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Promoting Transparency in Sierra Leone's Judiciary

Quarterly Progress Report

1 January – 31 March 2016



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

Project Overview

Reporting Period	1 January – 31 March 2016
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
2 year Project Budget	USD 1,500,000
2016 Annual Work Plan Budget	USD 949,656
Total resources spent during reporting period	USD 57,178 (AWP signed 25 February 2016 which explains expenditure)
Actual average monthly burn rate	USD 19,059.33 as of 31 March 2016
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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 January – 31 March 2016. The report builds on the information and achievements shared in the previous two quarterly reports.

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.

On 28 December 2015, the appointment of the new Chief Justice Abdulai was announced by his Excellency the President Ernest Bai Koroma. The Chief Justice Charm was formally sworn into office in early February 2016.

The new Chief Justice was a member of the Sentencing and Bail Working Group (WG) at the time of appointment and UNDP had awaited the appointment since the nomination of the two candidates in November 2015 by the Judicial and Legal Service Commission. In January 2016, it was communicated that the Chief Justice would be replaced in the WG, and Justice Browne-Marke would continue as the Chairperson.

The first quarter of 2016 has been dedicated to further planning of key project activities (i.e. National Consultations and drafting the first policies and guidelines) with the Judiciary senior management and the WG in order to effectively achieve the objectives set-out under the project. This included the discussion and agreement of the Annual Work Plan (AWP) 2016, which provides the overview of the key project activities as well as budget available to cover the implementation of these activities. In this connection, the Chairperson of the Working Group revived a discussion from project inception in 2015 with respect to UNDP's unwillingness to pay regular facilitation fees to the WG members for their participation in the Sentencing and Bail Working Group meetings. UNDP proffered detailed explanations of its policies to this extent both to the new Chief Justice Abdulai Charm and the WG chair but also to the WG in its entirety. Finally, after several months of back and forth, the AWP was signed 1 March 2016 by the new Chief Justice that stated *'that at the end of the day, it was also for members of the Working Group to understand that they in fact are beneficiaries of this project'*.

This has caused minor delays to the project, as activities could not commence before the authorisation of the AWP 2016 by the Chief Justice. This resulted in the postponement of the National Consultations that initially were to commence in February 2016. However, these consultations were instead initiated in the beginning of March 2016 during the visit of two U.S. Judges Ricardo H. Hinojosa and Beryl A. Howell with the Judiciary and WG.

The visit of the first U.S. Judge was to take place in February, but due to two new Ebola cases being reported within the northern district of Bombali in January, it was decided that the exchange visit of the two Judges would take place in March 2016.

The programme with the U.S. Judges was sincerely appreciated by the Chief Justice and Senior Management of the Judiciary as well as the Working Group. It was an intensive 10-day programme providing opportunities for both the WG and the justice sector institutions to learn about the U.S. Federal Sentencing System, importance of reforms such as the Speedy Trial Act and in general discuss challenges facing the justice sector with respect to bail and sentencing and possible solutions (including Criminal Procedure Bill amendments, improved case management, witness/victim protection mechanisms, alternative sentencing). Through bilateral meetings with the management of the justice and security institutions as well as civil society working within the sector, the U.S. Judges were also able to become further informed of the Sierra Leonean legal framework on bail and sentencing and present governance

of these same institutions which allowed the Judges to provide key recommendations on the backdrop of their senior judicial expert knowledge both to the WG Chair, the Chief Justice and UNDP on key issues to consider on the path to development and implementation of new bail and sentencing policies in Sierra Leone. (See annex 2 for full report on WG workshops and national consultations).

During the first quarter, the two consultancies namely the legal baseline study and the needs assessment of the records and case management system within the justice sector have been presented to the WG with feedback and documents finalised with support from UNDP. Both consultancies are essential for the achievement of the project goals.

During the last week of March, UNDP has together with the Judiciary developed the Letter of Agreement (LOA) 2016 which will identify and govern the project activities which the Judiciary will be mainly responsible for implementation for the rest of the year. These activities include the remaining national consultations, the drafting activities of the Working Group, development of the training modules on the new bail and sentencing policies and guidelines (joint Judiciary/UNDP), training of trainers – and training of more than 400 Judges, Magistrates, judicial support staff, State and Defence Counsels, Police Prosecutors and Correctional Officers as well as civil society to ensure effective implementation of identified activities. The LOA is in its final stage as it is submitted for approval by the Chief Justice and Senior Management of the Judiciary.

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 and citizen representatives with strong female representation to lead process of development 	<ul style="list-style-type: none"> Achieved See 1 July – 30 September 2015 report for details on target achievement. <p>Progress and Achievements of the WG for 1st quarter of 2016:</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. The Human Rights Commission has a new representative, due to the death of Commissioner Kebbie in

		of sentencing policy and guidelines	<p>December. See Annex 1 for updated list of members.</p> <ul style="list-style-type: none"> • 4 regular working group meetings have been held during this quarter, and in addition the WG has held two 1 day workshops as part of the programme with the US Judges Hinojosa and Howell.
<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"> • Achieved – although with slight delay • The consultant submitted the draft study delayed in terms of the contract agreed and was furthermore, not available to arrive in-country to present and receive feedback from the WG at a much later date, than what was originally agreed. • The baseline consultant presented her draft report to the WG on 9 January 2016 and received substantial feedback from the WG, including calling for increased data inclusion and reflection of the actual practice of sentencing in the country. UNDP has also provided extensive comments to the study, as the initial version was lacking substantial analysis of the legislative framework in Sierra Leone and also best practices. • The consultant has resubmitted a much improved version of the report in March 2016 and it has received final review by UNDP and is currently with the Chairperson Justice Browne-Marke for his final approval before it will be printed and shared with the WG. • The report is expected to be printed at the latest by 8 April 2016 (and will also be shared in its final form with INL). • The WG held the first two national consultations in March, and through these workshops substantial information was

			<p>collected, collated and captured in the report. The findings from the workshops will also further inform the policies and the guidelines as the WG proceeds with the drafting April – June 2016. The reaction from consulted stakeholders to the issue of ‘bail as an absolute right’ (and the high level of corruption involved in the bail process) encouraged the WG even more to identify the drafting need as an immediate action.</p> <ul style="list-style-type: none"> • Together with the two U.S. Federal Judges the WG held in-depth discussions on the U.S. Federal Court system, the Sentencing Commission – reforms undertaken to ensure speedy trial and reduce pre-trial detention as well as effective case management in the U.S. and for Sierra Leone.
<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 • Data collection continues through the different activities of the WG and overall project. • The WG has commenced with the national (community) consultations in Freetown and Waterloo (Western Area Rural) ensuring consultation of a wide array of stakeholders, including justice sector personnel, local government, Paramount and Section Chiefs, unions, market women and civil society. • The remaining consultations will be rolled-out to 9 cities covering the rest of the country in April, targeting 150 persons per workshop. These will however be accompanied by increased communication / outreach components - as prior radio announcements and radio discussions with WG members are planned to ensure that the mandate and present project of the

			<p>Judiciary reaches a much broader audience. Already from the initial consultations, the WG has seen that these consultations offer a unique opportunity to ensure proper outreach on judiciary reforms, especially the bail and sentencing project.</p> <ul style="list-style-type: none"> • <i>Who will do the actual ‘first draft of the policies and guidelines’</i> was discussed at length with the WG during the visit of the U.S. Federal Judges, and Judges Howell and Hinojosa recommended to the Chair and the Chief Justice that it possibly be someone outside the WG for the process to remain as objective as possible and that this could ensure for proper discussion/debate on the first products – as this would be more difficult if it was the Chair drafting the main outputs. This has been agreed in principle by the Chair of the WG, however UNDP is at present holding bilateral meetings with the Chair to further define the next steps, and following with the whole WG.
<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 2016 AWP has received approval by the Chief Justice on 25 February 2016, and it will form the main tracking tool for progress for 2016 as we further progress with implementation. (The consultation on the AWP 2016 was initiated already in November 2015 – and was re-submitted to the new Chief Justice appointed in January 2016).

