

# **Law Enforcement and Human Rights in Post-Conflict African Societies. The Case of Sierra Leone**

A Dissertation submitted in partial fulfilment of the requirements for the award of the Master of Laws Degree (LLM) in Human Rights and Democratisation in Africa, to the Centre for Human Rights, faculty of law, University of Pretoria.

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30 October 2008

## DECLARATION

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The ground was prepared by me hence I take responsibility for any shortcoming.

Mohamed Bendu Kamara

Addis Ababa, October 2008.

## **DEDICATION**

This work is dedicated first to God Almighty who made it possible for me to go through this great academic journey through Jesus Christ our Lord.

Then to my Church, The United Church Of God Mission in Sierra Leone, which was founded on the foundations of Justice, Unity and Human Dignity.

To my beloved wife Mrs Florence F Kamara, our children, Samuel and Abigail and my nephew Augustine.

To the great human rights lawyer in Sierra Leone Melron Nicol-Wilson, Director of the Lawyers Centre for Legal Assistance (LAWCLA). A patriot to whom I shall owe gratitude for years to come. May your sun continue to shine in Sierra Leone.

To the men and women of the Sierra Leone Police who may have been perpetrators or victims of human rights violations.

## FOREWORD

A Poem For those Who have Suffered human rights violations from law enforcement agents.

Seamus Heaney *The Cure at Troy*

Human beings suffer,  
They torture one another,  
They get hurt and get hard.  
No poem or play or song  
Can fully right the wrong  
Inflicted and endured.

The innocent in gaols  
Beat on their bars together.  
A hunger striker's father  
Stands in the graveyard dumb.  
The police widow in veils  
Faints at the funeral home.

History says don't hope  
On this side of the grave  
But then, once in a lifetime  
The longed for tidal wave

Of justice can rise up  
And hope and history rhyme.  
So hope for a great sea change  
On the far side of revenge  
Believe that a further shore  
Is reachable from here  
Believe in miracles  
And cures healing wells.



## TABLE OF CONTENTS

Title page -----	1
Declaration-----	2
Copyright-----	3
Dedication-----	6
Acknowledgements-----	4-5
Foreword-----	7-8
Table of Contents-----	9-12
List of Abbreviations-----	13-15
Chapter One: INTRODUCTION-----	16
1.1 Background to the study-----	18
1.2 Statement of purpose-----	18
1.3 Research question-----	18
1.4 Objectives of the study-----	19
1.5 Preliminary literature review-----	19
1.6 Methodology-----	21

1.7 Justification for the Study-----	22
1.8 Limitations-----	23
1.9 Chapter breakdown-----	23

Chapter Two: THE INTERACTION OF LAW ENFORCEMENT AGENTS AND HUMAN RIGHTS.

2.1 Introduction-----	25
2.2 The key players in the criminal justice/law enforcement generally-----	26
2.2.1 The Sierra Leone Police-----	27
(a) Need for reform-----	28
2.2.2 The Prosecutions Department-----	31
2.2.3 The Judiciary-----	33
(a) Some Reforms-----	35
2.2.4 The Prisons Department-----	36
(a) Some Prisons Standards-----	38
2.2.5 Conclusion	

Chapter Three: IMPROPER/UNLAWFUL MEANS OF ENFORCING THE LAW

3.1 Introduction-----	42
3.2 State of Emergency-----	42
(a) Derogation on fundamental rights-----	43
(b) Constitutional safeguards; the post Apartheid example-----	44
(c) Judicial safeguards-----	46
3.2.1 Law enforcement during emergencies-----	48

(a ) Mass arrests-----	48
(b ) Search and seizure-----	50
(c ) Disappearances-----	51
(d ) Extrajudicial detention-----	54
3.3 Protecting law enforcement officials in post-conflict states-----	56
(a ) The political question doctrine-----	57
(b ) The act of State doctrine-----	58
(c ) Limitation Statutes-----	59
(d ) Peace Accords, TRC's And Amnesties-----	59
(e ) Transfers-----	60
3.4 Conclusion-----	60

Chapter Four: INVESTIGATION: FORCE,FEAR,FRAUD,CORRUPTION AS  
VEHICLES FOR HUMAN RIGHTS VIOLATIONS

4.1 Introduction-----	62
4.2 Police Duty And Human Rights (Investigation, prevention, detection)-----	63
4.2.1 The use of Force/Violence-----	64
(a ) When is the use of force permitted?-----	65
4.2.2 The use of Fear/Intimidation-----	66
(a ) Orders from Above-----	67
(b ) Respect for the law-----	68
4.3 Use of Fraud/Deceit-----	69
(a ) Agents Provocateurs/Entrapment-----	69
4.4 The use of Corruption-----	71
4.5 Conclusion-----	73

## Chapter Five: Conclusions And Recommendations

5.1	Conclusion-----	74
5.2	Recommendations-----	75
5.2.1	Politics-----	75
5.2.2	Law Reform-----	76
5.2.3	Norm Creation-----	77
5.2.4	Community Policing-----	77
5.2.4.1	Benefits of Community Policing-----	78
5.2.5	Civilian Oversight Mechanisms-----	79
5.2.6	International Commitment/general Comments-----	81
5.2.7	Co-ordination Among human Rights NGO's-----	82
	BIBLIOGRAPHY-----	83

## LIST OF ABBREVIATIONS

ACC	Anti Corruption Commission Sierra Leone
ACHPR	African Charter on Human and Peoples' Rights
AG	Attorney General and Minister of Justice
AI	Amnesty International
AU	African Union
AUC	African Union Commission
AIG	Assistant Inspector General of Police
CID	Criminal Investigations Department
CDIID	Complaints Discipline Internal Investigations Department
CAT	Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment
CRC	Convention on the Rights of the Child
CCSSP	Commonwealth Community Security and Safety Programme
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CORDESRIA	Council for the Development of Social Science Research in Africa
CPA	Criminal Procedure Act
CBO	Community Based Organisation
CSO	Civil Society Organisation

CPDTF	Commonwealth Police Development Task Force
DFID	Department for International Development (UK)
DDR	Disarmament, Demobilization and Reintegration
DPP	Director of Public Prosecutions
ECOMOG	ECOWAS Monitoring Group
ECOWAS	ECONOMIC Community of West African States
IGAD	Inter-Governmental Authority on Development
ISS	Institute for Security Studies
IGP	Inspector General of Police
IACHR	Inter-American Court of Human Rights
JSDP	Justice Sector Development Programme
KFOR	Kosovo Force
LRP	Law Reform Project
LAWCLA	Lawyers Centre for Legal Assistance
NGO	Non Governmental Organization
ONS	Office of National Security
OSD	Operational Support Division (SLP)
PACE	Police and Criminal Evidence Act
PBF	Peace Building Fund (UN)
RSLAF	Republic of Sierra Leone Armed Forces
RUF	Revolutionary United Front (SL)
SB	Special Branch (SLP)
SLP	Sierra Leone Police
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UNAMSIL	United Nations Mission in Sierra Leone
UNIOSL	United Nations Integrated Office in Sierra Leone

UNHCHR	United Nations High Commissioner for Human Rights
UNIDIR	United Nations Institute for Disarmament Research
UNMIK	United Nations Mission in Kosovo

# CHAPTER ONE

## 1 Introduction

### 1.1 Background to the study

Law enforcement is the greatest tool used by the state, inadvertently or otherwise, to violate human rights. Paradoxically, though, law enforcement is used to protect these rights between individuals, and between the state and individuals. The typical law enforcement agencies are the police<sup>1</sup>. In Sierra Leone this includes the prosecutions department or the law officers' department who work directly with the Director of Public Prosecutions in the office of the Attorney-General and Minister of Justice<sup>2</sup>. The judiciary comprises the courts and the Attorney-General who is the political head. The Chief Justice is the administrative and professional head.<sup>3</sup> The prisons department which is an autonomous body, like the police, is under the supervision of the ministry of internal affairs.

This is the tripartite system<sup>4</sup> in the administration of criminal justice in many countries of the world. A fourth category could be the military. For instance in Sierra Leone and its neighbours Guinea and Liberia, there are times when no clarity is

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<sup>1</sup> The Sierra Leone police was set up by the Police Act no.7 of 1964.

<sup>2</sup> Section 64 of the Constitution of Sierra Leone Act no.6 of 1991.

<sup>3</sup> n 2 above sec.120.

<sup>4</sup> These are the three conspicuous agents of law enforcement-the police, judiciary and the prisons department.



made in the differentiation of roles between the police and the army, or whenever there is an overlapping of functions during abnormal situations.<sup>5</sup>

There is a phenomenon common in Africa, where the military is deployed to war-torn countries to monitor, maintain or enforce peace during a truce.<sup>6</sup> Police officers are also deployed to war areas during a truce or during a transition period to maintain order. There is always some probability for these two agencies to violate human rights. As such, the people who should be the beneficiaries of peace and security easily become victims of gross human rights violations by these forces.

At the domestic level, the problem is also very visible. The police in maintaining law and order, or in its daily contact with civilians by way of investigating crimes, or effecting arrest and detention, commit violations of human rights. The judiciary when interpreting the law either, erroneously or otherwise commit violations. They may refuse bail for bail able offences and sometimes give doubtful interpretations to statutes and cause many otherwise innocent people to suffer as a consequence. Prison officers either through lack of knowledge or deliberate high handedness also violate human rights. Soldiers or Para military officers in post war or “militarised” societies,<sup>7</sup> easily join the police to violate people’s rights.

Whichever way we examine the issues in particularly post conflict situations in Africa, the civil populace is always at the receiving end of human rights violations during law enforcement. It is also very easy for the governments in conflict states to

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<sup>5</sup> During an emergency, the military is called to help restore law and order. In Francophone countries like neighbouring Guinea, there are the Gendarmes (a Para-military outfit) who enforce law and order jointly with the regular police.

<sup>6</sup> Military officers are sometimes invited to assist the police. In Sierra Leone it is called Military Assistance to Civilian Police (MACP).

<sup>7</sup> Societies where the police and military have leverage for excessive show of force with acquiescence from the government of the day.

declare states of emergency to justify their derogations on fundamental constitutional human rights and allow its agents to violate these rights in most cases with impunity.<sup>8</sup>

## **2 Statement of purpose**

The principal aim of this study is to examine law enforcement and human rights in a post war African society (Sierra Leone) using other African countries where necessary, as one of many reference points of a post conflict society with a view to examining the best practices in law enforcement and respect for human rights in Africa. Human Rights were until recently not part of the operational agenda of the law enforcement agencies in the small West African state of Sierra Leone<sup>9</sup>. And this may be true for many countries in Africa. Today, however, bad policing is tantamount to a misapplication or a non-application of internationally approved standards in policing and hence a violation of human rights.

## **3 Research question**

The major question addressed in the course of this research is: should respect for human rights be relevant to law enforcement and should law enforcement officials in post conflict societies (such as Sierra Leone) be bound by national and international standards in domestic law enforcement in their countries?<sup>10</sup>

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<sup>8</sup> Article 93 of the Federal Constitution of Ethiopia 1995 and section 29 of the Constitution of Sierra Leone 1991 provides for a state of emergency. These allows for derogations on the human rights such as freedom of movement, arrest, assembly, detention etc during emergencies.

<sup>9</sup> The Sierra Leone Police like many other police in the sub region inherited a policing culture premised on investigative rather than preventive policing.

<sup>10</sup> UN Secretary-General on best practices available at <http://www.peacekeepingbestpractices.unlb.org/pbpu/library>. (Accessed on 16 may 2008).

#### 4 Objectives of the Study

(a) The proposed study aims at exposing some excesses of law enforcement officials during peace time as well as in post conflict times.

(b) To explore the use of dissuasive measures such as prosecution to minimise the culture of impunity by law enforcement officials especially during conflict and post conflict periods.

#### 5 Preliminary literature review

Various handbooks<sup>11</sup>, articles, monographs<sup>12</sup> and books have been written on Human Rights and Policing stating broad principles of conduct expected of police officers. Ralf Crawshaw, Barry Revlin and Tom Williamson(1999)<sup>13</sup> captured the idea of policing in Europe and America as a template for international standards in policing. Crawshaw went further to state that police officials who violate human rights do not contribute to the improvement of the criminal justice system. They become as J Hudson describes them, criminals parading as law enforcement officials and that the ultimate thing to do is to make such officials individually accountable for their deeds.

The United Nations Handbook *on justice for victims of crime and abuse of power*<sup>14</sup> also attempts to set standards for law enforcement officials in the discharge of their duties. Much of the focus is on victim protection and counselling by the

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<sup>11</sup> UNHCR *International Human Rights Standards for Law Enforcement A pocket Book on Human Rights for the police.*(1996).

<sup>12</sup> Institute for Security Studies (ISS) Monograph nos.135,185.

<sup>13</sup> Crawshaw R et al *Human Rights and Policing Standards for Good Behaviour A Strategy for Change* (1999) 88.

<sup>14</sup> Adopted at the UN General Assembly Resolution 40/34 29 November 1985.

various players in the wider criminal justice system including community members, friends, relatives, neighbours, hospital staff, judges etc. The hand book emphasizes the point that victims of crime should be given humane treatment from law enforcement officials to help reduce their suffering. Victims of abuse of power are exactly those who suffer at the hands of law enforcement officials who abuse their authority. Hence the UN recommends actions to domestic governments to make such officials face justice for their acts.

Niels A Uldriks<sup>15</sup> focused on policing in past communist regimes in the Soviet Union and other East European nations. He highlighted the many instances of police brutality and gross violations of human rights by a regime that was never accountable to the people. Then came the difficulty of the police to adjust their methods of law enforcement after the fall of communism.

