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Promoting Transparency in Sierra Leone's Judiciary

Quarterly Progress Report

1 October – 31 December 2015



UNDP 2 year project funded by the US Department of State, Bureau of
International Narcotics and Law Enforcement Affairs

Project Overview

Reporting Period	1 October – 31 December 2015
Donor	US Department of State, Bureau of International Narcotics and Law Enforcement Affairs
Country	Sierra Leone
Project Title	Promoting Transparency in Sierra Leone’s Judiciary
Project ID (Atlas Award ID)	00090095
Outputs (Atlas Project ID and Description)	00096027
Implementing Partner(s)	UNDP, Sierra Leone
Project Start Date	1 July 2015
Project End Date	30 June 2017
2015 Annual Work Plan Budget	USD 269,611
Total resources required	USD 225,000
Total resources spent during reporting period	USD 173,000
Actual average monthly burn rate	USD 57,667 as of 17 December 2015 (All commitments made)
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I. Executive summary

This report details progress in the implementation of the two year project 'Promoting Transparency in Sierra Leone's Judiciary' for the period of 1 October – 31 December 2015. The report follows the same structure of the first quarterly report and builds on the information and achievements detailed herein.

The projects popular name among the key institutions has become 'the Sentencing and Bail project' with reference to name of the now well-established Sentencing and Bail Working Group (WG). The two project outputs are (1) to develop a sentencing policy and guidelines for 7 selected offences and to revise the 2009 Bail Policy, and (2) to ensure that these are in place and consistently applied within a two-year time frame. UNDP's main implementing partner is the Judiciary of Sierra Leone in cooperation with key justice sector institutions and civil society organisations working within the sector.

A key component of the project, is to engage the government and legislative committee to support the passing of the Criminal Procedure Bill (CPB), which was revised in 2010 and has since then not fully completed the legislative process. On 2 October 2015 the WG agreed to dedicate a one and a half day retreat to conduct a detailed review of four thematic areas of the CPB, namely Arrest & Bail, Committal Proceedings, Sentencing and Indictments & Trial with the purpose of developing a position paper to the Legislative Committee (LC). Already in late August the LC had requested papers from justice institutions and civil society organisations working in the criminal justice sector, but had indicated that the Committee was still open for receiving more input. The retreat was held outside Freetown on 15-16 October and ensured a platform for intensive discussions on the CPB (see pictures in Annex 2) and included a presentation from the Chairperson of the WG Justice Browne-Marke that had also been part of the drafting committee of the new bill in 2010, he identified several remaining shortcomings, including with respect to bail, lack of alternative sentencing measures and jurors, but however detailed that the draft had also been subject to change by the Attorney General's Office.

UNDP ensured facilitation of the Retreat together with two facilitators (Justice Sector Coordination Office and NAMATI as well as Rapporteur from University of Makeni's Law Faculty), and the position paper was finalised on behalf of the WG by Namati and UNDP. In November Namati, the Access to Security and Justice Programme (ASJP) and UNDP have followed up with both the LC and the Attorney General (AG), and finally, it was communicated that the Bill would not be subject to pre-ledge before early 2016.

At the opening of the Parliament on 11 December 2015, his Excellency President Ernest Bai Koroma listed the Criminal Procedure Bill as a key government priority for 2016 together with the Police Act and the Justice Sector Coordination Bill – which also corresponds with the commitment made in the Agenda for Prosperity to ensure the passing of the revised CPB (AfP 2013-2018, p. 122). This will therefore be a key priority of both the WG and UNDP to follow-up with the LC and the Attorney General in early 2016 on the CPB and possible incorporation of the amendments suggested by the WG (See Annex 1 for position paper).

In late October, the planned South – South exchange study tour with the Judiciary of Ghana and related institutions (see detailed information in section II) to learn about their sentencing guidelines adopted in February 2015. The programme of visit was arranged jointly between the two UNDP Country Offices and proceeded well although with some minor changes, as the final programme of meetings had to be developed at very short notice – as the Judiciary of Ghana gave their final approval 10 days before departure. The WG members have in evaluation forms shared their views on the trip (see section II) – but overall the study tour was rated a success and everyone felt that the objective of the trip had been achieved. Discussions amongst members about similarities and disparities on the bus between and after meetings were also intense, and members explored together the best ways to approach reform initiatives that would complement and enhance the implementation of sentencing and bail instruments.