			<ul style="list-style-type: none"> • The draft AWP for 2016 was also presented to the Project Board 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 ensuring 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 Q2 and Q3 2016, however the baseline study developed includes data from interviews with stakeholders within the justice sector, discussing sentencing ranges and also recommending specific offences that should be the focus. • In May/June 2016 the Chairperson of the WG will lead a workshop with all the Judges and Magistrates discussing sentencing ranges, present practice – and recommendations on which offences that should have sentencing guidelines. UNDP will participate in this workshop. A full report will be developed and shared with the WG following. • A similar activity will be held by the SLBA with the support of the Judiciary under this project in May 2016.

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> 	<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 	<ul style="list-style-type: none"> • Activities to commence in August/September 2016 (part of new LOA with Judiciary). However senior professionals of all target groups are already engaged in the WG that will be developing the guidelines.

<ul style="list-style-type: none"> • <i>No and % (M/F) of Judges, Registrars, Prosecutors, Lawyers, Police, Parliamentary Oversight Committee and Civil Society who have successfully completed training programmes</i> 		<p>Society are aware of guidelines including their application in Court</p>	<ul style="list-style-type: none"> • UNDP discussed with the U.S. Federal Judges Hinojosa and Howell their possible or IJRC future support to the project also in terms of the development of the modules on bail and sentencing for the Judicial and Legal Training Institute. UNDP is presently awaiting the final feedback / report from the U.S. Judges that will also touch upon this issue. • However, the Judiciary is also receiving support from the Pro-bono Legal Network (UK-based) to the Judicial and Legal Training Institute and UNDP has submitted that the present project could possibly support this development – with a focus on the modules on bail and sentencing and possible ethics.
<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 later 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> 	<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 	<ul style="list-style-type: none"> • On target • The Records and Case Management Consultancy Team commenced work on 14 December 2015, and the assessment was presented to the WG in late February 2016, as the consultants had some difficulties in meeting with all

<ul style="list-style-type: none"> • <i>Reliable data is available</i> 		<p>policies and guidelines</p>	<p>identified and necessary stakeholders during the holiday season (including in January 2016).</p> <ul style="list-style-type: none"> • UNDP met with the Team leader of the Consultancy in March to provide ample feedback on the report submitted, which proffered development of a step-by-step action plan and projected costings, as these had been omitted in the first draft report. • The needs assessment is not included as annex due to its length (40 pages), but can be shared with INL Programme Officer separately. • UNDP will meet the WG Chairperson 4 April 2016 to discuss the report recommendations and how these align with the priorities and main needs of the Judiciary, and together define next steps to put in place a records and case management system.
<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 importance of sentencing guidelines 	<ul style="list-style-type: none"> • Practitioners, (beneficiaries) and citizens using the justice system are aware of the new guidelines including their application in the Courts 	<ul style="list-style-type: none"> • Target 2016 • The Freetown and Waterloo National Consultations revealed a gap in the public’s understanding of jurisdiction of the High and Magistrates Courts, key principles of bail and the whole process of bail and is therefore of immediate priority as well. • The commencement of the National Consultations and the visit of the Senior U.S. Federal Judges Hinojosa and Howell received good media coverage within the whole country. The joint press release was brought in 9 local newspapers and the

			<p>national consultations were mentioned on local radio stations as well. This has the potential to increase the general public's knowledge further as to the on-going project and Judiciary's reform initiatives on bail and sentencing.</p> <ul style="list-style-type: none"> • The LOA 2016 has provision for the Judiciary to engage Communications expertise to support the development of informational material for the Courts on the above-mentioned issues, but also to ensure proper outreach and increased awareness of the new policies and guidelines once these are in place.
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III. Schedule

1. Are all project personnel in country?

The Technical Specialist and Programme Manager a.i. was on leave until 18 January 2016, but the Rule of Law Officer covered during his absence, and for the remaining reporting period all project personnel have been in-country.

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). However due to the delays in the signing of the AWP for 2016 as above detailed, the project has had minor delays in the first three months of the year. These initial delays at this point in time are not expected to cause overall delay to the whole project, as UNDP has received promises from the Chief Justice that the Judiciary remain committed to the overall achievement of the project. Should these breaks in implementation become recurrent in the course of the project, then they would have the potential to affect project timelines.

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

- Finalisation of the WG Outreach / national consultations to Moyamba, Port Loko, Bo, Kenema, Kailahun, Kono, Kabala, Magburaka and Makeni by the three WG Teams, led by respectively Justice Browne- Marke, Justice P.O. Hamilton and Justice Kamanda.

- The consultations will be finalised by end April 2016 and conclude with a workshop in Freetown, including all WG members to extract the main findings and recommendations from the countrywide consultations.
- The Judiciary will hold a one day workshop with all Judges and Magistrates on sentencing ranges to collate further data that will inform the sentencing policy.
- Supported by the Judiciary, the Sierra Leonean Bar Association will hold a one day consultation workshop with members of the Bar to discuss bail and sentencing, and following which they will report back their main conclusions to the WG.
- First draft of the Sentencing Policy and revised version of the Bail policy will be finalised during the second quarter of the year. This was reiterated by Justice Browne-Marke during the Working Group workshop at the Hub closing the visit/ exchange with the two U.S. Federal Judges.
- Next steps with respect to the further implementation of the records and case management systems will be defined on the basis of the recent completed needs assessment. Focus is already identified to be within Freetown High Courts, as it has the highest caseload of criminal cases within the country together with one or two courts from the provinces.

IV. Other

UNDP finalised the agreed budget revision early in 2016 and was very pleased to receive the final approval by INL on 25 February 2016.

The Judiciary and UNDP have during the development of the new letter of agreement (LOA) 2016 ensured provision for training courses for three core Judiciary staff to further build their capacity in terms of project and financial management and accounting. Furthermore, in the roll-out of the records and case management activities more staff will be identified for training and mentoring to ensure effective implementation and sustainability of output 2 of the project.

The UNDP recruitment processes for the INL approved position has commenced and is expected to be concluded before 1 July 2016.

Once again, UNDP wishes to express its sincere appreciation of the continued partnership and support it has received over the last three months by the INL Programme Manager and the Justice Adviser as well as the US Embassy's Political Affairs Officer to this project, especially during the visit of the two U.S. Judges.