Uldriks goes further to state that the police play an important role during these periods of uncertainty that are notorious for the accompanying problems of public and political disorder, crime and violence, and poverty and disorientation of the population. The police are intensively confronted with such transitional problems. They must police the transition while being subject to the process themselves. They are vital to the process, especially when transition is directed towards democracy.

Andrew Goldsmith<sup>16</sup> mentioned that policing in the aftermath of major conflict is a largely neglected theme within the fields of international law, strategic studies, human rights, criminal justice and development studies. Consequently, how policing can contribute to peace-building after periods of instability and internal conflict through the competent, impartial performance of the mundane tasks of order

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<sup>15</sup> Uldriks N A *Policing Post Communist Societies: Police Public Violence, Democratic Policing And Human Rights*. (2003)7- 9.

<sup>16</sup> A Goldsmith: "Policing after conflict: Peace-Building and the Responsibility to Protect" (2003).

maintenance and law enforcement remains a largely open question for scholars, policy makers and practitioners alike<sup>17</sup>

Francisca Nel and Jan Bezuidenhout<sup>18</sup> are general editors of articles from different authors (some ex-police officers) who wrote on various aspects of policing as it affects human rights in post Apartheid South Africa. The articles on detention, bail, state of emergency, etc by the various authors, gives the reader an insight into what law enforcement looked like during apartheid and the efforts that have been made by the legislature and the judiciary in the new democracy<sup>19</sup> to curtail the excesses of the Police especially so as to avoid the ills of the past. This may provide very good insights even if slightly different from the situation in other African countries like Sierra Leone with a different socio-cultural background.

To date, to the knowledge of this researcher, no work has been done specifically targeting post conflict African societies and dedicated towards highlighting some reasons for gross violations of human rights by law enforcement agents in those societies. The police in Africa are considered to be such secretive institutions to the extent that they get away with impunity supported by other state functionaries or institutions.

## **6 Methodology**

The main sources of my study will include library/desk research, materials from the internet especially UN materials on peace keeping, the Sierra Leone Police experience, including legislation touching on the operations of that police. Interviews with the Ethiopian police authorities and experts on conflict management at the

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<sup>17</sup> Mary Kaldor, "New and Old Wars: Organized Violence in a Global Era" (Polity press,1999) 125.

<sup>18</sup> F Nel and J Bezuidenhout (eds) *Policing and Human Rights* (2002).

<sup>19</sup> South Africa became a new democracy after the first free elections in 1994.

department for peace and security of the African Union. The study will be descriptive, interactive and analytical coming from an author who is also a member of the police in Sierra Leone.<sup>20</sup>

## **7 Justification of the study**

After the war years in Sierra Leone, it became apparent that the police in that country needs to be strategically led with more emphasis on training in human rights standards for better results. This study will in a way contribute to the numerous literature on law enforcement already available to the Sierra Leone Police and many other police forces that share a similar tradition in law enforcement in Africa.

The UK, the US, Botswana, Ghana, Egypt and the UN have provided training to police officers on numerous occasions after the war to make it a more efficient force in the sub region<sup>21</sup>. The UN maintains an office called the UN Integrated Office in Sierra Leone (UNIOSIL) to monitor respect for human rights by especially law enforcement officials. Hence, the more reason why this study is necessary to provide the academic and practical insights needed for an efficient police in a post conflict society like Sierra Leone.

Furthermore, the importance of policing beyond the domestic criminal justice sphere has grown significantly in recent years by reason of the changes in the nature of human conflict.<sup>22</sup> Pressures for greater attention to police and law enforcement have also grown as a consequence of greater concern about transnational crime<sup>23</sup>

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<sup>20</sup> Until December 2007, the researcher was head of the legal department of the Sierra Leone Police.

<sup>21</sup> These trainings continue though not on a regular basis.

<sup>22</sup> UNHCR (n 11 above) 22.

<sup>23</sup> Transnational crimes include money laundering, drug trafficking, human trafficking etc. <http://www.loc.gov/catdir/toc/ecip0420/2004015912.html>. (Accessed 23 August 2008).

and terrorist networks.<sup>24</sup> In Sierra Leone for instance, the police and other law enforcement agencies lost the confidence of the people during the conflict, but as the principal law enforcement institution, the people's only choice after the war was to reinvest their confidence in a somewhat "revised" institution. Without the provision of secure conditions in which ordinary citizens can reconcile and rebuild, progress at the grassroots level in terms of economic and social development as well as human rights will remain elusive.<sup>25</sup>

## **8 Limitations**

Most of the materials on Sierra Leone have not been posted on the internet. I have to rely on hard copies to be posted to me through the normal postal service. Owing to language barrier, I could not incorporate the Ethiopian experience. This could have given the study a stronger comparative touch. This, however, is not a setback to the interesting reading that will come out of the informed contributions of experts and renowned contributors in the field of law enforcement and human rights in post conflict African societies such as Sierra Leone

## **9 Chapter breakdown**

6.1 Chapter one will introduce the study. It puts forward the problems to be dealt with and lay a foundation of what will be examined in the subsequent chapters. It contains the context and background in which the research is done.

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<sup>24</sup> M Sageman *Understanding Terror Networks* (2004) 1 .

<sup>25</sup> n 16 above .

- 6.2 Chapter Two will look at the stake holders in the criminal justice system. How their interaction affects law enforcement generally as well as an examination of human rights instruments on policing.
- 6.3 In Chapter three we will look at how to build a culture of human rights policing in the country under review. will examine the use of improper /unlawful methods of law enforcement during abnormal periods- emergency laws to derogate on human right provisions in the constitution or other laws.
- 6.4 Chapter four will examine the methods of investigation leading to prosecution of offences. Constitutional or legal provisions for such methods of interrogation, investigation and detention (coercion-force, fear, fraud, corruption, etc) as against international human rights standards.
- 6.5 Chapter five will sum up the issues discussed in the previous chapters. It thus highlights some of the best practices based on internationally approved standards and indicates the way forward for an end to impunity of law enforcement agents acting in post conflict situations.



## CHAPTER TWO

### THE INTERACTION OF LAW ENFORCEMENT AGENTS AND HUMAN RIGHTS

#### 2.1 Introduction

We mentioned in the preceding chapter that the people of Sierra Leone had no alternative but to reinvest their confidence in the security apparatus after the war<sup>26</sup>. This could be compared to Kant's social contract theory.<sup>27</sup> "He held that every rational being had both an innate right to freedom and a duty to enter into a civil condition governed by a social contract in order to realize and preserve that freedom". This chapter will attempt to illustrate how the law enforcement agencies could easily frustrate the social contract to respect and preserve people's human rights during and after conflict situations.<sup>28</sup> It will then highlight the efforts of the Security Sector Review (SSR) programme to rebuild the law enforcement agencies especially the police, in an attempt to re-establish the people's confidence in it as a law enforcement institution that respects human rights.<sup>29</sup>

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<sup>26</sup> The civil war in Sierra Leone officially ended in 2001.

<sup>27</sup> E Kant "Doctrine of Right" in *Metaphysics of Morals* (1797)

<sup>28</sup> UN code of conduct for law enforcement officials(1979) article 1and 8

<sup>29</sup> All police officials are part of, and have a duty to serve, the community. n 22 above article 1

## 2.2 The Key Players in the Criminal Justice/Law Enforcement Generally.

According to the Global facilitation Network for security Sector reform (GF-SSN), there are a number of key role players involved in security sector reform (SSR) which constitutes the law enforcement branches of the state<sup>30</sup>. These include:

- (a) *Core security actors*; armed forces, police service, gendarmeries, paramilitary forces, presidential guards, intelligence and security services (both military and civilian), coast guards, customs authorities, and reserve or local security units (civil defence forces, national guards, militias).
- (b) *Management and oversight bodies*; the executive, national security advisory bodies, legislative and legislative select committees, ministries of defence, internal affairs, foreign affairs, customary and traditional authorities, financial management bodies (Finance ministries, budget officers, financial audit and planning units) and civil society organisations (civilian review boards and public complaints commissions).
- (c) *Justice and rule of law*; judiciary and justice ministries, prisons, criminal investigation and prosecution services, human rights commissions and ombudsmen and customary and traditional justice systems.
- (d) *Non-statutory security forces*; liberation armies, guerrilla armies, private security companies, political party militias<sup>31</sup>.

This list may be extended to include ex-combatants and or demobilized military or service personnel in post conflict countries like Sierra Leone.<sup>32</sup> In

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<sup>30</sup> "Post conflict police reform in South Africa and other African countries". National security agenda, Sandton Convention Centre Idasa [www.idasa.org](http://www.idasa.org) (accessed 1<sup>st</sup> September 2008).

<sup>31</sup> N 29 above.

<sup>32</sup> Liberia's demobilised combatants spilled over into Sierra Leone in 1991 to fuel the conflict.

this case, the Disarmament, Demobilization and Reintegration (DDR)<sup>33</sup> programme saw many ex-combatants or service personnel either being integrated into the new Sierra Leone Police or found themselves in “vigilante groups” or “neighbourhood security watch” bodies that mushroomed after the war.

By this arrangement, one could see that in a police reform in many post conflict countries, the private sector plays a role either in an advisory capacity or in the provision of physical and human resources to augment the capacity of the police service as a whole<sup>34</sup>. However, there are always very sad human rights implications when it comes to law enforcement by such people with a militaristic background or with poor human rights background.

For the purposes of this research, we would limit our investigation to the law enforcement organs found within the core security forces and the justice and rule of law bodies namely; the police, judiciary and the prisons department which as indicated earlier are the most conspicuous agents of law enforcement in Sierra Leone<sup>35</sup>.

### **2.2.1 The Sierra Leone Police**

After independence in 1961<sup>36</sup>, Sierra Leone inherited the legacy of the former Frontier Police Force<sup>37</sup> which was incapable of meeting post-independence security

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<sup>33</sup> F Kai-Kai 'Disarmament, Demobilization And Reintegration In Post-War Sierra Leone' in A Ayasi & R E Poulton (eds) *Bound To Cooperate Conflict, Peace and People in Sierra Leone.*(2006) 115.

<sup>34</sup> N 30 above.

<sup>35</sup> N 4 above.

<sup>36</sup> Sierra Leone became independent from Britain on 27 April 1961.

challenges of a democratic, pluralistic and multi-ethnic country.<sup>38</sup>This type of security arrangement was established by the colonial authorities to essentially protect British interests. They were required to maintain law and order with a view to preventing rebellion against the colonial administration. Not surprisingly, the colonial authorities used this frontier police as instrument to suppress the colonised people. They were used to violently put down the 1890 Protectorate Uprising and the Hut Tax War of 1898<sup>39</sup>.The immediate post-independence regimes of Sierra Leone<sup>40</sup>did not do much to make a radical break with the past<sup>41</sup>.So law enforcement was still carried out in the pattern of the British militaristic orientation.

The unprofessionalism of the police intensified in the 1970's when the heads of the police and the military were made members of parliament and they became more involved in politics than in professional service<sup>42</sup>. Disregard for human rights and corruption became rife in the police, a situation that prevailed until 1991 when the civil war eventually broke out in the country. The undue political interference into the affairs of the police through ethnic and loyalty criteria for enlistment, appointment and promotion not only undermined efficiency, but also precipitated the breakdown of command and control in the force.

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<sup>37</sup> N 9 above.

<sup>38</sup> O Gbla 'Security Sector Reform in Sierra Leone' in Len Le Roux & Y Kidane (eds) *Challenges to Security Sector Reform in the Horn of Africa (2007) 14 ISS Monograph series No.135 May 2007.*

<sup>39</sup> Draft National Security Policy Paper for Sierra Leone (2000) 7

<sup>40</sup> The Sierra Leone People's Party (SLPP) 1961 to 1967 and the All Peoples Congress Party (APC) 1968to1992.

<sup>41</sup> n 37 above.

<sup>42</sup> n 38 above, 15.

(a) *Need for reform.*

By the end of the war,<sup>43</sup> the Sierra Leone Police (SLP) like the Sierra Leone Army (SLA) was in dire need of reform because the SLP was still operating under its traditional role of protecting the state, the people and property. The role is clearly mentioned in the police Act<sup>44</sup> where it states:

The Police shall be employed for the detection of crime and the apprehension of offenders, the preservation of law and order, the protection of property and the enforcement of all laws and regulations with which they are directly charged

The above definition of roles has no provision for respect for human rights. Hence it was easy to tell that this force was not prepared for the challenges of modern day policing which is largely human rights driven and therefore in need of major reforms.<sup>45</sup> The seven man Commonwealth Police Development Task Force (CPDTF)<sup>46</sup> under the auspices of the British government's department for international development (DFID)<sup>47</sup> set about to reform the police in 1998. The training, practice and recruitment policies were overhauled and for the first time, a human rights agenda was included in the training curricular.

It is worth pointing out that the task force was British dominated with a British national as the Inspector –General of police.<sup>48</sup> Of more interest is the fact that the British who set up the old frontier police in 1896 with a non-human rights mandate

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<sup>43</sup> The war in Sierra Leone officially ended in 2001 followed by the implementation of the Lome Peace accord.

<sup>44</sup> Section 4 of the Police Act 1964.

<sup>45</sup> N 41 above 25.

<sup>46</sup> Ero C *Sierra Leone's security complex*. (2000) 49 CDS working paper No. 3 England.

<sup>47</sup> N 45 above

<sup>48</sup> Keith Biddle (an ex-police officer was appointed Inspector –General of Police to oversee the change management programme from 1998 to 2003).

have been recalled nearly one hundred and fifteen years later to correct the mistakes of their predecessors.