The visit was termed *'an eye-opener, and not only on bail and sentencing but the whole judicial structure and functioning, which humbled them all'*, and members found the Ghanaian sentencing guidelines were well-structured and also how important monitoring, supervision and oversight can help ensure effective implementation.

On 12-13 November 2015 the project together with ASJP supported the Chief Justice and senior management of the justice institutions to hold a 'Lessons Learnt Workshop' on how to effectively tackle the endemic challenge of long-term pre-trial and remand detention in the country. The workshop naturally dealt with the present challenges with respect to bail and sentencing, and almost all members of the WG were present and shared their newly obtained knowledge of the justice system in Ghana. The Judiciary, ASJP and UNDP have developed a report from the workshop (still with Chief Justice for final approval) and presently a justice sector reform specialist contracted by ASJP is assisting the Judiciary and justice chain-link institutions in developing a strategic plan of action that prioritises and addresses the main issues identified. UNDP will try and cost the strategic plan of action, so this can be brought further in discussion with the Executive and government in achieving further prioritisation of the justice sector. (See section II for more information)

Finally, the WG has been further planning the national outreach activities scheduled for early 2016, programme of engagement with the two Senior Federal Judges offered through the assistance of INL and International Judicial Relations Committee that are expected to be in Sierra Leone consecutively in January and February 2016. January will also hold - the finalisation of both the baseline study and reference document for the WG as well as the records and case management finalised and presented to the (new) Chief Justice, the Law Officers Department, the Sierra Leone Police and the Correctional Services.

January 2016 is expected to bring the appointment of a new Chief Justice, which will be either the present Chair of the WG, Justice Browne-Marke or Justice Abdulai Charm (also member of the WG), and they are both very engaged and committed to the project, and the Acting Chief Justice has already assured UNDP that a thorough handover will be ensured to this extent. UNDP does not therefore at present see this as a risk to the project. However this might entail a possible change of Chairperson of the WG.

II. Progress Review

PROGRESS TOWARDS PROJECT OUTPUTS

Output 1: Sentencing and bail policies and guidelines adopted by the mandated judicial authorities			
Output Indicators	Baseline	Target	Current status
<ul style="list-style-type: none"> WG established (M/F) 	<ul style="list-style-type: none"> No WG in place 	<ul style="list-style-type: none"> WG in place comprised of Judiciary, Police, Prosecutors, Corrections 	<ul style="list-style-type: none"> Achieved See 1st Quarterly report for details on target achievement. <p>Please find the following further updates on progress and continued</p>