The support from the U.S. Judges and the International Judicial Relations Committee has generated much enthusiasm within the Judiciary and also institutions represented within the Working Group, and UNDP is certain that this exchange will prove very helpful in the further development of the bail and sentencing instruments.

V. Annex

Annex 1 – Updated list of Sentencing and Bail Working Group Members January 2016

	NAME OF ORGANIZATION	REPRESENTATIVE
1.	The Director of Public Prosecutions	Sulaiman Bah
2.	Campaign for Good Governance	Bernadette French
3.	Human Rights Commission	Mark Ngegba
4.	Judiciary	Hon Justice N C Browne-Marke (Chairperson)
5.	Judiciary	Hon Justice P O Hamilton
6.	Judiciary	Judge Komba Kamanda
7.	Judiciary	Emilda Stronge
8.	Sierra Leone Police	M. B. Kamara
9.	Correctional Services	Junisa Kamara
10.	Bar Association	Sonia Osho-Williams
11.	Justice Sector Coordination Office	Dr. Henry Mbawa
12.	Prison Watch	Mambu Feika
13.	TIMAP for Justice	Simeon Koroma
14.	US Embassy	Gregory Maggio
15.	Access to Security and Justice Programme	Amie Kandeh
16.	UNDP	Louise Simonsen Aaen
17.	UNDP	Walter-Neba Chenwi

Annex 2 – Report on the Working Group on Bail and Sentencing: Engagement with US Federal Judges and National Community Consultation(s), Freetown and Waterloo March 2016



Report on
The Working Group on Bail and Sentencing:
Engagement with US Federal Judges and
National Community Consultation(s)
Freetown and Waterloo
March 2016

9-11th and 15th of March, 2016

Adam Goguen, J.D.

Rapporteur

Introduction: This report accompanies abbreviated minutes, totalling more than 40 pages, of two meetings of the Working Group on Bail and Sentencing (WGBS), and of the first national community consultations in Freetown and Waterloo held by subgroups of the WGBS.

The full WGBS meetings, on the 9th and 15th March 2016, included United States Federal District Judge Hinojosa and United States Federal District Judge Howell. Presentations were made on the United States Federal Law on bail and sentencing, the United States Sentencing Commission, the structure of US Federal and State Courts, and on the requirements for, and terms and conditions of, serving as a Judge in the United States. Considerable dialogue and experience sharing took place between the US Judges and the members of the WGBS, enriching the foundation for comparative learning from other judicial systems which began with the trip of the WGBS to Ghana.

The minutes also cover the first two community consultations scheduled by the WGBS. On the 10th March 2016, the WGBS' first subcommittee, that for the Western Area, held consultations in Kingtom and met with a cross selection of government institutions, local governance structures and civil society organizations active in urban Freetown. On the 11th March 2016, the subcommittee held consultations with civil society representatives from the rural communities in the Western Area.

This report includes summaries of these events & selected findings, and concluding remarks.

Also attached is a copy of the presentation of US Federal District Judge Hinojosa and the Rapporteur to the WGSB summarizing key findings from the first national consultations.

Summary of the WGBS meeting on the 10th of March 2016.

The WGBS, chaired by the Honourable Browne-Marke, JSC., met on the 9th March 2016 in order to dialogue with two US Federal District Court Judges, Ricardo H. Hinojosa and Beryl A. Howell, one being the former Chair and one

former Commissioner of the United States Sentencing Commission. The meeting included dialogue on an extremely wide range of topics. These meeting summaries are not intended to replace the attendant minutes, but rather to serve as a potential working document for future meetings of the WGBS by identifying ideas presented and discussed which can, along with the lessons learned report from Ghana, serve as a non-exclusive list of potential action/discussion points for the WGBS.

1. Reducing the need for full criminal trials

Judge Hinojosa reported that 97% of defendants in criminal trials in US Federal Courts pled guilty.¹ Previously, Judge Howell had specifically asked if prosecutors in Sierra Leone engaged in plea-bargaining, and deferred prosecutions.² In Sierra Leone a significant number of persons are held on remand prior to plea and may ultimately be willing to plead guilty to the indictment, or to a lesser charge. Given a likely increase in the use of non-custodial sentences, plea bargaining (or even imply encouraging the state counsel to identify unindicted defendants who are willing to plead guilty) could greatly reduce the time spent on remand, while deferred prosecutions (either before or after indictment) could result in the immediate release of persons from overcrowded correctional centers.

2. The need to re-establish the criminal records system and make them readily available to the courts

A long discussion was had about the difficulty of Magistrates and Judges in Sierra Leone to access information about defendant's criminal history since the original records were destroyed in the war.³ This was contrasted to their frequent use in the bail process in the United States.⁴ Later discussions also highlighted the use of past criminal history, and the defendants rank in criminal organizations, during sentencing determinations in the United States. Evidence, including witnesses, were used when necessary.⁵

The availability of similar information to the Judiciary of Sierra Leone will be vital if future bail or sentencing policies are to incorporate the defendant's criminal history, and the Sierra Leone Police (SLP) should be assisted in advocacy

¹ Minutes, Page 9, Judge Hinojosa

² Minutes, Page 4, Judge Howell

³ Minutes, Page 5, Justice Browne-Marke

⁴ Minutes, Page 4, Justice Hinojosa and Judge Howell

⁵ Minutes, Page 5, Judge Howell

efforts to secure the resources necessary to create a comprehensive criminal database which is easily accessed by the courts.

3. Time limits regarding the first hearing, and its possible delay

In the United States, the Speedy Trial Act requires for the prosecutor to present evidence of why bail should be denied at the first hearing, though the prosecutor may request a three-day postponement of this hearing in order to gather additional evidence. The Defendant may also request an additional five days' delay so that evidence supporting the granting of bail may be collected.⁶ This provision is similar to that included in the first draft of the CPA and removed from the current Bill. During drafting the potential for postponing the hearing had been rejected out of a fear that it would become routine. However, given that the Attorney General's Office amended the provision to remove the need for evidence to be presented before bail is denied, the Working Group on Bail and Sentencing may want to consider advocating for a compromise position which is more acceptable to the AG if current efforts at restoring the original draft language, identified as a goal in previous WGBS meetings, is not achieved.

4. Implementation of a Speedy Trial Act⁷ or its equivalent

The American judges noted that the American system had an act which specifically prevented long periods of remand, mandating that an indictment must be served within 30 days of arrest, and the trial must begin within 30-70 days of indictment. If the government withdraws the indictment, the limitation on time under indictment is tolled over from the first indictment. Failure to abide by the term limits results in dismissal of the indictment, with or without prejudice based on factors listed in the statute.⁸

While some elements of this act are already included in the Criminal Procedure Bill, the WGBS should review the extent to which the current version leaves Judges with the necessary authority, and indeed instructions, to dismiss cases where prejudicial delay in trial on behalf of the government has occurred and factors do not exist which would necessitate allowing re-indictment.

⁶ Minutes, Page 4, Judge Howell

⁷ Speedy Trial Act of 1974, 88 Stat. 2080, as amended August 2, 1979, 93 Stat. 328, 18 U.S.C. §§ 3161-3174.

