Timap straddles the dualist legal system, engaging both customary and formal institutions depending on the needs of a given case.

We made this road by walking. When we began, we had no recipe for what a Sierra Leonean paralegal should know, or how paralegals could manage to address any of the myriad and complex injustices that Sierra Leoneans face. Our methodology evolved from the persistent trial and error of our staff, and the courage and insight of the communities with whom we work.

This manual is an expression of what we learned: it represents, in our view, the canon of knowledge and skills a Sierra Leonean community paralegal should possess. We are now working with partners - Government of Sierra Leone, Open Society Institute, the World Bank Justice for the Poor Program, Sierra Leonean human rights organizations - to expand the reach of independent justice services. Our joint goal is that all Sierra Leoneans will have access to the services of community paralegals, and that those paralegals will be supported in turn by a corps of public interest lawyers.

We have also argued that paralegals should receive recognition from a public legal aid board, to give them greater legitimacy in their work as advocates, and to establish a standard for what communities can expect from a paralegal office. This manual is a resource for everyone - and we hope it will be distributed and used widely - but for paralegals it is essential. To deserve recognition, a paralegal should master its contents.

We invite you to join us in building a system of justice services that is practical, flexible, and tailored to Sierra Leone. We believe such a system will be a significant step towards a more equal, more perfect Republic.

Vivek Maru and Simeon Koroma, co-founders, Timap for Justice

Preface

The adoption of the Justice Sector Reform Strategy and Investment Plan 2011-14 was a continuation of an important milestone in the effort to rebuild Sierra Leone's justice system, shattered by a decade of devastating conflict. The strategy identified as a key priority the need to provide 'primary justice' at the community level. To this end the government of Sierra Leone committed itself to supporting users of justice services through the provision of widely available community based paralegals in partnership with civil society.

Ahead of time, Timap for Justice has been at the forefront of providing primary justice at the community level. It has pioneered a method of delivering justice services through community based paralegals that responds to the peculiar socio-legal context of Sierra Leone. Timap has been acclaimed by institutions such as the World Bank, the International Crisis Group and the UN Commission on Legal Empowerment for developing such a creative and effective methodology in the complex and challenging context of Sierra Leone. Paralegals have successfully addressed an extensive array of justice problems through mediation, advocacy, education and community organising. One of the reasons for the success of paralegals in the field has been attributed to the high standard initial and continuous training that Timap offers. Tutored in basic paralegal skills and substantive law subjects among others, paralegals feel confident and capable to address the diversity of justice problems in the communities they serve.

A culmination of several years of experience amassed by Timap in providing high quality training and supervision of paralegals, the manual is a seminal resource for paralegals as well as organisations involved in basic justice service provision. It is balanced and well structured, providing information on a variety of relevant law and policy subjects in simple, non-technical language. It is recommended for everyone involved in the provision of basic justice services in Sierra Leone.

The manual could not have come at a more appropriate time especially for the Judiciary which is in the process of setting up for the first time in Sierra Leone, a judicial and legal training institute to provide periodic capacity building training to its staff as well as some paralegal training. It is hoped that the institute will take advantage of this invaluable resource. As the government works towards achieving its key priority of providing primary justice services to communities in partnership with civil society, there is no doubt that *Paralegal Manual 2012: a Practitioner's Guide to Providing Basic Justice Services in Sierra Leone* is a positive contribution to that effort.

Jamesina Essie King
Commissioner, Human Rights Commission of Sierra Leone

1 Introduction

1.1 Timap for Justice

Timap for Justice is a pioneering effort to provide basic justice services in Sierra Leone. Because of a shortage of lawyers in the country and Sierra Leone's dualist legal structure, Timap's frontline is made up of community-based paralegals rather than lawyers. Our paralegals advance justice through a creative, flexible model combining education, mediation, negotiation, organizing, and advocacy.

Our paralegals' efficacy stems from a confluence of (1) a knowledge of, and facility with, formal law and government, and (2) a knowledge of the community and facility with more community-oriented, social movement-type tools. Paralegals also work with Timap's directors, and other lawyers who train, supervise, and support the paralegals in their work and who engage in strategic litigation and high-level advocacy. Timap and its paralegals therefore adopt a synthetic orientation towards Sierra Leone's dualist legal structure, engaging and seeking to improve both formal and customary institutions. Ultimately, Timap strives to solve clients' justice problems – thereby demonstrating concretely that justice is possible – and at the same time to cultivate the agency of the communities among which we work.

1.2 The Timap for Justice Paralegal Manual

This manual serves as a guide to the work of Timap's paralegals. It is intended firstly as a reference and training tool for the paralegals. The sections herein cover (1) the skills our paralegals must develop to effectively provide justice services, (2) the structure of Timap as an organization, (3) the workings of the Sierra Leonean government, (4) Sierra Leonean law, and (5) basic human rights concepts. Paralegals should keep a copy of this manual in their office and update it with supplements provided by the directors.

The paralegal manual has a broader purpose as well. It is our hope that its contents will provide justice advocates elsewhere with insight into our methods and philosophy, giving them a model or guide to inform their own work. Our program has succeeded in achieving solutions to more than a thousand justice problems of poor Sierra Leoneans. We have been recognized by independent institutions including the World Bank and International Crisis Group for developing an effective methodology for providing justice services in a difficult and complex context. We hope our experiences will be useful to other justice efforts around the world. More information about Timap is available at www.timapforjustice.org.

This manual was written and produced by Timap's directors, staff, interns, and volunteers. The authors include Director and Co-Founder Simeon Koroma, Deputy Director Nancy Sesay, Co-Founder and former Co-Director Vivek Maru, Lead Paralegal Daniel Sesay, Matt Muspratt, Ed Sawyer, Abigail Moy, Douglas Wyatt, James Kirk, Casie Copeland, Sonkita Conteh and Lotta Teale.

1.3 The Role of the Paralegal and the Steps to Solving Justice Problems

Paralegals make up the frontline of Timap for Justice's work. While the Directors are qualified lawyers and litigate in the formal courts in instances of extreme injustice, Timap believes that the justice needs of Sierra Leoneans are often most effectively met by community-based paralegals trained to provide a wide range of justice services. Timap's paralegal model and methodology are designed to fit the Sierra Leonean context by emphasizing a broad and flexible set of tools and engaging both formal and customary institutions. Under the guidance and supervision of the Directors, paralegals provide Timap's core services to our clients.

Timap's mission is *"to provide concrete and practical solutions to people's justice problems,"* with a focus on people who have no – or limited – access to justice. Paralegals also strive to empower people by building their capacity to deal with future justice issues in their community. We aim to contribute to justice, equality and peaceful co-existence in Sierra Leone through a variety of services falling into two main categories:

- Assisting individuals in justice problems
- Providing community-based justice solutions

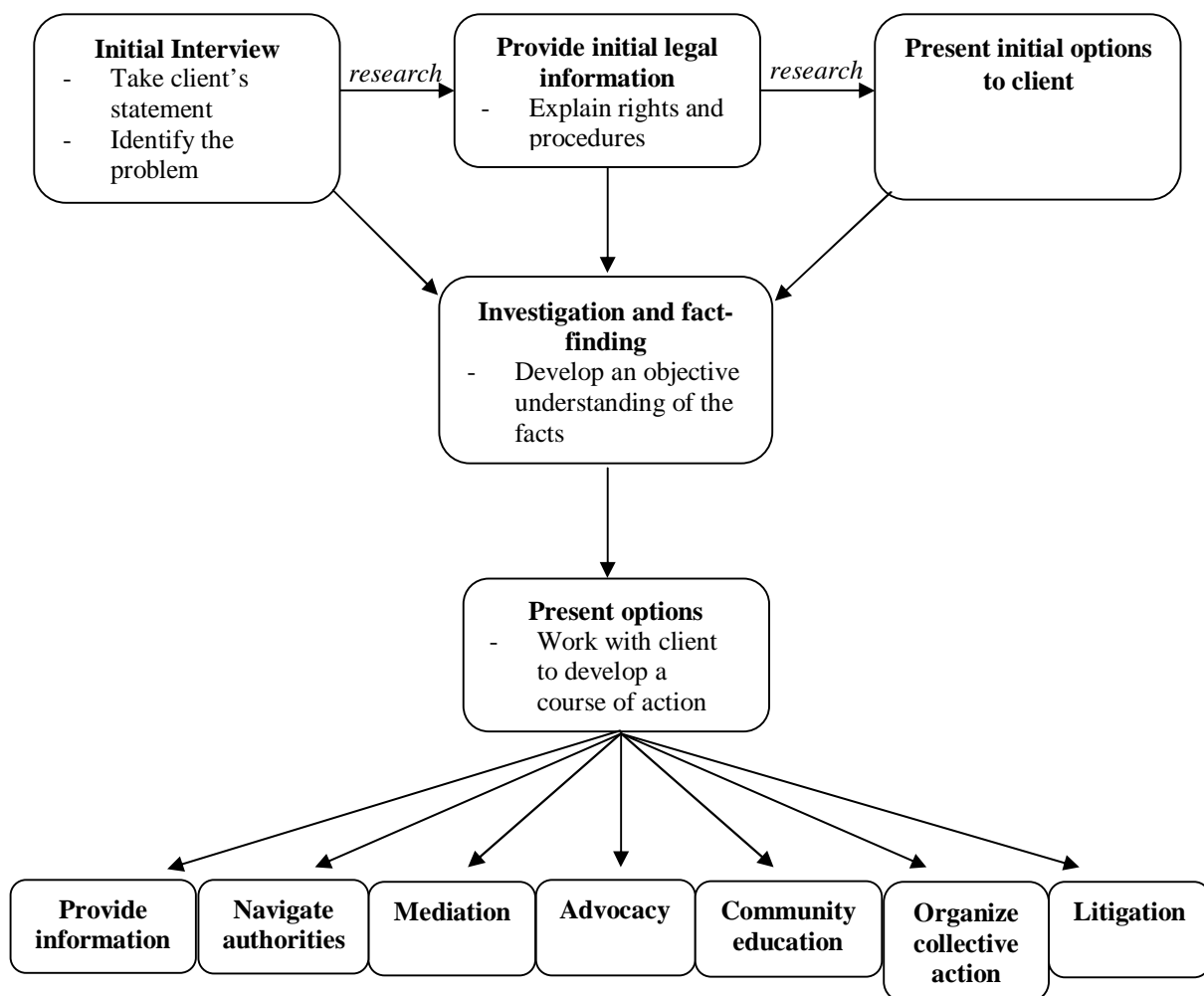
The justice problems facing individuals and communities are diverse. Disputes arise between husband and wife (e.g. domestic violence), between neighbours (e.g. a contract for palm oil), and between villages and powerful institutions like mining companies or government ministries. Because Timap paralegals should be prepared to ably assist clients and communities with any kind of problem they bring to our offices, they must be skilled in various methods of addressing injustice. Further, paralegals should approach justice problems in systematic steps to help them select the most appropriate tools and strategies for a given case. For example, mediation may be a useful tool for a child maintenance case, but litigation may be the only option against a corporation unwilling to sit down and engage in dialogue with a community.

The most common tools and strategies Timap paralegals use include:

- Providing information (e.g. about rights and procedures)
- Navigating authorities
- Mediation
- Advocacy
- Community education
- Organizing collective action
- Litigation (in conjunction with lawyers)

The chart below shows the basic steps paralegals take to address problems and how they arrive at the best tool(s) to employ in a given case:

Steps in Solving Justice Problems



Paralegal Tips: Teamwork

No one is an island – you cannot work alone. Consultations with colleague paralegals will expose you to different ideas and perspectives and help yield better results. Remember: this work requires making decisions and giving advice to people. A simple mistake will do more harm than good to the client; so checking your judgment against that of your colleagues is crucial to serving your clients' best interests.

What to do:

- Be sincere and open to colleague paralegals.
- Support each other when necessary if advice or feedback is requested.
- Discuss issues and share thoughts on cases. Respect each other's views.
- Work on complex cases together. Share your ideas and coordinate your activities before proceeding.
- Allow each other access to your offices, files, and other documents. This enables your colleagues to handle a case that requires urgent attention in your absence.

This manual is designed to provide paralegals with a summary of the skills and knowledge necessary to effectively implement these steps in their work. *2 Paralegal Skills* contains much of this information, but paralegals will also find it useful to refer to *4 How Government Works*, *5 Law in Sierra Leone*, and *6. International Human Rights Law* for key information and concepts applicable to their clients' cases.

1.4 Guiding Principles for all Staff

- **Clients first.** Our greatest duty is to the communities and individuals with whom we work. We must treat them with respect and solidarity. We would like you to constantly evaluate whether our program is doing its best to serve them, and to help us to improve wherever possible.
- **Working as a team.** In addition to our clients, we have a responsibility to support each other in our collective mission. It is important for us to communicate clearly and respectfully, to build each other's capacity, and to maintain an atmosphere of teamwork.
- **Solving justice problems.** *The aim of our work is to help people achieve concrete, practical solutions to their justice problems.* We must be creative and perseverant in pursuit of this aim.
- **Empowerment.** We aspire to treat the people with whom we work as social agents rather than as merely victims requiring a service. Our interventions should raise our clients' knowledge, capacity, and confidence to stand up for themselves and to solve justice problems on their own whenever possible.
- **Take initiative.** Each one of us owns this program, and each one of us has unique insight into a particular piece of its overall operation. We encourage all staff to take initiative and to work proactively to shape and grow Timap into the best organization it can be.
- **Rigor and discipline.** We owe it to our clients and to ourselves to be well organized and to work in a timely, rigorous, professional manner. We also need to be open to criticism and feedback.
- **Transparent, responsible, cost-effective use of resources.** The funding we have has been generously entrusted to us to fulfil an important mission. We must use it wisely and responsibly.
- **Confidentiality.** We are required to respect the privacy of our clients and do not divulge information of our clients to the public. We are to use the information for the purpose of solving their problems. Where we wish to make use of such information other than for our internal purposes, the consent of the client is required.

2 Paralegal Skills

This chapter of the *Timap for Justice Paralegal Manual* discusses some of the key skills paralegals will employ in their justice services work. The chapter describes the processes and techniques from the first interview with a new client, to investigation and fact-finding, to the assorted methods for dealing with a justice problem (e.g. mediation and advocacy).

2.1 Interviewing and Statement-taking¹

Client interviewing and statement-taking are essential components of a paralegal's work. They pose the first opportunity to listen and record a client's report or statement. They also form the foundation upon which a case file can be developed for future action by the paralegal. We offer some tips below.

2.1.1 Interviewing Clients

The client interview is a critical part of the process because it is the first interaction the paralegal has with the client. It sets the tone for the relationship and enables the paralegal to determine what the core issues are and how best to proceed.

2.1.1.1 Before the Interview

1. Make the client comfortable
 - a. Greet the client—use their name if you know it
 - b. Offer the client a seat and some water
2. Figure out the preferred language of the client and continue your discussions in that language. It is always better to interview a person in his/her own language. This is because people feel more at ease to explain a problem in their language.
3. Introduction—client, yourself and organisation
 - a. Take the particulars of the client—name, address, occupation, age (as in the Client Intake Form)
 - b. Introduce yourself and your role as a paralegal (even if the client already knows your name)
 - c. Tell the client briefly about the organisation
4. Explain the importance and purpose of the interview to the client
5. Create a comfortable atmosphere so that the client can tell his/her story without fear or hesitation.
 - a. You may need to work out the willingness of the client to explain his/her problem. This is because some people find it difficult to talk about their problems (especially when these are of a domestic nature) to strangers, or when other people are listening.

¹ Consulted: *Paralegals and Advice Officers, Black Sash Manual; LAWCLA Manual*

2.1.1.2 During the Interview Tips

1. Listen attentively and let the client tell his/her story without interruption.
2. Be respectful, courteous and non-judgmental.
 - a. Do not hurry to conclusions about the nature of the problem.
 - b. Do not be excited or show irritation; remain calm and attentive and make the client feel you are interested in his/her story. This will encourage frank and clear communication.
 - c. If a person is shy or embarrassed do not rush him/her. You must be patient.
 - d. There are times when a client tells his/her story in a roundabout way. Try to ask questions that will draw out information about the crux of his/her complaint. .
3. Ask questions: when, where, how, why, who, witnesses, age of those involved, written agreements, previous actions taken by relations or other parties.
4. Do not ask leading questions—questions that suggest or give an insight to the answer.
5. Identify underlying issues and causes.
6. Be sure not to raise the client's expectations beyond what is realistically achievable. .

2.1.1.3 Concluding the Interview:

1. At the end, try to ask questions that will clarify any lingering issues in the client's story.
2. Try to summarise the main issues.
3. Discuss next steps together and work out a strategy for resolving the issues raised.
4. Sometimes the client only needs advice or direction.
5. Ask the client whether he/she has any questions about the process or the next steps and end the interview.

2.1.2 Statement Taking

Taking a client's statement is an essential next step after the interview. This records information relating to the client and the problem for which he/she has approached the paralegal. A client's statement further helps to keep tabs on the progress of the case, including all the steps taken to find a solution. It will also assist paralegal supervisors to follow the latest developments in a case. The statement will often take the shape of a 'Client Intake Form', to which a written account of that client, as well as relevant parties to the case may be attached.

A typical statement will include the following information:

- a) Personal details: name, address, gender, occupation, contact number and so on.
- b) Summary and type of issue for which the client comes to the Paralegal Office
- c) The advice a paralegal gives to the client
- d) What step(s) a paralegal will take in a case

After the initial record taking, the paralegal will continue to make entries of next steps, gather additional documents, and interview witnesses necessary for developing a client's case file.

Here is an example of the first page of the Timap form used to record the client statement. Further details are captured on subsequent pages, and as the case progresses, information is added to record the progression.

Paralegal Tips: Taking Statements

Don't altogether trust the statements of clients. Even if a client comes to the office in tears, his or her statement may not be entirely reliable. People making statements are often reluctant to cast blame on themselves. Some clients' statements will be full of inconsistencies – statements contradicting each other. Some will even fabricate stories. This is usually because people tend to give statements in their favour, but clients may also be unable to express themselves clearly because of their level of education.

You should be careful not to make a decision on inaccurate or incomplete information. Take your time when trying to uncover the true circumstances. Acting too hastily, without verification of the facts, may lead to serious and harmful consequences, not only for your client but also for other parties involved.

What to do:

- Ask as many questions as possible to clear up inconsistencies in statements. Questions such as “When? What? Who? Where? And How?” should be asked. Until all of these are captured in the statement it will not be complete.
- Take note of all names appearing in the statement – understand the roles played by each person in the case. A small player at the beginning of the case might be a very important person in the case.
- Be aware of the date and time of incidents. Be sure they are in chronological order.
- Crosscheck the client's statements with those of other parties or witnesses.
- Don't be lazy in writing down the client's complete statement. Every bit of the statement might mean something.

Paralegal Tips: Avoiding Raising Clients' Hopes Falsely

Do not promise what you and the organization cannot provide. This raises clients' expectations. Clients are often so desperate, they expect more than what we can provide. Even casual statements stick in the minds of clients; they will expect you to keep your word.

To guard against this, do not decide on what to do for a client until you hear all sides of the story. For example, imagine that after a client makes his/her statement, you say sympathetically, “It was bad of that man to do what he did. Don't worry; I will make him give back all your Le 200,000. If not, I will send this case to court and provide you a lawyer.” Making such statement before hearing the other side of the story can be very dangerous. You might change your mind completely after you get the whole story; the money may be rightfully the defendant's, or the actual circumstances may be very different. It will be difficult for you to go back on your word.

What to do:

- Don't be totally moved by hearing the client's statement.
- Don't make hasty decisions.
- Don't make any bogus promises to a client. Doing this might hurt the organisation's reputation.
- Until you cross-check statements of clients, don't promise big results.
- Don't be biased towards the client. Always remain neutral in treating matters.

Paralegal Tips: Keeping Confidentiality

Confidentiality is an integral part of a paralegal's ethics. Issues and matters that clients bring to the paralegal are private and should not be exposed to anyone else without the client's consent. To do otherwise may diminish a client's trust in you, and discourage him or her from revealing further information that may be helpful to resolving the case. At worst, breaching confidentiality may place the client or other parties in danger.

Confidentiality, if properly adhered to, will give credibility to the paralegal and to the organisation. On the other hand, a breach of confidentiality may lead to very serious problems.

What to do:

- Ask for the consent of client before allowing a third person to hear the client's story.
- Ask visitors to leave the office when talking to clients or other people involved in a case.
- Even your spouse, boy/girlfriend, siblings, etc. shouldn't be allowed to read statements or play with files.
- Do not discuss cases with other people, no matter how general. The only exception is for people who may help in the resolution of the case (e.g. COBs, experts in customary law, witnesses, other relevant persons and institutions). When consulting/involving such people, do so with the parties' consent.

2.2 Investigations and Fact-finding

Once the paralegal has done the initial client interview and taken their statement, he or she must proceed to investigate the case and get a more complete picture of the issue. Clients may often only have partial information about the dispute, and some may even try to mislead the paralegal. Because of this, it is important that the paralegal not blindly trust all of the information that the client gives to them during the interview.

If the dispute is an individual-level problem, the paralegal will typically invite the other party to the dispute in to the office to give his side of the story. If there were witnesses to any important events, the paralegal may find them to confirm information given by the parties to the dispute. The paralegal may also look for any documents or items that are relevant to the dispute.

In some cases, the investigation and fact-finding process is relatively short and self-contained. In other cases, it may be more involved and require more time and energy. But the paralegal should be prepared to do enough investigating so that he/she understands the issue and the views of the parties involved. This is necessary to enable the paralegal to decide which tools or strategies are appropriate to resolve the issue.

Paralegal Tips: Dealing with Impatient Clients

Clients are always in a hurry for paralegals to handle their cases quickly. They don't consider your workload, but want their own matter to be handled more urgently than cases that may have been pending for longer periods of time. They might even grow so impatient that they approach you rudely on the street.

What to do:

- Always be polite with a client, no matter what the situation. Paralegals should be tolerant and understanding of a client's position. Remember the guiding principle of client first - you are paid to serve them, so do all in your power to satisfy them.
- Don't delay cases unnecessarily.
- Explain to your client the reasons for any unavoidable delays - tell the truth.
- Always give your clients an accurate update on their case: be honest and not overly optimistic about your timetable.
- Continue to encourage clients if there is any delay at all in handling the case.
- For those cases you can't handle by yourself, refer them instead of wasting time. Inform the client as soon as you refer the case.

2.3 Providing information and navigating authorities

One of the most important roles a community-based paralegal can play is that of "resource." Because of their training in formal law and their familiarity with customary law and traditional authorities, Timap paralegals are uniquely positioned to assist clients in understanding their rights and in navigating Sierra Leone's dualist legal system.

2.3.1 Providing Information

Timap paralegals provide clients with information about their rights, as well as the procedures a client may encounter if he or she decides to follow a certain course of action.

For example, a paralegal provides information when he/she informs a woman about her rights under the Domestic Violence Act. A paralegal also provides information when he/she explains to a family that its child's work on a teacher's farm is a violation of education policy, or when he/she describes to a client the processes and procedures one can expect if one is contemplating litigation, reporting a crime to the police, or facing a summons in local court.

When providing information about rights and procedures, Timap paralegals should keep several key points in mind:

- **Listen to the client.**

It is important to fully grasp the client's questions and needs before responding with accurate information.

- **Provide accurate information.**

It may seem obvious, but paralegals should ensure that the information they give a client is accurate. If a paralegal has any doubt about a topic, he should contact a Lead Paralegal or Director for clarification.

It is perfectly acceptable for a paralegal to tell a client that he/she must do further research before providing the client with the most relevant and complete information.

- **Provide useful information.**

Again, it may seem obvious, but paralegals should ensure that they are providing the most useful information possible to a client. Because clients are often unfamiliar with rights, laws, and procedures, they may not even know the best questions to ask a paralegal. Paralegals should not only respond to a client's questions, but should also thoroughly discuss the client's situation to see if there is any additional useful information that a client should know, but failed to ask about.

- **Present options.**

In addition to responding to a client's inquiries about procedures, paralegals should also help clients understand the range of options available to them. For example, a client considering suing a party should also be informed about Timap's mediation services, or other alternatives to litigation.

2.3.2 Navigating Authorities

While some clients need information about institutions and authorities, others may require assistance in interacting with them. Timap paralegals often help clients deal with police, chiefdom authorities, or government ministries.

While paralegals may simply refer a client to an institution, the paralegal's role is often more substantial. A paralegal might accompany a client to the police station to ensure that officers investigate the client's complaint, and may continue to advocate for the client as the prosecution process plays out. While lawyers may not appear in local courts, Timap paralegals may coach a client who is appearing in a case about what to expect in terms of procedure and questioning. Such guidance is especially useful where corruption, inaction,

and abuse of power threaten to render an institution's services unjust or meaningless to a client.

In addition to the key points described above in the

2.3.1 *Providing Information* section, paralegals should also consider the following when helping a client navigate an authority:

- **Know the institution.**

Paralegals should be very familiar with the rules and workings of an institution. 4 *How Government Works* and 5 *Law in Sierra Leone* are good resources concerning formal and traditional Sierra Leonean institutions.

- **Be a strong advocate.**

See part 2.5 *Advocacy* for comments on effective advocacy.

Paralegal Tips: Making Referrals

It is sometimes necessary to make referrals to other institutions or people, such as the FSU, Ministry of Social Welfare, hospitals, courts, chiefs, police, lawyers, director or even paralegal colleagues etc. Reasons for referral might be the expertise developed within these institutions, which sometimes makes them better equipped to handle certain problems than you the paralegal, or for litigation or because of jurisdictional reasons etc. Holding on to such cases amounts to a disservice to your clients.

What to do:

- Don't delay cases that are appropriate for referral. Refer them as soon as you know you can't handle them or as soon as you know you need the help of other institutions or professionals.
- Rape cases, for example, must be referred to the police as soon as they reach the office. Delaying this action is dangerous and may lead to the loss of evidence.
- Meanwhile, victims of rape should be referred to the hospital for a medical examination and/or treatment. Do not delay. Refer to section 3.4 *Emergency Fund* for guidelines on providing financial assistance in this task if needed.
- Refer complex cases to your Lead Paralegal coordinator and Directors if you think litigation or high level advocacy is appropriate tool to use.
- When making referrals, always document the transaction in writing. Make sure a copy of the case file is with you if a referral is made within the organisation
- The paralegal, or any one receiving the case, should acknowledge receipt of the file - this should be done in writing.
- Don't send the file if a referral is made outside the organisation, only send a referral letter explaining the case and what you want the institution or person to do.
- Be in touch and continue to update your copy of the file.

Paralegals at Work: Pursuing Police Prosecution of Rape

When a paralegal receives a complaint of rape, he/she must first address any immediate problems of safety or health. The client may need medical care, or may need protection from her assailant. The paralegal should then explain the client's rights and options, including the right to pursue criminal prosecution. Historically, police officers in Sierra Leone have sometimes been unable to pursue investigations leading to prosecutions for rape complaints, for lack of resources or some other reasons. Instead of merely referring a client to the police, Timap paralegals make it a practice to accompany rape victims to police stations to make complaints and "advocate" for the client throughout the prosecution process. In part because of Timap's record—we have successfully pursued cases of police misconduct with the police disciplinary board, for example—officers are less likely to act in bad faith, when Timap is involved. Timap aims to improve police accountability in partnership with the Sierra Leone Police.

2.4 Mediation

2.4.1 What is Mediation?

Mediation is a process in which a person helps two or more parties reach a resolution to a conflict or disagreement. Mediation may be thought of as "assisted negotiation." Through active listening, the diligent exploration of a variety of potential solutions, and patience, mediators can often help parties reach more creative and amicable solutions to justice problems than they can achieve in formal and customary courts. This is especially true in cases involving families or neighbours but also applies to disagreements involving traders, church groups, schools, government organisations and others.

A central component of mediation is "informed consent." Participants should understand the nature of the mediation process and effectively consent to participate in it.

2.4.2 What are the Benefits of Mediation?

Depending on the case, a settlement achieved through mediation may hold several advantages over a settlement imposed on the parties like litigation in formal courts. Mediation is less costly (no lawyer or court fees) and takes far less time than formal court proceedings. Furthermore, mediations are less acrimonious than litigation; parties are not seeking a winner and a loser: and skilful management by a mediator will help to transform parties' bitter feelings to focusing on constructive dialogue. This makes mediation an especially useful tool when the parties come from the same village or family, or if they work together and will continue to interact regularly with each other in the future.

Mediation is also an attractive option when parties do not trust other dispute resolution processes or when such processes are influenced by biases or power imbalances that favour one party over another. Paralegals should remember that, when acting as a mediator, they are not working for one party or the other. Even though one party may have come to the paralegal first and may sometimes be called "the client", to be an effective mediator, you

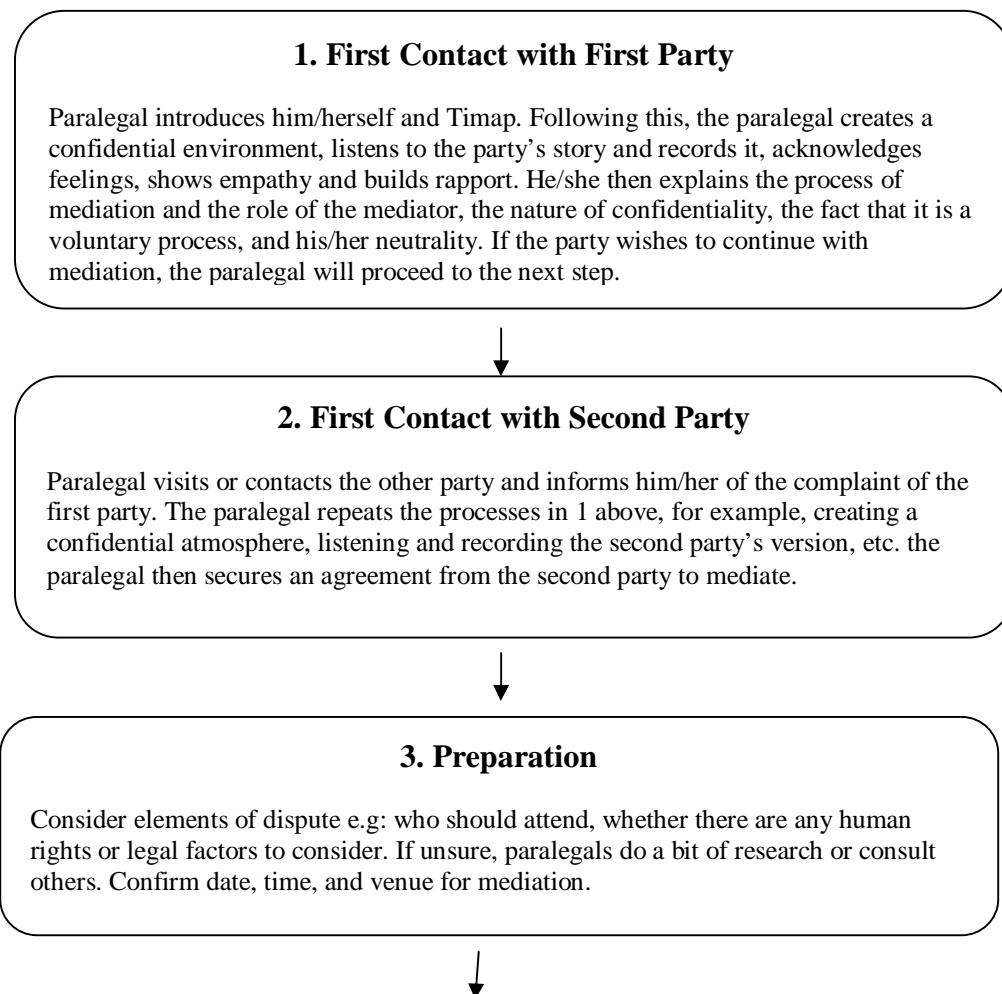
must be unbiased. Your goal should be to help them reach an agreement that achieves justice and benefits both parties, not just to help one party get as much out of the other party as possible.

Paralegals should remember that mediation might not be the best approach in every case. Paralegals should also always be conscious – and make sure that other parties are aware – that mediations are still governed by legal and justice concepts. For example, even though mediation agreements are the product of negotiation between parties (with the assistance of a paralegal/mediator), they should still provide a genuine remedy to a disagreement. Moreover, they cannot commit any party to an illegal course of action. If mediation fails to cure an injustice, paralegals can help clients pursue other means of redress.

2.4.3 Timap's Mediation Process

Paralegals frequently take on the role of the mediator in a case. The following chart depicts the 8-step mediation process employed by Timap for Justice Paralegals:

8-Step Mediation Process



4. Opening

Make sure everyone is comfortable and appropriately seated. Explain process. Remind the parties of confidentiality, neutrality, and the voluntary nature of mediation. Check authority to settle. Set ground rules e.g.: no shouting/interruption; parties should approach each other with respect. Each party tells their story. Paralegals must avoid making exclamations or interrupting stories, except perhaps for brief clarifying questions. Afterwards, the paralegal summarizes what has been said, identifying either side's key claims and confirming whether s/he has understood their feelings and concerns correctly. The paralegal encourages each party to acknowledge the perspective and emotions of the other side, and describe their reactions to what they have learned.



5. Caucus

Exploration phase. Private meeting. Review Opening Phase. Check understanding. Again, active listening and questioning skills. Clarify assumptions. Explore other hidden issues. Identify Party's concerns, needs and interests. Allow emotions. Acknowledge differences. Empathy. Help Parties consider other's position. Look for Common Ground. Maintain safe environment. Maintain focus but move to thinking of the future.



6. Finding Common Ground

Move from problems to solutions; from the past to the future. Generate/evaluate options and highlight areas of agreement/offers. Note conciliatory gestures/concessions.



7. Settlement

Joint meeting. Construct simple terms of agreement. Check no human rights or legal violations. List obligations on all sides. Read aloud. Check to confirm that it satisfies all needs and interests and responds to issues listed at outset. Check all agree. Include fall-back arrangements. Arrange follow-up. Acceptable settlements are written up according to a standard template and signed by parties, witnesses and paralegals. Each is given one copy of the settlement and one copy is kept on file at the office. Explore possibility of immediate commencement of compliance by both sides as a mark of good faith. Close mediation. Congratulate Parties.



8. Post Settlement

Paralegals debrief. Complete report and Case Record. After agreed period, visit parties to check/monitor whether settlement is proceeding well or if more help is needed.

2.4.4 Mediation Techniques

2.4.4.1 Distinguishing Interests from Positions

When mediating, it is important to distinguish a party's *interest* from their *position*. A *position* is the party's outward demands when coming into negotiation. A position often comes in the form of a demand for a sum of money or the completion of an act by the other party, like finishing a task or returning a possession. An *interest* is *what is really important to that Party which would explain why he/she is making such demands or is refusing to meet another's demands*. For instance, a party may take the *position* that another party should be punished with an enormous *kassi* fine, while his/her underlying *interest* may be a desire to make the other party acknowledge and understand the hardship suffered. Demanding punishment may be a stand-in for what a party really wants: an apology and genuine contriteness for what has been done.

A party may hold a firm position because he/she thinks that is the best way to get at what he/she wants. Often, however, a party can achieve what he/she wants via other means. A mediator's task is to help parties identify their interests and explore ways of satisfying them in a way that they may not have envisioned before.

Consider this example. A mother's *position* may be that she wants Le 30,000 a month from the father. However, her *interest* may actually be that she wants her child fed, sheltered, and provided with proper medical care. An indigent father, for his part, may defend his *position* that he cannot pay money, but his *interests* may revolve around the child's well-being as well. Suppose the father is unable to provide the money, but can nevertheless offer food from his farm, space in his home, and ask a doctor friend to check in on the child. A mediator can help draft an agreement setting up this arrangement. Such a solution would set aside the parties' positions and satisfy their *interests*.

Or, in a debt dispute, the debtor's *position* may be to demand a sum of money immediately - but not for the mere sake of being paid. Perhaps he/she needs the money for something else urgent, like transporting recently harvested crops to Freetown. The party in debt may defend the *position* that the sum is exorbitant, but his *interest* may be the swift resolution of the dispute, because he has pressing matters elsewhere. If his brother owns a truck, perhaps he can arrange to transport the goods at a discounted price to reduce the debt he owes the debtor, and bring the unpleasant business closer to an end. By focusing on the *interests* of the parties, a mediator can help parties overcome a standoff, and arrive at a greater diversity of potential solutions that brings greater satisfaction.

A key skill employed in uncovering a party's interests is *active listening*. By actively listening, a mediator can sense the concerns and motives that underlie parties' positions. Once discovered, these concerns can be brought to light by a skilled mediator, who will ask questions, rephrase statements, or reframe the dispute in ways that will encourage the parties to contemplate their real interests, question their assumptions, consider their own words, and most importantly, consider the interests and concerns of the other party, of which they may not have been aware of previously. The 2.4.4.2 Active Listening discusses what *active listening* means and what it involves.

2.4.4.2 Active Listening

Listening, not talking, is the paralegal's most important role in a mediation session. To actively listen, a paralegal must be open to learning, be visibly engaged, and acknowledge parties' communications. This requires reassuring body language - in addition to verbal responses - that demonstrates that you have heard the parties and understood their concerns or are seeking clarification. Active listening seems simple, but it can be a difficult skill to develop, since it is often the mediator's instinct to interrupt or rush towards a solution.

Active Listening is important because it helps paralegals:

- **Understand what happened.** A good mediator wants the issues that are important to the parties to be addressed.
- **Understand how the parties feel.** Mediators want to know how parties feel in order to help them come to an agreement that will satisfy them.
- **Communicate to parties that we understand their issues/concerns.** Parties often feel more assured when they know that the paralegal understands what happened and how they feel.
- **Facilitates communication between the parties.** Feeling heard can help parties move past strong emotions. Being listened to can help make parties more willing to listen. Parties may be more willing to listen to our translations than to each other.

Tips & Tools for Active Listening

- **Open-Ended Questions** (e.g. "How did this affect you?" *not* "And this ruined your business, not so?")

Open-ended questions do not include an assumption on the part of the mediator, and cannot be answered with a "yes" or a "no". Rather, they are phrased in such a way that a party must explain him or herself. Open-ended questions encourage parties to define the agenda. They allow parties to determine what issues and what information are important. They also encourage parties to generate solutions. Open-ended questions can help parties broaden their thinking.

- **Clarifying Questions** (e.g. "What do you mean by that exactly?")

Clarifying questions help mediators understand what is going on. They are good tools for challenging parties' thinking about their positions. They compel parties to think about the rationale for their positions and they help move the discussion towards a discussion of interests.

Clarifying questions can help parties explore the underlying motives and concerns that drive their positions. They require parties to provide the basic data on which their positions rest. They can help mediators test the parties' assumptions.

- **Summarizing** (paraphrasing key points)

Summarizing parties' statements allows mediators to confirm, correct, and/or complete their understanding. And it helps parties feel heard.

- **Mirroring** (repeating parties' words back to them)

Mirroring provides parties with an opportunity to hear their own words and to evaluate them. Sometimes parties say things without thinking. Upon hearing them repeated, they may feel inclined to alter what they said to be more accurate or reasonable.

- **Reframing** (putting things in a less charged, more helpful light)

A mediator can reframe a situation by pointing out another way to look at a dispute. For instance, rather than emphasizing differences of opinion in a dispute over child maintenance, a mediator can say, "it sounds like you both have such strong opinions about how to support this child because you both share a love for her and a concern for her future. If so, perhaps we should think less about winning this fight and more about what is best for the child." Reframing can help mediators make a conversation less emotionally charged. This encourages mutual listening and helps move the process forward. Reframing can be used to emphasize common ground. This helps establish a cooperative atmosphere.

Reframing can empower parties to address their real interests by focusing a discussion on interests instead of on positions.

- **Silence**

Silence can be used to shift responsibility for outcomes to the parties, who may take the opportunity to look for solutions themselves rather than seeking ones from the mediator.

- **Body Language** (eye contact, posture, etc.)

Your body language can say a lot to the parties. Keeping your body language open and receptive, as well as attentive to the parties, will encourage open communication.

- **Assumption Evaluation** (e.g. How do you know that? What makes you think that?)

Assumption evaluation involves urging a party to explain the basis of some of their assumptions, like "he did this on purpose" or "she did this because she wanted to humiliate me." Compelling a party to rethink initial conclusions, which may not be well founded, may lead to a more thoughtful conversation and help the party understand the situation and the other party's circumstances better. By encouraging parties to re-evaluate the premise of their thinking, a paralegal helps the parties create new possible conclusions.

2.4.5 Mediation Agreements and Enforcement

Timap for Justice has developed two template agreements that paralegals and mediators will employ when mediating, (see the 3.2 Case Management System³ *Timap for Justice: Processes & Procedures*).

Agreement to Mediate: The mediator is bound to impartiality; Parties, mediators and any others present alike bind themselves to confidentiality; the Parties confirm that they are entering the process voluntarily.

Mediation Settlement: The Parties sign to confirm their agreement to the terms of the settlement. Everyone present at the mediation also signs as witnesses and to reaffirm the confidentiality provisions of the Agreement to Mediate.

Care should be taken regarding how the Mediation Settlement will be enforced. Paralegals should take steps to make compliance with a mediated settlement more likely. Some useful techniques paralegals (and parties) should consider include:

- **Obtaining witness signatures** from community, family elders, and/or a sababu. These witnesses are “social enforcers” – the hope is that their presence and witness signatures will increase the respect parties give to the Settlements.
- **Working with the Directors** to a Mediation Settlement that will be enforceable in formal court. Timap’s agreement template includes a provision that a party may pursue legal action if the other party breaks the terms of the Settlement.
- **Any payment schedule by one party or another may need to be flexible in order to adapt to the seasonal nature of earnings.**
- **Ensuring that any payment** schedule agreed upon is realistic give a party’s earning capacity
- **Take special care to confirm that all parties, having accurately understood the final Settlement, agree to its terms of their own free will,** and not as a result of external pressure or a fear.

Regardless of the contents of the Mediation Settlement, paralegals should be prepared to follow up with the parties to ensure that they are adhering to the Settlement’s provisions.

2.4.6 Important Notes on Mediation

- Mediation is a powerful tool when all parties are willing to negotiate a resolution.
 - *However,* Timap cannot force anyone to engage in mediation.
- It is against the law to mediate serious crimes.

- *However*, in some circumstances, it is possible to mediate exclusively the *civil component* of crimes. For example, in the case of an assault, a paralegal could mediate a settlement about compensation for the victim. However the paralegal must ensure that the case has been reported to the appropriate authority.
- Timap's position is that mediation settlements arrived at in Timap offices are often legally valid settlements of legal claims. In some cases, Timap mediation settlements qualify as legally enforceable contracts. Such settlements observe, for example, the requirement of consideration and legal restrictions on contracts between family members.
 - *However*, this position has not been tested in court at the time of this writing.
- Special care should be taken when mediating cases where the relationship between the parties is abusive in nature or where there is an imbalanced power dynamic that is not conducive to mediation.
- Paralegals should feel free to end the mediation if, due to a power imbalance or intractability of the parties, the mediation is unlikely to result in a fair and just agreement.

2.5 Advocacy

2.5.1 What is Advocacy?

Advocacy is a broad term. In fact, advocacy plays a role in all other tools and methods employed by paralegals. Advocacy can take the form of talking with Ministry of Agriculture officials about problems farmers are facing within a particular program. Advocacy is also involved in explaining a human rights concept to a party and urging at party to accept a fair mediation agreement. When a paralegal assists a client in pursuing police prosecution, that paralegal is advocating with the police. Even a presentation at a community meeting entails advocacy.

Generally, advocacy is about sustaining a dialogue with people in support of a particular point of view or action. It is about making a single party, a powerful institution, or a village aware of an issue and urging action. A paralegal may advocate in writing – by sending a letter to a foreign mining company, for example. Or a paralegal may advocate in person – by meeting with that company's official.

2.5.2 Effective Advocacy

To be effective, a paralegal must be knowledgeable about an issue and persuasive in his or her advocacy, while possessing creativity and the ability to utilize different courses of action. Some elements of these skills include:

- **Knowledge**
 - Paralegals should know all of the relevant facts of a case.
 - Paralegals should thoroughly understand the desires of their clients and the root cause of the problem.

- Paralegals should research the laws and procedures relevant to the particular case.
- Paralegals should learn which people, institutions and organizations are the most relevant to a case so that they can effectively target their efforts.
- **Persuasiveness**
 - Paralegals should be articulate in advocating for a particular point or action. They should be able to clearly state the objectives of their advocacy and what their clients/constituents are seeking.
 - Paralegals should be ready to call on their knowledge of an issue to support their position.
 - Paralegals must balance firmness with respect. While a paralegal should be firm in his or her position, it is also important – and often effective – to keep emotions under control and demonstrate to a party that the paralegal’s position should be listened to.
- **Creativity**
 - Paralegals should brainstorm multiple courses of action.
 - Paralegals should carefully consider their approach. Is it best to write a letter first? To meet privately with an accused party? Should a journalist be contacted? Should the Directors or Lead Paralegals be involved?
 - Having multiple courses of action gives a paralegal flexibility and alternatives when a particular approach does not work. It also demonstrates to a stubborn party that the paralegal can employ other options if the party will not cooperate with a particular approach.

Paralegals should always remember that the Directors and Lead Paralegals are available to assist in their advocacy efforts. Directors and Lead Paralegals can recommend courses of action and, importantly, can access high levels of government and other institutions when necessary.

Paralegals at Work: Advocacy with the Roads Authority for Repair of a Bridge

Three villages in Bumpeh Ngao chiefdom in southern Sierra Leone reported to Timap that, because of a broken bridge on the Bumpeh-Matru Jong Road, cars and trucks were driving through the stream on which all three villages depended for drinking water. Villagers had, on their own initiative, undertaken a community effort to continually repair the bridge in a makeshift manner with the trunks of palm trees. But the villagers complained that *poda poda* drivers would rain curses on the community volunteers for obstructing the road. Interestingly, when the villagers approached Timap, they did not ask the organization to convince the government to repair the bridge. This, perhaps, was beyond their hopes. Rather, they asked Timap to lobby the Sierra Leone Drivers Union to ask its drivers to stop the curses, which the villagers found humiliating and demoralizing.

Timap did speak to the Drivers Union, but Timap also succeeded in lobbying the Sierra Leone Roads Authority to repair the bridge. Timap directors started with the chief engineer in Freetown and then, once he agreed to a repair in principle and issued corresponding orders, Timap paralegals followed up with the roads authority staff in Bo District. The bridge was remade just before the rainy season in 2006. The

villagers were astonished. Timap's thesis is that victories like these—though small in relation to the massive scope of injustice in rural Sierra Leone—expand the horizons of what people feel they can demand from their government.

2.5.3 Advocacy Letters

Timap paralegals often employ advocacy to encourage action from a large institution. A common first step is to initiate a dialogue with the institution via a letter.

An advocacy letter must do several things in a small amount of space. It should briefly introduce Timap; concisely describe Timap's clients, their problem with the institution, and key facts; precisely request an action or next step; and make clear how Timap will proceed in the matter. The paralegal must convey all of this information while maintaining a firm but professional tone. Although wild and emotional accusations should be avoided, the letter should make very clear Timap's concerns and expectations regarding the matter.

Below are a pair of mock advocacy letters. These have been used at Timap paralegal training sessions and are designed to highlight the elements of an effective advocacy letter. Note the differences between the two letters and why the second one is the more effective:

Mock Advocacy Letter #1 (Poor)

Monday, November 20, 2006

The Vice Chancellor
Mount Aerol University
Freetown

Dear Sir,

As you may be aware, Timap for Justice is a human rights organization under the constitution of Sierra Leone.

We were approached by some men seeking help with an issue with your institution after having been either forced to retire or pronounced redeployees. All our clients were originally employed by the Riverside Teachers College. The men received letters from Mount Aerol University under the auspices of the Ministry of Education, Science and Technology regarding their redeployment or retirement. The men have not been paid since March / April 2006. They are all members of a trade union.

We have been in conversation with some officials of both the University and the Ministry since the men approached our office; we have sent letters and come to see your personnel on numerous occasions seeking help for these men. It's not easy for most of them to survive without Mount Aerol University and the Ministry of Education collaborating in the interest of these men.

In terms of the redeployees, do you think it fair just and reasonable that the men were, and yet have to be given any information regarding their new location? It would seem that there was indeed no organisation in this matter right from the start. This is evident from the dates on the letters that were sent out informing our clients of their new employment status. The redeployment was to take effect from March 31st 2006, some of the letters were received on April 25th 2006, other letters were dated Jan 25th 2006 but most letters were received by the clients on and around the 2nd of May 2006. Perhaps you anticipated this right from the start and had decided amongst yourselves that denial of all knowledge would eventually make the

problem, these men just go away! We would like to believe that this is in fact not the case and you in fact meant to make this process beneficial in some way to all concerned. Of course when institutions merge it is only natural that some employees should expect to lose their jobs, but this is a delicate situation and so must be handled so.

For the sake of your reputations, please help Timap for Justice help you in working collaboratively in solving this issue through consultation and prompt action.

We look forward to hearing from you, initially with a contact person in both your organisations with the relevant authority to serve as a decision maker. We can then get together and conduct the consultation.

In an event that this didn't work out, Timap for Justice will be left with no other option but to take legal action. Thank you,

Timap Paralegal

Mock Advocacy Letter #2 (Better)

Monday, November 20, 2006

The Vice Chancellor
Mount Aerial University
Freetown

Dear Sir,

**RE: REDEPLOYMENT AND RETIREMENT OF WORKERS OF MOUNT AEROL
UNIVERSITY, FORMALLY RIVERSIDE TEACHERS' COLLEGE**

Timap for Justice is a justice services organization that is dedicated to assisting Sierra Leoneans in addressing individual and community-level justice related problems.

On the 2nd August, 2006, this office was approached by nineteen employees who were inherited by Mount Aerial University from Riverside Teachers' College. According to our clients (the workers), they were served letters by the University administration stating that their services can no longer be retained and that they should go to the Deputy Director of the Ministry of Education, Science, and Technology for redeployment. When these workers went to the Director as instructed, they were told by the Deputy Director that his Ministry is not responsible for any redeployment and that he lacked any knowledge of the issue. He advised the workers to go back to the University. These workers have not been paid since April 2006. They have been wrongfully denied both work and wage.

The workers have not been terminated or pronounced redundant. As such, they should still be considered workers. Their salaries for the past months should be paid and the destination of their deployment should be made clear.

For the sake of the reputation of the University and the Ministry, Timap for Justice encourages both institutions to work towards a peaceful resolution of these issues as fast as possible so that these teachers can start working and living their lives again.

TIMAP FOR JUSTICE will continue to monitor these issues up to the 30th November, 2006. If no positive action is taken by that time, we will have no other alternative but to consider other avenues of redress, such as legal action and/or approaching the press.

We count on your cooperation.

Yours sincerely,

Timap Paralegal

How is the second letter an improvement on the first? For one thing, it begins with a subject heading, so that the reader immediately knows the problem being addressed. For another, the language in the second letter is more concise and focuses only on the relevant facts, rather than delving into small details that distract the reader's attention away from the real problem. Note how the first letter weakens the firmness of its position by asking questions, posing hypothetical situations, or implying that the university may be in the right. Lastly, the second

letter makes specific, actionable demands and is not vague about Timap's intentions like the first.

2.5.4 Using the Media

The media is a unique and powerful advocacy tool. Sometimes, publicizing a particular problem or injustice by radio or newspaper will help urge an unwilling party into action. Public figures like government officials, chiefs, or police officers normally do not want their reputation tarnished, as it interferes with their authority. To protect their reputation, such individuals may choose to cooperate with Timap or take action in a case, as opposed to resisting or ignoring the paralegal as before. In cases where Timap is trying to promote a broader policy change, a media publicity campaign will help a paralegal's message reach a larger audience.

When trying to draw attention to a specific injustice or advocate for a policy or course of action, Timap paralegals will find it helpful to have a good working relationship with local media outlets. In rural Sierra Leone, the media is most active on the radio. In the past, radio stations have donated free airtime to Timap for jingles or panel discussions with Timap paralegals, clients, officers, and COB members. At other times, stations have given the organization sizeable discounts.

Paralegals should forge a good relationship with local radio stations before the need for publicizing information arises, so that they can act quickly when necessary. Upon starting work in a community, paralegals should introduce themselves and describe Timap for Justice's mission to local radio station managers, so that they are aware of Timap's work and not surprised by later requests.

If a paralegal encounters a particularly noteworthy case or success – that is, a case that touches on a problem that is common nationally or has national implications – advise the Lead Paralegal or Directors, who will pass the case on to Timap's Media Officer. He or she will then contact journalists and managers of national newspapers, issue press releases, and conduct other media outreach activities to spread the news about a specific problem or a particularly successful example of Timap's effectiveness as a justice services organization. Besides strengthening a paralegal's advocacy efforts, such publicity also informs the general public about the work of Timap paralegals, attracting clientele in need that may not otherwise have known about Timap for Justice.

2.6 Community Meetings

Timap paralegals might organize a community meeting for a variety of reasons. Community meetings can be used to engage the community in a dialogue about a justice issue. They might provide people with an opportunity to access authorities and leaders in their community and chiefdom. Community meetings can also be used to educate people on topics of law, government, and other issues.

Paralegals convening meetings should be careful to avoid a preachy tone – our goal is to focus on deliberation and an honest dialogue between various points of view.

2.6.1 Needs Assessment at Community Meeting

The purpose of such meetings is to help identify the needs and problems of communities. This is important as it serves as the basis for addressing community level problems. Once these problems are identified, the paralegal will use the information for either advocacy or organising the community for collective action, depending on the nature of the issue/problem.

The procedure of the meeting should be as follows:

- Prayers;
- Introduction:
 - Of the Community people;
 - Of Guests (paralegals, COB and others);
- Brief statement about the organisation and your role as a paralegal;
- Statement on the purpose of the meeting (needs assessment).