		<p>and citizen representatives with strong female representation to lead process of development of sentencing policy and guidelines</p>	<p>achievements of the WG for 2nd quarter of the project:</p> <ul style="list-style-type: none"> • There are still 14 members of the WG and 2 observatory members (ASJP and US Embassy) and UNDP continues to provide technical and programmatic support to the WG. CCG has changed their permanent member to Ms. Bernadette French, with Ms. Samba-Sesay still providing ad hoc support. • 5 regular working group meetings have been held during this quarter, and in addition the WG has held a 1.5 day retreat on the Criminal Procedure Bill and engaged during the 5 day study tour to Ghana (detailed below)
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<ul style="list-style-type: none"> • <i>WG knowledge of the process of developing sentencing and bail reforms is enhanced</i> • <i>Assessment completed with sex disaggregated data</i> 	<ul style="list-style-type: none"> • No assessment has been undertaken of current legislation and practices 	<ul style="list-style-type: none"> • Assessment completed of current sentencing practice and manual developed (sex disaggregated data) 	<ul style="list-style-type: none"> • Partially on target and progressing (see below) • The recruitment of the consultant(s) to draft the baseline study proved difficult (detailed in the first report), - however a qualified and strong Sierra Leonean candidate was finally identified in October and commenced on 20 October 2015. • The inception report has been approved in November and the full draft study will be presented to the WG at the first meeting of 2016 for further consultation and final feedback. • The report is expected to be completed and available from 15 January 2016. • On 15-16 October 2015, the WG held a one and a half day retreat with the purposes of developing a position paper on the Criminal Procedure Bill (CPB), Vol. CXLVI, no. 35 – 30th July 2015 which was finally being prioritised by the Legislative Committee since the expert committee developed the new draft bill in 2010. The whole WG came for the retreat and had invited members of the SLBA with specialised knowledge in the field together with a few other representatives of CSO's working in the justice sector. A paper has been developed (please see attached in Annex 1) and one of the facilitators of the Retreat, Mr. Sonkita Conteh from Namati together with the JSCO has on behalf of the WG and UNDP, actively engaged the Attorney General and the Chair of the Legislative Committee (LC) on the paper. • The CPB draft has now been pushed forward to 2016, but is expected to be passed in January – February, as
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			<p>it was also announced by President Ernest Bai Koroma, in his opening of Parliament on 11 December 2015 as a key government priority. The WG and UNDP will present the position paper and further engage with the LC in the beginning of 2016.</p> <ul style="list-style-type: none"> • From 27 October – 1 November 2015, UNDP SL and UNDP Ghana jointly arranged the South-South exchange and study tour for the WG to receive in-depth knowledge on the development of sentencing guidelines in Ghana. • The study tour included visits with the Courts and Administrative wings of the Judiciary of Ghana as well as with Senior Justice Sir Dennis Adjei that had led the development of the Ghanaian sentencing guidelines together with the British High Commission technical adviser at the time. The visit also included engagement with the Prisons Service, the Commission Human Rights and Administrative Justice (CHRAJ) and the Executive Director of the Legal Aid Scheme. • The South-South exchange instigated several discussions amongst the WG members both on the guidelines, case management and on the level of government investment in the justice sector in Sierra Leone, and on how the WG as a whole could share these insights and learnings in Sierra Leone as well as within their respective institutions. • UNDP had developed evaluation questionnaires and these were analysed by the Rule of Law Officer and feedback shared with both UNDP senior management and the Chairperson of the WG. Quotes from the questionnaires, include the following: <i>“All the officials seem</i>
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			<p><i>to master their area of responsibility. It was easy for the WG to identify the problems back home. Sierra Leone needs a holistic approach to overhaul the justice sector.” “Visits by Judges to the prisons is a lessons to be learnt” (referring to that Judges went on regular visits to the prisons and the Courts established within these - which had also effectively reduced remand detention by the courts established within the prisons).</i></p> <ul style="list-style-type: none"> • The overall perception from the WG members was that the learnings on the Ghanaian sentencing guidelines would inform the development of the Sierra Leonean policies and guidelines. Furthermore, the WG members have shared their knowledge obtained from the Ghana study tour on sentencing and bail and best practices at ‘<i>The lessons learnt workshop</i>’ in Kenema that was planned by the Chief Justice with the support of the ASJP and UNDP under the auspices of the sentencing and bail project to allow senior management of the justice chain-link institutions to analyse findings and challenges identified during backlog sessions during May – August 2015, which focused on the following issues human resources, case management, court proceedings and internal accountability mechanisms. • Based on the knowledge obtained from the Ghana study tour, the WG supports the suggestion of the Chairperson – that the sentencing and bail instruments for Sierra Leone should be developed and made statutory instruments – to enhance their legal status and ensure that all judicial staff and
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			related institutions are obliged to apply them.
<ul style="list-style-type: none"> • <i>Gender sensitive sentencing and bail policy adopted</i> • <i>General institutional and public awareness of sentencing policy enhanced</i> 	<ul style="list-style-type: none"> • No sentencing policy in place • The 2009 bail policy needs revision and has not successfully been implemented 	<ul style="list-style-type: none"> • <i>Gender sensitive sentencing and bail policy adopted</i> 	<ul style="list-style-type: none"> • On target and progressing well • The WG is planning outreach / national consultations to 10 cities in late January and early February to receive feedback on the present situation of sentencing and bail as well as perceptions/ideas on how to handle offenders. The target group will be the local government institutions and community structures, paramount and section chiefs, local CSO's and the broader public. • Justice Browne-Marke has developed a questionnaire for the purpose of the consultations which was presented on 9 December 2015 to the WG and the deadline for feedback is the first WG meeting in January, 2016. • The CSO members of the WG have agreed to co-arrange the town hall meetings in the 10 identified cities together with the Judiciary and UNDP, this will include prior announcement and media coverage in all the districts, newspapers and radio.
<ul style="list-style-type: none"> • <i>M&E Framework established to track progress</i> 	<ul style="list-style-type: none"> • No M&E Framework in place 	<ul style="list-style-type: none"> • To ensure for the successful achievement of key milestones and the whole project (Not in RRF) 	<ul style="list-style-type: none"> • Achieved • UNDP has developed an Annual Work Plan (AWP) for the full two years of the project, which has been approved by Senior Management and the Monitoring and Evaluation Unit of the Office. • The 2015 plan has been reviewed by the WG and the Judiciary as the main implementing partner in November and late December. Some adjustments were made and activities as well as some resources have been moved forward into 2016 with the approval of the Chief Justice.