⁸ Minutes, Page 13, Multiple Participants

5. Compensation for Victims / Restitution

Justice Browne-Marke noted that compensation for the victims of crimes was an idea that was gaining increasing support in Sierra Leone, and was allowed, but was rarely used. Judge Hinojosa and Howell commented on the increasing strength of the victim's rights movement in the United States and the use of restitution orders. Members of the WGBS seemed to express relatively widespread approval for the idea of restitution being included in the criminal procedure law.⁹

In this light, the views of the public on the use of restitution orders should be explored, and restitution orders should be incorporated as an additional/alternative sentence in the proposed guidelines beyond what is already included in the present draft of the Criminal Procedure Bill, so that their use in sentencing is made consistent under the proposed guidelines if they come into power.

6. Formation of a Sentencing Commission

Judge Howell spoke about how the U.S. Sentencing Commission was created to make sure that sentencing continued to “reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process” and spoke about how it reviewed all available evidence and suggested yearly amendments which had a presumption of acceptance from the legislature.¹⁰ The seven-member commission contains a mix of individuals including Judges, a Representative of the Attorney General, and practitioner(s). No more than four commissioners may come from any one political party. Justice Browne-Marke expressed that a similar structure should be employed as part of the proposal on bail and sentencing reform, as otherwise any proposal would have the potential to become outdated, necessitating another review in a generation. The WGBS should discuss mechanisms to ensure that that any proposed legislation or guideline would maintain conformity with best practices for the rehabilitation of criminal defendant and the safety of the community and that the passage of such through parliament would be expeditious if changes were not rejected to.

7. Guidelines which take account of mitigating and aggravating factors rationally

⁹ Minutes, page 9, multiple participants

¹⁰ Minutes, page 10-13, Judge Howell, specifically quoting the Sentencing Reform Act, 28 U.S.C. 991(b)(1)(C), 1984.

Difficulty in achieving consistency in sentencing is often caused by different judges accounting both for different mitigating or aggravating factors and weighing their impact to different extents. In the United States, a point system is used to move crimes up and down a table of punishments (increasing in severity as points are accrued), and judges are given discretion to depart from the table when the situation demands that a higher or lower punishment be given.¹¹ Either party may appeal sentences that depart from the guidelines. While the WGBS has given considerable attention to alternative sentences, vital to decongesting the prisons, and ending long periods of remand, more attention must be given by the WGBS to explore options to promote consistency especially since the implementation of alternative sentencing will likely increase the possibilities for divergent sentencing.

Summary of the Community Consultation for the Western Area Urban on the 11th of March 2016

The Bail and Sentencing Working Group met with representatives from justice institutions, local government, unions and civil society representatives at the Kingtom Bank Complex, and spent more than six hours discussing, and collecting viewpoints, on sentencing and bail reform efforts in Sierra Leone. The consultation featured strong representation from a cross section of civil society organizations including the Petty-Traders' Union, the Commercial Motorbike Riders' Association, The United Council of Imams, The Teachers' Union, Students, from local schools, The Council of Churches, the Motor Drivers' Union, and The Council of NGOs (with representatives from the Human Rights Network, Prison Watch, the Campaign for Good Governance, the Center for Accountability and Rule of Law), the Law Officers Department, the Police, the Correctional Services and Bar Association. Justice Browne-Marke introduced the panel, and began consultation by asking if participants knew what 'bail' was.

Selected representative answers include one pastor present volunteering that "bail is a permission granted to an accused person for conditional release while awaiting trial for a crime". Another community member defined it as "when one person stands for another and promises they won't be lost". Another said a "guarantee that someone attends court". A police officer volunteered "it is money

¹¹ Minutes, Page 13, Judge Howell. Note: Copies of the Judges Handbook for Sentencing were left with WGBS members Justice Browne-Marke and Justice Hamilton and with Chief Justice Charm

paid to the courts for the release of an accused person”. Another said bail was “a temporary release of an accused person while the judge prepares for trial”.¹²

Justice Browne-Marke praised the general level of knowledge in the group, but strongly challenged them on the idea that bail was only a pledge, and did not require the payment of money unless the defendant failed to appear for trial. Discussion then evolved around the recent ‘bail is free’ campaigns run by local NGOs including Advocaid in cooperation with the Access to Security and Justice Programme and the Sierra Leone Judiciary and Police Force. Participants aggressively challenged the Justice’s statement that bail did not require cash payments, stating that in practice lower ranking judicial support staff and the police regularly required that cash payments be made in order to facilitate the granting of bail to accused persons and criminal defendants. A frank conversation then occurred regarding whether or not citizens asked for cash payments to facilitate bail had an obligation to report such requests to the new Judicial Committee on Ethics, and to the Anti-Corruption Commission. Justice Browne-Marke strongly advocated that corruption can only be effectively combated if citizens refuse to pay, and instead report, bribes and other corrupt payments.

Judge Kamanda then detailed the powers of both the Magistrate and the Judge in granting bail, and in sentencing defendants, including the difference between statutory offences, with fixed limits on sentencing, and common law crimes where the judge had more discretion.

Justice Browne-Marke then explained to the participants that the purpose of the meeting was to discuss potential ways to reform the law relating to bail and sentencing in Sierra Leone. He explained that the prison system was extremely overcrowded, and that the law needed to be changed for several reasons including to ensure reduction of the number of people sent to prison, to ensure fair punishments that also corresponds to the expectation of the public. These was greeted with great enthusiasm by participants, with one statement that “instead of imprisoning Okada men, we should fine them. Instead of taking criminals freedom, we should take their money”¹³ being met with a standing ovation.

Other members of the working group including Dr. Mbawa, Justice Hamilton, Justice Finn, and Ms. Sonia Osho-Williams addressed the gathering,

¹² Minutes, page 12-16, various participants.

¹³ Minutes, Justice Browne-Marke, page 17

and spoke on various defects in the bail process, the need for consultation as solutions were implemented, and the bail is free campaign.

The rest of the session consisted of participants answering a questionnaire developed by the Working Group for the purposes of the consultation on bail and sentencing. For the first part, Justice Browne-Marke addressed and took responses from the crowd, after lunch participants worked in small groups to answer the questionnaire.

Selected answers from the first moderated question session:

1. "Should bail be a right for persons charged with serious crimes like murder?"
 - a. Okada Rider representative- yes they may be innocent and being framed, unless there is evidence against them, then grant them bail.
 - b. Teacher- These are dangerous crimes that damage society and these people should not be granted bail until their innocence is proven.
2. Should bail granted by magistrates or judges alone
 - a. Several respondents: by both
3. Should bail be at the absolute discretion or according to rules
 - a. Teacher- definitely not absolute, that's subjective and unaccountable
 - b. Okada representative, several others, said at absolute discretion.
4. Should bail be granted as a right to people charged with serious assaults?
 - a. Petty trader- bail shouldn't depend on the type of assault, but on the type of evidence
 - b. Student- it makes no difference, it's still the same crime.
 - c. Government worker- those who are accused with serious weapons charges should not be granted bail if the injury is the same.
 - d. Caterer- bail should be denied in all of these situations so that they can learn about what they did wrong.
 - e. Religious leader (female priest) that bail should be at the discretion of the Judge, and not absolute. The Judge must review all evidence and circumstances before him/her – and then decide on the bail decision.