**Very importantly*, tell the community what role the organisation will be playing. Tell them that the organisation is not directly providing funds but will help in the area of advocacy and in navigating authorities.

Identification of needs by brainstorming:

- At this time, allow the active participation of the community people – particularly encourage the women to participate.
- During the brainstorming, the community will come out with their problems/needs.
- As they bring out their problems/needs, the paralegals should be taking down notes.
- Read out the entire list of issues/problems you have written down.
- Help the community to prioritise the needs: choose the top 3 or 4 on the list, to include at least one issue that particularly concerns women in this community.

Focus the discussion on the 3 or 4 top community problems/issues in the discussion, try to establish or flesh out.

What - is the actual problem

Why - the problem

When - the problem started

Where - is the problem- which part of the community is it?

How - it came about

Discuss also with the community:

- What they have done in their own way in addressing the problem;
- What institution(s)/ organization(s) - NGOs, CBOs have been involved in addressing the problem;
- How do they think the problem can be addressed?

Paralegals should write all of this down and keep it for a report of the meeting.

If the problem is one which the paralegal feels the community can handle by themselves, the paralegal can go ahead to organize the community for collective action. See section 2.7 Organizing Collective Action for more details.

For those community level problems that require advocacy, the paralegal should consider what would be needed and start working on it.

- The community should be informed of every development in the advocacy effort.
- The community should be actively encouraged to participate in every step of the advocacy, as this will empower them to take the initiative in addressing similar problems when they next occur.
- Where the paralegal has exhausted his/her ability, or where the advocacy requires meeting other higher authorities or institutions that are at the district/regional headquarters or in the capital city, the paralegal should refer such matters to a lead paralegal or the Director.
- The lead paralegal and/or the Director will continue the advocacy by engaging the authorities or institution directly.

See section 2.5 Advocacy for more details.

2.6.2 Community Education

There are several important elements to convening a successful community education event:

- **Preparation is key.** From content (e.g. speakers) to logistics (e.g. venue, food, if necessary), paralegals must attend to all the details of a community meeting.
- **Appropriate speakers.** Is the paralegal or invited guest qualified to address the community about a matter?
- **Research and curriculum.** Community meetings aimed at educating on a particular topic require paralegals to master specific material and develop a curriculum or organized presentation.
- **Interactive teaching methods.** People attending a community meeting are more likely to appreciate and utilize the information presented if paralegals use dynamic teaching methods and stimulate participation from the community.

Further community education events are often most effective when part of a longer-term campaign to address a particular injustice. Paralegals might use a meeting to educate a community about a justice issue that individuals frequently report at a Timap office. The meeting would be just one part of a strategy that also involves, for example, on-going mediations, advocacy with ministries, and even litigation.

Paralegals at Work: Community Meetings as part of an Education Policy Enforcement Campaign

The government of Sierra Leone has made a series of commitments in the field of primary education. These include a prohibition on school fees, a prohibition on extracting forced labour from students, and a minimum teacher to student ratio. These policies are largely unheard of by the public and unheeded by schools. Timap has adopted a strategy for bringing the practice in primary education closer to the law.

The first step is to convene Ministry of Education officials, teachers, school administrators, and parent representatives to publicly present the policies. These community meetings—which have been held in Tikonko and Gbonkolenken chiefdoms thus far—walk participants through real-life scenarios to illustrate the nuances of how the policies should be applied. Once the law has been described clearly in front of all parties, the excuse of ignorance is no longer available.

The meetings, which inform parents and community members of Timap’s role as a monitor and advocate, are the beginning of a long-term campaign to establish compliance with education policies. For example, Inspectors of Schools from the Ministry Education committed at both the Tikonko and Gbonkolenken meetings to use their enforcement power whenever we brought major policy breaches to their attention. Since the meetings took place, paralegals have been able to stop several breaches of education policy—like children being forced to provide labour on teachers’ farms—simply by visiting the schools and invoking the commitments made at the public meetings.

2.6.3 Proposals for Community Meetings

For community meetings that need funding (e.g. to cover food and transport for attendees), Timap for Justice requires paralegals to submit a proposal to the Lead Paralegals and Directors. The proposal must detail several aspects of the community meeting, including:

- **Summaries of the issue identified in the community and the importance and objectives of the meeting.** Community meetings should be focused on addressing a specific problem and not multiple problems.
- **A description of the target group/community.**
- **A description of the methodology/strategy to be employed.** This can include speeches, interactive sessions, a curriculum, etc.
- **Expected results.**
- **Agenda.** Meetings should be designed to last a maximum of a few hours.
- **Budget.** Timap meetings differ in their scope and geographic target area, making exact cost unpredictable. They are, however, relatively inexpensive in most cases. A budget is nonetheless required for every meeting.

2.7 Organizing Collective Action

Collective action means organizing community members to work together to address a problem. A paralegal and community may decide that the most effective solution to a problem is to call on community members to act together and take action themselves, as opposed to, for example, lobbying the government to provide a particular service. Community meetings may serve a role in galvanizing collective action. For example,

community members might decide at a meeting to organize youths to repair a road, or to call on residents to contribute to a village sanitation effort by digging latrines and covering wells.

In organising the community for collective action, the critical role of the paralegal is helping the community in planning and mobilization of both material and human resources. In planning, the following should be taken into consideration:

- Clearly state the objectives;
- Resource identification and mobilization;
- Identification of activities to be carried out;
- Identify existing community institutions that could contribute;
- Time line for every activity.

Paralegals at Work: Examples of Collective Action

- Villagers in Tikonko Chieftdom in the Southern Province of Sierra Leone approached Timap paralegals to complain that they were cut off from basic services because of the condition of the feeder road that connected their village to the main road. Although Timap had advocated for the government to undertake road construction in some prior cases, in this case, swift government action was unrealistic. Instead the Tikonko paralegals organized village residents for a day of voluntary, collective road maintenance.
- After a cholera epidemic occurred in Magbas, a town in Northern Sierra Leone, Timap paralegals in the chieftdom conducted a thorough assessment of the problem, studying ground-level conditions and seeking the views of experts. This led to a community meeting, which included contributions from a government health and sanitation officer. An action plan was agreed on at the meeting, and the community worked voluntarily to improve the water and sanitation system, including fencing wells and building toilets. The paralegals continue to follow up to ensure that the plan is carried out effectively and to seek additional technical advice when necessary.

2.8 Litigation

Timap's frontline is made up of paralegals and their work represents the core of Timap's services. Timap directors are lawyers and Timap also has a volunteer corps of lawyers from the private bar, who are qualified to litigate in formal courts.

Timap's capacity to litigate strengthens our work in two ways:

- First, litigation itself is one of the tools Timap can use to resolve a case. That is, in some instances, taking a party to court may be the best – or only – means of pursuing justice.

- Second, litigation actually strengthens the other tools used by Timap paralegals (e.g. mediation, advocacy, etc.). Citizens, government officials, corporations, and other institutions take our paralegals seriously because they know Timap can choose to use formal court litigation if necessary.

For strategic and resource reasons, Timap requires a case to meet certain criteria before it is considered for litigation. Timap will only consider litigation when all four of the following are met:

- A paralegal is unable to resolve the problem on his or her own.
- The client has suffered a severe injustice.
- There is opportunity for legal or social impact.
- The client faces extreme financial constraints or is otherwise vulnerable because of a power imbalance between the parties.

The decision to litigate involves on-going conversations between paralegals, Lead Paralegals, and Directors. When faced with difficulties and obstructions – such as a responding party’s refusal to mediate or a party’s failure to honour an agreement – paralegals should work with a Lead Paralegal and together decide whether to approach the Directors for possible litigation. Paralegals typically stay involved with a case during court proceedings.

2.8.1 The role of paralegals in litigation

Introduction

Paralegals can provide invaluable assistance to lawyers during the litigation process. They can expedite court proceedings and reduce the work load on lawyers by doing the vital ‘leg work’. They can be a source of vital information for a lawyer and effectively liaise between the client and the lawyer. The paralegal can relate with court officers in filing and receiving documents and negotiating and confirming adjournment dates. The paralegal continues to play a significant role until the final determination of the case and even after that the paralegal can continue to provide follow up and counselling services.

Roles in litigation

In the litigation process, paralegals can carry out the following roles:

i. Preparation of case file

Paralegals can prepare the case file for court. This will include filling out client record forms with clients’ personal information, taking clients’ and witnesses’ statements, collecting evidence such as medical reports, photos etc., and documenting/ filing all matters relating to the case.

ii. Fact finding/investigation

Paralegals can find out facts about a case. This will include talking to additional witnesses or other people concerned in the matter, visiting the scene of the incident, talking to the police and other actors.

iii. Legal research

Paralegals can assist in basic research on relevant laws and other related information useful to a case, researching newspaper articles or conducting internet research on related incidents or claims, gathering information from other sources such as the police, registry, medical practitioners, photographers and other experts.

iv. Advising/educating clients about court proceedings

This starts from the day that the decision is taken for a case to be litigated. Paralegals can tell the client all that is expected of him/her while the case is in court. The paralegal needs to talk to the client about the different procedures the case will go through before it is decided. If the client is a defendant in a criminal case, the client and the family needs to be educated about bail issues, and the paralegal should tell him/her about what is required and who qualifies a surety (explaining the bail conditions likely to be given by the particular court).

v. Contacting/connecting witnesses

Paralegals can ensure that witnesses for a case are available in court when they are needed to testify (*i.e. witnesses for our clients*). The paralegal should guide the witnesses, especially those testifying in court for the first time, as to what is expected of him in court, how to behave, how to address the court, what time to be in court and many other matters related to court proceedings.

vi. Filing in court

The paralegal can do all court filings and service of documents in relation to matters taken to court. A paralegal should keep copies of all documents in the appropriate case files. In the event that a court official (for example, a bailiff) is given an assignment on a case, such as to serve the parties, the paralegal plays a facilitation role and helps the bailiff perform his assignment properly and promptly by identifying the person or institution to be served.

vii. Negotiating /reminding lawyers about court dates

Paralegals should keep all court dates in their diaries: this is so that they can remind clients, witnesses, and the lawyer of upcoming court appointments. The paralegal should consult with the clerk of the court to confirm whether the magistrate/judge will be in court or not. This should be done at least two days before the court day. If there will be no hearing, the paralegal should consult the lawyer appearing in the case, so that the lawyer can suggest a suitable adjournment. The paralegal should then negotiate a new date with the court clerk. It is the responsibility of the paralegal to inform the lawyer, clients, and witnesses of the new court date.

viii. Attending court and monitoring cases

The paralegal responsible for the case needs to be in court whenever the matter comes up whether or not the lawyer representing the client is present. The paralegal can explain to the client what happens in court (most clients find it difficult to understand what happens in court since courts are conducted in English). This is also important because when there is a change of solicitor, the paralegal will be able to work with the new solicitor since he already knows about the case and will introduce the clients to the new lawyer. When a lawyer does not

attend a court session and the case still proceeds, the paralegal should take note of the proceedings. This ensures that any development in the case will not be missed and the paralegal should update the case file appropriately and inform the lawyer.

Role in criminal defence

Paralegals assigned specifically to work on criminal cases will, on a daily basis, visit local prisons and police stations, and talk with suspects and prisoners. In the course of this, they will provide legal education and identify cases that require legal representation.

The paralegal should get information from the police, prison officers, or from available records regarding the offence/s for which the client (accused) has been arrested as well as the general status of the case. The paralegal should also interview the accused and obtain a statement in order to build a case file. In conducting the interview and taking down the statement, the paralegal should adhere to the guidelines provided in section 2.1 Interviewing and Statement-taking as much as possible.

If a suspect is detained at the police station beyond 72 hours or 10 days (depending on the nature of the offence—see section on detention periods), the paralegal should inform the police of their obligation under the Constitution, and to urge for one of three actions: a) drop charges and release suspect where there is no prima facie evidence to require further investigation; b) release on bail; and c) charge to court. Where the suspect is admitted to bail, the paralegal will contact family members or relatives, provide information on bail, including an explanation of the bail conditions and the obligations of a surety. If the suspect is charged to court, the paralegal prepares the case file, which should contain the statement of the accused and all relevant documents, for referral to the lawyer responsible for criminal matters in the area, or any appropriate official. Once the accused is charged, the lawyer can then go to court, accompanied by the paralegal, who may continue to provide all necessary support.

Post-Litigation Role

Clients need special assistance after litigation. This may include:

- Following up on clients' condition at home and in the community.
- Assistance with the reintegration of clients that have been acquitted or discharged from court or served their punishment for offences communities see to be particularly bad e.g. murder. The paralegal should carry out an assessment to evaluate whether or not the community is willing to accept the individual and on what terms.
- Monitoring the implementation of court orders (which may be in collaboration with court officials and other actors). If any problem arises in the course of post-litigation monitoring, the paralegal should promptly inform the lawyer, who may decide the best course of action, including whether to make another application to the court.
- Periodic counselling of certain clients, including those involved in rape and other sexually related offences.

Case Study: Paralegals' role in litigation

Pa Margai, a 63 year old man, had been working for a hotel in Bo, owned by a popular business man, for many years. His service was terminated summarily and he wasn't given any benefits package for all the time he had worked. The proprietor is a very big man, an influential figure in society, and had been a cabinet minister in the past. Our client made the complaint at the ministry of labour office in Bo. The labour office was not able to help him as the proprietor did not want to cooperate with the labour office.

Three years after this happened, the matter reached the Timap paralegals. The proprietor made it very difficult for the paralegal responsible to get an audience with him. She tried to see him on several occasions without success. She felt he was avoiding her. After three attempts to get hold of him, she finally succeeded. In presenting his own side of the matter, the proprietor said that he knew the old man but he was only a casual worker. He went on to say that his former manager hired the man, that he wasn't involved in the hiring personally, and that the paralegal should find this manager and talk to him. The paralegal went to this former manager. The manager told the paralegal that the proprietor was very much aware of the recruitment of the old man. He went on to say that the proprietor used to pay the old man directly, throughout his time working.

The paralegal went to the proprietor to talk to him about what the former manager had said. The proprietor told the paralegal he was not involved, and that she should deal with the matter however she could.

With all these efforts and the non-cooperation of proprietor, the paralegal knew that she could no longer resolve this case by herself. She decided to refer the case to the director/lawyers for further advice, and if necessary litigation.

Before the referral to the director/lawyers, the paralegal made sure that the case satisfied the litigation criteria. She felt that it did:

1. She was not able to resolve the case on her own;
2. The client was old and had very little and was suffering from severe injustice;
3. The case had the opportunity to have both a social and legal impact; and
4. The client was vulnerable, faced extreme financial constraints, and there was a serious imbalance of power between him and the proprietor.

Accordingly, she referred the matter to the lawyer.

The lawyer asked the paralegal to do more fact finding on the matter before it could be taken to court. She was asked to interview more workers both present and former, and collect information from the labour officers, including calculations of the benefits and other payments that were due to the old man. The paralegal prepared the entire file for the case, organizing all the documents for the lawyer to go to court.

When the case went to court, the paralegal attended court whenever the case was brought up whether the lawyer was present in court or not. She helped in negotiating adjournment dates with the clerk in consultation with the lawyer, as the lawyer was travelling from Freetown.

The paralegal was constantly in touch with the client on the matter, explaining the procedure in court as the case was going on. The court decided in favour of the old man, deciding that the proprietor should pay all the money as calculated by the labour office with 15% interest. After judgment, the paralegal continued to liaise with the proprietor's lawyer to obtain payment of the money, as the money was paid in installments. She subsequently collected the money and passed it over to the old man. The old man died a week after receiving the last payment.

2.9 Working with Children

(See also subsection
5.5.6 The law relating to children.)

2.9.1 Child and Adolescent Development

Children interact with the justice system in different ways and for different reasons. They may be children in need of protection, children in conflict with the law, children who seek to exercise individual rights, or children who are the subject of a legal dispute. They may be victims or witnesses. They may be involved in criminal, civil, or administrative proceedings. They may require legal assistance in formal and informal justice settings. Paralegals who provide justice services to children in all of these proceedings face special challenges related to their clients' development status and evolving capacities. Children are, by definition, physically, cognitively, socially and emotionally immature. Recent studies explain that children's immaturity is linked to the process of brain development. The last part of the brain to develop prior to adulthood is the frontal cortex, the lobe responsible for higher level cognitive thought, reasoning, planning, impulse control, and susceptibility to manipulation by authority figures and peer pressure. This new knowledge has important implications for how the law treats children and for how paralegals go about the task of providing child-friendly legal aid.

2.9.2 Legal Framework

The UN Convention on the Rights of the Child (CRC) recognizes a child's right to assistance and participation in any judicial or administrative proceedings affecting his or her interests (Art. 12). Art. 40 gives a child in conflict with the law a right to "legal or other appropriate assistance in the preparation and presentation of his or her defence." The Committee on the Rights of the Child's General Comment 10 makes clear that paralegals, among others, may provide such assistance, but admonishes that they "must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law." Art. 17 of the African Charter on the Rights and Welfare of the Child also provides that every child accused of having infringed penal law "shall be afforded legal and other appropriate assistance..." [Section 28\(5\)](#) of the Constitution of Sierra Leone provides for the right of access to legal representation, although it does not require the government to supply legal assistance to accused persons.

2.9.3 Core Competencies

Paralegals who provide legal assistance to children must develop special competencies in addition to the skills identified earlier in this chapter for working effectively with adults. They include:

1. **Interviewing and statement-taking**

Legal representatives face unique challenges when interviewing children. Because of their age and lack of experience, children are likely to be unfamiliar with the legal system, their rights, and the role of their legal aid provider. In addition, they may appear to understand what is being said when in fact they do not. These issues are exacerbated in the cases of children who have endured traumatic experiences. Key suggestions for overcoming these challenges include:

- **Develop rapport.**

Young people in contact with the justice system are often upset, confused, and may be distrustful of adults. Make an effort to establish a comfortable relationship with the child prior to beginning the formal interview. Approach him or her in a friendly and relaxed manner, asking questions that suggest you are interested in the child and not just the facts of the case. General questions about the child's family, school, or sports are good starting points. Establishing rapport and trust will produce better outcomes.

- **Explain your role and the process.**

Before beginning the interview, explain your role, why it is important to be as accurate and complete as possible, and any ground rules for the interview, such as "If I ask you a question you don't understand, please ask me to repeat it or ask it in a different way." It is also helpful to explain how the paralegal intends to use the interview information to support the client's interests.

- **Keep it short and simple.**

A person who interviews a child must tailor his or her questions to a child's language ability and experience level. Young children in particular are very concrete in their understanding and use of language. Even older children have trouble with abstract concepts or ideas with which they are not familiar. For all children, use simple language (not "legalese") to ask questions, provide information, and explain concepts. It is best to include only one main idea per question or sentence. Specific and focused questions are best. At the same time, it is important not to put words in a child's mouth. "Tell me who was at the market" is better than "You were at the market with your mother on that particular date and time, weren't you?"

- **Ask follow-up questions.**

Young people often have a difficult time telling a logical story or knowing what information is important. You can help by allowing a child client to answer a question without interruption and then asking one or more follow-up questions, such

as “Now tell me again exactly where you were standing.” It may help to use a demonstrative aid, such as a photograph or simple diagram.

- **Confirm the client understands.**

Ask the client to explain back to you the information or idea you have communicated rather than merely asking for a “yes or no” response to the question “Do you understand what I am saying?”

- **Do not feel pressure to accomplish everything in one session.**

Children are particularly susceptible to pressure and fatigue, especially in stressful situations. For that reason, it is preferable to meet more than once. If that is not possible, arrange for breaks, especially between the information gathering and statement-taking phases of the interview. A child’s nonverbal clues (yawning, looking distracted, etc.) are good indications of when a break may be needed.

- **Carefully consider issues of confidentiality and consent. (see Paralegal tips on confidentiality under 2.1.2 Statement Taking)**

A paralegal should consult with the child client and obtain his or her knowing consent before obtaining or sharing confidential information. As part of the interview process, a paralegal should secure the child client’s consent to access relevant documents such as medical, education, or police records. Whether someone else should be present with the child during an interview and statement-taking depends on the circumstances of the individual child. For some children, it may be helpful to have the support of a family member during the interview. Others may be reluctant to speak openly, especially if they are embarrassed or concerned about the person’s reactions. In sexual violence cases a paralegal should make sure that neither the perpetrator nor his/her relatives are present when the child is being interviewed. Before allowing anyone to participate in an interview with a child, the paralegal should discuss the matter with the child and obtain his or her consent.

2. Client Counseling and Decision-making

Client counseling is an important aspect of legal assistance. Counseling provides a client with the benefit of a legal advisor’s expertise and experience and helps the client make better decisions about his or her case. When counseling a child about options, a legal advisor must be careful to set out all alternatives and to offer informed guidance that is sensitive to the inherent power differential between an adult legal advisor and a child client. These same principles apply when negotiating with others for resolution of the client’s case. Because it is the youth who must live with the consequences of decisions made in the course of the representation, heavy weight should be given to the expressed preferences of the child client. This is true even if the paralegal or a caregiver have a different opinion.

3. Effective advocacy

As discussed above, effective advocacy on behalf of any client requires knowledge, persuasiveness, and creativity. Effective advocacy on behalf of child clients has additional elements, including:

- **Case management**

Adult clients are more likely than child clients to keep up with developments in their cases and to reach out to their legal representative when new information surfaces or when problems occur. Child clients, however, may not understand the significance of an event, may be hesitant to contact their representative, or may be unable to because they are in someone else's custody. For that reason, a paralegal must be proactive in maintaining contact with a client and keeping the client updated on the status of his or her case. This is especially true in the case of children in conflict with the law who are held in custody.

- **Ongoing and holistic representation**

Paralegals who provide legal aid to children must consider the scope of their assistance. Given children's special vulnerabilities, it is best practice to continue to represent a child client until his or her case is fully resolved. This may mean ensuring the safety of a child in secure confinement, or helping the child to reintegrate into the community. A child may also have multiple problems that require legal or other support. For example, a child in conflict with the law may also lack adequate parental care, be the victim of child exploitation, or face deportation.

- **Interdisciplinary collaboration**

Paralegals should acquaint themselves with the expertise and ethical duties of other disciplines and be able to work effectively and respectfully with their interdisciplinary colleagues. As an example, social workers can help paralegals understand the importance of engaging families in a child's rehabilitation. They can also be of assistance in identifying and accessing rehabilitative services.

CHECKLIST FOR INTERVIEWING CHILDREN

- ✓ Did I introduce myself and explain my role?
- ✓ Did I make the child comfortable?
- ✓ Did I explain the purpose of the interview, why it is important, and what will happen next?
- ✓ Did I use clear language?
- ✓ Did I assume that a child understands the words and concepts without explaining them?
- ✓ Did I keep my questions simple?
- ✓ Did I listen carefully to the answers?
- ✓ Did I ask follow-up questions?
- ✓ Did I follow verbal and non-verbal cues about the need for breaks?

Adapted from Anne Graffam Walker, HANDBOOK ON QUESTIONING CHILDREN, 2d. ed. 1999

3 Timap for Justice: Processes & Procedures

This chapter of the *Paralegal Manual* outlines important elements of Timap for Justice as an organization and in terms of key processes and procedures. The chapter begins with a listing of Timap staff positions and their roles as they relate to paralegals. Most important to the paralegal, the chapter describes Timap's case management system, the mobile clinic program, and the newly launched Emergency Fund.

3.1 Organizational Structure

Timap for Justice comprises more than 70 paid staff members, the vast majority of whom are paralegals. Another 430-450 people make up an unpaid or modestly compensated network of interns, volunteers, Contact Persons, Community Oversight Board members (COBs), Community Mediators (CMs) and Board of Directors.

As of January 2011, Timap works out of 19 offices in 15 locations: Freetown in the Western Area; Kakua, Tikonko, Bumpeh, and Valunia Chiefdoms in Bo District; Kholifa Rowalla, Gbonkolenken, and Yoni Chiefdoms in Tonkolili District; Bombali Sebor, Safrokoh Limba, and Gbemdenbu Ngowahun Chiefdoms in Bombali District; Nongowa, Dama, Guara and Gorahun Tunkia Chiefdoms in Kenema District and Njaluahun Chiefdom in Kailahun District.

Board of Directors

The Board of Directors guides Timap's leadership and staff by setting the broad direction of the programme. The Board typically engages the Directors and has little interaction with paralegals.

Directors

Timap is currently led by two lawyers, Director Simeon Koroma and Deputy Director Nancy Sesay. They provide training and supervision for paralegals; paralegals ultimately report to the Directors.

Head of Mediation

The Head of Mediation coordinates the Community Mediation Programme (CMP). He supervises and mentors 300 community mediators in 97 villages across 4 chiefdoms.

Administrative Officers

The administrative staff comprises the Programme Assistant, Project Officer and Administrative Officer. They provide administrative support to the various programmes, the headquarters and paralegal offices.

Finance Officers

The finance officers are responsible for administrating Timap's budget and liaising with donors and partners. Paralegals may engage the finance officers from time to time over running costs, reimbursement, and salary matters.

Lead Paralegals

Timap currently has seven Lead Paralegals - each serving a cluster of chiefdoms. Each paralegal is assigned to one Lead Paralegal. Lead Paralegals are points of reference for paralegals and assist or advise on cases. Lead Paralegals also perform administrative tasks and act as a go-between for paralegals and the Directors.

Paralegals

Paralegals are the frontline of Timap's work and provide mediation, advocacy, and other services in 19 offices across Sierra Leone.

Media Officer

The media officer spearheads Timap's outreach campaigns. Paralegals may assist the media officer with radio program appearances, collection of newsworthy stories about Timap's work, and other publicity efforts.

Solicitors' Clerks

The Clerks assist the Directors with research and matters related to formal court proceedings. Paralegals may occasionally work with clerks if one of their cases has been referred to the Directors for litigation.

Office Assistant

Timap's office assistant performs tasks in the Freetown office and may assist paralegals there with various errands.

Drivers

Timap's drivers convey the Directors and other staff to appointments in Freetown and to supervisory visits at paralegal offices.

COBs

Community Oversight Board members are Timap-community liaisons who provide oversight and advisory assistance to paralegals. They serve as a cushion between the community and Timap, and as a rallying point for support when there is conflict between certain traditional practices (and leaders) and Timap. COBs also help to direct the focus of Timap's work through community assessments.

Community Mediators

Community mediators are trained, mentored and supported by paralegals/teachers. They settle minor disputes in their communities and also refer cases to paralegals and other institutions.

Contact Persons

Contact persons reside in villages where Timap conducts mobile clinics. They assist paralegals in notifying communities of clinic days and alert paralegals to cases in their communities.

Interns

Timap occasionally hosts Sierra Leonean and foreign interns. Many of these are stationed with paralegals and work alongside them in their work.

3.2 Case Management System

Timap documents its work in a couple of ways. The case management system is the primary means of tracking a paralegal's workload and progress on a case. Monthly reporting is a second, more flexible way for paralegals to convey their work to the Directors.

There are three components to Timap's case management system. Each serves a different purpose.

1. **The Case File** consists of (1) an Individual Case Record or a Community Level Problem Case Record, (2) an Action Log, (3) party statements, and (4) any other documents and materials related to the case. When opening a new Case File, paralegals complete the "Client Intake Section" of the Case Record and from then on log all of their activities concerning the case in the Action Log. A copy of the Case Record with the Client Intake Section filled out is also put in a folder to be picked up by the Lead Paralegal and delivered to the headquarters office.

Each Action Log entry should include the date and a summary of what took place (e.g. "delivered letter to employer" or "client visited office to ask about progress" or a report of a fact-finding mission). The Action Log should be in enough detail that a supervisor or another paralegal can understand the story of the case by reading it. Thorough record keeping is crucial for effective supervision and effective case management. Each entry should also include an estimate of time and money spent on a given task.

For most cases, the Case File should be held together by a paper clip or a staple, and filed in alphabetical order in the paralegal's pending case binder. For particularly complex or lengthy cases, the record should be kept in a separate folder, labelled with the case name and case number.

When a case has been resolved, paralegals complete the "Case Resolution Section" of the Case Record. The case is officially closed after a specified monitoring period – if necessary – has passed without breach or failure of the resolution. A copy of the Case Record with the Case Resolution Section filled out is also put in a folder to be picked up by the Lead Paralegal and delivered to the headquarters office. The Case File should then be moved from the pending case binder to the paralegal's resolved case binder. These binders should be organized by date.

2. **The Paralegal Ledger** is a record of the paralegal's time. Each activity in the day is recorded, noting the date, the activity, and the case name and number if the activity is case-related. Ledger entries should be just a line or two, and should only take a few seconds to write. A supervisor will look at the Ledger to have a sense of how a paralegal spent his or her time; if a supervisor wants to learn about a typical case, she will consult the case record. Of course, the Case File/Action Log and the Ledger should be consistent. So if the Ledger shows a paralegal conducted mediation in the office on Wednesday April 30, the Action Log for that case should have, under April 30, an account of the mediation and its results.

3. **The Case Management Database** is the system by which Timap tracks its overall efforts. Paralegals submit to the Freetown office duplicates of the Case Record upon the opening and closing of each case. The Case Records include information like name, type of case, how reported, distance travelled to make report, institutions engaged, and outcomes. The information from the Case Records is entered into the Database and the aggregate data is analysed for trends and information about Timap's caseload.

In addition to these case management system components, paralegals also submit monthly reports to the Directors. Monthly reports should contain summaries of the following:

- Summary of cases
- New cases
- Highlights from pending cases
- Highlights from resolved/closed cases
- Mobile clinic
- Other activities undertaken
- COB members
- Constraints
- Recommendations

Paralegal Tips: Writing Reports

It is through report writing that a paralegal can most effectively communicate with supervisors. Information on what happens, what you do, what's left to be done, cases handled, and constraints should be included in your reports. With this information, your Lead Paralegals and Directors will be able to determine how they can best assist you in your work.

What to do:

- Don't wait until the 11th hour before you start writing your report. Put it at the top of your priority list.
- Pay special attention to the date and time of incidents.
- Report on any activity, notable case, mobile clinic, meetings etc. you complete that month.
- Make sure you keep a duplicate of the report at the office.

3.3 Mobile Clinic System

To further extend Timap's presence, paralegals regularly visit a cluster of additional villages through our mobile clinic program. This ensures that Timap reaches and serves Sierra Leoneans who are unable to visit our offices due to prohibitive cost or distance.

Mobile clinics are critical not only for outreach and publicity purposes, but also for extending the reach of our services to those for whom legal empowerment and access to justice are most tenuous – people who are often excluded in chiefdom administrative decision-making

processes.

Failed infrastructure and poverty are among the greatest obstacles to access to justice in Sierra Leone. Timap's offices are almost all located in chiefdom headquarter towns, which also host paramount chiefs, chiefdom councils, local courts, and other local administrative bodies. But there are fewer roads linking villages in the interior and no working public transportation system. Most people must walk (sometimes distances of 5-15 miles) to reach a local court, police post, or chiefdom council. Thus, a chiefdom headquarter town is still immensely far from the reach of most rural communities. For them, services located in the chiefdom headquarter town may as well be located in a provincial city or Freetown.

3.3.1 The System

For this reason, Timap formulated a scheme in 2005 – which began with a needs assessment of the chiefdoms and was followed-up by meetings with local authorities and community members – to establish the mobile clinic system. Under this system:

- Paralegals devote four Fridays per month to visiting a cluster of villages near each office.
- The same villages are frequented each month so that residents can expect Timap paralegals to come by every 30 days on agreed dates (e.g. first Friday, last Friday, etc. of the month).

3.3.2 Contact persons

An appointed contact person in each village acts as a liaison between Timap and community members.

The contact person's responsibilities include:

- Securing a venue to hold mobile clinic sessions. Mobile clinics will require both a public place to address the community and a more private place to deal with particular cases.
- Notifying community members about paralegals' movements. As long as paralegals adhere consistently to mobile clinic schedules, notification should not be too complicated. But if paralegals are going to miss a particular day, or make a visit outside of the ordinary schedule, the contact person can assist in disseminating this information.
- Assisting paralegals to deliver letters to parties involved in cases.
- Assisting paralegals to organise community meetings.

Contact persons are *not* to engage in substantive work addressing justice issues. They should not, for example, be asked to mediate disputes or to attempt to solve cases reported to them.

In the event that a case or justice problem is reported directly to a contact person, the contact person can consider three options:

- Inform the parties about the next mobile clinic date in that area and ask them to see the paralegals on that day.
- Ask the parties to go to the paralegal office in the chiefdom headquarter town.
- In cases of emergency, the contact person can go to the paralegal office (with the parties if possible) and inform the paralegal(s). In such situations, the contact persons can be reimbursed for their transport costs.

3.4 Emergency Fund

3.4.1 Background

Recognizing that many of our clients face extreme financial hardship, and that the lack of funds can prevent clients from obtaining services critical to their health, their safety, and their pursuit of justice, Timap for Justice has established an Emergency Fund.

The goal of the Emergency Fund (the “Fund”) is to provide financial support to clients who have suffered a severe injustice and lack the funds necessary to address that injustice. The need most frequently arises in situations that implicate health and safety, such as instances of domestic violence and sexual assault. For example, if a client is a survivor of domestic violence but lacks the resources to obtain the medical report required by police for investigation, monies from the Fund could cover the client’s transport, doctor’s fees, and medical costs.

There are a few organizations in Sierra Leone that provide free health (and other) services in relation to justice problems. Paralegals are occasionally faced with a situation where immediately funding a hospital visit would be very beneficial to a client in terms of health, safety, and justice. In light of these emergency cases and the knowledge that some clients need financial support to pursue litigation, Timap has created the Fund to ensure that those faced with severe injustice are not denied access to justice for want of resources.

3.4.2 Purpose of the Guidelines

While Timap for Justice would like to support all of our clients in all of their health, safety, and justice needs, we simply cannot. Timap for Justice is a legal services and human rights organization, not a health service, bank, or grant-making institution. It is simply impossible for Timap – or perhaps any organization – to meet all of the needs of all Sierra Leoneans all of the time. Resources are limited.

As such, it is necessary to precisely specify which Timap clients qualify for support from the Emergency Fund. Failure to clearly define guidelines and failure to closely follow those guidelines could have serious negative consequences for Timap’s work. First, excessive use of the Fund would result in its rapid depletion. We want to ensure that the Fund is used only to support our most needy clients and we must husband our limited resources carefully. Second, there is the risk of sending “mixed messages” about our services, confusing clients,

and raising hopes and expectations that cannot be met. Timap's reputation would be badly damaged if clients believed that Timap promised to pay for anybody's medical needs and doctor's fees – the Fund cannot do this and clients must not be misled to believe otherwise.

Therefore, the guidelines below describe the very limited circumstances in which a paralegal may access the Fund to provide financial support to a client.

3.4.3 The Guidelines

Paralegals may provide monies from the Emergency Fund only to clients who qualify under the *Eligibility* guidelines. Paralegals must follow the *Process* guidelines when using the Fund. The Fund is limited by the *Disbursements and Limitations* guidelines.

Eligibility

Only clients who meet ALL of the following requirements are eligible for support from the Emergency Fund:

1. To the best of the paralegal's knowledge and belief, the client must appear and allege to have suffered AT LEAST ONE of the following:
 - *Rape/Unlawful carnal knowledge.*
 - *Indecent assault/sexual abuse.*
 - *Domestic violence.*
 - Paralegals should look to section (2) of the [2007 Domestic Violence Act](#) for the definition of domestic violence.
 - The Emergency Fund is especially relevant for incidents falling under (2)(a) – physical or sexual abuse.
2. To the best of the paralegal's knowledge and belief, the client requires AT LEAST ONE of the following services:
 - Client requires a medical examination and report from a specific doctor in order for the police to investigate his/her case.
 - Client must make a report at a police station, FSU office, Ministry of Social Welfare, or other government institution in order to advance his/her case.
 - Timap is assisting the client in court and the client must attend one or more court proceedings.
3. To the best of the paralegal's knowledge and belief, the client faces extreme financial hardship as evidenced by ALL of the following indicators:
 - Client claims extreme financial hardship.
 - Client is not formally employed by a registered business, NGO, or government entity and the client is not involved in any income-generating venture (e.g. business, petty trading).
 - Client's relatives and friends cannot or will not assist the client.
 - Client has no alternative means of financial support.

Process

Clients who meet the above eligibility requirements may receive monies from the Fund.

Paralegals who believe the above requirements are met and wish to access the Fund must follow this process:

1. Paralegal calls a Lead Paralegal and explains the client's case.
2. Lead Paralegal may (1) deny use of the Fund or (2) approve use of the Fund only after further approval of a Director. (Therefore, any use of the Fund must first be approved by both a Lead Paralegal and a Director.)
3. When paralegal has received approval, he or she may access the Fund.
4. The paralegal may use Fund cash from his or her office and Fund cash from the Makeni and Bo offices.
5. Paralegal uses the "Emergency Fund Checklist and Expense Sheet" to track expenses and submits that form to Lead Paralegal when accounting for office expenses.

Disbursements and Limitations

Each office will maintain a limited amount of cash that must be reserved solely for Fund use. The Directors and Lead Paralegals will determine the sum for each office. A larger sum of cash will be maintained at the Makeni and Bo offices, also solely for Fund use. Again, the Directors and Lead Paralegals will determine the sum for these offices. The reason for keeping larger sums at these offices is that any client who uses the Fund will very likely pass through these towns and may need additional financial support once there.

The specific uses of the Fund (i.e. transport, doctor fees, food, etc.) and the disbursement amounts will be determined on a case-by-case basis through consultation between the paralegal, Lead Paralegals, and Directors.

Further, the Fund may not always be used to support a client to the completion of a case. Rather, after consultation with the Lead Paralegals and Directors, a paralegal may refer the client to an NGO that can take on the client's medical – and/or other – needs.

Other limitations to the Fund include:

- The Fund may be used to support only the Timap client.
- The Fund may NOT be used to assist police or suspects.
- When covering health costs, the Fund may only be used for medical care related to the health issue which qualified the client for the Fund. For example, if the client is a survivor of domestic violence, the Fund may only cover treatment related to the domestic violence injuries and not other, unrelated, health issues, such as malaria.
- Further restrictions on use of the Fund may be imposed by the Directors at any time.
- The Directors reserve the right to waive limitations and eligibility requirements for any case.

3.5 Financial Management

Paralegals are expected to keep continual track of their running costs, operating costs and other funds. Money allotted to running costs, for instance, by Timap for Justice should be used to pay for transport when distributing letters, conducting follow-ups, hosting community meetings, and attending to other Timap-related activities. In offices with motorbikes, the running cost fund should be spent on fuel.

In addition, paralegals in offices without motorbikes are supplied with funds to pay for a meal and transport to mobile clinic sites. Paralegals with motorbikes only receive money for a meal on mobile clinic days.

Money allotted to running costs and mobile clinics should not, under any circumstances, be used for personal ends. Any misuse of funds for purposes not related to Timap for Justice work invites disciplinary action. Running cost funds should be kept in a locked cash box in the office at all times, and should not be carried around on the paralegal's person when travelling.

Every time Timap money is spent in a transaction, it must be documented on the Running Cost Form. For those paralegals that can obtain receipts, receipts must be attached. All costs are monitored against the paralegal's activities in the Ledger, to check for consistency. Likewise, offices with motorbikes should keep track of their fuel purchases. All repairs or vehicle maintenance are undertaken by the Lead Paralegals or other designated persons (Paralegal Office Managers) based in the regional headquarter towns of Bo, Kenema, and Makeni, who also handle the provision of office supplies.

If a paralegal prematurely exhausts their running costs due to increased Timap activity or a case requiring particularly large amounts of travel, he or she can request more money by sending the completed Running Cost Form to the Lead Paralegal as evidence of the legitimate expenditure of the funds. Once the expenditures are verified by the Finance Officer and Director, reimbursement for extra costs will be disbursed by the Lead Paralegal or other designated person.

If a paralegal has money remaining for running costs at the end of the month, only a top-up to meet the original amount will be given.

Paralegal Tips: Handling Clients' Money

As the neutral party in many mediated arrangements, Paralegals often must handle and delivery clients' money for payment of medical bills, maintenance fees, paid back loans, school fees, house rent, etc. These monies are as sacred as the collection in the mosque and church. Don't play with them, even if you desperately need money. Simply don't touch client money for any reason, and certainly do not borrow from it. It will cost you your job.

What to do:

- Put client money away in a separate envelope, seal it and write the name of the client on it. Do this as soon as you receive the money.

- Hand it to the client as soon as he/she comes to the office.
- Issue a receipt to the person paying the money. And make the client sign for the money before collecting it.
- Keep client money in the office and do not take it to your house.
- Don't keep client money too long, for fear of temptation
- In a case where the client does not show up for the money, follow up and invite him/her to come to the office to collect the money.
- Please don't play with client money; it is against the policy of our organization.

Paralegal Tips: Rejecting Gifts/Money from Clients

Remember, our services are free of cost. Don't accept gifts in any form from clients or their relatives. The gifts some people give are bribes in disguise. Even when they aren't intended as such, gifts can amount to bribes that may still influence you, especially if a relevant case/matter is still on-going. As soon as you accept a gift from any party to a matter, you tend to do things in favour of the gift-giver. Accepting gifts is strictly against the policy of the organization.

What to do:

- Paralegals should be absolutely firm on this policy from the beginning and be prepared to reject all gifts/money. Be aware of the date and time of such incidents.
- When introducing yourself and the office, you should be able to openly tell the clients and/or those accompanying him/her that accepting gifts is against our policy.
- Tell people you will be sacked if you take a gift or money in return for services.
- To prevent this, in your opening statement during your first meeting, make it clear with strong emphasis that our services are totally free of cost and that it is against the organisation's policy to take money for anything.

3.6 SUPERVISION

This comprises a whole section of Paralegal tips for lead paralegals, managers, coordinators and others who may be supervising paralegal work.

3.6.1 Visiting paralegal offices

When to visit paralegal offices?

- Visit as often as possible.
- Visit unannounced, when you're not expected.

What to do while you're there?

1. *Reviewing ledgers*

- The ledger is a good place to start because it is a log of the paralegal's time.
 - Does the ledger reflect sufficient work?
 - Are there days missing or days with little activity?
 - What is the condition of the ledger—is it kept tidy?
 - Is it properly filled out?
 - Is the paralegal managing his time well as stated in the ledger?
 - Cross check/compare ledger with case files to verify time management.

The ledger is a basis from which you can provide constructive criticism on how paralegals can make best use of their time.

2. *Checking general organization*

- Are they keeping their files well-organized?
- Are they filling out petty cash forms correctly?
- Are their notes, manual, resource materials from training sessions, etc. all kept in an organized fashion?

3. *Reviewing case files*

- Choose some of the cases mentioned in the ledger—cases which the paralegals are presently working on—and ask to see the case files (either the intake form plus documents from the ring binder or, in the case of complex cases, the manila folder).
- Are the developments in each case noted in the case file? Our supervision depends on proper documentation; we should be able to look at the case and understand all that has happened to date.
- Ensure the intake form is properly filled out, with the appropriate case type checked, and names and other details properly filled out
- Make sure all relevant documents to the case are attached to the file- e.g. statement, copies of letter including invitations and other letters, agreements, photos etc.
- Review the strategy taken in these cases. Ask questions about what the issues are in the case, the approach paralegals followed, about the choices they made, and about their strategy going forward. Provide input and feedback.

4. *Observing paralegals conducting mediation*

Some questions to consider when observing paralegals conducting mediation:

- Do they set out ground rules clearly and ensure that the rules are respected throughout?
- Do they do a good job of conducting mediation within a legal and human rights framework? Are they providing relevant legal information?
- Are they evenhanded and respectful in mediation? Do they take adequate consideration of any pre-existing power imbalances outside the mediation room?
- Do they refrain from judgment, in both tone and language, and 'stay above the fray'?
- Do they set out options in clear and simple terms?

5. *Some general questions to consider when reviewing cases and observing paralegals at work:*

Working with clients

- Are the paralegals asking the right questions?
- Are they too trusting of the clients that approach them?
- Do they treat clients and all people with respect? Do they identify specifically what clients want and need?
- Are they creative and flexible in finding solutions to justice problems, or do they stick to a standard approach for any given case type?
- Do they adequately follow up with clients after a case is finished?
- Are they taking an *empowerment* oriented approach? That is, are their clients left with more power and more knowledge than before they approached our office? Or are the paralegals acting as experts providing a service?
- Are they showing adequate concern for the health and safety of anyone in the case who may be vulnerable?

Working with Institutions

- Are they interacting with and engaging government institutions effectively? What about chiefdom authorities?
- Are they effective advocates? Do they conduct advocacy with diplomacy, maturity, and a careful and thorough understanding of the facts?
- How is their interaction with the COB?

Paralegal Ethics

- Are they showing adequate respect for client confidentiality?
- Are they handling money responsibly?

Community level problems

- This is an area of work where there is a lot of room to grow. Ask the paralegals about any community-level problems they are working on, and see if you have ideas for improving the strategy the paralegals have adopted.
- Are there ways the directors/ managers/ coordinators/ lead paralegal should assist with research, advocacy, or litigation?
- Paralegals should seek out community level problems rather than waiting for them to be brought to the office. Help the paralegals to think about the cases they see, present issues facing their community, etc. to identify possible community problems on which the programme could have an impact.
- Paralegals especially need the assistance of lead paralegals, coordinators, directors etc. in handling community level cases. Support in the form of advice, planning, participation in advocacy meetings, and the writing and/or editing of advocacy letters is particularly useful.
- Push paralegals to work toward getting results from community level problems – don't allow paralegals to accept cases and then let them lose momentum, only to claim the client didn't respond, or abandoned the case etc. You should make sure the paralegal actually played his/her role (follow ups) to the fullest of his/her ability before allowing the case to be closed.

Closing cases

- You should be consulted when a case is about to be closed, especially those cases that are closed for reasons other than being resolved – ask the paralegals to consult you.

Generally

- Place an emphasis on thoroughness in the handling of cases. Handling a few cases well is preferable to providing a large group of clients with mediocre services.

3.6.2 Mobile clinics

- Join paralegals at some mobile clinics unannounced – this will put them on the alert to conduct them appropriately at all times.
- Observe them in their work at the clinic – you can come in to help when necessary.
- Help the paralegals develop preparatory notes for meetings at mobile clinics - make sure they are prepared before the mobile clinic day itself.
- Hold periodic meetings with contact persons to get to know how the paralegals are doing at the clinic when you are not with them. Get to know people's perception of the clinic and services provided.

3.6.3 COBs

- Find COB members in the community and ask about their perception of the paralegals' work.

3.6.4 Meet the parties

- Follow up on other cases paralegals handled in the past, see how clients are doing – and more importantly- see if the paralegals are in touch with their former clients. Randomly select cases to stop and check with clients - both current and previous clients.

3.6.5 Other updates and reports

- Ask for weekly updates by phone from each paralegal office - say every Monday. This will help you get correct and regular updates on cases which individual paralegals are handling.
- Each paralegal should make up a report every month, in a requisite format. You should collect each of these, and give feed back to the paralegals on each report.

3.6.6 Other general notes

Our interactions with paralegals should be dialogic (multiple voices, perspectives or discourses engaging and interacting with each other) rather than didactic (one-way instruction). Though we may have more knowledge of law, or more experience with the program, the paralegals often have more knowledge of their clients, their communities, local

customary law, etc. Our program will be strongest if we listen for and respect the paralegals' insights. Directors, managers, lead paralegals, and paralegals should discern the programme's path together.

4 How Government Works

Timap paralegals make the most of their skills – especially advocacy and negotiation skills – when they have a thorough understanding of the institutions they are engaging. This chapter seeks to provide paralegals with information about Sierra Leone’s governmental structures.

Knowledge of how government works is important because of the numerous ways paralegals come into contact with governmental institutions. Paralegals that assist chiefdoms in negotiations with mining corporations need to understand the Ministry of Mineral Resources licensing process. Paralegals advocating for farmers must interact with Ministry of Agriculture officials. Paralegals must often explain the formal and customary court systems to clients, or need to know government commitments in the areas of health and education.

After an overview of the branches of government and a description of the legal system, this chapter describes the ministries paralegals most frequently encounter. The sections also contain suggestions of how paralegals might approach certain issues involving particular government bodies.

4.1 The Branches of Government

Sierra Leone has three branches of government: the Executive, Legislative, and Judicial.

Generally, the Executive branch implements laws, the Legislative branch makes laws, and the Judiciary interprets laws. The Executive branch includes the President and his Ministers; Parliament is the primary body of the Legislative branch; and courts make up the Judiciary.

Other institutions, including traditional authorities (e.g. Paramount Chiefs) and local councils are also part of the structure of government in Sierra Leone.

4.1.1 The Executive Branch

Chapter V (sections 40 to 73) of the [Constitution of Sierra Leone, 1991](#) (Act No. 6 of 1991) deals with the Executive Branch of Government.

The President and his Ministers form the Executive branch of government. The President acts as both head of state and head of government. He is also Commander-in-Chief of the Armed Forces. The President is elected by popular vote and is limited to two five-year terms in office. He appoints Ministers who must be approved by Parliament.

The executive power of the State vests in the President, and he may exercise it directly, or through his Cabinet Ministers, Deputy Ministers, or public officers. The Ministers advise the President, determine the general policy of the Government, and are charged with the responsibility of heading government ministries. Examples are the Ministry of Finance, the Ministry of Social Welfare, Gender and Children’s Affairs, etc. Permanent Secretaries, who are public officers, are charged with the responsibility of supervising government departments.

The President's functions include concluding international agreements, conferring national honours and awards and exercising his prerogative of mercy in favour of convicted or condemned criminals. He exercises this power in accordance with the advice of a Committee appointed by Cabinet and headed by the vice-president.

The Attorney-General, who is also a Minister, is the principal legal adviser of the Government. He is appointed by the President and should be qualified to hold office as a Justice of the Supreme Court. That is to say, he should be qualified to practice as counsel, and should have been qualified to practice for a period of not less than twenty (20) years.

4.1.2 The Legislative Branch

Chapter VI of the Constitution establishes the Legislative branch of government, which is also known as Parliament. Members of Parliament are elected by members of their constituencies to represent them in the Legislature. Parliament consists of the President, the Speaker, and Members of Parliament. In addition to the elected members of Parliament, 12 Paramount Chiefs are elected by the Council of Paramount Chiefs of the District through an elector college (supervised by the National Electoral Commission) to represent the 12 districts in Parliament. The Speaker presides over sessions and in his absence, the Deputy Speaker presides.

The main function of Parliament is to make laws for the peace, security, order and good governance of the country. Members of Parliament are divided into Standing Committees. Each Committee has the responsibility to investigate and inquire into the activities or administration of the government ministries and departments to which they are assigned. The Committees are as follows:-

- the Legislative Committee;
- the Finance Committee;
- the Committee on Appointments and Public Service; the Foreign Affairs and International Co-operation Committee;
- the Public Accounts Committee;
- the Committee on Privileges;
- the Standing Order Committee; and
- such other Committees that may be established by Parliament.

The Constitution guarantees members of Parliament the freedom to speak and debate, and to carry on their proceedings freely. Therefore, no civil or criminal action will lie against any Member of Parliament for anything said by him in Parliament.

Parliament is dissolved at the expiration of 5 years, commencing from the date of its first session after a general election. This period can be extended by the President in a state of Public Emergency when it is impracticable to conduct general elections.

4.1.2.1 How a Bill becomes Law

A Bill may be introduced in Parliament by a Minister, or a member of Parliament. It becomes law only if it goes through the stages below:-

1. The First Reading: Here the Bill is read and its purpose and objectives are explained to Members of Parliament. No voting takes place at this stage, and the Bill must have been published in at least 2 issues of the *Gazette* before the first reading. At this stage, Members are given an opportunity to study the Bill further in order to be able to deliberate on it.

2. The Second Reading: At this stage, the Bill is deliberated upon, and members vote. In order for the Bill to proceed to the next stage, it should be supported by a vote of not less than two-thirds of the Members of Parliament.

3. Committee Stage: During this stage the Bill is assigned to a Standing Committee, which examines it 'line by line and clause by clause'. Major amendments can be proposed by members of the Committee who report back to the house. .

3. The Third Reading: At this stage the Bill is deliberated upon and the amendments are considered and voted on by Members for a final time. A two-thirds majority is required. This bill is then sent to the president.

4. Presidential Assent: The President must sign the Bill for it to become an Act of Parliament. He may sign or refuse to sign. By refusing to sign, he has exercised his presidential veto. When he vetoes a Bill, the Bill may be sent back to Parliament. If parliament obtains a two-thirds vote on the Bill, it will become law irrespective of the President's refusal to sign. While this is the same fraction required for the original passage of the bill, some of the legislators may have changed their minds in the face of presidential opposition.

The Act is published in the *Gazette*, and it comes into effect on the date of publication or on a date that may be prescribed in the Act itself or any other enactment.

If Parliament wishes to enact a new Constitution, or to alter some provisions of the Constitution, for example, Chapter 3 (the chapter on human rights-freedoms and liberties); the Bill must be approved by a referendum in addition to going through the usual stages of a Bill as stated above. It must be approved by not less than one-half of all persons entitled to vote, and by not less than two-thirds of all the votes validly cast at the referendum. The provisions requiring a referendum in order to be amended are referred to as *entrenched clauses* of the Constitution. Other provisions of the constitution may be amended by two-thirds majority.

4.1.3 The Judiciary Branch

The judicial branch of government – the Courts, both formal and traditional – is dealt with in greater detail in the 5 Law in Sierra Leone.

4.1.4 Separation of Powers/Checks and Balances

The three branches of government are separate; meaning they each have their own particular functions and independence. Though each is separate and independent, the system of “Separation of Powers and Checks and Balances” comes into play in the exercise of their functions. Separation of powers/checks and balances means that each branch is independent of the other, but can also act as a “check” on the other branches to keep power “balanced” across the government. Here are few examples:-

- If the Legislative branch (Parliament) passes an Act that contravenes the Constitution, the Judiciary has the power to declare the Act null and void. In this instance, the Judiciary is acting as check on Parliament in its function as the law maker.
- On the other hand, Judges and members of the Executive, when appointed by the President, must be approved by Parliament. Parliament serves as a check on the Executive power of the President. Without Parliament approval, the appointees will not hold office.
- The President checks the power of the Judiciary through the exercise of the prerogative of mercy. Persons who are convicted by the Court may be pardoned by the President.