			<ul style="list-style-type: none"> • The Project Board has also received and approved these revisions at the project board meeting held on 14 December 2015. • The UNDP project team is ensuring due diligence in monitoring the project progress and ensuring for adjustments to be made – as well as ensure necessary approvals.
<ul style="list-style-type: none"> • <i>Sentencing guidelines completed and agreed by WG</i> 	<ul style="list-style-type: none"> • Besides from the Sexual Offences Act, there are no existing guidelines for sentencing in the country 	<ul style="list-style-type: none"> • Sentencing guidelines developed to assist Judges in determining sentence tariffs (gender sensitive) 	<ul style="list-style-type: none"> • Planned 2016 – but progress made • Activities to this extent will be primarily undertaken in 2016, however as it is closely related to the development of the sentencing and bail policies, the baseline study will include recommendations on sentencing • WG has discussed sentencing at length for the offences already reviewed by the group, including but not limited to murder, assault, robbery with aggravation etc.

Output 2: Sentencing/Bail guidelines are in place and consistently applied			
Output Indicators	Baseline	Target	Current status
<ul style="list-style-type: none"> • <i>Training modules completed and approved by WG</i> • <i>Resource materials including SOP's and guidance notes approved by WG</i> • <i>No and % (M/F) of Judges, Registrars, Prosecutors, Lawyers, Police, Parliamentary Oversight Committee and Civil Society who have successfully completed training programmes</i> 	<ul style="list-style-type: none"> • Practitioners including Judiciary have not received training on guidelines 	<ul style="list-style-type: none"> • Practitioners including Police Investigators, Judges, Prosecutors, Registrars, Defence Counsels and Civil Society are aware of guidelines including their application in Court 	<ul style="list-style-type: none"> • Activities to commence in 2016, however senior professionals of all target groups are already engaged in the WG that will be developing the guidelines. • Facilitated by INL, UNDP is engaging with the International Judicial Relations Committee (IJRC) on receiving technical support to the project from two Senior Federal Judges over the next one and a half year – and this includes possible support to the actual development of the curriculum.

<ul style="list-style-type: none"> • <i>Courts where sentencing guidelines introduced are functioning with sentencing decisions being applied with increasing uniformity</i> • <i>Improvement in respect for procedures and due practice noticed</i> 	<ul style="list-style-type: none"> • Lack of uniformity in sentencing 	<ul style="list-style-type: none"> • Enhanced/Traceable uniformity in sentencing 	<ul style="list-style-type: none"> • Activities will commence to this extent in 2016, therefore no update on this indicator in the present report.
<ul style="list-style-type: none"> • <i>Records – Case management assessment finalised</i> • <i>Equipment is in place</i> • <i>Judicial staff capacitated to manage the CMS</i> • <i>Reliable data is available</i> 	<ul style="list-style-type: none"> • Partial tracking and case management systems currently in place 	<ul style="list-style-type: none"> • Electronic case management system in place in selected courts and able to track uniformity in application of sentencing and bail policies and guidelines 	<ul style="list-style-type: none"> • On target • The Records and Case Management Consultancy Team commenced work on 14 December 2015, and the assessment will be finalised by 20 January 2016. The main deliverable of the ToR is a detailed plan for implementation of the records and case management system, including costing. • The Consultancy technical team will meet all justice-chain link actors upon inception of the ToR – and have access to the same institutions present records and case management systems, this will include field missions to the provincial headquarters in the country. • The draft report will be presented to the Judiciary and related institutions in second week of January before final completion.
<ul style="list-style-type: none"> • <i>Court Monitoring data reflects the increase in knowledge on the sentencing guidelines amongst court users</i> 	<ul style="list-style-type: none"> • Sentencing guidelines – only for SGBV offences and no or little knowledge of the 	<ul style="list-style-type: none"> • Practitioners, (beneficiaries) and citizens using the justice system are aware of the new guidelines including 	<ul style="list-style-type: none"> • Target 2016 • Campaign for Good Governance has provided a presentation to the WG on their project that includes components on court monitoring and will effectively be able to trace the

	importance of sentencing guidelines	their application in the Courts	<p>implementation of sentencing and bail and the new guidelines once produced.</p> <ul style="list-style-type: none"> • UNDP has supported court monitoring under the previous Access to Justice and Rule of Law Programme from 2012-2014. Available data has been shared with the consultant carrying out the baseline study to support the development 'of a snapshot' of present practice. The UNDP monitoring process was implemented nationwide and the networks established would contribute to the monitoring of sentencing and bail practices across the country at a later stage of this Project.
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III. Schedule