- f. Religious leader (female priest) Now we have a new initiative, and community policing can also assist the Courts to this extent – also in terms of ensuring facts and evidence for the case under review.
 - g. Petty traders’ union- Government should make a provision that where someone has no guarantee they should be kept until they have a guarantee.
5. Should bail be granted as a right to someone accused of larceny
- a. Drivers union- people accused of these minor crimes should be entitled to bail
 - b. Bike riders- there should be absolute discretion from the courts.
6. What about crimes like forgeries or fraudulent conversion etc.
- a. Drivers Union- these are not major crimes, and should be granted bail.
 - b. Pastor- they should be granted bail.
 - c. Petty traders- the 419ers¹⁴ are better handled through traditional means than the police and should be granted bail so that the community can handle them.
 - d. Drivers Union- everyone with a surety should have access to bail. When people are denied bail and found innocent, it means there was a serious violation of rights.”¹⁵

The following Answers to the second set of questions was given by rapporteurs after participants had finished working in small groups. Note that not all groups provided answers to all questions.

“Q4. Assuming that you understand what bail is, do you think that generally the Court should be more inclined to grant it than refuse it? Will your answer be affected by A) knowledge that the prisons are overcrowded, or b) that persons remanded before and/or without trial become more serious or more serious criminals.

Group 1 (NGOs): Yes, and Yes. But we are not influenced by B.

Group 2 (Police and Corrections): Yes, based on all considerations.

Group 3 (legal Practitioners): Yes, it is a constitutional right.

Group 4 (Unions): Yes, based on all considerations.

Group 5 (Education and Religious): Yes, grant bail.

¹⁴ A colloquial expression referring to persons who could be charged under section 419 of the Nigerian Criminal Code for Fraud.

¹⁵ Minutes, pages 20-22, various respondents.

Q5. Do you think it fair tht any person charged with an offense should be kept in prison until he or she is found guilty of that offense? If your answer is yes, how will this affect the prison population?

Group 1 (NGOs): No, it is not fair.

Group 2 (Police and Corrections): No, grant them bail.

Group 3 (legal Practitioners): No, except capital offenses.

Group 4 (Unions): No, give them bail.

Group 5 (Education and Religious): Yes, based on gravity of offense.

Q6. What do you know about the powers of the various Courts on sentencing?

Group 1 (NGOs): No.

Group 2 (Police and Corrections): The magistrates can sentence only for lesser crimes.

Group 3 (legal Practitioners): Courts have little discretion on statutory offenses.

Group 4 (Unions): High court can give longer sentences.

Group 5 (Education and Religious): They vary.

Q7. Do you think in every case in which an accused is found guilty of a crime, he must be sent to prison? If you don't, do you think this should be the case where a person is found guilty of:

i. Offenses against the person such as wounding or shooting with intent, or assault occasioning actual bodily harm?

Group 1 (NGOs): Prison.

Group 2 (Police and Corrections): Prison for wounding, alternatives for lesser.

Group 3 (legal Practitioners): Fine

Group 4 (Unions): Prison

Group 5 (Education and Religious): Prison

ii. Offences against property such as Simple Larceny, House or Shop or Store-Breaking and larceny or burglary and larceny?

Group 1 (NGOs): Alternative sentence.

Group 2 (Police and Corrections): Alternative sentence for larceny, prison if aggravated.

Group 3 (legal Practitioners): Fine

Group 4 (Unions): Prison

Group 5 (Education and Religious): fine/alternative punishment

iii. Offences against both property and the person such as Robbery with Aggravation or Robbery with Violence?

Group 1 (NGOs): Prison.

Group 2 (Police and Corrections): Prison

Group 3 (legal Practitioners): Prison

Group 4 (Unions): Prison

Group 5 (Education and Religious): Prison

- iv. Offences such as Murder or Manslaughter?
 - Group 1 (NGOs): Prison for murder, alternatives for manslaughter.
 - Group 2 (Police and Corrections): Prison.
 - Group 3 (legal Practitioners): Prison for murder, based on situation for manslaughter.
 - Group 4 (Unions): Prison.
 - Group 5 (Education and Religious): Prison.

- v. Anti-Corruption Offences?
 - Group 1 (NGOs): pay fine, and ban from office.
 - Group 2 (Police and Corrections): fines.
 - Group 3 (legal Practitioners): no answer
 - Group 4 (Unions): fines.
 - Group 5 (Education and Religious): fines.

- vi. Offences against the State such as treason?
 - Group 1 (NGOs): prison.
 - Group 2 (Police and Corrections): prison.
 - Group 3 (legal Practitioners): no answer.
 - Group 4 (Unions): prison.
 - Group 5 (Education and Religious): prison.

- vii. Public order offences such as Affray, Riot, Unlawful Assembly?
 - Group 1 (NGOs): Fine, but no prison.
 - Group 2 (Police and Corrections): Fine, but no prison.
 - Group 3 (legal Practitioners): no answer
 - Group 4 (Unions): Fine.
 - Group 5 (Education and Religious): fines.

- viii. Non-Fatal Road Traffic Offences?
 - Group 1 (NGOs): Fines, but no prison.
 - Group 2 (Police and Corrections): fine or alternative sentence, no prison.
 - Group 3 (legal Practitioners): No answer
 - Group 4 (Unions): fines.
 - Group 5 (Education and Religious): fines.

Q8. Do you think it is fair to impose fines as an alternative in all cases? Or, in any of the cases mentioned in sub-paragraphs i-vii above? Or do you think it fair that fines should be added on to terms of imprisonment of, OR, in one or more of such cases as mentioned above?

- Group 1 (NGOs): Yes, to all based on situation.
- Group 2 (Police and Corrections): Yes, except for capital offense and treason.
- Group 3 (legal Practitioners): Yes
- Group 4 (Unions): No, poor people should be given an alternative sentence.
- Group 5 (Education and Religious): both for anticorruption.

Q9. Do you think the time is now ripe for the Justice system to consider other forms of sentencing in all cases?

- Group 1 (NGOs): Yes
- Group 2 (Police and Corrections): Yes
- Group 3 (legal Practitioners): Yes
- Group 4 (Unions): Yes
- Group 5 (Education and Religious): Yes, for minor crimes.

Q10. If you think so, what forms of sentencing would you suggest?

- Group 1 (NGOs): ADR, non-custodial punishments.
- Group 2 (Police and Corrections): non-custodial punishments, community service
- Group 3 (legal Practitioners): Community service
- Group 4 (Unions): Community service
- Group 5 (Education and Religious): communal labour, repairing harm from crime.

Q11. Have you ever thought of whether it would be a good thing that persons found guilty of certain types of offenses are made to perform tasks in the community in which they live? Or elsewhere, at the discretion of the court? And without paying a fine or being sent to prison?