The doctrine of separation of powers in Sierra Leone

As a model of democratic governance, separation of powers envisages a separation or division of the three branches of government to ensure that a branch does not become too powerful thereby overwhelming the others. This division is normally on three fronts: control, personnel, and function. However, the business of running a government in Sierra Leone necessitates some measure of cooperation among the three arms of government, otherwise government activities would grind to a halt. The Constitution of Sierra Leone is realistic enough to recognise this and that is why it has provided for a level of collaboration among the three branches while striving to retain the independence of the judicial arm. For example, the president, though the head of the executive arm, also plays a vital role in parliament and in the legislative process. Section 73 of [the constitution](#) stipulates that parliament shall consist of the President, the Speaker and Members of Parliament. Also, even though the power to make law is vested in parliament, the executive branch can make laws through delegated legislation. Finally, the executive can exercise judicial functions by setting up administrative tribunals.

4.2 The Legal System

This section looks more closely at the judicial branch of government (though the legislative branch is also relevant) by providing an overview of the legal structures in Sierra Leone. Important topics include the sources of law and the formal and traditional court systems.

4.2.1 The Legal Territory of Sierra Leone

The legal definition of the territory of Sierra Leone is found in the first schedule of the 1991 [Constitution](#) (Act No.6 of 1991). Sierra Leone is composed of two territories: (1) The Western Area, consisting of the Peninsular, Islands of Sherbro, Plainain Banana, Turtle, York and Tasso; and (2) the Provinces. The former was formally known as the “Colony” and the latter as the “Protectorate.”

4.2.2 The Judiciary

The judicial power of Sierra Leone is vested in the judiciary, and the Chief Justice is its head. It is the third organ of Government and has jurisdiction over criminal and civil matters, matters relating to the Constitution, as well as other matters for which Parliament confers jurisdiction to the judiciary.

There are two main components of the judiciary: (1) The Superior Court of Judicature and (2) the Inferior Court. The Superior Judicature consists of the Supreme Court, the Appeal Court and the High Court. The Magistrate Courts and the Local Courts are referred to as the Inferior Courts.

1. *The Supreme Court*

The Supreme Court comprises the Chief Justice, at least four other Supreme Court Justices, and such other Superior Court Judges of Sierra Leone or of other countries whose laws are similar to the laws of Sierra Leone (mainly Commonwealth countries) as the Chief Justice may request to sit.

The Supreme Court is the final court of appeal for criminal and civil cases. It exercises supervisory jurisdiction over inferior courts and issues orders and directions to them as it deems necessary. The Supreme Court has original and exclusive jurisdiction to interpret and enforce the Constitution of Sierra Leone, to determine whether Parliament acted in excess of its power in enacting any provision in the Constitution, or whether an Act of Parliament is unconstitutional.

If an issue of interpretation arises in any court, the proceedings must be stayed and the matter referred to the Supreme Court for interpretation. The quorum of the court should include a) one justice (in criminal cases relating to an application; and if refused the matter may be heard by 3 or 5 justices); b) three justices (in civil cases) and c) the full quorum is 5 justices with the Chief Justice presiding. In his/her absence, the most senior Justice will preside. The Supreme Court is not bound by its previous decisions.

2. *The Court of Appeal*

The Court of Appeal comes next in hierarchy to the Supreme Court. It comprises the Chief Justice, at least seven Court of Appeal Justices and such other judges of the

superior courts as the Chief Justice may request to sit. A panel of any three Justices of the Court of Appeal or any other Justice of the superior courts appointed by the Chief Justice will hear all cases.

The Court of Appeal has an appellate function and hears civil and criminal appeals from the High Court. The court also has the power to supervise the lower courts such as the High Court and Magistrate Court. The Court of Appeal is bound by its own previous decisions and all inferior courts are required to follow its decisions on points of law.

3. *The High Court*

The High Court is comprised of the Chief Justice, at least nine High Court Justices, and such other judges of the superior courts as the Chief Justice may request to sit.

The High Court has jurisdiction to hear any criminal or civil matter that comes before it for trial at first instance. It also exercises an appellate function for cases from the Magistrate Court, and it has supervisory jurisdiction over the Magistrate and Local Courts.

4. *The Magistrate Courts*

Magistrate Courts operate as courts of first instance for summary and hybrid criminal offences and less serious civil matters (disputes concerning up to Le 5,000,000). There are some exceptions, in that Magistrates cannot hear actions for libel, slander, false imprisonment, malicious prosecution, seduction or breach of promise of marriage. Magistrates Courts reportedly deal with about 80 percent of all cases in the formal court system.

Magistrate Courts do not have jurisdiction over more serious offences such as murder, treason, aggravated robbery, and rape. Such cases must, however, be heard on Preliminary Investigation (PI) to determine whether there is sufficient evidence to warrant a committal to the High Court for trial, unless special permission is obtained from a judge or with the direction of the Attorney-General. Such offenses are referred to as “indictable offences.”

Magistrate Courts however, have power to conduct summary trials on offences such as simple larceny, domestic violence offences, and most offences under the Public Order Act 1965. This means that for these cases the court can start and finish a case (hear evidence from the prosecution and defence and give judgment). The Magistrate can caution, fine or commit the accused to prison or can caution, fine and commit at the same time.

The Magistrate Courts also sit as District Appeal Courts (DAC), in which capacity the court hears appeals from the Local Courts. When it sits as a DAC, the Magistrate sits with assessors, who advise him on the customary law of that community. Assessors are members of the community that are presumed to be knowledgeable in the customs and traditions of that community. The Magistrate is not bound by their advice.

Appeals from the DAC are heard in the Local Appeals Division of the High Court, in which a High Court Judge also sits with two assessors. Further appeals can be made to the Customary Appeals Division of the Court of Appeal and to the Supreme Court.

Juvenile Courts exist in parallel with the ordinary Magistrate Courts to try children and young persons in conflict with the law. Outside Freetown because of a lack of sufficient magistrates, there is no special Juvenile Court. However, the magistrate court sits on specific days or times to hear child matters. The Magistrate sits with two Justices of the Peace when hearing matters relating to children.

5. *The Local Courts*

The Local Courts have limited jurisdiction to hear criminal and civil cases governed by customary law. They can hear and determine all criminal cases where the fine imposed does not exceed Le 50,000 and/or imprisonment for a period of six months, or both such fine and imprisonment. However, in practice, local courts are often not held to this limit. For civil cases the claim, debt, or matter in dispute should not exceed Le 1,000,000, in all cases governed by customary law including those between the paramount chief and tribal authorities involving a question to title to land.

Local courts do not have the jurisdiction to try the following cases:

- Those relating to civil status of persons;
- Cases involving the Government, a company, or a public officer acting in his official capacity;
- Actions founded on libels, slander, false imprisonment, malicious prosecution, seduction, and breach of promise of marriage;

Local Courts administer customary law, which applies predominantly to ethnic tribal communities and is derived from their respective customs and traditions. The court regulates matters relating to customary marriage, divorce, title to land etc. The procedure and practice of the Local Court is also governed by customary law.

The Local Court Chairman presides over the court. He is assisted by a clerk of court, a finance clerk, chiefdom police, bailiff, etc.

Local courts are advised, supervised, and their decisions reviewed by Customary Law Officers (CLOs) attached to the office of the Attorney-General. The CLO is a qualified lawyer. He advises the Local Court on matters of law and organization, and can also train Local Court personnel. Currently, there are three CLOs, one in each of the 3 provinces in the country.

There are also Local Court Supervisors who mostly reside in the community and who assist the CLO with his administrative functions.

(NOTE: Please also see the *Paralegal Manual* chapter on 5.9 Customary Law.)

A few other courts complement the Superior Court of Judicature and the Inferior Court described above.

1. *Coroners Court*

The Coroners Court is established under the Coroners Act (Chapter 9 of the Laws of Sierra Leone 1960 as amended by the Coroners (Amendment Act) Act No. 62 of 1961). The court has power to hold an inquest or inquiry on the body of a deceased person when there is a reason to suspect that the person died from violence or unfair means, or by culpable negligent conduct of another person. The President appoints a Coroner to conduct the inquiry.

2. *Court-Martial*

A Court-Martial has power to try persons subject to military law (i.e. military personnel). The court can try and punish persons subject to military law for military offences within their exclusive power, and civil offences that can also be tried in the civil courts. The court has similar status with the High Court. The court was established by the Sierra Leone Military Forces Act No. 34 of 1961.

The convening officer – who may either be the Force Commander, a General, Brigadier, Colonel, or any officer of corresponding rank commanding a troop – has the power to convene a Court-Martial, and he may appoint a Judge Advocate to advise the court on questions of law and procedure during the proceedings and before the court deliberates on its findings. There is a right of appeal from any decision of a Court-Martial to the Court of Appeal, and an appeal from a death sentence shall lie to the Court of Appeal as of right pursuant to section 129 of The Armed Forces of the Republic of Sierra Leone (Amendment) Act, 2000. The Supreme Court has power to supervise a Court-Martial.

Paralegal Tips: Dealing with the Military

Those paralegals that find themselves working in communities with military barracks will find it a challenge, considering the experience of the civil war, in which most of these soldiers were involved in human rights violations with impunity. Some soldiers refuse to respond to police invitations even when they commit crimes, let alone requests from a human rights office. Nevertheless, problems and cases involving the military may come to the office, and if you don't know the approach of handling matters related to them, you will undermine the effectiveness of the office as a whole.

What to do:

- Familiarize yourself and the office with the senior officers such as the RSM, welfare officer, Adjutant, Military Police, Commanding Officer, etc.
- Talk to the top military officers about the organization, the services provided, and the nature of its operations.
- The best way to approach cases involving military officers is communicating with their superiors—for junior ranks, you can contact the RSM (Paramount Chief of the barracks) and or the welfare officer, and for senior officers, the commander or the 2nd in command should be contacted.
- When communicating, write a simple, polite letter explaining what the complaint is and what you want the authority to do to help handle the matter.

- Don't attempt to directly invite the accused soldier to the office – he is not likely to come.
- Follow up on your letter to confirm what disciplinary action they have taken. If no action has been taken, seeing you will spur them into action. Sometimes, as soon as letters reach the authorities, they will come to the office to confess their wrong deeds and ask you to help them out.
- You may be required to work with the military police if the case is of a criminal nature.

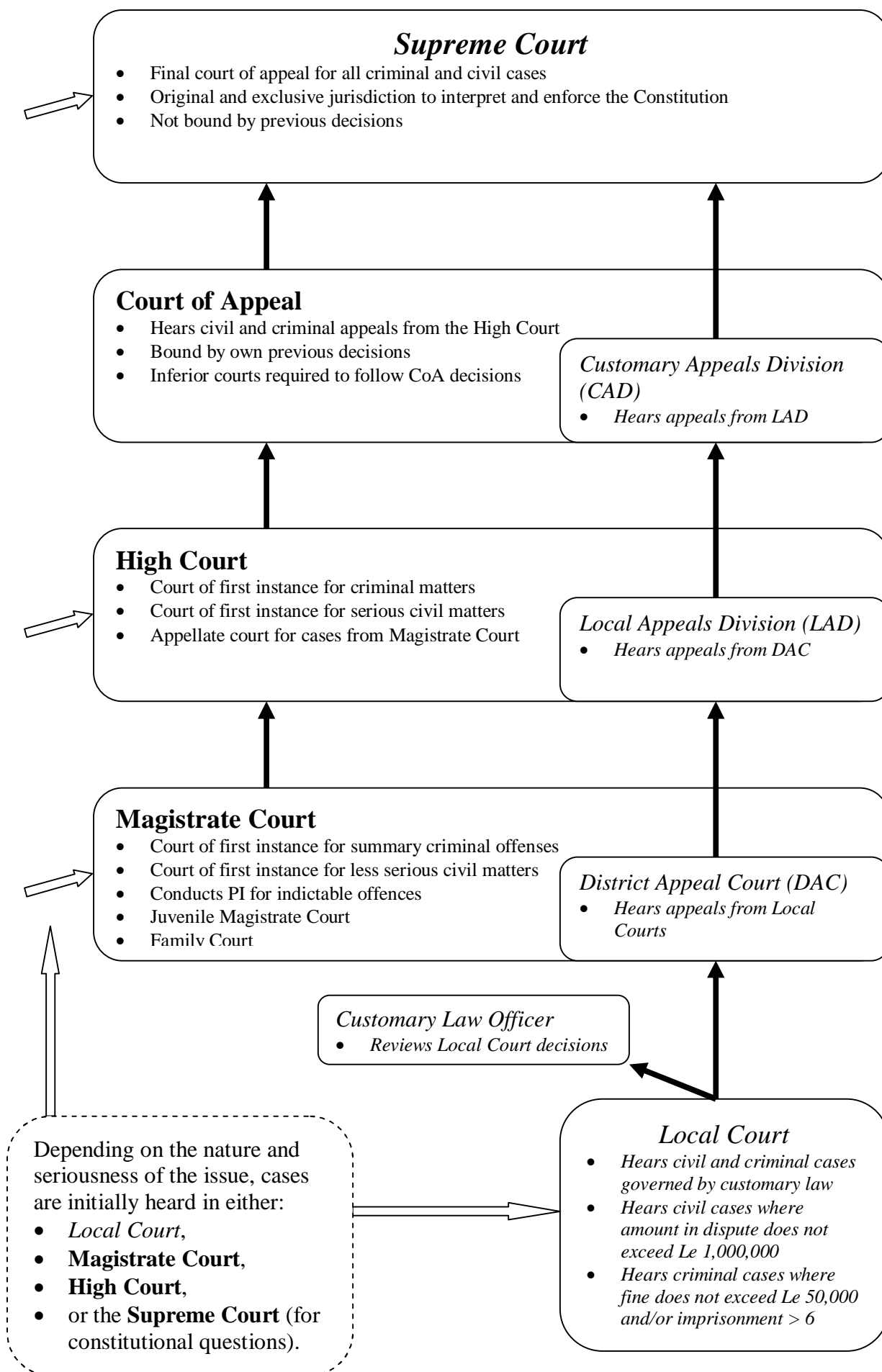
3. *Commissions of Inquiry*

The President may appoint a Commission of Inquiry into any matter of public interest on the advice of Cabinet or by a resolution of Parliament. Chapter IX of the [1991 Constitution](#) provides for Commissions of Inquiry. The Commission has similar powers as that of the High Court or a Judge. The findings of the Commission may result in a penalty, forfeiture, or loss against the person, and be deemed as judgment of the High Court. It also means that the person has a right of appeal to the Court of Appeal. A Commission of Inquiry therefore has concurrent jurisdiction with the High Court.

4. *Institution of Tribal Headmen*

Tribal headmen are appointed by their tribesmen to act as the head of that tribe within the Western Area. A tribal headman may adjudicate in a dispute between members of his tribe arising out of customary marriage or any act contravening any laws governing customary marriage. They also have power to assist the police in the discharge of their duties, help in collecting taxes, and may act as liaison between the government and his tribesmen. A tribal headman cannot exercise judicial functions of a civil and criminal nature in respect of members of his tribe. The institution is governed by the Tribal Administration (Western Area) Act (Cap 78 of the Laws of Sierra Leone 1960 as amended by the Tribal Administration (Western Area) (Amendment) Act Acts 11 and 17 of 1975).

The Judiciary: Formal and Customary Systems



4.3 Other Government Bodies

4.3.1 Local Government

In 2004, Parliament passed the **Local Government Act, 2004**. The Act mainly provides for decentralising and devolving powers and services to local councils. This means that some functions initially performed by the central Government will be transferred to Local Councils. The Local Councils are made up of the Mayor (and in other areas a Chairman), councillors and paramount chiefs who are selected to represent the interest of their chiefdoms. The localities are delineated into wards from which a councillor is elected. The Mayor or Chairman, as the case may be, is elected by the locality, and every Council comprises a membership of not less than 12 people. There are Local Councils in each of the 12 Districts, and the Western Area. Councillors serve a term of four years.

Local Councils have executive and legislative powers, and they are responsible generally to promote the development and welfare of the people of their locality. They are to use the resources and capacity at their disposal, and to mobilise these resources from the central government, national and international organizations, and the private sector. Other functions include, but are not limited to, the following:

- to mobilise human and material resources for development of the locality;
- to promote and support productive and developmental activities;
- to initiate programmes to develop the infrastructure of the locality, and provide employment and services for the locality;
- ensure the security of the locality through the cooperation with relevant agencies
- oversee Chiefdom Councils in the performance of their functions;
- determine local tax rates; and
- approve the annual budgets of Chiefdom Councils, and supervise their implementation.

The Ministry of Local Government supervises and monitors the performance of Local Councils. It is responsible for setting out matters of policy and providing technical guidance to the Councils.

Local Councils can delegate any of their own powers to Chiefdom Councils, a body of persons, or a person as it thinks fit. The institution or body to whom power has been delegated is required to submit a written quarterly report (on accounting and other financial matters) to the Council. Such a report is to be displayed in the locality, or ward of the chiefdom for the public.

4.3.2 Office of Paramount Chief

Paramount Chiefs (and other traditional chiefs) are another major governmental structure in Sierra Leone. [The Constitution](#) in section 72 (1) guarantees and preserves the existence of the chieftaincy institution. There are 149 chiefdoms, and each chiefdom is ruled by a Paramount Chief. Under [The Chieftaincy Act, 2009](#), a person is qualified to be elected chief if:

- he was born in wedlock to a rightful claimant in a recognised ruling family in the chiefdom
- he has direct paternal lineage to a rightful claimant in a ruling family, whether he is born within wedlock or not.

A ruling house must have been established and in existence at the time of independence - 27th April, 1961. Chiefdom Councils elect the Paramount Chief, and the government is authorised only to facilitate a fair and transparent election process.

The polling at a chieftaincy election is supervised by the Electoral Commission, and its decision is final. The Provincial Secretary is the Presiding Officer.

The functions of the Paramount Chief include safeguarding traditions and customs and resolving disputes. They are regarded as custodians of the land. They are highly respected and command a lot of influence in their chiefdoms.

Chiefdoms are divided into sections, towns and villages. Sections Chiefs are elected by Chiefdom Councillors in their sections in accordance with the customs and traditions. Town Chiefs, on the other hand, are elected by members of their communities (taxpayers) according to their respective customs and traditions. Section chiefs, town chief and village headmen are answerable to the Paramount Chief.

The Chiefdom Speaker is the principal assistant to the Paramount Chief. He is appointed by the Paramount Chief after consulting with his Chiefdom Committee. The Chiefdom Speaker can be removed from office by the Chiefdom Administration on the advice of the Chiefdom Committee for misconduct.

[The Constitution](#) (section 72 (4)) and Part V of [The Chieftaincy Act, 2009](#), provide for a Paramount Chief to be removed from office by the President for gross misconduct in the performance of his duties. The President sets up a public inquiry upon the recommendation of the Ministry of International Affairs and Local Government. If adverse findings are made against the Paramount Chief, he would be removed if the President is of the opinion that it is in the public interest. The Chieftaincy Act further requires that he be suspended from office during the inquiry.

The Act requires an election of a new Paramount within 12 months after a vacancy occurs. The Minister of Internal Affairs appoints a Regent Chief to hold office until such election. If by custom, this position is reserved for anyone other than the person appointed by the Minister, the customary law shall apply to such appointment.

Paralegal Tips: Navigating Local Authorities

Be aware that some local authorities, chiefs, and headmen are not happy to see us in their communities. They fear that we have taken over a profitable area they had claimed (i.e. cases they were presiding over and fining people for). Such authorities often run courts that are illegal according to Section 40 of the [Local Courts Act of 1963](#), but people somehow accept them in the chiefdoms. They come to dislike us even more when they learn that our services are free of cost.

Yet, these people can also be very useful, and good relationships must be maintained

with them if we are to succeed with public support in our communities of operation. They are useful for consultations on sensitive customary issues, for instance. You can even delegate certain cases to them when appropriate, including cases involving sensitive customary law issues. Overall, cooperation and collaboration can have its benefits.

What to do:

- Introduce yourself as soon as you enter any new community to the chief/headman.
- Show respect for them – don't attack or undermine them openly.
- Take your time in probing cases they will be handling – consult your C.O.B. when doing so, as well. They can be very useful in this area as most of them are also knowledgeable in customary law.
- Allow chiefs to handle ordinary mediation cases that come to them. Make them aware of section 40, and tell them it is illegal for them to fine people.
- Traditional authorities are allowed to receive small tokens called “Bora” in Temne and “Famalo” in Mende. This is a token given to the traditional chief to get their attention and to listen to a complaint or whatever type of issue.

4.4 Education Policy: The Ministry of Education

Timap paralegals often handle cases touching on education. For example, clients may report problems concerning illegal school fees or forced child labour during school hours. This chapter describes important structures and policies you may deal with in cases touching on education.

4.4.1 Structure

The Ministry of Education, Science and Technology (MEST) oversees education in Sierra Leone.

Most of the relevant policies and laws appear in the Education Act of 2004. MEST also developed an Education Sector Plan in 2007 which outlines the country “goals and aspirations for education up to the year 2015”. In 2010 a White Paper on Education was issued, which outlines principles of education reform that the Government intends to implement.

The ‘MEST Inspectorate’ is responsible for monitoring and supervising the performance of all aspects of the school system through regular inspection. This includes ensuring standards are set, maintained and improved upon; compliance with National Education Policy, rules and regulations; preparation of good data reflective of the actual enrolment, teacher numbers and number of schools, and making this data available (See School Inspection Forms Foreword).

There are four levels of education in Sierra Leone:

- Primary School
- Junior Secondary School (JSS)

- Senior Secondary School (SSS) or technical vocational education
- Tertiary education (e.g. university)

Children are required to attend school through ‘basic education’, i.e., six years of Primary School and three years of Junior Secondary School.

4.4.2 School Fees and Subsidies

The Education Act of 2004 establishes that there are no school fees for the six years of government provided basic education (Primary School or Junior Secondary School). In practice however, this has not been implemented, and while Primary is free, only girls get partial subsidy for JSS: JSS1 is free for girls (through a subsidy of Le 60,000), JSS2 girls get two terms paid (a subsidy of Le 40,000), JSS3 girls get one term paid (Le 20,000) (figures confirmed by MEST PA). Otherwise JSS is not free.

Private Primary and Junior Secondary schools are restricted from charging “unreasonable fees.” Girls who opt for Science Subjects get their education fully subsidised up to university level.

Government subsidies are designed to cover the essential needs of their schools. Still, they might not cover all expenses. A community might be asked, or decide, to contribute to the genuine need of a school, at which point it is at the discretion of the community and the school’s parents to support such a need. These contributions should be approved by a School Management Committee (described below) public meetings, and then be approved by the Ministry. Voluntary activities like sport are also not exempt from charges, but again can’t be forced. It is illegal for children to be turned away from school for not making such a payment.

The fees for primary are paid from MOFED to Local Councils as follows: as long as there is learning activity taking place with a minimum of one teacher and three pupils, Local Councils have to report the activity to MOFED which will pay Le 3,000 per term per child registered in the school (Le 9,000 per year). That is regardless as to whether schools are registered with MEST or not.

Community schools (see chart below) can apply for funding if they meet the government criteria. The chart contains further details concerning fees and subsidies for several levels of schooling:

Types of Schools	Govt-assisted schools	Private schools	Community schools
Pre-primary education		<p>Almost entirely run by private institutions and therefore not standardised. The government does not have much control over these schools, but Ministry of Education officials say a curriculum is currently being formulated.</p>	
Primary schools	<p>Approved and financially assisted by the government. Must abide by government conditions.</p> <p>The government pays each school Le3,000/student/term – a total of Le9,000 per year for each child. This fee subsidy covers day-to-day running of the school, including repairs and cleaning materials.</p> <p>Teachers' salaries, exam fees, and teaching materials are provided by the government separately. These teaching materials do not include books for students to take home and study with in the evening, so parents may be encouraged to purchase these materials if they can in order to assist their child's education.</p> <p>To ensure transparency, schools should have two bank accounts – one for fee subsidies and one for teachers' salaries. This is not always the practice, especially in small, rural schools. Also, fee subsidies are sometimes used to supplement teaching materials, especially where there are big schools and government quotas don't meet demand.</p>	<p>Required to follow the national curriculum, but the government doesn't control the fees.</p>	<p>Owned by the communities in which they operate.</p> <p>Some community schools do not receive government assistance, but others are a collaboration with the government and NGOs.</p> <p>These schools are part of a drive for full national education.</p>
JSS	<p>Each student is required to pay Le20,000 per term for fees. Principles often prefer annual payments but this can't be enforced.</p> <p>The government pays exam fees for the Basic Education Certificate Examination (BECE)</p>	<p>These take the same form as private primary schools.</p> <p>Exam fees are not covered by the government.</p>	
SSS	<p>Each student is required to Le25,000 per term for fees.</p> <p>The government pays the exam fees for West African Schools Certificate (WASC).</p>	<p>These take the same form as private primary schools.</p> <p>Exam fees are not covered by the government.</p>	

Sierra Leone has a number of illegal schools—schools that are not government-registered. The government tries to regulate these schools rather than shut them down and deprive children of their education. According to Ministry officials, “[t]he Government Recognition of Schools Policy is overlooked in communities for the bigger goal of getting all children into schools.”

The government is responsible for maintaining government-owned school structures. For other schools, the responsibility belongs to the school and its proprietor (e.g. the City Council, SLMB, Roman Catholic Church, etc.). School committees and the community should lobby these organisations, not the government.

4.4.3 Policies Regarding Teachers

4.4.3.1 Salaries & Attendance

In government-assisted schools, teachers get paid by the government. For this to happen, every teacher is required to be in school every teaching day for the whole day, unless they are sick and taking their sick-allowance.

Paralegals should approach the School Management Committee (described below) for primary schools if teachers are not attending school. If the School Management Committee fails to respond, and for secondary schools, the paralegal can approach the Local Inspectorate, and/ or the Education Committee of the Local Council. They can also approach the Education Secretary of the agency or mission to which the school belongs, if the school is a government assisted school or founded by a religious denomination. Alternatively, the paralegal may take up the issue with the Deputy Director of Education at the District Education Office by writing to him/her formally, clearly presenting the issue.

In cases of non-payment of teachers’ salary, the most appropriate course of action will depend on whether the teacher is on the government pay roll or not. If the teacher is on government pay roll, the paralegal should advise the head of the school, or the teacher themselves, to go to the Ministry of Education office in Freetown, taking along a photocopy of the voucher for the last month at which the teacher was paid, and the month in which his name was deleted and/or not paid. If the teacher has never been on the government pay roll, the paralegal can try to advocate through or seek advice from the District Education Office to have him/ her inserted on the pay roll: DEOs do not have authority over recruitment, but may be able to advise on the process. The district office will provide information on teachers’ recruitment, including when to apply and the application procedure for approval. Through such advocacy, it may be possible to place the school on the priority list for teachers’ recruitment.

Alternative routes for complaints reporting are set out in the teachers’ **code of conduct**. According to the code of conduct, reports can be made to the following bodies:

A. Pre/Primary School

- i. Guidance Counselor/ Class Teacher
- ii. SLTU school representative
- iii. Head of School/School Administration/ Complaints Committee

- iv. School Management Committees (SMCs), Community/ Teacher Association (CTAs), Child Welfare Committees (CWCs)/ Teachers Union
- v. District Education Office/Appropriate Local Council/Local Authority/ District MSWGCA office
- vi. Ministry of Education Youth and Sports/Complaints Committee
- vii. Teaching Service Commission (nb. Not established at time of publication)

B. Junior Secondary School

- i. Guidance Counselor/Form Teacher
- ii. SLTU school representative
- iii. Head of School/School Administration/Complaints Committee
- iv. Board of Governors
- v. Community/Teacher Association (CTAs), Child Welfare Committees (CWCs)/ Teachers Union
- vi. District Education Office/Appropriate Local Council/Local Authority/ District MSWGCA office
- vii. Ministry of Education Youth and Sports/Complaints Committee
- viii. Teaching Service Commission (Not established at time of publication)

C. Senior Secondary/ Technical /Vocational Institute

- i. Guidance Counselor/ Form Teacher
- ii. SLTU school representative
- iii. Head of School/ School Administration/ Complaints Committee
- iv. Board of Governors
- v. Community/ Teacher Association (CTAs), Child Welfare Committees (CWCs)/ Teachers Union
- vi. District Education Office/ Local Authority/ District MSWGCA office
- vii. Ministry of Education Youth and Sports/Complaints Committee
- viii. Teaching Service Commission (Not established at time of publication)

4.4.3.2 Teacher Qualifications Policy

Government policy requires all teachers to have a professional certificate or a license issued by the Ministry of Education.

In terms of qualifications, the Ministry seeks individuals with a Teachers' Certificate (TC) or Higher Teachers' Certificate (HTC) at primary school level, and HTC/degree holders/teacher qualifications at secondary school.

Nonetheless, schools are not always staffed by qualified teachers due to a shortage of supply – about 40% of teachers nationwide are untrained and unqualified ('UU Teachers'). Section 36 of the [Education Act 2004](#), which spells out the certificate and licensing requirements, indicates that the Ministry can issue a license if the Minister is satisfied that "such person is in all respects suitable so as to warrant his employment as a teacher in a school." As such, given the high proportion of UU Teachers, community schools' teachers' lack of qualification is not a barrier to recognition.

However, there is a government ceiling on teacher recruitment, so no recruitment of new teachers took place for several years before this manual's publication. The Education Sector Plan 2007 and the White Paper 2010 stress the importance of upgrading the skills of existing

unqualified teachers. A short term recommendation in the White Paper 2010 reads: “Training of all Untrained and Unqualified Teachers throughout the country through well-structured training programmes.”

4.4.3.3 Teacher/Student Ratios

The government required minimum staff to student ratio is 1:50 at primary school and 1:40 at secondary school, in theory. This requirement only applies to government assisted schools. In practice, the Education Sector Plan 2007 states “The country average is 66 pupils to a teacher and 112 pupils per qualified teacher.” If a school has a ratio lower than this (say, 160 students and only 2 teachers), and if there aren’t other schools at a reasonable distance (no specific distance was given, so this is perhaps determined at the district level), then the government is obliged to either recognize an existing community school or employ additional teachers so that the ratio is met.

The government’s major restriction for acceptance into schools is space. [The Education Act 2004](#) requires that “Every citizen of Sierra Leone shall have the right to basic education which accordingly shall be compulsory and shall be designed to provide facilities for all citizens to be literate and numerate and help them cultivate the knowledge, skills and attitudes that will enable them to earn a good living.” (Section 3(2)(a))

4.4.4 School Management Committees (SMCs)

SMCs are legally required for all government-assisted primary schools under the Education Act 2004. They are responsible for the day-to-day running of the schools and administration. They should act as a check-and-balance to ensure the smooth and transparent running of the school.

According to the Education Act, Section 33(2), an SMC should include the head teacher, the inspector of schools (or a representative), the proprietor’s representative, the chairman of the Community Teacher’s Association (CTA), the traditional ruler of the village or area, a female representative of the Chiefdom Education Committee, and a prominent educationalist.

Ministry of Education officials say that most SMCs exist on paper rather than in practice. However UNICEF is now providing a training package for SMCs, and MEST should have trained 300 – 400 SMCs by the end of 2011.

4.4.5 Community Teacher Associations (CTAs)

CTAs are boards that consist of members of the community and teachers, who make suggestions and give advice to schools. However, they hold no enforceable powers, but report to the SMCs, which would then implement ideas and suggestions.

4.4.6 WFP Feeding Programme

The World Food Programme (WFP) runs a school feeding programme that provides daily lunches to school children. As of October 2008, WFP estimates it reaches some 225,000 students in more than 900 government-assisted schools across eight districts in the North, South, and East.

Not all schools benefit from WFP's assistance. There are a number of conditions to eligibility. A school must:

1. Be accessible
2. Have an active School Management Committee (SMC)
3. School authorities and SMC willing to coordinate and ensure the provision of condiments by the students' parents
4. Have a kitchen (can be achieved after school is approved for the program)
5. Have a toilet (preferably separate facilities for boys and girls)
6. Be government-assisted
7. Have acceptable school infrastructure
8. Have an adequate store room in the school or in a secure area on school grounds
9. Have a potable water source
10. Have an updated daily class register to be used to determine food requirements
11. School-based food management committee with a school food focal person (preferably a female teacher) (can be achieved after school is approved for the program)

Some paralegals have reported some misuse and abuse of the WFP programme. For example, there have been reports of meals being diverted from the school children to workers associated with the school.

4.4.7 Student Exploitation

Because they are particularly vulnerable, students may also be exploited in other ways, including physically, sexually, and monetarily. Such forms of exploitation are also in violation of the Child Rights Act of 2007. See also CRC, Act. 36. These forms of exploitation may rise to the level of criminal behaviour on the part of teachers or administrators. Such conduct should be reported to local child panels and/or to the police depending on the circumstances.

Students cannot be compelled to perform work for teachers. Note that Section 32 of the [Child Rights Act 2007](#) protects children from exploitative labour and explains "Labour is exploitative of a child, if it deprives the child of its health, education or development." The Teachers Code of Conduct, also states that, '(3) Teachers and other education personnel shall:... (c) establish and maintain zero tolerance for all forms of sexual and gender-based violence, exploitation and abuse, physical and humiliating forms of punishment, psychological abuse, and child labour'. As such, a teacher is not allowed to make the students perform labour for the teacher's personal benefit.

The best way for you to deal with a child labour issue is to firstly call general teacher meetings to inform them that it is wrong, rather than target specific teachers. If this advocacy/education approach fails, then the teacher should be reported to the SMC, or other reporting systems as set out above.

PARALEGALS AT WORK: addressing child labour in schools

Following complaints from some community members, paralegals in Binkolo-Safroko Limba Chiefdom in the Bombali District office observed widespread use of pupils as labourers on the farms of teachers and other people in the community. It had been the habit of teachers especially during the farming season to use these pupils as free labour to work on farms. Some teachers, it was discovered, even took money from other people in the community in exchange for the children's services. Sometimes, this is done during school hours when the pupils are in their uniforms. To help resolve this problem, the paralegals and the lead paralegal conducted an investigation-documenting incidences, noting down names of schools and teachers involved, the type of work the kids did, etc. After the investigation, the paralegals held several meetings- first with the heads of schools and separate staff meetings in all the affected schools within Binkolo.

All the meetings were productive as the heads of schools and the teachers admitted that such practices were taking place. In the heads of schools meeting, they thanked Timap for Justice for identifying the issue and promised to work with the paralegals in addressing it. During the meetings, the paralegals referred to the education act of 2004 and the child rights act of 2007. Section 32 of the child rights act was particularly useful-it provides that "***no one shall subject a child to exploitative labour***" and sub-section 2 defines exploitative labour as "***any labour that deprives a child of his health, education and development***". Bills/posters reflecting these provisions were made and distributed to the schools to be posted on their notice boards. At the secondary school, the principal requested that we also talk to the students themselves. According to him, the kids need to know their roles and responsibilities as students and to be empowered to resist teachers who ask them to go and work on farms. This was done at a general assembly of the entire school. As a result of the paralegals' actions, the practice has been halted in the community and the paralegals are now embarking on extending it to other schools in communities outside Binkolo.

4.4.8 Corporal Punishment

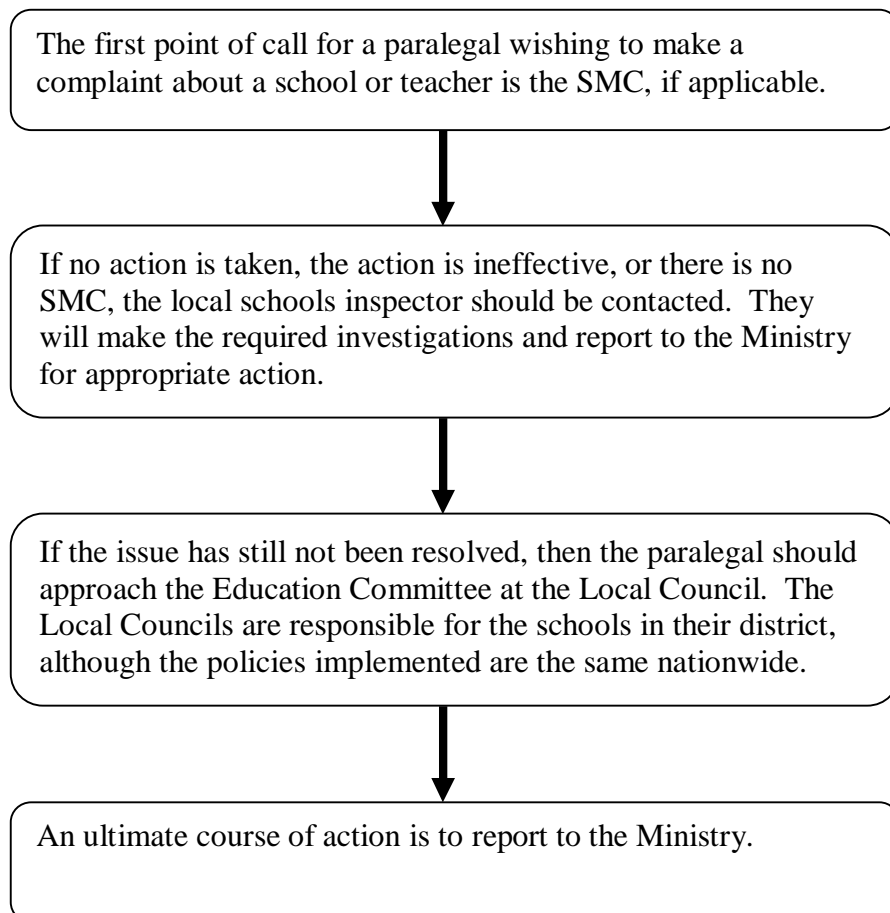
Corporal punishment in schools is prohibited according to the Code of the Conduct for Teachers and Other Education Personnel In Sierra Leone (MEYS, 2009), in which it states that teachers shall "establish and maintain zero tolerance for all forms of sexual and gender-based violence, exploitation and abuse, physical and humiliating forms of punishment, psychological abuse, and child labour".

[The Child Rights Act 2007](#) also repealed The Corporal Punishment Act. Section 33(2) of the Act bans correction of children which is "unreasonable in kind or in degree according to the age, physical and mental condition of the child." Further, "[N]o correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction." However, given the repealing of the Corporal Punishment Act and the terms of the teachers Code of Conduct, it is arguable that all corporal punishment by teachers is prohibited.

Paralegal Tips: Solving Education Problems

- Hold community meetings to explain the education laws, what people are entitled to, and what action should take if there are breaches. Mobile clinics can serve a similar purpose here.
- Conduct surveys. This can be especially useful to find out about non-school-attending children.
- Employ advocacy. Paralegals should use diplomatic negotiations with schools if problems arise, to help improve rather than inflame a situation and disrupt others' education.
- Monitor and follow up any on action resulting from paralegal intervention with the child, parents, the school, the SMC, the inspector, etc. to obtain accurate and insightful information about the specific case and the issue more broadly.

Paralegal Procedure for Lodging Complaints with Schools



4.5 Healthcare Policy: The Ministry of Health & Sanitation

4.5.1 Introduction

Child mortality in Sierra Leone is the highest in the world: more than 25% of children will die before reaching five years old. Life expectancy is 42 years, which ranks Sierra Leone 192nd out of 195 countries. One out of eight women risks dying during pregnancy or child birth. Amnesty International has called the maternal death rate a “human rights emergency.”

Despite the poor health outcomes, a severe shortage of human and material resources, and wide-ranging corruption, Sierra Leone’s health care system enjoys favourable satisfaction rates. In a 2007 survey 90% of respondents expressed satisfaction with government health services. Between 2003 to 2008, only a handful of clients brought health cases to Timap. This discordant co-existence of satisfaction and injustice in health care calls for paralegals to take a proactive approach to the health sector.

Mobile clinic sessions and community meetings are opportunities to initiate health cases. The paralegal can raise communities’ expectations of the health sector by providing information on the services PHUs are charged to deliver, clarifying fees for drugs and procedures, explaining the constraints under which service providers operate, and identifying public health priorities. This chapter attempts to give the paralegal a basic understanding of these topics including policy and reality, both of which are crucial to developing practical solutions to instances of injustice in the health sector.

4.5.2 Institutional Actors and Structure

Sierra Leone’s health system is both publicly and privately funded. It is primarily donor-driven with some input from the government. The country is divided into 13 health districts (one for each district and one for the entire Western Area).

Key Actors:

Ministry of Health and Sanitation (MoHS)

Main responsibilities:

- defines national health strategy;
- provides grants to Councils for primary health care initiatives;
- coordinates monitoring and evaluation (M&E);
- organizes disease-specific programming including malaria, immunizations, HIV/AIDS, maternal health;

Hires and fires health care workers. The 83 at the end of this chapter comes from the Ministry’s *Primary Health Care Hand Book 2007* and illustrates a chain for seeking redress within the health sector.

Councils

Each council has a health committee. Their purpose is to:

- collaborate in management of Peripheral Health Units (PHU) by:

- implementing vaccination campaigns;
- distributing bed nets;
- constructing and equipping primary health clinics.
- Implement Ministry-funded projects, including:
 - the digging of water wells;
 - construction of public toilets;
 - organization of solid waste management schemes.

District Health Management Team (DHMT)

These are responsible for:

- Managing budgets devolved for primary and secondary health care;
- Collection and analysis of M&E data within district;
- Supervising health care workers;
- Procurement and distribution of drugs and medical supplies.

Led by the District Medical Officer (DMO), these comprise a number of different stakeholders², and meet once a month.

Maternal and Child Health Posts (MCHP)

These are situated in villages with populations of between 500 and 2000. They are staffed by MCH Aides who provide antenatal care, supervised deliveries, postnatal care, family planning, growth monitoring and promotion for under-five children, immunization, health education, management of minor ailments, and referral of cases to the next higher level.

Community Health Posts (CHP)

These are situated in small towns with populations of between 2,000 and 10,000. They are staffed by State Enrolled Community Health Nurses (SECHNs) and MCH Aides. In addition to the services provided by MCHPs, CHPs also provide prevention and control of communicable diseases and rehabilitation. They refer more complicated cases to the Community Health Centres (CHCs).

Community Health Centres

Located at Chiefdom level, these usually cover a population ranging from 10,000 to 20,000. Staffs include a community health officer (CHO), SECHN, MCH Aides, an epidemiological disease control assistant and environmental health assistants. In addition to services provided at the CHP level, CHCs address environmental sanitation and supervise the CHPs and MCHPs within the Chiefdom.

District Hospitals

These provide the following services:

- outpatient services for referred cases from PHUs and the population living within its immediate environs;
- inpatient and diagnostic services;
- management of accidents and emergencies;
- technical support to PHUs.

² The Medical Officer or Medical Superintendent or Specialist in charge of the district Hospital, the District Health Sister (DHS), the District Environmental Health Superintendent (DPHS), the Hospital Matron, the Monitoring & Evaluation Office, the Health Education Officer, the District Pharmacist, the Health Administrator or Hospital Secretary, the WATSAN Co-coordinator, Representative of Community Health Officers, Finance Officer, District Operation Officer (D.O.O.), District Social Mobilization Officer, Birth and Deaths Registrar, MCH Aides training Coordinators, and the Disease Surveillance Officer

These hospitals are each led by a District Medical Officer.

Village Health Committee (VHC) / Village Development Committee (VDC)

The role of VHC is not clearly defined or consistent across districts, but includes the following:

- a means of communication between the local population and the service providers and can help resolve problems in health care delivery;
- contribute to monitoring and evaluation;
- support health workers by improving quarters for health workers, organizing community labour to clean and repair health facilities, hosting visitors from disease specific health campaigns;
- negotiate fees for medicines and services;
- resolve disputes between patients and PHUs;
- mediate the relationship between TBAs and PHUs;

These committees should include women, youth, and representatives from villages within the catchment.

United Nations Children's Fund (UNICEF)

Provides medicines and bed nets intended for children and pregnant women to District Medical Stores free of charge.

Non-profit sector

Nonprofit organizations that provide health care services are required to report and coordinate their activities with the Ministry of Health and DHMT and are obligated to report health statistics to M&E Officers.

Pharmacies Board

This certifies private pharmacies and periodically checks quality of medicines. Private pharmacies are often used as a primary point of care, even though they are not equipped to provide diagnostic consultation to patients. The Pharmacy Board is responsible for closing facilities that are posing as independent health care centers.

Other agencies are also active, including mission health services, NGOs, the private-for-profit institutions and traditional healers, complement MOHS services. According to the *National Health Policy* (2002): "All health care providers, both public and private, will be expected to conform to the specific technical policies and treatment protocols referred to in [the *National Health Policy*]. . . . The Government of Sierra Leone recognises the important services provided by many of these agencies and will work towards ensuring complementary and positive relations between the different agencies." The Government therefore acknowledges the importance of traditional practitioners in Sierra Leone, though it intends to specify their relationship with District structures and promote trainings that improve the quality of traditional care.

Monitoring and Evaluation /Data collection

There are Monitoring and Evaluation personnel in each district who collect, manage, and analyse data on a monthly basis. Their reports include data on maternal and paediatric mortality, malaria cases, births conducted at health facilities, births conducted outside facilities, and vaccinations administered. The tally sheets submitted by the health workers monthly to the District M&E should match the patient register books kept at the facility.

They also update facility conditions annually, including water and toilet access, and the presence of staff accommodations. Data is available for each PHU and can be aggregated by chiefdom and district. This data could be useful in the paralegals' work.

Policy and Reality

Human Resources: Health workers are in the national Civil Service. As of October 2009, the government is in the process of decentralizing salary disbursement; Local Councils will disburse salaries to health workers and may have the power to refuse payment to workers. Once a health worker has finished training, he/she is posted to a health facility, and a registration for admission to civil service is initiated. It isn't uncommon for these health care workers to serve a community for years before getting on payroll. In some districts, as much 50% of the staff is off payroll. Bureaucratic failure and resource shortage both contribute to this reality. The existence of unpaid, but posted staff contributes to absenteeism rates, but many nurses on payroll either have never worked at their assigned facility or are frequently absent. Contracts for all health workers can be found in the Government Order. Responsibilities for each level of staff are enumerated in the Primary Health Care Handbook.

Drugs: Under the Decentralization plan, the Ministry of Health has devolved drug procurement to DHMTs. Each District Medical Store purchases drugs from Ministry-approved pharmacies on a competitive basis. The Ministry publishes selling prices for these medicines (appended). The chief health worker from each PHU travels to the district capital to collect drugs from the Store as needed. In some districts, a councillor or other member of local government must co-sign the receipt for the health worker to receive the drugs. Most drugs are sold on a cost recovery basis. The terms of cost recovery are determined at the district level. For example, in Bonthe the health worker pays the District Medical Store 60% of the value of the medicines at their selling prices. The 40% margin is meant to be distributed by the PHU. These "cost recovery" funds are supposed to contribute to the following:

- 5% of the net profit of each health facility shall be deposited in the community account quarterly for minor maintenance and repairs to the hospital or facilities
- Purchase medicines and other Medical/surgical supplies
- Provide incentives for health workers
- Incidental costs related to the cost recovery programme

While districts have control over their own cost recovery plans, selling prices are set nationally.

The Store also distributes medicines donated by UNICEF and ADB. These medicines should be provided to patients for free or at nominal cost. Current lists of UNICEF and ADB medications can be acquired through Freetown and/or their offices at district headquarters.

Data: There are Monitoring and Evaluation personnel in each district who collect, manage, and analyse data on a monthly basis. Their reports include data on maternal and paediatric mortality, malaria cases, births conducted at health facilities, births conducted outside facilities, and vaccinations administered. The tally sheets submitted by the health workers monthly to the District M&E should match the patient register books kept at the facility. They also update facility conditions annually, including water and toilet access, presence of

staff accommodations. Data is available for each PHU and can be aggregated by chiefdom and district.

The Free Health Care Policy

In April 2010, the Government launched a free health care policy for all pregnant women, breastfeeding mothers, and children under five years of age at all Government hospitals and clinics. The goal is to reduce the number of deaths among pregnant women, breastfeeding mothers, and young children up to the age of 5 years old, due to ill health in childhood and complications during pregnancy and childbirth. Sierra Leone currently has some of the worst child and maternal mortality statistics in the world. Evidence from other countries such as Uganda or Burundi show that increased access and usage of health care facilities should lead to reduced levels of mortality and morbidity over time.

With support from donor assistance an adequate supply of free essential drugs has been provided to all government health facilities to treat pregnant women, breastfeeding mothers, and young children up to the age of 5. Qualified health workers have received a salary increase in recognition of the fact that they will no longer be able to charge a fee for drugs or their services and the additional workload associated with free health care.

The recently launched Health Sector Strategic Plan 2010-2015 aims to ensure successful implementation of the Basic Package of Essential Health Services (BPEHS) in order to improve service delivery. This package ensures the provision of a minimum essential quality of care for all, and includes services that have the greatest impact on the major health problems (especially that of maternal and child health). The objective of this strategy is to abolish all charges to pregnant women, lactating mothers, and children under 5 years of age. In the longer term, the aim is to provide universal access to quality health care for all vulnerable groups. The strategy has two phases:

1. The first phase will see the provision of free quality health care to pregnant women and children under 5 years of age to deliver a one-year Emergency Programme of Support.
2. The second phase aims to provide universal access to free quality health care for all vulnerable groups through the delivery of a 5-year programme of work to implement the Health Sector Strategic Plan in its entirety.

Staff Compliance and Conduct Under the Free Health Care Policy

In order to ensure the compliance and good conduct of the health facility personnel, the ministry of health and sanitation is working with various partners to ensure that adequate mechanisms are in place to identify health workers who do not comply with the free health policy. To ensure this, the following have been put together to guide all health facility staff.

- The sanction for staff absenteeism without a valid excuse will be loss of pay or dismissal.
- If an eligible patient - child under five, pregnant woman or lactating woman - is being charged a fee or a health worker is caught stealing or selling drugs, it

will be treated as a criminal offence and will be investigated and dealt with accordingly.

- To ensure that the health facility staffs attend regularly, every center is expected to keep an attendance register that the individual workers sign daily and is submitted to the district level office every month.
- Health staff are expected to treat patients ethically, giving priority to emergency cases and others treated in sequence of arrival.
- A health workers registration/license will be withheld in the event of gross misconduct or serious non-compliance.
- The government encourages all people and organisations, including communities, civil society organisations, the police, district councils, paramount chiefs, the ACC etc. to work towards the realization of the country's health objectives and to reduce the rate at which our children and mothers are dying.

Paralegals Role in Monitoring the Health System

Paralegals should use the staff compliance and conduct measures set out above to address problems related to the health workers directly. This is something they are all aware of and they have agreed to follow. Where a health worker fails to abide by the policy, the paralegal can either approach him/her to address the matter, as in the case study below, or take it up with his/her authorities at the district level.

Complaints will come in diverse forms – both from the side of the health workers and the service users/community people. Complaints will range from health staff taking illegal fees, siphoning drugs/medical supplies, community not using facilities, community misusing facilities, community not accommodating staff, diverting food supply, VHC not meeting/working etc.

The methods of addressing complaints brought forward depend on the nature of the complaints. For example if the complaint is that a health worker is in the habit of shouting at patients, the paralegal may take it up with the health worker directly after the first complaint. If the same complaint comes up repeatedly, the paralegal should hold a session with the VHC and the health facility staff to address the issue. If this fails, the paralegal may take the matter up with the authorities at the district office, for example with the District Medical Officer (DMO). In cases that concern the taking of fees from pregnant women, children and lactating mother or siphoning drugs, paralegal should undertake a fact finding mission on the matter and then if necessary take the issue up with the district medical officer. In certain circumstances the paralegal may need to take the matter up with the police. Be aware that the district office is often very slow in dealing with such matters; that is to say, the paralegal should not just make a report and then become passive but rather make a formal report and follow up on it.

How to pro-actively identify community level health problems

- *Visiting health centres during mobile clinics:*
 - Determine antenatal care utilization by examining antenatal registration in PHU;
 - Review causes of death for a catchment area over previous twelve months;
 - Assess health worker attendance both from the patient register and attendance register.
- *Talking to people/service users:*
 - Determine antenatal care utilization by surveying community members;
 - Assess health worker attendance and ethical behaviour by community report.
- *Observing and assessing community sanitation situations:*
 - This can be done during mobile clinics - the paralegal can go around the community to observe conditions of health and sanitation facilities within the community such as water sources, toilet facilities, waste disposal etc.
- *Organising a Community meeting*
 - This meeting should not only focus on the health facility but also all the sanitation situation in the community. Discussions in the meeting will give a clear insight into any health and sanitation problems. The first meeting should be a generalist kind of meeting that will enquire about the following:
 - Availability and attitude of health workers.
 - Availability of toilets and potable water - both at the health facility and in the community in general.
 - Bed net usage and availability.
 - WFP supplied food-availability and ace
 - Enquire how free is the free health care service for antenatal care, deliveries and paediatric care (ask for community assessment)
 - Waste disposal (how and where)
 - Either in this same meeting or in subsequent meetings, the paralegal needs to educate people about the new free health care policy. Other subsequent meetings will address specific issues in the health system.
 - In the event that a particular disease is prevalent in some areas the paralegal, in collaboration with the health workers at the facility and the district disease surveillance officer, should organise a community meeting that will aim at sensitising the community to that particular disease. How to go about this is illustrated in one of the case studies below.

Build a partnership with the VHC

Village Health Committees (also known as Village Development Committees) may serve as the primary point of contact for a paralegal who is helping to address community-level health issues. While the role and effectiveness of VHCs varies from community to community, the paralegal can strengthen this institution while working on a health case. If the case is a private health matter initiated by an individual client, the VHC may provide the paralegal a starting point for fact finding and problem solving.