As part of the restructuring programme, the government released its policing charter<sup>49</sup> which states among other things the role of the police in relation to government and people, with emphasis on equal opportunity, professionalism and local needs policing. The main thrust of the charter states that the Sierra Leone police will assist in returning its communities to peace and prosperity by acting in a manner, which will:

- Eventually remove the need for the deployment of military and paramilitary forces in the villages, communities and city streets
- Ensure the safety and security of all people and their property
- Respect the human rights of all individuals
- Prevent and detect crime by using the most effective methods, which can be made available to them
- Take account of local concerns through community consultation
- At all levels be free from corruption<sup>50</sup>

In a follow up to the policing charter, the Police released a parallel Mission Statement<sup>51</sup> which states:

- **Our Duty :** Providing a professional and effective service, which will protect life and property, achieve a peaceful society and take primacy in the maintenance of law and order
- **Our Values :** Respecting human rights and freedom of the individual, honesty impartiality and care that is free from corruption

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<sup>49</sup> Sierra Leone Government Policing charter 1998.

<sup>50</sup> n 49 above.

<sup>51</sup> SLP Mission Statement 1998.

- **Our Priorities:** Responding to local needs, valuing the people, involving all in developing policing priorities
- **Our Aim:** To win public confidence by offering reliable, caring and accountable police services<sup>52</sup>

The Strategic Development Plan<sup>53</sup> of the Sierra Leone Police also included a human rights objective which among other things aims to establish centralized custody suites and reduce the number of locations of police cells; conduct continuous training of custody officers on human rights and the duty of care and improve management of persons in police custody including visitors to the cell block; intensify sensitization of personnel and community on human rights issues.<sup>54</sup>

The above security sector reform and the oversight mechanisms<sup>55</sup> were put in place primarily by the Commonwealth Community Security and Safety Programme (CCSSP),<sup>56</sup> DFID and other partners.<sup>57</sup> The success of the SLP in promoting human rights in its law enforcement drive depend largely on the reforms and cooperation of the other stake holders.<sup>58</sup>

### **2.2.2 The Prosecutions Department.**

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<sup>52</sup> N 50 above.

<sup>53</sup> The SLP Strategic Development plan 2000.

<sup>54</sup> n 53 above.

<sup>55</sup> The oversight mechanisms include the Police Council section 156 and 158 of the 1991 constitution of ; the Complaints, Discipline, Internal Investigation Department (CDIID).

<sup>56</sup> The principal body through which the change management programme was executed between 1998 and 2003.

<sup>57</sup> Other partners include the UN, ECOWAS.

<sup>58</sup> See n 1 above.

This office is directly under the Attorney General and Minister of Justice<sup>59</sup>.It is responsible for all criminal prosecutions in the country and therefore by inference directs the Inspector-General on all criminal investigations in the country. Section 64(1) of the 1991 Constitution of Sierra Leone states: "There shall be an Attorney-General and Minister of Justice who shall be the principal adviser to the Government and a Minister" .His authority over prosecution of cases is spelt out in section 64(3):<sup>60</sup>

All offences prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Attorney-General and minister of Justice or some other person authorised by him in accordance with any law governing the same.

From the above provision, the Minister of Justice to directs the investigation of any criminal matter under investigation by the police. And she/he being a politician, there is always a possibility for her/him to secure party interest in the investigation and prosecution of cases<sup>61</sup>.The merger of these two offices shows that there is no respect for the doctrine of separation of powers<sup>62</sup>. This as we shall see later, has serious implications for human rights as far the enforcement of the law is concerned. Essential rights like freedom of movement<sup>63</sup>, fair trial<sup>64</sup>,Privacy of home<sup>65</sup>, right to

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<sup>59</sup> Section 64 Constitution of Sierra Leone 1991.

<sup>60</sup> N 58 above.

<sup>61</sup> Section 66(4)(c) of the 1991 Constitution gives the DPP power to commence or discontinue criminal prosecution at any stage of the prosecution on behalf of the AG.

<sup>62</sup> Baron de Montesque *De L'Esprit des Lois* (1748).

<sup>63</sup> Section 18 of the 1991 Constitution.

<sup>64</sup> n 63 above, Section 23.

<sup>65</sup> n 64 above Section 21.



bail<sup>66</sup> etc are easily violated through instructions from this official who wears the cap of the executive and the judiciary at the same time.

Another interesting point is the provision in sections 66(8) and 120(3) of the Constitution<sup>67</sup>. Section 66 states that the Attorney-General and Minister of Justice shall not be subject to any direction or control in the exercise of his powers. By section 120(3) also, the Judiciary shall not be subject to the direction or control of any other person or authority apart from the Constitution.<sup>68</sup> This could easily lead to a stale mate between the executive and the judiciary and notwithstanding the interests at stake, for the reasons mentioned above, the executive will almost always prevail.

### **2.2.3 The Judiciary.**

As part of the Justice and Rule of Law segment of Law enforcement<sup>69</sup>, this organ of government is supposed to be independent and be the principal means for the interpretation, protection and enforcement of the provisions of the Constitution.<sup>70</sup> The judiciary in Sierra Leone is divided into the English Type courts<sup>71</sup> which is made up of the magistrate courts, the High court, the court of appeal, and the supreme court; and the non-English type or Customary law courts which only administers local or customary laws outside of Freetown.<sup>72</sup>

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<sup>66</sup> Sections 79 and 80 of the Criminal procedure Act of 1965.

<sup>67</sup> The Constitution of Sierra Leone 1991

<sup>68</sup> n 67 above.

<sup>69</sup> N 29 above.

<sup>70</sup> P Mtsbaulana "History and Role of the Constitutional Court of South Africa" in F Nel & J Bezuidenhout (eds) *Policing And Human Rights* (2002) 41.

<sup>71</sup> Section 120 of the Constitution of Sierra Leone 1991.

<sup>72</sup> The local courts Act 1963 gives limited jurisdiction to customary law courts to function only outside Freetown.

For the years preceding the war and after the war, there was great loss of confidence in the judiciary of Sierra Leone<sup>73</sup>. Cases investigated and charged to court by the police will take very long before judgment is delivered. The result is that either the litigants get disillusioned or suspects spend very long terms in remand sometimes almost equal to or more than the period they ought to have spent as convicted prisoners.<sup>74</sup> In the case of *The State v Foday Kallay and others (Westside boys)*<sup>75</sup> (unreported), the suspects spent more than two months in police custody at undisclosed locations under the directives of the Attorney-General and Minister of Justice. When they were finally charged to court, they were remanded by the High Court for more than one year, following series of adjournments until early 2007 when they were sentenced to various years of imprisonment. Some got a discharge after already spending their years in remand according to the level of involvement.

The attitude of the court and the police resulted to an overcrowding of the prisons all over the country until the UN intervened in 2007 through its Peace Building Fund (UN PBF)<sup>76</sup>. Special contract judges were employed to help clear the huge backlog of cases and reduce the congestion in the prisons.<sup>77</sup>

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<sup>73</sup> US state Department Country Report on Sierra Leone 2006.

<sup>74</sup> Section 23(1) of the Constitution of Sierra Leone 1991.

<sup>75</sup> West side boys were a rebellious group who set up road blocks in the western side of the outskirts of Freetown (hence the name West side boys). From there they molested travellers, including British and UN troops, raped and abducted women and children, until they were rounded up by a combined British and Sierra Leone paratrooper force in the famous “operation Barras” in 2000. See [http://en.wikipedia.org/wiki/operation\\_Barras](http://en.wikipedia.org/wiki/operation_Barras) (accessed 7th September 2008).

<sup>76</sup> UN PBF Reform of the Judiciary of Sierra Leone Project SIL 2007.

<sup>77</sup> The British funded Justice Sector Development programme (JSDP) facilitated the decongestion of the Prisons since 2002.

Section 15 of the constitution<sup>78</sup> stipulates that every person in Sierra Leone is entitled to the fundamental rights and freedoms of the individual without regard to race, place of origin, political opinion, colour, creed or sex and that all persons are equal before the law and are entitled without discrimination, to the equal protection of the law<sup>79</sup>. Ensuring equality of treatment to all before the courts is not only essential to the due performance of the judicial office but also a constitutional right of every person before the courts and should be enforced as such. A judicial officer should therefore not in the performance of his judicial duties, by words or conduct manifest bias or prejudice towards any person or group of persons. Expression of bias or prejudice by him even outside his judicial duties may adversely affect his capacity to act impartially as a judicial officer.<sup>80</sup>

(a) *Some Reforms*

The above comments by the Chief justice set the stage for the much needed reforms within the judiciary. The government and its partners<sup>81</sup> realised that human rights will never fully be realised if these institutions are not given full and equal attention.<sup>82</sup> When cases are initiated by the police, they go through the law officers department and end up in court where litigants are given justice. The guilty party of a crime is sent to prison which is meant to be a place of correction.

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<sup>78</sup> N 67 above.

<sup>79</sup> Chapter 3 of the Constitution-“The recognition and protection of fundamental human rights And freedoms of the Individual”.

<sup>80</sup> A Renner-Thomas Chief Justice of Sierra Leone 2003-2008 in “Code of Conduct for Judicial officers of the Republic of Sierra Leone” (2005) 13.

<sup>81</sup> The UN, the UK, AU, ECOWAS, OSIWA and other INGO’s and Civil society organisations involved in Human rights promotion and post conflict peace building.

<sup>82</sup> The Police, the Prosecutions, the Judiciary and the Prisons department.

To say the least, the judiciary should be the most important organ in the protection of human rights. If there is a violation by the police, the court should be able to correct it and put a deterrent to the police for any future violations. The code of conduct for judicial officers was therefore more than timely for the significant reforms that the judiciary is still undergoing in post conflict Sierra Leone.<sup>83</sup> Additional judges were appointed to clear the backlog of cases pending in court; further training was provided for judges and magistrates on justice and human rights; additional registries were opened in the provinces to expedite the trial of cases in the provincial high courts<sup>84</sup>; new and spacious court rooms were built in the provinces and Freetown to expedite the process of justice<sup>85</sup>; joint training and seminars for police, magistrates and prison officers on human rights were conducted countrywide; and the remuneration of magistrates and judges was revised as well as the provision of new vehicles to the judiciary of Sierra Leone by the government of Nigeria and the JSDP.<sup>86</sup> All of this is in an effort to make justice affordable and accessible to every Sierra Leonean.

#### **2.2.4 The Prisons Department.**

They provide custody of those who fall short of the law and hence need to be corrected for their wrong doing.<sup>87</sup> By this duty, the responsibility of all prison

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<sup>83</sup> n 79 above.

<sup>84</sup> After nearly 100 years, the northern provincial high court registry was opened at Makeni 'Northern Province gets registry' *For Di People* 17 April 2007 2.

<sup>85</sup> The building and rehabilitation of the courts in Sierra Leone was started by the British in 1998/99 under the Law Reform Project and continued by the JSDP in 2002.

<sup>86</sup> 'Judiciary gets Boost as UNAMSIL donates vehicles' *Awoko Newspaper* February 2008 1.

<sup>87</sup> The Prisons Act 1963.

authorities in the world becomes universal and therefore must be subject to the UN standard minimum rules for the handling of prisoners.<sup>88</sup>

In Sierra Leone and in many countries, imprisonment is used as a tool for coercion especially against political opponents or a critical press. So that once in prison, the officers are under the misguided belief that all human rights of the prisoner are suspended and therefore could be subject to any form of inhuman or degrading treatment without redress<sup>89</sup>.

The prisons department unlike the Police and judiciary have no complaints mechanism for prisoners or their attorneys to make complaints of violations against prison officers.<sup>90</sup> Prisons Watch does little more than visit prisons and report violations to the press or the minister of internal affairs.<sup>91</sup>

The situation may be worse for prisoners condemned to death<sup>92</sup>In the case of *The state v Mohamed Sorie Fornah and fourteen Others* (1974) SLLR (SLLR 1975) (Treason)<sup>93</sup>, one of the accused persons Ibrahim Taqui complained to the judge that while in prison his human rights were denied him and his colleagues. They were not given sufficient food, no tooth paste to brush their mouths and could not have a normal bath for several weeks.

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<sup>88</sup> Adopted by ECOSOC resolutions 663,c(xxiv)of 31 July 1957 and 2076 (Cx11) of 13 May 1977.

<sup>89</sup> See Article 5 of the African Charter on Human And Peoples' Rights 1981/1986.

<sup>90</sup> The Police have the CDIID, n 55 above, while the judiciary have the judicial ethics committee for reports of misconduct and violations by police and judicial officers respectively.

<sup>91</sup> Prisons Watch Sierra Leone is an NGO formed to protect human rights of prisoners as well as suspects in police custody.

<sup>92</sup> The common law offence of murder; Treason under the treason and state offences Act of 1963; the 1971 amendment to section 23 of the Larceny Act of 1916 'Robbery With aggravation' all attract the mandatory death penalty in Sierra Leone.

<sup>93</sup> Sierra Leone Law Reports (SLLR) 1975.

This complaint fell on deaf ears since they were all political prisoners. Twelve of them were subsequently executed and two sentenced to life imprisonment. Surprisingly after the war and the supposed reforms, in the case of *The State (Justice Tolla-Thompson) v Paul Kamara* (unreported)<sup>94</sup> the accused editor was kept in solitary confinement for six out of his eighteen months imprisonment between 2004 and 2006<sup>95</sup>

However, since the execution of twenty three soldiers in 1998, Sierra Leone has observed a moratorium on the death penalty. This was achieved through the African Commission on Human and Peoples' Rights decision in the communication *Forum of Conscience v Sierra Leone* (2000) AHRLR (ACHPR 2000).<sup>96</sup>

(a) *Some prisons standards*

As mentioned above, detention does not mean damnation and prison officers should know that prisons should be seen as homes for correction not an avenue for human rights violation when enforcing detention laws. This is the impression guaranteed by the UN General Assembly Resolution 43/173 of 9 December 1988 when it adopted the "Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment"<sup>97</sup>. These are:

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<sup>94</sup> The editor Paul Kamara of "For Di People Newspaper" was charged under the criminal libel laws of 1965 for alleged libel against a sitting judge of the supreme court who was at the same time chairman of the Sierra Leone football Association which the editor alleged was contrary to section 138 (4) of the 1991 Constitution.