- Group 1 (NGOs): Yes, for minor offenses.
- Group 2 (Police and Corrections): No answer
- Group 3 (legal Practitioners): Yes
- Group 4 (Unions): Yes
- Group 5 (Education and Religious): Yes, communal labour or income seizure.

Q12. If you think so, what sort of activities would you want such convicted persons to perform?

- Group 1 (NGOs): Sentenced to labor on state farms.
- Group 2 (Police and Corrections): No answer
- Group 3 (legal Practitioners): hard labour
- Group 4 (Unions): Labour on a state farm, cleaning public buildings.
- Group 5 (Education and Religious): communal labour, work without salary.

Q13. Have you ever thought of what it might mean for a court to convict a person charged with a non-fatal offense and then pronounce that the sentence it imposed will not come into effect until and unless that person convicted commits the same or a similar offense within let us say, the next two years?

- Group 1 (NGOs): Yes.
- Group 2 (Police and Corrections): Yes.
- Group 3 (legal Practitioners): suspended sentences, Yes.
- Group 4 (Unions): Yes.
- Group 5 (Education and Religious): Yes, it would make them boast of avoiding punishment.

Q14. If you have thought about it, do you think this will be a good thing for our country?

- Group 1 (NGOs): Yes.
- Group 2 (Police and Corrections): No answer.
- Group 3 (legal Practitioners): Yes, with proper monitoring mechanisms.
- Group 4 (Unions): Yes.
- Group 5 (Education and Religious): Yes, but based on feedback from forums like this. ¹⁶

¹⁶ Minutes, pages 22-25, various respondents.

The Consultation was then ended, with speeches from both the WGBS members and from participants.

Summary of the Community Consultation for the Western Area Rural on the 12th of March 2016

The consultation held in the Western Area Rural began in a similar fashion to that held in the Western Area Urban, but featured a notably difference in participants. Representatives from the surrounding communities included the Fisherman's Association and Fish Sellers' Union, village youth leaders, and 'stakeholders' in local communities. The consultation was held predominantly in Krio, and a town-hall style (as opposed to small groups) was used for answering the consultation questions, as a significant portion of the participants were not fluent or literate in English. The introductory portion was delivered by Justice Hamilton who explained the need for bail to the community and the discretion of the Judge in sentencing. Similar to the discussion in the Western Urban Area, Western Rural Residents expressed significant challenges to the idea that bail was free and so were engaged on a citizen's obligation to assist in fighting corruption in the justice system by reporting, instead of facilitating, corrupt practices such as requiring monetary payments for bail. Justice Finn spoke about the judiciary's new anti-corruption and justice sector improvement plans, and Sonia Osho-Williams presented on bail and sentencing policies in Sierra Leone, and about the difficulty they cause for women.¹⁷ The presentation was extremely interactive with Sonia Osho-Williams and Justice Finn taking questions from participants. Participants were the asked, Town Hall Style, to answer the same questions as had been presented to participants in Freetown. The session was very lively and engaged and answers differed on several issued from those reported in Freetown, and there appeared to be significant support for forced labour as a punishment for property crimes, strong self-defense laws, and for judicial discretion.

The conversational interaction between participants was many and overall these led to a general position. The general position is presented below.

“Q4. Assuming that you understand what bail is, do you think that generally the Court should be more inclined to grant it than refuse it? Will your answer be affected by A) knowledge that the prisons are overcrowded, or b) that persons remanded before and/or without trial become more serious or more serious criminals.

¹⁷ Minutes, Page 28-30, Sonia Osho Williams, Justice Finn, and several participants.

Waterloo: Yes, but not for serious crimes against the person.

Q5. Do you think it fair that any person charged with an offense should be kept in prison until he or she is found guilty of that offense? If your answer is yes, how will this affect the prison population?

Waterloo: No, bail should be granted in general.

Q6. What do you know about the powers of the various Courts on sentencing?

Waterloo: No Answer. Previously people had endorsed wide judicial discretion.

Q7. Do you think in every case in which an accused is found guilty of a crime, he must be sent to prison? If you don't, do you think this should be the case where a person is found guilty of:

i. Offenses against the person such as wounding or shooting with intent, or assault occasioning actual bodily harm?

Waterloo: Alternative sentence for first offense, prison for second.

ii. Offences against property such as Simple Larceny, House or Shop or Store-Breaking and larceny or burglary and larceny?

Waterloo: Hard labour/ community service.

iii. Offences against both property and the person such as Robbery with Aggravation or Robbery with Violence?

Waterloo: Prison.

iv. Offences such as Murder or Manslaughter?

Waterloo: Prison

v. Anti-Corruption Offences?

Waterloo: Fines.

vi. Offences against the State such as treason?

Waterloo: prison.

vii. Public order offences such as Affray, Riot, Unlawful Assembly?

Waterloo: Alternative Sentencing/ Community Labour

viii. Non-Fatal Road Traffic Offences?

Waterloo: fines.

Q8. Do you think it is fair to impose fines as an alternative in all cases? Or, in any of the cases mentioned in sub-paragraphs i-vii above? Or do you think it fair that fines should be added on to terms of imprisonment of, OR, in one or more of such cases as mentioned above?

Waterloo: Both for crimes with financial benefit.

Q9. Do you think the time is now ripe for the justice system to consider other forms of sentencing in all cases?

Waterloo: increased used of fines and alternative sentences should be considered.

Q10. If you think so, what forms of sentencing would you suggest?

Waterloo: Hard Labor, Community Service.

Q11. Have you ever thought of whether it would be a good thing that persons found guilty of certain types of offenses are made to perform tasks in the community in which they live? Or elsewhere, at the discretion of the court? And without paying a fine or being sent to prison?

Waterloo: Yes!

Q12. If you think so, what sort of activities would you want such convicted persons to perform?

Waterloo: Farm work, cleaning, hard labour, in shame inducing uniforms.

Q13. Have you ever thought of what it might mean for a court to convict a person charged with a non-fatal offense and then pronounce that the sentence it imposed will not come into effect until and unless the person convicted commits the same or a similar offense within let us say, the next two years?

Waterloo: Yes, but fear that people would escape monitoring.

Q14. If you have thought about it, do you think this will be a good thing for our country?

Waterloo: Yes."¹⁸

The meeting then adjourned so that participants could attend Friday prayer.

Summary of the WGBS meeting on the 15th of March 2016

The meeting opened with a summary presentation of the Rapporteur Adam Goguen that presented the main findings and a comparison of the two community consultations to the members of the WGBS, Judge Howell, and Judge Hinojosa.

Finding Number 1: "Bail as a Right"

The majority of Western Area participants felt that bail should be granted as a matter of right to defendants, excepting strong hesitation to declare bail a matter of right for persons charged with serious offenses against the person.

"Q4. Assuming that you understand what bail is, do you think that generally the Court should be more inclined to grant it than refuse it? Will your answer be affected by A) knowledge that

¹⁸ Minutes, Pages 31-35, various participants and Justice Browne-Marke.

the prisons are overcrowded, or b) that persons remanded before and/or without trial become more serious or more serious criminals.

Group 1 (NGOs): Yes, and Yes. But we are not influenced by B.

Group 2 (Police and Corrections): Yes, based on all considerations.