Paralegals can strengthen VHCs in a variety of ways, including:

- education on the role of the VHC;
- education on key public health issues;

- relaying health statistics of particular catchment area from DHMT to VHC;
- ensuring equitable representation of community on VHC (members from each village, inclusive of women and children).

Paralegals may also provide mediation between VHC and health workers and advocacy on behalf of VHC to DHMT and Local Council

Case Study: accountability

The Family Support Unit of the Sierra Leone police referred a case of child neglect to paralegals stationed at the mile 91 office. The child's father was refusing to support the child, and the mother had gone to the police for help. The police referred the case to the paralegals because the father of the child would not cooperate with them. The paralegal who was dealing with the case tried to meet with the father, but he wouldn't cooperate with the paralegal either. Eventually, the paralegal decided to refer the case for litigation. To do this, he needed the birth certificate of the child.

A birth certificate should only cost 5,000 leones to obtain. The child's mother went to the local health centre to get a copy of the birth certificate, and was asked to pay Le 20,000. The woman had only Le 10,000, which she paid. The Community Health Officer (CHO) told her that he would not give her the certificate until she paid the balance of Le 10,000. She came back to the office without the certificate and explained to the paralegals what had transpired at the centre. When the paralegal went to the centre, at first the CHO said that Le 20,000 was the proper cost. Then the paralegal told him that he was going to take up the matter with his authorities at the district headquarters. And when he realised that the paralegal was serious, he immediately accepted that indeed the correct cost was Le 5,000, but said that it cost more in practice because of the transport he had to pay to collect the certificates from the headquarters. He ended up providing the certificate, and the paralegal asked him to refund the Le 5,000, which he did.

In another incident, a pregnant woman was asked to pay Le 30,000: Le 15,000 for a clinic card and Le15,000 for treatment. She was also a client of the Timap office at Mile 91. The paralegals had asked her for her antenatal clinic card from which they could determine the stage of the pregnancy. The paralegals asked her to collect the card from the centre and suggested she be treated, as she was sick when she came to the office. She came back to the office untreated and without the card as she was not able to pay the required amount. When the paralegals reached the health centre, the CHO said it was his MCH Aid that had demanded money and not him. The correct amount should be Le5000 for card during first attendance and Le 1000 in subsequent clinic attendance. Because of the paralegals' intervention, the woman was treated for free. The paralegals then came out and educated all the women present at the centre that they should not pay extra charges and that they should only pay the Le 5000 or Le 1000. The women burst out clapping, thanking the paralegal for what he had done.

Case study: epidemic reporting and prevention

A deadly cholera epidemic broke out in five communities in the Kolifa Rowala chiefdom, Northern Sierra Leone, in February 2007. A health NGO based at the Magburaka hospital successfully treated patients during the emergency. When the outbreak died down, there were many speculations that the epidemic might come back, as the root cause was not known.

Many in the affected communities attributed the outbreak to chemical dumping from a nearby Chinese sugar factory. Timap paralegals decided to investigate to find the real cause. The investigation took the form of an assessment: talking with government health officials, interviewing respondents in the affected communities, and conducting on-site assessments of the sanitation situation in the affected communities. The assessment report showed that the outbreak was not connected to the chemical, but the poor sanitation situation in the affected communities. The people were living in deplorable unhygienic situations with few, poorly constructed, toilet facilities. A good number of people used the nearby bush as a toilet, while the water sources for drinking were uncovered and unprotected.

The paralegals, in collaboration with the disease surveillance officer, conducted a community education meeting on the causes and prevention of cholera. The paralegals advised the community about the results of the assessment and discussed basic prevention techniques. Part of the preventive strategy was an action plan in which the community promised to improve their hygiene situation by building more toilets, fencing the covers for the water wells, no longer using the bush etc. The paralegals were then charged with the responsibility of monitoring the implementation of the plan. The community did very well in implementing the plan. Since then this community hasn't experience any further outbreaks of cholera.

Case study: negotiation

The health worker in a health centre in the Valunia chiefdom in Bo district was not punctual at the centre and was spending most of his time in the city of Bo. The community did everything they could to get this health worker to stay at the centre but he continued to stay away. When the complaint reached the paralegals during their usual mobile clinic sessions, the paralegal contacted the health officer who gave his own side of the story. He said that the quarters in which he was supposed to stay were in a deplorable condition and that he couldn't stay in the house in such a condition. The paralegal inspected the house and found out that the old house was in a bad shape and needed repair. Alternative housing was provided for him, but even then he was still not punctual.

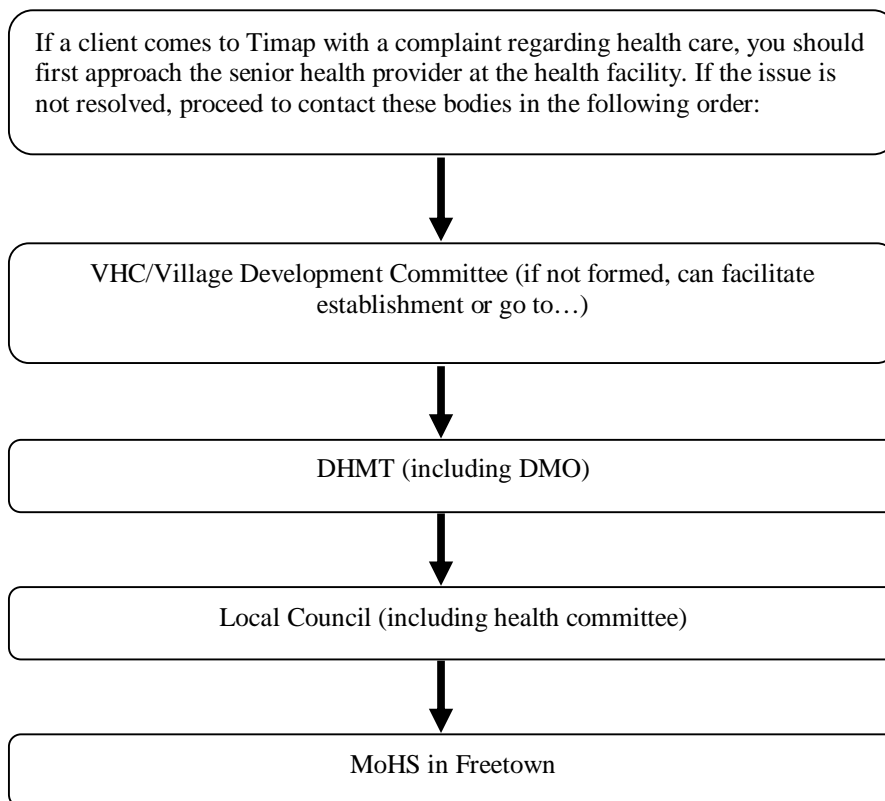
To solve the problem, the community and the paralegal advocated the district health management team for the rehabilitation of the house. This was successful and the house was rehabilitated. In addition to that, some work was also done on the water well at the health centre. During the construction, the paralegal helped in organizing people in the community to provide local materials.

For proper monitoring of the centre, the paralegals decided to reorganise and revitalize the village health committee, which had been dormant for about two years. It had been dormant because some members, who had loaned money from the committee's account and had not paid, were evading the committee meetings. A series of meetings were held until finally the committee came back to life. The paralegals were able to retrieve most of the money from those members that owed it to the committee. The committee became a vibrant committee and they even embarked on activities such as agriculture to raise funds for the centre.

Treatment Guidelines for Critical Diseases

A copy of Where There is No Doctor is available in almost all Timap for Justice Offices. Refer to this book for background on key public health illnesses: the diseases that contribute most to mortality in Sierra Leone include diarrhoea in children, malaria, malnutrition, acute respiratory infection, cholera, as well as complications of pregnancy and childbirth. This book also covers fundamentals concepts of water management and sanitation.

C) Flow chart for seeking redress



4.6 Mining Policy: Ministry of Mineral Resources

Timap works in many communities where mining is prevalent. Paralegals' cases may touch on labour issues, environmental degradation, or the relationship between a community and a mining company. This chapter discusses a few relevant laws and processes and outlines how you might approach a problem involving natural resources.

Mining presents unique community level problems in each community connected with the industry and, ideally, Timap's work can serve to make mining an engine for national economic growth and development.

Important legal obligations of mining companies

- Obtain relevant mineral rights licence
- Provide periodic relevant information to the Mining Cadastre Office
- Secure land lease from owner or lawful occupier
- Not to create unprotected pits or dangerous waste dumps
- Compensate users of land for disturbance of right, damage to land or property
- Allow land owner or lawful occupier to graze animals or cultivate land
- Remove any temporary installation on the land at the end of the licence
- Backfill or make safe any borehole or excavation
- Rehabilitate areas damaged or affected by mining operations
- Minimise environmental impact of mining operations
- Assist in the development of mining communities
- Secure the health and safety of employees and to not discriminate against them
- Not to use child labour

4.6.1 Natural resource laws and the mining permit process

The Ministry of Mineral Resources regulates licensing, land use issues, and environmental requirements in the mining sector. The Mines and Minerals Act 2009 is the key document governing mining activities in Sierra Leone. Additionally, Sierra Leone's employment and environmental laws and the Child Rights Act may also be applicable to mining activities.

Any mineral found in land in Sierra Leone is the property of the Republic of Sierra Leone, notwithstanding that a person may own or be in possession of the land in, upon, or under which the mineral is found. Before undertaking any exploration or mining activities, all mining companies must obtain a licence by filing an application to the Mining Cadastre Office, accompanied by a set of paperwork and a non-refundable fee at the Ministry of Mineral Resources in Freetown.

There are five types of licenses that may be granted:

- (a) reconnaissance licence

- (b) exploration licence
- (c) artisanal mining licence
- (d) small scale mining licence
- (e) large scale mining licence

Any person or corporation who explores or mines without the proper licence commits an offence punishable by a fine of not less than \$1000 USD or up to two years imprisonment or both. For foreign corporations, the fine can be up to \$20,000 USD.

Once a company or individual is granted a mining license, they are required to obtain a land lease or other right to use the land from the owner or lawful occupier (or landholding families) and pay such rent as may be agreed. This 'surface rent' is distributable as follows:

- (a) land owner- 50%
- (b) district council- 15%
- (c) paramount chiefs- 15%
- (d) chiefdom administration-10%
- (e) constituency development fund-10%.

A company that causes damage to the surface area or destroys crops, trees or buildings during the course of its operations is liable to pay compensation. Where land is compulsorily acquired for mining purposes, the owners or lawful occupiers may be resettled on suitable alternative land. The owner or lawful occupier of any land within a mining area has a right to graze stock or cultivate crop on the land provided such activity does not interfere with the mining operations.

4.6.2 Negotiating a lease

Negotiations begin when a company is granted a license for large scale mining. The agreement may be re-negotiated each time the license structure changes or on a schedule, often annually. A successfully negotiated and implemented agreement can provide significant opportunities for community development.

Tips on negotiating a lease:

- Negotiations should be open, transparent, and include all stakeholders.
- Early identification of relevant stakeholders and prompt start of negotiations.
- Stakeholders should include all those who stand to benefit from the surface rent and may additionally include spokespeople, community elders, male and female leaders, local business people, police, organisations that sponsor development initiatives, health clinic employees, current and (potential) future employees of the mining company, and NGOs in the area.
- The language of the negotiation should be understood by those participating.
- Rights and duties established by law in respect of both the land owner and the company should be highlighted.

4.6.3 Child Mining

Child labour is a major issue in many communities with mining activities. Child labour is

typically associated with illicit mining activities and is a violation of the [Child Rights Act](#). Section 128(1) of that act says: “The minimum age for the engagement of a person in hazardous work is eighteen years.” Section 128(3)(b) then indicates “Hazardous work includes mining and quarrying.” Further, Section 130 requires employers engaged in mining to “keep a register of the children and young persons employed by him and of the dates of their births if known or of their apparent ages if their dates of birth are not known.” The Mines and Minerals Act 2009 expressly prohibits the use of child labour.

Paralegals may find that child mining is a community level problem – one that requires a community level solution. There are Mine Monitoring Units which are responsible for documentation and administering repercussions for child mining in the artisanal sector, but these are understaffed and underfunded. Many communities may need to be sensitised about existing laws prohibiting child labour in the mining sector and the consequences of violating them. Still, there are a number of complications to altering child labour practices: severe poverty, lack of schooling opportunities for children who stop mining, and the transitory nature of many mining communities.

Tips on dealing with child labour cases

- Work with chiefs and elders. Some chiefs introduce bye-laws prohibiting child labour – paralegals may want to encourage this.
- Focus on educating communities and individuals about laws protecting children and the opportunities for children who stop mining.
- Ensure that communities addressing child mining enroll children in schools and address the economic consequences of lost income.
- When engaging with individuals and families from different regions or tribes always show respect and understanding for their unique situations.
- Engage local law enforcement on the implementation of laws prohibiting child labour.

4.6.4 Labour/Employment

Companies are required to give preference for employment to citizens of Sierra Leone and are prevented from importing unskilled labour. Employees of mining companies may be hired at-will or as day labourers, but they are still subject to national minimum wage requirements.

Workers should be paid regardless of their success in mining. If an employee does not bring in gold, diamonds, etc., he must still receive the minimum wage (or the negotiated salary, which must not be less than the minimum wage).

Employers can provide employees with food, materials, or tools, but these may not be substituted for the minimum wage. Any person who works in a mine has the right to abandon it if he reasonably thinks that continuing to work in the mine at that material time poses a serious danger to his health or safety. An employer cannot act against an employee for exercising this right.

4.6.5 Illicit Mining

Illicit mining is a major issue. In many areas it is associated with child labour, environmental degradation, and large migrant populations. Economic stress caused by prohibitions on illicit mining or certain activities is also a major concern. It may be impossible to avoid economic difficulties altogether, but Timap may be able to use creativity to address these difficulties whenever possible.

4.6.6 Environmental protection

Environmental degradation by illicit mining is a major problem. No mining licence can be granted to a small scale or large scale miner unless it has first obtained an environmental impact assessment licence under the Environment Protection Act 2000. The National Environment Protection Board can investigate or cause to be investigated any activity likely to harm the environment and take preventive measures. If landholders or communities are concerned about environmental degradation, they might consider how to use the Environment Protection Act 2000 and the Mines and Minerals Act 2009 to protect their communities. Environmental Impact Assessments are supposed to be public documents, but are often unavailable to the community. A community paralegal may seek out a copy of the EIA from the company or from the ministry.

4.6.7 Community Development

A small-scale or large-scale mining licence holder is obliged to assist in developing communities affected by its operations. They are required to promote sustainable development, improve the quality of life of the inhabitants and respect customs and traditions. Where their approved mining operations exceed certain quantitative limits these mining companies should negotiate and implement a community development agreement (CDA) with the 'primary host community'.

Issues that may be addressed in a CDA	Issues that may not be addressed in a CDA
Scholarships, training and employment	Imposition of additional rent, fee or tax for the community
Financial contribution for infrastructural development, such as health services, roads, water and power	Provision of vehicles to individuals or the community
Support to small-scale and micro enterprises	Provision of money, goods or services to an individual or single family unit
Environmental and socio-economic management, local governance enhancement	

A small-scale or large-scale mining company is required to spend at least 1 percent of 1 percent (0.1%) of its gross revenue earned by its mining operations in the previous year, to implement the CDA. A company that substantially fails to comply with the terms of the CDA may have its licence suspended or cancelled.

In addition to the CDA, communities in areas where diamonds are mined also benefit from the Diamond Area Community Development Fund (DACDF). Set up in 2001 by the Ministry of Mineral Resources and the Ministry of Local Government, the fund aims to ensure that communities benefit from diamond resources by addressing issues of basic service provision and poverty generally. The fund represents one-quarter of the formerly 3% tax levied on artisanal diamond exports. The DACDF Procedures and Guidelines 2008 set out how chiefdoms can access this fund.

4.6.8 Non-compliance with mining laws

The Minister responsible for mineral resources has overall responsibility for mining but it is the Director of Mines who is responsible for the implementation of mining laws. The Director or an authorised officer can enter any licensed area to determine whether the Mining Act is being followed, carry out inspections of such areas and take samples or specimen from them and examine books, accounts and records of any kind.

Where there are non-criminal breaches of the mining laws, such as poor or non-implementation of CDA paralegals working in mining communities may want to engage the companies concerned before resorting to sending a complaint of non-compliance to the Director of mines. Complaints should be in writing, stating the nature of the complaint, the loss that has been suffered and the remedy sought. Criminal breaches of the mining laws should not be mediated but reported to the police and the Director of mines.

4.7 SOCIAL WELFARE POLICY: THE MINISTRY OF SOCIAL WELFARE, GENDER AND CHILDREN'S AFFAIRS (MSWGCA) AND OTHER AGENCIES INCLUDING FSU AND LOCAL COUNCILS

4.7.1 Government Bodies

Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA)

The Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) has responsibility for protecting and promoting the rights and welfare of women and children as well as those who are socially marginalized, disadvantaged, or less privileged including the aged and the disabled.

The MSWGCA has traditionally provided social welfare services at the local level. As a result of decentralization processes, the MSWGCA mission is supposed to be shifting from service delivery (which will now be done by the Local Council) to coordination, planning, monitoring/evaluation, and policy formulation. This will take several years.

The MSWGCA currently has three 'technical directorates':

Directorate for Social Welfare: To develop, strengthen and build a social welfare system;

Directorate for Gender: To promote gender equality by strengthening and implementing a national gender strategy in line with national priorities and international standards;

Directorate for Children's Affairs: To build a protective environment for children by strengthening and developing a Child Protection System specific to the Sierra Leone context. This directorate has 3 divisions: child protection, alternative care and child justice.

At the regional level, there are Principal Social Development Officers (PSDOs) to oversee the region, and a Gender Coordinator. At the district level, there is a small team of Social Development Workers (SDW), led by the Social Development Officer. This team is based in the district capital, but the SDW are predominantly located in the field. Their role covers all issues relating to children and gender including case management. Formerly, there was one Social Development Worker per chiefdom, but the team is significantly depleted and they have few resources for transport or communication.

Family Support Unit (FSU) of Sierra Leonean Police (SLP)

The Family Support Unit (FSU) was established with the mandate to deal with offences against women and children (both girls and boys) including sexual offences, child abuse, and domestic violence. After the enactment of recent laws,³ the mandate of the FSU was further broadened to include dealing with children in conflict with the law (child offenders), victims of Child Trafficking and monitoring of proven child abusers. In 2011 there were 43 FSU stations across Sierra Leone. The principal purpose of the FSU police officers is to investigate cases of abuse, arrest perpetrators, and prepare cases for prosecution. In addition, a social worker is attached to the FSU by the MSWGCA in order to ensure that: the interview procedures are child-sensitive; family liaison and assessments are conducted; referral processes are facilitated; and reintegration of the child is monitored. However, only 25 out of 43 FSU stations have a social worker attached. Paralegals are expected to work closely with the FSU in their operational areas. They shouldn't just refer cases to the police, but should accompany the child to the police station and ensure that his/her case is treated appropriately.

4.7.2 Child Welfare and Protection Policy

See also: 2.9 Working with Children;

5.4.5 Juvenile jurisdiction;

5.5.6 The law relating to children. The term "Child Protection" refers to "*preventing and responding to violence, exploitation and abuse against children*:- including commercial sexual exploitation, trafficking, child labour, and harmful traditional practices, such as child marriage. The MSWGCA policies on child protection are listed below:

- **Age Assessment Guidelines** -mainly for young people and children in conflict with the law.

³Gender Acts (Domestic Violence Act of 2007, Devolution of Estates Act of 2007 and Registration of Customary Marriage and Divorce Act of 2009), the Child Right Act of 2007 and of the Trafficking in Persons Act of 2005

- **Regulations for the Care and Protection of Children in Children’s Homes in Sierra Leone** – These set out the requirements that each Children’s Home must meet before it can be approved and licensed to operate and look after children. It covers: promoting community care, reintegration of children, management, inspections, M&E of homes by authorities, staffing, security and safety, case management, contact with families, facilities, nutrition/hygiene/education
- **Quality Care Standards for Children living in Children’s Homes in Sierra Leone** – the standards that each Home must adhere to, to ensure quality of service provision. They cover respect of rights, compliance with laws, mission and management of the home, staffing, keeping children safe, care of children in the Home etc.;
- **Alternative Care Policy** – outlines the overall policy on alternative care. It covers the policy with regards to residential homes, foster care, adoption and menpikin;
- **Child Wellbeing Policy 2006** – the policy upon which the Child Rights Act was based;
- **Operational Guidelines for Child Welfare Committees (CWCs)**
- **Operational Guidelines for Child Panels** – to be developed in 2011;
- **Referral protocol for child victims of SGBV;**
- **Child Welfare Committee Operational Guidelines**
- **Memorandum of Understanding between Paramount Chiefs, the Family Support Unit of the Sierra Leone Police and Child Welfare Committee:** Constitutes an agreement to work together to promote the protection of children – operates only in limited chiefdoms so far.

4.8 Agriculture

Many clients will be reliant on agriculture in some form for their income. Many of them should be able to benefit from government schemes or NGO programmes assisting the sector. This chapter sets out the different government bodies and the types of cases paralegals will likely come across.

The Ministry

The Ministry of Agriculture and Food Security (MAFS) is responsible for the sustainable management of resources in agriculture and forestry to attain food security, poverty reduction, and environmental sustainability. The ministry supports the production of all crops and livestock in an environmentally friendly manner to achieve food security.

MAFS has set out objectives to be achieved by 2012. These include:

- increasing agricultural productivity among poor rural farmers through a variety of support measures such as provision of agricultural equipment, fertilizers and high yielding seeds;
- promoting private sector participation by creating an enabling environment;
- improving agricultural research.

For more information on these objectives and how they will be realized, see the National Sustainability Agriculture Development Plan: [Sierra Leone's Comprehensive African Agriculture Development Programme 2010-2030](#) (NSADP/CAADP).

The ministry has two sections: administrative and professional:

- The administrative wing is responsible for policy advice and inter-sector cooperation and is headed by a Senior Permanent Secretary.
- The professional wing, headed by a Director-General. This has three technical divisions: (i) crops, (ii) livestock and (iii) forestry; and two service divisions: (i) land and water development, (ii) planning, evaluation, monitoring and statistics. Each division is controlled by a Director.

At the local level, the Office of District Director of Agriculture has been established in all the districts under the supervision of the Director-General. This is responsible for implementing policies.

The technical divisions of the Professional Wing

The three technical divisions deal directly with farming communities.

1. The **Crops Division** comprising crop production, crop protection, horticulture, produce inspection, agricultural engineering and fertilizer, and rice units seeks to provide farm inputs to vulnerable farmers, improved farm technology and new ideas and farming techniques.
2. The **Livestock Division** is responsible for veterinary services, inspection of animal products and livestock extension e.g. increasing cattle population. The division comprises special units for animal health and animal production. The health section handles disease diagnosis and treatment, preventive health care and vaccination. The production unit is concerned with improving husbandry practices.
3. The **Forestry Division** is responsible for the protection of forests and forest products such as wildlife. Its duties include forest conservation and development, research, wildlife conservation, protection, and utilization.

Decentralisation

The Local Government Act 2004 has devolved responsibility for the three technical divisions to local councils [s. 20(2)(k)(i)]. MAFS has begun to decentralise, passing some functions to district councils and encouraging district councils to focus on specific commodities for which they have a strong competitive advantage. This process is yet to be completed. There are four provincial MAFS offices headed by Provincial Directors of Agriculture and 14 district offices headed by District Directors of Agriculture. Provincial Directors supervise the District Directors, who are supported by Subject Matter Specialists drawn from the various divisions of MAFS.

Development agencies and other partners

Development partners consisting of UN agencies, other Governments and NGOs play a key role in the agriculture sector. UN agencies and other Governments provide technical and financial support through the national government while NGOs work directly with communities to provide them with support such as basic agricultural implements, fertilizers and seeds. MAFS is seeking to unite these interventions under the NSADP/CAADP framework to ensure a coordinated approach to agricultural development. MAFS is also seeking to attract private sector participation in the agriculture sector.

Work of paralegals

Paralegals working with farming communities need to understand the various structures within the ministry, so that when it comes to channelling clients' concerns or complaints, they can be taken up at the appropriate place.

Typical complaints that may arise include:

- Selective distribution of farming inputs such as seeds and tractors;
- Inadequate or substandard seeds;
- Excessive delay in the distribution of farming inputs;
- Exorbitant cost of securing farming inputs;
- Over-exploitation of forestry products, through practices such as excessive logging and hunting;
- Non-availability or irregularity of veterinary services.

Complaints should be made in writing to the relevant unit stating the nature of the complaint, the loss that has been suffered, and the remedy sought. Follow-up visits to the unit or body may be required until a result is obtained.

Case study

In Kakua Chiefdom, farmers registered with officials of the ministry of agriculture, through the district council, are to be supplied with seed rice under a programme called the 'rapid results farming project'. This was a short term, post-war, government initiative to bolster agricultural productivity in specific districts. They had to pay a small registration fee, which they did. In anticipation of the supply and in preparation for the planting season, the farmers brushed and cleared their farms. Well into the planting season, only a few farmers were supplied with seed rice. These farmers made several complaints to the traditional authorities but to no avail: both the district council and the ministry failed to respond to the efforts of the local authorities to settle the matter. With the possibility of missing the ploughing season looming large, the farmers reported the issue to Timap paralegals.

Led by one of Timap's contact persons, the paralegals went to the district council, but were referred to the official in charge of the rapid results farming project, who in turn referred them to the ministry of agriculture office in Bo. The paralegals raised the issue of the registration fee and the apparent breach. After some initial reluctance the ministry office admitted that they gave less than the required quantity of seed rice to the council officers to supply the farmers, but denied taking money for registration. The threat of referring the issue to relevant 'higher authorities' secured full cooperation which led to the farmers being

supplied with the seed rice before the ploughing season was over. The farmers asked Timap not to pursue the issue of the registration fee as they felt satisfied with the outcome of the intervention.

4.9 Water

Supply of clean water is essential for all communities, and yet pollution and consequent outbreak of disease are common across Sierra Leone. The key laws governing the sector are the Guma Valley Water Company Act 1961, the Sierra Leone Water Company Act 2001 and the Water (Control and Supply) Act 1963. This chapter sets out the main agencies involved and their responsibilities, and highlights some of the types of cases paralegals will likely come across.

The different actors and their responsibilities

The Ministry of Energy and Water Resources is the government body responsible for the water sector. Its duties include developing policies, planning, and coordination. Underneath this, there are three main players in the water sector, all of which are supervised by the ministry. These are:

(i) Guma Valley Water Company

This company was established by an Act of Parliament in 1961 and is responsible for the supply of water to Freetown. Its area of responsibility stretches from Allen Town to Sussex Village covering an area of approximately 42 square miles. The majority shareholder is the government and the municipal authority Freetown City Council is the minority shareholder. The company controls water abstraction and pollution in the areas upstream of its water sources, bills customers and disconnects customers from its service for non-payment of rates.

(ii) Sierra Leone Water Company

This company was established by an Act of Parliament in 2001. It is responsible for the supply of water to the following townships: Bo, Kenema, Koidu New Sebehun, Makeni, Lungi and Kabala. It likewise controls water abstraction and pollution in the areas where it sources water and can levy rates and charges and disconnect customers from its service for non-payment. By virtue of the Local Government Act 2004, local councils have responsibility for rural water supply.

(iii) Water Supply Division

The Water Supply Division of the Ministry of Energy and Water Resources covers urban and rural areas outside the areas served by two companies named above. It is governed by the Water (Control and Supply) Act 1963. The Act provides for the setting up of water authorities by the minister, who shall take over existing water works or construct new ones in areas designated 'water supply areas' and generally manage and distribute water within these areas. They have power, among others things, to grant licenses for non-domestic uses of water, supply water to premises or public fountains, fix water meters on service pipes, and charge a rent for the use of the meter.

In areas where there are no water authorities, the **Director of Public Works** is the default water authority with all the attendant powers. A water authority can suspend the supply of water to any premises or public fountain for non-payment of water rate, charges or meter rent. Water authorities are obliged by the Water (Control and Supply) Act to prevent anyone from diminishing, diverting, or interfering with any natural water supply in their areas.

Development partners consisting of UN agencies, other Governments and NGOs play a key role in the water sector. UN agencies and Governments generally provide technical and financial support through the national government, while NGOs work directly with communities to provide them with water and sanitation facilities. Sometimes, community members will provide labour for the construction of latrines, boreholes, or wells, but in many instances, NGOs will contract out construction work to private contractors. It is important for such contractors to be properly monitored by the NGOs and the beneficiaries to ensure that proper and timely work is completed.

It is useful for a paralegal to understand how these different bodies work and the areas they are responsible for to ensure that, when there are problems, the proper institution is approached.

Types of Cases

Typical problems that may arise include:

- Arbitrary interruption of piped services by way of disconnection for non-payment or for public works;
- Insufficient disconnection notice;
- Damage to consumers pipes and property as a result of activities by these water institutions;
- Unsatisfactory valuation of premises for the purpose of levying general water rates;
- Exorbitant water charges;
- Pollution of communal water source by mining or other activity;
- Interference with or diversion of natural water source for purposes other than domestic;
- Poor construction or non-completion of water or sanitation facilities by private contractors.

Complaints should be made in writing to the relevant body stating the nature of the complaint, the loss that has been suffered and the remedy sought. Follow-up visits to the institution or organization may be required until result is obtained.

Case study

For several years, a community called Masory in the Bombali Shebura chiefdom in Bombali district had challenges accessing clean, safe drinking water. Inhabitants got water for domestic and personal use from a stream that was also used for bathing and laundry, with severe health consequences. UNICEF decided to construct a water well with a pump for the community and contracted privately for the construction work. The contractor started and then abandoned the work and for over two years nothing happened.

During a Timap mobile clinic excursion to the community, the inhabitants raised the issue of the uncompleted well with paralegals and sought their help as they did not know how to pursue the matter.

Timap enquired and found out that it was a UNICEF sponsored project but that UNICEF was unaware that the well was not completed. The contractor had reported that work was completed and UNICEF had paid the contractor in full.

Staff at UNICEF and Timap went to the community to verify the facts and UNICEF promised to and did eventually track down the private contractor who was forced to complete the work, this time with the paralegals and the community monitoring the project. The community now has access to clean, safe drinking water.

5 Law in Sierra Leone

An understanding of the law should be the foundation on which the actions and advice of paralegals are based. Whether the nature of the problem brought by a client calls for a legal response, or whether it is more appropriately handled through non-legal or extra-legal measures, a paralegal's activity must remain within the ambit of the law, be guided by the letter and spirit of Sierra Leonean law, and promote the rule of law overall.

5.1 Basic Concepts

5.1.1 What is "Law"?

Broadly, law consists of a set of rules created and enforced by public authorities. It is the structure on which society's institutions are built. Law accomplishes two things:

1. Sets limits on actions (e.g. curfews, criminal offences)
2. Requires actions (e.g. paying tax, obtaining licenses)

5.1.2 What is "Justice"?

Justice is an ideal that incorporates fairness, equality, truth, fulfilling responsibilities, respect for the dignity and worth of people and the environment. Law can be employed to attain justice.

5.1.3 Types of Laws

Law typically falls into several categories. Understanding these categories can help you look for the law that may relate to a dispute that is presented to you. Generally speaking, most disputes you will encounter will be related to one or more of the following types of laws:

Criminal Law

Criminal Law covers obligations that people have to the state/country. These are typically prohibitions on actions, but sometimes include obligations to engage in certain types of action. Some common obligations under criminal law include prohibitions on physical violence (e.g. murder, battery) and prohibitions on theft or destruction of property (e.g. larceny, arson). While these may seem like obligations towards other people (and not the state/government), the state views these actions as injurious to society as a whole and prosecutes them in its own name. Criminal Law typically requires both intent (to commit the crime) and an act (that constitutes the crime). The same violations may also constitute breaches of other laws (see 5.3.2 Specific Offences).

Family and Estate Law

Family and Estate Law cover marriages, divorces, relationships between family members, and the distribution of property of deceased persons. For instance, it determines how marriages must be performed, the obligations of parents to their children, and which family members benefit from the property of a deceased. The Registration of Customary Marriage and Divorce Act 2007 and the Devolution of Estates Act 2007 are both examples of family and estate laws.

Contract Law

Contract Law covers the enforcement of certain promises between people. While not all promises are enforced by the state, some are. Contract Law defines which promises are legally enforceable, how they are to be interpreted, and what happens when someone fails to fulfil their contractual obligations.

Tort Law

Tort Law defines people's involuntary obligations to each other (as opposed to Contract Law, which covers voluntarily acquired obligations). Some violations of Tort Law may also be violations of Criminal Law, so if someone takes your property or intentionally harms you, they may be pursued both by you, under Tort Law, and by the state, under Criminal Law. Tort Law violations, however, often result from unintentional acts. For instance, if someone's negligent behaviour causes harm to you, you may have a claim in tort against them even though there was no violation of Criminal Law.

Property Law

Property Law regulates how property can be acquired, used, protected and transferred. Much of it involves "real property" (land and buildings), but it also deals with "personal property" (movable items, such as cars, animals, cash, clothing, etc.) Violations of someone's property rights may result in both criminal violations as well as tort violations.

Regulatory Law

Regulatory Law typically deals with rules for how certain activities must be performed or how certain industries must conduct their business. For instance, there may be laws governing the amount of pollution a factory can produce, or how a company must treat its workers. Violations of these regulations will typically be considered either a criminal or civil violation.

Administrative Law

Administrative Law typically deals with rules for how government agencies or actors must behave. For instance, there may be laws covering how the Ministry of Mines gives out mining concessions, or laws covering how the Sierra Leone Roads Authority makes decisions on where to build roads. These laws can be relevant if you are trying to ensure that a government ministry or office fulfils their obligations to a person or a community.

5.1.4 The Formal Sources of Sierra Leonean Law

According to the Constitution of Sierra Leone we have the following laws and they apply in this hierarchy:

1. *The Constitution*

The 1991 Constitution (Act No.6 of 1991) is the supreme law of the land and all other laws are derived from it and must conform to it. It is not acceptable for any law-making body to pass a law that contravenes the Constitution or that puts into place an act or organ not consistent with the Constitution. Such a law would be null and void.

2. *Legislation*

Laws made by or under the authority of Parliament (i.e. Acts of Parliament) form another source of law. For example the Devolution of Estates Act 2007 and the Income Tax Act 2004 are Acts of Parliament and form part of the laws of Sierra Leone.

3. *Delegated Legislation*

These are orders, rules, regulations, and other statutory instruments made by any person or authority in accordance with powers conferred by the Constitution or any other law. For instance, Government Notice No. 73 published 31st May 2007, declares that the Minister of Social Welfare, Gender and Children's Affairs shall appoint Registrars of Muslim Marriages and Divorces.

4. *The Existing Law*

The existing law means the written and unwritten laws that existed immediately prior to the 1991 Constitution, and all statutory instruments made and issued before or after the coming into effect of the Constitution.

5. *The Common Law*

The Common Law of Sierra Leone comprises (1) the rules of law generally known as the common law (that is the common law of England before 1880), (2) the rules of law generally known as the doctrines of equity (equity, natural justice, and good conscience), and (3) the rules of customary law including those determined by the Superior Court of Judicature (i.e. decisions of the Supreme Court, Court of Appeal, and the High Court).

Common law draws mostly from judicial precedents or case law. In other words, when judges make decisions in cases, their rulings become part of the common law and are used by future judges when they encounter similar cases. Courts are required to follow the precedent of higher courts, so if the Supreme Court makes a ruling about a particular principle of common law, all of the lower courts must follow it. While court decisions had previously been published in books (called Court Reporters), these have not been published in Sierra Leone for quite some time. Because of this, it can be challenging to find all of the previous cases that may apply to a given dispute. Common law can be changed by Parliament if it decides that the rules that the courts have come up with are not appropriate. Additionally,

when judges are making their decisions, they often look to legal textbooks and writings of learned scholars for principles of equity.

Customary Law, as identified by Section 170(3) of the [Constitution](#), are the rules of law that by custom are applicable to particular communities in Sierra Leone. More on Customary Law can be found in Section

5.9 Customary Law.)

5.2 Constitutional Law

The highest law of the country is the [Sierra Leone Constitution of 1991](#). This document is the source for all other legal authority in the country. It defines what the sources of law are, the structure of government and the basic rights of the citizens. It is broken down into the following primary sections:

Chapter 1 - The Republic of Sierra Leone

This chapter describes the official name of the country, along with the official seal, flag and anthem.

Chapter 2 - Fundamental Principles of State Policy

This chapter describes the overall objectives of the country, government and citizens. It is important to note, however, that this section is “non-justiciable”. This means that a provision in this chapter cannot be used in a court of law to compel the government or a person to do anything in particular.

Chapter 3 - The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual

This chapter enumerates various individual rights: the right to life, protection from arbitrary arrest, freedom of movement, protection from slavery and forced labour, protection from inhumane treatment, protection from the deprivation of property, protection for privacy of home and other property, protection of law, freedom of conscience, freedom of expression and the press, freedom of assembly and association, and the protection from discrimination. Any person may apply to the Supreme Court to enforce these rights.

Chapter 4 - The Representation of the People

This chapter guarantees voting rights, establishes an electoral commission, and provides for the existence of political parties.

Chapter 5 - The Executive

Part 1 of this chapter outlines the responsibilities of the president and the qualifications for the office. It also defines the how the election of the president occurs. Part 2 vests executive powers in the president which may be exercised through ministers. It establishes the office of the vice-president and various ministers.

Chapter 6 - The Legislature

This chapter establishes Parliament as the law making authority for Sierra Leone. It sets out the composition of parliament, the qualifications to run for a seat in Parliament, and the privileges, powers and responsibilities of Parliament.

Chapter 7 - The Judiciary

This chapter establishes and defines the structure, composition, and procedures of the superior courts of the Judiciary, including the Supreme Court, the Court of Appeal and the High Court. Other courts like magistrates’ courts are established by acts of parliament.

Chapter 8 - The Ombudsman

This chapter describes the office of the Ombudsman.

Chapter 9 - Commissions of Inquiry

This chapter defines the composition and powers of Commissions of inquiry.

Chapter 10 - Public Service

This chapter deals with the public service and establishes the public service commission, the police force, and protection of pension rights.

Chapter 11 - The Armed Forces

This chapter establishes and describes the Armed Forces of Sierra Leone. It prohibits the raising of any private armed force.

Chapter 12 - The Laws of Sierra Leone

This chapter defines the sources of law, including the constitution, common law, customary law, existing law, and statutory law.

Chapter 13 - Miscellaneous Provisions

5.3 Criminal Law

A crime generally involves any action or omission forbidden by law which injures public rights or a breach of a duty to the community. This is why criminal cases are brought in the name of the state (in the high court) or the Inspector General of Police (in the magistrate's court-as the keeper of public safety and security). In some cases, even self-inflicted actions can qualify as a crime, for example, if you deliberately put fire to your own house or attempt to kill yourself. Criminal law has a range of punishments, from the death penalty to imprisonment and fines. Anyone found 'not guilty' of a crime is entitled to an acquittal.

5.3.1 Elements of a Crime

In order for an offence to become a crime, the general rule is that there should be a positive act or omission accompanied by the requisite mental state. In legal terms these are known as **actus reus** and **mens rea** respectively.

1. **The actus reus:** A positive act or omission committed by the party in question. It is needed to prove that an actual forbidden crime took place. An *actus reus* doesn't have to be a physical action; it can also consist of words (e.g. conspiracy/blackmail), an omission (the failure to do something / take responsible action), possession (e.g. drugs) or a state of affairs (a situation that you find yourself in).
2. **The mens rea:** the requisite mental state of a crime. The accused must have a "guilty mind" to commit the crime; this usually includes *intention* (the person planned to commit the crime) and/or *recklessness* (the person didn't care what the consequences of their actions were).

Exercise: Stolen Camera

Q: Abby leaves her camera in her room. Matthew, a stranger in the village, sneaks in to deliberately take the camera away without Abby's knowledge or permission. Matthew is knowingly assisted by Isata, Abby's neighbour, who opens Abby's room for Matthew and watches to see if anybody is coming. Earlier, Isata had acquired the key to Abby's room from Abby's brother, Mohammed. Isata had lied to Mohammed, that she needed the key because she had been asked by Abby to replace her mosquito net. Not knowing Isata's true plans, Mohammed surrendered Abby's room key. Abby returns home to find her camera missing and reports the theft to the police.

What is the *actus reus* and *mens rea* of this crime? Who can be found guilty of theft in this case?

A: The taking and carrying away of the camera is the *actus reus* (i.e. the guilty act). The *mens rea* (i.e. guilty mind) of the crime is the intention to permanently deprive Abby of her camera without her consent.

Matthew committed the *actus reus* with the assistance of Isata. Because Matthew knew that Abby did not consent to losing her camera, he possesses the required *mens rea* of the crime of larceny. Isata also knew that Abby did not consent to this act, so Isata also has the required *mens rea*; her assistance in Matthew's theft thus makes Isata an accomplice to the crime. Mohammed does not have the required *mens rea* for the theft because he did not intend to commit a crime when he gave Isata the key to Abby's room; he thought he was making good on Abby's wishes. Thus, Matthew and Isata are guilty of theft because they possess both the *actus reus* and *mens rea*. However, Mohammed is not guilty, because even though he unwittingly assisted in the *actus reus*, he lacked the *mens rea*.

5.3.2 Specific Offences

Name of Offence	Elements of the Offence		Maximum Penalty	Specific defences
	Actus reus	Mens rea		
Murder When a person of sound mind, who has reached the age of discretion, kills another person, or wounds them so severely that they die within a year and a day.	Unlawful killing (unlawfully causing the death of another human being, either by action or omission)	Malice aforethought – an intention to cause death or grievous bodily harm knowing that death will probably occur.	Capital punishment – death penalty (see Section 1 of the Offences Against The Person Act [1861]).	Provocation; self-defence, defence of another from unlawful violence, defence of property [see section 16(2) of the 1991 Constitution].
Voluntary manslaughter When one person kills	(same as for murder)	No malice aforethought – the accused provided a	Life imprisonment with or without a fine.	See general 5.3.7 Defences later in this

another, but the defendant produced a defence that neutralises the mens rea for murder.		defence (e.g. provocation) that neutralises any expressed or implied malice.		chapter
Involuntary manslaughter Killing by gross negligence or by an unlawful act that is likely to cause bodily harm.	Unlawful killing by negligent conduct or a breach of duty.	Recklessness (a disregard for the life and safety of others).	Life imprisonment with or without a fine.	See general 5.3.7 Defences later in this chapter
Assault Intentionally / recklessly causes another to apprehend immediate & unlawful violence (doesn't have to include applied force).	Causing another to apprehend immediate and unlawful violence	Intending, or being reckless as to causing the victim to apprehend immediate and unlawful personal violence	1-year imprisonment for common assault and 3 years for assault occasioning actual bodily harm (see Section 47 of the Offences Against The Person Act [1861]).	Actual or implied consent; self-defence; crime prevention; crown control; the lawful correction of a child.
Battery ⁴ Intentional or reckless infliction of unlawful force.	The infliction of unlawful force by one person on another / others.	Intentional or reckless application of unlawful force on another	6 months imprisonment or a fine or both.	Actual or implied consent; self-defence; crime prevention; crown control; the lawful correction of a child.
Indecent assault	The indecent touching / contact of a person by another without that person's consent	Intention to touch a person indecently.	2 years imprisonment with or without hard labour ⁵	See general 5.3.7 Defences later in this chapter
Further notes: Indecent assault can be committed by men and women against both men and women. It can also include non-physical elements such as forcing somebody to watch masturbation or pornography. It has to be indecent. It is indecent if: a) a reasonable person, considering the whole circumstances, will believe it to be indecent irrespective of the belief of				

⁴ Battery is technically different from assault in that it requires the positive *application* of force, while assault causes someone to *fear* imminent violence.

⁵ The punishment on the table is only for offences relating to young girls and not for adults generally. Judges carry discretion because it is a common law offence.

the accused; b) it can be shown that the accused thought it indecent. Indecent assault is also a statutory offence, which makes it illegal for any person to either indecently assault or attempt to have sexual intercourse with a girl less than 14 years.

<p>Rape When a man has intercourse (even with the slightest penetration) with a woman who at the time of intercourse doesn't consent to it.⁶</p>	<p>Sexual intercourse with a woman without her consent.</p>	<p>Intention to have sexual intercourse with a woman without her consent or not caring as to whether she consents.</p>	<p>Penal servitude for life (life imprisonment with hard labour) (see Section 48 of the Offences Against The Person Act [1861]).</p>	<p>Genuine mistaken belief in consent.</p>
--	---	---	--	--

Further notes: The consent element is the mens rea for rape. The accused must know, or be reasonably expected to know, that there is no consent from the woman. But it is not consent if: a) such consent is achieved through force, threat or trickery; b) such consent cannot be legally given (e.g. very young (generally held to be under 16 years [common law] or mentally imbalanced or she is incapable of expressing either assent or dissent [common law]). A boy under 14 years cannot commit rape, but a girl of any age can be a victim of rape.

<p>Unlawful carnal knowledge When a man has intercourse with a girl under the age of 13 or between 13 and 14.</p>	<p>Sexual intercourse with a girl under the age of 13 or between 13 and 14.</p>	<p>None required – this is known as strict liability. What age the principal believes the girl to be, whether he honestly believes her to be legally old enough, or if she tells him she is legally old enough, is immaterial.</p>	<p>15 years for girls below 13 years old; 2 years for girls between 13 and 14. Both with or without hard labour. A few months to two years, various factors considered, for girls below 16.</p>	<p>See general 5.3.7 Defences later in this chapter</p>
--	---	---	---	--

Further notes: There are two sources of law involved in this crime, which to some extent overlap: 1) Statute law (or statutory rape) – this is according to the [Prevention of Cruelty to Children's Act 1926](#) (also referred to as Cap 31). Section 6 states that it is an offence to have intercourse with a girl below 13 years. Section 7 states that it is illegal to have intercourse with a girl who is above 13 but below 14 years; 2) Common law – having intercourse with a girl too young to give consent is considered rape.

<p>Larceny Fraudulently taking and carrying away</p>	<p>Fraudulently taking and carrying away anything capable</p>	<p>The intention to permanently deprive the owner of their</p>	<p>5 years imprisonment and / or a fine (see Section 1 of the</p>	<p>Mistake of facts</p>
---	---	--	---	-------------------------

⁶ This includes both vaginal and anal sex, and also if a man induces a married woman into having sex with him by pretending to be her husband. Under the common, law a husband cannot rape his wife. However, the Domestic Violence Act 2007 introduced the offence of sexual abuse which covers non-consensual sexual intercourse in marriage.

anything that is capable of being stolen without the consent of the owner or a claim of right, with intent to deprive the owner of it permanently.	of being stolen belonging to another person.	possession(s).	Larceny Act [1916]).	
Arson Unlawfully and deliberately setting fire to the property of another.	Setting fire to the property of another.	Intention to destroy somebody's property or recklessness as to whether the property is destroyed.	Life imprisonment for setting fire to a dwelling house or other similar structure (see sections 2&3 of the Malicious Damage Act 1861).	See general 5.3.7 Defences later in this chapter
Fraudulent conversion Converting to one's own use or benefit, or the benefit of another, property received for or on behalf of someone else.	Being entrusted, you sell / transfer / convert to your own or another party's use something that belongs to another person.	Fraudulent or dishonest intent.	7 years imprisonment (see Section 20 of the Larceny Act [1916]).	See general 5.3.7 Defences later in this chapter
Obtaining by false pretences Deliberately obtaining property, money or other valuable for one's own benefit or for the benefit of another from someone by intentionally lying about or falsifying a fact.	Making pretence and obtaining property, money, etc., knowing same to be false.	Intention to defraud.	5 years imprisonment (see Section 32 of the Larceny Act [1916]).	See general 5.3.7 Defences later in this chapter

5.3.3 Strict Liability for Various Offences

The condition that both *actus reus* and *mens rea* should be present for a crime to be committed is subject to some exceptions. That is, there are certain offences that can be committed by the presence and proof only of the *actus reus*. This category of offences is known as Strict Liability offences. The exception to the *mens rea* requirement is set by the statute creating the offence or by common law. For this class of offences, the mere action or omission (*actus reus*) is sufficient to constitute the offence, regardless of whether the person acted in good faith. Intention or knowledge is immaterial.

For example, the failure to display a license on a motor vehicle is a strict liability offence.⁷ Suppose Edward is driving his new vehicle along Kissy Road. He, together with fellow workers present in the vehicle at the time, has just come from the Road Transport Corporation, where both the licence and insurance had been obtained. Suddenly, the traffic police pull Edward over for driving an unlicensed vehicle. When the police officer points to the empty space on the window where the licence is supposed to be, Edward realises that it had fallen off inside the vehicle, because the glue applied by the Road Transport Corporation officer was inadequate. However, even though Edward had no intention of driving an unlicensed vehicle (and the vehicle had in fact been licensed), he still committed a crime and may be convicted if prosecuted, because the crime of failing to display a license is a strict liability offence.

Or, consider this example. Mrs. Tamba owns a large house and rents it monthly to tenants. She rents her property to three ladies, but unknown to her, these ladies are all prostitutes and they use her premises for their trade. Mrs. Tamba can be found to have committed a crime for allowing her premises to be used for the purpose of prostitution, although she has no such knowledge, because hosting prostitution is a strict liability offence.

Most strict liability offences are defined as such by statute. It is important to find out, therefore, whether a statute defines an offence by applying strict liability or requiring *mens rea*. There are also a few common law examples like contempt of court and criminal libel.

5.3.4 Vicarious Liability

Vicarious Liability means holding one person accountable for the actions of another, as a result of a particular relationship like employer-employee. Generally, everybody is responsible for his or her actions under criminal law and nobody may be punished for the deeds of another. Thus, a father or mother may not be punished for the offences of their child and vice versa. Vicarious liability poses an exception to this rule. This exception is created by statute, when it contains words which make it possible to hold a person liable even if he or she knows nothing about the offence.

For example, Edward, a journalist and employee of Mr. Hassan, the proprietor of “Famous” Newspaper, writes and publishes, without Mr. Hassan’s knowledge, libellous substance against Ms. Fatu. Mr. Hassan will be held liable under the doctrine of vicarious liability in

⁷ This is a principle of common law.

Criminal Law (distinct from liability in tort) for the deeds of his employee or servant, Edward.

5.3.5 Parties to a crime

- a) **Principal:** A principal (also referred to as principal in the first degree, key suspect, or first accused) is the person who actually commits the offence, or plays the leading role in its commission.
- b) **Accomplice:** An accomplice is any person who participates in the commission of a crime together with the principal, knowingly, willingly and with a common interest. His or her presence is necessary and he or she is charged and punished for the same offence as the principal. Going back to the “Stolen Camera” exercise above, Matt would be the principal and Isata the accomplice. Although Isata is not the one who does the final act of stealing, her role in obtaining the key to Abby’s room and keeping watch for Matt was crucial to the commission of the crime.
- c) **Accessory before the fact:** An accessory, like an accomplice, provides some support for the principal in a crime. A person becomes an accessory before the fact if he or she is not actually or constructively present when the crime is committed, but solicits, counsels, or commands the principal to commit the offence.
- d) **Accessory after the fact:** A person becomes an accessory after the fact if he or she, with the knowledge that the principal has committed a crime, intentionally assists him to avoid arrest, trial, or conviction. The difference is that the support of the accessory after the fact comes after the crime has been committed, while that of the accessory before the fact comes before the crime is committed.

These parties to a crime are important when it comes to sentencing, as every person is punished according to the extent of his or her deeds.

5.3.6 Inchoate Offences

This category of offences is different from substantive offences like stealing, killing, wounding, etc., in that they represent only steps towards the commission of crimes and not the commission itself. This means that, even if an offence is not or cannot be committed, the mere planning or taking action towards it can still be punishable under criminal law. Unlike strict liability and vicarious liability offences, inchoate offenses are not set by statute but established by common law. Under Sierra Leone common law, attempt, conspiracy and incitement are inchoate offences.

- a) **Conspiracy:** This is an agreement between two or more natural persons to break the law at some point in the future, and, in some cases, with at least one (or the first) step in furtherance of that agreement; but taking one step is not always

necessary.

- b) **Attempt:** This is where the accused would have performed the act but for some intervening circumstance. In other words, there is the requisite *mens rea*, but the *actus reus* is incomplete, not (solely) based on the accused's decision. For example, Teacher Pete invites Esther to his house for extra lessons and forces himself upon her. He quickly overpowers Esther and tears off all her clothes. As soon as he throws his naked body on helpless Esther, his friend John enters the unlocked room and catches him red-handed. Here, Teacher Pete will be charged with attempted rape instead of rape. Even though he did not complete the crime, he would still be punished for the attempt.
- c) **Incitement:** Incitement is anticipatory in nature and involves persuading, encouraging, instigating, pressuring, or threatening so as to cause another person to commit a crime.

5.3.7 Defences

There are a number of defences that can be used for the different crimes listed earlier in this chapter. The list below documents some of those that can apply generally. Where there are defences for specific crimes, see the 5.3.2 *Specific Offences*.