<sup>95</sup> "Editor Kept in Solitary Confinement" *For Di People* 2006 1.

<sup>96</sup> (2000) 1 African Human Rights Law Journal 25 135.

<sup>97</sup> GA resolution 43/173 9 December 1988.

**Principle 1**

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

**Principle 2**

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

**Principle 3**

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognised or existing in any state pursuant to law, conventions ;regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

**Principle 4**

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

**Principle 5**

These principles shall be applied to all persons within the territory of any given state, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.<sup>98</sup>

Looking at these principles, officials should understand that human rights can only be limited within legally approved standards and that detention is

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<sup>98</sup> International and Regional human Rights for Policing standards.

never tantamount to a suspension of those rights or worse still, a curtailment of those rights. Once this view is accepted by law enforcement agents, the rights and dignity of persons under detention will be restored and observed at all times.

### **2.2.5 Conclusion**

The human rights situation as far as the interaction amongst the law enforcement agencies is concerned has improved significantly in Sierra Leone after the conflict but there is still much to be done. A clear picture of the situation is seen through a letter to the newly elected president of Sierra Leone by Human Rights Watch.<sup>99</sup>

In that letter, Human Rights Watch highlighted among other things the weakness of the institutions charged with the responsibility to promote the rule of law and its impact on the human rights situation. There is the problem of extortion and bribe-taking by court officials; insufficient numbers of judges, magistrates, and prosecuting attorneys; extended periods of arbitrary detention (some detainees held for up to six years without charge)<sup>100</sup>

Detention conditions are inadequate. A prison designed to hold 350 inmates is now holding over 1000 inmates. There are persistent allegations of mismanagement of food, medicines and other health care materials by prison authorities.

Corruption in public and private sectors remains a major setback to development and respect for human rights. It robs the population of funds needed to support vital services such as education, water, and healthcare. The Anti-Corruption

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<sup>99</sup> Human Rights Watch letter to H E Ernest Bai Koroma President of the Republic of Sierra Leone 2007 on <http://hrw.org/english/docs/2007> (Accessed 8th September 2008).

<sup>100</sup> N 98 above.



Commission<sup>101</sup> was unable to prosecute high-level government officials because of political interference from the office of the Attorney –General and minister of justice who has to approve charges before they are forwarded to the courts for prosecution.<sup>102</sup>

The Sierra Leone police was praised for acting as a professional force during the 2007 elections. Yet there were complaints about unprofessional conduct and corruption among junior or low ranking officers-sexual abuse of female detainees; widespread extortion from civilians; requiring victims of crimes to pay money before their report is filed for investigation.

Human Rights Watch finally added its voice to the outcry for the abolition of the death penalty,<sup>103</sup> the autonomy of the Anti-corruption commission, and the strengthening of the newly established National Human Rights Commission<sup>104</sup>.

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<sup>101</sup> This commission was set up by the Anti-Corruption Act of 2001.

<sup>102</sup> See n 60 above.

<sup>103</sup> Abolition of the death penalty was recommended by the Truth and Reconciliation commission (TRC) IN 2005.

<sup>104</sup> The National Human Rights Commission Act 2006.

## CHAPTER THREE

### IMPROPER/UNLAWFUL MEANS OF ENFORCING THE LAW

#### 3.1 Introduction

There are situations when law enforcement agents violate human rights under the belief that they have been empowered or authorised to do so because of the prevailing situation.<sup>105</sup> Their actions are sometimes sanctioned by law or some executive orders or authority. Post elections violence and states of emergency for instance allow the law enforcement agents especially the Police to use high handed methods of enforcing the law. This may also be the result of derogations on human rights provisions in the constitution by heads of state to deal with an emergency situation. This chapter will highlight some of those situations with a view to discuss the legality or otherwise of those methods in such situations.

#### 3.2 State of emergency

This is a common tool used by many leaders not only to protect the interest of the general good<sup>106</sup> but also to control dissidents and political opponents. During such emergencies, certain rights such as freedom of Assembly or association,<sup>107</sup> movement,<sup>108</sup> expression,<sup>109</sup> privacy,<sup>110</sup> protection from arbitrary arrest,<sup>111</sup> and the

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<sup>105</sup> Personal observation of the researcher.

<sup>106</sup> In cases of national disasters or internal unrest, a state of emergency may be declared to protect citizens or residents in the affected area.

<sup>107</sup> Section 26 of the 1991 constitution.

<sup>108</sup> Section 18 (n 105 above).

<sup>109</sup> Section 25 (n 106 above).

right to property<sup>112</sup> are seriously curtailed by the state or violated by law enforcement agents. Section 29 of the constitution of Sierra Leone for instance gives the circumstances under which a state of emergency can be declared:

Whenever in the opinion of the president a state of public emergency is imminent or has commenced, the President may at any time, by proclamation which shall be published in the Gazette, declare that:<sup>113</sup>

The President may issue a proclamation of a state of public emergency only when:<sup>114</sup>

- (a) Sierra Leone is at war;
- (b) Sierra Leone is in imminent danger of invasion or involvement in a state of war; or
- (c) There is actual breakdown of public order and public safety in the whole of Sierra Leone or any part thereof to such an extent as to require extraordinary measures to restore peace and security.

Apart from the above mentioned situations no other situation should permit the President to declare a state of emergency and allow for a derogation on the fundamental rights and freedoms enshrined in the constitution.

*(a) Derogation on fundamental rights.*

The constitution of Sierra Leone makes provision for the arrest and detention of persons as well as for the entering of premises without warrant, search and seizure

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<sup>110</sup> Section 22(n 107 above).

<sup>111</sup> Section 17(n 108 above).

<sup>112</sup> Section 21(n 109 above).

<sup>113</sup> Section 29 (1).

<sup>114</sup> Section 29 (2) .

of property during a state of emergency.<sup>115</sup> However unlike the constitution of South Africa<sup>116</sup> for instance, it (i.e the Sierra Leone Constitution) is very silent on the issue of non-derogable rights of the detainees or the arrested persons. Hence there is little or no safe guards against violations of rights which otherwise should not be derogated from by the law enforcement agents of the state under any circumstance.

*(b ) Constitutional safeguards. The Post Apartheid Example.*

In the South African Constitution, for example, section 37(5)<sup>12</sup> sets out the extent to which fundamental rights can be infringed during a declared state of emergency<sup>117</sup>.

But certain important rights are however regarded as non-derogable, namely:

- (a) The right to life (section 11);
- (b) The right to remain silent and to be informed of such right (section 35(1)(a)(b));
- (c) the right to be informed of the charge(section 35(3)(a));
- (d) the right to a public trial before an ordinary court(section 35(3)(c));
- (e) the right to choose and be represented by a legal practitioner(section35(3)(f));
- (f) the right to be presumed innocent(section 35(3)(b));
- (g) the right of appeal to, or review by a higher court (section 35(3)(o)).

Section 35(5)<sup>118</sup> also clearly states that even during a state of emergency evidence will be excluded if the admission of such evidence would render the trial unfair.<sup>119</sup>

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<sup>115</sup> Section 29 (6)(a).

<sup>116</sup> The constitution of South Africa Act No.108 of 1996.

<sup>117</sup> Nel & Bezuidenhout (eds) *Policing And Human Rights* (2002) 435.

<sup>118</sup> N 114 above.

<sup>119</sup> Nel & Benzuidenhout (n 115 above) 436.

The other important safeguards in the South African constitution are sections 37(6) and (7) which stipulates that:

“(6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:

- (a) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
- (b) A notice must be published in the national *Government Gazette* within five days of the person being detained, stating the detainee’s name and place of detention and referring to the emergency measure in terms of which that person has been detained.
- (c) The detainee must be allowed to choose and be visited at any reasonable time by a medical practitioner.
- (d) The detainee must be allowed to choose and be visited by at any reasonable time by a legal representative.
- (e) A court must review the detention as soon as reasonably possible, but not later than ten days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
- (f) A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
- (g) The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at

those hearings, and to make representations against continued detention.

- (h) The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
- (7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.<sup>120</sup>

*(c) Judicial safeguards.*

In Sierra Leone and in many other West African countries, the judiciary has little control over executive decisions in especially periods of emergency. For instance during an emergency in Sierra Leone,<sup>121</sup> a detainee can only make a request for his case to be heard after thirty days from his first detention to a tribunal set up by the chief justice. But the recommendations of the tribunal are not binding upon the authority that ordered the detention. Section 29(17)(c) stipulates:

On any review by a tribunal in pursuance of paragraph (a) of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Looking again at South Africa, another important safeguard in the constitution<sup>122</sup> is the authority of the courts as set out in section 37. By this provision,

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<sup>120</sup> n 114 above.

<sup>121</sup> Section 29 (17) of the Constitution of Sierra Leone 1991.

<sup>122</sup> n 116 above.

any competent court may decide on the validity of a declaration of a state of emergency, its extension and the legality of any legislation passed or action taken during the period of emergency. This puts the judiciary in the position of watchdogs for citizen's rights against violations by state agents under cover of an emergency.<sup>123</sup>

This exemplary mandate of the South African courts was set up by Lord De Villiers in *In re Kok and Balie*<sup>124</sup> He stated:

The disturbed state of the country ought not, in my opinion, to influence the court, for its first and sacred duty is to administer justice to those who seek it and not to preserve the peace of the country. The civil courts of the country have but one duty to perform and that is to administer the laws of the country without fear, favour and prejudice independently of the consequences which ensue.<sup>125</sup>

If the court is able to exercise extensive jurisdiction over all actions taken during a state of emergency and also over all legislation enacted at such times, this will prevent a lot of abuses by law enforcement officials.<sup>126</sup> The situation becomes more serious when there is a collusion between the Police and the law officers department for instance<sup>127</sup>. In Ethiopia for example, the law<sup>128</sup> provides that the prosecutor shall have control over police investigation, but research has proved that this has never

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<sup>123</sup> M Pansegrouw 'State of Emergency' in Nel & Benzuidenhout *Policing and Human Rights* (2002) 437.

<sup>124</sup> (1879) Buch 45 at 66.

<sup>125</sup> (Pansegrouw n 123 above).

<sup>126</sup> 'as above'.

<sup>127</sup> See n 58 above where the Police and the Law office take instructions on criminal matters from the AG.

<sup>128</sup> Articles 8 & 9 criminal procedure code & art 23(4) of proclamation No.4 1995.

happened. What follows is a large number of undecided files and over detention of many people in Ethiopian jails.<sup>129</sup>

Prior to the 2007 elections in Sierra Leone, a state of emergency was declared specifically to put a ban on all politicking until the President declares political activities officially opened. The president's delay in lifting the emergency was challenged in court until the emergency was lifted.<sup>130</sup>

### **3.2.1 Law enforcement during emergencies.**

In Sierra Leone, like in many other countries, a declared state of emergency gives law enforcement officials a bad excuse to violate human rights sometimes with impunity. Hence it is very common in a state of emergency to have; mass arrests, forceful entry, search and seizure of property, unlawful detention, restriction on bail, and disappearances.<sup>131</sup>

#### **(a) Mass Arrests**

Article 29 (2) of Universal Declaration of Human Rights(UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR) states that no one should be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.<sup>132</sup>

This provision notwithstanding, mass arrest is carried out to quell down riots or protests by trade unions or student groups. And it sometimes coincides with the

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<sup>129</sup> Tadesse Meseret "Criminal Investigation in Addis Ababa: A legal Appraisal of the Challenges and Prospects in the Criminal justice system"(2008) 14

<sup>130</sup> [www.globalsecurity.org/military/library/news/2007/08/mil-070828-voa04.htm](http://www.globalsecurity.org/military/library/news/2007/08/mil-070828-voa04.htm) (accessed 26<sup>th</sup> September (2008).

<sup>131</sup> N 110 above.

<sup>132</sup> UNHCHR International Human Rights Standards for Law Enforcement A pocket Book on Human Rights for the Police (1996) 6.



use of force. If the situation becomes very volatile or uncontrollable, the police may conduct mass arrest of especially the ring leaders to control the situation.<sup>133</sup>Sometimes however, it is the attitude of the police that will transform a somewhat peaceful protest into a violent situation giving them (the police) an excuse to use force.<sup>134</sup>

This form of arrest is still carried out today in post conflict Sierra Leone with serious consequences at times. As recently as 2006, a school girl was shot by the police during a riot after an inter-secondary school football competition.<sup>135</sup>

The other situation where mass arrest is done is during murder investigations. Due to the lack of adequate professional training and basic logistics to handle such cases<sup>136</sup>,the Sierra Leone police still employ the rules formulated by the English judges of the Nineteenth Century. Rule one of these rules stipulates that an investigator is allowed to ask questions to anybody who might help him to know a culprit.<sup>137</sup>

It is worthy to note that Sierra Leone and many other common law African police still make use of the “Judges’ rules” to conduct mass arrests. Whether it is a misunderstanding of the rules or a deliberate misinterpretation, the fact remains that these rules are used by law enforcement officials to violate citizens’ rights.<sup>138</sup>

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<sup>133</sup> In 1977 the student union leader was arrested for calling a nationwide boycott of classes and lectures in schools and colleges in Sierra Leone.