1. Are all project personnel in country?

During October – December 2015 all project personnel have been in country, the only exception being the WG study tour to Ghana to which the Rule of Law Officer co-arranged and participated. The main activities have been carried out primarily by the Rule of Law Officer – with the support of the Project Manager Access to Justice and the Programme Associate. The project activities have been planned taken into account the December holiday season as several of the WG members will be out of the country during this period.

2. Are project activities Ahead of Schedule, on schedule or behind schedule?

Overall assessment is that the project is *On Schedule* (see section III for detailed account) and has made good progress over the past three months and although the recruitment for the baseline study and case management consultancies have been delayed slightly, these consultants are now on board and working towards the successful completion of deliverables by mid-January 2016.

3. List significant project activities/events planned for the next 3 months?

- WG Outreach / national consultations to Moyamba, Bo, Kenema, Kono, Kailahun, Kabala, Magburaka, Makeni, Port Loko and Freetown (WG will divide into 4 teams to conduct 1 day consultative town hall meetings in each city)

- WG workshop to collate and analyse feedback and findings from the nationwide consultative meetings, which will feed into the development of the first draft of the Sentencing and Bail Instruments.
- First draft of the Sentencing Policy and revised version of the Bail policy will be finalised by end March 2016 and the second round of consultations will be planned.
- Exchange/Support – 2 Senior Federal Judges (US) facilitated through the International Judicial Relations Committee (IJRC) will engage with the WG. Activities will include – participation in outreach activities, workshop on Sentencing and Bail best practices and reform initiatives in the US Court system, support to the development of the first draft sentencing policy, revision of the existing bail policy, and participation in the Judicial Conference as resource person.
- Baseline study and records and case management assessment finalised and decision on way forward as well as required resources will be identified.

IV. Other

In the drafting of the project document, it is indicated in the narrative, as well as full project description and budget, how UNDP planned to ensure effective programme management and staffing.

Since late June 2015, UNDP has posted and held interviews for the position of Programme Support Specialist (PSS) for the Judiciary several times without obtaining qualified candidates. This has entailed that the Rule of Law Officer instead has carried out the functions of this position to a great extent together with one of the existing staff of the Judiciary. This has therefore prompted UNDP to discuss the following proposed strategy with the Chief Justice: As the Judiciary is undergoing several reforms, including structurally, it has been proposed that part of the funds allocated for the PSS be utilised to enhance capacities of existing staff within the Judiciary, this including the Chief Administrative Secretary of the Chief Justice's Office and/or any other identified suitable capacity within the Judiciary. This will include enhanced sparring by UNDP staff with respect to supporting the mandate of the WG as well as courses on programme management and donor reporting, which will also ensure that the Judiciary will be capacitated to better manage funds from donors.

Furthermore, the position within UNDP of the Programme Manager & Technical Specialist has been merged at present. However, UNDP stands to lose the capacity of the present Rule of Law Officer Louise Simonsen Aen by April 2016. The position of Rule of Law Officer is currently being funded by the Danish Government and UNDP has been informed that funding support is to be discontinued by April, 2016 due to changes in the Danish Government's new development strategy and priorities. It is UNDP's thinking that the position of Rule of Law Officer/ Programme Specialist due to the above detailed recruitment constraints is central to the further achievement of the INL project. Furthermore, there is need to ensure a smooth continuity of implementation as a break might jeopardize the trust in implementation between UNDP and the Judiciary. As a reason of the above, UNDP is therefore, seeking permission from the INL/US

Department of State to reallocate the funds dedicated to programme management and implementation of the project as well as utilise the funds not spent in 2015 to ensure the following:

1. Strengthen capacity of judicial staff to manage the INL project and ensure effective implementation of the future Sentencing and Bail instruments
2. Fund the position of Rule of Law Officer/Programme Specialist for 1 and a half year to ensure successful implementation of the INL project

UNDP is very appreciative of the support provided by the INL Programme Manager and the Justice Adviser as well as the US Embassy Political Affairs Officer to this project including in facilitating the contact with the IJRC which will now ensure that the project receives Senior Criminal Justice experts to support the WG further in developing the sentencing and bail instruments.