- **Mistake:** Ignorance of the law is no excuse, but ignorance or mistake may be a defence where (a) the mistake is of such a character that, had the circumstances been how the accused believed them, it would have prevented the alleged liability being imputed on him, (b) it negates the *mens rea* of the offence (e.g. if A takes B's umbrella by mistake there will be no *mens rea* for theft) or (c) if it is an honest mistake, which relates only to matters of fact and not of law.
- **Automatism:** If an act is involuntary then there is no act in law. This means that automatism can be a defence even to strict liability offences. Automatism is confined to acts done while the defendant is unconscious or suffering spasms, reflex actions and convulsions. Examples include sleepwalking and other behaviour during sleep, concussion, epilepsy, etc. A successful defence of automatism entitles the defendant to an absolute acquittal.
- **Insanity:** The defence of insanity is governed by the M'Naughten rules. An accused is presumed sane until proved otherwise. In order to succeed in the defence of insanity, it must be shown that at the time of committing the act, the defendant was labouring under such a defect of reason from diseases of the mind, as not to know:
 - (i) The nature and quality of the actions;
 - (ii) That there was no realization of wrong doing.
 An accused that puts forward this defence must prove that there is insanity and that the situation comes within the M'Naughten rules. If the defence is successful, the verdict is not guilty by reason of insanity but the accused will be kept in a mental hospital.
- **Intoxication:** The law with regard to this defence is as follows:

- (i) If the intoxication causes actual insanity then the M’Naughten rules will apply;
 - (ii) Intoxication is a defence if it rendered the defendant incapable of forming the specific intent required to constitute the crime;
 - (iii) Intoxication will be no defence if its only consequence is to lead the defendant more readily to such behaviour.
- **Self-defence:** Self-defence will excuse crimes against person or property if the actor acted to protect him or herself from an imminent attack. It provides a defence so long as the force used was necessary to avoid the attack and was reasonable. If the defendant was mistaken in the belief that there was a need to defend, the defendant will only be excused if the belief is reasonable. The occupier of premises may use force against a trespasser provided it is necessary and reasonable.
 - **Duress:** When a person only committed a crime because she was coerced to do so, or because she was threatened, she does not have to be held accountable for her actions. The defence of duress can be argued when the defendant commits any crime other than murder and some forms of treason.
 - **Necessity** – in some jurisdictions, this defence can be used if a crime was committed in order to prevent a greater crime from taking place (e.g. throwing peoples’ property off a sinking ship in order to prevent them being killed). However, this defence cannot be used for cannibalism.
 - **Provocation** – used as a defence to justify an act that was provoked by a series of acts towards the accused, compelling him to lose self-control (mostly used in assault cases).

5.3.8 Sexual offences

See 5.3.2 Specific Offences for the law on sexual offences.

5.3.8.1 Special considerations in handling sexual offence cases

When receiving a complaint of a sexual offence, special actions need to be taken. When a survivor comes in, a paralegal should take similar actions to those taken with domestic violence cases, except that it should never be settled. In addition, paralegals should make sure they think about all the following issues and develop a protection plan.

Have you and the survivor talked about:	Possible questions/ issues
Prosecution?	What action do you need to take towards prosecution? What evidence could you collect? (<i>see 5.3.8.2 Helping with prosecution of sexual offences for how to assist with prosecutions</i>)
Where to stay?	Where is the client living now? Does she feel safe at home? Is she living with the abuser? Are other family members involved in the abuse? Do people in her family blame her? Could the paralegals help the parents understand it is not her fault? Where is she going to stay? Does the

	community know about it? Will there likely be pressure from community members/ relatives of the perpetrator? What could you do to protect against this?
Schooling?	Is she going to school? How will she cope with taking time off for court? Can it be kept confidential so not everyone in school knows? Can the paralegals help with this?
Financial support?	Where is she going to get support from? Does it need to be from the perpetrator and if so how could you get that? Longer term, does she need to support herself and does she have the skills to do that? Are there any skills training programmes or any microfinance programmes that would help that you could connect her to?
Medical care?	Does she need medical attention? If needed, how can she access medical attention?
Pregnant?	Is she pregnant? How will that be handled?
Children?	Does she have any children with the perpetrator? Does she have children from other relationships? Are they somewhere safe? Who is looking after them? Does the abuser physically abuse the children or threaten to harm them? What physical, emotional, cognitive and behavioural symptoms does the client notice in her children?
Counseling?/ emotional support?	Does she have someone she can speak to confidentially who she finds supportive? Friends/ family/ church etc. What physical, emotional, cognitive and behavioural symptoms does the client notice in herself? Would she like counseling? Can you help her access it locally? (nb. Rainbo centres/ trained PHU nurses in some areas). What can she do to support herself? How can she distract herself from thinking about it?
Advice on separation?	Does she need advice on separation/divorce?
Protection against perpetrator?	Is there an ongoing threat? What contact does she have with the abuser if she is not living with him? What are her present feelings toward the abuser? Can she avoid the perpetrator and how? Can you protect other community members from the perpetrator? (e.g. If he is a school teacher/ community member)
Follow-up?	What follow-up will there be by the paralegals?
Compensation?	How could she obtain compensation from the perpetrator?
Other?	What assistance was the client hoping for? Has she sought assistance in the past regarding her situation? If so with whom? (Social services, courts, hospitals, police, mental health setting etc.)

5.3.8.2 Helping with prosecution of sexual offences

Paralegals can assist survivors/clients in the prosecution of sexual offence cases at all stages. Below is a step by step guide to paralegal involvement at all stages after a reported sexual offence.

At the paralegal office

- Admit case - fill out intake forms and take thorough statement.
- Make any family members who have brought the client feel comfortable, and assure them that it is not in any way the victim's fault.
- Ensure and keep client confidentiality.

- Do risk assessment.
- Consider all the questions in 5.3.8.1 Special considerations in handling sexual offence cases and develop a protection plan.
- Explain the legal issues around her case e.g.
 - The type of offence it may constitute (rape/ sexual assault etc.) and why it constitutes that.
 - What evidence there is or might be to prove the case.
 - What the process would entail for her if there were to be a prosecution.
- Tell clients about the kind of support you will be providing, don't raise victim's hope unnecessarily, and let them know it may take a long time.
- Help preserve any evidence that client may bring at the inception of case and turn it over to the police as soon as possible.

- Start implementing the protection plan.

At the police station

- Accompany client to the police station.
- Stand near clients as the police obtain a statement and issue medical paper.
- Follow up on the case with the police, until it is charged - this will give you an opportunity to push the police when they want to relax in treating case.
- While the case is being investigated ensure that the police collect and preserve evidence appropriately:
 - Types of samples to collect include:
 - Clothing – especially if ripped/ made dirty by incident. Look for marks which are consistent with the events of the incident.
 - Injuries (document on map of body/ picture)
 - Hair
 - Sand/oil/grass/leaves
 - Description of room – draw map and get description, e.g. Room colour – especially where the victim wouldn't otherwise know what the room looked like – then if police go there, this verifies her story.
 - Photos if possible (not of intimate parts)

 - Collection
 - Police should collect evidence as soon as client gets to the station.
 - If police takes clothing you'll need to replace it, so try to get donations of clothing.
 - Ensure the police are careful in collection – no touching with hands – use gloves. If none, use plastic bags over hands
 - Exhibits must be properly labeled. Write date and time taken.
 - Don't use plastic for storage – use paper envelopes, because plastic heats and destroys evidence as fungus grows – seal the paper envelopes and staple them. Write signature across the celotape to prevent tampering.

- All evidence collected should be indicated in the medical certificate.
 - Paralegal should write a list of evidence items, including what it is, date taken, date given to police, and paralegal signature for your own records. (the police often lose it)
 - Take photocopy of medical certificate as well (this should be useable in court as long as it is signed by the Dr.) – certificates are often lost or adapted.
- Work with the police to ensure that they give the appropriate charge (or if possible several charges) to the case - do this in collaboration with the supervising lawyer/ lead paralegal.
 - If necessary/ possible, assist the police in carrying out any investigations – e.g. Accompanying police on motorbike to investigate or find witnesses.
 - Record all contact with the police, and with the client, in the case log,

At the court

- Encourage and coordinate witnesses involved in the client's case.
- If your lawyer is supporting the case, support them in any way required.
- Always be in court when the case is coming up - your presence will give confidence to the client.
- Brief her about the court proceedings and outcome as the case proceeds – make sure the client understands what happens in court and why it happens.
- If she doesn't come to a hearing, go and find her and enquire why.
- Record all details about case progress in court in the case log.
- In discussion with the lawyer, see what options there may be for compensation.

At the health centre/hospital

- Accompany client to medical centre/hospital/ Rainbo centre.
- Lobby /advocate with the doctor or the health officer in charge for a free treatment and medical certificate - you can use the free health care policy in doing the advocacy for any pregnant women or children under 5.

General while case is going on

- Assure the client/ victim that justice is possible and the importance of prosecution to stop such things happening to someone else.
- Counseling services - may refer client/victim to other counseling service providers.
- Assist in securing safe home or temporary placement for client.
- Don't raise victim's hope inappropriately.
- Provide other assistance such as basic transport reimbursement, food and accommodation if possible.
- If, at any stage, the client wants to stop going ahead with prosecution, encourage them to stay with it, but ultimately respect their choice. accept that decision and understand the different pressures she is under – leaving the prosecution may be the best/ safest decision for her, and she is the most important person in this. This may seem

annoying, but it may be best for her, and it will only seem annoying if you are putting yourself and the legal process first. To be professional you must graciously accept her decision.

5.4 Criminal Procedure

To commit a crime is a serious matter. Yet, it is very important that the wrong person is not punished at the end of the day. For this reason, there are many safeguards to ensure that only guilty criminals get punished by imprisonment, fines, or other court orders like community service. These safeguards work through procedures considered visible attributes of a fair justice system. They include the presumption that a person, even under suspicion of committing an offence, is innocent until proven guilty by a court of competent jurisdiction.

Criminal procedure, in general terms, describes the methods or processes a person goes through within the criminal justice system, from the moment he or she is suspected of a crime to the completion of their appeal or sentence. The principal law on criminal procedure in Sierra Leone is the Criminal Procedure Act 1965.

5.4.1 Police Powers and Arrests

5.4.1.1 What is an arrest?

An arrest is the act by which government or persons in special authority deprive a person of his/her personal liberty with the aim of compelling or ensuring that he/she appears in court to answer a criminal charge. Usually, an arrest involves taking a person into custody and detaining him for some period. An arrest, however, must be conducted in compliance with a country's constitution and laws.

According to section 4(1) of the [Criminal Procedure Act](#) (1965), in making an arrest, the constable should actually touch or confine the body of the person to be arrested unless the person submits to the custody of the constable by words or conduct. But if the person forcibly resists, or attempts to evade the arrest, the constable may use sufficient force to effect the arrest, *but no more*. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

5.4.1.2 Who can make an arrest?

Members of the Sierra Leone Police Force (SLP) have the primary duty to arrest persons suspected of having committed or on the verge of committing a crime. However, section 11 of the [Criminal Procedure Act](#) (1965) provides that any person may effect an arrest under limited circumstances.

- Magistrates have general arrest powers but within the limits of their specific jurisdiction;
- Military officers have the power to make arrests, but limited to other military personnel;

- Individual citizens can also make arrests, without a warrant, but only when a person commits a serious crime in their presence, when they reasonably believe that a person has committed a serious crime, if a person is about to commit an act which endangers another person's life, is detaining, or suspected of detaining, a person with intent to kidnap or unlawfully remove that person from Sierra Leone, or if a person is suspected of selling, pawning or delivering stolen property.

Note, however, that when private citizens arrest a suspect, they must hand him/her over to either a police officer or take him to the nearest police station as soon as possible. Private citizens do not have the right to beat up or torture a suspect, nor do they have the right to use any means whatsoever (particularly force) to extract a confession from a suspect.

5.4.1.3 Search Warrants

A Judge, Magistrate, or Justice of the Peace can issue a search warrant in respect of a building vessel, vehicle, receptacle or place authorising a police officer to enter, search and seize anything that can assist in the proof of a crime. According to the Criminal Procedure Act (1965), the official issuing the warrant must be satisfied that there is reasonable ground in believing that there is, in the specific place, an instance where an offence has been committed or an object that is believed to have assisted in the crime.

The warrant allows officers to search anyone found on the specified site(s) and seize objects or persons suspected of being involved in the crime(s). It allows officers free entry to the specified site(s), or by force if free entry is not granted or possible. The warrant is granted to a particular officer(s), but they are free to be accompanied by others necessary to assist them. They are usually issued for action between 5am and 10pm, but the legal official endorsing the warrant can issue it at any time of the day or night ([Criminal Procedure Act](#) (1965), Part I, Section 30). Things seized in the execution of a search warrant must be delivered to the judicial officer who issued the warrant, who will then make an order as to the immediate custody of them and how to dispose of them.

5.4.1.4 Warrants of Arrest

Arrest warrants are usually issued on the ground that a criminal charge has been made against a person by a public prosecutor or police officer and that a warrant is necessary to make sure the suspect will appear in court to answer the charge. An arrest may be carried out anywhere in Sierra Leone, as long as it is in accordance with the conditions stated in Section 17 of the [Constitution](#).

Arrests can be made:

- In consequence of his unfitness to plead to a criminal charge;
- In the execution of a sentence or order of a Court whether in Sierra Leone or elsewhere in respect of a criminal offence of which he has been convicted;
- In the execution of an order from the High Court or the Court of Appeal or the Supreme Court or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal or commission of inquiry as the case may be;
- In the execution of an order of a court made in order to secure the fulfilment of any obligation imposed on him by law;

- For the purpose of bringing him before a court or tribunal, as the case may be, in execution of the order of a court;
- Upon reasonable suspicion of his having or of being about to commit a criminal offence;
- In the case of a person who has not attained the age of twenty one years, for the purpose of his education or welfare;
- For the purpose of preventing the spread of an infectious or contagious disease;
- In the case of a person who is, or is reasonably suspected of being of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- For the purpose of preventing the unlawful entry of that person into Sierra Leone, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Sierra Leone or the taking of proceedings thereto.

A police officer may arrest a suspect without a court order or arrest warrant under the following circumstances (see the [Criminal Procedure Act](#) (1965), Section 13 (1)):

- If a violent or dishonest act is committed in their presence;
- If another person positively accuses someone of having committed a felony, any larceny, embezzlement, or crime using false pretences;
- If another person suspects someone of having committed any of the above mentioned crimes, as long as the accusation appears to the constable to be well founded and they are prepared to declare their name and address to the constable and accompany them to the nearest police station or lock-up if they are required to do so;
- If the constable has reasonable cause to suspect a person has committed, or is about to commit, a felony;
- If any person is found lying or loitering in any street highway, yard, compound or other place between the hours of 6pm and 6am, and who is unable to give a satisfactory account of himself;
- If any loose, idle or disorderly person is found to be disturbing the peace of an area, whether public or private, or causing annoyance to any person.

After an arrest is made, the police have the authority to question (or interrogate) the accused about the alleged crime(s).

In sum, the police have the power to arrest citizens with or without a warrant if it is in accordance with the conditions of the 1991 constitution and 1965 Criminal Procedure Act. If any actions by police are not in accordance with these laws, then they are liable for disciplinary action, and in certain cases, the person arrested can maintain an action for unlawful detention.

5.4.1.5 Other Circumstances of Arrest

In certain instances, it is lawful for the police to make arrests and detain persons apart from the reasons above. These circumstances are referred to as protective or preventive custody. According to the laws governing the conduct of the police, they can arrest and detain a person if he or she is:

- causing physical injury to oneself or any other person;
- suffering physical injury;

- causing loss or damage to property;
- committing an offence against public decency in a public place;
- causing unlawful obstructions to the highway;
- inflicting harm or undue suffering to a child or other vulnerable person (like mentally insane persons);

Paralegal Tips: Dealing with the Police

Sometimes, to a paralegal, police officers may seem unapproachable. They may consider us the 'opposition' or people who have come to expose their corrupt practices and inadequacies. They sometimes befriend paralegals but their friendships are fragile. There are many things they don't want us to know about.

Interestingly, without them, we find our work somewhat difficult, especially when it comes to law enforcement and criminal prosecution. But if one is not careful, working too casually with the police may lead to complications. The police certainly respect us, but this has a lot to do with the way we present ourselves and the organization to them.

What to do:

- Read your training notes properly and other documents relating to the functions of the police.
- Read other legal materials that will empower you to confront issues with the police.
- Pay a familiarisation visit to the local police in your area of operations-introduce yourself and the organisation to them
- Interact with them: it will help you learn certain aspects of the criminal procedure.
- Be aware that they are also trained in the law.
- For any serious act of injustice by the police that you want to take up with the CDIID, consult with your directors before proceeding.
- Don't disclose all of your cases to them or allow them to understand your operation. Only talk to them on cases that concern them.
- Take statistics of police abuse or professional misconduct – including dates, names of persons involved, offence, etc.
- Approach them politely but firmly when negotiating for bail, talking to suspects in detention or when taking up other issues with them.
- Refer matters that require enforcement to the police.

Case Study: Working with the Police

A complaint was made at a police station in Tonkolili against three boys. The police went to arrest the boys but couldn't find them. Instead, the police arrested the mothers of these boys and detained them. When the paralegals learned about this, they approached the police - the Officer Commanding (OC). At first the OC told the paralegals that she would not release the women until their sons were brought to the station. The paralegals argued that there was no

need to arrest someone who has not committed any crime and that someone should not be arrested for a crime committed by another. As such, the paralegals argued, the women should not be punished for a crime they didn't commit. They went on to say that even if the women had committed the crime, they should not be held for more than the time the law stipulates - 72 hours. These women had spent their 4th night at the station. No statement or anything of the sort was obtained from them.

The OC realized that what the paralegals were saying was true, and she released the women and asked them to report after two days. When the women came to the police station after the two days, they were rearrested by the second in command. According to him, he was instructed by the OC to do so. The OC was out of the station - she had gone to Magburaka, the district head quarter town. The Paralegal at the Tonkolili police station called the OC on the phone, putting forward the same arguments as before. There was a dispute, because the OC was angry saying that the paralegal wanted to tell her how to do her work. The paralegal was mild and gently pushed his arguments on the case. The OC then called her second in command to release the women, this time unconditionally. After that they were not invited to the police again. A junior police officer expressed his happiness to paralegals about the way they intervened in the matter.

5.4.2 The Rights of an Accused

On many occasions, when a person is arrested, he or she is badly beaten, tortured and forced to 'confess' to a crime; he or she is even denied access to his family, a lawyer, and medical treatment. Often, most family members are afraid to come forward and identify themselves with the suspect for fear of being branded 'criminals'. Needless to say, all of these actions are wrong under our laws.

The 1991 Constitution is clear about the rights of a person arrested and detained for a criminal offence and the Sierra Leone Police Human Rights Unit (a subset of the Professional Standards Department) also agrees that following should be ensured:

- You are considered innocent until proven guilty;
- You must be told of the reasons for your arrest and detention immediately upon your arrest in a language you understand;
- You must be allowed free and unobstructed access to your legal representatives (*for who is entitled to state representation, see later in*
- *5.4.4.2 Rights of the Accused*);
- Your next of kin (or any other close relative or friend), at your request, shall be informed of your detention as soon as possible and allowed free and unobstructed access to the detainee;
- You are not tortured in your cell;
- To apply for bail (to be released with reasonable conditions to ensure your appearance in court to stand trial – *see*
- *5.4.2.3 Police Bail*).
- You are kept in a clean and non-overcrowded cell, and are fed and provided with a change of clothing throughout your detention period, along with a host of other similar standards relating to basic human rights principles;

- You must be allowed medical attention/treatment if it is required.

5.4.2.1 Charging an accused

If a person is charged with a crime(s), he must be informed, in a language he understands, of the charges that have been put against him. If there is sufficient evidence, the status of the person is changed from 'suspect' to 'accused'. When a police officer decides to charge a person with a crime, the officer must give the person proper warning before questioning them. Ideally, a lawyer should be present (although there is no right to legal representation in Sierra Leone). If an accused cannot afford a lawyer, then the best thing for him to do is keep quiet or be careful about what he says. What he does say can be used as evidence in a courtroom against him.

Any statement or confession a suspect or accused makes must be given voluntarily, and be accurately recorded. The statement should be read back to him so that he ascertains that what he has said is written down. The constitution forbids the police or other security force to subject a suspect/accused to any form of torture, inhuman or degrading treatment to force them to speak or give up information. As a general rule, statements or confessions obtained through violence, force, threat, inducement, or promise will be rejected in a court of law. All statements and confessions must be the product of a suspect/accused's own free will and not forced.

5.4.2.2 Detention Periods

The police have the following restrictions in regards to an arrestee:

- He must be charged or released **within 72 hours** for all offences, except:
- Capital offences, offences carrying life imprisonment, and economic or environmental offences for which the period of time is extended to a **maximum of ten days**.
- Any person that is unlawfully arrested or detained by any other person shall be entitled to compensation from that person (The Sierra Leone Constitution (1991), Ch. III, Sec 17 (3) and (4)).

5.4.2.3 Police Bail

Police bail can be granted to someone who has been arrested, to allow police time to carry out further enquiries into the case before making a final decision on whether or not to charge that person to court. According to the Criminal Procedure Act 1965, any court issuing a warrant of arrest for any offence other than murder or treason may, in its discretion, if the person enters into a recognisance with sufficient sureties for his attendance before the Court at a specified time, order the officer to whom the warrant is made to release such person from custody ([The Sierra Leone Criminal Procedure Act](#) (1965), Part I, Section 29 (1)).

The accused will have been interviewed and as he is released from custody, issued with a form stating when and where he must return either to answer to further interrogation or appear in court. If a person has been arrested with a warrant, and the warrant makes no statement as to the bail, the police must seek permission from the required court before such bail is granted.

5.4.2.4 Cost of Bail

Police bail is free and the surety (person providing the bail) does not need to bring money to where the person is detained. He or she only makes a promise to pay the bail amount if the detainee fails to appear in court and does not have a satisfactory reason for the absence. The bail may be money, or in some cases property. There are no set limits for the amount that can be demanded for bail; it is discretionary.

5.4.3 Remedy

If a person is found guilty of a criminal offence, he or she is either served a fine and/or a warning or caution as to his/her future conduct, a period of imprisonment, or the death penalty. Meanwhile, in civil cases (torts or contracts), the plaintiff is provided with a remedy if the defendant is found liable for the breach(es) of duty. This usually includes compensation or injunctive relief. If the criminal offence includes a civil component, i.e. a tort, the court may order reasonable compensation to be paid to the prosecutor (or injured party) in addition to or instead of punishing the accused (sec 54 Criminal Procedure Act 1965). The court in a criminal case can also order restitution of stolen property or its value (sec 60 Criminal Procedure Act 1965). . *For more details, see the separate chapters on '5.7 Tort Law' and '5.6 Contract Law'.*

5.4.4 Court Procedure

5.4.7.1 Preliminary Investigation vs. Summary Trial

For crimes within the Magistrate's jurisdiction, the case will be heard in full and the Magistrate will pass judgment. This is known as a summary trial. For crimes above Magistrate jurisdiction, the most common procedure is for the Magistrate Court to conduct a Preliminary Investigation (PI) to determine whether the facts before the Magistrate Court suggest the accused has any case to answer. If there is a case against the accused, then the matter will be committed to the High Court for full trial. However, if there is no case against the accused, then he or she will be discharged (but not acquitted). This means he or she may be brought again to face charges if fresh evidence arises. The following crimes cannot be concluded in a Magistrate's Court, and are thus Preliminary Investigation cases (see Courts Act Amendment No. 31, 1965):

- Any offence punishable by death or life imprisonment (except arson and wounding/causing grievous bodily harm with intent);
- Blasphemy and all offences against religion;
- Bigamy and all offences against laws relating to marriages;
- Composing, printing or publishing blasphemous, seditious or defamatory libels;
- Unlawful combinations and conspiracies, except those relating to crimes that the Magistrate's Court has jurisdiction to try and is committed by one person;

- Any offence against the Perjury Act 1911 and any offence which is declared to be perjury under any enactment if the offence is punishable by more than 2 years imprisonment;
- Offences against the Treason and State Offences Act 1963;
- Rape and attempted rape;
- Reckless driving offences (see Section 38 of the [Road Traffic Act](#));
- Housebreaking and committing a felony therein, housebreaking with intent to commit a felony or being found at night armed or in possession of house-breaking instruments;
- Robbery (or intent to rob) with the use of personal violence or an offensive weapon;
- Any offence against the Forgery Act, 1913.

5.4.4.1 Examination in chief/cross examination/re-examination

Witnesses called to testify have to ‘tell their story’ before the court, after which questions may be put to them by the accused or a lawyer representing the accused or by the court itself. These forms of examination can be differentiated as follows:

- **Examination in Chief:** This is usually the first step by the Prosecutor to elicit information from his witnesses regarding the commission of an offence. The Prosecutor should not ask leading questions in this first examination. This is one of the ways by which the Prosecutor establishes a case against the accused person(s).
- **Cross Examination:** This type of examination is carried out by the defence. Its main object is to destroy the testimony of the Prosecution witnesses and thereby discredit the evidence. Cross-examination has a wider latitude that is to say the defence is at liberty to ask as many questions as possible, including leading questions, and questions not pertaining to the specific testimony of the Prosecution witness, unlike the examination-in-chief which has certain restrictions.
- **Re-examination:** If the defence has succeeded in creating doubt in the testimony of the Prosecution or in part of his testimony, the Prosecutor has a second opportunity to clear those doubts in order to reinforce his case – this is known as re-examination. He might face several objections from the defence but a prudent Prosecutor can always correct a mistake in re-examination. If however, the witness is very clear in his testimony and there is no ambiguity, there should be no need for re-examination, which might damage the case. Also note that in re-examination, the prosecutor is not allowed to raise new issues.

5.4.4.2 Rights of the Accused

Right to call witnesses and to prepare a case

When a person has been accused of a crime, it doesn’t automatically mean that he is guilty. Sierra Leonean law states that every person charged with a criminal offence **shall be presumed innocent until proven guilty**. As a result, an accused person has the right to prepare a defence and to call witnesses to testify on his behalf.

Right to counsel

Anyone on trial has a right to a lawyer of his or her choice. You may represent yourself if you choose to do so. The right to state-provided counsel is reserved for cases involving capital offences.

5.4.4.3 Court bail

When a person is charged to court with a criminal offence, he is entitled to apply to be released and allowed to appear on any subsequent dates. This is known as bail, and it is granted by a judge or magistrate. When you are put on bail you are required, either personally or through a representative, to enter into a promise to pay a certain amount of money or deliver up your title deeds if you deliberately fail to appear in court. The promise is known as a recognisance and the court has the authority to enforce the recognisance, which requires payment of the money or possession of the property in question if a court appearance is not made. The person who enters into a recognisance who is not the accused, is known as a *surety*.

Who can apply?

Any person accused of a crime can apply for bail. However, bail is discretionary, meaning that it is left with the magistrate or judge. In the majority of cases, the gravity of the offence charged influences the exercise of the magistrate or judge's discretion. For capital offences, for example, bail can only be granted by a judge of the High Court, but even here it is rarely granted, due to the severity of the offence.

Bail Application and Granting Bail

Bail application is usually made on the first appearance of the accused in court, although it can be made at any time, and once bail is granted and the terms fulfilled, the accused can be discharged from custody/prison if he/she is not detained for any other cause. It is also normally made on his/her behalf by his/her solicitor. Where he/she is not represented, the magistrate or JPs will have to consider whether or not to grant bail. A Judge can override a Magistrates Court's decision regarding bail. (*See Section 79 of the Sierra Leone [Criminal Procedure Act 1965](#)*).

Usual 'Bailable' Offences

It is not possible to state categorically if/when an accused will obtain bail, as it depends so often on context. Common examples of bailable offences include assault, simple larceny, loitering, trespass, all summary offences and traffic offences (excluding causing death by reckless driving). However, the Court will refuse bail in relation to these crimes if it sees good reason to.

Adhering to Bail Conditions

Once an accused person is given bail, he must abide by the bail conditions, which usually require him/her to return to court on a specific day and time, not to leave the country, and may include restrictions on his/her movements (e.g. avoiding a crime scene, prosecution witnesses, etc.). If a person fails to adhere to the bail conditions (e.g. if he/she fails to turn up to Court on a given date), his/her surety will be made to pay the agreed amount for the bail.

If the surety is unable to produce the recognisance, the Court shall obtain it through the sale or distress of the surety's property or, failing that, detain the surety for up to 60 days. Providing false documents or making false statements to secure bail is a criminal offence. (See Section 129 of [The Sierra Leone Criminal Procedure Act 1965](#)).

Refusal of Bail/Remand

If a person is refused bail at the Magistrate Court, he/ she has the right to apply to the High Court. However, if bail is refused again, the person will be remanded in custody until either the end of his or her trial, or the bail application is reconsidered and granted at the next adjourned date or a later stage.

5.4.4.4 Adjournment

Adjournment is the postponement of a case until another time or place. The reasons for adjournment are numerous, but are often related to one party, or the Court, not being ready to continue with the case. Some of the common reasons include: a) either party (or both) cannot come as a result of illness. Here, the surety (or sureties) are expected to turn up in court and a letter or document from a doctor is mostly required; b) the accused is remanded in custody and has not been brought by the prison authorities to stand his/her trial; c) The magistrate or judge is absent as a result of illness, official assignment or personal circumstance; d) the prosecution/defence lawyer has not had conference with their witnesses; e) the expert/official witnesses are absent.

Note that adjournment is discretionary and a magistrate or judge may reject any of these reasons and continue the trial notwithstanding the absence of one party. If the court rejects the excuse from the accused, a bench warrant (which is an order for the arrest and detention of the accused until he/she is brought before the court on the next adjourned date) may be issued. If it is the complainant that is absent, the court may dismiss his or her case and the accused may be discharged (but not acquitted) [S. 94 Criminal Procedure Act 1965]. If an accused person in Sierra Leone has been denied bail, their case cannot be adjourned for more than eight days at a time at the Magistrate court.

5.4.4.5 Close of Case, No Case Submission, Plea in Mitigation

No case submission: This is where, at the close of the Prosecution's case, either the accused or his/her counsel urges the court to dismiss the charges against the accused because the Prosecution has failed to prove their case. Here, the accused or his counsel argues that based on the Prosecution's case, the evidence is both weak and unreliable to secure a conviction and the accused will have no further need to give evidence or call witnesses in his or her favour.

Plea in mitigation: The defendant's lawyer (or even the defendant personally) will, once found guilty, take the opportunity to explain to the court why the offence was committed, the defendant's personal circumstances and that the defendant feels remorse, in an attempt to lessen the punishment. A prior good act or anything that appeals to the human mind will come in handy. The most common situation is to ask the magistrate or judge not to give a custodial sentence (e.g. where the accused is the sole breadwinner of 7 children, all of whom are below 14 years, his/her lawyer may tell the court that keeping the accused in custody will

cause irreparable consequences to the children). Note, however, that a plea is not a right and the magistrate or judge is entitled to ignore it.

Close of case: This simply means the end of the case of either or both parties. For the prosecution, this is after re-examining the last witness and/or making closing remarks/address. For the defence, this is after the final address (which may also be the no case submission). It is the last element of the case from both parties before the Magistrate/Judge pronounces judgment. The plea in mitigation is sandwiched between judgment and sentencing.

5.4.4.5 Referrals

Cases can be referred to different courts for a number of reasons. The most common cause for referral is between the Magistrates and High Court if, after the Magistrate has conducted a Preliminary Investigation into charges that are beyond their jurisdiction, they find that there is a case to answer in the High Court. However, another type of referral is between courts of equal jurisdiction (i.e. between two Magistrates courts). This can occur when the accused is charged with having committed an offence, or is continuing to commit an offence(s), within the local limits of the jurisdiction of a different court than to which he/she is appearing. Multiple but related offences in different jurisdictions may also be subject to referral.

5.4.4.6 Final Sentence, Fine, or Remedy

A sentence is the final decision of a court which determines the type of punishment a convicted person will have to serve. It sometimes refers to the punishment itself.

If a person is found guilty of a criminal offence, he is either served a fine and/or a warning or caution as to his/her future conduct, a period of imprisonment, or the death penalty. If he is not found guilty, he/she can be acquitted and discharged.

In detail, a court's final decision can take the following forms:

- **Fine.** A sum of money a convicted person is required to pay to the court as a penalty for a criminal offence he has been found guilty of.
- **Imprisonment.** Most crimes under criminal law carry an imprisonment punishment. In Sierra Leone, they may also be accompanied by hard labour. If a person is found guilty of a crime that carries a prison sentence, he/she will usually be sent to prison for a specified period of time (*see the 5.3.2 Specific Offences in the 5.3 Criminal Law*). Most crimes in Sierra Leone just have a maximum penalty – if the judge chooses to issue a lesser punishment, it is at their discretion.

Concurrent Prison Terms. When a criminal defendant is convicted of two or more crimes, a judge sentences him/her to a certain period of time for each crime. Then out of compassion, leniency, or the fact that the several crimes are interrelated, the judge will rule that the sentences may all be served at the same time, with the longest period controlling.

Consecutive Prison Terms. This is when the judge orders that all prison terms are served one after the other.

Suspended sentence. This is when a person sentenced to prison is not actually sent to prison - provided he/she keeps out of trouble for the period of the suspension.

- **Remedy.** In civil cases (torts or contracts), the plaintiff is provided with a remedy if the defendant is found liable for the breach(es) of duty. This usually includes compensation or injunctory relief. If the criminal offence includes a civil component, the court may order reasonable compensation to be paid to the prosecutor (or injured party) in addition to or instead of punishing the accused (sec 54 Criminal Procedure Act 1965). However, judges do not normally award the injured party compensation in a criminal trial. *For more details, see the separate chapters on '5.7 Tort Law' and '5.6 Contract Law'.*
- **Discharged.** To be discharged of a crime means you are released from any duty, obligation or even custody based on a technicality, reprieve or lack of evidence. It is not a bar to further proceedings and you may be rearrested and prosecuted after discharge for the same crime.
- **Acquitted.** To be acquitted, on the other hand, means that after hearing evidence from both sides, the prosecution has failed to prove its case and the accused is found not guilty. Once acquitted, an accused person cannot be brought to court for the same offence.

5.4.4.7 Double jeopardy

Double Jeopardy occurs when someone is prosecuted a second time for something that he or she has already been tried for. **This is illegal in Sierra Leone**, with the exception of when there is an order from a superior court made in the course of appeal relating to the conviction or acquittal (see [The Sierra Leone Constitution](#) (1991) Chapter III, Section 23 (9)).

Note, however, that in most cases, the prosecution casts a wide net and a person can be convicted of an offence other than the one s/he is charged with. In addition to this, there is always an opportunity to amend the information/indictment relating to an event or series of events. Therefore, it is very unlikely that once a person is convicted or acquitted for an offence, he/she can be brought to trial again for an offence arising out of the same situation.

5.4.4.8 Appeals in the High Court

If a person has been found guilty of a crime, he/she has the right to appeal the decision. If the sentence was passed in the Magistrate's court, he/she can appeal to the High Court. If the sentence is passed in the High Court, he/she can appeal to the Court of Appeal. A final appeal can be made to the Supreme Court, which is the most superior of the Court structure in Sierra Leone and is responsible for interpreting the Constitution. Although the right to appeal is guaranteed by the Constitution, the ability of most Sierra Leoneans to do so is seriously compromised by a lack of resources. Navigation through the lengthy appeals process is complicated, and is only possible for those with money to hire a counsel over a

relatively long period and, for those outside Freetown, to travel and support themselves away from home to attend hearings is an additional burden.

5.4.4.9 Pardon

This consists of using the executive power of a President to forgive a person convicted of a crime, thus removing any remaining penalties or punishments, and preventing any new prosecution of the person for the crime for which the pardon was given (see [The Sierra Leone Constitution](#), 1991, Part II Section 63).

A pardon strikes the conviction from the books as if it had never occurred, and the convicted person is treated as innocent. However, the President is not able to pardon crimes independently in Sierra Leone, as pardons must be approved by a Committee appointed by the Cabinet over which the Vice President presides.

Pardons, as well as forgiving a person for a crime/s, have some other functions, including respite for the punishment of a crime for a specific period of time, substituting a less severe form of punishment for a crime or remitting the whole or part of any punishment imposed on a person for an offence/s. Sometimes pardons are given to an older rehabilitated person long after the sentence has been served to clear his/her record. However, a pardon can also terminate a sentence and free a prisoner when the chief executive is convinced there is doubt about the guilt or fairness of the trial, the party is rehabilitated and has performed worthy public service, or there are humanitarian reasons such as terminal illness.

5.4.5 Juvenile jurisdiction⁸

The laws of Sierra Leone relating to children in conflict with the law, especially the Child Rights Act of 2007, express a preference for addressing the causes and prevention of minor misdemeanor offenses in the community. Thus, under the CRA, each village is required to elect a Child Welfare Committee (CWC), which, among other duties, “shall provide advice and instruction to a child alleged to have committed a minor misdemeanor.” Each CWC is also required to “provide advice to children, parents, and other community members in promotion of the best interests of the child,” and to seek advice from Chiefdom CWC regarding children’s welfare within their localities. CWCs are explicitly prohibited from considering serious offenses committed by children and may not impose punishment. Rather, the objective is to allow “any child directly concerned to search for solutions, according to the child’s age and ability.” Whilst any serious crime must be referred to the formal justice system, for minor offences in the community it is in the best interests of the child for these to be resolved locally rather than putting the child through formal criminal procedures. The MSWGCA is developing diversion guidelines to support this approach.

5.4.5.1 Minimum age of criminal responsibility

⁸ Large parts of this section are drawn from Global Rights and LAWCLA, ‘A Handbook for Paralegals in Sierra Leone’, pp. 65-71.

A child is defined as a person below the age of eighteen under both international law and Sierra Leone's Child Rights Act, 2007. **The minimum age for criminal responsibility in Sierra Leone is fourteen years of age. This means that a youth under fourteen is unable to commit a crime and no court has jurisdiction to hold such a youth accountable for his or her criminal conduct (S.70 of the Child rights Act, 2007).**⁹ A paralegal should raise the issue whenever he or she reasonably suspects that a client is under the age of fourteen. The issue of age may be raised at any stage of the proceeding, including arrest, investigation, trial and sentencing.

5.4.5.2 Establishing a child's age

The absence of reliable birth records may make it difficult to establish whether a child in conflict with the law is under or over the age of fourteen or under or over the age of eighteen. To respond to this challenge, the MSWGCA recently prepared Age Assessment Guidelines. The Guidelines provide that an age assessment should be made as early as possible in order to avoid the trauma of deeper involvement in the justice system and to conserve public resources. A paralegal should become familiar with these guidelines and use them in cases where a child client's age is at issue.

5.4.5.3 Child arrests

A child arrested by the police for an offence within the jurisdiction of the Juvenile Court, must be brought before a Magistrate's Court forthwith. If it is not possible for the police to bring the child to the court immediately, the police shall release the child unless the child is charged with homicide or an offense punishable by more than 7 years; unless it is in the interest of the child to be removed from association with any undesirable person; or unless the release of the child would defeat the ends of justice. (Children and Young Persons Act, Section 5).

Children arrested by police should not be detained with adults while waiting to appear in court, unless the case involves co-defendants over the age of 17. (Children and Young Persons Act, Section 4). Male and female prisoners must be detained in separate quarters.

In practice, primarily because of limited resources, children are often held in detention in police stations for prolonged periods of time. Although under the Sierra Leone Constitution, adults must be brought to court within 72 hours, there is no such provision regarding children in the Children and Young Persons Act (Beyond the Law: Assessing the Realities of Juvenile Justice in Sierra Leone, Defence for Children International, 2010). While so detained, children lack access to parents, to counsel, to adequate nutrition and to adequate medical care. They may also be abused by police during detention. Thus, every effort should be made to remove children from police stations by working with police to transport them to court or by convincing the police to release the child pursuant to Section 5 of the Children and Young Persons Act.

It should also be noted that the Family Support Unit (FSU) of the Sierra Leone Police (SLP) is charged with the responsibility of interacting with the families of children in detention and with children in detention to provide for the best interest of the child. The MSWGCA has at

⁹ A child under the age of fourteen may be the subject of counselling or probation in the child welfare system.

least one probation officer in each district who handles all cases of children in conflict with the law.

5.4.5.4 Appearing in Court

When a child appears before the court, the Magistrate reads and explains to him/her the details of the offence(s). It is the duty of the Magistrate to ensure that the child has understood the nature of the offence.

Juvenile courts consist of a magistrate and two justices of the peace. Juvenile proceedings are not open to the public, although representatives of the press are allowed to attend as long as they do not publish the name of the child or any information that might lead to the identification of the child. (Children and Young Persons Act, Section 5). In practice, however, juvenile proceedings are often not conducted in accordance with the privacy provisions of the Children and Young Persons Act.

Children charged with adults are tried in adult court but are sentenced according to the Child and Young Persons Act if they are convicted. Children charged with homicide or other serious offenses are tried in the High Court if the Juvenile Court determines that trial in the High Court is appropriate given the background of the child and the nature of the offence. (National Child Justice Strategy for Sierra Leone, MSWGCA, 2006, p. 7).

It is the duty of the Magistrate at the child's first court appearance to explain the charges to the child and to ask the child whether the child admits the offence. If the child denies the offence, the case must be set for trial. At the trial, witnesses must be called to testify, with questions asked by the Magistrate, by the child, or by the child's lawyer, if the child has been able to employ counsel. Although the Constitution of Sierra Leone provides for the right to counsel (Constitution of Sierra Leone, S. 28 (5), Act No. 6 of 1991), indigent children in conflict with the law in Sierra Leone are provided with appointed counsel only when the interests of justice so require.

If the child admits the offence, and if the court is satisfied that the evidence supports the charge, the court must order an investigation regarding the child's background with the objective of gathering information that will enable the Magistrate to make a disposition of the case that is in the best interest of the child. (Children and Young Persons Act, Section 16). It should be noted here that if the charge is 'trivial' the Magistrate need not proceed to this stage and may dispose of the case without this information. During this investigation, the child may be released on bail. The dispositions available to the Magistrate after a plea of guilty are the same as those available to the Magistrate after a trial.

If the Magistrate finds beyond a reasonable doubt that the charge has been proved after a trial, or where a child pleads guilty, the Magistrate may¹⁰:

- Discharge the child or young person without making an order;
- Order the child or young person to be repatriated at the expense of Government to his home or district of origin;

¹⁰ Extracted in part from Rachel Harvey, "Juvenile Justice in Sierra Leone - an analysis of legislation and practice."

- Order the child or young person to be handed over to the care of a fit person or institution named in the order, such person or institution being ready to undertake such care;
- Place him for a specified period, not exceeding three years, under the supervision of a probation officer;
- In certain instances a fine, in conjunction with another punishment or standing alone, may be imposed. However if the offender is a child (under 14 years) then there will be no criminal responsibility. If the offender is a young person (14-17 years) then it is within the discretion of the court to decide whether the parents or the young person will be ordered to pay.
- Conditional release – the child will be released on the condition of good behaviour. If this is breached, the child will be brought back to court and the punishment will be re-considered.
- Place a child in an approved school until age 18 where “none of the other methods in which the case may be legally dealt with by the provisions of this or any other Ordinance is suitable.” Children and Young Persons Act, Section s 26 1, Section 23 (2).

At the end of it all, the probation officer makes a report which includes the social and family back ground of the child, the conditions in which the juvenile is living and the circumstances under which the offence was committed. The contents of the report should then be made known to the child and a copy should be given to the juvenile’s parents or guardian or legal representatives.

A Juvenile court will dispose of all cases regarding juveniles with the exception of homicide, which must be tried in the High Court.

5.4.5.5 Detention

After trial

If sentenced to prison, “a young person...shall, so far as circumstances permit, not be allowed to associate with adult prisoners.” (Id. Section 24 (3)). However, the only facilities for imprisonment of children is an approved school located in Freetown, the result being that there are many children who are detained prior to and after adjudication in jails and penal institutions in which they are not separated from adults. (Id. at p. 11). If the court decides that a child is to be punished through detention, this should be in the approved school. Approved Schools are designed to reform and transform child delinquents into functioning members of society by giving them skill training programmes - carpentry, tailoring, masonry, and by giving them education in a formal primary school.

Pre and during trial

No child should be detained in an adult prison or in a police cell together with adults. However, Chapter 44 of the Children and Young Persons Act (1945) states that this *should be wherever possible*. In practice, the only facilities for child detention are the Remand Homes, which are located in Freetown and Bo, where children are kept in custody awaiting trial or during trial in cases where bail has not been granted, and are therefore designed to be for short periods of time.

5.4.5.6 Duration of cases

There is no specific time frame within which a case involving a child should be dealt with. However courts are expected to proceed expeditiously and without any unnecessary delay.

5.4.5.7 Appeals

The appeal procedure is the same for non-child cases, culminating at the Supreme Court.

Section 41 of CAP 44 provides that appeals against an order made by a juvenile court must be filed within seven days of the order or sentence appealed against. However, the Supreme Court has the discretion to allow a late appeal for good cause shown. Appeals from juvenile courts go first to the High Court, then to the Court of Appeal, and finally to the Supreme Court.

5.5 Family Law

This chapter contains information concerning some of the most frequently arising issues that you will handle as a paralegal: Marriage and divorce, separation, matrimonial finance, the law relating to children, domestic violence and inheritance.

This includes detailed information about important legislation passed in 2007: The Child Rights Act and the three ‘Gender Acts’: the Domestic Violence Act, the Registration of Customary Marriage and Divorce Act and the Devolution of Estates Act.

5.5.1 What is a family?

The word “family” has various definitions. In one sense it refers to blood relations arising from a common ancestor, and in another it means an entire household including parents, children, aunts, uncles, nieces and nephews etc. There is also the nuclear family – restricted to parents and children. Certain rights and obligations are dependent on who is a member of the family.

The term “family” in most African cultures refers to a blood relationship arising from common descent or marriage.

The family, in short, can be regarded as a social unit constituted by at least two or more people, and may fall in either of the following categories:

- A parent living with one or more children.
- Brothers and sisters or other persons related by blood or marriage.

5.5.2 Marriage

Marriage is the voluntary legal union between a woman and man. According to the laws of Sierra Leone, there are four types of marriages in Sierra Leone: Christian, Civil, Mohammedan, and Customary Marriage.

The minimum age for marriage is 18 (Child Rights Act 2007, s.34, discussed in detail below). According to this Act, “No person shall force a child (a) to be betrothed, (b) to be the subject of a dowry transaction; or (c) to be married.” Contravention of this attracts a fine of up to 30 million leones or two years’ imprisonment or both (s.35)

Christian marriage

- The law regulating this type of marriage is Chapter 95 of the Laws of Sierra Leone 1960, and its amendments: Christian Marriage (Fees) Rules (Public Notice No.16 of 1964) and Christian Marriage (Amendment) Act Public Notice No.48 of 1965.
- It is monogamous – one woman, one man.
- It should be conducted by publication of banns or license.
- It should be celebrated in a place of worship and by a licensed priest.
- There should be at least two witnesses.
- The parties should not have close blood ties (blood affinity), which can be an impediment to the marriage.
- If any impediment recognized by law is raised (e.g. blood affinity; one of the parties is not properly divorced; age of one party where there is no consent from parents or guardians etc.), the marriage should not be conducted.
- Before the passing of the Registration of Customary Marriage and Divorce Act 2007, a man married under the Christian Marriage Act could contract a second marriage under customary law, and he would not be said to have committed bigamy – because Christian marriage did not recognise customary marriage as a valid marriage. The new Act prohibits a man to contract a Christian marriage with another woman if he is married customarily unless he gets a divorce first (s.3(1)). Similarly, a man in a Christian marriage cannot marry another woman customarily unless he gets a divorce first.

Civil marriage

- This type of marriage is regulated by the Civil Marriage Act (Cap 97) of the Laws of Sierra Leone 1960, and its amendments: Civil Marriage (Amendment) Act Public Notice No.15 of 1964; Civil Marriage (Amendment) Act Public Notice No. 49 of 1965; and Civil Marriage (Amendment) Decree – Decree No.6 of 1994.
- The ceremony takes place in the office of the Administrator and Registrar- General or their District Offices.
- Either party to the marriage can notify the Registrar of their intention to marry. The Registrar will publish a Notice after it had been entered in the Marriage Notice Book. The Notice will also be affixed at the outer door of the office of the Registrar for three months or after the Certificate is granted. The Certificate is issued by the Registrar at the expiration of 21 days. At the expiration of the 21 days or the three months, the marriage can be conducted.
- The marriage can in the alternative be conducted by Licenses instead of the publication of the Notice. The License is granted on condition that there is no impediment.

- If an objection is raised by anyone, the person will be required to enter a *caveat* in the Marriage Notice Book. The Chief Justice will conduct a summary hearing to hear the objection and will order accordingly.
- Under the Registration of Customary Marriage and Divorce Act 2007, a man married under civil law cannot marry another woman customarily, and vice versa, unless he gets a divorce first (s.3(1)).

Mohammedan marriage

- This type of marriage is regulated by the Mohammedan Marriage Act (Cap 96 of the Laws of Sierra Leone 1960), and its amendments: Mohammedan Marriage (Amendment) Act Public Notice No.10 of 1988.
- The marriage is potentially polygamous – the husband can marry up to four wives if he can love and treat them equally.
- The marriage ceremony can be conducted in the house or the mosque.
- A bride price (dowry) must be paid to the parents of the bride and the *Qur'an* be read.
- The marriage must be publicized and there should be at least two witnesses at the marriage ceremony.
- A Registrar must be appointed from the Muslim community to record marriages and divorces. Certified copies of marriage certificates should be registered in the office of the Registrar-General.
- Under the Registration of Customary Marriage and Divorce Act 2007, a man married in a Muslim marriage cannot then marry a new woman under customary law, unless he divorces the woman he has married under Muslim law first, and vice versa (s.3(1)).

Customary marriage

- Customary marriage refers to all marriages celebrated and recognized as valid under any system of customary law in force in Sierra Leone.
- There are different types of customary laws varying from tribe to tribe. This explains the reason why customary marriage is in no way a single institution with uniform procedures and effects. Different tribes celebrate marriage differently.
- A customary marriage is celebrated in the bride's home. Most tribes require the payment of the bride price and/or gifts for the bride's parent.
- The new **Registration of Customary Marriage and Divorce Act 2007** changes certain aspects of customary marriages:
 - i. Age for marriage
 - Previously, there was no minimum age for entering into a customary marriage. Young children could enter into marriage, which was often without their consent, resulting in forced marriages.
 - In the new Act, the marriage will not be valid as a marriage unless both parties are 18 (s.2). This reinforces the [Child Rights Act 2007](#). However, note that Section 2 has exceptions.¹¹

¹¹ These exceptions were a mistake in printing the Act after approval by Parliament, and the Government is working to amend the Act.

- ii. Consent to marriage
 - Under the old law, a woman's consent was not required to enter a customary marriage.
 - The new Act introduces the bride's consent as an essential requirement for a customary marriage to be valid (s.2).

- iii. Polygamy
 - Customary marriages are allowed to be polygamous, but they are not necessarily polygamous. There is no limit to the number of wives a man may marry. Before the new Act, men who had entered into a customary marriage were then able to enter into civil, Christian or Mohammedan marriages, and vice versa, during the subsistence of the first marriage, i.e. alongside.
 - Under the new Act, a man can likewise marry as many women as he likes in customary law, but cannot marry other women in other ways. The purpose of this is to prevent the previous practice of some wives (those married in Christian or Muslim ceremonies) being considered more important than others (those married customarily).

- iv. Cohabitation
 - Under the old law, when a couple, whose personal law was customary law, did not get married but lived as husband and wife for many years, when the relationship came to an end, either through separation or death, the vulnerable party was not protected as those who were married under customary law.
 - Under the new Act, partners who cohabit as husband and wife for more than 5 years will be afforded the same protections as a couple married under customary law, as long as neither party is already married to another person.

- v. Married women to be entitled to own property
 - Before the new law, the husband in customary marriages was often entitled to own and dispose of his wife's property and earnings, and she was not allowed to use it without his permission.
 - The new Act provides that women married under customary law are able to keep and dispose of their own earnings and property in the same way as men.

- vi. Registration of marriage and divorce
 - The new Act requires that all customary marriages and divorces be registered. Those marriages contracted after the Act came into force can also register their marriages.
 - At Section 7(1) either party to a customary marriage may apply to the relevant local council for the registration of the marriage. Such application, according to Section 8, should be accompanied by a statutory declaration by that party which should be supported by either of the parents of the spouses, a person standing in place of the parents, or a relative of either spouse. As such, if a husband refuses to register the marriage, it can still be validly registered if only the wife goes to register it. However, at the time of publication, the system for registration still needs to be established.

- vii. Litigation

- Matters relating to customary marriages and divorces, as well as disputes arising under this Act, shall be dealt with by local courts and magistrate courts.

Frequently asked questions

Q. What law applies when a couple marries using several ceremonies?

A. Where a couple celebrates a marriage with customary rites and then later holds a Christian, Muslim or civil marriage ceremony, the customary marriage shall be deemed to be dissolved by the second marriage (s.4(2)). If a couple celebrates marriage under several rites at once the couple need to expressly agree which type of marriage it is to be.

Q. Is it a crime to force an adult woman to get married?

A. It is not a crime, but the marriage will not be valid because there is no consent. Moreover, any person who applies to have such a marriage registered will be committing a crime, punishable by up to one year's imprisonment or a fine of 1 million Le or both.

Q. What if a girl and boy under 18 insist on getting married? What can parents do?

A. The law as it is requires parental consent for under aged marriage (see Sec 2). However this was a printing error. When corrected a boy and girl below 18 can have a relationship but by law it cannot be a marriage.

Q. Does this law deal with the division of property upon divorce or the procedure for getting divorced?

A. No. The division of property on divorce, and the procedure for divorces will be dealt with by the Matrimonial Causes Bill, which is currently with the Law Officers Department being finalised.

Q. What about polygamous marriages combining Christian, Muslim, Civil and Customary law that already exist? Are they lawful?

A. The Act does not apply to marriages contracted before 27th September 2007.

5.5.3 Divorce

Divorce under Christian and civil marriages

Either party under a Christian or civil marriage can ask for divorce. A petition of divorce can only be filed after three years of marriage.

There are three grounds for divorce: Adultery, cruelty and desertion. The party seeking a divorce will have to establish at least one of the grounds. This is done by a Petition to the High Court.

The person seeking a divorce is called the Petitioner, and the other party, the Respondent. In the case of adultery, the third party with whom the act of adultery is alleged to have been committed can be joined in the proceedings as Co-Respondent. For the Petition to succeed,

the petitioner has to prove through evidence that the Respondent was either cruel to her, deserted her, or that he had committed adultery. If the petitioner proves any of the three grounds, the court will grant a divorce order.