<sup>134</sup> O Gbla (n 38above) 15.

<sup>135</sup> n 73 above U S State Department country report on Sierra Leone 2007.

<sup>136</sup> J P Chris-Charley ‘Arms Regulation, A challenging issue for the police force in post-war law and order enforcement’ in A Ayisi & R E Poulton (editors) *Bound to Cooperate Conflict, Peace and People in Sierra Leone (2006)* United Nations Institute For Disarmament Research (UNIDIR) 2<sup>nd</sup> edition p 82.

<sup>137</sup> Judges Rule (1) Criminal Evidence Act 1894.

<sup>138</sup> Personal comment of the researcher who witnessed many of such arrests under these rules in Sierra Leone.

*(b ) Search And Seizure*

The power to search and seize property, whether in an emergency or not, directly relates to the individual's right to privacy, freedom to own property and his right to dignity.<sup>139</sup>It is an internationally accepted principle that save in exceptional circumstances, prior authorization should be obtained for search and seizure. The authority issuing the warrant should also be independent and impartial. The unreasonable and unjustifiable violation of a person's right to privacy, dignity, property, and freedom and security holds serious consequences, not only for police officials but also for the administration of justice.<sup>140</sup>

Sadly enough, these rights are violated during a state of emergency and during normal times. The challenge facing law enforcement officials especially police is to reconcile human rights with everyday policing. In 1987, for instance, the then president of Sierra Leone declared a state of economic emergency.<sup>141</sup>This gave the law enforcement officials power to enter premises without warrant<sup>142</sup> (break and enter if need be), confiscate any amount above fifty thousand Leones and prosecute the culprits for the offence of unlawful possession. Ten years later in 1998, under the president Kabba administration, another state of emergency was declared to enable peace keeping officers from the Economic Community of West African States Monitoring Group (ECOMOG) to forcefully enter "suspected" premises with arms, confiscate such arms if any, arrest the owners of such premises and or such arms

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<sup>139</sup> Articles 5 and 14 ACHPR, Article 12 of UDHR.

<sup>140</sup> J Koekemoer 'Search and Seizure' in Nel &Benzuidenhout (eds) *Policing And Human Rights* (2002) 212-213.

<sup>141</sup> State of economic emergency Act no.1 (1987).

<sup>142</sup> Section 4 of the criminal procedure Act of Sierra Leone 1965 provides that searches can only be conducted in premises with the authority of a warrant.

and hand them over to the state police for investigation and subsequent prosecution by the department for public prosecution.<sup>143</sup>

This action preceded the disarmament of combating groups agreed in the Lome Peace accord.<sup>144</sup> The annoying point is that, whilst the searches were going on, more than just arms and ammunition were confiscated and a lot of people suffered at the hands of these law enforcement officers both from ECOMOG and the local security officers. There was a lot of high handedness which resulted in the deaths of many people.<sup>145</sup>

*(c) Disappearances*

One of the most serious outcomes of a state of emergency is “disappearance” and it is usually the most difficult area to investigate and on which to mobilise effective action especially when they were authorized by military or civilian dictatorships.<sup>146</sup> Today however, this is no longer a common phenomenon in Africa due to the intervention of many human rights organizations especially Amnesty International. Even where it does occur in our post conflict situations, the intention will be to temporarily keep the abductees quiet and not to permanently eliminate them as it happened in the One Party era of governance in Africa by which Sierra Leone was also affected from 1978 to 1996.<sup>147</sup>

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<sup>143</sup> J P Chris Charley (n 132 above) 79.

<sup>144</sup> Article xvi of The Lome Peace Accord 1999.

<sup>145</sup> During the searches, people suspected to be rebel collaborators were seriously molested.

<sup>146</sup> Amnesty International (1994) 15 “*Disappearances*” and *political killings: human rights crisis of the 1990's: a manual for action*. Amnesty International Amsterdam.

<sup>147</sup> Kandeh J D ‘Sierra Leone’s Post –conflict elections of 2002’ (2003) 41 *Journal of Modern African Studies* 192

Civil society has joined Amnesty International in their vigilance against disappearances. Also with the increase in democratization in Africa<sup>148</sup> and some former communist Republics like Peru, Honduras, it is not common for either dictators or their agents to make use of disappearances to suppress political dissent. The International human right commissions and courts<sup>149</sup> have also made it clear that “disappearances” are like any other human right abuse for which no immunity is given to perpetrators whether by a state or by individuals.

First in the land mark case of *Velasquez Rodriguez v Honduras* IACHR (26 September 1986) Ser L/Doc 8 REV.1. It was established that not only must the individuals responsible for “disappearances” and extrajudicial executions be brought to justice: the state itself should be held responsible for killings and “disappearances” which it ordered or in which it had acquiesced.<sup>150</sup>

In the instant case, the Inter-American Commission on Human Rights received a petition against the state of Honduras concerning the disappearance of Manfredo Velasquez. After protracted consideration, the commission asked the court to determine whether Honduras had violated articles 4, 5 and 7 of the American Convention<sup>151</sup> and to rule that the consequences be remedied and compensation paid to the injured party or parties.<sup>152</sup>

In its judgment, the Inter-American Court decided also to rely on Article 1 (1) of the American Convention, in which the state parties undertake to respect the rights recognized in the convention and to ensure the free and full exercise of those rights to all persons subject to their jurisdiction. The court held:

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<sup>148</sup> “Freedom House”2007 report <http://www.freedomhouse.co.uk> (accessed 27<sup>th</sup> September 2008)

<sup>149</sup> The IACHR; the ACHPR; the ECHR and their respective courts.

<sup>150</sup> AI 1994(n 144 above),164

<sup>151</sup> The American Convention on Human Rights 1975

<sup>152</sup> AI 1994 (n 145 above),165

The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the state...any exercise of public power, that violates rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the convention.<sup>153</sup>

In the former Rhodesia (Zimbabwe), the army, police and other security agencies were responsible for widespread extrajudicial executions, disappearances, torture and other human rights violations which had been thoroughly documented by both domestic and international human rights organizations<sup>154</sup>.Whether they will be prosecuted in future for such crimes is an open question. The fact for now is that most of these perpetrators were granted amnesty (The Lancaster House Amnesty) in the new Zimbabwe and have not been prosecuted. Some even retained their jobs in the new dispensation.<sup>155</sup>

The Zimbabwe situation is true for many post –conflict African countries as we shall see later in the cases of South Africa and Sierra Leone with the introduction of the Truth And Reconciliation Commission<sup>156</sup> and the signing of the Lome Peace Accord<sup>157</sup> respectively.

The African Commission, like its American counter part, showed its intolerance for derogation by states or their agents on fundamental rights even during

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<sup>153</sup> As above

<sup>154</sup> AI 1994 (148 above), 46

<sup>155</sup> AI 1994 (n 149 above),48,49.

<sup>156</sup> The Truth And Reconciliation Commission of South Africa in 1995 appears to put a stop to any possible prosecution of former Apartheid law enforcement officials.

<sup>157</sup> Article ix (1) (2)& (3) of The Lome Peace Accord 1999 For Sierra Leone granted amnesty to former members of the Revolutionary United Front(RUF),and other combatants who perpetrated some of the worse atrocities during the war.

emergencies. In *Commission Nationale des Droits de l'Homme et des Libertes v Chad* (2000) AHRLR 66 (ACHPR1995),<sup>158</sup> the complaint alleges among other things, the harassment of journalists, arbitrary arrest of several people including opposition party leaders, killings, disappearances and torture and the assassination of Bisso Mamadou. In spite of the government's denial of the allegations, the Commission<sup>159</sup> finds that the government of Chad has committed serious and massive violations because it has failed to protect those within its borders, irrespective of the fact that their attackers had not been government agents. The commission also held that the African Charter does not allow state parties to derogate from their Charter obligations during emergency situation.<sup>160</sup>

*(d) Extrajudicial Detention*

Another outcome of a state of emergency is extrajudicial detentions which may easily amount to arbitrariness if the arrested persons are not charged to court within the time stipulated by law<sup>161</sup>. This practice is very common in post conflict countries temporarily occupied by international peace keepers.<sup>162</sup> And this in turn very often clash with both domestic and international legal provisions on arrest generally.

The criminal procedure Act<sup>163</sup> of Sierra Leone for instance makes provision for arrest with and without warrant,<sup>164</sup> but there must be a reasonable ground of

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<sup>158</sup> Heyns And Killinder (editors) *Compendium of Key Human Rights Documents Of The African Union (2007)* 182.

<sup>159</sup> ACHPR.

<sup>160</sup> n 153 above, 182.

<sup>161</sup> See section 17 of The Constitution of Sierra Leone 1991.

<sup>162</sup> Sierra Leone and Liberia had (ECOMOG) and later (UNAMSIL) and (UNMIL) respectively during their periods of war.

<sup>163</sup> Act no.5 of 1965.

<sup>164</sup> n 158 above, sections 4 & 13(1)

suspicion for a crime or a positive accusation of having committed a crime in either case. And any such arrest should be investigated and the suspect charged to court within 72 hours, for normal criminal offences, or within 10 days for economic and environmental offences, or the suspect is released within 24 hours if no offence is found against him.<sup>165</sup>

These provisions were not respected during the ECOMOG intervention in 1998 and were also ignored by the local law enforcement officials long after ECOMOG had left.<sup>166</sup> People were detained for longer periods sometimes at undisclosed locations without any criminal charges. Where criminal charges were preferred, they were hardly ever proved in evidence in court. The case of *The State V RUF* (unreported)<sup>167</sup> illustrates an instance where the accused persons were detained for inordinately long periods (in this case close to three years) for alleged crimes of subversion, murder and other atrocities during the rebel war, but were eventually released when the court found out that the State either lost interest in prosecuting or lacked enough evidence to prove their case.

As mentioned above, there is always a clash of laws when it comes to enforcing either international law provisions or domestic law provisions on the issue of detention. A look at the situation in post-conflict Kosovo for instance, Noelle Quenivet<sup>168</sup> states:

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<sup>165</sup> Section 17 The constitution of Sierra Leone 1991.

<sup>166</sup> ECOMOG officially left in 2004 and UNAMSIL took over as peace keepers.

<sup>167</sup> The accused persons were discharged in 2007 when the state cannot proceed with the prosecution.

<sup>168</sup> Quenivet N 'Promoting And Abiding By The Rule Of Law: UN Involvement In Post-Conflict Justice' in Arnold R & Knoops A Jan-Geest (editors) *Practice and Policies of Modern Peace Support Operations Under International Law.*(2006) 85

On the basis of Security Council Resolution 1244(1999), KFOR<sup>169</sup> commanders by directives enacted by the competent NATO command on the right to detain, are authorized to order “extrajudicial detention.” This measure is based on a military rather than on a judicial decision. On this basis, people may be arrested upon order of the Austrian commander of the multinational Task force, provided that this order is legitimate under the ROE. KFOR documents do not state that the period of detention shall be limited to a maximum of 48 or 72 hours, during which a specific charge shall be brought against the detainee, or the latter shall otherwise be released.<sup>170</sup>

### **3.3 Protecting Law Enforcement Officials in Post-Conflict States**

The law enforcement officials, as we have seen above, may have committed the worst violations of human rights in the name of the state but they may not necessarily face “justice” because of certain mechanisms which the State usually employ to protect its agents.<sup>171</sup> These protection mechanisms run contrary to Amnesty International’s 14-Point programs for the Prevention of “disappearances” and Extrajudicial Executions<sup>172</sup>. It states among other things that if the criminal justice fails to bring violators of human rights to justice then the notion of justice which is an important basis for social order, is dangerously distorted. And that bringing perpetrators to justice will remove the question of impunity and restore the rule of law.<sup>173</sup>

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<sup>169</sup> Kosovo Force (KFOR) was in charge of security law and order until UN mission in Kosovo (UNMIK) replaced them.

<sup>170</sup> N 161 above.

<sup>171</sup> AI 1994 (n 152 above) 157.

<sup>172</sup> Amnesty International 14 point programs on Disappearances and extrajudicial executions 1990.

<sup>173</sup> n 169 above.



(a ) *The 'Political question' doctrine*

This doctrine limits the exercise of federal judicial power in the United States. It is used as a justification for a motion to dismiss a case of human rights litigation before US courts in cases where one or more factors are present which may compromise the justiciability of a case.<sup>174</sup>In *Baker v Carr*<sup>175</sup>the US Supreme Court cited matters involving foreign affairs and the exercise of executive powers that fall within the political question doctrine. The ruling in a sense ousted the jurisdiction of the court. This doctrine may not be directly replicated in African legal systems but its application is noticeable in rulings or decisions that favour the government against the individual(s).In *The Fourie Case*<sup>176</sup> for instance, the Constitutional court of South Africa<sup>177</sup> in a rather controversial ruling, referred the question of allowing same sex couples (lesbians) to marry, to parliament instead of venturing an interpretation of the Marriage Act<sup>178</sup> which should allow same sex couples to marry.<sup>179</sup>This is an example of a political question doctrine.

In Sierra Leone, there is no direct application of the political question doctrine but as mentioned earlier, the fused office of the Attorney –General and minister of justice has power to enter a *Nolle Prosequi*<sup>180</sup> on any criminal matter brought against

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<sup>174</sup> Bachmann S-Dominic *Civil Responsibility for Gross Human Rights Violations The need For A global Instrument (2007) 22.*

<sup>175</sup> 369 US 186 (1962).

<sup>176</sup> *Minister of Home Affairs And another v Fourie* CCT 60/2004.