The support from INL has generated much enthusiasm within the Judiciary and beyond and UNDP will continue to follow up closely to mitigate any risks of delays in completion as well as to ensure quality outcome.

V. Annex

Annex 1 - Position paper by the Sentencing and Bail Working Group on the Criminal Procedure Bill 2015

Date of submission 23 November 2015

Introduction

At a two day meeting held at the Eden Bay Resort, Mama Beach on the 16 – 17 October 2015, the Working Group on Sentencing and Bail (hereinafter referred to as ‘Working Group’ or WG) - comprising senior judges and magistrates, high ranking officers from the Sierra Leone Police and Correctional Services, legal practitioners, ministry of justice personnel, civil society organizations and development partners deliberated extensively on and discussed the provisions of the Criminal Procedure Bill 2015. The Working Group lauds the considerable efforts of all and everyone who have contributed to the development of the bill which when enacted would address persistent challenges of delay, abuse of discretion and corruption in the criminal justice system. The innovation of alternative sentencing would have a significant impact on the problem of overcrowding at correctional facilities and detention centers nationwide. The objective of the meeting was to generate recommendations from participants who collectively have had decades-long experience in criminal justice work, which would further improve the 2015 bill.

It was resolved at that meeting that the Working Group will collate its numerous recommendations and forward same to the office of the Attorney-General and the House of Parliament for their consideration and inclusion in the criminal procedure bill. It is the Working Group’s hope that these recommendations would strengthen the content of the bill and consequently improve criminal justice delivery in the country. The WG has where appropriate in its recommendations, suggested possible language to ease the possible process of inclusion should the recommendations be adopted to strengthen or improve the relevant provisions.

The Working Group commends the efforts to replace the current outdated legislation on criminal procedure to reflect the government’s commitment to transforming the justice sector and instilling

modern day best practices on criminal procedure. The following recommendations are humbly made by the WG:

Recommendation 1 - Section 4: Arrest generally

The WG is of the view that persons or authority other than the police also have statutory powers to arrest. These include anti-corruption investigators. The WG proposes therefore that section 4(4) take this into account as follows:

- Section 4(a) “if a police officer, or any person with statutory authority to arrest....”

Recommendation 2 – Section 9(2): Arrest generally - Medical examination of defendant

The WG is of the view that section 9(2) may impose an onerous duty on private persons who make an arrest and therefore proposes a slight amendment as follows:

- Section 9(2) should read “the police officer in charge of a person arrested for an offense against the person of another, may cause the person arrested to be examined by a medical practitioner or authorised medical personnel”.

Recommendation 3 – Section 9(3) and (5): Rank of approving police officer

Section 9(3) and (5) require the approval of an Assistant Superintendent of Police for extraction of body samples or intimate searches. The WG is of the view that ASPs may not be available or reachable from remote locations across the country. The WG therefore proposes that

- “not below the rank of Inspector” should replace “not below the rank of Assistant Superintendent of Police.”

Recommendation 4 – Section 10: Appearance in court without delay: Definition of economic and environmental offences

The WG is of the view that section 10 of the bill reflects the constitutional safeguards on arrest and detention. However, the said section omits environmental offences. The WG proposes that environmental offences be inserted and that both “economic” and “environmental” offences be defined in the interpretation section by professionals with the required expertise from these fields. The definition of economic crime in the Anti-corruption Act 2008 could be considered:

- “an offence involving dishonesty under any enactment providing for the maintenance and protection of the public revenue.”

Environmental offences could also be defined in relation to the Environment Protection Agency Act 2008.

Recommendation 5 – Section 10 continued: Production of arrested persons without delay and compensation

The WG endorses the provision in section 10 that arrested persons should not be detained beyond the constitutionally stipulated time frame of 72 hours and 10 days respectively. The WG is however mindful of persistent complaints of breaches of this stipulation by the police. Further, the WG is aware of the challenges faced by illegally detained persons attempting to seek a writ of “habeas corpus” from the high court or redress from those that illegally detained them. In view of this, the WG recommends that section 10 be amended to (i) allow for magistrate’s courts to issue production orders on affidavit for the police to produce such illegally detained persons before the court (ii) payment of compensation by the detainer. The following addition to section 10 is proposed:

- “10(1) “any person detained beyond the stipulated period may cause such information to be laid before the court in an affidavit and the court may if satisfied of the facts deposed to, issue a production order, directing the police to produce the illegally detained person before the court on the same day.”