Divorce proceedings are governed by the Matrimonial Causes Rules (Chapter 7 of the Laws of Sierra Leone 1960). During the proceedings, the court will usually consider the issues of custody of the children, maintenance, and maintaining the wife. The application can be done by either of the parties and the court will make an order to that effect. Such orders are known as Ancillary Reliefs. The Child Rights Act 2007 further provides for maintenance of children, parenthood, custody etc.

The court will grant a *decree nisi* at the end of the proceedings. The *decree nisi* has the effect of separating the parties temporarily. After three months, the court will grant a *decree absolute*. The court may abridge the three months period (the petitioner can apply to the court for time to be abridged). The *decree absolute* dissolves the marriage, and either party can re-marry.

Divorce under the Muslim marriage

For Mohammedan marriages there are different grounds for divorce. These include:

- adultery by either party
- barrenness or infertility
- contagious disease
- husband's failure to maintain or wilful neglect of the wife
- impotence

The grounds of divorce mentioned are based on Islamic law and practice, and the grounds apply differently according to tribes.

Divorce is granted by Imams who conducted the marriage, and not through the courts.

Divorce under customary law

There are no specified grounds for divorce which need to be proven to bring customary marriages to an end. Instead the party puts forward a reason why the marriage should not continue. Both spouses often give the following reasons, but many reasons are allowed:

- Persistent disrespect of the other's parents
- Incurable insanity
- Barrenness or sterility
- Persistent and unreasonable refusal of sexual intercourse
- Sexual intercourse with a person within prohibited degrees of affinity
- Persistent cruelty
- Desertion
- Witchcraft
- Chronic and infectious disease

Divorce under customary law can be initiated in two ways:

- i. **Judicially.** Through the Local Court. Either husband or wife can initiate proceedings.

- ii. **Extra judicially.** This is the more common type of divorce because it is cheaper. There are two types of extra judicial divorce:
 - Arbitration tribunal.
 - If the husband seeks divorce, he complains to the wife's parents; if the wife seeks divorce, she retires to her parents. The tribunal consists of representatives of the families of both spouses, usually the parents.
 - The tribunal starts by seeking to reconcile the couple.
 - If the complainant insists on divorce after this intervention, the matter is put to the town chief and/or elders, who also encourage the parties to live together.
 - If this fails, and one of the parties is adamant he or she no longer wants to continue the marriage, the tribunal should pronounce a decree in favour of the complainant to dissolve the marriage.
 - Unilateral repudiation.
 - If the husband wants to leave, it involves sending the wife back to her parents and saying he is terminating the marriage. While the husband may in theory be entitled to return of the marriage payments, the parents will rarely return them.
 - The wife can also leave in this way, but there is a different procedure. She must inform the chief in the village where she was married, who should contact the husband who will advise him of the wife's intention to leave and suggest the husband sue in the Local Court for refund of the marriage payments. If the husband fails to bring an action in the Local Court, the chief can pronounce the woman divorced.

5.5.4 Separation

Informal separation is also possible, with the marriage on-going. The spouses' rights to property would not be the same as with a divorce, but paralegals could still assist the parties in coming to a written settlement as to the division of property, support for children etc. The wife would not be entitled to remarry, and neither would the husband depending on the type of marriage.

It is also possible to seek a decree of judicial separation from the High Court, although this is a more costly and lengthier process – paralegals should consult a supervisor for further information. See Part 3 of the Matrimonial Causes Act.

5.5.5 Family finance

Spousal maintenance during marriage

Any married woman who has been deserted by her husband, can take him to the Magistrates Court or the Local Court, and if he is able to maintain his wife or his wife and children, and has refused to do so, the Court may order a weekly amount not exceeding four pounds (Le 25,000 at time of publication). No order will be allowed if the wife has committed adultery, unless the adultery was condoned by the husband. See section 2, Married Women's Maintenance Act Cap 100. In order to enforce this, the Court may order the sale of goods

and/or the detention of the husband in custody, to imprisonment not exceeding 3 months, unless all reasonable charges and costs are paid sooner (s.4).

Spousal maintenance on breakdown of marriage

For monogamous marriages, this is handled under the Matrimonial Causes Act, CAP 102. In such marriages, all division of marital property needs to be decided before the divorce is finalised. ‘Alimony’ is handled at section 21. The court may, if it thinks fit, order that the husband shall secure to the wife such gross sum of money, or annual sum of money of any term not exceeding her life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the court may deem reasonable (s.21(1)). In addition or instead, the court may direct the husband to pay a weekly or monthly sum for her maintenance as the court thinks reasonable (s.21(2)). Under s.22 the wife’s property can also be ordered to the husband or children if the divorce was on grounds of her adultery, cruelty or desertion.

There is no provision for spousal maintenance in customary marriages after the breakdown of the marriage.

Division of property

There are different types of property in a relationship: individual property (that owned by each party to the relationship) and joint property.

1. Individual property

Each party is entitled to keep their own property:

- The Constitution sets out the right to property at article 15:
*‘Whereas every person in Sierra Leone is entitled to the fundamental human rights and freedoms of the individual, that is to say, **has the right**, whatever his race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, **to each and all of the following—***
 - (a) life, liberty, security of person, **the enjoyment of property**, and the protection of law;’*
 - (d) **protection from deprivation of property without compensation;***
- This is reinforced by the Registration of Customary Marriage and Divorce Act which, at s.18, states:
‘A wife in a customary marriage shall have the capacity to personally acquire and dispose of properties and to enter into contracts in her own behalf.’

Because each party can acquire and hold their own property, those things which they each brought into the marriage, any income they earned during the marriage, and anything they purchased with their earnings/labour during the marriage, belongs to them individually.

2. Joint property

For land, paralegals should enquire in whose name the deeds of the property are held. If the property is in the husband's name alone, it may nevertheless be possible to argue that the wife should have an interest in the property in accordance with the Common Law principle of equity.

One of Timap's cases from 2010 shows that the Courts in Sierra Leone are interpreting the principle of equity to mean that women may have an interest in their husband's property even when their names are not on the deeds. The facts of that case were that couple had been married for 36 years, and at the start of the marriage the wife had found a large diamond, which the husband had used as seed money to invest and build capital. The couple had bought and sold property and moved across the country, and the husband had had several wives and children by different women. Throughout the marriage the first wife had continued to look after the household. The case was brought to Timap when the husband, having remarried again, sought to evict the original wife from their home, by this time in Freetown. The Magistrate decided that the property was owned jointly, with equal interest.

It can be argued that this also applies in cases of customary law, even where customary law in the area states that wives do not have right to property, because the Local Court Act 1963 states that rules of customary law can only apply in so far as they '*conform with natural justice and equity*'.

This same principle of equity can be applied to all types of property, not just to land, and should be used when one party, often wives, have contributed unpaid labour to the household, including looking after agricultural property, housework and looking after children.

Return of dowry

For Muslim marriages, the dowry is not refundable upon divorce.

For Customary marriages, the wife's family will not be expected to refund the dowry if the husband divorces the wife. If the wife divorces the husband, her family may be expected to refund the dowry:

- Mende, Krim, Sherbro, Gallinas – a wife would not have to refund dowry in the event of his intercourse with a relative, impotence, or persistent cruelty.
- Kono district (Kamara, Nimi Koro, Sai chiefdoms) and Koinadugu (Saradugu, Wuli and Yeraia chiefdoms) - a wife would not refund dowry in the event of his impotence or persistent cruelty.
- Limba – a wife would not refund the dowry in the event of the husband's insanity, non-maintenance or abuse of wife's parents.
- Temne – if a wife divorces her husband on grounds of insanity, impotence, intercourse with an affine, non-maintenance, cruelty or witchcraft, marriage payments are not refunded.

In cases where refund is required, the quantum would be reduced considerably where there are children.

Other gifts

Gifts are not civil debts, but voluntarily rendered to foster cordial relations – as such they are not returnable (e.g. Jewellery etc.)

Damages/ adultery

A husband can claim damages from any person on ground of adultery (s.20 Matrimonial Causes Act, and under customary law). There is no provision for a woman to claim.

5.5.6 The law relating to children

The Child Rights Act deals with a number of areas of law involving children, including child maintenance and custody, rights of parents, abuse against children, minimum age for marriage, criminal responsibility of children, and child employment among others.

When you are applying provisions of the [Child Rights Act](#) (CRA) to a case, always remember the following two important points:

- Under the CRA, a child is a person who is under 18 years of age. (Section 2.)
- The most important principle under the CRA is the short- and long-term *best interests of the child*. (Section 3.)

Broadly, the CRA defines the rights of children and then sets out how these must be upheld.

The 12 key child rights are as follows:

1. Right to life and development
2. Nationality and name
3. Live with parents
4. Dignity, respect, leisure, liberty, health, education, shelter (by parents)
5. Reasonable provision from a parent's estate
6. Protected from involvement in armed conflict
7. Sports, positive cultural and artistic activities
8. Treat disabled children in dignified manner
9. Express an opinion, be listened to and participate in decision-making (s.31)
10. Freedom from exploitative labour (s.32; ss.125 - 140)
11. No torture or other cruel inhuman or degrading treatment or punishment (s.33)
12. Minimum age of 18 for marriage (s.34)

These are set out in sections 23 – 34 of the CRA.

If any person violates one of these sections, or any other section in Part III of the CRA, that person has committed a criminal offence and can be fined Le 3 million and/or imprisoned for 2 years. (s.35)

Paralegals will be involved in upholding the above rights in a number of ways.

The CRA also outlines a child's duties:

- Depending on his/her age and ability, a child has a duty to respect his/her parents and others.

- A child also has a duty to be diligent with work and studies, as well as to strengthen positive values of the community. (Section 45.)

There are a number of institutions involved in resolving matters related to children:

Family Support Unit (FSU) - the Act gives the FSU responsibility for dealing with alleged juvenile offenders, child victims of domestic violence and for monitoring proven child abusers (s.57). The FSU may also make referrals to, or take advice from other institutions.

The National Commission for Children – this has to be established to oversee the implementation of the Child Rights Act, parental and state responsibilities and advise government on policies to improve the welfare of children.

Village and Chiefdom Child Welfare Committees (CWC) – is a community-based structure made up of community members to monitor and respond to specific children’s cases, to provide direct support to children and parents and raise awareness on and advocate for fulfilment of children’s rights at village and chiefdom levels. Their composition, mandates and powers, together with procedure for appeals, are set out in detail in the Act (ss.47 – 55). The Ministry of Social Welfare, Gender and Children’s Affairs is responsible for monitoring all CWCs.

Family Court - A new ‘Family Court’ will handle parentage, custody, access and maintenance of children (civil matters) (s.78). See 5.5.7.8 Civil actions.

Child Panels – These will be set up in each District for mediation of certain matters relating to children, including minor criminal matters and issues relating to child rights and parental duties. Various members of the community will sit on the panels, such as social welfare officers, district council members, and Chiefdom Council representatives (see CRA s.72).

Ministry for Social Welfare, Gender and Children’s Affairs – The MSWGCA is responsible for the implementation of the Act. MSWGCA social welfare officers will need to sit and play a leading role on Child Welfare Committees, Child Panels and Family Courts. They will also play a key part in investigations of child abuse, obtaining care/ supervision orders and reviewing/ monitoring children in care, and in preparing social enquiry reports. The ministry also holds Child Protection Committee meetings at national, regional and district levels which bring together agencies working for children to jointly coordinate and oversee child protection activities. In Makeni, there is also a Child Justice Taskforce. Paralegals can participate in these.

Traditional Chiefs and other community mechanisms

Traditional chiefs are taking an important role to respond to Child Protection cases¹² and many cases are handled and solved at the community level. Sometimes they make byelaws, which can be useful, but they are not always in line with the CRA or other related national legislation. Paralegals are sometimes asked for assistance in developing byelaws, and in such

¹²More than 80% of 5000 respondents reported that they report child protection issues to chiefs according to action oriented (?) research conducted by UNICEF in 2009.

cases should always consult their supervising lawyer at once. Some local councils are also developing local council byelaws on issues relating to children.¹³

Juvenile Court – the CRA does not mention a Juvenile Court but the Government of Sierra Leone has set one up, within the Magistrates Court system.

Minimum age of criminal responsibility- for more detail see 5.4.5.1.

The CRA defines the age at which a person can face criminal liability:

- Under Section 70, a child who is under 14 years of age cannot be held criminally responsible for his/her actions. Therefore, a child can only be guilty of a crime if he/she is over 14 years of age.

The CRA contains the laws on child custody, maintenance, and parentage. If a person wants to take civil legal action on these issues, he/she must go to a family court. A family court is a special type of magistrate court, and is described in Sections 76 – 82 of the CRA. The CRA confers on the family court jurisdiction to decide on child custody, maintenance, and parentage; a local court does not have jurisdiction to decide these issues. NOTE: Family courts have not been created yet. For now, magistrate courts have jurisdiction over these issues.

Child custody:

In the CRA, it is the family court that has jurisdiction on these issues. However, the possibility of establishing a family court in each district is slim bearing in mind the number of magistrates in the country. Regular Magistrates' Courts sit part time as Family Courts in order to deal with these issues. The MSWGCA has social workers who deal with family case work. In their work on these issues, paralegals should refer to sections 83 to 108 of the CRA for guidance. The most important principle with regards to custody, access and maintenance are "*the best interests of the child*".

- If there is a dispute about who should have custody of a child (for example, between the child's father and mother), only a family/magistrate court can decide who should have custody.
- Under Section 86, a parent, family member, or any person who is raising a child, can apply to court for custody.
- If you have a case wherein the parties are arguing about who should have custody of a child, you should explain how the court would make its decision. This information can help the parties decide who should have custody of the child.
- Under Section 88, the court will consider the *best interests of the child* when it is deciding who should have custody. The court will also consider the following:

¹³ Freetown City council enacted a set of four local council byelaws in February 2010. One of them deals with employment of children. See Gazette Volume CXLI No. 11.

- It is usually important for a young child to be living with its mother.
 - The opinion of the child, depending on the child's age and maturity.
 - It is often preferable for a child to live with its siblings.
 - It is good for there to be continuity and stability in a child's development.
 - (Remember, these are just considerations – the decision should always be made based on the *best interests of the child*.)
- It is an offence under s. 89 for anyone to unlawfully remove a child from another person who has lawful custody of that child. If one of the parents of the child wants custody, s/he must go to the family court which will decide who gets custody. Removing a child from the parent who has custody without a court order is punishable by 6 months imprisonment or a fine not exceeding Le 500,000. It is important for a paralegal dealing with such a case not to confuse such action with child trafficking, which is a more serious offence under the Anti-Human Trafficking Act 2005. A parent or relative who removes a child from a person who has lawful custody so that that parent or relative will have custody of the child, without more, is not child trafficking but an offence under s. 89.
 - NOTE: There is no customary law giving a father the right to take a child from its mother when it is 7 years old. This practice came from an interpretation of old British Common Law, but is not the law in Sierra Leone. It is clear from the CRA that decisions about custody must be based on the *best interests of the child*.
 - Under s. 36(c), if a parent's child is not living with him/her, the parent has the right to maintain a personal relationship with the child UNLESS this would harm the *best interests of the child*. For example, if a child is not living with his father, the father still has the right to see the child, BUT, if the father is abusive towards the child, he should not be permitted to see the child because this would not be in the *best interests of the child*.

Child maintenance:

- Under the CRA, both parents of a child have important duties, even if the parents are not married or are not living together. (Section 26.)
- Under Section 90, a parent has the duty to supply the necessities of health, life, basic education, and reasonable shelter for the child. The natural father of a child has this duty, EVEN IF he is not married to the child's mother OR he is not living with her or the child (Section 90(3)).
- There are two different types of legal action that can be taken against a person who does not fulfil his/her duty under Section 90: Criminal and civil.
 - Criminal: A parent who violates Section 90 is guilty of a criminal offence. If he/she is reported to the police/FSU, he/she can be prosecuted and fined Le 500,000 and/or imprisoned for 6 months.
 - Civil: If a parent does not fulfil his/her duty under Section 90, the person who is raising the child can apply to a family/magistrate court for a maintenance order. A maintenance order is an order from a court that forces a parent to support his/her child. A maintenance order can also force the father of an unborn child to pay for the pregnant mother's medical expenses, for her

maintenance, and for her continued education after her pregnancy if she is under 18 years of age. (Section 94.)

Parentage:

- The CRA contains provisions about how to prove who the parents of a child are. This could be important, for example, in a child maintenance case if the alleged father says that he is not the father of the child. Under Section 83, any interested person can apply to a family/magistrate court for an order to confirm parentage of a child. If this application is made, the court will investigate who the parents of the child are. The court can order an alleged parent to take a medical test (Section 85).

Child abuse:

- The CRA prohibits any person from subjecting a child to torture or other cruel, inhuman or degrading treatment or punishment. Any such abuse should be prosecuted under the Prevention of Cruelty to Children law.

Child abuse means behaviour that harms or is likely to cause harm to the safety, health and well-being of the child. It may include physical, sexual or emotional harm.¹⁴

When dealing with child abuse cases, it is extremely important to respect the rights and dignity of the child and family at all stages.

The discussion of sensitive information and release of information might have a negative and long-term impact on children and their families. This can lead to the child and the family being stigmatised in school and the community and can put the child's and/or family's safety at risk. Confidentiality and, consent in case the particular case need to be referred to other service providers should never be compromised at all cost¹⁵.

- The Act does not specify that **female circumcision** is unlawful, but it does say that cultural practices that dehumanise or injure the physical or mental welfare of the child count as cruel treatment. (s.33(1))

¹⁴ Dealing With Child Abuse - A Handbook for Child Welfare Workers in Sierra Leone, Government of Sierra Leone, Ministry of Social Welfare, Gender and Children's Affairs, 2009.

¹⁵ **Physical abuse** means intentional use of physical force against a child that results in harm to the child's health, survival, development or dignity.

Sexual abuse means forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening; this includes penetrative, non-penetrative and non-contact activities. Although the age of sexual consent is not established yet in the country, the Sexual Offences Bill will do so, though this Bill is yet to be passed through Parliament. See the section for Gender Policy in 4.3.3 for more detail.

Emotional/psychological abuse means persistent attacks on a child's sense of self; this includes public shaming, constant criticism, name-calling, belittling, excessive teasing, ignoring a child, punishing normal social behaviours, exposure to domestic violence, rejection, forced isolation, intimidation, discrimination, exploitation, unappreciative/demeaning/degrading comments used on a child, terrorizing or routinely making unreasonable demands on a child and not allowing children to join other children in play.

Neglect means failing to meet the child's basic needs (adequate supervision, food, clothing, shelter, safety, hygiene, medical care, education, love and affection) and failure to use available resources to meet those needs.

- **Corporal punishment** - Whilst the CRA states that “**corporal punishment**” is, in principle, not justifiable under the CRA unless it is reasonable¹⁶
 - Corporal punishment in schools is prohibited under the “Code of Conduct for Teachers and Other Education Personnel”. The code does not tolerate any forms of sexual and gender-based violence, exploitation and abuse, physical and humiliating forms of punishment, psychological abuse, and child labour.
 - The Domestic Violence Act 2007 states that domestic violence is an offence. Definitions of domestic violence are given and include physical or sexual abuse (section 2). Domestic relationships are defined (section 3) and include a family relationship, a relationship akin to a family relationship and a relationship where the complainant lives in or attends a public or private care institution and is under the care and control of the offender;
 - The CRA repealed the Corporal Punishment Act and any corporal punishment in the context of sanctions for violations of the law (for child offenders) was abolished.

- In certain circumstances children can be **removed from abusive parents**. s.25 states:

No person shall deny a child the right to live with his parents and family and grow up in a caring and peaceful environment unless it is proved in court that living with his parents would -

 - i. lead to significant harm to the child*
 - ii. subject the child to serious abuse or*
 - iii. not be in the best interests of the child*

- The FSU is required to maintain a **register of child abusers** (of sexual or other abuse) whenever reported, and must take special measures to protect children from such people. (s.38).
- Investigation. The SLP should investigate cases of suspected abuse. The district council may direct a probation officer or social welfare officer accompanied by the police to remove the child on an emergency basis to a place of safety for a maximum of 7 days within which time the matter should be brought before a family court (see s.62 for procedure). Section 60 sets out the circumstances when a child is in need of care and protection.
- What the court can do in child abuse cases:
 - The court can prosecute the case as child cruelty.
 - Additionally, the court can make civil orders - **care orders** or **supervision orders** - for the protection of the child. See ss. 63 and 64 for more details.

This chart summarizes key sections of the CRA. Consult a copy of the CRA for the complete text of these and other sections.

¹⁶ Sec 33(2) says “No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction.

Provisions of the [Child Rights Act \(2007\)](#)

<u>Issue</u>	<u>Section</u>	<u>Law</u>
Who is a child?	Section 2	“Child” means a person below the age of eighteen.
The most important principle when applying the CRA is “best interests of the child.”	Section 3(1)	The short- and long-term best interests of the child shall be a primary consideration in any decision or action that may affect the child or children, as a group.
Child’s voice and empowerment	Section 31	No person shall deprive a child the right to express an opinion, to be listened to, and to participate in decisions which affect his welfare. The age and maturity of the child determines how much weight to give to the child’s opinion.
Child maintenance	Sections 26(1)(a) and (b)	No parent shall deprive a child of his welfare whether or not the parents were not married at the time of the child’s birth and whether or not the parents continue to live together.
	Section 26(3)(b)	Every parent has rights and responsibilities towards his child, which include the duty to provide good guidance, care, assistance and maintenance for the child and assurance of the child’s survival and development.
	Section 90(1)	A parent is under a duty to supply the necessities of health, life, education, and reasonable shelter for the child.
	Section 90(3)	The father of the child, whether it is legitimate or not, is legally liable to maintain the child
Criminal liability	Section 70	A child shall not be held to be criminally responsible for his actions if he is below the age of fourteen years.
Child labour	Sections 32(1) and (2)	No person shall subject a child to exploitative labour. Labour is exploitative of a child if it deprives the child of its health, education, or development.
	Sections 128(1) and (3)	The minimum age for the engagement of a person in hazardous work is eighteen years. Hazardous work includes mining and quarrying; portorage of heavy loads; manufacturing industries where chemicals are produced or used; work in places where machines are used.

	Section 125	The age of fifteen shall be the age at which the compulsory primary education of a child shall end, and also the minimum age for the engagement of a child in full-time employment.
Child Custody	Section 36(1) and (2)	Every parent shall have the right to have the child live with him or to maintain personal relations, if the child is not living with him. A parent shall have the right to apply to a court to prevent a co-parent from asserting his rights.
	Section 88(1) and (2)	A Family Court shall consider the best interests of the child and the importance of a young child being with his mother when making an order for custody or access. A Family Court shall also consider the age of the child; the views of the child.
Marriage	Section 34(1) and (2)	The minimum age of marriage of whatever kind shall be eighteen years. No person shall force a child to be betrothed, to be the subject of a dowry transaction, or to be married.
Child punishment	Section 33	No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child.
Child duties	Section 45	Every child shall contribute towards family cohesion, respect parents and other people, exhibit diligence towards studies and work, and strengthen the positive cultural values of his community.

5.5.6.1 Other legislation on children

Sierra Leone has or is in the process of enacting several pieces of legislation relevant to social welfare policy for children. These include:

- **Anti-Human Trafficking Act 2005¹⁷**: Jurisdiction to try trafficking cases; establishment of an agency to oversee the implementation of the Act and strategic planning to combat trafficking in persons; defines trafficking and all acts that would be considered to be trafficking or to support an act of trafficking including penalties for those trafficking or supporting acts of trafficking; gives details about powers of arrest, search of premise, seizure of things related to the act of trafficking; care and protection of victims of trafficking including restitution;

¹⁷ Trafficking involves recruiting, transporting, keeping a person by threat, use of force or other forms of coercion or deception for the purpose of exploitation, which includes, prostitution, sexual slavery and forced labor.

- **Adoption Bill 2010** – details the establishment of an agency in Freetown to oversee adoption; details the processes to adopt a child;

5.5.6.2 Key social issues affecting children

Teenage Pregnancy

Teenage pregnancy is a complex issue and its causes include sexual exploitation and abuse (SEA), insufficient parental care, poverty and early sexual exposure and activity¹⁸. In order to obtain their basic needs such as food, clothing, medical needs and schooling, children often resort to transactional sex, which often leads to unwanted and unplanned pregnancies. Children are exposed to sexual activity due to family living arrangements, easy access to pornographic films, social events without adults' supervision, and peer pressure.

When dealing with cases of teenage pregnancy, it is crucial to understand the factors that led to the pregnancy and to take appropriate actions including referral to social workers or to FSU for criminal procedure if there has been sexual abuse. However, often teenage mothers feel isolated, trapped and helpless and have to drop out of school, so it is very important to consider the best interests of the pregnant teenager mother as well as the teenage father to seek the best possible support for the teenage parents during the pregnancy and post pregnancy with regards to returning to school and for the upkeep of the baby. This should be done in collaboration with schools and other child protection service providers.

For pregnant teenagers and teenage mothers, the type of support required is listed below:

- Access to ante-natal care and reproductive health service for delivery;
- Assistance in child care;
- Access to information on reproductive health including contraception for future reference.
- Support to return to school at the earliest possible time for their own economic independence and self-sufficiency;
- If any, opportunities for teenage mothers who cannot, or do not wish to, return to school, to receive skills training opportunities for economic independence.

Children without Parental Care (Alternative Care)

In Sierra Leone, many children are being placed in alternative family care (menpikin) for socio- economic and cultural reasons. Formal fostering with court orders and supervision from the MSWGCA is not frequently practiced.¹⁹ Many children in residential care were received into the Children's Homes for reasons of poverty or educational opportunity. Research shows that residential care can harm children's physical, psychological and emotional development.²⁰

According to the [Child Rights Act 2007](#), section 113, the use of residential care for a child is only allowed in the following circumstances: i) pending the determination by a Family Court of a protection order under this Act; ii) on the recommendation of a probation officer or social welfare officer who has determined that the approved home for the care of children is

¹⁸ A Glimpse into the World of Teenage Pregnancy in Sierra Leone, UNICEF, 2010

¹⁹UNICEF, Mapping of Residential Care Institutions in Sierra Leone. Lamin 2008

²⁰ Save the Children. 2009, Keeping Children Out of Harmful Institutions; Why we should be investing in family-based care.

the most suitable place for the child; iii) or if the child is an orphan and family care and fosterage are not available.

Local Councils/MSWGCA are responsible for managing the approvals, inspections, monitoring and admissions to children's homes. The Alternative Care Policy 2011 details the arrangements for local foster care solutions and *menpikin* arrangements, both of which require the oversight of CWCs and / or Chiefs.

Adoption is a means of permanently transferring parental responsibilities to another adult. It severs all ties with the child's original family. All cases for adoption must be referred to the MSWGCA.

Fosterage (*'menpikin'*) is the informal arrangement made between parents and another family, who are frequently relatives that the child will go to reside with this family. The usual reasons for the practice of *'menpikin'* appear to be lack of infrastructure in the rural areas and a desire to provide children with increased educational opportunities to develop and achieve.

However it appears that the custom of *'menpikin'* is in some circumstances benefitting parents and the receiving families (e.g. to use the child for domestic work) more than it is benefitting the child. According to the Alternative Care Policy 2011, *'menpikin'* arrangements need to be negotiated with the full involvement of the child concerned. Where the *'menpikin'* situation is such that the child will move to another community, the chiefs of both communities must be informed and oversee the living arrangements.

Chiefs, CWCs, social workers, and paralegals are asked to communicate the following messages regarding *menpikin*²¹:

Children should not be taken to live with non-relatives except where the arrangement has been validated by the paramount chiefs or village chiefs where both families live;

Children should take part in the decision for them to be *'menpikin'*;

There should be contact between the child and his/her parents and siblings on a regular basis

- The child must be informed of where he/she can go if he/she wishes to discuss any problems surrounding the *'menpikin'*;
- An agreement must be reached between the families; if necessary the chiefs should be consulted;
- Girls should not be sent to live with single males even if they are related.

5.5.7 Domestic Violence

5.5.7.1 Special needs in domestic violence cases

Domestic violence cases may be unlike other types of cases because of the intimate and potentially on-going nature of the relationship, the reality that there is likely high dependency between the parties and the fact that there may be considerable power imbalances. Victims will often depend on the perpetrator for economic support for themselves and/or their children. Domestic relationships include parents and children. Domestic violence cases are

²¹ Alternative Care Policy, MSWGCA 2011.

also different because much of the harm will take place in private without witnesses and may be continuous rather than just one-off incidents, and because of the perception that outsiders shouldn't be involved.

Domestic violence often starts off with a small incident and gets steadily worse. In fact, victims are at their most vulnerable just after they have reported an incident to an outside authority, because the perpetrator may be extremely angry at the victim, feeling she has undermined his authority by reporting him. Victims are sometimes even killed by their attacker at this point.

You should also remember that perpetrators of domestic violence may often be charming and seem completely inoffensive to outsiders. They may often try to make out that the victim is the one with the problem.

These are difficult cases. There are real dangers at stake. The paralegal needs to be realistic and put the survivor's safety and security first. What may be a satisfactory solution for all the parties in one case may be totally inappropriate to another situation.

There will often be pressure from family and community to settle the case. Under these various pressures, the victim may well change her mind after her initial decision to take action. Paralegals must respect any such decision. Victims may also be very scared, and they more than anybody know what the abuser is capable of. Paralegals have a responsibility to inform victims of the full range of options accurately, and need to show empathy and be non-judgmental.

5.5.7.2 Steps in domestic violence cases

All of this means that such cases need to be handled particularly carefully. When a domestic violence case comes to the office:

1. The paralegal makes the survivor feel welcome, showing empathy, letting her take her time, listening, ensuring confidentiality.
2. The paralegal admits the case by filling out the intake form and takes the client's statement (nb. If there is clearly a medical emergency, you should see to this first, otherwise carry out these steps).

The paralegal undertakes the risk assessment (see

3. **5.5.7.3 The Risk Assessment**) by carefully and professionally asking the relevant questions and filling out the form, decides whether it is a high risk case or not and explain on the form why they think it is, or is not, a high risk case. The risk assessment is confidential – you must never show it to any members of the community, or anyone else involved in the case except the victim.
4. The paralegal then needs to talk through the options of next steps with the client to make a plan of action. The paralegal should consider:
 - i. Seeking medical attention
 - ii. Making a report to the police/ pursuing prosecution

- iii. Determine whether there is a safe place she can stay, even for a few days (brainstorm with her where might be suitable)
 - iv. The possibility of temporary separation, for a few days, weeks or months, to let tempers cool and assess the situation later. The possibility of more permanent separation already at this stage.
 - v. Would a protection order help?
 - vi. What ability does she have to feed her children/ look after herself?
 - vii. Does she need counselling? Can you help her access this? (you should have a list of all such NGOs in the community)
 - viii. Does she want help in settling with the other side? She may not want to go to court but also not want to settle right away. This is fine: she can do neither.
5. The paralegal should then implement whatever steps are agreed upon.
 6. Follow-up.
 7. Case closure.

Each of these considerations is explained in more detail below.

Points to remember:

- If it is a high risk case, the paralegal should never recommend that the client returns to the perpetrator. If the client insists and wants to return, she is entitled to do that, but the paralegal must never encourage it.
- Respect the client's decision.
- A client is at their most vulnerable after reporting it to an authority outside the home. Their violent partner is likely to be very angry.
- You should not report a case to the police if the victim has brought the case to you and does not want you to. If it is reported to the police, and the victim then decides to withdraw, you should respect that decision. This does not mean the prosecution must collapse. E.g. there may be other witnesses, and a medical report, so that the victim's testimony is not essential. You can continue to assist the police with the prosecution in such circumstances. How do you assist the police with the prosecution when the client (victim) wants out of prosecution? Will the paralegal then (without the consent of the client) divulge any information previously obtained? On whose authority will that paralegal be acting then? If the client does not want to proceed with the case, that's it for the paralegal. You record this and close the case.
- All *sexual offences* are serious crimes and paralegals should not mediate or settle in any way.

5.5.7.3 The Risk Assessment

In some cases the victim will be in extreme danger. It is vital you can recognize the signs of such cases. Paralegals should try to get information on the suspect and the victim in order to

assess whether it is a high risk case. The first thing you should do, after checking that the client is not in need of emergency medical treatment, is to take down a detailed statement with full details of the current incident. You should then carry out a ‘risk assessment’. You must do this at once, and BEFORE contacting the alleged perpetrator. See the format for the risk assessment form on the following page.

Risk assessment form		
<p>Include details of current incident in statement. Complete this checklist for every domestic violence case brought. If the survivor is not comfortable answering any of these questions, please write ‘did not answer’. Please continue overleaf if necessary on any of these questions.</p>		
Risk factor	Yes/ No	Details/ explain
Serious injuries?		
Planned?		
History of abuse?		
Criminal record?		
History of forced sex?		
Weapon used?		
Threats (before, at time, since)		
Possessiveness, jealousy, or stalking?		
psychological or emotional abuse?		
Pregnancy?		
disabled or mentally/ physically ill?		
<p>Victim’s view of the future of the relationship.....</p> <p>.....</p>		
<p>Victim’s view of the likelihood of further violence.....</p> <p>.....</p>		
<p>Do you consider this a high risk case? Yes/ No</p> <p>Explain.....</p>		
<p><u>Additional details:</u></p> <p>Witness contact details</p>		

The following guidance may be useful in completing the form.

Serious injuries?

E.g. Blood, pain, ongoing pain, unconscious, needed to go to a doctor.

Planned?

E.g. Did he tell her beforehand or indicate that he was going to hurt her? Did he bring a weapon specially? Did he take her somewhere specially in order to beat her? Did he tell someone else he was going to hurt her?

History of abuse?

Has he beaten her in the past? How often? For how long has he been violent to her? Can she describe previous incidents? E.g. Weapon used, planned etc. Any serious injuries in the past?

Has he beaten other women in the past? Has he beaten children? Did they incur serious injuries?

Violence often escalates. Perpetrators who have previously been violent against this woman or other women are a particularly high risk. Abuse of animals may also indicate a risk of future violence.

Criminal record?

Including all sorts of offences – violence (whether domestic or general), drugs, dishonesty etc. Even before the relationship.

Also, even if he wasn't caught by the police, has he committed crimes in the past that she knows about?

History of forced sex?

Does he force her to have sex when she doesn't want it? Has he done this in the past? On one occasion or more often?

This is a crime in itself, and may show there is a risk of homicide. Several studies have found that victims of domestic homicide had a much higher rate of previous sexual violence than domestic violence victims who are not murdered. Male paralegals should be careful in deciding whether to ask questions such as this – it may make the client feel uncomfortable, and you should therefore use your discretion. In some languages it is fine to say without causing offence or upset, but in others it is too personal and as a male paralegal you should not ask it.

Weapon used?

I.e. Anything other than his hands. Please describe. How was it used? Was there any attempt at choking or strangulation? Strangulation and stabbing are common methods of killing in domestic homicides.

Threats (before, at time, since)

E.g. Has he ever told her how he is going to hurt her? Has he made threats against any other family member? Has he threatened to commit suicide? Please describe what he said, writing down his specific language.

These are important because threats are evidence, threats are crimes in themselves, and threats show the abuser's criminal intent. Many studies of domestic violence homicide show that threats to kill are often carried out in exactly the same way as is threatened.

Possessiveness, jealousy, or stalking?

Does he check where she is too often? Does he distrust her unreasonably? Does he think she's having affairs when she is not? Does he restrict her movement/ tell her where she is/ is not allowed to go?

This includes following the victim, unwanted attention, persistent telephone calls or text messages and visits. Many harassment and stalking cases involve former partners and there are clear links between this behaviour and subsequent domestic violence assaults and domestic homicide by men against women.

Psychological or emotional abuse?

Does he restrict her movement/ tell her where she is/ is not allowed to go? Does he try to isolate her from her friends/ family? Does he make you feel small or inadequate? In public or in private? Do you feel intimidated by him? How does he do this?

This included denial or minimisation of violence. If the perpetrator is increasingly entrapping the victim it may be a warning sign of future homicide or repeat and severe violence. Women who are isolated, because they don't work or live in a rural area, have the highest risk of domestic violence.

Pregnancy?

Is she pregnant/ was she at the time of the assault?

Pregnancy may increase the victim's isolation and dependency. Violence during pregnancy increases the risk of miscarriage, fetal abnormality and risk to the life of the woman herself. Violence during pregnancy and just after childbirth both indicate a high risk of future violence.

Disabled or mentally/ physically ill?

You can observe this, and you can ask.

Disability or illness may be because of the violence, but it may also be important in assessing the victim's vulnerability to future harm.

Victim's view of the future of the relationship

Discuss this with her. Does she want to continue/ leave? How does she feel about it?

Female victims who separate from their partner are at a higher risk of physical violence and sexual assault as well as homicide. Violence that continues after separation is often more serious and is more likely to involve stalking and to lead to homicide. The early stages of separation (especially the first three months) are particularly dangerous. Disputes over children can indicate a risk of homicide to both the partner and the children.

Victim's view of the likelihood of further violence

Discuss this with her.

Paralegals should be aware that victims frequently *underestimate* the risk of harm.

Do you consider this a high risk case? Yes/ No

Think about all of the above, and consider whether you think there is a likelihood of further serious violence. Consult the paralegal manual for an explanation of how each of the above contributes to the riskiness of the situation. Please review the page if necessary. Always explain your answer, whether you say yes or no.

Additional details

Witness contact details

Include details of anyone who was present, including children. Include address and telephone numbers where possible.

Details of friend/ family members

Include details of people who might be able to help/ support her either now or in future. You may want to take her to stay with these people, preferably people who live nearby or in a neighbouring town. Include address and telephone numbers where possible.

5.5.7.4 Seeking medical attention

According to the DVA, medical care should be free, but clients may require assistance in accessing this. Currently the Ministry of Health has not set aside funding to provide this. See section 3.4 *Emergency Fund*.

When accompanying clients to a medical facility, you should make sure that the nurses make the client feel comfortable, explain procedures and obtain consent, treat any emergencies, counsel on possible health consequences, take a medical history, conduct a physical examination, obtain any necessary forensic evidence, give treatments, document findings and treatments thoroughly, and keep all documents confidential and secure. When she is

discharged, nurses should ensure the client has a safe place to go, give clear simple instructions for medication and wound care, and encourage a follow-up visit.

5.5.7.5 Prosecution

The Law

If an *act of domestic violence* has been committed AND the perpetrator was, at the time the act was committed, in a *domestic relationship* with the victim, then the perpetrator is guilty of a criminal offence under the [DVA](#).

- Under Section 5, a victim of domestic violence or anyone with information about the commission of an offence of domestic violence can report the matter to the police/FSU.
- Section 7 explains the actions that must be taken by the police/FSU when they receive a complaint of domestic violence. Under Section 7, the police/FSU must:
 - Interview the parties and witnesses (Section 7(1) (a)).
 - Record the complaint and, if requested, give the victim an extract of the complaint (Section 7(1) (b)).
 - If necessary, assist the victim to obtain medical treatment (Section 7(1) (c)). The victim must be given a medical form and, where necessary, sent to a medical facility (Section 7(2)). Medical treatment and a medical form must be given free of charge – the victim must not be required to pay a fee (Section 7(3))
- There is no guidance in the Act as to whether the police should prosecute a case or not. However, it does say that once a criminal action has been brought, the matter can still be settled. If, once in court, the victim wants to settle the matter, the Magistrate **MUST** direct that it be settled unless the domestic violence is *aggravated* (s.20(1)(a)). The Magistrate **MAY** also direct that it be settled if he thinks it is appropriate for settlement and the victim consents (s.20(1)(b)).
- If it is *aggravated*, the Magistrate is not permitted to direct settlement. Aggravated domestic violence is defined under Section 1, and includes any act of domestic violence that causes wounding to the victim, or any incident that the court otherwise considers to be aggravated taking into consideration whether a weapon was used, failures to respond to previous warnings, evidence of premeditation and whether the victim is particularly vulnerable.
- If a person is convicted of an offence of domestic violence, he/she can be fined Le 5 million and/or imprisoned for 2 years.

The Role of Paralegals

If the client wants to pursue prosecution:

- DO NOT at this stage contact the alleged perpetrator.
- Do inform the supervising lawyer or lead paralegal.
- Go to the police with the victim, to report the matter and ask to be issued with a medical certificate form. The police may take a statement at this point or wait for the medical report to be brought back to the station before obtaining statement. Make sure the police follow the proper procedures set out in Section 7 of the DVA.

- Paralegals should inform the victim that she can choose to withdraw the matter once in court.
- Accompany the victim to a medical centre (in the western area and in Kenema, to the Rainbo centre) to have a medical examination (and treatment if necessary). The medical certificate will be needed in court as evidence.
- Take the completed medical certificate to the police. In many areas it is only the police themselves that are allowed to convey the medical certificate from the doctor/hospital to the police station. If this is the case, the paralegal's role is to ensure that the police in charge of the case do so in a timely manner.
- The police should then investigate the matter. They may accept your assistance, e.g. you could take them on your motorbike to investigate the incident. However, they will often not want help. Nevertheless, the paralegal should monitor the case, following up to show that someone is interested and listening to the client, to check that they are doing the right thing and speedily working to charge the case to court.
- You should NOT have anything to do with the other party (alleged perpetrator) e.g. inviting him for interviews or trying to get his own side
- Remember there is no such thing as an excuse or mutual responsibility for violence. If the perpetrator argues that she provoked him (as is common), this is good evidence against him in committing the crime, as it shows he had a motive.

5.5.7.6 Safe place to stay

If a victim is not comfortable going back to her home, paralegals should ask whether she has friends or relatives who she could stay with, and should accompany her to that house if necessary. The Ministry of Social Welfare, Gender and Children's Affairs is still in the process of operationalising two safe homes in Freetown and Makeni.

Each paralegal office should also consider in advance a safe place where they can send clients for a few days: this way, if it is agreed in advance with e.g. a local leader, there may be less chance of allegations by the husband that the person living in the house is having an affair with the woman.

5.5.7.7 Separation

A good option will often be temporary separation, for a few days, weeks or months, to let tempers cool and assess the situation later. After this time, the client may want to seek a permanent separation. However, the client may also want to seek permanent separation on first coming to the office, as she may already have been considering the issue for a long time and have come to a decision. It may be useful then to provide information on separation and divorce at the very beginning if it is appropriate so that the client has informed options about what might be possible at a later stage.

5.5.7.8 Civil actions

In addition to or instead of a criminal action, the victim can apply for a civil protection order (section 10). This is an order made by the court to prohibit the perpetrator from committing or threatening to commit further acts of domestic violence.

The court can grant a protection order forbidding many different kinds of behaviour by the perpetrator (see sections 15 and 17 for a full list)

- If the victim and perpetrator do not live in the same home, a protection order can prohibit the perpetrator from going near the victim's home (Section 13(2) (n) and (o)).
- If the victim and the perpetrator are living together, the protection order could order the perpetrator to leave the home and pay maintenance to the victim (Section 15(2) (a) (iii)-(iv); Section 17).
- If a protection order is made against a perpetrator and the perpetrator does not obey the order, the perpetrator is guilty of a criminal offence and can be fined Le 5 million and/or imprisoned for 3 years (Section 19).

The victim will need to make this as a civil application, or it can be made in the course of a criminal prosecution (without requiring a separate application).

The court can make a protection order without the respondent being present (this is known as '*ex parte*'), and without notice being given to the respondent (this is known as '*ex parte* without notice'), and the burden is lower if the respondent is not present. For the grounds on which the court can make an order, see section 12.

Paralegals should bear in mind that in very serious or dangerous cases, protection orders may not be appropriate. Protection orders are only as strong as the ability of the court to enforce the order. There are cases in other jurisdictions of women being murdered by their partners immediately after a protection order is granted.

5.5.7.9 Can she support herself financially?

Often with domestic violence cases, one central problem is that the victim is financially reliant on the perpetrator. This can be a factor in causing the violence, since the perpetrator knows they can get away with the violence because of the financial dependency. Paralegals need to be able to assist women by advising them on how they could support themselves financially in the future. It's important to have this discussion near the beginning so that the client knows what her options are. Possible considerations include:

- Does she have skills for employment? Are there any skills training available in the community?
- Are there any microfinance programmes available? Note that many people default on microfinance programmes and can become indebted. Paralegals must make clear they are only providing information and not recommending that the client joins a microfinance programme.
- Can the paralegal assist in seeking child maintenance payments from the perpetrator? Either under the CRA or DVA.
- What property does she have? What is she entitled to at home? (Think about what belongs to her in her own right and what joint property she might have with the perpetrator. Has she contributed to the upkeep of the house? Even if through looking

after children rather than financial input.) See '5.5.5 *Family finance* section for more details.

It is important for this that you identify all appropriate services available in the community, and speak with the relevant person within each organisation in advance. Such services may be provided by government agencies, NGOs, UN agencies or traditional local actors.

5.5.7.10 Counselling

Paralegals should enquire whether the client has a close friend or relative who she can confide in. If she does not, or even if she does, she may want counselling. Some NGOs such as the Rainbo Centres and Centre for Victims of Torture, have trained counsellors who should be able to assist. Ministry of Social Welfare staff based in FSUs are also trained in providing such services. Paralegals should keep a list of any such services in the community, and accompany the client to access these.

5.5.7.11 Settlement

Paralegals should always be alert to the dangers of settling. Settling early is likely to show the perpetrator that his behaviour is acceptable, and may show the survivor that her worries are not being taken seriously. It should be remembered that even if there has been an argument, violence is not an acceptable way to settle an argument in any circumstances, and accordingly it is not 'the victim's fault' at all. If however, the survivor is keen to settle and wants help in negotiating a settlement, it may be that this course of action feels empowering to her, as it gives her back authority, which has been taken away from her by the violence. Be aware however, that victims may feel pressure to settle because the perpetrator or family members have threatened her.

You shouldn't seek to settle a case of domestic violence where:

1. the victim doesn't want to settle, or
2. there is aggravated violence, or
3. it is a high risk case.

Tips on settlement:

- First you should ask permission of the client to contact the other side. If she accepts, you should contact him and ask him to come in to make a statement.
- When you meet him you should explain briefly that the victim has come to you for assistance. You must not tell him about the information given to you in the risk assessment, or show him the risk assessment. You should tell him how seriously domestic violence is being treated now, and that it is a criminal offence, punishable by a fine of Le 5 million and/or 2 years imprisonment. The perpetrator must understand how serious the offence is and understand that it is his own responsibility.
- Paralegals can then arrange a date for settlement.

- In discussing the terms of an agreement, the paralegal should remember that in a relationship with domestic violence, the relationship is not balanced, they do not have equal responsibility for the violence, and they cannot mediate on an equal footing. As such, the victim should not be required to change her behaviour or agree to do anything. If there is any apology, it must be from the perpetrator to the survivor: the victim must not be asked to apologise. If the victim, of her own free will, thinks that she has behaved badly and wants to commit to not behaving in the same way again, then she may be allowed propose this commitment and it may form part of any agreement.
- In reaching the agreement, the paralegal should inform the parties that the agreement will not be a bar to further action to prosecute the case in the future. Therefore, if the victim decides at a later date to go to the police, he/she can do so even though a mediation agreement has been signed. Mediation cannot immunise a person from prosecution for a criminal offence.
- If appropriate, the paralegal can inform the parties that if the paralegal discovers during follow-up that the domestic violence is continuing, the paralegal and the organisation will consider referring the matter to the police or a social worker even if the victim does not want such action to be taken.

Chart of the Domestic Violence Act 2007

This chart summarizes key sections of the DVA. Consult a copy of the DVA for the complete text of these and other sections.

<u>Issue</u>	<u>Section</u>	<u>Law</u>
When has the offense of domestic violence been committed?	Section 2(1)	Under the DVA, domestic violence offenses occur when any person in a domestic relationship engages in any act of domestic violence. The DVA has specific definitions for “act of domestic violence” and “domestic relationship.”
What is an act of domestic violence?	Section 2(2)(a) – (e)	Domestic violence means any of the following acts or threat of any such act: <ol style="list-style-type: none"> a. physical or sexual abuse b. economic abuse c. emotional, verbal, or psychological abuse d. harassment, including sexual harassment and intimidation e. 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) 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.
What is a domestic relationship?	Section 3(1)(a) – (j)	Domestic relationships include relationships where the complainant and offender <ul style="list-style-type: none"> (a) are married; (b) live together in a relationship in the nature of a marriage; (c) are courting; (d) are parents of a child or expecting a child; (e) are related by consanguinity, affinity or adoption; (f) share or shared the same residence; (g) are related as parent-child or elderly blood relation; (h) are in household employment relationship; (i) are living in a care institution together; (j) are in a relationship determined by the court to be a domestic relationship.
What is aggravated domestic violence?	Section 1	Aggravated domestic violence is domestic violence that: <ul style="list-style-type: none"> - causes the victim to suffer wounding or grievous bodily harm; - or the court considers the violence aggravated due to factors such as use of a weapon, failure to respond to previous official warnings, premeditation, or a vulnerable victim.
How many acts of violence does it take to amount to domestic violence?	Sections 4(1) and (2)	A single act may amount to domestic violence. A number of acts that form a pattern of behaviour may also amount to domestic violence, even if some or all of the acts are trivial when viewed in isolation.
Police assistance upon receiving a domestic violence complaint	Sections 6 and 7(1)	Police officers shall: <ul style="list-style-type: none"> - interview parties and witnesses - record the complaint in detail - assist victim to obtain medical treatment - assist victim to a place of safety - assist and advise the victim to preserve evidence - assist and advise the victim of rights and services available
Medical forms	Sections 7(2) – (3)	Police assistance includes issuing a medical form. A victim assisted by police to obtain medical treatment is entitled to free medical treatment and a free medical report within 14 days of receiving the medical form.
Mediation and litigation	Sections 7(4)	Family mediation or intervention shall not be a bar to the investigation or prosecution of a

		complaint of domestic violence.
Protection orders	Section 10(1)	An applicant may apply to a court for a protection order to prevent a respondent from carrying out a threat of domestic violence or from committing acts of domestic violence.
	Sections 13(2) and 15(2)	See full text of DVA Sections 13(2) and 15(2) for a list of restrictions that can be included in a protection order.

5.5.8 Devolution of Estates Act

This Act substantially improves the legal position of women and girls who until now have been very vulnerable when husbands and fathers die, and should also provide much needed security for all children. Most of the Act deals with what happens when a person dies without a will, but the Act also introduces some changes to the law when a person dies leaving a will.

The Act applies to all persons dying in Sierra Leone who have property anywhere in the country. It should be pointed out that certain provisions of the law are unclear and need to be clarified by the Courts.

1. When a person dies without a will

Equality

- Male and female children are to be treated equally.
- Spouses inherit property from each other equally.

How property is now distributed?

Small estates, of up to Le15 million, will go entirely to the wife or wives and children of the deceased.

Estates larger than Le15 million will be divided between the remaining relatives as follows:

- i. The wife and children shall automatically be entitled to the house and household goods.
 - Where there is more than one wife:
 - a. if there is only one house they will share that house;
 - b. if there is more than one house, each will be entitled to their own house, and they must agree between them who is going to have which house, or they can ask the court to decide.
 - If there is no surviving spouse but there are children, the parents of the deceased will be entitled to reside in the house until they die, but the children can live there too and the property will belong to the children.

- ii. Of the remainder of the estate (after the house and household goods), any child of the deceased (whether born in marriage or not) must be provided with maintenance and education.
- iii. After that, the remainder of the estate will be divided in the following ways:
 - 35% will go to the surviving spouse or spouses (regardless of whether they have children);
 - 35% to go to the children of the deceased;
 - 15% to go to the parents of the deceased;
 - 15% to be distributed according to Muslim or Customary law as applicable.
- iv. Where only the spouse remains, the whole of the estate shall go to her. Where there is more than one wife, the estate will be distributed among the wives according to the duration of their marriages and other factors such as their respective contribution to the estate.
- v. Where there are only children left, the whole of the estate shall go to them in equal shares.
- vi. Where there are only parents left, 75% of the estate will be divided between them, and 25% will be distributed according to Muslim or Customary Law if applicable.
- vii. Where there are only brothers and sisters left, 75% of the estate will be divided equally between them, and 25% will be distributed according to Muslim or Customary Law if applicable.
- viii. Where brothers, sisters and parents remain (but no wife or children), 75% of the estate will be divided equally between them, and 25% will be distributed according to Muslim or Customary Law if applicable.
- ix. Where the personal law of the deceased is neither Muslim law or Customary Law, the proportion of the estate which would otherwise be distributed according to customary or Muslim law will be distributed in equal shares to all the other beneficiaries of the estate.

Who distributes the property?

- The surviving spouse is the proper person to apply for letters of administration to administer the estate. Only if there is no spouse or she cannot be found, will other relatives, the 'next of kin' be allowed to apply for letters of administration. In the event of polygamous marriages, the first wife shall apply for letters of administration and in her absence the next wife in line shall apply.

What is the status of unmarried couples?

- If a couple is unmarried, but they have lived together as husband and wife for at least five years and neither has another married partner, they will inherit in the same way as spouses.
- If a couple live together and one of them is married, the surviving cohabitant will not be entitled to any of the deceased's property under this Act. However, children of such a relationship will be entitled to maintenance and may be entitled to the property.

Are all children treated equally?

- Children born outside of marriage will not be treated in the same way as those born in marriage. Children will be able to inherit from the deceased if they are:
 - i. Born to the deceased while he was unmarried and the child was recognised as his child;
 - ii. Born within marriage;
 - iii. Born to the deceased while he was married to someone else, but the child was recognised by the deceased and his spouse as the child of the deceased;
 - iv. Adopted.

However, all 'natural children', (that is, any biological or adopted child) including those born outside marriage, have the right to be maintained out of the estate.

Does this Act apply all over Sierra Leone?