<sup>177</sup> Section 146 of the Constitution of South Africa 1996 makes the Constitutional Court the highest court for all constitutional matters.

<sup>178</sup> The Civil Marriages Act of 1968 defines marriage as a union between two heterosexual couples thereby excluding same sex couples.

<sup>179</sup> See also *Coalition of Gays and Lesbians v Minister of Home Affairs & Others* CCT 10/ 2004.

<sup>180</sup> Section 66(4)(c) Of the Constitution of Sierra Leone 1991.

the government. And this power has been effectively used in post conflict Sierra Leone to prevent claims by victims of the war against the government and or its agents.

*(b ) The Act of State Doctrine*

This doctrine prohibits the US judiciary from examining the validity of a foreign sovereign's act regardless of the existence of possible international law infringements.<sup>181</sup>This doctrine has the potential to undermine litigation in cases where human rights violations were authorized or encouraged by the ruling government itself.<sup>182</sup>

The equivalent of 'The Act of State Doctrine' in Africa is the principle of 'Sovereignty'<sup>183</sup> (an objective of the Constitutive Act).Under a narrow interpretation of this principle, many African leaders and their agents violated human rights with the conviction that no other state can interfere into another's internal problems.<sup>184</sup>

The perceptions started to change first in the case of *The Republic of the Philippines v Marcos*,<sup>185</sup>the Ninth Circuit refused to apply the act of state doctrine to shield the activities of former Philippines president Marcos. It concluded that the classification of 'act of state' is not a promise to the ruler of any foreign country that his conduct, if challenged by his own country after his fall may not become a subject of scrutiny in the American courts.<sup>186</sup> Second, the UN Security Council can evoke its

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<sup>181</sup> The doctrine is similar to diplomatic immunity see the case of *Miguel vThe Sultan of Jahore in the 1960's*.

<sup>182</sup> Bachmann S-Dominic (n 171 above) 23.

<sup>183</sup> Article 3(b) of the constitutive Act of the African Union (2000/2001)

<sup>184</sup> Article 2 of the Charter of the United Nations 1945

<sup>185</sup> (1988) 862 F 2d 1355 (9<sup>th</sup> Cir).

<sup>186</sup> n 179 above, 23.

powers under chapter vii to authorize the use of force to restore law and order in any country.<sup>187</sup> UNAMSIL peace keepers and ECOMOG were authorized to use force to protect themselves from attacks by the Revolutionary United Front (RUF) in Sierra Leone.<sup>188</sup>

*(c) Limitation Statutes*

Steven R Ratner and Jason S Abrams<sup>189</sup> states that the notion of a chronologically fixed endpoint to the possibility of prosecution is common in the world's legal systems, but special issues arise regarding gross offences against the person. At international law level, states are prohibited from applying the statute of limitation on war crimes and crimes against humanity.<sup>190</sup> The domestic laws of many states do not provide for limitation statute for such crimes but may have limitation statutes for crimes that do not fall within the category mentioned above<sup>191</sup>. This can be used in post conflict societies like Sierra Leone to protect law enforcement officials.

*(d) Peace Accords, TRC's and Amnesties*

Generally, it would seem that only leaders of dissident groups would welcome peace accords, truth and reconciliation commissions and amnesties after a period of

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<sup>187</sup> Article 41 Chapter 7 UN Charter 1948.

<sup>188</sup> As above.

<sup>189</sup> Ratner R S & Abrams S J *Accountability For Human Rights Atrocities In International Law Beyond the Nuremberg Legacy* (2001) 143.

<sup>190</sup> R H Miller, *The Convention on the Non-applicability of statutory limitations to War crimes and Crimes against humanity*, 65 AJIL 476, 478-479, 484 and n.50(1971)

<sup>191</sup> Sierra Leone has a limitation statute for minor criminal offences and some felonies.

conflict, but the state makes use of these mechanisms to shield its agents from prosecution for human rights violations.<sup>192</sup>

The South African TRC bears striking similarities with the one in Sierra Leone to the extent that perpetrators of human rights violations in the old order only need to confess their past deeds and go.<sup>193</sup>

#### *(e) Transfers*

This type of shield is provided by members in the law enforcement organs to their colleagues to either slow down the process of prosecution or to discourage it eventually. And sometimes for the personal security of the perpetrator at the end of a conflict. It is very common within the military forces and could be a very effective shield in big countries like Nigeria.

Once the transfer or posting is done, it either gives the perpetrator enough time to rebuff the evidence against him or it keeps him away from prosecution for at least some time. Post conflict Sierra Leone witnessed a lot of transfers for both police and military officers until the beginning of the implementation of the TRC recommendations.<sup>194</sup>

### **3.4 Conclusion**

We have so far seen how law and order is enforced by methods which result to illegality and gross violation of human rights. Some outcomes of law enforcement under states of emergency which are declared mostly during and after a conflict, and

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<sup>192</sup> Article ix of the Lome peace Accord 1999.<http://www.sierraleone.peaceaccord.org/> (accessed 28 September 2008).

<sup>193</sup> Chapter 2 sec.3(1) Promotion of National Unity And Reconciliation Act no. 34 1995 in South Africa and Article 9 Lome Peace Accord of Sierra Leone 1999.

<sup>194</sup> <http://trcsaleone.org/>

how counter productive these outcomes can be. The different methods used by states and or state agents to evade prosecution for past violations. The next chapter will focus on the use of certain illegal methods like force, fraud, fear corruption etc in enforcing the law and how these methods impact on the human rights of people in societies that have come out of conflict in Africa.

## CHAPTER FOUR

### **Investigation: Force, Fear, Fraud, Corruption as vehicles for Human Rights Violations.**

#### **4.1 Introduction**

This chapter will focus on investigation methods vis-à-vis the legal provisions at both domestic and international law which are expected to guide law enforcement officials during investigation of crimes.<sup>195</sup> The use of these methods in post conflict Sierra Leone will be viewed against their impact on the human rights of victims who expect better but get much less from their “protectors”<sup>196</sup>. There has been substantial training for all sectors of law enforcement by the International community<sup>197</sup> which is geared towards a change of attitude and the advancement of human rights. But the problem that police and other enforcement agents continue to have is to really distinguish between their roles and human rights in the performance of their duties.<sup>198</sup>

#### **4.2 Police Duty and Human rights: Criminal Investigation, Prevention, Detection.**

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<sup>195</sup> UN *Human rights standards and practice for the police: expanded pocket book on human rights for the police*; New York (2004)

<sup>196</sup> It is expected that the law enforcement officials will be more sympathetic to people who have come out of war when enforcing the law in Sierra Leone.

<sup>197</sup> Between 2000 and 2007, the British government provided training for the criminal justice sector through (DFID); the UN and Commonwealth have also provided training for this sector. See *A Compendium of Human Rights Instruments; A training Seminar on Police Ethics, Human Rights and the Rule of Law For Senior Police Officers (2005)*.

<sup>198</sup> Nel & Bezuidenhout (n 138 above).

One of the primary reasons for having a police force, is for the efficient prevention, detection, and impartial investigation of crimes. As C de Rover<sup>199</sup> puts it “prevention and detection of crime are among the areas of immediate interest to law enforcement agencies around the world.” Section 155 of the constitution of Sierra Leone,<sup>200</sup> sets up the Police of that country and its primary responsibilities are, the detection of crime and the apprehension of offenders, the preservation of law and order, the protection of property and the due enforcement of all laws and regulations with which they are directly charged.<sup>201</sup>

Post war Sierra Leone witnessed the fragmentation of police investigation by different ‘Police outfits’ which sprung up after the war<sup>202</sup>. Local chiefs, private security guards, drivers associations, traders union, military officers, etc will investigate and sort out both civil and criminal matters instead of referring to the regular police or court<sup>203</sup>. This made it difficult for the police to carry out their constitutional and legal mandate to investigate criminal offences in the name of the state.<sup>204</sup>

Suffice it to say that normalcy returned almost before the final drawdown of UNAMSIL in 2006<sup>205</sup>. The Sierra Leone Police (SLP) was once again fully in charge of criminal investigation. Therefore the continued violation of human rights through the use of force, fraud, fear, corruption cannot be justified.

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<sup>199</sup> C de Rover *To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces ICRC (1998) 171.*

<sup>200</sup> The constitution of Sierra Leone Act No.6 1991.

<sup>201</sup> Section 4 of The police Act of Sierra Leone Act no.7 1964.

<sup>202</sup> Bruce B ‘Who Do people Turn to for Policing in Sierra Leone?’(2005) 23 *Journal of Contemporary African Studies* 371.

<sup>203</sup> Section 155 and section 120 of the 1991 constitution of Sierra Leone.

<sup>204</sup> n 196 and 197 above.

<sup>205</sup> Baker B (n 198 above) 371.

#### 4.2.1 *The use of force/violence*

J D van Der Vyver believes that every state has a leading function to maintain law and order within its territory through some kind of 'political power'<sup>206</sup>. Such political power has the propensity for physical coercion through the agency of the police and or the military. But in as much as it is important for the state to exercise such power, it is equally important that the subjects be protected against the abuse of state authority<sup>207</sup>.

The 1991 constitution<sup>208</sup> guarantees to everyone the right to life, protection from arbitrary arrest, protection from inhuman treatment and privacy of home and other property.<sup>209</sup> That is to say, the application of any force to a person or to his or her property, necessarily infringes upon at least one or more of the above rights.<sup>210</sup> In terms of section 13(1) of The Criminal Procedure Act, only reasonable and necessary force may be used to affect an arrest and nothing gives the right to cause the death of the person to be arrested.<sup>211</sup>

At the outset, it should be noted that the use of proportionate force is not outrightly prohibited<sup>212</sup>. It is the use of disproportionate or excessive force that is condemned. A nation like Sierra Leone just coming out of war, will need a lot of training and sensitization to help the law enforcement officials make the distinction between the

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<sup>206</sup> J D van Der Vyver 'State Sponsored Terror Violence'(1998) 4 *South African Journal on human Rights* 55-56.

<sup>207</sup> n 202 above.

<sup>208</sup> n 196 above.

<sup>209</sup> n 204 above Sections 16,17,20 and 22 respectively.

<sup>210</sup> T Geldenbuys 'The Use of Force' in Nel & Benzuidenhout (eds) *Policing And Human rights* (2002) 193 see also Articles 6(1) and 9(1) of the ICCPR, Article 4 of ACHPR, art 4 of American Convention on Human rights (ACHR),art 2 ECHR.

<sup>211</sup> Section 13(1) of the CPA 1965.

<sup>212</sup> The use of force in self defence or in defence of another who faces an obvious danger to his life is permissible but should be reasonable.



internationally accepted 'proportionality' principle and the 'minimum force' principle<sup>213</sup>.

In 2005, for instance, some operational support division (OSD) police officers were charged to the police disciplinary court for assaulting a journalist<sup>214</sup>. The following year, eight police officers majority OSD personnel were dismissed from the force for using excessive force, assault and stealing from civilians<sup>215</sup>.

(A) *When is the use of force permitted?*

The international community has established general principles to be observed by law enforcement officials throughout the world which should also guide the regulations on the use of force established by domestic laws<sup>216</sup>. These principles are found in the United Nations Code of Conduct for Law Enforcement Officials<sup>217</sup>, and the UN Basic Principles on the use of force and Firearms by law Enforcement Officials<sup>218</sup>.

According to these standards, force of any kind should only be used exceptionally:

- (a) when strictly necessary
- (b) to the extent required for the performance of their duties such as to prevent crime and to effect or assist in the lawful arrest of suspected offenders.<sup>219</sup>

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<sup>213</sup> N Haysom 'Licence To Kill Part II: A comparative survey of the Law in The United Kingdom, United States Of America And South Africa' (1987) 3 *South African journal of Human Rights* 202.

<sup>214</sup> 'Police Brutality in Freetown' *Awoko Newspaper* 17 March 2006 1

<sup>215</sup> [www.state.gov/g/drl/rls/hrrpt/2006/78756.htm](http://www.state.gov/g/drl/rls/hrrpt/2006/78756.htm). (Accessed 1<sup>st</sup> October 2008).

<sup>216</sup> Amnesty International (AI) & CORDESRIA (2000) *Monitoring and Investigating Excessive use of Force. A companion to UKWELI: Monitoring and Documentation of Human Rights Violations in Africa (2000)* 5.

<sup>217</sup> Adopted by the General Assembly of the UN of 17 December 1979.

<sup>218</sup> Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders 27 August to 7 September 1990.

<sup>219</sup> Sec. 13 (1) (a) –(f) of the CPA of Sierra Leone 1965.

(c ) after all non-violent methods available have been used but have remained ineffective.

Governments are encouraged to adopt and implement these standards on the use of force and firearms against persons by law enforcement officials. They are furthermore encouraged to keep the ethical issues associated with the use of force and firearms constantly under review<sup>220</sup> bearing in mind that the use of force beyond these limits will be characterized as “excessive”<sup>221</sup>.

#### 4.2.2 *The use of fear/intimidation*

The investigation of crimes in Sierra Leone like many other commonwealth jurisdictions should be based on the presumption of innocence.<sup>222</sup>This means an accused is presumed innocent until he is proven guilty by a competent court of law<sup>223</sup>. In many law enforcement systems, fear or intimidation continues to be a major tool used to get quick confessions or convictions. This runs contrary to the UNHCHR guidelines on police investigation which says “No pressure, physical or mental, shall be exerted on suspects, witnesses or victims in attempting to obtain information”<sup>224</sup>

The use of fear and intimidation ‘techniques’ in post conflict Sierra Leone, can be traced to the communist and socialist orientation of that police during the cold war.<sup>225</sup>This continues to have serious implications on the service delivery of the

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<sup>220</sup> C de Rover (n 196 above) 275.