And,

- “10(2) where the court finds that a person has been detained beyond the stipulated periods, the court shall in addition to any other action taken, award compensation to the illegally detained person. Such compensation shall be paid by the person found to responsible for the illegal detention.”

Recommendation 6 – Section 13(e): Time frame for offence of loitering

The WG recommends that the time frame for the offence of loitering in section 13(e) be changed from:

- “8pm to 5am to 11pm to 5 am”.

Recommendation 7 – Section 13(1)(f): Arrest for anti-social behaviour

The WG is of the view that the current wording of section 13(1)(f) is too broad and very susceptible to abuse. It provides that the police may without warrant arrest “any loose, idle or disorderly person...”.

- The WG suggests that “idle” and “loose” should be replaced with “intoxicated.”

Recommendation 8 – Section 16(2)(c)(i): Private prosecution and notification of Attorney-General

The WG is of the view that the Attorney-General or the Director of Public Prosecutions (DPP) need not be notified when a private lawyer or individual issues a criminal summons against a person who is not a public officer. Section 16(2)(c)(i) should be amended as follows:

- “Section 16(2)(c)(i) the Director of Public Prosecution shall be notified if the summons is issued against a public officer; and... .”

Recommendation 9 – Section 56(1) and (3): Compensation in criminal proceedings

The WG is of the view that section 56(1) limits a complainant’s ability to obtain compensation in full where the offence charged is also a tort. The magistrate can only order compensation not exceeding the maximum fine even if the value of the complainant’s loss is greater. Once compensation is awarded, no matter how unsatisfactory, a dissatisfied complainant cannot bring a civil action by virtue of section 56(3) for the same claim.

The WG recommends that section 56 either allows the magistrate to transfer the matter to a higher court to assess and award compensation where evidence suggests that the loss may be higher than the maximum fine or that section 56(3) be amended to state that a dissatisfied complainant is not barred from seeking additional compensation by a civil claim.

Recommendation 10 – Section 81(1) and (3): Bail in court

The WG believes that the current provision in the bill on “court bail” is inadequate and could be improved to ensure that it addresses current challenges. Figures from the Correctional Services indicate that detention facilities in the country are excessively oversubscribed with the vast majority being pre-trial detainees. The provisions governing bail in the CPA 1965 (which have been mirrored in the 2015 bill) are so broad that they allow judicial officers to deny bail at will, no matter the nature of the offence. It is the view of the WG that no meaningful reform of the criminal justice system can be undertaken without addressing the issue of bail. The WG recommends the following insertions:

- “Section 81(1) A person charged with murder or treason shall not be admitted to bail except by a judge.”

This will replace the current section 81(1) and ensure that Magistrate’s courts are able to address the issue of bail for a wider array of offences.

- “Section 81(3) When a person is charged with any offence other than those referred to in subsections (1) and (2), the Court shall admit him to bail, unless the prosecutor by affidavit proffers good and sufficient reasons why bail should not be granted.”

This proposed provision will ensure that for traffic and other less serious offences, accused persons are not unduly kept in detention during trial.

Recommendation 11 – Section 121: Committal proceedings - Appearance at committal proceedings

The WG is of the view that committal proceedings as set out in section 121 would make heavy use of documents such as witness statements, documents, lists, etc. Given the high rate of illiteracy and the likelihood that defendants may be unable to read or understand English, their ability to participate effectively in the committal process is doubtful. This may have fair hearing implications. In view of this, the WG therefore suggests that section 121(3) specifies that:

- “defendants who are non-literate in English shall have access to legal assistance to help interpret and explain committal documents”

Recommendation 12 – Section 123(b): Committal proceedings: endorsement of statement by interpreter

The WG is of the view that the interpretation clause in the statement of an illiterate person in section 123(b) should contain identifying details of the interpreter. This will enable the court to verify if it so desires that such a function was performed.

- Thus “by an interpreter” in the section should read be replaced with “by.....(name of interpreter) of (address) and other details such as telephone contact.”

Recommendation 13 – Section 123(c) and (d): Committal proceedings - Statements by limbless persons

The WG is of the view that the section 123(c) and (d) should refer to persons who are disabled generally such as the blind, deaf or limbless. The section currently only refers to limbless persons.