- Yes. However, the Act will not apply to certain property in some places. In areas where customary law applies, houses or land ('immoveable property') that belong to the deceased's family will return to that family. However, the household contents and residue will still be divided according to the Act. The wife will still be entitled to live in the house if she lived in it with the deceased during the marriage, but after her death the property will go back to the husband's family.

What happens in the event of a dispute?

- If any person wants to take a matter to court, they will have to take it to the High Court.

Criminal offences

- It is an offence to eject a surviving spouse or child from the matrimonial home before the formal distribution of the estate, unless a year has passed since the deceased's death, or six months have passed if the house is public property, or a court order has been obtained. This is punishable by two years' imprisonment and/ or Le 5 million.
- It is also an offence to deprive someone of property to which they are in law entitled to.
- It is an offence for a person without lawful authority to interfere with (e.g. take possession of or move) the property of a deceased. Letters of administration can constitute lawful authority to deal with the property of a deceased.

2. What happens when there is a will

- Where the deceased made a will, this is binding, and the rest of this Act does not apply.
- However, if someone dependent on the deceased has not been or is not adequately provided for in the will, and they will suffer hardship, they can apply to the court to have the will changed to provide for them.

Frequently asked questions

Q. If a man has two wives and one has no children, will she be entitled to inherit anything?

A. Yes. A wife's entitlement to property is not dependent on whether she has children. She will be entitled to her share of the portion given to wives. Moreover she will be able to stay in the marital home in just the same way as every other wife.

Q. What happens if a man and woman marry and then he leaves her and marries a younger wife - will the first wife be entitled to inherit?

A. This will depend on whether they have been divorced or not. If they have been formally divorced, she will not be entitled to inherit. If they are just separated, she will be entitled to inherit in the same way as in any polygamous marriage.

Q. What happens if a woman lives with a man but they are not married, and the man had a wife before and did not divorce, and then the man dies? Will the woman be entitled to anything as a dependent? If she has children, will they be entitled to anything?

A. The woman will not be entitled to any of the man's property. However, if they have children together, his children will be entitled to maintenance up to the age of 18. The children may also be entitled to the property of the deceased, but only if the deceased and spouse recognised the children as the children of the deceased.

Q. Can step children inherit property of a deceased person equally?

A. They can inherit equally if they were recognised by the deceased and the deceased's spouse as the children of the deceased.

5.6 Contract Law

One day Allison travelled to a Timap for Justice Office to see if the paralegals there could help with a problem. Allison explained her story. Her dwelling house needed repairs and so she had asked Ben to cut sticks for the rehabilitation. Ben said he would cut the sticks for Le 100,000. Allison agreed to the price and gave him an advance of Le 60,000, promising the balance of Le 40,000 upon completion of the work. Ben did not perform the work. He even refused to cut the sticks after Allison paid him the Le 40,000 balance as extra motivation.

The main issue in Allison's case is the subject of this chapter: Contracts. Contract law is one of three branches of the Law of Obligations. In the first branch, sometimes one party owes another party an obligation because of harm he or she has caused, as in an assault – that branch is known as tort law. In the second branch, sometimes a party owes another party an obligation because he or she has received a benefit – that branch is called the law of restitution. Contract law is the third branch: One party owes another party an obligation because a promise has been made. Here, Ben made a promise to cut sticks and Allison made a promise to pay Le 100,000.

Understanding contracts means understanding promises and obligations as well as the remedies available when promises are broken or obligations not met. When dealing with cases that involve contracts, paralegals should be aware of the common problems that arise in contract law. First, have the disputing parties even made a contract – what are the elements of a contract? Second, if there is indeed a contract, what are its terms? Third, even if a contract between parties exists, are there reasons that the contract should not be enforced? Fourth, how do we know if a contract has been breached? Finally, what are the remedies available to plaintiffs in contract cases?

5.6.1 Making a Contract

Did Allison have a contract with Ben? For a contract to be valid and enforceable, three elements must be present: (1) an offer, (2) an acceptance of that offer, and (3) consideration. Let us look at these concepts more closely.

5.6.1.1 Offer

An offer is genuine if it creates the power to accept. Ben has made a valid offer to cut sticks for Allison only if Allison can close the deal. His offer is indeed valid because Ben has given Allison the choice of whether to accept his labour or not. It is now up to Allison to establish the contract by accepting the offer.

Here are other examples:

- Abby says to Allison: “I will dig a well in your village for Le 200,000.” This is an offer because Abby clearly intends to enter into a bargain if Allison accepts her offer.
- Matt says to Allison: “If I dig a well, it will take about 10 days.” This is not an offer because Matt has not indicated that he is willing to be bound to a bargain. Since he is just describing his abilities hypothetically, Allison does not have the power to accept.

5.6.1.2 Acceptance

Whoever makes an offer also describes how the offer may be accepted. There are two ways to accept an offer: (1) a return promise or (2) a performance. In our example, Ben told Allison she could accept his offer to cut sticks by paying him Le 100,000. Allison accepted his offer by promising to pay the money – she made a return promise.

Here is another example:

Allison says to Sam: “If you swim across the river, I will give you Le 5,000 when you reach the other side.” Here, there is no return promise, but Sam can make a contract with Allison simply by swimming across the river. This is accepting by performance – no return promise is needed.

5.6.1.3 Consideration

An important element of a contract is that it must be supported by consideration – each party must *give* and *get* something. For example, Ben has promised to cut sticks for Allison, and in consideration Allison will pay Le 100,000. On the other hand, if Ben had promised to cut sticks for Allison for nothing in return, then there would be no contract. Even if Ben had promised very sincerely that he would do the work, *the law of contracts does not recognize a valid contract unless the other party either gives something in return (such as Le 100,000) or at least gives something up.*

Thus, another example of a contract that includes valid consideration would be:

Matt agrees to dig a well for Allison if Allison promises to never drink Star beer again.

To recap: promise to give a gift (of food, of labour, or of anything) without receiving anything in return never makes a legal contract. If Ben says he will cut sticks for no money, then he is not legally obligated to cut the sticks.

5.6.2 Voiding a Contract

Even if a contract is valid and even if the terms are clear, there may still be reason to throw out the contract, rendering it unenforceable. These reasons generally concern the conditions under which the contract was made. Below is a sampling of the kinds of issues paralegals might look out for:

5.6.2.1 Duress

In our original example, Ben might not be required to cut sticks if Allison forced him to agree to the contract and he had no alternative but to agree. If so, Ben entered the contract *under duress*. It is easy to imagine situations where a party feels she/he has no choice but to agree to the contract: maybe she/he was threatened with violence if she/he did not agree to a contract; maybe she/he was threatened with imprisonment; maybe Allison threatened to tear down Ben's house if he did not agree to cut sticks for Le 10,000. In such cases, duress provides a legitimate reason to throw out a contract and make it void (not enforceable).

5.6.2.2 Misrepresentation

Contracts need not be enforced if one party can prove that there was a misrepresentation. Perhaps, in our example, Allison led Ben to believe that the house needing repairs was her hut in the village, when it was really her mansion far away in Freetown. Ben would not be required to perform the work because Allison misrepresented the facts underlying the contract, even though she had a duty to tell Ben that she had a different house in mind.

5.6.2.3 Unconscionability

If a contract is obviously unfair or one-sided, there may be justification to make it void. If the contract for cutting sticks had been for only Le 50 and not Le 10,000, Ben might not be required to do the work because the contract was so blatantly unfair. However, paralegals should be aware that parties generally are allowed to make whatever bargain they wish, and it may be difficult or unwise to determine if a contract is too one-sided. Therefore, unconscionability usually excuses a party from an obligation only when that party had much less bargaining power than the other party.

5.6.3 Breach of Contract

In our example, Ben clearly breached the contract with Allison by not cutting sticks as they agreed. But sometimes identifying a breach is not so simple. For example, what if Ben had been hired by Allison to dig a well and the contract required him to dig the hole, line it with concrete, and supply a bucket and rope. Ben does everything perfectly, but fails to supply the bucket. Has he breached the contract?

Generally, only breaches that are material (seriously affecting an important part of the contract) can justify the harmed party in leaving a contract. For instance, Allison could decide not to pay Ben if Ben breached by not lining the well hole with concrete. But if Ben has merely forgotten the bucket, the breach is only partial. Allison should pay him nearly the full contract amount, but could deduct a small sum to compensate for the missing bucket.

5.6.4 Remedies: Enforcing a Breached Contract

Contract breaches require remedies. In our original example, if Ben has breached his contract with Allison by not cutting any sticks, Allison is entitled to a remedy. Paralegals should be aware that there are several different kinds of remedies available and that some remedies are better suited for some cases than others. Below are five kinds of remedies paralegals might think about.

5.6.4.1 *Specific performance*

One solution if Ben breaches his contract with Alison is for Ben to cut the sticks anyway. This remedy is called specific performance.

Specific performance is an especially useful remedy when the contract concerns a unique item or something without substitutes. For example, suppose Abby makes most of her money from selling groundnut paste. Sam is the only woman nearby who grows groundnuts, so Abby has a contract to buy all of Sam's groundnuts to make her groundnut paste. If Sam breaches their contract and decides to sell groundnuts to someone else, Abby is in a lot of trouble – she no longer can get the groundnuts to make groundnut paste. Instead of taking money damages, Abby may insist on specific performance and delivery of the groundnuts so that she can maintain her thriving groundnut paste business.

Sale of property is another area where specific performance is useful. If Matt promises to sell his house to Allison, but then breaches the contract by refusing to do so, Allison could be awarded specific performance and Matt required to sell her the house. Money damages may not be satisfactory because the house is one-of-a-kind and no substitute exists.

5.6.4.2 *Restitution*

Restitution is a useful concept in cases of unjust enrichment – when one party has benefited without giving anything in return. In our original example, Allison paid Ben Le 100,000 and Ben breached the contract. Ben has been unjustly enriched. One remedy is for Ben to give back to Allison the Le 100,000.

Now imagine if Allison had promised Ben the Le 40,000 balance when he was halfway through cutting the sticks. Suppose Ben cuts the sticks and is in fact nearly done, but Allison

breaches the contract by not paying. Now Allison has been unjustly enriched because she has the new sticks but has not paid for them. The sticks may even be worth more than Le 100,000 – perhaps Sam would buy them for Le 120,000. If that is the case, Ben could ask for Le 120,000 in restitution damages because that is the amount Allison has been unjustly enriched.

5.6.4.3 Expectation damages

Many contract breaches are best remedied with expectation damages, which put the party that was harmed in a position as if the contract had been performed. For instance, let us say that Allison has a contract with Sam to buy a bag of charcoal for Le 5,000. Sam can get a bag of charcoal for Le 4,000 and expects to make a Le 1,000 profit when she sells it to Allison. If Allison breaches their contract and decides not to buy a bag of charcoal, then Sam can ask for expectation damages: Le 1,000.

Another way to measure expectation damages is by loss of value. For instance, if Allison had contracted with Matt to build a concrete house with a zinc roof, but he had constructed a thatch roof instead, Allison's home would be less valuable. As a remedy, Matt could pay Allison the difference in value between a home with a zinc roof and one with a thatch roof. There is another way to calculate expectation damages in this situation: cost of completion. By this measure, Matt could be required to pay the amount needed for someone to replace the thatch with zinc, that is, complete the project as was originally expected.

5.6.4.4 Reliance damages

Sometimes a damage remedy can be measured by figuring out how much compensation would return a party to the position he or she was in before the contract was breached.

What if Allison contracted with Ben to build a bed for a guest that was arriving soon. Ben agrees to the contract, so Allison buys a mosquito net for the bed – Allison is relying on Ben to do the job in their contract. But if Ben fails to make the bed, Allison not only lacks a bed, but she has also spent money on a mosquito net. As a remedy, Allison might ask for the price of the mosquito net – this is a sunk cost that can't be recovered.

5.6.4.5 Liquidated damages

In making a contract, two parties might agree on what damages will be paid if a breach occurs. For instance, Allison and Ben could have agreed that if Ben fails to cut sticks within three days, then he will be charged a late fee – perhaps he will only receive Le 8,000 total for the job. Liquidated damages are therefore already a part of the contract, like a built-in solution.

A rule-of-thumb for liquidated damages is that they should be reasonable and not designed to punish. For example, a contract provision that states Ben must pay Allison Le 200,000 if he fails to cut sticks within three days might not be considered valid.

5.6.4.6 Mitigation

Once a party is aware of a breach by another party, he or she is required to take reasonable care to avoid aggravating the injury done to them or increasing the damages owed to them. This common law requirement is called mitigation.

Assume that, after building the walls of a house, Matt only has the roof left to construct for Allison. Allison contacts Matt and tells him that she cannot pay for the roof and asks him to stop construction. She promises to pay him the full sum they agreed on for constructing the rest of the house, but informs him that she cannot compensate him for the roof. Matt, knowing that he can sue for reliance damages, cleverly goes ahead and buys zinc for the roof, finishes the roof, and demands that Allison pay for the supplies and services.

Even though Allison was originally in the wrong, Matt, knowing that a breach was unavoidable, nonetheless continued his work so as to increase the damages he could collect from Allison as a result of her breach. However, Matt is unlikely to receive these additional damages, because he had a duty to *mitigate* the damages that he knew he could collect from Allison and deliberately failed that duty.

5.7 Tort Law

5.7.1 What is the law of tort?

The word “tort” comes from the Latin *tortus*, which means twisted or wrong. Law of tort is the name given to a body of law that creates – and provides remedies for – civil wrongs arising out of a duty imposed by law. In other words, a person who is legally injured may be able to use tort law to recover damages from someone who is legally responsible, or liable, for those injuries.

Therefore, tort law defines what constitutes a legal injury, and establishes the circumstances under which one person may be held liable for the injuries of another person.

The basic elements that should be looked for are:

- a duty imposed by law,
- breach of that duty
- injury/loss as a result of the breach
- damages

As explored below, tort is divided into several types, including intentional torts, defamation and negligence.

5.7.1.1 What is the difference between the law of tort and criminal law?

A tort is different from a crime in that a crime is a proscribed conduct for which *the state/government* intervenes to punish the wrongdoer, as well as to ensure it does not happen again in the future.

Crimes typically, but not always, require both intent (*mens rea*) and action (*actus reus*). There are a few instances where intent is not required (e.g. strict liability crimes) or where actions are not required (e.g. vicarious liability crimes), but these are rare. Criminal law is largely designed to regulate behaviour, not the effects of behaviour.

Torts, on the other hand, have no requirement for intent or action. Instead, they are based on breaching a duty to someone that causes harm, whether the harm was intentional or not. Tort

law is largely designed to allocate the costs of harmful actions in either the most just or most societally-beneficial manner.

See chapter 5.3 *Criminal Law* for more about crimes.

5.7.1.2 What is the difference between tort and contract?

A contract is a legally enforceable agreement between entities (containing a valid offer and acceptance), backed by consideration and the intention to create legal relations.

Contracts require consent between the parties to establish new obligations, and only certain agreements rise to the level of legally enforceable contracts.

Torts, on the other hand, involve obligations that people have to each other that do not require consent. Your obligation not to take your neighbour's property exists whether you agreed to it or not.

See

5.6 *Contract Law* for more about contracts.

5.7.2 Intentional torts

Intentional torts are wrongs committed by someone who intends to do something that the law has declared wrongful, such as:

- **Trespass to the person**
 - Assault
 - Battery
 - False imprisonment
 - Infliction of emotional distress

- **Trespass to goods**
 - Conversion (unjustified wilful interference intending to deprive owner)
 - Detinue (an action for wrongful detention of goods)
 - Replevin ("claim and delivery", is an old-fashioned legal remedy in which a court requires a defendant to return specific goods to the plaintiff at the outset of the action)

- **Trespass to land**

Trespasses to goods are described in more detail below.

5.7.2.1 Trespass to goods

Trespass to goods is a form of intentional tort. It consists of the direct, unauthorized, immediate interference with goods in the possession of another. Note these important subtleties about trespass to goods:

- The interference must be direct and forcible. Mere touching may be trespass, but accidental touching is actionable.
- The trespass must be intentional.
- Trespass is actionable *per se* – the complainant need not prove damage.
- Trespass is a wrong to possession, as distinguished from ownership.
 - To maintain trespass, the claimant **MUST** show possession of the goods at the time of the trespass.
 - For example, a borrower, hirer, or a bailee (e.g. a shoemaker to whom shoes are sent for repair) possess the goods let, hired or bailed. He can maintain an action against any person who wrongfully interferes with the goods in their possession. It follows therefore that a bailor cannot sue in trespass during the term of bailment. The tort is designed to protect possession, not ownership.
- To be liable, the defendant need not appreciate that the interference is wrongful. If he uses a chattel (an item of property other than real property) deliberately or erroneously believing that it is his, this is still a deliberate and direct act amounting to trespass. It is sufficient that he intended to do the act complained of.

5.7.2.2 Conversion

Conversion is a form of intentional tort. It is a wilful and wrongful interference with goods or chattel so that any person entitled thereto is deprived of their possession.

To be liable, the defendant need not intend to question or deny the plaintiff's right. It is enough that his conduct is inconsistent with those rights.

There are several types of conversion:

- **Conversion by taking.** A person commits this tort if he takes possession of another's goods, without lawful authority, with intent to exercise some right or dominion over them – depriving the plaintiff.
 - A mere taking without the intent to deprive permanently or temporarily may be trespass but not conversion.
 - Note that the taking need not be with the intention of acquiring a full ownership – it is enough if any interest is claimed.
- **Conversion by transfer.** If Osman transfers/delivers Tommy's goods to Matt (a stranger), Osman is liable in conversion.
 - Similarly, if a bailee of goods sells them before the period of the bailment has expired, he commits conversion – for example, a tailor can be liable for conversion if he sells the material you gave him to use for making your bedspread.
- **Conversion by keeping/detention.** If Casie detains the goods of Erin in defiance of Erin's rights, Erin can sue for conversion. Here, Erin must prove demand and refusal.

- Similarly, there can be conversion by the use and enjoyment in a manner inconsistent with the rights of the plaintiff. For example, James is given a barrel of palm wine by Zaid for temporary storage, but James bottles it for his own consumption. This can be conversion even if James does not drink the palm wine.
- **Conversion by destruction.** The wilful and unlawful destruction of another's goods amounts to conversion.
 - The goods must be destroyed to a point that the identity is lost. For example, grapes turned into wine.

5.7.3 Defamation

Defamation involves publishing communications that cause another person to be held in ridicule, or that injure another's reputation or business interests.

- Oral defamation is called slander.
- Written or printed defamation is called libel.
- Courts differ on whether defamation by radio or television is slander or libel, but the difference is primarily a matter of form as essentially the same principles of law apply to each.

5.7.4 Negligence

Negligence is generally defined as conduct that is culpable because it falls short of what a reasonable person would do to protect another individual from a foreseeable risk of harm.

- To establish a defendant's negligence, the plaintiff must prove by the preponderance of the evidence these four basic elements:
 - There must be a duty to act in such a manner as not to expose the plaintiff to an unreasonable risk.
 - There must be a breach of duty on the part of the defendant.
 - There must be a causal connection (called proximate cause) between the defendant's failure to abide by the duty to act in a reasonable and prudent manner and the plaintiff's loss
 - The defendant's negligent act or omission must result in injury or loss to the plaintiff.
- Examples of negligence include:
 - Negligent driving that causes injuries to a person or damage to someone's vehicle.
 - Professional malpractice. For instance, a physician whose performance falls below the standard of care and causes injury to a patient; or a lawyer whose negligence results in loss to a client.

5.7.4.1 Defences to negligence

When accused of negligence, a defendant may offer up one or more defences:

- The defendant may simply deny negligence.
- Defendants commonly assert an affirmative defence, that is, a defence that the defendant is required to prove. Affirmative defences commonly include:
 - Assumption of risk:
 - Informed consent. Example: A patient who consents to surgery after being advised of the risks involved.
 - Implied consent. Example: A football player implies his consent to the ordinary risks of injury during the game.
 - Contributory negligence:
 - The defendant acknowledges liability but alleges further that the injury occurred as a result of some fault of the plaintiff.
 - The importance here is mainly towards the award of damages.
 - Comparative negligence.
 - Waivers:
 - A more formal consent may take the form of an exculpatory agreement whereby a person expressly agrees not to hold another party liable for any injury or damage from a given activity.
 - Courts view such documents cautiously and before a party can be relieved of negligent acts the exculpatory language of the document must be very clear and explicit.
 - Even if valid, such a document would not ordinarily relieve a person from liability for commission of an intentional tort or for conduct amounting to gross negligence.

5.7.5 Strict liability

Strict liability means that one is held liable for an injury regardless of one's intent or negligence. Historically, one who keeps wild animals or who stores or uses explosives has been held strictly liable even where damage occurs through no fault of the accused. Today, strict liability is imposed on those who engage in abnormally dangerous activities and can be imposed on designers and manufacturers of products.

5.7.6 Animal Liability

When it comes to liability regarding animals, two types of animals are identified: *ferae naturae* and *mensuetae naturae*. Whether one is liable for the injury caused by an animal depends upon this classification.

- *Ferae naturae* is a Latin term meaning natural [wild] animals. This term is used to describe animals that are not designated domesticated animals by law.
 - Such animals belong to the person who has captured them only while they are in his/her power, for if they regain their liberty, his/her property interest in them instantly ceases. Examples of such animals include lions, tigers, leopards, etc.

- Where a person keeps an animal belonging to the class of *ferae naturae*, the law presumes the owner's actual or guilty knowledge (also known as *scienter*) of the danger that animal poses, as it is said to be habitually ferocious.
- In other words, there is strict liability (i.e. the owner is held liable without proof of fault) as soon as it is proven that the animal is *ferae naturae*.
- *Mensuetae naturae* is a Latin term meaning tamed animals. This term is used to describe animals that are designated as domestic animals by law. These include dogs and cats.
 - Where an animal designated as tamed injures another person, the owner does not become automatically liable by reason of being owner.
 - Instead, the plaintiff (or victim) of the attack from a dog, for example, has to prove the following 3 conditions:
 - That the defendant is the owner of the dog.
 - That the dog has manifested in the past a propensity to cause the type of harm occasioned.
 - And that the owner knows of that propensity.

Tort law is also applicable to cases of animal (cattle) trespass. The concern here is about cows, goats, sheep, pigs, etc.

- Apart from negligence (which we have discussed above) an owner is liable for damage caused by the trespass of his animals.
- This is, however, confined to trespass to land only as there is no liability for trespass to person or goods by an animal in the absence of intention or negligence.
- An owner of an animal is therefore required by law to take care that it does not stray into neighbouring land.
- Whether or not the straying of the animal to another person's land is due to the owner's negligence is immaterial as long as the damage is one that may ordinarily be expected to be done by things of that sort.
- The only exception where the owner of an animal is not liable is where the trespass is committed by the animal from the highway when it is being driven or led along the highway in the absence of negligence.
 - But if it strays on to the highway and then trespasses from the highway on to the plaintiff's land, then the owner is liable, because the owner of livestock is under a duty to keep them from straying on to the land of others.

The owner of the animal is liable for the natural consequences of the trespass. The action for trespass can be brought by anyone who has possession of the land or any part of it – so a lessee who has planted groundnuts can sue for groundnuts eaten by trespassing cows.

- Exceptions: The owner of dogs and cats cannot be held liable for trespass to land.
- Defences:
 - Failure of plaintiff to fence:

- It is a defence to an action for trespass by animals to show that the trespass was caused by breach of an obligation on the part of the plaintiff to fence.
- To be a defence, the obligation to fence must be enforceable by the defendant against the plaintiff.
- The defendant, who is under obligation to fence, will therefore be liable for damage caused to his neighbour's cattle through breach of this obligation.
- Unlawful act of third party:
 - The wrongful act of a third party can be a defence to animal trespass. For example, the owner of cattle will not be held liable if it trespasses on to the plaintiff's land where a third party leaves the gate open when using a common road through the field in which they were kept.
 - However, the following conditions must be fulfilled in order for the owner to be liable for his/her animals' trespass
 - He must be unaware of the act at the time.
 - His unawareness must not be as a result of any negligence on his part.
 - He could not reasonably have foreseen and guarded against it or its consequences.

5.8 Property Law

5.8.1 What is property?

Property is the generic term for all that a person has dominion over. It is the sole and authoritative dominion which one man claims and exercises over the external things of the world in total exclusion of the right of any other individual in the universe. Put simply, property connotes ownership of a thing to the exclusion of others.

The word "property" itself can have two meanings:

- It may mean the *thing or things capable of ownership*. In this sense the word includes not only physical (or corporeal) things such as a pen or book, but also non-physical (incorporeal) things such as patents, copyrights, and debts.
- It may also mean *ownership*. In law we may say "Nancy owns a watch." In a sale of goods contract, when someone buys a pen, the seller in return will pass "the property in the goods" (i.e. ownership) to the buyer by delivery on the sale.

Therefore, contrary to popular belief, property is not just a "thing" or "object," but consists of a bundle of rights that a person has in the thing or object in question. The law of property consists of a body of rules, principles and regulations governing among others, the acquisition, use and disposal of things.

5.8.2 Classifications of property

There are two major divisions of property: *Real property* and *personal property*.

- **Real property** commonly refers to the rights and interest associated with land use and its use. Land includes the surface of the earth, mines and minerals, buildings or parts of buildings as well as a right, interest or benefit in, over, or from land.
- **Personal property** refers to rights and interests in things other than land. It is further broken down as follows:
 - *Chattel real* (e.g. leaseholds in land)
 - *Chattel personal*
 - *Choses in action* (e.g. rights in non-physical or intangible things such as copyright, debt and shares)
 - *Choses in possession* (e.g. rights in physical or tangible things such as cars, jewels and clothes)

These two classifications are explored below.

5.8.3 Real property

Two distinct legal regimes regulate rights and interest in land in Sierra Leone. The first regime is the general law regime and the second is customary law. This duality affects the entire legal system in Sierra Leone and stems from the colonial policy of direct and indirect rule for different parts of Sierra Leone. In the former colony English law was directly applied because British rule was direct. The policy of indirect rule was applied in the protectorate and customary law was applied.

- General Law consists mainly of received laws from England in the form of common law, doctrines of equity, statutes of general application and laws enacted by Parliament in Sierra Leone as well as decisions of the courts of Sierra Leone. The general law governs persons other than natives and creates an individual tenure of land ownership. Examples of such laws include the Statute of Frauds 1677, the Real Property Act 1845, Public Lands Act Chapter 117, Summary Ejectment Act Chapter 49, and the Rent Restriction Act Chapter 52.
 - Estates and interests in land. Land lawyers view land as potentially fragmented into a number of interests, with people owning an estate or interest in land rather than the land itself. The word “estate” has been defined as an interest in land of some particular duration. Interests refer to the rights of persons other than the owner. They are glued to the land and are transferable. There are now two estates in land, freehold and leasehold:
 - A freehold estate is the biggest and best way of owning land. Its proper name is *fee simple absolute in possession*. Each of these has a particular meaning. “Fee” simply means that the estate could be inherited. The fee is “simple” in that it does not suffer from

complications. The fee could be inherited by anyone the owner wished. “Absolute” distinguishes the fee simple from others that are limited, for example the conditional fee. “In possession” means that the owner is entitled to enjoy the estate (occupy the land or collect rent) immediately.

- Leasehold is an estate for a term of years absolute with a fixed beginning and a fixed end and gives exclusive possession to the tenant. There are various types of leases such as periodic tenancies, tenancy for a term certain, tenancy at will and tenancy at sufferance.
- Rights of a fee simple owner. A fee simple owner enjoys certain rights in relation to his land. These include:
 - Right to alienate or dispose by sale, mortgage, gift etc.
 - Right to use and enjoy.
 - Right to exclusive possession.
 - Right to exploit subsoil (but see the Minerals limitation below).
 - Right to airspace.
- Limitations on the rights of a fee simple owner include:
 - Mines and minerals.
 - Public works.
 - Reasonable use and enjoyment.
 - Interests of other persons (such as easements and profits).
- The rights of a leaseholder include:
 - Right to exclusive possession.
 - Right to quiet enjoyment.
 - Right to transfer (though this may be limited by the lease agreement).
- Limitations on the rights of a leaseholder include:
 - Limited period.
 - Payment of rent.
- Interests of persons other than owner. Persons other than the owner of land may have an interest or right over his land. This may be in the form of an easement or *profit a prendre*. An easement is a right to do something on someone’s land, for example a right of way. Profit is a right to take something from someone’s land, for example collection of firewood. These interests can be created by deed or usage.
- Customary land tenure: All land in the Provinces is vested in the “Tribal Authority” who holds such land in trust for native communities concerned.
 - Tribal Authority is defined as the Paramount Chiefs and their councillors and men of note, or sub-chiefs, and their councillors, and men of note elected by the people according to native law and custom. A Tribal Authority is expected to act in accordance with native law and custom provided such native law and custom is not repugnant to morality or justice. Native law and custom vary from tribe to tribe and as such there is no uniform customary law applicable to

land in the provinces. (See the Provinces Land Act and the Tribal Authorities Act for more on customary land tenure.)

- Three types of tenure have been identified under customary law generally. These are communal, family and individual tenures.
 - Communal tenure is where land is held by the tribal authority on behalf of the community. In this situation no one exclusively owns land, as it belongs to the community as a whole. Rules relating to use and enjoyment of the land are made by the tribal authorities concerned. This is done by means of a by-law.
 - Family tenure arises where pieces of land are allocated by the tribal authority to families within the community. Since land is not owned, but held by the tribal authority on behalf of the people, it follows that they have to benefit from the land. For farming and other purposes, land is allocated to individual families for use. The head of the family is normally the custodian of any land allocated. Once the allocation is done, the family has all the rights associated with an owner with respect to that land. This includes the right to sell the land, though in these cases, the paramount chief will usually need to sign the deed attesting that the family did indeed own the land they were selling.
 - Individual tenures arise where the head of the family as custodian of family land subdivides such land and allocates them to individual members of the family for residential or farming purposes. This individual tenure is tied to and is dependent on the family tenure. The rights of individual holders are limited. They cannot dispose of the land allocated to them without the consent of the family or community. However, depending on the native law and custom, individual holders of land may hold the equivalent of the fee simple estate.
- To protect land in the provinces, the Provinces Land Act, Chapter 122, provides that a non-native can only occupy land in the provinces if he has first obtained the consent of the tribal authority. He must also obtain the approval of the District Commissioner if he does not, he becomes a tenant at will. When it comes to acquiring an interest in land in the provinces, a non-native can only acquire a tenancy for a term of 50 years with an option to renew for a term not exceeding 21 years.
- A non-native who wrongfully takes possession of land or whose tenancy has been determined by notice to quit can be ejected by means of summary proceedings pursuant to the Summary Ejectment (Provinces) Act, Chapter 50.
- Succession under customary law. Wills are recognized under the customary laws of Sierra Leone but they are usually oral and not written. If written, it must have been made in the presence of at least two members of the deceased family or before some important member of the community, for example the Paramount Chief or District Officer and the immediate relatives, namely children and relatives, must not object to the alleged will. Administration of the estate of a deceased intestate native is according to native law and custom.

5.8.4 More on leaseholds and tenancies

A leasehold is any interest in land for a term of three or more years. A leasehold is created by express agreement between the parties. It should be for a fixed term – that is, it should be certain when it commences and when it ends. A lease must be created by a deed (a deed must be signed, sealed and delivered).

A tenancy occurs where a person having an interest in land (estate in land, be it fee simple, leasehold etc.) grants that interest to another for a *term*. If this happens, a tenancy relationship has been created. The following are the different types of tenancies.

- Yearly, monthly, and weekly (periodic) tenancies.
 - These tenancies continue from year to year, or month to month as the case may be.
 - Such tenancies are created expressly between the tenant and landlord, or they can be implied. An implied tenancy will arise in circumstances where a person occupies a house with the owner's consent and pays rent to him. The manner of paying rent may be used to imply the type of tenancy that has been created in the absence of an express agreement.
 - Rent is usually calculated on an annual basis for a yearly tenancy, and on monthly basis for a monthly tenancy etc.
 - The tenancy can end by either party giving notice. Ending a yearly tenancy requires at least six months' notice; one month notice for a monthly tenancy and one week notice for a weekly tenancy.

- Tenancy at will.
 - This arises where a person takes possession of property with the owner's consent (not as a servant or agent) on the understanding that the term can be brought to an end at any time by either party giving notice.
 - Such a tenancy may be rent free, but the parties have to expressly agree or the tenant **MUST** pay rent.
 - Where there is no agreement as to rent, the tenancy can become a periodic tenancy if the tenant pays and the owner accepts the rent.
 - If any party breaches the conditions or does something that is inconsistent with the tenancy, the tenancy will come to an end.
 - Example: If Tenant Hassan's tenancy has come to an end, but Landlord Bristo allows him to remain in the house subject to conditions, Hassan is considered a tenant at will.

- Tenancy at sufferance.
 - This describes a tenant that is not on the property with the owner's consent. It comes into existence where on the expiration of a tenancy, a tenant holds over without the owner's consent.
 - No rent is payable, but the tenant must compensate the landlord by a payment called *mesne*, profits for the use and occupation of the land.
 - This tenancy may be brought to an end at any time or it may be converted into a periodic tenancy if rent is paid and accepted.

5.8.5 Duties of a landlord

- The landlord should ensure that the tenant gets “quiet enjoyment” of the land. This is a guarantee to the tenant that no third party will be lawfully able to question the title of the tenant to the land/house.
- The landlord must ensure that the tenant’s enjoyment of the premise is not interfered with (i.e. the landlord must not derogate from the grant). Nothing must be done which would render the premises/house unfit for the purpose for which it was let, for example, using the adjoining premises in a manner inconsistent with the tenancy.
- In Sierra Leone, the landlord has the obligation to carry out external and structural repairs (the agreement will require him to also paint the exterior of the house).

5.8.6 Duties of a tenant

- To pay rent.
- To pay rates and taxes – except those which are legally the landlord’s obligation, e.g. city rates.
- Not to commit waste and must keep the property in a reasonable state of repairs. This means that the property must not be deliberately damaged or allowed to depreciate by neglect.
- The tenant commits to do the following:
 - To carry out repairs.
 - To permit the landlord or agents to enter and inspect premises/house.
 - Not to carry out trade or business in the house, vice versa.
 - Not to assign or sublet without the landlord’s consent.

5.8.7 More on Property

There are various other legal principles that affect how property is acquired and how it can be used.

- **Adverse Possession** - if someone takes possession of another person’s property without permission of the owner for long enough, they become the owner of the property.
- **Principles of Accession** - these deal with the natural creation and destruction of property. For instance, the owner of a goat gets ownership over any children the goat has. Likewise, the owner of a fruit tree gets ownership of any fruit that is produced. As for real property, the owner of land on a river gets ownership over any new land

that is formed by sand or dirt accumulating on the banks of the river, but at the same time, loses ownership if some of their riverfront property erodes away in to the river.

- **Public Commons** - some land is not ownable by individuals, but is instead held in trust for the public by the government. This includes navigable waterways and the sand on beaches that is below the high-tide mark.
- **Nuisance** - if your actions disturb the peaceable enjoyment of someone's property, you may be required to stop or pay damages to the owner. For instance, if you engage in an abnormally loud activity, or create so much dust or smoke that someone can no longer use their property, he/she may have a nuisance claim against you.
- **Zoning Laws** - some areas may have specific rules about what sort of uses land may be used for. This may include limitations on the kinds of buildings that may be built, or restrictions on whether land may be used for residential, commercial, industrial or agricultural purposes.

Case study: Property/ Inheritance

An old woman was about to be deprived of the house she had lived in with her late husband. A man, who was the brother of the Paramount Chief, wanted to take the house. He had even gone as far as to take over two of the four rooms in the house. According to him, his late father had given the land to the old woman's husband and there was an agreement between his father and the woman's late husband that when he died, this man's father should take over the house. As such the man was going to take over the house from the widow.

The old woman had an adopted son to whom she was intending to give the house in a will when she died, but this chief's brother was now threatening to take the house. The matter had gone to the Paramount Chief and other chiefs but they didn't do anything to resolve it. The man who was trying to take the house was very powerful and feared by people in the community. The woman was old and hadn't the power to do anything to get him out of the house. She had already given up, when her adopted child approached the paralegals for assistance.

The community in which this case arose was about 24 miles from the nearest paralegal office. Since the old woman couldn't walk such a long distance and since most of those involved in the matter were in the same community, the paralegals decided to move to the community to resolve the case. Before going, the paralegals wrote letters informing the authorities that they would be coming. When they went to the community, they went with the intention to investigate and fact find, and not to preside over it – they wanted to know about all the issues and take care of any obstacles before going further into the case. On the arrival of the paralegals, the adopted son informed the Paramount Chief about the presence of the paralegals, and the Paramount Chief invited them to question them about their interference into a property case, which is normally the remit of the Chief. The paralegals explained that they were there to fact find, and not to preside over the case.

This meeting with the Paramount Chief was held in an open place. It started with a few people and ended up attracting more than a hundred people. The issue had been an issue of concern in the community, but people were afraid of the man who was trying to take the property. Both parties were given the opportunity to explain. People were surprised at the old woman's boldness, confidence, and strength she had that day. It was as though she had been waiting for this opportunity to get justice and was now making use of it. She couldn't remember dates but she was able to tell us that the house in question was built four years before the Queen came to Sierra Leone. She explained how she and her late husband built the house. The other chiefs and elders were encouraged to ask questions – they asked her very few questions. After the man who wanted to take the house had given his very long story, the old woman and many other people asked a lot of questions, most of which were embarrassing to the man and exposed him. A few old people, who knew about the history of the house, testified. The man was exposed to the extent that his family asked that they be allowed to go and hang heads. To the surprise of the people, they came back to say that, from that day onwards, the man would stop trying to take over the house, and that he would hand over the two rooms he had taken. They asked the paralegals not to take another step.

The old woman and most of the people expressed happiness and commended the paralegals for a job well done. Later, the paralegals went to the community with a mediation agreement for the man and the woman to sign, setting out the outcome of the matter.

5.9 Customary Law

5.9.1 What is customary law?

Custom is one of the sources of law in Sierra Leone. According to the 1991 Constitution (Section 170 (3)), customary law means the rules of law that by custom are applicable to particular communities in Sierra Leone. This is an expansion on the more detailed definition given by the new Local Courts Act 2011 (Section 1) which replaced the old [Local Courts Act, 1963](#) (Section 2).

In general, we can deduce the following from the definitions of customary law:

- Customary law is recognised by law in Sierra Leone, not least by the Constitution.
- Customary law includes both civil and criminal offences.
- Customary law can vary from community to community, chiefdom to chiefdom, and tribe to tribe.
- Any customary law which does not conform to the principles of natural justice, equity and good conscience, and which conflicts with any statute (e.g. the Constitution) is void.
- If customary law does not follow the principles of human rights as guaranteed in our constitution (Chapter III) then that particular customary law is a bad law and should not be allowed to stand.

5.9.2 Who makes, interprets, and enforces customary law?

The definition of customary law means that it is mostly unwritten and always evolving; it is not permanent.

However, for a very long time now, chiefdom committees in different chiefdoms codify customary practices that are applicable as chiefdom bylaws. They set, for example, the maximum summons fees or chiefdom tax. These committees act like the legislature of the chiefdom.

The duty to interpret customary law, punish lawbreakers and carry out all other judicial functions primarily lies with the local courts, which are present in each of the 149 chiefdoms in Sierra Leone. Please note that there is no provision for local courts in Freetown or the Western Area.

Paralegal Tips: Understanding Customary Law

Integrating customary and formal/general law is one of the challenging tasks of community based paralegals. A little mistake can lead to a huge problem. You can't be an effective community-based paralegal without properly knowing the customary law of the locality in which you operate. Cases involving both customary and general/formal law always come to the offices and you should know both to enable you to properly handle such cases.

Working to protect clients from some of the more discriminatory elements of customary law is a task that must be handled in a careful and subtle way. Always try to look out for a proper balance between customary and the formal/general laws. Don't force or impose issues.

What to do:

- Be close to community elders, discuss issues with them, and ask as many questions as possible about their customary law.
- Observe local court sittings frequently.
- Hold consultations with local court officials, headmen, chiefs, ceremonial chiefs, etc.
- Consult with your Community Oversight Boards on issues of customary law.
- Don't altogether condemn the custom and tradition of the people. This will lead to conflict with the communities in which we work.

5.9.3 Local Courts

5.9.3.1 Officers

There may be several officers according to the new Local Courts Act, who may be appointed by the Chief Justice after consultations with the Judicial and Legal Service Commission, but the main ones you should try to identify are the following:

- **Court Chairman:** He or she is the president of the court and all other court officials are below him. This means that he/she presides over cases and has the final say in the local court. For example, any judgment that is not signed by him/her is not valid. Under the old act, the chairman was appointed for a period of three years, based on

the recommendations of the Paramount Chief and his Chiefdom Council or Committee. In the new act, his and the vice chairman's appointment are not subject to any limited tenure and they are now appointed by the Chief Justice. The vice chairman takes charge where the Chairman is by reason of illness, death, or misconduct unable to discharge his functions.

- **Clerk:** In most Chiefdoms, the clerk will be the only literate official of the local court. Also appointed by the Chief Justice, he or she takes care of all clerical duties. In addition to this, he or she is responsible for:
 - Preparing and issuing all court documents including warrants and summonses;
 - Recording all proceedings of the local court;
 - Registering all orders and judgments of the court;
 - Delegating any of these duties to any other officer of the court PROVIDED he or she secures the approval of the Chairman.
- **Finance Clerk:** This is a new position created by the Local Courts Act 2011. His or her duties include:
 - Receiving and paying into state funds all fees, penalties, fines and monies taken by the court
 - Keeping an account of all such monies received and paid.
- **Bailiff:** This is the primary process server of the court. His or her duties therefore include:
 - Serving or executing summonses, warrants and other court documents;
 - After service, making the necessary returns;
 - When not involved in serving process, being in court to obey any *lawful* instructions of the court.
- **Chiefdom Police:** These are members of the chiefdom police force (not the regular Sierra Leone Police) who may be appointed by the local court to support the bailiff in his or her work.

5.9.3.2 *Functions and jurisdiction*

The activities of local courts, and the cases they may try, include:

- Administration of estates of deceased persons so far as they are situated within the jurisdiction of the courts and the administration is governed by customary law.
- Hearing and determining all civil cases governed by customary law including cases between paramount chiefs or tribal authorities involving a question of title to land.
- Hearing and determining all civil cases governed by the general law where the claim, debt, duty or matter in dispute does not exceed Le 1,000,000, whether on account or balance, or in claim for possession where the annual rental value does not exceed Le 3,000,000 or a term not exceeding 5 years.
- Hearing and determining criminal cases where the maximum punishment which may be imposed does not exceed a fine of Le 50,000 or imprisonment for a period of six months, or both.

Local courts cannot sit on:

- Cases founded upon libel, slander, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage
- Cases of wounding, rape, unlawful carnal knowledge, burglary and larceny, murder, treason, etc.

The above jurisdiction of the local court is not limited. So where a particular case is not covered by a particular customary rule, then the general law will apply. This jurisdiction also affects all persons who are within the limits of the local courts' powers.

Furthermore local courts can do all such lawful acts necessary to hear and determine cases arising within the limits of their authority or transferred by the Customary Law Officer.

The Chief Justice is also empowered by the provisions of the Local Courts Act 2011 (section 16) to confer jurisdiction on local courts to enforce all or any provisions of any law.

5.9.3.3 Hearings

The local court, like any other court in Sierra Leone, should respect the rules of justice. This means that in a criminal case for example, the person accused of a crime must be presumed innocent until proven guilty; he or she must be allowed to call witnesses and present his or her case under the same conditions as his/her accuser(s).

In general, cases are initiated by summonses (including criminal summonses) which must be returned by the persons to whom they are addressed.

All local court sittings are in the open, and the public may be excluded only if their presence will defeat the course of justice or a young person is involved.

For the purpose of the trial, the local court has the same powers as any other court in Sierra Leone. This means that it can impose fines and imprisonment for certain offences including contempt of court. You should therefore be very careful when attending local court sittings and should you be concerned about anything heard or seen, you should exercise good judgement and wait until after the court sitting to act.

At the end of the case in the local court, the judgment will be read mostly by the clerk, with the chairman concurring to the conclusion. The parties will be informed immediately of their right to appeal in the event that either is dissatisfied. Whatever gains or payments have been "won" by the victorious party – which include payments made by the losing party – will be withheld until the expiration of the 15 days period of appeal.

5.9.3.4 Enforcement of Judgment

There are two types of judgement, uncontested and contested:

- Uncontested judgment;

- An *uncontested judgment* is one in which both parties are pleased with the outcome or at least have no interest in challenging it. Such a judgment can be enforced immediately.
- Contested judgement.
 - A *contested judgment* on the other hand, is one in which one party is dissatisfied with the decision of the local court and makes his or her displeasure known either at the end of the judgment or before the expiration of the time for appeal.
 - It is also possible that both parties may not be happy about different parts of a judgment, in which case they may both appeal for different reasons. The successful party (where one is satisfied with the judgment) must wait until after 15 days to give the other party time to appeal. If he or she does not take steps to appeal after the expiration of the 15 days, then the winning party can enforce the judgement and take the benefits of the decision.

If the judgment is for a “liquidated” amount, the court will order the judgment debtor to pay the full sum (but this is mostly allowed to be done by instalments). If there is default in the payment, there are two options available to the *judgment creditor*:

- The defaulter may be summoned for contempt of a court order and he will be fined or even imprisoned. This punishment is exclusive of whatever obligations are contained in the order.
- The judgment creditor can apply to the court for execution of the judgment under Rules 58-71 of the Local Court Procedure Rules 1964.

In criminal cases, the convict is sent to jail on warrant if the judgment is uncontested. If it is contested, the convict is put on bail to give him time to either appeal against the decision or ask for a review of the matter by the Customary Law Officer.

5.9.3.5 Representation and Joinder

There is no form of legal representation of parties in the local court. This means that neither lawyers nor any other persons (including paralegals) are permitted to represent either party at the local court level.

However, if a party is not satisfied with the decision of a local court and appeals to the District Appeal Court, he or she may secure the services of a lawyer. In situations where a party before the local court cannot attend for some reason, the court may allow his or her duly authorised spouse, guardian or relative to stand for him or her.

There is a system known as joinder, which is permissible and is different from representation. In joinder a person assumes the same advantages and liabilities as the party he or she is joining, so that if that person loses the case, the liability will be incurred equally. Joinder is common in many areas and it is a way to make provision for more eloquent, knowledgeable and confident members of a family to help others who may have a good case, but lack the above qualities.

5.9.3.6 Appeals

A person dissatisfied with the decision of a local court may appeal to the District Appeal Court and then upward through the following hierarchy of courts (NOTE: Please also see the chapter on 5 *Law in Sierra Leone*):

- District Appeal Court
 - This is found in every district in the country and presided over by a magistrate sitting with two assessors. The assessors advise the magistrate only on customary issues and the magistrate is not bound by what they tell him or her.
 - Where the issue involved is a matter of law, the magistrate may sit without assessors.
 - If either party is unhappy with the decision of the District Appeal Court, then he or she may appeal to the Local Appeals Division of the High Court. Note that the period for appeal here is 30 days.
- High Court (Local Appeals Division)
 - Here, a judge sits with two assessors to determine the appeal.
 - If a party is displeased with the decision of the High Court then he/she may appeal to the Court of Appeal.
- Court of Appeal
 - Here, three judges sit with two assessors who advise them on matters of customary law only.
 - If a party is still unsatisfied, then that party may appeal to the Supreme Court.
- Supreme Court
 - Here, five judges sit (with possibly the Chief Justice presiding) together with two assessors who advise them only on matters of customary law and practice.
 - This is the highest court of Sierra Leone and the final point of appeal.

5.9.3.7 Other methods of review

The Local Court Act grants powers of review of local court decisions to the Customary Law Officer (CLO). This power of review involves a situation where, either on his or her own motion or on the application of parties before a local court, the CLO revisits the decision of the local court to correct any miscarriage of justice that may have occurred.

The CLO is assisted by Local Court Supervisors. The functions of the CLO include the following:

- Reviewing concluded cases before any local court;
- Training local court personnel;
- Advising local courts on law and organisation;
- Transferring cases to the local court, magistrate court or District Appeal Court;
- Undertaking research for the development of customary law; and
- Supervising the local courts.

The functions of the local court supervisors are:

- Representing the CLO at district level;
- Making on-the-spot checks on local courts to ensure that things are done properly;
- Ensuring that local court clerks submit their monthly returns; and
- Reporting to the CLO on any matter observed.
- (Local court supervisors must not transfer or review cases.)

5.9.3.8 Chiefs Courts

Only the local court in any chiefdom has the authority to sit as a court of law, with power to issue summons, levy punishment and demand fees. Any other person or authority that acts like a court is therefore illegal according to section 44 of the Local Courts Act 2011.

Therefore, chiefs, including paramount chiefs must not sit as a court and if they do, they may be prosecuted.

However, generally, chiefs may adjudicate between their subjects. As part of their ceremonial authority, chiefs are expected to settle disputes that are brought to them voluntarily and without the payment of any fees.

Chiefs must not charge fees for their services, nor must they impose punishments like fines on defaulting parties. They also have no authority to either remove a case that is before a local court or interfere with the process.

Case study: Working with the Local Court

A chairman of a Local Court in the Gbonkolenken chiefdom was presiding over a case. He started well, but then started missing a number of points - doing things in contravention of the [Local Courts Act of 1963](#). One issue arose when the chairman refused to consider a witness which both parties mentioned in their case - this witness was pivotal to the case and key to any decision. He made his judgment without considering this very important witness. Paralegals do not have audience at the Local Court and so the paralegal assisting on the case was not able to draw these problems to the court's attention. The paralegal continued to monitor the case in court. One of the parties to the case, who wasn't satisfied with the way the matter was being handled, made a complaint to the paralegal, but the paralegal was not able to intervene.

The party who lost the case then asked the paralegal to assist him. The paralegal explained the two options: appealing to the District Appeals Court and applying for a review to the Customary Law Officer. After explaining the advantages and disadvantages of the options to the client, he chose the latter i.e. applying to the CLO for a review. The paralegal helped him complete the application for a review to the Customary Law Officer. The other options, appealing at the District Appeals Court takes a long time and is somewhat expensive – the case will likely be adjourned several times and this raises costs considering transportation and other expenses involved. Such cases might take a whole year while the reviews are concluded within a month, maybe after just two sittings. People hardly appeal or apply to review cases because they do not understand the procedures and think it is impossible.

At the review, which took place in Makeni, there were many inadequacies in the way the chairman presided over the matter, which did not go down well with the CLO. The CLO, who was very patient, went through all records/documents and allowed the parties to state their sides of the case. Paralegals were also present to observe the review process. The chairman's decision was overturned in favour of the paralegal's client.

6. International Human Rights Law

6.1 Basic Concepts

International law originated as laws between nations, and covered issues such as the prosecution of wars, the treatment of diplomats and other foreign citizens, resolution of border disputes, etc. However, beginning in the 1900's, international law started to impose obligations on nations with respect to how they treat their own citizens. Many of these laws are codifications of what are called "Human Rights"- rights people have as a condition of their existence as a person, independent of the nation in which they reside.

International Human Rights obligations include both treaties to which nations have voluntarily signed, customary international law that has evolved through practice over time, and some laws referred to as *jus cogens*, which are rules that the international community has decided that all nations must abide by, regardless of whether they agree with them or not. Examples of *jus cogens* include prohibitions on slavery and torture.

Treaties are documents that are signed by Sierra Leone and are binding upon that country in the international arena, but they do not necessarily enable individuals to realize the rights listed within. Because Sierra Leone law requires that treaties be enacted in domestic legislation for them to be effective, for an individual to sue the government or someone else on the basis of one of the rights listed in these treaties, there must be a parliamentary act (or some other domestic law) that gives the person these rights. Because of this, many of the human rights treaties that Sierra Leone has signed promise more rights than are actually guaranteed to the people.

6.2 International Human Rights Instruments

The following are major International Human Rights treaties to which Sierra Leone is a signatory.

International Covenant on Civil and Political Rights

This treaty describes people's rights to be free from arbitrary arrest, torture, extrajudicial execution; people's rights to fair trials; people's rights to be free from discrimination based on gender, religion and race; people's rights to freedom of speech, association, belief, and assembly; and people's rights to political participation. There is an optional part of the Covenant that abolishes the death penalty, but Sierra Leone is not a signatory of this part.

International Covenant on Economic, Social and Cultural Rights

This treaty describes people's rights to work, social security, family life, adequate standard of living, health care, education and participation in cultural life. This Covenant is complicated because the "rights" listed in it often require significant resources on the part of the country, and the treaty includes some language that recognizes that these rights will be "progressively realized" and that it may be limited by the country's resources.

African Charter on Human and Peoples' Rights

This treaty is an African regional treaty, and guarantees a variety of rights similar to those contained in the ICCPR and ICESCR. Additionally, the ACHPR also recognizes “group rights”, and duties that individuals have duties to each other and their countries. Unlike most of the other international human rights treaties, there is an African Court on Human and People’s Rights which has the authority to enforce these rights.

Convention Against Torture (CAT)

This treaty specifically bans torture, provides a definition of torture, and states that there are never exceptional circumstances which justify torture. It also bans cruel and degrading treatment which does not necessarily rise to the level of torture, and it bans the extradition of people to other countries where it is likely that they will be tortured.

Convention for the Elimination of Discrimination Against Women (CEDAW)

This treaty puts stronger requirements on signatory states to eliminate discrimination against women. Not only does it prohibit the government from officially discriminating, it also requires the nations to take steps to eliminate discrimination against women perpetrated by individuals and corporations.

Convention for the Elimination of all forms of Racial Discrimination (CERD)

Convention on the Rights of the Child

This treaty deals specifically with children, and states that governments must act in their best interests. It prohibits capital punishment for children, requires that they be given legal representatives in judicial processes involving their care, states that they have the right to express their opinions and have those opinions listened to in proceedings affecting their lives, states that they have the right to privacy and protection from exploitation.