Group 3 (legal Practitioners): Yes, it is a constitutional right.

Group 4 (Unions): Yes, based on all considerations.

Group 5 (Education and Religious): Yes, grant bail.

Waterloo: Yes, but not for serious crimes against the person.

Q5. Do you think it fair that any person charged with an offense should be kept in prison until he or she is found guilty of that offense? If your answer is yes, how will this affect the prison population?

Group 1 (NGOs): No, it is not fair.

Group 2 (Police and Corrections): No, grant them bail.

Group 3 (legal Practitioners): No, except capital offenses.

Group 4 (Unions): No, give them bail.

Group 5 (Education and Religious): Yes, based on gravity of offense.

Waterloo: No, bail should be granted in general"

Finding Number 2: Jurisdiction & Discretion

Most participants do not understand the jurisdiction and the sentencing power of the various courts in Sierra Leone. This highlights the opacity of the current system and likely increases both frustration among those engaged with the criminal justice system and the perception of dysfunction by the general public. ***Further work needs to be done explaining the differences between the High Court and the Magistrates Court.***

Q6. What do you know about the powers of the various Courts on sentencing?

Group 1 (NGOs): No.

Group 2 (Police and Corrections): The magistrates can sentence only for lesser crimes.

Group 3 (legal Practitioners): Courts have little discretion on statutory offenses.

Group 4 (Unions): High court can give longer sentences.

Group 5 (Education and Religious): They vary.

Waterloo: No Answer.

Finding Number 3: Incarceration is the preferred punishment for offenses against the Person, but may not be appropriate in less serious assaults

Offenses against the person such as wounding or shooting with intent, or assault occasioning actual bodily harm?

Group 1 (NGOs): Prison.

Group 2 (Police and Corrections): Prison for wounding, alternatives for lesser.

Group 3 (legal Practitioners): Fine

Group 4 (Unions): Prison

Group 5 (Education and Religious): Prison

Waterloo: Alternative sentence for first offense, prison for second.

iii. Offences against both property and the person such as Robbery with Aggravation or Robbery with Violence?

Group 1 (NGOs): Prison.

Group 2 (Police and Corrections): Prison

Group 3 (legal Practitioners): Prison

Group 4 (Unions): Prison

Group 5 (Education and Religious): Prison

Waterloo: Prison.

Finding Number 4: Murderers should go to prison, but manslaughter in its less aggravated forms, may be subject to alternative sentencing, but the community needs to be sensitized.

iv. Offences such as Murder or Manslaughter?

Group 1 (NGOs): Prison for murder, alternatives for manslaughter.

Group 2 (Police and Corrections): Prison.

Group 3 (legal Practitioners): Prison for murder, based on situation for manslaughter.

Group 4 (Unions): Prison.

Group 5 (Education and Religious): Prison.

Waterloo: Prison¹⁹

Finding Number 5: Participants favored fines as the preferred method of sentencing for corruption, traffic offenses and public order offenses.

v. Anti-Corruption Offences?

Group 1 (NGOs): pay fine, and ban from office.

Group 2 (Police and Corrections): fines.

Group 3 (legal Practitioners): no answer

Group 4 (Unions): fines.

Group 5 (Education and Religious): fines.

Waterloo: Fines.

vii. Public order offences such as Affray, Riot, Unlawful Assembly?

Group 1 (NGOs): Fine, but no prison.

Group 2 (Police and Corrections): Fine, but no prison.

Group 3 (legal Practitioners): no answer

Group 4 (Unions): Fine.

Group 5 (Education and Religious): fines.

Waterloo: Alternative Sentencing/ Community Labour

viii. Non-Fatal Road Traffic Offences?

Group 1 (NGOs): Fines, but no prison.

Group 2 (Police and Corrections): fine or alternative sentence, no prison.

Group 3 (legal Practitioners): No answer

Group 4 (Unions): fines.

Group 5 (Education and Religious): fines.

¹⁹ It should be noted that in Waterloo, significant discussion occurred over the specific intersection between murder and the justification of self-defense, and strong opinions towards a 'stand your ground' policy were advanced with applause.

Waterloo: fines.

Finding Number 6: For property crimes community service was the preferred sentence

ii. Offences against property such as Simple Larceny, House or Shop or Store-Breaking and larceny or burglary and larceny?

Group 1 (NGOs): Alternative sentence.

Group 2 (Police and Corrections): Alternative sentence for larceny, prison if aggravated.

Group 3 (legal Practitioners): Fine

Group 4 (Unions): Prison

Group 5 (Education and Religious): fine/alternative punishment

Waterloo: Hard labour.

Finding Number 7: Most Participants feel that mixed and optional sentences would be beneficial i.e. fine and/or incarceration and/or community service

Q8. DO you think it is fair to impose fines as an alternative in all cases? Or, in any of the cases mentioned in sub-paragraphs i-vii above? Or do you think it fair that fines should be added on to terms of imprisonment of, OR, in one or more of such cases as mentioned above?

Group 1 (NGOs): Yes, to all based on situation.

Group 2 (Police and Corrections): Yes, except for capital offense and treason.

Group 3 (legal Practitioners): Yes

Group 4 (Unions): No, poor people should be given an alternative sentence.

Group 5 (Education and Religious): both for anticorruption.

Waterloo: Both for crimes with financial benefit.

Finding Number 8: Community Service, Suspended Sentences, and unpaid farming are all approved of by the Community as sentences

Finding Number 9: There is fear that these are not appropriate for serious crimes, and that if mismanaged would allow for apprehended criminals to escape punishment, which would greatly erode trust in the law

Q8. DO you think it is fair to impose fines as an alternative in all cases? Or, in any of the cases mentioned in sub-paragraphs i-vii above? Or do you think it fair that fines should be added on to terms of imprisonment of, OR, in one or more of such cases as mentioned above?

Group 1 (NGOs): Yes, to all based on situation.

Group 2 (Police and Corrections): Yes, except for capital offense and treason.

Group 3 (legal Practitioners): Yes

Group 4 (Unions): No, poor people should be given an alternative sentence.

Group 5 (Education and Religious): both for anticorruption.

Waterloo: Both for crimes with financial benefit.

Q9. Do you think the time is now ripe for the Justice system to consider other forms of sentencing in all cases?

Group 1 (NGOs): Yes

Group 2 (Police and Corrections): Yes

Group 3 (legal Practitioners): Yes

Group 4 (Unions): Yes

Group 5 (Education and Religious): Yes, for minor crimes.

Waterloo: fines.

Q10. If you think so, what forms of sentencing would you suggest?

Group 1 (NGOs): ADR, non-custodial punishments.

Group 2 (Police and Corrections): non-custodial punishments, community service

Group 3 (legal Practitioners): Community service

Group 4 (Unions): Community service

Group 5 (Education and Religious): communal labour, repairing harm from crime.

Waterloo: hard Labor, Community Service.

Q11. Have you ever thought of whether it would be a good thing that persons found guilty of certain types of offenses are made to perform tasks in the community in which they live? Or elsewhere, at the discretion of the court? And without paying a fine or being sent to prison?

Group 1 (NGOs): Yes, for minor offenses.