Recommendation 14 – Section 125(4): Ancillary proceedings

The WG is of the view that section 125(4) is couched too broadly making room for endless extensions and unlimited time frames. To guard against such, the WG proposes the following addition to section 125(4):

- “Such extension shall be made not more than twice and for periods not exceeding 8 days”.

Recommendation 15 – Section 132: Binding prosecutor and witnesses by recognisance

Section 132 provides for prosecutors and witnesses to enter into recognisance to ensure that they prosecute or testify at trials. This provision would expedite trials significantly. However, the WG is of the view that it should be limited to complainants and witnesses and not extended to prosecutors, a term which is interpreted in the bill as including

- “the Attorney-General, law officers and the Anti-corruption Commissioner.”

Additionally,

- “complainant” needs to be defined in the interpretation section. Note: prosecutor may be defined as “the person or authority responsible for the conduct of criminal proceedings on behalf of the state including the DPP, ACC commissioner, law officers.” Complainant may be defined as “the person laying an information with the police or the court which results in criminal prosecution.”

Recommendation 16 – Section 143: Arraignment – Right to interpreter and legal advice

The WG is of the view that section 143 should in addition to requiring courts to provide interpreters, also require courts to inform defendants of their right to legal advice and assistance and how to access legal aid representation.

Recommendation 17- Section 147(2): Defendant to be discharged by court for lack of trial

The WG supports the provision in section 147(2) for defendants who have not been tried after 3 sessions to be discharged for want of prosecution. **The WG however wants the court of its own motion to discharge** the case rather than wait for an application from the defendant who may not be sophisticated enough to make it. Further, the defendant should be “discharged” rather than “acquitted and discharged”.

Recommendation 18 – Section 160(2): Jury trial - Exemption from jury trial

The WG is mindful of the current challenges of jury trial in Sierra Leone and notes the innovative ways in which the present bill seeks to address some of those problems, e.g. by reducing the number of jurors and allowing some flexibility when numbers are reduced during trial. The WG however notes that section 160(2) contains a long list of professions or persons that will be exempt from jury trial. The WG believes that such exemptions reduce the pool of available persons for jury duty and leads to recycling of serving jurors. The WG notes that the UK in 2003 (Criminal Justice Act 2003) abolished exemptions from jury duty for many of the professions currently listed in section 160(2). Police officers, lawyers, etc., are now eligible for jury duty. The WG therefore recommends that at the very least, the number of professions enjoying exemption in section 160(2) be reviewed and reduced. The WG is also of the view that as in the case in the UK the electoral register should be used to compile lists of potential jurors. There is also need for a separate jury office (like in the UK) to facilitate jury trial.

Recommendation 19 – Section 170: Power to exempt whole districts from jury duty

The WG is of the view that section 170 of the current bill should be deleted as it is not in keeping with modern practices of efficient jury trial.

Recommendation 20 – Section 221(1): Execution of sentences

Courts currently do not have a system to help them ascertain whether a defendant is a repeat offender or a first time offender. They mostly rely on human memory or the claims of counsel. The WG is of the view that courts need to maintain and have access to a database of convicted persons when pronouncing punishments. The WG therefore proposes that section 221(1) should require courts to maintain a database of all criminal sentences in accessible format for purposes of referral and comparison.

Recommendation 21- Non-compliance with provisions of bill

The WG supports the clear timelines set out in the bill for the performance of an action or a series of actions. This will expedite the criminal justice process significantly. However, the WG notes that the bill does not lay out a consequence for non-compliance, a necessary incentive for compliance. The WG therefore suggests a stand section stipulating that non-compliance with the provisions of the bill may result in a discharge of the defendant or a waiver of rights.

Ex: Section 251 “Failure to comply with the provisions of this act or any rule made hereunder is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the Court may (i) grant all necessary amendments or make such order on such terms as are just (ii) in the interest of justice discharge the defendant.”

In closing, the Sentencing and Bail Working Group hopes that both the House and the Ministry of Justice would respond positively to these recommendations which are geared towards making an already good bill even better. The WG is ready to support the work of the honourable members of the House to ensure that a very progressive piece of legislation is enacted by the end of the year.

Annex 2 – Pictures from project activities October – December 2015

Sentencing and Bail Working Group - Criminal Procedure Bill – Retreat 15-16 October 2015





Sentencing and Bail Working Group – Study Tour to Ghana 27 October – 1 November 2015