6.3 DOMESTIC PROTECTION OF HUMAN RIGHTS

6.3.1 Chapter 3 of the 1991 Constitution

Chapter 3 (§§ 16 -27) contains a number of fundamental human rights and freedoms of the individual which are recognised and protected by the constitution. These include:

- the right to life, liberty, security of person, the enjoyment of property, and the protection of law;
- freedom of conscience, of expression and of assembly and association;
- respect for private and family life, and
- protection from deprivation of property without compensation;

Anyone who alleges that any or all of these rights have been, are being or are likely to be violated in relation to him by any other person, can apply directly to the Supreme Court for binding reliefs.

6.3.2 The Human Rights Commission

Established by the [Human Rights Commission Act 2004](#), this body is mandated to protect and promote human rights in Sierra Leone. The functions of the commission include, investigating or inquiring into, on its own or on complaint by any person, any allegations of human rights violation. It also promotes respect for human rights through various means such as public awareness and education programmes aimed at creating a culture of respect for human rights in Sierra Leone.

The commission cannot investigate any matter involving human rights violations if that matter is pending before or has already been decided by a competent court.

Making a complaint to the commission

- You don't have to pay any money
- Go to any of the offices of the commission in Freetown or in the provinces and request a complaint form
- Fill out the complaint form making sure to provide all the information requested
- Submit form to the appropriate officer in the office

The complaint will be assessed to determine if it is properly made and if it is one that the commission can handle. If it cannot handle such a complaint, the commission will inform the complainant. If it is one that it can handle, the commission will then proceed to investigate, including informing the respondent about the complaint. The commission may pursue mediation if the respondent admits complaint and both parties agree. Otherwise, investigation continues with witnesses on both sides being interviewed. After investigation, the commission will attempt conciliation of the parties. If this proves unsuccessful, the commission then considers the evidence gathered during investigation and makes a decision. Parties are thereafter informed of the decision of the commission, which can be enforced by the High Court.

Case intake form

Individual Case Record



Case Status <input type="checkbox"/> Case Initiated <input type="checkbox"/> Agreement/Solution Reached <input type="checkbox"/> Monitoring Implementation <input type="checkbox"/> Case Closed		Case Number: [] [] [] [] Office: _____ Paralegal Code/Name: ____ / ____ Intake Date: ____ / ____ / ____									
<input type="checkbox"/> Reopening Old Case (_____)		Client Name/Village/Phone Number _____ _____									
Client Demographics <table border="1"> <tr> <td> Gender <input type="checkbox"/> Female (1) <input type="checkbox"/> Male (2) <input type="checkbox"/> Mixed (3) </td> <td> Status <input type="checkbox"/> Single (1) <input type="checkbox"/> Married (2) <input type="checkbox"/> Widow (3) </td> <td> Religion _____ </td> <td> Age _____ </td> <td> # Children _____ </td> </tr> </table>		Gender <input type="checkbox"/> Female (1) <input type="checkbox"/> Male (2) <input type="checkbox"/> Mixed (3)	Status <input type="checkbox"/> Single (1) <input type="checkbox"/> Married (2) <input type="checkbox"/> Widow (3)	Religion _____	Age _____	# Children _____	Distance Traveled <input type="checkbox"/> < 1 Mile (1) <input type="checkbox"/> 5 - 15 Miles (3) <input type="checkbox"/> 1 - 5 Miles (2) <input type="checkbox"/> > 15 Miles (4)				
Gender <input type="checkbox"/> Female (1) <input type="checkbox"/> Male (2) <input type="checkbox"/> Mixed (3)	Status <input type="checkbox"/> Single (1) <input type="checkbox"/> Married (2) <input type="checkbox"/> Widow (3)	Religion _____	Age _____	# Children _____							
Occupation <input type="checkbox"/> Farmer (1) <input type="checkbox"/> Government Employee (6) <input type="checkbox"/> Trader (2) <input type="checkbox"/> Teacher (7) <input type="checkbox"/> Student (3) <input type="checkbox"/> Soldier (8) <input type="checkbox"/> Laborer (4) <input type="checkbox"/> Housewife (9) <input type="checkbox"/> Chief (5) <input type="checkbox"/> Tailor (10) <input type="checkbox"/> Other (88) (_____)		How Case Reached Timap <input type="checkbox"/> Client came to office (1) <input type="checkbox"/> Client came to mobile clinic (2) <input type="checkbox"/> Referred by Chief (3) <input type="checkbox"/> Referred by COB (4) <input type="checkbox"/> Observed by paralegal (5) <input type="checkbox"/> Referred by former client (7) <input type="checkbox"/> Referred by relative (11) <input type="checkbox"/> Referred by mobile contact (12) <input type="checkbox"/> Other (88) (_____)									
Previously Brought Before <input type="checkbox"/> Paramount Chief (1) <input type="checkbox"/> Other Chiefs (2) <input type="checkbox"/> Local Courts (3) <input type="checkbox"/> Family Elders (5) <input type="checkbox"/> Formal Courts (11) <input type="checkbox"/> Police (10) <input type="checkbox"/> Ministry (_____) <input type="checkbox"/> Military (21) <input type="checkbox"/> NGO (24) (_____) <input type="checkbox"/> School (22) <input type="checkbox"/> Other (88) (_____)		How Client Learned of Timap <input type="checkbox"/> Saw Timap office sign (1) <input type="checkbox"/> Saw Timap presentation (2) <input type="checkbox"/> Saw mobile clinic presentation (3) <input type="checkbox"/> From former client (4) <input type="checkbox"/> From Paralegal (5) <input type="checkbox"/> Other "word of mouth" (6) <input type="checkbox"/> Heard about it on radio (7) <input type="checkbox"/> Read about it in newspaper (8) <input type="checkbox"/> Referred by (81) (_____) <input type="checkbox"/> Other (88) (_____)									
Brief Description of Problem or Dispute: _____ _____		Case Type <table border="1"> <tr> <td> Family <input type="checkbox"/> Child Neglect (1) <input type="checkbox"/> Wife Neglect (2) <input type="checkbox"/> Early Marriage (3) <input type="checkbox"/> Teen Pregnancy (4) <input type="checkbox"/> Family Dispute (5) <input type="checkbox"/> Marital Problems (6) <input type="checkbox"/> Child Custody (7) <input type="checkbox"/> Child-Parent Conflict (8) </td> <td> <input type="checkbox"/> Public/Mob Disobedience (34) <input type="checkbox"/> Group Conflict (35) <input type="checkbox"/> Genital Circumcision (36) </td> </tr> <tr> <td> Abuse by Formal Authorities <input type="checkbox"/> Police Abuse (10) <input type="checkbox"/> Wrongful Detention (11) <input type="checkbox"/> Corruption by Formal Auth. (12) </td> <td> Economic Injustice <input type="checkbox"/> Employment (40) <input type="checkbox"/> Unpaid Wages/Benefits (41) <input type="checkbox"/> Breach of Contract (42) <input type="checkbox"/> Debt (43) <input type="checkbox"/> Housing (44) <input type="checkbox"/> Land/Property/Animal Dispute (45) <input type="checkbox"/> Larceny/Conversion (46) <input type="checkbox"/> Accident Compensation (47) <input type="checkbox"/> Inheritance (48) </td> </tr> <tr> <td> Abuse by Customary Authorities <input type="checkbox"/> Injustice in Local Courts (20) <input type="checkbox"/> Abuse by Custom. Auth. (21) <input type="checkbox"/> Corruption by Custom. Auth. (22) </td> <td> Social Infrastructure/Development <input type="checkbox"/> Education (50) <input type="checkbox"/> Health (51) <input type="checkbox"/> Roads (52) <input type="checkbox"/> Water/Sanitation (53) <input type="checkbox"/> Agriculture Development (54) <input type="checkbox"/> Mining (55) <input type="checkbox"/> Market/Commerce Development (56) <input type="checkbox"/> Support Community Institutions (57) </td> </tr> <tr> <td> Private Violence <input type="checkbox"/> Assault (30) <input type="checkbox"/> Domestic Violence (31) <input type="checkbox"/> Rape/Sexual Abuse (32) <input type="checkbox"/> Child Abuse (33) </td> <td> <input type="checkbox"/> Other (88) (_____) </td> </tr> </table>		Family <input type="checkbox"/> Child Neglect (1) <input type="checkbox"/> Wife Neglect (2) <input type="checkbox"/> Early Marriage (3) <input type="checkbox"/> Teen Pregnancy (4) <input type="checkbox"/> Family Dispute (5) <input type="checkbox"/> Marital Problems (6) <input type="checkbox"/> Child Custody (7) <input type="checkbox"/> Child-Parent Conflict (8)	<input type="checkbox"/> Public/Mob Disobedience (34) <input type="checkbox"/> Group Conflict (35) <input type="checkbox"/> Genital Circumcision (36)	Abuse by Formal Authorities <input type="checkbox"/> Police Abuse (10) <input type="checkbox"/> Wrongful Detention (11) <input type="checkbox"/> Corruption by Formal Auth. (12)	Economic Injustice <input type="checkbox"/> Employment (40) <input type="checkbox"/> Unpaid Wages/Benefits (41) <input type="checkbox"/> Breach of Contract (42) <input type="checkbox"/> Debt (43) <input type="checkbox"/> Housing (44) <input type="checkbox"/> Land/Property/Animal Dispute (45) <input type="checkbox"/> Larceny/Conversion (46) <input type="checkbox"/> Accident Compensation (47) <input type="checkbox"/> Inheritance (48)	Abuse by Customary Authorities <input type="checkbox"/> Injustice in Local Courts (20) <input type="checkbox"/> Abuse by Custom. Auth. (21) <input type="checkbox"/> Corruption by Custom. Auth. (22)	Social Infrastructure/Development <input type="checkbox"/> Education (50) <input type="checkbox"/> Health (51) <input type="checkbox"/> Roads (52) <input type="checkbox"/> Water/Sanitation (53) <input type="checkbox"/> Agriculture Development (54) <input type="checkbox"/> Mining (55) <input type="checkbox"/> Market/Commerce Development (56) <input type="checkbox"/> Support Community Institutions (57)	Private Violence <input type="checkbox"/> Assault (30) <input type="checkbox"/> Domestic Violence (31) <input type="checkbox"/> Rape/Sexual Abuse (32) <input type="checkbox"/> Child Abuse (33)	<input type="checkbox"/> Other (88) (_____)
Family <input type="checkbox"/> Child Neglect (1) <input type="checkbox"/> Wife Neglect (2) <input type="checkbox"/> Early Marriage (3) <input type="checkbox"/> Teen Pregnancy (4) <input type="checkbox"/> Family Dispute (5) <input type="checkbox"/> Marital Problems (6) <input type="checkbox"/> Child Custody (7) <input type="checkbox"/> Child-Parent Conflict (8)	<input type="checkbox"/> Public/Mob Disobedience (34) <input type="checkbox"/> Group Conflict (35) <input type="checkbox"/> Genital Circumcision (36)										
Abuse by Formal Authorities <input type="checkbox"/> Police Abuse (10) <input type="checkbox"/> Wrongful Detention (11) <input type="checkbox"/> Corruption by Formal Auth. (12)	Economic Injustice <input type="checkbox"/> Employment (40) <input type="checkbox"/> Unpaid Wages/Benefits (41) <input type="checkbox"/> Breach of Contract (42) <input type="checkbox"/> Debt (43) <input type="checkbox"/> Housing (44) <input type="checkbox"/> Land/Property/Animal Dispute (45) <input type="checkbox"/> Larceny/Conversion (46) <input type="checkbox"/> Accident Compensation (47) <input type="checkbox"/> Inheritance (48)										
Abuse by Customary Authorities <input type="checkbox"/> Injustice in Local Courts (20) <input type="checkbox"/> Abuse by Custom. Auth. (21) <input type="checkbox"/> Corruption by Custom. Auth. (22)	Social Infrastructure/Development <input type="checkbox"/> Education (50) <input type="checkbox"/> Health (51) <input type="checkbox"/> Roads (52) <input type="checkbox"/> Water/Sanitation (53) <input type="checkbox"/> Agriculture Development (54) <input type="checkbox"/> Mining (55) <input type="checkbox"/> Market/Commerce Development (56) <input type="checkbox"/> Support Community Institutions (57)										
Private Violence <input type="checkbox"/> Assault (30) <input type="checkbox"/> Domestic Violence (31) <input type="checkbox"/> Rape/Sexual Abuse (32) <input type="checkbox"/> Child Abuse (33)	<input type="checkbox"/> Other (88) (_____)										
Reason for Ending Case <input type="checkbox"/> Reached agreement through Timap (1) <input type="checkbox"/> Reached agreement without Timap (2) <input type="checkbox"/> Litigated by Timap to completion (3) <input type="checkbox"/> Litigated by Timap, but settled (4) <input type="checkbox"/> Resolved by police/other official (5) <input type="checkbox"/> Resolved in customary court (6) <input type="checkbox"/> Resolved in formal court (7) <input type="checkbox"/> Client withdrew complaint (20) <input type="checkbox"/> Client no longer responding (21) <input type="checkbox"/> Other party too far away (22) <input type="checkbox"/> Other party ignoring Timap (23) <input type="checkbox"/> Other (_____) (88) <input type="checkbox"/> Agreement later broken (99)		Result if Resolved <input type="checkbox"/> One-time payment (1) of _____ Le <input type="checkbox"/> Recurring payment (2) of _____ Le/month <input type="checkbox"/> Contract fulfilled (3) <input type="checkbox"/> Behavior change (4) <input type="checkbox"/> Property returned (5) <input type="checkbox"/> Government action (10) <input type="checkbox"/> Release from police (11) <input type="checkbox"/> Detention by police (12) <input type="checkbox"/> Other (88) (_____)									
Institutions Engaged <input type="checkbox"/> Paramount Chief (1) <input type="checkbox"/> Other Chiefs (2) <input type="checkbox"/> Local Courts (3) <input type="checkbox"/> Family Elders (5) <input type="checkbox"/> Police (10) <input type="checkbox"/> Formal Courts (11) <input type="checkbox"/> Ministry (_____) <input type="checkbox"/> Military (21) <input type="checkbox"/> School (22) <input type="checkbox"/> NGO (24) (_____) <input type="checkbox"/> Other (88) (_____)		Tools/Resources Used <input type="checkbox"/> Gave Information (1) <input type="checkbox"/> Helped Navigate Authority (2) <input type="checkbox"/> Mediation (3) <input type="checkbox"/> Advocacy (4) <input type="checkbox"/> Organized Collective Action (5) <input type="checkbox"/> Community Education (6) <input type="checkbox"/> Director consulted (11) <input type="checkbox"/> Director participated (12) <input type="checkbox"/> COB consulted (13) <input type="checkbox"/> COB participated (14) <input type="checkbox"/> Lead Paralegal consulted (15) <input type="checkbox"/> Lead Paralegal participated (16) <input type="checkbox"/> Other (88) (_____)									
Date resolved: ____ / ____ / ____		Will monitor until: ____ / ____ / ____									
Date closed: ____ / ____ / ____											

Client Intake Section

Case Resolution Section

Mediation agreement form

MEDIATION AGREEMENT

THIS AGREEMENT is made on theday of....., 200.....
BETWEEN.....of.....
.....of the one part and.....
.....ofof the other part.

WHEREAS Timap for Justice is an independent, registered, human rights organisation that provides free justice services to indigent Sierra Leoneans

AND WHEREAS Timap has as its objects inter alia, the mediation of disputes between individuals.

AND WHEREAS both parties are desirous of settling their dispute and have approached Timap for Justice in furtherance of same

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1.agrees as follows:
 - i)
 - ii)
 - iii)
2.agrees as follows:
 - i)
 - ii)
 - iii)
3. **PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED** that both parties having freely consented to the above conditions and obligations and the Organisation serving as guarantor as such, any breach of the said conditions and obligations will be considered absolutely unacceptable AND the aggrieved party with the support of the Organisation MAY consider legal action.
4. **BY SIGNING UNDERNEATH** we agree to be bound by this AGREEMENT.
5. **THIS AGREEMENT** having been recorded in English was read to me in Krio//Mende/ Temne/Loko/Limba and I understand same to be true, correct, and a representation of my wishes.

.....

**THE PARTIES HAVING CONSENTED TO THE ABOVE AGREEMENT
THE ORGANISATION HEREBY GIVES ITS SUPPORT AND APPROVAL.**

Form for community meetings

**MONTHLY COMMUNITY DIALOGUE MEETINGS/ACTIVITIES
PROPOSAL FORM**

Title of meeting/activity.....

Town/Village..... **Date of Meeting**.....

Time of Meeting..... **Date of Submission**.....

Person(s) submitting Proposal.....

.....

Name of Office.....

Brief Summary of the issue identified in the community.....

.....

.....

.....

.....

Importance of the Meeting (Why you are choosing this among others)

.....

.....

.....

.....

.....

Objectives (What you hope to achieve):

1.

.....

2.

-
- 3.
-
- 4.
-
- 5.
-

Target Group/Community

(State the communities, villages or group(s) of persons you intend to reach e.g. teachers, students, youths, chiefs, miners, farmers, etc.)

.....

.....

.....

Number of Participants.....

Methodology/Strategy.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Proposed Agenda:

- 1.
- 2.

.....

.....

Approved Amount..... **Verified**

by:

Name **Date**.....

Approved by:

Name..... **Date**.....

Supervision guidelines

Notes on Supervision for lead paralegals, directors, coordinators, managers, etc.

This documents sets out practical guidance for supervising paralegals and assisting on cases.

Visiting paralegal offices

When to visit paralegal offices?

- Visit as often as possible.
- Visit unannounced, when you're not expected.

What to do while you're there?

4. *Reviewing ledgers*

- The ledger is a good place to start because it is a log of the paralegal's time.
 - Does the ledger reflect sufficient work?
 - Are there days missing or days with little activity?
 - What is the condition of the ledger-is it kept tidy?
 - Is it properly filled out?
 - Is the paralegal managing his time well as stated in the ledger?
 - Cross check/compare ledger with case files to verify time management.

The ledger is a basis from which you can provide constructive criticism on how paralegals can make best use of their time.

5. *Checking general organization*

- Are they keeping their files well-organized?
- Are they filling out petty cash forms correctly?
- Are clients filling out client evaluation forms? (*format to be developed*)
- Are their notes, manual, resource materials from training sessions, etc. all kept in an organized fashion?

6. *Reviewing case files*

- Choose some of the cases mentioned in the ledger—cases which the paralegals are presently working on—and ask to see the case files (either the intake form plus documents from the ring binder or, in the case of complex cases, the manila folder).
- Are the developments in each case noted in the case file? Our supervision depends on proper documentation; we should be able to look at the case and understand all that has happened to date.
- Ensure the intake form is properly filled out, with the appropriate case type checked, and names and other details properly filled out
- Make sure all relevant documents to the case are attached to the file- eg statement, copies of letter including invitations and other letters, agreements, photos etc

- Review the strategy taken in these cases. Ask questions about what the issues are in the case, the approach paralegals followed, about the choices they made, and about their strategy going forward. Provide input and feedback.

4. *Observing paralegals conducting mediation*

Some questions to consider when observing paralegals conducting mediation:

- Do they set out ground rules clearly and ensure that the rules are respected throughout?
- Do they do a good job of conducting mediation within a legal and human rights framework? Are they providing relevant legal information?
- Are they evenhanded and respectful in mediation? Do they take adequate consideration of any pre-existing power imbalances outside the mediation room?
- Do they refrain from judgment, in both tone and words, and ‘stay above the fray’?
- Do they set out options in clear and simple terms.

Some questions to consider when reviewing cases and observing paralegals at work:

Working with clients

- Are the paralegals asking the right questions?
- Are they too trusting of the clients that approach them?
- Do they treat clients and all people with respect? Do they refrain from judgment, in both tone and words, and ‘stay above the fray’?
- Do they identify specifically what clients want and need?
- Are they creative and flexible in finding solutions to justice problems, or do they stick to a standard approach for any given case type?
- Do they adequately follow up with clients after a case is finished?
- Are they taking an *empowerment* oriented approach? That is, are their clients left with more power and more knowledge than before they approached our office? Or are the paralegals acting as experts providing a service?
- Are they showing adequate concern for the health and safety of anyone in the case who may be vulnerable?

Working with Institutions

- Are they interacting with and engaging government institutions effectively? What about chieftom authorities?
- Are they effective advocates? Do they conduct advocacy with diplomacy, maturity, and a careful and thorough understanding of the facts?
- How is their interaction with the COB?

Paralegal Ethics

- Are they showing adequate respect for client confidentiality?
- Are they handling money responsibly?

Community level problems

- This is an area of work where there is a lot of room to grow. Ask the paralegals about any community-level problems they are working on, and see if you have ideas for improving the strategy the paralegals have adopted.

- Are there ways the directors/ managers/ coordinators/ lead paralegal should assist with research, advocacy, or litigation?
- Paralegals should seek out community level problems rather than waiting for them to be brought to the office. Help the paralegals to think about the cases they see, present issues facing their community, etc. to identify possible community problems on which the programme could have an impact.
- Paralegals especially need the assistance of lead paralegals, coordinators, directors etc in handling community level cases and so such support in the form of advice, planning, joining them in advocacy meetings, writing and/or editing of advocacy letters etc will be particularly needed.
- Push paralegals to work toward getting result from community level problems – don't allow them to admit cases and let them lie, only to close it saying client didn't respond, or client abandoned case etc. You should make sure the paralegal actually had played his/her role (follow ups) to the fullest of his/her ability before allowing the case to be closed.

Closing cases

- You should be consulted when a case is about to be closed, especially those cases that are closed for reasons other than being resolved – ask the paralegals to consult you.

Generally

- Place emphasis on thoroughness of handling of cases, if even there are only a few, rather than handling lots with less effectiveness.

Mobile clinics

- Join paralegals at some mobile clinics unannounced – this is to put them on the alert that they need to be conducting them appropriately at all times.
- Observe them in their work at the clinic – you can come in to help when necessary.
- Help the paralegals in developing preparatory notes for meetings at mobile clinics - make sure they are prepared before the mobile clinic day itself.
- Hold periodic meetings with contact persons to get to know how the paralegals are doing at the clinic when you are not with them and also know people's perception of the clinic and services provided.

COBs

- Find COB members in the community and ask about their perception of the paralegals' work.

Meet the parties

- Follow up on other cases they had handled before, to see how clients are doing –and more importantly to see if the paralegals have got contact with clients. Randomly select cases to stop and check with clients - both current as well as previous clients.

Other updates and reports

- Ask for weekly updates by phone from each paralegal office - say every Monday. This will help you get correct and regular updates on cases which individual paralegals are handling.
- Each paralegal should make up a report by 25th of every month, in a requisite format. You should collect each of these, and make copies, providing copies to the office itself, the lead paralegal, management, and for now, the scale-up team.

Other general notes

- Our interactions with paralegals should be dialogic (multiple voices, perspectives or discourses engaging and interacting with each other) rather than didactic (one-way instruction). Though we may have more knowledge of law, or more experience with the program, the paralegals often have more knowledge of their clients, their communities, local customary law, etc. Our program will be strongest if we listen for and respect the paralegals' insights. Directors, managers, lead paralegals, and paralegals should discern the programme's path together.

Community oversight boards- FAQs**COMMUNITY OVERSIGHT BOARD- INFORMATION SHEET**

No	Question	Answer
1	Can COBs take decisions on behalf of the organization or the paralegals at chiefdom, council or any other level?	COBs do not take decisions on behalf of the organization or the paralegals at any level. Paralegals are responsible for the cases they handle and if they require any help they will consult with the lead paralegal or managers.
2	Should COBs report and sign a daily register at the paralegal office?	The work of COBs is not full time so they are not required to report or sign a register at the paralegal office. However, COBs are expected to visit the office periodically.
3	What should COBs do when they visit paralegal offices?	When COBs visit paralegal offices they can observe how the paralegals deal with clients and other people, how they carry out mediation, and note whether the offices are properly kept. COBs do not supervise the paralegals and are not allowed to look at case files or ledgers.
4	Should COBs provide written reports about their monitoring work to the director/coordinator?	COBs should provide feedback to the director/coordinator but how frequently COBs report will be determined by the organization and the report does not have to be written
5	Will COBs be reimbursed for calling paralegal offices on their mobile phones?	The organization will determine how it communicates with COBs and if it requires COBs to make phone calls then they will be reimbursed.
6	Can COBs assist paralegals in their day to day work?	COBs should not be involved in the daily work of paralegals. However, if paralegals require their assistance in mediating or handling certain community, group or traditional cases then they can assist.
7	Is it essential for COBs to be trained?	It is important for COBs to be trained. They need to know about the organization, their roles and how to carry them out. Training can help CBOs function effectively.
8	Do COBs perform the same roles as Contact Persons?	COBs and Contact Persons have different roles but they are both expected to know the same things about the organization. Sometimes the organization may require COBs and Contact Persons to undertake similar tasks.
9	Do COBs monitor the work of Contact Persons?	COBs monitor the work of paralegals and not the work of Contact Persons. However, COBs are encouraged to communicate with Contact Persons and share ideas.
10	To whom should COBs send complaints?	COBs can send complaints to the lead paralegal/seconded paralegal, manager, coordinator or director of the organization as is most convenient and appropriate.
11	Can COBs report lead paralegals?	COBs can send complaints against lead paralegals to the manager, coordinator or director.
12	How will COBs be identified in the community?	COBs will be provided with letters of introduction by the organization stating that they have been appointed as such and the duration of the appointment.
13	On what basis can COBs be removed before the 12 month period?	COBs can be removed for not performing their responsibilities satisfactorily (eg. not visiting offices) or for misconduct (such as taking money from clients, using their position to gain an

		advantage or breaking confidentiality rule).
14	Can COBs negotiate on behalf of the paralegals?	Generally no. But if the paralegals expressly authorize it then they can.
15	Can COBs intervene on behalf of someone who has been reported to the paralegal office?	COBs should not interfere in the work of the paralegals, they are appointed to monitor and should not be involved in the handling of a case except where their input is asked for.
16	How should COBs handle complaints from clients that paralegals are requesting or taking money for the services?	The organization takes such complaints seriously. COBs should liaise with lead paralegals to investigate such claims after which they should inform the coordinator/manager, whether or not such claims are proven.
17	Can COBs approach the paralegal office for help to deal with a justice problem?	COBs are part of the community that the paralegal office is meant to serve. They can bring genuine personal justice problems to the paralegal office.
18	Will COBs meet frequently with the management of the organization?	Management will meet COBs at least every 3 months. Lead paralegals will arrange to meet COBs individually between quarterly meetings.
19	Can COBs receive and handle cases at their houses and then report to the paralegals later?	It is not the duty of COBs to deal with cases on behalf of the organization at their houses or anywhere else- their role is to monitor the paralegals. If they are approached they should refer the matter to the paralegal office. If their help is required by the paralegals then it should be given.
20	Are COBs allowed to report to the headman/chief about what they do within the organization?	COBs can inform their headmen/chiefs about their general roles within the organization. However they should not give details of cases in which they assisted. They can be removed for breaching confidentiality.
21	What is confidentiality and why is it important?	Confidentiality means that Contact Persons should not discuss or disclose information about a case which they have come about by virtue of their role, to other persons. Confidentiality is necessary to retain the trust of the clients that come to the organisation for help. If what a client tells a paralegal in the office becomes known by others outside, then people in the community will not have confidence in the paralegals and the organisation and will not bring their justice problems to the organisation.

Contact person FAQs**Information sheet - Contact Persons**

	QUESTION	ANSWER
1	How will Contact Persons be identified in the community?	Contact Persons will be provided with letters of introduction by the organization stating that they have been appointed as contact persons and how long they have been appointed for.
2	Can Contact Persons write letters on behalf of the organization?	Contact Persons must not write letters on behalf of the organization. All letters will be written by the organization.
3	Is it essential for Contact Persons to be trained?	It is important for Contact Persons to be trained. They need to know about the organization, their roles and how to carry them out. Training can help Contact Persons function effectively.
4	Can Contact Persons receive and handle cases at their houses and then report to the paralegals later?	No. It is not the duty of Contact Persons to deal with cases on behalf of the organization at their houses or anywhere else - their role is to assist communication between the organization and the community. If they are approached they should refer the matter to the paralegal office. Any Contact Persons who handle cases themselves may be removed from their position as Contact Person. If their help is required by the paralegals then it should be given.
5	Do Contact Persons perform the same roles as COBs?	Contact Persons and COBs have different roles but they are both expected to know basic things about the organization. Sometimes the organization may require Contact Persons and COBs to undertake similar tasks.
6	Will Contact Persons be reimbursed for calling paralegal offices on their mobile phones?	The organization will determine how it communicates with Contact Persons and will provide a small stipend which will cover among others, the cost of phone calls if they have to be made.
7	To whom are Contact Persons answerable?	Contact Persons are answerable to the management of the organization. Even though they will work closely with paralegals, they are not answerable to the paralegals. Contact Persons who either do not perform satisfactorily or misconduct themselves will be removed.
8	Should Contact Persons provide written reports about their work to the director/coordinator?	Contact Persons should provide feedback to the director/coordinator but how frequently and the manner in which they report will be determined by the organization. The report does not have to be in writing.
9	Can Contact Persons intervene on behalf of someone who has been reported to the paralegal office?	No. Contact Persons should be neutral and should not take the side of one party to a conflict. They are appointed to facilitate communication and should not seek to influence the handling of a case by a paralegal in favour of a party. Likewise, if the Contact Person doesn't agree with what a complainant says, this should not stop him/her from assisting the complainant to contact the paralegal office.
10	If Contact Persons have complaints against paralegals to whom should they report?	Contact Persons can send complaints to the lead paralegal/seconded paralegal, manager, coordinator or director of the organization as is most convenient and appropriate.
11	Are Contact Persons a branch of the paralegal office in their communities?	Contact Persons are not a branch of the organization and should not hold themselves out as such. Their role is to facilitate communication.
12	Can educated and hard-working Contact Persons become paralegals?	A Contact Person who has the necessary qualifications can apply to become a paralegal just like any other person whenever the organization advertises a vacancy. A Contact Person cannot be 'promoted' to be a paralegal.
13	Can Contact Persons negotiate on behalf of the paralegals to secure facilities and services?	No. However if paralegals request Contact Persons to negotiate for venues, chairs, refreshments, etc, for the purpose of organising clinics, community meetings or similar events then they can.

14	Should Contact Persons go to the paralegal offices every day?	The work of Contact Persons is not full time so they are not required to go to the paralegal office daily. They may be called whenever the office needs to pass on information or they may go to the office when they have important information to give.
15	Can Contact Persons assist paralegals in their day to day work?	Contact Persons should not be involved in the daily work of paralegals. However, if paralegals require their assistance in communicating with clients, chiefdom authorities, etc, then they can assist.
16	Do Contact Persons monitor the paralegals and report on their behaviour?	No. It is not the role of Contact Persons to monitor paralegals, that role is performed by COBs. Contact persons assist the organization in communicating with communities.
17	How should Contact Persons relate with the chiefs and community members?	Contact Persons should build a good relationship with the local authorities and people. They should be courteous when relating with community members and leaders. Their professionalism or not will reflect on the organisation.
18	Will Contact Persons meet frequently with the management of the organization?	Management will meet Contact Persons periodically. Lead paralegals will arrange to meet Contact Persons periodically.
19	Are Contact Persons allowed to report to the headman/chief about what they do within the organization?	Contact Persons can inform their headmen/chiefs about their general roles within the organization. However they should not give details about clients or cases to them. This would be a breach of confidentiality. Contact Persons can be removed for breaching confidentiality.
20	What is confidentiality and why is it important?	Confidentiality means that Contact Persons should not discuss or disclose information about a case which they have come about by virtue of their role, to other persons. Confidentiality is necessary to retain the trust of the clients that come to the organisation for help. If what a client tells a paralegal in the office becomes known by others outside, then people in the community will not have confidence in the paralegals and the organisation and will not bring their justice problems to the organisation.
21	Can Contact Persons accept gifts or money from clients of the organization?	Contact Persons are not allowed to accept gifts or money from clients of the organization. A Contact Person will be removed for asking for, or receiving gifts or money from clients.

Monthly report

Reporting format for Paralegals

1. Introduction

2. Summary of cases – Table of new cases

3. Highlight of cases – *Please discuss two or three interesting cases in which you have been involved in detail. This should include a brief statement of the original complaint, what the paralegal intervention was, what tools were used, what were the challenges and what was the outcome, what lessons did you learn that you may want to share. The case doesn't need to be resolved it can be an on-going case.*

4. For each paralegal – note:

- *Any issues arising during **mobile clinics**.*
- *An update on **COBs** and the role played by them during the reporting period.*
- ***Community meetings** – any issues arising. Please attach community meeting reports.*
- ***Other activities** -This will include issues like meeting/workshops organised by other institutions/organizations, high level advocacy work, survey, progress in establishing offices and community networks, selecting contact persons etc.*
- ***Follow up/developments on old cases**- progress made in on-going cases*

5. Constraints and recommendations - *Suggestions of what would improve the paralegals' work and how to surmount any problems faced during the reporting period.*

Details of Partners



The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. The Open Society Justice Initiative fosters accountability for international crimes, combat racial discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources. In Sierra Leone, the Justice Initiative helped establish Timap for Justice in 2003. Timap has developed a creative, flexible model to advance justice, one which combines education, mediation, organizing, and advocacy, responding to the particularities of Sierra Leone's socio-legal context. Since 2009 Justice Initiative has worked with the government of Sierra Leone, Timap for Justice, the World Bank and civil society organizations, to develop a national approach to justice services, one that includes a frontline of community-based paralegals and a small corps of public interest lawyers. The project is scaling up justice services, in collaboration with Timap and on Timap's model, working in partnership with a network of 5 CSOs namely Access to Justice Law Centre, Advocaid, Brac Sierra Leone, Justice and Peace Commission and Methodist Church Sierra Leone. Timap and Justice Initiative established a 'scale up unit' to provide training, technical support, supervision, and design the replication of services, to the same standard. Currently, paralegal services are provided in 31 offices, reaching approximately 36% of the country. The project has also sought for recognition of paralegals; working with the government to design a legal aid bill recognising ngos with paralegals as providers of justice services – at the time of publishing, this was before Parliament. The scale-up unit is formalising a training programme, based on this manual, at the University of Makeni, at which paralegals can study for a one-year certificate in paralegal studies. In 2012, the scale-up unit has been brought under the aegis of Namati, a new independent global legal empowerment organization, with support from Justice Initiative and other donors, including Dfid. In addition to maintaining the core justice services provided to date, it is seeking to expand its work on state accountability and citizens' ability to hold government accountable.



Namati (www.namati.org) is an international organization dedicated to legal empowerment. Legal empowerment is about the capacity of all people to exercise their rights and to participate in the process of governing. In partnership with civil society groups and governments, Namati implements and evaluates innovative interventions along several themes, including environmental justice, community land protection, and the accountability of essential public services.

Namati also hosts a global network to foster greater collaboration among practitioners worldwide. Members of the Global Legal Empowerment Network share resources and experiences, including research, training materials, monitoring and evaluation tools, case management systems, and advocacy strategies.



As a federal enterprise, the "Deutsche Gesellschaft für Internationale Zusammenarbeit" (GIZ) GmbH supports the German Government in achieving its objectives in the field of international cooperation for sustainable development. The services delivered by GIZ draw on a wealth of regional and technical expertise and tried and tested management know-how. GIZ's programme "Promoting the Rule of Law and Justice in Sierra Leone" is funded by the German Federal Foreign Office. It aims at strengthening the capacities of the justice sector of Sierra Leone particularly with regard to capacity development, access to justice, and further legal and organisational reforms. GIZ supports paralegal training in Sierra Leone as well as the printing of this manual.



UNICEF is on the ground in over 190 countries and territories to help children survive and thrive, from early childhood through adolescence. The world's largest provider of vaccines for developing countries, UNICEF supports child health and nutrition, good water and sanitation, quality basic education for all boys and girls, and the protection of children from violence, exploitation, and AIDS. UNICEF is funded entirely by the voluntary contributions of individuals, businesses, foundations and governments. For more information about UNICEF and its work visit: <http://www.unicef.org>

A

abuse, 14, 46, 72, 73, 90, 104, 109, 110, 116, 137, 141, 142, 144, 149, 150, 156
 acceptance, 71, 161, 166
 accessory, 107
 accomplice, 102, 107
 accountability, 82
 accused, 23, 34, 37, 59, 62, 101, 102, 103, 104, 107, 108, 109, 115, 117, 118, 119, 120, 121, 122, 123, 124, 169, 170, 182
 Act of Parliament, 56, 58, 94
 Action Log, 42, 43
 actus reus, 101, 102, 105, 108, 166
 adjournment, 32, 33, 36, 122
 Administrative Law, 98
 adoption, 91, 144, 145, 156
 advocacy, 1, 2, 6, 14, 22, 23, 24, 27, 28, 29, 32, 39, 41, 51, 52, 54, 69, 73, 74, 82, 112
 agreement, 16, 18, 19, 21, 22, 32, 86, 88, 91, 107, 145, 155, 166, 170, 174, 175, 176, 178, 179, 189
 agriculture, 84, 91, 92, 93
 Appeal Court, 58, 184
 appeals, 59, 60, 122, 124, 129, 139, 183, 184
 arrest, 90, 100, 107, 113, 114, 115, 116, 117, 118, 122, 126, 144, 187
 arson, 97, 119
 assessors, 59, 60, 184
 authorities, i, 3, 12, 13, 27, 28, 29, 44, 51, 54, 60, 62, 65, 66, 72, 80, 82, 91, 93, 94, 97, 122, 174, 178, 181

B

bail, 33, 116, 117, 118, 120, 121, 122, 127, 128, 183
 bailiff, 33, 181
 basic human rights concepts, 2
 battery, 97
 best interests, 4, 125, 138, 140, 142, 143, 144, 188
 bigamy, 130
 bill, 56
 Bill, 55, 56, 133, 144, 181
 body language, 19, 21
 British rule, 173

C

Case File, 42, 43
 case management, 40, 42, 43, 90, 91
 Case Record, 42, 43
 Chief Justice, 58, 59, 130, 181, 184
 chiefdom, 13, 24, 27, 31, 44, 45, 51, 60, 64, 65, 78, 79, 83, 86, 90, 93, 95, 139, 179, 181, 185
 Chiefdom Administration, 65
 Chiefdom Council, 139, 180
Chiefdom Police, 181
 Chiefdom Speaker, 65
 chiefs, 14, 27, 44, 60, 64, 65, 66, 80, 86, 87, 139, 145, 174, 178, 180, 181, 185
 child abuse, 90, 139, 142
 child custody, 139

child labour, 72, 87, 90
 child maintenance, 3, 20, 137, 141, 154
 child mining, 87
 Child mortality, 75
 child neglect, 82
 Child Panels, 91, 125, 139
 Child Welfare, ii, 70, 90, 91, 125, 139
 children, i, iii, 30, 36, 37, 38, 39, 60, 67, 69, 72, 73, 74, 75, 76, 77, 79, 80, 82, 84, 87, 89, 90, 91, 98, 110, 112, 122, 125, 126, 127, 128, 129, 131, 133, 135, 136, 137, 138, 139, 141, 142, 144, 145, 146, 147, 149, 150, 151, 154, 157, 158, 159, 160, 161, 175, 177, 188
 client, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 22, 32, 33, 34, 35, 36, 37, 38, 39, 42, 45, 46, 47, 48, 49, 51, 52, 81, 82, 97, 109, 110, 111, 112, 125, 126, 146, 147, 148, 149, 151, 152, 153, 154, 155, 169, 185, 186
 clients, 2, 3, 4, 5, 10, 11, 12, 13, 14, 16, 23, 24, 25, 26, 27, 32, 33, 34, 35, 36, 39, 45, 46, 49, 51, 52, 53, 54, 66, 75, 91, 93, 110, 111, 151, 153, 180
 collective action, 3, 28, 30, 31
 Commission of Inquiry, 62
 committal, 59
 common law, 99, 101, 103, 104, 105, 106, 107, 165, 173
 communication, 7, 19, 21, 77, 90
 Community Health Centres, 76
 community health officer, 76
 community level problems, 28, 29, 52, 85
 community meetings, 30, 48, 74, 75, 189
 Community Oversight Boards, 180
 community paralegals, 1
 community school, 71
 complainant, 122, 134, 135, 156, 167, 189
concrete and practical solutions, 3
Concurrent Prison Terms, 123
confidential, 38, 110, 147, 151
 consent, 5, 11, 15, 38, 102, 103, 104, 130, 131, 133, 151, 166, 167, 169, 170, 175, 176, 177
 consideration, 22, 31, 51, 142, 152, 161, 162, 166
 conspiracy, 101, 107
 Constitution, iv, 37, 54, 55, 56, 57, 58, 62, 64, 65, 98, 99, 100, 102, 114, 117, 118, 124, 126, 127, 136, 179, 188
 contact person, 25, 44, 45, 189
 contact persons, 40, 45, 52, 93
 Contract Law, iii, 98, 124, 161, 167
 conversion, 105, 168
 conviction, 107, 122, 124
 Coroners, 61
 corporal punishment, 73, 141
 council, 44, 75, 93, 132
 Court of Appeal, 59, 60, 62, 99, 100, 114, 124, 129, 184
 courts, 13, 14, 15, 33, 44, 54, 58, 59, 60, 61, 65, 99, 100, 110, 123, 127, 128, 129, 132, 134, 139, 173, 179, 181, 182, 184, 185
 crime, iii, 12, 97, 101, 102, 103, 104, 105, 106, 107, 108, 109, 113, 114, 115, 116, 117, 120, 121, 123, 124, 125, 133, 139, 149, 152, 166, 182
 crimes, 22, 61, 107, 108, 109, 115, 119, 121, 123, 124, 149, 166
 criminal case, 33, 119, 182
 criminal cases, 34, 60, 101, 181, 183
 criminal liability, 139

Cross-examination, 120
 custom, 65, 100, 145, 174, 175, 179, 180
 customs, 60, 65, 88
 customary law, iii, 11, 12, 53, 59, 60, 65, 66, 99, 101,
 130, 131, 132, 134, 137, 140, 160, 173, 174, 175,
 179, 180, 181, 184
 Customary Law Officers, 60

D

damages, 137, 164, 165, 166, 170, 177
 Database, 43
 death penalty, 101, 102, 119, 123, 187
Decentralisation, 92
 defamation, 166, 169
 defence, 34, 36, 59, 102, 103, 108, 109, 120, 122, 169,
 171
 defendant, 10, 33, 102, 108, 109, 119, 122, 123, 167,
 168, 169, 170, 171
 delegated legislation, 57
 detention, 115, 116, 117, 122, 126, 128, 135, 167, 168
 Detinue, 167
 Devolution of Estates, iii, 90, 98, 99, 129, 157
 discharge, 62, 124, 180
 discrimination, 100, 187, 188
 dispute, 11, 18, 19, 20, 36, 60, 62, 97, 99, 117, 140, 160,
 181
 district, 29, 69, 71, 75, 76, 77, 78, 80, 81, 82, 83, 86, 90,
 92, 93, 95, 117, 126, 127, 137, 139, 184, 185
 District Appeal Court, 183, 184, 185
 district council, 86, 93, 139
 District Medical Officer, 76, 80
divorce, 60, 110, 129, 130, 132, 133, 134, 135, 137, 161
 divorces, 97, 131, 132, 133, 137
 domestic legislation, 187
 domestic violence, 3, 45, 46, 48, 59, 90, 109, 129, 138,
 141, 146, 149, 150, 151, 152, 153, 154, 155, 156, 157
 Double Jeopardy, 124
 duress, 109, 163

E

education, 1, 2, 3, 10, 12, 29, 30, 34, 38, 54, 66, 67, 68,
 69, 71, 72, 73, 74, 76, 81, 83, 91, 114, 128, 138, 141,
 142, 143, 158, 187, 189
 Education Committee, 69, 71
 education policy, 30
 Emergency Fund, i, 14, 40, 45, 46, 47, 151
 employment, 25, 64, 70, 85, 87, 88, 137, 143, 154, 156
 English law, 173
entrenched clauses, 56
 environment, 88, 90, 91, 97, 141
 estates, 60, 158, 173, 181
 evidence, 14, 32, 48, 59, 109, 111, 112, 117, 119, 120,
 122, 124, 127, 133, 149, 151, 152, 157, 169, 189
 existing laws, 87
 expectation damages, 164, 165
 exploitation, 39, 72, 73, 90, 93, 144, 188

F

fact finding, 36, 80, 81
 false imprisonment, 59, 60, 182

Family Courts, 139
 Family Support Unit, 82, 90, 91, 126, 138
ferae naturae, 170
 Financial Management, ii, 48
 financial support, 45, 46, 47, 92, 95
 fine, 18, 59, 60, 66, 86, 102, 103, 104, 119, 123, 127,
 129, 133, 140, 147, 149, 155, 181, 182
 formal courts, 1, 3, 15, 31
 formal institutions, 1
 formal law, 2, 12, 180

G

gender-based violence, 72, 73
 general law, 173, 180, 181, 182
 government, 1, 2, 3, 13, 23, 24, 27, 29, 30, 31, 32, 37,
 47, 51, 54, 55, 56, 57, 58, 62, 64, 65, 67, 68, 69, 70,
 71, 72, 75, 78, 79, 80, 83, 91, 92, 93, 94, 95, 97, 98,
 100, 113, 138, 154, 166, 177, 181, 187, 188

H

harmful, 10, 90, 166
 health care, 1, 75, 76, 77, 78, 79, 81, 92, 112, 187
 High Court, 58, 59, 60, 61, 62, 99, 100, 114, 119, 121,
 123, 124, 127, 128, 129, 133, 135, 160, 184, 189
 human rights, 1, 2, 22, 25, 46, 51, 56, 61, 75, 117, 136,
 179, 187, 188, 189

I

imprisonment, 60, 86, 101, 102, 103, 104, 105, 113, 118,
 119, 123, 128, 129, 133, 135, 140, 155, 160, 163,
 167, 181, 182
 inchoate offences, 107
 incitement, 107
 Indecent assault, 46, 103
 indictment, 124
 information, i, 2, 3, 5, 7, 8, 10, 11, 12, 13, 20, 24, 25, 27,
 28, 29, 32, 33, 34, 36, 37, 38, 39, 43, 45, 51, 54, 69,
 74, 75, 85, 91, 118, 120, 124, 127, 129, 135, 140, 144,
 148, 151, 154, 155, 189
 inheritance, 129
 insanity, 108, 134, 137
 Inspector General, 101
 institutions, 1, 2, 3, 11, 13, 14, 23, 25, 26, 29, 31, 32, 43,
 51, 54, 68, 77, 95, 97, 128, 138
 intentional torts, 166
 international law, 125, 187
 interrogation, 118
 interviewing, 6, 37, 83
 intoxication, 108
 investigations, 112, 139

J

judgement, 182, 183
 judges, 59, 99, 124, 184
 judiciary, 58
 jurisdiction, iii, 58, 59, 60, 62, 90, 113, 119, 123, 125,
 126, 139, 181, 182
 Justice of the Peace, 114

justice services, 1, 2, 3, 6, 26, 27, 36
juvenile, 37, 127, 128, 129, 138

L

labour, 29, 30, 35, 36, 66, 72, 73, 77, 85, 86, 87, 88, 90, 95, 100, 103, 104, 123, 136, 137, 138, 143, 162
land, 60, 65, 85, 86, 92, 98, 99, 136, 137, 160, 167, 171, 172, 173, 174, 175, 176, 177, 178, 181
larceny, 59, 97, 102, 115, 121, 182
lead paralegal, 29, 52, 73, 112, 152
lease, ii, 85, 86, 174, 175
Ledger, 43, 48, 189
legal empowerment, 44
legal principles, 177
legal representation, 34, 37, 118, 183
Legal research, 33
legal system, 1, 12, 37, 54, 173
legislature, 179
Liquidated damages, 165
litigation, i, 1, 2, 3, 12, 13, 14, 15, 29, 31, 32, 34, 35, 41, 46, 52, 82, 157
local court, 12, 44, 139, 180, 181, 182, 183, 184, 185
Local Court Supervisors, 61, 184
loitering, 115, 121

M

Magistrate, 58, 59, 60, 114, 119, 121, 122, 123, 124, 126, 127, 137, 152
manslaughter, 102, 103
marriage, 59, 60, 62, 104, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 143, 156, 158, 159, 160, 182
marriages, 90
marriages, 97, 119, 129, 131, 132, 133, 134, 135, 136, 137, 158, 159
maternal health, 75
mediation, 1, 2, 3, 6, 13, 15, 16, 19, 22, 32, 41, 43, 51, 66, 82, 125, 139, 155, 157, 179, 189
medical examination, 14, 47, 152
mens rea, 101, 102, 104, 105, 106, 107, 108, 166
mining, ii, 3, 23, 54, 85, 86, 87, 88, 89, 95, 98, 143
Minister, 55, 56, 65, 70, 89, 99, 180, 181
Misrepresentation, 163
mistake, 4, 108, 120, 131, 180
mitigation, 122, 165
mobile clinics, 42, 48, 52, 81
mobilization, 31
Mohammedan, 129, 130, 131, 132, 134
monitoring, 33, 35, 42, 66, 75, 76, 77, 83, 89, 90, 92, 95, 138, 139, 145
murder, 34, 59, 97, 102, 109, 118, 182
Muslim law, 131, 159

N

native law, 174, 175
needs assessment, 28, 44
negligence, 103, 166, 169, 170, 171, 172
negotiation, 2, 15, 16, 18, 54, 83, 86
nuisance, 177

O

offence, 34, 80, 86, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 138, 140, 141, 149, 151, 152, 153, 155, 160, 182
offences, iii, 34, 35, 59, 61, 90, 97, 103, 105, 106, 107, 108, 109, 118, 119, 120, 121, 123, 125, 149, 160, 179, 182
offer, 6, 18, 38, 161, 162, 166, 169
Ombudsman, 100
omission, 101, 102, 106, 156, 169
organizing, 1, 2, 30, 77, 83

P

Paralegal Skills, 5, 6
parentage, 139, 141
parental care, 39, 144
penalty, 62, 123, 182
Permanent Secretary, 92
plaintiff, 119, 123, 167, 168, 169, 170, 171
plea, 122, 127
police, 12, 13, 14, 22, 27, 33, 34, 38, 44, 45, 47, 48, 60, 61, 62, 72, 80, 82, 86, 89, 90, 101, 102, 106, 110, 111, 112, 114, 115, 116, 117, 118, 126, 128, 141, 147, 149, 151, 152, 155, 156, 157, 181
polygamous, 131, 133, 159, 160
Preliminary Investigation, 59, 119, 123
primary health care workers, 1
privacy, 5, 100, 127, 156, 188
property, iii, 85, 95, 97, 98, 100, 102, 105, 106, 109, 113, 115, 118, 119, 121, 132, 133, 135, 136, 137, 154, 158, 159, 160, 161, 164, 167, 168, 170, 172, 173, 176, 177, 178, 188
prosecution, 13, 15, 22, 59, 60, 90, 109, 110, 111, 112, 116, 121, 122, 124, 147, 152, 153, 155, 157, 182, 185, 187
protection order, 145, 147, 153, 154, 157
provocation, 102
punishment, 18, 34, 72, 73, 102, 103, 122, 123, 125, 127, 128, 138, 141, 143, 181, 183, 185, 188

R

rape, 14, 15, 35, 59, 104, 108, 111, 119, 182
real property, 98, 168, 177
recklessness, 101, 105
referendum, 56
referral, 14, 35, 76, 90, 123, 144
Regent Chief, 65
remedy, 16, 89, 93, 95, 119, 123, 164, 165, 167
rent, 49, 86, 88, 94, 95, 173, 174, 176, 177, 181
resolved case, 42
respondents, 75, 83, 139
restitution, 119, 144, 161, 164
robbery, 59

S

School Management Committee, 67, 69, 72
school teacher, 110
Self-defence, 109

sentence, 38, 113, 114, 122, 123, 124, 125, 129
separation, 57, 110, 129, 132, 135, 147, 150, 153
sexual offences, 90, 109, 110
Sierra Leonean law, 2, 97, 120
social welfare, 89, 139, 144, 145
standard of living, 187
Statement Taking, i, 7, 38
statutes, 173
strict liability, 104, 106, 107, 108, 166, 170
Supreme Court, 55, 58, 59, 60, 61, 99, 100, 114, 124,
128, 129, 184, 188
survivor, 45, 48, 109, 146, 155
suspect, 61, 107, 114, 115, 117, 118, 148

T

tenancy, 173, 175, 176

Tort Law, iii, 98, 124, 166
trespass, 121, 167, 168, 171

U

unlawful carnal knowledge, 182
Unlawful killing, 102, 103

V

Village Development Committee, 77
village health committee, 83

W

water, 6, 24, 31, 72, 76, 77, 78, 81, 83, 84, 88, 92, 94, 95

PARALEGAL MANUAL 2012

A practitioner's guide to providing basic justice services in Sierra Leone

Timap for Justice is a pioneering effort to provide basic justice services in Sierra Leone. As a result of a shortage of lawyers in the country and because of Sierra Leone's dualist legal structure, Timap's frontline is made up of community-based paralegals rather than lawyers. Timap presently employ over 70 staff working in 19 paralegal offices across Sierra Leone as well as in the capital Freetown.

In 2009 Timap launched two initiatives expanding on its core work. Modeled on the Malawian Village Mediation Programme, Timap's Community Mediation Programme is a partnership with the Sierra Leone government's Justice Sector Development Programme and focuses on resolution of disputes at the community level through mediation. Timap's pilot Criminal Justice Project established with support from the Open Society Justice Initiative's "Global Campaign for Pretrial Justice", seeks to narrow the gap in the availability of criminal justice services by employing paralegals to provide basic legal assistance to detainees. Timap has been recognised by the World Bank and the International Crisis Group for developing a creative, effective methodology for providing basic justice services in the difficult and complex context of rural Sierra Leone. <http://www.timapforjustice.org>