Group 2 (Police and Corrections): No answer

Group 3 (legal Practitioners): Yes

Group 4 (Unions): Yes

Group 5 (Education and Religious): Yes, communal labour or income seizure.

Finding Number 10: The participants trusted the Judiciary, but not police and support Staff

Widespread support was shown for judicial discretion regarding both bail and sentencing, and it was often called for this discretion to be unlimited, to the point of abolishing sentencing provisions of criminal statutes.

However, many participants openly accused judicial support staff, and the police, of demanding money to process bail bonds. This calls for ever greater monitoring of judicial staff, and for reinforcement of the support staff's terms of service and campaigns against bribery related to the criminal justice system.²⁰

Recommendation on Findings:

These ten findings were clearly displayed by participants in the consultation, and recorded in the minutes. These findings should be compared and compiled with the consultations which will take place across Sierra Leone's provinces. If trends are persistent then the working group will have a clear mandate to propose alternative sentencing guidelines and bail reforms of the type currently being considered.

Also, the working group should possibly consider delivering a more simply structure survey which would solicit the same information from individual participants and which would be capable of quantitative analysis. The Town Hall format, while extremely effective at capturing the general feeling of a community, such as was employed in Waterloo, is difficult to record and produces less certain and detailed information than the small group reporting or individual response surveys.

Upon closing of the presentation the WG members present discussed an eleventh finding, that bail denial should be subject to a *sua sponte* appeal by the magistrate to the High Court.

This was followed by a detailed conversation between the American Judges and the members of the WGBS on the role of customary law in Sierra Leone, and its

²⁰ Minutes, pages 15-16, 19, 21, 25-16.

gradual encroachment in the Western Area where it lacked the imprimatur of the state. Various arguments and observations were raised about the nature of the encroachment and immigration patterns, and about the potential and trend for more closely integrating customary law into the state based legal system in Sierra Leone.²¹

A discussion was then held around ‘tariffing’ the setting of sentences when a range of years has been proscribed, and Justice Browne-Marke stated that this would need to be accomplished by an act which amended and streamlined the language of the OAPA and Larceny Act, and would not occur until after guidelines on alternative sentences and bail reform had more progress.

Additional discussions were held around the ‘rights’ of Sierra Leoneans and the procedural rules now intended to ensure access to bail and to a speedy trial. Additional conversation covered the method of assigning cases, and it was noted by the Justices that it appeared that they would return to the older system of routine assignment based on geography, instead of the current ad hoc arrangement.

Conversation also covered whether there should be special accommodations in the bail reform for persons with vulnerabilities or disabilities, such as pregnant women or the blind, who typically fared very poorly in incarceration.²² A decision was taken that those familiar with the accommodation of disabled and vulnerable persons should receive an additional consultation so that solutions to their detention, or its avoidance, could be developed.

Justice Browne-Marke then discussed the way forward, and informed by comments from Judge Howell and Hinojosa called for members of the working group to actively begin to collect available material which would be helpful as they looked at further measures to improve sentencing and bail, and specifically noted that he would collect international material (the Ghanaian and American examples already in hand), that an NGO representative should collect statistics on case outcomes, and that the Corrections service should provide statistics on remand/bail and separately on sentencing to gauge current consistency in an empirical way. Sonia Osho-Williams suggested, and it appeared to be endorsed, that the WGBS

Justice Browne-Marke agreed with Louise Aaen from UNDP that the original timeline for policies, and guidelines, to be finished in August and September

²¹ Minutes, pages 31-34, various speakers.

²² Minutes, pages 34-36, various speakers.

respectively.²³ It was expressed that ideally, the remaining national consultations would be finalized before the end of April.

A wide ranging but fruitful conversation then occurred before the meeting was closed, and featured a number of notable comments. Concrete proposals which had not been raised in a previous section are hereafter included as a continuation of the list of action points in the first dialogue meeting.

8. An Alternative to Land Title as bail

Justice Browne-Marke formally suggested that the WGSB look at an alternative to a house deed as a bail requirement, as these were rarely held by women, and in many communities the vast majority of deed holders are non-resident landlords. This proposal appeared to have the support of a majority of members.

9. An Expedited Habeus Corpus Procedure

Justice Howell expressed that habeus corpus petitions be streamlined so that persons who were being wrongfully imprisoned on an overly long remand could easily access justice without the intervention of a non-governmental organization. The majority of working group members appeared to support this proposal.²⁴

10. Additional Use of Media and Production of Statistics

Judges Hinojosa and Howell proposed, and members accepted that a mechanism needs to be created for the regular publishing of judicial statistics and their public dissemination, so that the public could understand how herculean the task of the Judiciary was, and how much work was being done to address the caseload with the present resources (human and financial) available to the Judiciary.²⁵

Conclusion

Over two days of national community consultations and two days of Working Group workshops, the WGSB was able to make ten findings which will help to inform future guidelines on bail and the implementation of alternative sentencing, and identified ten areas for potential action/further discussion.

²³ Minutes, page 38, Louise Aaen and Justice Browne-Marke

²⁴ Minutes, page 39, Judge Howell and Justice Browne-Marke.

²⁵ Minutes, page 40, Judge Howell and Hinojosa, various participants.

The findings revealed a high level of consensus among Western Area Residents on what the appropriate type of punishment was for different types of crimes, and showed a relatively uniform opinion that bail should be a right for most defendants, especially those accused of non-violent acts. Rural residents did show a preference for hard labour as a non-custodial sentence, but any implementation of this must be made concurrent with the Constitution's qualified ban on forced labour in the Republic of Sierra Leone.

There also appeared to be a consensus that bail should be granted a right to most defendants, though there was serious worry about granting it to those who were accused of violent crimes and that additional steps must be taken in order to reduce bail related corrupt practices, and the practice of setting unattainable bail or treating bail as a punishment.

The ten action/discussion points were far more varied, but all represent areas of potential agreement and beneficial reform which could become part of the ultimate legacy of the WGBS either as part of the Guidelines on Sentencing and the Guidelines on Bail or as acts reforming current laws, or as part of a law institutionalizing the capacity to maintain the guidelines as technology and knowledge necessitate change in the law.

For the next meeting of the WGBS, held after consultations have finished and full findings are available, the action/discussion points should be reviewed, so that concrete decisions can be taken by the group about which reforms need to be prioritized at this time, and what mix of guidelines, policies, and statutes, the WGBS and will ultimately attempt.

With Thanks,

Adam Goguen, J.D.

Rapporteur

29 Marts 2016

Annex 3 Pictures from Working Group exchange with US Judges Howell and Hinojosa March 2016 and National Consultations Freetown and Waterloo



Welcoming meeting by Chief Justice Abdulai Charm’s Chambers – 7 March 2016



Chief Justice and Judge Howell Magistrate Court 1, Main Law Courts Building tour – 7 March 2016



Working Group Workshop with U.S. Judges, Hub Hotel 9 March 2016



National Community Consultations, Freetown Bank Complex Kingtom 10 March 2016



US Judges Hinojosa and Howell courtesy visit to the Correctional Services, Director General Mr. Bilo, before visiting Pademba Road Prison - 14 March 2016