<sup>221</sup> AI &CORDESRIA (n 213 above) 5.

<sup>222</sup> Sec.23 (4) of the constitution of Sierra Leone 1991.UDHR,article11(1);ICCPR,article14(2).

<sup>223</sup> Sec.120 of the 1991 Constitution. This suggests that the finding of guilt is legal if it comes from the courts recognized by the constitution. Finding of guilt by “mushroom” courts or (*kangaroo Courts*) is illegal.

<sup>224</sup> UNHCHR Centre For Human Rights: *International Human Rights Standards For Law Enforcement A pocket Book on Human Rights for the Police New York and Geneva* (1996) 5.

<sup>225</sup> During the cold war, many police officers who were trained in Russia and Cuba to protect the regime of the day still serve in senior positions in the force.

force. In the post communist societies for instance, in order to obtain confessions from those under arrest, threats, violence and torture were employed along normal interrogation techniques<sup>226</sup>. This may not be the exact case in Sierra Leone today but things like over detention of suspects, and refusal to grant bail<sup>227</sup> are still common with the investigation of crimes<sup>228</sup>.

(a ) *Orders from Above*

A common reason that instigates the use of fear is the “orders from above” phenomenon which is used by law officers department<sup>229</sup> to object to bail in court, and by police officers to refuse bail to suspects of crimes especially political suspects. In a recent case of *The State v Omrie Golley* (unreported)<sup>230</sup> the latter was investigated and charged with treason offences<sup>231</sup>. For that reason he was denied access to his relatives by the police while in police custody. His application for bail in court was objected to and refused by the court<sup>232</sup>. Furthermore, his access to his medical doctor was denied by prison officers when he reported sick all because of

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<sup>226</sup> Uldriks *N A Policing post- communist societies ;police public violence ,democratic policing and human rights (2003) 13.*

<sup>227</sup> Section 79 of the CPA Act no.31 of 1965 provides for bail at the police stations and sec 80 provides for bail by the High Court for the crime of murder and other serious felonies.

<sup>228</sup> US State Department country report on Sierra Leone 2007.

<sup>229</sup> See n 120 above, under the direction of the Attorney-General and Minister of justice who conducts all criminal cases on behalf of the State.

<sup>230</sup> <http://www.uniosl/human rights.sl> (accessed 4th October 2008).

<sup>231</sup> The Treason and State offences Act 1963, makes treason an offence in Sierra Leone that attracts the mandatory death penalty. See *Forum of Conscience v Sierra Leone(2000) AHRLJ 293 (ACHPR 2000).*

<sup>232</sup> N 228 above, it is also a non-bail able offence.

orders from above<sup>233</sup>. Following the change of government in 2007, Omrie Golley was released unconditionally<sup>234</sup>.

(b) *Respect for the law*

In Sierra Leone like in many other countries in the world, the law provides certain guidance for the action of police officers. Their authority derives individually from the law, rather than depending upon obedience to orders of their commanding officers.<sup>235</sup> Since police officers can exercise discretion on how the law is enforced, they are more vulnerable than military personnel to legal repercussions under domestic law<sup>236</sup>. By use of the discretion, police can operate with some flexibility and create opportunities for public trust in the police.

It may be true that respect for the law is difficult during periods of hostility and internal conflict. Hence many civilians will turn a blind eye to police improprieties during such periods. But to continue with impunity after conflict, will stagnate justice sector reform efforts and impact negatively on the political legitimacy and human rights reports of such countries.<sup>237</sup> The international human rights standards for law enforcement states that officials who refuse unlawful orders shall be given immunity.<sup>238</sup>

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<sup>233</sup> N 227 above.

<sup>234</sup> Human Rights Watch (n 99 above).

<sup>235</sup> A Goldsmith 'Policing after Conflict: Peace-Building and the Responsibility to Protect' in Dolgopol, U and Gardam, J (eds) *The challenge of Conflict. International law Responds (2006)* 42.

<sup>236</sup> n 232 above.

<sup>237</sup> See US State department country report on Sierra Leone 2006.

<sup>238</sup> Principle 25, Principles on Force and Firearms (n 221 above) 38

Police in post conflict countries must have due respect for the law because an accountable and effective police will be essential to public confidence in the restoration of internal security and relevant to rebuilding the rule of law.<sup>239</sup>

#### *4.3 Use of Fraud/Deceit*

The use of the above method has been and continues to be part of investigation in many law enforcement agencies<sup>240</sup>. This method easily makes up for the lacunae created by the inability to investigate crimes and obtain evidence through hard work or through genuine means. It has a lot of implications on fair trial at both domestic and international levels. The constitution of Sierra Leone<sup>241</sup> and the UNHCHR places a high premium on fair trial provisions.<sup>242</sup> The latter instrument states for instance that “in investigations, the interviewing of witnesses, victims and suspects, personal searches, searches of vehicles and premises, and the interception of correspondence and communications: everyone has the right to a fair trial”<sup>243</sup>

#### *(a) Agents Provocateurs/Entrapment*

The lack of sufficient skill and equipment accounts for the use of the above pattern which is consistent among law enforcement officials.<sup>244</sup> It is a system of investigation where the police sets up a colleague (a trap) against a suspected criminal to elicit

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<sup>239</sup> International Crisis Group, *Rebuilding Liberia: Prospects and Perils-Africa, Report no.75 (ICG, 2004)*19.

<sup>240</sup> This could be illegally obtained evidence which is still admissible in evidence in Sierra Leone.

<sup>241</sup> Section 23 of the 1991 constitution.

<sup>242</sup> UN *Human Rights Standards and Practice for the Police Expanded Pocket Book on Human Rights for the Police (2004)*.

<sup>243</sup> n 239 above.

<sup>244</sup> AI & CORDESRIA (n 218 above ) 22.

information that will lead to the criminal's arrest.<sup>245</sup>To get such information may be in the form of buying the prohibited commodity (in the case of drugs or contra banned goods) from the suspect or by befriending him. This technique is mostly used by the secret service police. In the case of Sierra Leone, by the Special branch<sup>246</sup>.

The arguments for and against the use of this pattern may be inconclusive but we should approach it from the point of view of the UN standards for policing<sup>247</sup> on investigations where it states:

- -No one shall be compelled to confess or to testify against himself or herself
- Investigatory activities shall be conducted only lawfully and with due cause
- Neither arbitrary nor unduly intrusive, investigatory activities shall be permitted
- Investigation shall be competent,thorough,prompt and impartial
- Investigation shall serve to identify victims; recover evidence; discover witnesses; discover cause, manner, location and time of crime; and identify and apprehend perpetrators
- Crime scenes shall be carefully processed, and evidence carefully collected and preserved.<sup>248</sup>

There is nothing in these standards to suggest the use of deceitful methods to obtain evidence because the right to a fair trial will be infringed.<sup>249</sup>

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<sup>245</sup> The US courts do not admit illegally obtained evidence due to the fourth and fifth amendments to the US Constitution. See <http://www.robertslaw.org/4thamend.htm> (Accessed 2nd October 2008).

<sup>246</sup> The Special branch or secret police gives information to the CID for arrest and investigation if necessary.

<sup>247</sup> n 239 above.

<sup>248</sup> n 244 above.

<sup>249</sup> One of the causes of the war in Sierra Leone was the lack of respect for human rights including fair trial. See n 190 above the TRC report of Sierra

The position in post conflict Sierra Leone regarding the admissibility of evidence is governed partly by the common law and partly by statute<sup>250</sup>. In terms of the English common law approach, there is no bar to the admissibility of relevant evidence obtained in an unlawful manner<sup>251</sup>. In the case of *Kuruma, Son of Kainu v R*<sup>252</sup> it was decided that as long as the evidence was relevant it does not matter how the evidence was obtained. This is known as the “inclusionary approach” as opposed to the “exclusionary approach”. The concern is that the misuse or overuse of the inclusionary approach has greater potential for human rights violations by law enforcement officials.

#### 4.4 The use of corruption

It is a known fact that Law enforcement officials use corruption to enforce the law and hence contribute to the violation human rights. It is almost always a moot point. But the fact remains that corruption is a very old and destructive phenomenon and an impediment to development and human progress.<sup>253</sup>

Before 1999, that is during the war period, Sierra Leone did not have a separate Anti-Corruption legislation. As such, offences involving corruption were investigated under the old larceny Act.<sup>254</sup> This Act which was close to 100 years old did not cover much to combat present day trends in crime generally and on corruption specifically.<sup>255</sup> But

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Leone. <http://www.trcsierraleone.org/drswebsite/publish/legal/shtml> (accessed 4<sup>th</sup> October 2008)

<sup>250</sup> The Common law, the Criminal Procedure Act no.31 of 1965 and the Police And criminal Evidence Act (PACE) of 1984.

<sup>251</sup> D Clarke ‘The Exclusion of Unconstitutionally Obtained Evidence’ in Nel & Benzuidenhout (eds) *Policing And Human Rights* (2002) 363

<sup>252</sup> 1955 AC 197 203.

<sup>253</sup> G Feifer ‘Russia: Police Corruption Chokes Progress’ <http://www.freiserbia.net/Articles/2003/Corruption.html> (accessed 5th October 2008).

<sup>254</sup> Sections 17 and 20 of the larceny Act of 1916, Vol.1 laws of Sierra Leone (1960) 218-219.

<sup>255</sup> This Act is still in force in Sierra Leone although there are efforts to repeal and replace it.

after much civil society activism<sup>256</sup>, the Anti-corruption Commission set up to investigate exclusively corruption related crimes<sup>257</sup>.

In Sierra Leone, unlike Nigeria and Kenya, the Anti-Corruption Commission is an exclusive civilian outfit headed by a civilian commissioner appointed by the president<sup>258</sup>. In Nigeria and Kenya, the commission is part of the police and it is headed by a senior police officer. Furthermore, until recently, the Anti-Corruption Commission can only investigate offences, but the decision to prefer charges and prosecute offenders lies with the Attorney-General and Minister of Justice.<sup>259</sup>

Suffice it to say that there are now two institutions responsible for the investigation of corruption related offences-the SLP using the larceny Act of 1916, and the Anti-Corruption Commission, using the Anti corruption Act of 2000 as amended. This does not mean however that these law enforcement agents do not employ corruption in their investigation of crimes.<sup>260</sup> Apart from the Anti-Corruption Act of Sierra Leone, there are other international instruments which condemn acts of corruption among law enforcement officials whether in Sierra Leone or elsewhere. The UN in its code of conduct lays it down that: 'Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts'<sup>261</sup>. It goes further to state that:

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<sup>256</sup> A Bayraytay 'Arms Control Policy Under Threat: dealing with the Plague of Corruption' in A Ayisi & R E Poulton (eds) United Nations Institute For Disarmament Research (UNIDIR) *Bound To Cooperate Conflict, Peace and People in Sierra Leone (2006) 94*

<sup>257</sup> The Anti- Corruption Act no 1 of 1999.

<sup>258</sup> Section 3 Part 2 (n 254 above).

<sup>259</sup> Section 48(1) (n 255 above). By sec.121 of the new Anti-corruption Act 2008, the Commission can now investigate, and prosecute offences on its own.

<sup>260</sup> UN Country report on Sierra Leone 2007.

<sup>261</sup> 'Code of conduct for Law enforcement Officials' Adopted by General Assembly Resolution 34/109 of 17 December 1979 art 17.



...any act of corruption in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.<sup>262</sup>

This prohibition notwithstanding, deviant behaviour of the police in terms of corruption defeats the objective of this force created to ensure that the enjoyment of rights by one person does not impact negatively on the general good.<sup>263</sup>

#### **4.5 Conclusion**

Among the reasons that law enforcement officials give to justify corruption is poor salaries and conditions of service and poor standards of living.<sup>264</sup> But surveys have proved that high salaries are not the solution to corruption within these agencies. They are in fact sometimes a panacea for more corruption. Hence the African Union, in its fight against corruption in the region, made it part of its objectives to develop mechanisms in each state to prevent, detect, punish and eradicate corruption and related offences, the coordination of policies in the general fight against the scourge, and the condemnation and rejection of acts of corruption related offences and impunity<sup>265</sup>.

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<sup>262</sup> As above

<sup>263</sup> P Cronje *Manual on Human Rights Training for Police in Commonwealth West African Countries*(2005) in Polycarp N F 'Police Corruption in Cameroon And Uganda: A comparative analysis' unpublished LLM (HRDA) dissertation(2007) 4

<sup>264</sup> The Economist Intelligence Unit London UK 'Country Report Sierra Leone 2007/2008' 10 Sierra Leone was again ranked bottom of 177 countries in the Human development report.

<sup>265</sup> AU Convention on Preventing and Combating Corruption 2003/2006 Article 2(1) (2) (3)&(5).

Chapter Five:  
CONCLUSIONS AND RECOMMENDATIONS

5.1 **Conclusion**

This work was premised on the hypothesis that law enforcement is an indispensable tool in reinstating the rule of law in a post conflict society. However, the ensuing research shows that law enforcement officials<sup>266</sup> either through lack of knowledge, neglect, design or the several factors discussed so far become perpetrators of gross human rights violations. The social contract theory<sup>267</sup> which anticipates a surrender of some rights and privileges in exchange for security from the sovereign leaves much to be desired if the sovereign in the form of state agents like law enforcement officials, fail to perform their expected roles in a responsible manner.

From the study so far, a few lessons have been learnt and several issues highlighted which we may see as clogs in the vast machinery of law enforcement in post conflict Sierra Leone. These may be true for other post conflict countries:

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<sup>266</sup> n 27 above.

<sup>267</sup> n 30 above.

- The military background of the police is still a ghost that is chasing it so that it becomes difficult for the police to distinguish between its constitutional role and its paramilitary activities,
- The Sierra Leone Police (SLP) is still politicised. The chairman of the police council is the vice president of Sierra Leone,<sup>268</sup>
- There is a problem with separation of powers. The Office of the Attorney General and Minister of Justice is manned by one person who is both a politician and the political head of the Judiciary of Sierra Leone,<sup>269</sup>
- The Anti-Corruption Commission is eventually subject to the direction and control of the Attorney –General and minister of justice. He has to approve criminal charges before any one can be prosecuted on corruption charges.<sup>270</sup>

## 5.2 Recommendations

### i *Politics*

One key reason for the inefficiency of our law enforcement institutions is the political interference from the government of the day<sup>271</sup>. In 1978, the head of the SLP was a member of parliament<sup>272</sup>. Under the present 1991 constitution, the vice president is chairman of the police council<sup>273</sup>. On the other hand, the Attorney-General And minister of justice has wide ranging powers over the prosecution of

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<sup>268</sup> See section 156(1) (a) of the Constitution of Sierra Leone 1991.

<sup>269</sup> n 265 above, sec.64.

<sup>270</sup> n 256 above.

<sup>271</sup> J P Chris Charley (n 141 above) 73.

<sup>272</sup> Under the one party Constitution of 1978 in Sierra Leone, the heads of the military and the police became members of parliament with cabinet ranks.

<sup>273</sup> n 266 above.

cases in court and he is not subject to the direction and control of any other authority in the exercise of his powers<sup>274</sup>.

The government should adopt a hands off approach to enable these institutions to function effectively. The negative perception of the police, judiciary, prosecutions and prisons department as mere tools of the government found expression in 1991 when the war broke out. Government should not allow these perceptions to resurface in peace time.

ii *law reform*

Most of the laws in Britain have been repealed and replaced to meet modern demands of human rights and criminality, but many of those repealed laws are still in use in Sierra Leone. For instance, there is the larceny Act of 1916 which has been repealed in England and now known as the theft Act of 1978; the offences against the person Act of 1861; the perjury Act of 1911; the forgery Act of 1913 are very old laws which needs review.<sup>275</sup> We commend the government that by 2007, the following laws were enacted: the Anti-human trafficking Act 2005; the domestic violence Act 2007; the Child Rights Act 2007; the Human Rights Commission Act 2004; the Sierra Leone Citizenship (Amendment) Act 2006.<sup>276</sup>

Following the enactment of new laws should be the ratification of international charters, treaties, conventions, covenants and other international law obligations. Sierra Leone like many African states has not ratified the African Charter on Democracy, Elections and Governance.<sup>277</sup> We want to use this platform to urge all the

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<sup>274</sup> Section 66(8) of the 1991 Constitution.

<sup>275</sup> In 2006 the government set up the law reform commission to review many of the laws of Sierra Leone.

<sup>276</sup> See <http://thereport.amnesty.org/eng/regions/africa/sierraleone> (Accessed 5th October 2008).

<sup>277</sup> Heyns & Killinder (eds) (n above) 108.

states to ratify this charter which has brilliant ideas for a peaceful transition of power, respect for human rights, and a peaceful Africa<sup>278</sup>.

### iii *Norm creation*

Ethiopia may not be the best example for the respect of human rights in a post conflict African society<sup>279</sup>, but there is relative peace and security which is achieved through the creation of norms or values that Ethiopians have<sup>280</sup>. Such norms as the respect for human life and dignity and the belief in a deity who punishes every crime. These norms have been infused into the law enforcement mechanism of Ethiopia to achieve relative peace. They can be used in Sierra Leone to promote respect for human rights. But it requires commitment from government, the police and the civil populace<sup>281</sup>.

### iv *Community Policing*

Closely linked to norm creation is Community Policing which the Sierra Leone Police has implemented and needs to sustain.<sup>282</sup> Article (1) of the code of conduct for law enforcement officials states:

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal

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<sup>278</sup> LLM(HRDA)2008 Centre For Human Rights University of Pretoria, clinical group on Democracy, Elections and Governance.

<sup>279</sup> Human Rights Watch New York Dec.9,1997 'Human Rights Curtailed in Ethiopia' <http://www.humanrightswatch.africa.org> (Accessed 7th October 2008). See also U.S. Department of State Ethiopia Country report on Human Rights Practices 2005 on <http://www.state.gov> (Accessed 7th October 2008)

<sup>280</sup> Interview with Hassen Shifa Deputy Commissioner Ethiopian Federal Police in his office at Federal police headquarters Addis Ababa on Monday 6<sup>th</sup> October 2008 9:30 Am.

<sup>281</sup> As above

<sup>282</sup> J P Chris Charley (n268 above)

acts, consistent with the high degree of responsibility required by their profession<sup>283</sup>.

Community policing can be better understood when contrasted with authoritarian policing.<sup>284</sup> Whilst the former laid emphasis on civilian involvement in policing, the latter draws a strict line between civilians and police. Their loyalty is exclusively to the government of the day rather than to the community they serve.<sup>285</sup> This type of law enforcement is bound to fail. A typical example is in Somalia where the law enforcement agents are only answerable to the war lords making it ever difficult for the maintenance of law and order.<sup>286</sup>

#### *Benefits of community policing*

Criminal methods are becoming more sophisticated and traditional methods of combating crime may not be as effective<sup>287</sup>. Furthermore, the dependence on high technology to fight crime is helpful but is not on its own enough (and police resources are never enough to support the 'high tech' approach to fighting crime).<sup>288</sup> As a result, in many countries police have discovered that they need to form partnerships with the community in order to fight crime more effectively with the full cooperation of the community and by using less resource.

It has also been discovered that community policing forms an integral part of the notion of any human rights-based approach to policing<sup>289</sup>. By working closely with

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<sup>283</sup> Adopted by the UN General Assembly Resolution 34/69 17 December 1979.

<sup>284</sup> Uldriks N A (n above) 32.

<sup>285</sup> As above.

<sup>286</sup> Interview with Abu Zeid Intergovernmental Authority on Development (IGAD) Liaison officer with the AU at his office 5<sup>th</sup> floor Dashen Bank building Addis Ababa 15<sup>th</sup> September 2008 at 10:00 AM.

<sup>287</sup> 'Manual on Human Rights Training for Police in Commonwealth West African Countries (2005)161.

<sup>288</sup> As above.

<sup>289</sup> As above.

the community to prevent crime, police are in a position to better protect the rights of the community, in particular of vulnerable groups<sup>290</sup>. On the other hand, the community is in a good position to ensure that the police act in a professional and transparent way, and that they respect basic human rights<sup>291</sup>.

Law enforcement is fundamentally about people—about personal relationships and management of people. It is about serving and protecting people and their basic human rights. It includes ensuring that police themselves are not vulnerable and are welcome in their communities. Hence law enforcement cannot take place in isolation. Community policing has been developed as an operational strategy in response to the realities of change confronting police forces. It is also a strategy which supports human rights, wider good governance and democratic policing<sup>292</sup>.

#### *v Civilian oversight mechanisms*

One of the requirements necessary to achieve community or local needs policing<sup>293</sup> (local needs policing is defined as policing that meets the expectations and needs of the local community, and reflects national standards and objectives)<sup>294</sup> is civilian oversight mechanisms.

O’Rawe and Moore explain that a fundamental objective of policing in democratic societies is:

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<sup>290</sup> Vulnerable groups include victims of abuse of power who are defined as ‘persons who, individually or collectively, have suffered harm...’ UN General Assembly Resolution 40/34 of 29 November 1985.

<sup>291</sup> n 286 above.

<sup>292</sup> As above.

<sup>293</sup> Community or local needs policing see (n 279 above) 76. See also ‘The Sierra Leone Police Force in Distress’ Freetown 1999.

<sup>294</sup> As above.

to protect and defend the rights of all, to ensure equality before the law, and to do this by having as a primary goal the maintenance of the rule of law.<sup>295</sup>

The above principle is the ideal. In practice, police often choose to ignore the rule of law and behave in a manner which suggests that it does not and should not apply to them. Their non-compliance is considered by some to be a type of “perk” that goes with the job. However, the reality is that when police ignore laws which are designed to protect citizens’ human rights they become criminals masquerading as law enforcement officials. As Crawshaw points out, their actions do not reduce criminality, rather they add to it.<sup>296</sup>

In order to curb this unprofessional attitude by law enforcement officials, writers on this subject like J Hudson<sup>297</sup> are of the view that a separate and independent disciplinary body be set up by governments to investigate complaints against such officials. The police for instance should not have a monopoly over the investigation of crimes committed by the police itself.<sup>298</sup>

The Sierra Leone Police has in place the Complaints Discipline Internal Investigation Department (CDIID)<sup>299</sup> with the responsibility to investigate allegations of criminal acts and or human rights violations by police officers against civilians and against their colleagues. This is laudable, but one criticism is that the department is completely run by the police and there is a tendency for the officers to shield the misconduct of their colleagues depending on the interest they have.

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<sup>295</sup> C Lewis ‘The Politics of Civilian Oversight: Serious Commitment or Lip Service?’ in C Lewis & A Goldsmith (eds) *Civilian Oversight of Policing* (2000) 21.

<sup>296</sup> As above.

<sup>297</sup> J Hudson ‘Police Review Boards and Police Accountability’ 36 *Law and Contemporary Problems* (1977) 515-38

<sup>298</sup> n (286 above) 22.

<sup>299</sup> That department was set up by Constitutional Instrument no.1 *Sierra Leone Police Discipline Regulation* (2001)



The researcher would like to join those critical voices and call for an independent civilian oversight body to investigate human rights violations by police and other law enforcement officers. In the absence of the oversight body, the Human Rights Commission<sup>300</sup> should enforce the provisions of the Act relating to human right abuse.<sup>301</sup>

vi *International commitment/general comments*

To make law enforcement officials more accountable in their duties, there has to be a great level of commitment by the government to both national legislations and international resolutions or general comments on best practice for law enforcement. For example in general comment No.8, the Committee<sup>302</sup> makes it clear that paragraph 1 of Article 9 ICCPR is applicable to all deprivations of liberty.<sup>303</sup> Furthermore, the committee in the same comment, urges police or any other law enforcement agent to promptly bring arrested persons before a court of law to avoid over detention<sup>304</sup>. And if the detention is a so called preventative detention for the security of the person, then it must also not be arbitrary and must be based on grounds and procedures established by law.<sup>305</sup>

In General recommendation 13,<sup>306</sup> the committee recommended intensive training for these officials to ensure better understanding and implementation of instruments like

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<sup>300</sup> The Human Rights Commission Act no.7 of 2004 set up the Human Rights Commission of Sierra Leone in 2004.

<sup>301</sup> Section 7(2)(a) of the Act empowers the commission to investigate human rights violations.

<sup>302</sup> The human rights committee.

<sup>303</sup> UN '*International Human Rights Instruments*' A Compilation of General Comments And General Recommendations Adopted by Human Rights Treaty Bodies.HRI/1/REV.8 May (2006) 169.

<sup>304</sup> n 76 & 77 above.

<sup>305</sup> n 300 above.

<sup>306</sup> Adopted at the Forty-second session of the Human Rights Committee in 1993.

CERD<sup>307</sup>, and the Code of Conduct for Law Enforcement Officials(1979).<sup>308</sup>. Post conflict Sierra Leone is in dire need of such training to meet international standards as well as some of the findings and recommendations of the TRC.<sup>309</sup>

vii *Co-ordination Among Human Rights NGO's*

Following the end of the war in Sierra Leone, a lot of civil society activity sprung up<sup>310</sup>. CBO's and NGO's working on human rights issues were set up but were not effectively and properly co-ordinated.<sup>311</sup> As such it became difficult to bring perpetrators of human rights abuses among law enforcement agents to justice. As in post Apartheid South Africa, although the government maintained a veneer of concern when police abuses were exposed, the processes available to bring the police to account were almost always ineffective<sup>312</sup>.

A well co-ordinated civil society organisation will compliment the efforts of international human rights organizations<sup>313</sup> and government institutions<sup>314</sup> in the fight against impunity and the promotion of human rights.

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<sup>307</sup> Convention On the Elimination of All forms of Racial Discrimination.

<sup>308</sup> UN (n 302 above) 246-247.

<sup>309</sup> Conflict management And Development Associates(CMDA) *A Pocket Guide to the Sierra Leone TRC Findings and Recommendations (2007) 6*

<sup>310</sup> Personal observation of researcher.

<sup>311</sup> L Fofanah 'Sierra Leone Building Peace' <http://www.ipsnews.net/news.asp?idnews> (Accessed 10<sup>th</sup> October 2008)

<sup>312</sup> B Manby 'The South African Independent Complaints Directorate Oversight of Police misconduct in South Africa Under the Apartheid government' in C Lewis & A Goldsmith (eds) (n 292 above)195.

<sup>313</sup> The UNHCHR, UNHCR, UNIOSL, UNESCO, UNICEF etc all have a mandate to promote human rights in Sierra Leone.

<sup>314</sup> The Human Rights Commission of Sierra Leone, the Ombudsman(see section 146 of the 1991 Constitution of Sierra Leone), should join forces to prevent violations and promote human rights.

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(J) **Interviews**

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Interview with Abu Zeid (IGAD) liaison officer with the AU in his office Dashen Bank Building Addis Ababa 15<sup>th</sup> September 2008 at 10:00 am.

Interview with Dr Ahmed Sallah Human Rights expert AU in his office Political Affairs division AU headquarters AddisAbaba 18<sup>th</sup> September at 10:00 am.

(k) Newspapers

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